

MINUTES OF THE REGULAR MEETING
OF THE BOARD OF ADJUSTMENT
OF THE CITY OF SUNSET HILLS, MISSOURI
HELD ON TUESDAY, AUGUST 28, 2007

BE IT REMEMBERED that the Board of Adjustment of the City of Sunset Hills, Missouri met in regular session at City Hall Quarters, 3939 S. Lindbergh Blvd., in said City on Tuesday, August 28, 2007. The meeting convened at 7:00 p.m.

ROLL CALL

Present:	Robert Hansen	-Chairman
	William Groth	-Member
	Larry Smith	-Member
	William Weber	-Member
	Kenneth Vogel	-Member
	Anne C. Lamitola	-City Engineer
	Robert E. Jones	-City Attorney
Absent:	Jerome Cox	-Member

APPROVAL OF MINUTES

Copies of the Minutes of the July 26, 2007 Board of Adjustment meeting were distributed to the members for their review. Mr. Vogel made a motion to approve the Minutes as submitted. Mr. Weber seconded the motion, and it was unanimously approved.

A-5-07 Notice of appeal submitted by Mark & Beth Sime to vary the side yard setback from the required 15' to 13' for the purpose of constructing a deck onto the existing residence at 10526 Alswell Court.

Mr. John Shay was present representing Mark and Beth Sime. Mr. Shay stated that the deck is more of a walkway to the back of the house. The plan was originally drawn as a raised walk sidewalk by the architect. The walkway was poured as a concrete slab sidewalk. However, the homeowners felt it was not aesthetically pleasing and looking like a raised piece of concrete. It was at this time Mr. Sime asked if the deck could be extended to the driveway.

Mr. Shay stated that they did not think they were that close to the property line and the deck was extended. He added that the deck does not encroach any further than the sidewalk. However, it is his understanding that a sidewalk is not a structure. Mr. Shay further stated that the deck not only looks better than the concrete for the homeowners but it is also more attractive for adjacent homeowners as well. Therefore, the request is to keep the deck as it currently exists.

Mr. Shay stated that the encroachment was found during the final inspection stage. The Sunset Hills inspector noticed the difference and advised that a variance would be necessary. Mr. Shay restated that they did not think a variance would be necessary because the deck extension is in the same location as the sidewalk.

Mr. Shay stated that the only portion of the deck that is over the building line is the outside corner of the landing that goes around the house to the walkway.

Mr. Hansen called for a vote on A-5-07. There being 5 AYE votes and 0 NAY votes, A-5-07 was approved.

A-6-07 Notice of appeal submitted by Peter T. Wilson to vary the front yard setback from the required 30' to 27' for the purpose of reconstructing a deck onto the existing residence at 519 Rotherwood Court – **Petition Canceled by City Engineer.**

A-7-07 Notice of appeal submitted by Ray Devine to vary the R-1 requirement of 1 acre minimum lot size to .955 for the purpose of splitting the 1.955 acre lot into two lots at 9262 Rott Road.

Mr. Ray Devine and Ms. Shelly Devine were present. Mr. Hansen asked when the property was originally purchased. Mr. Devine replied approximately May, 1985 and the property consisted of an excess of two acres in size.

Mr. Hansen asked for clarification regarding previous negotiations with the Missouri Department of Transportation (MoDOT) in regards to Mr. Devine's property. Mrs. Lamitola stated that she could not find much information; however, MoDOT owns Rott Road in this portion of the roadway even though Sunset Hills maintains the road. She stated that it is a fairly wide right-of-way that apparently at one time MoDOT felt they needed to obtain but now MoDOT does not need the width. Mrs. Lamitola stated that it is her understanding that at the time of the purchase of the property, there was a dedication of almost .1 acres to MoDOT. She added that she was given a lot of this information from Mr. Devine. Mrs. Lamitola stated that she has a survey at the time of the purchase of the property that showed the dedication.

Mr. Hansen stated that Mr. Devine purchased the property as a little over two acres. However, circumstances beyond his control the property was reduced to under two acres.

Mr. Groth asked if the easement for Tributary B is an easement for the Metropolitan Sewer District (MSD) that is 30 to 50 feet wide. Mrs. Lamitola stated that she presumes that the Metropolitan Sewer District (MSD) would predominantly use the easements. However MSD does not necessarily maintain Tributary B.

Mr. Jones asked how the city was involved with the purchase of the property. Mr. Devine stated that the engineer that did the drawing worked with the city to be in compliance. However, he was not aware that it reduced his property to less than two acres. Mr. Jones asked Mr. Devine what he was trying to be in compliance with. Mr. Devine replied the R-1 Zoning requirements for a subdivision plat. Mr. Jones stated that the lot already exceeded one acre and would have met the R-1 requirement.

Mr. Smith stated that it is his understanding that there was a dedication of a portion of the property to MoDOT without monetary compensation and the City Engineer at the time had some involvement. Mrs. Lamitola stated that this is her understanding as well but there is not written documentation with the exception of the drawing.

Mr. Jones stated that one of the requirements of the Board of Adjustment to grant a variance is to find that there is not a hardship of the Petitioner's own doing and he has not seen anything to the contrast. Therefore, there are hearsay comments that somehow the city was involved but there has not been confirmation.

Mr. Hansen stated that his opinion is that Mr. Devine did not do anything to intentionally reduce the acreage.

Mr. Weber asked if Mr. Devine has the opportunity to purchase a portion of the property back. Mr. Devine stated that he asked MoDOT in 2005 and to this date have not been able to get to that point.

Mrs. Lamitola stated that a portion of property mentioned in the summary of the members' packets mentions that the .06 acres attempted to be purchased for \$8,000 would not be the same section of property that was previously dedicated.

Mr. Devine stated that he anticipates building a home on the proposed second lot.

Mr. Weber asked if the lot were to be split, if the existing pool and outbuilding would still meet the setback requirements. He then stated that he would not vote in favor of the petition not knowing if the existing structures would meet the setback requirements after the lot split.

Mr. Hansen stated another situation would be if the lot split was approved and the information presented to the members is not complete or correct, the structure or a portion of the structure would have to be removed.

Mr. Hansen asked if the members approved the petition and the lot line is incorrect and would come close to any structure that the approval of the variance is invalid. Mr. Weber stated that he would prefer knowing that all setback requirements are met before approving the petition by seeing the full drawing in relationship to the property line.

Mr. Weber stated that it would solve the problem if Mr. Devine were to be able to purchase property from MoDOT. Mr. Devine stated he has been continually trying to be in contact with MoDOT since November 2005; his last correspondence was approximately 60 to 90 days ago. Mr. Devine stated that MoDOT came up with \$8,000 because of the price and value of existing land in the area. He has only been able to leave messages with MoDOT.

Mr. Groth stated that if there were written documentation, it would help the petition if the petitioner had been making reasonable attempts with MoDOT.

The members discussed the possibility of tabling the petition.

Mr. Jones stated he has a concern that granting the variance as submitted is beyond the scope of the powers of the Board of Adjustment. He explained that it is his opinion that what would be done is rezoning proposed Lot B and circumventing the zoning process. Therefore, if the variance is granted and challenged it not withstand scrutiny by the courts. Mr. Jones stated that he feels the Petitioner needs to request Lot B to be rezoned to a higher density zoning classification or acquire the necessary property to meet the R-1 zoning requirements.

Mrs. Lamitola stated that the previous city engineer stated the two options were to acquire additional land or pursue a variance from the Board of Adjustment to vary the minimum lot size. Mr. Jones stated the Petitioner can also request rezoning of the lot.

Mr. Hansen stated it would be inappropriate to attempt to make a decision on this matter.

Mr. Jones stated he does not feel a mistake was made in referring the matter to the Board of Adjustment due to the history. If there was a file that showed that the city required the dedication as part of the approval of the subdivision of Clarence Morrison Subdivision, it would be a different situation. However, there is not such a file and the dedication was made to MoDOT which does not necessarily mean the city was part of causing the hardship.

Mr. Hansen stated that the requested variance is beyond the powers of the Board of Adjustment. There being a unanimous AYE vote, the Board of Adjustment declined to make a decision regarding A-7-07.

ADJOURNMENT

Mr. Weber made a motion to adjourn the meeting at 7:42 p.m. Mr. Smith seconded the motion, and it was unanimously approved.

Recording Secretary,



Laurie Govreau