

***MINUTES OF THE
MIAMI COUNTY BOARD OF ZONING APPEALS
SEPTEMBER 15, 2021***

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

ATTENDANCE:

CHAIR:	Chris Brown
VICE-CHAIR:	Gary Brockus
MEMBERS PRESENT:	Glenn Alpert, Ken Berg, Mark Ross, and Larry Sumner
MEMBERS ABSENT:	Ken Patrick
PLANNING DIRECTOR:	Teresa Reeves
COUNTY COUNSELOR:	Not present
PLANNER:	Katie Jardieu
SECRETARY:	Angie Baumann
COUNTY COMMISSIONERS:	None present
COUNTY CLERK:	Not present
PRESS:	Not present

MINUTES

SEPTEMBER 15, 2021

MIAMI COUNTY BOARD OF ZONING APPEALS

1. CALL TO ORDER

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

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

Roll Call was taken and six (6) members were present, constituting a quorum. Ken Patrick was absent.

4. DISCLOSURE OF ANY EX PARTE COMMUNICATIONS OR POTENTIAL CONFLICTS OF INTEREST

Glenn Alpert disclosed the owners of K. Properties, Inc. (Debrick) are his cousins. He noted he will therefore recuse himself from this evening's hearing regarding 21002-VAR: Wingert Sign Co. (Debrick/K Properties).

5. NEW BUSINESS

a. Oath of Office *(item added to the Agenda)*

Teresa Reeves, Planning Director, advised an oath of office needs to be added to the Agenda. Reeves proceeded to administer the oath of office for Glenn Alpert, and welcomed Mr. Alpert.

Reeves then introduced Katie Jardieu, the new Planner II.

b. 21002-VAR: Wingert Sign Co. (Debrick/K Properties)

Alpert recused himself and exited Commission Chambers.

Jardieu presented the staff report for consideration of a request for a variance from Section 18-5.06 of the Miami County, Kansas Zoning Regulations, which requires that an off-premises outdoor billboard sign be located no less than 1,000 feet from any other existing billboard sign on the same side of the street. The Applicant would like to erect a billboard sign approximately 850 feet from an existing billboard sign on the same side of the highway. The subject property of approximately 20 acres is zoned Heavy Industrial (I2), and is located on the east side of Lone Star Road, approximately ½ mile south of 327th Street, and north of US-169 Highway, in the NW ¼ of Section 32, Township 17 Range 23, Valley Township, Miami County, Kansas. Submitted by Fred Wingert of Wingert Sign Company, as the Applicant and Kevin Debrick, on behalf of K Properties, Inc., the property owner of record.

Jardieu 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. She 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.”***

She explained prior to the adoption of Countywide zoning in 1991, individual townships regulated zoning. Therefore, it is not unusual for a property that is zoned for residential purposes to abut property with Commercial or Industrial zoning.

- 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.”***

Jardieu reported the only hardship cited by the Applicant is financial loss. She reported that a number of court cases, several of which are outlined in the meeting packet, speak to this. She then read aloud a portion of the Court’s determination in *Hacker v. Sedgwick County*, 286 P.3d 222 (Kan. Ct. App. 2012):

“Mere economic advantage or disadvantage to the landowner applying for a zoning variance does not in itself constitute unnecessary hardship . . . not where strict application would merely prevent increased profitable use of that land.”

- E. *“Granting the variance desired will not be opposed to the general spirit of the regulations.”***

Jardieu reported the Planning Commission has stated, and the Board of County Commissioners found while adopting amendments to the Zoning Regulations governing billboard signs, that reducing the 1,000’ minimum spacing requirement between billboards does not meet the intent and purpose of the Sign Regulations, part of which is to:

“Support the purpose of the sign regulations by: a) ensuring the visual quality of signs and preserving and promoting the aesthetic quality of Miami County by reducing visual clutter . . .”

Staff recommends the Board of Zoning Appeals deny the request for the reduction in the minimum spacing requirement, based upon the Findings detailed in the staff report.

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

Sumner asked how many signs exist on the subject property.

Jardieu answered there are no existing signs.

Sumner asked if additional signs are proposed for the future.

Jardieu answered that if this variance is granted and an additional sign is desired in the future, it would require another variance application because an additional sign also would not meet the 1,000’ minimum spacing requirement.

Brown then invited the Applicant to make a presentation, if desired.

Mr. Kevin Debrick of K Properties, Inc. (14315 W. 351st St., Paola) approached the podium and introduced himself as 25% owner of K Properties, Inc. He stated his two sisters and a brother are the other owners, all of which are in agreement with Wingert Sign Company's offer to erect a billboard sign structure on the subject property. It is Mr. Debrick's understanding there is enough room on the subject property for only one sign. He reported he does not know how many signs will be on the billboard sign structure. Mr. Debrick further reported Mr. Wingert has talked with the two adjacent landowners, who are also fine with this proposal.

Berg asked for more information regarding the existing billboard sign, which is in conflict with the proposed billboard sign.

Mr. Debrick responded the closest sign, which is owned by Wingert Sign Company, is located on the Martin property to the northeast. He stated there are actually two billboard signs on the Martin property.

Brockus noted if a billboard sign is constructed 1,000' south of the nearest billboard sign to the north, the new sign would be less than 300' from the residential property to the southwest, which would be a violation of that sign regulation (Section 18-5.02.1). He concluded there seems to be no way a billboard sign on the subject property could comply with both of those sign regulations. He asked Mr. Wingert if he had spoken with the owner of the residential property to the southwest.

Fred Wingert (20920 Walmer St., Stilwell) approached the podium and confirmed he spoke with the property owner to the southwest. He reported that approximately one year ago during the COVID-19 pandemic, a travel-related business in the area had approached him about opportunities for additional advertising signage along US-169 Highway. Mr. Wingert explained he was approached about this because his company operates two other billboard signs in Miami County along US-169; and, many travel-related businesses have been dramatically impacted by the pandemic. He reported he then contacted Mr. Debrick and his family, and the two parties reached an agreement regarding a billboard sign. Mr. Wingert noted he also spoke with the adjacent landowners (to the northeast), Lynn and Carol Martin, regarding the proposed sign. Mr. Wingert then distributed to the Board members a letter of support from the Martins.

Sumner asked about the location of Debrick Trucking.

Mr. Wingert directed the Board's attention to the map on display and pointed to Debrick Trucking's location. He noted the aerial map on Page 16 of the meeting packet shows the 17.43-acre parcel owned by the Martins and a billboard in the southwestern corner of the Martin property. Mr. Wingert reported another billboard, which is 500' to the northeast of that billboard, does not appear on this aerial map. He stated the Martins have no issue with the granting of the requested variance, and reasoned if any property owner were to be impacted by this proposal, it would certainly be the Martins.

Mr. Wingert then reported he spoke with the residential property owner to the southwest and sent to her information on the proposal. He stated that she had no issue with the proposal and recognized the potential benefit of having more illumination of her property. However, he had informed her the billboard sign likely would not add any light to her property due to the dense tree line, which is approximately 50' tall, along the north side of her property.

Mr. Wingert also reported he talked with this property owner about the proposed sign being visible from her house when the tree leaves have fallen, but she was not concerned.

He reasoned the requested variance is for a reduction of only 150'. He added that his company has been operating in the County for a number of years and has good relationships with landowners and businesses in the area. Mr. Wingert invited questions from the Board members.

Sumner asked Mr. Wingert to indicate on the aerial map where the sign is proposed to be located, and its distance from the residential property to the southwest.

Mr. Wingert noted the proposed sign would be located approximately 550' from the residence, which meets the regulation requiring 300' separation from a residential property. He clarified that the variance being requested is a reduction in the minimum spacing requirement from the billboard sign on the adjacent property, not from the residence.

Brockus asked Mr. Wingert if he has searched for alternative locations in the area.

Mr. Wingert confirmed he has, but noted there are no alternatives due to lack of Commercial or Industrial properties along US-169 Highway. He reasoned there is some value in the clustering of signs; and although he understands concerns about aesthetics, the signs on the Martin property are spaced only 500' apart, so he does not see a problem with the proposed sign being located 850' from another sign. He commented there doesn't seem to be an abundance of billboards along US-169, and there are no billboard signs all the way to Garnett.

There were no further questions for the Applicant.

Sumner asked about the separation requirement between a billboard sign and a residence. He commented it seems the billboard sign is proposed to be located very closely to the residence.

Jardieu clarified that regulation is with regard to the required distance from a residential property (line), not a residence. She explained the billboard is proposed to be located 300' from the residential property line, which complies with that regulation. She added staff also measured the distance from the proposed sign to the residence, and it is 500'.

Reeves added the regulations require setbacks of 300' from a residential property line. The proposed billboard meets that requirement and is located even farther from the residence.

Reeves clarified that the two billboard signs located on the Martin property, which are spaced approximately 500' feet apart, were permitted only through the granting of a variance. She reported the Board had granted the variance because there were two existing signs on that property; otherwise, the request would not have met the variance standards.

Ross noted he serves on the Planning Commission and recalls the Planning Commissioners' discussions, during the course of two or three meetings, of proposed amendments to the Zoning Regulations governing billboard signs. He reported the Planning Commissioners took the time to digest all the information presented to them and agreed to four of the five amendments proposed. He explained the Planning Commissioners could not accept the proposed reduction in the minimum spacing requirement between billboard signs because they believed it was important to keep as much of a rural setting in Miami County as possible.

He then referenced Planning Commissioner Phil Elliott's comments included on Page 7 of 8 of the staff report:

"Elliott commented that the Planning Commission is tasked with creating Zoning Regulations for three reasons: health, safety, and welfare; and, the State Statute specifies that it is for those three reasons that the Planning Commission and the Zoning Regulations exist. Elliott noted that although he agrees that there is some welfare benefit, he does not know what portion of the people we serve will benefit. He expressed that aesthetics and rural lifestyle are a greater benefit. Elliott reported that some of the results received from the Comprehensive Plan survey speak to these very things. It is his opinion that discussions regarding the 1,000' minimum spacing requirement that have been on the books up to this point were specific to help maintain some of that rural character. He expressed that he would hate to go away from that, especially before finishing the Comprehensive Plan." (Page 12 of 14 of the approved February 2, 2021 Planning Commission Minutes)

Ross commented that Planning Commissioner Elliott's statement is great, and explains why the Planning Commission did not agree to the amendment proposing to reduce the minimum spacing requirement. He reasoned the Board of Zoning Appeals has already granted a variance for the two billboard signs along US-169 Highway (on the Martin property). He reasoned if the Board grants a variance for a sign to be located 850' from an existing sign, and later grants a variance to construct another sign near the one currently being proposed the signs will begin to stack up, and this area will begin to look like I-35 in downtown Kansas City. Ross commented this is not what the Planning Commissioners had in mind for aesthetics and a rural lifestyle.

Sumner asked if the proposed billboard is a one-sided or two-sided sign or V-shaped.

Jardieu answered it is two-sided.

Reeves noted it is also double-stacked.

Ross noted the proposed billboard sign will be the same type of structure as those on the property to the northeast: V-shaped and double-stacked.

Berg asked why the billboard is proposed to be located on the north side of US-169 Highway.

Jardieu explained billboards must be located within an Industrial or Commercial zoning district, and the properties on the south side of the highway are zoned for residential purposes.

Reeves reported the Applicant had considered the portion of the subject property that lies south of US-169 Highway, but the billboard sign would be located too closely to property zoned for residential purposes.

Sumner asked about the property southwest of the subject property.

Reeves answered the structure on that property is a mobile home or RV, and she believes a caretaker resides there. She asked Mr. Wingert to confirm.

Mr. Wingert reported Ms. Moore resides there, and that he spoke with her by phone.

Sumner asked if that property owner has submitted a letter in support of the proposal.

Mr. Wingert stated he has had only a phone conversation with that property owner.

Jardieu clarified the proposed billboard's location meets the sign regulations with regard to its distance from a property zoned for residential purposes.

Brockus noted if the Moore property was instead zoned Commercial, the proposed billboard would not be subject to the 300' separation requirement from that property line.

Reeves confirmed this is correct.

Ross asked in which zoning district the Moore property is located.

Jardieu answered it is zoned Countryside or Agricultural.

Brockus observed the Moore property is surrounded by properties zoned Commercial and Industrial.

Jardieu confirmed this is correct.

Brockus asked if the Moore property could qualify for a rezoning.

Reeves answered rezoning a property with a residence to Industrial or Commercial would cause the existing residence to be non-conforming because a residence is not allowed on an Industrial or Commercial property without a conditional use permit. She added lenders would not be in favor of a rezoning because the residence would then be non-conforming.

Reeves clarified, however, that the distance of the proposed billboard from the residence is not an issue because it complies with the separation requirement from property zoned for residential purposes. She reminded the Board that the Applicant is seeking a variance regarding the distance from the existing billboard sign to the northeast.

Brown asked if the proposed billboard is located as closely as it possibly can be to the residential property line.

Jardieu confirmed.

Wingert stated he and the property owner would be open to locating the proposed billboard farther from the residence if that is a concern of the Board.

Brockus reasoned that according to the sign regulations, locating the sign farther from the residentially zoned property would only worsen the Applicant's problem.

Ross commented the trees on the north side of the residential property are green for only three months out of the year, and are as bare as can be during the winter.

Reeves directed the Board to focus on the five variance standards. She advised the Board to address each of those standards individually to determine if the variance may be granted based on that particular standard. Reeves explained a variance may be granted only if the Board determines all five standards are met.

Brown proceeded to read aloud Variance Standard “A”:

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.

Ross referenced Section 18-5.06 of the Zoning Regulations, which requires billboard signs to be located at least 1,000’ from another billboard. He noted the proposed billboard does comply, however, with Section 18-5.02.1 of the Zoning Regulations, which requires billboard signs to be located at least 300 feet from property zoned for residential purposes.

Brown commented Variance Standard “A” has not been met; therefore, there is no need to address the four remaining standards.

Reeves advised the State statute requires the Board to address all standards; therefore, the Board must address the four remaining standards.

Brockus asked whether the statute would require the Board to uphold the regulations if the proposed billboard was a distance of 999’ instead of 1,000’ from the existing billboard.

Reeves clarified it is the County’s Zoning Regulations—not the State statute—that require minimum spacing between billboard signs. The State statute addresses how the Board is to consider a variance request. Although she cannot speak for this Board, if a billboard’s distance was within only one foot (1’) of meeting the minimum spacing requirement she guesses the Board would recognize how closely it comes to meeting that requirement.

Brockus asked if this is a matter of the Board determining how closely the proposed billboard may be located to the existing billboard to be acceptable to the Board.

Jardieu answered it is a matter of determining whether the request meets each one of the variance standards.

Brockus commented the request meets four of the five variance standards.

Reeves read aloud Variance Standard “A”:

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.”

She asked the Board members if they feel this condition is unique to the subject property.

All Board members present agreed the condition is unique to the subject property.

Brown read aloud Variance Standard “B”:

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

He reasoned one property owner (Martin) has submitted a letter of support and the other closest property owner (Moore) has verbalized to the Applicant she does not have an issue with the proposed billboard.

All Board members present agreed the granting of the variance will not adversely affect the rights of adjacent property owners.

Brown read aloud Variance Standard “C”:

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.”

Ross commented he does not believe this will constitute unnecessary hardship because the Applicant has argued financial hardship. Further, it is money the owner does not already have.

Mr. Wingert approached the podium, and reported staff had emailed him on September 2nd, requesting additional information about the sign. However, staff did not include the property owner in this email, although the email was all about the property. Mr. Wingert argued the email should have instead been addressed to Mr. Debrick to answer.

Jardieu responded Mr. Wingert is the Applicant and could have shared staff’s email with the property owner.

Berg asked if Mr. Wingert owns the sign company.

Mr. Wingert answered he is the Applicant, but staff’s questions about hardship were regarding the property owner.

Sumner asked staff if financial hardship is the only hardship argued by the Applicant.

Jardieu responded that after emailing her initial questions to the Applicant she sent a follow-up email to the Applicant, asking him to explain the hardship. The Applicant’s answer, which is included in the meeting packet, was financial hardship.

Ross commented he does not think financial hardship constitutes a hardship.

Brockus read aloud from the meeting packet (Page 5 of 8) the following finding of the Court in *Hacker v. Sedgwick County*, 286 P.3d 222 (Kan. Ct. App. 2012):

“Mere economic advantage or disadvantage to the landowner applying for a zoning variance does not in itself constitute unnecessary hardship...”

Brown read aloud Variance Standard “D”:

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

Brown commented the requested variance does not adversely affect any of those. The remaining Board members present agreed with Brown.

Brown then read aloud Variance Standard “E”:

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

Brown commented granting the variance based on all variance standards except for Variance Standard “C” (hardship) would not be opposed to the general spirit and intent of the regulations. He added he believes the request meets Variance Standard “A”, as the condition is unique. He reasoned there is no alternative location for the sign.

Ross commented granting the variance would indeed be opposed to the general spirit and intent of these Regulations because the Planning Commission studied the Zoning Regulations for billboard signs and voted to amend those regulations, but retained, specifically, the 1,000’ minimum spacing requirement.

Berg agreed with Ross.

Brockus commented he agrees with Planning Commissioner Elliott’s comments on Page 7 of 8 of the staff report.

Sumner commented the subject property does not have the frontage necessary for the proposed billboard to be located 1,000’ from the existing one. Therefore, he believes Variance Standard “A” has been met.

To confirm her understanding, Reeves summarized the Board’s Findings. She stated the Board members present agree Variance Standards “A”, “B”, and “D” have been met and Variance Standard “C” (hardship) has not been met. She reported the Board members present are divided, 3-2, regarding whether Standard “E” has been met (whether granting the variance would be opposed to the general spirit and intent of the regulations). Reeves noted if all Board members present agree Variance Standard “C” (hardship) has not been met, then the Board should not grant this variance, based on the Zoning Regulations, which require that all standards be met to grant the variance. She advised, however, this is the Board’s decision.

Ross moved to deny requested variance 21002-VAR: Wingert Sign Co. (Debrick/K Properties) from the 1,000’ minimum spacing requirement between billboard signs.

Reeves asked Ross to state his Findings.

Ross stated Variance Standard “C” has not been met because the hardship cited is financial, which is not considered a hardship; and Variance Standard “E” has not been met because granting the variance would oppose the general spirit and intent of the regulations and the intent of the 1,000’ minimum spacing requirement.

Brockus seconded the motion.

Reeves restated the motion and Findings.

The motion passed, 5-0, with one (1) recusal (Alpert).

Reeves announced the variance has been denied.

Findings to Deny

1. Strict application of the regulations does not constitute an unnecessary hardship since the only hardship cited by the Applicant is financial, which the courts have repeatedly stated is not a consideration to approve a variance.
 2. Granting the variance is in opposition to the general spirit and intent of the Zoning Regulations as cited in the Purpose statement of the Sign Regulations and by the Planning Commission.
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Alpert returned to Commission Chambers.

c. 21003-VAR: Rockville Gen. Contractors (Hause)

Jardieu 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, and the entire existing residence is located within the required front yard setback. The nearest point of the proposed addition would be approximately 76 feet from the centerline of 263rd Street and will encroach the setback by approximately 6 to 7 feet. The subject property of approximately 2.98 acres is addressed as 8010 W. 263rd Street, is zoned Countryside (CS), and is located in the SE ¼ of Section 18, Township 16, Range 25, Wea Township, Miami County, Kansas. Submitted by Brian Sterner of Rockville General Contractors, as the Applicant, on behalf of Lauren Hause, the property owner of record.

She then addressed Variance Standard “A”:

- 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.”***

Jardieu explained there are instances when a nonconforming setback may be used, which is established by averaging the front yard setback of existing dwellings, buildings, or structures on the same street. However, the average front yard setback did not provide any relief, so staff utilized the least restrictive requirement: 50' from the ultimate right-of-way. She added all the surrounding homes were constructed prior to the adoption of Countywide Zoning Regulations, which is why their setbacks vary. Jardieu reasoned the existing home's proximity to the road is somewhat unique to this property.

Jardieu addressed Variance Standard "C":

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."

Jardieu explained the existing house would need to be moved 48' north, away the ultimate right-of-way, to comply with the regulations for front yard setbacks, and doing so would be an unnecessary hardship upon the property owner.

Staff recommends approval of the requested variance based upon the five Findings and subject to the Conditions in the staff report.

The property owner, Lauren Hause (8010 W. 263rd St., Louisburg), approached the podium and reported the house was built in 1963 with one full bedroom and approximately one-half bedroom. She explained hers is a family of four, two of which are kids. She noted they wish to add a basement and a couple of bedrooms to the house. She explained the basement will also serve as a tornado shelter for the family, which is important.

Brockus asked if a walkout basement is possible.

Mr. Sterner answered it is not possible without significantly more construction.

Ms. Hause expressed she wishes it could be a walkout basement.

Sumner asked how many bedrooms are planned to be added.

Ms. Hause answered there will be three bedrooms total: two in the basement and one on the main level.

Alpert referenced Exhibit "A" (surveyor's Plot Plan) included with the staff report, and pointed out the 52' measurement from the 393.95' line. He asked whether the 393.95' line represents the edge of the right-of-way or the middle of the road.

Reeves answered it should represent the center of the road.

Mr. Sterner confirmed.

Reeves reported she has confirmed this with the surveyor. She explained she had also used the aerial photo and taken a measurement from the center of the road and came up with 52', as shown on the Plot Plan.

Sumner asked if the entire addition will be at the rear of the house.

Mr. Sterner and Ms. Hause confirmed.

Ross asked about the other building on the property.

Mr. Hause answered it is a shop building, which is larger than the house.

Alpert noted a driveway along the west side of the subject property, which appears to provide access to the property directly north. He asked Ms. Hause if this is a private drive and whether there is an easement for it.

Ms. Hause confirmed.

There were no further questions for the Applicant or the property owner.

Brown then addressed each of the following Variance Standards:

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.”*

All Board members agreed Variance Standard “A” has been met.

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

All Board members agreed Variance Standard “B” has been met.

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.”*

All Board members agreed Variance Standard “C” has been met.

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

Brown remarked he believes granting a variance to construct the proposed addition will have no effect on surrounding property owners.

Alpert commented the addition of a basement will enhance health and safety.

All Board members agreed Variance Standard “D” has been met.

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

Ross commented the house existed prior to the adoption of the County’s Zoning Regulations.

All Board members agreed Variance Standard “E” has been met.

Berg moved to grant requested variance 21003-VAR: Rockville Gen. Contractors (Hause) based upon these five Findings, and subject to the Conditions in the staff report.

Sumner seconded the motion, and the motion passed unanimously, 6-0.

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; and c) was not created by the actions of the property owner.
2. Granting the variance will not adversely affect the rights of adjacent property owners.
3. Denial of the variance request could impose an unnecessary hardship upon the property owner, as the existing house is located entirely within the front yard setback therefore, there is no alternative location for the addition that would comply with the front yard setback requirement.
4. Granting the variance will not adversely affect public 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 only the proposed addition, which is shown on the Plot Plan, and attached hereto as Exhibit “A”. Any additional or future encroachment into the front yard setback shall not be allowed, except as may be granted through the variance procedure.
 2. The Applicant must obtain a building permit for the proposed addition. All County codes related to this addition shall be complied with.
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5. OLD BUSINESS

None.

6. OTHER BUSINESS

Jardieu announced there have been no variance applications submitted for October, so there will be no Board of Zoning Appeals meeting in October.

Sumner welcomed Jardieu to Miami County.

Berg asked if the Petition for Incorporation of the proposed City of Golden is approved whether the City would no longer be subject to the County's Zoning Regulations.

Reeves responded as soon as the Board of County Commissioners were to approve the incorporation the County would have no jurisdiction over that area. She stated the City would otherwise need to sign some type of an agreement to allow the County's Zoning Regulations to have jurisdiction there. Reeves explained the County can provide certain services to areas outside its jurisdiction if there is an agreement to do so. She noted the City of Fontana has an agreement with the County, whereby building permits are issued through the County and inspections are done by the City. She added the County provides such services via a user-based fee, which is paid by the applicant or landowner.

Ross expressed he was perturbed by the request for a variance from the 1,000' minimum spacing requirement between billboards (21002-VAR) because the Planning Commission went through a lot of trouble considering the proposed amendments to the sign regulations, and had determined specifically to keep the 1,000' requirement. He further commented the request was an attempt to defeat what the Planning Commission put into place.

7. PLANNING DIRECTOR REPORT

Reeves reported the Planning Department has received significantly more lot split applications this year than in all of 2020. She reported building permit applications have slowed slightly since school started, however, they are still at record highs.

Brockus asked Reeves to elaborate on the Planning applications being received.

Reeves explained most of the County is zoned either Agricultural, with a 20-acre minimum lot size or Countryside, with a 15-acre minimum lot size. She reported one variation of a lot split—agricultural preservation lot split—is currently very popular, and involves dividing a large parcel in such a way that 75% of the land area is retained in one parcel, which allows for a parcel that is much smaller than the minimum.

Brown asked about the smallest, buildable lot size in the County.

Reeves answered it depends upon when the lot was created. She stated wastewater options are limited for small lots. She explained the Environmental Health Department determines which wastewater systems are suitable, based upon a property's soil types, so a smaller property is more likely to need an alternative wastewater system, which can be very expensive. She explained the smallest a lot can be to accommodate a lagoon is three acres. Reeves also noted nonconforming setbacks may be used for lots created prior to the adoption of Zoning Regulations.

Reeves reported the last of the testimony—officials from the City of Edgerton—was heard today regarding the Petition for Incorporation of the proposed City of Golden. She noted Attorney Jim Kaup, a land use attorney from Topeka, is guiding the County through this process; and the Board of County Commissioners hopes to make their decision in late October.

Berg asked how the County will view those properties made nonconforming by the K-68 expansion.

Reeves responded in the past when a road cut through a property the County had recognized that modified lot as a legal, nonconforming lot of record, as the situation was beyond the control of the property owner.

Berg asked whether such a property owner must still come before this Board if they would like to build an addition to their house.

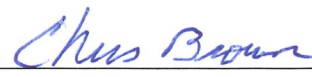
Reeves responded it will depend on the particular property. She explained staff would first determine whether the property could meet nonconforming setbacks; however, if that is not possible, a variance request would need to come before the Board of Zoning Appeals.

8. ADJOURNMENT

Brown called for a motion to adjourn, and Sumner moved to adjourn. Alpert seconded, and the meeting was adjourned by unanimous vote, 6-0, at 8:19 p.m.

Approved this 12th day of November, 2021.


Angie Baumann, Secretary


Chairman, Chris Brown/Vice-Chair, Gary Brockus

Minutes written by Angie Baumann.