

BOONE COUNTY BOARD OF ADJUSTMENT
BOONE COUNTY GOVERNMENT CENTER; ROOM 301
801 E. WALNUT ST., COLUMBIA, MO.
Thursday, March 23, 2023

The meeting was called to order at 7:00 p.m. in the Room 301 of the Boone County Government Center having a quorum present.

Roll call was taken:

Present: Frank Thomas
Michael Leopard
Paul Zullo
Jesse Stephens
Jason Russell

Absent: None

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

Chairperson Thomas read following statement:

Ladies and Gentlemen, the Boone County Board of Adjustment is now in session.

This Board is appointed by the Boone County Commission to consider specific application of the zoning and subdivision regulations. The Board is empowered to enter rulings that may give relief to a property owner from the specific application of the Zoning and Subdivision regulations. Generally, variances can only be granted in situations where by reason of shape, topography or other extraordinary or exceptional situation or condition of a specific ordinance would result in peculiar and exceptional difficulties to or exceptional and demonstrable undue hardship upon the owner of the property as an unreasonable deprivation of use as relating to the property. A variance from the strict application of this ordinance can be granted provided the relief requested will not substantially impair the intent, purpose and integrity of the zoning regulations.

Notice of this meeting has been published in accordance with our by-laws for the proper number of days. All decisions of the Board are based on the zoning or subdivision regulations for Boone County, Missouri, and they are hereby made a part of the record of this meeting.

This Board is comprised of five members, with three members constituting a quorum. An applicant must receive at least three votes in order to receive the relief that they have requested from the Board.

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.

This meeting is available through an audio link; members of the public attending by phone will be muted until the Public Hearing portion of each request.

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 or silence 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 27, 2022 meeting were approved as written.

REQUESTS

1. Case 2023-002

- A. Request by Jonathan D. Wadlow & Elizabeth Ann Wadlow for a variance to allow a lot to be platted of less than 2.5-acres while proposing construction of an onsite wastewater system on property less than 2.5 acres located at 16571 N Old Hwy 63, Sturgeon. Subdivision Regulations, Appendix B.3.1 & Appendix B.3.2 (open public hearing)

- B. Request by Jonathan D. Wadlow & Elizabeth Ann Wadlow for a variance to create a lot less than 2.5 acres in the Agriculture 2 (A-2) zoning district located at 16571 N Old Hwy 63, Sturgeon. Zoning Regulations, Section 5.A.3 & Section 11.A (open public hearing)

Planner, Thad Yonke gave the following staff report:

This property consists of two tracts totaling 1.44 acres and is zoned Agriculture (A-2); all the surrounding property is also zoned A-2. The site is located approximately one mile north of the intersection of Highway 63 & Highway 124 west, there is a single-family dwelling on the property. The applicants own two legal lots of record which, if combined, total 1.4 acres. One lot is developed with a single-family dwelling, the other lot is vacant. Wastewater from the dwelling is discharged to a lagoon on a third lot under different ownership. The applicants desire to combine their two lots by subdivision plat and construct a lagoon on their property for wastewater treatment. The original zoning for this property is A-2, the property was surveyed in 1963. The survey recorded in Book 326/Page 536 created six lots, all of which utilized a centralized lagoon on an adjoining property. Variance A is from Subdivision Regulations, Appendix B.3.1 & 3.2; the applicant requests a variance to plat a lot of less than 2.5-acres while proposing to construct an onsite wastewater system on a property less than 2.5-acres. Variance B is from Zoning Regulations, Section 5.A.3 the applicant requests a variance to plat a lot of less than 2.5-acres while the minimum lot size in the A-2 zoning district is 2.5-acres. Staff notified 12 property owners about this request.

Facts:

- The subject properties were created as Tracts 1 & 2 of a survey recorded in Book 326/Page 536 of the records of the Boone County Recorder of deeds in August of 1963.
- The subject properties are two legal lots-of-record since the creation date is before both the zoning and subdivision regulations original adoption date and the effective date of December 1973.
- Tracts 1 & 2 are each approximately 31,350 square feet in area with a total combined area of approximately 1.4-acres.
- A home was constructed on Tract 1 sometime around 1973, according to the Boone County Assessor's records.
- The existing wastewater system for the house on Tract 1 is not located on either Tract 1 or Tract 2.
- The location of the house and the water line on Tract 1 leave little to no room for an on-site wastewater system on Tract 1.
- Combining the two Tracts into a single lot requires the subdivision action of platting.
- Platting the two tracts into a single Lot will result in a lot of less than 2.5-acres, the minimum lot size for the A-2 zoning district is 2.5-acres so the lot will not meet the required minimum lot size.
- Creation of platted lots of less than 2.5-acres requires connection to a centralized sewage collection and/or treatment system; no such system is available.
- A soils report prepared by a Licensed Soil Scientist has been provided that indicates that a wastewater lagoon should work for a combined platted Lot.

Staff Analysis & Recommendation

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

Subdivision Regulation Variances:

Variance A: Subdivision Regulations, Appendix B 3.1 & 3.2.

The applicant requests a variance to plat a lot of less than 2.5-acres without connecting to a public sewer, while proposing to construct an onsite wastewater system on a lot less than 2.5 acres.

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 consists of two legal lots-of-record with a home that was built on one of the Tracts prior to the adoption of building codes. The action that requires the requested variances is the property owner's need to find a different wastewater solution for the existing home on Tract 1. The home is currently connected to a lagoon on an adjoining property. That property is under a different ownership; this is not allowed by the County Health Code as it violates the very definition of an onsite wastewater system. The solution is to use an onsite wastewater system on the property the applicants own.

However, in order to be issued an onsite wastewater permit there needs to be a suitable area on the same lot as the structure being served. In this case the suitable area is found on Tract 2 which is a separate legal lot and therefore, can't be used for a lagoon serving the home on Tract 1. The applicants have chosen to try to resolve this situation by platting the two legal lots-of-record into a single platted subdivision lot. But platting requires compliance with the Zoning Regulations and Subdivision Regulations. For the plat to be approved the applicants must obtain a variance to create a lot that does not meet the minimum size and use an onsite wastewater system.

Variance A: Subdivision Regulations, Appendix B. 3.1 & 3.2 The applicant requests a variance to plat a lot of less than 2.5-acres while proposing to construct an onsite wastewater system on a property less than 2.5 acres.

- a. The applicant will incur unreasonable and unnecessary hardship. The purpose of the minimum lot size requirement, of 2.5-acres for proposing onsite wastewater disposal, is to prevent new lots being created that do not have both a buildable area for a primary structure and a suitable area to construct a regulatorily compliant onsite wastewater system. This was placed in the regulations to prevent the creation of new problematic lots, as are found in this request. Because there is already a legally constructed residence on the property there needs to be a compliant onsite wastewater system on the property or it renders the home unusable, which would cause the owner unreasonable and unnecessary hardship. The combination of the two existing Tracts into a single lot seems to be the best solution.
- b. Granting this variance will not endanger the health, safety, or welfare of the public. By combining the two Tracts into a single platted lot the existing home can be served with a compliant onsite wastewater system which is a promotion of public health standards. There is an additional benefit of allowing the replat in that it eliminates one of the problematic Tracts altogether.
- c. Granting this variance will not thwart or circumvent the general intent or any specific purpose of the regulations. Granting this variance could be seen as violating a specific purpose of the regulations, and creating a bad precedent, if the unique facts of the situation are not clearly considered.

There is a legally constructed home on a legal lot-of-record. Until recently, that home was connected to a wastewater system that was constructed prior to adoption of the County Health Code but is no longer usable and is not in compliance with current regulations. Those facts distinguish this case. The combination of the two tracts into a larger single lot brings the property closer to regulatory compliance and eliminates one of the problematic tracts.

The request 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.

Zoning Regulation Variances:

Variance B: Zoning Regulations, Section 5.A.3.

The applicant requests a variance to plat a lot of less than 2.5-acres while the minimum lot size in the A-2 zoning district is 2.5 acres.

The Board may grant a variance to the Zoning Regulations where, by reason of shape or topography or other extraordinary or exceptional situation or condition of a specific ordinance would result in peculiar and exception difficulties to or exception and demonstrable undue hardship upon the owner of the property as an unreasonable deprivation of us as relating to the property.

Analysis:

The minimum lot size requirement is a critical feature of a zoning district and variances should not be granted to allow creation of noncompliant lots. In many cases a rezoning action can facilitate the desired change in minimum lot size and make the requested variance unnecessary. However, in this case, a rezoning to Agriculture – Residential (A-R) with a ½-acre minimum lot size would likely be more problematic than granting the variance. To justify the requested rezoning, the applicant must demonstrate that there are sufficient services available to justify the change in zoning. Those resources would include access to a public sewer, which is not present in this case. Such rezoning would be unlikely to gain approval.

In this case, the critical component is that there is a legally built home that has existed on a legally created lot for almost half a century. It is the need for a new compliant wastewater system to allow the continued use of the home that has driven this request. Failure to grant the request would deprive the owner the ability to use the home.

Construction of a new, compliant, on-site wastewater system will help promote the very health, safety, and welfare aspects of the Zoning Regulations for which the standards that are needing to be varied were set.

Codified standards should only be varied in the most unusual circumstances based on criteria established in the regulations by the County Commission. The variance should be limited to the least amount necessary to provide relief while keeping the greatest degree of regulatory compliance. It would be inappropriate to grant a variance to allow an increase in the intensity of development beyond existing conditions.

In this case neither of the legally created tracts in question meet the minimum lot size of the A-2 District. When combined, the resultant lot will be closer to, but not compliant with, the required 2.5 acre minimum. Granting the variance to allow combination of the two tracts is the minimum variance necessary to avoid deprivation of use of the home. In this recognition, staff recommends that the minimum lot size variance be granted subject to the condition that it is granted for the purpose of allowing the two legal lots-of-record be combined by plat into a single legal lot.

Chairperson Thomas asked if staff received any feedback from the neighbors regarding this request.

Planner, Andrew Devereux stated that we received a call for information, but the caller did not indicate any favor or opposition to the request.

Present representing the request:

Elizabeth Wadlow, 16571 N Old Hwy 63, Sturgeon

Elizabeth Wadlow: I am hoping to combine both tracts on my property to put a lagoon in for on-site wastewater. Currently, the wastewater goes to a lagoon much farther away and pretty problematic. Combining the property would allow us to put something on my own property.

Open to public hearing.

No one spoke in favor or opposition to the request.

Closed to public hearing.

Member Stephens: Where is the old lagoon?

Elizabeth Wadlow: It is on the neighbor's property.

Member Stephens: Do the other neighbors have the same issue?

Elizabeth Wadlow: I am the only one left dumping into that lagoon; the other neighbors have put in their own systems.

Chairperson Thomas: How have the other neighbors addressed this situation?

Thad Yonke: They did it during the Health Department's tenure of overseeing onsite wastewater systems.

Bill Florea: We don't have that information.

Member Leopard: Are you looking at putting a lagoon or septic system?

Elizabeth Wadlow: A lagoon; we've had the site tested and a surveyor came out to make sure it could meet setbacks. I have the soils tests done and have everything planned out and ready to do the work.

Thad Yonke: We indicated to her that it was critical information to have at the application and she provided it.

Member Stephens: Even if you did have difficulty making a lagoon work there are other options with lesser setbacks.

Member Leopard: What is the size of the house?

Elizabeth Wadlow: It is a three bedroom.

Member Stephens made, and Chairperson Thomas seconded a motion to approve the request by Jonathan D. Wadlow & Elizabeth Ann Wadlow for a variance to allow a lot to be platted of less than 2.5-acres while proposing construction of an onsite wastewater system on property less than 2.5 acres located at 16571 N Old Hwy 63, Sturgeon:

Member Thomas	Yes	Member Leopard	Yes
Member Zullo	Yes	Member Stephens	Yes
Member Russell	Yes		

Motion to approve the request carries unanimously

Member Leipard made, and Member Stephens seconded a motion to approve the request by Jonathan D. Wadlow & Elizabeth Ann Wadlow for a variance to create a lot less than 2.5 acres in the Agriculture 2 (A-2) zoning district located at 16571 N Old Hwy 63, Sturgeon with the following condition:

- Variance is for the purpose of allowing the two legal lots-of-record to be combined by plat into a single legal lot

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

Motion to approve the request carries unanimously

OLD BUSINESS

Case 2022-007 Teresa Rhoades – Certificate of Decision

Chairperson Thomas approved and signed the certificate.

NEW BUSINESS

Annual Election of Officers

Member Stephens made, and Member Russell seconded a nomination to appoint Member Thomas as Chairperson. No additional nominations.

All members voted in favor of Member Thomas as Chairperson.

Member Stephens made, and Member Thomas seconded a nomination as Member Leipard as Vice-Chairperson. No additional nominations.

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

ADJOURN

Being no further business, the meeting was adjourned at 7:25 p.m.

Respectfully Submitted,

Paula L Evans
Secretary

Minutes approved this 27th day of April, 2023