BZA APPEAL VAR20-01

VARIANCE REQUEST - 3300 NORTH HIGHWAY 94

Application: VAR20-01
Owner: Dyer-Weisz, LLC
Applicant: Fred Dyer
Variance Requested: Section 405.175.D.2 - A request to vary the front yard setback from 35 feet to 10 feet
Property Zoning: I2, Heavy Industrial District, With Floodway
and Floodway Fringe Overlay Districts
Area: 21.59 acres
Location: On the east side of Highway 94 North, approximately 750 feet north of Hawning Road; adjacent to the City of St. Charles
Council District: 6
Account No.: 880770G000

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➢ Staff Recommendation Report
➢ Photo(s) of Site
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➢ Surrounding Zoning Map
➢ Topographical Map
➢ Applicant’s Statement of Hardship
➢ Concept Plan
➢ Letters received
  • Comments & Photos - Rick Rehm – 2/6/2020
➢ Board of Zoning Adjustment February 6, 2020 Meeting Minutes
➢ Notice to Applicant of the Board’s decision on Variance No. VAR20-01
➢ Request to County Council for an Appeal of the Decision of the BZA
February 24, 2020

This is a synopsis for the following application and bill to be introduced at the March 9, 2020 County Council meeting:

A request to reverse the Board of Zoning Adjustment’s February 6, 2020 decision denying the following variance request:

**VARIANCE REQUEST - 3300 NORTH HIGHWAY 94**

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This is an application to reverse the Board of Zoning Adjustment’s February 6, 2020 denial of a variance to reduce the required front yard setback from 35 feet to 10 feet.

The applicant explains the necessity for this variance request as follows:

"The existing natural channel and 25-foot buffer area bisecting the property does not allow for adequate depth of a double loaded parking isle in the front of the property for the purposes of outdoor storage parking stalls. It is not the desire to relocate the natural channel."

Per Section 405.590.C, a variance may be issued when the evidence demonstrates that each of the four following criteria has been met:

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; and**

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; and**

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 impairing the intent, purpose and integrity of the zoning regulations as embodied in the Unified Development Ordinance and maps.**
Recommendation:

At its February 6, 2020 meeting, following public testimony, the Board of Zoning Adjustment unanimously denied the variance request. County staff likewise recommends denial in failing to conform to any of the four criteria of Section 405.590.C of the County Code.

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).

Should the County Council choose to approve this variance request, County staff recommends that the following conditions be added to the variance approval:

1. This variance shall apply to the proposed development only. Any future development would have to meet the setbacks as provided in the I2, Heavy Industrial District.

2. The variance shall only apply to an outdoor storage yard and shall not apply to any buildings.

3. The requested variance shall not apply to screening and landscape buffer requirements of the County.

Sincerely,

Robert Myers, AICP
Director of Planning & Zoning

cc: Steve Ehlmann, County Executive
    Joann Leykam, Director of Administration
    John Watson, County Counselor
REPORT TO BOARD OF ZONING ADJUSTMENT

To: County Board of Zoning Adjustment  Prepared by: Mark Price Jr., A.I.C.P.
Application No.: VAR20-01  Date: January 29, 2020

BACKGROUND

Owners: Dyer-Weisz LLC, Fred Dyer
Applicant: Saint Charles Engineering, Jim Piper
Requested Action: To vary Section 405.175.D.2 of the Ordinances of St. Charles County (OSCCMo); to vary the front yard setback requirement in the I2, Heavy Industrial District from 35 feet to 10 feet, for an outdoor storage yard.

Zoning: I2, Heavy Industrial District with FF, Flood Fringe, FW, Floodway and DF, Density Floodway overlay zoning.

Location: 3300 North Highway 94, On the east side of North Highway 94 approximately 750 feet north of the intersection of Hawning Road and North Highway 94, adjacent to the City of St. Charles

Parcel Size: 22.00 acres
Current Land Use: Vacant Land

Adjacent Land Use and Zoning:

<table>
<thead>
<tr>
<th>Direction</th>
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<tr>
<td>North</td>
<td>Zoning Pending (City of Saint Charles)</td>
<td>Sewage Pump Station</td>
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<tr>
<td>East</td>
<td>I1, Light Industrial and I2, Heavy Industrial</td>
<td>Logging Company and Storage Lot</td>
</tr>
<tr>
<td>South</td>
<td>C3, Highway Business District (City of Saint Charles)</td>
<td>RV and Boat Storage Lot</td>
</tr>
<tr>
<td>West</td>
<td>C2, General Commercial</td>
<td>Commercial businesses</td>
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Request Summarized:

The applicant requests a variance to reduce the required front yard from 35 feet to 10 feet. The applicant is making the request to allow for a second row of 40-foot-deep tractor trailer storage stalls between Highway 94 and a drainage channel which bisects the property.

The applicant states the following in their hardship letter:

"The existing natural channel and 25 ft buffer area bisecting the property does not allow for adequate depth of a double loaded parking isle in the front of the property for the purposes of outdoor storage parking stalls. It is not the desire to relocate the natural channel."
Site Characteristics:
The parcel depth varies from 1,452 to 1,846 feet and is approximately 609 feet wide. The site has an elevation of approximately 442 feet above mean sea level. The site undulates and sinks to its lowest point of 436 feet. The lot does contain a significant stand of trees. The site contains a drainage channel that is approximately 55 feet in width and runs north and south through the property approximately 140 feet from the western property line. There is a land bridge that crosses this water way that is approximately 17-20 feet wide. This is in alignment with the curb cut that accesses this property. The Density Floodway boundary is located immediately on the eastern edge of this water body.

This property is in the special flood hazard area. The areas located towards the western end of the property are in the Flood Fringe, which is also known as the 1% chance annual flood or the 100-year flood plain. Much of the property (19.44 acres) is in the Density Floodway. This is a specially designated area that occurs at the confluence of two rivers that has increased risk over the floodway flooding zone and is more restrictive on how much development can occur in this zone. A maximum of 18% of this parcel can be developed without a no-rise certificate from a Missouri licensed engineer. This would equate to 3.5 acres of land in this instance.

The property owner would be required to keep any vehicle or trailer stored on the property in a highway ready state. It would need to be moved to an area protected from flooding prior to any flooding event.

Relevant Property History:
The property owner has submitted a site plan for this development (attached). In reviewing the submitted site plan, staff did not approve site plan as the proposed parking areas were shown to extend into the required front yard setback. The applicant has requested this variance to resolve this concern with the site plan. Staff has included this for your reference as an attachment to this staff report.

COUNTY STAFF ANALYSIS:
The applicant is requesting this setback variance to allow for the construction of an outdoor storage area approximately 10 feet from the western property line as other uses have developed in this area. This proposed use is comparable to other developments located along North Highway 94 in this area. It should be noted that those properties developed closer to the front property line were developed under a different zoning district’s requirements, were developed prior to the current setback requirements being implemented in 2006 or are not under County jurisdiction. Any new development in the I2, Heavy Industrial district, would have to meet these setback standards.

VARIANCE CRITERIA:
The Board of Zoning Adjustment may vary the strict application of a regulation if the property owner proves all four of the following criteria:

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.
Staff sees no exceptional situation or condition that applies to this specific property as it relates to developing an outdoor storage lot. The property owner currently has a way to cross the drainage channel that is on the property and could continue development on the other side of the water body that would allow for the density of use that the applicant is requesting. The applicant is currently requesting a development area of approximately 1.5 acres. If the applicant were to cross the land bridge and enter the density floodway, the applicant could develop up to 3.5 acres on that side of the water body and still be below the 18% development limit of the Density Floodway.

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.

The concept plan shows a proposed development that is approximately 1.56 acres in size on the western portion of the parcel. The land is generally higher on the eastern side of the drainage channel at 442 – 452 feet above mean sea level which would provide for a better area for development and would provide approximately 3.5 acres of land that would be developable without a no-rise certificate. The applicant can access the eastern portion of the lot by using an existing land bridge that crosses the existing water body.

The applicant does have a choice that would not require the issuance of a variance to accomplish the proposed density of development. Developing solely on the western side of the existing drainage channel would be an affirmative act of the property owner that could be 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.

The applicant would be granted a special benefit as no other property owner would have the ability to build a new development within 10 feet of the front property line in any other I2, Heavy Industrial zoning district.

There are other properties that were developed prior to the current zoning code that do have a reduced front setback as they were developed prior to the current zoning ordinances being adopted in the County. Should those properties be demolished and redeveloped for any reason, they would have to meet current zoning setbacks.

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 impairing the intent, purpose and integrity of the zoning regulations as embodied in the Unified Development Ordinance and maps.
The applicant has not provided documentation stating there is no other alternative for development. Staff believes development is possible without a variance by developing on both sides of the land bridge.

**STAFF RECOMMENDATION:**
The options of the Board of Zoning Adjustment are:

- Approve the requested variance without conditions
- Approve the requested variance with conditions, or
- Deny the requested variance.

County staff recommends that the Board of Zoning Adjustment deny this application as it fails to meet any of the four required criteria in Section 405.590.C of the Unified Development Ordinance of St. Charles County, Missouri.

Should the Board of Zoning Adjustment wish to approve the variance, County staff recommends that the Board add the following conditions to the variance:

1) This variance shall apply to the proposed development only. Any future development would have to meet the setbacks as provided in the I2, Heavy Industrial District.
2) The variance shall only apply to an outdoor storage yard and shall not apply to any buildings.
3) The requested variance shall not apply to screening and landscape buffer requirements of the County.