

BOARD OF ZONING ADJUSTMENT MINUTES
September 24, 2013

Regular meeting of the Clay County Board of Zoning Adjustment, Commission Hearing Room, 3rd Floor, County Administration Building, One Courthouse Square, Liberty, Missouri.

Call to Order

@ 5:30 pm: David Fulton, Chairman

Roll Call: Matthew Tapp, Director

Members Present: David Fulton, David Fricke and Vernon Reed

Members Absent: Mike Johnson and Brian Klopfenstein

Staff Present: Matthew Tapp, Director
Debbie Viviano, Planner
Tim Flook, Assistant County Counselor
Angie Stokes, Secretary

Mr. Fulton: Okay let's call the regular September 24, 2013 meeting of Clay County Board of Zoning and Adjustment to order. Would you call roll please.

Mr. Tapp: Mike Johnson?

Mr. Johnson: No answer.

Mr. Tapp: Brian Klopfenstein?

Mr. Klopfenstein: No answer.

Mr. Tapp: David Fricke?

Mr. Fricke: Here.

Mr. Tapp: Dave Fulton?

Mr. Fulton: Here.

Mr. Tapp: Vernon Reed?

Mr. Reed: Here.

Mr. Fulton: Okay everyone has received, thank you gentlemen for being here we're short two men, but we have received the minutes of the meeting from August the 27th is there any adjustments or corrections to the minutes that you have received?

Mr. Tapp: Mr. Chairman actually if I may pipe in a little bit on the agenda the posted agenda said August 27, 2012 Board of Zoning Adjustment minutes, we probably just need to have a motion to amend the agenda to reflect 2013 minutes as oppose to 2012 and then get a roll call and then approve the minutes.

Mr. Fulton: We will amend the motion to August the 27, 2013 contrary to what is printed as 2012.

Mr. Tapp: I would say remove the, if there is a motion on the floor, remove it and actually have a separate motion saying amend the agenda.

Mr. Fulton: I will..

Mr. Flook: Withdrawal the motion.

Mr. Fulton: Withdrawal the motion, it's been withdrawal.

illustration with; yes that is what Mr. Reed is showing that is correct. Let me know when each member has that pulled up. The applicant, property owner/applicant is here to answer further questions and they could probably clarify and actually the page before that explains what the colors are but the applicant says the blue line is a public water main that runs through the property, kind of parallel to the road as it curves around the property. The yellow different squares or lines are the septic system lateral fields and that is plural there is three of them and that is the yellow lines. And then the pink lines represent the 50 foot setback line as it relates to the house or actually the 50 foot setback lines relates to the property line which is the further out square close to the blue and then the pink lines as they come out from the house that's the front line of the house so in theory a compliant accessory structure would be behind those pink lines that come off the house and back in that back quadrant and you'll see that because of the septic fields as well as the water line and where other utilities are the applicant proposes that the only logical location for this accessory structure is the square in the bottom southwest corner of the lot. So which in effect would make it in noncompliance with side setback the front setback and being forward of the house. So that's probably the best site plan to illustrate that.

Mr. Reed: But there's no plan per say of the building and the driveway or whatever modifications there are to paving.

Mr. Tapp: Building no. No and perhaps the applicant/owner can speak further to that later on.

Mr. Reed: The drain fields for the septic system are those all three active?

Mr. Tapp: Yes and it's based on the number of bedrooms, bathrooms and there are different variables that the Health Department considers, but yes the current applicant/owner, I think that is correct you all put it in, right? Had to do that to be in compliance with the Health Department Code for septic systems the sizing of the lateral fields.

Mr. Reed: Are any of those fields new or recent or have they been in existence for some time?

Mr. Tapp: The property owner can explain when that was constructed.

Mr. Fulton: This is very unique there's never been one, and I am going to ask legal counsel can a building front on two sides, I don't think it's possible. Can a building have frontage on two sides north and west?

Mr. Flook: Yes if the code does not restrict it the answer is yes, if it did restrict it (inaudible) really it's a question I think that jumps out to my mind is can you get road access from both sides.

Mr. Fulton: Yes.

Mr. Flook: I know that you can, that's a highway department question to talk to. I don't know off the top of my head.

Mr. Tapp: I am trying to follow the question Mr. Chairman what was the question?

Mr. Flook: There hasn't been many of these but there fronted on one side or the other not on two sides.

Mr. Tapp: How the house is situated as it relates to the two streets?

Mr. Fulton: A front is on one side.

Mr. Tapp: A lot of folks have a...

Mr. Fulton: That is why I asked the legal side.

Mr. Tapp: Yeah a lot of houses have a circle drive like this that comes off onto two streets like that. It's basically where your main driveway comes off of or where the mailbox is that is generally how you address the house if it is situated like that. There's a few not many but a few. Not on major roads like this.

Mr. Fulton: That's fine, let's hear from the proponents. What we do this evening we'll have the proponents speak in a public hearing then we will follow it if there should be anyone who wants to speak in opposition, so let's first hear from the proponents and if you would please stand at the microphone and identify yourself. Let there be on the record that we have two guests in attendance and both have been sworn in.

Mr. Prendergast: Okay thank you Mr. Chairman, I'm Patrick Prendergast the property owner and the individual requesting the variances. We bought this property in 1993 with the house and the little shed in its current configuration we're on one acre and we're zoned R-1 which kind of puts us in kind of a funny situation since we only have one acre trying to follow all the other rules associated with a R-1 gets to be kind of creative. Back in 2003 our septic system was original with the house when it was built in 1971 and it had failed many years probably before we even bought it.

Mr. Reed: And by failure you mean what? The ground was super saturated?

Mr. Prendergast: Well it was the old type where you basically had sand, you got a tank within a sand basin where the top pipes came out and then the fluent leaks down through a sand basin to some fill pipes and then the fill pipes went out and they actually drained onto the neighbor's property. So once we kind of became aware of all that we decided we needed to upgrade that septic system and bring it into compliance.

Mr. Reed: Again what was the failure?

Mr. Prendergast: It drained on the neighbor's property which was illegal so once that was brought to our attention and we didn't know that it had failed supposedly.

Mr. Reed: That's not a failure that's on the design. I am just trying to find out if the septic system drain field itself failed.

Mr. Prendergast: We didn't have a drain field it daylighted to the ground.

Mr. Reed: Oh I see.

Mr. Prendergast: The filter system is what had actually failed because over time the sand filters just load up and there's no way to do anything with it.

Mr. Reed: I got it now thank you.

Mr. Prendergast: So in 2003 we updated the system to meet the current codes and after the leaks test and everything we had to go with a high pressure pump system which is lateral field 6 inches below the surface and then they have to drain back to the tank every time the pump turns off so they don't freeze. By the codes at that time we had to have enough lateral fields for basically 150 gpm per bedroom. So that came out to essentially a septic system capable of 600 gpm per day.

Mr. Reed: Are you saying the gpm or gpn

Mr. Prendergast: Gpm gallons per minute.

Mr. Reed: That doesn't sound right but go ahead.

Mr. Prendergast: So the measurement of use is well okay 150 gallons per day, I am sorry you are correct. And so that came out to 18,000 gallons month which is kind of hard to swallow cause if your water bills only 3,000 gallons a month but anyway that predicated the size of the septic system you will see in the letter we have included in the second to last page this is the layout of that septic system that was provided to us by the installer. Kind of shows where those lateral fields are and what the sizes of them are so

essential that took up the entire side and backyard of our property and the only thing we can drive over the top of is nothing heavier than a riding mower or it will damage those laterals. So that's kind of where we are. We're currently as you can see on that photo down on the bottom left hand corner there's a gravel parking pad there and it has actually been extended from that photo because the tree behind it got blown over in a storm so we took the opportunity to extend that pad back a little bit so we could hook and unhook the boat and the trailer without having the pickup blocking the road. And that is where we would like to put up a post frame constructed accessory structure to basically protect our equipment there. We've tried to figure out if there is anywhere else on the property we could put that and that seems to be about it without really putting it way in front of house and really making it look, really stick out like a sore thumb so to speak. So we are up against a lot of restrictions as you can tell we're trying to put it close to the immediate neighbor, we'll still be outside of the five foot utility easements that's there. We want to put it closer to the road than the 50 feet and in front of by the definition of it in front of the house. I have included a letter from the immediate neighbor indicating that he is not interested at this time in selling me any additional land so that I can get the building put in a location where I don't need variances and the letter also indicates that he has no issue with an accessory structure being built on the property adjacent to his in that location.

Mr. Tapp: I would like to point out real quick to the board, Exhibit C is the Health Department permit with conditions and Paul Barnes with the Health Department has basically indicated that the only location is that which is shown for the accessory building. So I just wanted to point that out that the Health Department has been a part of this process.

Mr. Reed: The reason you can't move the structure back is because of the drain field and the prohibition against going over the drain field.

Mr. Prendergast: Correct.

Mr. Reed: So if that drain field had been designed properly at the time it was put in it could have accommodated moving the building back?

Mr. Prendergast: Yes I agree the problem is that we got a bunch of variances when that septic system had to go in to even fit enough laterals within our property to meet their codes. So we actually have variances where that septic field is already too close to the house and the too close to the adjoining property line. And the same way with the field on the north end of the property there it's too close to the road and property lines. So we've had to pretty much shoe horn everything into this one acreage property.

Mr. Reed: I presume you have less soil generally toward the upper part and do you know how far that goes down before you are into clay or shale or something that's *(inaudible)*

Mr. Prendergast: Yes about six inches in most places. That's why we had to go with this system.

Mr. Reed: You have an impermeable soil within six inches of the top?

Mr. Prendergast: It depends they took the initial perk test was where the second square down from the north was and that's kind of on a hill and it was six inches there and then they went up and took another one up there and they got up to about a foot. That's what predicated the high pressure pump system with the laterals two feet on center with the admitters every two feet on those.

Mr. Fulton: Regardless you've got a septic field there so and we understand your predicament. Any questions from; because it would appear that you're covered with lots of septic fields, so be it. So on this sketch on the (*inaudible*)

Mr. Tapp: Mr. Chairman go ahead.

Mr. Fulton: Matt put up, do you have an overhead of the septic system schematic so you can show where he put the; it doesn't show where you're adding in your pad that you built?

Mr. Prendergast: No.

Mr. Fulton: It's on the as you face north it's on the left hand side of the house, is that right?

Mr. Prendergast: The existing?

Mr. Fulton: Where the pad you are planning or you designed to build.

Mr. Prendergast: Yes it's on the southwest corner of the property there.

Mr. Fulton: Right in front of the zone free in other words.

Mr. Tapp: Yes.

Mr. Prendergast: Yes.

Mr. Fulton: That is all. So you come back, how far off the road, how far back does it go the pad?

Mr. Prendergast: The front of the accessory building will be 25 feet off the front of the road. As its proposed size.

Mr. Reed: The front is 25 feet?

Mr. Prendergast: Of the proposed building, yes.

Mr. Reed: In the right of way to the front of the building?

Mr. Prendergast: Yes.

Mr. Reed: And then the building itself is going to how deep?

Mr. Prendergast: 40 feet.

Mr. Reed: 40 feet and so goes pretty much back to the end here.

Mr. Prendergast: One foot off that retaining wall, yes.

Mr. Reed: Is this the old Duden Property? Robert Duden?

Mr. Prendergast: Yes, he was the gentleman who built the houses along 106th street there I believe.

Mr. Reed: No I think he sold that to somebody in Excelsior Springs, Vernon what's his name that did that development didn't he?

Mr. Prendergast: It's called Dennison Heights, so John Dennison is who originally built our house I believe and then houses along there. He built house there and then down in Raytown and the original plat of the place is really strange they were all on one acre with the big field behind it but ..

Mr. Fulton: To keep us on track, do you have any more you would like to speak and a proponent or any other things you would like the board to know why we should approve it?

Mr. Prendergast: Well, from the stand point of the property I believe the building will enhance the overall appearance of the property it's going to be a proficiently built post frame building with a wanes coat and a little architectural over hang porch so it will help cover up the boat and the trailer and stuff like that. The building size that I'm proposing is pretty much the absolute minimum size that it can be and still get in there, it gives me about a foot and half on each side of the stuff and about two foot in front and back so we are going to be shoe horning it in there to begin with so I tried to keep this small and

unobtrusive as I possibly could and in the end I think it will be a benefit to the neighborhood so to speak.

Mr. Fulton: And it was a neighbor to your south that we got the letter from?

Mr. Prendergast: Yes.

Mr. Fulton: Any other.. how many letters went out? I know that's kind of immaterial.

Mr. Prendergast: Fourteen I think?

Mr. Fulton: Fourteen out.

Ms. Viviano: Yes.

Mr. Fulton: Any other feedback what so ever by phone or any contacts.

Mr. Tapp: I don't believe there's any phone call Mr. Chairman.

Mr. Fulton: So there's no other objections, there's no objections to it what so ever.

Mr. Tapp: We received no feedback what so ever.

Mr. Fulton: Very good. David did you have any questions?

Mr. Fricke: I don't, no. Everything right here.

Mr. Fulton: Thank you very much.

Mr. Prendergast: Thank you.

Mr. Fulton: Any others who want to speak as proponents? I see.

Ms. Tulipana: No I just got the letter and didn't know what it was about so it's been very interesting.

Mr. Prendergast: We tried to meet with all the neighbors to let them know, but Mrs. Tulipana has since moved from but she still owns the property there so we didn't get a chance to let her know what was going on with the property. Sorry.

Mr. Fricke: Well thank you for coming any way.

Mr. Fulton: And your name was what?

Ms. Tulipana: Rena Tulipana.

Mr. Fulton: She voiced she had no objections here. Okay we will close the public hearing and see no one in the room that will speak in opposition the board will now take it under discussion and take action on it but we will reserve the right to ask you more questions Mr. Prendergast if anything comes up. At this point I would entertain a motion on this application. Or do you all have additional discussion.

Mr. Fricke: Mr. Chairman,

Mr. Fulton: Yes Mr. Fricke.

Mr. Fricke: With that I would like to develop some history on this I don't believe that the resulting conditions are intentional by the owner and they are unique and they are not contrary to public interest or adversely affect the rights of adjacent property owners and I think to withdraw this or not approve this would be an unnecessary hardship and nor does it affect the public health, safety, or general welfare these are our criteria's for consideration so with those being met I would like to make a motion that we approve this request for variance number one the ten foot side setback variance from section 151-6 also the 25 foot front setback variance from section 151-6.3B.

Mr. Tapp: And then also there is a third one Mr. Fricke.

Mr. Fricke: Oh I'm sorry, there's a third one?

Mr. Tapp: Yes there is a third one the allowance of the accessory structure to be forward of the principal dwelling which is part of the second one so there are two variances but three parts per say.

Mr. Fricke: Okay, alright what Matt said location of the proposed accessory structure.

Mr. Fulton: That's in front of the principal building.

Mr. Fricke: Yes.

Mr. Tapp: Okay thank you.

Mr. Fricke: That's a motion.

Mr. Reed: I second the motion.

Mr. Fulton: It moved to a second now we are open for discussion. Any more questions?

Mr. Reed: I still have a concern about whether your resolving the issues of your site to the optimum condition to satisfy your aspirations in the future use of the property and so forth it struck me as being not the best solution to your problem and I don't want to presume to tell you how to do your job but I am just concerned that you could do better than this for yourself. Not that I think you are creating any kind of hazard to the public, I just think that on a purely planning land use bases, you could do better.

Mr. Prendergast: I am open to all suggestions.

Mr. Fricke: You cannot advise him anything.

Mr. Tapp: Mr. Reed you recommend an alternative?

Mr. Reed: He's talking about the small size of the building and he's barely squeezing it in because of some constraints I would suggest that those constraints could be modified and allow you to build a decent size building if that helps it to function better. You are stopped by that drain field where as you have other options on dealing with the septic system for your property and that drain field there I don't know if it's worth going to any major expense to modify that to gain whatever else you would get so it depend upon the value you place upon having a building is not workable.

Mr. Fulton: Tim clarify for the board if you would please the role of the board and advising.

Mr. Flook: On the motion is to approve it before us.

Mr. Fulton: That is what we are discussing the motion.

Mr. Flook: Yes so what you're are discussing it's maybe what his options are maybe adjustments to his septic system. If I hear you right it's just making comments.

Mr. Reed: That is a comment.

Mr. Flook: If that's all it is.

Mr. Reed: I am going to vote for it.

Mr. Flook: Okay then I guess what you are saying is I am for the motion but you are making the comment that maybe you should reconsider this, I'll pass but we reconsider your septic flow out and see if you can plan if I am hearing you right that's what you are saying.

Mr. Reed: Yes that's basically right, I don't have any objections.

Mr. Flook: Passing it but don't' (*inaudible*) he is going to vote to cast it don't take it as gospel you might consider something else.

Mr. Prendergast: So essentially if I figure out a way to make that longer and skinnier or something a little different that would be all the same variances that I am requesting right now I maybe make the building a couple of feet wider might help me out.

Mr. Reed: If that is important to you.

Mr. Fulton: Is there any other discussion on the motion that is before us? If not are you ready to vote? Okay Matt will you call roll.

Mr. Tapp: David Fricke?

Mr. Fricke: Yes.

Mr. Tapp: David Fulton?

Mr. Fulton: Yes.

Mr. Tapp: Vernon Reed?

Mr. Reed: Yes.

Mr. Tapp: That was a yes? Chairman Fulton sorry I did not hear you.

Mr. Fulton: Yes.

Mr. Tapp: Okay thank you.

**Final Vote 3/0 Approved Case 13-104BZA
Patrick and Theresa Prendergast**

Mr. Fulton: Okay your application has been approved unanimously and we appreciate you coming in and sharing it with us and with what you got to work with it would appear that you've done a good job in working with the staff and that's where these things get worked out to come before us and that's why we have staff to dig into them and see if this is the most logical way, you've done your homework to find out the way to do it with the staff so I think that's what Matt does, does a good job.

Mr. Prendergast: Matt and Debbie were both very very helpful.

Mr. Fulton: Very good, okay is there any other business to come before the board?

Mr. Tapp: No Mr. Chairman there is no other additional business for the BZA.

Mr. Fulton: If not do I have a motion to adjourn?

Mr. Fricke: So moved.

Mr. Fulton: Second?

Mr. Reed: Second.

Mr. Fulton: All those in favor say aye.

All: Aye.

Mr. Fulton: We are adjourned.

Meeting Adjourned

Chairman, Board of Zoning Adjustment

Secretary, Board of Zoning Adjustment

Recording Secretary