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

In the matter of Substitute Bill 4822 / Appeal of
Fred Dyer / Dyer-Weisz, LLC, Property Owner, and
Applicant, from Board of Zoning Adjustment’s Denial of
Variance No. VAR20-01

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

On March 30, 2020, the County Council (“Council”), by a vote of one (1) nays and six (6) ayes, voted to pass Substitute Bill No. 4822 to modify and amend the St. Charles County Board of Zoning Adjustment’s denial of Variance No. VAR20-01. 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 4822, modifying and amending 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 February 24, 2020, prepared by the Planning and Zoning Division Director; (b) the Staff Recommendation to BZA Report dated January 29, 2020; (c) Photos of the Site; (d) Aerial Photo; (e) Surrounding Zoning Map; (f) Topographical Map; (g) Applicant’s Statement of Hardship; (h) Concept Plan; (i) Letters Received; (j) Board of Zoning Adjustment February 6, 2020 Meeting Minutes; (k) Notice to Applicant of the Board’s decision on Variance No. VAR20-01 dated February 7, 2020; and (l) 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 “I2” Heavy Industrial zoning district. Sections 405.065.A.1.t; 405.175, OSCCMo.

4. Among the regulations applicable within the “A” Agricultural zoning district are regulations on height, area, and lot requirements. Section 405.175 OSCCMo. Specifically, Section 405.175.D.2 provides:

   Minimum front yard. Thirty-five (35) 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
impairing 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.

**APPLICATION FOR VARIANCE NO. VAR20-01: PROCEDURAL HISTORY BEFORE THE BOARD OF ZONING ADJUSTMENT**

8. In its application for Variance No. VAR20-01, owner Dyer-Weisz LLC, Fred Dyer, and applicant St. Charles Engineering, Jim Piper (collectively “Applicants”) requested to vary the 35-foot minimum required front yard setback from 35 feet to 10 feet.

9. To support their application, Applicants explained in their “Statement of Hardship” that 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.

*January 29, 2020 Staff Report to the BZA*

10. The Staff Report to the BZA explained that the Applicants are 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.

11. The Staff Report noted that 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.

12. In assisting the BZA to reach their decision on the requested variance, the Staff Report noted the following: (1) while the site is bisected by the 55-ft wide channel, the property owner currently has a way to cross the drainage channel that is on the property and can develop the property located on the other side of the water body that would allow for the density of use that the applicant is requesting; (2) choosing to 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, namely develop the eastern side of the drainage channel; (3) by granting the variance, 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; and (4) the applicant has not provided documentation stating there is no other alternative for development.

February 6, 2020 BZA Meeting

13. At the February 6, 2020, Mike Meiners from St. Charles Engineering, the owner’s representative, testified that there is a drainage channel that runs through this 21.59-acre site that has a 25-foot non-disturbance area. The Applicants plan to develop the first phase of the property outside of the high-density floodway area at the front of the property. Accounting for the 25-foot front non-disturbance setback that is required around the channel that runs across the property and the 35-foot required front yard setback, would leave only 70-100 feet of usable property for the first phase of this development. The owner is requesting that the front yard setback be varied from 35 feet to 10 feet to allow for two rows of 40-foot deep parking stalls to be developed between Highway 94 and the drainage channel.

14. Fred Dyer, property owner, testified that the 35-foot required front yard setback would only allow for one row of parking to be put in, and he would like to be able to fit in two rows of parking. Although he knew the property was in the floodway when he purchased it, all the setback requirements make it hard to develop this property even though it’s 22-acres. The Applicants are not going to build any buildings on the property, they are just asking for this variance in order to allow for the fencing at the front of the property to be closer to the road.

15. In response to questions from the board members, Dyer testified that the parking will likely be used mainly to store shipping containers, recreational vehicles and trailers; that the rear...
portion of the property flooded during the 1993 flooding event, that there is about 3.5 acres of the property that are at the 100-year flood level; that parking stalls will be graveled with Roto mill on top of the gravel; that he plans to develop the front portion of this property at this time for safety reasons, preferring the parking area to be located at the front of the property; that the area on the rear of the property to the west of the tree line is made up of trees, concrete and rubble put there by the previous owners.

16. Robert Myers, Director of Planning & Zoning, described the zoning of the property and the variance request. Myers testified that St. Charles County changed the Ordinance in 2006 to allow only landscaping, driveways, and signage to be placed within the 35-foot required front yard setback. The Heavy Industrial Zoning District allows for several types of outdoor storage which could include trailers, shipping containers, and other items. A 10-foot front yard setback as opposed to a 35-foot front yard setback could drastically change the street view of this property. While there are other properties in this area that were developed with reduced setbacks, those properties were either developed prior to the current setback requirements being implemented in 2006 and are therefore grandfathered into the previous requirement, or they were not under County jurisdiction. A large portion of the subject property is located within the Density Floodway District, in which only 18 percent of the property can be developed. The eastern portion of the property that is located within the Floodway Fringe District contains approximately 3.5 acres of land, which could be developed and used for outdoor storage without the issuance of a variance. The storage on the property located to the south of this property is approximately 35-feet from the front property line and is located within the City of St. Charles zoning jurisdiction. 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.

17. In response to questions from board member Dave Bauer, Dyer testified that when he purchased this property last year and he was not aware of the 35-foot minimum front yard setback requirement. Dyer stated that he owns another property in this area that is only a couple of feet back from the roadway, and all of the other properties to both the north and the south of this property are developed right up to property line.

18. Chairman Gerry Prinster asked if there was anyone in the audience that would like to speak for or against this application.

A. Rick Rehm, 3250 North Highway 94, was sworn in. Mr. Rehm owns a storage lot on the property to the south of this property. He stated that he followed all County regulations when he developed his property in 2002 and he followed the front yard setback that was required at that time. Rehm stated he has no problem with Mr.
Dyer following the fence line and developing his property at the same setback as his own property. Rehm testified of the following issues he saw upon reviewing the plans for this development:

i. Allowing reduction of the front yard from 35 feet to 10 feet would impede utility companies from being able to access their utility easement with their work vehicles and would hamper any future plans for widening Highway 94.

ii. the 9-foot wide proposed parking spaces are too narrow to allow tractor trailer, boat and RV parking.

iii. The distance between the front row along the Highway and the back row is only 24 feet, which would make it virtually impossible to pull in and out of these 40-foot spaces.

iv. The steep hill on the common area at the south side of the property that joins Rehm’s property needs to be covered with a weed prevention fabric and decorative stone, not sod, to prevent grass clippings being discharged onto adjoining lot and also prevent erosion debris.

v. A storm water runoff detention area is not located on the drawing. Because the water way / creek behind this property is already stressed due to development in the area and debris, the creek needs to have the debris cleaned out and dug out to allow better flow and prevent increased flooding on the adjoining lot, unless a detention area is built.

vi. The plan should incorporate adequate security lighting for the proposed facility.

vii. The plan should incorporate running water provided to this property to apply to the shrubs and plants in the proposed landscape buffer.

viii. The plan should incorporate a border around the perimeter of the fenced in area to prevent the gravel from being kicked out into the green spaces or being washed out of the parking area during heavy rains.

In closing, Mr. Rehm testified that this property is across from Twillman Drive were hundreds of newer homes are located and they access Highway 94 at this intersection, thus the presence of this lot is very important to many residents in the area. Rehm further emphasized that given the size of the subject property there is no need to build this project all the way out to the property line and negate the 35-foot setback ordinance when the owners have 20 acres of property directly behind them at their disposal that is out of the public view and would better suit the kind of development they are proposing.

19. Chairman Prinster called the applicant’s representative and Rehm back to the podium to respond to questions from the Board.

A. Addressing the comment about the inadequacy of the 9-foot wide parking spaces, Meiners testified that the concept plan submitted was a depiction of how the parking will be. Smaller boats and vehicles will certainly fit into a 9-foot wide parking space, and tractor trailers generally require a 10-foot to 11-foot wide parking space. Due to the narrowness of the property, it will be difficult to park large vehicles on
the front portion of the property. He would imagine that this portion of the property may be used for smaller vehicle parking. Should they choose to move forward with the second phase and develop the rear portion of the property, larger vehicles may be better accommodated on that portion of the property. He stated that the lot to the south of this property is setback 20-feet from the right-of-way. Mr. Meiners stated that it appears that the channel that runs through that neighboring property has been regraded, thus allowing them more space for parking. They are not going to be grading the channel on the subject property, as they are required to maintain a 25-foot non-disturbance area around that channel. This setback coupled with the 35-foot minimum required front yard setback only leaves them with a lot width of between 70 and 100 feet to develop into a gravel parking lot.

B. In a final comment, Rick Rehm testified that if the Board would require that the front yard setback on the subject property to be even with the front yard setback on his property, he would not have an issue with that.

20. There being no further speakers from the audience, the public hearing was closed. Chairman Prinster stated that he does not believe this request meets the four required criteria for a variance request. He stated that FEMA has strict requirements that need to be met in order for the County to be included in the National Flood Insurance Program. He is concerned that if the Board were to grant this variance request, it would be granting a privilege that is not available to others since the property can still be developed without a variance.

21. There being no further discussion from the Board, the Board voted zero (0) ayes, four (4) Nays, and zero (0) Abstentions, to deny the variance request.

APPEAL TO COUNTY COUNCIL

March 9, 2020 Council Meeting

22. On March 9, 2020, Bill No. 4822 upholding the BZA’s decision was given its first reading by the Council.

23. During Public Comments section of the Council meeting, the following testimony was received in support of the BZA’s decision to deny variance VAR20-01:

A. Rick Rehm, resident of St. Charles County stated he supports the BZA’s decision on the Variance to revise the setback at 3300 North Highway 94 from 35 ft. to 10 ft. Rehm explained he has the same type of storage and keeps his property maintained, and has concerns about the applicant having this business on the adjoining lot because the applicant’s other storage property on N. Highway 94 is unkept.

B. Mary Ann Ohms, St. Charles City Council Member explained the area of North Highway 94 is evolving and stated the businesses along the corridor should remain
kept up. Ohms requested consideration on adding conditions to the parcel to maintain a nice venue.

C. Gary Heinike, St. Charles County resident stated the lot full of tractor trailers is poorly kept and damages property values.

D. Gerry Prinster, St. Charles County resident stated as the chairman of the Board of Zoning Adjustment, this applicant did not meet the four (4) items of criteria for the Board of Zoning Adjustment to approve the variance request. Prinster stated the applicant should keep his place and the Highway 94 Corridor clean.

E. William Kish, resident of St. Charles County stated he was notified when the property was rezoned, however had not seen any notification since then. Kish noted the area looks like a junk yard and explained the land next to the river having storage had to install a fence to hide the view.

F. Arnie Dienoff requested the County uphold the BZA decision.

24. During Public Comments section of the Council meeting, Lawrence Weisz, resident of St. John, MO testified in opposition to the BZA’s decision to deny the variance. Weisz stated he was another representative of the Applicants for this variance. Weisz explained the original request was for a 10’ setback from 35’ and the Applicants are now requesting the Council amend the variance to a 20’ setback which is similar to the neighbor right next door that has the same type of storage. Weisz explained there is a drainage ditch that runs through the property that makes it unusable.

25. Upon the introduction of Bill No. 4822, the council members engaged in discussion of the bill.

A. Council Member Schneider stated she has received several phone calls and e-mails from area residents who are against this variance request. Schneider pointed out the applicant did not meet the four (4) criteria items to have a variance granted and if they want to amend the distance should go back to the Board of Zoning Adjustment process. Schneider indicated she is not in support of overruling the Board of Zoning Adjustment’s decision.

B. Council Member Brazil stated this property is already zoned to allow this type of usage. Brazil questioned if the Council can make amendments and add conditions to the variance request.

C. Council Member Cronin stated amending the distance from 10’ to 20’ is a good start and to consider natural landscaping such as berms to make the site more pleasant.

D. In response to the question on whether the Council can amend or modify a variance request on appeal, Mike Hurlbert, Director of Community Development, testified
the UDO allows the Council to amend or modify a variance appeal. Also discussed was the setback lines in the County vs what the City of St. Charles allows which is 25’. Discussion continued on various methods to include natural landscaping, water issues and possible fencing.

March 30, 2020 Council meeting

26. At the March 30, 2020 Council meeting, County Counselor John Watson explained under the unique situation of the COVID-19 Pandemic, the public attended the meeting through virtual presence.

27. Council Chair Hollander opened public comments. Hollander explained due to the unusual circumstances with the COVID-19 Pandemic, the Council posted their “Tentative Agenda” on Wednesday, March 25, 2020 instructing anyone wishing to submit a public comment to do so by Monday, March 30, 2020 at 5:00 p.m. Those comments received will be placed with the County Registrar as part of the official record. Hollander explained the Council will hear a total of six comments alternating pro and con views on any agenda item or the COVID-19 Response.

28. At the March 30, 2020 Council meeting, no written comments were received on Bill 4822 or Substitute Bill 4822.

29. At the March 30, 2020 Council meeting, Council Member Elam made a motion to amend Rule Twenty of the Council rules, to allow Substitute Bill No 4822 to move forward, seconded by Council Member Brazil and unanimously approved. Council Member Elam made a motion to amend Bill No. 4822 and replace it with Substitute Bill No. 4822, seconded by Council Member Brazil.

30. Councilmember Cronin explained the Substitute Bill 4822 amends and modifies Bill 4822 by incorporating the Applicant's request to the Council to amend the originally requested setback variance from 10 feet to 20 feet, and granting the new revised variance subject to 2 specific conditions requiring the Applicant to construct and maintain visual screening along the frontage of Highway 94, and to construct an adequate drainage culvert. The Substitute Bill also included the requirement that per Section 405.639.B, of the Unified Development Ordinance, to reverse, modify or amend the decision of the Board of Zoning Adjustment and passing this Substitute Bill requires the super majority vote of five (5) County Council members.

31. Discussing whether cargo trailers and tractor trailers would be allowed to be parked along the front property line with no berm to cover it, it was accepted that the issue was addressed through the requirement in Substitute Bill 4822 that the applicant shall construct and maintain visual screening along the frontage of Highway 94.

32. Council Member Schneider explained the area of North Hwy. 94 has several industrial zoning parcels nearby and many of them are unsightly and should be inspected and brought up to code. Several subdivisions are now being developed along with the large amount of
traffic and it just looks bad. Schneider stated Council Member Cronin did a lot of work on Substitute Bill 4822 communicating with the owners and County Staff, however Schneider explained she has received several concerns from her constituents, and she will not be supporting this bill.

33. There being no further discussion, Council voted six (6) Ayes to one (1) nay to pass the Substitute Bill 4822.

**CONCLUSIONS OF LAW**

34. Upon hearing testimony from the Applicants, other speakers, Planning and Zoning staff, and further negotiating with the Applicant, County Council concluded that the facts surrounding the revised variance subject to the conditions contained in Substitute Bill 4822 before them supported the claim of hardship from the Applicants.

35. The County Council concluded as a matter of law that it has the authority to grant the variance VAR20-01 as outlined in Substitute Bill 4822 because, when made subject to the conditions contained in the Substitute Bill 4822, 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, with the drainage channel running through the lot dividing in into a narrow front strip of land and much wider back, dictates the only usable portion of the subject property for the proposed uses without the variance is the very back 3.5 acres of the nearly 22 acre lot, when most businesses of this type, including the adjoining lot, use the front of the property, the variance to the same setback as that of the same business on the adjoining lot is necessary and due to the unique circumstances of the property.

B. While evidence shows that the Applicants can develop the rear portion of their property without the need for a variance, the similar businesses on adjoining and nearby lots have indeed developed the front properties, albeit under different rules applicable to them at different times or in different jurisdictions. The property owner bought the subject property with intent to develop it for the same business and at the same setup as the one located on the adjoining lot upon inspection of such business and its setback lines. Thus, the variance requested to match the setback line of the adjoining property owner is needed in order to develop the front of the property;

C. Because the drainage channel runs across multiple property lots, including the adjoining lot with the similar business developed in the front of the property, and testimony was introduced that the adjoining lot owner enjoys the same setback as the requested revised variance, granting this variance would not merely grant a special benefit to the property but rather place him in the same setback line already established by the adjoining property; and
D. Because the proposed plan for the storage business to develop the front of the property is the first step to further development of the rest of the property and its success would determine whether it will be feasible to develop the rest of the property, considering any alternative to developing the front of the property would result in practical difficulties to the property owner.

**DECISION AND ORDER**

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

1. Approves and spreads upon its records its March 30, 2020 decision and order to modify and amend the decision of the Board of Zoning Adjustment being appealed, and grant Variance No. VAR20-01.

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. VAR20-01 as required by the Unified Development Ordinance.

**ST. CHARLES COUNTY COUNCIL**

By: ____________________________
   Terry Hollander, Chairperson

**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