

BOONE COUNTY BOARD OF ADJUSTMENT

BOONE COUNTY GOVERNMENT CENTER

801 E. WALNUT ST., COLUMBIA, MO.

Thursday, September 27, 2018

The meeting was called to order at 7:00 p.m. in the Boone County Commission Chambers having a quorum present.

Roll call was taken:

Present: Frank Thomas
Rhonda Proctor
Paul Zullo
Dennis Stephenson
Michael Leopard

Absent: None

Staff: Thad Yonke, Senior Planner Uriah Mach, Planner
Paula Evans, Secretary

The meeting was called to order at 7:00 pm having a quorum present.

Chairperson Thomas read the following procedural statement:

Ladies and Gentlemen, the Boone County Board of Adjustment is now in session.

This Board is appointed by the Boone County Commission to consider specific application of the zoning and subdivision regulations. The Board is empowered to enter rulings that may give relief to a property owner from the specific application of the Zoning and Subdivision regulations. Generally, variances can only be granted in situations where by reason of shape, topography or other extraordinary or exceptional situation or condition of a specific ordinance would result in peculiar and exceptional difficulties to or exceptional and demonstrable undue hardship upon the owner of the property as an unreasonable deprivation of use as relating to the property. A variance from the strict application of this ordinance can be granted provided the relief requested will not substantially impair the intent, purpose and integrity of the zoning regulations.

Notice of this meeting has been published in accordance with our by-laws for the proper number of days. All decisions of the Board are based on the zoning or subdivision regulations for Boone County, Missouri, and they are hereby made a part of the record of this meeting.

This Board is comprised of five members, with three members constituting a quorum. An applicant must receive at least three votes in order to receive the relief that they have requested from the Board.

The following procedure will be followed: The agenda item will be announced, followed by a report from the Resource Management Department staff. At that time, the applicant or the applicant's representative may make a presentation to the commission. The Board may request additional information at that time, or later following the public hearing.

After the applicant's presentation, the floor will be opened for a public hearing to allow anyone wishing to speak in support of the request. Next, the floor will be given over to those who may be opposed to the request. Direct all comments or questions to the Board and please restrict your comments to the matter under discussion. The public hearing will then be closed, and no further comments will be permitted from the audience or the applicant unless requested by the Board. The Board will then discuss the matter and may ask questions of anyone present during the discussion.

Please give your name and mailing address when you address the Board and sign the sheet on the table after you testify. When you address the Board please speak directly into the microphone, so your remarks are properly recorded. Also, we ask that you turn off your cell phones. All testimony from the applicants and the public should be given from the speaker table, do not approach the Board unless requested. Any evidence submitted should first be given to the Secretary of the Board to properly identify for the record. During testimony, any references regarding submitted evidence should be referred to by its exhibit number.

Any materials that are presented to the Board, such as photographs, written statements or other materials will become a part of the record for these proceedings. If you would like to recover original material, please see the staff during regular business hours after they have had an opportunity to make a copy of your submission.

Minutes of the August 23, 2018 meeting were approved as written.

REQUEST

1. Case Number 2018-011

Request by Silas McCubbin Family Trust to allow a variance from the 50-foot front setback and from the requirement to provide a 10' utility easement for an existing barn located at 1480 W Hwy NN, Clark (Zoning Regulations 10.A / Subdivision Regulations Appendix B.7.1).

Planner, Thad Yonke gave the following staff report:

This site is located on State Highway NN 1.25 miles west of Highway 63 and 4.25 miles southwest of Sturgeon. The property has been used for agricultural purposes; there is a barn, shed, house, and other accessory structures on the property. The existing barn does not comply with the setback requirements in the zoning regulations and does not allow enough space for a required utility easement if the property is platted. The original zoning for this property is A-2. A 1956 aerial photograph of the property shows the barn existed at that time. The requested variances are from Zoning Regulations 10.A which stipulates that structures must be at least 50 feet from the front property line and from Subdivision Regulations Appendix B.7.1 which states that utility easements, including easements for future use shall be required as deemed necessary by the utility service providers and a minimum of a ten-foot utility easement shall be provided along all roads and streets. Staff notified 11 property owners about this request.

Section 1.9.2 of the subdivision regulations requires that the Director make a recommendation on requests for variance from the provisions of the regulations. The Board may grant a variance only if it finds after public hearing and upon competent and substantial evidence that the applicant meets the criteria for grant of a variance required by these regulations. No variance from any requirement contained within Appendix A or B of these regulations shall be granted unless the Board finds: (a) the applicant will incur unreasonable and unnecessary hardship if a variance is not granted and the variance is not sought primarily to avoid financial expense in complying with the requirements of these regulations (b) grant of a variance will not endanger the health, safety or welfare of the public, and (c) grant of a variance will not hinder, thwart or circumvent the general intent or any specific purpose of these regulations. All applications for variances

shall be filed with the Director and after review thereof the Director shall make a recommendation to the Board to grant or deny the application and state the reasons for his recommendation.

The subject property is a large parcel that is subject to being subdivided. The tract is zoned A-2 agriculture as is all the surrounding property. A single-family dwelling, barn, shed and other accessory buildings are located on the property. An aerial photo from 1956 (the oldest available to Resource Management) shows the barn, shed and house. Appendix B.7.1 of the subdivision regulations requires a ten-foot utility easement adjacent to all roads and streets.

- a. The applicant will incur unnecessary hardship if this variance is not granted. The barn would have to be removed.
- b. Granting this variance will not endanger the health, safety, or welfare of the public. The structure has been there for at least 62 years. Staff believes that the utility providers have developed the access they need while taking into consideration the location of this structure.
- c. Granting this variance will not thwart or circumvent the general intent of the regulations. Insuring that access to public utilities is an important function of government; however, staff believes that the A-2 zoning in this rural area will minimize demand for utility expansion in the future and that development can be designed to utilize available utility corridors.

Staff recommends that this variance be granted.

Chairperson Thomas: Has staff heard from any neighbors about this request?

Thad Yonke: Staff received a call from the property owner who wanted to know why 11 property owners were notified. It was explained to the property owner that staff is required to notify everyone within 1000 feet of the entire 200 plus acres, not just the proposed five-acre tract.

Present representing the request:

Don Bormann, Surveyor, 101 Singleton, Centralia

Don Bormann: We started this process about three or four years ago and got partway through it. The applicants are renting the house and it has been rented for many years, but the renters moved out; the owner wasn't sure if she could find another tenant, so we started this process and she was going to sell the property. They did find another tenant and now they are moving out of it. Mrs. McCubbin doesn't want to be in the rental business anymore, so we had surveyed out 25 acres in order to keep everything above what we needed to and not have to worry about a variance. Now the owner doesn't want to sell 25 acres because it detracts from their farming, this is all pasture land and they don't want to give up that much farmland. Instead we are going to create a five-acre piece, so we don't have to worry about a variance for the accessory structure being in front of the house. If you look at the highway maps that were done in the late 1950-1960's this barn was there when the highway plans were made. I am guessing this barn is over 100 years old, it is a stout structure, so the applicant doesn't see any reason for tearing it down. As staff reported the utilities work their way around the barn and it hasn't caused any problems at this point.

Open to public hearing.

No one spoke in favor or opposition to the request.

Closed to public hearing.

Chairperson Thomas: What is the size of the building?

Don Bormann: I don't recall off hand, I am guessing it is around 30 to 40 feet square, it is less than 10 feet off the right of way line. It is outside the right of way, but it encroaches in the utility easement.

Member Stephenson: Are there utilities running there now?

Don Bormann: No, they run along the other side of the highway.

Member Stephenson: Is the barn being used now?

Don Bormann: Yes, they've had some animals in there and they keep hay in it.

Chairperson Thomas: How much of the building is in the front setback?

Don Bormann: The entire building is in the setback.

Member Leipard: Does the building have electric?

Don Bormann: I think it does.

Chairperson Thomas: Are the applicants going to parcel off the five acres and sell the barn and house?

Don Bormann: Yes, the barn would go with the house.

Member Stephenson made, and Member Thomas seconded a motion to approve the request by Silas McCubbin Family Trust to allow a variance from the 50-foot front setback and from the requirement to provide a 10' utility easement for an existing barn located at 1480 W Hwy NN, Clark with the following condition:

- The existing structure maintain the same location, footprint, and square footage. If the existing structure has been damaged, by any cause, equal to more than seventy-five percent of the actual value of the structure immediately prior to the damage then any replacement structure must be built in compliance with the required setback.

Member Thomas	Yes	Member Proctor	Yes
Member Stephenson	Yes	Member Zullo	Yes
Member Leipard	Yes		

Motion to approve the request carries unanimously

2. Case Number 2018-012

Request by Silas McCubbin Family Trust to allow a variance from the 50-foot front setback for an existing shed located at 1480 W Hwy NN, Clark (Zoning Regulations 10.A).

Planner, Thad Yonke gave the following staff report:

This site is located on State Highway NN 1.25 miles west of Highway 63 and 4.25 miles southwest of Sturgeon. The property has been used for agricultural purposes; there is a barn, shed, house, and other

accessory structures on the property. The existing shed does not comply with the setback requirements in the zoning regulations. The original zoning for this property is A-2. A 1956 aerial photograph of the property shows the shed existed at that time. The requested variance is from Zoning Regulations 10.A which stipulates that structures must be at least 50 feet from the front property line. Staff notified 11 property owners about this request.

Present representing the request:

Don Bormann, Surveyor, 101 Singleton, Centralia

Don Bormann: This is a smaller structure and was used as a garage. It was built very stoutly, any thing less stout probably would have fallen down a long time ago but it is still there and there really is no reason to tear it down.

Open to public hearing.

No one spoke in favor or opposition to the request.

Closed to public hearing.

Chairperson Thomas: Does the building have a concrete floor?

Don Bormann: No.

Chairperson Thomas: Is it totally in the setback too?

Don Bormann: I don't think it is totally in the setback.

Member Stephenson: What type of shed is this?

Don Bormann: It used to be an old garage; it has the old, fold open doors.

Member Stephenson: Is the building being used currently?

Don Bormann: They just use it for storage at this point.

Chairperson Thomas: Where is it in relation to the existing house?

Don Bormann: It is in front of the house right beside the circle driveway.

Member Thomas made, and Member Proctor seconded a motion to approve the request by Silas McCubbin Family Trust to allow a variance from the 50-foot front setback for an existing shed located at 1480 W Hwy NN, Clark **with the following condition:**

- The existing structure maintain the same location, footprint, and square footage. If the existing structure has been damaged, by any cause, equal to more than seventy-five percent of the actual value of the structure immediately prior to the damage then any replacement structure must be built in compliance with the required setback.

Member Thomas

Yes

Member Proctor

Yes

Member Stephenson	Yes	Member Zullo	Yes
Member Leipard	Yes		

Motion to approve the request carries unanimously

OLD BUSINESS

Report: Temporary Dwelling Renewal - Waller

Thad Yonke gave the following staff report:

On September 27, 2001 the above-named applicants applied for and were granted a variance for temporary placement of a mobile home as a second dwelling. The permit was reviewed by the Board on June 27, 2013 and granted a two-year renewal and instructed staff to perform an administrative review in 2016. The permit was renewed by Resource Management on October 27, 2016.

Resource Management sent a renewal notice to the applicant in August 2018 and a completed application was returned. The applicant indicated that there have been no changes in circumstances since the last renewal and that the variance was still needed. Therefore, the permit was renewed for an additional two years. The next renewal is scheduled for October 2020.

Thad Yonke: These renewals used to come back to the Board and they would have to act on them every two years. The Board asked if these renewals could be done administratively and only bring back requests that have changes or ones that need to be terminated.

Member Proctor: When the application for renewal is sent does the application ask if it is the same trailer and the same people?

Paula Evans: Yes.

Member Proctor: This temporary trailer has been there for 19 years and the Board gave them approval because someone is elderly or sick.

Paula Evans: We ask them to state the nature of the hardship, on this application in particular the applicants stated it is for an elderly widow with mobility issues who requires daily assistance with activities, daily living and transport. We ask for the name of the people living in the trailer and also for the year and make of the trailer. Since most of these are for elderly people we do check the obituaries.

Thad Yonke: The other part of this is that sometimes the variance will have been granted for an elderly couple and one of them may still be around and sometimes the person needing the help is the property owner and the caretaker lives in the trailer. We have had instances where the person passed away and they move a disabled child into the home and in those instances, we have required them to reapply because you can't just switch people.

Chairperson Thomas: I am okay with doing it like this, but I think we should probably talk about this in the future about when they start hitting the 10 year mark, maybe we should set a point where the applicants have to appear before the Board.

Thad Yonke: That is fine. That was discussed.

Member Proctor: This was for a hardship and for 19 years they have been allowed to have a trailer right next door.

Member Zullo: Are the same people still living in this trailer?

Paula Evans: Yes.

Chairperson Thomas: That is the thing, all they are doing is filling out the application and mailing it in as opposed to coming before the Board and testifying.

Thad Yonke: That is how it used to be, the Board heard all of the renewals.

Paula Evans: The Board can stipulate when staff gives them the report that the Board wants to see them back before the Board at the next renewal.

Thad Yonke: Yes, that is the purpose of this report, so the Board knows what is going on.

Member Proctor: When I first joined the Board, we were getting them a lot and every other year we were getting them back. I am looking at this and thinking this has been 19 years? Health can change but 19 years of living next door in a trailer is not a hardship, it is a homestead.

Member Zullo: This can only be approved for 2 years?

Paula Evans: It is renewable, and the Board can choose to renew it for one year or two years.

Thad Yonke: The reason it is written into the regulations is the most the Board can approve it is for two years.

Member Zullo: What about the sewage?

Paula Evans: It has to have a separate system.

Member Zullo: So, everything has to be up to code.

Thad Yonke: They have to get a building permit to place the trailer.

Member Zullo: So that is the only time you can have two dwellings?

Thad Yonke: On a smaller acreage, yes.

Member Leopard: How close can it be to the house?

Thad Yonke: It depends, it has to be at least ten feet away from the house or it is considered to be part the original home; singlewide mobile homes are not constructed to meet the fire requirements, so it has to be at least ten feet away from the main building. In many cases the question immediately comes up when people want to request one of these variances is why they don't just add an extra bedroom on to the house and then it is permanent, and you don't have to come back and whatever investment they have made stays with the property. The mobile home is deteriorating no matter how good. It is a vehicle and it depreciates. The only thing that is allowed to get this variance is a singlewide mobile home because it has to be easily removable and not a permanent fixture of the property.

Paula Evans: We are down to only two of these temporary dwellings now. All the rest have been removed or the property has been divided.

Chairperson Thomas: This is one of them and it has been 18 years.

Paula Evans: We will have a report for another request by Bernie and Lisa Kile at the next meeting.

Member Zullo: Does the staff have a preference on how these renewals are done?

Thad Yonke: What the Board came up with as a procedure for staff to handle these administratively has worked and to a certain extent us showing people that they might have to come back even after it becomes administrative makes people a little more receptive when we point out that their smarter money is on adding to the house.

Paula Evans: Being that we are only down to two the Board could request they come back to the Board for their renewals.

Thad Yonke: Yes, unless we start getting a lot more of them.

Member Stephenson: What happens when the person who lives in this singlewide passes away? Does the temporary continue until the next renewal or is it over when the need is over?

Paula Evans: It is supposed to be removed when the need is gone.

Thad Yonke: We don't want it to become a zoning violation.

Member Stephenson: They have the responsibility to remove the trailer.

Thad Yonke: Yes, they do and if they don't work with us to get it removed in a reasonable time frame then it will be pursued as a zoning violation.

Chairperson Thomas: I would like to see this one come back before the Board because it is going on 19 years and that is a little much.

Chairperson Thomas made, and Member Stephenson seconded a motion for the applicants in Case 2001-009 Waller to appear before the Board for the next renewal due October 2020

All members voted in favor.

NEW BUSINESS

Meeting Procedures

Thad Yonke: The Board may have noticed that the Chairperson's statement had some additional information. We are asking for the Board to approve the change in procedures so that the Secretary can track in the minutes what is going on during the hearing the way it is supposed to be. This is a quasi-judicial hearing which means that this is closer to the court than it is to a legislative act. This is establishing a record that can go over to Circuit Court so when people are talking about materials they have given you and they say "as you can see in the picture" we need to document what picture is being referred to. When the

applicants come up present evidence to the Board, no one but the Board members can tell what it is and, it makes it difficult for the Secretary to reference what is being talked about in the record.

Member Proctor: I have noticed recently that we have been getting more people bringing in photos and that doesn't give us a chance to look at them before the meeting. Will staff send something out to surveyors and developers to say that they need to get this turned in beforehand?

Paula Evans: I don't believe there is anything in the bylaws that makes us require that they submit their evidence in advance.

Thad Yonke: That being said, we can look into whether or not that can be modified where any written or other types of documents could be required to be submitted ahead even if it is 24 hours in advance or require they give it to us in a format that already has a reference number. There could be something that we could look at to try to put something in the bylaws.

Member Proctor: It has become a habit to show up and show photos and we are not supposed to go out to these sites.

Member Stephenson: I agree with Member Proctor, they come in and want us to look at 20 pictures and three drawings and we don't have time to look them over.

Paula Evans: Each individual Board member can determine how they want to weigh the evidence.

Chairperson Thomas: Right, and that is how I approach it.

Thad Yonke: If they give you too much that is a little too complicated to be able to look at then the Board can always tell the applicants that they are not prepared to make a decision however, they can inform the applicants that they can make a decision based on the information submitted with the application.

Member Leopard: The Board can table a request if they need more time.

Member Proctor: I think it has become a ploy for some of them to bring in evidence at the time of the meeting. The Board doesn't get a chance to study it and it is hard to formulate questions not having that in front of you.

Thad Yonke: It seems like most of the Board members are concerned about this. Staff can speak with the Director. Staff can maybe look at the application form and we might be able to modify the application to say exhibits that you plan to submit need to be submitted with the application. This way the Board gets all the information up front. We will see what we have to do with the bylaws to see if those have to be modified. I don't see getting away from the applicant's ability to bring evidence and present it to the Board at the hearing, especially if it is evidence from the non-applicant. If they have pictures they need to be able to introduce those as evidence and their first opportunity to do that is at the hearing.

Member Leopard: If the Board is not comfortable they can always table the request.

Member Zullo: Do we vote on tabling?

Uriah Mach: Yes, the Board can make a motion to table the request.

Thad Yonke: The Chairperson's statement says the Board can ask the applicant for additional information and table the request.

Chairperson Thomas: We have had applicants not bring in enough information so we tabled the request.

Thad Yonke: You can always deny an application because they don't present. It is incumbent on the applicant to make a case and if they don't make a case there is no record and you really can't vote yes because there is no evidence in the record.

ADJOURN

Being no further business Chairperson Thomas made and Member Stephenson seconded a motion to adjourn. Motion to adjourn passes unanimously

Meeting adjourned at 7:50 p.m.

Respectfully Submitted,

Paula L Evans
Secretary

Minutes approved this 27th day of December, 2018