

**BOONE COUNTY BOARD OF ADJUSTMENT**  
BOONE COUNTY GOVERNMENT CENTER COMMISSION CHAMBERS  
801 E. WALNUT ST., COLUMBIA, MO.  
Thursday, September 28, 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  
                  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 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 July 27, 2023 meeting were approved as written.

## **REQUESTS**

1. Case 2023-008

Request by Spillman Contracting for a variance to reduce the front setback to 25-feet in the Agriculture (A-2) zoning district for new house on 3.46 acres (Lot 20B Rokes Bend Plat No. 2) to be located at 1578 W Woodie Proctor Road, Columbia. (Zoning Regulations, Section 10.A). Open public hearing.

7:05 PM. No applicant or representative present to represent the request. The Board opted to address Old Business first.

7:20 PM.

Boone County Board of Adjustment Bylaws, Section 4.E state “when there is a hearing scheduled upon any appeal and the person making application or appeal to the Board is found to be not present at the hearing, the Chairperson, after consultation with members of the Board, may continue said hearing and reschedule the hearing or may dismiss the application or appeal after a favorable vote of three members of the Board to do so, and the usual minutes will be taken and records of such minutes will be handled in the usual manner”.

Board members chose to hear the staff report and hold the public hearing since neighbors were present.

Planner, Thad Yonke gave the following staff report:

This 3.46 acres is zoned Agriculture 2 (A-2) as is all surrounding property. The site is located on Woodie Proctor Road in Rokes Bend Subdivision, approximately 9/10 mile west of State Route N; the property is currently vacant. The applicant applied for a building permit to build a single-family dwelling on the property, due to stream buffer on the property, the applicant wishes to reduce the front setback to 25-feet. The original zoning for this property is A-2, Rokes Bend Plat 2 was platted in 2017. The Master Plan designates this area as being suitable for agriculture/rural-residential land use. The requested variance is from Zoning Regulations, Section 10.A Minimum Yard Requirements. The front setback in the A-2 zoning district is 50-feet. Staff notified 24 property owners.

**Facts:**

- The subject property was created as Lot 20B of Rokes Bend Plat No. 2

- Rokes Bend Plat No. 2 was divided from a twelve-acre administrative survey found at Book 4755 Page 229 of Boone County Recorder of Deeds.
- The property is only 3.46-acres where most of the front of the lot has a creek and stream buffer limiting its suitability for a home construction.
- The marginal developability of the lot was discussed at the Concept Review with the developer and their design consultants.
- The questionable nature of the developable area of the lot between the road and creek and that the actual buildable area for the lot is found on the up-hill south side of the creek was discussed prior to creation of the lot.
- Application states “The space between the right-of-way for Woodie Proctor Dr. and the existing stream buffer is too shallow to accommodate a home”. This area was already identified to the subdivider and the surveyor as having severely limited potential for construction at the time the lot was platted.
- Application cover letter states that, “Since platting it has been determined the stream has shifted some causing the property to be impossible to build on.” No supporting documentation has been submitted to support this statement. Review of historic aerial photography does not indicate any measurable change in the location of the stream since at least 2002 to 2019.
- If the stream location shifts in the future, it is likely to continue to move toward the road making building in the area unwise even with a variance.
- A reduced setback does not solve the long-term issue with the property as even with a reduced setback a house constructed in this area will likely be threatened by continued creek movement.
- The proposed wastewater system is on the south side of the creek so the area on the uphill side of the lot is proposed to be disturbed.
- The creek and stream buffer can be crossed with a driveway under the regulations.
- There is buildable area on the site on the uphill side of the lot across the creek, therefore, there is no deprivation of use.
- Without deprivation of use there is no eligibility for grant of a variance.
- Financial concerns related to meeting the regulations are not grounds for grant of a variance.
- The perceived need for the variance is self-created and therefore ineligible for grant of a variance.

#### STAFF ANALYSIS & RECOMMENDATION:

Zoning regulation variances:

Zoning Regulations, Section 10.A Minimum Yard Requirements. The front setback in the A-2 zoning district is 50-feet. (25-feet is requested)

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 exceptional and demonstrable undue hardship upon the owner of the property as an unreasonable deprivation of use as relating to the property.

Analysis:

While having topographic challenges is mentioned in the language describing when a variance might be granted, the presence of challenging topography alone does not constitute grounds for the granting of variances. There are other general principles of variances that prevent or bar the granting of variances under circumstances where one might otherwise consider the granting.

- The first barrier is when there is no deprivation of use. When the property can be used without the grant of a variance, there is no undue hardship and/or unreasonable deprivation of use.
- The second barrier is when the need for the variance is self-created.
- The third barrier is where the variance is sought to avoid the cost of compliance with the regulations, where the justification is predominantly financial, or where compliance is possible but might be more costly than what is currently proposed.

This request is a good example of a self-created hardship. The developer chose to configure the lot as it is currently situated knowing that the buildable area of the lot would likely be south of the creek. With due diligence, the current owner should have become aware of the limitations of this lot. During the lot creation it was identified by staff in discussions with the developer and their design consultant that proposed lot had marginal developability and that the actual buildable area was likely towards the steeper area in the rear of the lot across the creek and away from the road.

The developable portion of the lot is challenging but not impossible to develop with a residence. The property can be developed in compliance with the regulations so the variance is unwarranted and would become a grant of special privilege to allow for less costly development of the property.

The underlying requirement for grant of a variance is *unreasonable deprivation of use*. If there is not a deprivation of use, the variance cannot be granted. This may compel the owner to develop in a manner that is not their preferred option. When the property still has use without the grant of a variance, there is no undue hardship as an unreasonable deprivation of use and therefore no variance can be granted.

There are at least three predominate reasons why a variance should not be granted for this request:

- There is no unreasonable deprivation of use;
- The need for a variance is self-created, the developer created the lot with full knowledge of the regulatory and topographic difficulties of the lot;
- The reason for the variance is financial, it will be more expensive building on the uphill portion of the lot.

The barrier to grant of a variance is intentionally high. So long as the property can be used in compliance with the regulations, the standard that must be met for a variance has not been met. Neither inconvenience nor cost are valid reasons to support granting a variance.

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.

In this case staff cannot conclude that there are grounds meeting the required criteria for granting the variance. Staff recommends the variance be denied.

No one present to represent the request.

Chairperson Thomas opened the public hearing.

No one spoke in favor of the request.

Present speaking in opposition:

Thad Yonke: Staff received an email in opposition from Eric Wilson.

The email was submitted to Board Members for review.

Jason Sawyer, 1620 W Woodie Proctor Road, Columbia

Jason Sawyer: I own the property adjacent to the subject property. After listening to the staff report, I wanted to respond. I am here representing fourteen homeowners of the Rokes Bend community of the 24 that received notification. The request is from the minimum yard requirement in the A-2 zoning district which is 50-feet. Spillman is proposing 25-feet. In his application, the applicant indicated that the stream has shifted and has made this property impossible to build on. This shift is a natural one and may continue in the future which is a concern for the adjacent property as any future disturbances may contribute to the shift; we have seen floods on our property because of this. The layout indicated in the proposed layout is not an ideal location with its proximity to the corner as it is a blind corner and any new structure will contribute to the blocking of the corner for traffic. Another concern is the potential that the road will eventually need to be widened, as the utilities are laid out the road would seem to be designated to expand in the direction of the new home. The road was measured to be 8.5 feet, I don't know what the regulation is but it is a narrow road; if the road is widened it will shorten the distance to the proposed home from the right-of-way.

Mr. Sawyer submitted a signed petition which stated "We, the undersigned residents of the Rokes Bend/Woodie Proctor neighborhood would like to affix our names in objection to this proposed variance. The variance is not acceptable in what is not an agricultural area, but a residential area that the residents feel needs to be properly compliant with the currently established regulations". Fourteen residents signed the petition. (STAFF NOTE: One signer was not within 1000-feet of the subject property)

Member Leopard: Where is your house in relation to the subject lot?

Jason Sawyer: I live at 1620 Woodie Proctor. My house is more than 50-feet from the right-of-way and goes to the edge of where the stream buffer is. It is pushed to the far right about 15-feet from the side property line.

Member Leopard: How far is the water coming up toward you?

Jason Sawyer: I was at work and got a text from my wife that it was flooding, it was about 25-30 feet from my back door. I am on just short of five-acres and I wanted to build a shop on my property but the regulations say that I cannot build within 50-feet of the right-of-way. I went to the County and built a low water crossing that was engineered through Crockett and we built on top of the hill. My neighbor has had the same experience that I have, I know Spillman had to move the house back for that one.

Member Russell: They are saying that they've determined that the stream has shifted?

Jason Sawyer: I was speaking with my neighbor, Mr. Wilson, and he said that in the last six years it has not shifted. I have noticed that if you drew a line where he wants to build where the dotted line is (stream buffer), up to that dotted line is almost flooded completely. That whole area in the stream buffer has flooded.

Member Russell: But you wouldn't say that it has shifted.

Jason Sawyer: I will say that there has been some small erosion in the dirt that is there because we see a shift in the way the water is flowing. Where the big bend is on my property we have seen the rocks fall and the side of the wall cave in on the back side.

Stephen Diebold, 1734 W Woodie Proctor Rd, Columbia

Mr. Diebold submitted two photos of the 25 & 50-foot easement and the blind curve on Woodie Proctor.

Stephen Diebold: As you can see by the photos, moving the house up to a 25-foot setback and if you widen the road the house is almost going to be sitting on top of the road. To relocate all of the utilities is not a small feat and he has a large property line along the road so that is a long distance to move. The money he spends for that could be spent to build a low water crossing or maybe it is possible to address the creek and rip-rap to make the lot more level to build on. Moving the utilities would not be cheap and we would lose service in our neighborhood for a while when they do that. I agree with Mr. Sawyer's comments.

Eric Wilson, 1585 W Woodie Proctor Rd, Columbia

Eric Wilson: I am directly across the street from the subject property. I submitted the email but I don't have much to add to what has been said here. I agree there are safety concerns with the corner and environmental concerns with the creek. My point about the creek not really having shifted was that in the application they talked about how the creek had shifted and that was what would necessitate moving the home. The creek has not shifted, certainly not 25-feet. We bought our property in 2017 so we have been there since the plat existed. Everyone else is 50-feet from the road.

Fred Klippel, Speaking on behalf of Barbara Worley, 1701 Woodie Proctor Rd, Columbia

Fred Klippel: I have helped Ms. Worley out since her parents passed away. 15-years ago that creek came out toward the road, across their property between the canopy and the garage; it was 14-feet deep through there. The county came back at the same time and put in two large culvert pipes to resolve the problem and it has flooded six other times before these new homes got built. The creek is eroding but it is eroding toward the roadside, in other locations as it comes around the bend rocks are falling. If you put another home in there you are asking for a disaster and it will be a blind side on that road.

Closed to public hearing.

Member Stephens: Is there just the statutory right-of-way along there?

Thad Yonke: It is a platted right-of-way so 33-foot half-width right of way that was created when the plat was created. That doesn't necessarily cover where if the road was widened, it might need to shift and change where the centerline is in order to make the curves. All of Woodie Proctor has significant terrain features along it that depending on how you do it, you might have to have backslopes and things that would shift where you want to put the roadway. It is a little challenging if we wanted to rebuild the roadway to improve it.

Member Leipard: It is just chip and seal now?

The audience members stated yes.

Member Stephens: It sounds like there has been more than one person who has built low water crossings across the creek.

Thad Yonke: As stated in the staff report, it was successfully done but also, it was pointed out at the beginning when the plat was created that this was there. Originally when they platted, the three lots that are together, was designed for one home but when the final plat came back they had divided it into three

lots. The one lot was good, but the other two lots they created were marginal and that was pointed out to the developer but we didn't have anything in our regulations that prohibited them from the division because there are technically buildable spots but those buildable spots are going to be expensive to build on and we pointed that out during the platting process.

Member Stephens: The only lot of the three that doesn't have a home is the one in question?

Thad Yonke: Correct.

Audience Member: Mr. Spillman informed me when I bought my house that he intended to build up top on the slope.

Member Stephens: If it is true that the creek is shifting and trying to shoe-horn in a house is probably not a good idea. I don't know that there is a good reason to table this request and put the neighbors through another public hearing. I don't know why we would do that.

Chairperson Thomas made, and Member Russell seconded a motion to deny the request by Spillman Contracting for a variance to reduce the front setback to 25-feet in the Agriculture (A-2) zoning district for new house on 3.46 acres (Lot 20B Rokes Bend Plat No. 2) to be located at 1578 W Woodie Proctor Road, Columbia. (Zoning Regulations, Section 10.A):

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

Motion to deny the request passes unanimously

## **OLD BUSINESS**

1. Case 2019-002

Review permit issued to Dolores Wolfe for a mobile home as a second dwelling on 10 acres located at 8888 E Old Hwy 124, Hallsville. **Open public hearing.**

Planner, Thad Yonke gave the following staff report:

This 10-acre property is zoned Agriculture 2 (A-2). Property to the north, south & west are zoned Agriculture 1 (A-1) and property to the east is zoned Agriculture-Residential (A-R). The site is approximately one-mile northeast of Hallsville on Old Highway 124, there is a modular home, shed, barn and singlewide on the property. On June 27, 2019, the Board of Adjustment approved the placement of a mobile home on the property as a second dwelling for a period of two years. During testimony, the applicant's daughter indicated that she and her son would reside in the second dwelling in order to assist the applicant. The original zoning for this tract was A-1, in 2009 the applicant requested the tract be rezoned to A-2 to effectuate a family transfer which did not occur. The reason cited for the rezoning at that time was for a family transfer due to health reasons. Ms. Wolfe applied for a variance from the Board of Adjustment 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. The variance was approved with the condition that the permit be reviewed every two years. The last renewal took place in 2021. The permit is due for review at this time. Upon researching the property ownership, staff found that Dolores Wolfe is deceased, and the property is under different ownership, therefore, the permit cannot be renewed. Staff noted that

ownership is two of four people named in the beneficiary deed. The original variance was granted under Zoning Regulations, Section 15.C.f, 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 16 property owners.

Staff analysis & recommendation:

Facts:

- The original permit was granted in June 2019, at that time, the applicant and her daughter were informed that this was only a temporary placement.
- Dolores Wolfe passed away on October 9, 2022.
- Upon discovery that the original applicant was deceased, staff attempted to contact the current property owner, Sarah Perry, by letter. Staff received no response.
- Variances such as these are granted to the individual, not to the property.

Analysis:

Since the conditions under which the original approval was granted no longer exist, renewal is not possible.

If a situation exists where the property owner believes they are eligible for a similar variance to the one previously granted they would need to submit a new application reflective of the facts related to the new situation.

Staff recommends denial of the renewal as it can't be approved.

No one present to represent the request.

Open to public hearing.

No one spoke in favor or opposition.

Closed to public hearing.

Chairperson Thomas made, and Member Leipard seconded a motion to deny the renewal of the permit issued to Dolores Wolfe for a mobile home as a second dwelling on 10 acres located at 8888 E Old Hwy 124, Hallsville:

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

Motion to deny renewal passes unanimously

## **NEW BUSINESS**

### 1. Certificate of Decision

The Certificate of Decision for Sean & Leslie Zullo was accepted and signed by the Chairman.



**ADJOURN**

Being no further business, the meeting was adjourned at 7:48 p.m.

Respectfully Submitted,

Paula L Evans  
Secretary

Minutes approved this 25<sup>th</sup> day of April, 2024