

**Board of Zoning Appeals**  
**January 17, 2018**  
**7:00 P.M.**  
**County Administration Building**  
**201 S. Pearl Street**  
**Paola, KS**

**AGENDA**

---

**1. Roll Call**

**2. New Business**

**a. Oaths of Office – Tom Bach and Larry Sumner**

**b. Election of Officers**

Article IV, Section 4 of the By-Laws states, “Term of office shall be one (1) year and officers may succeed themselves one time for a total term of two (2) years. A member may serve again as an officer after one year has passed from the expiration of the most recent term.”

- Larry Sumner was elected to his 1<sup>st</sup> term in September 2017 after Mike Martin resigned from the board. Sumner is eligible for re-election as Chair.
- Chris Brown was elected to his 2<sup>nd</sup> term in 2017 as Vice-Chairman and is no longer eligible for re-election as Vice-Chairman.

**c. Adoption of 2018-2019 BZA Calendar**

**d. Approval of December 20, 2017 Minutes**

**3. Old Business**

**4. Other Business**

Any other business the Board may wish to discuss.

**5. Planning Director Report**

- a. Variance request scheduled for February 21st

**6. Adjourn**

## **Public Hearing Procedure**

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

**Board of Zoning Appeals  
Schedule**

| 2018         |                      |               | 2019         |                      |               |
|--------------|----------------------|---------------|--------------|----------------------|---------------|
| Hearing Date | Application Deadline | Public Notice | Hearing Date | Application Deadline | Public Notice |
| 17-Jan-18    | 04-Dec-17            | 18-Dec-17     | 16-Jan-19    | 03-Dec-18            | 17-Dec-18     |
| 21-Feb-18    | 08-Jan-18            | 22-Jan-18     | 20-Feb-19    | 07-Jan-19            | 21-Jan-19     |
| 21-Mar-18    | 05-Feb-18            | 19-Feb-18     | 20-Mar-19    | 04-Feb-19            | 18-Feb-19     |
| 18-Apr-18    | 05-Mar-18            | 19-Mar-18     | 17-Apr-19    | 04-Mar-19            | 18-Mar-19     |
| 16-May-18    | 02-Apr-18            | 16-Apr-18     | 15-May-19    | 01-Apr-19            | 15-Apr-19     |
| 20-Jun-18    | 07-May-18            | 21-May-18     | 19-Jun-19    | 06-May-19            | 20-May-19     |
| 18-Jul-18    | 04-Jun-18            | 18-Jun-18     | 17-Jul-19    | 03-Jun-19            | 17-Jun-19     |
| 15-Aug-18    | 03-Jul-18            | 16-Jul-18     | 21-Aug-19    | 09-Jul-19            | 22-Jul-19     |
| 19-Sep-18    | 06-Aug-18            | 20-Aug-18     | 18-Sep-19    | 05-Aug-19            | 19-Aug-19     |
| 17-Oct-18    | 04-Sep-18            | 17-Sep-18     | 16-Oct-19    | 03-Sep-19            | 16-Sep-19     |
| 21-Nov-18    | 08-Oct-18            | 22-Oct-18     | 20-Nov-19    | 07-Oct-19            | 21-Oct-19     |
| 19-Dec-18    | 05-Nov-18            | 19-Nov-18     | 18-Dec-19    | 04-Nov-19            | 18-Nov-19     |

The Miami County Board of Zoning Appeals meetings are held as needed on the 3rd Wednesday of the month at 7:00 p.m. in the County Commission Chambers, 201 South Pearl, Paola, KS 66071. Please note that the the annual business meeting is held in January and will be held whether an application has been received or not.

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

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

**MINUTES OF THE  
MIAMI COUNTY BOARD OF ZONING APPEALS  
December 20, 2017**

**MIAMI COUNTY ADMINISTRATION BUILDING  
COMMISSION CHAMBERS  
201 SOUTH PEARL STREET  
PAOLA, KANSAS 66071**

**ATTENDANCE:**

|                              |  |
|------------------------------|--|
| <b>CHAIR:</b>                | Absent   |
| <b>VICE-CHAIR:</b>           | Chris Brown                                      |
| <b>MEMBERS PRESENT:</b>      | Tom Bach, Ken Berg, John McLean, and Ken Patrick |
| <b>MEMBERS ABSENT:</b>       | Larry Sumner & Lloyd Peckman                     |
| <b>PLANNING DIRECTOR:</b>    | Not present                                      |
| <b>COUNTY COUNSELOR:</b>     | Not present                                      |
| <b>PLANNER/SECRETARY:</b>    | Kenneth Cook                                     |
| <b>COUNTY COMMISSIONERS:</b> | None present                                     |
| <b>COUNTY CLERK:</b>         | Not present                                      |
| <b>PRESS:</b>                | Not present                                      |

# MINUTES

December 20, 2017

## MIAMI COUNTY BOARD OF ZONING APPEALS

### 1. Call To Order

Vice-Chair Chris Brown called the meeting to order at 7:00 p.m.

### 2. Pledge of Allegiance

### 3. Roll Call:

Five members were present for roll call, which constituted a quorum. Chair Larry Summer and Lloyd Peckman were absent.

### 4. Approval of Minutes

Tom Bach moved to approve the minutes of the October 18, 2017 meeting of the Board of Zoning Appeals. Ken Berg seconded. The motion passed unanimously (5-0)

### 5. New Business

None.

### 6. Old Business

#### a. 17003-VAR: Milkowski

Brown asked the applicants if the survey for the property had been completed. Mr. Milkowski replied that it had not been done.

Bach suggested that staff provide an update on the request. Kenneth Cook provided a brief review of the staff report, the findings that must be considered to grant a variance and status of the project. Cook also stated that the applicants were in the audience and that they could provide additional information in regards to the status of this project.

Berg asked what the setback requirement was. Cook replied that the requirement is 50 feet from the edge of the right-of-way. Berg asked if there was a normal right-of-way width. Cook stated that the normal right-of-way width for a local road according to the Comprehensive Transportation Plan was 80 feet of total width or 40 feet from the center of the ROW. Cook stated that in this case the road is a private.

Bach suggested that the Board hear from the applicant. Mr. Milkowski discussed that it was his understanding that the building was needing to be setback around 90 feet from the center of the road. Mr. Milkowski also stated that at the last meeting it had been discussed that a survey was needed and that there was also property located adjacent to theirs that is in dispute and that they had thought was part of their property. Mr. Milkowski stated that they have

been trying to get ahold of the neighbor to see about purchasing this disputed property and then a survey would be performed of both pieces. At this point they had not been successful at getting ahold of the neighbor, although it appeared that they would be able to get together with them next week.

Bach stated that at the previous meeting that the Board offered a 60 day extension, with no additional charge, to provide time for the applicant to have a stake survey done and to work with his neighbors on acquiring additional property. Mr. Milkowski stated that he had talked with a surveyor and that they had some reluctance due to the location of the property and how this area was originally laid out. He also stated that they have had similar issues in the past.

Mr. Milkowski stated that they also approached the title company to see if they would provide any assistance due to the errors that had occurred and they stated that they would not.

Patrick asked if the properties to the East were accessed off of 221<sup>st</sup> Street. The applicant stated yes.

Bach asked if they were wanting to construct a 30' x 40' building. The applicant stated that this was correct.

Patrick stated it would appear that if they constructed the building as proposed, they would lose access to one of the basement garage doors. Mr. Milkowski stated this was correct and they have discussed that lawnmowers and other items could be placed in there.

Patrick asked if the applicant had placed the lateral field to the East of the house. Mr. Milkowski stated that this was correct. Patrick also stated that the house appears to be the closest house to the street. Mr. Milkowski stated that others may be closer or at least similar. Patrick replied that the accessory structure on the property to the West would appear to be the next closest structure and that it appears to be located about the same distance from the road as the applicant's house. Patrick also specified that the location of the proposed building would appear to be even closer. Patrick commented that in cases where a subdivision has been developed prior to regulations and where many structures are already located closer to the road than permitted, that it would not make as big of a deal as the request would be similar to what is already there. But, that this is not the case in this circumstance. Berg stated that it kind of depends on where the road is. Bach replied that this was within the 3-mile jurisdiction of Spring Hill before the county removed the planning areas. Bach stated that he was not sure if the road was located where it was supposed to be back when it was built. Patrick stated that if you look at the original plat, that it does not look anything like it does now.

Brown asked if there were any questions. Berg asked if we operate on a simple majority. Cook stated yes. (Secretary Note: The bylaws require at least 4 members of the Board of Zoning Appeals to approve any agenda items.)

Bach stated that he would like to make one more comment. Bach referred to the staff report and the five criteria that the Board needs to consider to approve or deny a variance request. He stated that he agrees with items A, B, C & D of the staff recommendations. He further stated that on item C, that he does not believe that the request will have any substantial impact on others and that it is not in conflict with the general spirit and intent of the regulations. He specified that he agrees with the staff findings on A, B, C, D & E.

Bach moved to grant the variance based upon the findings of A, B, C, D and E of the staff report and recommendations. Berg seconded

Brown stated that we have a motion and a second and asked if there were any additional questions or discussion. Patrick stated that he questions the premise in that the first stipulation states the variance cannot be created by the action of a property owner or applicant. Patrick further stated the applicant built the house, their contractor put in the lateral field. It is laid out the way it is by his choice, his action. It is not something that someone else did to him. It was the selections that he made. Bach stated that he felt as though his actions were dictated by the topography of the ground, the lot and what he could do in a certain location. He put his septic system about the only place he could put it and so is mostly impacted by the shape of the lot. Patrick stated that the second stipulation is that the granting of the variance will not adversely affect the rights of adjacent property owners. He is already the first house you see as you come around the corner and he is already the closest structure to the road and this will make him even closer and will be a metal building out in front of his house. Bach stated that he did not feel like you would really see it until you get around the corner and that he did not believe the building would be an objectionable thing compared to the site line of the house.

Bach stated that he still stands by his motion and that we also have a second and so it should either be approved or denied. Patrick stated that he felt as though we should at least hear from the neighbors before we grant this. Patrick asked if the neighbors had been notified. Cook specified that there is not a notification requirement for variance requests and that they are only published in the paper.

Bach specified as a point of order that there is a motion that has been made and seconded and that a vote needs to be called. Brown asked if there was any further discussion. Bach stated that there was no discussion on it, that a motion has been made and seconded and a vote should be called for.

The motion passed four yeas to one nay, with Patrick opposing (4-1).

## **7. Other Business**

The Board discussed the five standards on which a variance may be granted.

## **8. Planning Director Report**

None.

## **9. Adjourn**

Ken Berg motioned to adjourn the meeting. Second by Tom Bach. The motion carried unanimously.

The meeting was adjourned at 7:35 p.m.

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

---

Kenneth A. Cook, Secretary

---

Chair, Larry Sumner

Minutes written by Kenneth A. Cook.

DRAFT