BEFORE THE ST. CHARLES COUNTY COUNCIL  
ST. CHARLES COUNTY, MISSOURI  

In the matter of Substitute Bill 4793 / Appeal of  
Phillip J. Pisciotta, Property Owner, and THD Design  
Group, Applicant on behalf of Owner, from Board of  
Zoning Adjustment’s Denial of Variance No. VAR19-03  

FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION, AND ORDER  

On December 17, 2019, the County Council (“Council”), by a vote of zero (0) nays and six (6) ayes, one (1) Councilmember being absent from the meeting, voted to pass Substitute Bill No. 4793 to reverse the St. Charles County Board of Zoning Adjustment’s denial of Variance No. VAR19-03. Under Section 405.639.B of the Ordinances of St. Charles County, Missouri (“OSCCMo.”), an affirmative vote of five (5) of the Council’s seven (7) members was required to reverse, modify or amend the decision of the Board of Zoning Adjustment, so Substitute Bill 4793 reversing the decision of the Board of Zoning Adjustment required approval by a super majority of the County Council. The County Council is required to approve Findings of Facts and Conclusions of Law.  

For the purpose of making those findings and conclusions, the County Council hereby receives into the record the following documents: (1) the St. Charles County Master Plan Year 2030; (2) the Unified Development Ordinance of St. Charles County, Missouri; (3) Exhibit A, the record certified to the Council by the Board of Zoning Adjustment (“BZA”) pursuant to Section 405.639.B, OSCCMo, which includes (a) a synopsis dated September 25, 2019, prepared by the Planning and Zoning Division Director; (b) the Staff Recommendation to BZA Report dated August 29, 2019; (c) Photos of the Site; (d) Aerial Photo; (e) Surrounding Zoning Map; (f) Topographical Map; (g) Preliminary Concept Plan; (h) Topography Exhibit from Applicant; (i) Applicant’s Statement of Hardship; (j) Emails received; (k) Board of Zoning Adjustment 9/5/19 Meeting Minutes; (l) Notice to Applicant of the Board’s decision on Variance No. VAR19-03 dated September, 6, 2019; and (m) Request to County Council for an Appeal from the Decision of the Board of Zoning Adjustment; and any documents or exhibits received by the Board during those proceedings; and (4) any other documents relied upon in reaching this determination of the Council.  

Having been duly advised in the premises, the County Council hereby makes its Findings of Fact, Conclusions of Law, Order, and Decision, as required by law.  

FINDINGS OF FACT  

APPLICABLE PROVISIONS OF THE UNIFIED DEVELOPMENT ORDINANCE  

1. At all times relevant to this decision, St. Charles County has had in effect the Unified Development Ordinance for St. Charles County, Missouri (“UDO”), including its zoning regulations codified as Chapter 405 of the OSCCMo.
2. Chapter 405 of the UDO sets out zoning regulations applicable to the unincorporated part of St. Charles County.

3. Among the zoning districts established and regulated by the UDO is the “A” Agricultural zoning district. Sections 405.065.A.1.a; 405.080, OSCCMo.

4. Among the regulations applicable within the “A” Agricultural zoning district are regulations on height, area, and lot requirements. Section 405.080 OSCCMo. Specifically, Section 405.080.D.2 provides:

   Minimum front yard. Fifty (50) feet.

5. The UDO establishes a Board of Zoning Adjustment (“BZA”). Sections 405.590-405.639, OSCCMo.

6. Among the BZA’s powers is granting variances where applicants prove undue and unnecessary hardship due to strict application of the UDO’s requirements to the applicant’s property, all as provided in Section 405.590.C, which states in full:

   Variances. The Board of Zoning Adjustment may hear a request for a variance from a non-use regulation herein contained as applied to a specific lot or tract, and render a decision on that request. In order to provide relief where the conditions of a property prevent development consistent with the intent or purposes of the applicable zoning regulations, the Board of Zoning Adjustment may vary the strict application of a non-use regulation upon appeal by the owner of a specific piece of property if that property owner proves that:

   1. The variance is requested due to unique circumstances inherent to the specific piece of property and not to personal considerations of the property owner;
   2. The variance is not needed as the result of an affirmative act of the property owner that could have been avoided through a different course of action;
   3. The variance would not merely grant a special benefit to the property beyond what is enjoyed by other properties regulated by the same set of zoning regulations; and
   4. The application of such non-use regulation would result in practical difficulties to the property owner. In determining whether "practical difficulties" exist, relevant factors to consider include whether, or to what degree, the owner can pursue the permitted use without a variance; the financial hardship to the property owner from the strict application of the regulation; how substantial the variance request is in relation to the regulation; whether the difficulty can be obviated by some method other than a variance; and whether such relief can be granted without substantial detriment to the public good and without substantially
imparing the intent, purpose and integrity of the zoning regulations as embodied in the Unified Development Ordinance and maps. If the Board of Zoning Adjustment determines that the above-required standards are met, the Board may issue a variance, signed by the Chairperson, and set out the terms or conditions of the variance. In no case shall the Board of Zoning Adjustment issue a variance permitting a use to be placed in a district in which it is not permitted in this Chapter or Chapter 410. In no case shall the Board decide an appeal from a legislative action of the County Council

Section 405.590.C, OSCCMo.

7. Parties may appeal adverse decisions by the BZA to the County Council, as provided by the UDO’s Section 405.639, OSCCMo, which states:

SECTION 405.639: Appeals From a Decision of The Board of Zoning Adjustment.

A. Any applicant, County Department Director, Elected Official, or Division Director aggrieved by a decision of the Board of Zoning Adjustment may appeal that decision to the County Council. Where the decision of the Board of Zoning Adjustment was not unanimous, any other person or persons jointly or severally aggrieved by any decision of the Board of Zoning Adjustment may appeal that decision to the County Council. Appeals to the County Council shall be on a form approved by the Council and submitted to the County Council within fourteen (14) working days after the date of the decision of the Board of Zoning Adjustment was mailed.

B. In the event of an appeal to the County Council, the Board of Zoning Adjustment shall provide the record of the property owner's request for variance and all records held by the Board of Zoning Adjustment to the County Council, as well as the decision of the Board of Zoning Adjustment. The County Council may affirm, reverse, modify or amend, in whole or in part, any determination of the Board of Zoning Adjustment. It shall require the affirmative vote of five (5) members of the County Council to reverse, modify or amend the decision of the Board of Zoning Adjustment.

C. Affirmation, reversal, modification or amendment of the decision of the Board of Zoning Adjustment by the County Council shall be in the form of an ordinance.

D. Appeal of the decision of the County Council shall be pursuant to the Missouri Administrative Procedure Act, codified at Chapter 536 of the Revised Statutes of Missouri.

E. As an alternative to an appeal to the County Council, any person or persons jointly or severally aggrieved by any decision of the Board of Zoning Adjustment may appeal the decision of the Board as provided
by Statute to the Circuit Court by filing a petition, duly verified, specifying the grounds of the illegality and asking for relief therefrom, and thereafter proceedings shall be had thereon as provided by the appropriate State Statute

**APPLICATION FOR VARIANCE NO. VAR19-03:**
**PROCEDURAL HISTORY BEFORE THE BOARD OF ZONING ADJUSTMENT**

8. In their application for Variance No. VAR19-03, owner Phillip Pisciotta and applicant THD Design Group (collectively “Applicants”) requested to vary the 50-foot minimum required front yard setback from 50 feet to 37 feet.

9. To support their application, Applicants explained in their “Statement of Hardship” that the existing topography of the property, containing an extreme slope from the 80-foot elevation difference from the front to the back of the property, limits the site to build a house to a “natural building pad” the Applicants identify on the property which would place the house closer to the property line than the required 50 feet minimum. Compliance with the 50-foot minimum setback requirements should cause the house to be placed on a 50% slope, requiring significant retaining walls and large amounts of fill at the expense of much of the vegetation on the site, to make the site viable for a home.

**August 29, 2019 Staff Report to the BZA**

10. The Staff Report to the BZA explained that the Applicants are proposing to build a new home at a specific location on the site identified as a natural building pad, which would result in a 37-foot front yard setback instead of the required 50-foot minimum.

11. The Staff Report noted that the site contains significant terrain and is entirely wooded, with the majority of the site being covered in trees. The elevation of the lot goes from 638 feet in the front to 594 feet towards the rear of the lot.

12. In assisting the BZA to reach their decision on the requested variance, the Staff Report noted the following: (1) while the site itself has extreme topography and steep slopes, it is not extraordinary or exceptional in the area, as all the lots in this Augusta Shores subdivision share the same attributes, with other property owners in the subdivisions having found ways to fit their house footprint in compliance with the minimum front-yard setback requirements; (2) there exist other courses of action to prevent the need for the variance, as the house can be oriented and designed within the required parameters; and (3) granting the variance in this situation would be merely granting a privilege to the applicants instead of unreasonably depriving the applicants form use of the property.

**September 5, 2019 BZA Meeting**

13. Matt Poston, with THD Design Group (“Poston”) was sworn in and testified that the property owner is seeking a 13-foot variance to the front yard setback due to extreme topography on the lot which limits the placement of the house. Requiring the property
owner to construct the house in compliance with the front yard setback would place half of the house onto a 2:1 slope, requiring extreme foundation work and possibly cause foundation failure in the future.

14. In response to various questions from BZA members, the Applicants testified that the location of the home on the identified natural building pad was also reviewed and supported by a geotechnical engineer; that the subject lot’s slope of 28% at the location of the house is much steeper than most of the surrounding lots, getting even steeper towards the back of the property; that the owner knew of the setback requirements when he acquired the lot; that while the reorientation of the house was possible, the owner would rather build the house per the floorplan requiring the variance; the owner was aware of the same setback minimum requirement from the Homeowners’ Association and plans to approach the HOA after obtaining the County’s approval.

15. The BZA received two (2) email communications opposing the granting of the variance.

16. The public hearing was closed, and the BZA voted. The application for variance VAR19-03 was denied by a vote of 2 ayes and 3 nays.

**APPEAL TO COUNTY COUNCIL**

17. On September 19, 2019, Applicants appealed the decision to the County Council. The “[r]eason for appealing decision” given by the Applicants was that based on examination of the area most of the properties have steeply sloped terrain requiring unique building techniques to achieve construction of the residences. It is the opinion of the Applicants that there exists a unique hardship to this parcel of land, being nearly two times as steep as the surrounding lots that currently have residences constructed on them, making even unique building techniques not possible and rendering this lot unusable.

18. On December 2, 2019, Bill No. 4793 upholding the BZA’s decision was given its first reading by the Council.

19. At the December 2, 2019 Council meeting, in response to Councilman Cronin’s question, Robert Myers, Director of Planning and Zoning, explained the BZA based its decision on the existence of alternative means to build on the lot houses that would comply with the setback requirement, and the concerns about Applicants not having sought HOA approval of variance from HOA’s same setback requirement. Councilmen Brazil and Hammond expressed their support for the variance.

20. On December 17, 2019, Bill No. 4793 was given its second reading by the Council.

21. Council Member Elam motioned to amend Bill No. 4793 and replace with Substitute Bill No. 4793, reversing the Board of Zoning Adjustment’s decision on application VAR19-03, seconded by Council Member Hammond with all Council Members in favor.
Testimony was introduced from the Applicants regarding the unique topography of the lot and the hardship imposed on the property owner in the construction of his house. Applicants further testified that the house plan selected and the proposed location and orientation of the house necessitating the variance request are the only optimal solution for the utilization of this subject lot as a house site. Without the variance, Applicants maintain the lot is useless.

**CONCLUSIONS OF LAW**

Upon hearing testimony from the Applicants and explanation from Planning and Zoning Director of the reasons why the BZA made its decision to deny the variance, County Council concluded that the facts surrounding the variance before them supported the claim of hardship from the Applicants.

The County Council concluded as a matter of law that it has the authority to grant this variance VAR19-03 because the facts presented in the case support the elements based upon which a variance request is considered, as follows:

A. Because the unique topography of the property dictates the only optimal location for the house the Applicants propose to construct, the variance is requested due to unique circumstances inherent to the specific piece of property and not to personal considerations of the property owner;

B. Because any other positioning or orientation of this house on the lot would be impractical due to the uniqueness of the lot, the variance is not needed as the result of an affirmative act of the property owner that could have been avoided through a different course of action;

C. Because the lot is twice as steep as the other lots in the subdivision, and also because testimony was introduced that at least one other house in the subdivision was granted a similar variance, granting this variance would not merely grant a special benefit to the property beyond what is enjoyed by other properties regulated by the same set of zoning regulations; and

D. Because the proposed plan for construction of the house requiring the variance is the only viable option for this unique topography lot to be used as a house lot, and because any other alternative would require extreme foundation work making the house construction impracticable and impossible, the application of such non-use regulation would result in practical difficulties to the property owner.

With respect to the Applicants not having obtained the HOA’s approval of its 50-foot minimum front yard setback requirement, the Council concluded such HOA approval is not necessary, nor is it a condition to the Council’s review and approval of the subject variance.
DECISION AND ORDER

On this January 13, 2020, the St. Charles County Council hereby:

1. Approves and spreads upon its records it’s December 17, 2019 decision and order to reverse the decision of the Board of Zoning Adjustment being appealed, and grant Variance No. VAR19-03.

2. Directs the County Registrar to mail or send certified copies of this Findings of Fact and Decision and Order to _________________, MO ____, and to the Department of Community Development; and

3. Directs the Department of Community Development to retain its certified copy of this Decision and Order with its records on Variance No. VAR19-03 as required by the Unified Development Ordinance.

ST. CHARLES COUNTY COUNCIL

By: ________________________________
   Chairperson of the Council

ATTEST:

By: ________________________________
   Brenda Hinton, County Registrar

Certificate of Service

The undersigned certifies that on this ___ day of ____________ , 2020, she mailed or sent certified copies of this Decision and Order to ____________________________, and to Michael Hurlbert, Director of Community Development, St. Charles County, 201 North Second Street, St. Charles, Missouri 63301.

______________________________
Brenda Hinton, County Registrar