

# **BOONE COUNTY BOARD OF ADJUSTMENT**

BOONE COUNTY GOVERNMENT CENTER

801 E. WALNUT ST., COLUMBIA, MO.

Thursday, August 25, 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: Michael Leipard  
Jesse Stephens  
Jason Russell

Absent: Frank Thomas  
Paul Zullo

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

Vice-Chairperson Leipard 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. Members of the public attending by phone will be muted until the public hearing portion of each hearing.

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 May 26, 2022 meeting were approved as written.

## **REQUESTS**

### 1. Case 2022-004

- a. Request by Andrew Biggs for a variance from the rear setback for an existing garage located at 10281 E Englewood Rd, Ashland (Zoning Regulations, Section 10.A)
- b. Request by Andrew Biggs for a variance from the front and rear setback for an existing single-family dwelling located at 10281 E Englewood Rd, Ashland (Zoning Regulations, Section 10.A)
- c. Request by Andrew Biggs for a variance from the 33-foot half-width right of way located at 10281 E Englewood Rd, Ashland (Subdivision Regulations, Appendix B, Section 2.2)
- d. Request by Andrew Biggs for a variance from the width to depth ratio located at 10281 E Englewood Rd, Ashland (Subdivision Regulations, Appendix B 1.8.2, Table A)

Planner, Thad Yonke gave the following staff report:

The site is located at 10281 E Englewood Road, Ashland and is zoned A-1 (Agriculture) and R-S (Single-Family Residential). The adjacent zoning to the north and east is A-1, zoning to the south and west are R-S and A-1. The site is located 3.3 miles east of the municipal limits of Ashland, the property is on the north side of Englewood Road 300-feet past the Englewood/Johnson Cemetery Road intersection. There is a single-family dwelling and several accessory structures on the property. According to the Boone County Assessor's records, the home was built in 1935. The applicant wishes to create a 2.5-acre tract by subdivision plat proposed to be zoned R-S; the remaining 9.54-acre parcel is proposed to be zoned A-2. In order to accomplish this the applicant is requesting four variances.

Request A & B are for the existing home and shed (located northwest of the existing home) which do not meet the current setback requirements. A setback variance must be obtained, or the buildings removed, prior to submitting a rezoning request and Minor Plat to create the two proposed lots.

Request C: The proposed subdivision requires dedication of a 33-foot half-width right-of-way for Englewood Road. The applicant is requesting a variance to provide a 25-foot half-width additional right-of-way on the portion of the property immediately in front of the existing home.

Request D: A variance application has been submitted indicating the creation of the two lots will result in one of the lots exceeding the 3 to 1 width to depth ratio from Table A, although it is unclear to Staff the specifics of the requested variance. Also, from Table A, the portion of the existing lot containing the existing house does not meet the minimum depth of 250 feet which is needed for platting.

The original zoning for this property is R-S and A-1; the property was surveyed in 2003. While the existing outbuilding was shown on the survey, the existing home was not. There have been no previous requests for this individual tract. The requested variances for Requests A & B are from Zoning Regulations, Section 10.A. The minimum front and rear setback in the R-S zoning district is 25-feet. The variance for Request C is from the Subdivision Regulations, Appendix B, Section 2.2 – The right of way width for a collector street is 66-feet. The variance for Request D is from Subdivision Regulations, Appendix B, 1.8.2, Table A – Maximum lot depth cannot exceed three times the lot width and minimum lot depth is 250-feet. Staff notified 14 property owners about these requests.

Facts:

- The lot is 12.04-acres with a small appendage that doesn't meet minimum lot depth. Currently treated as legal nonconforming.
- A home and garage are located in this appendage area. Currently treated as legal nonconforming.
- The home was constructed in the 1930s. Currently treated as legal nonconforming.
- The property is currently split zoned with the house and garage in the R-S portion of the property.
- The existing home appears to be located in the front yard 25 feet and rear yard 25 feet setback.
- The garage encroaches into the rear 25 feet setback.
- A rezoning will be required to allow the land division envisioned for the property.
- There is not enough information provided related to the 3 to 1 length to width variance to evaluate.

The variances requested fall into two sections, variances from the subdivision regulations and variances from the zoning ordinance. These two categories are subject to differing analysis.

Staff Analysis and Recommendation:

Zoning regulation variances:

Requests A & B - Zoning Regulations, Section 10.A. The minimum front and rear setback in the R-S zoning district is 25-feet.

Analysis:

The rear yard setback variances as proposed are an unchanged aspect of the request. Whether a land division occurs or not, the rear property line and its relationship to the structures in question are not changing. The situation is not becoming more or less compliant with the regulations other than currently, our office is treating the structures as legal nonconforming with respect to the rear setback.

The front yard setback variance is proposed for the existing home and while also currently considered a legal nonconforming situation, the land division proposed will exacerbate the encroachment into the setback as the front property line moves closer to the front of the home with the dedication of additional road right-of-way required by the platting process. The need for this variance is self-created by the desire to divide the property while attempting to retain the existing structures. The purpose of the land division is to allow for another dwelling unit to be built on the second proposed lot. Since the land is being divided for development it is hard to ignore that the existing structures could be removed and a house that complies with the zoning regulations could be constructed on the new lot.

Staff can't recommend approval of variances A or B as there is not a unique situation but rather an economic choice driving the need for both front and rear setback variances. It is possible to divide the property into two lots, pending a rezoning, and to construct a home on each lot without the need for the proposed variances. This would be accomplished by removing the existing structures as part of the property redevelopment.

Should the Board see fit to grant the setback variances, at a minimum the "As-Is Where Is" condition should be imposed on both structures along with a separate condition that if the existing home is removed/damaged to 75% of its value/destroyed for any reason the garage structure must be removed as it will be in violation of additional county regulations if this situation occurs.

Subdivision Regulation variances (variances C and D):

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 has existed in its current configuration for many years and for most of the zoning regulations is treated as legal nonconforming. The action that is requiring the requested variances is the property owner's desire to subdivide the property into two platted lots while allowing the two main existing structures to remain. Platting requires compliance with the zoning regulations and subdivision regulations.

Regarding Variance (C or D): The existing home is too close to Englewood Road to allow dedication of the required 33 feet half width right-of-way and 10 feet minimum utility easement. By providing the proposed 25 feet half width right-of-way, the minimum utility easement should be able to be provided when platting. While this is a creative approach to a variance, as the Average Daily Traffic (ADT) of Englewood Road is less than 200 vehicles per day at this location which is similar to a local roadway traffic volume, the situation is not unique and therefore questionable as to suitability for justification of a variance.

Regarding variance (C or D): The 250 feet minimum lot depth is an existing condition, related to the shape of the property, that could only be corrected by sale of additional land to or from an adjoining property owner. Grant of the variance does not change anything about the existing configuration of the property; the only issue is platting or not. Any land division subject to the subdivision regulations will need this variance.

The 3 to 1 ratio for length to width from Table A is a standard for each resultant proposed lot. There is a lack of provided information related to this request for Staff to make a recommendation for approval.

Staff offers the following findings in support of its recommendation:

For variance C:

Subdivision Regulations, Appendix B, Section 2.2 – The right of way width for a collector street is 66-feet.

- a. The applicant will not incur unreasonable and unnecessary hardship as an unreasonable deprivation of use. While sympathetic to the applicant's situation, the current situation of the property is considered legal nonconforming due to the age of the structures. The structures can be maintained in their current locations indefinitely. The desire to divide the property to allow for additional development is a choice. While this may not be the desired development scheme, the property can be rezoned and platted and each lot would qualify for construction of a house, built in compliance with the regulations, without the need for the right-of-way dedication variance simply by demolishing the existing home and garage. There is no unique topographic reason for providing 25 feet of additional right-of-way as opposed to the required 33 feet.
- b. Granting this variance could 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 but even with the right-of-way reduced to a 25-foot half width near the existing house, the building is very close to the road/right-of-way. However, physically, it is the existing situation and there are no know roadway improvements proposed that would bring the pavement closer to the house.
- c. Granting this variance will thwart or circumvent the general intent or any specific purpose of the regulations. There is no unique feature of the property to prevent the dedication of the required 33 feet half width right-of-way and justify the dedication of only 25 feet instead. Removal of existing structures is a common practice in redevelopment of land associated with land division.

The request for variance C seems to fail 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 denied.

For variance D:

Subdivision Regulations, Appendix B, 1.8.2, Table A. Maximum lot depth cannot exceed 3 times the lot width. The 3 to 1 length to width ratio can't be evaluated and therefore can't be recommended for approval for lack of supporting information.

For variance D:

Subdivision Regulations, Appendix B, 1.8.2, Table A. minimum lot depth is 250 feet.

- a. The applicant will incur unreasonable and unnecessary hardship as an unreasonable deprivation of use. The minimum lot depth variance is needed for any reconfiguration of the property not involving the neighbor to the west and is based upon the longstanding shape of the existing property boundary. The shape was created at a time when the configuration of the lot was legal, making it a legal nonconforming situation.
- b. Granting this variance will not endanger the health, safety, or welfare of the public simply by the retention of this appendage when the lot is platted. The possible endangerment comes from having structures within this area and having said structures close to the road. If the structures are removed there will be no endangerment of health, safety, or welfare solely because this area of the lot does not meet the minimum depth.
- c. Granting this variance will not thwart or circumvent the general intent or any specific purpose of the regulations. This portion of the existing configuration of the property is not changing nor being created in a manner that will allow it to be buildable area in the future. If the structures are removed from the decision-making process for this requested variance the lack of 250 feet in depth changes nothing from the original lot configuration.

The request for variance D with respect to not meeting the minimum depth of 250 feet for a portion of the property meets 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.

Granting the requested variances, except variance D could be considered to be a grant of special privilege. There is no deprivation of use that results from denying variances A, B, and C that would cause the owner to incur unreasonable and unnecessary hardship.

The need for those variances is triggered by the owner's desire to redevelop the property. There are means, within the regulations, under which the property can be redeveloped without the need for variances A, B, and C. It simply requires removal of the violating structures. Removal of the structures does have a financial cost, but cost cannot be the sole justification for grant of a variance.

Present representing the request:

Jay Gebhardt, A Civil Group, 3401 W Broadway Business Park, Columbia  
Andrew Biggs, 10281 Englewood Rd, Ashland

The applicant presented a 4-page document marked as Exhibit 2.

Member Leopard stated that several letters in support were received and asked if staff received any correspondence in opposition.

Thad Yonke stated no.

Jay Gebhardt: I would like to thank staff for their report and respect their position to enforce the regulations of the County, but I would like to share a different opinion. Reasons for this request are that Andrew and his wife have decided to end their marriage but do not want to disrupt the life of their child. The propose of this whole endeavor is to allow their daughter easy access to both of her parents. Andrew plans to build a new residence on the new lot we are proposing so their daughter can freely come and go to both of her parents. This may not be a basis for approving the requests, but it shows the intent of two people who are committed to their daughter. This is not being done for financial gain or development of the area. The two zoning variances are all about the two existing structures on the property. There will be

no changes to the existing buildings; we aren't adding on to the buildings, it is going to be Mrs. Biggs' home. The staff has pointed out that this is not a unique situation, but I offer a different opinion. The house goes back to the 1930s. This in itself is a unique situation as to the preservation of a 90-year old building. The staff's position is that the building could be removed but would that be in the best interest of the neighbors and the Englewood community? This is not an economic choice driving the request, it is the existing condition that we do not have the ability to change. Staff has suggested that if you see fit to grant these two variances then you should require the as-is, where-is condition and the applicants are fine with that condition. The subdivision regulations require us to grant the minimum right of way for a collector street and we are proposing that we do that in all locations that we can.

On the first page of Exhibit 2; you can see a small area in front of the house where we are dedicating the 25-feet and everywhere else we are dedicating 33-feet. We could dedicate all 33-feet along the entire property but there wouldn't be room to dedicate the 10-foot minimum utility easement. Having room to dedicate the 10-foot utility easement was the preferred way to go. That is the best that we can do without removing the home. Although this does not meet the letter of the regulations, we believe it meets the intent as closely as we can. I also believe the dedication of the right of way is in the best interest of the community and is a positive rather than a negative.

The variance for the length to width ratio is being requested as the large lot's width is a bit of a gray area. Page 3 of Exhibit 2 shows the entire property. There is 69% of the width that meets the 3:1 ratio and 31% that does not. Doing a weighted average of the two widths provides the necessary 3:1 ratio. Since we are here before the Board, we wanted to have this discussion; the new lot may or may not meet the 3:1 ratio.

As for the minimum depth it too is a gray area. Although there is 106 feet of the lot that does not meet this, there is 183 feet of the lot that does. This again is beyond our ability to control and is a function of the shape of the existing property. It is also a function of the lot having to be 2.5 acres due to the only option for sewer is onsite sewer which requires 2.5 acres. The 2.5 acres requires the 250-foot minimum lot depth. The regulations have us in a box, but we believe that our proposed 2.5-acre lot is the best solution for the community and the Biggs family. Granting the variance for the length to width ratio and the depth of the 2.5-acre lot is due to the unique shape of the existing property.

The staff points out that this can be remedied by removing the buildings and redevelop the property in a compliant manner. Redevelopment is not the intention here; the intention is to maintain the unique character of the existing community and keep both parents close to their child. I am not an attorney and I look at things in a different manner than a strict interpretation of the law. My goal is do no harm or as little harm as possible to my clients, to the neighbors and the community as a whole. The regulations are intended to guide the zoning and subdivision of land in a manner that does not harm the community as a whole. However, the regulations cannot cover all of the unique situations we have with this request. The applicants ask for approval of all the requested variances; this would preserve the character of the neighborhood by maintaining the existing structures and not redeveloping the property and allow the Biggs' to do what is best for their daughter.

Andrew Biggs: This is about my daughter. I get along with my ex-wife, but I am doing this for my daughter. The house is 87 years old; it has an 87 year history of not interfering with the county's business, of not interfering with the utility right of way, and of not interfering with public safety. It has existed there as part of the community that drives past it on a daily basis without affecting anything negatively.

Down the road from that house, on my property next to one of the driveways is a tree that is about 4-feet in diameter and it is about three feet from the road, it is still alive because nothing on my side of the road

has ever impeded progress. If that tree was a danger it would have been removed a long time ago. This house is considerably farther from the road than the tree is.

Beyond that, when I purchased the property the deed to the property had two addresses on it. The property came with two driveways, two water meter pits, two electric pits, two lagoons and the reason for that is because within the last 20 years the previous owner had multiple dwellings on this property. What I am trying to do here is not reinvent the wheel, this has all been done here before. I have a property that has a history of multiple dwellings, that is partially zoned residential which implies that at some point in the past, someone had the intention of this property being something different than one house per ten acres.

I have a situation where I have a daughter that would benefit greatly from being able to hop off the school bus and going to either parent's home; she is four years old. This is not something I am looking at as an investment. If my wife decides that this isn't working for her that house will come down. I don't have a need for two houses, I don't want a rental house, I am retaining ownership of all of it. She is going to get a 15-year lease for \$1 so she can leave any time she wants, otherwise she has a place to stay that is stable.

I don't intend to leave where I live, I have lived there for 12 years and I love it; it is six miles from my work. I live at the front of a dead-end road; you go past my house a couple of miles and you run into Cedar Creek in Callaway County. There is a National forest past my house and that isn't getting developed. It is not going to change a whole lot past me. It could change toward the airport, but no one is driving past me to get anywhere. The county acquiesced to that in their statement, they don't have any plans to improve or widen the road.

I have spoken with all of the planners twice now; I think they genuinely did their best to advise us on how best to approach this but I find myself surprised by the conclusion of their report. They are suggesting that I will not endure an unreasonable or unnecessary hardship if I just tear down my house. Let's assume that is true but the part that they left out is that the next step is to rezone my property in order to have two houses, which is the goal. There is no guarantee that the next board I sit before will grant me the zoning request. If they don't then I have torn my house down for nothing and I end up with one house which is not the goal. That sounds unnecessary to me in terms of reasonableness. I don't think it is reasonable to tear down a house that I've lived in happily for 12 years. It is part of the community. I don't believe that makes a lot of sense and I don't think it is reasonable.

But I do believe they are opening me up to the possibility that I enter an unreasonable and unnecessary hardship in the event that I tear down my house and then I get caught by the next board I have to talk to and I can't progress this idea. There is a flaw in the logic being applied here. Staff says it is simple and it is simple to knock down a house but there is no guarantee that I get to move forward with my plan if I follow their advice tonight. Which means that the county staff failed to offer an alternative that is actually a reliable alternative that produces a guaranteed outcome.

They say financial cost can't be the justification for a variance, I appreciate that but if I sat ten-million dollars on this table and said I am prepared to spend all of that money to get this done, no one in this room can guarantee that I can build two houses on that property. This isn't driven by money; the need for the variance is driven by the rules. I cannot build two houses in a situation that doesn't set me up for failure, potentially, and undue hardship and unnecessary and unreasonable hardship without leaving the existing house first, then I get rezoned, replatted and then I would be able to build a new house. At that point I can safely tear down that house and build a new one but any time prior to that, what am I doing? I am rolling the dice on a committee of people I've never met and hope they will approve the next step. That sounds unreasonable to me. I don't know how to progress with that, and I don't know how to do



that in such a way where I am not opening my daughter and wife up to a situation that I can't recover from. I don't know a better option, that is why I worked with county staff and that is how we came to the conclusion that we needed to request these particular variances. These variances are at staff's recommendation. This is what they proposed as the only way for me to get from point A to B where I have two houses on that property other than tearing down the house and rolling the dice to see what the next committee thinks and that puts me in a tough spot; a rather unreasonable hardship in my opinion.

Member Leipard: Where is the sewer?

Jay Gebhardt: There is a lagoon shown on page 3 of Exhibit 2.

Thad Yonke: It will be on the 2.5-acre tract.

Member Leipard: So, there is plenty of room to put a lagoon on the other tract for the new house.

Thad Yonke: Yes.

Member Leipard: When can you register a building for historic building registry?

Andrew Biggs: I was advised that I could do it now, but I haven't looked into it.

Member Leipard: That is a reason not to tear the house down.

Jay Gebhardt: That would be through the Boone County Historical Society.

Member Leipard: Is the home in good shape?

Andrew Biggs: Yes, we put a metal roof on it within the last ten years.

Member Russell: Is there access going to the pole barn?

Andrew Biggs: Yes, it has two driveways. The property came with two street addresses. Behind the pole barn the concrete piers are still in the ground from where the trailer was.

Member Russell: Where do you propose to put the second house?

Andrew Biggs: That is going to depend on what I am told I can do. If I am told I have to push the thing back into the field in order to meet setbacks that's what I will do. If I can put it closer to the pole barn I would love to.

Member Leipard: If you get to leave the existing house where would you put the new house and how would you get to it?

Andrew Biggs: I would extend the driveway beyond the pole barn.

Member Leipard: How is staff with that location?

Thad Yonke: If they create two legal lots, as long as it meets the setbacks, then they would be able to get a building permit to place the building either in front or behind depending upon whether or not it meets the setbacks.

Member Russell: If we were to grant these variances does that make it so they can divide the property; do they have to get zoning done also?

Thad Yonke: Yes, in order to create the two lots, the split zoning does not match the lot configuration that they wish to have. Also, the A-1 zoning has to be a minimum of ten acres. The rezoning for that portion would be to rezone to A-2 which allows a minimum of 2.5 acres. In order to rezone they must have these variances.

Member Russell: These are recommendations? If they get these variances then they can go to the next step, if they can't then they will need to tear down the structures?

Thad Yonke: The other thing that needs to be understood is that the unreasonable deprivation of use is not for the owner, but the property. It has to be an unreasonable deprivation of use of the property; if there is a legal use of the property there is no unreasonable deprivation. You can have a house on the property whether it is this house or a different house, that property is not being deprived of a use.

Member Stephens: As to the process, if the house were to be tore down when would it have to be done? If the Board denies the variance and the applicant went before Planning and Zoning for rezoning the applicant wouldn't be required to tear the house down prior to going through that process, would he?

Bill Florea: It depends on how we approach the rezoning. If the applicant were to ask for straight, open rezoning then yes, the house would need to be removed first. If he were to ask for planned zoning then the review plan would give him the ability to get the zoning tentatively approved; once that is obtained then he could tear down the house and the final plan could be approved which establishes the permanent zoning. There is no discretion at the final plan stage, it is a ministerial act. If the final plan complies with the zoning regulations and matches the review plan and they comply with any conditions that were placed on the review plan, it has to be approved. There is no discretion so there is no risk to the owner if they can comply with all of those things, there is no risk that it won't be approved. There is a way to know if his rezoning request goes through prior to tearing the house down.

Member Russell: He could request planned zoning and he could still get denied, he wouldn't necessarily have to tear the house down first. It seems as though staff is recommending approval of request D?

Thad Yonke: On the minimum 250-foot depth, they've got to have that in order to reconfigure the property at all. It is based upon the existing shape. An argument can be made that it meets the 3:1 ratio, therefore it doesn't need that variance.

Member Russell: On request C; it looks like about 100-feet? Was there anything else that could be done? Is there anything topography wise that could accommodate the 100-feet?

Jay Gebhardt: It is 50-feet.

Member Russell: Has there been other cases where we've had a small portion of the setback?

Bill Florea: I don't remember a similar case.

Jay Gebhardt: The whole reason we are doing this is so we can dedicate a 10-foot utility easement but we are short eight feet; if we were to dedicate a street easement and utility easement on there it would act as the same; it just wouldn't be right of way which is what is required by the code. We don't have a problem dedicating an additional eight feet of street easement, it is all because of getting the utility

easement in there. If we dedicate eight feet of right of way it means the house would be eight feet from the right of way.

Thad Yonke: That would require a different variance. If the Board decides there is enough of a situation to grant the variance you should grant the variance for the 25-foot the same as you would for the other because it is all going to come out to be the same thing. Our justification, as our requirement to back the regulations, is to point out from a regulatory point of view, there is not a unique circumstance but it is the applicants job to convince you that there is enough of a unique circumstance to grant it.

Member Stephens: In terms of the question about the right of way width, is 25-feet appropriate? Ultimately, isn't Planning and Zoning going to weigh in on that? Does anyone down the road weigh in on the 33-foot versus 25-foot?

Thad Yonke: The portion of the property that they are seeking to rezone in the future is already zoned R-S, they are proposing to leave that portion zoned R-S. They are just reconfiguring the other end of it, so it matches whatever the new lot line is as opposed to just randomly being out in the middle of the field. That won't play an issue in the rezoning request.

Member Stephens: The Planning and Zoning Commission won't question it and say they aren't comfortable with the 25-foot dedication?

Bill Florea: No, that can't happen. The Board of Adjustment has the legal authority to grant that variance; the Planning and Zoning Commission does not.

Member Leipard: What does staff think about the 25-foot dedication? Is it ample since it is at the end of the road? It won't be developed down further, there is nothing out there.

Thad Yonke: 25-foot would be a half-width for a local roadway; if they were platting a local roadway as part of the subdivision, 50-foot is the standard roadway and 25-foot being the half-width, that is what would be required. The average daily trips, as we pointed out in the staff report, is less than you would have even for a local roadway.

Member Russell: I understand that financial hardship cannot be a reason for granting a variance, can we go over one more time what the reasons are for granting a variance?

Thad Yonke: Shape, topography and unique circumstance related to the property, not unique circumstance related to the owner or the owner's situation.

Member Russell: What is the exact language on the unique portion.

Thad Yonke: 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.

Jay Gebhardt: We are of the opinion that the shape of the lot is what is causing the setback issue and it is unique to that property because of the shape.

Member Leipard: That is also making it hard on the 3:1 deal.

Member Stephens: Is the property line the center of the roadway?

Bill Florea: I haven't reviewed the deed.

Jay Gebhardt: The centerline is a little bit south of what his deed calls for. It is within three or four feet, but it is a little south.

Member Leipard: If we granted a variance on this and 20 years from now, they decide to tear down the house and make two houses on this then it would be in accordance with the setbacks at that time?

Thad Yonke: If it is granted with the as is where is condition.

Member Leipard: I don't want to cause the county any trouble later.

Member Russell: Who determines the as is where is? Does someone go out and determine 75%?

Thad Yonke: That is true now. The house is a legal non-conforming, if it is damaged by anything to more than 75% of its value it would have to be rebuilt in compliance with the regulations because it would lose its legal non-conforming status.

Member Russell: The granting of the variance would last until something like that happened.

Thad Yonke: Yes.

Member Leipard: What if they tried to sell the property? Would they have to tear the house down?

Bill Florea: The variance is granted to the property, not to the owner.

Member Russell: If they tore the garage down and rebuild, who determines if the loss is 75% of the value?

Member Stephens: The building permit.

Open to public hearing.

Present, speaking in favor of the request:

Tony Crocker, 11771 E Englewood Rd, Ashland

Amanda Crocker, 11771 E Englewood Rd, Ashland

Tony Crocker: The house is 80 years old, there was no utility easement when the house was built. When he bought the property, the road was asphalted so the county has moved themselves into his yard and now we want to condemn him for buying something that the county has encroached into him. The utility easement was further away until 1999 when the road was asphalted, then it got moved closer to his house; he didn't move his house closer to the road. There is a unique situation there because the property wasn't changed by anybody, the county changed their property. Of course, you have to look at the scenario of the homeowner because he wants to keep his child close to both parents. I can't see anyone saying you can't look at that. It is a dead-end road; nothing is going to happen down there.

Amanda Crocker: 200 cars go down that road, but I bet 100 a day don't belong down there, they go down to the creek or hiking. They don't live down there.

Tony Crocker: My biggest thing is according to Boone County everything has been fine up until now. Why now when he bought the property everything was just like it is now and there were no problems then. I believe there was a discrepancy back in 2007 with the neighbor butting up to the property and was looked at by Boone County. Why wasn't anything said then? Because it was just like it is now. Had Boone County left it with two addresses this would be a non-issue, but because he bought the property it is all one address now. If he would have bought that with two addresses like he did and they left it like that, where would the issue be?

Thad Yonke: Addresses don't make a difference. It is a matter of if there were two legal dwelling units on the property and they had retained two legal dwelling units at the time it was purchased and had not removed them. The address itself is not relevant to the situation. The unit would have been gone longer than a year, it lost any potential rights that it would have had; it is currently one lot with one house. The fact that the applicant wants to plat the property is where the issue arises.

Member Leopard: 25-feet is probably sufficient for the road.

Bert Shaw, 8250 E Rte Y, Ashland

Bert Shaw: I have known the applicant for quite a while, and I don't think anyone can say that he doesn't have community support. If you look at the Englewood community, every home in that community is that close to the road but if you took that home out of the community you would lose is the community feel. It is right across from the community club house, that home is part of that community. Anyone that would recommend taking that out isn't trying to retain what is Boone County or keeping Boone County what it is. I and my children go down that road on a regular basis to get to nowhere. We go down to the Devil's Backbone, that isn't going to be developed. We go down to the bridge that goes to a road that goes into a National forest; it is not a road anymore. We aren't talking about a place that is going to be developed later, we are talking about a large piece of property. He is talking about putting a home behind the pole barn so you wouldn't even see it from the road. The community feel is a big thing and keeping Englewood what it is. The house is part of the community and taking it out doesn't make any sense. I know the only thing driving this is the commitment to their child and not financial gain.

Tom Andrews, 10201 E Englewood Rd, Ashland

Tom Andrews: I live next door to the applicant. In 2007 we negotiated with our neighbors after they built the garage on our property, back then we came up with dropping the property line a couple of feet back from the garage. That was alright with the county. There is the history of the home itself so let them do what they want to do. There is no reasonable reason not to.

John Crane, 11725 E Englewood Rd, Ashland

John Crane: I have known the applicant since he came down and has been a great part of the community. I remember going to that house and getting candy out of the bowl; that house is part of the community. Talking about historical buildings, I did a google search and to be on the Natural Registry it is 50-years. If the house was damaged this variance won't make a difference, the next house that is built has to be right. There is no question of if it is going to negatively impact the future. The applicant is a great guy and we look forward to keeping him in the community and we would hate to see this house tore down just to make up a few feet.

No one spoke in opposition.

Closed to public hearing.

Member Leipard asked staff if they had any additional comments.

Thad Yonke stated no but staff would be happy to explain how the regulations work and that the predominate thing in this is that it is the land division that is being proposed that is creating the issue, not the existing structure itself as it sits now; it is the fact that they want to divide the land and you have to meet the regulations in order to do that.

Member Russell: They couldn't just build another house, so they have to divide the property. There is no other recommendation to get around requests A or B other than tearing down the house.

Thad Yonke: If they want to divide the property and create the plat those are their two options.

Member Russell: Requests A and B are existing setbacks; when they divide the property, the issue is that it is not in compliance with the setbacks. There is no way to divide the property differently to meet the setbacks?

Bill Florea: No, because they don't own the neighboring property.

Thad Yonke: The extent of the variance from the rear property line is 3-feet.

Member Russell: Then we get to Request B and that is a variance from the front and rear setback too.

Thad Yonke: The house itself needs a variance for front and rear setback; the garage just needs a variance from the rear setback.

Member Russell: Is the garage attached to the house?

Thad Yonke: No, it is detached. If it were attached it wouldn't need a garage setback, it would be part of the house.

Member Russell: On request B how many feet are we talking about?

Thad Yonke: About 1.7 feet as opposed to the 25. There is an exception for an accessory structure that will allow for an accessory structure to be as close as 2-feet to either the rear or side property line but not both as long as it is 60-feet from the road. I believe that was what was intended. The garage still doesn't meet the 2-foot setback.

Member Russell: We are looking at Request A which is for 3-feet; Request B we are talking about 1.7-feet and we are looking at Request C which isn't the whole area.

Member Russell made, and Member Leipard seconded a motion to approve the requests by Andrew Biggs for a variance from the rear setback for an existing garage; for a variance from the front and rear setback for an existing single-family dwelling; for a variance from the 33-foot half-width right of way; and for a variance from the 250-foot lot depth, located at 10281 E Englewood Rd, Ashland with the following conditions:

1. The existing house and garage 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

2. If the existing home is removed/damaged to 75% of its value or destroyed for any reason the garage structure must be removed

Member Leipard	Yes	Member Stephens	Yes
Member Russell	Yes		

Motion to approve the requests carries unanimously

### 3. Case 2022-005

Request by Steve Baumgartner for a variance from the front setback in the A-2 (Agriculture) zoning district for an existing single-family dwelling located at 8505 N Nature Ln, Columbia (Zoning Regulations, Section 10.A)

Planner, Thad Yonke gave the following staff report:

This tract is 42.4 acres and is zoned A-2 (Agriculture) as is all surrounding property. This site is located approximately 1200 feet south of the intersection of Wilhite Road and North Nature Lane, there is a single-family dwelling and barn on the property. According to Boone County Assessor's records, the house was built in the 1930's. The applicant intends to divide the property to create a lot of less than 5-acres around the existing house. When the required right-of-way is dedicated, the house will be in the newly established 50-foot setback. The applicant requests a variance from the front setback for the existing house. The original zoning for this property is A-2 and was surveyed in 1974. There have been no previous requests for this tract. The requested variance is from Zoning Regulations, Section 10.A which requires a 50-foot minimum front setback in the A-2 zoning district. Staff notified 12 property owners about this request.

#### STAFF ANALYSIS & RECOMMENDATION:

##### Facts:

- The existing home currently meets the front setback on the 42.4-acre parcel
- The house will not encroach into the plat provided 20-foot utility easement.
- The house will encroach approximately 5-8 feet into the front setback when platted.

##### Analysis:

The parent parcel is 42.4-acres and a normal rectilinear shape. It is occupied by a single-family dwelling in the northeastern corner of the property. The existing home appears to comply with the required setbacks. The proposed subdivision is presumed to be undertaken to sell the existing home on less than 10 acres while keeping the bulk of the farm together. It is the act of subdividing the property that creates the need for the variance.

There does not appear to be unique circumstance specific to the property, such as shape or topography, that differentiates this situation from many others. In addition, there is no deprivation of use that will cause to owner to incur unreasonable and unnecessary hardship. Staff cannot recommend approval of the variance.

Present representing the request:

Kevin Schweikert, Brush and Associates, 506 Nichols St, Columbia.  
Steve Baumgartner, 3850 Coats Ln, Columbia

Kevin Schweikert submitted a copy of the Baumgartner Subdivision Plat; this was marked as Exhibit 1.

Member Leopard asked staff if they heard from any of the neighbors.

Staff stated no.

Kevin Schweikert: We are trying to create a 2.5-acre lot in the northeast corner of the tract with the existing house on it. It is a 40+ acre tract and we are trying to create the lot by subdivision plat. When we create by subdivision plat, we are required to dedicate right-of-way and the new building line is measured from the 33-foot right of way. The property is family owned, two-generations, the applicants grandfather owned the property and purchased it in the 1970's. The intent of the owner is to keep as much of the tract in one contiguous ownership as possible which is the reason for this small lot. The house is livable and marketable; the applicants haven't decided what they want to do with the house yet, but the intent is to separate the house from the farm and put the residential portion on one piece.

I was surprised that this was not recommended for approval. In December 2021, I came before the Board of Adjustment for case number 2021-007 and had a singlewide mobile home in front of this Board and it was granted a variance and it is virtually the same situation as this. I have a copy of the minutes from that meeting.

If you need a topographical reason to grant this variance, if you look at Exhibit 1, the goal is to keep the farm in the family. If the small piece with the house is sold, then the applicant would keep the rest of the property. The access point to the back portion of the property is where you see the low water crossing, there is about 13 acres behind the creek. The existing low water crossing has been used since the 1970's, there is a culvert in there. The driveway to get to that is running along where we have put those jogs in the line so the road that is already there as access.

If we created a large 20-acre tract in order to put the house on its own we would split the property in half, the Planning Department knows that private easements to get to the back portion of the property are usually not a good thing, they can be problematic sometimes. What we intend to do is keep that without an easement and keep it on the property the applicants will be retaining. There is no other regulatory way to separate this house from the rest of this tract on a piece smaller than 20-acres without this variance.

The county and the public benefit by receiving the right-of-way and the utility easement along the public road. If we don't do this and it is 20-acres or larger and we decide to separate it, you wouldn't get any right-of-way or utility easement so the public benefits from granting the variance. If you decide not to divide it and decide to do something else on the rest of the property by dividing pieces, which the applicants don't intend to do, if you don't grant the variance for the house it would have to be tore down to do something later but while the house is sitting there you would end up with a portion of ground.

If this was platted, you would give right of way on the southeast side of this and when you get up toward the house, wherever that platting stopped you would end up with a portion of the road that never had right of way granted or a utility. The house has been there about 70-90 years, it doesn't look that old but it could be; it needs some cleaning up but it is livable and marketable and was lived in just a few years



back. It doesn't sound reasonable to create another low water crossing; you can see water starts from the pond and comes down and the further south you go the deeper the creek gets.

Member Russell: The 50-foot building line is the issue? The issue starts because the applicant wants to divide the property. If they didn't divide the property, there isn't anyone coming after them. There is no other way, nothing is going to stop the idea that it needs to be 50-feet back from the road.

Member Stephens: The zoning is driving it?

Thad Yonke: The zoning is driving it. If they had the ability to do a family transfer as the method of division instead of doing a subdivision plat then that might, but that is a very limited occurrence.

Member Russell: If their intention is to sell it, they would have to come back.

Thad Yonke: No, if it is created as a 2.5-acre family transfer lot and they retained it for the year that they are required to retain it, after that they could sell it and it would still be a legal lot that did not have to dedicate right-of-way. However, it would not dedicate the utility easement or right-of-way so there is a public benefit to doing it the way they are proposing, and they might not even be eligible to do the family transfer.

Member Russell: As far as staff is concerned, they couldn't approve it because it needs a variance. We don't typically see staff not recommending a variance.

Thad Yonke: The previous variance that Mr. Schwiekert mentioned was prior to staff recognizing that we really need to make recommendations on all variances; that request was at a time when staff didn't make recommendations on zoning variances. If we had at that time, we would have recommended against granting the variance because there were no unique circumstances, however the Board felt there was and granted it. This request is the same way, we don't see a unique circumstance, it is up to the applicants to convince the Board that there are unique circumstances as related to the property.

Member Russell: Going back to the unique circumstances, if they want to divide this property in a way other than family transfer, there is nothing that is going to stop it if they need a variance because where the house is over the property line.

Thad Yonke: They would either need to remove whatever portion of the building that encroaches but something will have to be torn down in order to meet the regulations if they wish to move forward with the land division.

Member Russell: The term unique is an interesting interpretation. Asking someone to tear their porch down is a unique situation.

Thad Yonke: Under the legal statutes no.

Member Russell: What does unique mean under the regulations?

Thad Yonke: It has to be a matter of topography, or shape that is an unreasonable deprivation of use.

Bill Florea: It is the unique features of the land, not how the buildings are placed on the land. Variances should only be granted based on a feature such as shape or topography of the land.

Thad Yonke: It can't be an economic factor.

Bill Florea: An example would be steep bluffs that prevent you from meeting the 50-foot setback; that is a topographic feature unique to that land.

Member Russell: The structure isn't?

Bill Florea: That is not a unique circumstance.

Thad Yonke: That is economic because the choice is to divide the property, there is a value to the house as is and a value to the property as divided. Those are economic variances and the Board cannot use economic variances as the sole reason to grant a variance. The Board needs to find that there is some other unique circumstance as related to the property.

Member Russell: It seems really close to 50-foot.

Bill Florea: The home was built prior to zoning.

Steve Baumgartner: There are less than 50 people who travel that road per day. It is a nice road but if you go that wide, it is huge.

Member Russell: How far is the porch into the setback?

Thad Yonke: It is a five to eight feet encroachment.

Member Russell: That encroachment is not the utility stuff. Why 50-feet there in how it is zoned? Why not 25-feet?

Thad Yonke: The 25-feet on the previous request was based on the property being zoned R-S; this property is zoned A-2 which requires a 50-foot setback.

Member Russell: If this was zoned R-S it wouldn't need to be 50-feet?

Thad Yonke: Correct. If they were to rezone this to A-R or R-S they would only need a 25-foot setback. The problem is justifying the rezoning to R-S or A-R is typically based upon having utility access for things like central sewer; you couldn't justify that zoning in that area, there are no resources there, it is still a rural area. Rezoning a property just to get a shorter setback would probably not get approved.

Member Leipard: Staff probably already discussed that with the applicants.

Kevin Schweikert: We knew that already.

Thad Yonke: We don't put in the report as an alternative when we know it will likely not be approved.

Kevin Schweikert: A rezoning request like that would never make it from my office on this property; it is not a viable alternative.

Member Russell: The only alternative is to rip off a section of the house?

Thad Yonke: Or get a variance if they want to divide the property.

Member Stephens: Or do something that doesn't require them to dedicate right of way; that option would be to split it in to two tracts.

Kevin Schweikert: Yes, 20 acres or larger or do a family transfer.

Member Stephens: Does the existing house have a functional sewer now?

Kevin Schweikert: Yes, it looks like there is a septic tank on the northwest corner.

Thad Yonke: They will have to locate it on the plat.

Member Leopard: Is the applicant thinking about putting another house in sometime?

Steve Baumgartner: We don't really know, we rushed into this situation to get it bought.

Member Russell: If they took the porch down it looks like they would also have to take part of the house down.

Thad Yonke: That would be part of the equation.

Steve Baumgartner: The porch extends outside the house about four feet.

Kevin Schweikert: The front portion of the house seems to be in the setback also.

Open to public hearing.

Present speaking in support of the request:

Eric Taylor, 3505 S Coats Ln, Columbia.

Eric Taylor: I am in support of this request.

No one spoke in opposition.

Closed to public hearing.

Member Stephens made, and Chairperson Thomas seconded a motion to approve the request by Steve Baumgartner for a variance from the front setback in the A-2 (Agriculture) zoning district for an existing single-family dwelling located at 8505 N Nature Ln, Columbia 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 Leopard	Yes	Member Stephens	Yes
Member Russell	Yes		

Motion to approve the request carries unanimously

**NEW BUSINESS**

Annual Election of Officers

Members requested to postpone the election until more members were present.

**OLD BUSINESS**

None

**ADJOURN**

Being no further business, the meeting was adjourned at 8:47 p.m.

Respectfully Submitted,

Paula L Evans  
Secretary

Minutes approved this 27<sup>th</sup> day of October, 2022