

BOONE COUNTY BOARD OF ADJUSTMENT

BOONE COUNTY GOVERNMENT CENTER

801 E. WALNUT ST., COLUMBIA, MO.

Thursday, December 23, 2021

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
Michael Leipard
Jesse Stephens
Paul Zullo

Absent: Jason Russell

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

Chairperson Thomas read following statement:

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.

This meeting is being conducted in compliance with County Commission order 443-2021 which recommends all persons who have not completed their COVID-19 vaccination process, and who are 10 years of age or older continue to wear a face mask in any public areas of the Government Center.

We will follow a partial virtual format. There are Members present in the Chambers. Other Members may be attending the meeting through an audio link. The audio link is open to members of the public who wish to follow the proceedings.

If necessary, there will be a staff member in the Lobby who will meter access to the Chambers. Members of the public, who wish to testify, will be allowed in as space allows. Individuals may be asked to exit the Chambers when their testimony is complete in order to make space for another. The public will be rotated through until all who wish to testify have had an opportunity to do so.

When the Board has voted on any agenda item, the applicant may be asked to exit the Chambers to make room for the next applicant.

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 October 28, 2021 meeting were approved as written.

REQUESTS

1. Case 2021-006
 - a. Request by Gary & Debbie Thomas for a variance from the 50-foot front setback in the A-2 (Agriculture) zoning district for an existing single-family dwelling located at 19001 S. Old Route A, Hartsburg. (Zoning Regulations, Section 10.A)
 - b. Request by Gary & Debbie Thomas for a variance from the minimum lot width in the A-2 (Agriculture) zoning district located at 19001 S Old Route A, Hartsburg (Subdivision Regulations, Section 15.C.(4)(d))

Chairperson Thomas stated he would not participate in this request for personal reasons.

Planner, Thad Yonke gave the following staff report:

This 12.43-acre tract is zoned A-2 (Agriculture). Adjacent zoning to the north, west and south is zoned A-2, adjacent zoning to the east is A-2 and A-R (Agriculture-Residential). The site is located at the northwest corner of State Route A and south Old Route A approximately 2.1 miles south of the Ashland municipal limits, there is a single-family dwelling and two outbuildings on the property. The applicant intends to subdivide the property. This tract is located at the corner of South Old Route A and State Route A, both roads require a front setback of 50-feet. Request A: The existing home currently encroaches into the front setback along State Route A. Request B: The lot does not meet the 150-foot minimum width at the building line. The original zoning for this property is A-2, there have been no

previous requests submitted for this property. The requested variances are from Zoning Regulations, Section 10.A which requires a minimum 50-foot front setback in the A-2 zoning district and from Subdivision Regulations, Appendix B.1.8.2 and Table A, which requires lots larger than 2.5 acres to be at least 150-feet wide at the building line. Staff notified 33 property owners.

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 property is 12.43 acres and zoned A-2, (Agriculture). Adjacent zoning is also all A-2. This site is located approximately 2.1-miles south of the municipal limits of Ashland at 19001 S. Old Route A. There is a house, and two out-buildings on this property. The applicant wants to subdivide the property into two lots by Plat, which requires compliance with the zoning regulations and subdivision regulations.

The property has two front yards because of the frontages on both State Route A and Old Route A, for which, each have a 50 feet setback. The existing home encroaches into this setback as much as 15.85 feet. It is at this setback line that the minimum lot width is measured. The configuration of the existing tract does not allow the property to meet the 150 feet minimum width at the building line for the Old Route A frontage. It appears that the width at this point is around 125 feet. This conflict must be resolved before the land division can be completed. One remedy is to obtain variances from Section 10.A of the zoning ordinance for the setback encroachment and the Subdivision Regulations Appendix B, Section 1.8.2 and Table A which, requires a minimum 150-feet width at the building line throughout the buildable area of the lot.

The requested variance to which this recommendation pertains is from the Subdivision Regulations, Appendix B, section 1.8.2 and Table A.

The 1977 aerial photograph shows a structure where the home is located. The need for the variance is created by the owner's desire to divide/reconfigure the property. The land division cannot be completed without removal/modification of the home unless the variance is granted.

Staff offers the following findings in support of its recommendation:

- a. The applicant will incur unreasonable and unnecessary hardship as an unreasonable deprivation of use. The home constitutes a considerable portion of the value in the property. Removal of the house to rebuild further away from the frontage would not change the problematic shape of the parent parcel. The portion of the lot in question, the Old Route A frontage, does not meet either the 150 feet minimum as a width nor the 250 feet minimum as a depth. The property has significant frontage on State Route A that will allow for division into mostly regular shaped lots. But, the portion of this lot where the existing house is located would not be considered buildable area if the house was not already there.
- b. Granting this variance will not endanger the health, safety, or welfare of the public. The home is located along a straight stretch of Route A and is separated from Route A by a ditch.

- c. Granting this variance will not thwart or circumvent the general intent or any specific purpose of the regulations if the “as-is, where-is” provision is placed upon the variance. Any “replacement” home would then have to be built further back away from the frontage where the minimum distance of 150 feet would be met. The original lot configuration and location of the adjacent roadways is causing the need. While there is no inherent right to divide property except in compliance with the regulations and adopted standards this property seems otherwise suitable for division.

This request seems to satisfy part a, b, or c of the regulatory criteria cited in Section 1.9.2 of the Subdivision Regulations. Staff recommends that this variance be approved with the as is where is provision as a condition.

Chairperson Thomas: Did staff hear from any of the neighbors?

Thad Yonke: We received two emails and two phone calls; all in opposition.

Present representing the request:

Kevin Schweikert, 506 Nichols St, Columbia
Debbie Thomas, 15710 James Sapp Rd, Hartsburg

Kevin Schweikert: We basically want to do a subdivision; the staff report was very thorough and appropriate. This is an existing condition based upon no fault of the owners, there was a new right of way for new State Route A. Before new State Route A was there this lot was fine with old State Route A. The applicants are asking for the house to stay where it is and for the lot width.

Debbie Thomas: If roads are developed maybe the variances should already be in place so that we are not rehashing this for 50 years. We run a road and we don't think about the setbacks that are being created when we take an extra 20 or 30 feet off of a property line. It makes a difficult scenario for the Board because they keep seeing these requests come forward.

Open to public hearing.

No one spoke in favor of the request.

Speaking in opposition by phone:

Janette Nichols, 19025 S Old Route A, Hartsburg

Janette Nichols: While I understand that there are rules and regulations in place and that these variances are allowed, there have been multiple neighbors who have been denied that 50-foot variance even when we have requested it. We weren't given access to a public hearing, but if you come out here and refuse a property of which we have measurements for, the only reason they are requesting the variance is to maximize their profit and subdivide it into a subdivision. There is plenty of room leaving the house grandfathered in because of where it was currently when old Route A was put in with Route A and the division of the two properties that they want to create off of Route A with the 50-foot setback. It is A-2 agricultural, we've all had to stay that way. Even our neighbor who requested a front porch to be put onto her house, which is the house right next door, she was denied a front porch so why all of a sudden to maximize profit for a developer would it now be okay to approve?

Paula Evans: Ms. Nichols sent one of the emails.

Member Stephens: There was another email?

Paula Evans: Yes, two calls and two emails.

Thad Yonke: The other email was opposed to dividing the property which isn't what this variance is for.

Paula Evans: She sent a second email stating she was opposed to the minimum lot width but she didn't give further explanation.

Member Stephens: I don't know how old the house is but I assume MoDOT came in and asked for additional right of way in order to rebuild Route A.

Kevin Schweikert: I assume it was "take it or leave it", the state came in and put the road in and probably gave them a fair price for it.

Member Stephens: Through condemnation?

Debbie Thomas: Yes, condemnation came through when the new state highway came through.

Kevin Schweikert: The house was there when that happened according to the old aerial photos.

The 1968 aerial photograph was shown.

Thad Yonke: You can see where the house is.

Kevin Schweikert: Yes, you can see the trees where the road is now.

Member Stephens: The regulation didn't exist at the time but even if it had the situation was created by condemnation.

Thad Yonke: Had the regulations existed at the time the house was built it looks like it would have complied with both of the things it now needs variances for. It is new Route A's diagonal angle that created both of the places where it doesn't comply.

Member Leipard: Regarding the phone call, everyone has the opportunity to come and ask for a variance, correct? They just have to go through the proper channels.

Thad Yonke: The issue is when someone wants to build something new, they can take their chances to come before the Board and ask for a variance, but there is a really good chance they aren't going to be granted a variance for new construction. New construction is expected to meet the regulations.

Janette Nichols: I would like to add that the front porch that you were talking about was built in 1967 as well as the one right next door to ours so this was an existing property that was there when the new highway went through.

Chairperson Thomas stated the public hearing was closed.

Member Stephens: The reality is if they want to take their chance with a variance they can always try. I agree with the staff report. The situation doesn't go away whether you draw another line and have another house. It is what it is.

Member Leipard: If they were to try to put another house there they would have to move it back.

Thad Yonke: If the as is where is condition is placed on the variance then should this house be removed, either by a natural act like a tornado or on purpose because they tear it down, then the new structure would have to be built back far enough to meet the 150-foot wide but that is not impossible because of the new configuration of the lot. Any additional lots that they create will have to meet the setbacks and width and all the other requirements of the regulations; it is just that this portion of the existing lot, as it stands today, doesn't meet those requirements because of how new Route A was put in.

Member Stephens made, and Member Leipard seconded a motion to approve the request by Gary & Debbie Thomas for a variance from the 50-foot front setback in the A-2 (Agriculture) zoning district for an existing single-family dwelling located at 19001 S. Old Route A, Hartsburg 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	Abstain	Member Leipard	Yes
Member Stephens	Yes	Member Zullo	Yes
Motion to approve the request carries		3 YES	1 ABSTAIN

Member Stephens made, and Member Leipard seconded a motion to approve the request by Gary & Debbie Thomas for a variance from the minimum lot width in the A-2 (Agriculture) zoning district located at 19001 S Old Route A, Hartsburg:

Member Thomas	Abstain	Member Leipard	Yes
Member Stephens	Yes	Member Zullo	Yes
Motion to approve the request carries		3 YES	1 ABSTAIN

2. Case 2021-007

Request by Larry Spauldin for a variance from the 50-foot front setback in the A-2 (Agriculture) zoning district for an existing singlewide located at 11921 E. Roberts Ln, Centralia. (Zoning Regulations, Section 10.A)

Planner, Thad Yonke gave the following staff report:

This 175.8 tract is zoned A-2, as is all the surrounding property. This site is located on the north side of east Roberts Lane, approximately 2700 feet west of Route Z; there is a singlewide mobile home, a single-family dwelling and several accessory structures on the property. The applicant intends to divide an 11.51-acre tract by administrative survey, the division will require additional dedication of right-of-way, in doing so the existing singlewide will encroach into the front setback. The original zoning for this

property is A-2, there have been no previous requests submitted for this property. The requested variance is from Zoning Regulations Section 10.A which requires a minimum 50-foot setback in the A-2 zoning district. Staff notified 17 property owners.

Present representing the request:

Kevin Schweikert, 506 Nichols St, Columbia
Larry Spauldin, 11921 E Roberts Ln, Centralia

Kevin Schweikert: When we do an administrative survey, we do a 33-foot roadway easement along the center line of the road, as we do that the building line is measured from that 33-foot roadway easement back 50-feet; therefore, we need an 83-foot setback from the property line, the property line is still the section line in the middle of the road. The mobile home is over the building line by about seven or eight feet at the south end. The singlewide is occupied.

Larry Spauldin: I purchased this property in 1965. There have been three mobile homes there, the first one burned and it was placed on 1968 or 1970.

Kevin Schweikert: He is having the farm surveyed for his estate and none of these tracts are to be sold until he is gone. It is written by Turner-Jones and it says "upon Grantor's death the trustees shall as soon as practical, sell the Boone County real estate at public auction and convert the same to cash and request that said real estate be sold in six separate parcels as shown on the existing maps in Grantor's records which will require a survey and the net proceeds from the sale of said real estate, after payment of the expenses of the sale, be distributed as follows".

Larry Spauldin: This is just my Boone County land. I have three children and seven grandkids. Several of them want the property so I decided we were going to split it six ways, but it is ending up just being split five ways. The property is not going to be sold in my lifetime.

Kevin Schweikert: The smaller tract where the singlewide is, there is a building site back in the middle of it on top of the hill and when it is sold there will be a house built and the trailer will go away.

Open to public hearing.

No one spoke in favor or in opposition to the request.

Closed to public hearing.

Chairperson Thomas: The singlewide will be seven or eight feet into the setback at the most?

Kevin Schweikert: About seven and a half at the furthest protrusion into it.

Chairperson Thomas: How permanent is the singlewide, is it on a foundation?

Kevin Schweikert: I believe it is on blocks.

Larry Spauldin: When the property changes hands to start with, if you own 11.5 acres you wouldn't want a trailer that close to the road anyway. The spot can support a nice home.

Kevin Schweikert: The singlewide is currently occupied.

Member Stephens: How old is the trailer?

Kevin Schweikert: It is kept up well, I don't know how old it is.

Thad Yonke: It has been swapped out about three times in the same location.

Member Zullo: Does the applicant live in the trailer?

Larry Spauldin: No, my granddaughter does. She might end up buying the land.

Member Zullo: When she would inherit this, she doesn't inherit the variance?

Thad Yonke: The variance runs with the property. If the Board grants the variance for a mobile home located at that spot and the Board places the as is where is condition, once the trailer is removed the variance goes away. The Board can clarify that the trailer cannot be swapped out in that location.

Member Stephens: If you are going through the expense of hauling a trailer in it should be in compliance with the regulations.

Thad Yonke: Especially since the pier placement will likely be different with a different trailer.

Member Stephens: If they try to obtain a permit to build a single-family home, they can't retain the trailer.

Thad Yonke: We will not issue a permit for another home on this property until the singlewide is removed from the property.

Larry Spauldin: I am not even sure why I am here because I agreed to this with Janet Thompson and Bill Florea. Have any of you seen what the grandfather clause says in the dictionary?

Chairperson Thomas: Yes, I have.

Larry Spauldin: I did a little research.

Thad Yonke: It doesn't apply in this case. Because you are dividing a piece of property you have to comply with the current regulations. If you weren't dividing the property then the existing situation meets the setbacks but when you divide the property, because of the creation of the new property line you have to comply with it and that is not grandfathered.

Larry Spauldin: Why do we even have a grandfather clause?

Thad Yonke: Grandfather clause is not actually a real thing; non-conforming use status is the actual term. A non-conforming use has to exist without change and when it goes away or changes it is supposed to come into compliance, it is not a permanent situation. It is a situation that is expected to go away at some point in time.

Chairperson Thomas made, and Member Stephens seconded a motion to approve the request by Larry Spauldin for a variance from the 50-foot front setback in the A-2 (Agriculture) zoning district for an existing singlewide located at 11921 E. Roberts Ln, Centralia with the following condition:

- The existing structure shall maintain the same location, footprint, and square footage. If the existing structure is 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 and/or located in compliance with the required setback. In addition, if this mobile home is replaced in the future, any replacement structure will need to be located in compliance with regulations.

Member Thomas	Yes	Member Leipard	Yes
Member Stephens	Yes	Member Zullo	Yes

Motion to approve the request carries unanimously

NEW BUSINESS

None.

OLD BUSINESS

Certificate of Decision – MBK Investments

Chairperson Thomas approved and signed the certificate of decision.

ADJOURN

Being no further business the meeting was adjourned at 7:38 p.m.

Respectfully Submitted,

Paula L Evans
Secretary

Minutes approved this 24th day of March, 2022