

## BOARD OF ADJUSTMENT

### MEETING MINUTES

December 3, 2020

Zoom Online Meeting

Regular Members Present: Larry Caldwell, Charles Haubold, Tim Kelley, Skip Smallwood, William Whitlock

Regular Members Absent: None

Alternate Members Present: Dave Hinton

Alternate Members Absent: Ed Hart, Ron Robertson

Staff Present: Scott Meyer, Carol Peters, Ryan Shrimplin

#### Call to Order

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

#### Approval of Minutes

The minutes of the November 5, 2020 meeting were unanimously approved upon a motion made by Mr. Smallwood and seconded by Mr. Caldwell.

#### ZONING CODE VARIANCES

1. A public hearing was held on the request of Eugene Besand for a variance from Section 30-322(e)(5)(a), front yard setback, for property located at 303 Stepping Stone Way. Mr. Besand was in attendance to present the request. He explained that the property is a long, narrow lot with a utility easement in the rear yard, which makes it difficult to build on.

A staff report was submitted to the Board, containing the following findings of fact in reference to the variance request:

Criterion #1: The variance request arises from a condition which is unique to the property in question and which is not ordinarily found, and is not created by an action or actions of the property owner or the applicant.

Finding: The subject property has an irregular shape and is located in The Meadows of Whispering Oaks subdivision, which was platted and developed prior to being annexed into the city. The plat for this property shows a 15 foot utility and sewer easement running east-west through the northern third of the property. There is a sanitary sewer main in the easement. The streets in The Meadows of Whispering Oaks are private and are located in a 50 foot access, utility, and sewer easement (25 feet on each side of the centerline of the street). Adjacent to this easement is a 10 foot utility easement. Per the Zoning Code, the 30 foot front yard setback is taken from the access, utility, and sewer easement line. Due to the front yard setback and the location of the 15 foot utility and sewer easement, the buildable area is

significantly restricted. This is a unique condition of the subject property that was not created by the property owner or the applicant.

Criterion #2: Approval of the variance request will not adversely affect the rights of adjacent property owners or tenants.

Finding: Although the 15 foot utility and sewer easement runs through other properties in this subdivision, it does not restrict the buildable area to the degree it does on the subject property. The applicant is requesting relief from the front yard setback requirement in order to make the property buildable in the same manner as the other properties. Therefore, approval of the variance request will not adversely affect the rights of adjacent property owners or tenants.

Criterion #3: The strict application of the provisions of the Zoning Code from which the variance is requested will constitute unnecessary hardship upon the utilization of the property.

Finding: If the variance request is denied, the applicant will be unable to construct a home that is appropriately sized for the subject property and comparable to other homes in the subdivision. This constitutes an unnecessary hardship upon the utilization of the property.

Criterion #4: Approval of the variance request will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.

Finding: Approval of the variance request will allow the applicant to construct an appropriately sized home on the subject property, which will not adversely affect the public.

Criterion #5: Approval of the variance request is consistent with the general spirit and intent of the Zoning Code.

Finding: The unique condition of the subject property, the unnecessary hardship that will result if the request is denied, and the lack of an adverse effect on the adjacent property owners, tenants, and the public form the basis for approving the variance request in keeping with the general spirit and intent of the Zoning Code.

Based on the above findings, staff recommends approval of the variance request.

Chairman Haubold opened the public hearing. He acknowledged an email from Mike Anderson, 316 Stepping Stone Way, which had been sent to Mr. Shrimplin and printed for the Board members. In the email, Mr. Anderson expressed concern about the proposed location of the house, which he believed did not comply with the private setback established in the covenants for the subdivision (The Meadows of Whispering Oaks). He stated that the setback is 40 feet from the edge of the street, and the house would encroach on it.

Mr. Anderson was in attendance, and he explained that after he sent the email, he was contacted by the president of the homeowners association, who informed him that the setback is 40 feet from the front lot line and not the edge of the street. He stated that based on this clarification, he no longer has a concern about the proposed location of the house.

Mr. Shrimplin explained that the streets in The Meadows of Whispering Oaks are private, and the front lot lines run along the centerline of the street. Mr. Smallwood asked why the streets were not made public when the subdivision was annexed into the city. Mr. Shrimplin explained that the homeowners association was notified that the streets would have to be upgraded to meet City standards and a plat dedicating right-of-way for the streets would need to be submitted for approval. To date, neither has occurred.

Seeing no further appearances to speak, Chairman Haubold closed the public hearing. A motion was made by Mr. Smallwood and seconded by Mr. Caldwell to approve the variance request. The motion passed by a roll call vote of 5 in favor, 0 in opposition, and 0 abstaining (Aye: Caldwell, Haubold, Kelley, Smallwood, Whitlock). Chairman Haubold called for a motion to adopt the staff report as the Board's Findings of Fact and Conclusions of Law. Mr. Smallwood made a motion to adopt, which was seconded by Mr. Whitlock. The motion passed unanimously.

#### ADVISORY BOARD TRAINING

Scott Meyer, City Manager, gave a presentation on the City's non-harassment, non-discrimination, and advisory board attendance policies. He also thanked the Board members for their service. He noted that many current and former City Council members served on a City advisory board before running for Council. He encouraged the Board members to consider running for Council as a way of extending their service with the City. Chairman Haubold asked if the City Council has considered allowing medically-related absences to be excused. Mr. Meyer replied that the Council has discussed allowing excused absences, but there has not been enough support for doing so.

#### OTHER ITEMS AND COMMUNICATION

##### Board Communication

Chairman Haubold thanked the City staff for revising the variance application form by adding language advising the applicant of their responsibility to check with the private utility providers to ensure there will not be a conflict if the variance request is approved. Mr. Smallwood stated that applicants should contact Janice Collier with Ameren regarding its right-of-way.

##### Staff Communication

There were no communication items from the City staff.

##### Adjournment

There being no further business, the Board voted unanimously to adjourn the meeting at 7:30 p.m. upon a motion by Mr. Smallwood and seconded by Mr. Kelley.

Respectfully submitted by:



William Whitlock, Secretary