

JOHNSON COUNTY BOARD OF ZONING APPEALS

Johnson County Administration Building

111 South Cherry Street

Olathe, Kansas

MINUTES OF MEETING

May 15, 2019

5:30 p.m.

I. CALL TO ORDER

A meeting of the Board of Zoning Appeals of Johnson County, Kansas, was convened at 5:45 p.m. on Wednesday, May 15, 2019, and was called to order by Richard Hemphill, Chairman, with the following members present and participating; to-wit: Jeff Menefee, Karen Barber, A.J. Lang and Roxanne Morse. 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

Mr. Lang: I have one correction. I misstated the size of my barn. I think in here I said it was 20 by 60; it's 30 by 40. Other than that, they look good.

Motion by Mr. Lang, seconded by Ms. Morse, to correct the minutes of April 17, 2019, as corrected. Motion passes unanimously.

IV. BOARD REPORTS

Chairman Hemphill: County Commissioners' actions?

Ms. Wicklund: There's nothing new to report.

Chairman Hemphill: Okay. Planning Commission activity?

Ms. Morse: We have been looking at updates to the Comprehensive Plan, and we saw final changes at our last meeting. I believe there will be a public hearing on that. It relates mostly to arterial lots. And then, we are beginning to discuss the non-conforming parcels and what we can do when people buy a piece of property and do not realize it has been previously divided. The Register of Deeds is required by the state to record them as long as they meet the criteria, one which is checking on the background of the lot.

Chairman Hemphill: Just curious. Is the Sunflower plant, that's going to be part of a long-range study? Do you know anything about that?

Ms. Morse: No. There was a long-range study years ago, but I've not heard anything recently.

Chairman Hemphill: Okay. Just curious. It's just sitting there. Okay.

Ms. Morse: There's a development plan for that area that was done years ago. Of course, the chemicals on the property, they have to be removed, etc.

V. BUSINESS BEFORE THE BOARD

Continued - 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: You received a packet in the mail. There was a staff memo; I'll go over that briefly. I also included a copy of the original staff report for your purposes. In addition, those drawings that I just handed out, I got those off of AIMS, just to have some larger drawings for us to look at. Part of this packet was a nice and thorough write-up from the applicant about different scenarios that you requested he go back and look at. There are a lot of good pictures in here, too, which I am hoping will be helpful as we go along.

So, this board continued this application last month and asked the applicant to go back to the drawing board, think about 15-foot setbacks, check with Environmental, think about different scenarios and options. He did that, and his attachment is in your packet. I think the most important piece is that last page, which is the Environmental Report. They came out and did a second site visit. The person from Environmental proposed placing the building two feet closer to the base of the mound, is approved, but no closer. So, up above, it says 22 feet. I think they were saying that he could get as close as 20 feet to the mound system with a building, no closer. So, that results in an extra four feet; I think the maximum setback will be nine feet, if I'm doing my math and thinking about that correctly.

Just a general staff response to the applicant's work-up. I think he did a great job in trying to answer your questions and did more homework on it. However, I think staff's recommendation is going to be the same because there are still options where he could put something on the property and still meet that 25-foot setback. That's why staff continues to recommend denial.

And then, as a reminder - and I think the board talked about this last month - you do have to find that all criteria are satisfied, and as we go along here tonight, if the board is looking to approve some type of setback, then before the motion is done, we will need to go through those five criteria and list out the reasons for each of them. That's something we then have to write up and forward to the Board of County Commissioners. So, keep that in mind because those five criteria, you'll need to go through those and say whether it meets them or not.

A couple follow-ups from last month. One, I went back and verified, so, in 1993, the property was zoned RR Rural Residential. That had a one-acre minimum. In 1994, we did that countywide rezoning, and that's why the property is now zoned RUR Rural. So, we changed the zoning regulations in 1994. So, in 1993, when it was RR, the setback for accessory structures in a rear yard was 10 feet. And then, of course, today in that rural zoning district, it's 25. But it's also 25 in all of our residential districts today. So, we talked about that, and I wanted to remind the board. In addition, the board was asking about some of the larger accessory structures in the subdivision. So, remember that these eight lots here, they are a series of one-acre lots. There are eight lots, and there are three lots that have accessory buildings that are larger than those garden sheds that are all kind of in the back towards the back property line but don't meet the current setback requirements. They're the smaller, 8 x 10, 10 x 12 garden sheds that, in general you don't need building permits for. So, those larger accessory buildings, there are three lots that have those. Two of those lots, those accessory buildings do meet the current setback requirements. There was one lot to the south of the subject property, it has two larger accessory buildings. The one on the south did not meet the current setback requirements, but it looked like it was legal non-conforming because I could see it in the 1982 aerial. So, just an update on that. I know the board was asking about that. The size of those accessory structures, one was about 1,080 square feet, 800 square feet, and

about 675. I just wanted to give you an update because I know we talked about that last month. With that information, I'll stand for questions. The applicant is here, too.

Chairman Hemphill: Thank you. Can you explain this drawing showing 64 feet from the north property line? My question is, I see where the pad is back in the corner. There's a bunch of trees in front of that pad. Are those trees in the current 20-foot setback, or the proposed 20-foot setback from the mound system?

Ms. Wicklund: I don't know. I printed these pictures off of AIMS and I just used a measuring tool. So, I understand that those are a pretty good estimate of distance to those property lines, but it's not survey-accurate. I did not do any measuring from the mound system to the trees or anything like that. The applicant might know that. I don't know how close those trees are to the base of that mound system.

Chairman Hemphill: We will ask the applicant. Between board members, it kind of looks like that third page back is a pretty good drawing of it. It appears as though that tree is in the setback, the proposed 20-foot setback. Could you give us a brief reason why these wider lots exist? Just because that's what somebody got approved back in 1992? Are there a lot of lots like this in the county?

Ms. Wicklund: This property is in a platted subdivision called Moonlight Acres, and that was platted in 1962. It was platted in one-acre lots and it had that RR zoning. There are other examples of one-acre rural lots out in the County. I couldn't tell you exactly where they are off the top of my head, but looking at the zoning map, we could see those. In addition, there are many parcels out in the County that have rural zoning that are less than 10 acres. So, that rural zoning, just a reminder, has a 10-acre minimum, so there are a lot of what we would call legal non-conforming lots in the County that have the rural zoning, but they are less than 10 acres. So those are considered legal nonconforming as long as they were split in conformance with regulations. You can build on them even though they don't have that 10 acres. But, yes, there are other lots out there that are one-acre, two-acre, rural zoning.

Chairman Hemphill: Any other questions for Diane? One comment. This is probably an unanswerable question, but you have your non-conforming lots, are they in the spirit of Gardner Lake, with the 50 by 100 lots, at Gardner Lake?

Ms. Wicklund: Out at Gardner Lake, yes, those are, like, 50 by 100 lots, smaller lot sizes. They have a different zoning category. They have PRU1B zoning, which is a residential zoning, and it's got a 10,000 square foot minimum. So, your correlation is correct in the sense that a lot of those lots, although a different zoning, it's still the same thing. There are a lot of lots out at Gardner Lake that are less than 10,000 square feet, which is that zoning category minimum. So, those lots are considered legal non-conforming lots. So, the same kind of idea, if that's what you're getting at.

Chairman Hemphill: Yeah, I was just trying to put this one lot that we're looking at tonight in that category of, it's pretty tough to make 25 feet work. I think everyone on the board agrees with that. I just want to make that statement.

Ms. Morse: Maybe I can refine some of that for you. Oxford Township and Aubry Township in the southeast part of the county, a number of neighborhoods are on one-acre, two-acre, three-acre, and there are also 10-acre. And the neighborhood I live in goes back to the early 1970's, and it was laid out in one-acre lots. And septic systems were allowed. I picked up on your train of thought there because I had the same thought. When it was laid out, the developer - and I don't know if it was something - that he chose, or whether it was being done countywide, because there wasn't a planning office at that time - had set the lots at 10 feet setbacks from everything. So, the lots were laid out that way. The homes are not centered; they're over to one side, giving more space. So, you've got a larger setback, and then you've got your neighbor's driveway and so forth, before their living quarters. So, you have more separation. So, people were immediately putting up storage sheds because if you have an acre of land, you've got a riding mower, tractor, and other equipment. So, we put up sheds in the setback, and that's the design of the neighborhood. So, I know of a number of people in the neighborhood who, over the years, after this 25-foot setback was put in, that have not been able to do what they would like to do.

Even not get a variance. To me, that doesn't make sense because an acre, when the regs were changed to a 25-foot setback, it also required two acres for a septic. So, here we are. We have a septic system and only one acre. And to be able to put something in our yard, we actually can't, because 25 feet from the property line, because of the shape of my lot, would put it out on top of the septic system. So, I think the intended regs do not take into consideration the limitations on a one-acre lot, which now you cannot put a septic system on. I think that was caused by the regs. The ironic thing is that now, Overland Park is behind us, so our neighborhood has duplexes about 35 feet from our property line. And we're supposed setback a little shed 25 feet? It's very mixed up to me.

Ms. Barber: I don't think we need to beat a dead horse. I understand it's code, but I think we can all understand that we can't change the past. We can't make that not okay today. You can't now say, "Why are all these one-acre lots there?" Well, because in the past, it was okay. And people wanted them, and they bought them. Have about 5,000 square feet? Who only knows? But they did a lottery. You won the lottery; you got your 5,000 square feet. We can't change it. It is what it is. And trying to make people conform, it's pretty difficult.

Chairman Hemphill: Well, I want to have this discussion on the five criteria before we hear from the applicant. The very first item:

a. The variance requested arises from such condition which is unique and which is not ordinarily found in the same zoning classification...

Chairman Hemphill: Well, the zoning classification, the standard is 10 acres, and with a CUP I think you can go down to two or three acres. It's like a Catch-22; you can't get there from here. It won't all fit. My point is, I think it's a very unique situation because you can't get there from here. The spirit of the original design was 1 acre, and 10 foot setbacks. So, this is a unique condition. Anybody else have any feeling on that that item?

Mr. Menefee: I would agree with that. I think number 1 could be satisfied in my mind with it being unique, for that reason. I would agree.

Chairman Hemphill: Okay. Item b.

b. The granting of the variance will not adversely affect the rights of adjacent property owners or residents.

Chairman Hemphill: I'm struggling with that. We have letters from two adjacent landowners. The minister on the property behind has stated that he is not concerned. The other neighbors have somewhat encroached in that 25 feet. Nobody is here to object to that, but maybe our duty goes beyond whether they show up or not. That is, does it really impact the neighbors if this building is less than 25 feet? I think that's the question. And I think, for me, driving in that neighborhood and just looking at it and seeing the one-acre lots, knowing the spirit of the design when it was designed, that it does not adversely affect other residents. That's just my opinion. Any other thoughts on that?

Ms. Barber: I agree.

Mr. Menefee: I would go further and say that denial of the variance would adversely affect the neighbors, more than granting the variance would.

Ms. Morse: I agree with that.

Ms. Wicklund: Could you elaborate a little more?

Mr. Menefee: Yes. The way that the property is set up as one acre, if we denied it, his options are limited to certain areas, and those areas would adversely affect the neighbors. If he had to build in those areas, it would be a worse place than if we would grant him the variance and he would be able to put it back in the corner. Does that make sense?

Ms. Wicklund: Yes. But if he put it to where he met the 25-foot setback, there are two options where he could do that, right? But it would be closer to the street, closer to the neighbors' house...

Mr. Menefee: Yeah. When you drive down the street, I would notice, if we denied the variance and he had to put it in one of the alternate locations, I would notice that building much more than if we granted him the variance and it was put back somewhere close to where he would like to have it. I think it would be more in the general spirit of the neighborhood and the layout.

Ms. Barber: I drove down there today, and I have to say that the neighbors have all put, everything they put in their yard is as far back to the fence as they can get it. And I know they're smaller, but there's one that's a one-car garage with a lean-to with a roof on it. I know they're smaller, but obviously the neighbors went, "Let's put this all the way back here so it doesn't affect any of us." So, I agree with you in terms of better further back than up front.

Ms. Morse: You can visualize, too, the curb appeal, and having a building of that size sitting almost to your front yard I think will detract from the neighborhood as a whole, and perhaps lessen property values, or maybe the resale of this particular property. The purpose of the Rural Comprehensive Plan is to preserve open space and views, and as has been testified to at a previous meeting, putting the structure up further to the house has been shown to block the view of the open space for the neighbor to the north.

Chairman Hemphill: Any other comments on item b.? I'll move to item c.

c. The strict application of the provisions of the Zoning Regulations from which the variance is requested will constitute an unnecessary hardship upon the property owner represented in the application.

Chairman Hemphill: I'm having a little trouble with this one. I'm not sure I see the unnecessary hardship. I'm looking for if anybody else has any ideas on this topic.

Ms. Morse: First of all, the whole problem in restricting back there is the septic system. If the septic system wasn't there, it wouldn't be a problem with a 25-foot setback. So, the hardship would be is the option to relocate the septic system, or doing something with that, I guess. I don't know if that's possible, but that certainly would be an expense. The other option is moving the structure to the north side of the house, which is going to put it right by the neighbor. If it was attached, I don't know what the connection factor would be. But it also could, as mentioned in the item before, affect his property value by having it close to the road.

Ms. Barber: If I am correct, I believe the master bedroom is on that north side. So, if you attached a garage, you'd be attaching it to the master bedroom. Not normal. Not appealing. The other thing he pointed out himself for us, and this is where I was having trouble last week. You take 37,181 square feet, and when you squeeze it in 25 foot on the two sides, they're left with 19,867 feet. They bought a house on an acre. And of that, the septic is about 5,300 feet of the 19. That's in his response to a. And I think that that creates a hardship.

Chairman Hemphill: Anybody else? Let me try to summarize. The hardship is that to do it right, you need to move the septic system. That is a bunch of money. I think we were throwing around \$35,000 - \$40,000 for a mound system. That's a lot of money. So, maybe that is enough of a hardship right there. Although there are other places to put it, according to staff. Our whole line of design and reasoning goes that move it to the back, it really needs to go to the back because it looks better back there. It doesn't block the neighborhood, the spirit of openness, etc. So, if it has to go to the back, the mound system is the hardship.

d. The variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.

Chairman Hemphill: I'm not demeaning the neighborhood, but it's like most rural neighborhoods. They become somewhat... What's the word I'm looking for? Push everything to the back fence, push everything to the property line, open up the front yard space... You know? That's kind of the order of the neighborhood. I'm not saying it's good or bad, but that's what that neighborhood is. There's a lot of activity going on, and I don't think this one building will adversely affect that order that's out there. So, if anybody else has any thoughts on item d...?

Mr. Menefee: I would agree. Granting the variance would be in order with the neighborhood, rather than adversely affecting the order of the neighborhood.

Chairman Hemphill: Yes, it's not clean and neat and everything 25 foot in and, you know, there's not room for all that. Any other thoughts?

Ms. Morse: We talked about this the last time. Public health and safety. We talked about the use of the building, and he certainly has the right to use that building as he wishes. But his use would possibly cause odors, noise, and could be a fire hazard. And his statement in today's report, he has the opinion of the Olathe Fire Department that said the captain he spoke to stated that increasing the distance from the storage shed to the houses is a much greater safety priority than increasing the distance from other property lines. That he would be putting those hazards close to their residence, their bedroom, and to the neighbors' house also. I think that's a very important factor. And the fire captain mentioned that they would be required to leave enough open space on the north side for two fire trucks to reach that facility. That seems reasonable to me.

Mr. Lang: I'd like to point out that this is in the Northwest Consolidated Fire District and not Olathe.

Ms. Morse: We may not have the same...

Mr. Lang: Yes. The fire district, it's a uniform fire code, it's definitely interpreted differently by different chiefs and everything else. I agree with the statement that it would be much better to be away from the residential structure. However, I'm pointing out that going to the Olathe Fire Department and asking about regulations in the Northwest Consolidated District would be like me going to Olathe and asking for their blessing to do something on my property when it's not their jurisdiction.

Ms. Morse: I understand that, and will strike the part about the Olathe Fire Department. It's common sense. You put fire hazards further away from residences.

Mr. Lang: Roxanne, I've served on that board since 1984, Olathe would love to take us over, but it was consolidated, so it's there to stay.

Chairman Hemphill: So, an accessory building is supposed to be accessory to the main structure, meaning that it's not a farm; it's a house. It's supposed to be accessory to the house. I guess that could be a hobby, or what. But we hear talk about welding projects, and I'm thinking, are we fabricating out there? What are we doing? Is this going to be a business...? And I think the applicant said he did projects for the house, and they had the wife's van out of the driveway. But I'm not going there because I think it's a person's right to do whatever they want on their property. But it seems kind of odd. I would hope the applicant is not going to be doing a home business. That's a whole other issue. And that's not part of our discussion, so, I'm just going to say it, but it's not going to carry any weight in my discussion tonight.

Okay, so, we talked about public health, safety, morals, order, convenience. Item e.

e. Granting the variance desired will not be opposed to the general spirit and intent of the Zoning Regulations.

Chairman Hemphill: My statement on this is that the original 10-foot setbacks are the design. They are the spirit of this neighborhood. Why else would you design something on one acre...? That is the spirit. So, yes, there was an overlay of 25 feet, so I feel that that design, the original design, you meet the spirit

of that. Now, you can argue, well, that's why I brought up that discussion about Gardner Lake. You've got 50 foot wide, 47 foot, six inch wide, 45 foot wide lots. You can't even turn a car around on them. The County went through and did regulations. Maybe the regulations need to be redone for some of these small areas. So, the general spirit and intent I feel is met due to the original design being the spirit of the original design. Any comments from staff or anybody else on that topic?

Ms. Morse: I would just add that the intent of the Rural Comprehensive Plan is for open space and views, and this would accomplish it better than moving the structure. As far as the 10-foot setback, I think the 10 foot is appropriate for this size of a lot that requires a septic system.

Chairman Hemphill: Nobody else? Okay. We're running out of topics.

Ms. Wicklund: Just a quick comment. So, one of the things you were talking about earlier is that this specific lot is legal non-conforming in terms of rural zoning district, which it has, but it's legal non-conforming in terms of the lot size. The rural zoning required to have 10 acres; this is one acre, so it's a legal non-conforming lot. That's part of what we're talking about, is, that was caused by that 1994 countywide rezoning. I think you're trying to fit those two together, is what it sounds like to me.

Chairman Hemphill: Yes, that's well put. It's trying to take, like, what was Gardner like in the 1940's, and design back when it was created.

Chairman Hemphill: Yeah. And to take those design criteria and move them forward, I'd like to think we're bigger-better-faster now. We're definitely bigger. Look at your grandmother's closet, then look at your closet. Bigger-better-faster. You can't sell a house today with a two-foot closet, but you can sell a house with a walk-in. This is a similar deal. Time changes things. So, you can't go back and have more land. So, here we are. That's why we have this board of appeals.

Okay, the general spirit and intent of the zoning regulations - I'm doing a retro on that, going back. Any other comments on item 3.? [None] Any other comments from anybody before we have the applicant speak? [None]

[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. I don't need to touch on the five criteria this time, I'm guessing? The five criteria you just touched on?

Chairman Hemphill: Based on our decision, based on the five criteria... And yes, I think if you would restate the type of statement that you did, that would be a good starting point. Then we could ask you some specific questions. Please do so.

Mr. Puthuff: Okay. I am applying for a variance of the setbacks. To kind of clear up some stuff from our first meeting, I don't have a ton of pictures, and everybody is kind of on the same page. The pad that I poured at the back of my house has a five-foot setback. The structure that was proposed in the first meeting would have had a six foot setback if I had moved it to the very edge of the path. I have laid out two other options based on your concerns, which is in the packet. I left the last meeting somewhat confused as to how I need to go about this. I know we had property line issues, and a survey was requested. I did not do the survey due to what they told me it was going to cost, because it was 1964. Ultimately, I could do a \$2,000 survey and you guys could say no, I still don't get it. And what I heard from Diane's comments in the last meeting is, basically when the inspector comes out, you point at the property line, and that's what they basically go off of.

So, I have a fence. I talked to my neighbor. Apparently there used to be a drainage ditch. I'm learning the history of Moonlight Acres in a nutshell every time I talk to somebody. So, the fence is basically right

on the property line. I was hoping that the previous owner cheated it in so I would get another two feet, but that wasn't the case according to my neighbor. I know that there was a big safety concern as far as fire and having a space between for fire trucks to drive. Mr. Lang, I'm sorry I went to Olathe Fire Department. I actually didn't. My neighbor to the north is friends with the fire department person... I don't know his first name, but Mr. Huffman, who is a retired captain of some sort at the fire department. So, I asked him what his thoughts were. He kind of laughed when structures need to be far away from each other, because I burn down that white shed next to it, Keith is... Now, I understand a future owner could put something very nice up, and we obviously want to account for that.

So, I proposed two things in this. Basically, it's moving the structure forward, which puts it close to the road but still out of the way and is 25 feet behind the shed, and still requesting a six-foot variance off the property line. And then, as you saw in the report, Environmental gave me two foot closer to the septic mound, and then, in my second report, I would shrink the width of the structure, giving me roughly nine foot off the property line. Obviously it wouldn't be centered in the pad, but using my high school auto CAD skills, drew it all to scale, kind of what I was thinking, and where it puts it close to the house, and septic mound, and all of that. I called a couple arborists, and without coming to look at it, but telling them the size of the tree, obviously that was a pretty significant cost. So, I decided not to remove the tree. I might have to trim the tree, depending on, even if I get a variance. There is a cost in that, but I am willing to incur that cost. Moving the septic mound, besides the cost, I wouldn't do it because it would be more expensive than the building itself. And at that point, might as well move to something that has a couple more acres. You know, if you're spending a lot of money to put a storage shed where people already don't want it, so.... On top of that, it puts it too close to my neighbor to the north. Unless I got a variance like I did for the shed, I guess.

Those some of the research I did. I took pictures. I guess my thought after leaving the last meeting was that it's hard to classify my little property of one acre with all the people around me. I know there have been concerns about the size of the building I'm trying to build, but if you step out my front door, I look at a building that's even bigger than that. Granted, he has more land. So, I was trying to address some concerns, but we talked for, I think 2 hours and 15 minutes, and my brain was so fried, I couldn't remember everything. So, as you ask questions, I will try to answer them.

A couple things that I heard, and some of the things I've read from the pamphlets, you know, the setbacks are to keep open spaces.... And if I follow the setbacks, it makes my space and everybody around me a little less open. So, I guess the spirit is why I'm trying to move it to the back. And then, as far as the welding projects and stuff like that, that's a future hope. Originally, this building will not even going to have electrical in it. It's just going to be storage, to get my garage cleared out. I stated that because I've been trying to be honest through this whole thing. Yes, that's eventually what I would like to do. Not running a business out of it. Nothing like that. I guess I wanted to tell you future plans so that if that was a concern, I could address it now and not do it. But, like I said, originally this building was just going to be for storage, to get everything out of my garage and be able to park some cars in there. Any questions you have for me?

Chairman Hemphill: Okay. Let me make sure I understand. I'm looking for.... Proposal 1.

Mr. Puthuff: Proposal 1. That would basically be asking for one setback variance, just off my neighbor to the north and not the church property.

Chairman Hemphill: Okay, so, this proposal wants a five-foot setback.

Mr. Puthuff: It would be a six-foot setback from the north neighbor, and there would be no setback variance from the neighbor to the east. It still puts it by my house. Still keeps it out of my neighbor to the north's view, which.... He doesn't care at all, but if he goes to sell his house, I would hate for him to have that. He hasn't probably even thought of this; maybe he has. I can't say. But if he goes to sell his house and I put up a shed or shop, or whatever, I want it to be back as far as possible so you can't see it from

his house. With that, I'm only asking for the one setback. He could probably see the corner of it, but it would still be out of his way.

Chairman Hemphill: Proposal 2, the one on the left at the bottom of the sheet, shows the red rectangle is 25 feet from the rear.

Mr. Puthuff: I asked for 15 because... I don't know. Because we were scooting it further out, I want it to be further back so that my neighbor couldn't see it. The black rectangle is the current pad. The red rectangle is the proposed structure. In this, I would have to pour, obviously, the two feet of concrete closer to the septic that I'm allowed, and then, more out towards the front. I shrink the structure from 21 feet wide to 20. Obviously, that would be to the furthest side of the pad that's already poured, and it goes past that. And that gets me to roughly nine feet. I think I've got five foot-something to the edge of the pad. Originally I had 21 feet and it's 22 feet wide, so I'm offsetting another foot, which gets me to six. And then... Wait, I did my math wrong. It's roughly a nine foot setback from the north property line. I shrunk the building. That's how I get to that nine foot setback.

Chairman Hemphill: Asking for a 10-foot variance on the north property line. That's the fourth bullet down. Can you explain that? Asking for a 10-foot variance.

Mr. Puthuff: So, well, if you have 15 foot, I guess, a variance... I apologize. I'm asking for a 10-foot setback. And that's on the north side. And then, it would be 15 foot off and back. Ten foot setback on the north, 15 foot off the back.

Chairman Hemphill: Write that on here so I can remember it. Here it is.... There it is.

Mr. Puthuff: And like I said, I've got, like, 5 foot 7 inches to the fence. It would be right at 10 foot.

Ms. Wicklund: Just a quick reminder, remember that, as far as I'm doing my math here, I think the most setback that you could give on that north side would be nine feet. We need to remember that. Because of the mound system and that they can only be 20 feet away. That map there would only allow for a maximum of nine foot setback.

Chairman Hemphill: That's at the current building size.

Mr. Puthuff: Yes, if I had a 21-foot structure, that would be a nine-foot setback. By shrinking it another foot, I could get to 10 foot. And then, I just made it 20 by 45 because that's 900 square feet. So, extending it longer, but making it long and skinny.

Another thing with that proposal, we'd probably have to change the type of structure. It would still look the same as all the pictures, but the original plan for me was to have an all-steel building, no maintenance. I think the piers might interfere with the tree I'm trying to not cut down, so in the scenario, it would probably be a wood timber frame with metal sheeting on the outside. I don't know if that matters to you guys, but I want to be forthright. And this is in my head. I might call the metal place and they'll say that tree is not going to matter. Again, I want to tell you everything that I know.

Chairman Hemphill: What matters to me personally is that we've gone from 25 down to another number, and a logical number to land on is 10. And if you make your building a little skinnier, you can hit 10. I'm fixated on the 10 feet. I would hope you and Mr. Knauss would walk out there together and somebody take a picture, here's the property line, you know.... Good photographs make good neighbors, at the point where the property line is. You know what I'm trying to say?

Mr. Puthuff: I agree. Again, I measured from the fence, which he told me was the property line.

Chairman Hemphill: Good.

Mr. Puthuff: And I even went out there with a metal detector and rummaged through the poison ivy, but I couldn't find that marker that you guys are talking about.

Chairman Hemphill: And I'm going to steal A.J. Lang's thunder a little bit. There's no lean-to.

Mr. Puthuff: No lean-to in this proposal at all because I know that as a concern at the last meeting, about total roof... I don't know what you call that. Area of roof? So, I gave up on that. Again, I put that in the proposal because it was something I wanted to do; I would have to do this again. The fact that it's not an option, again, this is a give and take, and I'm trying to be as easy as possible. I know I've taken up a lot of your time already, so I'm just trying to see what I can do.

Chairman Hemphill: Any other questions of the applicant?

Mr. Lang: He answered mine. Because I kept on reading this, asking for a 10-foot variance, and setback with a 10 foot variance.

Mr. Puthuff: My apologies.

Ms. Wicklund: Could you remind us of the total height?

Mr. Puthuff: I was shooting for 14, again, with the second proposal. That will probably have to change because of the tree. And looking at some of the limbs, 14 foot would basically take away half that tree, so we'd probably be shrinking it down. It would probably be a 10- or 12-foot wall, just given how I'm stuck in that area.

Mr. Menefee: That's within the guidelines of the regulations already, right?

Ms. Wicklund: Are you saying...? I'm talking about total height from grade to top of peak.

Mr. Puthuff: You're going to make me math this? I guess to the peak would be, if it's a 12-foot wall...? There are different roof options. I mean, you'd still probably be at 13 feet, depending on what grade you go with. I know it's more expensive the more angle you go, less expensive the less angle you go. Obviously the wall is closest to the tree so it could probably still be 14 foot at the point if I really wanted to.

Ms. Wicklund: To answer your question, in the rural zoning district, accessory structures can actually be as tall as 30 feet.

Chairman Hemphill: I've read that, and that's obscene. I can't imagine, but that is in the regs.

Mr. Menefee: So it's well within the guidelines, what he's planning.

Ms. Wicklund: Correct, yes. I just wanted us to have that conversation, so everybody knows. And it goes back to the one-acre lot versus rural zoning. That is actually meant more for, if you've got 20 acres and you're putting up a big barn, big house. That's another, not inconsistency, a difference when you change regulations.

Chairman Hemphill: Yes, personally, I much prefer the smaller eave height. The eave height that's measured on that building from grade to the top of the roof, at the outside wall line, that is a traditional eave height. That's your metal frame, your horseshoe, so to speak. And the roof on top of that is usually six or eight inches. So, that height right there, you're speaking not 14 feet, but a little bit lower to save some of the trees. Which I would endorse that 100 percent.

That brings me to a little sketch I did last night. Now, I'll explain this. This is a nine foot shed. This is a 10 foot setback. That basically gives it a nine to ten, roughly a 45 degree angle. This is 14 feet. What this shows me, to get that same angle, I need a 12-foot setback. But since you are reducing your height and you're roughly at that same, a short 45-degree angle. That's the angle of a shade angle - You know what I mean? From the height of the roof down to the property line, which I think has impact. A lot of design codes for big cities use that angle to establish setbacks. So, I wanted to show that. I just think I was one step ahead of you, but I'm not going to use that. So, you're reducing it. If we could get that in the minutes, please. What else? Any other questions for the applicant?

Ms. Morse: Which side was the potential overhang going to be on?

Mr. Puthuff: The lean-to?

Ms. Morse: On the side or the front?

Mr. Puthuff: It would have been on the front or the back. Originally it was off the front. I was going to make a porch out of it. The west side of the building.

Ms. Morse: It could be in the plan if you wanted it to, but I would recommend the length of the building maybe not be so long. Go back to the 25/40, or something like that.

Mr. Puthuff: Correct. If I wanted to take away enclosed space for the lean-to, I can still do something like that.

Ms. Morse: I wasn't sure if you were taking it off because of the tree.

Mr. Puthuff: Obviously I would prefer enclosed space to store stuff, so if taking away that outdoor space that I put on there for fun appeases you guys, I have no problem with that. But thank you for suggesting that I could still do it. Within my 900 square feet.

Ms. Morse: It's really not our decision or our place here to decide on the building dimensions, as long as they are within the guidelines. We are here to make a decision on the setback. Is that correct? Just that?

Ms. Wicklund: Yes, that's correct. So, for this one-acre lot, you get a maximum of 900 square feet of detached accessory building, and a 300 square foot lean-to area. So, he is within that. We figured a 42 x 21, that's 82, plus the 14 x 21 lean-to, just 294. So, he meets those requirements. Now, if those dimensions have to change based on a setback, you want to try to approve, we just need to make sure that we describe that. So, we can't go over 900 square feet with this board. But if we're wanting to change dimensions, I think that needs to be talked about, so that when we get to the building permit, we know exactly what size, what dimensions, so that it's not affecting the setback that, if you were to approve something tonight.

Chairman Hemphill: Is that not a "purchaser beware" thing? I mean, we're telling him the setback. And we're going to tell him how big the building...?

Ms. Wicklund: No, right, so, you're telling him what setback, will be whatever you decide on, on the setbacks, and as long as he doesn't exceed 900 square feet, I guess you don't necessarily need to make those dimensions. It's just that he needs to know what that setback is that you approve. Can't be over 900 square feet. He can do the lean-to. And also, can't be closer than 20 feet to that mound system. So, I think you're right. It's not necessarily the dimensions that you are deciding.

Chairman Hemphill: Well, if he gets out there and finds out the property line is way different, and we've approved certain dimensions. I don't want to approve a building size. I don't want that liability. I want to approve a setback and give a variance on that, and then, "buyer beware" on the rest of it. Because we... I don't think we should do that. That's just my opinion.

Ms. Wicklund: That's appropriate, yes.

Chairman Hemphill: Anybody else?

Mr. Menefee: Yeah, basically, we're here to give him a variance on the setback. He has to stay within the regulations of the County for the 900 square foot and height. If he so chooses to make a lean-to that goes out towards the front, that's within our variance, he can choose to do that. As long as it's within the County regulations, we have nothing to say about that. We're here to talk about the variance of the setback only.

Chairman Hemphill: Yeah, of course... I kind of stated this before. I'd like it smallish, but that's just me. I thought about that a lot. I don't feel comfortable saying he can only build 40 feet long... I mean, we have traded in the past things like that, but I'm... I'm not here to trade tonight. I'm here to set a setback.

Ms. Wicklund: Right.

Chairman Hemphill: And walk away from it. Is that the right word?

Ms. Barber: I think the question that you proposed was answered - No, we are not here to tell him the dimensions of the building. It has nothing to do with this. So, she answered that. It's not our job.

Ms. Wicklund: You're just looking at the setback.

Ms. Morse: I'll tell you how I'm thinking and see how the rest of you feel about this. My recommendation would be for a variance for 10 feet on the north side, and 10 feet on the east side. There's no reason to do an extra five feet there, set the building back. And the 10 feet would be in keeping with what we feel is appropriate for a one-acre lot. And that they be required to stay 20 feet from the septic. And the width of the building then would be determined on the space between the 20-foot setback from the septic and the 10 foot from the property line. So, that building may need to be adjusted. It would be best... I mean, I know it's not our place to put the width, but he may have to make some adjustments in the width.

Chairman Hemphill: Correct. I think procedure on this, I mean, we have some criteria here. If we have a motion that addressed a., b., c., d., e., very carefully, and everybody needs to put their heads together. I see some notes down here that Jeff has put together. Future people, kind of look at our criteria, and read them real slow, and they interpret it one way or another, and I don't want to be accused of making things up. I just want everybody to agree on those five criteria. The process I see in front of us now is, if one person wants to take that on, and if other people will chip in on a., b., c., d., e., who would that person be? And we'll make that motion.

Mr. Lang: Can I ask one more question to Mason? It seems our problem is on the north setback. Is that correct?

Mr. Puthuff: Yeah.

Mr. Lang: Okay. Not really the east setback. I mean, he has stated 25 feet in one proposal, that he could meet that. In the second proposal, he could meet the 10 foot, but I think all of us seem to be leaning towards on the north side. But... Well, Richard, I'm asking, why could he not meet the 25 foot on the east side? Which means that this red line then would extend out to the west 10 more feet to get the 25 foot. And you have your 10 foot on the north.

Ms. Morse: Why go to 25 feet if we are basing this on a non-conforming one-acre lot that only requires 10? There's no reason on the adjoining property to require that, and you move it further, 25 feet or whatever, you're bringing it closer in line with the view of the adjacent property owner.

Mr. Lang: Roxanne, I'm trying to meet the criteria that the County set out after 1994, but still give a variance so that he can build a building there. If his neighbor comes next month and says that they want to build a building now right next to this, we're probably going to have to also do the 10 foot to that neighbor, I would think. But in order to at least have a compromise, I would think that the 25-foot makes sense. Because it seems he could meet the 25 foot on the east property side; he just can't meet the 25 foot on the north property side.

Ms. Morse: And the adjacent property or the property on the north side already has a structure there that is non-conforming.

Mr. Lang: That is correct, but it's not as big as the structure that is going to be there.

Ms. Barber: Again, we're back to the same point. We're going in circles. We don't have a say-so on the size. The County decided the size. He's not going above what he is allowed to build. Our opinions are not really what they are looking for.

Mr. Lang: I agree.

Mr. Menefee: The difference between a 10-foot on the side... it doesn't really matter. It's the back side. The difference between a 15 or a 25 is, if we set precedent for the 10 and we go with 10 on the back, in that sense we're being consistent with what was, from 1994. We're also setting a precedent for the future

of other properties wanting to go closer. So, my proposal would be, let's split the difference and give him the 15 that he proposed for the back part, and then, 10 on the side.

Ms. Morse: I just want to point out, too, that most of the lots already have a structure in their back corner, and some do not even meet the 10-foot setback. So, it wouldn't be breaking a precedent in the neighborhood to have that 10 feet. I guess I'm basing this on the one-acre exception, for these setbacks, and we're saying it's okay on one property line; we should back that up and say it's okay on the other property line.

Mr. Menefee: Right. I do agree that by setting it at 10 on both sides, it's more in compliance with our reasoning, for the five reasons for the variance. So, in that sense, yeah, it makes more sense.

Chairman Hemphill: Well, the variance that we, we're talking 10 feet, has several working for it - a., b., c., d., e. The septic system, you know, the openness - whatever else. The rear setback doesn't, there's no hardship. What I'm trying to point out is that there definitely not as much of a reason for the rear setback. It doesn't have a case. It's got, yeah, we gave 10 for the side, so let's give 10 for the back. Well, we don't have the same criteria at that back. So, I'm for more. And the land in back is not developed. Likely a developer is going to get hold of it someday, or somebody is, and this building we're building is a heck of a lot bigger than any other neighbor, what they have. I mean, yeah, they've got garden sheds, eight foot high. So, I feel it meets more distance, whether or not it's to the property line, 25 feet, or the 15 feet that the applicant is proposing, I guess that is it. Anybody, on that specific topic...? I guess if you've said all you want to say, I guess we can... Any other thoughts on that specific topic?

Ms. Barber: I've said all I want to say.

Chairman Hemphill: Okay, well, let me ask the applicant. What does 25 feet do to you?

Mr. Puthuff: It just puts it further out in the yard and more in my neighbor's view. Again, I was trying to conform to the rural zoning, keeping it open by sticking it back there. That was my reasoning for reducing it to 15 foot in my second proposal. I mean, 10 foot is even better. I guess that's the reason it was proposed. I don't want you guys to think I was like, well, I'm just going to move it back. That was my thought process behind it. It keeps it out of view of the neighbor by moving it further back.

Chairman Hemphill: Refresh my memory, Diane. If somebody makes a proposal, and we vote on that proposal, and it's got a rear setback that somebody doesn't agree with, and they vote no on it, then the whole thing fails. There is no... I've never seen those brought up, you know, so, on the board, I think it's to our advantage. It's pretty important that we agree. We can do a show of thumbs. Does everybody agree pretty much on the topic, the five topics, a., b., c., d., e.? We all agree on those? All right. We're down to a setback. We all feel pretty good about 10 feet on the north side. It's down to that back side. Ten feet, 15 feet, or 25 feet?

Ms. Barber: I feel good with 10 and 10. That's one of the things we addressed, was making it look more like the neighborhood and further away from the street. Why we would push it 15 just so we get five more feet, and the next people who come along are going to have to do all this rigamarole, when we actually have somebody here who is on a one-acre lot, and it was 10-10. I understand they changed the rules. But the rules for a one-acre lot do not match a 10-acre lot. I don't believe. I don't see that comparing to each other at all.

Chairman Hemphill: Well, like I said before, we gave a variance from 25. We have a good reason for the north property line. Everybody is in agreement. It's just that the back property line, our basis for granting that variance are they are not based on a hardship. So, that's my thought. I don't feel comfortable for a 10. I vote for... 10-15 would be my preference, and I'd like 25, but...

Mr. Menefee: I'm fine with 10-10, but I see your point, and I see your reasoning in it. That's why I proposed the 10-15. I think it's a nice middle point. If you like 25 but you'd agree with 15, I think that should be the direction we go, because we've worked really hard to get him this variance, and I think that's a fair compromise.

Chairman Hemphill: Roxanne?

Ms. Morse: I've already stated mine.

Mr. Lang: I would go with the 10 and 15 foot setback. But Mason, you were saying the reason why that you would not move it towards the west is because of the neighbor's view?

Mr. Puthuff: Correct.

Mr. Lang: Does the neighbor have a garage?

Mr. Puthuff: He does. And it would block the view of the shed until I get further and further out into the yard. The further you stick it to the south, and then, it, you know, again angles from his kitchen window, right now, that shed will be blocked by his garage. The further you go out in the yard, the more you see it.

Mr. Lang: Yeah, I would like for the members here to take a look at page 3 of the previous package that we received originally, where the neighbor's house and garage or located.

[Looking through packet.]

Chairman Hemphill: Right. That's quite a ways over there. Well, the visual obstruction is a matter of, I guess, personal interpretation. Most political way I know how to put it.

Mr. Puthuff: This may or may not help, but in the packet I submitted with the pictures, picture 5 has a picture of the tree, the pad, and the very left-middle is my neighbor's garage. That white border you see in the distance is his garage. So, if you can picture that slab right there moving out 15 more feet, and then, I guess you don't have a very good view of how far away that is in that picture, but that might give you a little inside input, I guess.

Chairman Hemphill: Well, can I have a proposal with a 10-15? We're kind of split on that.

Ms. Wicklund: Go ahead and do a motion.

Mr. Menefee: I would make a motion to approve a variance for a 10-foot setback to the north side and a 15-foot setback to the rear of the property on the east side. For the following reasons: A legal non-conforming lot, in this case, would be unique due to the regulations changes and the unique size, of past zoning regulations. Number 2, granting a variance would not adversely affect adjacent owners or residents. And, denial of a variance would adversely affect the resident and go against the general spirit of the Rural Comprehensive Plan, as well as the general spirit of the neighborhood. Number 3, the moving of the septic system to accommodate the 25-foot setback creates a hardship, as well as on the north side it would block the bedroom window if it was relocated to an alternate location on the north. Number 4, a variance would actually be in order with the spirit of the neighborhood, rather than adversely affecting it, which is backed up by a statement by the fire department, saying that increased safety, rather than having an attached building. And number 5, the spirit of the original Rural Comprehensive Plan would be in compliance with a 10-foot setback, as well as the criteria before changing in 1994.

Chairman Hemphill: Can I...? I'm not sure, but in item a., if we use a., b., c., d. as the criteria, if we could superimpose a., b., c., d. for.... On item a., just want to make sure, this is a unique condition not ordinarily found in this zoning category. And did your verbiage cover that?

Mr. Menefee: Yes, I think, because of the fact that it is a one-acre lot, as has been stated before, that that makes it unique, and that the zoning regulations on a 25-foot setback on a one-acre lot, including the septic, create a very small area to put an outbuilding or additional building.

Ms. Morse: I would like added to that the notes that Ms. Wicklund took when we were discussing the five areas. Points that were discussed in there...

Ms. Wicklund: Yes.

Ms. Morse: We could add them to the motion?

Ms. Wicklund: Okay, yes.

Chairman Hemphill: Okay, so we have: Adversely affect the neighbors - b. Letter c. was hardship, and that was the mound system. Letter d. was the order of the neighborhood, and we talked about that. Letter e. was general spirit and intent, and we're covered there. So, yes. Is there a second?

Ms. Barber: I second the motion.

Chairman Hemphill: We have a motion and a second. Can we have a roll call vote, please?

Aye: Menefee, Barber, Morse, Hemphill, Lang (5)

No: (0)

Motion was approved 5-0.

Ms. Wicklund: If I could summarize, just to make sure we're clear. So, your motion to approve is for a 10-foot setback on the north side, 15 feet on the east side, which is the back property line, in addition to meeting the Environmental Department requirements of 20 feet, that they will come out and double-check. We are not going to pick the size or dimensions of the building. He just has to meet those requirements. But we're not going to get into that because if things were to shift, he's got his parameters here of these setbacks. So, I'm not sure if there are any other stipulations other than that, meet building code, the septic system. I just want to summarize that, say that out loud so that we're clear on that.

Chairman Hemphill: Yes, we're not putting any riders on there like fire department approval, etc. We are granting a setback variance. And some of the criteria which maybe should have gone in, I just thought about now - The eve height... Never mind.

Ms. Wicklund: I think you addressed the criteria just fine.

Chairman Hemphill: Okay. We heard discussion about eve height and building height, and we just take the applicant at his word. We're not basing our proposal on that criteria. That's all I got.

Ms. Wicklund: Quick summary. This does not get forwarded to the Board of County Commissioners for action on their Action agenda. We have two weeks to prepare all the documents, and then, in the Manager's Report in two or three weeks, they'll just report that you approved a variance. And then, because it's contrary to the regulations, then the Board of County Commissioners has a two-week period where if they want to call for their own public hearing, they can do that. If they don't do that, once that 14-day period is up, then your decision is affirmed. I just wanted to remind people of that process.

Chairman Hemphill: Thank you.

VI. UPDATES/OTHER BUSINESS [None]

Ms. Wicklund: Actually, we did receive another variance application, so I think it will be on for your June meeting. You'll be getting a packet about that.

ADJOURNMENT

Richard Hemphill, Chairman

ATTEST:

Secretary to the Board, Sherry Cross