

# JOHNSON COUNTY BOARD OF ZONING APPEALS

## Zoom Webinar

### MINUTES OF MEETING

July 15, 2020

5:30 p.m.

#### I. CALL TO ORDER

A meeting of the Board of Zoning Appeals of Johnson County, Kansas, was convened at 5:30 p.m. on Wednesday, July 15, 2020, and was called to order by Richard Hemphill, Chairman, with the following members present and participating; to-wit: Andrew Belt, A.J. Lang and Roxanne Morse. Also present were Sean Pendley, Diane Wicklund and Jay Leipzig, Johnson County Planning Department. Serving as Secretary to the Board of Zoning Appeals, Leslie Davis.

Chairman Hemphill: Please note:

*To reduce the spread of COVID-19, the Board of Zoning Appeals meeting will be conducted online using Zoom Webinar. The board members will not be physically present in the board meeting room.*

*If you are using Zoom, you may participate in the meeting using your computer, phone or other electronic device. If you e-mailed the Planning department in advance of this evening's meeting and signed up to speak at the public hearing cases, your name will be called by the moderator in the order received. If you are unable to sign up in advance and you would like to speak, then prior to the start of the case that you want to speak on, click the "raise hand" function in the Zoom app. By phone, you may raise your hand by dialing \*9.*

*All speakers will be limited to three minutes, unless the Chair designates a different time period in order to accommodate all the speakers desiring to speak. When your name is called by the moderator, your microphone will be unmuted. Please state your name and address for the record, followed by you comments. With respect to all board members and presenters, please state your name every time you begin talking, so the notes can be transcribed accurately for the record. This is a public hearing. We are presenting live and recording the meeting. Thank you.*

#### II. AGENDA ITEMS

##### Additions, Deletions, or Revisions to the Agenda:

Chairman Hemphill: With respect to the agenda, item 2, number a, are there any additions, deletions or modifications to the agenda that anybody would like to make? [none]

*Motion by Mr. Lang, seconded by Ms. Morse, to approve the agenda. Motion carries unanimously.*

##### Disclosure of Conflicts of Interest:

Chairman Hemphill: Does anybody have any conflicts of interest? [none]

##### Disclosure of External Contacts/Discussions:

Chairman Hemphill: Have there been any external discussions on the information or on the item before the Board? [none]

#### III. APPROVAL OF MINUTES

Chairman Hemphill: The June 19, 2019, minutes were in the packet. Has everybody had a chance to review those?

Mr. Belt: Yes.

Mr. Lang: Yes.

Ms. Morse: Yes

*Motion by Ms. Morse, seconded by Mr. Lang, to approve the minutes of June 19, 2019. Motion passes unanimously.*

#### **IV. BOARD REPORTS**

Chairman Hemphill: I guess this would be Sean or Diane?

Mr. Pendley: I'm not aware of anything, of Board of County Commissioners actions recently, for any items related to Board of Zoning Appeals. I will just note that we are looking for appointee as replacement for some of the Board members that have resigned, so we are actually looking into those appointees now with the County Manager's office and we hope to have an update on that here in the next month. So, before there's another meeting, we'll have an update on new board members.

Chairman Hemphill: I have a question, Sean. If a person lives half time at Gardner Lake, but it's not their primary residence, are they in the county? Could they join this?

Mr. Pendley: That's a good question. Are they a property owner in the unincorporated area?

Chairman Hemphill: It's a property owner who contacted me the other day. It's one of my former...He's an architect that I used work with. He said, "You know, I'm retired. I'm looking for something to do. Do you know any boards or anything?" So, I could get you his information. I don't know – maybe you've got plenty of people who are willing.

Mr. Pendley: Not a lot. That would be great. I think it would be very appropriate to forward their information. We could share that with the County Manager's office. We do need to check. We do have to have a certain number of board members based on district, based on their location in the Commission's districts. So, we'd have to see where we are with that. But, certainly, forward their information to me. I will get that to Jay Leipzig and also the County Manager's office, and we can certainly see about that.

Ms. Wicklund: And we could check with the Legal Department and the Manager's Office about your question. I don't think I've ever had that question before. That's a good one. I don't know what the answer is, but we can find that out.

Chairman Hemphill: All right, I'll forward his information.

Mr. Pendley: Thank you.

Chairman Hemphill: How about Planning Commission activities?

Ms. Morse: Well, at our last meeting – we've had our last two meetings on Zoom – we reviewed the Annual Comprehensive Plan, as required by law and determined that the plan remains current and that no part of it has become obsolete. Then also, kind of ongoing, talking about flexible subdivision design in the PRUR, Planned Rural District.

Chairman Hemphill: Thank you, Roxanne.

#### **V. BUSINESS BEFORE THE BOARD**

**Application No. SE 20-49-BZA (AU) – Variance – 6001 W. 180<sup>th</sup> Street**

Kevin Christian, applicant, and Elisabeth A. Lothamer, landowner, requesting a height variance on a detached garage, on a residential lot, zoned RN1, Residential Neighborhood 1 District on 3.6 acres, in Section

29, Township 14, Range 25.

Chairman Hemphill: Could we please have the staff report?

Ms. Wicklund: Yes. I'm going to be doing the staff report here. I think I'm going to just go through the staff report, and then I can share screen, maybe here when we get to the end. Actually, I think I'm going to try to share the staff report now. Can everybody see the staff report?

*[Unidentified Speakers]*: Yes.

Ms. Wicklund: Okay, so I'm going to try to scroll through this as I go along here. This is a request for a variance to allow a 28 ½ foot tall detached accessory structure, instead of the maximum height allowed of 25 feet. It is located at 6001 West 180<sup>th</sup> Street. The property has RN-1, Residential, zoning. It's about 3.6 acres in size. You can see the aerial view here. It's got a single family home on it.

Really, the purpose of the variance is to facilitate construction of a new detached accessory structure taller than allowed by the regulations. The reason for the request is because he wants the proposed garage to match the existing home in height and architectural style, scale, roof pitch, etc. This property is located in the Berryhill Farms Estates subdivision.

I'm going to scroll down here. Here's just another aerial view of the property. The yellow square is the general location of the new garage. Here gives you a zoomed out picture of the area. The new proposed garage would be generally where that red star is. This is, if you can see the outline in blue, the subject parcel. It's within the subdivision of Berryhill Farm Estates. Also, just to note, if the variance request is approved, a conditional use permit would also need to be approved for the oversized accessory structure, prior to issuance of a building permit. So that would be the next step, if and when we get to that point.

Like I said, the general character of the area that you can see here is it's located within this subdivision. To the east, west and south of the subject property is the RN-1, Residential, zoning. There is Rural zoning to the north, if you can see where my mouse is scrolling over. And then, the Midwest Bioscience Research facility is over here to the northwest.

So, just a reminder that there's five criteria for granting a variance. I believe the last time we met, we had two applications last summer, so I'm going to go through each of those criteria. I'll try to be as quick as I can, but just a reminder that this Board must find that all five criteria are met in order to grant the variance. If the request fails on any one or more of the five, then the variance cannot be granted. Just a quick reminder on that.

I'm going to go back to the aerial picture as I'm talking. The first criteria is that the variance request arises from such conditions which are unique to the property, which are not ordinarily found in the same zoning classification as created by the Zoning Regulations and not created by acts or actions of the property owner. This first criteria is really asking the question, is there a hardship or a physical constraint to the property that prohibits the applicant from complying with the Zoning Regulations? With our review, there really does not appear to be anything unique about this property in relationship to its size, zoning, configuration or topography that would prohibit the applicant from complying with the height requirement. That height requirement is equally shared and enforced against all property owners that have this Residential zoning. Compared to the proposal, which is about a 28 ½ foot tall accessory structure, I found no other accessory structures in this subdivision that are taller than the 25 feet maximum height. Just to note, I cited two options in the staff report that the applicant could utilize in order to comply with the regulations. One is to redesign the proposed garage and reduce the height to 25 feet; or, construct an addition to the house instead of a detached accessory structure. Main structures or houses in this zoning district are allowed a maximum height of 35 feet.

The second criteria is that the variance would not adversely affect the rights of adjacent property owners. Adjacent property owners have the right to develop and use their property in accordance with the Regulations, and they expect enforcement of the Regulations upon neighboring property. The surrounding zoning has this RN-1 zoning. There are 10 lots along 180<sup>th</sup> Street, which is the cul-de-sac street that you can see here. So, there are 10 lots along 180<sup>th</sup> Street, and they are all developed with a home, with a residence. Only one of those lots has a detached accessory structure, and it is less than 25 feet tall. To the west of the subject property, along Dearborn Drive, there are two lots that have detached accessory structures, and they appear to be less than 25 feet tall.

The proposed detached garage will comply with the setback requirements and will be located to the side of the house, not behind the house. As you can see here, where that yellow square is. It will be located about 170 feet from the house and about 360 feet from the house to the east, which is across the street, and about 470 feet from the house directly to the west. The subject property is located within a residential subdivision and located along this curve of 180<sup>th</sup> Street, which would make the – I'll show it here – which would make the garage more visible. Because of the location of the proposed garage and the close proximity to the adjacent residences, granting the variance would adversely affect the rights of the adjacent property owners.

We can go on to the third criteria, which is that the strict application of the Regulations would constitute an unnecessary hardship upon the property owner. Really, here we don't feel like this criteria is met, because that does not constitute an unnecessary hardship upon the owner, but it's more of an inconvenience. He would still be allowed to construct an accessory structure 25 feet tall and still make a reasonable and economically viable use of his property if required to conform to those height regulations. So, this third criteria is not met as well.

Going on to the fourth criteria, which is that the variance desired will not adversely affect the public health, safety, moral and general welfare. The proposed structure could visibly alter the character of this residential subdivision, because if the variance is approved, it would locate a larger over-height accessory structure, which could be seen from the street and adjacent residences. The variance request will not adversely affect public health, safety or morals. However, the variance would adversely affect the order and convenience of the neighborhood, for the following reasons, which I've already touched on. Because the detached accessory structures in the immediate neighborhood do comply with the height requirements, the locations of the proposed garage is to the side of the house and not behind the house and therefore, more visible from the street. The close proximity to adjacent homes and the over-height proposed accessory structure will not be compatible with the order and uniformity of this residential subdivision and would not meet neighborhood expectations of enforcement in compliance with the County Regulations.

The last criteria, the fifth criteria, is that granting the variance desired will not be opposed to the general spirit and intent of the Zoning Regulations. We did find that this criteria has been met. The applicant is, again, requesting about a 28 ½ foot tall structure. That results in about a 14 percent increase, or about 3.5 feet, in height from what the Regulations allow and is not a substantial deviation from the maximum height requirements and therefore is not opposed to the spirit and intent of the requirement. So, this criteria has been met.

In summary, in staff's opinion, not all of the criteria have been met for granting the variance, and for the reasons that I've talked through with each of those criteria. So, Planning staff is recommending denial of the variance for this over-height garage. You'll also find, a couple basic reasons for the recommendation tonight. But then, those are also summarized in that Proposed Findings and Conclusions that we usually do. You're familiar with those. They start on page 9 through 11. We can look at those later, after discussion. So, I think I'm going to stop there for now. If you have questions, I can answer those, and hopefully the applicant is online and can hear me and can respond to questions as well.

Mr. Pendley: Once the Board is ready, I can go ahead and open up the hearing, and we can allow the applicant to speak.

Chairman Hemphill: I have a few. I can go first, or does anybody else have any questions for staff at this point in time?

Mr. Lang: Yes. Richard, I would like to ask Diane if Berryhill Farms has subdivision restrictions? Since it was done in 1973?

Ms. Wicklund: Yes. They do. I did find that they do have a Declaration of Restrictions for the Berryhill Farm Estates subdivision. Those were recorded in 1973. I did do a quick review of those, and I found no reference to a maximum height for homes or accessory structures, and I was just specifically looking for any height requirements.

Mr. Lang: Right.

Ms. Wicklund: I did not see any reference to that in those restrictions.

Mr. Lang: Okay, thank you, Diane.

Chairman Hemphill: On the height, you brought up one photograph a while ago that showed there was a flat roof on the very top of the house... Yeah, if you can zoom in. Yeah, everybody see that? I can't remember the exact words the applicant was saying. He wanted the slope of the roof to match the main structure, and that little flat piece up there, that could be an option for him. I just noticed that when you brought that up. I thought, gosh, why is he so concerned? The other thing – this is just a theoretical question – with 25 foot height, does anybody have any thoughts on why that's 25? Why that's not 35, or...? Is it possibly to make the house the primary thing on a building lot? The accessory structure is number? Any thoughts on why it's 25 feet? I'm really curious.

Ms. Wicklund: In general, I can start, and then maybe if Sean or Jay have anything to add, they can do that as well. The Regulations in general set forth, uniform rules and procedures for the improvement and division of property. The intent of height requirements in the Regulations is to promote orderliness and uniformity in Residential zoned subdivisions, and to promote adequate light and air onto the subject property and adjacent properties. In addition height limitations can also protect views and vistas of adjacent properties and neighborhoods in subdivisions, which can benefit the community. They can also play a role in the integrity and the character of a neighborhood or a subdivision. So, those are some of the general reasons why we have height requirements. Now, I'm not sure how they got to 25 feet, necessarily, back in 1994 when these regulations first came into effect, in terms of the height. I don't know if that helps, or if Sean has anything to add.

Mr. Pendley: I would just expand on what Diane mentioned. I think, as you had mentioned, Chairman Hemphill, what I think the intent for the height of the accessory buildings is for that to be just that – an accessory to the primary structure for the house. If the addition was for a garage or an addition to the actual house, it could be taller. It could be the height as to what would be allowed for the primary structure, which would be taller. But here, because it's an accessory building and it is detached, there is a different height requirement for those accessory buildings, and I think it is for that very reason – to be secondary to the house. The thought process is that it shouldn't be as prominent, so it's that lower height, the reduced maximum height. That's also why there's other provisions – for it to be set back, to be equal to or behind the building line for the primary structure. I think that's the main intent. As Diane mentioned, I don't where that magic number 25 foot height came in. That was probably considered the top of what would be allowed for a detached structure. That should be the maximum for a residential district.

Chairman Hemphill: Okay. There were several floor plans that were attached. They were in the packet. It's of no concern to this board that it looks like that's going to be a living unit upstairs?

Ms. Wicklund: I'm going to try to get to those. I think I'm going to have to scroll up.

Chairman Hemphill: We can ask the applicant, but it just struck me as kind of odd that.

Mr. Belt: I have to say, that was one of the first things that came to my mind as well when reviewing this. I think one of the other questions I would have, more of a concern, is not necessarily there being no undue hardship to the applicant, but also when you look at the uniformity and why the restrictions are in place from a residential valuation standpoint and how it may affect the surrounding homeowners and their properties, what you're doing is kind of setting precedence there for allowing these variances. You create, in a sense an extraordinary condition where you've got a structure that is not comparable to the other properties that are in the area that have an accessory structure. So, one of my concerns would be, does anybody have any comment on the impact that it actually may create to some of the surrounding property owners that they may not consider just visual?

Ms. Wicklund: I brought up those floor plans.

Chairman Hemphill: The second floor is what kind of caught me. It just looks like it could be a couple bedrooms. Obviously, there's no toilet shown, but pretty fancy garage. Oh, yes there is. Excuse me. And a shower, all right.

Ms. Wicklund: I think the applicant is online, so he can answer that, too. I did ask him that, and he said there's no intent for it to be a dwelling unit – mainly storage and vehicles, and maybe storage for this second floor area. So, maybe he can talk about that, too.

Chairman Hemphill: That would be fine. Are there any other questions for staff at this point in time?

Ms. Morse: There's two gables on the front of the house, two peaked gables. Do you know what the height of those are? On the house, not the accessory building.

Ms. Wicklund: Oh, on the house?

Ms. Morse: Mm-hmm.

Ms. Wicklund: I don't know that. Houses in this zoning district are allowed up to 35 feet in height. I don't know off the top of my head how tall it is. Is that what you're asking, or just more specifically the - ?

Ms. Morse: Yes, but the two peaks, the two gables. One's a large one on the left and the smaller one on the right. I just wondered what the height was compared to what is being proposed on the accessory building.

Ms. Wicklund: Oh. I'm not sure I could answer that right now. We could probably get that information, or maybe the applicant knows that and could maybe answer that.

Chairman Hemphill: Diane, can you zoom in on the bottom two elevations? Zoom in on those dimensions?

[*adjusting screen*]

Mr. Lang: There you go.

Chairman Hemphill: Okay, it looks like it's roughly 10 feet. On the garage, it looks like 10 feet to the first floor. No, that's 11 feet. Excuse me. There's roughly 12 feet for the first floor and 10 feet for the second. That's 22, plus the 6 foot 6 more, would be 28 feet, 6 inches. I'm just trying to get a feel for floor-to-floor. Assuming the main building...I don't know if you could go back to one of the elevations on the photographs of the front of the main building and zoom in. You have to backtrack to the photographs that were in the staff report. Can you zoom in on the front?

Ms. Wicklund: Like this one? Is that a good one? Or maybe this one?

Chairman Hemphill: That one.

Ms. Wicklund: Does that help? Is that a little bit better?

Chairman Hemphill: Yeah, I'm just trying to get a feel for, to answer Roxanne's question. It's kind of hard to tell on that.

Ms. Morse: I'm looking at the color photo packet. On the front page is the front of the house. You can see the two gable peaks, and they are less than the roofline.

Mr. Lang: There you go.

Ms. Wicklund: Is that what you're looking for?

Chairman Hemphill: Yeah.

Ms. Morse: So I was wondering what height that was in comparison to what's being proposed.

Ms. Wicklund: Yeah.

Ms. Morse: And also the height of the smaller one.

Ms. Wicklund: These two are what you're talking about in terms of heights?

Ms. Morse: Right.

Ms. Wicklund: Maybe the applicant will know. I'm not sure without being in the AIMS mapping system. I'm not sure if I can measure that now.

Ms. Morse: Well, the applicant says he wants that height to be compatible with the house, so I was wondering, is he proposing something the same height as the one on the left? Or the one on the right? Or something taller?

Chairman Hemphill: I suppose we'd better... We can come back to staff after the applicant speaks. Maybe this is a good time. If nobody else has any, what I call nut-and-bolt questions for staff on the application, maybe we should go to the applicant now.

Mr. Pendley: I have Mr. Christian on the meeting, and I just allowed him to speak with the rights here for speaking, so Mr. Christian, can you hear us?

*Kevin Christian, 6001 West 180<sup>th</sup> Street, Stilwell, Kansas, appeared before the Board of Zoning Appeals via Zoom and made the following comments:*

Mr. Christian: First off, thank you for taking your time to look at my situation. The actual reason for the height is I hired an architect, and I asked him his opinion – it's what he does – and he said this 28-foot-6 will tie in and be aesthetically pleasing to the eye, and it won't look like an afterthought. I'm trying to use all the same materials. The homes association wants you to use the same materials and colors and all that, so I want to abide all of that. There was a question about a bathroom. The bathroom is on the first floor. We're outdoors people, and I've been asked to keep my muddy boots and my muddy body out when I come home from hunting, to keep it out of the house. So, that's why the bathroom is there. The upstairs is strictly storage. My kids are a bit younger, but they all have aspirations of playing golf. I was going to put an area of there for them to hit golf balls into a net.

Ms. Wicklund: On the second floor area, do you mean?

Mr. Christian: Yes, ma'am.

Ms. Wicklund: Okay.

Mr. Christian: And then, I believe a letter was sent...As far as it being detrimental to the

neighborhood, I think it was sent out to all of the neighbors within 1,000 feet. Did you get a response from any of that?

Ms. Wicklund: I did not. No.

Mr. Christian: Okay. This is far enough from the road – and I know you have rules and regulations, but I don't see what the... I personally, as a homeowner, I don't see what a variance would make a big difference to the neighborhood or the county or the area. No one is even going to know that. Not that we're trying to hide anything, but they're not going to know the difference. I am probably oversimplifying it, but that's just my take on it.

Chairman Hemphill: I had something written down. All I've got to do is find it. So, you want the roof slope to match. Had you considered putting a flat top on it like your main house? Your main house, that area that has a flat top?

Mr. Christian: Yeah, there is a flat top area on that one section. I left it to the architect, so I had not considered that. I don't know how it would look. I'm not that creative.

Chairman Hemphill: Years ago we had a variance on height for a monster house, 135<sup>th</sup> Street and Moonlight, a big brick house. They came in and they did a flat roof on top to meet the 35 feet. So, everybody went away happy on that one. I'm just curious, if you truly are in love with that location, that plan, that is a possible option for you – to flatten the top. Because, you now, we deal with variances on like side yard setbacks, where there's a big tree or there's a rock outcropping, or you have laterals. There's some kind of hardship reason why you need four feet instead of meeting five feet. But, the sky is not the limit. There's nothing, on a vertical setback, what's the hardship? The hardship is you want to build it taller to meet the roof slope, so that's kind of an uphill battle. You know, we've got the five criteria. Do you have a statement for why you might meet all of those five criteria?

Mr. Christian: I do not.

Chairman Hemphill: You do not. Okay.

Mr. Belt: Mr. Christian, just in looking at this, I'm just curious. I understand that the architect had wanted to produce a structure that was similar aesthetically, and I agree with the concept there, but in looking at your piece of property and the trees that run along the driveway there and the distance that that structure would be set back from the street – did the architect convey or express that he really did think that that three-foot difference was going to be that impactful to the eye from that distance, of a structure that was architecturally of the same design?

Mr. Christian: He didn't go that in-depth. I've just dealt with him many times, and we're on, kind of the same page, the same tastes and communicate pretty well. But we did not go through that detail. No, we did not. I'm looking at this –

Mr. Belt: Just curious.

Mr. Christian: Yeah, I understand. I appreciate that. I'm looking at the drawings. I don't know I would aesthetically put a flat roof on it, but I'd be glad to visit that.

Chairman Hemphill: I don't mean... It is a little awkward, but you've done it on the... I'm looking at your final elevation on page four.

Mr. Christian: Yes, sir.

Chairman Hemphill: I mean, when you talk about roof slopes, you look at your left elevation on page four – that's got an Ozark slope to it. You know what I mean by that? Two different... It's like you put an addition on the house and the main roof is too steep, so you've got to kick it out at an angle. I think your roof is all over the place. It's probably a function of the 12-foot first floor that kind of starts the process. So, we're not here to tell you how to design your facility. We're just

trying to meet the five criteria that we've got, you know. Unique condition. Won't adversely affect the rights of the adjacent property owners. The strict application of these Zoning Regulations from which the variance is requested will constitute an unnecessary hardship. The variance desired will not adversely affect the public health, safety, morals and order. Granting the variance will not be opposed to the general spirit and intent of the Zoning Regulations. Those are what we're judging it on. These are side discussions – the roof slope and that you've got a bathroom or whatever down there, or what your architect thinks. I guess, to get back on track, we really need to look at those items. I guess if you have no...I mean, it's a lovely looking addition. I like it. I'm not sure it can meet our criteria. Does anybody else on the board have any comments or any questions for the applicant?

Ms. Morse: I'd like to ask about the height again of the two gables on the front of the house.

Mr. Christian: I don't think that those, particularly, are the same, but there's other parts of the roof that are, and this is just an architectural proposal He's just trying to make it look tasteful.

Ms. Morse: Do you know the height?

Ms. Wicklund: I think Roxanne is talking the height of the two gables.

Mr. Christian: Not to the peak. Just to the gable part.

Ms. Wicklund: Trying to compare this height to the height of your proposed garage. So, Kevin, do you have any idea of what this height here might be?

Ms. Davis: Kevin disconnected somehow. He's no longer on here. We'll want to wait 'til he comes back, and then Sean will have to let him in again.

Ms. Wicklund: Okay.

Mr. Pendley: I'm looking at the attendees, and I don't see him. I'll wait and hopefully he's able to reconnect.

Chairman Hemphill: Well, to fill that air, visually, it looks to me like that's probably...If the gutter line on the front side of the garage, that gutter line is probably 10 feet. I would guess that's 24 or 25 feet. I'm just guessing.

Ms. Wicklund: To here? Yeah.

Chairman Hemphill: From the ground, probably 24 or 25 feet. Probably, but just a guess.

Ms. Morse: Well, I think to be aesthetically pleasing to the eye, the detached building shouldn't be higher than the gable part. The roof shouldn't be any higher than that gable on the front of the house. That's what I curious about. And if it's 25 feet or less, then transfer that look to the new structure, you'd have something that looks compatible and would meet the Regulations.

Chairman Hemphill: You know, when I was driving that neighborhood, this is just...I'm feeling dead air. This is not...When I was driving in that neighborhood, there's a lot of older farms. The traditional old farm – the barn is big and the house is small. The Regulations have flipped, and I see a reason for the flip. The outbuilding is small and the house is big. It establishes the hierarchy. I guess that keeps people from running a business out of their garage or building a massive structure out there. That's why I was asking on that 25 feet, if it had something to do with...From 30 or 40 years ago, if it had something to do with this land being partially agri- and partial high-end residential, and some farmer may want to build a barn on his property. I don't know. Just filling dead air.

Mr. Pendley: We're still waiting for the applicant, to see if he can re-connect. Leslie is trying to call him. I don't, Diane, if you have some additional things.

Ms. Davis: If I could interrupt...

[Reconnecting with Mr. Christian]

Mr. Christian: I'm just going by what the architect said, who has been doing this for many, many years. He said that this would be something that would be most appealing to the eye and would not look like an afterthought. I can only go with what the professional tells me. The hardship would be going back to the drawing board and spending the money to have it redrawn. I guess that's all I have.

Chairman Hemphill: Okay, well, can I read these to you, and if you have any comment, please make it. The variance requested arises from such condition which is unique and not ordinarily found in the same zoning classification and is created by the Zoning Regulations, not created by an action or actions of the property owner. So, do you feel your actions are creating this variance? I could probably explain that a little better if you –

Mr. Christian: No, I think my architect's actions have created the variance request.

Chairman Hemphill: Did he read the regulations? You know, like there's building codes and there's zoning regulations. I'm an architect. I know you've got to read that stuff before you start designing. It doesn't matter how fast you're running if you're going the wrong way.

Mr. Pendley: I'm sorry to interrupt. If I could just remind all the board members and the applicant, if you could announce your name prior to speaking. Thank you.

Chairman Hemphill: Okay, well, the action by the architect. All right, that's cool. Item a. Item b. – Granting of the variance will not adversely affect the rights of the adjacent property owners. So, do you have any comments on that one?

Mr. Christian: Well, if I'm granted the variance, I don't think it's going to adversely affect any of my neighbors, no.

Chairman Hemphill: Because you're so far spread apart, etc.?

Mr. Christian: Absolutely. We're far apart.

Chairman Hemphill: Okay. The strict application of the provisions of the Zoning Regulations from which the variance is requested will constitute an unnecessary hardship. Do you have a reply to that, sir?

Mr. Christian: Is it saying it would cost an unnecessary hardship on me?

Chairman Hemphill: Yes.

Mr. Christian: [*distortion*] It would cost [*distortion*].

Mr. Pendley: Looks like we may be having audio difficulty. I don't know if, Mr. Christian, if you could state that again, if you're still connected here?

Mr. Christian: I am. Can you hear me?

Ms. Wicklund: Yeah, can you just repeat what you just said, because it was cutting in and out a little, please?

Mr. Christian: The only hardship it's causing would be time and money. I'd like to get going on this, and I'm going to have to re-submit and have it redrawn. I'm sure all these architects are busy, and I'm probably going to be put in the pipeline, and he'd get to me when he could.

Chairman Hemphill: Thank you. The variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare. I guess what we're talking about here is just the general character of the neighborhood – big spaces, 3.6-acre lots. Do you have a reply to why your variance will not adversely public health.

Mr. Christian: It's not going to affect any public health. [*distortion*] in spite of putting a [*distortion*]. I guess I could do that, but what constitutes a breezeway? Would it be a trellis? Could it be canvas? That wouldn't tie in with the aesthetics of the home [*distortion*].

Chairman Hemphill: That's probably not a question for this board. It's more than a used car lot vender, but it's less than the [*inaudible*] of my building addition. A lot of people do covered walkways or something like that. I shouldn't be commenting on that, but that's something you could go into with the staff.

Ms. Wicklund: You were cutting in and out again. I didn't hear all of that question, but was it something about could you do a breezeway and call it attached? Was that the question?

Mr. Pendley: I don't know if we...I think Mr. Christian may be back now. I think one of the things I would ask, if the applicant wants to consider alternatives, it may be more appropriate to bring back a revised plan, if he is wanting to consider that, but maybe to consider the matter at hand here for this current application as it is, with the variance.

Ms. Wicklund: Kevin, can you hear us?

Mr. Christian: I can.

Ms. Wicklund: Okay, I'm sorry. Was your question before – what was it about the breezeway?

Mr. Christian: I guess my question would be, what constitutes a breezeway? Could it be a trellis from one building to the other? I mean, I guess it's all in the eye of the beholder. I'm not trying to skirt any issues, and I'm not a bait-and-switch guy. I'm straightforward, and I'm just trying to do what the architect said. I like the drawing, and I don't feel it's unreasonable, but I know we have rules and regulations. I know sometimes the rules don't always apply and are not always the best fit. But I'm obviously going to honor your wishes or whatever you guys come up with, so I guess I'll close with that.

Ms. Wicklund: If I could just try to answer that real quick here. So, if kind of the direction you were going was if I do some kind of breezeway from the house to this proposed garage, would that be considered attached, and therefore I could go up to 35 feet instead of 25 feet?

Mr. Christian: That would be...There's a couple of structures in my neighborhood, that that's what they've done. I'm not saying it's right or wrong. It's just, I guess it's how you play the game.

Ms. Wicklund: Just a quick note here, that breezeways generally do not count in making a structure attached to a home, to a house. It generally has to be a full addition, attached to the main wall, a significant part of it attached to a main wall of the house. Breezeways or trellises or walkways, or whatever, really generally do not count for that. Now, you may see breezeways out there. Not that you can't have them, but they may or may not be able to count something as attached. So, maybe if you see a breezeway out there, that doesn't necessarily mean that that structure was considered attached in terms of planning and zoning, if and when they came through for a building permit.

Mr. Christian: I got you. Okay.

Ms. Wicklund: I don't know if that helps. I just wanted to share that, because I don't want us going down a direction that wouldn't really benefit anybody here.

Mr. Christian: Well, I'm not going to construct a breezeway. I think what I'll probably do just to make it simple is I'll probably go back to my architect and go back to the drawing board and come back with something that fits all the criteria I'm supposed to.

Chairman Hemphill: That's a good idea. Ask him why he didn't read the Regulations.

Mr. Lang: I agree with you, Richard.

Chairman Hemphill: I mean, usually that's part of the service, is a code review and a review...Now,

if he's used to working – I don't know where he's used to working – but if he's used to working rural Johnson County, he should know that there are zoning ordinances here. That's not going to affect your outcome tonight. I'm just saying that as information to you, Kevin.

Mr. Christian: I appreciate all you're saying and doing. Mostly, I appreciate your time. I know there's some of you who put a lot of time into this, and I want to tell you that I appreciate it.

Ms. Morse: Kevin, I appreciate the fact that you are willing to look at this again, because I don't see how we can come to another conclusion. Because I do support everything that the staff has recommended in this report. I do agree with them. So, finding, getting over four of these points, I don't think it's...It's not going to fly, so it's good that you are willing to do that. I think that you might look into the height of your gable there, where your garage, and perhaps you can tie into that design in some way.

Chairman Hemphill: I agree with everything Roxanne said. It's going to be difficult for us to approve it. Are there any other questions for the applicant? Does the applicant wish to say anything additional?

Mr. Christian: I think I can close with what I said.

Chairman Hemphill: Thank you, Kevin. Assuming there is nobody else that would like to speak that's online.

Mr. Pendley: We do not see anyone else that is requesting to speak. Nobody else signed up to speak.

Chairman Hemphill: I will close the public hearing, and we'll have board discussion. So, does anybody want to start?

Ms. Morse: I think I've stated my position, that I support the staff report for the same reasons that they give and listed in the staff report.

Mr. Lang: I concur with Roxanne. I do not believe that it meets the criteria.

Chairman Hemphill: I agree with Roxanne also. I see no way to make all those criteria apply.

Mr. Belt: I also carry the same sentiment with the decisions and staff report, and I agree with Richard and the rest of the board here that it would not be in the spirit and the nature of what we have in place for a reason.

Chairman Hemphill: Thank you, Andrew. Well, if nobody else has any additional comments, is there anybody that would like to make a motion and second that motion?

Ms. Wicklund: Just for the Board's reference, I think there is a motion on page 11 if anybody needs that for a reference.

Ms. Morse: That's what I was hunting for.

Ms. Wicklund: Go to page 11 of the staff report, down towards the bottom. It says, "Proposed Motion."

*Motion by Ms. Morse, seconded by Mr. Lang, that the Board deny Application No. SE20-49 Board of Zoning Appeals for the reasons set forth in the Proposed Findings and Conclusion section of the staff report. Motion carries unanimously.*

Chairman Hemphill: Unfortunately, that was a nice-looking facility that Kevin wants to build. I wish him luck in the future.

## **VI. UPDATES/OTHER BUSINESS [None]**

Chairman Hemphill: There is nobody on the floor, I assume, that would like to speak.

## VII. NEW BUSINESS

Chairman Hemphill: Is there anything in line for us for Planning Commission or Zoning Board of Appeals-wise that we need to know about?

Mr. Pendley: There are no other applications pending for the BZA.

## VIII. OTHER BUSINESS

Chairman Hemphill: Is there any other business? Sean, you're the only one that's left.

Mr. Pendley: I think that's it. No other business, but we will provide an update on future additional BZA members once the appointees are made and provide an update to the Board. Diane, did you have anything in addition?

Ms. Wicklund: I did, sorry. Just while Kevin's online here, I just wanted to summarize. So, the Board of Zoning Appeals decision, the process is a little bit different than the zoning boards. So, since this Board has denied the variance request, that's really the end of the process. So, Kevin, you and I can talk later about maybe next steps.

Mr. Pendley: Actually, sorry Diane, Kevin is no longer on the meeting, so we'll have to follow-up with him. But thanks for the reminder. I wish we would have caught him sooner, but we'll follow up with him about the next steps. That would be helpful.

Ms. Wicklund: I know somebody mentioned something before about having him come back with drawings. Since the Board found that he did not meet all those criteria, I'm not going to send him in that direction, since you found that it didn't meet all the criteria. Say, if he came down to 26 or 27 feet, I don't think that would change the criteria. I just kind of wanted to say that. I was hoping he was still on the line, but I can share that with him later. I wanted to share that with the Board, just to make sure we were on the same page on that, there.

Chairman Hemphill: You know, I don't know where he wants the front door to that thing, but you can put buildings two feet in the bricks, two or three feet down and get the height... I mean, there's all kinds of ways an architect can work with something. I could make that thing look adequate at 25 feet, so I think he will. Just my opinion.

Ms. Wicklund: Then, Richard, we'll have to get with you, because what we do is we'll re-print off those facts and conclusions, and the Chairman has to sign those. So, at some point here in the next few weeks, we'll try to see, maybe either mail them to you, or we'll get that signature figured out.

Ms. Morse: I have a question for Diane. Let's assume that Kevin does come back with a plan – well, if he meets the criteria, the 25 foot – would he still see you to get approval on that?

Ms. Wicklund: If he meets the 25 feet height, he would not have to come back to you guys, to this board. But, as his proposal is now, his garage is still over-sized in terms of the square footage allowed for his acreage, so say he reduces it to 25 feet, he would still have to see if he can get a Conditional Use Permit for being over-sized. If he meets 25 feet height and he gets that Conditional Use Permit approved, then after that we could issue a building *permit*. But if he gets to that 25 feet you guys would not be seeing this applicant again.

Ms. Morse: I know that we wouldn't get it again if it meets the height standard, but I'd be curious to know. Maybe you could just let us know that he's proceeded and has met the requirements.

Ms. Wicklund: I think we can keep you updated on that. Yes.

Mr. Pendley: That's a good idea. We can certainly update the Board on proceedings, as Diane mentioned, he would need to submit a separate application if he doesn't reduce the size, but if he does reduce the height and meets the height requirement, he would still need to get a Conditional

Use Permit for the over-sized garage. We can certainly provide the BZA an update on that as it moves forward.

Ms. Morse: One more statement. How much is he exceeding the square footage? Is it a lot, or just a little?

Ms. Wicklund: I don't think it's a whole lot.

Mr. Pendley: If I recall, it wasn't too far over. I don't remember exactly.

Ms. Wicklund: Yeah. I had those numbers in the staff report and then I was asked to take them out, so I apologize. I know he wanted about 2,000 square feet. It wasn't significant, so I don't think Planning staff would have much issue with the Conditional Use Permit for it being over-sized.

Ms. Morse: Okay. I just thought if he's going to have to make a change on that, too, rather than redesigning twice...that he should wait and do it all at once with his architect.

Ms. Wicklund: Sure. And he's aware of that. I had that conversation with him. He wants to try to go through these processes to see what approvals he can get first.

Ms. Morse: Okay, well thanks, Diane.

## **IX. OLD BUSINESS**

Chairman Hemphill: Well, we have no other business. We have no old business. Anybody have any "Oh, by the way's," or comments they'd like to make? If not I will accept a motion to adjourn.

## **ADJOURNMENT**

*Motion by Mr. Lang, seconded Ms. Morse, to adjourn. Motion passes unanimously.*

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*Richard Hemphill, Chairman*

**ATTEST:**

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*Secretary to the Board*