

**BOARD OF ZONING APPEALS
APRIL 21, 2021
7:00 P.M.**

**MIAMI COUNTY SHERIFF'S OFFICE -
COMMUNITY ROOM
209 S. PEARL STREET
PAOLA, KS**

AGENDA

- 1. CALL TO ORDER**
- 2. PLEDGE OF ALLEGIANCE**
- 3. ROLL CALL**
- 4. DISCLOSURE OF ANY EX PARTE COMMUNICATIONS OR POTENTIAL CONFLICTS OF INTEREST**
- 5. NEW BUSINESS**
 - a. Amendment of 2021-2022 BZA Calendar**
(correcting Application and Public Notice deadlines for April 20, 2022 meeting)
 - b. 21001-VAR (York)**
Consideration of a request for a variance from Section 6-5.02.3 (Front Yard) and 16-1.02 of the Miami County, Kansas Zoning Regulations, requiring a 50-foot minimum setback from ultimate right-of-way. The applicant would like to construct an addition to the existing residence that is located approximately 14.5 feet from the ultimate right-of-way. The proposed addition would also be approximately 40.5 feet from the ultimate right-of-way. The subject property of approximately 10 acres is addressed as 38510 Rockville Rd, zoned Agricultural (AG), and located in the Northeast Quarter of Section 5, Township 19S, Range 25E, Sugar Creek Township, Miami County, Kansas. Submitted by Logan and Katie York, property owners of record.
- 6. OLD BUSINESS**
- 7. OTHER BUSINESS**

Any other business the Board may wish to discuss.
- 8. PLANNING DIRECTOR REPORT**
- 9. ADJOURNMENT**

Public Hearing Procedure

1. Chairman announces agenda item.
2. Members describe what, if any, contact they may have had with applicant or interested party regarding the case; indicating the nature of the communication and whom it was with.
3. Members describe what, if any, conflicts of interest they may have and dismiss themselves from the hearing room for the duration of the hearing.
4. Staff presents the application with staff's recommendations on the request.
5. Chairman opens the public hearing.
6. Applicant or agent of the applicant makes brief presentation of the case or request.
7. Members ask for any needed clarification of the applicant or agent.
8. Chairman solicits comments from the audience.
9. Members ask for any further clarification from the public, applicant or staff.
10. Chairman closes the public hearing.
11. Members deliberate on the request and take action if able to do so. Members should present findings to substantiate the action taken.

**2021-2022
Board of Zoning Appeals
Submittal Deadlines and Meeting Dates**

2021			2022		
Meeting / Hearing	Application Deadline	Public Notice	Meeting / Hearing	Application Deadline	Public Notice
January 20, 2021	12/7/2020	12/21/2020	January 19, 2022	12/6/2021	12/20/2021
February 17, 2021	1/4/2021	1/18/2021	February 16, 2022	1/3/2022	1/17/2022
March 17, 2021	2/1/2021	2/15/2021	March 16, 2022	1/31/2022	2/14/2022
April 21, 2021	3/8/2021	3/22/2021	April 20, 2022	5/18/2022	6/15/2022
May 19, 2021	4/5/2021	4/19/2021	May 18, 2022	4/4/2022	4/18/2022
June 16, 2021	5/3/2021	5/17/2021	June 15, 2022	5/2/2022	5/16/2022
July 21, 2021	6/7/2021	6/21/2021	July 20, 2022	6/6/2022	6/20/2022
August 18, 2021	7/5/2021	7/19/2021	August 17, 2022	7/4/2022	7/18/2022
September 15, 2021	8/2/2021	8/16/2021	September 21, 2022	8/8/2022	8/22/2022
October 20, 2021	9/6/2021	9/20/2021	October 19, 2022	9/5/2022	9/19/2022
November 17, 2021	10/4/2021	10/18/2021	November 16, 2022	10/3/2022	10/17/2022
December 15, 2021	11/1/2021	11/15/2021	December 21, 2022	11/7/2022	11/21/2022

If an application submittal deadline falls on a weekend or holiday, the deadline will automatically fall to the next business day.

The Miami County Board of Zoning Appeals meetings are held as needed on the third (3rd) Wednesday of the month at 7:00 p.m. in the County Administration Building (Commission Chambers), unless otherwise noted on this schedule. Said meetings are subject to change with proper notice. Please note that the the annual business meeting is held in January, whether or not an application has been received.

Per Article VIII, Section 2 of the By-Laws of the Miami County Board of Zoning Appeals, "Agenda items shall be approved by a vote of four (4) BZA members." The Board is comprised of seven (7) members and there may be instances where only four (4) or five (5) members are in attendance to consider a request. If this is the case the request can still only be approved if four (4) members vote for approval of the request. An appeal of a decision by the Board of Zoning Appeals to the District Court of Miami County, Kansas, must be filed within 30 days of the final decision of the Board.

Please refer to Article 23 of the Miami County Zoning Regulations for detailed information regarding the Board of Zoning Appeals.

Adopted 1/20/2021

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Board of Zoning Appeals
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Adopted 1/20/2021

2021-2022 Board of Zoning Appeals Calendar (Amended)
*(Application and Public Notice Deadlines for April 20, 2022 meeting
were previously 5/18/2022 and 6/15/2022)*

Miami County Planning Department

York Variance

DATE: April 21, 2021

TO: Board of Zoning Appeals

FROM: Kenneth A. Cook, AICP, CFM, Planner

RE: **21001-VAR (York)**
Consideration of a request for a variance from Section 6-5.02.3 (Front Yard) and 16-1.02 of the Miami County, Kansas Zoning Regulations, requiring a 50-foot minimum setback from ultimate right-of-way. The applicant would like to construct an addition to the existing residence that is located approximately 14.5 feet from the ultimate right-of-way. The proposed addition would also be approximately 40.5 feet from the ultimate right-of-way. The subject property of approximately 10 acres is addressed as 38510 Rockville Rd, zoned Agricultural (AG), and located in the Northeast Quarter of Section 5, Township 19S, Range 25E, Sugar Creek Township, Miami County, Kansas. Submitted by Logan and Katie York, property owners of record.

Property Owners Logan M. York & Katie G. York

Current Zoning Agricultural (AG)

Comp. Plan Rural Agriculture (20 ac density)

Acreage Approximately 37.39 acres

CAMA # 213-05-0-00-00-001.01-0

Background

1920: The Appraiser's records show that the residence was constructed. The residence has an area of approximately 1,144 square feet.

Prior to 1992: Numerous other structures were constructed on the property.

1999: The Appraiser's records show construction of a 2,000 square foot farm utility lean-to structure, which is considered an agricultural structure. Staff is unable to locate a permit for this structure.

2000: The Appraiser's records show construction of a 252 square foot structure described as a "site improvement". Staff is unable to locate a permit for this structure.

2010: The Appraiser's records show construction of a 336 square foot structure described as a "loafing shed". Staff is unable to locate a permit for this structure.

May 30, 2013: The property was conveyed to the Applicant, per a Deed recorded as Document No. 2013-02745.

2016: A permit was issued for a 5,000 square foot agriculturally exempt structure.

Provisions of the Zoning Regulations from which a variance is being requested:

Article 5, Countryside District (CS)

6-5.02 In the Agricultural District, the minimum lot area, dimensions of lots and yards shall be as follows:

Section 6-5.02.3: The depth of the front yard shall be at least 50 feet.

Article 16, Nonconforming Uses

16-1.02 The premises, or a building or structure located on said premises, occupied by a nonconforming use, or a building or structure nonconforming as to height, area, yard or parking regulations, shall not be added to, enlarged in any manner or moved to another location, where such addition, enlargement or relocation would also be nonconforming. A building or structure may be added to, enlarged or relocated if the addition, enlargement or relocation is being done for the purpose of causing such building or structure to be conforming, or the addition, enlargement or relocation will itself be conforming with all regulations of the zoning district in which it is located. Said improvements may be done following the obtaining of a building permit.

16-2.02 Yard Requirements for Nonconforming Lots: Building permits authorized in Section 16-2.01 shall comply with all requirements of that zoning district, except as noted in Section 16-2.01, provided, however, that the following front, rear and side yard setback requirements shall apply in lieu of front, rear and side yard setbacks as set forth in the zoning districts.

3. Reduction of the required front yard setback is permitted by averaging the established front yard setbacks of existing dwellings, buildings or structures fronting on the same street, except that no front yard shall be less than fifteen feet (15'). If no dwellings, buildings or structures exist in the required front yard on the same street, then the front yard shall be no less than fifteen feet (15').

Article 21 Permits

Section 21-1.02: Conformance With County Regulations And Plans: No building permit shall be issued for any building or structure unless the same is in conformity in every respect with all the provisions of these Regulations and the Subdivision Regulations of the County, unless otherwise set out. All building or structure setbacks along roads shall be measured from the ultimate right-of-way identified in the Miami County Comprehensive Transportation Plan.

Related Provisions of the Zoning Regulations

Definitions

YARD: A required open space, other than a court, unoccupied and unobstructed by any structure or portion of a structure from the ground upward, provided, however, that fences, walls, poles, posts, and other customary yard accessories, ornaments and furniture may be permitted in any yard subject to height limitations and requirements limiting obstruction of visibility.

YARD, FRONT: A yard extending across the full width of the lot, the depth of which is the least distance between the lot line or road easement or right-of-way line (including the ultimate right-of-way identified in the Miami County Comprehensive Plan) and the front building line.

STRUCTURE: Anything constructed or erected, the use of which requires permanent location on the ground or attachment to something to have a permanent location on the ground, but not including fences or public items such as utility poles, street light fixtures, and street signs.

Request

The Applicants are requesting a variance from the Front Yard Setback of the Agricultural District, to allow an encroachment for the construction of an addition onto the rear of the existing house. The front of the existing house is located 54.5 feet from section line; and the rear is located 81 feet from section line (14.5 feet and 41 feet, respectively, from the edge of the ultimate right-of-way, as identified on the Comprehensive Transportation Plan). The existing house is located entirely within the required front yard setback; and the proposed addition will encroach approximately 9.5 feet into the front yard setback.

In their narrative, the Applicants explain their desire to build additional living space, including a bedroom, living room and mudroom onto the existing residence, and convert the current living room into a dining room. The proposed addition will not reduce the existing non-conforming front yard setback of the existing residence.

Discussion

Surrounding Neighborhood

The subject property of approximately 37 acres is on the west of Rockville Road, and ¼ mile south of 383rd Street. The surrounding area is comprised of mostly large agricultural tracts, some with farmsteads, as well as a few smaller tracts. US-69 Highway lies approximately 1.5 miles west of the subject property.

Rockville Road is designated as a “Local” road per the 1995 Comprehensive Transportation Plan, with an ultimate right-of-way width of 80 feet, or 40 feet half-width. The front yard setback of 50 feet is measured from the “ultimate right-of-way”, which creates a total setback of 90 feet from section line. Effective July 1, 2001, the Regulations established that front yard

setbacks shall be measured from the ultimate right-of-way, rather than from the existing right-of-way.

Staff calculated the “non-conforming setbacks” for this property by averaging the setbacks of existing structures along Rockville Road. However, because most of the structures along this road were built farther from the road the non-conforming setbacks do not benefit the Applicants.

For the Board’s general reference, staff has provided the following decisions of the BZA regarding three, previous variance requests that are similar to the current request (excerpts from the BZA minutes are also attached to this report):

- **04001-VAR: Prothe:** The BZA allowed a reduced front yard setback of 73 feet from centerline for an addition to an existing residence where 100 feet is the minimum setback.
- **08001-VAR: Peer:** The BZA allowed an 8-foot reduction in the front yard setback and a 12-foot reduction in the side yard setback.
- **18003-VAR: Yerby:** The BZA allowed the front yard setback to be reduced to 67 feet from the centerline for an addition to an existing residence (90 feet is the minimum setback).

Variance Standards

Article 23 of the Zoning Regulations requires that certain standards be met in order to approve a request for a variance. Staff offers the following information on each of the standards:

The Board of Zoning Appeals shall not grant a variance unless it shall, in each case, make specific written findings of fact, based upon the particular evidence presented to it, that ***all*** of the following standards have been met:

- 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.***

According to the Appraiser’s records the existing house was constructed in 1920. The house is located 54.5 feet from section line; and the rear of the house is located 81 feet from section line. Although the addition is proposed for the rear of the house, the house sits in such proximity to the road that the proposed addition would encroach into the front yard setback. However, the addition would not encroach into the front yard setback any farther than the existing house already does.

It was once common for farmsteads to be located closely to the road, but many of these old houses no longer remain intact. Although it may be argued that the Applicants are creating the need for a variance, it may also be argued that there are no other reasonable locations where the Applicants may add onto this residence.

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

The adjacent property owners' rights should not be adversely affected if this variance is granted. Staff submitted to various departments and agencies a notification and request for comments regarding this Application but did not receive any comments in opposition to this request.

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.

If the strict application of the provisions of these Regulations is upheld, the Applicants would be required to move the entire house in order to add onto it. In staff's opinion the requested encroachment into the front yard setback would neither detrimentally impact the County's ability to construct and maintain the road at this location, nor cause the house to encroach closer to the ultimate right-of-way.

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

In staff's opinion, the variance would not adversely affect public health, safety, morals, order, convenience, prosperity or general welfare. As the addition is proposed to the rear of the house, it would not encroach into the setback any farther than the house already does. The Applicants are not proposing any changes to the existing house that would bring it any closer to the edge of the right-of-way. Moreover, this section of Rockville Road likely will not experience any development to such an extent that the variance requested would give cause for concern regarding expansion of this road.

Denial of the variance would result in the existing house remaining in its current location in the front yard setback, which would not create any benefit to public health, safety, morals, order, convenience, prosperity, or general welfare.

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

Front yard setbacks are intended to prevent conflict with potential road expansion in the future and to provide consistency in the character of the neighborhood. Setbacks are a planning tool that is utilized to prevent the removal of a home or other structure—and displacement of the homeowner—to construct or expand a road, and to avoid burdening taxpayers with unnecessary costs for such removal.

The development setbacks along Rockville Road vary widely, ranging from as little as 81 feet to as much as 128 feet from section line. In staff's opinion, the front yard setback would still adequately accommodate future expansion of the road, even after the proposed addition is constructed. Reduction of setbacks for non-conforming lots may be considered so long as the reduction is not so great that it is inconsistent with other development along the road, and the character and integrity of the neighborhood can be upheld.

Section 23-5.05 specifically authorizes the Board of Zoning Appeals to grant variances under the following conditions:

“The Board may grant variances, on the basis and in the manner hereinafter provided, to authorize in specific cases a variance from the specific terms of these Regulations, which will not be contrary to the public interest, and where, due to special conditions, a literal enforcement of the provisions of these Regulations, in an individual case, results in unnecessary hardship, provided that the spirit of these Regulations shall be observed, public safety and welfare secured, and substantial justice done.”

Staff Recommendation

The Board should consider all the facts provided and the specific details of this request and make Findings, based upon standards A. through E. above, to support its decision.

Although the Applicants are proposing an addition that will encroach into the front yard setback, the age of the existing house and its location entirely within the setback leaves no alternative location for the addition that would comply with the front yard setback requirement. Moreover, the addition is proposed to be located on the rear of the existing house; therefore, it will not encroach any farther into the front yard setback than the existing house already does. Further, the location of the proposed addition creates the least amount of impact to adjacent property owners and to the County and can be considered the least amount necessary to afford relief. Staff therefore recommends approval of the requested variance.

On a side note, when similar variance requests are consistently submitted this usually indicates that the Regulations need to be revisited. Some jurisdictions provide relief from their regulations by allowing an addition to be constructed where it will not encroach any farther into a setback and when the addition is less than 50% of the area of the existing structure. If the Board believes the Regulations should be amended to allow additional relief from front yard setbacks, staff suggests including this as an item to be considered when the Zoning Regulations are being updated (after the County's Comprehensive Plan update is complete).

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 Agricultural District; and c) was not created by the actions of the property owners.
2. Granting the variance will not adversely affect the rights of adjacent property owners.

3. Denial of the variance request could be considered as imposing an unnecessary hardship upon the property owners, 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 the public's 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 that which is shown on the Plot Plan, which is attached hereto as Exhibit "A". Any additional or future encroachment into the setback area shall not be allowed, except as that which may be granted through the variance procedure.
2. The Applicants must obtain a building permit for the proposed addition. All County codes related to this addition shall be complied with.

Attachments: Exhibit "A" - Plot Plan (2 pgs)
Narrative
Vicinity Map
Aerial Image
Excerpts of minutes of previous BZA hearings regarding similar variance requests

PLOT PLAN

DATE 2-19-2021

ORDERED BY: *Logan York*

FOR: *Logan York*
38510 Rockville Road
LaCygne, KS
66040

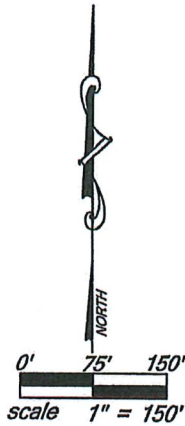
R. L.
Hearn


12209 W. 271st St.
Louisburg, KS 66053
Phone: (913)-837-5688
Cel Ph 913-406-6595

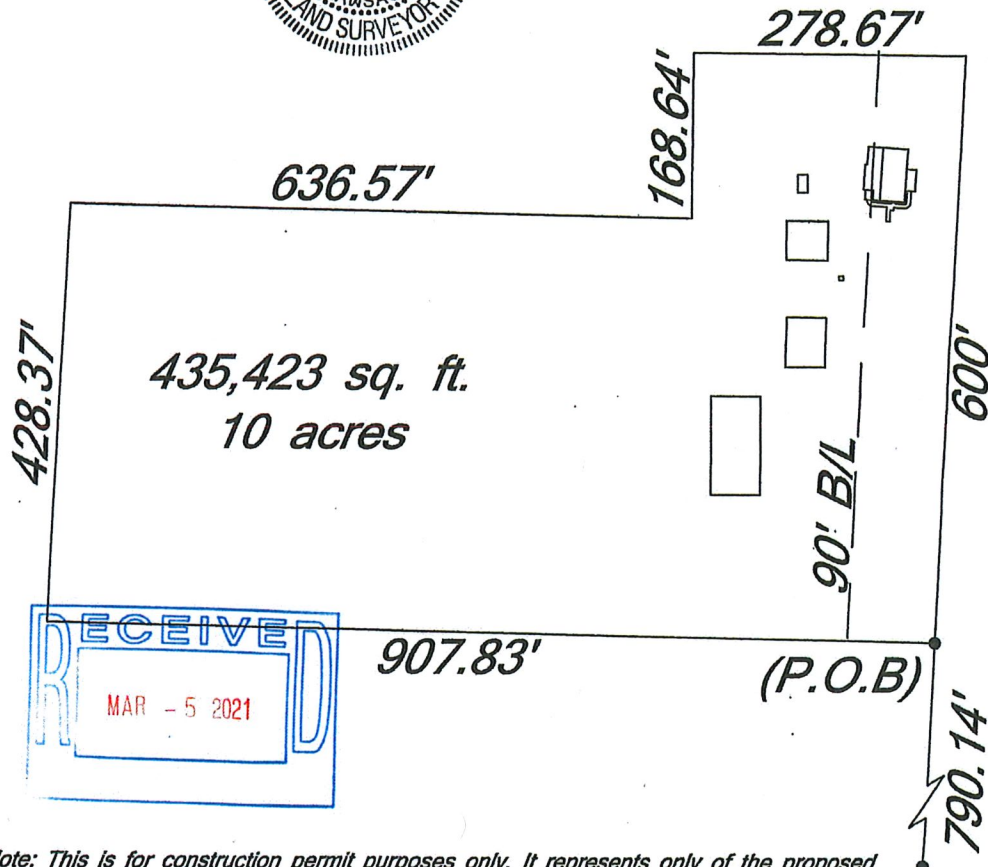
JOB NO. 10000.300

DESCRIPTION: *That part of the East half of the Northeast Quarter of Section 5, Township 19 South, Range 25 East, of the Sixth Principal Meridian, in Miami County, Kansas, Described as follows.*

Commencing at the Southwest Corner of said East half, then on an assumed bearing of N 03°03'17" E a distance of 790.14 feet to the Point Of Beginning (P.O.B) of the land to be described; said point being in the East line of said Section 5, then continuing on N 3°03'17" E a distance of 600 feet; then N 89°28'04" W a distance of 278.67 feet; then S 0°34'14" W a distance of 168.64 feet; then N 88°52'11" W a distance 636.57 feet; then S 3°03'17" W a distance of 428.37 feet; then S 88°52'11" E a distance of 907.83 feet to the Point Of Beginning.



*See Page 2 of 2 for
House Detail &
Future Addition*



Note: This is for construction permit purposes only. It represents only of the proposed addition as furnished by our client. THIS IS NOT A BOUNDARY SURVEY and is not to be used to establish property corners. Contractor is to check and verify all dimensions at the project site. Additionally contractor is responsible for establishing grades at this site and to verify that this drawing meets all city and or county zoning regulations.

EXHIBIT A
PAGE 1 OF 2 PAGE(S)

PLOT PLAN Page 2 of 2

DATE 2-19-2021

ORDERED BY: Logan York

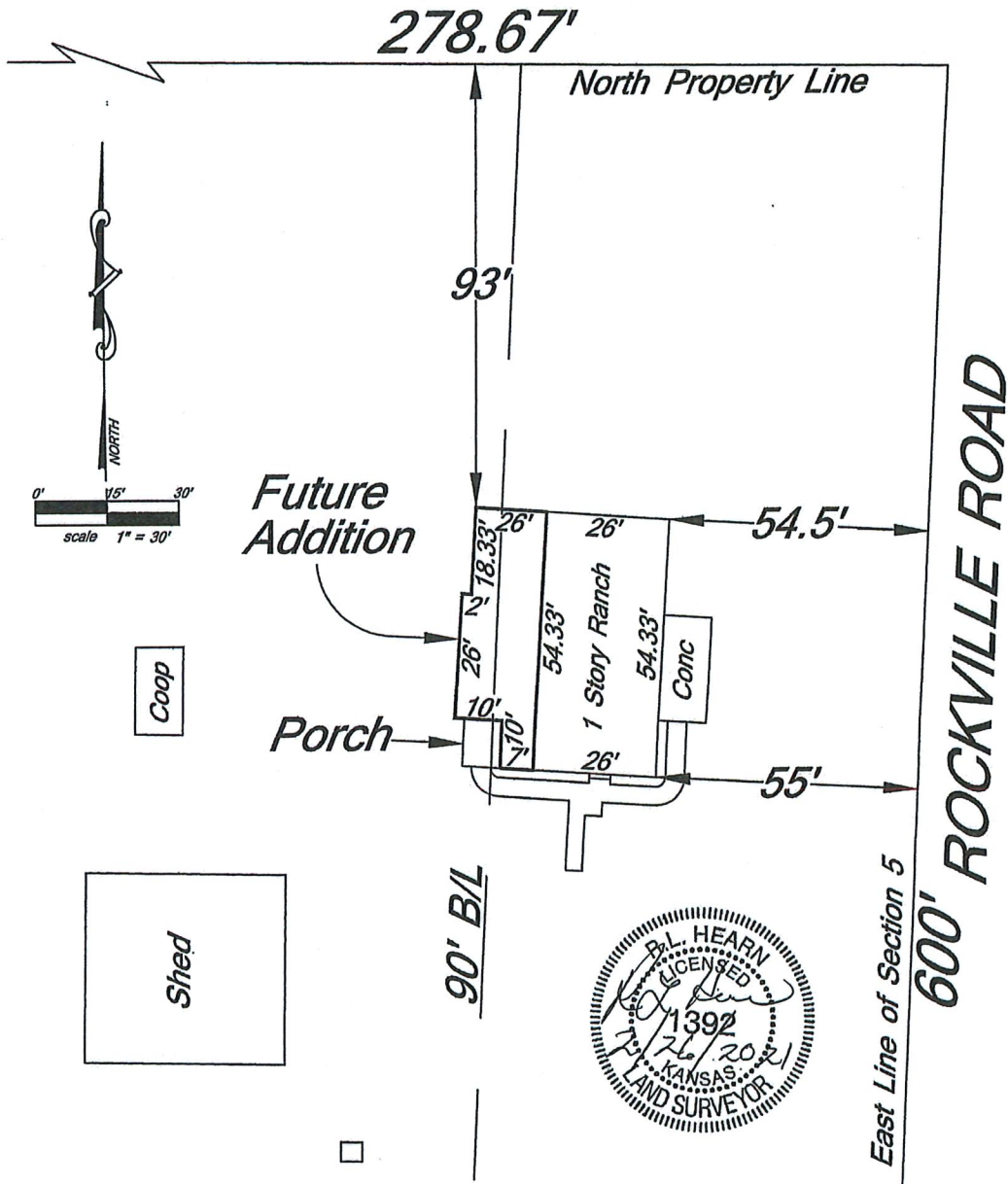
FOR: Logan York
38510 Rockville Road
LaCygne, KS
66040

R. L. Hearn
 12209 W. 271st St.
 Louisburg, KS 66053
 Phone: (913)-837-5688
 Cel Ph 913-406-6595



JOB NO. 10000.300

House Detail & Future Addition



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BOARD OF ZONING APPEAL

Logan and Katie York
38510 Rockville Rd.
LaCygne, KS

General Description of Proposed Use:

The purpose of this variance request is for the building of an 800 square foot addition to our home located at 38510 Rockville Rd. LaCygne, KS. The home is located within the 90 ft set back on the West side of Rockville Rd. Part of the addition will also be in the set back.

The current size of the house is 1,430 square feet. It has 3 bedrooms and one bathroom. The new addition will include a bedroom, a living room and a mudroom. The purposed addition will be located on the West side of the existing house. This is the only direction we can go to get further away from the road. The current West side of the house 81 feet from the section line. Unfortunately a few feet of the addition will still be in the setback. We are a family of six. We have three teenage boys and a younger daughter. All three of the boys share a 11x15 foot bedroom, therefore another bedroom is necessary. We farm and raise cattle for a living. In the winter time, we enter the South side of the home and are greeted with piles of mud boots, work coats, coveralls, hats, gloves, school shoes and backpacks. There simply is no other place to put everything. A mud room is needed. Our current dinning area is a burden. It is very cramped around our dinner table. Every time one person wants to get up from the table, two or three members of the family also have to get up so the other person can leave the table. For this reason, we do not eat together as a family as often as we should. Upon completion of this addition our current living room will become our dinning room and we will be able to have more enjoyable and comfortable meals together as a family.

The earliest record of our house at the appraisers office is 1920. I believe the house is older than that and was most likely constructed before there was a county road in front of it. The house is still in good shape. Tearing it down and building a new home is financially not feasible. Once again, we want to add on in the only direction possible to get further from Rockville Rd.

Utilities and Infrastructure:

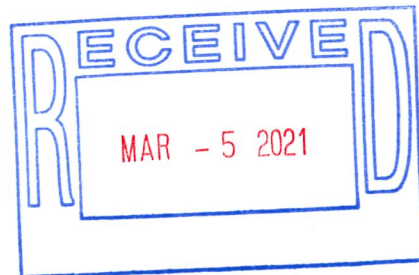
Utilities include rural water and electricity. There will be no effect on these utilities. If the addition is approved a new septic system will be installed, which will be an improvement over the current system. The new system has been approved be the Miami County Environmental Department. Access to the house is a large gravel area South of the house and will not be affected.

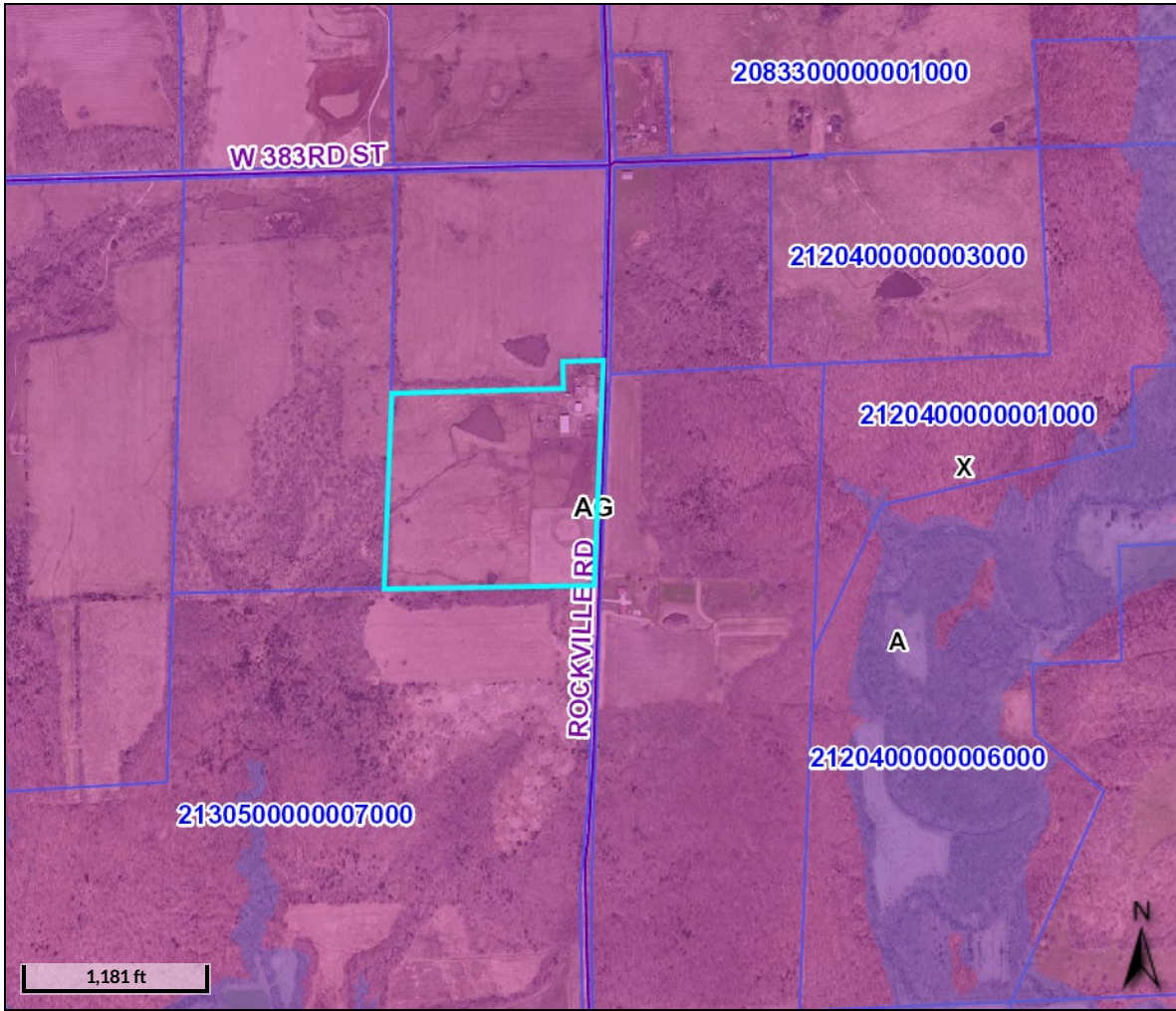
Impact to Surrounding Properties:

There will be no impact to the surrounding properties. We will be adding on to the West side of our home, which will be further into our own property. All of the land surrounding our property is undeveloped agricultural land. We understand the reason for the setback rule. Road expansion of Rockville Road in the Southeast corner of Miami County is very unlikely. Traffic is very minimal in front of our home. A car driving by at night is so rare that when it does happen I get up and look out the window to see what is going on. There are also no drainage issues along the road anywhere near our home. Therefore, having to create larger ditches most likely will not be an issues either. Once again, we want to add on to the West side of the home, which is going away from the road, not towards it. Whether the variance is granted or not, our home will still be in the setback.

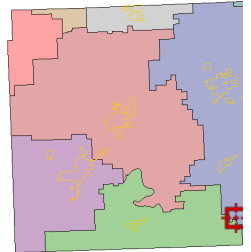
Conclusion:

We want to be able to create a more comfortable place for our family to live. We work hard and honestly for the money we have. We have the money to pay for this proposed addition, but not enough to build another home in another location on our land. My wife and I grew up in Miami County and have chosen to live here, make out living here and raise our family here. We are asking that this variance be granted so that we can live in a home that is a better fit for our family.





Overview



Legend

- City Limits
- Centerlines
- Parcels
- Lakes
- Flood Zones**
- 0.2 PCT ANNUAL CHANCE FLOOD HAZARD
- A
- AE
- Zoning**
- AG
- BP
- C-0
- C-1
- C-2
- CITY
- CS
- I-1
- I-2
- PD
- PRD
- R-1
- R-1A
- R-3

Parcel ID= 213050000001010
Acres= 37.389848149999999

Date created: 3/25/2021
Last Data Uploaded: 3/25/2021 7:16:34 AM

Developed by  Schneider
GEOSPATIAL

Miami County GIS



Legend

 Parcels - April 2021

 Lot Lines

Flood - Jan 2014

FLD_ZONE

 .2 PCT ANNUAL

 A

 AE



1 inch = 100 feet

Parcel Data Date:
April 2021

This property ownership map is for tax purposes only. It is not intended for conveyances, nor is it a legal survey.

Minutes Excerpts for Prothe, Peer, and Yerby

04001-VAR: Prothe

Scott McCullough presented the staff report to consider a variance request from Section 6-5.02.3 of the Miami County, Kansas Zoning Regulations to allow a front yard setback of 73 feet from the centerline of 339th Street for an addition to an existing residence where 100' is the minimum setback distance allowed. The subject property is located at 37050 W. 339th Street.

In general discussion it was clarified that the existing house is a legal non-conforming structure at this location and the addition would not encroach on the setback any more than the existing house already is. The total setback from the centerline of 339th Street should be 100 feet under the current regulations, including ultimate right-of-way and building setback. The house is setback 73 feet from the centerline of 339th Street. If the addition were placed on the north side of the house, the house would still remain non-conforming.

Tom Bach moved to approve the variance based on the findings and subject to the condition listed below. Janet McSpadden seconded. The motion carried unanimously (6-0).

Findings

1. The circumstances surrounding the desire for a variance were created by the adoption of zoning regulations after the residence was constructed. "Squaring off" the house is a minimal infringement into the setback area.
2. Granting the variance will not adversely affect the rights of adjacent property owners.
3. Denying the request would render the residence practically unable to enlarge, which could be viewed as an unnecessary hardship given the current trends in home sizes and amenities.
4. The variance will not adversely affect the public's health, safety and general welfare.
5. The addition is relatively small compared to the residence. The addition does not extend past any side of the structure and will only square it off. While the addition does not meet the current setback requirements, it is not opposed to the spirit of Article 16, Nonconforming Uses, which seeks to prevent substantial additions that might increase a nonconforming structure.

Condition

1. The variance is granted for only that which is shown on the attached plans. Any additional or future encroachment into the setback area shall not be allowed except as may be granted through the variance procedure.
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08001-VAR: Peer

Tom Bach disclosed that he met the applicants during his campaign a couple of years ago. The applicants had mentioned that they would like to add onto their house. He had no further discussions with them and did not feel he needed to excuse himself from voting on this matter.

Charlene Weiss presented the staff report for consideration of a request for variance from the front and side yard setbacks as established in Section 5-5.02 of the Miami County Kansas Zoning Regulations, requiring a 50 foot front yard setback from ultimate right-of-way of 40 feet half-width, and a 20 foot side yard setback. The applicant proposes to build an addition to an existing residence that is located approximately 48 feet from the centerline of 215th Street and 20 feet from the side property line. The proposed addition would be located the same distance from 215th Street as the existing residence and 12 feet from the side property line. The residence is located on 15 acres and is addressed as 32695 W. 215th Street, which is located on the south side of 215th Street in the Northwest Quarter of Section 22, Township 15, Range 22, Miami County, Kansas.

Ms. Weiss noted that there is a white oak tree on the east side of the house. She noted that the county had removed similar trees on other property and may well have paid \$5000.00 +/- for a tree like this one. Ms. Weiss suggested that this should be factored in when considering whether or not the applicant would be able to add onto the east side of the house rather than obtain a variance.

Chris Brown asked how the plumbing for the addition would comply with the sanitation setbacks from property lines.

Ms. Weiss clarified that the new plumbing would tie into the existing plumbing inside the house, which connects to the existing sanitation system. No plumbing or sanitation lines would be added outside the house and therefore, the sanitation setbacks would not be encroached. She pointed out that the applicant is not “adding” a bedroom, they are only enlarging the existing bedrooms. If more bedrooms were added, they would have to comply with the current sanitation code.

Ken Patrick asked Ms. Weiss how the Board might find in favor of the criteria listed under “E” noting that the addition to the front makes the structure more non-conforming.

Ms. Weiss noted that she listed recommended findings to either approve or deny the application.

John Murphy pointed out that all 5 of the criteria listed in the Zoning Regulations must be met in order to approve the request.

Chairman Berg opened the public hearing and asked the applicants if they would like to address the Board.

Carl and Pat Peer stated that the house is small and the proposed addition would not only increase the size of the house but add a downstairs bathroom, which will keep them from having to climb stairs as they age. They also noted that their son and daughter-in-law are both in the military. Their son just returned from Iraq and has subsequently been stationed at Fort Leonardwood, Missouri. His wife was just recently deployed to Iraq, so their grandchildren will be living with them for a while. Because of this, the addition is needed more than ever. They noted that the people they spoke with at the county seemed optimistic that the variance would be approved since no buildings would be encroached and the neighbors approved of the variance. They therefore decided to apply for the variance since it seemed like a unique situation. When asked if the addition could be placed on the other side of the house, they pointed out that the septic location would prevent the addition

from being located on the south side of the house and they would prefer not to lose the trees on the east side. The bedrooms really need to be where they are currently located and the floor plan needs to be as it is designed or it would not be feasible.

When asked by Chairman Berg if they had a back-up plan if the variance were not approved, Mr. Peer stated that they would just have to muddle through and try to figure something else out. If their health deteriorated they would be forced to move.

Ken Patrick asked how far west the house could be extended without encroachment of the property line.

Ms. Weiss clarified that the house is currently located at the minimum building setback of 20 feet. Therefore, the house cannot extend any further west without encroachment.

Tom Bach asked what the problem was with adjusting the property boundary.

Ms. Weiss explained that a boundary adjustment would reduce the frontage of the property to the west, which is already nonconforming.

Chairman Berg closed the hearing.

Ms. Weiss clarified that the proposed addition would reduce the side yard setback from 20 feet to 12 feet.

Ken Patrick stated that he didn't see how the Board could get around Item E.

Tom Bach argued that Article 16 is criteria meant for new development versus the Board having the ability to grant a variance. He noted that this is an old farmhouse and that the location of the building is not the fault of the applicants. He stated that the addition would not adversely affect the county or the neighbors. Mr. Bach commented that the implementation of county zoning affects the enjoyment of their home.

Janet McSpadden believed this to be a unique situation and she didn't feel the request opposed the intent of the regulations.

Chris Brown disagreed and stated that Article 16 does apply to this situation.

John Murphy agreed with Mr. Brown stating that Article 23 refers back to the rest of the regulations and that all of the regulations must be taken into consideration.

Ms. Weiss noted that any enlargement would make the structure nonconforming. The existing structure is grandfathered in and they are now trying to add more. She noted that it may not be the fairest way, but it's the only way to deal with it. She stated that all of the regulations should be used when deciding or judging cases.

Tom Bach stated that the Board has the legality and the authority to grant this variance and he disagreed that Article 16 should be used to consider this case.

Regarding Tom Bach's statement, John Murphy replied that one would then have to disagree that the structure is nonconforming.

Mr. Peer acknowledged that he was out of order, but pointed out that new subdivisions have a setback of only 7 feet from the property line with a total separation of 14 feet between houses. He pointed out that his setback from the property line would be 12 feet plus a significant separation between structures.

Ms. Weiss referenced findings for approval under Item E, and pointed out that the area being enlarged is small compared to the house.

David Heger noted that Section 23-6.01 gives the Board authorization to grant a variance in specific cases and with specific terms. He noted that a literal enforcement of the regulations would create an unnecessary hardship.

John Murphy agreed, but clarified that doesn't mean all of the regulations cannot be used at all.

Janet McSpadden moved to approve the variance request. Tom Bach seconded and amended the motion to include the findings of approval and 3 conditions listed below. The motion carried with 5 approving, 1 opposed (Patrick), with the Chairman abstaining from the vote.

Findings

6. The circumstances surrounding the desire for the front yard variance were created by the adoption of zoning regulations after the residence was constructed.
7. Granting the variance will not adversely affect the rights of adjacent property owners. This is an area that would be expected to remain in lower density development due to the dead-end road, the indirect access to the properties on 215th Street and the proximity to the Corps of Engineer's property.
8. Denying the request could be viewed as an unnecessary hardship due to the loss of desirable large shade trees if the addition was redesigned for the east side of the residence.
9. The variance will not adversely affect the public's health, safety and general welfare.
10. A boundary line adjustment with the property owner to the west is not a viable option for meeting the side yard setback requirement.
11. The addition is relatively small compared to the square footage of the existing residence.

Conditions

1. The variance is granted for only that which is shown on the attached plans. Any additional or future encroachment into the setback area shall not be allowed except as may be granted through the variance procedure.
2. A licensed surveyor will need to prepare a site plan and perform a construction staking since the addition would be less than 30 feet from the west property line.
3. The applicant must obtain a building permit for the structure. All county codes related to this addition shall be complied with.

18003-VAR (Yerby)

Teresa Reeves presented the staff report for consideration of a request for a variance from Section 5-5.02.3 (Front Yard) and 16-1.02 of the Miami County, Kansas Zoning Regulations, requiring a 50-foot minimum setback from ultimate right-of-way. The applicant would like to construct an addition to the existing residence that is located approximately 25 feet from the ultimate right-of-way. The proposed addition would also be approximately 25 feet from the ultimate right-of-way. The subject property of approximately 20 acres is zoned Countryside (CS) and addressed as 36720 Crescent Hill Rd, which is located in the Northeast Quarter of Section 28, Township 18, Range 22, Osawatomie Township, Miami County, Kansas. Submitted by Brandon Shay, Shay Homes on behalf of Craig and Christie Yerby, property owners of record.

Reeves provided a brief overview of the home's history, including the original construction in 1910, a remodel in 2006, and a pool installation in 2017. Reeves stated that the applicants hired Allenbrand-Drews to survey the property, and that she has received this evening the measurements from the center of the road as well as measurements from section line. (*At this time Reeves shared a copy of the survey with the Board members.*) Reeves noted that at its closest point the proposed addition would be 71 feet to center line.

Bach asked if the addition will stick out any farther than the current porch. Reeves answered "no", and added that it should be even with the porch.

Reeves stated that each variance has to stand on its own merit, but that she has included in the Board packets similar variances approved in the past. She reminded the Board members that they must determine if this variance request applies to each of the five variance standards as listed in Article 23 of the Zoning Regulations. Reeves then read aloud each of the five 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."*
- B. *"The granting of the variance will not adversely affect the rights of adjacent property owners or residents."*
- 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."*
- D. *"The variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare."*
- E. *"Granting the variance desired will not be opposed to the general spirit of the regulations."*

Reeves announced that the applicants and their contractor, Brandon Shay, are present this evening. She then invited questions from the Board.

Patrick stated for clarification that the proposed addition sticks out as far as the current porch. Shay confirmed.

Reeves stated that the current porch is 6' x 8', but that it appears the addition is 6-1/2' x 8'.

Sumner asked if the addition will be any closer to the road than is the front of the current porch.

Reeves stated that the addition appears to stick out ½ foot further than the front of the porch.

Patrick asked if there would be any benefit in placing the addition on the side of the house.

Craig and Christie Yerby approached the podium. Mrs. Yerby stated that she brought the architect's drawings. *(At this time, Mrs. Yerby shared the drawings with the Board members.)*

Mr. Yerby stated that most of the addition is away from the road.

Sumner asked about the required setback, and Reeves answered that the normal minimum setback is 90 feet from the center line. Sumner asked when the house was built. Reeves answered that it was built in 1910. Sumner commented that there likely weren't easements or setbacks at that time.

Reeves noted that this would be a nonconforming structure from the setback to the road and that there is a provision for nonconformities that would give some relief for the owner, which involves averaging the setbacks of other structures along this same road. Reeves stated that staff attempted to do so, but that the structures' setbacks were so varied that they were unable to give the applicants any relief from the required setback. She added that some of the structures are located closer to the property line than the proposed addition and others are farther away.

Peckman read aloud the following from Page 5 of the staff report: "The development setbacks vary widely from as little as 38 feet from the right-of way to 206 feet." He then asked about the proximity of the house with the 38-foot setback with regard to the applicants' home. Mr. Yerby answered that the house is located approximately ½ mile from his home. Reeves added that she took measurements on properties within the same section of road as the applicants' property.

Patrick asked if all of the properties measured are 20-acre lots. Mr. Yerby answered "No".

Sumner asked if the proposed addition will be only one room or if it also includes a porch. Mrs. Yerby answered that it will include a porch, but that the porch will be located on the side of the house—not on the front.

Patrick commented that it appears the applicants will be substantially improving the neighborhood.

Peckman asked how old some of the neighboring houses are. Mr. Yerby answered that he believes theirs is one of the oldest homes. Peckman stated that the house that is situated 38 feet from the right-of-way may have been built prior to the adoption of the Zoning Regulations.

Sumner asked the applicants and Reeves if they have anything further to add.

Mr. Yerby thanked the Board for their time this evening. He stated that this has been nearly a three-year process, that they have considered other options, and that the option proposed is the only one that works with the home's current floorplan and fits within their budget.

Reeves noted that if the variance is approved Condition No. 2 on Page 6 of the staff report would require the applicants to have a site plan prepared and have the construction staking performed. She reported that this Condition has already been met.

There being no further questions, Sumner stated that he will entertain a motion.

Bach moved to approve variance request 18003-VAR: Yerby as presented by staff, noting that the request complies with all five variance standards and that he concurs with staff's recommendation for approval.

Findings

12. Granting the variance will not adversely affect the rights of adjacent property owners.
13. Denying the request could be viewed as an unnecessary hardship due to the inability to add onto the residence due to the floorplan of the house.
14. The variance will not adversely affect the public's health, safety and general welfare.
15. The addition is relatively small compared to the square footage of the existing residence and will not encroach the setback any further than the house already does.

Conditions

1. The variance is granted for only that which is shown on the attached plans. Any additional or future encroachment into the setback area shall not be allowed except as may be granted through the variance procedure.
2. A licensed surveyor will need to prepare a site plan and perform a construction staking since the addition will be less than the minimum setback.
3. The applicant must obtain a building permit for the structure. All county codes related to this addition shall be complied with.

Peckman seconded. The motion passed unanimously, (4-0).

Reeves noted that this is one of several variance requests received and granted, where the addition doesn't encroach any further than the existing structure. She added that some jurisdictions have a provision for staff to administratively approve such requests when the addition will be less than 50% of the area of the existing structure. Reeves then asked the Board members for their feedback with regard to whether they would prefer that these requests continue to come before this Board. She noted that if the Board prefers that staff administratively approve these requests that the Planning Commission would need to consider a text amendment to the Zoning Regulations.

Patrick expressed, with regard to some of the variance requests received, that he would rather see the County Commission amend the Zoning Regulations so that the Board is not dancing along the existing rules.

Reeves noted that when similar variances are requested repeatedly, that it is usually an indication that the Zoning Regulations may need to be adjusted.

Bach made reference to the June 26, 2018 workshop, during which Attorney Jim Kaup addressed zoning, variances and regulations. Bach stated that it is his understanding that this Board is a quasi-judicial board with the authority by State Statute and by Miami County to make judgments on each individual situation with regard to the variance. He expressed that he believes this Board was established to be reasonable outside of regulatory guidelines. He stated that this is the reason the Board exists; otherwise, the county does not need this Board.

Peckman agreed.

Patrick made reference to the following provision of Article 23 of the Zoning Regulations: “The Board of Zoning Appeals shall not grant a variance unless it shall, in each case, make specific written findings of fact, based upon the particular evidence presented to it, that *all* of the following standards have been met.” He then stated that the Board has to go by this.

Reeves stated that the Board is supposed to adhere to a fairly strict interpretation of the Zoning Regulations. She added, however, that there are cases where the applicant has not created the problem and needs relief.

Sumner expressed that such applicants need an outlet, and that this Board is a solution.

Patrick made reference to the following portion of variance standard “A.”, which states that the variance being requested “is not created by an action or actions of the property owner or the applicant”. He stated that he recalls cases that this Board has heard for which the applicant purchased the lot, picked the site, built a house on it and the applicants were then unable to get by because of where they placed the driveway. Patrick added that everything was by the applicants’ choice and election. He stated that he feels that by granting the variances, the Board violated what it was supposed to do.

Bach stated that since 1993, the guidelines have changed, through no fault of the applicants. He added that this Board has made fair, reasonable, and just decisions.

Patrick argued that property owners have a right to expect that the county will uphold its Zoning Regulations.

Sumner added that property owners also have a right to appeal if they don’t agree. Reeves agreed and stated that this is why the Board of Zoning Appeals was established.

Patrick expressed that the Board of Zoning Appeals is in a very small box, with just a bit of flexibility and only if all five standards for variances are met.

Reeves asked the Board for direction regarding whether they would like staff to take this to the Planning Commission to consider amending the Zoning Regulations.

Patrick responded that he would like staff to do so.

Bach asked for clarification regarding what would be amended. Reeves explained that the text amendment would apply to requests such as the one heard tonight, where the proposed addition does not meet the setback requirements but does not encroach any further into the setback than the existing structure and is less than 50% of the existing structure. She added that such an addition would not be considered a substantial improvement to the structure, and would give applicants some relief without having to go through the Board of Zoning Appeals. Reeves noted that we have received four or five requests similar to the one heard this evening.

Patrick stated that there is a danger that once the Board has granted such a variance that it is setting a precedent, which sets people’s expectations and the Board could therefore be flooded with similar requests.

Bach argued that it was specifically noted during the June 26th workshop with Attorney Kaup that this Board is not bound by precedence.

Reeves stated that her question is with regard to whether or not the Board would like to continue reviewing requests for similar, recurring issues.

Bach stated that he thinks staff should have the latitude to approve such routine requests. He asked for the Board members' feedback with regard to asking the Planning Commission to change the Zoning Regulations so that staff may make the decision on these routine requests.

Patrick moved that the Planning Commission consider a text amendment to the Zoning Regulations that will allow staff to approve routine requests for variances involving proposed additions to structures to be constructed that will not encroach into the setback any further than the existing structure and where the proposed addition will be less than 50% of the area of the existing structure.

Peckman seconded the motion. The motion passed unanimously, (4-0).