

1 FRANKLIN COUNTY PLANNING AND ZONING
2 BOARD OF ZONING ADJUSTMENT
3 FRANKLIN COUNTY GOVERNMENT CENTER
4 SECOND FLOOR COMMISSION CHAMBERS
5 400 EAST LOCUST STREET
6 UNION, MISSOURI 63084
7
8
9 TRANSCRIPT OF PROCEEDINGS
10 JANUARY 25, 2022
11 (COMMENCING AT 7:00 P.M.)
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22 Reported by:
23 Patsy A. Mayberry, C. R.
24 Alaris Litigation Services
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A P P E A R A N C E

FRANKLIN COUNTY BOARD OF ADJUSTMENT COMMISSION:

GORDON UPCHURCH, CHAIRMAN

FRED THATCHER, COMMISSIONER

JUSTIN HEAD, COMMISSIONER

STEVE HOFF, COMMISSIONER

TIMOTHY TOBBEN, COMMISSIONER

PLANNING AND ZONING STAFF:

SCOTTIE EAGAN, DIRECTOR PLANNING AND ZONING

CRYSTAL HOLDMEIER, ADMINISTRATIVE ASSISTANT

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1 P R O C E E D I N G S

2 (JANUARY 25, 2022)

3 CHAIRMAN UPCHURCH: Good
4 evening. I'm Gordon Upchurch, and I call to order
5 this meeting of the Franklin County Board of Zoning
6 Adjustment.

7 I'm joined tonight by Steve Hoff to my
8 left, Tim Tobben to my left, Fred Thatcher, and Justin
9 Head. We welcome all of you.

10 Let me add each of you have tethered one
11 of these things to you. Turn them off. If you don't
12 turn them off and they ring, I'm not going to be
13 happy. If you ring and you answer them, I'm going to
14 ask security to remove you from the room. We're going
15 to be respectful of one another here.

16 In addition to that, I think we only have
17 one matter on the agenda. I'll be candid. We do
18 these pretty informally so that in my opinion, our
19 opinion, we're sort of being fair to everybody.

20 We're going to handle some minor
21 procedural stuff first, and then we'll get going.

22 I'm going to invite any member who feels
23 they have any conflict in this matter to offer that on
24 the record now. That's something I routinely do. By
25 lack of eye contact, I and the rest don't feel we have

1 any conflicts with regard to this matter.

2 And, Ms. Eagan, would you call roll.

3 MS. EAGAN: Justin Head?

4 COMMISSIONER HEAD: Here.

5 MS. EAGAN: Steve Hoff?

6 COMMISSIONER HOFF: Here.

7 MS. EAGAN: Fred Thatcher?

8 COMMISSIONER THATCHER:

9 Present.

10 MS. EAGAN: Tim Tobben?

11 COMMISSIONER TOBBEN: Here.

12 MS. EAGAN: And, Gordon

13 Upchurch?

14 CHAIRMAN UPCHURCH: Here.

15 MS. EAGAN: Okay. We have a

16 full Board and a quorum.

17 CHAIRMAN UPCHURCH: And I

18 believe we need to approve the last prior minutes,

19 which were included in the packet. I'd entertain a

20 motion to approve the minutes.

21 COMMISSIONER HEAD: I make a

22 motion to approve the November 24, 2020 minutes.

23 COMMISSIONER TOBBEN: Second.

24 CHAIRMAN UPCHURCH: There's

25 been a motion and second. Those in favor, aye.

1 COMMISSIONER THATCHER: Aye.

2 COMMISSIONER HEAD: Aye.

3 CHAIRMAN UPCHURCH: Aye.

4 COMMISSIONER TOBBEN: Aye.

5 COMMISSIONER HOFF: Aye.

6 CHAIRMAN UPCHURCH: Those

7 opposed same sign.

8 (NONE)

9 I believe the prior minutes have been
10 approved.

11 Scottie, would you read into the record
12 the hearing procedures.

13 MS. EAGAN: Tonight's Board of
14 Zoning Adjustment hearing is governed by the Franklin
15 County Unified Land Use Regulations.

16 At this time, I would like to place into
17 the record these Regulations as Exhibit A, the
18 official Zoning Map as Exhibit B, the official Master
19 Plan as Exhibit C, and the case file for each case as
20 Exhibit D for all the cases to be heard at this
21 hearing.

22 (THEREUPON, EVIDENCE WAS
23 MARKED FOR IDENTIFICATION AS
24 BOARD EXHIBITS A, B, C, AND D.)

25 The Board of Zoning Adjustment will

1 address each case as they are listed on the agenda.
2 As each case is opened for hearing, a staff report
3 will first be read to the Board, followed by any
4 questions for the staff.

5 Then if anyone in the audience would like
6 to speak or comment during this public hearing, they
7 must first print their name on the sign-in sheet
8 provided, then be sworn in.

9 When it is your turn to speak, you will
10 come to the front of the room to address the Board and
11 only the Board, not anyone in the audience, with your
12 comments.

13 At the conclusion of all questions,
14 comments and discussion concerning each case, the
15 public hearing for that case will conclude and the
16 Board of Zoning Adjustment will proceed with a
17 decision.

18 Any decision by the Board may be
19 appealed. If anyone desires to appeal a decision made
20 by the Board of Zoning Adjustment, they need to submit
21 it to Circuit Court.

22 CHAIRMAN UPCHURCH: And I
23 believe we only have the one matter on tonight. I
24 believe that's, for the record, identified as File
25 210359. It's a request for a variance by an applicant

1 Nienhaus, and may we have a staff report.

2 MS. EAGAN: First, I think we
3 need to do the election of officers.

4 CHAIRMAN UPCHURCH: Well, if
5 you insist.

6 And our officers are?

7 MS. EAGAN: Currently, Gordon
8 Upchurch is the Chairman, and I think Justin is co --
9 or vice-chair.

10 CHAIRMAN UPCHURCH: Vice-Chair.
11 I can see that from here.

12 COMMISSIONER HEAD: I make a
13 motion to saddle Gordon again with the Chairman.

14 COMMISSIONER TOBBEN: I'll
15 second that.

16 CHAIRMAN UPCHURCH: Is there
17 any other better suggestion and those wouldn't offend?

18 (NONE)

19 Hearing none, we'll call it for a vote.
20 Those in favor.

21 MEMBER THATCHER: Aye.

22 MEMBER HEAD: Aye.

23 MEMBER HOFF: Aye.

24 MEMBER TOBBEN: Aye.

25 CHAIRMAN UPCHURCH: Those

1 opposed?

2 (NONE)

3 Are we going to elect any other officers,
4 Scottie?

5 MS. EAGAN: Only the
6 Vice-Chair.

7 CHAIRMAN UPCHURCH: I would
8 nominate Justin as the Vice-Chair.

9 COMMISSIONER TOBBEN: Second.

10 CHAIRMAN UPCHURCH: We have a
11 nomination and a second by Tim. No other suggestion
12 forthcoming. I'm going to call that for a vote.
13 Those in favor aye.

14 MEMBER THATCHER: Aye.

15 CHAIRMAN UPCHURCH: Aye.

16 MEMBER HOFF: Aye.

17 MEMBER TOBBEN: Aye.

18 CHAIRMAN UPCHURCH: Those
19 opposed same sign.

20 (NONE)

21 Scottie, are we done electing officers?

22 MS. EAGAN: Yes.

23 CHAIRMAN UPCHURCH: Back to
24 more important things. Can I have the staff report
25 with regard to the variance request 210359.

1 MS. EAGAN: Yes. This is File
2 210359. The applicant is Jim Nienhaus.

3 The applicant is seeking a variance from
4 the stream buffer requirement found in Article 11,
5 Section 243(a)(3)(b).

6 The property is located at 1218 Glen
7 Eagle Lane, 1224 Glen Eagle Lane, and Cedars Valley
8 Road at St. Albans, approximately 350 feet south of
9 the intersection of Glen Eagle Lane and St. Georges
10 Drive in Boles Township.

11 THE FACTS: The variance request involves
12 three parcels totaling approximately 12.84 acres in
13 size.

14 The property is currently zoned Y.

15 The applicant seeks a variance from the
16 requirement that states:

17 "A stream buffer for
18 an intermittent stream shall
19 be the area within 50 feet
20 of the top of the stream bank.
21 For the purpose of this section,
22 a regular stream shall be
23 defined as those streams that
24 are identified as dashed blue
25 lines on the USGS map."

1 According to the Center for Applied
2 Research and Engagement System maps, there is an
3 intermittent stream that runs through these
4 properties.

5 The applicant requests the requirement
6 for the stream buffer be removed entirely.

7 The applicant states compliance cannot be
8 met due to the existing topography and its impact on
9 the buildable area of the lot.

10 STAFF COMMENTS: According to Section
11 103(A):

12 "A variance may be
13 granted by the Board of
14 Zoning Adjustment if the
15 applicant proves sufficient
16 evidence that the hardship
17 relates to the applicant's
18 land and where, by reason of
19 exceptional narrowness,
20 shallowness, shape or topography
21 or other extraordinary
22 or exceptional situation or
23 condition of a specific piece of
24 property, the strict application
25 of any regulations would result

1 in peculiar and exceptional
2 difficulties to or exceptional
3 and demonstrable undue hardship
4 upon the owner of the property
5 as an unreasonable deprivation
6 of use as distinguished from
7 the mere grant of a privilege,
8 to authorize, upon an appeal
9 relating to a property, a variance
10 from the strict application so
11 as to relieve the demonstrable
12 difficulties or hardships, provided
13 the relief can be granted without
14 substantial detriment to the public
15 good and without substantially
16 impairing the intent, purpose and
17 integrity of the zone plan as
18 embodied in the zoning regulations
19 and map."

20 And that's all I have.

21 CHAIRMAN UPCHURCH: Thank you.

22 Is there anyone here to speak on behalf
23 of the applicant?

24 MR. STEVE LAUNE: Yes, sir.

25 CHAIRMAN UPCHURCH: Would you

1 step forward and sign in, please.

2 (THEREUPON, THE WITNESS WAS
3 SWORN.)

4 MR. LAUNE: Steve Laune, 682
5 Orchards Farm Drive.

6 CHAIRMAN UPCHURCH: How would
7 you spell that for the record?

8 MR. LAUNE: L-A-U-N-E.

9 CHAIRMAN UPCHURCH: And from
10 your shirt, you're with Cochran?

11 MR. LAUNE: Yes, sir.

12 CHAIRMAN UPCHURCH: And just so
13 we're clear, as a matter of course, we receive a
14 packet. This one, I'm not complaining, is a little
15 sparse. It's about four pages. You may offer other
16 exhibits this evening. We'll consider this as part of
17 your record, and it hasn't offered already by your
18 filing, I'm going to offer it for you as part of your
19 exhibit and part of your proof so that we don't have
20 to stumble along trying to figure out if that got put
21 into the record.

22 I'll add to that I received when I got
23 here some photos. I'm going to describe those as a
24 group exhibit, and we're not going to break from the
25 record right now, but I'm going to call that Group

1 Exhibit A, and I'm going to write an A on my copy, and
2 then the court reporter, when she gets time, she'll do
3 a more formal notation on those so that those can be
4 properly received in your record, assuming there's any
5 further litigation.

6 (THEREUPON, EVIDENCE WAS MARKED
7 FOR IDENTIFICATION AS GROUP EXHIBIT
8 A - FILE 210359.)

9 I didn't say anything -- any of those
10 things to slow you down. I want you to tell us
11 everything that you think you want and need to tell
12 us. I am trying to expedite the fact that we try to
13 receive records, and we give them the force, if you
14 will, that we deem to give them. But in terms of gee,
15 are they part of the record, I just made them part of
16 the record.

17 You have the floor. We're ready to
18 listen.

19 MR. LAUNE: Thank you.

20 Basically Mr. Nienhaus has these two lots
21 that adjoin a golf course under contract. He's
22 negotiated with the golf course as well to get
23 additional ground in a swamp situation.

24 We've got a minor subdivision into the
25 County for that process. That's a different --

1 different process.

2 CHAIRMAN UPCHURCH: And I'm
3 going to interrupt you ever so briefly.

4 MR. LAUNE: Okay.

5 CHAIRMAN UPCHURCH: Just so
6 we're clear and everybody in the room is clear, the
7 only thing that's before this Board is a -- is a
8 variance from a stream requirement. In terms of you
9 building and you making frankly Planning and Zoning
10 and the Building Department happy, as you well know --
11 but I'm just making the record for everybody in the
12 room and there's some spectators that may be -- may
13 want to speak. You're going to have to get over those
14 hurdles that may exist.

15 The only thing that we're here to listen
16 here about and to ultimately rule on is an application
17 with regard to the stream. And again, I'm doing that
18 just for clarity and not to interrupt you.

19 MR. LAUNE: Sure.

20 CHAIRMAN UPCHURCH: So --

21 MR. LAUNE: No, I understand.

22 The reasoning for the minor subdivision,
23 understand, is to get additional ground because the
24 topography of the lot does push the house down the
25 hill closer to the stream.

1 So he's tried to acquire -- or made an
2 agreement to get more ground to be able to place that
3 house further down on the flat spot.

4 Those lots have been platted since '91.
5 They've sat there for 30 years. They've got a chance
6 to sell them now, and he's interested. So bottom
7 line, he's come for the variance to push that stream
8 buffer down the hill a little ways to make room for
9 the new house.

10 CHAIRMAN UPCHURCH: And what
11 you've just described is on the third and fourth page
12 of the exhibit?

13 MR. LAUNE: Yes, it is, and I
14 have a larger copy if anybody wants to look at it.

15 CHAIRMAN UPCHURCH: My eyes are
16 good enough.

17 MR. LAUNE: Okay. But
18 basically that's the -- that's the request, to remove
19 the stream buffer to create an area lower on the lot
20 that's flatter to construct a house.

21 CHAIRMAN UPCHURCH: I'm going
22 to do a little of your heavy lifting for you.

23 MR. LAUNE: Okay.

24 CHAIRMAN UPCHURCH: In terms of
25 a hardship, what is the hardship if we don't do this?

1 MR. LAUNE: Well, he's -- the
2 lots are going to sit there, and he's not going to be
3 able to construct the house in the manner that he
4 wishes, basically. They're going to not -- the
5 contract is not going to go through.

6 CHAIRMAN UPCHURCH: As an
7 engineer and pursuant to what you've already given me,
8 is the rest of the lot really buildable? And from the
9 topo map, I think I know your answer to that, but I
10 want to hear it in the record.

11 MR. LAUNE: No, the only
12 buildable spot is on the lower portion of the lot.
13 There's a 3:1 slope coming off the road that takes up
14 half of both lots. And the driveway has got to come
15 in off the north end crossing the one lot to get down
16 to the buildable area on the other lot.

17 So that's the reasoning for buying both
18 lots and needing the variance, to push the house down
19 to a buildable area.

20 CHAIRMAN UPCHURCH: And I want
21 to thank you or whoever decided to bring us some
22 photos because I realize there's a map and there's a
23 CARES something that indicates that there's a creek
24 here, and I wanted to see a picture of the creek.

25 MR. LAUNE: The creek is very,

1 very minimal at this point. It's at the end of the
2 stream, so there's not a whole lot of water coming
3 through there at this point in time anyway.

4 CHAIRMAN UPCHURCH: Okay.

5 MR. LAUNE: It's about a foot
6 high.

7 CHAIRMAN UPCHURCH: Don't get
8 too far ahead of me.

9 MR. LAUNE: Sorry.

10 CHAIRMAN UPCHURCH: Is this a
11 fair and accurate representation of the stream?

12 MR. LAUNE: Yes, or ditch if
13 you can call it that.

14 COMMISSIONER HOFF: Is that a
15 stream or a terrace?

16 MR. LAUNE: That's a ditch.

17 COMMISSIONER HOFF: It looks
18 kind of like a terrace.

19 MR. LAUNE: Pardon?

20 COMMISSIONER HOFF: A terrace?

21 MR. LAUNE: No, that's -- if
22 we're looking at the same picture.

23 COMMISSIONER HOFF: It's the
24 one that Gordon showed you. That's the one I'm
25 talking about.

1 MR. LAUNE: No, that's the
2 ditch itself. That comes down off the hill down here
3 to a ditch here, and the golf course is over here.
4 Does that make sense?

5 COMMISSIONER HOFF: Yeah.

6 MR. LAUNE: The water comes
7 down -- whatever water there is comes down through
8 here. This is the ditch itself. It's not a terrace.
9 It doesn't flow readily.

10 CHAIRMAN UPCHURCH: And
11 candidly, the staff report indicated -- I believe it
12 was the staff report -- that it's even described as an
13 intermittent stream, which means it doesn't carry
14 water on a regular basis.

15 MR. LAUNE: That's correct.

16 CHAIRMAN UPCHURCH: With regard
17 to the map, and I'm putting you on the spot here, and
18 again I'm overstating, and from what I've seen, if
19 there were a head water to this intermittent stream,
20 how far from this spot is that head water of this
21 intermittent stream?

22 MR. LAUNE: I would say
23 basically at the top of the road there. I don't have
24 the dimensions on here, but 300 feet tops.

25 CHAIRMAN UPCHURCH: I would

1 have guessed somebody could hit a baseball to where
2 this is supposed to have started?

3 MR. LAUNE: And I would say
4 you're probably correct.

5 CHAIRMAN UPCHURCH: Would that
6 be a fair assessment -

7 MR. LAUNE: Yes.

8 CHAIRMAN UPCHURCH: -- and
9 characterization?

10 MR. LAUNE: Correct.

11 CHAIRMAN UPCHURCH: Do you have
12 more to offer to us on this matter?

13 MR. LAUNE: I don't believe so.
14 I think it's pretty -- pretty well laid out as best I
15 can.

16 CHAIRMAN UPCHURCH: I'm going
17 to remind you, and I know you may have been in front
18 of us before, and forgive me if I didn't remember,
19 don't recall you.

20 But in any event, if there is adverse
21 testimony offered here tonight, and again we handle
22 these informally, we will give you an opportunity to
23 rebut. In other words, to offer further testimony to
24 rebut some complaints that may be made to your
25 application.

1 So when I'm inviting you to quit, I'm not
2 inviting you to be barred from being heard further.
3 Okay?

4 MR. LAUNE: I understand.

5 CHAIRMAN UPCHURCH: And I'm
6 going to open this up to the Board. I don't have any
7 other questions of you, but the Board may.

8 COMMISSIONER THATCHER: May I
9 start. I guess I'm trying to get a grasp on when this
10 regulation was enacted in Franklin County. This was
11 platted in 1991. I don't -- was that a regulation in
12 '91, the setback?

13 MS. EAGAN: So I actually did
14 research yesterday about it. Franklin County has
15 always had stream setback requirements. They haven't
16 been to the extent that they are now. In '89, it was
17 just very general that they shall provide set -- I
18 think it said something like they shall provide
19 setbacks to prevent erosion, flooding, stuff of that
20 nature.

21 In '90 -- I believe '96, then they
22 started getting more specific that it was five times
23 the width of the stream.

24 And then in 2009, is when the regulations
25 turned to more of what we have now where we

1 differentiate between a regular stream and
2 intermittent stream, and at that time, there was --
3 even if the stream isn't on USGS but we see it on our
4 map, we have setbacks at that time.

5 And then in 2014, I believe, we changed
6 it to what it is today.

7 COMMISSIONER THATCHER: So
8 because of the re-platting, or the potential
9 re-platting, we -- what they would like to do is get a
10 variance before we re-platting; is that correct, what
11 I'm hearing here?

12 MS. EAGAN: Yes.

13 COMMISSIONER THATCHER: Okay.
14 I had a couple of questions. I need to understand the
15 background on -- on the requirement. And I guess the
16 next thing, what defines -- other than the blue line
17 on the USGS map, what defines an intermittent creek?

18 Scottie, can you kind of educate us. If
19 you don't mind, educate us to kind of what we're
20 looking at here.

21 MS. EAGAN: I believe that is
22 the only definition we have on intermittent stream.

23 COMMISSIONER THATCHER: I'm
24 kind of getting the feeling that a ditch can be a
25 stream, but a stream can't be a ditch. It seems --

1 MS. EAGAN: Yeah, we don't --
2 we don't have a specific definition in our code for
3 intermittent stream. So we would just go by whatever
4 USGS defines it as.

5 COMMISSIONER THATCHER: And the
6 last revision they have on this class, when were these
7 -- were these on the USGS or --

8 MR. LAUNE: No, those are
9 something we actually topo-ed.

10 COMMISSIONER THATCHER: You
11 actually did?

12 MR. LAUNE: Yeah.

13 COMMISSIONER THATCHER: So but
14 the last time this was revised, just for my own
15 edification, was?

16 MR. LAUNE: '94, the plat
17 itself you talking about?

18 COMMISSIONER THATCHER: No,
19 that the stream and the fact that the classification
20 of the stream was --

21 MR. LAUNE: Oh, I can't answer
22 that.

23 MS. EAGAN: Where are you?

24 COMMISSIONER THATCHER: Okay.
25 Now that brings us to the house. The house is down

1 the street, up the street, where?

2 MR. LAUNE: That's downstream.

3 I believe those were just -- those were just examples
4 that there are other houses that are near the stream.

5 COMMISSIONER THATCHER: Okay.

6 MR. LAUNE: In places out
7 there, that's all those were a reference for, that it
8 does exist elsewhere.

9 COMMISSIONER THATCHER: All
10 right. And this is the actual stream? I think Gordon
11 kind of --

12 MR. LAUNE: Yeah, there are two
13 pictures. I think one --

14 COMMISSIONER THATCHER: Two
15 pictures?

16 MR. LAUNE: Yeah, one of them
17 was upstream a little higher than the other one.

18 COMMISSIONER THATCHER: All
19 right. And I see on the plat the house is pretty far
20 from the street, but that's what, it's only -- if this
21 is one inch equals ten feet, I don't know what the
22 scale is on this particular map, but how far is the
23 house from the street? How far is the house from the
24 actual center line of the creek?

25 MR. LAUNE: From the center

1 line of the creek? The center line of the creek is
2 shown down there. So you're roughly 15 feet off
3 there, 10 to 15 feet off there at that closest point.

4 COMMISSIONER THATCHER: And
5 there are a number of other homes, this being one
6 here, but how many other homes are encroaching up it?
7 Have variances been granted to those homes, or were
8 they just built?

9 MS. EAGAN: That I can't
10 answer. I don't believe we've -- since I've been
11 here, we haven't had a variance for anything out
12 there. So I don't know if they just went through and
13 whoever was doing building permits didn't catch them,
14 or what happened.

15 MR. LAUNE: But those were
16 platted prior -- like she said, earlier in '89. When
17 those were platted in '91, they didn't have the
18 definite stream line. And so now we're going for the
19 revised plat that comes up again for the stream
20 buffer. But those were existing, and people basically
21 yeah, approved by the Building Department.

22 COMMISSIONER THATCHER: Okay.
23 It would appear to me that really, because of all the
24 rooftops that dump water into this ditch, that's
25 really where most of the water comes from. It's

1 basically from all these gutters that feed it, and
2 what I see here to me is not a stream. It's a ditch,
3 just what i see.

4 And I just -- I think the problem I have
5 is in the determine the difference between a ditch and
6 a stream, and if this is a stream buffer, it's --
7 well, it just isn't -- I don't see it as that a big of
8 a stream. I'm surprised it's a blue line on the USGS
9 map.

10 So what we have here is the history of
11 the houses that have been built very close to the
12 stream, all within 10 or 15 feet like this one here.
13 And this home not particularly very large home.

14 How big is this house?

15 MR. LAUNE: I can't answer
16 that. I can -- Mr. Nienhaus could answer that
17 question, but I don't -- maybe 3,000 square foot,
18 4,000.

19 COMMISSIONER THATCHER: I think
20 that the -- you know the impact of the golf course
21 would be a bigger concern of mine with golf balls
22 coming in at 250 miles an hour. So -- because I know
23 the way I play golf, this house would be in jeopardy.
24 A prime target, yes. So I think that's all that I
25 have for you.

1 CHAIRMAN UPCHURCH: Other
2 questions by the Board?

3 COMMISSIONER HOFF: I only have
4 one. The golf course or the fairway is right next to
5 this, I take it?

6 MR. LAUNE: Yes.

7 COMMISSIONER HOFF: Does the
8 golf course have any concerns about the water drainage
9 over on them?

10 MR. LAUNE: They haven't voiced
11 any concerns. They're working with him to move the
12 lot line to get him an area down there that is
13 feasible.

14 COMMISSIONER HOFF: Because I'm
15 kind of like Fred. This is not to me a waterway.
16 This is just a --

17 MR. LAUNE: By default, it
18 shows up on a USGS map, and that's why we're here.
19 They claim a lot more jurisdiction than what is in
20 reality or common sense really dictates.

21 So that by default, we're subject to that
22 line, and that's why we're here, because common sense
23 would tell anybody that no, there's no issue of
24 flooding there. There's no issue of much water at all
25 coming down there.

1 COMMISSIONER THATCHER: You hit
2 on a key point. So in terms of flood plane, how far
3 are we above the flood plane?

4 MR. LAUNE: I did not research
5 the elevation of the flood plane, but it's pretty --
6 it's quite a ways.

7 MS. EAGAN: This is not located
8 near the flood plane.

9 COMMISSIONER THATCHER: Okay.

10 CHAIRMAN UPCHURCH: Other
11 questions? I failed to ask you the home or homes in
12 this group exhibit which I already offered for you
13 into your record, are these in the general vicinity of
14 this property?

15 MR. LAUNE: Yeah, I believe
16 that one right there, if you look on the map, it is --
17 if you pan up, Crystal, on that to the lower part of
18 the gold course. It's within a thousand feet of that.

19 That's -- nope, other way please.

20 It's down there where that -- where keep
21 going -- Cedar Valley Road crosses, it's generally in
22 that -- I believe it's down in that area.

23 COMMISSIONER HOFF: Kind of --

24 (CROSSTALK)

25 MR. LAUNE: No, I don't think

1 so. It's pretty close though.

2 CHAIRMAN UPCHURCH: It would be
3 a fair representation of other homes in the area?

4 MR. LAUNE: Yes.

5 CHAIRMAN UPCHURCH: Does that
6 prompt any other questions of this witness?

7 (NONE)

8 Anything else you want to tell us
9 before --

10 MR. LAUNE: I can't think of
11 anything.

12 CHAIRMAN UPCHURCH: -- we leave
13 the floor?

14 Thank you. Is there somebody else to be
15 heard with regard to the application?

16 (NONE)

17 Seeing no one jump to their -- Mr.
18 Nienhaus, will you step up.

19 MR. JIM NIENHAUS: Sure.

20 CHAIRMAN UPCHURCH: You need to
21 sign in.

22 COMMISSIONER THATCHER: While
23 he's signing in, may I ask Scottie a question?

24 CHAIRMAN UPCHURCH: Sure.

25 COMMISSIONER THATCHER:

1 Scottie, in terms of the Franklin -- does DNR have any
2 other regulations about streams; do they kick in at a
3 certain stream size in other regulations?

4 MS. EAGAN: That I don't know.
5 I know when people are talking about doing any work in
6 streams or crossing streams, we always direct them to
7 the Corps or the Corps of Engineers.

8 COMMISSIONER THATCHER: So does
9 the Corps -- where does their jurisdiction begin? Does
10 it also being on dotted blue lines?

11 MS. EAGAN: That I don't know.

12 COMMISSIONER THATCHER: I'm
13 sorry. Go ahead.

14 (THEREUPON, THE WITNESS WAS
15 SWORN.)

16 MR. NIENHAUS: Hello, my name
17 is Jim Nienhaus, and I am at 544 Quail Ridge Lane.

18 Actually I was there up until two weeks
19 ago, and I sold my house. I'm in a different -- a
20 rental house. I actually don't know that area. So I
21 apologize for that.

22 But yes, that's where it was.

23 CHAIRMAN UPCHURCH: Will you
24 spell that last name just for the record.

25 MR. NIENHAUS: Sure. It's

1 N-I-E-N-H-A-U-S.

2 CHAIRMAN UPCHURCH: And, Mr.
3 Nienhaus, what do you want to tell us?

4 MR. NIENHAUS: I just wanted it
5 to -- I can clari- -- I actually happen to be a home
6 builder and I plan on building this house. And as you
7 can imagine, as a home builder, I certainly don't want
8 my house near any possibility with any water issues.
9 That's a bad word in our industry, and I certainly
10 don't want that to be the case.

11 So I would never build something too
12 close to that, but in this case, the ditch which is a
13 good way to describe it. I haven't described it that
14 what. That's exactly what it is. It's -- I've even
15 been out there for my own personal, you know, use, in
16 big storms just to see what it's like, you know. Just
17 something I even want to do, and in this case, there's
18 just really nothing going through there.

19 It's pretty -- it's just benign. There's
20 -- it really just happens to be a depression where two
21 hills come together. And the only reason that it's --
22 as Steve mentioned, the only reason that we're in that
23 area is because that's the only flat part between
24 these two lots.

25 So that's what that is. And I didn't

1 know if there was any questions or any descriptions
2 from those drawings or anything. I certainly -- I
3 will tell you one thing that house picture that you
4 were holding up, that is a picture -- the reason I
5 took that -- I did take the picture, by the way.

6 The -- that shows you a house that's
7 within six feet of a much larger creek, I guess you'd
8 call it, out at St. Albans where water actually does
9 flow through it. And that's not the same creek as
10 running behind ours, but it's just an example of one
11 that's much closer.

12 So anyway that's -- that's what that was.

13 COMMISSIONER THATCHER: I have
14 a question, Jim. Has your site plan been approved by
15 the HOA?

16 MR. NIENHAUS: It has not. We
17 -- it has not been approved, no. We just aren't that
18 far, and if this wasn't going to work, to be honest,
19 we wouldn't -- we wouldn't build on it because it just
20 -- there's nowhere to put it. So -- so there was just
21 no reason to go for that until we got further down the
22 road here.

23 COMMISSIONER THATCHER: Thank
24 you.

25 CHAIRMAN UPCHURCH: Anything

1 else you want to tell us?

2 MR. NIENHAUS: That's all I
3 have.

4 CHAIRMAN UPCHURCH: Any other
5 questions from the Board?

6 (NONE)

7 Thank you for exposing yourself to
8 interrogation.

9 MR. NIENHAUS: Sure. Thank
10 you.

11 CHAIRMAN UPCHURCH: You too
12 will have an opportunity to be heard if somebody wants
13 to say something and it's not rebuttal, it's not
14 repeat. But you will have that opportunity also.

15 MR. NIENHAUS: Thank you.

16 CHAIRMAN UPCHURCH: Thank you.

17 Anyone else to be heard in support of the
18 application?

19 Yes, sir. You need to sign in and -- like
20 everyone else has. Sir, before I let you be sworn,
21 only because you were sitting on the other side of the
22 room where usually we have the opponents --

23 MR. MICHAEL LEWIS: Opponents,
24 okay.

25 CHAIRMAN UPCHURCH: -- and I

1 want -- I just want to be clear. You're here to speak
2 in support of the application?

3 MR. LEWIS: Well, I'm -- let me
4 clarify that. I'm here because I'm a resident of St.
5 Albans, and I received some correspondence saying that
6 I was within so many feet of this.

7 CHAIRMAN UPCHURCH: Well, let's
8 just let you be sworn in.

9 MR. LEWIS: Okay.

10 CHAIRMAN UPCHURCH: We'll
11 figure out if you're in support of or in opposition.
12 So you need to be sworn.

13 (THEREUPON, THE WITNESS WAS
14 SWORN.)

15 MR. LEWIS: My name is Michael
16 J. Lewis. I reside at 1264 Cedars Valley Drive in St.
17 Albans, Missouri.

18 CHAIRMAN UPCHURCH: You have
19 the floor.

20 MR. LEWIS: Okay. Whether or
21 not I'm in support of the variance, I would say that I
22 probably would be. I've been a resident of St. Albans
23 for 22 years, and there was a -- there are times when
24 there's a creek in the back of my yard that runs
25 through the 17th fairway of the Lewis and Clark Golf

1 Course.

2 And whenever -- over the number of years,
3 you know, we get these downpours and the water would
4 just expand and come out of the creek around. They
5 had a bowl, you know, that was a catch with water in
6 it to keep it contained. But it would come around the
7 bowl, and it would drop leaves, branches, limbs in my
8 back yard. And I would go out, and yes, i would clean
9 it up. It wouldn't take much time, you know, but it
10 was my time that I had to utilize, my efforts and my
11 resources to clean this up.

12 And so I got tired of doing that, and I
13 called the maintenance department. I says, hey, i
14 said, you know, all these leaves an branches when it
15 rains and downpours, water runs off the hills through
16 the golf course, comes out of the bowl and the drain
17 for this creek, and it's coming back into my back
18 yard.

19 I said I'm tired of cleaning it up, and
20 so the maintenance supervisor, I knew him, and he
21 would send -- whenever I would call, he would send
22 somebody around, and in fairness to St. Albans
23 maintenance, that they would have somebody come around
24 and clean all of this up.

25 And so I guess -- and so later on, you

1 know, we had a meeting with the St. Albans properties
2 and St. Albans maintenance, my next door neighbor, he
3 would get the brunt of the impact because everything
4 that ran through my yard in essence would run down
5 into his yard as well.

6 And so we had a meeting, and they had a
7 gentleman come out with St. Albans properties and St.
8 Albans maintenance and myself, my neighbor, and we
9 were discussing what to do. My neighbor wanted them
10 to tear out some trees, re-slope the golf course and,
11 you know --

12 CHAIRMAN UPCHURCH: This golf
13 course?

14 MR. LEWIS: The Lewis Clark
15 Golf Course at St. Albans, Reese Logan Golf Course
16 (ph.), and so that water would not run over into his
17 property. And what I shared with him, I said we have
18 this bowl here. One side is up pretty high. Why
19 don't we just level all this around and make it a
20 wider bowl and it catch more of the water.

21 And so the maintenance supervisor, he
22 came to me, and he said, Mr. Lewis, he said, that was
23 a great idea. He said, that's what we're going to do
24 with it. We're going to level this down, and he says,
25 I guess we could have done a better job of cleaning

1 out the drainage pipe that runs through there because
2 it was so clogged up. That's one reason why the water
3 was backing up.

4 And so that's what they did, and it
5 solved -- it solved the issue. And so I know
6 firsthand, you know, about the water history that it
7 caused. I guess that's the creek they're referring to
8 that's within 200 feet of our property.

9 And so I wanted to find out just how and
10 where my property was as it pertained to these lots
11 that the gentleman who was considering building some
12 homes on there. How far away are these lots, you
13 know, where they reference to there?

14 CHAIRMAN UPCHURCH: Well, where
15 is your lot?

16 MR. LEWIS: 1264 Cedars Valley
17 Drive.

18 CHAIRMAN UPCHURCH: Do you know
19 what lot that is?

20 MR. LEWIS: What lot number? I
21 do not know offhand.

22 CHAIRMAN UPCHURCH: What street
23 is it on?

24 MR. LEWIS: Cedars Valley.

25 COMMISSIONER THATCHER: Gordon,

1 he's just north of Club Creek Road. It's the second,
2 Lot 20.

3 COMMISSIONER HOFF: Lot 20.

4 COMMISSIONER THATCHER: It
5 could be Lot 20. The located number says 20. So is
6 that downstream from the subject tract or upstream?

7 CHAIRMAN UPCHURCH: Upstream.

8 MS. EAGAN: So 5 and 7 are the
9 ones in question. Parcel 20 is this.

10 COMMISSIONER HOFF: Parcel 20
11 gets more -- I'm sorry. I may be speaking out of
12 turn. Parcel 20 is a bigger creek.

13 MR. LEWIS: Well, and that's
14 what I was trying to determine because I was not
15 familiar with the creek that they were talking about
16 as far as in the various stream.

17 COMMISSIONER HOFF: The way I'm
18 looking at it, this creek comes through your back
19 yard?

20 MR. LEWIS: Through -- it comes
21 off through the golf course at the 17 hole, and then
22 it makes a -- I guess if I'm looking at it, it makes a
23 left turn and goes up under my neighbor's property,
24 the storm drainage pipe does.

25 COMMISSIONER HOFF: Okay.

1 MR. LEWIS: But where the
2 bridge is for the golfers when they come down the golf
3 course to go over, you know, the creek, that's where,
4 you know, my residence is and I can look out my window
5 and I can see, you know, the creek itself makes a --
6 if I'm looking at it, makes a left turn and goes down
7 under part of my property and part of my neighbor's
8 property as well.

9 But I do know for a fact that that water
10 will come out -- you know, it used to. It would come
11 out as much as 40 to 50 feet and look like a, you
12 know, not looking like the '93 -- flood of '93, but it
13 would just come out 40 to 50 feet around that creek
14 and leave all kind of debris and limbs and leaves and
15 everything.

16 CHAIRMAN UPCHURCH: Anything
17 else that you want to offer with regard to the
18 application?

19 MR. LEWIS: No, sir, but if you
20 could just show me in relation to my property this Lot
21 20, where are these other lots located at?

22 MS. HOLDMEIER: Right here
23 by --

24 MR. LEWIS: Okay. So ==

25 MS. HOLDMEIER: Then opposite

1 the golf course.

2 MR. LEWIS: Okay. So they're
3 further up here?

4 MS. HOLDMEIER: Yes.

5 COMMISSIONER HOFF: The way I
6 read this, the creek kind of starts there and heads
7 off at Eagle. It's more of a drainage ditch off the
8 road.

9 CHAIRMAN UPCHURCH: So they're
10 sort of down at the far end of the course from you?

11 MR. LEWIS: Yeah, right.

12 CHAIRMAN UPCHURCH: Anything
13 else you want to offer to us?

14 MR. LEWIS: No, sir. That was
15 it. Thank you.

16 CHAIRMAN UPCHURCH: Are there
17 any questions of this witness?

18 (NONE)

19 Thank you.

20 MR. LEWIS: You're welcome.

21 CHAIRMAN UPCHURCH: Is there
22 anyone else to be heard in support of the application?

23 (NONE)

24 Seeing none, we'll consider the
25 applicant's case closed with regard to evidence at

1 this moment in time subject to rebuttal.

2 Is there anyone wishing to be heard in
3 opposition of the application?

4 (NONE)

5 Seeing no one jump to their feet, then we
6 will consider the evidence closed, and I'll open it
7 for discussion among the Board on the evidence which
8 is now closed.

9 I will jump in first. We sort of made a
10 record here, and candidly with regard to variances,
11 Scottie already covered the -- in the staff report the
12 burden of a hardship for granting a variance. In
13 fairness, I whispered at her earlier that I would be
14 putting her on the spot. So I do so now on the
15 record.

16 If we were to grant this request, in
17 fairness with regard to the zoning plana and the
18 public good, what impairment of the intent or purpose
19 of integrity of either would occur from our approval
20 of this variance?

21 MS. EAGAN: I would say
22 considering the amount of water that runs through the
23 stream up by parcel 5 and 7 and the fact that this
24 isn't even located in the floodplain, the detriment to
25 any future plans or the zoning regulations, I don't

1 think there is any detriment to it. So I hope that
2 answers your question.

3 CHAIRMAN UPCHURCH: It does,
4 but I think I need to have that as part of the record.

5 Is there other discussion among the Board
6 with regard to this application?

7 COMMISSIONER THATCHER: I'd
8 like to make a comment. I think to solve the problem
9 build a smaller house. But the problem is all the
10 houses in that area are three to four thousand square
11 feet.

12 So that becomes a hardship. I mean, if
13 you have to build a small house, everybody else is
14 different than you. It's incongruous in my opinion.

15 COMMISSIONER TOBBEN: I just
16 want to add to that. Subject to our Architectural
17 Control Committee and minimum square foot requirements
18 that is probably something that wouldn't get approved.
19 I don't know what the minimum square footage is for a
20 house in that area.

21 COMMISSIONER HOFF: You mean
22 for HOA?

23 COMMISSIONER TOBBEN: The HOA,
24 everything, the subdivision has restrictions.

25 COMMISSIONER THATCHER: That's

1 the hardship.

2 CHAIRMAN UPCHURCH: And in
3 addition to that, the record would indicate that
4 although the lots would support another location,
5 there's a practical inability to build because of the
6 elevation. And I for one will say I do appreciate the
7 fact that we don't have an infinite -- I realize,
8 Cochran, you cost money, but we need someone to make a
9 record here. And the elevations are pretty dramatic.
10 We don't see a lot of those.

11 If there's anyone that wishes -- with the
12 Board that wishes to be heard, if not, I'm ready to
13 try to move this thing along.

14 COMMISSIONER HOFF: One minor
15 question. This variance is to this property and this
16 property only, it's not for any other lots or anything
17 around it other than this?

18 MS. EAGAN: Correct.

19 COMMISSIONER HOFF: Just making
20 sure that we don't open a can of worms down the road
21 with other lots down the road.

22 MS. EAGAN: I believe when we
23 -- it's been a long time since we've done a record of
24 decision, but I believe we tie it to the parcels.

25 COMMISSIONER THATCHER: Every

1 other lot's built upon, from what I see here.

2 COMMISSIONER HOFF: Yeah.

3 CHAIRMAN UPCHURCH: Even if it
4 were not, my belief and I could be wrong, but it's
5 where our ruling would apply to this application and
6 this lot. Certainly our rulings to the extent that we
7 approve and somebody with another lot would make
8 another application on nearing identical facts, this
9 Board may be somewhat bound, but the devil is in the
10 detail with regard to those facts.

11 And again, that might be a concern of
12 this Board, but it's not going to change my
13 impression.

14 Is there other discussion?

15 COMMISSIONER HEAD: Just out of
16 curiosity, Scottie, if the Board affirms the variance
17 and the variance is still recorded on the property
18 even if this contract does not go through, correct?

19 MS. EAGAN: Correct. Yes.

20 COMMISSIONER HEAD: So the
21 current owner will get the variance?

22 MS. EAGAN: And the variance
23 will go to the land.

24 COMMISSIONER HEAD: Okay.

25 CHAIRMAN UPCHURCH: Good

1 question. Thank you. Thank you for that, Scottie.

2 IS there further discussion?

3 (NONE)

4 I'm going to make a motion that the
5 variance as requested be approved, and in light of the
6 evidence, I believe the request to move that variance
7 from the 50 feet be reduced to 0, and I think as a
8 practical matter, and again we've made a record ad
9 nauseam about the fact that calling this a creek is a
10 significant overstatement.

11 But be that as it may, I think that
12 request of the variance is legitimate as the least
13 amount of a variance as will alleviate the hardship to
14 this lot owner on this particular lot. And I would
15 make that my motion for approval.

16 Is there discussion or a second my
17 motion?

18 COMMISSIONER THATCHER: I'd
19 second the motion.

20 CHAIRMAN UPCHURCH: There is a
21 second. Is there further -- is there any more
22 discussion on the motion which is now seconded?

23 (NONE)

24 Then we should call it for a vote.
25 Scottie.

1 MS. EAGAN: Justin Head?

2 COMMISSIONER HEAD: Yes.

3 MS. EAGAN: Steve Hoff?

4 COMMISSIONER HOFF: Yes.

5 MS. EAGAN: Fred Thatcher?

6 COMMISSIONER THATCHER:

7 Approved, yes.

8 MS. EAGAN: Tim Tobben?

9 COMMISSIONER TOBBEN: Yes.

10 MS. EAGAN: And, Gordon

11 Upchurch?

12 CHAIRMAN UPCHURCH: Yes.

13 MS. EAGAN: Okay. Five in
14 favor and zero opposed, the variance has been granted.

15 CHAIRMAN UPCHURCH: For the
16 record, we're sort of one stop on the rail line. We
17 approved this variance that will be subject to suit by
18 someone who feels that they were harmed by it. That is
19 unlikely in this case with the absence of any
20 opposition, but so we do the best that we can.

21 And again, if someone feels that we've
22 done it to their detriment, the court survey will go
23 to them. The formal Order will be prepared and
24 available in short order from Scottie's office.

25 And with that, I'm going to entertain a

1 motion that we adjourn.

2 COMMISSIONER HEAD: I make that
3 motion.

4 CHAIRMAN UPCHURCH: And is
5 there a second on that?

6 COMMISSIONER TOBBEN: Second.

7 CHAIRMAN UPCHURCH: Those in
8 favor aye.

9 COMMISSIONER THATCHER: Aye.

10 COMMISSIONER HEAD: Aye.

11 COMMISSIONER TOBBEN: Aye.

12 COMMISSIONER HOFF: Aye.

13 CHAIRMAN UPCHURCH: We're
14 adjourned.

15 (THEREUPON, THE PROCEEDINGS
16 CONCLUDED AT 7:51 P.M.)

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1 CERTIFICATE OF REPORTER

2 STATE OF MISSOURI)
3 COUNTY OF FRANKLIN) SS

4 I, PATSY A. MAYBERRY, Professional Court
5 Reporter and Notary Public within and for the State of
6 Missouri, before whom the foregoing proceeding was
7 taken telephonically, do hereby swear that: the
8 aforementioned was held at the time and in the place
9 previously described; the witness whose testimony
10 appears in the foregoing transcript was duly sworn by
11 me; the proceedings were taken down in stenographic
12 notes by me and transcribed by me, or under my
13 supervision, to the best of my ability; that I am
14 neither counsel for, related to, nor employed by any
15 of the parties to the action in which this testimony
16 was taken; further that I am not a relative or
17 employee of any attorney or counsel employed by the
18 parties thereto, nor financially or otherwise
19 interested in the outcome of the action; and that the
20 aforementioned represents a true and accurate
21 transcript of said proceedings

22 IN WITNESS WHEREOF, I have hereunto set
23 my hand.

Patsy A. Mayberry



24 Patsy A. Mayberry, Court Reporter
25 Notary Public, State of Missouri;
My Commission Expires: August 26,

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