



**MINUTES BOARD OF ADJUSTMENT  
ONE ST. PETERS CENTRE BLVD., ST PETERS, MO 63376  
MEETING OF MAY 21, 2014  
6:00 P.M.**

CALL TO ORDER

Chairman Dan Meyer called the meeting to order at 6:00 p.m.

ATTENDANCE

Those in attendance were Mr. Bill Kendall; Mr. John Shetterly; Mr. Nick Trupiano; Mr. Dan Meyer; Mr. William Jaggi; Mr. Ken Braunfeld, Planning Coordinator; and Ms. Melissa Vollmer, Recording Secretary. Mr. Tom Fann was absent.

MINUTES

Mr. Meyer asked the Board for any comments or questions regarding the minutes of April 16, 2014. Mr. Jaggi made a motion and Mr. Trupiano seconded to approve the minutes as presented. The motion carried unanimously.

COMMUNICATIONS AND REPORTS OF OFFICERS

Mr. Meyer asked for any reports or communications from the Officers or Staff. Mr. Braunfeld indicated there were none.

PETITION 14-L:

Mr. Meyer stated that the purpose of the meeting was to consider Petition 14-L. Marilyn Jarvis requests a variance to permit a pool to encroach into an easement in the R-1 Single Family Residential District. The property is located at 504 Gentle Breeze Drive. Mr. Meyer further stated that the evidence and testimony received this evening would be the only record considered by the Board. Title IV Land Use of the Municipal Code, as amended, shall be Exhibit #1 for this petition.

Mr. Meyer declared the public hearing open to consider Petition 14-L. The petitioner or their agent was requested to step forward to present their position. Ms. Marilyn Jarvis, homeowner, was sworn in as the petitioner. Ms. Jarvis explained that she would like to install a swimming pool in her backyard; however, due to the large easement in her backyard, she will need the variance requested.

Mr. Meyer asked if there were any questions of the petitioner. Being none, Mr. Ken Braunfeld was sworn in to present the City's position for Petition 14-L.

Mr. Braunfeld explained that Marilyn Jarvis is the owner of a home located on Lot 260 of County Crossing Estates Plat One as recorded in Book 35 Pages 42-44 at the St. Charles County Recorder of Deeds Office, more commonly known as 504 Gentle Breeze Drive. The owners desire to install a pool in their backyard. When the applicant's laid out the proposed pool location the owner discovered that the pool would extend approximately four feet into a utility easement.

The owner's exhibit shows that the backyard includes a large patio. This, coupled with the standard depth backyard, leaves a small area for an above ground pool. The owner would like to install the pool for use by the family. The owner notes that their lot is smaller than other lots, and that there are other pools in the vicinity. Staff has verified that there are no public water or sewer lines in this easement.

Based on this, Marilyn Jarvis requests a variance to allow a swimming pool in an easement in the R-1 Single Family Residential District. The property is located on Lot 260 of Country Crossing Estates Plat One as

recorded in Book 35 Pages 42-44 at the St. Charles County Recorder of Deeds Office, more commonly known as 504 Gentle Breeze Drive.

Mr. Braunfeld noted that the variance requested by the applicant is from requirements of the Zoning and Subdivision Regulations (Title IV Land Use Chapter 405 as amended) it states:

Section 405.270 Accessory Buildings or Structures, Alterations and Additions

4. No principal building or structure or accessory building or structure shall be located within or partially within a designated utility easement.

Mr. Braunfeld explained that a standard utility easement is typically five feet wide. Larger utility easements are typically created to accommodate a particular utility requirement. To the south of this lot there are utilities in the easement; however, they stopped before reaching this lot. Staff assumes the easement was originally placed on all the lots during the platting stage because the exact location of the utilities was not yet known.

The proposed pool would be in keeping with the neighborhood, with the encroachment not visibly noticeable. There are other swimming pools in the area, including the adjacent lot. Also, the proposed encroachment would still leave more than the standard five foot wide easement for the utility companies' use.

In general it is important to protect easements and prohibit structures from being built in an easement. If the property contained a standard five foot wide easement there would not be an easement encroachment. Even with the oversized easement the encroachment is only approximately four feet.

Given the larger easement that is on the lot, staff believes the variance will not have a negative impact. The granting of the variance will not relinquish the property owner from any easement rights that have been granted to the City or other utility companies. In essence, the property owner will proceed at their own risk and are free to deal with the other utility companies on the encroachment.

Mr. Braunfeld stated the code considerations as follows:

1. If the petitioner complied with the provisions of this Zoning Code (does not obtain the variance they are requesting), will they not be able to get a reasonable return from, or make reasonable use of the property?

The applicant would not be able to install a pool of a practical or useable size due to the larger than usual easement that does not contain any public utilities. Therefore, a smaller pool would be a burden to the homeowner with no benefit to the public.

2. Does the hardship result from the strict application of these regulations?

If a standard five foot easement was established, the pool could be constructed outside of the easement rather than encroaching into the larger easement. Therefore, the larger than usual easement does create a hardship.

3. Is the hardship suffered by the property in question?

The larger easement creates a hardship on the subject property as it limits the recreational use of the rear yard.

4. Is the hardship the result of the applicant's own actions?

The larger easement was platted on the lot and not created by the applicant.

5. Is the requested variance in harmony with the general purpose and intent of the zoning regulations and does it preserve the spirit?

If the variance were approved it would be in harmony with the general purpose and intent of the zoning regulations since the pool's location is standard for the neighborhood and the encroachment is not visibly noticeable. In addition, more than five feet of space is still available for the utility companies to use, which is wider than the norm.

6. If the variance is granted, will the public safety and welfare have been assured and will substantial justice have been done?

The public safety and welfare will have been assured and substantial justice will have been done because the applicant will be able to use their property to the fullest extent and will have no ill effects on surrounding properties or the City as a whole.

Based on this analysis staff recommends approval of the requested variance to allow an encroachment into a utility easement with the following contingencies:

1. The encroachment shall not exceed five (5) feet.
2. The granting of this variance is only for a pool.
3. The granting of this variance does not relinquish the various utility companies' rights to use the easement as granted on Country Crossing Estates Plat One as recorded in Book 35 Pages 42-44 at the St. Charles County Recorder of Deeds Office.
4. The use of the easement is at the property owners sole risk which may require partial or full removal of the pool at the property owners expense at the requires of a utility company for use of the easement.

Mr. Meyer asked if any of the board members had questions for Mr. Braunfeld. Mr. Meyer asked if there was anyone in the audience to speak in favor, opposition or in comment of Petition 14-L. Seeing no one present to comment, Mr. Meyer closed the public hearing.

Mr. Jaggi made a motion and Mr. Kendall seconded to approve Petition 14-L.

Mr. Meyer requested Ms. Vollmer call the roll, which resulted in the following votes:

Mr. Shetterly	Yes
Mr. Kendall	Yes
Mr. Trupiano	Yes
Mr. Meyer	Yes
Mr. Jaggi	Yes

There being 5 yes and 0 no vote, Mr. Meyer declared that Petition 14-L was approved.

Mr. Trupiano presented the findings of fact as follows:

1. The property is located on Lot 260 of Country Crossing Estates Plat One as recorded in Book 35 Pages 42-44 at the St. Charles County Recorder of Deeds Office, more commonly known as 504 Gentle Breeze Drive.

2. The lot is presently zoned R-1 Single Family Residential District.
3. The surrounding zoning is R-1 Single Family Residential District.

Mr. Kendall made a motion and Mr. Jaggi seconded to approve the findings of fact. The motion carried unanimously.

Mr. Jaggi presented the Conclusions of Law for Petition 14-G as follows:

1. The variance will not impair the supply of light or air to the adjacent properties.
2. The variance will not increase congestion in the public streets.
3. The variance will not impact the safety of the community.
4. The variance will not impact on the general health and welfare of the community.

Mr. Kendall made a motion and Mr. Trupiano seconded to enact the Conclusions of Law. The motion carried unanimously.

PETITION 14-M:

Mr. Meyer stated that the purpose of the meeting was to consider Petition 14-M. Sheila Johnson requests a variance to allow the construction of a garage larger than five hundred square feet in a Planned Urban Development. The property is located at 6 Spencer Valley Court.

Mr. Meyer further stated that the evidence and testimony received this evening would be the only record considered by the Board. Title IV Land Use of the Municipal Code, as amended, shall be Exhibit #1 for this petition.

Mr. Meyer declared the public hearing open to consider Petition 14-M. The petitioner or their agent was requested to step forward to present their position. Ms. Sheila Johnson, homeowner, was sworn in as the petitioner. Ms. Johnson explained that she would like to construct a 1,080 square foot freestanding garage on her property. The garage will be used to store personal vehicles that do not fit in a standard size garage.

Mr. Meyer asked if there were any questions of the petitioner. Being none, Mr. Ken Braunfeld was sworn in to present the City's position for Petition 14-M.

Mr. Braunfeld explained that the subject property contains an existing home on an 11,765 square foot lot. When the development was constructed the adjacent common ground was given to the City and was then platted into lots that were then sold to the adjacent property owners. This former common ground lot adds an additional 6,238 square feet to the original lot for a combined total lot size of 18,003 square feet (0.41 acres).

The applicant inquired about constructing a 1,080 square foot freestanding garage. Staff advised that the maximum permitted detached garage size is 500 square feet. The applicant indicated they needed more garage space and wanted to face the garage with a brick/stone veneer. They also noted that the larger lot is more than adequate to accommodate the proposed garage and would be buffered by existing trees and foliage.

Based on this, Sheila Johnson requests a variance to allow the construction of a garage larger than five hundred square feet in a Planned Urban Development, for property located on lot 605 of Spencer Creek West Village as recorded in Book 19 Pages 160-161 and lot 605A of Spencer Creek Village as recorded in Book 23 Pages 69-71 at the St. Charles County Recorder of Deeds Office, more commonly known as 6 Spencer Valley Court.

Mr. Braunfeld noted that the variance requested by the applicant is from requirements of the Zoning and Subdivision Regulations (Title IV Land Use Chapter 405 as amended) it states:

Section 405.130 R-1 Single Family Residential District

H. Yard Requirements

1. The minimum yard requirements shall apply to each lot.
  - e. Accessory buildings...shall not exceed five hundred (500) square feet in area...

Mr. Braunfeld noted that the subject lot is large being almost one-half acre in size; it would be able to accommodate a 1,080 square foot detached garage. The proposed garage would be located behind the existing house on the former common ground lot. The proposed garage will be faced with a brick veneer and be complimentary to the architecture of the neighborhood.

Staff notes the proposed garage location will be buffered by a substantial tree buffer in the former common ground area. The garage will also be approximately one hundred and sixty feet from the home to the northeast, two hundred feet from the home to the east, and fifty feet from the home to the southwest. Therefore, the placement of the proposed garage is planned to have minimum impact on the adjacent residences.

In the past, City regulations allowed the maximum size of the garage to be based on the size of the lot. While the regulations generally worked, in a few cases a detached garage was built out of scale with the surrounding subdivision, resulting in a garage that was too large or too tall. In response, the Board of Aldermen changed the regulations to allow no more than a standard two-car detached garage, which would be about 500 square feet. Since the majority of the lots in St. Peters are less than 10,000 square feet the 500 square foot requirement fits most lots in St. Peters. However, larger lots like the applicant's can easily accommodate a larger garage.

It is noted that a future creek redevelopment project has been proposed in this area; however, no timeline or design has been established at this time. The City Engineering Department has made a preliminary review of the garage location and find it should not interfere with the goals of the creek project at such time a project may be initiated. Staff is of the opinion the garage, with the upgraded brick, will be compatible with the subdivision and will be located so as to be appropriate for the site and area.

It is staff's opinion that the proposed variance will not impair an adequate supply of light or air to the adjacent property, substantially increase congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the neighborhood.

Mr. Braunfeld stated the code considerations as follows:

1. If the petitioner complied with the provisions of this Zoning Code (does not obtain the variance they are requesting), will they not be able to get a reasonable return from, or make reasonable use of the property?

Compliance with the regulations would not allow the applicant to fully utilize the value of their large lot, which can accommodate a larger garage. The detached garage size regulations are typically more applicable to a traditional 7,000 to 10,000 square foot lot.

2. Does the hardship result from the strict application of these regulations?

The applicant would be prevented from installing a garage commensurate with the overall size of the lot and, therefore, it would create a hardship for the applicant.

3. Is the hardship suffered by the property in question?

The City regulations do not effectively address larger lots and larger garages; therefore, the property owner would suffer a hardship with a smaller garage.

4. Is the hardship the result of the applicant's own actions?

The property was originally developed in 1977 with the additional lot purchased in 1984. Although the new owner has requested the larger garage, they did not initially develop the property.

5. Is the requested variance in harmony with the general purpose and intent of the zoning regulations and does it preserve the spirit?

If the variance is approved the property would be in harmony with the general purpose and intent of the zoning regulations since the owner would be able to construct a garage in a manner that is compatible with the area and subject lot.

6. If the variance is granted, will the public safety and welfare have been assured and will substantial justice have been done?

The public safety and welfare will have been assured and substantial justice will have been done because the applicant will be able to use their property to the fullest extent and will have no ill effects on surrounding properties or the City as a whole.

Based on this analysis it is staff's recommendation that the Board of Adjustment grant the requested variance to allow a 1,080 square foot garage with the following contingencies:

1. The proposed garage design shall be substantially the same as included in the petitioner's application.
2. The garage shall include a minimum 50% brick and/or stone veneer.
3. The applicant to coordinate the final location with the City Engineering Department.

Mr. Meyer asked if any of the board members had questions for Mr. Braunfeld. Mr. Meyer asked if there was anyone in the audience to speak in favor, opposition or in comment of Petition 14-M. Seeing no one present to comment, Mr. Meyer closed the public hearing.

Mr. Jaggi made a motion and Mr. Trupiano seconded to approve Petition 14-M.

Mr. Meyer requested Ms. Vollmer call the roll, which resulted in the following votes:

Mr. Shetterly	Yes
Mr. Kendall	Yes
Mr. Trupiano	Yes
Mr. Meyer	Yes
Mr. Jaggi	Yes

There being 5 yes and 0 no vote, Mr. Meyer declared that Petition 14-M was approved.

Mr. Trupiano presented the findings of fact as follows:

1. The property is located on lot 605 of Spencer Creek West Village as recorded in Book 19 Pages 160-161 and lot 605A of Spencer Creek Village as recorded in Book 23 Pages 69-71 at the St Charles County Recorder of Deeds Office, more commonly known as 6 Spencer Valley Court.
2. The lot is presently zoned R-1 Single Family Residential District.
3. Adjacent zoning is R-1 Single Family Residential District.

Mr. Kendall made a motion and Mr. Jaggi seconded to approve the findings of fact. The motion carried unanimously.

Mr. Jaggi presented the Conclusions of Law for Petition 14-M as follows:

1. The variance will not impair the supply of light or air to the adjacent properties.
2. The variance will not increase congestion in the public streets.
3. The variance will not impact the safety of the community.
4. The variance will not impact on the general health and welfare of the community.

Mr. Trupiano a motion and Mr. Jaggi seconded to enact the Conclusions of Law. The motion carried unanimously.

PETITION 14-N:

Mr. Meyer noted that the applicant has requested that this petition be withdrawn.

PETITION 14-O:

Mr. Meyer stated that the purpose of the meeting was to consider Petition 14-O. Linda Grillo and John Arthur request a variance to allow the construction of an open air patio cover within the side yard setback and within the front yard setback from Boone Hills Drive, and to permit the placement of a structure within an easement in the R-1 Single Family Residential District. The property is located at 429 Lantana Lane.

Mr. Meyer further stated that the evidence and testimony received this evening would be the only record considered by the Board. Title IV Land Use of the Municipal Code, as amended, shall be Exhibit #1 for this petition.

Mr. Meyer declared the public hearing open to consider Petition 14-O. The petitioner or their agent was requested to step forward to present their position. Mr. John Arthur, homeowner, was sworn in as the petitioner. Mr. Arthur explained that they would like to install a cover over a portion of patio in their backyard. The area they would like to cover is within the side yard setback and within the front yard setback from Boone Hills Drive. The structure would also be within an easement as it's within a foot of the property line.

Mr. Meyer asked if there were any questions of the petitioner. Being none, Mr. Ken Braunfeld was sworn in to present the City's position for Petition 14-O.

Mr. Braunfeld explained that the applicant desires to install an open air patio cover adjacent to their in-ground swimming pool in the backyard. When the applicants laid out the proposed open air patio cover they found that the narrow width of the lot and small back yard would not accommodate the proposed improvement without encroaching into a building line setback and easement.

Based on this, Linda Grillo and John Arthur request a variance to allow the construction of an open air patio cover within the side yard setback and within the front yard setback from Boone Hills Drive, and to permit the placement of a structure within an easement in the R-1 Single Family Residential District. The property is located on lot 99 of Misty Valley Estates Plat Two as recorded in Book 28 Page 144 at the St. Charles county Recorder of Deeds office, more commonly known as 429 Lantana Lane.

Mr. Braunfeld noted that the variance requested by the applicant is from requirements of the Zoning and Subdivision Regulations (Title IV Land Use Chapter 405 as amended) it states:

Section 405.130 R-1 Single Family Residential

1. The minimum yard requirements shall apply to each lot.
  - a. The minimum front yard depth shall be twenty (20) feet. Roof, canopy, and covered entranceways, including posts, shall extend no more than four (4) feet over the front building line.
  - b. Each side yard width shall be a minimum of ten percent (10%) of lot width as measured at the front building line except lots which are on a cul-de-sac and lots for which the preliminary plat was approved by the City of St. Peters before January 1, 2001 need not have a side yard which is more than six (6) feet wide.

Section 405.270 Accessory Buildings or Structures, Alterations and Additions:

5. No principal building or structure or accessory building or structure shall be located within or partially within a designated utility easement.

Mr. Braunfeld noted that the subject lot is narrow and thin and has two front building lines. The front of the home faces Lantana Lane with the home's backyard facing Boone Hills Drive. Since the open air porch is a structure it is required to meet the twenty foot "front" yard building setback to Boone Hills Drive even though it is visually in the backyard. It is noted the City Code does make exceptions for decks and pools to be within six feet of a side and rear property line and fences to be along the rear property line on what is defined as a "through-lot".

The backyard is completely fenced by a six foot tall white vinyl privacy fence which provides a substantial buffer to the adjacent properties. The proposed 12 foot by 14 foot open air porch would be placed adjacent to the west property line and approximately three feet from the north property line. The proposed covered patio is in keeping with what is expected in a backyard next to a pool. The open air design of the patio cover will minimize any visual encroachment along the west property line and neighboring residences. The proposed patio cover design is decorative and airy. The design augments a standard pergola with a solid roof to provide additional shade for the backyard. In addition, the north property line is adjacent to Boone Hills Drive and will not have an adverse affect on the City right-of-way.

In general it is important to protect easements and prohibit structures from being built in an easement. In this case the easement has not been used since the subdivision was constructed over twenty-years ago. In theory the patio cover could be disassembled and removed if necessary. In addition, the applicant understands that the use of the easement is at their own risk. It is noted that the property owners may pursue vacation of the unused easement; however, this can be very time consuming and would most likely prevent use of the cover this season.

Setback requirements have been established to provide for adequate separation of buildings and uses, and create reasonable amount of open space between structures to enhance the general health, safety and welfare of the community.

It is staff's opinion that the proposed variances will not impair an adequate supply of light or air to adjacent property, substantially increase congestion in public street, increase the danger of fire, endanger the public safety or substantially diminish or impair property values within the neighborhood.

Mr. Braunfeld stated the code considerations as follows:

1. If the petitioner complied with the provisions of this Zoning Code (does not obtain the variance they are requesting), will they not be able to get a reasonable return from, or make reasonable use of the property?

The subject lot is narrow with two front building lines. One front building line is along the front of the house and the other is in the back yard. The front building line through the backyard limits the standard placement of the open air patio cover in the backyard. The proposed variance allows for the standard placement of the open air patio and thus, provides for the reasonable use of the property.

2. Does the hardship result from the strict application of these regulations?

The subject lot is unique due to the two front building lines. The front building line through the backyard limits the standard placement of the open air patio cover in the backyard. The strict application of setback and easement regulations would make the side and front (rear) yards impractical to use, resulting in a hardship.

3. Is the hardship suffered by the property in question?

The subdivision and placement of the house occurred with the original development thereby creating the hardship.

4. Is the hardship the result of the applicant's own actions?

The subdivision and placement of the house occurred with the original development thereby creating the hardship.

5. Is the requested variance in harmony with the general purpose and intent of the zoning regulations and does it preserve the spirit?

If the variance is approved it would be in harmony with the general purpose and intent of the zoning regulations, since it will allow the standard placement of an open air canopy in the back yard, thus providing for the reasonable use of the property.

6. If the variance is granted, will the public safety and welfare have been assured and will substantial justice have been done?

The public safety and welfare will have been assured and substantial justice will have been done because the applicant will be able to use their property to the fullest extent and will have no ill effects on surrounding properties or the City as a whole.

Based on this analysis, it is staff's recommendation to permit a variance to allow the construction of an open air patio cover within the side yard setback and within the front yard setback from Boone Hills Drive, and to permit the placement of a structure within an easement with the following contingencies:

1. The granting of this variance is for an open air patio cover only.

2. The open air patio cover may extend to within six inches of the west property line and within three feet of the north property line.
3. The open air patio cover shall not exceed twelve by fourteen feet in size.
4. Water drainage from the roof shall drain away from the west property line or be captured by a gutter.
5. The granting of this variance does not relinquish the various utility companies' rights to use the easement as granted by Misty Valley Estates Plat Two as recorded in Book 28 Page 144 at the St. Charles County Recorder of Deeds Office.
6. The use of the easement is at the property owners sole risk which may require partial or full removal of the patio cover at the property owners expense at the request of a utility company for use of the easement.

Mr. Meyer asked if any of the board members had questions for Mr. Braunfeld. Mr. Meyer asked if there was anyone in the audience to speak in favor, opposition or in comment of Petition 14-O. Seeing no one present to comment, Mr. Meyer closed the public hearing.

Mr. Jaggi made a motion and Mr. Trupiano seconded to approve Petition 14-O.

Mr. Meyer requested Ms. Vollmer call the roll, which resulted in the following votes:

Mr. Shetterly	Yes
Mr. Kendall	Yes
Mr. Trupiano	Yes
Mr. Meyer	Yes
Mr. Jaggi	Yes

There being 5 yes and 0 no vote, Mr. Meyer declared that Petition 14-O was approved.

Mr. Trupiano presented the findings of fact as follows:

1. The property is located on lot 99 of Misty Valley Estates Plat Two as recorded in Book 28 Page 144 at the St. Charles County Recorder of Deeds Office, more commonly known as 429 Lantana Lane.
2. The lot is presently zoned R-1 Single Family Residential District.
3. The adjacent zoning is R-1 Single Family Residential District.

Mr. Jaggi made a motion and Mr. Kendall seconded to approve the findings of fact. The motion carried unanimously.

Mr. Shetterly resented the Conclusions of Law for Petition 14-O as follows:

1. The variance will not impair the supply of light or air to the adjacent properties.
2. The variance will not increase congestion in the public streets.
3. The variance will not impact the safety of the community.
4. The variance will not impact on the general health and welfare of the community.

Mr. Trupiano made a motion and Mr. Jaggi seconded to enact the Conclusions of Law. The motion carried unanimously.

PETITION 14-P:

Mr. Meyer stated that the purpose of the meeting was to consider Petition 14-P. BNJS Cafes, LLC (Paul's Donuts) requests a variance to allow a reduction in the ten foot ground sign setback from Jungermann Road within the C-2 Community Commercial District. The property is located at 1289 Jungermann Road.

Mr. Meyer further stated that the evidence and testimony received this evening would be the only record considered by the Board. Title IV Land Use of the Municipal Code, as amended, shall be Exhibit #1 for this petition.

Mr. Meyer declared the public hearing open to consider Petition 14-P. The petitioner or their agent was requested to step forward to present their position. Ms. Julie Feld, Owner, was sworn in as the petitioner. Ms. Feld explained that they want to construct a ground sign near the curb cut of the business along Jungermann Road.

Mr. Meyer asked if there were any questions of the petitioner. Being none, Mr. Ken Braunfeld was sworn in to present the City's position for Petition 14-P.

Mr. Braunfeld explained that the applicant, BNJS Cafes, LLC, better known as Paul's Donuts, is located at 1289 Jungermann Road. The applicant would like to construct a ground sign near the curb cut of the business. The business is located in the C-2 Community Commercial District where ground signage is allowed to be twelve feet tall and fifty square feet in area and must be ten feet back from the property line.

If it is noted that the original owner sold the business a few years ago and BNJS Cafes which includes the applicant, Julie Feld. Ms. Feld approached the City with the desire of installing a ground sign in the existing island area adjacent to the curb cut to Jungermann Road. The applicant was proposing a modest ground sign of approximately five to six feet in width to provide physical identification of the curb cut that belongs to the applicant's business. A preliminary review found that the existing island at the curb cut would not accommodate even a modest ground sign without encroaching into the ten foot setback.

The applicant was also advised of a previous variance granted in 1989 which allowed wall signs on the north and south sides of the building in lieu of a ground sign. The 1989 variance allowed for the substitution of wall signage without street frontage in exchange for a ground sign. The new owner indicated that they would remove the wall signs if they installed the ground sign.

Staff reviewed alternative locations with the applicant. However, due to the layout of the lot, curb cut location, right-of-way, and the adjacent paved drainage swale, a better sign location could not be found.

Based on this, BNJS Cafes, LLC (Paul's Donuts) requests a variance to allow a reduction in the ten foot ground sign setback from Jungermann Road, within the C-2 Community Commercial District, for property located at 1289 Jungermann Road.

Mr. Braunfeld noted that the variance requested by the applicant is from requirements of the Zoning and Subdivision Regulations (Title IV Land Use Chapter 405 as amended) it states:

Section 405.745.D Signs Permitted in all "C" Commercial and "I" Industrial Districts...

1.b.(4) Ground signs shall not extend nearer than ten (10) feet to the public right-of-way (as measured from the sign edge).

Mr. Braunfeld noted that although the sign is required to be ten feet back from the property line/right-of-way, the site has some unique issues that make the placement of the sign a hardship for the applicant. The proposed sign location would be approximately thirteen feet from the edge of curb. A typical commercial street layout typically includes a property line next to or within a few feet of a curb or sidewalk. Therefore, the visual encroachment of the sign is not noticeable due to the layout of the street with the additional green space

between the property line and curb. Staff has also reviewed the sight visibility and found no obstruction to vehicular traffic.

The existing landscape island adjacent to the curb cut is an ideal location to place the sign to identify the entrance to the business. It is noted that reconfiguring the landscaped island would not be practical as it could impact the adjacent parking lot swale, and therefore, storm water drainage. In addition, shifting the sign to the north property line would place the sign on top of the adjacent property and too far away from the actual entrance of the business creating potential confusion for new customers.

Mr. Braunfeld stated the code considerations as follows:

1. If the petitioner complied with the provisions of this Zoning Code (does not obtain the variance they are requesting), will they not be able to get a reasonable return from, or make reasonable use of the property?

The applicant would have to place a ground sign in a location on the property that would make the sign less visible to on-coming traffic and therefore, it would have a negative impact on the return.

2. Does the hardship result from the strict application of these regulations?

If the sign was required to be ten feet back from the property line, the applicant would have a hardship. A variance will allow them to place their proposed ground sign in a location that would have improved visibility and safety from Jungermann Road.

3. Is the hardship suffered by the property in question?

The applicant's lot configuration, curb cut location, right-of-way, and the adjacent paved drainage swale, limit the practical location for a ground sign on the property, thereby creating a hardship.

4. Is the hardship the result of the applicant's own actions?

When the property was developed it had to be graded in a way that would allow storm water to comply with City Code. This resulted in the current configuration of the lot and drainage swale.

5. Is the requested variance in harmony with the general purpose and intent of the zoning regulations and does it preserve the spirit?

If the variance is approved the development will be in harmony with the general purpose and intent of the zoning regulations, since the sign being placed closer to the property line will not increase hazards to pedestrian and vehicular traffic or cause blighting within the community.

6. If the variance is granted, will the public safety and welfare have been assured and will substantial justice have been done?

The public safety and welfare will have been assured and substantial justice will have been done because the applicant will be able to use their property to the fullest extent and will have no ill effects on surrounding properties or the City as a whole.

Based on this analysis staff recommends approval of the requested variance to permit the reduction of the ten (10) foot sign setback with the following contingencies:

1. The ground/pole sign shall be setback a minimum of three feet from the property line.
2. The ground/pole sign shall not interfere with the sight visibility along Jungermann Road.

Mr. Meyer asked if any of the board members had questions for Mr. Braunfeld. Mr. Meyer asked if there was anyone in the audience to speak in favor, opposition or in comment of Petition 14-P. Seeing no one present to comment, Mr. Meyer closed the public hearing.

Mr. Jaggi made a motion and Mr. Trupiano to approve Petition 14-P.

Mr. Meyer requested Ms. Vollmer call the roll, which resulted in the following votes:

Mr. Shetterly	Yes
Mr. Kendall	Yes
Mr. Trupiano	Yes
Mr. Meyer	Yes
Mr. Jaggi	Yes

There being 5 yes and 0 no vote, Mr. Meyer declared that Petition 14-P was approved.

Mr. Trupiano presented the findings of fact as follows:

1. The property is located at 1289 Jungermann Road.
2. The lot and adjacent property are presently zoned C-2 Community Commercial District.

Mr. Jaggi made a motion and Mr. Kendall seconded to approve the findings of fact. The motion carried unanimously.

Mr. Jaggi resented the Conclusions of Law for Petition 14-P as follows:

1. The variance will not impair the supply of light or air to the adjacent properties.
2. The variance will not increase congestion in the public streets.
3. The variance will not impact the safety of the community.
4. The variance will not impact on the general health and welfare of the community.

Mr. Meyer made a motion and Mr. Kendall seconded to enact the Conclusions of Law. The motion carried unanimously.

Mr. Jaggi made a motion and Mr. Meyer seconded to adjourn the meeting at 6:55 p.m. The motion carried unanimously.

Respectfully submitted:

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Melissa Vollmer  
Recording Secretary

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Dan Meyer  
Chairman