

BOONE COUNTY BOARD OF ADJUSTMENT

BOONE COUNTY GOVERNMENT CENTER

801 E. WALNUT ST., COLUMBIA, MO.

Thursday, March 24, 2022

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
Jason Russell

Absent: Paul Zullo

Staff: Bill Florea, Director Thad Yonke, Senior Planner
Andrew Devereux, 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 December 23, 2021 meeting were approved as written.

REQUESTS

1. Case 2022-001

Request by Thomas W. Smith of Smithview Development for a variance from the width to depth ratio on two lots in the A-R (Agriculture-Residential) zoning district located at 7630 & 7650 N Highway VV, Columbia. (Subdivision Regulations, Appendix B 1.8.2, Table A)

Planner, Thad Yonke gave the following staff report:

This request consists of two tracts, lot 1 is 5.03 acres and lot 2 is 10.57 acres and both are zoned A-R (agriculture-residential). Property to the north is R-MP (planned moderate residential) and A-R, to the east is A-R, west is R-S (single-family residential) and to the south is A-R. This site is located on State Highway VV, approximately 2500 feet north of the intersection of Mauller Road & State Highway VV, there is a single-family dwelling on each tract. The applicant would like to do a lot line adjustment survey to make the two lots similar in size with equal road frontage. The resulting lots would exceed the allowed depth to width ratio of 3 to 1. The request is to vary from that standard. The original zoning for this property is A-R, the property was platted as a two-lot subdivision in 2004. The requested variance is from Subdivision Regulations, Appendix B 1.8.2, Table A which states that the maximum lot depth cannot exceed three times the lot width. Staff notified 13 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 15.6-acres and zoned A-R, (Agriculture-Residential). Adjacent zoning is also A-R to the east, south, and part of the north. The zoning to the west is R-S (Residential-Single Family) and the remaining north zoning is R-MP (Planned Moderate Density Residential). The property is located approximately 2300 feet north of the intersection of Mauler Road and State Highway VV. There is a single-family dwelling on each lot. The property was platted as Crutchfield Subdivision in 2004. The applicant wants to reconfigure the two platted lots which requires compliance with the zoning regulations and subdivision regulations.

Lot 1 of the plat is 5.03-acres and currently has all the road frontage, the 10.57-acre lot, Lot 2, is served by a private access easement. While it might be possible to create three lots over 5-acres each that would comply with the three to one ratio, the standard for which this variance is sought, one lot would be entirely steep slope with creek and floodplain and no road frontage. It is likely that this lot would be unbuildable and get sold off at some point to someone that would not understand that they could not build on it. This would clearly be a much worse situation than granting relief due to extreme topography. One remedy is to obtain a variance from Section 10.A of the zoning ordinance for the three to one ratio of length to width requirement found in the Subdivision Regulations Appendix B, Section 1.8.2 and Table A, which is the variance sought.

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 current plat does not meet the minimum depth standards and therefore has considerable areas that are not eligible for building permits. The rear portion of the property is creek, steep slope and floodplain. Creation of a stand-alone lot that would only be composed of these difficult areas would likely create a totally unusable lot, therefore creating a much more difficult if not impossible situation to remedy.
- b. Granting this variance will not endanger the health, safety, or welfare of the public. The reconfiguration that will be allowed if the variance is granted will give each of the two lots direct road frontage and make each lot a rectangular shape which is the configuration of intent of the subdivision regulations, and while each of the two resultant lots will be longer than they would otherwise be allowed to be, the “extended” portion of each lot is the unbuildable area with extreme topography.
- c. Granting this variance will not thwart or circumvent the general intent or any specific purpose of the regulations by granting the requested variance the resultant lot will be in greater compliance with the zoning and subdivision regulations than the current plat. It is unclear how the current plat was considered to meet the regulations when it was approved and likely really needed more variances than what is currently sought.

This request seems to satisfy part a, b and c of the regulatory criteria cited in Section 1.9.2 of the Subdivision Regulations. Staff recommends that this variance be approved.

Present representing the request:

Christina Luebbert, 409 Vandiver, Bldg 4, Ste 102, Columbia

Christina Luebbert: I am working with Bormann Surveying to get ready to prepare a plat. I prepared the variance application for our client, Tom Smith who is ill tonight and cannot be here. We originally looked to make this a three-lot plat for various reasons. During the concept review, staff indicated that they didn't think it would work because of some of the complexities with the topography and the stream and floodplain areas. Staff suggested we go this route, we are following their recommendation and trying to clean up the layout of the lots. The intent at this time is to continue to use the shared driveway to simplify the MoDot access. We would still do a driveway easement where there is already a driveway easement.

Member Leipard: Are there two ponds?

Christina Luebbert: The one on lot one is an existing lagoon; that lagoon may end up being modified because the house that was there has burned and we are working with the Health Department to get that sorted out. The similarly shaped pond on lot two is also a lagoon that is existing. I am not sure why it is showing a second body of water because in my recollection, that is not there. It may just be a low area that GIS is picking up, it is not a body of water.

Member Stephens: The reconfiguration is just going to take a line?

Christina Luebbert: It is roughly going to be bisecting the overall parcel. There will be some jogs in it because of where the existing structures are on lot two. We will have to hold the setback off that exiting structure. It won't be exactly in half but it will be close.

Open to public hearing.

Present speaking in support:

Lauren Brandkamp, 7750 N Hwy VV, Columbia

Lauren Brandkamp: I own the property to the north and I just have a question. Are the applicants planning on rebuilding the burned residence?

Christina Luebbert: There will be another home put in.

No one spoke in opposition.

Closed to public hearing.

Member Stephens: This looks like a clean up of the property lines.

Member Leipard made, and Member Russell seconded a motion to approve the request by Thomas W. Smith of Smithview Development for a variance from the width to depth ratio on two lots in the A-R (Agriculture-Residential) zoning district located at 7630 & 7650 N Highway VV, Columbia.:

Member Thomas	Yes	Member Leipard	Yes
Member Stephens	Yes	Member Russell	Yes

Motion to approve the request carries unanimously

2. Case 2022-002

Request by Carl Freiling for a variance from the 50-foot front setback in the A-1 (Agriculture) zoning district for an existing barn located at 8315 E. Route Y, Ashland. (Zoning Regulations, Section 10.A)

Planner, Thad Yonke gave the following staff report:

This property is zoned A-1 (agriculture), the property to the north, east, and south is A-1, the property to the west is A-1 and A-2 and is located on Route Y, 1.7 miles east of the Ashland city limits. The parcel is 63.5 acres and is occupied by several outbuildings and an uninhabitable house. The applicant also owns an adjoining 10-acre lot that is vacant. The applicant has submitted an administrative survey to divide the 73.5 acres into seven lots. As a result of the proposed land division, an existing barn on proposed tract 4 will be located within the required 50-foot front setback. The original zoning for this property is A-1. There have been no previous requests for this property. The requested variance is from Zoning Regulations, Section 10.A, the front setback in the A-1 zoning district is 50-feet. Staff notified 20 property owners about this request.

Staff Analysis and Recommendation:

At the time of the submission of the variance request the barn is compliant with the setbacks for the 64-ish acre parcel on which it is found because of the following:

- All road frontage on corner lots are fronts for front yard setback purposes.
- In its current configuration, the overall property is considered a corner lot. Since the southern frontage is narrower than the western frontage, the southern frontage is the “front” for purposes of determining the rear. So, the line north of the barn in question is a rear and the line west of the barn is a side.
- There was and is arguably a house located on the property making the barn an accessory use currently and as of the survey date.
- Zoning Ordinance Section 10 C (8) - Any accessory building more than ten feet from a main building may be erected not closer than two feet to a side or rear lot line but must be located at least 60 feet from the front street line. For clarification – the two feet exception is to either a side or rear, not both, so one standard must be met.
- The barn in question is more than 60 feet from the front street line. The west line is over 15 feet from the barn, so it meets the A-1 side yard setback and the north line is more than the 2 feet allowed under the exception.

It can be argued that when the house that was located on the existing foundation was removed from the property, the barn no longer qualified for the exception and became a zoning violation because removal of the house changed the status of the building so it is no longer an accessory building.

The applicants have stated that the building that staff considers to be an un-inhabitable house is a very old home. In either case the situation remains in compliance or the act that created the zoning violation for which a variance is sought was created by the property owner and is a self-created situation.

The simple solution to this situation is to take out a building permit to re-establish a dwelling unit on the property to again requalify the barn for the rear setback exception.

The need for the variance is being created by the specific design currently submitted to divide the 64-ish acre property into administrative survey tracts. The proposed tract layout changes the nature of the existing lot lines with respect to the barn as well as the status of the barn. It is possible to divide the property in a manner that would not require a variance.

All properties are subject to the decisions made by the past and present owners and those decisions have implications that change how and what the present and future owners can and can't do. In this instance the bulk of the current issue is being created by the desire to divide the overall property into multiple properties and from the specific configuration proposed for those properties making this a self-created "hardship" for which variances can't be granted.

Present representing the request:

Kevin Schweikert, Brush & Associates, 506 Nichols St, Columbia
Carl Freiling, P.O. Box 319, Ashland

Kevin Schweikert: We have a nice, well framed barn in good condition; some of the siding needs to be replaced but other than that it is well suited to keep, there is no reason to tear it down other than it is sitting too close to a property line. The two property lines we are talking about were created previously. The staff report was right, we are doing what we are doing. I am not sure of any way to reconfigure the property to make that barn work within the property lines.

Thad Yonke: If you took a lot that went from the south up to the north so you still maintain the front property line it would still qualify.

Kevin Schweikert: That doesn't make good sense to do because of the topography with an entrance at the south from Route Y. There are topography issues as well as a site-distance issue on the curve where there is already an existing entrance from Route Y to access the federal ground at the point at the south tip; that is state right of way for the highway. There is an existing dirt entrance there, it goes directly into the federal ground, the US Government owns it. You could possibly put an entrance there to come up and access the southern piece but you can't get a drive up through the rest of the property due to topography and it doesn't make good sense. That is the purpose of the way we divided the ground. Our request is to keep the barn, there will be a house built on the tract as soon as we sell the property, there is already a buyer and he is ready to build and the barn will be in compliance with where it is sitting. We can't bring a drive in from the south end and divide the ground that way for the specific reason to keep the barn where it is and to make it fit within the parameters of the zoning regulations. The ground and terrain are too difficult to navigate for a road.

Carl Freiling: It is a 100-year old classic, Boone County barn and they are disappearing. The access from the very southeast corner is a registered MoDot access, we submitted a letter from John Kuhlman/MoDot indicating that it was a legal access point. Because of the way the stream runs it is a topographical impossibility and our understanding of the regulations is that topographic issues are a legitimate reason for seeking a variance. The barn is not an economic issue, the price of the property won't change whether the barn is there or not but it is a good barn and the purchaser and his son are interested in restoring it. I hate to see barns torn down for absolutely no reason. We have a legitimate reason for a variance due to the topography. Applying for the building permit doesn't work because we can't record a survey to create the lot until the variance is granted. I submitted pictures of the barn with the application. It is a nice barn and there aren't many of these left and very few of them are that structurally sound. It has

always had a roof on it and there is no rot. It has hay and debris storage; on the south side the siding is deteriorating but it is a good barn. It hurts me to tear them down for no reason. Given the fact that we have the opportunity, we have access from the south but the topography makes it impractical.

Member Leopard: If the house was built does that make the barn in compliance?

Thad Yonke: No. If they divide the property, merely having a house on the 10-acre piece because the access is different. The aspect about building a house is the argument of whether it currently has a house that we would honor as a residence, that can also be considered having brought it out of compliance. If we accept that the unlivable house is a house it is still in compliance. The way to get around that difference of opinion would be to put a house on the existing property and it would be back in compliance. The way that it is being proposed for division it would have to have a variance in order to be in compliance.

Open to public hearing.

Present, speaking in support of the request:

Matt Uhrig, 290 Sequoia Circle, Ashland

Matt Uhrig: I will be the owner of the barn if the variance is granted. The plan is to build a house on the 10 acres as soon as the sale closes. There are two reasons I bought the property, the first is because we are bordered by Mark Twain on two sides and the second reason is the barn. I have three kids and it is our plan to get the barn cleaned out and restore it as much as possible. It has a concrete foundation and straight lines and we don't want to tear it down. To approach the property from the south you would have to go through a steep draw and it would make it very difficult to use the property in the way we want. Around the barn is welded, metal cattle fencing and the barn is essentially part of the property and terrain. The barn is one of the reasons why I decided to purchase the property.

Also present speaking in support of the request:

Stephanie Smith, 8351 S Rangeline Rd, Columbia

Stephanie Smith: I intend to buy the three tracts to the south and we would have loved to have that barn but financially it worked out so we could buy three of the tracts but we weren't able to put a contract on the land to put a barn on the part we are buying. We also value the barn; the house we live in now was built in 1866 so I obviously I like old house. We have a 60 year old barn that we continue to use, I believe the barn in question is older, the roof lines are good and it is very straightforward to have it be preserved and continue forward. Due to the terrain issues the access would be coming from the north to get to the property where the barn is; they value it and I value it and would like to be able to look out and see it. We are not going to live there, we are hoping we can work on the old house on the property. I am supportive of the applicant's idea to keep the barn and it is unfortunate with the way the existing survey was drawn; at the time there were unintended consequences of setback problems, I don't think it was meant to create a hardship. I am in support of the variance so this barn can continue to be used and valued.

No one spoke in opposition to the request.

Closed to public hearing.

Member Russell: Is the reason for this request because the house was deemed uninhabitable?

Thad Yonke: It is questionable, staff didn't realize that what they are calling the uninhabitable house was even a house because it looked like one of the sheds. The house that we considered to be the house on the main property was previously there on top of a foundation but it was removed. At that point, staff thought that it was had come out of compliance. On property 20 acres or more you can have two dwelling units before you have to do any division of land. There is no address for the property; the house was so old that it wasn't listed with an address so staff didn't recognize it as a house. That part is a technicality as to whether it is in compliance at the moment but all it would take is any dwelling unit.

Member Russell: They can't do a survey until we grant a variance.

Thad Yonke: Correct. We cannot approve a survey that is in violation of either the zoning or subdivision regulations.

Member Stephens: Whoever split this property originally made a considerate effort to go around the barn. Do we have an exact measurement of the barn off the property lines?

Kevin Schweikert: It is 20-feet off what would be the front property line and 22-feet off the side.

Member Stephens: What is considered the front property line?

Thad Yonke: Currently the front is the south property line; that makes the 20.4-foot the current rear yard setback which would make the other the side yard; a side yard only has to be 15-feet so it meets the setback.

Chairperson Thomas: The 50-foot rear yard is what it is not meeting.

Thad Yonke: Yes, however, as an accessory structure that is more than 60-feet back from the road, if there was a primary structure, then it still qualifies for the exception which allows an accessory structure to be two-feet from the side or rear yard setback. Once the survey is done, the current rear setback will become the front setback and there is no exception for the front yard setback.

Member Leopard: If they redraw the survey to move the front property line to 50-feet.

Thad Yonke: They can't alter that property line because the neighboring property is a separate piece and under different ownership.

Bill Florea: It used to be part of the same property but it was divided by a family transfer.

Carl Freiling: Their lagoon is there too; we will have to grant them a setback easement.

Kevin Schweikert submitted a copy of the proposed survey of the property.

The survey was marked as Exhibit A.

Kevin Schweikert approached the Board with the survey and showed the location of the 10-acre tract. The Board reviewed and discussed the survey with the applicants.

Kevin Schweikert: The house that was removed was a doublewide. The old house is still there but no one is living in it.

Chairperson Thomas: What makes a house inhabitable?

Bill Florea: If it is safe to live in and if it has a wastewater system.

Thad Yonke: We don't know if the old house has any of that.

Kevin Schweikert: There is an existing lagoon on the property that the doublewide was using.

Chairperson Thomas: If the doublewide was still there this would not be an issue, correct?

Bill Florea: The act of subdividing the property is creating the issue.

Member Stephens: From my understanding it is really the access point because it is changing the frontage.

Bill Florea: The point of access is not the only determinant of front yard. As Thad explained, it is a corner lot so it has multiple front yards. When you are determining the front yard versus determining where the rear yard is, it is the narrower of the two frontages and that is the southern frontage, that is what makes the property line just north of the barn the rear property line but subdividing the property changes that.

Member Stephens: I don't know the benefit of forcing them to take this down to a 90 degree turn on Route Y. I don't think it would be beneficial. I think this is a good case for the as is where is condition.

Chairperson Thomas: Is the structure in compliance now?

Bill Florea: Whether the property is in compliance now revolves around whether you consider the house to be a primary structure and if it was made to be habitable, then yes.

Member Russell: We don't consider the house to be habitable but we have to grant a variance for them to get a survey.

Bill Florea: For them to survey the way they want to survey.

Member Russell: Are we granting a variance to say that we are agreeing?

Bill Florea: The Board is being asked to grant a variance from the setback, it is not contingent on the house. They are proposing to subdivide the property and it takes the house out of it completely. The question is if this is the only way they can subdivide the property and is their choice to subdivide it this way creating the nonconformity with the regulations or is there another way to do it that is compliant? The choice is up to the Board.

Thad Yonke: They are correct that topography is one of the things you can use to justify in granting the variance.

Member Leopard: With granting the variance are you worried about a precedent?

Thad Yonke: The Board has told a number of other people who have had barns that came out of compliance because they were trying to divide the property that they had a choice. They could either take the structure down and divide the property or basically keep the barn and not divide the property. For a good number of those there was no topographic argument made so there is a difference between this case

and some of those. The bigger question is for the Board to weigh the self-inflicted nature of this. That is staff's biggest objection. Under law, the Board is not allowed to grant variances that are self-created so the Board has to buy into the idea that there is no other practical way to divide the property in order to justify granting the variance.

Carl Freiling: We would have to build the road in a stream buffer.

Bill Florea: You couldn't put it farther west? The stream buffer is the most extreme topography on there.

Carl Freiling: I suppose you could swing way west.

Member Stephens: Will they end up with a 3:1 problem?

Thad Yonke: The 3:1 ratio does not apply to ten acre tracts.

Chairperson Thomas: What is the minimum width?

Thad Yonke: The minimum width is 150-feet, the depth is 250-feet.

Matt Uhrig: You would have to go down the middle of those three, 10-acre tracts or you would have to get MoDot to give you permission to have an entrance almost at the 90-degree portion of Route Y.

Carl Freiling: It takes a trackhoe an hour to crush a 100-year old barn but it accomplishes nothing positive.

Matt Uhrig: I believe the state statutes give you the discretion to grant this variance.

Bill Florea: If it meets the criteria to grant a variance.

Member Stephens: They are going to divide the property whether they tear the barn down or not, it is just a question as to how they will do it. If we force them to do it this way they could meet the regulation and put it in a more dangerous spot. Is the driveway existing?

Carl Freiling: The tiny triangle at the southeast corner is owned by MoDot as part of their right of way. When John Kuhlman researched it he said the driveway is a registered access for both this piece and the National Forest lands which were created in the 1930s as part of a federal buyback. There were accesses to both properties off of that common access, it is just a lousy spot.

Member Stephens made, and Member Russell seconded a motion to approve the request by Carl Freiling for a variance from the 50-foot front setback in the A-1 (Agriculture) zoning district for an existing barn located at 8315 E. Route Y, Ashland 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	NO	Member Leopard	Yes
Member Stephens	Yes	Member Russell	Yes

Motion to approve the request carries 3 YES 1 NO

NEW BUSINESS

None.

OLD BUSINESS

Certificates of Decision – Larry Spauldin
Gary & Debbie Thomas

Chairperson Thomas approved and signed the certificates of decision.

ADJOURN

Being no further business the meeting was adjourned at 7:56 p.m.

Respectfully Submitted,

Paula L Evans
Secretary

Minutes approved this 26th day of May, 2022