

## **BOONE COUNTY BOARD OF ADJUSTMENT**

**BOONE COUNTY GOVERNMENT CENTER**

**801 E. WALNUT ST., COLUMBIA, MO.**

**Thursday, December 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

Absent: Dennis Stephenson  
Michael Leipard

Staff: Thad Yonke, Senior Planner                      Bill Florea, 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 September 27, 2018 meeting were approved as written.

## **REQUEST**

### 1. Case Number 2018-013

Request by Tina Long for a variance from the required 50-foot front setback for an existing house in the A-2 zoning district on 17 acres located at 11570 N Old No. 7 (**Zoning Regulations 10.A**).

Planner, Thad Yonke gave the following staff report:

This 17-acre property is zoned A-2 as is the adjacent zoning. The site is located approximately 5.5 miles north of Columbia, there is a modular home and several accessory structures on the property. The existing dwelling does not comply with the required 50-foot setback. The original zoning for this property is A-2, there have been no previous requests submitted for this tract. The requested variance is from Zoning Regulations 10.A which requires that structures in the A-1 and A-2 zoning districts provide at least a 50-foot setback from the property line. Staff notified 27 property owners about this request.

Chairperson Thomas asked if staff heard from any of the neighbors.

Thad Yonke stated no.

Present representing the request:

Kevin Schweikert presented a display drawing of the property which the Secretary of the Board accepted as Exhibit 1 for this case.

Kevin Schweikert: Our plan is to do a subdivision on the 17 acres and create a smaller tract around the existing modular home, shed, barn, lagoon, and pond. The modular home is 52 feet from the current property line which meets the 50-foot building setback. Whenever we do a subdivision, we are required to dedicate 33 feet of right of way from the center line of the road and that becomes the new lot line. The 50-foot setback line as shown on Exhibit 1 comes back into the property further from the new lot line we are creating. In that case the modular home is mostly across the building line. The applicants are asking for the

modular home to remain as it currently sits which is within the new building line, if something happens to the home a new one would have to be placed to meet the required setback.

Open to public hearing.

No one spoke in favor or opposition to the request.

Closed to public hearing.

Member Proctor: When was the home placed on the property?

Kevin Schweikert: I estimate around 1984.

Member Proctor: Is there a basement under it?

Kevin Schweikert: I don't believe so; I think it has a crawl space, it doesn't look like it is on a walkout.

Thad Yonke: Mr. Schweikert indicated the current property line is the center line of the road. We would never consider the 50-foot setback from that property line even if there was no dedicated right of way now we consider a minimum 15 feet statutory then the 50 foot, so technically it should be 65 feet from the centerline of the road. It doesn't have any bearing on this case as they still need the same variance.

Kevin Schweikert: In that case the modular home is sitting across the building line at this point.

Chairperson Thomas: Is the modular home currently in use?

Kevin Schweikert: Yes.

Chairperson Thomas: Is it owned or rented?

Kevin Schweikert: I don't know; I think the owner lives there. I think I had something like this on Old Number 7 in the past and I think I had to apply for a variance for a house close to the property line. It seems to be a common thing in this area.

Member Proctor: The outbuildings will be in compliance?

Thad Yonke: If they create a 6.9-acre lot like shown in Exhibit 1 then that is larger than 5 acres so it would be able to be in front of the house.

Member Proctor made, and Member Thomas seconded a motion to approve the request by Tina Long for a variance from the required 50-foot front setback for an existing house in the A-2 zoning district on 17 acres located at 11570 N Old No. 7 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 Zullo	Yes		

Motion to approve the request carries unanimously

2. Case Number 2018-014

Request by Gary and Rhonda Wilson to allow an existing building to remain within the perimeter setback located at 5700 E Hwy 124, Hallsville (Zoning Regulations 6.6.4).

Planner, Bill Florea gave the following staff report:

This 39.95-acre tract is zoned A-2 the adjacent zoning to the north is A-RP and A-R, properties to the east, south and west are zoned A-2. This site is located on State Highway 124 approximately 1400 feet west of Hallsville, there is a single-family dwelling and accessory structure on the property. The applicants desire to develop a planned development which requires a minimum 25 feet setback around the perimeter of the property. The accessory structure is within that perimeter area. The original zoning for this tract is A-2. In 2010, 19.21 acres were rezoned to A-RP and a development plan was approved. The applicants desire to rezone additional land which includes the subject area. The requested variance is from Zoning Regulations 6.6.4 which requires that a setback equal to the A-R front setback is to be provided around the perimeter of a property. Staff notified 28 property owners about this request.

Present representing the request:

Gary Wilson, 5700 E Hwy 124, Hallsville  
Rhonda Wilson, 5700 E Hwy 124, Hallsville

Staff submitted a copy of the proposed preliminary plat and review plan which the Secretary of the Board accepted as Exhibit 1 for this case.

Gary Wilson: In 2009 we had this subdivision set up and I was still going to be able to have 10 acres, so I never knew anything about this setback; now that 10-acre tract is being made into 5.6 acres. The building has been on there and I just put metal on it and fixed it up. It is about 12 feet off the property line, there is a pond on the other side of the property from it. It is not really close to anything which is probably why no one complained about it; it is probably a \$50,000 shop and I use it for my construction business. I was hoping to get a variance so it could stay there.

Open to public hearing.

No one spoke in favor or opposition to the request.

Closed to public hearing.

Chairperson Thomas: How old is the building?

Gary Wilson: I would say it is 50 or 60 years old.

Chairperson Thomas: Is it a pole structure?

Gary Wilson: Yes.

Chairperson Thomas: Does it have concrete, electricity or water?

Gary Wilson: It has concrete and electricity, no water.

Chairperson Thomas: How large is the building?

Gary Wilson: 30 x 60.

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

Gary Wilson: 10 x 60 feet.

Chairperson Thomas asked for clarification about this request and why the variance was needed.

Bill Florea: In August 2018 the Board heard a similar case where a property owner desired to obtain approval of a planned development on their property, it was zoned A-2 which requires a 50 foot perimeter buffer and they had an accessory structure that was in the buffer and they asked for a variance for that. This is a similar circumstance. It is a request for the planned development that brings up the need for the variance. The reason for inclusion of the property in the planned development is that they are platting lots that are less than five acres along the frontage of Highway 124 and this particular lot will not have frontage on a publicly maintained road. The subdivision regulations say that in order to qualify for a private road to serve a lot, all lots in the subdivision have to be five acres or greater unless it is in a planned development as a major plat. That is why they are proposing this as a planned development: so they can serve this five-acre lot by a private drive. Otherwise, they would be required to combine this lot with one of the less than five acre lots that has frontage to give it public road frontage.

Member Zullo: They own all the lots?

Bill Florea: Yes, they own all of the property.

Thad Yonke: The lots don't exist yet, they are proposing them.

Member Zullo: So, what you just said I shouldn't pay attention to? Or should I?

Bill Florea: It is up to each Board Member to weigh testimony.

Bill Florea showed Exhibit 1 to the Board Members and invited the applicants to the table to view as well.

Bill Florea pointed out the location of Highway 124 and the location of the A-R zoning.

Bill Florea: Since the frontage lots are all less than five acres, they are proposing a planned development in order to use a private drive to access Lot 7. If the applicants don't get the variance then they will have to combine Lot 7 with one, or a portion of the other lots in order to provide direct road frontage to that piece of property.

Member Proctor: Is someone living in the home on proposed Lot 7 and the home directly to the west?

Gary Wilson: My kids.

Chairperson Thomas: Is this a separate piece?

Gary Wilson: Yes.

Bill Florea: It was divided by an administrative survey and it is still zoned A-2.

Member Proctor: The applicants are using the shop on Lot 7, correct?

Gary Wilson: Yes.

Member Zullo: So, you would surrender this lot if the variance isn't granted?

Chairperson Thomas: Which makes for a really odd shaped lot.

Bill Florea: It is already an odd shape.

Member Proctor: Who owns the land over here (to the east) and how much is it?

Bill Florea: It says Darla Ardrey and it shows 15 acres.

Member Zullo: So, if you dedicate this lot to your property does it allow you to do what you want to do?

Member Proctor: It just takes this as being sold.

Member Zullo: If they need this to make this work to serve this?

Bill Florea: This lot will have to have frontage, somehow, they will have to create a compliant lot that has frontage on Highway 124.

Member Zullo: They would have to change everything.

Thad Yonke: It is already A-RP property for a portion of this; they've already done a plan.

Bill Florea: The A-RP zoning follows the gas line.

Thad Yonke: The previous plan didn't include the property where the variance is being requested.

Member Proctor: They are asking for us to excuse this piece of land so they could go ahead and use this plan but they can't do that until we excuse that building right there.

Member Zullo: To surrender this to himself he would have to replat all of these things.

Bill Florea: He hasn't platted any of these, this is a preliminary plat. It would require some redesign but so far it is lines on paper.

Gary Wilson: There is an existing house on that lot is what messes it all up and there is floodplain down here. So, the house can only go right there or it will be in the floodplain and if I push that down it eliminates that from having anything on it.

The Secretary of the Board asked for clarification on which lots were being discussed.

Bill Florea: There is an existing home on proposed Lot 2, proposed Lot 1 to the west is 9.4 acres but it has limited building area because of the flood plain.

Member Proctor: We are looking at Lot 7 which has the building that the variance is being requested for because Lot 6 is in front of it. Lots 6 and 7 create a very odd shaped lot.

Chairperson Thomas: Have the applicants worked with staff at all on this? Did staff give them any suggestions or is this as good as it gets?

Bill Florea: This is what the applicants proposed. Either they get the variance, or they redraw it.

Member Zullo: Is this just a gravel road?

Gary Wilson: Yes, I think there has been some discussion about that as well though.

Bill Florea: It will have to be paved if this is approved and they end up developing it. It is in the urban service area and comes off a paved surface, so it has to be paved to the point at which it is only a single family driveway.

Chairperson Thomas: If this were denied and they replat it to accommodate it?

Bill Florea: Then it is just a driveway.

Member Proctor: My big concern, while I know what the applicants are trying to do but when I look at this and future usage of the land it concerns me that we have this really odd shaped piece in the back and we have the other piece the applicant owns.

Chairperson Thomas: There are also two single family structures that are close too.

Member Proctor: If one part gets sold off then you have a road that is a driveway that ends up going to two places that are different.

Bill Florea: They are currently two separate legal lots but the lot their home is on is 21.91 acres that includes all of that planned development. The other home is on a separate 10 acres so that is the case now and will continue to be the case either way whether you grant the variance or not.

Thad Yonke: The applicants created the 10-acre piece and the 20-acre piece as part of the previous iterations of the development.

Gary Wilson: The little house is an old earth-contact home, it doesn't have an upstairs it just has a roof. I would assume someday that the house will probably go and someone will build away from the current location and there is room to do that on the driveway.

Chairperson Thomas: How wide is the narrowest part of this lot?

Bill Florea: It has to be at least 150 feet and it is a little over that.

Chairperson Thomas: When you read what variances can be granted for it is for shape, topography, or other extraordinary or exceptional situation or condition of a specific ordinance result in a peculiar and exceptional difficulties or exceptional and demonstrable undue hardship upon the owner as an unreasonable deprivation of use as relating to the property. How does this impair the applicant from using the property? We don't generally grant variances for economical reasons.

Gary Wilson: If you don't give me the variance the lot is already zoned like that and that won't change at all, it is already like that.

Bill Florea: It is currently part of a 21-acre tract.

Gary Wilson: Regardless it still looks like that whether I did anything.

Thad Yonke: Being part of a 20 plus acre piece there was no review of the configuration when the 20 acres was created.

Chairperson Thomas: Is there a way that this could be divided that it would not have to come back for a variance or will this always have to have a variance?

Bill Florea: They will have to divide it in a way that the home with the shed on it has road frontage.

Chairperson Thomas: That is all it needs is road frontage?

Bill Florea: Or all the lots up front become five acres or greater which is probably less desirable for the applicants.

Chairperson Thomas: How large is lot 6?

Uriah Mach: Lot 6 is 3.5 acres.

Member Zullo: It seems this is more of a convenience because there is a lot in front. If it was my property and I had the space in front I would assume I have to use that lot to make my lot bigger.

Gary Wilson: I agree with you on that, the only thing I would complain about is that if I tore the shed down and moved it over 12 feet then do I comply?

Bill Florea: If you could meet the 25-foot setback.

Gary Wilson: Then I wouldn't have to do anything.

Bill Florea: That is correct.

Gary Wilson: In my opinion the 12 feet doesn't matter except for on the paper. It seems unfair to me.

Bill Florea: People usually don't like when I suggest this but there is the option of purchasing property from your neighbor to make up the balance of the 25 feet.

Gary Wilson: Can you get just a chunk big enough for it to fit?

Bill Florea: It would have to be surveyed and there would be some process to doing it.

Thad Yonke: Variances are not allowed to be granted for economic reasons if the whole thing can be solved by moving the building 12 feet that is more lying on the cost of moving it.

Member Proctor: It is just a pole barn?

Gary Wilson: It is a pole barn, it has concrete. It wouldn't be moved it would be demolished and then I would build the same thing 12 feet over. If it was 10 acres I wouldn't be sitting here.



Member Proctor: I am going to make a motion to deny the request. Being a pole barn there are other remedies. As Chairperson Thomas stated, variances can only be granted due to topography or some extra thing that keeps it from happening. Chairperson Thomas seconded the motion.

Gary Wilson: Is my option just to eliminate that lot and that is the end of the conversation?

Bill Florea: That is an option. The applicant can work with their surveyor.

Rhonda Wilson: How much frontage does it need?

Thad Yonke: The applicants should probably come in with their surveyor to speak with staff, there are probably multiple options.

Gary Wilson: Can the 10-acre piece be changed up or is it already zoned and 10 acres?

Bill Florea: Do you mean if you add it to yours?

Gary Wilson: Yes.

Bill Florea: Once it gets below 10 acres then it becomes a subdivision and it is in a different category and it isn't quite enough if it was 15 and you got 20 out of it between the two then you could just redraw the line and have two 10's and you're good. To answer Mrs. Wilson's question it has to be at least 150 feet wide the whole way and then there is an aspect ratio of 3:1 so it can't be any deeper than three times it's width.

Member Proctor made, and Member Thomas seconded a motion to deny the request by Gary and Rhonda Wilson to allow an existing building to remain within the perimeter setback located at 5700 E Hwy 124, Hallsville:

Member Thomas	Yes	Member Proctor	Yes
Member Zullo	Yes		

Motion to deny the request carries unanimously

## **OLD BUSINESS**

Report: Temporary Dwelling Renewal - Kile

Bill Florea gave the following staff report:

On July 24, 2014 the above-named applicants applied for, and were granted a variance for temporary placement of a mobile home as a second dwelling. The Board instructed staff to perform an administrative review in two years. The permit was renewed for a period of two years by Resource Management on October 24, 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.

Chairperson Thomas: What exactly was the reason for it?

Paula Evans: They still have aging parents living in the temporary dwelling. It's a 1995 Fuqua Singlewide.

Member Proctor: We decided how many renewals before they have to come back?

Paula Evans: The last review we gave the Board the Board requested that all future renewals come back before the Board.

Thad Yonke: There aren't as many as there used to be so the Board requested to see them again.

## **NEW BUSINESS**

### Meeting Procedures

Thad Yonke: That is what we did tonight with naming the submitted exhibits and referring to them as such.

Bill Florea: The first one is what Paula implemented tonight was that when exhibits or displays are presented the Secretary gets a copy, so she can label it and track it otherwise it is impossible for her to track what the Board is discussing unless the exhibits are referred to as 1, 2, 3, etc. The other thing we have been discussing is there is no prohibition about reapplying immediately after being denied a variance, so we are proposing a change in the rules to address that. Applicants would have to wait a year to come back. Rule changes require four members to be present and there are only three here tonight.

Paula Evans: Typically, the bylaws are reviewed every October but we didn't have a meeting in October. We are working on a few small changes and those that Bill had mentioned.

Bill Florea: The Board By-Laws require four votes to amend the By-Laws. We will probably keep that on the agenda until we have four members present.

## **ADJOURN**

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

Meeting adjourned at 7:44 p.m.

Respectfully Submitted,

Paula L Evans  
Secretary

Minutes approved this 28<sup>th</sup> day of February, 2019