

BOONE COUNTY BOARD OF ADJUSTMENT

BOONE COUNTY GOVERNMENT CENTER

801 E. WALNUT ST., COLUMBIA, MO.

Thursday, July 23, 2020

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
Jesse Stephens
Rhonda Proctor
Michael Leipard
Paul Zullo

Absent: None

Staff: Bill Florea, Director 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 statement:

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. The applicant or the applicant's representative may make a presentation to the Board. The Board may request additional information at any time.

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 unless requested by the Board. The Board will then discuss the matter and may ask questions of anyone present during the discussion.

Please sign in and give your name and mailing address when you address the Board. Please speak directly into the microphone so your remarks are properly recorded. 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.

Minutes of the June 25, 2020 meeting were approved as written.

REQUESTS

1. Case Number 2020-007

Request by Greg and Joan Dyer Living Trust for a variance to allow an onsite waste water system to be placed in a designated stream buffer on 31.77 acres located at 10251 S Smith Hatchery Rd, Columbia. (**Zoning Regulations, Section 26.5.3 Table I & Section 26.5.4 Table II**)

Member Stephens stated he has a conflict of interest with this request through his employment with Crockett Engineering. Member Stephens stated he will not participate in the discussion or vote on this request.

Senior Planner, Thad Yonke gave the following staff report:

This 31.77 acre tract is zoned A-1 (Agriculture), the adjacent zoning to the north, west and south are also zoned A-1. Property to the east is zoned A-2. This site is located 6.5 miles southwest of Pierpont, approximately 3400 feet north of the Missouri river, there is a single-family dwelling and three outbuildings on the property. The applicant wishes to install an onsite septic system within the stream buffer, the proposed septic system will serve one of the accessory structures. The original zoning for this property is A-1, there have been no previous requests submitted for this site. The stream is a Type 1 stream which requires a 100-foot buffer, in addition, the buffer includes a slope that is a greater than 25% which requires an additional 50-feet of buffer for a total required stream buffer width of 150 feet.

The section of the zoning regulations that covers this request is:

Section 26.2.5.2 Other Variances.

Where undue hardships or practical difficulties may result from strict compliance with this chapter, the developer may file an application for a variance. Said applications shall be directed to the Boone County Board of Adjustment organized and existing under the zoning regulations of Boone County, Missouri, which shall have the jurisdiction and shall be charged with the duty of hearing and deciding applications for variances from the strict application of the provisions of this ordinance. The Board may grant a

variance only if it finds after public hearing and upon competent and substantial evidence that the applicant meets the following criteria:

- A. The variance shall not have the effect of nullifying the intent and purpose of these regulations.
- B. The granting of the variance will not be detrimental to the public safety, health or welfare, or injurious to other property or improvements.
- C. The conditions upon which the request for a variance is based are unique to the property for which the variance is sought, are not applicable generally to other property, and are not self-imposed.
- D. Because of the particular physical surroundings, shape or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if this chapter was strictly interpreted and carried out.

Staff conducts an analysis of the request and makes a recommendation based upon the analysis. The bullet pointed criteria have been given an alphabet letter designation for ease of reference.

A. The variance requested does have the effect of nullifying the intent and purpose of these specific regulations:

The placement of the wastewater system within the stream buffer disturbs or removes a large portion of the required buffer. The standard for which the variance is sought was written for the exact purpose of prohibiting disturbance of areas such as this.

The variance sought would allow disturbance of the base stream buffer and the expanded buffer. The intent of the regulation is to protect the physical integrity of the stream and to purify water running off the landscape before it enters the stream system. Construction that would be allowed by the variance directly contradicts both the purpose and intent of this provision.

B. The granting of the variance will not be detrimental to the public safety, health or welfare, or injurious to other property or improvements:

While a granting of this variance would erode public health and welfare as an incremental degradation of the environmental protection provided by the stream buffer, it is not believed the granting in this case would rise to the level of being detrimental. However, the cumulative effect of repeated variances such as this could become detrimental.

C. The conditions upon which the request for variances are based are not unique to the property:

Steep slopes are commonly found adjacent to streams. In Boone County there are numerous instances of stream buffers with added buffer due to steep slopes. The situation would be the same for any property containing a Type I stream with slopes exceeding 25%. This property is 31-acres in size, of which, approximately 25-acres is outside of the stream buffer.

Streams and wastewater systems tend to be on the low portion of properties. This is a conflict that is not unique to this property and is, in fact, common in Boone County. The building that is associated with this variance request was constructed in 2019 and had no provision for electricity or wastewater when first constructed. The permit to add wastewater to the building was taken out in February of 2020. The chosen location of the building is a greater factor in creating the need for this variance than any issue related to the property itself. Had the building been placed in a different location the conflict between the stream buffer and the proposed wastewater system could have been avoided altogether. The need for the

variance is self-created by these choices. It should be noted that there is an on-site wastewater system serving the home on the property and the owner has submitted an application to construct a third on-site system.

D. The need for this variance is not because of the particular physical surroundings, shape or topographical conditions of the specific property involved:

The need is related to the choice to locate the building where it was constructed when no wastewater was proposed for said structure, and the choice of the specific septic system proposed once wastewater was desired. The desire to have wastewater facilities added to a building that was sited without considering those facilities is at best a self-inflicted hardship.

There is no particular hardship to the owner as a deprivation of use of the property. Deprivation of use is the standard for a legal hardship. Additionally, the deprivation of use to meet this standard is not the inability to use the property as the applicant desires but rather does it make the property totally un-usable by the applicant. In this case the inability to locate the wastewater system in the stream buffer does not deprive the owner of reasonable use of the property nor does it create a legal hardship but, instead would qualify as an inconvenience. There are other options such as alternative systems and locations that may cost more than what is proposed. When there are compliant alternatives to the need for a variance cost cannot be the primary factor in establishing a hardship. The property is 31-acres in size and has other areas that can function as wastewater locations that do not need the variance requested. There are other on-site wastewater systems already located on the property which could possibly be connected into/and or modified to work. There are other wastewater alternatives possible without the grant of the requested variance.

Staff recommends denial of the variances for failure to comply with criteria A, C, & D above.

Chairperson Thomas asked if staff heard from any neighbors.

Staff indicated they received one call from someone who had no problem with the request.

Present representing the request:

Greg Dyer, 10251 S Smith Hatchery Rd, Columbia

Greg Dyer: We run an organic flower and orchard on our property. The building by the road is a new building and if you go south that is where the orchard is. The other shop is our flower garden where we have a greenhouse attached to a workshop with a cooler. The whole area around there is tilled and has been for years with covered crops. The only place we can put the septic where it is undisturbed is in the proposed area. We had it out of the buffer zone and when the construction crew came out they disturbed some of the location there and Kris Vellema at the Health Department suggested we move it toward the creek and get a variance. It is a 30 x 40 building and 10 x 40 of it is a greenhouse. There may be a restroom that is used maybe once a day by my wife, other than that we may have some workshops that hold up to eight people. We have a very small utility sink in the bathroom and a toilet and outside the bathroom we have a small utility sink that would be used very rarely. We also have waterlines that run from the orchard to the pond and from the pond directly left almost all the way to the shop. They are waterlines with three spigots so we can't put the septic there. Because all of that is tilled it is all disturbed land. Kris with the Health Department came out and we thought about pumping it to the septic serving the house but the septic serving the house had a little failure and Kris recommended, due to the failure, that we put a septic down on the other side instead of running it to the house because it has already failed. The borders of the property to the west and north belong to my father-in-law. The shop is an educational

thing where we bring people down and teach them about agriculture and organic flowers but no livestock. We bring people in and teach them how to put bouquets together, we do things with weddings, we don't hold weddings there but we do the bouquets. Right now with Covid we have people come in and do their own DIY bride thing and they make their own bouquets and things like that, we provide the flowers. It is a very low use but to have people assemble on the property you have to have a bathroom. We have been working with Uriah Mach. Because of that we don't know why we can't have people at the workshop.

Open to public hearing.

No one spoke in favor or opposition of the request.

Closed to public hearing.

Chairperson Thomas: How far is the shop from the buffer zone?

Greg Dyer: The shop itself is quite a way from the buffer.

Chairperson Thomas: Why can't you put the septic somewhere else where it won't be in the buffer?

Greg Dyer: All of that is tilled land and it is also very hilly. We have flowers in there and it has been tilled for years.

Chairperson Thomas: What does tilling have to do with putting in a septic?

Greg Dyer: Because it is disturbed land according to the Health Department.

Thad Yonke: I am not sure that is accurate.

Greg Dyer: That is what Kris at the Health Department told me. It is disturbed and machines are on it and we can't have a septic there.

Member Zullo: Why did the septic system fail?

Greg Dyer: I think we just overused it. We have a 4000 square foot house and three kids.

Member Proctor: Is this going to be an engineered system?

Greg Dyer: Yes.

Member Proctor: Have you already had soils tests?

Greg Dyer: Yes, we've had two.

Member Proctor: Has anyone gone out there and checked for karst or sinkholes on the property?

Greg Dyer: We have had the Health Department and Dennis Sievers, a soils scientist out there.

Member Proctor: I admit I have some pre-knowledge of this. I find it interesting that you are building the buildings but you aren't getting the septic before you build.

Greg Dyer: We were doing this in pieces, we weren't sure how far this was going to go. It started taking off and Covid hit.

Member Proctor: The house was built in 2017 and then in 2019 you went for the permit for this building but you didn't come for the onsite wastewater permit until 2020.

Greg Dyer: Correct.

Member Proctor: In that part of building, I know you are piecemealing it, but I am questioning if you knew at a certain point you had to have permits. I am concerned how this is piecemealing together and all of sudden coming back to get the wastewater permit.

Greg Dyer: We pulled all the correct permits, we built everything according to future. We didn't know we needed this until Kris reached out to us and told us to talk to Uriah to make sure we had our ducks in a row, so we weren't 100% on the same page.

Chairperson Thomas: What we are getting at is you should have let staff know when you pulled your permits in the first place. Is this a common question with permitting, does staff ask if the applicants are going to put in wastewater and electric?

Bill Florea: Yes.

Chairperson Thomas: A financial hardship isn't a reason to grant a variance. Like staff said the purpose of this regulation is to keep structures, like the one the applicant is proposing, out of the buffer. I don't know about the disturbed land issue, the applicant will have to talk to someone else about that but that doesn't sound quite right.

Thad Yonke: They may not have been able to put the exact conventional system that they wanted to in that particular area but I know for a fact you can do engineered systems where they take part of the ground out and replace the soil.

Greg Dyer: I have talked to a couple of engineers about that and they have said I don't need the engineered system. Dennis Sievers and Kris Vellema both said I don't need an engineered system and that I could have a conventional system.

Chairperson Thomas: You could have a conventional system if you can get a variance.

Greg Dyer: Correct. That is why I am here because I was told by the Health Department.

Member Leopard: Where is the system for the house?

Greg Dyer: We are pumping up a couple hundred feet.

Member Zullo: So you are aware of pumping systems already?

Greg Dyer: Yes. My father-in-law owns a lot of property and he put in a septic down south in Maries County so he was telling me and Kris said not to pump because we already had a septic failure and pumping from another building up is not the right thing to do.

Bill Florea: Has the applicant thought about pumping into the new system for the other shop? The applicant applied for a third septic.

Greg Dyer: That other shop is up a slope.

Member Proctor: I would highly suggest the applicant either get an engineering firm or go to the State of Missouri site and find someone who is a certified inspectors, installers, and evaluators.

Greg Dyer: I have already done all of that.

Member Proctor: I can go to the Assessor's page and tell you that you have karst all over that property and you will have to be very careful where you pump because if it gets in to the karst and the stream buffer you are in big trouble with DNR. Just looking at the topographical map I can tell it is karst. You really need to go outside of Boone County for information. If you already have three systems on the property...

Greg Dyer: We don't have three systems.

Member Proctor: You have the house system which is already failing, the upper shop system and now you want the third.

Greg Dyer: Tompkins Construction built the house, I don't know who they went through.

Member Proctor: I would suggest you get some soil testing done.

Greg Dyer: We have had a lot of soil testing done; three different times.

Thad Yonke: The building permit for this structure was taken out as a residential accessory structure, it was not taken out as an assembly structure. It actually hasn't been evaluated by an architect or design professional.

Greg Dyer: We had Crockett Engineering come out there, Jared came and approved it.

Thad Yonke: That hasn't been submitted to our office.

Greg Dyer: We were told to wait until we get all of this done.

Thad Yonke: That is part of the issue we are having; some of the aspects of it, by doing it in this manner you are ending up tripping over other things we could have potentially let you know.

Greg Dyer: I was told by Uriah that we should wait until we get all of this done. I am only doing what I was told by the professionals. I have gotten soils tests, I have talked to the Health Department. I am literally just listening and doing exactly what I am told with regard to the permits. I know it is an unconventional way but we are going this way.

Thad Yonke: We can only respond to you with the information we are given. When we aren't given all of the information up front we can't then give you information to head off of problems you are going to run into and, that is how you found yourself in this position. It is not that you did anything intentionally wrong it is just that we were answering questions that we were asked based upon limited information that we were given. Had we been told the extent that you wanted to use the building from the beginning then the issues would have come up then.

Greg Dyer: We weren't sure from the beginning that this is where we were headed. It is a small business and we weren't sure if it was going to grow. Now here we are trying to expand our business and it is what it is. I understand that I am trying to respond to everything that I am given and giving back the information and I thought by talking with the city, county and the Health Department and having all of these people come to the property, how much more am I supposed to do? I didn't go to school to do all of this, I am relying on the city and county people to help. That is what I was told. Maybe I made the wrong decision on accident but that is not the point. I got soils scientists and had them come out and paid thousands of dollars and I didn't know, I didn't know that they were disturbing the soil so I had soils tests and built the building and the land was disturbed so I got another soils test. There is only so much I can do.

Member Leipard: Our position is that this is so close to the stream.

Greg Dyer: I do understand that.

Member Leipard: The buffer is 150 feet. How big is the building?

Greg Dyer: With the greenhouse 30 x 40.

Member Leipard: Can he put a port-a-pot there?

Greg Dyer: No we cannot, Richard King ruined that down at Coopers Landing because they promised they would put septic tanks in and they didn't so Cooper's Landing now has port-a-potty's that they can't get rid of. We had an event and rented a port-a-potty for one day to have six people make some flowers.

Member Leipard: So you can't have a port-a-potty?

Thad Yonke: Port-a-potty's are not a legal wastewater system and Richard King had them as a temporary use so it is not just him, that has never been a legal system as a permanent wastewater system.

Member Zullo: It is kind of difficult, especially with the pollution of these creeks and septic tanks that people already have. To allow the applicant to put a septic system by the creek is not something I am in favor of when there are a lot of different systems that can be used. Convenience doesn't motivate the Board to go along with what is going on. I think the applicant needs to explore more options.

Greg Dyer: It is not my expertise. We don't have any flat land there.

Member Zullo: Staff's expertise is who I rely on so the applicant probably needs to check into it more. There are entities bigger than us that are going to ask the applicants to do something more specific. I think the applicant needs to do more research before asking the Board to make a decision. If the Board makes a decision and it is not what the applicant wants then that is what you have.

Greg Dyer: I am here because this is where I was told to go.

Member Zullo: We are representing the county and the applicant.

Greg Dyer: It is not all of the buffer zone, it is a very small amount that is in the buffer.

Bill Florea: There is a sketch in the members packets that shows the proposed location of the septic.

Greg Dyer: What is the buffer zone for?

Bill Florea: The buffer zone is to protect the physical integrity of the stream and also to clean the water that is coming off the landscape to remove pollutants from it.

Greg Dyer: But it is not in the floodplain.

Bill Florea: That is correct, that is separate from the stream buffer.

Thad Yonke: Stream buffers do tend to be in flood zones which is a different set of regulations.

Member Zullo: Everyone in the county is in the same position with septic tanks. The applicant needs to explore that more.

Greg Dyer: I didn't even know I was going to have to sit in front of the Board, I paid the bill on Wednesday.

Member Zullo: Is it fair to explain to him that if he asks us to make a decision then that is final? I don't think the applicant understands that. The applicant is asking the Board to make a decision.

Greg Dyer: If the Board votes no then I can't have a septic tank there.

Thad Yonke: If the variance is not granted the applicant will have to go back and touch base with the Health Department and with Staff to coordinate where the applicant goes from here.

Member Zullo: Is this a tabling situation?

Bill Florea: That would be up to the applicant to request to be tabled. Generally if there is enough information to make a decision and the applicant wants to move forward then the Board should respect that.

Member Proctor made, and Member Thomas seconded a motion to deny the request by Greg and Joan Dyer Living Trust for a variance to allow an onsite waste water system to be placed in a designated stream buffer on 31.77 acres located at 10251 S Smith Hatchery Rd, Columbia:

Member Thomas	Yes	Member Leopard	Yes
Member Proctor	Yes	Member Zullo	Yes
Member Stephens	ABSTAIN		
Motion to deny the request carries	4 YES	1 ABSTAIN	

OLD BUSINESS

1. Certificates of Decision
Case 2020-003 Certificate of Decision – Guerra

Case 2020-004 Certificate of Decision – Glydewell-Lewis
Case 2020-005 Certificate of Decision – Fry
Case 2020-006 Certificate of Decision – Leach

Chairperson Thomas accepted and signed the certificates of decision.

NEW BUSINESS

1. Annual Election of Officers

Chairperson Thomas turned the floor over to Bill Florea who opened the floor to nominations for Chairperson.

Member Stephens nominated and Member Zullo seconded Member Thomas as Chairperson. No other nominations were made.

All members voted in favor of Member Thomas as Chairperson

Chairperson Thomas opened the floor for nominations for Vice Chairperson.

Member Stephens nominated and Member Zullo seconded Member Leipard as Vice Chairperson. No other nominations were made.

All members voted in favor of Member Leipard as Vice Chairperson.

ADJOURN

Being no further business the meeting was adjourned at 7:40 p.m.

Respectfully Submitted,

Paula L Evans
Secretary

Minutes approved this 5th day of November, 2020