

BOONE COUNTY BOARD OF ADJUSTMENT

BOONE COUNTY GOVERNMENT CENTER

801 E. WALNUT ST., COLUMBIA, MO.

Thursday, September 26, 2019

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: Michael Leipard
Rhonda Proctor
Paul Zullo
Jesse Stephens

Absent: Frank Thomas

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

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

Vice Chairperson Leipard 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 July 25, 2019 meeting were approved as written.

REQUEST

1. Case Number 2019-005

Request by David & Linda Sappington for a variance from providing a central sewer system on a lot less than 2.5 acres located at 2100 E Hwy MM, Ashland. (Subdivision Regulations, Appendix B, Section 3.1)

Member Jesse Stephens stated that Crockett Engineering, with whom he is employed, is representing this case and he will abstain from the discussion and the vote.

Planner, Thad Yonke gave the following staff report:

This site is located approximately two miles northwest of Ashland, the subject tract is 220 feet south of State Highway MM. The property is zoned A-R as is the adjacent zoning. There is a single family dwelling on the property. The applicants wish to acquire additional land in order to make wastewater system improvements. They have reached an agreement with the adjoining property owner to purchase additional land, however not enough to meet the requirement of 2.5 acres for an on-site wastewater system. There is not a central wastewater system in the area proximate enough to connect. The subject tract was created by legal description on a deed in 1972, prior to the adoption of zoning regulations. The original zoning for this area is A-2. The house appears to have been built in 1975. In 1977 a previous owner requested A-R zoning for a residential development on 19.6 acres which included this parcel that had already been created. The development never occurred. The requested variance is from Subdivision Regulations, Appendix B, Section 3.1 which states that any subdivision containing any lot less than 2.5 acres in size shall have an engineered centralized sewage collection and/or treatment system. Staff notified 12 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 0.83 acre tract zoned A-R on a private road 220 feet south of State Highway MM approximately two miles northwest of Ashland. The tract was created in 1972 before zoning was introduced and the house was built in 1972. The applicants wish to make improvements to their existing on-site wastewater system and are obtaining additional land from their neighbor. They are not obtaining enough land necessary to meet the 2.5 acre minimum lot size that allows an on-site wastewater system as required by the subdivision regulations. Appendix B, Section 3.1 states “any subdivision containing any lot less than 2.5 acres in size shall have an engineered centralized sewage collection and/or treatment system”.

- a) The applicant will incur unreasonable and unnecessary hardship. The property owner cannot make improvements to the wastewater system without additional land and appears unable to obtain enough land from the adjoining property owner to total 2.5 acres. There is not a wastewater collection system in the vicinity.
- b) Granting this variance will not endanger the health, safety, or welfare of the public.
- c) Granting this variance will not thwart or circumvent the general intent of the regulations.

Staff recommends that this variance be approved.

Present representing the request:

David Butcher, Crockett Engineering, 1000 W Nifong, Columbia

David Butcher: The property as it is shown is a nice rectangle around an existing house. The unfortunate thing is that it is not exactly how the property turned out. I was hired because the contractor was going to come out and install a new sewer, he was going to put in an engineered wastewater system on the property and he wanted me to locate the property lines in order for him to install the system to make sure he met all of the setbacks and didn't trespass on the neighbor.

David Butcher presented a copy of the plat of the property. This was marked as Exhibit A.

Member Proctor: We have too many times when we come and we are handed stuff right here and we don't have time to really study it so from now I am just going to ask you and Mr. Schweikert (who is in the audience) to go ahead and make sure when you turn in your stuff you turn in all things because it is very unfair for us to get a couple of minutes to look at things and the audience if we have someone in opposition they don't ever get to see information. So from now on if you can go ahead when you submit the original information make sure to include everything. You are welcome to do that now but as long as Paula puts it into the record that it is an exhibit.

David Butcher: Very well, I will do my best Mrs. Proctor to make sure that happens. I need you to know that this is like a quasi-judicial hearing so it is my prerogative to prove my case and sometimes I develop evidence as I am going from the initiation of my application it is a 30 day window for me to develop my case.

Member Proctor: It is also our prerogative to table the request which would be hard for your client.

David Butcher: I am not sure that tabling would allow me to present more evidence.

Member Proctor: But we get a chance to look at the evidence and look at it in depth. We aren't allowed to go out and look at the property as you know so we want to be able to look at all the paperwork that we get at one time. You are welcome to present it and give it to Paula and she will enter it in as record but I want to make sure that you all know that we've actually changed our bylaws that says that we can table immediately if we wanted to.

David Butcher: So, I don't want to go off on too big a tangent but what we are saying here is that you do not want us to present evidence anymore at the hearing.

Member Proctor: Correct.

David Butcher: So we aren't allowed to prove our case or present any evidence that we've collected.

Member Proctor: How long have you had to present everything into your application to us? How long do you have to do that?

David Butcher: I don't understand the question. Sometimes I have minutes, sometimes I have days, sometimes I have weeks.

Member Proctor: So what are you presenting?

David Butcher: I will present it and I'll show you.

Member Zullo: Are we speaking in general?

Member Proctor: We changed our bylaws.

Member Zullo: But you are speaking in general?

Member Proctor: Right. Not necessarily this case but I want to make sure they understand that they can be tabled very quickly.

David Butcher: As you can see after I presented Exhibit A, after I surveyed the property I determined that the property lines went through the building so I have highlighted in yellow where the building is and created bold lines to show where their actual property boundaries are in relationship to the house. The applicants wouldn't be here asking for this variance if it wasn't for the fact that their property line bisected their house. They want to resolve that matter. This is about the sewer but it is also about fixing something that is broken. I explained to them what the situation was so the first course of action was to try to obtain some additional property from the neighbor.

David Butcher asked Uriah Mach to zoom into the property on the aerial.

David Butcher: Since this is already public record I won't pass around any pictures, I think we can make this work. You can see a mowed line on the aerial and there is another one south of the shed. These two lines are what we consider the use lines of the property. The landowners have been taking care of the property between those mowed lines as long as they have owned the property and had no idea where the property boundaries were and this is what they have been taking care of. The adjoining landowner was willing to sell property to them to help mitigate the property but was unwilling to give up any of the farm ground and will only give up what the applicants were already maintaining. That helped the applicants but in this zoning the minimum lot width is 60 feet and since the applicants don't have over five acres to have a

private road it required a 60 foot addition. The neighbor was willing to grant the applicants a 60 foot strip of land to create a conforming lot however the neighbor is not willing to sell enough land in order to make the 2.5 acre minimum. I am here to ask the Board to allow the applicants to have a two acre lot in the A-R zoning and that will allow the applicants plenty of space to fix their sewer.

Vice-Chairperson Leipard: What kind of sewer do the applicants have now?

David Butcher: Currently they have a lagoon and it is located on the neighbor's property. The applicants on their own wanted to improve their system and get rid of the lagoon and in doing so they opened up a hornets nest.

Vice-Chairperson Leipard: Getting rid of the lagoon is a probably a good thing?

Thad Yonke: Yes, since the lagoon is on a neighboring piece of property.

Member Zullo: What will be the applicants property now is what they have been mowing and they are just trying to get a septic system to work in that space.

David Butcher: Exactly.

Vice-Chairperson Leipard: Have you talked to a professional or looked at how to get the septic system on the property, is there enough room for it to work or perk?

David Butcher: Yes, the applicants already hired an engineer to install the system but in the process they found out the property lines bisected the house so they put that on hold and are putting the system in a different location.

Vice-Chairperson Leipard: Where are they going to put the new system?

David Butcher pointed on the map the proposed location.

Vice-Chairperson Leipard: That has to be approved by the Health Department?

David Butcher: Yes.

Thad Yonke: If the variance is approved the new wastewater system would then be on their own property.

Rhonda Proctor: How much property is the applicant getting from the neighbor?

David Butcher: They are going to have two acres total. It shows on the drawing I gave you; 2.03 acres.

Rhonda Proctor: When do they close on that?

David Butcher: We don't have a set time because I need the Boards approval to do this first.

Open to public hearing.

No one spoke in favor or opposition to the request.

Closed to public hearing.

Member Zullo made, and Member Leipard seconded a motion to approve the request by David & Linda Sappington for a variance from providing a central sewer system on a lot less than 2.5 acres located at 2100 E Hwy MM, Ashland

Member Leipard	Yes	Member Proctor	Yes
Member Zullo	Yes	Member Stephens	Abstain

Motion to approve the request carries 3 YES 1 ABSTAIN

2. Case Number 2019-006

Request by William & Mary Oswald for a variance to construct an accessory building in front of an existing single-family dwelling on 4.23 acres located at 16654 N Crownview Dr, Centralia. (Zoning Regulations, Section 7.A.(5))

Planner, Bill Florea gave the following staff report:

This site is located approximately one mile north of Hallsville and is zoned A-2 as is the surrounding zoning. There is a single family dwelling and several accessory buildings on the site. The applicants wish to build an accessory structure in front of the residence. The original zoning for this property is A-2, the subject tract was created in 1973 and the house was built in 1988. The requested variance is from Zoning Regulations 7.A.5 which states no accessory building may be erected in front of a main building unless the accessory building is attached to the main building by a common wall. Staff notified 26 property owners.

Present representing the request:

Bill Oswald, 16654 N Crownview Dr, Centralia
Mary Oswald, 16654 N Crownview Dr, Centralia

Bill Oswald: I am asking for a variance on this property. The boundary survey on that is different from the aerial; my property line goes almost to the neighbor's house. I want to build a 40-foot x 60-foot garage to house a boat, truck and wood working shop for when I retire. From what I understand the reason for it not to be in front of the house is because of Fire Department connections and the fire department gaining access to my property and not being able to see if the house is on fire. This building is going to be placed in a field on the other side a tree.

Bill Oswald presented a picture of the property where he would like the building to go. This was marked as Exhibit A.

Bill Oswald: This will have a separate entrance off of North Crownview Drive and will not hinder the fire department or any of the neighbors. I spoke with all 26 neighbors on the list and no one had any concerns and offered to come and support this request. The building will be placed at the southwest corner of the property.

Vice-Chairperson Leipard: Staff doesn't have a problem with the applicants coming off the road with this building?

Bill Florea: It will require a driveway permit, our engineering staff will verify that the location meets the site distance requirements.

Member Proctor: Is there a problem with this being a hobby shop?

Bill Florea: Not if it is for personal use.

Bill Oswald: It is for personal use; I won't be selling anything.

Vice-Chairperson Leipard: We get the exhibits and look at what is submitted. I was able to review the survey today and it helps to have it in advance. There are two houses overlooking the lake?

Bill Oswald: There are a lot of houses.

Vice-Chairperson Leipard: But there are two that are close to each other.

Bill Oswald: That is my neighbor.

Vice-Chairperson Leipard: Will the building impede the neighbors view of the lake?

Bill Oswald: No, he can see the lake. I am 25 feet from his property line now.

Member Stephens: To meet the criteria the shop would have to be located behind the front plane of the house from road frontages?

Thad Yonke: Due to the location of the house, the only place an accessory structure would be able to go is to the east or to the north of the house.

Bill Oswald: That is all water.

Vice-Chairperson Leipard: Where the applicant is proposing the shed to be it is not directly in front of the house.

Bill Oswald: Yes, in the southwest corner of the property.

Open to public hearing.

No one spoke in favor or opposition to the request.

Closed to public hearing.

Member Zullo: Will this set a precedent?

Bill Florea: It's possible. The Board could stipulate that this variance is for a single building as depicted on the site plan that was submitted with the application.

Member Proctor made and Member Zullo seconded a motion to approve the request by William & Mary Oswald for a variance to construct an accessory building in front of an existing single-family dwelling on 4.23 acres located at 16654 N Crownview Dr, Centralia with the following condition:

1. The variance is for a single shed as depicted on the site plan submitted with the application.

Member Leopard	Yes	Member Proctor	Yes
Member Zullo	Yes	Member Stephens	Abstain

Motion to approve the request carries unanimously

3. Case Number 2019-007

Request by Aaron & Hannah Foster for a variance to allow an existing accessory structure to remain in front of a single-family dwelling on 3 acres located at 6506 E Spiva Crossing Rd., Hallsville. (Zoning Regulations, Section 7.A.5)

Planner, Bill Florea gave the following staff report:

The site is located at the intersection of Spiva Crossing Road and Sheridan Road approximately two miles north of Columbia. The property is zoned A-2 as is the surrounding property. There is a house and accessory structure on the property. The subject tract is a corner lot so it has a front setback on both Spiva Crossing and Sheridan Roads. The accessory structure extends into the front plane of the main structure as seen from Sheridan Road. The subject site is zoned A-2 and is part of Bluegrass Hills subdivision which was platted in 1976. Bluegrass Hills is a 39 acre tract that was divided into 34 lots most of which are one acre in size. A note on the original plat indicates that at least three lots are required for a building site. The applicants own three one-acre lots that they would like to combine into a single lot, which requires that the land be re-platted. The requested variance is from Zoning Regulations Section 7.A.5 which states that no accessory building may be erected in front of a main building unless the accessory building is attached to the main building by a common wall. Staff notified 22 property owners.

Present representing the request:

Kevin Schweikert, Brush & Associates, 506 Nichols St. Columbia
Aaron Foster, 6506 E Spiva Crossing Rd, Hallsville

Kevin Schweikert presented the following:
Photos of the accessory structure. Marked as Exhibit A.
Aerial photo showing the new lot configurations. Marked as Exhibit B.

Kevin Schweikert: In the future I will make sure I have the exhibits available for the Board before the hearing. The staff report did a good job of explaining the situation, we have a subdivision that was done in A-2 zoning that was one acre lots which is not appropriate for A-2 zoning. The plat had a note on it that stated they had to have three lots to build on. The applicants are trying to replat the lot; we are actually replatting ten lots into three tracts that would be three new lots larger than the 2.5 acre minimum in A-2 zoning. Part of the reason for doing this is that the guy to the south owns ten lots and we are trying to get a new septic system, the existing lagoon is too close to both property lines and it drains to the south. There haven't been any problems with the Health Department at this point, the property owner is doing this on his own. We approached doing this different ways but the current subdivision regulations requires that we replat it. In the process we made two lots for the owner to the south. We found out that the existing accessory structure doesn't meet the front setbacks for either road. The applicant would like to keep the building, it is approximately 30 x 50 with heating and air, plumbing and is on a concrete pad. It is a well-built building. The applicant uses it to store his lawn mower.

Member Stephens: How long has the building been there?

Aaron Foster: It has been there since the 1980's. It is a nice building and I would like to keep it.

Member Zullo: Where will the septic tank go?

Aaron Foster: We are buying the field to the south and it will go back there.

Kevin Schweikert: The house faces the north but it has a driveway to it from both roads; there is a circle drive.

Member Stephens: Does it meet all other setback requirements?

Kevin Schweikert: Yes.

Member Zullo: There aren't any site issues?

Kevin Schweikert: No.

Open to public hearing.

No one spoke in favor or opposition to the request.

Closed to public hearing.

Member Proctor made and Member Zullo seconded a motion to approve the request by Aaron & Hannah Foster for a variance to allow an existing accessory structure to remain in front of a single-family dwelling on 3 acres located at 6506 E Spiva Crossing Rd., Hallsville with the following condition:

1. 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 Leipard	Yes	Member Proctor	Yes
Member Zullo	Yes	Member Stephens	Yes

Motion to approve the request carries unanimously

OLD BUSINESS

None

NEW BUSINESS

None

ADJOURN

Being no further business the meeting was adjourned at 7:49 p.m.

Respectfully Submitted,

Paula L Evans
Secretary

Minutes approved this 26th day of September, 2019