

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

**FEBRUARY 21, 2024
ANNUAL MEETING**

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

ATTENDANCE:

CHAIR: Absent

VICE-CHAIR: Ken Berg

MEMBERS PRESENT: Ken Patrick, Glenn Alpert, Randy Kitchen, Chris Brown, and
Larry Sumner

MEMBERS ABSENT: Brockus

PLANNING DIRECTOR: Kenneth A. Cook

ASSISTANT DIRECTOR: Jennifer Koehn

SECRETARY: Absent

PLANNER: Bobby Wardecker

COUNTY COUNSELOR: Not present

ECONOMIC DEVELOPMENT: Not present

COUNTY COMMISSIONERS: None present

COUNTY CLERK: Janet White

PRESS: Not present

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FEBRUARY 21, 2024**

Call To Order

In Vice 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.

Oaths of Office

Janet White, County Clerk, swore in Glenn Alpert and Larry Sumner for their reappointments to the Board of Zoning Appeals and Randy Kitchen for reappointment to the Planning Commission.

Disclosure of any Ex Parte Communications or Potential Conflicts of Interest

There were none.

Old Business

There was none.

New Business

Election for the 2024 Chairman and Vice Chairman

Berg stated they need to elect officers for the 2024 year. Positions for election include Chairman and Vice Chairman.

Sumner nominated Ken Berg for Chairman; Patrick seconded the nomination. There were no other nominations.

Brown nominated Larry Sumner for Vice Chairman; Sumner seconded the nomination. There were no other nominations.

Berg called for a vote for the motion of Berg being elected as Chairman for 2024, the vote was unanimous (6-0).

Berg called for a vote of the motion of Sumner being elected as Vice Chairman for 2024, the vote was unanimous (6-0).

Per the election of officers Ken Berg will now be serving as Chairman for the remainder of this meeting and all future meetings for the year 2024.

Berg asked for discussion of the 2024/2025 Board of Zoning Appeals calendar.

Cook noted there might be a couple of dates that might overlap election stuff and if there is a meeting on those dates the meetings will need to be held at a different location.

Sumner moved to accept the calendar as presented; Patrick seconded; the vote was unanimous (6-0).

23002-APP: 29630 Metcalf, Louisburg, KS (Deborah Bowes)

Cook presented the Staff report for consideration of an appeal to the decision of the Planning Director to deny a building permit finding that a proposed Detached Accessory Dwelling Unit would be located in front of the principal dwelling. The subject property is located at 29630 Metcalf Rd, in the Northeast Quarter of Section 7, Township 17, Range 25 East, Middle Creek Township.

Cook stated the request was not in compliance with the regulations. The regulations stipulate the Accessory Dwelling Unit (ADU) is not allowed to be in front of the main dwelling unit. The subject property's house is oriented more to the side putting the front of the house more to the North / Northwest direction. From the applicant's prospective that is the front of the house because that is where the main entrance is located. The Zoning Regulations define the front of the house as the side of the structure that is adjacent to the street. Staff denied the permit based on the definition provided in the Zoning Regulations.

Cook noted that Staff did give suggestions to the applicant to come into compliance. One suggestion made was to make it an attached ADU with a 25-foot hallway connecting the dwellings. The applicant would prefer not having the ADU attached to the main dwelling on the property, so the appeal brought before the Board of Zoning Appeals is more about the definition of "front". Does "front" mean the main entrance of the structure or does it mean the front property line closest to the street.

Cook referred to a 1988 case *Goodwin v. City of Kansas City*, 244 K. 28, 766 P.2d 177, in which the court specifies "a landowner is charged with knowledge of the zoning ordinances". In Staff's opinion that would include the definitions in the Zoning Regulations. Cook stated there can be some confusion on definitions and noted Staff tries to stay consistent with the interpretation of the definitions and enforcing them.

Cook asked for questions from the Board and stated the applicant is present to answer any questions the Board has for them.

Patrick asked if the house faces away from Metcalf.

Cook replied that is correct.

Berg asked what's the purpose of the regulation stipulating that the front of the house must face the road.

Cook stated two (2) dwellings on the same property is not typical in Miami County when there is a second dwelling added to the property per regulations the ADU is to be subordinate to the primary dwelling. Some of the regulations for an ADU are the size and the location of the ADU.

Berg stated he understands the stipulations of ADUs, but doesn't understand the purpose of a house front must face a road.

Cook stated if this ADU is permitted to be placed in the location the applicant desires then in the future if the neighboring house wants an ADU they would not be permitted in the same general sit because their house is actually facing the road.

Patrick stated there is an earth home on K-68 highway with a building between the house and K-68 highway that was turned into living quarters for someone to stay in. He doesn't recall if this made it to the Board of Zoning Appeals and believes this set a new precedence to something similar to this applicant.

Berg asked if this still needs to have a setback.

Cook stated yes.

Patrick asked how big the lot is.

Cook stated 21 +/- acres in size.

Kitchen asked if it will be visible from the road.

Cook stated there are a fair amount of trees.

Alpert asked if there is any kind of restriction with other buildings, such as barns, that cannot be built in front of the house.

Cook stated not with Miami County, only Accessory Dwelling Units (ADU).

Alpert stated most of the regulations are for safety, then neighbors so there's not a lot of stuff, and then to help banks with mortgages and asked is there much difference between an ADU being in front then a barn.

Cook stated Staff's interpretation of "front" is the area between the road and the existing structure regardless of the size of lot.

Alpert stated he doesn't understand the logic. Alpert noted his barn and two (2) of his neighbors' barns are in front of the house.

Cook stated a barn is permitted to be in front of the house.

Kitchen stated the difference is there will be someone living in this structure. Kitchen noted this wouldn't be in front of the Board of Zoning Appeals if no one were living in the structure.

Cook agreed. The original ADU regulations would not allow an ADU to exceed 25% of the size of the main structure on the property and the ADU could not be detached. In 2018 the Planning Commission wanted to loosen the ADU regulations allowing more opportunities for people so the size limitation was taken from 25% to 50% but still can't have it larger than 900-square feet of living space and now allow for detached ADUs. As part of that discussion the Planning Commission and Board of County Commission adopted regulations that said the ADU cannot be in front of the primary structure. Cook believes the main intent of this was the primary structure was to be the primary focus of the property and any ADU needed to be further from the road and be subservient to the main structure.

Alpert used his house as an example stating his house has access from the South and from the East and the road is to the North and he would not want a barn between the house and the road. Alpert doesn't believe the definition for "front" is defined.

Cook stated for the purpose of setbacks anything adjacent to a road right-of-way is considered front. If a property is a corner lot with two roads, technically there are two (2) frontage roads for that property and there will be a 50-foot setback of each road right-of-way.

Patrick asked if the applicant needs to meet the front setback on what is being identified as the back of the house.

Cook stated this one is the side of the house.

Sumner asked what the square footage of the ADU is compared to the existing structure.

Cook stated the living space of the ADU is 900-square feet. The primary structure has multiple levels but hasn't seen the square footage and suggested asking the applicant.

Kitchen noted the ADU the applicant is wanting to build with less than 900-square feet.

Cook stated 900-square feet is the maximum square footage allowed for an ADU.

Alpert inquired if there are any other types of structures that are not allowed in front of a primary house such as a solar array.

Cook stated any other structure is permitted to be in front of the primary structure unless it is related to a Conditional Use Permit (CUP) such as a contractor's shop and on these cases the Planning Commission considers them on a case-by-case basis.

Alpert stated he could not find in the regulations that states the property line is the front of the house. Alpert stated if the property line is a mile long and the primary structure is a quarter of a mile away it shouldn't matter.

Kitchen stated if a house is built in the middle of 160-acres and the house is facing away from road frontage because the view out the window is pretty or the ground slopes or something like that this person won't be able to build behind the house because it is a quarter of a mile from the road.

Cook stated Staff's opinion is if the Planning Commission felt it was appropriate to change the regulations to say there are other unique conditions that could be taken into consideration such as the example Kitchen gave. Cook stated the current regulations were adopted as *"the front is defined as the part or side of the building or structure facing the street or frontage road which is used as the basis of establishing the permanent address for the building or structure"*. Cook stated in the regulations for an ADU it states, *"a detached dwelling shall not be located in front of the principle dwelling"*. Cook stated in this case when looking at what is defined as the front is the side where the garage is of the principle structure which is in front of and closer to the road.

Alpert stated Staff is using the 450-foot width of the house and the house is actually only 50-feet.

Cook stated in discussions with the Planning Commission that is what the intent was.

Cook suggested bringing the applicant before the Board to present their intent and allow the Board to ask questions of the applicant.

Berg invited the applicant to the podium at 7:35 p.m.

Deborah Bowes, 29630 Metcalf, stated her father is the caregiver for her mom and they are needing to live closer to her parents to assist as needed. They have researched new locations, adding onto their existing house, and building a detached Accessory Dwelling Unit for the past two (2) years. They believe building a detached ADU is the best option for them. Due to a wraparound porch on the house and the hills on the property the only thing that made sense to them is the detached ADU.

Applicant passed out a packet to the Board of Zoning Appeals members.

Bowes stated her primary residence faces North, the back of the residence faces South and the detached ADU is proposed to be located South of the primary residence. Bowes stated the Zoning Regulations states the ADU cannot be in front of the primary residence. Bowes stated the definitions in the Regulations talks about common and most reasonable use of the word(s). Bowes believes her case is unique as the primary residence does not face the road it faces North. Bowes stated she agrees if a house faces the road an ADU should not be placed between the house and the road, it is not reasonable. Bowes stated the front of her house faces North and Metcalf Road is to the East.

Bowes asked the Board Members to please make a case by case decision and not include her in the blanket decision.

Bowes referred to page three (3) of her handout and she believes she has satisfied all Zoning Regulations pertaining to an ADU except item four (4) as it is the regulation that is questionable. "*iv. A detached accessory dwelling unit shall not be located in front of the principal dwelling.*" Bowes stated there is no reference to the definition of "front". Bowes believes if there is a special definition of a common word then the word should show a reference and the same in the definitions. Bowes noted the definitions do not reference ADU. Bowes stated a person doesn't know to reference words and shouldn't be expected to reference every common word, she believes it is unreasonable.

Bowes showed the pictures that she included in the packet she handed out to the Board of Zoning Appeals members. The pictures included a front view, side view, roads, the undeveloped part of her property, and aerial shots. Bowes stated the ADU will be to the left and behind the garage that is connected to the primary house. Bowes stated they have cleared the trees in the area for the ADU waiting for the excavation to begin.

Sumner asked which location will the new structure face.

Bowes stated the ADU will face Metcalf Road.

Sumner stated it will be facing the frontage road.

Bowes agreed and stated it will still be 150-feet from Metcalf Road.

Sumner stated the ADU will be swapping places with the primary house, putting the ADU in front of the primary house.

Bowes agreed with Sumner and stated neither structure is visible from Metcalf Road. Bowes showed a picture of her driveway and stated when pulling onto the property using her driveway the ADU will not be visible and the ADU will be subordinate to the primary house.

Bowes showed an aerial picture of her property which shows Metcalf Road.

Brown asked if the primary house is several hundred feet from Metcalf Road.

Patrick asked if there are two (2) driveways.

Bowes stated there is a circle driveway and the driveway for the Accessory Dwelling Unit (ADU) is tied into the circle drive.

Kitchen noted it appears there is a gravel driveway that goes up to the trees.

Bowes stated there is gravel. There is a black top going up to the primary structure garage then gravel that circles through the timbers which is where the ADU will be.

Kitchen noted there is an elevation on the subject property to Metcalf Road.

Bowes showed a second aerial view showing where she proposes to have the ADU. The ADU is proposed to be 35-feet behind the primary structure. The proposed ADU is 900-square feet, the primary structure is 2,400-square feet.

Berg asked if the ADU will be on a slab or basement.

Bowes stated there will be no basement.

Kitchen stated it looks more like a garage to him than a house.

Bowes stated when coming up the driveway to the ADU the first thing seen will be the garage.

Brown asked why the ADU can't be on the West side of the primary structure.

Bowes stated the septic for the primary structure is on the West side of the primary structure plus a hill.

Kitchen asked if this is the most level place on the property for an ADU.

Bowes stated yes, other than near the pond but then she loses the convenience factor of being available to help her parents.

Bowes went to the next page of the packet which is a printout of Section 2-1 (Regulations Definitions). *"...words or phrases used in these Regulations shall be interpreted so as to give them the meaning they have in common usage and to give these Regulations their most reasonable application."* Bowes doesn't believe a member of the community will look up the definition of the word front and if the word front is important in the ADU section then front should be referenced in the ADU section.

Berg asked if she knew she had a problem with the front of her primary structure prior to the application.

Bowes stated none at all.

Berg asked if the applicant had been communicating with Staff.

Bowes stated her engineer had been communicating with Staff. Bowes stated no one knew there was an issue with "front", so no questions were asked about "front".

Bowes stated she went to the Miami County website and searched the word "front". In her search popped up *"Façade: The principal face or front of a building."* Bowes believes the front of her house is her "façade" not the garage connected to the house. Bowes stated according to the Zoning Regulations an attached Accessory Dwelling Unit (ADU) can be in front of the primary dwelling structure, but a detached ADU cannot be in front of the primary dwelling structure. Bowes referred to performance standards for ADUs and read *"a detached Accessory Dwelling Unit shall not be located in front of the principle dwelling"*, but if the ADU is attached it can be in front of the principle dwelling. Bowes noted that doesn't make sense to her. Bowes asked what's the difference.

Bowes stated an ADU can be a manufactured home attached to a manufactured home. Bowes stated this is allowed but she is not allowed to build a 900-square-foot home detached from her 2400-square-foot home

on 21-acres. Bowes noted the minimum acreage allowed is 2-acres and an ADU can be built behind a home on 2-acres but is being told she can't have an ADU on her 21-acres.

Kitchen asked what's the plan for the ADU when the parents move out.

Bowes stated she will be older by then and might move into the ADU and someone move into her home to help her but hasn't really thought about it.

Kitchen asked if she will possibly rent out the ADU.

Bowes stated she will not rent it out.

Alpert read the definition *"front, the part, or side of any building or structure facing the street or frontage road which is used for the basis of establishing the permanent address for the building or structure"*. Alpert stated he understands the definition and the setbacks but if there is a twisted house the definition means any corner of the house has to meet the setbacks. Alpert stated to him it defines other parts of the house other than front and to him that is the purpose of the definition. Alpert stated from a practical purpose an ADU shouldn't be in front of a "front" a generic front of a house. Alpert believes there are a couple of different purposes of "front" being merged. Alpert stated the definition does not state the front of the house is 450-feet wide. Alpert stated there is no part of the ADU that is in front of any part of the house perpendicular to Metcalf.

Cook gave an example using a house on 303rd Street, South of the applicant's property and stated if "front" is defined as the main entry into the house their "front" of the house is facing the opposite direction. Cook stated if the Board of Zoning Appeals makes a decision based on the way the house is oriented then the person on 303rd Street could build an ADU and pointed to a location on the property (303rd Street being used as the example).

Alpert and Kitchen stated it still has to be within 200-feet.

Cook stated the area pointed at is within 200-feet.

Cook stated he has housing in his neighborhood on 3-acre lots where the front of the house is actually oriented to the back and the back of the house is actually oriented to the road. If the Board of Zoning Appeals says the front of the house is really "only that", then there will be a lot of places that will be allowed an ADU between the house and the road.

Kitchen stated there is a difference between 2-acre lots and 21-acres. Kitchen stated he has a house that has no frontage road. The house has been there for 100-years, and he had to get an easement that is one half mile long to gain access to the house.

Cook stated there will be unique situations that aren't considered but all scenarios need to be taken into consideration. Cook showed a picture and stated if saying not in front of the house then an Accessory Dwelling Unit (ADU) can be built 50-feet back from Metcalf Road putting the ADU behind the house.

Alpert asked if that is hurting anyone.

Cook referred to the Zoning Regulations and stated the Board of Zoning Appeals to determine if there is an error in Staff's decision based off the Zoning Regulations. The decision is not to be based off the Board of Zoning Appeals thinking the Zoning Regulations are appropriate or right or that "you" don't

agree with the Zoning Regulations. The decision needs to determine if Staff's decision is in line with what the Zoning Regulations as they are written. If the Board of Zoning Appeals believes the Zoning Regulations should be written in a different way or a different requirement then it needs to go to the Planning Commission to consider.

Cook stated the Planning Commission adopted the Zoning Regulations with the definition of what "front" is. In the definitions it specifically says "unless specifically defined below" then they are to be used as commonly defined. It's not just what the most common use is, it's first based on what is defined in the definitions then goes to common use. The reason the term "front" is defined is to assure Staff is consistently applying it throughout the process. Cook stated to change it because the regulations is unreasonable or because this house is 1,000-feet back from the front property line... Cook stated he would agree that maybe there should be some other consideration in the Zoning Regulations that should allow for...

Kitchen stated but right now it does not.

Cook stated it just says "front"

Kitchen stated between the house and the road, no matter which way the house is facing...

Cook stated that is how he interrupted it.

Sumner stated it's the same way with the property, there are some many feet of frontage before a property can be developed.

Cook agreed.

Kitchen asked how many new homes have been built where the old house is in front that turned into an Accessory Dwelling Unit (ADU) later.

Wardecker stated he can't think of one.

Cook stated the houses are supposed to be demolished when a new house is built on the property.

Kitchen believes he knows of one that received some sort of variance to put an old house back together to use as an ADU and it is "way out" in front of the house, more than 200-feet.

Patrick stated it might be old enough that it might be grandfathered in.

Kitchen said this was within the last 20-years.

Wardecker stated he is aware of one right now that a house was build behind an existing structure, it was a residence. In order to put the new residence up the existing residence by the road had to be decommissioned. Once it was decommissioned they returned to Planning & Zoning in an attempt to recommission it, but it was denied as they are only allowed one residence.

Cook stated they had to remove all plumbing, closets, and other walls.

Kitchen stated this house was already existing with all walls intact and everything and asked if something like that was allowed.

Cook stated there was an individual that applied for a building permit for a dwelling that was in a pole barn

structure of sorts, with the intent of coming back for a building permit for a house on the same property in the future. When the individual did apply for the building permit for the house on the property, in order to build the new house, they had to sign an affidavit stating they would decommission the dwelling in the existing structure after the house was built. If the structure had been located somewhere different on the property they could have been looking at decommissioning it to an Accessory Dwelling Unit (ADU) and just removing some space out of it. Cook stated because it was located in front of the house they had to demolish it. The Zoning Regulations drew a line stating an ADU can't be located in front.

Alpert stated regulations can't be written to fit every situation that's why there is the ability to have waivers on regulations to fit situations that don't fit the regulations. Alpert stated the Board of Zoning Appeals can do a variance on this case.

Cook stated they can't do a variance on this case; this case is an appeal to determine if Staff's interpretation of the Zoning Regulations is wrong and "front" means something different.

Kitchen stated the discussion is what "front" is.

Cook agreed.

Berg stated the Board of Zoning Appeals can overturn Staff's decision.

Bowes stated she has meet with Staff about variance, appeal, and exception.

Cook stated an exception has to specifically written in the Zoning Regulations. Cook gave an example of an exception stating if the Regulations stated, "if the ADU is invisible from the road" or "the house is 500-feet back from the road", then the Board of Zoning Appeals can grant an exception giving the Board of Zoning Appeals more latitude.

Cook stated for a variance there are five (5) things the Board of Zoning Appeals must answer such as is it a hardship, and was it self-created. A person wanting to build an ADU in a specific place on their property is not a hardship and it is self-created.

Bowes stated she meet with Cook for about two (2) hours, and it was decided she should apply for an appeal with the Board of Zoning Appeals. Bowes believes the Zoning Regulations are unclear and stated she wouldn't have spent \$26,000 preparing for this ADU. Bowes stated she attempted to move the location a couple of times and it didn't work out, that is why she is appealing the decision. Bowes asked the Board of Zoning Appeals to grant her the ability to move forward with her plans of building the ADU on the property at the location she is requesting.

Kitchen referred to the Zoning Regulations and asked what is the definition of "front".

Cook read the definition of "front" from the Zoning Regulations: *"The part or side of any building or structure facing the street or frontage road which is used as the basis for establishing the permanent address for the building or structure."*

Kitchen stated "part" doesn't mean the front of the house but any part of the house/structure.

Cook agreed and stated the garage of this house is mostly facing the road and by the Zoning Regulation's definition that would be considered the front.

Berg asked the Board of Zoning Appeals if they were ready to make a decision.

Patrick believes if the County advertises they are a zoned county then the Zoning Regulations should be enforced, but the common usage of the words the front of the house with setbacks they would be ok with. Patrick stated by definition "front" is a different side of the house and so the applicant moved forward in good faith and spent money and the definitions the applicant is working with are not clear. Patrick stated the plans show a good looking building, it won't hurt anyone, but it will help someone.

Brown stated if she moves the house 5-feet closer and puts a connecting hallway she is ok. Brown doesn't believe it makes sense not to approve this appeal because it is a matter of 5-feet. Brown stated he has researched "front" for days and cannot agree with the County's definition of "front" in reference to the application before the Board of Zoning Appeals.

Alpert moved to approve the applicant's appeal. Kitchen seconded; the motion passed unanimously (6-0) via show of hands.

General Discussion:

Cook stated Staff is still working with the Planning Commission reviewing the Comprehensive Plan and have been holding some Study Sessions. Cook stated Koehn has been working hard to incorporate comments from the Planning Commissioners and Board of County Commissioners in an attempt to make it fit our community a little better.

Alpert stated the packet in the agenda has an error, it states the decision for tonight's applicant will be decided by the majority of the quorum and the by-laws states four (4).

Cook stated that is an issue that needs to be addressed because our by-laws do state four (4) no matter what, but in the Board of Zoning Appeals part of the Zoning Regulations, specifically with appeals, it states the majority of those present.

Patrick asked where the County is on new home building permits.

Wardecker stated new homes have slowed down depending on if it is a stick home or a barn home.

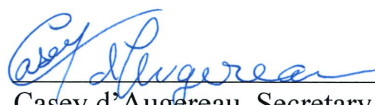
Announcements:

There were none.

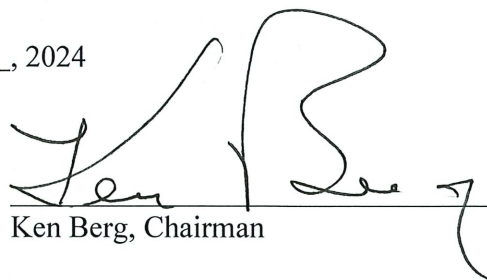
Adjournment

Alpert moved to adjourn. Brown seconded. Chairman Berg adjourned the meeting at 7:21 p.m.

Approved this 19th day of July, 2024



Casey d'Augereau, Secretary



Ken Berg, Chairman

Minutes written by Casey d'Augereau