

**BOARD OF ZONING ADJUSTMENT MINUTES**  
**January 22, 2013**

Regular meeting of the Clay County Board of Zoning Adjustment, Commission Hearing Room, 3<sup>rd</sup> Floor, County Administration Building, One Courthouse Square, Liberty, Missouri.

Call to Order  
@ 5:50 pm:

David Fulton, Chairman

Roll Call:

Matthew Tapp, Director

Members Present:

David Fulton, David Fricke, Brian Klopfenstein, and Vernon Reed

Members Absent:

Mike Johnson

Staff Present:

Matthew Tapp, Director  
Debbie Viviano, Planner  
Tim Flook, Assistant County Counselor  
Angie Stokes, Secretary

**Mr. Fulton:** Okay let's call this the January 22, 2013 meeting of Clay County Board of Zoning and Adjustment to order. Would you call roll please.

**Mr. Tapp:** Mike Johnson?

**Mr. Johnson:** No answer.

**Mr. Tapp:** Brian Klopfenstein?

**Mr. Klopfenstein:** Here.

**Mr. Tapp:** David Fricke?

**Mr. Fricke:** Here.

**Mr. Tapp:** David Fulton?

**Mr. Fulton:** Here.

**Mr. Tapp:** Vernon Reed?

**Mr. Reed:** Here.

**Mr. Fulton:** Okay thank you everyone. You have received in the mail the minutes of September the 11<sup>th</sup>, 2012, I am sure you all remember them vividly. Is there any additions or corrections?

**Mr. Klopfenstein:** Mr. Chairman I move we approve the minutes as they are written.

**Mr. Fricke:** I second.

**Mr. Fulton:** Thank you, the motion has moved and second to approve the minutes as received, any discussion if none all those in favor signify by saying "aye"

**All:** Aye.

**Final Vote**

**4/0**

**Approved**

**September 11, 2012  
BZA Minutes**

**Mr. Fulton:** Okay this evening we have one case before us but what we do in our normal procedure is anyone that wants to testify, since it is on a matter of record, she is keeping a recording of what goes on here this evening and you need to be sworn in if you're going to testify. Or even if you don't think you'll testify, if you think you might, if you stand up, I'll swear you in. So anyone who is going to be talking this evening needs to stand and be sworn in. Just stand and raise your right hand if you are going to testify. Do you solemnly swear to tell the truth the whole truth and nothing but the truth so help you God? Answer "I do".

**Mr. Mitchell:** I do.

**Mrs. Mitchell:** I do.

**Ms. Madison:** I do.

**Mr. Fulton:** Thank you very much. Okay this evening its case number 13-101BZA it's a request for a variance to Section 151-6.3B (5bii) of the Clay County Land Development Code, pertaining to the minimum side setback for the placement of an accessory building in a proposed Residential Ranchette (R-5) District, where such placement will be in non-compliance of the County code of requirements. The applicants are Bob and Jerry Mitchell. First we'll hear from the staff, what we will do this evening we'll hear from the staff, they will give us a summary. They have a very good report; we would like to hear from them if there is anything else they would like to add. Then we will listen to any proponent for the application then if there are any opponents we'll listen to those and then the board will make a decision, so with that Matt.

**Mr. Tapp:** Mr. Chairman I just want to bring the Commission's attention aside from the Staff Report is that the Mitchell's acquired the property in 2007 and the main house and accessory building in question have been there since the 60's or the 70's. As a result of some resurveying and doing some research on some title work it's been found that the property line actually does a jig jog or a Z type pattern. And doing that research it identified that the accessory building is actually really close if not on the property line. The Mitchell's would like to pursue a rezoning and subdivision of the property following this and that is what prompted all this. So they're coming before the Board of Zoning Adjustment for a variance from the obvious setback requirements for accessory buildings. With that, staff would like to close their comments.

**Mr. Fulton:** Does anyone have any questions to Matt as I said we all have an excellent set of preview for the application which you all had for some time. Is there any questions? If not let's go right in, yes Dave.

**Mr. Fricke:** It is only a 15 foot variance?

**Mr. Tapp:** Yes, because their pursuing a rezoning to a proposed Ranchette which is a 15 foot setback. So it's basically 15 feet.

**Mr. Fulton:** Okay thank you. We will open the public hearing now and hear any of the proponents, Mitchell's if they would like to ....

**Mr. Mitchell:** I am Bob Mitchell, I think Matt summed it up, we did not realize it was sitting on the property line until we actually did a survey.

**Mr. Fulton:** What happened to the microphone? You do need to stand and be on a microphone.

**Mr. Tapp:** Normally there is a stand here.

**Mr. Mitchell:** Okay sure no problem.

**Mr. Fulton:** Normally there is a podium here. Just share with us why you want have a variance.

**Mr. Mitchell:** Just to make a long story short, what the final goal is we have eleven (11) acres there and basically want to split that property in half and want to let my brother-in-law build a house there. In the process we did a survey and it came to our attention and Matt and Debbie that there was actually a building sitting on the property line. Well sometime between when the houses were built, Roby, the lady that's here with us which is the neighbor, the building sits next to her property. Somewhere down the line somebody cut a little piece of land off and gave it to that property and that's how it ended up on the line. So you can see the little jag through there, when theoretically at some point in time, we think, that line actually looks straight. So we don't know where it happened or when it happened or anything and like I said it is just existing pole barn that sits down on the back of the property close to the Railroad Easement. So that is what the variance is about to be sure there is not a problem with the community and all that, that is why our neighbor has come with us so she can attest that it's alright. So that is about it, pretty simple.

**Mr. Fulton:** Questions for Mr. Mitchell?

**Mr. Reed:** I have a question.

**Mr. Fulton:** Go ahead.

**Mr. Reed:** In the first sheet there's an existing accessory building and the neighbor's accessory building is it the neighbor's accessory building?

**Mr. Mitchell:** No it's the existing one.

**Mr. Reed:** Existing right.

**Mr. Mitchell:** The neighbor's is off the property line, it's that existing one right there that is an existing accessory building.

**Mr. Reed:** Okay well the jog you were talking about .....

**Mr. Tapp:** Keep in mind, Vernon thank you for bring that to the attention of the Commission, the aerial photography in the mapping that is provided by the Assessor looks to be substantially off from what was actually surveyed. So you always go with the surveyors more accurate detail information. So if you look at Attachment D, while it does not show the neighbor's to the south accessory building it does show the one in question. But the Assessor, like our Attachment C is off. So the parcel layer that the Assessor has is just not accurate there. It's to give you an idea. But Attachment D is the surveyor's; it's a zoom in of the surveyor's certificate of survey which is what you want to go off of.

**Mr. Mitchell:** And actually the line with the jag in it is actually further down again, so that whole line there just needs to be moved down, because it runs right against that existing accessory building.

**Mr. Tapp:** It's like .9 feet.

**Mr. Mitchell:** Yeah it is pretty close.

**Mr. Reed:** Alright so remind me again what you're asking for? The variance for...

**Ms. Tapp:** It's the side setback Vernon. So in the proposed zoning district they're going to all accessory buildings like this, like a pole barn what not, have to be at least fifteen (15) feet from a side property. So this is the side property line. Their requesting basically the full fifteen (15), because they don't meet the fifteen feet.

**Mr. Reed:** Alright they are asking for a waiver of the fifteen foot setback.

**Mr. Tapp:** Right, that's how we categorize it or explain it, is the amount they are requesting.

**Mr. Reed:** Yeah I guess it's just a semantics question.

**Mr. Tapp:** Correct yes. It's a side setback variance and they are requesting the full fifteen some people request ten, eight, nine.

**Mr. Reed:** When you say requesting a full fifteen, you are really meaning they are requesting zero setbacks.

**Mr. Tapp:** Correct if you want to look at it the other way.

**Mr. Mitchell:** We're requesting so that it doesn't become a problem later on.

**Mr. Reed:** Okay.

**Mr. Tapp:** That is just how we word it.

**Mr. Reed:** Okay that is what threw me off.

**Mr. Tapp:** Sure.

**Mr. Reed:** It made sense to me that you were asking for a zero setback.

**Mr. Tapp:** How we explain is to be very specific as to how many feet their requesting. Some people don't need the full fifteen, they just need eight or nine, four, five of the fifteen, but this one does.

**Mr. Fulton:** One question the property line does clear the building?

**Mr. Mitchell:** Yes it clears the building; it is right up against it like he said there is about .09 feet,

**Mr. Fulton:** The property line does not go through the building.

**Mr. Mitchell:** Right,

**Mr. Reed:** .09 feet.

**Mr. Tapp:** Right.

**Mr. Mitchell:** It's very close. And actually the survey that we did once before from the lady we bought the house from shows it a little further and the new survey we got shows it a little closer. But they are both off the line. There were a lot of question marks on the Railroad Easement back there, that's what was, kind of, causing him problems; he was having to go way way back to find all those Burlington Railroad easements. Both survey show clear and this one here is closer than any.

**Mr. Reed:** Okay so that is less than an inch?

**Mr. Mitchell:** Yes it is very close, on that one corner, on the front corner on the north corner or I'm sorry on the west corner, it's further away and cuts through that easement.

**Mr. Tapp:** If you look at Exhibit B, which are the pictures that the Mitchell's provided, picture one is a very good picture from basically the road, the utility pole and that pink survey stick really shows you where that, if you drew a straight line through there. Where that line kind of falls towards the building. It's right on it.

**Mr. Fulton:** Are there any other questions? Thank you Mr. Mitchell, is there anyone else who would like to speak as a proponent? Yes, stand up to microphone and state your name, please for the record.

**Ms. Madison:** My name is Roby Madison and I am their neighbor, next door neighbor, the line runs between both of our properties.

**Mr. Fulton:** Thank you for coming in.

**Ms. Madison:** I don't have a problem with their barn being right on the line and I'm okay with that, I just wanted to make sure that's okay. You know it's okay with me, we're good neighbors and everything is cool.

**Mr. Fulton:** Good, yes we appreciate you coming in. Are there any other's that would like to speak as a proponents? If not are there any opponents? One's that would like to speak in opposition? Hearing none we'll close the public hearing and the chair will entertain a motion for action on this request.

**Mr. Reed:** I move that we approve the application.

**Mr. Fulton:** Okay a motion has been made is there a second?

**Mr. Klopfenstein:** I'll second.

**Mr. Fulton:** A motion has been made and a second now is there further discussion? I think the staff pointed out pretty vividly the four criteria, by which we, A, B, C and D on page two of nine; it was well pointed out the support for the approval of this request without stating it in the motion.

**Mr. Klopfenstein:** And I ask that the Staff Review be included in the records as well.

**Mr. Fulton:** Very good.

**Mr. Klopfenstein:** And the reason I seconded the motion, I think in fact, the evidence clearly shows that it meets all four of the criteria necessary, with that I'll call the question.

**Mr. Fulton:** Okay is there other discussion? If not we will have Matt call the roll for the question been called for.

**Mr. Tapp:** Yes Mr. Chairman, Brain Klopfenstein?

**Mr. Klopfenstein:** Yes.

**Mr. Tapp:** David Fricke?

**Mr. Fricke:** Yes.

**Mr. Tapp:** David Fulton?

**Mr. Fulton:** Yes.

**Mr. Tapp:** Vernon Reed?

**Mr. Reed:** Yes.

**Mr. Fulton:** Thank you very much for coming in and the neighbors coming in is very helpful; we always like to hear from the neighbors.

**Final Vote 4/0 Approved Case 13-101BZA  
Bob and Jerry Mitchell**

**Mr. Fulton:** Okay is there any other business to come before the...?

**Mr. Tapp:** Yes Mr. Chairman actually and the rest of the members I want bring the schedule for 2013 up for discussion. And the only ones that really might have any concern or issue would be May, because the May pre-schedule meeting date coincides with Memorial Day. So the 27<sup>th</sup> is the holiday, the Monday, and then we are supposed to have the 28<sup>th</sup>, very next day, have a Board of Zoning Adjustment. Now if none of the members have any Memorial Day plans then great we'll keep it, but a lot of times we will bump it up a week.

**Mr. Fulton:** Let's bump it up a week, just in case.

**Mr. Tapp:** Yes. I also want to bring it to the attention of November. November it hits right before Thanksgiving, so again there might be some travel plans and in December we already have it the week before.

**Mr. Fulton:** Let's go ahead and move the November up to the 19<sup>th</sup>.

**Mr. Tapp:** Okay.

**Mr. Fulton:** Just so we are sure.

**Mr. Tapp:** And if any of the members have any other conflicts.

**Mr. Fulton:** That's the only ones, when I received it I noticed. And this early on there shouldn't be any problems in advance.

**Mr. Tapp:** No.

**Mr. Reed:** So in May you're changing from the 28<sup>th</sup> to the 21<sup>st</sup>?

**Mr. Tapp:** Yes and then in November from the 26<sup>th</sup> to the 19<sup>th</sup>.

**Mr. Reed:** Okay very good I am with you.

**Mr. Tapp:** And we'll go ahead and print out another calendar. Hopefully you will all meet before May. Otherwise just make note of that.

**Mr. Fulton:** Okay if there is no other business.

**Mr. Tapp:** No other business.

**Mr. Fulton:** I will entertain a motion to adjourn?

**Mr. Fricke:** So moved.

**Mr. Fulton:** Second?

**Mr. Klopfenstein:** Second.

**Mr. Fulton:** All those in favor signify by saying "aye".

**All:** Aye.

**Meeting Adjourned**

---

*Chairman, Board of Zoning Adjustment*

---

*Secretary, Board of Zoning Adjustment*

---

*Recording Secretary*