

**MINUTES OF THE  
MIAMI COUNTY BOARD OF ZONING APPEALS  
APRIL 21, 2021**

**MIAMI COUNTY SHERIFF'S OFFICE  
COMMUNITY ROOM  
209 SOUTH PEARL STREET  
PAOLA, KANSAS 66071**

**ATTENDANCE:**

**CHAIR:** Chris Brown

**VICE-CHAIR:** Gary Brockus

**MEMBERS PRESENT:** Ken Berg, Ken Patrick, Mark Ross, and Larry Sumner

**MEMBERS ABSENT:** None

**PLANNING DIRECTOR:** Not present

**COUNTY COUNSELOR:** Not present

**PLANNER:** Kenneth Cook

**SECRETARY:** Angie Baumann

**COUNTY COMMISSIONERS:** None present

**COUNTY CLERK:** Not present

**PRESS:** Not present

## MINUTES

APRIL 21, 2021

### MIAMI COUNTY BOARD OF ZONING APPEALS

#### 1. CALL TO ORDER

Chairman Brown called the meeting to order at 7:00 p.m.

#### 2. PLEDGE OF ALLEGIANCE

#### 3. ROLL CALL

Six members were present for Roll Call, which constituted a quorum.

Cook recommended amending the Agenda to add Larry Sumner's Oath of Office as the first Item under New Business. Brockus moved to amend the Agenda, as proposed. Ross seconded, and the motion passed unanimously, 6-0.

#### 4. DISCLOSURE OF ANY EX PARTE COMMUNICATIONS OR POTENTIAL CONFLICTS OF INTEREST

None disclosed.

#### 5. NEW BUSINESS

##### a. Oath of Office

Angie Baumann, Board Secretary, administered the oath of office for Larry Sumner.

##### b. Amendment of Adopted 2021-2022 BZA Calendar

Cook explained that staff proposes amending the adopted 2021-2022 Board of Zoning Appeals calendar to correct errors in the application deadline and public notice deadline for the April 2022 meeting. Ross moved to adopt the calendar, as amended. Patrick seconded, and the motion passed unanimously, 6-0.

##### c. 21001-VAR (York)

Cook presented the staff report for consideration of a request for a variance from Section 6-5.02.3 (Front Yard) and 16-1.02 of the Miami County, Kansas Zoning Regulations, requiring a 50-foot minimum setback from ultimate right-of-way. The applicant would like to construct an addition to the existing residence that is located approximately 14.5 feet from the ultimate right-of-way. The proposed addition would also be approximately 40.5 feet from the ultimate right-of-way. The subject property of approximately 10 acres is addressed as 38510 Rockville Rd, zoned Agricultural (AG), and located in the Northeast Quarter of Section 5, Township 19S, Range 25E, Sugar Creek Township, Miami County, Kansas. Submitted by Logan and Katie York, property owners of record.

Cook read aloud the following from Article 23-6.04.1 of the Zoning Regulations:

“The Board of Zoning Appeals shall not grant a variance unless it shall, in each case, make specific written findings of fact, based upon the particular evidence presented to it, that all of the following standards have been met.”

Cook reported that the same variance standards are also found in Kansas Statute 12-759(e). He then addressed each of the five standards for variances:

**A. *“The variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zoning district, and is not created by an action or actions of the property owner or the applicant.”***

Cook stated that the existing house was constructed circa 1920; and, the structure would have then been allowed in this location. He noted that the house sits in such proximity to the road that the proposed addition to the rear of the house would also encroach into the front yard setback. He then addressed the following portions of the Zoning Regulations, which apply to the requested variance:

**Article 16 - Nonconforming Uses, Section 16-1.02**

“. . . A building . . . shall not be added to, enlarged in any manner or moved to another location, where such addition, enlargement or relocation would also be nonconforming.”

**Article 21 - Permits, Section 21-1.02: Conformance With County Regulations And Plans**

“All building or structure setbacks along roads shall be measured from the ultimate right-of-way identified in the Miami County Comprehensive Transportation Plan.”

Cook stated that if the 50’ front yard setback was measured from the edge of the current right-of-way the new addition would be outside of the setback. However, the Regulations specify that the front yard setback is instead measured from the ultimate right-of-way. Cook explained that because Rockville Road is a “Local” road the current right-of-way is 20’ from the center line of the road, whereas the ultimate right-of-way is 40’ from the center line of the road. Therefore, the proposed addition would encroach into the setback. He noted, however, that the proposed addition would not encroach into the front yard setback any farther than the existing house already does. He also noted that the proposed addition also would not increase the nonconformity of the existing house.

Cook expressed that the farmhouse’s proximity to the road could be considered a unique condition, as many such farmhouses have since been demolished.

**B. *“The granting of the variance will not adversely affect the rights of adjacent property owners or residents.”***

Cook commented that he believes there are no concerns in this regard. He added that this will also not affect the County’s ability to maintain the road. Conversely, denying the variance does not change the location of the existing house.

***C. “The strict application of the provisions of these Regulations from which a variance is requested will constitute unnecessary hardship upon the property owner represented in the application.”***

Cook believes this would constitute an unnecessary hardship. He reasoned that the entire existing structure would need to be moved farther back for the addition to fully comply with the Regulations.

***D. “The variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.”***

Cook noted that this section of Rockville Road likely will not experience any development to such an extent that the variance requested would give cause for concern regarding expansion of this road. He also reported that Road & Bridge Director J.R. McMahan commented that the Department does not oppose this request.

***E. “Granting the variance desired will not be opposed to the general spirit of the regulations.”***

Cook explained that front yard setbacks are intended to provide greater separation distance from reckless drivers and from dusty, gravel roads. He added that front yard setbacks help to maintain consistency in the character of a neighborhood and ensure that structures are not located so closely to a road that they could impede a motorist’s line of sight.

He noted that staff believes granting the variance will not be opposed to the intent of the Regulations. He added that the location of the proposed addition creates the least amount of impact to adjacent property owners and to the County, and granting of the variance can be considered the least amount necessary to afford relief.

Cook invited questions from the Board, and noted that the Applicant is also present this evening.

Patrick commented that this variance request is like a previous request. He then stated that when a nonconformity exists it is technically beyond this Board’s authority to grant a variance, even if it would not further increase the nonconformity. He further expressed that this Board would like the Board of County Commissioners to grant them such authority if they so desire.

Patrick noted that the downside of the proposed addition is that in the event of a condemnation due to road expansion, the County would have to pay more for the house. He recommended that the County waive the extra value that would otherwise be given to the house because of this addition.

Cook added that because the existing house is nonconforming, if it is ever destroyed by fire, tornado, etc. beyond 50% of fair market value the Regulations would require that the house be brought into full compliance. Therefore, the owners would be required to relocate the house outside of the setback if they wanted to rebuild after such an occurrence.

Brockus asked whether a variance could be uncovered in a title search.

Cook answered that variances are not recorded in the land records, but that record of such is retained in the Planning Department's records and supplied with the building permit. He also noted that because the existing house is located within the setback, any prospective purchaser or new owner of the property should do their due diligence.

Cook noted that staff recommends approval of the requested variance based on the Findings and subject to the Conditions in the staff report.

The Applicant, Katie York, explained that their family is a farm family with four children, three of whom are teenagers, who are sharing one bedroom. She commented that the amount of boots, coats, and mud coming into their house is astounding. She expressed that she is especially excited about the possibility of a mudroom.

Ross recalled a previously approved variance, in which the Applicants desired to add onto the side of their existing residence, but part of the existing residence was within the front yard setback.

Cook responded that Ross is referencing the Yerby variance.

Patrick commented that it seems this Board should have the authority to grant a variance when there will be no additional encroachment than what exists currently. He further commented that the Board of County Commissioners has not given such authority to this Board.

Ross moved to approve variance request 21001-VAR: York, based on the five Findings and subject to the Conditions listed in the staff report. Berg seconded, and the motion carried with five (5) in favor and one (1) opposed (Patrick).

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## **Findings**

1. The variance arises from a condition that is a) unique to the property in question, in that the existing house was built in close proximity to the right-of-way and built prior to the adoption of the Zoning Regulations; b) not ordinarily found in the Agricultural District; and c) was not created by the actions of the property owners.
2. Granting the variance will not adversely affect the rights of adjacent property owners.
3. Denial of the variance request could be considered as imposing an unnecessary hardship upon the property owners, as the existing house is located entirely within the Front Yard Setback; therefore, there is no alternative location for the addition that would comply with the Front Yard Setback requirement.
4. Granting the variance will not adversely affect the public's health, safety, morals, order, convenience, prosperity, or general welfare.
5. Granting the variance will not be opposed to the general spirit and intent of the Zoning Regulations, as the location of the proposed addition does not create an impact to adjacent property owners or to the County, and can be considered the least amount necessary to afford relief

**Conditions**

1. The variance is granted for only that which is shown on the Plot Plan, which is attached hereto as Exhibit "A". Any additional or future encroachment into the setback area shall not be allowed, except as that which may be granted through the variance procedure.
  2. The Applicants must obtain a building permit for the proposed addition. All County codes related to this addition shall be complied with.
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**5. OLD BUSINESS**

None.

**6. OTHER BUSINESS**

Sumner asked staff for an update concerning the Nolan property, for which the Board had denied their request for a variance from the Floodplain Regulations; had reconsidered the variance request at the behest of District Court; and had again denied the requested variance. Cook responded that the Applicants chose not to appeal the Board's decision a second time. He reported that the Applicants found a way to comply with the Regulations and worked with staff and the State of Kansas to do so.

**7. PLANNING DIRECTOR REPORT**

Cook announced that Joe Flake is resigning from the Board due to a consistent calendar conflict. He reported that Commissioner Roberts is currently searching for his replacement.

**8. ADJOURNMENT**

Brown called for a motion to adjourn. Patrick moved to adjourn, Sumner seconded, and the meeting was adjourned by a unanimous vote (6-0) at 7:38 p.m.

Approved this 27<sup>th</sup> day of May, 2021.

  
Angie Baumann, Secretary

  
Chairman, Chris Brown/Vice-Chair, Gary Brockus

Minutes written by Angie Baumann.