

JOHNSON COUNTY BOARD OF ZONING APPEALS

Johnson County Administration Building

111 South Cherry Street

Olathe, Kansas

MINUTES OF MEETING

April 17, 2019

6:30 p.m.

I. CALL TO ORDER

A meeting of the Board of Zoning Appeals of Johnson County, Kansas, was convened at 6:35 p.m. on Wednesday, April 17, 2019, and was called to order by Richard Hemphill, Chairman, with the following members present and participating; to-wit: Jeff Menefee, Karen Barber and Roxanne Morse. A.J. Lang was absent. Also present was Diane Wicklund, Johnson County Planning Department. Serving as Secretary to the Board of Zoning Appeals, Sherry Cross.

II. AGENDA ITEMS

Additions, Deletions, or Revisions to the Agenda: [None]

Disclosure of Conflicts of Interest: [None]

Disclosure of External Contacts/Discussions: [None]

III. APPROVAL OF MINUTES

The minutes of the November 14, 2018, Board of Zoning Appeals meeting were unanimously approved.

IV. BOARD REPORTS

Chairman Hemphill: County Commissioners' actions?

Ms. Wicklund: The application this board heard in November of last year was a variance for a front yard setback at Gardner Lake. It was approved by the Board of County Commissioners. It's not really on your action agenda, but they have a two-week period of time in which they can review your decision, and if they want to hold their own public hearing, they can do that. They chose not to do that, so it was approved after that time period. That was the only application at your November meeting.

Chairman Hemphill: Planning Commission activity?

Ms. Morse: I'm a member of the Planning Commission. We have been discussing non-conforming parcels, and that is an ongoing subject that we are looking into. Recently, we had a workshop with Rick Lind from the Legal Department. He did a presentation on conflict of interest, ex parte contacts, and other issues concerning volunteers. I hope that some of you were there. It was a great workshop, with new information for everyone. If you did not attend, I would suggest that you contact the Planning office and ask for a hand out and notes from the meeting.

Chairman Hemphill: Can I ask you one question?. This has always puzzled me. If there are communications on a topic prior to it coming on our docket, is that a conflict of interest? I'm not applying it to this case, but I'm just curious if that was discussed at the workshop.

Ms. Morse: Discussions among whom?

Chairman Hemphill: The presenter telling the people in attendance that, let's say this applicant contacted me six months ago and said, "What shall I do? I have this problem with a setback." And I had a

discussion with him, and that's all it was, was a discussion. Now, six months later, let's say he's applying for an application. Is that an outside contact?

Ms. Morse: I would consider that it is, and I would suggest that you direct him to the Planning office to answer his concerns and questions. And the applicant insists on giving you information, then at the meeting, when you ask for disclosures, you need to disclose what was discussed. Because the rest of the board has the right to know whether you heard something that may not be heard tonight.

Chairman Hemphill: Somebody's trying to talk to me, or about something. I hate to be in that position, you know, to know something that nobody else knows. Just curious. Thank you.

Ms. Wicklund: And I think that's the appropriate response, is, sorry, I can't discuss this application with you because it's going to be before the board, and everybody needs to have the same information. I think Roxanne is right. Please contact the office. It's always awkward to have to tell somebody you can't talk about it, but it benefits everybody if that discussion doesn't happen. Then you don't have to explain it or talk about it.

Chairman Hemphill: Thank you.

V. BUSINESS BEFORE THE BOARD

Application No. NW-BZA-3459 (OL) – Variance – 13385 Moonlight Road

Mason Puthuff, applicant/landowner, requesting a variance to allow a 5-foot side and a 5-foot rear yard setback, instead of the setback required for construction of a detached accessory building on a 1 acre lot, zoned RUR, Rural District, in Section 30, Township 13, Range 23.

Ms. Wicklund: I'd like to enter the staff report dated April 20, 2019, into the record. Just a couple quick notes. In the back of the staff report packet there is a letter from one of the neighbors. I'm not going to read it. I will assume you read it when you read your packet. It is a letter, and I wanted to make sure that gets into the record. It's from a Kelly Knauss. So, I just wanted to make sure that you knew that was back there. A statement of support or narrative from the applicant is also in the packet, and the site plan.

In addition, the applicant/owner just handed you - and he'll talk about it when he gets up and talks - it's a petition from his neighbors. He'll talk about that later, but I also want to enter that petition into the record.

Chairman Hemphill: Diane, are all the neighbors on this form?

Ms. Wicklund: I don't know. Let's ask the applicant. So, I'll give a brief staff report. There are no neighbors in the audience here, other than the landowner. This is a request for a variance to allow a 5-foot side yard and a 5-foot rear yard setback where 25 feet on each side is required. The purpose is to construct a new detached accessory structure that will be about 882 square feet, with a 300 square foot lean-to, open walls, lean-to area with the structure. It is at 13385 Moonlight Road. It's got rural zoning. It does have a single-family home on the property, and the property is about one acre in size. It is platted, and is in the Moonlight Acres subdivision.

Just a quick note that we also have height restrictions on detached accessory structures on properties that have 10 acres or less. This does not exceed that in terms of size, so we're not talking about the size. The variance is only for the setback request. Just wanted to make sure that is clear. There is a concrete pad that has been poured, just so you know that.

You see a couple aerial pictures in the staff report on pages 2 and 3. This allows you to look at the property, see the location of where the accessory structure is going to be. So, in terms of, you know, we have to go through these five criteria that are set forth by state statute specifically for the Board of Zoning Appeals. I will go through that fairly quickly. This is an eight-lot subdivision, and then, it continues actually to the south, across 135th Street to the south. They are all generally one-acre lots. And there is a church to the east that you can see in the aerial.

The first criteria is that the variance request arises from such a condition which is unique, and which is not ordinarily found in the same zoning classification, and it's not created by an action or actions of the property owner. This one is generally, you know, there is some topographical or geographic reasons that limits the property where you can't meet the setback requirements. Like flood plain, or if there's a creek that runs through the property that makes it difficult. There really are no geographic constraints to the property. The request is really created by the owner's desire to build this detached accessory structure. That's the first requirement. In our review of it, it looks like that there are a couple other options where they could locate the accessory structure, where it would be detached but still meet the 25-foot setback requirement. They could do a garage addition attached to the house and also meet the setback requirements. That's not what they are looking to do, which is why they are requesting a variance.

The second criteria is that it would not adversely affect the rights of adjacent property owners. This one is a little more complicated. There's a pattern within these eight lots, where most of the lots have smaller garden sheds or tool sheds in the back yard, pretty close to the back property line. So, a building permit is not required on structures that are 200 square feet or less. Therefore, they don't come in for building permit, we don't see a site plan, we can't look at the requirements. Although when people call in, we tell them, you know, even though you don't need a building permit, they still need to meet the setback requirements.

Chairman Hemphill: Can I ask a question? It's the honor systems on these small buildings?

Ms. Wicklund: If it doesn't require a building permit, Unless a neighbor calls in and specifically asks about it, then we would have to follow up on that complaint. Our code enforcement is complaint-driven. We don't have the staff to be proactively looking for violations all the time. So, yes, it's basically an honor system because if we don't get to review a building permit or a site plan, we have no ability to go out and look.

Chairman Hemphill: Okay.

Ms. Wicklund: There is this pattern out there, but they are smaller sheds. There are a few larger accessory structures that are maybe more comparable in size to what the applicant wants to build. I think those, except maybe one, meets this setback requirement. One affect to adjacent property owners is that it would be locating a larger building than what exists on nearby lots, at 5 feet versus 25 feet. That may adversely affect the rights of property owners.

The third criteria that we look at is that the strict application of zoning regulations - in this case the setback - will constitute an unnecessary hardship on the property owner. With this criteria, I think we arrived at the conclusion that since there are a couple options for the applicant to locate a building and meet setbacks, that there is not a hardship. They could still come in and get a permit and build what they want.

Just a quick note. We did receive a note that Johnson County Environmental Department went out and did a locate check. There is a mound system for the septic system on the property. Given the location that they want, which is 5 feet from each side, I think Environmental said that there were no concerns because they have setback requirements, too, and it would not conflict with that. Nor would it conflict with these other possible locations. So, I don't think there's really an issue there. I just wanted to note that, as well.

The fourth criteria is that the variance desired will not adversely affect the public health, safety, morals, order, or general welfare of the neighborhood. I think, again, what we're seeing here, because it could affect the order or conformity that you see out here because the larger accessory structures - and I'm not talking about the garden sheds, but the larger ones - I think two of the three meet the setback requirements. Because this is a larger accessory structure that would be built, it also taller in height and has more building mass compared to the smaller garden sheds. And it would be visually more apparent in this neighborhood because it would be two to three times larger than those garden sheds. That's why we're saying that it could adversely affect that order.

Chairman Hemphill: Is there a larger structure crowding the property...? I drove by the neighborhood and I couldn't, there's a lot going on, you know? And it's kind of hard to tell where the property line is, what's a lean-to, what's a shed. Is there a large structure existing that's five feet from the property line?

Ms. Wicklund: In that neighborhood, you mean?

Chairman Hemphill: Yes.

Ms. Wicklund: No, I do not believe so. I know I wrote that in the report; I'm trying to look for it. The lot to the north has two accessory structures, one of which does not meet the current setback requirements as it's located to the north property line. The lot to the south has two accessory structures, one of which does not meet. I do not think that any of those larger ones were that close to a property line.

Chairman Hemphill: Okay.

Ms. Wicklund: The fifth criteria is that the variance desired will not be opposed to the general spirit and intent of the zoning regulations. Again, I think we're saying that, that it would be opposed to the general spirit and intent of the zoning regulations because they're asking for a 20-foot reduction in the setback requirement, and again, that there are a couple other options for locations that would meet the setback requirements.

In summary, staff is recommending denial of the variance for the reasons that are stated in the staff report. You'll also see findings and conclusions on pages 9 and 10. You'll remember, the purpose of those is that if you want to approve the variance, which means you would be contrary to the regulations, you have to have these findings and conclusions. No matter whether you approve or deny the variance, but if you want to approve it, we would have to adjust these findings and conclusions because those are based on denial, not approval. Those are the basic reasons listed out for staff recommendations. I think at this point I'll stop and see if you have questions.

Chairman Hemphill: Anybody have questions for staff?

Ms. Barber: You mentioned a couple of times that there's possibly three other structures on these other properties that are that large, and two of the three matched the requirements. So, there is somebody out there with a bigger building that isn't 25 foot, right?

Mr. Lang: When were those built? Do you know?

Ms. Wicklund: I'm reading here...

Chairman Hemphill: I remember reading something about a lot of them were pre-1982, when the regulations were different.

Mr. Lang: Ten foot...? I think they were 10 foot setbacks back then.

Ms. Wicklund: A long time ago, correct.

Mr. Lang: Florence developed that.

Chairman Hemphill: I've never heard of a five foot anywhere, but 10 occasionally in the city. I'm going to fill some dead air while you're looking at that. I'm looking at these criteria, and I'm struggling with, do they come close to meeting any of them? And the one about if it will impact the neighbors, will it reduce their rights, their ability to use the property? And they obviously have united the neighborhood. They've done due diligence on that. But I just wonder about... That's a certain group of people, and their kids go to school maybe... You know what I'm trying to get at. They're an enclave. Which is a nice thing. That's the one that I was trying to see some light at the end of the tunnel, that yes, that would be... But I'm still struggling with that. Maybe the applicant can shed some light on that. Has everybody driven by the neighborhood out there, taken a look?

Mr. Lang: It's my neighborhood.

Chairman Hemphill: It's congested, I guess is the... You know, there's just a lot of out buildings. So, the question to Diane was...

Ms. Barber: I'm curious as to, if there is one that has been built that is not, isn't 25 feet back.

Ms. Wicklund: Yeah, I'm looking here. I remember looking at each of those. I don't think I really have it spelled out here like I thought I did. I talked a lot about the garden shed. I think I talked about one of the structures was built prior to 1982 and pre-dates the 1982 regulations. And that's the one on the south. But I don't have a setback listed. But from my memory, when I went on AIMS, when I was looking at them, trying to measure, I don't think anything was as close as 5 feet, but I'm not sure that I can tell you, in fact, what it was. Just that it pre-dated 1982.

Ms. Morse: I'd like to hear from the applicant before I ask questions.

Chairman Hemphill: Sure.

[The Chairman opened the public hearing and asked the applicant to come forward.]

Mason Puthuff, Applicant, 13385 Moonlight Road, appeared before the Board of Zoning Appeals and made the following comment

Mr. Puthuff: I'm the applicant. Sorry, this is kind of nerve-racking. Do you guys want me to speak to the five criteria, or do you want me to let you know of my general plans, why I'm asking for what I'm asking?

Chairman Hemphill: You can do a narrative if you like, but you need to come back to those five criteria, because that's the only way we can judge your application, is on those five criteria.

Mr. Puthuff: Okay.

Mr. Lang: Mr. Chairman, can he start at the beginning, from purchase, and go forward? Purchase of the property.

Mr. Puthuff: Okay. Me and my wife purchased the property four years ago. Since then, we've started a family out there. Met some of the neighbors, and through this process, I got to meet a lot of the other neighbors. I've always wanted to live in the country. I couldn't afford more than my one little acre plot. And now, we're running into a storage issue with our little girls, and everything else. Some of my hobbies, so, I'm looking to build the outbuildings. I think we've been good neighbors. We try to keep our property clean. Some of that congestion you guys talked to earlier is the result of not having an outbuilding, and car trailers, and cars, and everything gets accumulated on these properties, and I'm trying to not do that. I've always wanted a storage shed for those reasons. I've got hobbies like ATVs, or welding, or anything like that, that I'd like to put all that stuff in there. Since we've had the house, we've had six to eight power outages, and we have a generator. We have a zero-turn mower. We have a lot of stuff that's in our garage. So, that's the reason for it, and that's where we're at today. We're just overflowing.

I think the toughest part about this criteria is the first one. If I'm being 100 percent honest, geographically, I don't have a creek running through my yard, I don't have anything like that. I have a septic mound that when the house burned down when the previous owner lived there, it's behind my house; I would probably put the shed there if I could because it would be behind the house, out of everybody's way, and I could extend my driveway to it. But, due to soil, from my understanding, they had to build a mound in the back yard, and it takes up a good majority of my one-acre plot. I've got mature trees, if you could count that as topographical. I would like to not cut those down either. As far as whether it's going to change with my acres, or goes against the spirit of my neighborhood, I think if I built it in the place I'm allowed to, it would be a lot more... And that's kind of what that petition that I had signed alludes to. I showed everybody what I was planning to build, and why I was putting it at the back of the property. The neighborhood that is going to be most affected by this structure wrote a letter of support. If we were to build it where we can without this variance, he would stare at it out of his kitchen window, and I would stare at it out of my master bedroom window and my living room window.

The field behind me is empty. The church owns it. The only thing they've ever talked about putting back there is a baseball field, from what I found out the other day, and they have no problem with it. They signed the petition, the pastor of the church. By moving it to the back and not where I can, I guess legally do it - I don't know the verbiage of all this stuff - by moving it to the back, I think I'm being a better neighborhood in all regards because it becomes less intrusive to everybody. So, I guess the goal was to accomplish my storage and move it to the back. The reason for the 5-foot setback, I know that seems very small, it seems close. One of my 20 trips to the Planning office through this whole process, I got to talk to one of the inspectors, and basically 5 feet is a fire requirement. If you don't have more than 5 feet, you have to engineer it for fire code, is what he kind of told me.

Another thing, I have a very big tree back there and the lateral mound is off to the south side of where I want to put this. So, I could put it maybe a couple feet closer to the lateral mound if I wanted to, according to Environmental. Their setback requirement is 25 feet. It's not for anything other than they don't want any traffic on the lateral mound and create contamination. So, I paid for them to come out. We are currently 22 feet away. They crammed them up to 15 feet as long as it's not a driving path. So, if I cut down the tree, I could maybe move it closer. I really don't want to cut down the tree because it's very large, it's been there for a very long time. But by moving it to the back of the property, one, it's less intrusive to all the neighbors, and two, it puts it where I kind of want it.

So, the reason that petition wasn't in the report is I just didn't get around to it. I'm a pretty busy guy at work, and then, my daughter. So, over the last couple of days, I've got to meet my neighbors and talk to them. I told them, in lieu of coming down here, because I'm trying to be simple through this whole process, that they should just sign the petition of support. If I got anything, I would have a 40 x 60 shop, and I would love life and have a ton of fun in there, welding, and doing all the stuff I like to do. But in the spirit of trying to be as easy possible, I haven't asked for a bigger structure. I haven't asked for anything outside other than the variance of the setback. And I've tried to be nice as I am through this whole process. You know, a lot of neighbors have garden sheds, some as recently as last year. I have no problem with that. I didn't realize a garden shed needs a setback until talking through this whole thing. The general response of my neighbors during the petition was, "We don't care, it's your land." That was the majority. The others were, "We hope you get it." So, I was very encouraged by that, and it was really nice to meet some of my neighbors. So, even if you guys deny this tonight, at least I've got that.

Did I miss any criteria that you'd like me to address? I kind of lump those three into one, being that I can put a structure right next to my house, close to the road, in more visual site of everybody, with a spirit of the neighborhood. All along, pretty much everybody has a storage shed of some sort. Big, small. It's kind of an odd area. The person across the street from me has five acres. One of the people that is not on the petition but is on the 1,000 radius lives, I mean, he's gotta own 60 acres, and giant ponds, and.... I talked to him on the phone today. I tried to explain to all my neighbors what I'm trying to do and why, and they all agreed with it. And I understand that that doesn't speak to some of these, but I think I'm trying to be a good neighbor and accomplish what I want.

Chairman Hemphill: Are there any questions?

Unidentified: I think he has something else to say.

Mr. Puthuff: That's my lovely wife over there. So, another option we have is attaching it to the house. The reason I'm trying to avoid that, you know, over the last four years of living there, every time we mow the grass, you smell the mower throughout the house. If I weld in the garage, you smell it through the house. So, a detached structure would really help in that regard. Plus, we really don't want to attach it to our house and change the look of our house.

Another weird thing is I can make it a big as I want if I attach it to my house, which I find odd, but the additional cost of attaching it to the house would probably also make it harder. So, it was pretty significantly more because you can buy another outbuilding, either in a kit, or have it built by a local company quite a bit cheaper than everything else. The concrete pad that's already there I poured myself.

I used to have a fence that was falling down, and there are a lot of weeds behind that fence because we have very clay soil, so it kind of soaked in all the rock that was behind it. And I poured the pad so not have to maintain weeds and keep my property looking nice. My neighbor Kelly actually came over and said, "That looks like a shop pad, did you pour a shop pad?" I said I already looked into it, they don't want me to build on there, so... And he's like, "You need to try," and that's one of the encouraging things that got me here, was my neighbor's words. And he's honestly the most affected one because I have not seen a person on the lot behind me, other than to mow the grass down, the whole time I've lived there. I guess it's a solution, kind of.

Mr. Lang: When you refer to the person behind you, you're talking about the church?

Mr. Puthuff: Yes, sir.

Ms. Barber: Do you have a three-car garage as it is?

Mr. Puthuff: Yes, and I park one car in it.

Chairman Hemphill: Does anybody else have questions for the applicant at this time?

Mr. Menefee: I just want to get it straight. How far are you from the septic now? Twenty-two? Is that right?

Mr. Puthuff: It will be 22, and...

Mr. Menefee: And they said that they would give you up to 15.

Mr. Puthuff: Environmental said that they have granted up to as close as 15 before. That's not saying they will grant mine. I went to Environmental three times. The original guy I talked to said he's granted them up to 15 feet. The inspector that actually came out to my home had me hold the tape and said, "You're at 22 feet, you're fine," and left. I don't know if they gave me 15 feet.

Mr. Menefee: Okay, yeah, I was just curious if you actually had that variance or not. Thank you.

Chairman Hemphill: Could you explain your building? You want to build 822 square feet.

Mr. Puthuff: So, I'm allowed 900. I told Diane I would get it as close as I could to that. There are pictures in the report of what I'm thinking. It's just going to be a metal structure, just like the neighbor across the street from me, or I think there are pictures in the report... I've talked to, I think it's Kansas City Steel Buildings. I plan to put in an all-steel building so there is zero maintenance. Put like a wainscoting on it to make it look nice for everybody. I do intend, being that I'm limited to 900 square feet, to make them at least 14 foot walls so I can put some type of storage loft in the front of it, you know, in case we're blessed one day to have a boat or pull anything in there, we could. And I'd have to drive through my yard to get there, because Diane has also explained that you're limited on how many driveways you can have. But that's kind of my plan. I'm planning for the future and expansion, whatever I want to put in the storage shed.

Chairman Hemphill: So if someone were driving by and they looked at it, would they say it was a shed or would they say it was a garage?

Mr. Puthuff: I would call it a... I mean, if I were driving by, I would call it a shop. I've always called a metal building a shop. You know, trying to think of people who use those in business. Some people will call it a barn, some people will call it... I mean, it's going to have a roll-up door like a business type thing. That's my plan. Honestly, I've tried to be as easy as I can. If I had to build it out of wood, I don't want to because it's more maintenance. I could build it out of wood, make it look like the house, but I'm trying to follow this criteria and be somewhat cost-effective for me, and not have to maintain as much.

Mr. Lang: Are you planning to use this for business?

Mr. Puthuff: No, sir.

Ms. Morse: The tree to the west of the shed, towards the street, how close is that to where this is proposed?

Mr. Puthuff: The one I'm concerned with, with the septic, or the one further forward? I've got two further forward.

Ms. Morse: Okay. within 5 feet, does it say?

Mr. Puthuff: Five feet of the shed?

Ms. Morse: Mm-hmm.

Mr. Puthuff: The one between the septic, by the time I trim back the limbs that would be hanging over it, will probably be eight feet away from the shed, I would guess. I'm going to have to trim that tree, so I can't give an exact, but obviously I don't want a tree falling on a shed I just paid money for. But it's a tall tree. It's the tallest tree on my property, is the one sitting next to the shed.

Chairman Hemphill: The reason you don't go to the south of your house, extend the driveway back, and put those trees are, the reason is you want to save the trees, or...?

Mr. Puthuff: I would say the trees are secondary. I think the bigger issue is it becomes more intrusive to my neighbors. So, those two trees, if I put a shed where I'm currently able to with just permitting, I would tear out the two trees and I would stare out of my bedroom and Kelly would stare out of his kitchen. That's to the north. I can't put anything to the south because of where my house sits.

Chairman Hemphill: Okay. It's kind of hard to sit here and verify, you know, from the...

Mr. Puthuff: Yeah...

Chairman Hemphill: You know, all we can do is assume that it's the exact way, like we are here, and make our decision based on that.

Ms. Barber: I think, too, it's very hard, at least for me, to figure out where it would be on the property, 25 feet and 25 feet. When I've looked, it doesn't seem like there's space to do that.

Mr. Puthuff: On the north side?

Ms. Barber: On the north and on the east.

Mr. Puthuff: East would be heading towards Moonlight Road. North would be towards Kelly's house. It's kind of the more open side of my house. I'm actually, probably doing something I shouldn't, because you're saying that I probably... I've drawn out next to my house, but it would be, if you look at my house from that aerial view, there's about two feet. That's potentially my master bedroom. It would be right there. And it would probably five feet off the house, and 25 feet off Kelly's property, and be, I don't know, 50 feet off the church's property, at that point. There's also, according to Diane, because that's where I get all my information, you can't run it past your house, but another, you know, not that I'd ever want to. The neighbor across the street is pretty close to, about level with his house, but that probably was pre-1982. I'm just trying to stick it back in the corner so it's out of everybody's way. That's kind of what I'm getting at.

Ms. Morse: I was looking at the map upside down.

Mr. Puthuff: Yeah, Moonlight runs north-south.

Ms. Morse: Okay. I don't know if we're ready to discuss the five criteria, but I do have a comment on A., which you said you thought was the most difficult.

Mr. Puthuff: I would believe so, and Diane told me that from the beginning.

Ms. Morse: Well, some observations I'd like to make. It says that this subdivision was platted in 1962, and at that time, a lot of subdivisions I think in the county, they were developed on the 10 acres. And

they all seemed to have a 10-foot setback for side and back yard for structures. Another thing I've observed over the years is that the homes seem to be built with the driveway closest to one property line, giving you more privacy on your bedroom wing, which is usually on the side of the house. And then the next house. And it looks to me that like this, from what I can tell on this map. So, it makes it difficult for extending your driveway and, let's say putting on a detached garage, or another attached garage, which I've seen. So, then the County, in 1994, changed the regulations, making it 25. And I think this has been a problem for people whose lots were laid out with a design with 10-acre and setbacks. So, I feel that this condition was created by the zoning regulations and not by the property owner. That would be my argument on that point.

Chairman Hemphill: Yes, I could add to that a little bit. The nature of this neighborhood is crowding the property lines. Right or wrong, that's just the nature of it. So, you know, it is kind of unique. We're just talking about criteria A, but I'm having trouble with the other ones. Could you please stay at the podium until...?

Mr. Puthuff: I will stay at this podium. I will stay here all night if I have to.

Chairman Hemphill: Does anybody else have any...? If we take them in order, Item A, unique condition, that, I mean, started by Roxanne, I kind of think it is a unique condition.

Ms. Barber: I agree. With your explanation. I agree.

Mr. Lang: I have a question for Diane. Is this either a denial or approval for the five? Or is there any compromise as far as the setbacks?

Ms. Wicklund: Compromise on the setbacks meaning...?

Mr. Lang: For instance, prior to 1994, this subdivision was set up for 10 feet. All right? As far as the setbacks. Then we made it 25 foot. I guess what I'm asking is, is that, because to me, this does not meet the criteria. I'm sorry. But because he does have a choice, there are several others - I'm just going by the laws, not my personal feelings or anything else. But what I'm asking is, does this board then have the right to say no, I'm sorry, it has to be 25 feet, or can we come back and say, no, we would like to see X amount of feet between it?

Ms. Wicklund: I think what you're asking is, is to say you wanted to say 10 foot setback...

Mr. Lang: Ten or 12, yes.

Ms. Wicklund: Okay, 10 or 12. Not meet the 25, but not go to the five foot. Yes. This board, you know, if you get to a point where you might want to approve the variance, you can with Mason, and talk about, if there's flexibility there. If you can do 10, we might be okay with 10. And then, you would just want to state some reasons for that. But yes, you do have that flexibility, to give another setback number if you want. There are a couple things. We need to remember that we have to have at least a 5-foot minimum because of the building and fire codes, and that we would, whatever number gets arrived at, one of the stipulations would need to be that Environmental would have to go back out, stake it, and, make sure that it's still not too close to that mound system. That would be a component. And you can make stipulations on that.

Chairman Hemphill: We've done that multiple times through the years, that it's adjusted, you know, just like you were talking. It seemed to make sense for me. Five feet is pretty minimal. I mean, that is way minimal.

Mr. Lang: Richard, I've served on the Fire Board since 1984. Five feet from a property line, that is a ridiculous fire code. We do not even have a piece of apparatus.... Well, we have an ATV that we can put five foot, but if there is a grass fire or something else, five foot between property lines - no. It would catch the other structure. And even though there's no structure on this...? Yeah. My personal opinion.

Ms. Morse: The reason I asked the question about the trees, which I was thinking 10 feet, which in the original subdivision, they approved in their plat, or their bylaws, if there's a homes association, whatever. So, it would be within the... In other words, I think it would be grandfathered, I guess, to what would be allowed prior to newer regulations.

Ms. Barber: I'm still a little confused. When we talk about Environmental coming in, they checked from the five-foot setback that they requested. My question is, where...? Are you saying the only thing you could see them doing is adding another garage on the other side of the house? I can't see where the building could go that it would be 25 feet and 25 feet, and it wouldn't interfere with lateral lines.

Ms. Wicklund: I guess what I'm thinking is two options. One is doing the garage addition to the house that we talked about, that they could do that and meet the 25 foot of setback. The other is that I think it can be east and north of the house.

Ms. Barber: North and east.

Ms. Wicklund: You know, this isn't to scale...

Chairman Hemphill: You see the yellow, on the upper, page 3 on the upper right-hand corner of the yellow rectangle? That rectangle can move down the sheet 12 feet, is what I'm hearing. Move to the south 12 feet. And is there any reason it can't go forward 20 feet? I mean, if we're just talking, we're just on item A, unique conditions, and this is what's awkward. It's not to scale, and we're trying to squeeze every inch of setback out of this thing. Or maybe I should ask the applicant that. Why can you not move your rectangle, your building to the south 12 feet, and toward the house 20 feet? So, you meet the setback in the rear. You just happen to have one variance are. Because you are building a building. You're going to have vehicles in it, with gasoline, explosive, you talked about welding. This is not a tool... I mean. You know what I'm trying to get at?

Mr. Puthuff: I get what you're saying. One, the welding and stuff can't take place until down the road, but again, it's in my plan. So, I completely agree with that. The building could move forward, I've not mapped it out with a 25 foot setback on the back because I did it with 25 feet and 25 feet. If I took down the tree, the big tree in the back, I could move it 12 foot off the property line, if Environmental would grant me the 15-foot variance off the lateral mound. I would have to map it out to where it comes on my house as far as how far 25 feet puts it further out in the yard and closer to the house. I was trying to avoid cutting down the tree, and two, because the neighbor behind me doesn't really use it, and it puts it closer to the road. But if you guys are talking about reverting back to that old setback requirement, I don't know, I don't think I'd be opposed to it. Like I said, I have not mapped that out. I've also talked to Diane, thinking a different width to accommodate some of this. Right now, we're not 100 percent sure where my property line is. I've got a fence up. We have not found the little marker indicators that they drop down in there. It might be two feet into my property line it might be on the property line. My neighbor to the north, Mr. Kelly , has said that he thinks it's actually more on my property than it is on his. So, five feet between property line... I plan on taking that fence down if it gets approved, but five feet between the property line is about where that pad currently is. Again, if I have to pour more cement, I'll pour more cement. I didn't pour that pad with the intention because I didn't think this was a possibility.

Ms. Morse: I think we need to look at and discuss all of these things. I also think we need to be practical here. It makes no sense to me to have, say, 10 feet on your north line, and then have 25 feet, when there's an open field that's going to maybe be a ball field at the most on the west side. So, I would like to make some comments on the other items.

Item B, it will not adversely affect the rights of adjacent property owners and residents. They have all expressed this in signing the petition. They are also, as admitted, building structures that do not meet the requirements. And, it looks from the map that there is a pattern of some larger units across the road on the other side. Perhaps even on the adjacent property. Can't tell exactly what they are. But a pattern has also been set up on this street, where everyone seems to have some sort of storage shed, and it

seems to be at the back part of the property. If you bring that shed 25 feet forward, you're, in effect, losing that 25 feet of usage. It's not really acceptable or convenient.

As far as C, unnecessary hardship, the design... And I think we need to take into consideration on the lot that everything doesn't have to be cookie-cutter kinds of things. But what about the aesthetics of it, and the design of it, and how a person designs their yard? And how it fits in with their septic system, and so forth. These are all things. And would create a hardship in trying to locate things not for the convenience, but just to meet some criteria.

Also, affects the public health, safety...? Well, we talked about noise. Moving that forward is going to create more noise for the neighbors and for the property owner. We've talked about odor, and having that. You mentioned in your testimony that the neighbor's kitchen area looked out across your area, and that would revert back to the other ones, the aesthetics that the neighbor would have in looking, instead of looking across open land, and would be looking at the side of a metal building. That, to me, is an adverse effect on your neighbor. So, you've got the noise, you've got the odor, and you also have fire safety, having somebody that close to the structure of your home, if you're working with equipment and welding, etc.

As far as the last one, the general spirit and intent, I don't think it's the intent of the regulations to make things difficult for property owners. We own land, we have the right to use it, as long as it does not have an adverse effect on other people. So, these are just some things maybe we should discuss.

Chairman Hemphill: Very good, Roxanne. Well, can I just start from the top and give you thoughts that need more discussion? Item A, about the unique condition. I really think that this is a pretty unique neighborhood. Driveway to one side, the trees, the neighbors, the mound. And it's all down this block. I mean, you know, you can see the buildings close. Now, I'm not saying 5 feet, but close. Closer than 25 feet. As far as the adjacent neighbors go, you know, we can say, yeah, there's going to be a ball field back there, but that, I mean, I've been around long enough to know that things change over time. Once we accept 5 feet, 7 feet, 15 feet, then that becomes the new norm, and the principle is the lever is sometimes used - So-and-so did this, then other people did it. You did for them, why are you not doing it for us? And while that adjacent neighbor in there now may be your best friend, you'll eventually move, they may move, and the new people will inherit what we left behind, what we agreed to tonight, and what you built.

The hardship, Item C, the septic system, the trees, you know, you have the ability to put it onto the house, and yet there are ways to ventilate away from the house. There are things you could do. Yes, they will cost more money, so I suppose it is a hardship. But you just can't go out and build what you want. I built a shed, 200 square feet. I've got a table saw, a drill press, I can open the doors, work outside under... You know? You can live small. I'm at the other end of the spectrum. I'm trying to downsize a little bit. There are options. That's why I asked you about your plan. You said 882 square feet, pull in a boat, weld, four-wheelers - That's a pretty good size. I own houses that are smaller than that. If I could take a short interruption and you tell me the physical size, Mason, of the building, the dimensions. How wide, how long?

Mr. Puthuff: According to her report, like I said, I was pretty flexible on this. I just wanted 900 square feet because I'm trying to maximize it. But I think in the report, it's 21 by 42, is what it comes out to. Almost 900 square feet.

Ms. Wicklund: And I think that's what was shown on the site plan.

Mr. Puthuff: Correct. And then, when we ran into the issue of not knowing where the property line is, I offered to make it 20 by 45. If I could, I know you're saying that I could live smaller. If there were no regulations, it would be 40 x 60. The only reason I say that is I grew up on a dairy farm in California. I have friends who have shops, and everybody said you can't build them big enough. My father-in-law said I couldn't build my deck big enough, and I said no, it's plenty big, and it's too small now. So, I guess I'm just preparing for the future, and I don't know what that is.

Chairman Hemphill: Well, back to the hardship thing. My point was you can't always build exactly what you want. You have setbacks, and you have other things. And I can't tell you you're building it too big or too small. You could argue that both ways. So I'm fighting with that a little bit, the hardship, I'm fighting that you can't build your 900 square feet, but you are on a pretty small lot. Item D, health, safety, welfare. As Mr. Lang pointed out, it's hard to get fire-fighting equipment in between structures. Let's say your neighbor decides they're going to go five feet, then somebody builds a fence in there between them. You could say, well, you have 10 feet between buildings, but more than likely there's going to be a fence there. And that just, you know, if it's a solid fence, the air circulation, getting in to fight fires. A lot of times there are easements along those adjacent property lines. I assume you have no easements.

Mr. Puthuff: At the front of the house.

Chairman Hemphill: And the spirit of the zoning, I mean, I don't know how... I'm not sure how we can meet that. I have trouble with that one, too. Maybe somebody else on the board would like to tackle that, or just kick in and discuss these one at a time again.

Mr. Lang: I have a couple more questions. The buildings that, I don't know if you have the drawing...?

Mr. Puthuff: Yes. It's just rough.

Mr. Lang: I take it that the garage door is going to be facing west. Is that correct?

Mr. Puthuff: That is correct.

Mr. Lang: So there's going to be a driveway that's going to go to that garage, I take it.

Mr. Puthuff: I don't think there will be a driveway.

Mr. Lang: There will not be a driveway?

Mr. Puthuff: I don't intend to drive back there a whole lot. Right now, there is a swing set on that back pad, and I just drove through my yard. Pretty common where we're at. Like I said, Diane said I couldn't have a secondary entrance. I'd rather not run a driveway from my current driveway all the way across the front of my house, to back there. So, as of right now, this could be a freestanding structure just to store all my stuff.

Mr. Lang: That was going to be one of my questions. Where is the driveway coming from?

Mr. Puthuff: There will be no driveway.

Mr. Lang: Is it going to go through the front yard?

Mr. Puthuff: If I could run a straight shot from the road back there, I would do that. One of the things that I love about the country is I have a big yard. Last weekend, we had our daughters on ATVs, riding around the yard. I do not want to dig up, as much of that yard as I can leave. Because of my limited space, that's what I'm trying to do. One of the reasons why it's in the back. And then, I don't want to take up a big chunk of my yard where I can play catch with my kids, or anything like that, with a driveway.

Mr. Lang: How high is this building going to be?

Mr. Puthuff: I would say 14 feet.

Mr. Lang: Fourteen.

Ms. Wicklund: From grade to the highest point?

Mr. Puthuff: Fourteen foot walls, so probably 16 foot at the peak. And that's just for the, again, planning for the future, putting a loft in the front of it.

Mr. Lang: Why is the lean-to there?

Mr. Puthuff: Well, originally...

Mr. Lang: That makes it 56 linear feet.

Mr. Puthuff: Originally I wanted to put the lean-to on the front of the building so that I could sit out there, have a beer, hang out with friends, or do whatever I wanted to do. Some of my stuff would be in the lean-to area off the back, and if I have a bike right now, and I hate this, but I have a woodchipper and motorcycle sitting in my yard, which to me is a nuisance to my neighbors. All my neighbors have them, so they probably don't care, but I don't personally like it. So, I would stick stuff like that under the lean-to. Honestly, I'm not even sure if I will build the lean-to, but it was instructed to me that it was an option, that I should try to get that approved now because I would have to do this again if I wanted to do it later. And that it could be denied. So, I put it on there.

Mr. Lang: Okay. I do have a barn that is 20 x 60. It is also 16 feet tall, which is a tall barn. In fact, it's allowed me to put a loft in it that is unfinished. There's no water out there or anything else. I'm not using it as a dwelling, but as a shop. And believe me, that shop is crammed full. I have a hard time putting my mower into. So, yes, unfilled space all of a sudden becomes filled space. I can tell you that. A 16 foot structure is actually going to be taller than some of the houses that are over there. The smaller ranches that were originally built are not 16 foot. Okay? Even though there is a split-level, and I think Mr. Sparks has a big bilevel, the one that has the 60 acres there that you talked to. But, yeah, there's... The thing is, Richard, I'm having a problem, and that's the reason why I asked the question, five foot to me is not enough, and it does not go into, even with the original 10 foot that was set prior to 1994.

The property to the north seems to be quite a distance away than the property to the south as far as the neighbor is concerned. I can understand the neighbor's concern to the south of putting up a, of attaching the building to the house, to where they would be looking out their kitchen window, looking at this building. I can understand that. However, where the building is sitting, where at least it is on our drawing, that tree is coming down anyway according to the schematic we have. The big tree is coming down in order to put that structure there, even at the five foot level. That's the shadows; there's the tree. I mean, it's coming down.

Chairman Hemphill: I mean, you'd be into the root system on that tree pretty heavily.

Mr. Puthuff: The pad was already poured. I'm probably eight foot away from that tree, with two limbs overlying. If it would have to come down, it would have to come down. Obviously that's an additional expense, but that could happen. I'd like to leave it up, but... I get the fire concerns. I get it. I struggle with it a little bit because if I was to put a fence or a forest in my front yard, you guys wouldn't be able to get back there anyway. I'm not saying that's what I want to do. So, I get it. Out of wanting to protect my neighbors, and wanting for fire trucks to be over there, I would always leave... They could tear up my lateral mound to save somebody life and field. I wouldn't block that off.

Mr. Lang: We don't like doing that. That's very expensive.

Mr. Puthuff: I heard those things are, like, \$40,000, so I would appreciate it .

Mr. Lang: Yeah, I mean, I tend to agree with you, Richard, that the characteristic of the neighborhood, with the outbuildings and everything else, you know, it's 1962 when those were plotted, just one-acre tracts. The thing is, though, that to me, five feet is not enough from property lines.

Chairman Hemphill: Well, let's take that one specific topic - the setback - and let's feel the board out. To me, the spirit and intent of this neighborhood is it's got to be 20, I mean, the rural district has got to be 25. Many of the neighbors are less than... I can't tell. I don't have dimensions. I'm just guessing they're in the 10 to 15-foot range...?

Ms. Wicklund: I think so. If you're referring to the smaller storage sheds or garden sheds in the back, yes, I think they range, you know, five, 10-ish. Maybe 12. Something like that.

Chairman Hemphill: But what compounds this setback more is this is, this is not a shed. This is not buying eight-foot studs at the lumberyard and that sets your wall height, you know. This is not a 10-foot-

tall building; this is much taller, much bigger. It doesn't match. It doesn't look like the other building because it's made out of metal. Not that the architectural portion is one of our criteria, but you're just too darn close to the property line. Five feet is not enough. So, how much is enough? Twenty-five?

Ms. Barber: Well, it's been 10 for years.

Chairman Hemphill: It has been 10 in the past. But those are for sheds.

Ms. Wicklund: Let me quickly interject here. That was just for accessory structures, so it really didn't put a size on that. So, it was just 10 foot from the property line, side property line for detached accessory structures.

Chairman Hemphill: Based on letter A, a unique condition, I can see, I mean, a unique condition as it would apply to property lines. I can see where it would be nice to make it as big as we could. And I'm not saying, I'm trying to help you here, but I don't know if we're going to get all these answered. But just on the setback, it's got to at least be 10 feet. It would be nice if it was 15 because it's a pretty tall structure, and it doesn't match the neighborhood. Any other thoughts on the setback?

Mr. Menefee: I agree that 5 is definitely not enough. Just going from what we heard from the Environmental, it looks like you could work with 12 possibly, and Environmental would work with it, which might be a nice compromise. But, you know, I would want it to go 12 from the back as well. Both sides 12. Whatever it is, it needs to be equal. That's why in 1994, they changed the regulations, was to create a bigger setback and more space. Even though that's the nature of the neighborhood because it is just the minimum size for RUR. But, you know, 25 is where it's at today. And we need to come up with good reasons to satisfy each one of these five.

Ms. Barber: I have to believe it's not the spirit and intent of Planning to take people's property away from them. And it was brought up, if you're 25 feet off this way and 25 feet off that way, are you ever going to use the land that's behind your shed? Or the land that's next to your building, your shop? So, you are taking... And it's only an acre. If we all had 10 acres, it would be lovely. I don't, either. So, I don't think that that was the intent, and yet, when I look at one acre and everything at 25, you're taking all that land away from the homeowner.

Chairman Hemphill: That's the code.

Ms. Barber: I know.

Chairman Hemphill: That's the reason for the building code, to take away, it seems like. I mean, it seems that way. It's not that way, but it seems like that. If you're Mr. XYZ owner and you have a setback, and they're increasing the road width and they want more frontage, or somebody wants an easement, it always comes out of Mr. Homeowner. Unfortunately, but those are our rules. But this board can, if we find a reason, we can bend those reasons.

Mr. Menefee: It's just unfortunate that they're at the very smallest of the RR. Like you said, If it was more than acre, that 25 is not as, you know, it's not encroaching on the percentage of land nearly as much. But being at the minimum of an acre, 25 is taking quite a bit of space. Now, whether or not that satisfies the criteria as to hardship or unusual circumstance, I don't know if that could be said.

Chairman Hemphill: Does anybody else have a thought on what the setback might be? Roxanne?

Ms. Morse: I just want to review. We're saying that the subject, as it is proposed now at 5 feet, that the septic is 22 feet away. Is that correct?

Mr. Menefee: Right.

Ms. Morse: And that the minimum we believe would be approved would be....15? Therefore, we could only add a seven-foot setback, which would make it 12 feet. Somewhere between 10 and 12, I think we recommend it.

Chairman Hemphill: Thank you. Twelve feet sounds... Obviously I would like 15, or if you gave me 15, I'd like 16. I'm the same way that you may be, that I want to build 900, but I'll cut it back to 882 - You know what I'm...? We're trying to figure a balance out here. So, pretty much, I mean, in my opinion, the five feet is gone. That should not... Whoever makes the recommendation tonight, it should not be 5 feet. It can be 12. Have you considered reducing the width of your building?

Mr. Puthuff: I didn't.

Chairman Hemphill: Okay, and the answer is...?

Mr. Puthuff: This is to satisfy property lines, like I said, it could go down to 20. I mean, but that would make it 45 feet long.

Chairman Hemphill: Well, you know, we're giving you something. We expect something... It's like a waterbed, where you push down on one side and this side goes up.

Mr. Puthuff: I completely... I kind of started this off with, I've tried to be as easy as possible throughout this thing, trying to not make too much work for her. My only goal is to get as much storage space as I can, as far back in the corner as I can, and I'll work with you just like you guys work with me.

Ms. Morse: A question for Diane. How does this work? Is there some way we can give a range in saying what Environmental would approve? Would they approve 15 feet? And if not, if they need another foot or two, can we do a range, like between 12 and 15, or something like that? To meet the environmental...

[crosstalk]

Ms. Wicklund: I think we can try to craft something that works. I'm thinking that also, that, you know, that if you have a range, then when we go back to Environmental, if it needs to be a little less or a little more or something, then we've got that flexibility and we don't have to come back here. So, if you've got a minimum of, this is the minimum, 10 feet, or whatever it is, that then have some flexibility, I think we can craft it.

Ms. Morse: Say, you know, 15 feet, but a minimum of 10. Something like that.

Ms. Wicklund: Yeah. And if you are wanting to try to change the sizes or dimensions, we can talk about that also, just as long as it doesn't get over 900 square feet because that's the maximum size that he can build.

Ms. Morse: A question on that. Does the lean-to square footage add to the shed?

Ms. Wicklund: To the 900? No. For an acre, you get up to 900 square feet of detached accessory structure. In addition to that, you get 300 square feet of lean-to area, but it has to be all open walls. Just a roof, no walls, all open. And that 300 square foot lean-to does not count towards that 900. So, sometimes that is beneficial to people because it still gives them some kind of roof coverage and protection without eating into that 900 square feet.

Chairman Hemphill: Well, my position will be it ought to be 15 feet, just because, I mean, whether the owner has to reduce his dimension, or whatever. Do an 18-foot-wide building instead of a 20, or whatever. If it were given... I guess we need... It would almost be nice to see that applied and see, see something, a drawing in front of us, or something. We don't have that luxury, so... So, what we've covered so far, Item A, it is a unique condition to that neighborhood. There are shorter setbacks, that we are somewhat in agreement, that 12 to 15 feet would be reasonable. Is that pretty much...? Okay.

Okay. Back to the adjacent owners, you know, I guess we could base our feelings on the strength of this signed document, and the old saying of maybe you'll... A friend in need is a friend indeed. So, if these neighbors are friends, then that's a nice way for neighborhoods to be, then, you know, there is no criteria on our form for the neighborhood. But, there almost should be. But I could almost agree that Item B, the right to the adjacent neighbors, at 12 to 15 feet, that's probably an acceptable number. Anybody else want to weigh in on that one?

Mr. Lang: I would agree just with the nature of the existing buildings and the type of neighborhood it is. A total of 15 would be similar to all the rest, and it would not adversely affect...

Ms. Morse: So, we can state 15 feet, but no less than 12.

Chairman Hemphill: Okay. Now, can we move on to...? I mean, we're going to come back to these, but Item C, as we're progressing down, which is hardship. And I know there is a septic system, there are trees, I don't like the odor coming into my house. It's almost like that old adage, when you go fishing, you caught, and you clean... I don't know if you ever heard that. I used to have my mom, okay, but when I got a little older, she wouldn't do it anymore. So, you caught this big building. You're going to have to clean it, and that means you might have to put it where you don't want to. What is the hardship? How much of a hardship is it to move the laterals five feet? Not the whole lateral, but... I mean, are we talking about the bottom end? Are we talking one leg and you replace another leg? You know what I'm trying to say?

Mr. Puthuff: I'm not a lateral expert. I don't know what that entails. As far as hardship, Diane kind of spoke to the fact that I could put this building right next to my house, and that's why we don't have a hardship. I've got an option to do that. To me, it's just more intrusive to myself and my neighbors, so I'm trying to avoid that.

Ms. Morse: I think it's a hardship. It ruins the design of your property, your home, and your house, and everything. I think that is a detriment to the appearance of the neighborhood. And as far as your septic, it's not cheap.

Chairman Hemphill: Any other thoughts on hardship?

Mr. Lang: Unfortunately, there are different choices, so there's really not a hardship. That's the reason I'm saying that as written, that's the reason I asked Diane, if we go by the letter of the law, this is not. I mean, that's why I'm wondering if there is a compromise.

Chairman Hemphill: Well, I guess the compromise that we're talking so far is increase the setback to 12 to 15 feet, and... I personally don't like... We'll get to the size of that building in a little bit. I'm not done with that yet. But it's a little big, if we're asking for breaks on setbacks. Yeah, I understand, there are options. Moving one leg of the septic system. So, we're not all in agreement that it is a hardship. You know, majority rules when we vote, but...

Mr. Menefee: One way to look at it possibly was to, by going with the strict 25 feet, it would create a hardship because of the nature of the way it looks, and like Roxanne had said, the nature of the neighborhood. So then, that would go right back to B. If we said, okay, it has to be 25 foot, then all of a sudden, would it adversely affect the rights of the adjacent property owners just because of the location? So then, we can argue that as a way of settling that, or getting that criteria.

Ms. Morse: Also D.

Mr. Menefee: Right. And that would, at the same time, it would circle right back to B. If we enforce the 25 feet, we would be into B, as well.

Chairman Hemphill: Those are real good points on hardship. I want to do this brief stutter-step here. We've had attorneys on this board in the past, and I can't tell you how many times we all voted, and they voted no because of what AJ was just pointing out - that there are, you know... It's not a hardship. I mean, he can, he's got other options, but... I don't want to insult anyone, but amongst us girls, we've managed to come up with compromises. And another attorney said, "Well, we fix problems." So, that's my take on what we do here. We fix problems.

So, back to the five criteria. Hardship, we don't all agree on that. Health, safety and welfare. Fire, odor, firefighting equipment, etc. Anybody want to weigh in on that one? Item D.

Ms. Morse: Well, I think having it moved up by the house and being close to two structures is going to get the safety issue, and noise and odor, as I previously stated.

Chairman Hemphill: Well, I would just say that it's probably better away from the house because of firewall, you can build a firewall, but residential construction, you know, if there were a fire there, it could go up through the roof, and leapfrog over. It seems to me there's more probability of a fire in a workshop than there would be in a house. So, it's probably a good location to keep it away. The welfare of the neighborhood, I think if we can do the firefighting distance, you know, the property line, that's a plus. So, I don't think it's going to undermine the health of anybody back there.

Mr. Menefee: We could argue that it is actually safer at 15 or 12 than it would be at 25.

Chairman Hemphill: Okay. Item E. This one is... I could read this ten times and not, you know... The spirit of the zoning regulations. Anybody have any thoughts on that one? That this reduced setback is not opposed to the spirit of the regulations. The spirit being rural, open, that's why the 25-foot setback.

Mr. Lang: The setbacks play a large role in the integrity and character of a subdivision or a neighborhood. I don't believe that that is true to this particular incident. With all the other buildings built prior to 1994, that are structures, I don't see where a 25-foot setback would, I guess, violate the integrity and character of the subdivision.

Chairman Hemphill: So if it was on 40 acres....? Yeah, why would you want to build anything five foot from the property line? But one acre, back to... Do you draw an imaginary line 25 feet in, all the way around? How wide is your lot?

Mr. Puthuff: Probably 130 or 140 feet. I think Kelly is 160 feet. He has the biggest lot.

Chairman Hemphill: What I'm trying to get at is, you take this dimension and you subtract 50 feet off of it, and that's your building footprint. Your building cannot go beyond that. That's more than a 50 percent reduction, I would think.

Ms. Wicklund: It's 152 by 243, the lot size.

[crosstalk]

Ms. Wicklund: And 243 feet deep.

Mr. Menefee: One-third of the width of the thing would be not allowed at 25.

Chairman Hemphill: Yeah. I would just get, the 25 foot ring would take 50 percent. I'm just rounding off. Okay, so, what we've heard on the spirit is, maybe there's a double spirit. A spirit requirement for 40 acres, 10 acres, where you've got all kinds of land, and this little oddball - I'm not demeaning it, but in this small enclave of one-acre lots, a pack of septic systems, and a garage, and, you know...? I'm not trying to make a case like Gardner Lake, but it's kind of heading in that direction. If it applies to a one-acre lot, maybe... And looking at that neighborhood, maybe the spirit is met in Item E. I didn't think that way an hour ago when I was driving here, waiting over there for the train and thinking about this, you know? So, is there anybody else who would like to speak in the audience? There's two of you back there. We're a small group here. We're friendly. Anybody else who would like to speak, please go to the podium. If not, Mason, can you wrap up your thoughts on the neighborhood and the unique condition? It is unique. That you feel that you are not impacting the adjacent neighbors. Especially if you set back 15 feet. That moving the septic system, which appears to be your most logical choice, would be a hardship. That the health, safety and welfare of your neighbors with a possibly a few square foot smaller building and set back 12 to 15 feet would not impact the health, safety and welfare of the neighborhood. And that you meet the spirit of the zoning regs as they can be construed to a wider lot in rural Johnson County. Would you agree with those statements?

Mr. Puthuff: I agree with those statements. It's not the size of the lot that matters.

Mr. Lang: I have one more question. We were given this petition to build a storage shed.

Mr. Puthuff: Yes.

Mr. Lang: I know there are rentals up there. Are all of these owners of these properties?

Mr. Puthuff: So, the top two signatures are the renters next to me. The owner of those buildings lives next to the next house over. It's the father of the daughter who lives next door. And then, Mr. Lee is the landowner of the two houses on the corner of Moonlight and 135th, and I did not have those renters sign, I had him sign. Which I probably should have done in the beginning. So, one of those has both the renters and the property owners, and one has just the property owner, who I think would be most impacted by this.

Mr. Lang: "Lee" is going by Walter?

Mr. Puthuff: Yes.

Mr. Puthuff: Lee was very nice, and he promised me a history lesson on the area. I'm pretty excited about it.

Mr. Lang: Okay, thank you.

Chairman Hemphill: Anybody else have anything they want to say?

Ms. Morse: I just wanted to add to what you said on the general spirit. Kind of looking at it back-ways, the regulations are to promote orderly open space. So, I would say it doesn't violate any of those things. It doesn't violate open space, or light, and air, and so forth. In fact, by moving it closer to the house, you are blocking space and an open field. And as far as the open space that is owned by the church, if that were to be platted and homes built back there, they would go under the new regulations, and it would be drawn out as a 25-foot setback. So, it shouldn't prevent approving, have any problem there. And I think it meets the integrity and character of the neighborhood.

Chairman Hemphill: Thank you. Well, have we talked it enough? Raise your right hand if we've talked it enough. Okay. Back on the setback and the size of the building. The size of the building, I do not want it to be, personally, 45 foot, or whatever, and a lean-to. It seems to me that the lean-to ought to go towards, you know, over the laterals, or something like that. You know? I mean, I don't know. Usually you do those things. And that seems to be the obvious, you know, if you're coming from the driveway side, driving around there. If the applicant needs to reduce his building in width to meet our setback requirement. I'm hesitating to squeeze that thing up to make it longer. And like I say, the regs say 900 square feet, but the regs also say 25. If we're giving, we expect something in return. And obviously this will set a... What's the name of this addition?

Ms. Wicklund: Moonlight Acres.

Chairman Hemphill: Moonlight Acres, or something? This outbuilding will set a high watermark for Moonlight Acres outbuildings, would you say?

Ms. Wicklund: Yes.

Chairman Hemphill: I mean, the biggest one there is considerably smaller.

Ms. Wicklund: I believe so, yes.

Chairman Hemphill: I mean, when I go to the neighborhood, I couldn't see anything this big. Okay. So, to those two points, we stay with the 12 to 15. I don't want that building, right now, it's drawn at... 40 feet long?

Ms. Wicklund: Forty-two by 21.

Mr. Puthuff: Can I make a suggestion, or an offer? You know, meet in the middle? What if I don't build the lean-to, which would shorten that 15 feet?

Mr. Lang: That was going to be my recommendation. Not putting the lean-to.

Chairman Hemphill: variance for the side.

[crosstalk]

Chairman Hemphill: Lean-to went to the center of the yard. Lean-to went to the side.

Mr. Lang: But, if it went to the south, any vehicles, ATVs or anything else, you would be driving over the septic system mound. And that's not good. And now, since mentioned about possibly moving, I would imagine that system probably connects, the way his house is, it connects on the south side of the house and goes down to the north. And you can't lop off part of the north side and put it on the south side because your entrance to that system is already on the south side. So, you're going to be relocating your main line to the south in order to, if you add your laterals back up here. This has to be located back to the south.

Chairman Hemphill: So, you feel that the, I'll call it the header. Usually a main line, and then, legs come off that. You feel that...? Do you know where that header is, Mason?

Mr. Puthuff: I don't know about lateral systems, but I know that north to south...

Chairman Hemphill: You will when it backs up.

Mr. Puthuff: We had a scare, so I learned a little bit. As far as the lateral side of it, my lateral mound runs north to south. There is a clean-out on the top of north to south. So, if we were to take that side, you'd have to move that clean out and this clean out. And you were referring to which degree, I don't know any of that. I don't know how that works.

Mr. Lang: Where does it come out of your basement?

Mr. Puthuff: It comes out of the southeast corner.

Mr. Lang: Southeast. So it goes down like this, so laterals are going to flow to the north.

Mr. Puthuff: I would rather not build the lean-to than have to pay \$40,000 to move the lateral.

Ms. Wicklund: Chairman, I might just pipe in here, too. You know, another option to think about is, you always have the option of continuing a month and letting the applicant re-draw, think about it some more based on the conversation that we've heard tonight. He now knows kind of what setback you guys would be more comfortable with, that it's not 5 feet, but maybe 15 would be great, maybe a little less. And to think about the size of the building. I'm just throwing that out there, that if it's better to think about it and come back in a month with new drawings, and maybe even with new locations of the building and setbacks, and maybe we can have Environmental go out before the next meeting. And then, you would just have more information and not feeling like... That you weren't really clear about what you were wanting to approve, I guess. Just an option.

Mr. Lang: That's a great idea.

Chairman Hemphill: Diane, would there be any cost to him for doing that?

Ms. Wicklund: No. We would probably send out, a courtesy letter to that 1,000 foot list. We would not need to do that certified mailing again. But we could just send out what we call a courtesy letter, letting them know it was continued. I think it would just be more time. I don't think there would be any additional cost, but obviously time because it would be another month.

Chairman Hemphill: That sounds pretty decent. I mean, that way, we've got something to work with. If we were to take action tonight, and if that motion passed, tell me what I would vote for. Fifteen feet, both property lines; 42 feet and no lean-to. Now, if that means... Whatever you got to do to hit that. Now, if that's too restrictive, because once we vote, it doesn't come back. You know what I mean? It doesn't come back. Is that...? I'm just thinking of moving forward tonight .

Mr. Lang: Well, that's right down my alley, but, yeah, I'm with you.

Mr. Menefee: Now, can we restrict the size, or...?

Chairman Hemphill: Well, the size is restricted by...

Mr. Menefee: By the 900 square feet.

Chairman Hemphill: But, it's restricted by 15 feet, both property lines, 42 feet as it abuts the neighbor, and whatever he can wrangle out of Johnson County Environmental with the septic system. I mean, that's one way we could go. Or, the applicant can go back with more specific dimensions and information and come back in a month.

Ms. Wicklund: Correct. I think the outlier is getting that final confirmation from Environmental. So, you know, if you voted on something tonight, that's great, but what happens is, you know, we get Environmental back out there, no, that's not going to work, you know, where does that leave us? That's what is in my mind, and that was the only reason I was thinking about, you know, if you can be clear - and I think you are - about what you might approve, then Mason can go back, re-draw, talk to Environmental. If he is agreeable to that. Then come back, yeah, we're set with everything per what you guys would approve, or it's beginning to look like that's what you want to approve. Because I think Environmental is a pretty big key here.

Mr. Menefee: I think maybe giving them time to see if they can work it out is, first of all, maybe get it surveyed and find out where that property line is, because you have two feet more than you think you have, which would help a lot. And if we put that off for a month, that would allow you to do that. It would allow you to talk to Environmental again. Then you can kind of back into the width of the building at that point, once you know where the 12 or 15 is, where Environmental says it's okay. You could back into the width and design your building from that. And that would give you time to come back to us with a nice, tight plan, and we'll be a lot more comfortable getting to the five criteria that way. There are a few I agree with. I agree with the reasoning and the argument, and in my mind, it would make it worse, keeping it at 25, but, you know, there's also the letter of the law that we have to be very cognizant of. So, I think a little more time, more information, a tighter plan, we'd feel more comfortable.

Ms. Wicklund: It sounds like you're heading towards the direction of 15 feet on both the side yard and the rear property line, and same dimension of the building, but no lean-to. So, no change in the 42 by 21, it's just that there will not be any lean-to.

Chairman Hemphill: Well, the 21, they have to adjust.

Ms. Wicklund: Depending on what Environmental says.

Chairman Hemphill: The plan will have to adjust to...

Mr. Menefee: And then, the back setback, I mean, depending on how the width works out, the back setback, maybe 25 is still okay, and it's still not getting quite far enough. But, I mean, if we're given them 15 on either side, that's fine with me, you know, with the big field in the back, and like you said, it's going to get platted.

Mr. Lang: When they built the church, the minister said that in addition, they were going to build a school out there. So, that might be possible.

Chairman Hemphill: We have a playground right next to a welding shop. No, I'm just...

Ms. Barber: What is, getting rid of the lean-to? Why does that help? Just making it look smaller.

Chairman Hemphill: Yeah.

Mr. Lang: To me, the roof structure, you've got 56, you've got about 1100 square feet of roof. I mean, it would look more out of place. I mean, even with the characteristics of the neighborhood, with the outbuildings and everything else. You must remember, this building is going to be at least 14 feet tall. Like I said, those smaller ranches out there aren't anywhere near that.

Ms. Morse: I would ask the applicant if you could provide us with a drawing. It doesn't need to be to scale, but to mark what you've come up with. You don't have to have it done professionally. But what the setback ends up being, and how close it is to the septic, etc. So then we have a visual of that. And, I think that it's a wonderful idea to continue this because we will all be much more comfortable with making our decision.

Chairman Hemphill: Can I get the applicant's input, please? On a set of regs tonight that we can live with, and you have to deal with, or have to start over, back to Square One. You can't apply one month later, is what I'm thinking.

Ms. Wicklund: Yeah, there is a timeframe in the regulations, like, similar applications within a year. I'm not sure if that applies to this zoning board, or if it applies to the variance request. But, I mean, to me, it would be better to continue, make sure you have a good plan in place that everyone is comfortable with, versus approving something tonight, and then we find out it doesn't work within Environmental, then we're dead in the water.

Chairman Hemphill: Your opinion, Mason.

Mr. Puthuff: Well, it's very important to me that this gets done right, so if we have to delay this a month, that just puts the project further back. A couple questions. How would one go about getting the property line surveyed? I know there's supposed to be a marker back there. I heard you can find it with a metal detector. And then, I'm guessing those are accurate?

[crosstalk]

Mr. Puthuff: I guess that's my question. Does that hold any weight?

Chairman Hemphill: You're going to have to get your wallet out. You're going to have to pull your wallet out, and you're going to have to call 1-800-surveyor, and you're going to have to get somebody out there. That's what you're going to have to do.

Mr. Puthuff: And then, as far as Environmental goes, I'm okay with moving this. I'll start with that. So, the next thing is, so, when I went to Environmental, and I heard from Environmental Guy A that your setback is 25 feet, I heard you guys give up to 15 feet, they said we're going to give you a re-inspection of septic... I don't know how to do that verbiage. They send a guy out, he says it's good, here you go, signs off. If you guys call it a compromise. Again, I'm easy on this whole process. He's going to come out again, and I don't know if they're going to say this is our minimum that you can do this at. It's almost like I'm going to have to have a plan in place, and then, see if they're okay with that plan. And if they're not okay with that, get a plan in place .Okay. Then that's what I will do. I'll do what I have to do.

Chairman Hemphill: And if you have it surveyed, a survey goes a long ways when you go talk to Environmental, and you lay it on the table in front of them, you maybe have some dimensions to show. I mean, the survey can locate the mound system, or whatever, rather than eyeballing it.

Ms. Wicklund: If I could interject here. So, what the Chairman is talking about is, if you hire a surveyor, they're going to go out and survey and put property pins in your four corners. That's so you know where your property lines are. That tells you where your property lines are. They may or may not be where you think they are. That's a first step. That identifies your property boundary. And then, a formal survey is done, and they can sketch in the house. I think Mr. Hemphill is right. Then you go to Environmental with, okay, now I'm going to be 15 feet, so you would stake that out, just like you did before, right? Stake that out, and Environmental comes out, and they have the ability to locate the septic system. It's not the surveyor that is locating the mound system, it's Environmental. Then, they come out, if you have that staked, and they locate that mound system. And they've already done that if they've been out once. So, I think what you're saying is, when we come back, we know that Environmental has seen the site plan, we know where the septic is, and that that 15 feet is either okay or not okay.

Chairman Hemphill: Well, this is an opinion, this is not in writing anywhere, this is not a regulation, but if you're going to survey, you probably ought to get a drawing, and you probably ought to have four corners, and you probably ought to have the house located on it. If you have a clean-out in the yard, you probably ought to have those located. You ought to have anything that sticks above ground there that could come into play. And call formal surveyors and tell them, you know... Obviously they can't see underground and locate laterals, but someone is going to have to locate them.

Ms. Barber: I'm just curious from you guys. Have any of you had a survey done recently? The last one I heard about was \$3,500.

Mr. Menefee: I just had one done on rural property in Kansas City proper and it was \$930. Now, we're not saying that you have to do a survey. Like I said before, it could be to your advantage if you gain a couple feet. Now, if you just go with the existing property lines like you had before, then that's fine. We're not sure, Environmental is not going to be sure. Like Diane said, they're going to be a lot more receptive to seeing those stakes and measuring their 15 or their 22 and showing you, like, okay, here's 15, here's where we found, and here's 21 to 18 feet of space that you can build in. And then you have a plan. Now, you might be able to find it cheaper for rural property. I'm not sure.

Mr. Puthuff: What's your guy's way if I find the property marker versus a survey? To me, \$900 is a lot of money. It takes me a lot of time to make that kind of money. So, I'm not... Believe me, I really want this, and I've already spent what's a lot of money to me to get to this point, so I don't mind spending more. But if I can go out with a metal detector and find a stake and it's going to serve the same as a \$900 surveyor, I would rather not spend the \$900.

Mr. Lang: I live down the street from you. The stakes sometimes were not put in the proper location. I hate telling you this. I know my neighbor discovered this when he sold his house. I actually own three feet from that stake into his yard. So, I had it surveyed and everything else. When the new surveyor came in and they took the lines off of 135th Street, the pinpoint, I guess they call it, it was off. So, don't go off your fence lines. There should be a survey stake down there, but like I said, it's probably going to be back in that field at least a foot, foot and a half buried. So, you might have a problem finding it. And they graded it Moonlight I don't know how many times, so those stakes that are out there, I don't know if you'll find those stakes.

Ms. Morse: Did you have the property surveyed when you bought it?

Mr. Puthuff: I do not believe so.

Ms. Barber: It's not required anymore in terms of a sale.

Mr. Menefee: The only other thing that you could do is if you know someone who is two or three lots away and has had a survey. Just kind of ask around. And you can measure then from a known point. Now, I mean, it's not normal for people to survey unless they're building something, so that may not be an option. But like I said, it's not required. Obviously we didn't require you to do it. But it may help.

Mr. Puthuff: Again, I'm just trying to figure this all out. I'll try to please you guys, as well as my pocketbook. I think step one is to go out and try to find that with a metal detector.

Chairman Hemphill: Well, you can start with a plat. Go to the courthouse, get a plat, measure off the center of Moonlight. You can be within a couple feet and know that it's center of Moonlight to your back property line, whatever, 270 feet. You can try to piece stuff together on your own. At least you'll know where to dig. Stake it and stretch out some string, and then call Environmental, and stake out... you know? Since we have no requirement for a survey. I know that's what I would do. It would take the guesswork out of it.

Ms. Wicklund: So, in general, I think when the building inspectors go out, one of the first inspections they do is a setback inspection. They generally, ask the owner where they believe the property lines are. In this case, it's a fence on the north side. There's no fence on the east side. You know, part of it is,

when the building inspectors go out, generally, it's a property owner telling them, here's where I believe my property lines are. And they measure off and stake for the building. And in this case, so you say, okay, I'm just calling my fence line my property line and that's where I'm measuring from? That's where I'm going to put my stakes for the 15 feet. And then, you go from there. If you're not going to do a survey. That's kind of a give-and-take. It's difficult. Without a survey, it's difficult to identify where your property lines are. That's really the best a building inspector can do, is take the landowner's word for it.

Chairman Hemphill: Traditionally, you build a fence a foot on your side of what you think is the property line. That's a courtesy that everybody does. I don't want to make this any more difficult than it needs to be. I'm still good back to 12 to 15 feet on both sides, 42 foot long, and work the rest of it out. Or come back in a month with something different than that. So, it's like rolling the dice. But the board wants to hear it back again. Let's have a motion.

Mr. Menefee: I make a motion that we table this for a month to get more information from the applicant.

Ms. Morse: Second.

Motion passes 5-0.

Ms. Wicklund: That would be May 15th, would be the next Board of Zoning Appeals meeting.

Chairman Hemphill: Does that give you time to advertise?

Ms. Wicklund: I think so. I don't think that we have to re-advertise. We'll probably send out courtesy letters to keep those people updated.

VII. UPDATES/OTHER BUSINESS [None]

ADJOURNMENT

Richard Hemphill, Chairman

ATTEST:

Secretary to the Board