**MINUTES**

**DOUGLAS COUNTY BOARD OF ZONING APPEALS**

Public Works/Zoning and Codes Building - Training Room, and by Zoom

3755 E 25th Street

**Monday, April 17, 2023**

10:00 A.M.

MEMBERS PRESENT: Charlie Thomas, Chair; Scott Eudaly; Jerry Wohletz, Phil Metsker, Rich Barr

STAFF PRESENT: Tonya Voigt, Zoning Director; Karl Bauer, County Planner; Ben Harris, Code Enforcement Officer;

PUBLIC PRESENT: In Person: Wendy Regehr; Travis McCormick

Virtual: Beth Michels; Stephanie Novacek; Mike Younger; Monti Nicolay

Charlie Thomas called the meeting to order at 10:00 a.m.

Charlie Thomas called roll and a quorum was established.

**ITEM NO. 1:** **MINUTES**

Approve, revise, or approve with conditions the October 17, 2022, meeting minutes.

Jerry Wohletz motions to approve, Rich Barr seconds. Approved 3-0.

**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.

Charlie asks, all members attest to no communication.

**VARIANCE REQUESTS**

**ITEM NO. 3: ZBZA-2023-0001 -** ON AN APPLICATION FOR: A VARIANCE request under the terms of the *Zoning and Land Use Regulations for the Unincorporated Territory of Douglas County, Kansas*, from Stephanie Novacek of Well Wilderness Kids Therapeutic Nature Center, requesting a Variance to allow a reduction of the required 110-foot front setback to approximately 91 feet for a 10-foot by 16-foot storage building, located on a 6.5-acre property approximately 1,000 feet north of the intersection of E 2100 Road and N 1100 Road.

APPLICANT/OWNER:Jonathan C. and Stephanie K. Novacek

LOCATION: North of the intersection of N 1100 Rd and E 2100 Rd

AREA: 6.5 Acres

DATE OF PUBLIC HEARING:April 17, 2023, 10:00 am.

DATE PUBLIC NOTICE PUBLISHED:March 28, 2023

PRESENT LAND USE:Ag-2 – Transitional Agricultural District, used as a therapeutic nature center

# SECTION AND REQUIREMENT OF ORDINANCE PERMITTING VARIANCE:

* 12-303-2.04 Dimensional Standards: Requires 35-foot base setback along a minor collector street and a 75-foot front and exterior side setback.

**DESCRIPTION OF VARIANCE REQUESTED:**

The subject property is approximately 6.5 acres in size and consists of a mostly wooded lot used for therapeutic nature experiences for children. A conditional use permit is currently pending and a variance will be a required condition. Structures include a yurt and 10-foot by 16-foot storage building. The storage building is built within the front setback. Building spaces are limited on the property due to the abundant trees and steep slope along a stream.

**STAFF RECOMMENDATION**

County Staff recommend approval of the variance request from Stephanie Novacek of Well Wilderness Kids Therapeutic Nature Center, requesting a Variance to allow a reduction of the required 110-foot front setback to approximately 91 feet for a 10-foot by 16-foot storage building, located on a 6.5-acre property approximately 1,000 feet north of the intersection of E 2100 Road and N 1100 Road, with the following stipulations:

1. This variance shall apply only for a 10-foot by 16-foot storage 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.
2. The conditions of CUP-23-00081 shall be continually followed.

**10:00 – Charlie Thomas reviews minutes from Oct. 2022 and asks for disclosure of ex-parte communication. None disclosed.**

**10:02 Karl Bauer presents ZBZA-2023-0001 from staff report**

**10:06 Charlie Thomas disclosed that he is also on the planning commission.**

10:07 Karl Bauer stands for questions.

10:08 Scott Eudaly asked whether this is a temporary structure. Tonya Voigt noted that they do not yet have approvals …

Rich Barr – when was structure placed. Tonya Voigt reviewed meeting onsite to review next steps that will be needed to gain permits.

Scott, is this exempt because it’s under 200 sq ft? Tonya stated no

Travis McCormick - 1110 E 2100 Rd – property owner placed shed and drive, but fence was there. He asks if they could meet the variance if they move it further to the South. Believes the CUP should be first before the BZA application. Not sure why this would need to be at the top of the hill. A lot of my concerns are regarding the CUP.

Wendy Regehr 1140 E 2100. If you’re going to do this, then what else are you going to do? I’m the original person that emailed. She met a person at work who stated how many buildings they are going to add. She was told they are adding a day camp. She is concerned about what is going on at the property. Do you have to have approval to add all the rock? Karl noted that from the approach.

Travis, township did not receive a request or allow a request. Township would have liked to have seen a request. They operated that business until county made them stop. This variance feels like a precursor, asking for a variance for something that isn’t allowed yet at the parcel.

Tonya, BZA is voting on variance for the structure, not the use. They will have to identify future buildings on site plan for CUP application. An engineered bridge would need to be built if they wanted to access the East of the parcel. We don’t believe that they plan to put in a full bridge, but we have reviewed the possibility of a pedestrian bridge, that would be crossed with a stretcher by emergency management.

Putting a structure across they floodplain will require the collaboration with lots of agencies. This is not a residential use; it is now a commercial use and the public needs to know emergency plan.

10:18 Karl Bauer - If the CUP is denied the building can only be used for storage.

Rich Barr – the use is not under our purview; it is the setbacks that we are looking at.

Mike Younger – parallel north property line. I do not have comments for this but will submit comments for the CUP.

Monti Nicolay – own farm ¼ mile from property. If we allow this variance, how many more will we allow?

10:21 - Stephanie Novacek – Pediatric Physical Therapist. Well Wilderness est. in Olathe since 2016. This would be the second location for Well Wilderness. Just to use the parcel they knew they needed better access, so they added drives. They have a lot of people who want to send their kids to the property for therapy. I want to meet more neighbors, I’m a health care professional. I’m learning a lot through this process. We’ve taken everything recommended very seriously. We do not take children to the back of the property because of the risk. I wan the support of everyone around us. This use will be small groups or one on one with children in nature. Purchased property in midst of pandemic. I want to be a team player and I want be a part of the community and support families. This is a learning process for me as well.

10:27 Rich Barr – Is there a plan for additional structures?

Stephanie – at the moment no. The current structure is used for supplies of inclement weather. However if weather is going to be bad, they just cancel. Hope to eventually use the structure for private 1 on 1 therapies.

Doesn’t think even a walking bridge can happen. No engineers are able to take that project on. Understands that going forward they may not be able to ever use rear of property.

Wendy R. Where does she live?

Stephanie, my family and I live in Olathe.

Jerry, before I got on the board, rules were so restrictive that no variances were ever approved. Part of our board is to be more flexible if it will not limit long range future expansions.

We need to look at just this building and how it will affect safety and future expansion of the road.

Rich Barr – I go back to the Kennel application. That was another situation where people came out against the Kennel use, but that was not in our purview.

When I joined board I saw everything as black and white, but over time I’ve learned. We need to focus on safety.

Charlie, We appreciate it when people come in and talk and say here’s how I see the world.

Jerry, you help us think about things we may not have thought about. My concern is about the building, not the CUP.

Charlie, any other comment from the board?

The CUP is a separate issue.

Tonya Voigt clarifies - That CUP application will be reviewed next Monday April 24th at the planning commission meeting.

Scott notes that the neighboring properties are closer to the road than current setbacks.

Rich Barr, is the fence necessary, or was it there.

Stephanie – the fence was there. We left it for a privacy option. If it needs to be removed to make this safe, we are happy to do that. Happy to move building if there was a safer spot for it.

10:42 - Jerry makes motion to approve variance with conditions.

County Staff recommend approval of the variance request from Stephanie Novacek of Well Wilderness Kids Therapeutic Nature Center, requesting a Variance to allow a reduction of the required 110-foot front setback to approximately 91 feet for a 10-foot by 16-foot storage building, located on a 6.5-acre property approximately 1,000 feet north of the intersection of E 2100 Road and N 1100 Road, with the following stipulations:

1. This variance shall apply only for a 10-foot by 16-foot storage 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.
2. The conditions of CUP-23-00081 shall be continually followed.

Motion seconded by Rich Barr. Motion to approve passes 5-0.

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**ITEM NO. 4: ZBZA-2023-0002:** A request from Alan D. Michels, property owner, seeking an amendment to a condition placed on a previously approved Variance to allow gravel surfacing in lieu of the required asphalt or concrete pavement for all off-street parking spaces and access drives for nonresidential uses taking access from adjoining roads paved with asphalt or concrete, to be located at 1558 N 600 Road.

**FROM:** Karl Bauer, County Planner

APPLICANT/OWNER:Alan D. Michels, applicant/Alan D. and Bethany B. Michels, property owners

LOCATION: 1558 N 600 Road

AREA: 20 acres

DATE OF PUBLIC HEARING:April 17, 2023, 10:00 am.

DATE PUBLIC NOTICE PUBLISHED:March 28, 2023

PRESENT LAND USE:Ag-2 – Transitional Agricultural District, used as residential and as an event center

**RECOMMENDED MOTION:**

Consider amending stipulation five of ZBZA-2022-0011: A VARIANCE request from Alan D. Michels, property owner, to allow gravel surfacing in lieu of the required asphalt or concrete pavement for all off-street parking spaces and access drives for nonresidential uses taking access from adjoining roads paved with asphalt or concrete, to be located at 1558 N 600 Road, to instead be as follows:  
5. The paved entrance should be completed by May 1, 2024. This date may be administratively extended, provided the nonresidential activity does not substantially increase in intensity.

**10:45 Karl Bauer presents ZBZA-2023-0002 and reviews staff report.**

No board members need to have full application presented.

Jerry Wohletz – My only concern is that there are only two events scheduled. I would need to know if there are more events planned if we extend the time to add the paved entrance.

Alan Michels – This is a pet project and we both work full time jobs. It’s taken time to get an asphalt company to pave the entrance. It’s tough to justify spending $20,000 when we have limited traffic coming in and out. I understand the request, but with the limited use and expense I’m asking for an extension until we know if the use will increase. We also have to time the installation with when they are gone.

Jerry would like to see it limited.

Scott, we need a trigger that would require the paving.

Jerry, I would consider 5 or less events until May 2024.

Rich Barr - are we talking about just the apron?

Tonya – Yes. Property line to end of the right of way.

Karl Measures – 50 ft.

Alan – in an ideal scenario, if there was a project occurring nearby he could just about pave the whole drive for the current cost of the approach.

Scott and Jerry discuss not wanting to leave an open door, but they want to see him be successful.

Alan is good with the proposal of 5 or less events.

General discussion that this needs to come back in a year to reevaluate.

Tonya, likes that this allows us to look at this yearly since he could do 4 per year with a special event permit.

Add Karl’s edited recommended motion:

Recommended Motion:

10:58 - Rich Barr motions to approve:

Consider amending stipulation five of ZBZA-2022-0011: A variance request from Alan D. Michels, property owner, to allow gravel surfacing in lieu of the required asphalt or concrete pavement for all off-street parking spaces and access drives for nonresidential uses taking access from adjoining roads paved with asphalt or concrete, to be located at 1558 N 600 Road, to instead be as follows: 5. The paved entrance shall be completed by May 1, 2024 provided no more than five events take place in a one-year period beginning May 1, 2023.

11:03 Scott Eudaly seconds motion to approve seconded by Jerry Wohletz - Motion to approve passes 5-0.

11:03 Brief recess.

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11:06 Charlie Thomas reviews mailed packet received. All board members received the mail, so it had to posted to the public packet.

Item 6: Election of a new Chairperson.

Karl notes that in November we elect Chair and Vice Chair. We did not have a November meeting, so this is the first opportunity to elect a chair.

Jerry nominates Rich to be chair.

Rich accepts the nomination.

Phil motions to approve, passes 5-0

Nominate vice-chair –

Scott Eudaly is nominated for vice-chair

Jerry Wohletz motions to approve, passes 5-0

11:10 Jerry Wohletz motions to end meeting.

Scott Eudaly seconds. Approved 5-0 to adjourn.