

MINUTES OF REGULAR MEETING

ST. CHARLES COUNTY BOARD OF ZONING ADJUSTMENT

DATE: MARCH 3, 2022

TIME: 7:00 P.M.

PLACE: COUNTY EXECUTIVE BUILDING
100 NORTH THIRD ST.
EXECUTIVE COUNCIL CHAMBERS
ST. CHARLES, MO 63301

MEMBERS PRESENT: Gerry Prinster, Chairman; Kevin DeSain, Secretary; David Bauer, Vice-Chair; John Matlick; and Leslie Gross, Alternate Board Member

MEMBERS ABSENT: Vicki LaRose; and Robert Boschert, Alternate Board Member

STAFF PRESENT: Robert Myers, Planning & Zoning Division Director; Mark Price, County Planner; and Bryan Wise, Associate County Counselor

CALL TO ORDER:

Chairman Gerry Prinster called the meeting to order at 7:00 PM. Following the Pledge of Allegiance, he welcomed the audience, explained the functions of the Board of Zoning Adjustment and the format of the meeting, and explained the procedures for speakers.

Chairman Prinster introduced the Unified Development Ordinance (UDO) and Zoning Maps of St. Charles County into the record.

CHANGES TO THE AGENDA

NONE

PUBLIC HEARINGS

I. VARIANCE REQUEST – 4450 SOUTH HIGHWAY 94

Application Number: VAR22-01
Property Owner: St. Charles County
Applicant: Gregory Hoffmann on behalf of Miss Augusta, LLC
Variance Requested: A request to vary Section 405.355 B.2 of the Ordinances of St. Charles County (OSCCMo) to allow for the placement of a movable accessory structure at the adjacent ground level rather than at 1-foot above the base flood elevation, in accordance with Section 405.375 OSCCMo.
Property Zoning: I2, Heavy Industrial District and A, Agricultural District, with Floodway and Floodway Fringe Overlay Districts
Parcel Area: 48.20 acres
Location: Located approximately 2,900 feet east of Berg Crossing Drive, adjacent to the Missouri River, in Klondike Park.
County Council District: 2
Parcel Account Nos.: 189630A000 and 189240E000

Board Secretary Kevin DeSain read the variance request aloud.

Chairman Prinster then opened the public hearing and asked the owner or owner's representative to approach the podium to explain the request.

The Applicant's representative, Tim Dean, 16253 Swingley Ridge Rd. #100, Chesterfield, MO 63017, was sworn in. Mr. Dean stated that as part of this development, they are planning to put up a cruise ship out in Klondike Park which is a County-owned park. The cruise ship is approximately 100 feet long and will have a dock where it is going to be placed in the river to help service that. The check-in feature at the top of the ramp adjacent to the parking lot is what we are seeking variances for. Mr. Dean stated that they are wanting to use a mobile trailer instead of a permanent structure, because the property is located in the flood plain just outside of the floodway. Other alternatives were looked at but a large amount of fill (approximately 14 feet) from the existing grade up to the required flood protection height would be required. Stilts were also considered but the amount of gangway ramp that would be required for that would be very extensive as well as having to elevate the structure. He explained that the plan was to put the trailer at grade and provide a view from the Katy Trail, but he is concerned about blocking the view of park users on the trail with the amount of fill that would be required to do so. The proposed structure will not block any views on the Katy Trail, as it is actually lower than the adjacent grade because the structure will be located on top of the old boat ramp access road. This location will take advantage of utilizing abandoned space within the park.

Chairman Prinster asked if this is within Klondike Park.

Mr. Dean replied that it is located over at the boat ramp rather than directly within the park. He added that adjacent to this structure there will be a boat ramp that has been in service for a while. The County is currently putting in a courtesy dock adjacent to that structure for public use, and the structure for the cruise ship is located upstream of that structure. This will not cause any conflicts with public interest.

Chairman Prinster stated that he read in the staff report that one of the alternatives would be to move this project when and if the flood water rises. He asked how movable that structure is.

Mr. Dean replied that it is a mobile trailer on wheels which is owned by Mr. Hoffmann in Augusta. At his wineries, Mr. Hoffmann has one-ton trucks that can pull out 30-foot trailer easily. He added that a flood

evacuation plan has been submitted the County's Community Development Department showing all off the removals to the flood stage heights on the adjacent river gauges.

David Bauer asked if the utility structure is going to be above the base flood level.

Mr. Dean replied in the affirmative and stated that the utility structure is located out in the field north of the park which is elevated above the base flood elevation level. Service drops are being done over that that building, and they are running everything underground over to the check-in building. Quick disconnects are being used that are fully submersible nautical connection points, so the plugs can come apart and can get fully submerged and plugged right back in without any damage to the plugs.

Leslie Gross asked if this structure would be fully electric.

Mr. Dean responded in the affirmative and stated that there will be water service out there as well. The Fire Marshal required a fire hydrant to be placed in proximity to the structure so that was tapped off of the water line. There will also be a restroom provided in the facility for the workers. There is an existing sanitary service force main that services the cruise ship dock as well, and that connects to the adjacent subdivision's wastewater treatment plant through the existing force main.

Chairman Prinster asked if the Commission had any other questions for the applicant. There being no further questions for the applicant, Chairman Prinster opened the public hearing and asked if anyone from the audience wishes to comment on Application No. VAR22-01.

Brain Lindsey, 4301 Murdoch Lane, Augusta, MO 63332 was sworn in. Mr. Lindsey stated that he is an adjacent landowner, and he does not waive notice or give any consent on this variance in any way. He stated that his property adjoins Klondike Park, and he owns the lot that attaches to the park. He asked if the construction of this shed will affect public safety by potentially not allowing for a life flight to be able to land there, as there is a stipulation in the County Ordinance which states that public safety cannot be affected.

Chairman Prinster asked if staff wanted to address that question.

Mark Price responded that the mobile trailer that they are proposing to put on the property will be located west of the existing concrete pad that is located the area of the boat ramp, so it will be completely away from any of the parking areas.

Mr. Lindsey stated that that the construction of a dam downstream was not addressed in the staff report, and the U.S. Army Corps of Engineers did not respond.

Mark Price stated that they will be required to obtain all of the necessary permits from the U.S. Army Corps of Engineers before they can construct anything on the property.

Mr. Lindsey asked if this includes the construction of a dam because there was no mention of the Augusta Shores property. He stated that it would have been nice if someone had contacted him before they bought the boat ramp and built the pier since he owns the property that joins Klondike Park right next to where they plan to build this project.

Tammy Basso, 4324 August Shores Dr., August, MO 63332 was sworn in. Ms. Basso stated that she is not for or against this variance request, but she has a few questions. She asked what the business hours of the temporary facility will be, and if there are going to be any lighting or sounds emanating from the property as a result of this project. She stated that she is the president of the Homeowner's Association and is seeking information to get a better understanding of what this project will entail.

Chairman Prinster asked staff would address the questions regarding lighting and sound.

Robert Myers stated that the purview of this variance hearing is for the Board of Zoning Adjustment to decide whether or not they believe that a variance is necessary, and whether it meets the criteria for a variance. The variance has to do with whether or not the structure should be required to be elevated above the base flood elevation which would essentially be 14 feet up in the air, if the structure should be required to be constructed on stilts which would require walking up a series of ramps up to 14 feet up in the air to obtain access, or if the structure may be granted a variance to allow it to remain at ground level. He stated that the Board of Zoning Adjustment should only consider the floodplain variance criteria in Section 405.375 of the County Code during this variance hearing, which are as follows:

A. A showing of good and sufficient cause.

Staff does find a good and sufficient cause as the impact of the larger fill area on the river would be greater than the structures impact on the river. The structure will be removed from the property prior to any flood event.

B. A determination that failure to grant the variance would result in exceptional hardship to the applicant.

The applicants have not shown an exceptional hardship that would be placed upon them because of a failure to grant this variance. The cost would be greater upon the applicant and the impact on the river will be greater, should filling of the property be required.

C. A determination that the granting of a variance will not result in increased flood heights, extraordinary public expense, additional threats to public safety, creating nuisances, case fraud on or victimization of the public, or conflict with existing local laws and regulations.

The applicant has submitted a shutdown plan for the structure to remove it from the property prior to any flood events. This should prevent any negative affect on any structure further downstream and should not conflict with any local laws or regulations.

Mr. Myers stated that in the County staff's view, this is a water-based business and it's hard not to be in the water. What is helpful here is that the Missouri and Mississippi Rivers are more predictable than inland streams.

The applicant's representative, Tim Dean, stated that the typical operation hours would be normal business hours between 8:00 AM and 5:00 PM. Excursion cruises would typically take place on weekends, and there may be an occasional evening cruise for a wedding but that would be booked in advance. The noise level would be minimal because most of the operations would take place once they have left the dock.

Chairman Prinster asked about the lighting plan.

Mr. Dean responded that lighting would be very minimal on the site. It would basically be comprised of some down lights to light the pathways for safety on the gangway and along the path from the check-in building. There will also be minor illumination on the utility structure that will be located in the field in order to illuminate the signage that identifies Klondike Park, and there will be typical riverboat lighting on sides of the vessel of the cruise ship

Larry Graves, 100 Murdoch Court, Augusta, MO 63332, was sworn in. Mr. Graves stated that he also lives in Augusta Shores, which represents a hundred plus homes. He lives right on Highway 94 and looks right across the highway to the river into the park. He stated that he would like to know the traffic impact this will have to the community. He asked how many people are going to be carried at one time, and how many trips will be made in a single day. He also asked how will parking be provided in the park, as there are about 26 single-car spacings that face the Katy Trail.

Kevin DeSain asked if this is something that would have been addressed in a Planning & Zoning Commission meeting rather than at this Board of Zoning Adjustment meeting, because the Board of Zoning Adjustment is here to talk about whether this structure needs to be 14 feet in the air.

Robert Myers responded that this particular use of the property is allowed by right in this zoning district, and therefore approval is not required from the Planning & Zoning Commission or the County Council. The project is currently under site plan review by County staff, and there are items that need to be addressed by the applicant in order for this project to conform with all County requirements. This hearing is to discuss a request for a variance only.

Chairman Prinster asked notwithstanding the request to vary where they place their building, will they have to obtain approvals on their scheduling. He stated that it appears these neighbors in attendance this evening are concerned about congested parking and traffic, which are valid concerns, but he does not believe the Board of Zoning Adjustment is here to discuss those concerns.

Robert Myers stated that the Parks Department is taking a lead regarding the scheduling concern.

Chairman Prinster stated that he is disturbed that neighbors do not get any notice until it's happening and the "boat is in the river". He added that he doesn't think that is prudent on the County.

Larry Graves stated that he is not for or against this variance, but this is the first he has heard about this project.

Kevin Desain asked if staff could tell people who they could contact regarding their concerns.

Robert Myers stated that people could contact the Hoffmann Group or the St. Charles County Parks Department with questions about operations, or the St. Charles County Community Development with questions about the design of the facility.

Mr. Graves asked if they are proposing to enlarge the existing parking lot or make any other physical changes to the parking lot.

Robert Myers responded that he would have to review the plans because he was not sure if they include upgrades or changes to the parking lot.

Mr. Dean stated that most of the parking will be off-site. There are adjacent wineries with ample parking and overflow areas that people can park in. There will also be a trolley service that will shuttle people over from the wineries and drop them off for the cruises a couple of times each day. In the park itself, there will be a drop off lane, so people won't be parking on the parking lot taking up any of those existing spaces. Mr. Dean stated that all of the parking information is on the site plan that has been submitted.

Chairman Prinster asked if they are Hoffmann owned wineries in this vicinity, and Mr. Dean answered in the affirmative.

Mr. Graves asked if the trolley would be to accommodate all of the people coming to and disembarking from the boat.

Mr. Dean responded that he understands that is a very tight parking lot and there is really no place to expand parking in that area. This is why ample off-site parking was coordinated within the plans.

Chairman Prinster asked who the County Councilman is for this area.

Robert Myers responded that Joe Brazil is the Council representative for this area.

Kevin Desain asked if there would be 24-hour security lighting on the property, which may affect the neighboring properties.

Mr. Dean responded that most of the lighting would be along the gangway, and that should be lower than what would be visible from the subdivision. He added that all lighting will be shrouded and pointed straight downward.

Mr. Graves asked if there will be any kind of an alert or horn used when the boat comes into the dock, which might awaken him.

Mr. Dean responded that the earliest that would typically happen would be around 9:00 AM. The boat schedule would likely entail only two to three cruises per day and will all be demand based.

Mr. Graves asked what the expected average crowd capacity is for the boat.

Mr. Dean responded that the maximum capacity for the cruise is 149 people, and that includes crew members.

Chairman Prinster asked the board members if they had any questions for staff.

John Matlick stated that there was a gentleman who mentioned a problem with the dam on the other side of Highway 94 and asked how that would affect the dam for this area.

Brian Lindsey responded that it doesn't affect the dam but building any structures downstream of the dam would be an issue with the Army Corps of Engineers. He would not be able to obtain a building permit for any structure downstream of an existing dam.

John Matlick stated that he does not know where the water runoff exits and goes and flows into the river and doesn't know how that would affect the dam.

Mr. Lindsey responded that that you cannot build downstream of a Class C dam. It holds back so many gallons of water that a structure cannot be built downstream.

Kevin DeSain stated that this structure is going to be on wheels so that it will be moveable.

John Matlick stated that the structure being mobile wouldn't help if the dam broke in the middle of the night, and he asked where the water would go if that were to happen.

Mr. Lindsey responded that he does not know, but the Army Corps of Engineers would have their own set of rules for such instances.

Chairman Prinster stated that those are permitting questions and are not being addressed here by this board. He stated that he would like to make a point that if this property were required to be raised fourteen feet in order to be above the base flood level, he does not picture people coming off that cruise and traveling down that fourteen foot slope.

Mr. Lindsey stated that in past dealings with the Army Corps of Engineers, they were always very aggressive in asking questions and explaining what their permitting requirements are. In discussions regarding this proposal, he did not find where anyone from the Corps of Engineers got involved and asked those same questions.

Mr. Dean stated that he has talked to the Army Corps of Engineers numerous times while finalizing the 404 permit and the other permits that are required based on the location of the dam structure. He pointed out the location of the dam structure on the map, and he stated that it is located downstream. During discussions with the Army Corps of Engineers, no one has ever mentioned anything related to this dam to him.

Chairman Prinster asked if staff had received any correspondence related to Application No. VAR22-01.

Mark Price stated that staff did not receive any correspondence regarding this variance request.

There being no further questions, Chairman Prinster asked for a motion be made to approve Application No. VAR22-01.

Leslie Gross made a motion to approve Application No. VAR22-01, subject to staff's recommended conditions. John Matlick seconded the motion.

The vote on the motion was as follows:

Gerry Prinster	Yes	Kevin DeSain	Yes	Leslie Gross	Yes
John Matlick	Yes	David Bauer	Yes		

Application No. VAR22-01 was **Approved**.

II. VARIANCE REQUEST - 1266 NORTH POINT PRAIRIE RD

Application Number: VAR22-02
 Property Owners: Bradley C Wade and Rachel R Wade
 Applicant: Brad Wade
 Variances Requested: (A) A request to vary Section 405.080.E.2 of the Ordinances of St. Charles County (OSCCMo) to reduce the minimum front yard for an accessory structure from 50 feet to 27 feet; and
 (B) A request to vary Section 405.080.D.3 OSCCMo to reduce the minimum side yard for a single-family dwelling from 40 feet to 24 feet.
 Property Zoning: A, Agricultural District
 Parcel Area: 2.67 acres
 Location: On the east side of North Point Prairie Road, located approximately 550 Feet south of Pasture View Court, adjacent to the City of Wentzville
 County Council District: 1
 Parcel Account No.: 294030A000

Board Secretary Kevin DeSain read the variance request aloud.

Chairman Prinster then opened the public hearing and asked the owner or owner's representative to approach the podium to explain the request.

The property owner, Brad Wade, 1266 Point Prairie Rd, Wentzville, Mo 63385, was sworn in. Mr. Wade stated that this property has been a perfect storm for a bad situation. He noted that the property is comprised of two parcels and presented pictures to the board of the old existing house underneath the power lines. He pointed to two outbuildings in the pictures, one that is still there and one that has been torn down. He also showed the board pictures of the frontage of the property along North Point Prairie Road, where the accessory structure is located. Mr. Wade stated that three different surveying companies have come up with three different surveys for this property. He stated that he built house and the outbuilding and applied for all of the required permits. Five inspections were performed on the structure and the home by the building department before this setback encroachment was brought to his attention. He stated that the house is a concrete house, and there is also a power line easement between the two property lines. He showed the board where the first survey company put their survey stake underneath a pole, which is where he pulled the line easement for the house. He stated that he has been building homes for twenty years in Illinois and in Illinois, you pull from the center of the road because that is the straightest part and that is what he did. He stated that would like to annex this property into the City of Wentzville, but the City of Wentzville will not let him due to the existing issue with the setbacks. Mr. Wade stated that all of the County's setback requirements must be met prior to annexing the property into the City of Wentzville.

Kevin Desain asked Mr. Wade for information about the three different surveys that he had done on the property, and how that affected where the house was staked.

Mr. Wade stated that the first survey was done by Premier Engineering. He stated that when he bought the acreage, he was going to develop it into four one-acre lot parcels and build four houses on it. He went through five meetings with the City of Wentzville about this.

Chairman Prinster stated that building four homes on 2.6 acres would be hard to do.

Mr. Wade stated that the property is comprised of two parcels and is almost four acres in size. He stated that after he purchased the property, he found out that the City of Wentzville would not grant him access to sewer and water unless he annexed the property into the City of Wentzville. That is when he decided to build his personal home on the property since he couldn't do what he originally wanted to do. That is when he had the property surveyed by Premier Engineering, and that's where the pins originally came from. The second survey came from Frazier Surveying, and that survey caused a visit from the County regarding the setbacks and the well. The third survey was done by Landmark Surveying and they are the ones that figured out where the actual pins were on the property.

Kevin DeSain asked if all three surveyors ever got together.

Mr. Wade responded in the affirmative.

Kevin Desain stated that he is trying to understand if he is telling him that he pulled from an incorrect pin. He noted that in the document it states that the surveyors were recommended to get together and work something out and he is interested in understanding how that line affects where his house is now.

Mr. Wade stated that he did pull from an incorrect pin and the reason that he did that is because when Premier Engineering came out and did the original survey on the property, they were supposed to pin all of the corners of the property line. He stated that this pin was for the easement of the power line.

Kevin Desain asked if they staked the easement.

Mr. Wade confirmed that that the easement had been staked but not his property line, and he pulled from that because he saw the flag with a stick that was in the corner.

Kevin Desain asked if he had an approved plot plan from Landmark Surveying.

Mr. Wade answered in the affirmative.

Kevin Desain asked why he did not use a licensed professional to lay out his house, even though he had a permit that was approved in the form of a plot plan.

Mr. Wade responded that the County does not require the surveying company to come out and lay the house out. The City of Wentzville will make the surveying company come out and stake the house, but the County only requires a footing inspection to ensure that the footings are laid out within the plot plan. Mr. Wade reiterated that inspections to the property were done by the County five times.

Kevin Desain asked if those five inspections were specifically for the foundation location.

Mr. Wade responded that on two different occasions, someone came out to inspect the footing and foundation. They also came out and did rough-in inspections on the two separate structures.

Kevin Desain asked if the house was staked prior to the surveyors agreeing on a line.

Mr. Wade responded that by the time he found out where the survey lines were, everything was already built.

Kevin Desain asked if the boundary line was adjusted.

The property surveyor, Shane Waltermann, 21 Tulip Bend, Wentzville, MO 63385, was sworn in. Mr. Waltermann stated that he was hired to do a plot plan for the property and when he submitted it to Mr. Wade, he recognized that there was a problem. He stated that he then went out to the property in order to locate the boundary lines and did a survey, and then that's when the issue was discovered.

Kevin Desain asked how the difference could be as much as twenty feet between the surveyors of the property line.

Mr. Waltermann responded that there is not a difference of twenty feet. He stated that he cannot speak regarding Premier Engineering's survey, but he and Frazier Surveying both came up with the same results from their surveys.

John Matlick asked Mr. Wade if he has been issued an occupancy permit for the home.

Mr. Wade responded that he has not been issued an occupancy permit, and he cannot even finish having the inspections performed because they pulled the permits for both the accessory structure and the home. Mr. Wade reiterated that he is trying to get approval from the Board of Zoning Adjustment so that he will be able to annex the property into the City of Wentzville.

Chairman Prinster asked Robert Myers if approval of this variance request will allow Mr. Wade to annex the property into the City of Wentzville.

Robert Myers stated that Doug Forbeck from the City of Wentzville told him that the City would not currently consider annexation of this property because it has outstanding setback violations in St. Charles County. Mr. Forbeck added that if the property were to be rezoned as residential, it would meet the required 25-foot front yard setback and the required 40-foot side yard setback.

Eric Merchant, 455 S Highway 19, New Florence, MO 63363 was sworn in. He stated that he came in to sell this property. Initially Mr. Wade was going to develop the property as a subdivision and sell the individual lots. There were four meetings with the City of Wentzville regarding this plan and there were no problems cited. He chose to close on the property based on the favorable meetings with the City of Wentzville. During the fifth meeting with the City of Wentzville, an employee who had not participated in any of the other meetings suggested that Mr. Wade could not bore between the two homes because their foundations had not yet settled, and since then he has been told that he would not be able to annex into the City of Wentzville. Mr. Merchant stated that this all occurred before he got involved. He noted that mistakes were made on where the house was set during the building process, but when the County came to do their inspections and looked at the two-footing holes they approved them. They then performed a subsequent inspection and that one was approved as well. By the time they discovered that there was a problem, a significant amount of money had been invested in both of the structures and that is the hardship that Mr. Wade is currently experiencing. Since he couldn't hook up the City's sewer service without annexing into the City of Wentzville, he installed an expensive septic system which is another hardship because if he were to try to move this building then he would have issues with the current layout of the septic system. Mr. Merchant stated that if the Board grants this variance, there will be no need for Mr. Wade to annex into the City of Wentzville. When Mr. Wade was turned down for his request for City sewer service, he chose not to develop the property into multiple lots and just build his own residence on the property. Mr. Forbeck from the City of Wentzville called him and asked him if he still plans to annex the property into the City of Wentzville and he told him that he would no longer need to, because he already had a septic system installed on the property. He stated that he believes that Mr. Wade would be content with getting approval of the requested variance and leaving the property in St. Charles County.

Mr. Wade stated he agrees with Mr. Merchant's last statement.

Kevin Desain asked if this issue came to light when Frazier Surveying was surveying an adjacent lot.

Mr. Wade responded that he does not know if was brought to light due to the survey as much as it was due to a question about the existing well and septic system.

Kevin Desain asked if it was due to their locations being too close to the property lines.

Mr. Wade responded that he does not know how anybody would be remotely close to his well or septic system but that is how it came to light.

Kevin Desain asked if this was supposed to be his residence and it's now for sale.

Mr. Wade responded that this was the house that he was planning to stay in forever, but he recently purchased 32 acres and is moving to the Lake of the Ozarks so that is the reason the house is currently for sale. He added that they have already lost the buyer that he had a contract with due to these setback issues.

Chairman Prinster asked the Board if they had any other questions.

David Bauer asked if the County should have discovered the setback issue when they went out and inspected the footings.

Robert Myers responded that the County does a visual inspection and when they looked at the side yard setback, according to their inspection notes it appeared to be compliant at that time. Around that time a neighbor contacted the County to report that the house was being built too close to the property line and they provided a survey to the County. There were now two different surveys from two different neighbors that were both prepared and stamped by licensed land surveyors. He stated that as the Planning and Zoning Director, he could not arbitrate this dispute as he is not a licensed land surveyor. He then

recommended that the two surveying companies get together and determine where the actual property line is located. Once the County identified this in February of 2020, they placed a stop work order on this property and has been identified since that time. It has now been about two years since this setback problem was identified.

David Bauer asked if the home was completely built at that time.

Robert Myers responded that he does not know what stage of the building process the house was in at that time, and he can only go by the photographs in the permit file. The accessory structure was constructed or partially constructed at that time, but he is not sure if it was finished on the inside.

Mr. Wade stated that he would like to testify that the house was completely drywall done at that time, and the accessory building has never had any electric rough-in done because that's when they placed a stop work order on the permits.

Kevin Desain asked Mr. Wade to confirm that the home was finished two years ago, around February of 2020.

Mr. Wade affirmed that the house was finished at that time, and it took two years to build the house because he builds other homes and worked on his own home last.

Chairman Prinster asked the Board if they had any other questions for staff or if staff wished to comment any further regarding this variance request.

Robert Myers stated that he would like to direct the Board to the criteria for granting a variance under Section 405.590 of the Ordinances of St. Charles County Missouri. He discussed those four criteria as follows:

VARIANCE CRITERIA

Under Section 405.590 of the Ordinances of St. Charles County, Missouri (OSCCMo), the Board of Zoning Adjustment may vary the strict application of a non-use zoning 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; and*

The specific circumstances inherent to this parcel specifically are:

- The two parcels combined include only 3.52 acres which is less than the minimum five-acre lot size for parcels zoned A, Agricultural District and just above the three-acre minimum area necessary to approve onsite sewage disposal.
- The parcel is "pie shaped" meaning that it has less usable area in the rear.
- Onsite sanitary sewage disposal requires both an undisturbed drain field and an area for a backup drain field. The shape of the lot pushes the drain field and back up drain field towards the front of the lot. According to plans, the sanitary sewage drain field was constructed 142 feet back from the front property line.

However, the applicant's plot plan, approved by the County for residential building permit, showed that both the house and the accessory building was proposed to be constructed in compliance with setback requirements.

County staff recommends a finding that unique circumstances exist inherent to this specific parcel which limit the placement of buildings but does not preclude development in conformance with County setback requirements.

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

The need for variances could potentially have been avoided had the applicant followed the approved plot plan and properly staked out the property lines before construction. Nonetheless, the parcel limits building placement by its size, "pie shape", and the need for a drain field and back up drain field for onsite sanitary sewage disposal.

County staff recommends a finding that the variance is 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

Given that the applicants learned of the encroachment after construction, and the alternatives for moving the parcel boundary, rezoning the property or removing a corner of the building are unworkable, this is the only viable course of action.

County staff recommends a finding that the variance would not grant a special benefit to the property beyond what is enjoyed by other properties in the A, Agricultural District.

Chairman Prinster stated that he doesn't find it prudent that a County inspector would inspect a foundation and do a quick visual inspection only, which lacks accuracy.

Mr. Merchant asked to follow-up on that thought. He stated that this is about front yard versus side yard setbacks and the City of Wentzville's and St. Charles County's position has been that the front yard is facing North Pointe Prairie Road but based on the physical location of the structures North Pointe Prairie Road is along the side yard. The house faces south, and North Pointe Prairie is to the west, but they are calling that the front yard. He stated that he tried to obtain printed manual that a building inspector would use which would outline the proper protocol for doing these inspections, but he was not able to find anything.

Kevin Desain stated that he does not believe that St. Charles County employees should be treated as licensed surveyors because when they go out to do an inspection, they are looking for stakes and will make assumptions based on the fact that those stakes were placed there by licensed professionals. They did that in this case, and it seems that there was no professional involved with staking these two buildings.

Mr. Merchant stated that there has to be a reasonable solution for this issue, aside from tearing down a brand-new accessory⁷ building that was well constructed and cutting off the corner of a house that cannot be moved because it is a concrete house.

John Matlick asked if the front yard setback has to be measured from the street or if it can be measured from the front of the house in this case.

Robert Myers responded that any street is subject to County Zoning Regulations. A front yard is required to have a setback from the street and accessory buildings are required to be at least 50 feet back from the front property line, which is the same as the right-of-way line. He added that sometimes the road is not in the middle of the right-of-way and he believes that is the case here.

Mr. Wade stated that even if he would have built it or marked it right where it was supposed to be off of the road where the survey showed, it still would have been off.

Chairman Prinster asked the Board if anyone had any further questions.

Robert Myers stated that he would like to comment on the last variance criteria.

4) Applying the 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.

Moving the subject structures would cause substantial practical difficulties. The owner has pursued the following actions to avoid the necessity for granting variances:

- Had the property boundaries surveyed multiple times by two licensed land surveyors,
- Pursued purchase of land from a neighbor,
- Looked into rezoning the property to a different zoning district with different setbacks, and
- Pursued annexation into the City of Wentzville with single-family residential zoning and a 25-foot front yard setback.

Although the accessory structure has been constructed too close to North Point Prairie Road, the view of the accessory structure is partially buffered from the street by a substantial line of mature vegetation, meaning that a variance would not pose a substantial detriment to the public good in terms of visual impacts.

According to St. Charles County's Thoroughfare Plan, North Point Prairie Road is not scheduled to be widened. Accordingly, the current placement should not interfere with County road widening.

County staff recommends a finding that applying the subject front yard and side yard setbacks to the accessory building and residence would result in practical difficulties.

Robert Myers stated that literally across the street, the City of Wentzville has 25-foot front yard setbacks in just about all of their zoning districts, or at least in their residential zoning districts, so in the subdivision across the street the interior streets all have a 25-foot front yard setback so in that regard this property would not be out of character with the adjoining land use context.

Chairman Prinster asked if staff had received any correspondence regarding Variance 22-01.

Mark Price responded that staff did not receive any communications regarding this variance request.

Thomas Corkin, 42 Marpat Drive, Wentzville, MO 63385 was sworn in. Mr. Corkin stated that his wife, his son, and himself purchased the lot next to Mr. Ward's lot in 2019. He stated that he hired Frazier Surveying Company in January of 2020 to do a survey of both properties because he owns lot three which faces Marpat Road.

Chairman Prinster asked if these properties were surveyed before they were purchased.

Mr. Corkin responded that they were surveyed after he purchased them. As a result of the surveys, he found out that he has access to the smaller lot and a 25-foot access from North Point Prairie Road to his home. He was also informed that the house was too close to his property line. He stated that he called St. Charles County's septic inspector when he was getting ready to build on his property and he also had percolation tests done to make sure that the well and septic system on for his property wouldn't affect anything on Mr. Ward's property. At that time, Mr. Ward called him because he thought that he had called the County to complain about something he was doing on his property but that is not what happened. It was agreed upon by himself and Mr. Ward that a land swap would be done with part of his property to

compensate for the variance. He stated that he does not mind doing this land swap or anything else that needs to be done in order to help Mr. Ward.

Kevin Desain asked if this land swap would bring the setback issue into compliance. He stated that if this is a potential way to solve this issue without a variance, then maybe this request should be tabled until this land swap takes place because otherwise there is no guarantee that it will take place.

Eric Merchant stated that Shane Waltermann got together the land swap documents and took them to the Corkin's home. At that time, they suddenly asked for 50 feet off the south side of the property which would no longer be an equal deal. Mr. Merchant stated that Mr. Wade is not opposed to the land swap, but it will only solve the setback issue on the east side of the property and not the issue on the west side of the property.

Mr. Corbin stated that what they stated at that time is that they would prefer to have 24 feet not 50 feet, which that would give them a 50-foot road frontage off North Point Prairie Road.

Chairman Prinster asked if there were any other questions or comments. There were none.

Chairman Prinster asked staff if the land swap would put Mr. Wade's property into compliance without a variance.

Robert Myers responded that it would depend on the details of the land swap and how much land was specifically swapped but conceivably it could work.

David Bauer asked if Variance Request (A) would be needed if they did this land swap.

Robert Myers responded that would not solve that issue. He added that as long as they are coming to Board of Zoning Adjustment to request a variance for the front yard setback, it would be more expedient to address the side yard setback at the same time rather than to have the possibility of having to come back a second time for another setback variance.

Chairman Prinster asked Kevin Desain about his suggestion to table this and see if they could work out that land swap.

Kevin Desain stated that they would have to request that here before we can table it.

David Bauer stated that the land swap would only table half of the variance request so the Board will still have to vote on Variance Request (A).

Kevin Desain stated that since he does not hear anyone saying they want to proceed with the land swap, Chairman Prinster may want to just call for a vote. Chairman Prinster called for a vote

David Bauer made a motion to approve both Variance Request (A) and Variance Request (B), subject to staff's recommendations. The motion was seconded by Kevin DeSain.

The vote on the motion was as follows:

Gerry Prinster	Yes	Kevin DeSain	Yes	Leslie Gross	Yes
John Matlick	Yes	David Bauer	Yes		

Application No. VAR22-02 was **Approved**.

APPROVAL OF THE MINUTES FROM THE OCTOBER 7, 2021 REGULAR MEETING

Chairman Prinster asked for a motion to approve the minutes from the October 7, 2021 regular meeting. Kevin DeSain made such motion, and the motion was seconded by John Matlick.

The minutes were approved by unanimous voice acclamation.

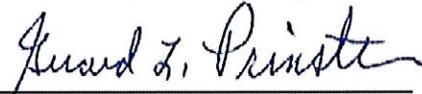
OTHER BUSINESS

Robert Myers informed the Commission that Ellie Marr, Senior Planner and Certified Floodplain Manager recently retired in February.

ADJOURNMENT OF MEETING

Chairman Gerry Prinster called for a motion to adjourn the meeting. The motion was made by David Bauer and was seconded by Kevin DeSain. The motion was approved by unanimous voice acclamation, and the meeting adjourned at 8:26 PM.

Respectfully submitted by:



Gerry Prinster, Chairman

9-01-22

Date