

**BOONE COUNTY BOARD OF ADJUSTMENT**  
BOONE COUNTY GOVERNMENT CENTER; ROOM 301  
801 E. WALNUT ST., COLUMBIA, MO.  
Thursday, May 25, 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  
                  Jesse Stephens

Absent:         Paul Zullo  
                  Jason Russell

Staff:           Bill Florea, Director                    Thad Yonke, Senior Planner  
                  Uriah Mach, Planner                    Andrew Devereux, Planner  
                  Christina Crane, Acting-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 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 April 27, 2023 meeting were approved as written.

## **REQUESTS**

### 1. Case 2023-005

Request by Bradley and Dawnde Irwin for a variance to allow a subdivision containing a lot less than 2.5 acres without requiring connection to an engineered centralized sewage collection and/or treatment system. And, allow a lot containing a septic tank/absorption system to be platted without providing an alternative location for the soil absorption field located at 10470 N Flynt Ln, Hallsville. (Subdivision Regulations Appendix B.3.1 & Appendix B.3.2)

Planner, Thad Yonke gave the following staff report:

This property is lots 5 & 6 of Tract D in Hartley Properties Subdivision and totals 1.21 acres. The property is zoned Agriculture-Residential (A-R) as is all surrounding property. The site is located on Flynt Lane, approximately 700 feet north of the Mt. Zion Church Road intersection; the property is currently vacant. The applicant submitted a request to the Zoning Board of Adjustment for a variance to allow a lot of less than 2.5 acres to be platted while proposing construction of an onsite wastewater system. The proposed use is the placement of a manufactured home, detached garage, and on-site, sub-surface wastewater system. Only one location is proposed for the on-site, sub-surface wastewater system; no alternate location is provided. The applicant has also submitted a petition to vacate lots 5 & 6 and to replat into one lot. There was a singlewide mobile home on the property, but it has been removed. An on-site lagoon was permitted and approved by Public Health and Human Services in 2004. There have been no previous requests for this property. The Master Plan designates this area as being suitable for agriculture/rural-residential land use. The requested variances are from Subdivision Regulations, Appendix B.3.1 and Appendix B.3.2. Staff notified 24 property owners.

Facts:

- The subject properties were created as Lots 5 & 6 of Tract D Hartley Properties Subdivision recorded in Plat Book 11, Page 12
- The subject properties are two legal lots-of-record since they were platted prior to adoption of Zoning and Subdivision Regulations.
- Lots 5 & 6 are each approximately 0.60-acres each with a total combined area of approximately 1.21-acres.

- There have previously been mobile homes located on the property as can be seen in the County's historical aerial photography.
- All structures have been removed from the property.
- The triangular shape of the original lot configurations along with the size of each make compliance with current development standards almost impossible for each lot individually.
- 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 which is larger than the one-half acre minimum lot size in an A-R zoning district.
- 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 was prepared in 2019 and an engineered on-site system was designed by The Sewage Doctor that indicates that the designed system will work for a combined platted Lot. Documentation has been provided as part of the application.

Subdivision Regulation variances:

Analysis:

Variance A: Subdivision Regulations, Appendix B. 3.1 The applicant requests a variance to plat a lot of less than 2.5-acres, without connecting to a public central sewer, while proposing to construct an onsite wastewater system on a lot less than 2.5 acres.

Variance B: Subdivision Regulations, Appendix B. 3.2 The applicant requests a variance to plat a lot containing a proposed sub-surface septic tank/absorption system without providing an alternative location for the soil absorption field as required.

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. The triangular shape and the limited size of each of these lots make each virtually unbuildable without access to a central sewer and so they need to be combined into a single lot in order to be used residentially.

In order to be issued an onsite wastewater permit there needs to be a suitable area for the system on the same lot as the structure being served. In this case the suitable area is found on existing Lot 6 which is a separate legal lot and therefore, can't be used for an onsite wastewater system serving a home on existing Lot 5. 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 variances to create a lot

that does not meet the minimum size to use an onsite wastewater system and where there isn't an alternate location for the proposed sub-surface onsite system.

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 lots such as these.

Construction of a compliant onsite wastewater system on the property is necessary to re-establish the historic residential use. Otherwise, these lots will have to wait until a central system is built. Such system may never be built in this location.

If these were legal lots of record that had never been used residentially then there would be no expectation of use without the appropriate infrastructure, in this case central sewer. As a historically residential site, denial of the variances 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.

The absence of the alternate location for the sub-surface wastewater system is problematic because it is an important regulatory health safeguard when creating new lots. In this case, an engineered wastewater system has been proposed. Such a system, if properly maintained, has the highest chance of protecting health. There is no alternative that would enable the continued residential use of the property. In this case not granting a variance would cause an unreasonable hardship.

b. Granting these variances will not endanger the health, safety, or welfare of the public. By combining the two Tracts into a single platted lot the property 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 lots altogether. However, the lack of an alternative site for the proposed sub-surface onsite wastewater system could be viewed as detrimental to health, safety, and welfare. This provision exists when platting so that any problem that might arise from the sub-surface onsite system which might render the original location unusable would not rise to the level of a crisis since an alternate location would have already been planned for and provided.

As redevelopment, the sub-surface system proposed for this property is an engineered onsite system which if properly maintained, has the highest chance of protecting public health. A suggested condition of requiring proof of a maintenance agreement with a qualified installer, as well as an annual report showing ongoing proper maintenance, should be a reasonable measure to ensure the system does not become a public health hazard.

c. Granting these variances will not thwart or circumvent the general intent or any specific purpose of the regulations. Granting these variances 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.

Until recently, the property had been used residentially for multiple mobile homes with a questionable septic tank for wastewater. There is a reasonable expectation that the property could be made safe to support one single-family dwelling, provided an appropriate on-site wastewater system is used to protect public health.

Requiring a continual maintenance agreement for the code compliant engineered sub-surface onsite wastewater system, can mitigate the lack of an alternative location for the system. Proof of annual

maintenance from a qualified professional should compensate, in this case, for the specific facts of this request.

Construction of a new, compliant, on-site wastewater system with ongoing proof of maintenance will help promote the 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 adopted 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.

These facts distinguish this case. The combination of the two lots into a larger single lot brings the property closer to regulatory compliance and eliminates one of the problematic tracts. The addition of a condition to compensated for the lack of an alternate disposal area makes variance B appropriate in this instance.

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 these variances be approved subject to the following condition:

1. The owner of the property shall continually contract with a qualified professional to conduct regular maintenance of the system. Documentation of compliance with this condition shall be provided to the Director of Resource Management no later than July 1<sup>st</sup> of each calendar year. A notice of this requirement shall be recorded against the title of the property in the Land Records of The Boone County Recorder.

Present representing the request:

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

Christina Luebbert: I submitted the drawing that I hoped would help illustrate what we were trying to do and how to make it work.

Chairperson Thomas: Was the proposal they wrote regarding the setback requirements worked out?

Thad Yonke: There was never a need for a setback requirement, they were being overly cautious in that they were concerned the setback requirement for structures above the ground was going to apply to the septic lateral field and there is a separate setback requirement for that that is less than the 25-foot building setback.

Member Leipard: Is the pond partly on these lots and partly on someone else's lot?

Christina Luebbert: Yes.

Member Leipard: How big of a pond is it?

Christina Luebbert: A third of an acre. We did go out and survey the edge of it so we could be sure we were staying 50-feet from it.

Member Stephens: Is the property owner agreeable with the condition?

Christina Luebbert: Yes, I spoke with her today and she contacted the installer; the first two years of maintenance is included in the installation and then it is \$400 a year after and she said she had no issue with that because it probably needs to happen anyway.

Open to public hearing.

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

Present with questions:

Kari Rippeto, 10560 N Flynt Ln, Hallsville

Kari Rippeto: The proposed are where it shows the septic and runoff, how close would that be to my property? Is there a runoff and would it affect my property?

Christina Luebbert: The first thing to understand is that this is not a traditional septic system; this is a drip irrigation system. There will be a tank that holds the solids and the effluent will go into an aeration treatment unit where micro-biological activity happens and breaks down the waste. All of those lines are right underneath the turf and they are feeding like a slow sprinkler system. It is feeding the root system but that area will be grass but it is not going to be swampy. It will dose it over time so there is not runoff from it; that is why we must be so many feet away from property lines and so many feet from the pond. Short of dumping some Clorox into it, it would be drinkable because it is quite a treatment process before it ever gets to where it comes out.

Kari Rippeto: Since that property line is so close, would that prevent me from doing anything or putting anything in that area because it has to be so many feet away from the irrigation system?

Christina Luebbert: I think setback rules on the other side of the property line would keep that from being a significant issue.

Thad Yonke: Them having the wastewater system on their side of the property line is not relevant to the regulations that tell you what you can do and how close you can be on your side of the line. That is why it is handled on their side of the land. If you use a lagoon, that is where it crosses over to having to be 200-feet from a house on a different property and there is some crossovers in those but that is not true when it comes to a sub-surface system; those are specific to lagoons.

Christina Luebbert: I think the house would actually have more impact to that kind of system. By the time you are at your setbacks I don't think it would impact it.

Leah Rippeto, 10750 N Flynt Ln, Hallsville

Leah Rippeto: Where her driveway is and the proposed sub-surface is already collects a lot of water; it is wet there all the time. That said, her driveway would be full of water.

Thad Yonke: It shouldn't because the way the system works, it feeds the vegetation off the water that is in it so it isn't discharging the water.

Leah Rippeto: Even though there is already a natural slope?

Thad Yonke: They should have taken that into account when they did the engineered design.

Christina Luebbert: We stayed far away from the driveway.

Leah Rippeto: In 1950 the first plat map there was, that was an existing driveway there. My grandmother owned all of Hartley Estates and it was separated and for whatever reason that easement was supposed to be on that side and it got set in the wrong spot. The way the grade of the land is, it goes downhill.

Member Stephens: That is something that would be in the annual report?

Bill Florea: If there was sewage surfacing then yes, that would be in the annual report. To clarify, these systems are designed based on the characteristics of the soil and its ability to absorb water. The engineer calculates how much water and at what rate it can be applied to the soil without water coming to the top. It shouldn't result in anymore surface water.

Member Stephens: Typically, if there is some sort of surface water diversion or trench drain that is needed that will be identified on the soil morphology report. If there is a water issue, there are ways to mitigate that by diverting water out into the field.

Leah Rippeto: It is right there at the road, there is not much of a field area.

Christina Luebbert: The distance between the second line from Flynt Lane to the building line is 25-feet. You can see we are probably 60 or 70- feet from the driveway with the north end of that drip field. There is about 4-feet of elevation change.

Leah Rippeto: I don't think so. That floats down and then it goes back up past her property line.

Christina Luebbert: There is a curtain drain that is required on the upper side of that.

Member Stephens: Is it coming down?

Christina Luebbert: Yes, it is going down toward the pond.

Member Leopard: Is it possible with this going in that it will help with the drainage issue?

Christina Luebbert: It is possible, I don't think it is going to go quite far enough north to make much of a difference to the driveway because I think it is further up. I don't know for sure.

Returning with additional comment:

Kari Rippeto, see address above

Kari Rippeto: When she was talking about that and how the water drains it reminded me that the water meter is there too. The meter is close to my driveway.

Thad Yonke: If your water meter is close to the driveway. The part where it shows the 25-foot building line, that area is not part of the system. The driveway is totally away from where the system is going to be so it shouldn't affect that at all. Things don't tend to go into a water line, if there is a leak the water is pushing out of the line so it likely not something that would come under contamination unless the pressure drops to where it can't push water out.

Kari Rippetto: I just wanted to state that it was there in close proximity to a waste area.

Chairperson Thomas: There are easements around all the water and utilities.

Thad Yonke: Typically, I don't know if a private service line has, assuming the private service line runs out to the roadway across a different property then theoretically it should have some kind of an easement but I don't know whether or not there would be one.

Closed to public hearing.

Chairperson Thomas made, and Member Stephens seconded a motion to approve the request by Bradley and Dawnde Irwin for a variance to allow a subdivision containing a lot less than 2.5 acres without requiring connection to an engineered centralized sewage collection and/or treatment system. And, allow a lot containing a septic tank/absorption system to be platted without providing an alternative location for the soil absorption field located at 10470 N Flynt Ln, Hallsville with the following condition:

1. The owner of the property shall continually contract with a qualified professional to conduct regular maintenance of the system. Documentation of compliance with this condition shall be provided to the Director of Resource Management no later than July 1<sup>st</sup> of each calendar year. A notice of this requirement shall be recorded against the title of the property in the Land Records of The Boone County Recorder.

Member Thomas	Yes	Member Leipard	Yes
Member Stephens	Yes		

Motion to approve the request carries unanimously

## **OLD BUSINESS**

Case 2023-004 Robert W Kilgore Jr. – Certificate of Decision

Chairperson Thomas approved and signed the certificate.

## **NEW BUSINESS**

None



**ADJOURN**

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

Respectfully Submitted,

Paula L Evans  
Secretary

Minutes approved this 22<sup>nd</sup> day of June, 2023