

BOARD OF ZONING ADJUSTMENT MINUTES
September 27, 2016

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

Call to Order
@ 5:30 pm: Brian Klopfenstein, Chairman

Roll Call: Kipp Jones, Manager

Members Present: Buddy Raasch, Brian Klopfenstein and Larry Whitton

Members Absent:

Staff Present: Kipp Jones, Manager
 Debbie Viviano, Planner
 Andy Roffman, Assistant County Counselor
 Angie Stokes, Secretary

Mr. Klopfenstein: I am going to call the Board of Zoning Adjustment meeting to order, can we take the roll?

Mr. Jones: Buddy Raasch?

Mr. Raasch: Present.

Mr. Jones: Brian Klopfenstein?

Mr. Klopfenstein: Present.

Mr. Jones: Larry Whitton?

Mr. Whitton: Here.

Mr. Klopfenstein: We have a quorum?

Mr. Jones: Yes.

Mr. Klopfenstein: We have the whole Board?

Mr. Jones: Yes.

Mr. Klopfenstein: There are some matters before the Board, the first issue is the approval of the minutes from the last, May 24, 2016, have the Board members had a chance to review the minutes? Does anybody want to make a motion?

Mr. Whitton: I move to approve the minutes.

Mr. Raasch: Second.

Mr. Klopfenstein: It's been moved and seconded that the minutes from the May 24, 2016 be approved as submitted, call the roll.

Mr. Jones: Buddy Raasch?

Mr. Raasch: Yes.

Mr. Jones: Brian Klopfenstein?

Mr. Klopfenstein: Yes.

Mr. Jones: Larry Whitton?

Mr. Whitton: Yes.

Final Vote 3/0/0 Approve Minutes from May 24, 2016

Mr. Klopfenstein: Motion passes. So now we are going to consider case number 16-102BZA which is a request for variances to Section 151-6.3B(1a) of the 2011 Clay County Land Development Code, pertaining to the minimum side setback of an accessory structure used to house animals; also pertaining to Section 151-8.4(A) for the minimum lot width to depth ratio of a proposed lot in an Agricultural (AG) District. Such accessory structure placement and lot dimensions will be in non-compliance of the County code of requirements. The applicant is Amy Swanson, Triple H Team, RE/Max Innovations, representing Andrea L Burgis. So I see there are quite a few folks here tonight what we are going to do is we are going to take the staff report first and then we'll swear witnesses who wish to testify. It has been our practice to take testimony first from the proponents of the action and then also to take testimony from those opposing the action. So Mr. Jones would you proceed with the report from your department.

Mr. Jones: Yes sir, first I would like to add the staff report as part of the official record.

Mr. Klopfenstein: Without objection.

Mr. Jones: Summarized the staff report 16-102BZA dated September 19, 2016.

Also we have received quite a few e-mails within the past couple of days and I would like to introduce as Exhibit A and I apologize to the Board that we couldn't give them out with the staff report but like I said we just received them within the last couple of days.

Mr. Roffman: To clarify on that Kipp, you have an Exhibit A and a B already so this will be Exhibit C just so the record is clear.

Mr. Klopfenstein: I will mark the stack of e-mails as Exhibit C and will include the e-mails in the record.

Mr. Jones: And staff will be happy to answer any questions the Board may have.

Mr. Klopfenstein: Okay so can I ask a question?

Mr. Jones: Yes sir.

Mr. Klopfenstein: As I look at the diagram on the wall in the far left corner is the orange and those two, those are not part of the property?

Mr. Jones: They are not.

Mr. Klopfenstein: The barn is down in the corner and what is the blue rectangle at the top?

Mr. Jones: The blue is the proposed lot number one, so we showed that because they are proposing to split that north ten acres off as part of a Planning and Zoning case that will be heard next week.

Mr. Klopfenstein: Okay.

Mr. Jones: And this is, so this is all one lot right now.

Mr. Klopfenstein: Okay.

Mr. Jones: But the blue is proposed north ten acres to be split off and the purple/pinkish is what will be left of the existing lot.

Mr. Klopfenstein: Okay.

Mr. Jones: And the width to depth ratio is in relation to what would be left of the purple lot.

Mr. Klopfenstein: And there is something else that is going on next week in a different Commission?

Mr. Jones: Yes, they are going to Planning and Zoning Commission for a rezoning and platting.

Mr. Klopfenstein: Alright, did the office have any objection to the four criteria that we typically use to determine variances? A, B, C and D on page...

Mr. Jones: Yes I think there might be some members of the public that might want to speak to that tonight.

Mr. Klopfenstein: Okay.

Mr. Jones: But I believe there are some objections to those criteria's.

Mr. Klopfenstein: Okay, anybody else have any questions? Okay so if you are wishing to testify on behalf of the applicant, I assume you signed in so we know who's present. Who all wishes to testify on behalf of the applicant? I've got two; alright raise your right hand to be sworn.

Audience: I am sorry, I miss spoke.

Mr. Klopfenstein: You wish to testify in opposition, okay I understand. We have one, do you solemnly swear the testimony provided will be the truth, the whole truth and nothing but the truth so help you God.

Ms. Swanson: I do.

Mr. Klopfenstein: Alright please and state your name for the record.

Ms. Swanson: My name is Amy Swanson, good evening everyone, I think Kipp has basically summarized kind of the points I want to bring up to the committee today, as the property stands. The two variances that we are asking for the building setback and the width to depth ratio have already been grandfathered in, they were in that condition when the owner purchased the property and therefore there really isn't anything she could have done about that, the only thing different would be in the future split that ten acres off and actually that ratio although this would not be a 4 to 1 it would still shrink that closer to your 4 to 1 ratio by bringing that north line down south a little bit. But I am open to questions I think's it pretty simple the way things stand, so I am open to questions.

Mr. Klopfenstein: Anybody have any questions? Alright thank you so much. For those folks who wish to speak in opposition, who would like to start, okay have you signed in sir?

Mr. Kramer: Yes.

Mr. Klopfenstein: Anybody who wishes to speak in opposition, rather than swear you each in individually, you wish to speak in opposition raise your right hand, do so. You solemnly swear the testimony provided will be the truth, the whole truth and nothing but the truth so help you God.

Audience: I do.

Mr. Klopfenstein: Thank you. I am going to show on record that we had a mass swearing in of folks, so whoever wants to start us off. Don't be shy. Mr. Porter how are you this evening?

Mr. Porter: I am okay, how are you?

Mr. Klopfenstein: Good would you rather stay seated?

Mr. Porter: No I am good. My name is Craig Porter I reside at 11306 Plattsburg Rd, Kearney, MO. This subject property adjoins us on our west line of our property.

Mr. Klopfenstein: Okay so you are over there, okay.

Mr. Porter: We are to the right. I am a residential developer and have been for forty years and was a County Commissioner from 2001 through 2008 and there were numerous reasons I decided to run for County Commissioner here in 2000 but one of them was I

was very disturbed by the way the County was being subdivided and the lack of what I would call up to date Planning and Zoning Ordinances and it was making it very difficult for the cities to grow they were ringed by large lot subdivisions, they had no sewer's, sometimes less (*inaudible*) with water. And so one of the things that we did was after I got elected was we looked at the Comprehensive Plan and we made several changes to the Comprehensive Plan and one of those was to put the County into tiers, I don't remember if we numbered them or lettered them but there were three tiers and the first tier was supposed to be within a mile or two miles of incorporated cities and it was supposed to contain higher density. One of the reasons for that and if I could get somebody to pass this out, I've got the city limits here of Kearney, I've got another one here Kipp if you want one for the record, this is actually the Kearney special road district but the road district is the same as the city limits.

Mr. Klopfenstein: I am going to mark this as Exhibit D and include this for the record.

Mr. Porter: You can see how fragmented the city limits of Kearney are and the main reason for that is every time you look at one of those where the green goes around the white spot you will see large lot, a large lot subdivision and it's been very hard for Kearney to expand and grow. I think the same can be said for Smithville and even to a little lesser extent Liberty and as a developer we run into this problem all the time. So we decided to do the higher density in the first tier this property would be in the first tier and the problem I see with this is that you are putting ten acres next to properties that are one and two acres and ten acres is just big enough that you can't hardly do anything with it once you establish the ten acres...

Mr. Jones: Chairman I think this is more into the rezoning subdivision part of the case.

Mr. Klopfenstein: So let me just ask Mr. Porter and I don't mean to cut you off I appreciate your testimony, if the Board is and I read it carefully, I think, if the Board is only considering whether there should be a variance for the location of the barn as for the setback and then whether or not it meets the standard ratio there should be a variance for that.

Mr. Porter: Width to depth.

Mr. Klopfenstein: Yes.

Mr. Porter: Okay.

Mr. Klopfenstein: So tell me and I get what you are saying about Land Development but if the only two issues I have to..

Mr. Porter: Okay I am getting to that, if you allow this to happen now you set a precedence that anybody that comes in here with properties deficient width to depth ratio can hang their hat on this and say well you did this for them and the lady was grandfathered in when she purchased it to me that was her good fortune to be grandfathered in, things like this hurt the value of property around it and when this happens I think that is one of the criteria that has an adverse effect on the surrounding properties I see no way this have a positive effect for anything but an adverse effect on the surrounding properties. We live on 35 acres if one of these days somebody came in and wanted to buy ours and subdivide it into small lots that would be fine but you are right on the edge of Liberty here and if I am not mistaken one of the largest subdivisions in the Kansas City area is being planned for the property that is less than a quarter mile to the south of this. So when you start doing things like this I think you are going to hinder the building of Liberty to do those type of things also.

Mr. Klopfenstein: Does anybody have any questions? Thank you so much, I didn't mean to cut you off are you finished?

Mr. Porter: No I am finished.

Mr. Klopfenstein: Okay, so Mrs. Porter do I call you Madam Recorder.

Ms. Porter: Please no I am not here in that capacity at all I am here as a private citizen who owns land adjacent to the applicant property, I appreciate your humor but I am strictly here as a private citizen. I am an attorney so I do kind of understand the land code and the various rules that come with it and I too was a County Commissioner that helped carry on the Comprehensive Plan that Craig was talking about and yes I am married to Craig and I also reside at 11306 Plattsburg Road. As I understand it there are four conditions that have to be met in order to grant a variance and one of those is that the condition must be unique to the property and not ordinarily found in the same zoning district and as I looked at the map of Clay County general at various parcels that are throughout this County it appears to be a rather common problem in almost all parts of the County we have some of the weirdest shaped parcels that you can imagine and like Craig said I believe if you do this now with this property you are going to have a bunch of other people coming and thinking they can do the same thing and their situation might be even more detrimental to the surrounding property than this one. The second condition that has to be met is granting a variance can't be contrary to the public interest of the adjacent property owners or adversely affect the rights of the adjacent property owners basically by allowing these variances you are opening the door to taking the next step at the Planning and Zoning by getting this ten acres lopped off and therein lies the problem when you have Private Gardens to the north of this property, you have 61 lots there of which I think at least 40 some are within the 1,000 feet effected area that received letters. You have millions of dollars of property that surround the subject piece here that can be adversely effected and people bought these adjacent properties expecting that this property knowing it was grandfathered in and knowing the land code as it was when they bought it and expecting that those guidelines would be followed they had no idea that somebody could come in and request a variance that can in essence change the very landscape of your backyard because there are I believe five or six people whose lots directly abut the ten acres there.

Mr. Klopfenstein: Can you tell me when you say that it can adversely affect can you give me other than the potential to adversely affect what is hard..

Ms. Porter: Well like I said this is pretty much the first step in the development process so once this goes then they are going to try to basically subdivide this ten acres off the subject land and I am trying to avoid the Planning and Zoning aspect, as you already stated you don't want to hear that, but that is an important part because there is actually a shadow plat that would show three lots and basically, obviously some of the things that you would expect in the agricultural and a big piece of property at its current size. So you might be okay with having animals on there because there's a wide range of area for them to run on a smaller piece of property they are still allowed under R-5 zoning to be able to have a wide variety of animals including buffalos and if there is only a 50 foot set back to store those in a shed or a barn you theoretically would be much closer to livestock and other farming activities than you are currently now and when you go to sell the property that actually views the question property you can have a hard time selling it where it's people expect this is a farm and they know the current use. It's just a matter of being able to resell your property and then there are other things that were going to

impact Private Gardens, I don't live in Private Gardens so I am not going to talk about that, I believe there are people that have specific things they want to speak with you about in regard to that. The third thing that has to be proven is that the strict application of your code would constitute an unnecessary hardship upon the applicant, she purchased this in 2015 she knew how the property was when she purchased it, she really shouldn't of had any other expectation then to be able to use the property other than it is in its current form. As I stated I believe the hardship falls around the surrounding property owners which will also be esthetic you are expecting to have a view of pastoral setting with horses and then someone who is going to go through the zoning process and basically they will be able to put in a house as small as 1,000 square feet the people in Private Gardens have restrictions and size limitations and what have you so that kind of goes to the economic parts that I was referencing earlier. Basically you will get this and there is one person that benefits from the granting of the variance but there are numerous surrounding property owners that will actually be punished by having the variances granted. And then lastly the variance can't adversely affect the public health, safety or general welfare or destroy the intent of the comprehensive growth and the plan states that the underlining purpose is to preserve and enhance investment by all citizens and the development must accrue in a manner that results in a logical urban pattern with long term values rather than short term gains. I believe that by giving the variance request you're basically letting one person benefit to the detriment of others and that long term in the development of this entire area it doesn't make a lot of sense it doesn't provide for cohesive planning to be happening. So I would strongly encourage you to not grant the variance, I don't believe that, you have to meet all four in order to be able to grant the variance and I don't believe those four criteria are met. You are also allowed, in my opinion if you decide to grant the variance you can also set conditions upon the variance and I think the conditions need to be placed and I think the homeowners should be consulted or the property owners should be consulted before you would make a final decision as to what her measures are.

Mr. Klopfenstein: Do you have any conditions you would offer to us?

Ms. Porter: My first request would be that you not grant the variance, but my second I am thinking that requiring the ten acres to actually follow the covenants and restrictions of Private Gardens, since it actually comes into and out of their cul-de-sac it would appear to be part of their subdivision, I think that the drive that will be coming off of the cul-de-sac of Gallatin should be paved because it would be more cohesive look with the subdivision than the surrounding area. If part of the concern is we have so many landlocked parcels and this is like unlocking something that is landlocked then if we are going to do that then I think we need to grant a road easement along the northeast boundary so that if I decide to subdivide my property in a long time then that would have access so we can un-land lock that and then the shadow plat that is going to be presented, I think if you are going to do the development right don't do one lot with a gravel driveway off of a paved cul-de-sac just actually do it as a three house subdivision and put in the streets and sewer as other developers who present a nice subdivision. Thank you for your time.

Mr. Klopfenstein: Okay, thank you, okay for the record that was Katee Porter, you introduced that you were the wife of Craig Porter.

Ms. Porter: I am Katee Porter also known as Chase Porter's mom.

Mr. Klopfenstein: There you go, thank you. Who else would like to speak? Come up, hopefully by now you have seen that I don't bite, yet, your name for the record.

Mr. Kramer: Zachery Kramer and I live at 11703 Riverview Drive, which is in the Private Garden Subdivision. I realize we are here today to discuss a change in variance however Kipp in his own speaking used the phrase rezoning for a subdivision. Kipp also did not answer the question that you asked Brian about if the variance meet four criteria and deferred it to the public might have an opinion about it.

Mr. Jones: Can I say something to that; staff does not make a recommendation.

Mr. Klopfenstein: Understand.

Mr. Kramer: It is my impression is the Board and the Planning Department not only to answer such question but it also makes sound decision based on criteria. Thank you for the opportunity to express my opinion I stand opposed to granting the variances, these variances will certainly affect the property value of residences of the established neighborhood of Private Gardens which follow strict and established HOA guidelines and also to the other adjacent property owners. There is a real estate transaction tied to this request the contract is contingent on the change of variance so we already know that if the variances are granted the new buyer of the property will have his or her own (*inaudible*) property, no adjacent property owners have been told of what the new owner plans to do with the land other than there being at least one home that will comply with the minimum square footage allowed by County Code. The drawings suggest shadow platting of the ten acres and it makes me wonder what additional information is not being presented at the meeting. Will this become a neighborhood that will enter through Private Gardens but not abide by the existing HOA and the documents standards?

Mr. Klopfenstein: I don't mean to cut you off but I am interested in objections to the setback requirements with regard to the barns and then the four to one ratio and so I want to hear any objections you've got in reference to that, as to what may or may not happen in front of another board.....

Mr. Kramer: I object to the change in variance because I don't think it meets the four criteria and think it's a shotgun approach to spot zoning that will benefit only the existing property owner and it disregards the other adjacent property owners as well as the neighborhood around it, so by granting these variances I think it's just a shotgun approach to spot zoning and it just leads to the benefit of the owner with disregard to everyone else. To put a cul-de-sac entrance the granting of variances changes the property value and to the established neighborhood, for instance what if the buyer decides to put in a home based business on the land, because of the home based business is so broad that there's no way to know what type of additional traffic, trucks, storage, satellite and waste issues that could arise from it. Could we end up with tractor trailers or heavy equipment being driven up and down neighborhood streets to be parked and stored at a home based business? The Board needs to be both considerate not only to the landowner and contingent buyer at question but to all landowners affected by the change in variance as quoted on the County website that the division's mission is to provide for planned and orderly growth while improving the quality of life for county residents, to achieve its mission Clay County has adopted through public hearing process numerous plans and codes to guide the growth and development throughout the County. I do not think that voting for this variance follows that mission stated, thank you.

Mr. Klopfenstein: Thank you, anyone else? Welcome.

Mr. Amick: I am John Amick, 11600 Plattsburg Road.

Mr. Klopfenstein: And your name?

Mr. Amick: John Amick and I did submit a letter I just want to, I am trying to understand if this variance is granted they're going to enter through Gallatin they are going have this odd shape lot and it doesn't have any other way to exit from. In my mind if you grant the variances and a road were to need to come out to 112th I would say pave a road out to 112th. I don't know how you make the variance on the far westward side you are going to have more opportunity to put a road out to 112th. I don't think that Gallatin can support the high density that Clay County proposes to occur on the development within one mile, which I saw was eight per acre on the website, it's four per acre right now on the website in the salmon color so I am looking at this seeing potentially 40 houses put on ten acres according to your land use plan exiting out through Gallatin plus the drain has some kind of easements sitting on the westward side, it's called the (*inaudible*) easement I don't know what that means but (*inaudible*) might may be initials for something. I am really concerned we Private Gardens aren't going to have conditions, absent conditions and the County Regulations in a property defacto regulations those are significantly different than Private Gardens.

Mr. Klopfenstein: Can I ask you a question?

Mr. Amick: Sure.

Mr. Klopfenstein: I don't know how long you have lived in Private Gardens so my question is this, did you know the lot size and general structure or general configuration of Private Gardens at the time you moved in..

Mr. Amick: I was the first lot to sell there, is that your question?

Mr. Klopfenstein: No, my guess is the folks who live in Private Gardens have a general understanding of the size and configuration of...

Mr. Amick: One acre lots or so..

Mr. Klopfenstein: Of the Private Garden's, you are not telling me are you that this lot which is under consideration is included in the Private Gardens, correct?

Mr. Amick: I don't know how you are going to access that lot but going through Private Gardens, okay and ...

Mr. Klopfenstein: And is that not an issue, that is not with regard to this variance request, I get what you are saying I understand that completely.

Mr. Amick: So what are you asking then?

Mr. Klopfenstein: I guess my question is, is it the position, is it your position that because I live in Private Gardens if there's land near Private Gardens that would have an impact on Private Gardens then I am taking a position on it?

Mr. Amick: So I can answer that two ways, the covenants which are filed here, state that land that will be added into Private Gardens at the end of cul-de-sacs would be added into the division and would conform to covenant deeds and restrictions, so we were lead through the covenant deed and restrictions that would be done. So true or false that is what...

Mr. Klopfenstein: Okay, that was your understanding.

Mr. Amick: And that is where all these steps which probably not your understanding, but that is ours. What was your second part of that question?

Mr. Klopfenstein: I think you answered it. I think you're telling me that you have the understanding that perhaps the land which is the basis of this application may sometime in the future ...

Mr. Amick: Become available.

Mr. Klopfenstein: become part of Private Gardens.

Mr. Amick: Yes.

Mr. Klopfenstein: Okay, alright.

Mr. Amick: Now the Comprehensive Plan I don't know if that is being followed if the variance is given and that's number D and then I have just a maybe it's an issue or not an issue but I did have fire at my home and Kearney Fire came out and they were very displeased that my driveway, they didn't like the access to my house, they have a truck they do not like to scratch for whatever reason but this falls under Kearney Fire I believe and so it will at least whatever you do do to accommodate fire equipment, everything else I've said in the letter and probably does go jointly to the Board and Zoning but the variance to me would adversely affect according to the (*inaudible*) under County Regulations.

Mr. Klopfenstein: Okay Dr. Amick, thank you so much. Anybody have any questions, sorry I didn't mean to cut you off.

Mr. Amick: No, I am just really concerned that there's not two exits, there's just one.

Mr. Klopfenstein: Okay appreciate it, thank you, whom else?

Mr. Huff: My name is Ryan Huff; I recently purchased the property at 12421 NE 115th Street, which is directly adjacent to the ten acre lot on the north side.

Mr. Klopfenstein: Very good.

Mr. Huff: It will be the third house right there.

Ms. Porter: (*inaudible*) we have the plat, I don't know what your lot number is but he lives in one of these right here, if you want it you can have it.

Mr. Klopfenstein: I will mark this as Exhibit E, so 20, 29, 30-something like that do you know what lot you are.

Mr. Huff: Yes it is the third lot from the western boundary, right there, correct. The first variance as far as shelter used to houses animals next to adjacent properties as a new resident of Clay County when I moved in approximately two months ago I did my homework I understood what I was moving into, I understood the by-laws of the Homeowners Association it's unfortunate that I don't believe that someone should be able to buy a property and not understand the rules they need to follow and then within a year and a half and two years we have a request for a variance to benefit themselves. I am more concerned about what the; if you grant these variances what precedence are you setting as far as the other agricultural land that is directly to the west, directly to the north, directly to the east if you do this what will the ramifications be as far as these other parcels of agricultural land wanting to do the same, what would basically what would stop them from let's say their adjacent neighbors to the north side of here who also own approximately the same amount of land what would stop them from wanted to put in something like a chicken farm where they want to put chickens coop approximately 15 feet off the property line now the variance has been granted so what is to say that property that is directly adjacent to you can do that but you cannot, I don't think with this land being grandfathered in that was supposed to be understood at the time of purchasing the property that this was grandfathered in and any changes you would have to abide by the by-laws of the County Land Code. So my question is what ramifications do you guys have as far as litigation for any past variances of similar that were denied and what future ramifications is granting a variance today going to cause as far as the residential development and agricultural development in Clay County, what I find just moving here we have lived in cities where situations like this has arose before and variances were

granted and it was not in the best interest in the growth of the community to do so those rules are put in there for a reason and I believe at the time of the purchase of the property that was to be understood that it was grandfathered in and any changes on that were to abide by the land code of Clay County. On the second variance, this is another that I feel that is opening up something we don't want as far as a community, the growth of the community. The reason being is correct me if I am wrong but I am asking for advise what happens when a developer buys a piece of agricultural ground such as Private Gardens in its infancy then it was rezoned and let's say that there was a section that it wasn't worth developing but it was to be the rest of the land that was purchased was to be rezoned residential there is an oddly shaped portion or parcel of land that is not adequate for building a home or some type of residential structure however that parcel of land is not adequate for using it as farm land or using it as some type of agricultural such as raising animals for sale so that land now is an oddly shaped piece of land does not fit the dimensions that was set forth by the County and it has basically no use anymore other than prairie ground and so other than annual taxes that brings nothing to the community as far as revenue that's my concern that more or less these variances if granted they have lasting effects further than this one piece of land we are talking about right here, that is why I do not support the granting of these.

Mr. Klopfenstein: So your position is if the Board approves the variance in your view that means any adjoining applicants or is bound to approve similar...

Mr. Huff: I just think it would be harder because you have opened yourself up for questions about the enforcement of the rules, I don't think that's anything other, I don't think it sets a good precedence for how a community wants to grow, this is why we moved up here because it was such a good community and I would like to see us prosper unlike some of the other places that we lived and moved from.

Mr. Klopfenstein: Thank you very much. Anyone else?

Ms. Swanson: Do I have the opportunity to (*inaudible*)?

Mr. Klopfenstein: If you request a chance to come back.

Ms. Swanson: I would like too.

Mr. Klopfenstein: Any other person speaking in opposition to the application.

Audience: I would like to.

Mr. Klopfenstein: Come on up.

Mr. Williams: My name is Mark Williams; I live at 12407 NE 115th Terrace.

Mr. Roffman: Sorry I am not trying to interrupt but did you raise your hand originally I just want to make sure you were sworn in.

Mr. Williams: Well no, I probably do need to swear in.

Mr. Klopfenstein: Do you solemnly swear that the testimony provided will be the truth the whole truth and nothing but the truth so help you God.

Mr. Williams: I do.

Mr. Klopfenstein: Thank you, is any of your property adjoining?

Mr. William: Yes I adjoin the ten acres in question, which is clear down on the end, one more down the other way, right here. My concern is that the County has established rules and regulations to go by that is why they are asking for a variance it's my understanding that the present owner owns all the property in the blue and in the pink and what they want to do is split off ten acres now they need a variance because of the ratio they do not meet. So if they were to buy more acreage and move the property line down I'm assuming that gets them within the ratio? So they're wanting a variance just so they can

profit more by not having to sell as much land, I am assuming, but I don't see why we are giving them a variance to change County rules because I haven't heard anything from the ones wanting the variance as to why they want it.

Mr. Klopfenstein: Okay thank you, has everyone who has wanted to speak in opposition, come on up. Have I sworn you in? Do you solemnly swear that the testimony you provided will be the truth, the whole truth and nothing but the truth so help you God.

Mr. Parish: I do.

Mr. Klopfenstein: Your name.

Mr. Parish: Joey Parish, I live at 11418 Gallatin which is, yes that one and I mainly just oppose the variance just because I don't know what the future of the ten acre lots are with dividing by the shadow parts.

Mr. Klopfenstein: Okay thank you very much. Come up and did I swear you in before?

Mr. Edwards: You did.

Mr. Klopfenstein: Okay, your name.

Mr. Edwards: John Edwards and I am at 12414 NE 115th Terrace and it's not directly adjoining but my front door actually looks out over the horse barn so in regards to the variances I agree that the variances A, B, C and D in my opinion do not meet the requirements that would be necessary to correct the grandfathered, my concern with this process in general is the fact that we received two letters, I want to point this out, we received two letters one for this meeting one for a meeting next week so obviously there's plans is in place to develop out or sell this so when we're being asked here at this meeting to only focus on one item I am not sure that's by rule you have taken this situation and look forward to what we have next week. I am really confused to the aspect of; if you are grandfathered in for a variance, you buy a piece of property if you take this narrow view and just focus in on the variances without taking into account this whole big picture why they will eventually be needed. You have the property you are grandfathered in there is nothing you need to do, there's obviously a gain here by selling the property by developing the property and that the other concern is if this property is developed and a road gets put into that incline what's to stop further variances from coming up saying we want to sell another ten acres, we want to sell another and keep moving it up, it's just not a good situation I am concerned this opening the door for future variances to this property it's self as well as other properties.

Mr. Klopfenstein: Okay thank you so much, has everybody had a chance to speak? Come on up and did I swear you in before?

Ms. McCall: Yes you did.

Mr. Klopfenstein: Your name.

Ms. McCall: My name is Jennifer McCall and I am at 12415 NE 115th Terrace that is also directly adjacent to the property. So thank you so much I know you guys only have a few more minutes and I don't want to take up too much of your time, I know we probably laid it all on the table where we stand as a member of Private Gardens as well we recently moved in, purchased our home about five months or so ago and probably the most wonderful thing about when we walked into our home and we walked into our backyard is this beautiful view and I just wanted you all to just kind of get a picture of walk out on your porch and you see these beautiful horse farms and there's a line of trees and it's gorgeous and that's my view there and that's very important to us and to our family. We brought our children there and to take that away and then to potentially split that up into different plots and whatever the future may hold that I believe by granting

that variance we are taking away from the community aspect of which we purchased our property and that has a potential negative affect on our property value and just our overall experience within our community and our home so I just want to leave you on that final note.

Mr. Klopfenstein: Okay thank you so much, all right you asked for a chance to respond.

Ms. Swanson: Yes please.

Mr. Klopfenstein: You of course remain under oath.

Ms. Swanson: I remain under oath, yes sir thank you. I just want to clear up a couple of things very quickly, I think everyone does understand now this is not the Planning and Zoning meeting but the variance meeting, the first one where that barn sits next to that west line where the variance will be does not affect anyone in Private Gardens, it has no effect on them. The ratio of the width to the depth also whether it is up to the blue line or whether it is up to the pink line has no negative impact on anyone's home value in Private Gardens or any of the issues that they are doing with Planning and Zoning that being said obviously we recommend the variances be approved. I however would like to state there was a lot of testimony here today in opposition of the Planning and Zoning. I am now very aware that the folks in Private Gardens do not have all of the information about the future plans of the ten acres about the gentleman who is purchasing it and his acreage and I would like to let everyone know I am available to answer questions for them outside of this meeting and save time here doing that, I think they will find a little more comfort in knowing that this really isn't this horrible monster that they presenting this is much more in line of what they would like to see but they don't know all of the details, I know someone had mentioned something about the contingency of the contract of the sale of the property no one has a copy of that contract but us. The facts are out there and we are willing to help Private Gardens understand so that they are comfortable of what we want to do with that being said we still believe the two variances do not have a negative impact and we ask the Board to approve those variances, thank you.

Mr. Klopfenstein: Alright, thank you so much, (*inaudible*).

Ms. Porter: The MLS does actually state the listing for the property does actually state that the sale is a contingent upon the outcomes at the County, I read that also maybe the buyer has a great plan but it doesn't mean just because he said it, it's what's going to happen. I think we have all experienced people who lied to you and it's not real fun when it's right next to your house and my property does abut. I think it does make a big difference whether the blue line's there or the pink line is there.

Mr. Klopfenstein: And for the record that was Mrs. Porter.

Ms. Porter: Yes Katee Porter again, and the bottom line is variances if it wasn't done right the first time it shouldn't be it's just not right if it's never right the first time you are not going to change it and make it right.

Mr. Klopfenstein: Okay alright having given everybody a chance to speak I am now going to close the meeting and by closing the meeting I am going to tell you that the record is now complete and now we will entertain any motion from any member on the Board. It strikes me that there are two different variance requests my thought would be that we will deal with each variance request separately. Anybody have any motions they want.

Mr. Raasch: I would like to make a comment, the ten acres in question is far from the area where there's a variance problem I don't see where it was grandfathered in, I don't see where there should be a problem with that ten acres being split off.

Mr. Whitton: I would like to know the lots to the north there in whatever this development is...

Mr. Klopfenstein: Private Gardens.

Mr. Whitton: What are the sizes of those lots average?

Mr. Edwards: Anywhere from approximately an acre and a half up to ...

Mr. Jones: Most of them are one to two acres.

Mr. Whitton: And do the homes back up most of them to that blue line or do they have a large backyard.

Audience: (*inaudible*) he sits quite literally on the easement (*inaudible*)

Mr. Klopfenstein: Yes and I am not trying to be rude but this is a discussion of the Board so I am going to turn to Mr. Jones.

Mr. Jones: Debbie will turn off the zoning and bring up the aerial so it's hopefully a little bit better for you to see. I believe there are houses in the cul-de-sac that will be their side properties and then the houses to the street that is farther north will be backyards that butt up against it.

Audience: Mine is one that is closes which is my driveway.

Mr. Jones: Okay we are not taking comments.

Mr. Klopfenstein: And I understand okay, Mr. Jones your indication is they're roughly one to two acres size lots.

Mr. Jones: Yes and Debbie can you read off some of the size of the lots that you are clicking on there.

Ms. Viviano: This particular lot here is about 2.3, 2.5, Parish's lot is about 2.4.

Mr. Jones: So just a little bit bigger two to three acres.

Ms. Viviano: 1.9 approximately 2 acres yes so we are about two acres there in the end line and on the shadow plat he is proposing about 1.8 acres on these..

Mr. Jones: But that does not have to do with tonight.

Ms. Viviano: Right absolutely.

Mr. Klopfenstein: Okay other questions.

Mr. Raasch: The only problem is and I see no problem with splitting this off but I don't see an easement to it. It has to actually go through Private Garden is there another way a road can go in.

Mr. Jones: I think that maybe more of a Planning and Zoning question but there's access from that cul-de-sac, that is the access for that ten acre piece and I really think that is a Planning and Zoning question.

Mr. Raasch: They are all Planning and Zoning problems, not ours.

Mr. Jones: The access is Planning and Zoning how that property is accessed is part of the P & Z case.

Mr. Klopfenstein: Okay, I am still waiting for a motion.

Mr. Whitton: I am still thinking.

Mr. Klopfenstein: Okay that is fine.

Mr. Whitton: You want to do this in two.

Mr. Klopfenstein: Two separate ones, one is the barn variance for the setback requirements regarding the barn and the second is the variance with regard to the four to one ratio of the land.

Mr. Raasch: And these are both questions that have nothing to do with these ten acres.

Mr. Klopfenstein: Right.

Mr. Raasch: So I make a motion that I don't see a problem to approve it.

Mr. Whitton: On the barn?

Mr. Raasch: To both of them.

Mr. Whitton: To both of them or do you want to the separately, I don't know.

Mr. Klopfenstein: Okay so how do we break it out, by golly I am going to get two votes if it kills me. Alright so there is a motion made that we approve the variance application for not only the barn setback and then also the width to depth ratio and allow that variance as well, the motion has been made and seconded is there any further discussion on either of those motions? So you understand the motion is that we approve both variances, setback requirements of the barn and then the width to depth ratio variance requested for the site line, do we want to do one vote or two? Let's do two votes. Okay I am first going to take out the issue of the variance request on the barn size and the minimum setback requirements; the motion has been made to approve that variance request, if you vote yes you are voting in favor of accepting that variance request, Mr. Jones will you call the roll.

Mr. Jones: Buddy Raasch?

Mr. Raasch: Yes.

Mr. Jones: Brian Klopfenstein?

Mr. Klopfenstein: Yes.

Mr. Jones: Larry Whitton?

Mr. Whitton: Yes.

**Final Vote 3/0/0 Approved Case 16-102BZA
Variance Request Number One; Barn Setback**

Mr. Klopfenstein: So the first vote passes as to the second motion with regard to the variance request given the size of the property motion has been made to approve that variance request as well again a vote in favor a vote yes is a vote for the variance request, will you call the roll.

Mr. Jones: Buddy Raasch?

Mr. Raasch: Yes.

Mr. Jones: Brian Klopfenstein?

Mr. Klopfenstein: Yes.

Mr. Jones: Larry Whitton?

Mr. Whitton: Yes.

**Final Vote 3/0/0 Approved Case 16-102BZA
Variance Request Number Two;
Minimum Lot Width to Depth Ratio**

Mr. Klopfenstein: Both motions have been, both requests for variances have been voted on and have been approved by the Board of Zoning Adjustment. Thank you so very much for coming, I appreciate your involvement and I appreciate the testimony I wish everyone a good evening. Any other business?

Audience: Could you tell us when the Planning and Zoning meeting will take place?

Mr. Roffman: Next Tuesday night.

Mr. Klopfenstein: One week from tonight, I think is that when it is?

Audience: Can we get the date, place and time?

Mr. Roffman: Right here 6:30 next Tuesday.

Mr. Klopfenstein: I assume the meeting is still in session.

Mr. Jones: We are still in session, please call the Planning and Zoning 407-3380 with any questions.

Mr. Klopfenstein: Alright is there any other business to take care of?

Mr. Jones: The only thing I wanted to discuss is next year's meeting dates I put a list in front of you, we would like to get the room scheduled for next year. The only one that is possibly an issue is the one after Christmas so I would assume you would want to move that one but it is up to you guys, if you could agree on something tonight and we can schedule the room that would be good.

Mr. Klopfenstein: I move that we approve everything but the 26th of December and I don't have an answer.

Mr. Jones: Do you want to do it before or after? Before the 19th?

Mr. Klopfenstein: The 19th.

Mr. Jones: Okay then we will do that.

Mr. Klopfenstein: Any objection? All those in favor say aye.

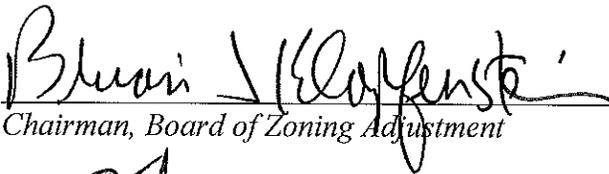
All: Aye.

Mr. Klopfenstein: It passes. Any other business?

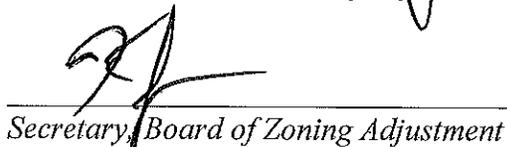
Mr. Jones: That is all I have.

Mr. Klopfenstein: Thank you so much and meeting is adjourned.

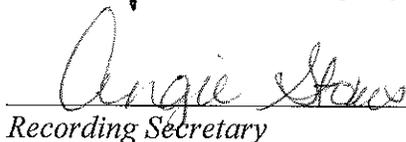
Meeting Adjourned



Chairman, Board of Zoning Adjustment



Secretary, Board of Zoning Adjustment



Recording Secretary