DATE: November 26, 2019

TO: Steve Ehlmann, County Executive  
Joann Leykam, Director of Administration

CC: John Watson, County Counselor  
Donna Vogt, County Council

FROM: Michael Hurlbert, AICP, Director of Community Development

RE: Item for December 16, 2019 County Council Meeting

The Community Development Department is submitting the following item for the December 16, 2019 County Council Agenda.

BILL FOR INTRODUCTION:

The property owner of 233 Lakeview Drive appealed a County staff determination to the Board of Zoning Adjustment as detailed below. On November 7, 2019, the Board of Zoning Adjustment rendered a decision denying the appeal. The property owner made a timely appeal to that decision and now applies to the County Council to reverse the Board of Zoning Adjustment’s decision.

County staff recommends that the County Council affirm the Board of Zoning Adjustment’s decision to deny the appeal. County staff submits the attached bill for introduction affirming the Board’s decision. The bill requires a simple majority vote for approval. Reversing the Board’s decision would require introduction of a substitute bill and approval by supermajority vote.

APPEAL OF DIRECTOR’S DECISION – 233 LAKEVIEW DRIVE

Application: ZAP19-01  
Owner: Thomas P. Adams  
Applicant: Suddarth & Koor, LLC  
Appeal Request: An appeal of the Planning & Zoning Division Director’s determination that a residence has sustained substantial damage  
Property Zoning: A, Agricultural District, with Floodway and Floodway Fringe Overlay Districts  
Parcel Area: 0.66 acres  
Location: In the Karmill Wood Acres Subdivision, 600 feet south of the Mississippi River  
County Council District: 6  
Parcel Account No.: T090400004
BZA APPEAL ZAP19-01

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➤ Synopsis
➤ Damage assessment letter and substantial damage estimate dated 7/15/19
➤ F.E.M.A. standards used by the County to estimate damage
➤ Additional items used by the county to estimate damage
➤ Letter to owner from planning & zoning director confirming substantial damage estimate dated 8/26/2019
➤ Code Compliance case history for septic system replacement without a permit
➤ Septic system replacement Notice Of Violation dated 10/09/19
➤ Request for appeal of the Director Of Planning & Zoning's substantial damage estimate to the Board Of Zoning Adjustment dated 10/04/19
➤ Applicant's statement of appeal to the Board Of Zoning Adjustment
➤ Staff Recommendation Report to the Board Of Zoning Adjustment
➤ Photos property
➤ Aerial photo of property
➤ Zoning map of property
➤ Topographical map of property
➤ Copy of appraisal report for the entire property submitted to the Board Of Zoning Adjustment on 11/07/19 during their meeting, which includes the value for the home, the land, and all accessory structures on the property
➤ Board Of Zoning Adjustment's September 5, 2019 meeting minutes
➤ Notice to applicant of the Board Of Zoning Adjustment's decision to uphold the Director of Planning & Zoning's damage determination dated 11/08/19
➤ Request to appeal the Board of Zoning Adjustment's decision to the County Council dated 11/15/19
November 25, 2019

This is a synopsis for the following application and bill to be introduced at the December 16, 2019 County Council meeting:

Summary:

- This is an application by an attorney for the owner of 233 Lakeview Drive to reverse the Board of Zoning Adjustment’s November 7, 2019 decision as detailed below.

- County staff recommends that the County Council affirm the Board of Zoning Adjustment’s decision to deny the request, which would require a simple majority vote approving the attached Bill.

- Reversing, modifying, or amending the Board’s decision would require a supermajority vote of five County Council members.

- Should the County Council vote to reverse, modify, or amend the Board’s decision and deny the attached bill, a substitute bill would need to be introduced for the County Council to conform with the requirement that action by the County Council “...shall be in the form of an ordinance.”

Procedural History:

Andrew Koor, attorney for the property owner, appealed to the Board of Zoning Adjustment, as follows:

**APPEAL OF DIRECTOR’S DECISION – 233 LAKEVIEW DRIVE**

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The applicant proposes to repair and reoccupy a house located within the Mississippi River floodway and which sustained flood damage before County inspection on July 12, 2019. The County determined that the house sustained “substantial damage”, as defined by the County’s floodplain development ordinance. A summary comparison follows.

**VALUE**

- Estimated value of house: $100,123 (County Assessor)

**SUBSTANTIAL DAMAGE**

- 50% of the home’s value: $50,062 (Sections 405.060 and 405.330.4)

**ESTIMATED DAMAGE TO HOUSE**

- County – 106%: $106,287 (following FEMA standards, guidelines, and software)  
- Applicant – 32%: $31,995 (based on applicant’s contractor quote)  
- Insurance company – 66%: $65,763 (house only, excluding out buildings and cleanup costs)
The County’s floodplain development ordinance requires that homes damaged greater than 50% of the structure’s value either be removed from the floodplain or elevated to at least one foot above the base flood elevation.

Both the Planning and Zoning Division Director and the Board of Zoning Adjustment upheld the determination of substantial damage. The applicant is now appealing the Board of Zoning Adjustment’s decision to the County Council.

Timeline

- **Detailed Building Damage Assessment.** The property owner scheduled a detailed building damage assessment, and on July 12, 2019 a County inspector visited the property, documented the damage, and determined the high water mark within the house. Consequently, the inspector posted a placard on the home and indicating “Unsafe” and “Do not enter or occupy” other than to make repairs. The high water mark within the house was determined to have been 41½ inches deep within the living room.

- **Substantial damage determination.** Based on the detailed building damage assessment and County Assessor information, on July 15, 2019, County staff prepared a Substantial Damage Estimate using standards, guidelines, and software developed and provided by the Federal Emergency Management Agency. The cost to repair the structure was calculated as 106.2% of the home’s current market value ($100,123.30 per County Assessor). The estimate was prepared by a Certified Floodplain Manager. The property owner was mailed notice on July 15 that the damages exceeded 50% of the home’s pre-damaged market value, and that the County’s floodplain development ordinance required either that the house be removed from the floodplain or that the lowest floor be elevated to at least one foot above the base flood elevation.

- **Meeting with property owner.** County staff met with the property owner on August 13, 2019 to hear his appeal the County’s substantial damage estimate. The property owner submitted (1) an Allstate flood insurance claim showing $91,000 in overall damage and $65,762.62 in damage to the house itself; (2) a structural report showing zero dollars damage to the foundation, superstructure, and exterior finish; and (3) one contractor’s bid for $31,995. From the County’s perspective the information did not support lowering the substantial damage estimate below 50% damage ($50,062). Because of the bid discrepancy, two additional bids were requested.

- **Appeal to the Planning and Zoning Division Director.** The property owner appealed the determination to the Planning & Zoning Division Director. The Division Director reviewed all documents and on August 26, 2019 reaffirmed that the residence had been substantially damaged for the reasons cited in the attached letter of that date. The Director’s determination took into account documents submitted by the applicant.

- **Appeal to the Board of Zoning Adjustment.** The property owner’s attorney on October 4, 2019 appealed the Planning and Zoning Division Director’s determination to the Board of Zoning Adjustment. At the Board’s November 7, 2019 meeting, the Board received evidence, including a new real estate appraisal prepared on November 5, 2019. Following a public hearing, the Board voted unanimously to uphold the decision of the Planning & Zoning Division Director. The Board commented that the Division Director’s determination on August 26, 2019 was correct based on information available when the decision was made, but that the applicant could at any time submit new information and request a new review.

- County staff remains open to reviewing new documentation. Due to a significant discrepancy between the one contractor’s quote supplied by the applicant and other documentation, two additional quotes are requested to ensure consistency. A notice of violation was issued for having installed a new septic system in September without County permits or licensing, and the cost for doing so was not included in the applicant’s total repair estimate of $31,995.

**Recommendation:**

County staff recommends that the County Council approve the attached bill affirming the Board of Zoning Adjustment’s decision.
Because action by the County Council "...shall be in the form of an ordinance" (Section 405.639.C OSCCMo), should the attached bill be denied, the County Counselor's office would bring forward for the Council's vote a bill reversing the decision of the BZA and granting the requested variance, and accompanied by findings of fact.

Affirming the Board's decision would require a majority vote, but reversing, modifying, or amending the Board's decision would require an affirmative vote of five County Council members. (Section 405.639.B OSCCMo)

Sincerely,

Robert Myers, AICP
Planning & Zoning Division Director

cc: Steve Ehlmann, County Executive
    Joann Leykam, Director of Administration
    John Watson, County Counselor