

# **BOURBON COUNTY JOINT BOARD OF ADJUSTMENT**

## **Minutes of Meeting**

**May 23, 2022**

The Bourbon County Joint Board of Adjustment met on May 23, 2022, at 5:30 p.m. in the City Commission Chambers of the Paris Municipal Building.

The meeting was called to order by Chair Wayne West. Present for the meeting were Board Members Wiley Faw, Darrell Poynter, and Noel White. Steven Osborne had called in and his absence was excused. Quorum established. Also, in attendance were Legal Counsel Patrick Watson, Planning Administrator Andrea Pompei and Planning Technician Micki Sosby.

(Note: Minutes from May 18, 2022, Meeting not yet prepared. To be presented at next meeting.)

Chair West introduced the first item on the agenda, VAR 22-01, a five foot rear setback variance request submitted by Robert and Karen Dorvel for construction of a single-family home on property located at 412 Houston Oaks Drive, Paris, KY 40361, Parcel ID: 018-40-02-023.00. He then asked Ms. Pompei to provide her Staff Report.

Ms. Pompei stated that the application was received on May 12<sup>th</sup> for a 5 foot rear setback variance. The property was located at 412 Houston Oaks Drive. A R-4 Residential Zone in the City of Paris. Her Staff Report for the Board Members showed the location of the property in relation to other parts of the Houston Oaks subdivision. The proposal from the Applicant was for a five foot rear setback variance to construct a single-family dwelling on a lot of approximately .335 acres. Ms. Pompei said the Staff Report states FRONT in error and should read REAR Setback. This change would make the rear setback 20 feet in the rear instead of the 25 feet that had been the standard. No existing structures on property. Property not located in a flood plain. Location on back side of lake with a walking trail. The proposed setbacks are 25 feet front, 10 feet side and 20 feet rear.

She stated her findings as being that before a variance is granted, the Board must find that the granting of the variance will not adversely affect the public health, safety, or welfare, will not alter the essential character of the vicinity, nor will not cause a hazardous nuisance to the public. She said she would talk about infrastructure and asked the members to refer to the back page of the Staff Report for the location of the gravity sewer line and forced main. With 10' easements on each side. Applicant had provided a site plan that showed the setbacks from the property lines for the structure; structure would immediately abut easement in the rear of the property. Applicant would meet the setback lines on the front and sides of the property. Additionally, a snapshot on the back page showed the easements in the front and the rear of the property. This showed that the property as one of the least deep lots on that road. Roughly 104' deep on one side of the lot and 106' deep on the other side of the lot.

The three questions that are reviewed at each hearing are whether the request arises from special circumstances, would the strict application deprive the applicant of the reasonable use of land or create unnecessary hardship, and were the circumstances the result of actions of the applicant taken subsequent to the adoption of the zoning regulation for which relief is sought.

First, were the circumstances the result of actions of the applicant taken subsequent to the adoption of the zoning regulation for which relief is sought? She stated that in this case, no.

Did the requested variance arise from special circumstances? Staff opinion was that yes, the applicant requested relief from the rear minimum setback of 25 feet to 20 feet. This particular lot is the shallowest lot along Houston Oaks Drive, 104-106 ft depth respectively, with a sanitary sewer easement located in the rear of the lot.

Would the strict application deprive the applicant of the reasonable use of land or create unnecessary hardship? According to Ms. Pompei, the strict application of the zoning ordinance reduced the buildable area on the lot. The applicant had requested relief, keeping the front and side setback in alignment with the Comprehensive Plan and keeping it in character with the neighborhood.

The Staff recommended approval of the five foot rear setback variance for construction of a single-family residence with the finding that the request arose from special circumstances due to the shallow depth of the lot. The granting of the variance is in character with the surrounding area and would not adversely affect the public health, safety or welfare, and would not cause a hazardous nuisance to the public. That concluded the Staff Report. She moved on to talk about interactions she had with the Applicant and Residents.

Ms. Pompei said the Applicant had submitted a site plan with the application, including a building footprint. The Planning and Zoning Office does not review the size of a house or the square footage of a house. This is something for the Homeowner's Association of Houston Oaks, as many of these things are in the covenants and restrictions for Houston Oaks Subdivision. She stated that she had contacted the Homeowner's Association, Susan Miller and Rosa Lee Rankin about this particular lot. She did not get an indication that they had given a review this particular lot at this time. Ms. Pompei reiterated that architectural standards, minimum square footage, building footprint, and such, are beyond the purview of the Planning and Zoning Office. This was a point that she wanted to make clear.

She was contacted by the immediate neighbor, if facing this lot, the neighbor to the right side, who is in attendance tonight and had provided the Commission with why denial of the application should be made and that the neighbor is here to speak on this tonight. That was the only person that made contact with her concerning the application. Ms. Sosby was queried if she had received any communication regarding this application, to which she replied that she had not.

Chair West asked if there were any questions for Ms. Pompei. Mr. Faw asked questions regarding the utility easement in the rear of the property. It was explained that the variance would grant the applicant the ability to build up to that part of the property. Mr. Poynter also spoke up to say that 10' was the typical easement size and was the same on his lot there in Houston Oaks. Ms. Pompei also noted that on the first page of her Staff Report was the language from the City of Paris Codes and Ordinances regarding Easements, with the minimum being 10 feet. She did verify this with the City.

Chair West asked if the utility went over the easement. Ms. Pompei said the burden was on the Applicant to verify the actual easement and not to encroach. Mr. Faw asked about other variances. Ms. Pompei said there had been an application at another address that was approved for a side yard variance. Chair West said it was for a one-foot variance on a side yard.

Chair West asked for additional questions. Hearing none, Ms. Pompei's Staff Report was completed.

Next, he asked for questions for the Applicant and who was present to speak on their behalf. Robert and Karen Dorvel were in attendance. Chair West asked for questions from the Board. With no questions from the other Board Members, Chair West asked of them if they bought the lot knowing that it was not big enough or if they were putting the wrong house on the wrong lot, or if you buy a lot, you put a house on it that will fit. Mr. Dorvel was sworn in to speak by Legal Counsel, Patrick Watson. Mr. Dorvel said that they purchased the lot knowing it was a lot of record with Houston Oaks and sold by Houston Oaks Development LLC and assumed you could build a house on it. They were given the restrictions, which he believed 2,800 sf were required for a ranch house and 1,800 sf on the first floor for a 1 ½ story house. Uncertain of the two-story requirement, but thought it was about 3,400 sf. They knew there were restriction and knew the lot was smaller. Even with the shape of the lot, he felt it was buildable. He said the easements did not 'jump out at you' even the 25 foot easement in the back. That the sides were 104' and 106' but it was considerably smaller in the center. He worked tirelessly with his builder and shrunk the plans down by over 15% to be able to build on the lot. It could not be shrunk down anymore, that's the reason for the meeting tonight. Chair West first asked if there was no other plan that would fit on the lot, then rephrased to ask if there was no way this plan would fit on this lot. He said there were other lots in the development that would not be buildable for a ranch home. Mr. Dorvel said he had been shown other lots, two other lots that were also long and narrow and he thought would require a variance to be buildable.

Chair West said there were lots that had been for sale for so long because they could not meet restrictions. Some of these were being combined three in to two to make them buildable. Mr. Dorvel said he would like to wait to later to say this, but the regulation from the City of Paris Zoning Ordinance, Section 80.201, R-4 Residential (5) vii: *In order to allow productive use of property, the Board of Adjustments shall permit lesser setbacks to be established where the lot in question is a lot of record and lesser setbacks will be in conformity with existing structures in the area.* Existing structures in the area. He continued by stating that the houses adjacent to his, at 410 and 414, appeared to have needed variances as they set so close to the cart path. He is dealing with a lot of restrictions: the square footage of the lot, the shape of the lot, the dimension of the lot, all to build a house they can retire to. They cut the square footage down as much as they could and stay in conformity. He said it was a great design and beautiful. No corners would be cut. Chair West noted that he did not remember ever giving a variance for the other property. Mr. Dorvel said the was willing to take a walk to the property so the Board could review it, compared to the other houses. Mr. Faw asked Ms. Pompei about the process of getting a variance on the utilities and was told that couldn't happen. Mr. Watson said that if someone builds on an easement, they do so at their own risk. Ms. Pompei noted that the aerial snapshot from the GIS database is just an approximate location of the easement and should not be confused with a certified plat. Mr. Dorvel asked if the City of Paris would require a site plan and was told it would. He then asked to reserve time for later to speak.

In addition to the location of the property, Ms. Pompei included an aerial photo of the lot showing the golf cart path, along with an approximation of the sanitary sewer and utility easement at the rear of the property. She also included a snapshot of the final subdivision plat with an enlargement of lot 81, 412 Houston Oaks Drive.

With the Public Hearing portion of the meeting opened for comment, Vicky Rosok was the next to speak. As public comment, it was not required for her to be sworn in. As the builder, she designed the house to fit the deepest part of the lot. She worked to keep it out of the sewer easement and had the variance down to 2' on the right side and 4'6" on the left side. This is what kept the house to the right side of the lot. Side and front setbacks were met. She questioned if a variance was given for the driveway at 410 as it seemed closer than 10' on the side setback. Mr. Faw questioned the 2' and 4'6" setbacks.

Next to speak was a neighbor, Chris Calero. He expressed concerns that the site plan omitted the sewer lines in the back. He had questioned where the pipes were and putting a concrete foundation over sewer line. Other things were omitted, such as manhole covers. Ms. Pompei addressed this by stating the site plan was only showing the foundation of the building, nothing else. Mr. Calero continued by stating that the 25' was the Houston Golf Course general homeowners' easement. He referred to Mr. West as stating that the lot had not sold, and he said the reason was there were so many challenges facing anyone attempting to build on this property. The lot was not buildable for a proper lot and that it had been researched and was not feasible. Many potential buyers for this property fell through, he named several as this lot was 'sexy' as he described it. That you could not possibly build over sewer pipe. He showed a copy of this to Mr. Poynter saying that it didn't work and that the plans did not place the house centrally on the lot but stuck it to one side. Mr. Poynter asked about the location of the sewer. Mr. Calero said it was an impossible situation. Mr. Poynter asked what his general issue was. He said that he was excited about neighbors but had no idea they would be building right up to the property line on the side. Mr. Poynter pointed out that was not an issue that could be heard by the JBOA. As long as the construction was in the building lines it was not a BOA issue. Chair West said that it was not a nonbuildable lot. A two story or a story and a half could be built there, just not a single story. Mr. Calero seemed to agree with that statement. In a Summary, he said that just because you can do something doesn't mean you should do something. When you look at the houses across the street, they built their houses and they centered them on the lots. He felt sure the Dorvel's would build a beautiful house, but it would only be 25' off the front where the neighbors built in the 35' range off the front. The Dorvel house would be sticking out in front and would not flow with the neighborhood. That it would not go along with the other houses in the neighborhood. Chair West said flow is not a reason for the Board to make a ruling in this case.

Jim Akers, another Houston Oaks resident, was next to speak. He stated he shared some of the same concerns as Mr. Calero. He expressed sympathy to the Applicant. He built his house 15 years ago, picked his house and a lot that fit. He said that everyone knew there were lots that would not conform. His concern is that if this variance is granted, it opens a 'can of worms' by setting a precedent. That this would not protect the neighborhood that he loved and hoped to live in for many years to come. A very significant investment was made to live there. He pointed out that the third point Staff made was if this changed the nature of the neighborhood; he felt that it does. Mr. Poynter questioned the unbuildable lots. Mr. Akers said there was one next door to him and several backing up to the farm and two on the lake side. His concern was a long term perspective.

Sims Frank spoke next. He said he agreed with Mr. Akers on the third point brought up by Staff on changing the nature of the neighborhood. If you look at all the house in the neighborhoods out there, the homes look evenly spaced, nicely spread out, same distance between them. He stated this house will be on about 1/3 of the lot (not centered), not in conformity and will look 'odd, strange'. Chair West said this is not something the Board can consider. Mr. Frank questioned even if it doesn't conform? He was told that people chose to set their houses as they did.

Debbie Jefferson of 414 Houston Oaks, next door to the property in question said that people find house plans and then a lot that fits it. She asked what are the restrictions for? Someone must have thought they were a good idea. But now they are even allowing front entrance garages. Things were changing that should not be changed. Chair West said that the Board was not changing things, it was the developer. She said the Applicant was going to build a "cabin on the lake", it is going to be a "cabin on a golf course" and they are not going to live there full time. She stated she has four bedrooms and three and ½ baths as did most of the houses in the area. This house would have two bedrooms and would decrease the value

of the other houses. She did the right thing and got her dream house. Chair West said that this was not something that the Board could consider. She said the Rankins were destroying the neighborhood.

Peggy Seithers spoke next. She lives on Houston Oaks Drive and said she wanted to commend the builders because she spent 5 years trying to buy that lot (412 Houston Oaks) but that four builders told her they could not build a house on that lot.

Gary Jefferson stated that he tried to build on that lot, also. He had it surveyed and a builder, but it could not be done. He tried to conform to make it a good subdivision to live in. What was being proposed was 'different, odd' and this would take away from their investment.

Ms. Pompei stated that it had been brought up that no variances were granted in Houston Oaks, but she found that in 2017 a 5 foot front setback variance was requested and granted for 416 Houston Oaks Drive. Peggy Seithers spoke up and said that was her house and that 5 feet was requested, but only 8 inches was used.

Chair West asked if there were any other questions for Staff or the Applicant or if anyone else wanted to speak. Hearing none, the Public Hearing portion of the meeting was closed.

Chair West asked if anyone wanted to make a motion to approve or deny VAR 22-01. Mr. Faw asked that some things be made clear. Patrick Watson made clarification to the Board Members that the application was to only allow Applicant to build five feet closer to the rear property line. It was not to give a blessing to the Applicant, not to give them a 'golden ticket', that the builder said that it would fit on the lot with only this five-foot rear setback variance.

Debbie Jefferson spoke up and stated that she would like to see a plat with all utilities marked. Mr. Watson said that was not part of this meeting. Chair West said that is the reason for 811 and reminded the audience that Public Comment was closed.

Wiley Faw said that as he understood it, this application was not about the utilities, the character or the placement of the house. It was only about the rear setback. He thought that a change in the side setback might change the look of the neighborhood, or a change in the front setback would definitely change the look of the neighborhood, but he did not feel that a 5' change in the rear setback would change the look of the neighborhood. He asked about HOA restrictions and Mr. Watson said that the BOA was not looking at the HOA restrictions. Member White said she thought that the third point that Ms. Pompei brought up was relevant.

Chair West asked for additional questions. Hearing none, he asked for a motion to either approve or deny the Applicant's request. Mr. Poynter pointed out that 3 of the 4 members live in Houston Oaks. That they were considering to accept or deny a rear setback variance only. Ms. Pompei asked if anyone had any additional questions for her. Mr. Poynter said no that he was considering nothing but the rear setback that any other questions should be referred to the Homeowner's Association if there was one or to Ms. Rankin. But, he did know that not all areas had HOA's. Mr. West said his section formed their own HOA.

Board Member Wiley Faw stated if this request was for a change in the front setback, he would totally agree that it would change the character of the neighborhood, but that they only had one task, the rear setback and he didn't think that would affect the health, safety or welfare of the neighborhood. Chair West said he would entertain a motion to approve or deny VAR 22-01. Board Member Poynter told the

audience that the Board could only consider what was set in the ordinance. Chair West reminded the audience that public comment was closed. They then asked who was voting. The members introduced themselves. Ms. Pompei asked if there were additional questions from the Board. Again, Board Member Poynter said they had no say in the style of the house. West and White said they had their own HOA's in their section of Houston Oaks. Board Member Wiley Faw made a motion to grant VAR 22-01, a rear setback variance of five feet based on the Staff Recommendation. The motion was made with the finding that the request arises from special circumstances due to the shallow depth of the lot. This motion for a variance is in character with the surrounding area and would not adversely affect the public health, safety or welfare, and would not cause a hazardous nuisance to the public. The motion was for approval of the five-foot rear setback variance for construction of a single-family residence with the finding that the request arises from special circumstances due to the shallow depth of the lot. The motion was seconded by Board Member Darrell Poynter. A roll call vote was taken:

Wiley Faw	Approve
Darrell Poynter	Approve
Noel White	Deny
Wayne West	Deny

Vote resulted in a tie.

A second motion was entertained to deny the rear setback variance of five feet. A motion was made by Board Member Noel White to deny VAR 22-01 on the basis of input from the neighbors that it affected the character of the neighborhood. The motion was seconded by Chair Wayne West. A roll call vote was taken:

Wiley Faw	Deny
Darrell Poynter	Deny
Noel White	Approve
Wayne West	Approve

Vote resulted in a tie.

Legal Counsel said that the options could be to ask for more information or reopen the hearing for more public comment. Hearing could be continued but the fifth member cannot be used to break the tie since he had not heard the first part of the hearing. Vote is tied on both approval and denial. No majority.

Decision was made to give the Board a 15-minute recess and then to reconvene thereafter.

After returning from the recess, the meeting was called back to order. The Chair asked if anyone would like to make a motion. Board Member Wiley Faw made a motion to grant VAR 22-01, a rear setback variance of two and ½ feet based on the Staff Recommendation. The motion was made with the finding that the request arises from special circumstances due to the shallow depth of the lot. This motion for a variance is in character with the surrounding area and would not adversely affect the public health, safety or welfare, and would not cause a hazardous nuisance to the public. The motion was for approval of the two and ½ foot rear setback variance for construction of a single-family residence with the finding that the request arises from special circumstances due to the shallow depth of the lot. The motion was seconded by Board Member Darrell Poynter. A roll call vote was taken:

Wiley Faw	Approve
Darrell Poynter	Approve
Noel White	Approve
Wayne West	Approve

Motion passed.

Chair announced that the Variance was granted for 2 and ½ feet instead of 5 feet. Audience questioned the appeal process. Legal Counsel advised that anyone had the option to Appeal within 30 days to the Circuit Court.

Chair West introduced the next application as VAR 22-02, a rear setback variance request submitted by Don Green for construction of a cover attached to house, over an existing deck, on property located at 216 Holly Lane, Paris, KY 40361 (parcel ID: 027-40-06-008.00). He asked that Ms. Pompei give the Staff Report.

Ms. Pompei began by stating that Mr. Green, the Applicant for VAR 22-02, proposed a 22 ft rear setback variance to enclose an existing deck to connect to the primary structure. Located at 216 Holly Lane in an R-8 Residential Zone. Parcel Size of .16 acres. Single family dwelling, not located in the floodplain. Proposed rear setback for deck enclosure is 3-feet. Aerial photo in staff report shows where the deck is located. There is a privacy fence. Adjacent neighbor called and was favorable.

She stated her findings as before a variance is granted, the Board must find that the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the vicinity, will not cause a hazardous nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Board shall consider if the requested variance arises from special circumstances. She said yes, the existing corner lot of .16 acres is bound by rear setback requirements on two sides. The applicant proposed to enclose an existing deck. Secondly, would the strict application deprive the applicant of the reasonable use of land or create unnecessary hardship? Given the orientation of this corner lot, the strict application of the zoning ordinance reduces the buildable area on the lot. The applicant has requested relief on the rear of the lot. Finally, are the circumstances the result of actions of the applicant taken subsequent to the adoption of the zoning regulation for which relief is sought? To this, she replied no.

Staff recommendation was for approval of VAR 22-02, the 22 foot rear setback variance for a porch enclosure with the finding that the request arises from special circumstances due to the unusual shape of the lot. The granting of this variance is in character with the surrounding area and would not adversely affect the public health, safety or welfare, and will not cause a hazardous nuisance to the public.

Board Member Faw asked about any other calls from neighbors and Ms. Pompei, nor Ms. Sosby had received any. Chair West asked if similar requests had been received and approved. Ms. Pompei said they had. Mr. Green said his closest neighbors told him his house was one of the nicest in the subdivision.

The Chair asked for questions for Mr. Green. With no questions for him, a motion was entertained to approve or deny VAR 22-02, the 22 foot rear setback variance for a porch enclosure with the finding that the request arises from special circumstances due to the unusual shape of the lot. A motion was made by Board Member Wiley Faw to approve VAR 22-02 the 22 foot rear setback variance for a porch enclosure with the finding that the request arises from special circumstances due to the unusual shape of the lot.

The granting of this variance is in character with the surrounding area would not adversely affect the public health, safety or welfare, and will not cause a hazardous nuisance to the public. The motion was seconded by Member Noel White. A roll call vote was taken:

Darrell Poynter	Approve
Noel White	Approve
Wiley Faw	Approve
Wayne West	Approve

Ms. Sosby asked Mr. Green to see Ms. Thornsburg about a building permit.

There will be a hearing on June 15, 2022, for continuation of a Special Hearing.

With nothing further to come before the Board, a motion to adjourn was made by Board Member Wiley Faw with a second by Board Member Darrell Poynter. All were in agreement. Meeting adjourned.

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Chair

\_\_\_\_\_  
Date