

BOONE COUNTY BOARD OF ADJUSTMENT
BOONE COUNTY GOVERNMENT CENTER COMMISSION CHAMBERS
801 E. WALNUT ST., COLUMBIA, MO.
Thursday, July 27, 2023

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

Roll call was taken:

Present: Frank Thomas
 Michael Leipard
 Jesse Stephens
 Jason Russell

Absent: Paul Zullo

Staff: Thad Yonke, Senior Planner Uriah Mach, 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 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 May 25, 2023 meeting were approved as written.

REQUESTS

1. Case 2023-007

Request by Sean & Leslie Zullo for a variance from the front setback in the Agriculture (A-2) zoning district for an existing house on 6.92 acres located at 491 W High Point Lane, Columbia. (Zoning Regulations, Section 10.A). Open public hearing.

Planner, Thad Yonke gave the following staff report:

This 5.54 acre tract is zoned Agriculture 2 (A-2). Property to the north is zoned Agriculture-Residential (A-R) and to the east, south and west is A-2. This site is located on High Point Lane, approximately 1 ¾ mile west of State Route N, there is a single-family dwelling on the property. The applicants wish to plat and add additional acreage to the rear of the property. In platting, the dedication of additional right-of-way is required. According to the applicant, the existing home will encroach 3.5 feet into the front setback. The original zoning for this property is A-2; the property was created and transferred to the current owner by Family Transfer in 2018. A single-family dwelling was constructed sometime around 1973 according to the records of the Boone County Assessor's Office. The Master Plan designates this area as being suitable for agriculture and rural-residential land use. The requested variance is from Zoning Regulations 10.A. Minimum Yard Requirements. The front setback in the A-2 zoning district is 50-feet. 46-feet is requested. Staff notified 16 property owners about this request.

Staff Analysis & Recommendation

Facts:

- The existing home was built in the 1970s.
- The house on the property currently meets the A-2 front setback for the tract created by family transfer which is shown on the survey recorded in Book 4926, Page 156 of the office of the Boone County Recorder of Deeds.
- A platting action is sought to add additional acreage to the area originally contained in the family transfer.
- A draft plat has been provided with the application to act as an accurate diagram for the request. The house will encroach 3.5 feet into the front 50-foot setback established by this A-2 zoning district.

- The house will not encroach into the future 20-foot utility easement that is a plat requirement.
- The application indicates that the variance sought is not to request the customary practice of allowing the structure to remain where it is within the newly defined 50-foot setback with the “as-is-where-is” condition. The actual request is to reduce the setback from 50-feet to 46-feet.
- The application indicates the request to reduce the required front setback, in this case, is due to extreme terrain to the south of the existing home.

Analysis:

The house will need the setback variance for any land division/reconfiguration, or the division/reconfiguration would be dependent upon removal of the non-compliant portion of the house. The existing survey shows that the parent tract is 5.54-acres and the proposed platted lot will be 6.92-acres, so the standard process for the division/reconfiguration of this tract is by subdivision plat.

A rezoning to another district that requires a shorter front setback, such as an A-R district with a corresponding 25-foot front setback, would be a way to avoid the need for a variance. However, in order to justify a change of zoning district to a higher category, it must be demonstrated that the rezoning is supported by an appropriate level of infrastructure. The higher level of infrastructure does not appear to exist at this location at this time therefore, rezoning is not a likely path forward.

It is the desire to increase the size of the lot that is driving this request which, requires reconfiguration of the land by plat. This is where the non-compliance for which the variance is needed is created. The existing home appears to be in compliance with the setback regulations on the lot in its current form. There is a statutory half width right of way of 15-feet measured from the centerline of the existing roadway. The 50-foot setback is measured from the edge of the statutory right of way. Platting requires dedication of a 33-foot half width right of way measured from the existing road centerline. The additional right of way will enable road improvements in the future along this section of public roadway which, will be of public benefit and will establish an adjoining platted public utility easement along the roadway.

While there is some extreme topography on the property, it does not appear to be sufficient to justify a blanket reduction of 4-feet in the front setback. The contours on the county terrain mapping shown that the site was able to be graded to allow for the current home to be constructed as a walk-out basement and it does not appear that additional grading would be impossible to conduct if it was necessary to relocate the structure if it experiences catastrophic damage. Such rebuilding appears to be able to be accommodated by additional compliant areas of the property without need of the variance.

Staff cannot support a blanket reduction in the setback as it violates the concept of complying to the greatest extent with the regulations and seeking only the least variance from the standards needed. There is no justification or need for variance except where the existing home is constructed. Staff recommends denial of the blanket 46-foot reduced front setback.

Staff could support the variance of the 3.5-foot encroachment into the front setback for the existing home with the “as-is-where-is” condition in accordance with customary Board of Adjustment practice.

Present representing the request:

David Butcher, Crockett Engineering, 1000 W Nifong Blvd, Columbia

David Butcher: The objective is the Zullo’s have a family farm that encompasses quite a bit of land and they want to sell off their farm. In doing so, the property north and east of the creek is basically inaccessible to anyone who would want to purchase the farm so the objective is that the applicant would extend his boundary line to the creek making it a natural boundary. There is no easy mechanism to do

that. I thought I was going to argue topography but after I did a site visit I saw that it wasn't as severe as I thought. I think the best approach is to move the house if significant damage were to happen to the home and put us in a position where we would meet the setback if rebuilt. I don't want to withdraw the request because I do need the variance for the plat to move forward, however, I understand that denial for the current request would be appropriate since I concede to the issue but I would still like a variance from the front setback so I can move forward with the subdivision plat.

Open to public hearing.

No one spoke in favor or opposition to the request.

Closed to public hearing.

Member Russell: The applicant is asking for a smaller variance of 3.5 feet?

Thad Yonke: What was requested on the initial application is probably not something that can be granted, however, rather than being required to come back with a new application, he is accepting the staff recommendation of a variance with the "as is-where is" condition. It does seem within the context of what the Board is allowed to do; to grant a variance with conditions and modifications. This is still related to the request that was made, which is the variance from the Zoning Regulations Section 10.A. It would be inappropriate to grant a variance from a different section. Staff is comfortable if the Board comfortable granting the customary as is-whereis and letting the applicant's plat. The Board can acknowledge that they are not approving the 46-foot blanket variance. It is still in relation to what was requested but it is still in relation to what was requested.

Member Leopard: What exactly is the as is, where is condition?

Thad Yonke: If the building is damaged more than 75% of its current value then it has to be rebuilt within the setback.

Chairperson Thomas: That is a condition the Board has been using for quite some time.

Thad Yonke: The Board would allow the existing home to encroach into the setback with the as is-where is clause so if something happens to the house and they have to rebuild there is no reason it can't be rebuilt within the rules. That is what the as is-where is condition does as opposed to if you granted the variance that was requested on paper then that 50-foot setback would be a 46-foot setback for this one property out of all the properties in Boone County and it would be a special privilege for this one property; that is the reason staff can't support the variance as requested.

Member Leopard: If we were to grant the variance as written, hopefully the road gets widened and paved so isn't it a big advantage for the county to gain the additional right-of-way.

Thad Yonke: Yes, and that is why staff doesn't object to the variance being granted as is-where is. That gets the right-of-way and should there ever be an issue where the house goes away and has to be reconstructed then it can be reconstructed within the regulations. Until then, we acknowledge that is a burden on the owner if they have to lose the house rather than getting the acreage on the property so we can live with that as the trade-off; part of that trade-off is there is a public benefit to getting the plat done so we can get the additional right-of-way.

Member Stephens: This property was acquired through family transfer, that can't happen again which is why they have to plat?

Thad Yonke: Yes, you can only receive one family transfer in a lifetime.

Member Leipard made, and Member Russell seconded a motion to approve the encroachment of the existing house into the front setback by 3.5 feet for Sean & Leslie Zullo in the Agriculture (A-2) zoning district on 6.92 acres located at 491 W High Point Lane, 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 Thomas	Yes	Member Leipard	Yes
Member Stephens	Yes	Member Russell	Yes

Motion to approve the request passes unanimously

OLD BUSINESS

1. Case 2014-002

Review permit issued to Bernie & Lisa Kile for a mobile home as a second dwelling on 10.02 acres located at 9151 E Rte H, Ashland (first granted July 2014). **Open public hearing.**

Planner, Thad Yonke gave the following staff report:

This 10.02 acre property is zoned Agriculture 1 (A-1) as is all adjacent property. The site is located on State Highway H, approximately 2.5 miles east of Highway 63, there is a single-family dwelling, a 1995 Fuqua singlewide and several accessory structures on the property. The applicants wish to renew their permit for the placement of a singlewide as a temporary dwelling. The original zoning for this property is A-1. The original variance was granted in 2014 and has been renewed every two years since that time. The last review was approved for a period of two years in April 2021. The requested variance is from Zoning Regulations Section 15.C.4.d, to permit, in case of practical difficulty or unnecessary hardship, for a period of two years, the location of a mobile home on a lot. Staff notified 6 property owners about this request.

Staff Analysis & Recommendation:

Facts:

- After receiving approval from BOA, a singlewide was placed upon the property under building permit M1720 and did get inspections.
- Wastewater is a lagoon that appears to serve only the singlewide and said lagoon appears to have been Health Department approved.
- The application indicates no change from the situation under which the permit was first issued.

Analysis:

The renewal application indicates that the facts that supported the original approval still persist.

If the applicant confirms that the practical difficulty or unnecessary hardship still exists, Staff recommends renewal of the permission.

Present representing the request:

Bernie Kile, 9151 E Rte H, Columbia

Lisa Kile, 9151 E Rte H, Columbia

Lisa Kile: The mobile home is still on the property and my parents are still living there. Nothing has changed other than my Dad had a stroke two weeks ago, we are asking for the permit to be renewed for two years. Them being on the property has been a blessing for them.

Open to public hearing.

No one spoke in favor or opposition to the request.

Closed to public hearing.

Member Leipard made, and Member Russell seconded a motion to renew the permit issued to Bernie & Lisa Kile for a mobile home as a second dwelling for a period of two years on 10.02 acres located at 9151 E Rte H, Ashland:

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

Motion to approve the request passes unanimously

NEW BUSINESS

Annual Election of Officers

Thad Yonke opened the floor for nominations for Chairperson.

Member Russell nominated, and Member Leipard seconded Member Thomas as Chairperson. No other nominations.

All members voted in favor of Member Thomas to serve as Chairperson.

Chairperson Thomas opened the floor for nominations for Vice-Chairperson.

Member Stephens nominated, and Member Russell seconded Member Leipard as Vice-Chairperson. No other nominations.

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

ADJOURN

Being no further business, the meeting was adjourned at 7:33 p.m.

Respectfully Submitted,

Paula L Evans
Secretary

Minutes approved this 28th day of September, 2023