

**MINUTES OF THE
MIAMI COUNTY BOARD OF ZONING APPEALS**

**July 17, 2024
ANNUAL MEETING**

**MIAMI COUNTY ADMINISTRATION BUILDING
COMMISSION CHAMBERS
201 SOUTH PEARL STREET
PAOLA, KANSAS 66071**

ATTENDANCE:

CHAIR:	Ken Berg
VICE-CHAIR:	Larry Sumner
MEMBERS PRESENT:	Ken Patrick, Glenn Alpert, Randy Kitchen, and Chris Brown
MEMBERS ABSENT:	none
PLANNING DIRECTOR:	Absent
ASSISTANT DIRECTOR:	Jennifer Koehn
SECRETARY:	Absent
PLANNER:	Bobby Wardecker
COUNTY COUNSELOR:	Not present
ECONOMIC DEVELOPMENT:	Not present
COUNTY COMMISSIONERS:	None present
COUNTY CLERK:	Not present
PRESS:	Not present

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Call To Order

Chairman Berg called the meeting to order at 7:00 p.m.

Pledge of Allegiance

Roll Call

Six members were present for Roll Call, which constituted a quorum.

Disclosure of any Ex Parte Communications or Potential Conflicts of Interest

There were none.

Old Business

There was none.

New Business

24001-VAR: 32630 N. Rockville Rd, Louisburg, KS (Michael Shadfar)

Chairman Berg opened Appeals Hearing 24001-VAR, property owner Michael Shadfar, located at 32630 N. Rockville Rd, Louisburg, KS.

Wardecker presented the staff report for consideration of a request for a variance from Section 5-5.02.3 (Front Yard) of the Miami County, Kansas Zoning Regulations, requiring a 50-foot minimum setback from ultimate right-of-way. The property owner would like to construct an addition to the existing residence, the existing residence is located within the required front yard setback. The nearest point of the proposed addition would be approximately 78 feet from the Section Line and will encroach the setback by approximately 12 feet. The subject property of approximately 37.69 acres is addressed as 32630 N Rockville Rd, is zoned Countryside (CS), and is located in the East half of the South half of the Southeast Quarter (E ½ S ½ SE ¼) of Section Twenty-nine (29) Township Seventeen (17), Range Twenty-five (25) East of the Sixth Principal Meridian, in Miami County, Kansas.

Wardecker noted per Article 23-6.04.1 of the Zoning Regulations, a variance shall not be granted unless all the variance standards have been met. He then addressed the following standards for variances:

- A. The variance requested arises from such condition which is unique to the property in question, and which is not ordinarily found in the same zoning district, and is not created by an action or actions of the property owner or the Applicant.***

Wardecker explained that according to the Appraiser's records the existing house was constructed in 1917 prior to the adoption of current regulations. The lot is located on the corner Rockville Rd and W 327th St. The house is located 150 feet from section line.

The existing residence was built in 1917 according to Appraiser's records. The house is located approximately 70 feet from section line and fully encroaches the 50-foot front yard setback. There are no other house on this section of road with a structure encroaching on the front yard setbacks. The action being taken by the property owner is to construct a large garage closer to

the road than the regulations allow. In staff's opinion, this request arises from an action of the property owner in that the owner is not prevented from building at the required setback but prefers the building to be located in alignment with the existing house which will increase the nonconforming building by what appears to be 2/3 the size of the house. This is the basis for staff's recommendation. The Applicants are creating the need for a variance as there are other locations on the property that would be outside of the setback.

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

Staff stated that adjacent property owners' rights should not be adversely affected if this variance is granted. Staff submitted to various departments and agencies a notification and request for comments regarding this Application but did not receive any comments in opposition to this request.

C. The strict application of the provisions of these Regulations from which a variance is requested will constitute unnecessary hardship upon the property owner represented in the application.

Staff asserted if the strict application of the provisions of these Regulations is upheld, the Applicants would still be able to build the garage in multiple other locations on the property that would not encroach on the front yard setback.

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

In staff's opinion, the variance would not adversely affect public health, safety, morals, order, convenience, prosperity, or general welfare.

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

Staff explained that front yard setbacks are intended to prevent conflict with potential road expansion in the future and to provide consistency in the character of the neighborhood. Setbacks are a planning tool that is utilized to prevent the removal of a home or other structure—and displacement of the homeowner—to construct or expand a road, and to avoid burdening taxpayers with unnecessary costs for such removal.

Wardecker reminded the Board that they should consider all the facts provided and the specific details of this request and make Findings, based upon standards A. through E. above, to support its decision.

Staff asserts that this application for a variance fails to meet conditions A, and C, and therefore, recommends denial of the request. It appears that the applicant would have the ability to construct the proposed garage and meet the required setbacks but prefers the garage be located in alignment with the current residence that is already encroaching on the front yard setback. In Staff's opinion, this is a condition created by the applicant.

Wardecker read the following Findings and Conditions:

- ***Findings:***

- 1. The request for a variance arises from the Applicant's desire to build a structure within the front yard setback so that it aligns with the existing house. There are other locations on the property where a building can be constructed without increasing the nonconforming situation.*
- 2. Granting the variance will not adversely affect the rights of adjacent property owners.*
- 3. The variance request does not meet the criteria to be considered as an unnecessary hardship upon the property owners, as the structure could be built elsewhere on the property.*
- 4. Granting the variance will not adversely affect the public's health, safety, morals, order,*

convenience, prosperity, or general welfare.

5. *Granting the variance will not be opposed to the general spirit and intent of the Zoning Regulations, as the location of the proposed addition does not create an impact to adjacent property owners or to the County.*

- **Conditions:**

1. *A surveyed site shall be required for the construction of this addition should a variance be approved.*
2. *The Applicant must obtain a building permit for the proposed addition. All County codes related to this addition shall be complied with contingent upon approval of the variance."*

Wardecker then invited questions from the Board and announced the Applicant is in attendance this evening.

Kitchen asked what the County has for a right-of-way now.

Wardecker responded 30-feet from the center line of Rockville Road.

Patrick stated the Applicant has a plan but there is nothing forcing the applicant do use the location in question.

Wardecker agreed but stated it would be easier for the Applicant and it is where the Applicant wishes to build it. Wardecker read County Code Section 16-1.02 *"The premises, or a building or structure located on said premises, occupied by a nonconforming use, or a building or structure nonconforming as to height, area, yard or parking regulations, shall not be added to, enlarged or relocated if the addition, enlargement or relocation is being done for the purpose of causing such building or structure to be conforming, or the addition, enlargement or relocation will itself be conforming with all regulations of the zoning district in which it is located. Said improvements may be done following the obtaining of a building permit."* Wardecker continued to read from the County Code with Section 21-1.02 *"Conformance with County Regulations and Plans: No building permit shall be issued for any building or structure unless the same is in conformity in every respect with all the provisions of these Regulations and the Subdivision Regulations of the County, unless otherwise set out. All building or structure setbacks along roads shall be measured from the ultimate right-of-way identified in the Miami County Comprehensive Transportation Plan of 1995."*

Chairman Berg invited the Applicant to the podium.

Applicant, Michael Shadfar at 32630 Rockville Rd, Louisburg, stated he is looking at an addition of 30 X 80. Shadfar stated the addition will be attached to the North side of the house and by attaching it on the North side of the house the addition will be further away from the road. Shadfar asked what hardship he is creating by having the addition located on the North side of the house.

Chairman Berg asked what year the house was built.

Shadfar stated 1917.

Chairman Berg asked what the square footage of the house is.

Shadfar stated approximately 1300-square feet.

Chairman Berg asked for the size of the garage addition.

Shadfar stated 30 X 80.

Chairman Berg stated the garage will be larger than the house.

Shadfar agreed and explained that the size is necessary to store farm equipment.

Alpert asked about power and water going to the addition.

Shadfar replied that the barn portion would not have power or water and would feature manual doors to minimize utility needs.

Alpert asked where the Applicant plans on having the drive for the garage portion.

Shadfar referred to the Site Plan indicating where he intends to have the drive.

Kitchen inquired why the Applicant chose the North side of the house rather than the side with an existing driveway.

Shadfar stated there is a power line on the South side of the house.

Sumner asked if the addition will be used for personal vehicles or tractors.

Shadfar stated tractors, brush-hogs, and other farm equipment.

Sumner asked what is stopping the Applicant from putting it on the backside of the house.

Shadfar stated propane tank, septic system, and 80 – 100 year old oak trees that he doesn't want to remove.

Chairman Berg asked if the Applicant were to expand the house what he would do.

Shadfar stated he is not looking at expanding the house but his goal in five (5) years is to build on the other piece of property he owns.

Kitchen asked if the barn currently on the property has electricity and utilities.

Shadfar confirmed it does and noted that the new barn will have windows for natural lighting to reduce the need for power.

Chairman Berg asked where the building would be located if the variance were not approved.

Shadfar stated that moving it west would encroach on hay fields, and described slopes on the property that further limit alternative locations.

Chairman Berg asked if there are any waterways on the property.

Wardecker presented the floodplain map and confirmed that there are no flood zones on the property.

Patrick questioned how the Board decides when to approve a variance, emphasizing the importance of adhering to zoning regulations.

Shadfar argued that since he is adding to an existing structure, this situation is different from a new build. He also noted that relocating the addition would increase costs due to elevation challenges.

Patrick stated that the cost issue arose from the Applicant's own choices and expressed doubt about the Board's authority to approve such a variance.

Brown countered that the Board of Zoning Appeals does have the authority to approve variances of this nature.

Sumner asked why the applicant want to attach a pole barn to his house.

Shadfar explained that he prefers the convenience of accessing the barn directly from the house, especially

during inclement weather.

Wardecker reminded the Board of Zoning Appeals when making a motion to please state their name for the record.

Alpert referred to “A. *The variance requested arises from such condition which is unique to the property in question, and which is not ordinarily found in the same zoning district, and is not created by an action or actions of the property owner or the Applicant.*” Alpert stated when talking about nonconforming if the new item is less than 50% of the old item it allows it to flow in a little better. Whereas if the new item is 80-feet of nonconforming and Alpert is questioning what happens in 10-15 years. Alpert believes it will be more functional for the applicant to find a different location that would be appropriate to store machinery.

Kitchen asked if it would make a difference if the addition was turned to the West and going back 30-feet.

Alpert stated it would look better in reference to the amount of nonconforming is being added.

Shadfar stated he is willing to shift the building westward to reduce its proximity to the road and will still allow him to stay out of the hayfield with the building.

Brown asked what the width of the structure is.

Shadfar stated it is 30-feet.

Brown stated there would be 30-feet nonconforming in front of the house.

Shadfar agreed.

Kitchen asked without the ultimate right of way the applicant would only be 5-feet.

Brown asked if the house will always be nonconforming.

Kitchen asked if it were a 2-car garage would that change things.

Koehn stated no, it won't change the regulations.

Kitchen stated it is odd to him that the structure is 80-feet long and the garage doors are on the opposite end of the building. Kitchen stated being a farmer he doesn't like using up his ground for something other than crops and almost all of these barns are on top of each other.

Shadfar stated he is trying to be proactive and build a larger barn building now in hopes not to need to build multiple barns through the years.

Brown stated whether it is 75-feet or 175-feet of a nonconforming building is irrelevant because nothing can be changed because of the existing structure. Brown believes the length of the new structure should not be considered because no matter what the length is the applicant is already in a nonconforming situation. Brown stated the applicant isn't allowed to create an additional hardship to the Ultimate Right-of-Way.

Wardecker stated that Road and Bridge can always reclassify a road but Planning & Zoning needs to consider the current road classification, not the potential reclassification of a road that might occur.

Shadfar stated his existing structure is still there and asked what hardship Staff is referring to.

Kitchen stated if it is determined that the road needs to be widened then the County will have to buy his house in order to widen the road.

Shadfar stated the current road is pretty small and doesn't foresee the County upgrading the road.

Kitchen asked what is directly east on the other side of the road.

Shadfar stated three (3) small houses and have been there for 5-10 plus years.

Kitchen stated then they should already have the Ultimate Right-of-Way.

Wardecker stated that Staff's report used the nonconforming setbacks for the Applicant's structure. He explained that if Staff had used the Ultimate Right-of-Way of the neighbors across the street, it would have pushed the Applicant's new structure back further than what Staff determined by using the nonconforming setbacks.

Kitchen asked if the County were to widen the road 10-years from now would it be easier to buy the extra 5-acres from the neighbors across the street.

Wardecker stated it probably would be.

Chairman Berg requested Staff to read the Variance Standards beginning with B.

Wardecker read the Variance Standards beginning with B.

Brown moved to approve the Variance. Kitchen seconded. The motion fails 2-4 with Patrick, Chairman Berg, Alpert, and Sumner voting against the motion, via show of hands.

24002-VAR: 27515 Old Kansas City Rd, Paola, KS (Susan Silver)

Chairman Berg opened Appeals Hearing 24002-VAR, property owner Susan Silver, located at 27515 Old Kansas City Rd, Paola, KS.

Koehn presented the Staff's report asking for consideration of a request for a variance from Section 5-5.02.3 (Front Yard) of the Miami County, Kansas Zoning Regulations, requiring a 50-foot minimum setback from ultimate right-of-way. The property owner would like to construct an addition to the front of the existing residence, the existing residence, located within the required front yard setback. The nearest point of the proposed addition would be approximately 80 feet from the Section Line and will encroach the setback by approximately 10 feet. The subject property of approximately 79.02 acres is addressed as 27515 Old Kansas City Rd, KS, is zoned Countryside (CS), and is located in the Northwest corner of the Southeast Quarter Section 27, Township 16 South, Range 23 East, in Miami County, Kansas.

Koehn read the Variance Standards:

Article 23 of the Zoning Regulations requires that certain standards be met in order to approve a request for a variance. Staff offers the following information on each of the standards:

*The Board of Zoning Appeals shall not grant a variance unless it shall, in each case, make specific written findings of fact, based upon the particular evidence presented to it, that **all** of the following standards have been met:*

- A. The variance requested arises from such condition which is unique to the property in question, and which is not ordinarily found in the same zoning district, and is not created by an action or actions of the property owner or the Applicant.***

According to the Appraiser's records the existing house was constructed in 1977 prior to the adoption of current regulations. The house sits catty-corner to 275th Street and Old KC Road. The North side of the house (275th St) is located 55 feet from section line; and the West side of the house is located 138 feet from section line. The addition proposed sits in such proximity to W 275th Street that it would encroach into the front yard setback to 275th Street. However, the addition would not encroach into the front yard setback any more than the existing house does.

It was once common for farmsteads to be located closer to the road than current zoning regulations allow, but many of these old houses no longer remain intact. Although it may be argued that the Applicants are creating the need for a variance, it may also be argued that there are no other reasonable locations where the Applicants may construct the new front porch onto this residence.

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

The adjacent property owners' rights should not be adversely affected if this variance is granted. Staff submitted to various departments and agencies a notification and request for comments regarding this Application but did not receive any comments in opposition to this request.

C. The strict application of the provisions of these Regulations from which a variance is requested will constitute unnecessary hardship upon the property owner represented in the application.

If the strict application of the provisions of these Regulations is upheld, the Applicants would be required to move the entire house in order to add onto it. The bigger question would relate to if the proposed setback being granted is the minimum necessary required in order to afford relief to the applicants as it could be argued the size of the proposed porch is more than necessary and the addition of a roof is not necessary to provide access to the dwelling. In staff's opinion the requested encroachment into the front yard setback is necessary in order to provide a method of access to the existing front door, although the size of the proposed covered deck is substantially beyond what is considered the minimum amount necessary in order to afford relief. Further, while a roof structure is being proposed, the proposed addition will remain unenclosed and would have minimal impact.

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

In staff's opinion, the variance would not adversely affect public health, safety, morals, order, convenience, prosperity, or general welfare. As the addition proposed to the front of the house would not encroach into the setback for 275th Street any farther than the house already does. The Applicants are not proposing any changes to the existing house that would bring it any closer to the edge of the right-of-way. Moreover, this section of W 275th Street likely will not experience any development to such an extent that the variance requested would give cause for concern regarding expansion of this road.

Denial of the variance would result in the existing house remaining in its current location in the front yard setback, which would not create any benefit to public health, safety, morals, order, convenience, prosperity, or general welfare.

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

Front yard setbacks are intended to prevent conflict with potential road expansion in the future and to provide consistency in the character of the neighborhood. Setbacks are a planning tool that is utilized to prevent the removal of a home or other structure—and displacement of the

homeowner—to construct or expand a road, and to avoid burdening taxpayers with unnecessary costs for such removal.

In staff's opinion, the construction of a covered deck which does not extend beyond the front of the existing garage would still adequately accommodate future expansion of the road, even after the proposed addition is constructed especially when considering the addition will not further increase the existing encroachment into the front yard (275th Street).

Section 23-5.05 specifically authorizes the Board of Zoning Appeals to grant variances under the following conditions:

"The Board may grant variances, on the basis and in the manner hereinafter provided, to authorize in specific cases a variance from the specific terms of these Regulations, which will not be contrary to the public interest, and where, due to special conditions, a literal enforcement of the provisions of these Regulations, in an individual case, results in unnecessary hardship, provided that the spirit of these Regulations shall be observed, public safety and welfare secured, and substantial justice done."

Koehn stated the Staff recommendation is to approve the variance and read he Findings and Conditions that guided the Staff's decision:

- **Findings:**

1. *The variance arises from a condition that is a) unique to the property in question, in that the existing house was built in close proximity to the right-of-way and built prior to the adoption of the Zoning Regulations; b) not ordinarily found in the Countryside District (CS); and c) was not created by the actions of the property owners.*
2. *Granting the variance will not adversely affect the rights of adjacent property owners.*
3. *Denial of the variance request could be considered as imposing an unnecessary hardship upon the property owners, as some type of improvement is required in order to provide access to the existing front door of the structure.*
4. *Granting the variance will not adversely affect the public's health, safety, morals, order, convenience, prosperity, or general welfare.*
5. *Granting the variance will not be opposed to the general spirit and intent of the Zoning Regulations, as the location of the proposed addition does not create an impact to adjacent property owners or to the County and can be considered the least amount necessary to afford relief.*

- **Conditions:**

1. *The variance is granted for a deck and roof structure that does not extend beyond the front of the existing garage. An updated Plot Plan will need to be submitted showing the necessary modifications to meet this requirement. Any additional or future encroachment into the setback area shall not be allowed, except as that which may be granted through the variance procedure.*
2. *The Applicants must obtain a building permit for the proposed addition. All County codes related to this addition shall be complied with.*

Kitchen stated he is trying to understand Article 16; Nonconforming Uses.

Koehn stated Miami County's Regulations state a nonconforming structure cannot be extended at all.

Kitchen asked why is the Board about variances then.

Koehn stated this application is before the Board of Zoning Appeals so that the Board has the opportunity to

review the case and approve a variance or deny the variance which ever the Board believes should happen. Koehn stated in this particular case approving a variance makes sense or the applicant won't have access to the front door of the structure. Staff's proposal for the variance is smaller than the applicant's desire.

Alpert asked if the actual house is at the roof line or the wall line for the garage because there would be up to a foot or 1.5-feet overhang of the roof.

Wardecker stated that would be a Buildings Codes question but Planning & Zoning measures from the edge of the structure.

Kitchen read from Article 16-1.02 of the Staff's report: *"A building or structure may be added to, enlarged or relocated if the addition, enlargement or relocation is being done for the purpose of causing such building or structure to be conforming."* Kitchen stated a nonconforming can't be made conforming if it is a setback.

Koehn agreed.

Sumner asked to get into the garage the applicant comes in the front of the house.

The applicant's contractor, Wes Reiting, stated there is a garage door in the front of the house and a front door off to the side.

Sumner asked what the size of the current stoop is.

The applicant, Sue Silver, stated it's a little stoop about 3 or 4-foot.

Alpert asked for clarification of the location of the front door.

Reiting demonstrated the location of the front door on the picture shown on the overhead projector.

Alpert believes if a shorter deck that does not go to the North could be built and be conforming.

Koehn stated the deck will still be in the setback which still nonconforming. Koehn stated it could be a smaller deck making it a less nonconforming issue.

Reiting stated the deck won't extend past the edge of the garage.

Kitchen asked how many houses in Miami County are nonconforming.

Staff did not have an answer to Kitchen's question.

Chairman Berg invited the applicant to the podium.

Susan Silver, 27359 Columbia Rd, Paola, stated she purchased this property to provide a place from her daughter to live. They have been doing repairs to the house. Silver stated when the ADA ramp was removed from the stoop in front of the front door the stoop was not very big and is broken in places. Silver stated the stoop appears to be missing a step as a person needs to step up appropriately 14 inches to get into the house.

Alpert asked if the covered porch roofline will be like the garage roofline.

Reiting stated the porch roof will extend past the garage by about 2-4 feet.

Kitchen confirmed the deck is only about 8-feet, not very big for a porch.

Reiting agreed and stated they are basically building a deck large enough to allow the owner to have a chair on the deck.

Alpert noted the deck isn't adding much value to the house, just functionality.

Sumner moved to accept the variance allowing the applicant to build the covered porch. Kitchen seconded.

The motion passed unanimously (6-0), via show of hands.

General Discussion:

There was none.

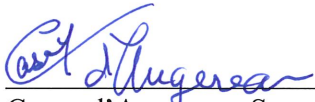
Announcements:

There were none.

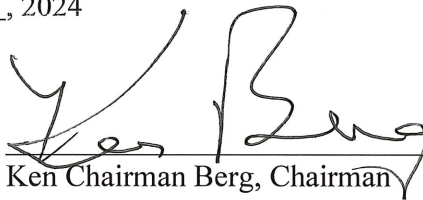
Adjournment

Alpert moved to adjourn. Patrick seconded. Chairman Berg adjourned the meeting at 8:43 p.m.

Approved this 3rd day of December, 2024



Casey d'Augereau, Secretary



Ken Chairman Berg, Chairman

Minutes written by Casey d'Augereau