

**BOONE COUNTY BOARD OF ADJUSTMENT
BOONE COUNTY ADMINISTRATION BUILDING
BOONE COUNTY FISCAL COURTROOM
BUSINESS MEETING
OCTOBER 12, 2016
6:00 P.M.**

Mr. Whitton called the meeting to order at 6:00 P.M.

BOARD MEMBERS PRESENT:

Mr. George Whitton, Chairman
Mrs. Sherry Hempfling
Mr. Bradley Shipe
Mr. Richard Miller
Mr. Chris Vaught

LEGAL COUNSEL PRESENT:

Mr. Dale T. Wilson

APPROVAL OF MINUTES

Mr. Whitton stated the Board members received copies of the minutes of the Boone County Board of Adjustment meeting of September 14, 2016. He asked if there were any comments or corrections? There being no changes, Mr. Miller moved that they be approved as written and Mr. Shipe seconded the motion. Mr. Whitton called for the vote and it carried.

ACTION ON REVIEWS

- 1. Request of Cornerstone Baptist Church for a Conditional Use Permit to remove a condition which requires the parking area to be secured when the church is not in use in a Rural Suburban Estates (RSE) zoning district. The approximate 5.64 acre site is currently located at 3920 Petersburg Road, Boone County, Kentucky.**

Staff Member, Mitch Light, presented the Staff Report which included a PowerPoint presentation (see Staff Report).

Mr. Miller asked Mr. Light to show the PowerPoint slide that shows the driveway on KY 20 and the parking lot. He asked if anything was currently in place to secure the parking lot? Staff member Vinnie Fazzino said the next PowerPoint slide shows the location of the cable gate. Mr. Miller said it looks like the condition prohibited vehicular access only because people can walk around the cable gate.

Pastor Steve Hankins said there were posts at the entrance of the driveway and they were found to be hazardous. There was a case that directly affected him. He was following someone into the church and the cable was up. He was not able to get off the road and a big truck came up behind him. He had to drive down the road to get out of the way. He then came back to the church and unlocked the gate. They then decided to move the cable gate closer to the parking lot. That worked fine for awhile, until one of their elderly

members drove through the gate and damaged the posts and his car. From that point on, they decided not to use the cable gate because it is hazardous. He has written a letter, which is included in the Staff Report, and it gives the reasons why the cable gate should be removed. He reviewed the points from the letter.

Mr. Miller asked why they hadn't considered using a gate? Pastor Hankins said he believes a gate would give a negative appearance. He questioned why the cable gate was being used before he became Pastor of the church. He was not aware that it was a condition of approval from the Board of Adjustment. He thought it looked very unwelcoming.

Mr. Mark Haddox said he and his wife are the closest neighbors to the church. They built their home 4 years ago. He approximated the cable was removed within 6 months of them building their home. He said a lot of people will pull into the church parking lot to get aggressive drivers off their rear. They will pull into the church lot, circle around, and get back onto the road. He has also seen people pull in to meet other people. He is not a member of the church but has seen nothing but kindness, consideration, and cooperation from them. Approximately 9 months ago, his nephew and niece had to come live with him and his wife as their house was being renovated. The church out of kindness said they could use two of their parking spaces. He felt that the cable gave the impression of a church with a barrier and that is not needed.

Mr. Miller asked if there had been any incidents in the parking lot since the cable has come down? Pastor Hankins replied no. He added that the Kahmann's complaint was legitimate. He wouldn't want to hear a generator running all night. He has since spoken to them and believes the issue is resolved.

Mr. Haddox said there was one night when a vehicle pulled into the parking lot and stayed overnight. He could not get a hold of the Pastor so he called 911. The Boone County Sheriffs Deputies informed him that it was 2 people that were applying for a job the next day. It was the only time he has called 911 regarding a suspicious vehicle on the lot.

Mr. Don Seely said he was Chairman of the Deacons and Treasurer for the church. The church has been experiencing some growth. Most of their congregation comes from a mile or two away. He said the church wants to be reasonable and in compliance with the rules. They feel the current condition is unreasonable and dangerous. He has not seen many other churches with gates in front of them and they are here to change it.

Mr. Tom Lightner, said he was Trustee for the church. He stated that there was also an incident where a 10 year old boy ran into the cable and fell back.

Chairman Whitton asked if anyone wished to speak in opposition to the request? There was no response.

Mr. Whitton asked for a motion. Mr. Vaught made a motion to approve the request as submitted and Mr. Miller seconded the motion.

Mr. Whitton called for a vote. The motion carried 5-0.

2. Request of Rider's Automotive for a Conditional Use Permit to allow an automotive repair facility in a Commercial One (C-1) zoning district. The approximate 0.9 acre site is currently located at 10055 Dixie Highway, Boone County, Kentucky.

Staff Member, Kevin Wall, presented the Staff Report which included a PowerPoint presentation (see Staff Report).

Mr. Miller asked if the only plan that was submitted was the one that was presented on screen? Mr. Wall said the two-dimensional plan was the only one that was received.

Mrs. Amy Rider said she and her husband, Mark, own Rider's Automotive. She also introduced Troy Walling, the general contractor for the project. They began leasing the building at 10053 Dixie Highway back in 2006 and they are still in it today. They were recently made aware of the violations on the property and have been taking corrective actions. A lot of the cars that were on this lot have been moved to the storage lot on the subject property with permission from the owner. All of those vehicles will not be staying there and they are not operating a junkyard. They have simply outgrown their building and have recently obtained the financing to purchase a new building and move forward. Some of the vehicles at the subject location are waiting on parts and others need to go a junkyard in Walton. They have asked Mr. Fazzino to give them some time to resolve the issue and he has done so. Their current landlord also owns Dino's Sports Café. They have been parking their rollbacks there. They are on Boone County's rotation to remove vehicles from accident scenes. Unfortunately, there are times when vehicles sit on their lot for weeks or even a month because of insurance issues. They are trying to come into compliance with everything that they are in violation of. They definitely want to have a better appearance. This is why they are pursuing the subject location and trying to move forward.

Mr. Walling said they have 3 garage bays at their existing shop. He said vehicles are going in and out of these bays all day long because of the amount of business that they have. The new building will have 8 bays and they will be able to keep wreckers and tow trucks inside the building at night. The building footprint on the lot will not change that much. They may move the proposed building location forward or backward so the layout is the best for the lot. There is an existing fenced area behind the building that they plan to utilize. All of the stuff that is visible from the street at the existing location will be in this fenced lot and will be out of public view.

Mr. Whitton asked how the building would be constructed? Mr. Walling said the building will be similar to a Tire Discounters or Bob Sumerel Tire. The building would probably have brick and stone on the front, split face block on the sides and rear, and a shingle roof. They do not have exact plans drawn yet because they were waiting on the outcome of this meeting. The building will have an office area with a glass storefront on the side, 3 bays on the front facing Dixie Highway, 2 bays on the side, and 3 bays on the rear. The bays on the side and rear will be obstructed from public view.

Mr. Whitton said he would like to address the Staff recommendations (Staff Comment #6).

- A. No auto body or paint work shall be performed on site.** The applicants responded they didn't do this type of work.
- B. All car repairs shall be made inside the building.** The applicants indicated they currently were performing repairs outside but that will not be the case with the new building. The FedEx trucks will fit inside the new building.

- C. Vehicles shall not be left outside on blocks or in a disassembled state.** The applicants indicated that would not occur once the new building was constructed because they will have more room inside. Mr. Rider added that their current building is only 25' deep. He said a small four door car will fit inside the building with no problems. A full size van is right up the tool boxes in the front and the garage door in the rear. Some of the vehicles they work on will not fit inside the building. The new facility will remedy this.
- D. Vehicle impounding shall be prohibited.** Mrs. Rider said most of the impounding they do is for Boone County. These could be insurance violations, driving under the influence violations, or accidents. Most of the things that are impounded go back to Boone County's impound lot and rarely to their lot. However, there are times when investigations are ongoing and vehicles are on their lot for more than a couple of weeks. She indicated that these vehicles would be stored inside the fence area behind the building. The parking spaces out front would be customers that are leaving their vehicles overnight to be serviced.
- E. The business shall not be operated as a junkyard (see definition in Article 40 of the Boone County Zoning Regulations).** Mrs. Rider said they do not buy cars for parts. They are working with a junkyard in Walton to remove the vehicles that need to be taken away. Some of these vehicles were worked on and the customer never came back to pay the bill. Once abandonment charges are finalized they are legally able to release the car. This process can take from 45 to 90 days. They have been working on this issue since the summer but the process takes time.
- F. Truck rental, trailer rental, and the retail sale of motor fuels shall be prohibited.** Mrs. Rider said they currently rent U-Hauls and the previous tenant of the building also rented them. The U-Hauls sit there as an advertisement so people know they can rent them.

Mr. Whitton asked if U-Haul rentals were permitted in this zone? Mr. Wall said he needed to review the zoning regulations. He stated the way the applicants explained vehicles staying on the lot does constitute vehicle impounding and that is not permitted in this zoning district. This is the case for any business, even those on Boone County's impounding list. Mrs. Rider asked what constitutes vehicle impounding? Mr. Wall said towing a vehicle and allowing it to sit until something else happens is vehicle impounding because it is part of a towing service and not a repair service.

He added that the rental of trucks and trailers is permitted in a Commercial One (C-1) zone as an accessory use to a principally permitted business. It is qualified with a statement indicating that they are only permitted to be displayed in the side or rear of the property. He said the Board should look at the whole proposal (repair shop, parking, storage yard, rental of U-Hauls from the side and rear yard) before acting on the Conditional Use Permit application.

- G. The rear storage lot shall be enclosed with a wood or vinyl privacy fence or decorative masonry wall.** Mr. Whitton asked what type of fencing currently enclosed the storage yard? The applicants indicated that it a wooden privacy fence on one side and the rest of it is chain link fencing. The gates have PVC slats.

- H. **All tow trucks and wreckers shall be stored behind the building.** The applicants indicated all tow trucks and wreckers would be kept inside or behind the building.
- I. **No vehicle shall be stored in the parking/storage lot for more than fourteen days.** Mr. Rider said that may present a problem. He has a truck that he is working on now. He took the computer out of it and sent it away to be repaired. It is going to be 30 days before he gets it back. Mrs. Rider said they could keep that vehicle behind the building so it wasn't visible.

Mrs. Hempfling asked if they have any estimates of how many vehicles will have to be stored? Mrs. Rider said she would expect the number to be 10 or less. Mrs. Hempfling asked if they had an approximate of how much space were back there? The applicants indicated that the area is larger than the building. They approximated there would be 6,000-7,000 square feet of storage area between the side and back of the building. They plan on pushing the new building forward as much as they can to enlarge the storage area.

- J. **Outside display or storage of car parts or accessories is prohibited.** The applicants indicated they didn't do that.
- K. **The entire parking lot shall be resurfaced with asphalt on concrete. The improved parking lot shall not contain any gravel surfacing.** The applicants indicated that the parking lot is mostly asphalt and they plan to touch it up. Mr. Whitton asked if there were any existing gravel surfaces? They indicated the rear storage lot contains some gravel and that there is a small square of gravel in the front parking lot where the gas pumps used to be. Mr. Whitton asked if any gravel surfacing is proposed to remain? Mr. Wall replied the lot must contain asphalt or concrete surfacing because the entire site is being redeveloped.

Mr. Whitton asked if their intention would be to repave the lot? They indicated their intention was to keep the existing concrete in the back, asphalt the gas tank area in the front, and recoat the entire front lot so it all matches.

Mr. Miller said his biggest problem is that they are speculating where everything is going. They have only presented a two-dimensional layout. He cannot vote for the request now because plans are needed show all the things are they are talking about (building location, parking/storage areas, building appearance). He knows it is an investment to do plans, but this Board needs to see them to evaluate the request. For example, is the lot large enough to house the vehicles? Where are the entry doors? Where are the 8 garage bays located?

The applicants indicated that a conceptual front elevation and floor plan were submitted. Mr. Miller said he didn't receive that information in his packet. He would still need a better layout of the lot even if that information was submitted. Mr. Whitton added they need a Site Plan. The applicants indicated that all of that information was provided. Mr. Wall said he could check Mr. Morgan's project file upstairs. Mr. Miller said the only thing they have in their packets is the two-dimensional drawing that was shown on screen. Mr. Miller said Mr. Morgan's comments (Staff Comment 4D) indicate that he did not receive any building elevations. Mrs. Rider said she remembers hand delivering them to the Planning

Commission office.

The applicants indicated that they were concerned about preparing a Site Plan and having to revise it if they are granted conditional approval. They were hoping to get an answer and move forward. Mr. Miller said this is a case where the existing business has had a lot of violations. He would personally need to see more detail before he could vote for the application. He is not asking them to design the building with foundation plans. He wants more information regarding the size and location of the building, parking areas, and building elevations or renderings. The Site Plan is critical because they have had a problem with the storage of vehicles on their lot and it will show if they have a plan to solve the problem. It will show where cars will be stored, where customers and employees will park, and if there is proper vehicular circulation. This is a small lot and vehicle circulation is critical.

The applicants responded that the Erpenbeck plan shows the lot, outlines of the existing and proposed building, fenced area, and rear buffer yard. They are not planning on revising any curb cuts. Mr. Miller said that plan doesn't allow him to make a judgement on the request. It doesn't show how vehicles are going to be stored are where parking spaces, driveway aisles, and landscaping buffers are going to be located. He agrees that the storage area is shown but the plan doesn't show how the storage area will be used. He asked where vehicles would be parked and how a tow truck would access them. In his opinion, they need a circulation plan to show how the storage area will work.

Mr. Miller said the applicants indicated that the proposed building will be deeper than the existing building. He asked how the footprint is being reduced if the building is getting deeper? The applicants responded the building they are proposing is smaller than the existing building. However, it will have a different configuration and be deeper. Mr. Miller said they also indicated the building will be taller. The applicants agreed. He said he needs a plan to show him the location of the 8 bays, parking areas, and traffic circulation areas.

Mr. Whitton asked if they could go to Staff recommendation K. The applicants indicated that they would be willing to asphalt the gravel areas in back of the building if it is required.

- L. The entire parking lot shall be striped and be in compliance with the Boone County Zoning Regulations. All vehicles parked on site shall be placed in striped parking stalls.** Mr. Whitton and Mr. Miller asked if the entire lot, including the storage lot, was going to be striped? The applicants indicated that striping the lot was not a problem.
- M. The landscaping buffer along the rear property shall comply with the Buffer Yard C landscaping requirements that are found in the Boone County Zoning Regulations.** The applicants indicated that the rear buffer already complies with code.
- O. Large shrubs from Plant List C shall be installed in the island between the two curb cuts.** The applicants indicated they didn't have any issue with that condition.

- P. The nonconforming freestanding sign on the site shall be removed.** The PowerPoint slide of the sign was shown and the applicants indicated that was the only sign on the property. Mr. Miller said they might have to put up a new sign if the existing one is nonconforming. Mr. Wall said the current code allows a 10' tall monument sign in this zone. The Board needs to determine if the nonconforming sign can remain or if it should be updated to comply with code as part of the Conditional Use Permit package. He said a principally permitted C-1 business could keep the existing sign and simply update the panel. The applicants asked if they would be permitted to have signs on the building? Mr. Wall said they would be permitted. Mr. Miller recommended they show the building mounted sign package on the elevations to show that they would comply with zoning.

Mrs. Hempfling asked if the applicants could address Staff comment 2B? The applicants indicated that comment applies to their existing building. They do not own that property and those things were supposed to have been addressed back in 2002. That landscaping was never installed and they had nothing to do with it. They are tenants in that building. They indicated that Mr. Fazzino and Mr. Morgan made them aware of the issue a few months ago and the landlord is working to address it. Mr. Walling said they will be moving once the new building is constructed and all operations will be on the subject site.

Mr. Whitton said the sign is pre-existing nonconforming if it's already there. Mr. Miller said that sign is for the use that is there now and they are demolishing that use. Mr. Wilson said the sign is a pre-existing structure and it's separate from the building. Mr. Wall agreed. He said the sign is a pre-existing nonconforming structure and can remain. However, the Board needs to determine how the sign fits into the Conditional Use Permit equation since they are looking at a complete site redevelopment.

Mr. Miller asked if they would put new panels in the sign to represent the new business? The applicants indicated they would. Mr. Miller questioned if this would be an expansion of the nonconforming use? Mr. Whitton said the determining factor for him would be if the new sign face was the same square footage or less than the existing sign face. This would not increase the nonconformity.

- Q. All proposed freestanding, building mounted, and directional signage shall be manufactured by a professional sign company and meet the current standards of the Boone County Zoning Regulations (size, height, materials, placement, etc.).** The applicants indicated they had no issue with that condition.
- R. All proposed lighting shall be directed downwards and inwards toward the subject site.** The applicants indicated they had no issue with that condition.
- S. The proposed building shall be subject to a Staff Design Review process when the Site Plan is submitted for review. The building shall comply with the following:**
- **The eastern building facade shall be designed with the appearance of a front facade (entry door and accompanying storefront or decorative metal garage door(s) with windows).**

- **All garage doors visible from Dixie Highway shall match and use a decorative metal design with windows.**
- **The front and side primary exterior wall materials shall include brick, architectural grade CMU, stone, tile, or concrete which is formed to have a highly textured, fluted, or unit masonry appearance. The materials shall have an integral color. Architectural grade metals, such as Alucobond type products, are also permitted. Aluminum store front units, with appropriate masonry detailing, can also be used in conjunction with these materials.**
- **Materials such as EIFS/stucco, wood or cement board siding, and precast concrete can be used for trim and detailing.**
- **Exterior wall colors shall primarily use colors which are reflective of rich, natural tones, such as those in the red, bed-brown, clay, beige/tan/blond or warm gray ranges. White or exceptionally dark colors shall not be permitted. Other colors may be used for trim and detailing. The color scheme shall use at least two colors to highlight the building features and details and create contrast.**
- **Any roof mounted mechanical equipment shall be screened by a parapet wall from public view.**
- **Building landscaping shall be required on the front building facade per Section 3630 of the Boone County Zoning Regulations.**

Mr. Miller said he still wanted to see elevation drawings. He plans on making a motion to table the request. He currently would be opposed to the project because he has not seen enough information. He is willing to take a look at more detailed drawings and have an open mind.

Mr. Whitton asked if anybody else in the audience wanted to speak for or against the request. There was no response.

Mr. Whitton asked for a motion. Mr. Miller made a motion to table the request until they get the supplemental information that has been done. Mrs. Hempfling seconded the motion.

Mr. Whitton asked if there was any discussion on the motion. Mr. Shipe asked the applicants if they were clear on the information the Board was looking for? Mr. Whitton said they are looking for some details on the building and some additional site layout information. They do not need full architectural drawings.

Mr. Whitton called for a vote. The motion carried 5 - 0.

3. **Request of John F. Berry for a Variance to allow a house to encroach into the 60 foot front yard setback in an Agricultural Estate (A-2) zoning district. The approximate 4.9 acre lot is located at Lot 21, Eagle Oak Estates Subdivision, Boone County, Kentucky. The subject property fronts on the southwest side of the Eagle Ridge cul-de-sac.**

Staff Member, Vinnie Fazzino, presented the Staff Report which included a PowerPoint presentation (see Staff Report).

Mr. Wilson noted for the record that Mr. Shipe left the meeting during Mr. Fazzino's presentation and was no longer present. He had to leave for a scheduled appointment.

Mr. Rod Fussinger said he was the agent that was marketing the property for the Berry's. He said the Staff comments pretty well described the issue with the lot. He stated the property being a cul-de-sac lot with very little street frontage contributes to the problem. There would be more latitude to situate a house on the property if it were not a cul-de-sac lot. Several people that have looked at the property have had concerns about getting the house and the septic system placed on the lot. The septic system needs to be placed in an area where the grade isn't that steep and that presents a problem on this lot. He said the subdivision is pretty well built out and it would be unattractive to have one lot not being built on. The Variance would ensure that a house would be built on the lot. He added that the subdivision has minimum square footage requirements. The minimum for a ranch is 1,800 square feet and the minimum for a two-story is 2,200 square feet. He believes the Variance will allow a bigger house to be constructed on the lot and that will be an advantage for the neighborhood.

Mr. Miller asked if there had been any layouts prepared to show how a house would be laid out if the Variance was approved? Mr. Fussinger said they did not have any plans. However, he has several people that might be interested in the lot if the Variance is approved. The shape of the lot, topography, and setback requirements make it difficult for a ranch house to be situated on the lot. People have looked at the lot with their builders and the septic department and have decided not to purchase the lot.

Mr. Greg Selby said he was a resident of Eagle Oaks and he is opposed to the application. He doesn't think it should matter what the topography is from the top and bottom of the hill because it will never change. In his opinion, the topography in the building area isn't unbuildable because there are several things that can be done to overcome the issue. Providing a septic system on the lot is going to be difficult no matter what. The issues have not changed from the time the lot was purchased. He is troubled by the fact that there is no house plan to look at. This would be a blanket Variance to allow any house to be constructed 25' from the front property line. He believes the 60' front yard setback adds to the exclusiveness of the subdivision. Putting a house up 25' from the front property line would wreck that. He chose his lot because it wasn't too steep. He knew what the rules were when he purchased it. He would have liked his house a little closer to the road because he would have saved on concrete.

Mr. Dustin Scroggins said he was a resident on the subject street and is opposed to the request. He would like to start by responding to something the realtor said about empty lots in a subdivision not looking good. They have one resident that bought four lots for one house. He is also contemplating buying the lot next to him and not putting a house on it. This is not a subdivision that needs a house on every lot. It is an estate subdivision with

larger lots. As a result, a lot remaining empty shouldn't have any bearing on the request. He looked at the subject lot before purchasing his and realized there would be issues. He is concerned that the applicant is seeking the Variance so he can sell the lot. He would feel better about the request if the applicant was looking to construct a house and they could visualize plans. He also had to go by the requirements when he built his house. His driveway goes down quite a bit. Pulling a house that far forward will look more awkward than having an empty lot because all the other houses meet or exceed to 60' front yard setback. He also questions if approving the request would cause the owners of the adjoining cul-de-sac lot to ask for a Variance. They might because the subject house would be located in front of them.

Mrs. Shannon Berry said the lot was exactly what she and her husband needed to build their home when they purchased it. However, they had some changes in their family that prevented them from building. They are now looking to sell the lot. They have some people interested in the lot and their builders have indicated they couldn't get things to work. They did reach out to the developer about the Variance before making application and he was fine with it as long as this Board approved it.

Mr. Jerry Ashworth said he has owned the adjoining cul-de-sac lot for the last 4 or 5 years. He currently does not have any plans to build on the lot and he is not sure when he will. He indicated that he would also apply for a Variance if this application is approved. He would not want his house 60' back and the adjoining house 25' back because he would potentially be looking at somebody's back door. He is not opposed to the request but will apply for a Variance in the future if this request is approved.

Mrs. Sherry Otte said she and her husband live a couple of lots down from the subject property and they are opposed to the request. She submitted letters from Rene and Barb Rocha and Rob Hartman into the record (see exhibits 1-3). She indicated the Rocha's own the adjoining property to the north and could not be at the meeting tonight. They are planning to build as close as they can to the subject lot. They are concerned that they will see the back of the subject house from their front yard if the Variance is approved. She indicated the property has been for sale many times. They thought it wasn't selling because there were septic issues. All of the lots in the subdivision fall off and have walkout basements. The residents want the houses in the subdivision to meet the A-2 requirements. They love the way the street is setup. They all purchased properties in the subdivision because they wanted estate lots and larger setbacks. There are two new streets going in the subdivision and they will see more Variance requests if this one is approved. She asked the Board to consider these things.

Mr. Joe Besheer said he lived a couple of lots away and is opposed to the request. He agrees that a house doesn't have to be built on each lot because it adds to the beauty of the area. He is originally from Chicago and they decided to relocate here to be closer to his wife's family. They decided to buy at least an acre of property because they wanted space. Approving the request will give the sense of houses being on top on one another. The house will not look right that close to the road because it is a pie shaped lot.

Mr. Craig Moseley said he also lived in the subdivision and is opposed for many of the same reasons that were already mentioned. They walked their lot with many prospective builders before they built their home to make sure they understood the lay of the land. They purchased their lot based on the space and the environment they wanted for their family. They enjoy the open area and the open lots around them. One of the comments tonight

was that this lot has some unique characteristics. The topographical maps show that this lot has very similar topography to other lots in the subdivision. Some of the other owners have brought additional dirt in to change to lay of the land to meet their building needs. He said you can do a lot with dirt with bulldozers and dump trucks but you cannot move a house once it has been built. The property owner indicated that they had a house plan that would work on the lot. He is concerned that there are no specific house plans and nobody knows what the house will look like if the request is approved. The promise of a big house doesn't mean much to him. There are restrictions on the property that call for a 60' front yard and a side entry garage. The lay of the land is not bad for a walk out basement. They all bought on a ridge and doesn't feel there is a unique situation.

Mr. Fazzino said he knows the subdivision has some house size requirements and other restrictions. The restrictions are private and are not enforced by Planning Commission. These restrictions should help guarantee that the house on this lot wouldn't be much different in character than other house built in the subdivision.

Mr. Whitton said the property owner indicated earlier that they had a house plan that was suitable for this lot. Mrs. Berry said that was correct. Mr. Whitton asked why wouldn't other purchasers be able to construct a house that was suitable? Mrs. Berry said they designed their dream home with a custom builder. It is a beautiful piece of property and they had something very specific in mind. She isn't sure if their dreams are the same as others.

Mr. Fussinger said the real challenge is getting the house and septic system to work because the shape of the lot is affected by the cul-de-sac bulb. The septic system needs to be located at a slope that will work. He understands that pulling the house closer to the front will also make it be closer to the side lines. He doesn't know if the future buyer would pull the house all the way up to the 25' setback line. However, it will give them the flexibility to locate the house and septic system on the lot and make the property useable.

Mrs. Berry said it is possible that someone could buy the property and not utilize the Variance. They thought that applying would give a potential buyer the flexibility to have a 40' or other reduced front yard setback.

Mr. Whitton said the unknown is what is being built? From his perspective, it would make more sense if they had a buyer and a contingency to buy based on Variance approval. This would allow a plan to be drawn up and the Board to analyze it. The Board would then be able to see the exact setbacks that were being proposed. He feels that the application is vague and the other property owners are vulnerable.

Mr. Miller said he would echo those comments. He would have a hard time approving a Variance due to the testimony from the neighbors and there being no specific plan. He may feel differently if there were a specific plan and some of the issues were worked out with the neighbors.

Mr. Scroggins stated that the current property owners had a house plan drawn up for them that worked on the lot. He asked if they also checked on the septic approval? He is asking the question because he has heard testimony that a septic system will not be approved unless the house is moved forward. Mr. Miller said Mr. Fussinger indicated that septic may not work if somebody wanted to build a big house on the lot. The gentleman indicated that a potential buyer should look at a different lot if that were the case. There are 5 acre lots down the street.

Mr. Fussinger said the Berry's house plan was like a jigsaw puzzle to get the septic system to work. Mr. Miller said that was without doing anything to the lot to make it work. Mr. Whitton said what is unknown is what type of house is being built and what type of work needs to be done. He said the Board needs a specific plan to analyze to make a reasonable decision. Mr. Miller said he cannot find that a hardship exists at this time because work could be done to the lot which caused the septic system to work and the building setbacks to be met.

Mr. Whitton asked for a motion. Mr. Miller made a motion to deny the request and Mr. Vaught seconded the motion. Mr. Whitton called for a vote. The motion carried 4-0.

ADJOURNMENT

Mr. Whitton asked for motion to adjourn the meeting. Mr. Vaught made a motion to adjourn and Mr. Miller seconded the motion. Mr. Whitton called for the vote and the meeting was adjourned by unanimous consent at 7:53 p.m..

APPROVED

Mr. George Whitton, Chairman

ATTEST:

**Todd K. Morgan, AICP
Senior Planner**

Exhibits

1. Letter from Rene Rocha
2. Letter from Barb Rocha
3. Letter from Rob Hartman