



**MINUTES BOARD OF ADJUSTMENT
ONE ST PETERS CENTRE BLVD., ST PETERS, MO 63376
MEETING OF SEPTEMBER 16, 2020
6:00 P.M.**

CALL TO ORDER

Chairman Tom Fann called the meeting to order at 6:00 p.m.

ATTENDANCE

Those in attendance were Mr. Tom Fann; Mr. Brian Stiens; Mr. John Luehrs; Mr. John Shetterly; Ms. Brynn Palmer; Mr. Ken Braunfeld, Planning Coordinator; and Ms. Melissa Vollmer, Recording Secretary. Mr. Bill Jaggi was absent.

MINUTES

Mr. Fann asked the Board for any comments or questions regarding the minutes of the August 19, 2020 meeting. Mr. Stiens made a motion and Mr. Shetterly seconded. The motion carried unanimously.

COMMUNICATIONS AND REPORTS OF OFFICERS

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

PETITION VAR 20-17

Mr. Fann stated that the purpose of the meeting was to consider Petition VAR 20-17. Nick Rongey requests a variance to permit a structure (shed) to be placed within an easement in the R-1 Single Family Residential District. The property is located on lot 113 of Hermitage Plat 2 as recorded in Book 21 Page 104 at the St. Charles County Recorder's Office, more commonly known as 128 Carriage House Lane.

Mr. Fann declared the public hearing open for consideration of Petition VAR 20-17. The petitioner or their agent was requested to step forward to present their petition. Mr. Nick Rongey was sworn in as the petitioner. Mr. Rongey explained that he would like to build a shed along the rear property line, not within the pipeline easement. Mr. Rongey noted that there are no utilities within the fifteen foot rear utility easement except for a single Spectrum Cable line and that the proposed shed would not be near this line.

Mr. Ken Braunfeld was sworn in to present the City's position on Petition VAR 20-17. Mr. Braunfeld that the subject property is located at 128 Carriage House Lane and includes a two-story single-family residence constructed in 1984. The northern side yard of the property contains the southern thirty feet of the adjacent sixty foot wide petroleum pipeline easement. The property also contains a standard five foot wide general utility easement along the front yard and side yards, and an oversized fifteen foot general utility easement in the rear yard.

The applicant approached the City regarding the requirements for the construction of a shed/garage. At that time the applicant was advised of the prohibition of a structure (shed/garage) from being constructed within an easement. The applicant noted they wanted to build the shed/garage along the rear property line, not within the pipeline easement. The applicant also noted that there were no utilities within the

fifteen foot rear utility easement except for a single Spectrum cable line and that the proposed shed/garage would not be near this line.

Based on this, Nick Rongey request a variance to permit a structure (shed) to be placed within an easement in the R-1 Single-Family Residential District. The property is located on lot 113 of the Hermitage Plat 2 as recorded in Book 21 Page 104 at the St. Charles County Recorder's Office, more commonly known as 128 Carriage House Lane.

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) state:

SECTION 405.130: "R-1" SINGLE-FAMILY RESIDENTIAL DISTRICT

H. Yard Requirements:

1. The minimum yard requirements shall apply to each lot.
 - d. Detached accessory buildings may not be used as dwelling units and shall be located in a rear yard. Detached accessory buildings shall be set back at least six (6) feet from the side and rear lot lines and shall not be located within a public easement. . .

SECTION 405.270: ACCESSORY BUILDINGS OR STRUCTURES, ALTERATIONS AND ADDITIONS

All accessory structures shall be permitted with the following provisions and requirements:

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 the proposed shed will be built along the rear property line within the existing fifteen foot rear utility easement but not within the adjacent pipeline easement. The applicant has indicated they will meet all other ordinance requirements including a six foot setback from the side and rear property line.

As previously stated, the subject lot is encumbered by several different sized easements. This includes a sixty foot wide petroleum pipeline easement in the side yard, a standard five foot wide general utility easement along the front yard and side yards, and an oversized fifteen foot general utility easement in the rear yard.

A review by the City found no public water, sewer, or stormsewer lines within the fifteen foot rear yard easement. As noted by the applicant, there is a single Spectrum cable line, but it is not located near the proposed shed/garage.

Typically a standard residential lot has a five foot wide perimeter utility easement along each property line. The creation of an oversized utility easement is usually for a specific purpose, so as to not unnecessarily encumber the lot. In this case, there was a reason to create the sixty foot wide pipeline easement along the side of the property. It remains unknown why the rear yard included a fifteen foot wide easement in place of a standard five foot wide easement, without the placement of a utility line. It

would be staff's assumption that at the time the plat was created, a water, sewer, or storm line was to be installed in this area. At a later date the engineering plans were changed, but the plat had already been recorded establishing the oversized easement.

In general it is important to protect easements and prohibit structures from being built in an easement. In this situation the easement does not contain any known utilities. In addition, the subdivision is about forty years old and it is highly unlikely additional utilities will be needed within the oversized fifteen foot easement.

Given the age of the subdivision and that the vast majority of the easement is not used, the variance will not have a negative impact on the delivery of utility services. Further, 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. The applicant has indicated they will be seeking an easement vacation, of a ten foot portion of the fifteen foot utility easement, leaving a standard five foot wide easement. It is noted that this process can be very slow and take months to complete; therefore, a variance will allow the project to move forward in a timely manner.

It is staff's opinion that the proposed variance will not impair an adequate supply of light or air to 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. Further, staff is of the opinion the placement of the shed further from the property line would not provide benefit to the adjacent properties.

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 the oversized easement is not necessary for the delivery of utility services, nor could the project proceed in a timely manner.

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

The applicant will be forced to shift the shed toward the center of the lot; therefore, it would create a hardship for the applicant because they would have less usable area in their rear yard.

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

The City regulations typically apply without issue; however, the oversized utility easement is not necessary for the delivery of services and imposes an unnecessary hardship, and the proposed

location of the shed allows for a more efficient use of the property. In addition, the applicant has proposed an easement vacation that will leave a standard five foot easement in place.

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

The establishment of the plat and unnecessary oversized easement took place prior to the current ownership of the property. The proposed location allows for more usable yard area.

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 be 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 shed within a utility easement with the following contingencies:

1. The granting of this variance is for a shed/garage only.
2. The proposed shed/garage shall not be located within the pipeline easement.
3. The proposed shed shall comply with all other City requirements, including the six (6) foot side yard and rear yard setback.
4. The granting of this variance does not relinquish the various utility companies' rights to use the easement as granted for on lot 113 of the Hermitage Plat 2 as recorded in Book 21 Page 104 at the St. Charles County Recorder's Office, more commonly known as 128 Carriage House Lane.
5. 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 request of a utility company for use of the easement.

Mr. Fann asked if any of the board members had questions for Mr. Braunfeld. Mr. Fann asked if there was anyone in the audience to speak in favor, opposition or to comment on Petition VAR 20-17. Mr. Tom Barcroft, 129 Carriage House Lane, had questions about the location of the shed. Mr. Matthew

Venegoni, 120 Carriage House Lane, had questions regarding the size and location of the shed. Seeing no one else present to comment, Mr. Fann closed the public hearing.

Mr. Stiens made a motion and Mr. Luehrs seconded to approve Petition VAR 20-17.

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

Mr. Stiens	Yes
Mr. Shetterly	Yes
Ms. Palmer	Yes
Mr. Luehrs	Yes
Mr. Fann	Yes

There being 5 yes and 0 no vote, Mr. Fann declared that Petition VAR 20-17 was approved.

Mr. Shetterly presented the Findings of Fact as follows:

1. The properties are located for on lot 113 of the Hermitage Plat 2 as recorded in Book 21 Page 104 at the St. Charles County Recorder's Office, more commonly known as 128 Carriage House Lane.
2. The lot is presently zoned R-1 Single-Family Residential District.
3. The lot is presently zoned R-1 Single-Family Residential District.

Ms. Palmer made a motion and Mr. Shetterly seconded to approve the findings of fact. The motion carried unanimously.

Mr. Stiens presented the Conclusions of Law for Petition VAR 20-17 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.

Ms. Palmer made a motion and Mr. Shetterly seconded to enact the Conclusions of Law. The motion carried unanimously.

Mr. Stiens made a motion and Mr. Shetterly seconded to adjourn the meeting at 6:27 p.m. The motion carried unanimously.

Respectfully submitted:



Melissa Vollmer
Recording Secretary



Tom Fann
Chairman