VARIANCE REQUEST - 1936 DUELLO ROAD

Application Number: VAR20-02
Property Owner: James W. Clemens and Jill Bryant Clemens Living Trust dated January 15, 2015
Applicant: SmithAmundsen LLC
Variance Requested: Section 405.095.D.2 - A request to vary the required front yard setback in the R2, Two-Family Residential District from 25 feet to 21 feet (Nutual Court right-of-way)

Property Zoning: R2, Two-Family Residential District
Parcel Area: 1.10 acres
Location: On the north side of Duello Road, approximately 430 feet east of Charity Drive; adjacent to the City of Lake St. Louis

County Council District: 2
Parcel Account No.: T132300003

CONTENTS:

➢ Staff Recommendation Report & Site Photos
➢ Aerial photo
➢ Zoning map
➢ Topographical Map
➢ Applicant Statement of Hardship
➢ Preliminary Plat
➢ Letters Received
  • None
REPORT TO BOARD OF ZONING ADJUSTMENT

To:         County Board of Zoning Adjustment                    Prepared by:  Mark Price Jr., AICP
Application No.: VAR20-02                        Date: July 29, 2020

BACKGROUND

Property Owner: James W. Clemens
Applicant: SmithAmundsen, LLC
Requested Action: To vary Section 405.095.D.2 to allow for a 4-foot reduction to the required 25 foot front yard setback requirement.
Zoning: R2, Two-Family Residential District
Location: 1936 Duello Road, on the north side of Duello Road, approximately 300 feet east of Hidden Bluffs Drive; adjacent to the City of Lake St. Louis
Parcel Size: 1.10 acres
Current Land Use: vacant land
Adjacent Land Use and Zoning:

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<thead>
<tr>
<th>Direction</th>
<th>Zoning</th>
<th>Land Use</th>
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<tbody>
<tr>
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<tr>
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<td>East</td>
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<tr>
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<td>Single Family Residences</td>
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Applicant Request

The applicant requests a variance from Section 405.495.D.2 of the County Code which imposes a minimum front yard setback of 25 feet for parcels zoned R2, Two-Family Residential District. The applicant is requesting a minimum building setback of 21 rather than 25 feet which would be a 4-foot reduction to the minimum.

The subject parcel varies in depth between approximately 101 feet on the south and 92.56 feet on the north. Based on County staff's review, subtracting front yard zoning setbacks and constructing the narrowest private street allowed by the County's Subdivision Regulations (Chapter 410, Exhibit A) would leave a buildable strip of land ranging from 16.56 feet to 25 feet in width.
Relevant History

Two arterial County roads border this parcel. Duello Road has traditionally bordered the southern boundary line of this parcel, and the County is extending Duello Road north, along the parcel’s eastern border, to avoid two sharp turns at Duello Elementary School. In order to extend Duello Road for the public good, the County Highway Department purchased what had been the eastern 60 feet of the subject property and resulting in the current lot depth.

At the request of the property owner, the parcel was rezoned from A, Agriculture District, to R-2, Two Family Residential District, in July 2019 (Ord. 19-058). A District regulations impose a minimum 50-foot front yard setback while the R2 District regulations impose a 25-foot minimum front yard setback.

The property owner subsequently submitted for County review a preliminary plat (attached) for this development (attached). County staff advised the applicant that plat approval must include a variance from either the Subdivision Regulations or the Zoning Regulations.

The applicant submitted The Villas at Lake St. Louis Preliminary Plat with variance requests from Chapter 410 (Subdivision Regulations) to address the front yard setback issue. Those requested variances from Chapter 410 would allow the street to be controlled by an easement rather than by right-of-way, meaning that the proposed internal street would cross each lot. The Planning and Zoning Commission at its July 15, 2020 meeting denied the plat and variances. Consequently, the applicant is instead proposing to address the shallow lot depth by a zoning variance so that all technical requirements of the Subdivision Regulations can be met and the Plat approved.

ZONING VARIANCE CRITERIA

The Board of Zoning Adjustment may vary the strict application of a regulation if the property owner provides sufficient evidence that all four of the following criteria have been met (Section 405.590.C):

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.

The applicant has provided detailed reasons justifying the variance under each of the four criteria. (See the attached document beginning “The tract in question contains…”).

**STAFF ANALYSIS:**
Each variance criteria is provided below with County staff analysis following.

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 finds the application for this variance is due to the unique circumstances inherent to this specific piece of property. Following County purchase of a strip of land to extend Duello Road, the lot depth now varies from 92.56 feet to 101 feet. The lot depth provides an insufficient land area for both an internal street and front yard zoning setbacks along both the eastern and western borders of each proposed lot. Any property owner proposing to build more than one house on this parcel would encounter the same situation.

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.*

   Staff finds the applicant could not have avoided the need for this variance. Any future development on this property, except a single-family home, would require an internal street and as such would require a variance to meet the requirements of the County’s ordinances. Building one single-family home on the parcel to avoid platting a subdivision could be accomplished without a variance, but doing so would unreasonable restrict the potential of the existing R2, Two Family Residential District zoning.

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.*

   Staff finds the variance would not grant a special benefit beyond what is enjoyed by other properties in the R2, Two Family Residential District. Granting the requested variance would allow what is customarily expected in R2 zoning districts.

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.

Staff finds that the subject tract would be unreasonably difficult to develop, other than for one single-family home, without this variance. Platting any number of lots would involve platting of an internal street and right-of-way, meaning that each lot would be required to have front yard setbacks on both the eastern and western parcel boundaries. The ability to construct more than one single-family house on parcels zoned R2, Two-Family Residential District, would be typical and expected.

In terms of the scale of the variance and whether or not any detriment to the public good would be created, the variance would reduce the front yard setback from 25 feet to 21 feet along an internal street: Nutual Court. This should pose few negative land use impacts as the primary users of Nutual Court will be a low-traffic cul-de-sac used primarily by five households.

Although the proposed villa homes would be placed four feet closer to two existing houses on Hidden Bluffs Drive, most of the subject parcel borders common ground for Wyndstone Subdivision meaning that the impact would be reduced.

**BOARD OPTIONS:**

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.

**STAFF RECOMMENDATION:**

County staff recommends that the Board of Zoning Adjustment approve the requested variance with the following condition:

1) The front yard setback variance shall apply only to the right-of-way for the internal street (Nutual Court) and shall not apply to Duello Road.
VAR 20-02 - Aerial
VAR 20-02 - Zoning
VAR 20-02 - Topography
The tract in question contains 1.1 acres and is zoned R-2 allowing single family and two-family attached homes. The property in question contains 1.1 acres and was reduced in area to allow for improvements being made by the County to Duello Road resulting in a narrow tract of ground ranging from 95 to 100’ in depth. Five homes (2 attached and one single) may be built on the property under the R2 classification and meet lot size and all setbacks if the lots obtain access from Duello Road, which is not permitted by the County. See the attached Exhibit A showing the five homes that may be built if the homes obtain access from Duello Road.

For safety reasons, St. Charles County Highway does not want homes to be built with driveways obtaining access directly off of Duello Road which upon completion of improvements will be a major arterial road. For safety reasons, St. Charles County requires the lots to obtain road access from an interior street. If an interior road is built so that the lots front on the interior street and not Duello, no buildable area is left on the lot after setting aside the area for the road, right of way, 25’ front yard setback and 25’ rear yard setback. The total area required by the two setbacks (50’), road (26’) is 76’, leaving from 19-24’ of buildable area. In order to create a minimal buildable area, the applicant is requesting that the front yard setback on the interior road be adjusted from 25’ to 21’. The 4’ variance is necessary because without this relief the property is unbuildable.

1. The variance is being requested because of the unique circumstances associated with this narrow piece of property and not personal considerations of the owner. The owner does not have any alternative than the granting of this variance to make his property usable because an interior street must be built on the property as homes may not be built with driveways directly accessing Duello Road, and the area required for right of way and setbacks for such street results in the elimination of virtually all buildable area.

2. The property owner did take any affirmative acts to create this condition. The property’s narrowness in depth was not created by the property owner. The road widening/improvements to Duello Road were public improvements for the general public good that were undertaken by St. Charles County. The applicant proposed to the Planning and Zoning Commission that the interior road be placed in a private easement, thereby avoiding the additional set aside of property required by right of way and was denied. The Commission believed the road should be right of way and not an easement.

3. The variance will not grant the owner a special benefit beyond what is enjoyed by other properties in R-2 Zoning Districts. The applicant’s lots sizes, home sizes, density, and all other setbacks and lot design will comply with the R-2 Zoning classification requirements. The granting of the variance will allow the applicant to use his property in the same manner as all other owners of property located in R-2 Zoning Districts.

4. If the 25’ front yard setback from the required interior street is applied to the property, practical difficulties will occur as the owner cannot use his property for any residential dwellings. The property is unbuildable. The application of this variance deprives the owner of the economic value of his property as zoned under the R-2 Zoning classification because the property is unbuildable. The variance may not be avoided by moving the houses back on the land because this will violate the rear yard setback. Further, the
topography of the property slopes as it faces Duello and utility poles are located along Duello. The amount of requested variance is the minimum required to make the property buildable and when considered in that light, the size of the variance is not great. The relief can be granted without substantial detriment to the public good. Storm water that currently runs off of the property without treatment will now receive water quality treatment to clean it before it leaves the property as required by St. Charles County ordinances. This storm water will not impact the property to the west in a newly built McBride subdivision because the water will not flow in their direction – rather it all flows away from them. The tree line along the north and the trees at the entrance are all being preserved as required by County ordinances and these serve as a visual buffer between the five homes that would be built on the property and the McBride Homes. At the Planning and Zoning Commission meeting at which the road easement was denied, these neighbors expressed concerns about storm water and tree preservation. The project was redesigned to assure that all of the trees were preserved and storm water, as noted above, flows away from the McBride homes, not toward them. The intent, purpose, and integrity of the zoning regulations embodied in the UDO are not substantially impaired by the granting of this variance because the property was zoned by the County for the R-2 use classification and without the variance the property cannot be used as zoned.