



**MINUTES BOARD OF ADJUSTMENT
ONE ST. PETERS CENTRE BLVD., ST PETERS, MO 63376
MEETING OF May 20, 2015
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. Tom Fann; Mr. Nick Trupiano; Mr. Dan Meyer; Mr. William Jaggi; Mr. Ken Braunfeld, Planning Coordinator, and Ms. Melissa Vollmer, Recording Secretary.

MINUTES

Mr. Meyer asked the Board for any comments or questions regarding the minutes of April 15, 2015. Mr. Fann made a motion and Mr. Kendall 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 15-G:

Mr. Meyer stated that the purpose of the meeting was to consider Petition 15-G. Car Wash Associates of St. Peters, LLC, c/o Stone's Sign Shoppe Inc., requests a variance to allow a wall sign on a side of a building façade that is not oriented to a street or access drive. The property is located on Centre Pointe Lot 2A as recorded in plat book 25 page 92 at the St. Charles County Recorder of Deeds Office, more commonly known as 1525 Jungermann Road.

Mr. Meyer declared the public hearing open to consider Petition 15-G. The petitioner or their agent was requested to step forward to present their position. Mr. Ron Stone, Stone's Sign Shoppe, was sworn in as the petitioner. Mr. Stone explained that the applicant is proposing a wall sign on the east side of the building, which does not face a street, access drive, or parking lot, but does have visibility to travelers 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 15-G.

Mr. Braunfeld explained that Car Wash Associates of St. Peters, LLC, c/o Stone's Sign Shoppe, Inc., (applicants) request a variance to allow a wall sign on a façade without street frontage. The property is located on Centre Pointe Lot 2A as recorded in plat book 25 page 92 at the St. Charles County Recorder of Deeds Office, more commonly known as 1525 Jungermann Road.

The subject site is zoned C-3 General Commercial District and contains a one-story building originally constructed as a single-line automatic carwash tunnel with two quick oil change bays off to the side. Over the last ten years the site has struggled to be successful and has gone through

several new owners/concepts. The current owners have rebranded the facility a only a carwash including a new paint scheme, a new eye-catching vacuum system, and new wash equipment.

The site fronts to Jungermann Road along the large curve in the road, between Highway 94/364 and Queensbrooke Boulevard. Although Jungermann Road is a north/south street, this portion runs east/west. To the east of the carwash is Queensbrooke Boulevard – a signalized intersection. To enhance visibility to travelers through this area, the operator has indicated a sign facing east would be helpful.

Based on this, Car Wash Associates of St. Peters, LLC, c/o Stone's Sign Shoppe, Inc., requests a variance to allow a wall sign on a side of a building facade that is not oriented to a street or access drive, for property located at 1525 Jungermann Road.

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

Section 405.745 Permanent Sign Regulations by Zoning District

D. *Signs Permitted in All "C" Commercial and "I" Industrial Districts (Non-Residential)*. In certain non-residential districts, the following signs are permitted in accordance with the regulations set forth herein.

4. Wall Signs.

- a. The total area of each wall sign shall not exceed five percent (5%) of the wall building façade or thirty-two (32) square feet, whichever is greater. A wall sign shall be permitted on each wall which parallels and is adjacent to, or is oriented to a street or access drive. If the business fronts on more than one (1) street or access drive, the sign area for each wall shall be computed separately. Where a business has no wall fronting a street or access drive, the Administrative Officer shall determine frontage for all sign locations. The Administrative Officer may approve the placement of a wall sign on a main façade, including but not limited to, facades fronting a parking lot or including a main building entrance, in lieu of a sign parallel to a roadway.

Mr. Braunfeld noted the subject site fronts on Jungermann Road and is adjacent to a Car Star auto body to the east and Bank of America to the west, with whom they share a joint curb-cut. The new owners installed eye-catching vacuums to create interest on the west side of the building. However, the east side of the building is visible to Jungermann Road, the nearby intersection, and west-bound travelers due to the curve of Jungermann Road.

Staff notes that the shape of the building – long and narrow – is due to the function of the building – a car wash. Although the unused oil change bays extend out from the side of the car wash building, they are set back from the street. Further, the new owners are investigating removing that portion of the building as the oil change bays are not used. Visibility of the building and building signage from both directions is key to the business success. The applicant has indicated that visibility from the east (west-bound traffic) is partially blocked by other business signs.

Staff notes the applicant is not proposing a sign on the west side of the building that faces the site entrance and vacuum area. Noting that a twelve square foot directional sign may be permitted at this location, and that the façade is approximately the same size as the east side of the building, staff recommends limited any signage on the west side of the building to balance the overall signage of the building. Therefore, a contingency is proposed that would reduce the size of any future identification sign on the west façade by the size of any identification sign placed on the east façade. This is consistent with other “sign shifts” which have been approved in the City.

This proposal is reasonable in staff’s opinion because the overall amount of signage for the property will not change. Off-site signs and other structures make the visibility of the site from the east more difficult which creates a hardship. Staff finds that the proposed sign will not be visually out of scale with the other signs in the area or the building façade. In addition, there will be no net increase in wall signage to the building as the twelve square feet of identification signage on the west wall will be reduced by any additional signage on the east wall to ensure the overall sign package is reasonable.

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 building is permitted one wall sign and an identification sign. By allowing for the shifting of identification signage, the proposed wall sign will better meet the needs of the applicant and have no net increase in total wall signage. This furthers the aesthetic goals of the sign code and ensures a reasonable return by the business.

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

The code does not allow the shifting of wall or identification signage unless they are shifted to accommodate a main entrance that does not face a roadway or driveway. The proposed identification sign area shifting will improve visibility for the applicant with no overall net change in the total signage available for the building.

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

The site is along a major roadway, but is partially blocked for travelers going westbound on Jungermann Road by other signs and structures. Therefore visibility is limited which can pose a hardship for a business. The substitution of identification signage will further the goals of the applicant with no negative impact on the City of St. Peters.

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

The property was developed and the sign code established prior to the applicant’s business being located at the subject site.

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 substitution of identification wall signage will not cause 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 an identification wall sign on a façade without street/access drive frontage and that does not mark an entrance/exist with the following contingency:

1. The size of the identification wall signage permitted on the east and/or west wall of the building may not exceed twelve square feet in total size added together.

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 15-G. Seeing no one present to comment, Mr. Meyer closed the public hearing.

Mr. Fann made a motion and Mr. Jaggi seconded to approve Petition 15-G.

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

Mr. Fann	Yes
Mr. Kendall	Yes
Mr. Jaggi	Yes
Mr. Meyer	Yes
Mr. Trupiano	Yes

There being 5 yes, and 0 no vote, Mr. Meyer declared that Petition 15-G was approved.

Mr. Kendall presented the findings of fact as follows:

1. The property is located on Centre Pointe Lot 2A as recorded in plat book 25 page 92 at the St. Charles County Recorder of Deeds Office, more commonly known as 1525 Jungermann Road.
2. The lot is presently zoned C-3 General Commercial District.
3. The surrounding zoning is C-3 General Commercial District.

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

Mr. Jaggi presented the Conclusions of Law for Petition 15-E 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. Fann seconded to enact the Conclusions of Law. The motion carried unanimously.

PETITION 15-H:

Mr. Meyer stated that the purpose of the meeting was to consider Petition 15-H. Gina Vaccaro requests a variance to allow an eight (8) foot tall fence and a variance to permit a fence to extend past the front building line in the R-1 Single Family Residential District. The property is located on Lot 52 of Country Crossing Plat book 32 Pages 191-194 at the St. Charles County Recorder of Deeds Office, more commonly known as 50 Treeshade Court.

Mr. Meyer declared the public hearing open to consider Petition 15-H. The petitioner or their agent was requested to step forward to present their position. Ms. Gina Vaccaro, homeowner, was sworn in as the petitioner. Ms. Vaccaro explained that she would like to install an eight foot tall sound reducing fence along her backyard and a portion of the side yard. Ms. Vaccaro noted that the goal is to reduce the noise from the adjacent Birdie Hills Road. Due to the height of the fence and her lot being a double corner lot, she's requesting the two variances as presented.

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 15-H.

Mr. Braunfeld explained that the subject site is located at 50 Treeshade Court at the entrance to the Country Crossing Subdivision. The home faces Treeshade Court with the side yard facing Treeshade Drive and the rear yard facing Birdie Hills Road.

The applicant approached the City requesting information on fencing. The applicant indicated they would like to install an eight-foot tall sound reducing fence along their backyard and a portion of the side yard. Their goal is to reduce the noise of the adjacent Birdie Hills Road which is an arterial roadway. Staff advised that the property was on a double corner adjacent to three separate streets, subject to three front building lines, and that the fence could not extend beyond the building lines except as allowed in the City Code. In addition, fences are not permitted to exceed six feet in height.

Based on this, Gina Vaccaro requests a variance to allow an eight (8) foot tall fence and a variance to permit a fence to extend past the front building line in the R-1 Single Family Residential District. The property is located on Lot 42 of Country Crossing Plat book 32 page 191-194 at the St. Charles County Recorder of Deeds Office, more commonly known as 50 Treeshade Court.

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

Section 405.360 (d) Fence Requirements:

2. No fence, wall, shrub, or hedge shall be constructed or altered to exceed six (6) feet in height except as indicated in the specific district regulations as follows.

4. On a corner lot, a fence shall not extend beyond the front building line, as platted, which is parallel to the front of the house. Along other front building lines as platted on a corner lot, the fence shall be set back a minimum of ten (10) feet from the property line and shall not extend into the sight distance area as defined in Section 405.340 of this Chapter.

Mr. Braunfeld noted that fence setback regulations were designed to prevent the fencing of front yards and side yards, on a corner lot, to maintain these areas as open space and ensure adjacent neighbor's views are not blocked. Fencing setbacks were also created to help insure proper visibility of an intersection by maintaining an acceptable site visibility triangle. In addition, the maximum six foot fence height was established to provide for privacy without creating complete barriers which would be unattractive and potentially create unsafe areas that are totally un-viewable.

In this case the lot is unique in that it is at the entrance to the subdivision and has three front yards. The applicant's request would not affect the traditional front yard of the house facing Treeshade Court. Rather the request is for the front (side) yard facing Treeshade Drive which only contains the subject property and no other homes. In addition, the request is for the front (rear) yard facing Birdie Hills Road. It is noted that the lots adjacent to the applicant's lot also face Treeshade Court, but since they are not on a corner they are defined as "through lots" which permits fencing to the rear property line along Birdie Hills Road.

On the side of the property facing Treeshade Drive the fence could extend to the property line with no aesthetic concerns. Along the applicant's property line, this section of Tree Shade Drive has a substantial tree buffer strip. Therefore, with no other homes on this one lot section of street and the existing landscaping, the proposed encroachment will not be visually noticeable.

As previously noted, the adjacent homes can have their "through lot" fencing at the rear property line. Therefore the applicant's request to place their fence in the same location would not encroach on the front yard of any adjacent property or be aesthetically unattractive. In fact, the more the fence is off-set from the existing line of fences the more the fence would look out of place. In addition, both the Planning Department and Engineering Department have evaluated the fence location pursuant to the City's Street Engineering Sight Visibility Standards and determined that the fence can be placed on the rear property line along Birdie Hills Road and on the side property line adjacent to Treeshade Drive and still maintain proper visibility for vehicles entering and exiting the subdivision.

Further, the applicant has indicated they need a higher fence to reduce the sound coming from Birdie Hills Road, which is an arterial roadway. The proposed height would be eight feet and made from material designed to absorb noise. As shown in the exhibits provided by the applicant, the fence will be a plastic type material that looks like stone. As also noted in the sound study, the fence material is designed to reduce noise. The general appearance of the material is similar to barrier walls installed in other areas of the City. In addition, the south side of Treeshade Drive has a retaining wall and steep hill that will also balance the height of the proposed fence. Therefore, the eight foot tall fence height will be mitigated by its location along Birdie Hills Road and the entrance

to the subdivision and retaining wall. Together, this will reduce the perceived height of the fence and allow for improved sound reduction for the applicant.

It is noted that barrier walls are only installed by the City when a roadway is expanded after development has occurred. In this case the road was a St. Charles County Road project and was planned or constructed prior to the subdivision being built.

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 corner lot is very unique with three road frontages resulting in three front building line setbacks. The proposed variance allows the proposed fence to meet the requirements of a standard corner lot, while maintaining the sight visibility standards for safety. In addition the height of the fence, in conjunction with the sound absorbing design, will provide for the reasonable use of the property.

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

The subject corner lot is very unique with three road frontages resulting in three front building line setbacks. The proposed variance allows the proposed fence to meet the intent of the corner lot fence regulations while maintaining the sight visibility standards for safety. In addition the height of the fence in conjunction with the sound absorbing design will improve the livability of the backyard area. The strict application of setback regulations would make the side and rear yards difficult to use, resulting in a hardship.

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

The subject corner lot is very unique with three road frontages resulting in three front building line setbacks substantially limiting the normal use of the property's side and rear yard area. In addition, the proximity of the backyard to Birdie Hills Road, an arterial roadway, creates a substantial amount of noise. Therefore the property suffers a hardship.

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

The placement of the house and lot occurred with the original subdivision development. In addition, traffic on Birdie Hills Road has continued to increase, 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 an appropriate fence to be installed on 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 recommends approval of the variance to allow a fence of eight feet in height and to extend beyond the front building lines in an easement in the R-1 Single Family Residential District with the following contingencies:

1. The fence may extend to the property line adjacent to Birdie Hills Road.
2. The fence may extend to the property line adjacent to Treeshade Drive.
3. The fence shall not extend past the front of the house facing Treeshade Court.
4. The fence may be extended to a height of (8) feet in the following locations:
 - a. Along Birdie Hills Road.
 - b. Along Treeshade Drive, but no farther than within ten feet of the front of the house.
 - c. Along the north property line, but may not extend past the back corner of the house.
5. The variance is for a fence that is made from a sound absorbing/reducing material only.

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 15-H. Seeing no one present to comment, Mr. Meyer closed the public hearing.

Mr. Kendall made a motion and Mr. Jaggi seconded to approve Petition 15-H.

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

Mr. Fann	Yes
Mr. Kendall	Yes
Mr. Jaggi	Yes
Mr. Meyer	Yes
Mr. Trupiano	Yes

There being 5 yes, and 0 no vote, Mr. Meyer declared that Petition 15-H was approved.

Mr. Trupiano presented the findings of fact as follows:

1. The property is located on Lot 52 of Country Crossing Plat book 32 pages 191-194 at the St. Charles Recorder of Deeds Office, more commonly known as 50 Treeshade Court.
2. The lot is presently zoned R-1 Single-Family Residential District.
3. The 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. Fann presented the Conclusions of Law for Petition 15-H 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. Jaggi made a motion and Mr. Fann seconded to enact the Conclusions of Law. The motion carried unanimously.

PETITION 15-I:

Mr. Meyer stated that the purpose of the meeting was to consider Petition 15-I. McBride Bellemeade LLC requests a variance to permit a structure (deck) to encroach into an easement. The property is located on Lot 87C of Bellemeade Plat One as recorded in book 45 pages 150-158 at the St. Charles County Recorder of Deeds Office, more commonly known as 719 Lorillard Drive.

Mr. Meyer declared the public hearing open to consider Petition 15-I. The petitioner or their agent was requested to step forward to present their position. Mr. Max Ladd, McBride and Son Homes, was sworn in as the petitioner. Mr. Ladd explained that during construction of the home at 719 Lorillard, the future homeowners requested a deck be added to the home. Due to a large utility easement that runs through the rear yard, a variance is being requested to allow the deck to extend into the easement by two feet.

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 15-I.

Mr. Braunfeld explained that McBride Bellemeade LLC (the applicant) is a residential home builder, commonly called McBride Homes. McBride Homes took over development of the Bellemeade Subdivision a number of years ago after the original developer stopped development.

During construction of a new home at 721 Lorillard Drive, the future home owners requested that a deck be added to the home. At that time McBride became aware of an easement in the backyard that contained a storm water line. The applicant indicated the deck would need to encroach two feet into the ten foot general utility easement to create a usable deck. Staff noted that the same type of variance was granted last year, for the adjacent home to the north, for a deck due to the same storm water line and easement.

Typically, utility easements are located along the perimeter of a residential lot and are only five feet wide. The applicant's lot has the traditional standard perimeter utility easement plus an additional ten foot wide utility easement through the middle of the back yard. This additional easement contains a storm sewer. During discussions with staff, the applicants noted that the location of the storm sewer severely limits the ability to install a usable deck on the back of the home without some encroachment.

City Code requires that all accessory buildings and structures are not allowed to encroach into any easements. Based on this the applicant's have requested a variance to allow a structure (deck) to encroach into an easement.

Based on this McBride Bellemeade LLC requests a variance to permit a structure (deck) to encroach into an easement. The property is located on Lot 87-C of Bellemeade Plat One as recorded in book 45 pages 150-158 at the St. Charles Recorder of Deeds Office, more commonly known as 719 Lorillard Drive.

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

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 noted that general utility easements are typically established around the perimeter of most lots in the City during the record plat process. The typical easement is five feet on each side of a lot line, thus creating a ten foot wide easement. On the applicant's lot the original developer of the subdivision routed a storm sewer through the back yard rather than around the back yard. This unusual placement substantially reduces the usability of the backyard and the applicant's ability to construct even a modest sized deck.

The Planning Department, Utilities Department, and the applicant's examined various layouts and determined that a two foot deck encroachment into the easement would allow for a usable deck and still permit a future repair of the storm sewer line if necessary. Therefore, contingencies will be added that limit the deck encroachment to two feet and require the deck supports be located outside of the easement.

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 property as they would have a smaller deck and large unused yard.

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

A typical easement is placed along the perimeter of a lot. In this case the easement is placed through the middle of the rear yard which causes a hardship related to the use of the rear yard.

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

The City regulations typically apply without issue to standard lots. With the unusual placement of an additional easement through the middle of the lot, use of the rear property area is severely limited. Allowing the deck to encroach into the easement will allow improved use of the lot.

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

The property was originally platted with the additional utility easement through the middle of the lot as part of the overall utility layout for the development; it was not done by the current 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 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 use their yard in a manner that is compatible with the area.

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 a variance to permit a structure (deck) to encroach into an easement for property is located on Lot 87-C of Bellemeade Plat One as recorded in book 45 pages 150-158 at the St. Charles Recorder of Deeds Office, more commonly known as 719 Lorillard Drive, with the following contingencies.

1. The granting of this variance is for a deck only.
2. The deck may extend up to two feet into the easement.
3. The deck support post shall be located outside of the easement.
4. The use of the easement is at the property owner's sole risk which may require partial or full removal or relocation of the deck steps at the property owner's expense at the request of the City of St. Peters or other utility company.

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 15-I. Seeing no one present to comment, Mr. Meyer closed the public hearing.

Mr. Kendall made a motion and Mr. Jaggi seconded to approve Petition 15-I.

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

Mr. Fann	Yes
Mr. Kendall	Yes
Mr. Jaggi	Yes
Mr. Meyer	Yes
Mr. Trupiano	Yes

There being 5 yes, and 0 no vote, Mr. Meyer declared that Petition 15-I was approved.

Mr. Fann presented the findings of fact as follows:

1. The subject property is located on Lot 87-C of Bellemeade Plat One as recorded in book 45 pages 150-158 at the St. Charles Recorder of Deeds Office, more commonly known as 719 Lorillard Drive.
2. The lot is presently zoned PUD Planned Urban Development.
3. The adjacent zoning is PUD Planned Urban Development to the north, south, and west, with R-1 Single-Family Residential District to the east.

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

Mr. Jaggi presented the Conclusions of Law for Petition 15-I 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 15-J:

Mr. Meyer stated that the purpose of the meeting was to consider Petition 15-J. Bryan and Amy Fennel request a variance to permit a pool to encroach into an easement in an Planned Urban Development (PUD) District. The property is located on Lot 10B of The Pointe at Heritage Crossing as recorded in book 43 pages 156-157 at the St. Charles County Recorder of Deeds Office, more commonly known as 504 Newkirk Circle.

Mr. Meyer declared the public hearing open to consider Petition 15-J. The petitioner or their agent was requested to step forward to present their position. Mr. Bryan Fennell, homeowner, was sworn in as the petitioner. Mr. Fennel explained that they would like to install a pool in their backyard. However, during the planning process they discovered that the pool would extend into an oversized easement in their backyard. Therefore, Mr. Fennel is requesting the variance as presented this evening.

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 15-J.

Mr. Braunfeld explained that Bryan and Amy Fennell are the owners of a home located on Lot 10B of The Pointe at Heritage Crossing as recorded in book 43 pages 156 - 157 at the St. Charles Recorder of Deeds Office, more commonly known as 504 Newkirk Circle. The owners desire to install a pool in their back yard. When the applicant's laid out the proposed pool location, the owner discovered that the pool would extend into an oversized utility easement within their back yard.

The owner's exhibit shows a standard back yard, deck, oversized utility easement, and the proposed pool location. The owner contacted Missouri One Call and requested any underground utilities be located in the backyard. It was found that the majority of the easement was not being used, except for a small corner of the easement for a storm water line. A secondary review was made by the City Utility Department. They confirmed the existing storm water line was not using the majority of the easement that appears to have been created for the storm water line. Rather, they found that the storm water line only clipped a small corner of the lot and that the remainder of the easement was not necessary. The Utility Department did not object to the easement vacation except to request that a seven foot easement be maintained adjacent to the storm water line for future access.

The owners indicated they intend to vacate the easement in the future, however, this can be a very lengthy process and the owners do not want to unnecessarily delay construction of the pool due to an unused easement. It is noted that when the easement is vacated, the standard five foot utility easement will be maintained plus the seven foot easement adjacent to the storm water line as requested by the Utility Department.

Based on this, Bryan and Amy Fennell requests a variance to permit a pool to encroach into an easement in a Planned Urban Development (PUD) District. The property is located on Lot 10B of The Pointe at Heritage Crossing as recorded in book 43 pages 156 - 157 at the St. Charles Recorder of Deeds Office, more commonly known as 504 Newkirk Circle.

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

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 noted that a standard utility easement is typically five feet wide. Larger utility easements are typically created to accommodate a particular utility requirement. As noted, the only utility within the backyard is a storm water line that clips the southwest corner of the lot. Staff assumes the easement was originally placed on the lot during the platting stage because the exact location of the storm water line 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. Also, the proposed encroachment is only temporary until the easement is vacated. Even if not vacated, it would still leave the standard five foot wide easement for the utility companies' use, plus the seven feet of easement as requested by the City Utility Department.

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 or even the seven foot easement, as requested by the City Utility Department, there would not be an easement encroachment.

Given the larger unused 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. However as previously discussed, the owners have indicated they plan to vacate the unused portion of the easement in the future.

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 due to the larger than usual easement of which only a very small corner contains a storm water pipe. Therefore, not being able to install a 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 along the south property line including a small seven foot section of easement to accommodate the storm water line, 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 with no benefit to the public

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 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, the standard five feet of space needed for a general utility easement plus the seven foot section for the storm water line is still available for use by the utility companies.

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 have been 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 a variance to allow an encroachment into a utility easement with the following contingencies:

1. The encroachment shall not extend closer than five feet to the south property line.
2. The encroachment shall not extend closer than seven feet to the south property line adjacent to the storm water line.
3. The granting of this variance is only for a pool.
4. The granting of this variance does not relinquish the various utility companies' rights to use the easement as granted on The Pointe at Heritage Crossing Plat as recorded in book 43 pages 156 - 157 at the St. Charles Recorder of Deeds Office
5. The use of the easement is at the property owner's sole risk which may require partial or full removal of the pool at the property owner's 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 15-J. Seeing no one present to comment, Mr. Meyer closed the public hearing.

Mr. Kendall made a motion and Mr. Jaggi seconded to approve Petition 15-J.

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

Mr. Fann	Yes
Mr. Kendall	Yes
Mr. Jaggi	Yes
Mr. Meyer	Yes
Mr. Trupiano	Yes

There being 5 yes, and 0 no vote, Mr. Meyer declared that Petition 15-J was approved.

Mr. Trupiano presented the findings of fact as follows:

1. The property is located on Lot 10B of The Pointe at Heritage Crossing as recorded in book 43 pages 156 - 157 at the St. Charles Recorder of Deeds Office, more commonly known as 504 Newkirk Circle.
2. The lot is presently zoned Planned Urban Development District (PUD)
3. The surrounding zoning is zoned Planned Urban Development District (PUD) to the north, east, and west. To the south the property is zoned R-1E Residential in Unincorporated St. Charles County.

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

Mr. Fann presented the Conclusions of Law for Petition 15-J 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. Jaggi made a motion and Mr. Fann 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 7:10 p.m. The motion carried unanimously.

Respectfully submitted:

Melissa Vollmer
Recording Secretary

Dan Meyer
Chairman