



MINUTES

DOUGLAS COUNTY BOARD OF ZONING APPEALS

Public Works/Zoning and Codes Building - Training Room, and by Zoom
3755 E 25th Street

Monday, September 16, 2024

10:00 A.M.

DRAFT

MEMBERS PRESENT: Rich Barr, Chair, Fadra Mitchell, Charlie Thomas, Jerry Wohletz, Scott Eudaly

MEMBERS ABSENT: All present

STAFF PRESENT: Tonya Voigt, Zoning and Codes Director; Karl Bauer, County Planner; Ben Harris, Zoning Administrator; Leo Ruhnke, Code Enforcement Officer.

PUBLIC PRESENT: In Person: Christopher Dunback; Jamie Winter
Virtual: None

Rich Barr called the meeting to order at 10:00 a.m.

Rich Barr called roll, and a quorum was established.

ITEM NO. 1: MINUTES

Approve, revise, or approve with conditions the August 19, 2024, meeting minutes.

Jerry Wohletz motions to approve August 19, 2024, minutes, Scott Eudaly seconds. Approved 5-0.

ITEM NO. 2: DISCLOSURE OF EX PARTE COMMUNICATIONS

Chair asks Board members for disclosure of any ex parte communications on the items on the agenda.

None heard

VARIANCE REQUESTS

ITEM NO. 3: ZBZA-2024-0005 - A VARIANCE request under the terms of the *Zoning and Land Use Regulations for the Unincorporated Territory of Douglas County, Kansas*, from Chris and Candace Dunback requesting a variance to allow a reduction of the required front/exterior side setback from 85 feet to approximately 45 feet for a proposed accessory building, to be located at 1247 E. 2000 Road.

APPLICANT/OWNER:	Christopher and Candace Dunback
LOCATION:	1247 E 2000 Road (Plate № 200096B01)
AREA:	5 acres
DATE OF PUBLIC HEARING:	September 16, 2024, 10:00 AM.
DATE PUBLIC NOTICE PUBLISHED:	August 27, 2024

PRESENT ZONING AND LAND USE: Ag-2 – Transitional Agricultural District, used as a single-family residence

SECTION AND REQUIREMENT OF ORDINANCE PERMITTING VARIANCE:

- 12-303-2.04 Dimensional Standards: Requires 35-foot base setback from the center of local road and a 50-foot front and exterior side setback.

DESCRIPTION OF VARIANCE REQUESTED:

The subject property, located at 1247 E. 2000 Road, is approximately five acres in size and is developed with a single-family residence. A 40x80-foot nonconforming pole barn was located along the north side of the property facing the road, though it was demolished after being damaged by a windstorm in 2020. The applicant is proposing to construct a 30x32-foot accessory structure on the site to store vehicles and boats. The subject property has a steep slope, and the western portion of the property is within the regulatory floodplain. Given the few buildable sites on the property, the applicants are proposing to build within the required 85-foot setback at the site of the previous building.

STAFF RECOMMENDATION

County Staff recommend approval of the variance request to allow a reduction of the required front/exterior side setback from 85 feet to approximately 45 feet for a proposed accessory building, to be located at 1247 E. 2000 Road, with the following stipulation:

1. This variance shall apply only for a 30x32-foot accessory building. Any other structures shall comply with the adopted zoning regulations, or another variance shall be obtained from the Douglas County Board of Zoning Appeals.

10:01 am Chair Barr calls meeting to order.

Karl Bauer presents ZBZA-2024-0004 staff report – Exterior side setback reduction request.

Rich Barr – Asks for questions from the board.

Karl Bauer states that the applicant is present and would like to give a presentation.

Chris Dunback – property owner presents his request. Mr. Dunback explains how they acquired the property and how they set out to fix the house and the property after purchase. A week after getting the pole barn cleaned up, a straight-line wind removed the roof. The insurance company determined that it would be best to replace the barn.

Mr. Dunback notes that it is not a through road. He describes the neighborhood and neighbors. He notes that the structure is being replaced with a smaller structure. 30x32 post frame structure will replace the old building. Trees will screen the structure from the road. Electricity and water are existing.

Rich Barr – Asks about electricity to the old pad.

Chris Dunback confirms. Adds that water is also present.

Rich Barr asks if there is an opportunity to shift the building location to the south?

Chris Dunback notes that it is very steep. They considered other areas, but they all have slope constraint, and this site is already there.

Jerry Wohletz notes that he had the same thought about trying to shift it south.

Scott – notes that the former barn location is already there and if Public Works has no concern he does not either.

Charlie Thomas notes that it's about as thorough a presentation as they've seen.

Rich Barr asks for a motion if there are no other comments from the board.

Scott Eudaly makes a motion for the approval of the variance request to allow a reduction of the required front/exterior side setback from 85 feet to approximately 45 feet for a proposed accessory building, to be located at 1247 E. 2000 Road, with the following stipulation:

1. This variance shall apply only for a 30x32-foot accessory building. Any other structures shall comply with the adopted zoning regulations, or another variance shall be obtained from the Douglas County Board of Zoning Appeals.

Charlie Thomas – seconds the motion.

Motion passes 5-0 with all in favor.

ITEM NO. 4: ZBZA-2024-0006 - A VARIANCE request under the terms of the *Zoning and Land Use Regulations for the Unincorporated Territory of Douglas County, Kansas*, from Jamie Winter requesting a variance to allow a proposed accessory building with a mean height of 42 feet, $\frac{3}{4}$ inches, in lieu of the maximum permitted 35 feet, to be located at 719 N 1851 Diagonal Road.

APPLICANT/OWNER:	Jamie Winter, Applicant; Jamie and Jeanne Winter, Owners
LOCATION:	719 N. 1851 Diagonal Road (Plate No 500243D)
AREA:	10.1 acres
DATE OF PUBLIC HEARING:	September 16, 2024, 10:00 AM.
DATE PUBLIC NOTICE PUBLISHED:	August 27, 2024
PRESENT ZONING AND LAND USE:	Ag-2 – Transitional Agricultural District, used as a single-family residence.

SECTION AND REQUIREMENT OF ORDINANCE PERMITTING VARIANCE:

- 12-303-2.04 Dimensional Standards: Maximum permitted height of 35 feet.

DESCRIPTION OF VARIANCE REQUESTED:

The subject property, located at 719 N. 1851 Diagonal Road, is approximately 10.1 acres in size and is developed with a single-family residence built in 2002. The applicant is proposing construction of a timber-frame barn behind the existing house with an observation deck protruding from the top of the structure, exceeding the maximum permitted height of 35 feet in the Ag-2 District. The observation deck would be an open-air pergola structure measuring 12 feet, eight inches by 16 feet, eight inches. The barn would have a footprint of 48 feet by 52 feet. With the proposed observation deck, the mean height of the barn would be 42 feet, $\frac{3}{4}$ inches.

The subject property is wooded and is situated on the slope of a hill. The property slopes upward from south to north, with the road being at the north end of the property and the house and proposed barn being at the south end, or at the top of the hill. The road sits at an elevation of approximately 860 feet above mean sea level (AMSL), the house sits at approximately 980-990 feet AMSL, and the proposed barn would be at approximately 1,000 feet AMSL. The northern part of the property is within the regulatory floodplain.

Building height is defined in Section 12-315-2 of the zoning code as “The vertical distance from the grade to...the mean height level between eaves and ridge for gable, hip, and gambrel roofs.” Plans submitted by the applicant indicate the height of the eaves at 38 feet, 1-11/16 inches and the height of the ridge at 46 feet, 4-15/16 inches with a mean height of 42 feet, ¾ inches for the observation deck. The submitted site plan indicates the proposed barn would be 30 feet from the rear property line, the minimum required setback.

Exceptions to the maximum height regulations are listed in Section 12-305-2.02. Staff have determined the proposed observation deck is not exempt from the height regulations as it not among the listed structures. Specific items listed include agricultural buildings (e.g. silos), church spires, water towers, fire towers, scenery lofts, and a variety of other structures. While a “scenery loft” is listed, this does not appear to be what the applicant is proposing. A scenery loft, also called a fly loft, is a part of a theater above the stage that protrudes from the top of the building and houses overhead rigging equipment.¹

STAFF RECOMMENDATION

County Staff recommend denial of the request.

10:15 am - Karl Bauer presents ZBZA-2024-0006, reviews staff report and provides additional information regarding a height variance request.

No comments have been received at time of meeting.

Applicant provided a list of neighbor signatures in support of the variance.

Charlie Thomas asks what the height of the top of the roof is.

Karl Bauer - 46 ft 4/16 inches.

Scott Eudaly asks if Karl visited the site because he would be interested to see photos.

Fadra Mitchell – comments, we’re not saying you can’t have an observation deck, just that it needs to be shorter.

Scott Eudaly states that he’d like to wait for the applicant’s presentation.

The board turns the floor over to the applicant Jamie Winter for a presentation.

Jamie Winter – Presents a slide show. Reviews design of the barn. Notes that observation deck is 8% of the total barn size.

Charlie Thomas asks – what are the dimensions of the observation deck? Mr. Winter responds 12 ft x 16 ft

Mr. Winter presents an aerial to show where/how far the barn will be set back into the woods.

Scott Eudaly – Asks about the four homesites around the perimeter; are they on the signature list?

Mr. Winter – Yes, except for the property to the south. They recently experienced the loss of their father and were not able to consider this proposal at the time.

Mr. Winter shows another aerial with the 1/3-mile driveway showing the barn set in the woods.

Mr. Winter describes unique elements of this request. All three neighboring sites cleared an extensive amount of trees to create a view. Mr. Winter is choosing not to clear trees to create a view.

Mr. Winter is asking for an 8’ variance exception over the 35’ limit.

The way the code is written you calculate the mean height. Discusses a bit of lack in clarity in the code with how it’s written.

Mr. Winter presents an image showing the mean height of trees at 60’ around the proposed site.

¹ [City of Newark, Delaware](#)

Mr. Winter notes that the code is not clear for structures that include multiple ridges.

Mr. Winter notes that the code is not clear for cupolas or other small roof extensions.

Mr. Winter notes that there is a lot of discrepancy across the country regarding roof mean height calculations.

Mr. Winter reviews options to comply without a variance

1. An ag building would be exempt from height limits.
2. Could remove approx. 200 trees to allow a scenic view. Mature trees are 50+ years old.
3. Remove the observation deck. Reduces aesthetics, of the barn and surrounding environment. Increases risk of water damage.
4. Remove loft. Reduces storage space.

With that information Mr. Winter requests support and is open to questions.

Rich Barr – You state that if you eliminate the loft, you reduce the storage space. If you reduce the mid-section and bring it down, you could lower the observation deck.

Mr. Winter – if it's not approved, the plan would be to cut the roof off.

Rich Barr – the observation deck seems to be a high priority. Is the observation deck so important that you're willing to lose the loft. It seems to be a priority over the storage.

Rich Barr - You have 60-70 ft tall trees; this will restrict your view even with the observation deck.

Mr. Winter – the main view will be to look over the house. When leaves are on it will be limited.

Charlie Thomas – Aesthetically it would look better with the roof. Notes that he has not seen so many signatures in support of a variance request. 30 out of 36.

Jerry Wohletz – Can you change the pitch on the observation deck to meet the height requirement? How much would that have to change?

Mr. Winter – Roof would become flat effectively and second roof needs to match the lowest roof. It would have to change more than the side roof. I discussed with Chris Cunningham, and he noted that it would not look appropriate.

Jerry Wohletz – Concerned about starting to set a precedence. If we change precedence, then what do we allow on the next building and the building after.

Charlie Thomas – Part of the difference is how far it's set back into the woods. If it were sitting by the road that would make a significant difference. Perhaps in the winter it could be seen by the neighbors. I'd like to find a path to approval.

Fadra Mitchell – Thanks Mr. Winter for his presentation and for his concern for the trees. Not sure if the height affects the functionality. I'm not seeing the hardship other than rethinking the top of the structure. The barn is still functional.

Mr. Winter – The hardship - He wants to be able to enjoy his property and doesn't want to have to remove the trees.

Charlie Thomas asks about the eave height.

Karl Bauer – states that the eave height is 38 ft

Scott Eudaly – Thanks Mr. Winter for following the rules. I want to find a way to say yes but need to find a way. Like a lot of what we do these are land issues and they will outlive us. Discusses how much of what is decided is an obligation the board has to future owners. I don't know our obligation to the privacy of neighbors. If the hill were 7 feet taller, the structure could be built to the same effective height while meeting height requirements.

Fadra Mitchell – States that she believes there are other ways to get the view and meet code. Concerned about setting precedence.

Charlie Thomas – in the new Lawrence Land Development code, it looks like 35 ft will be the maximum height. The planning director can approve administratively up to a 7 ft variance (20%). This proposal would not currently be possible in the City of Lawrence.

Rich Barr – without the observation deck you still have a barn that's functional.

Mr. Winter – Reiterates that he took the step to talk to all the neighbors. He reiterates that it's a very unique building site.

Charlie Thomas – Does not feel married to precedent. It is a unique site, not near the road, setback into the woods.

Scott Eudaly – Mostly agrees with Charlie's statement.

Rich Barr opens public comment. No public was present.

Jerry Wohletz – Have you talked to the architect to see if there is any way.

Mr. Winter states that he has, but the architect has stated that there is not a lot of room to lower the structure.

Rich Barr asks for motions.

Scott Eudaly – Motions to approve the variance request as presented.

Charlie Thomas seconds the motion.

BZA Secretary - Ben Harris calls roll:

Motion to approve the variance

Charlie Thomas – Yes

Fadra Mitchell – No

Scott Eudaly - Yes

Jerry Wohletz – Yes

Rich Barr - No

Motion passes 3-2

STAFF UPDATES

No Staff updates – not anticipating an October meeting

BOARD UPDATES

No board updates

Motion to adjourn from Jerry Wohletz.

Fadra Mitchell seconds motion. Motion passes 5-0.

The BZA Meeting was adjourned at 11:01 AM.