

BOARD OF ADJUSTMENT
OF THE CITY OF SUNSET HILLS, MISSOURI
THURSDAY, MARCH 23, 2023

BE IT REMEMBERED that the Board of Adjustment of the City of Sunset Hills, Missouri met in regular session on Thursday, March 23, 2023. The meeting convened at 7:10 P.M.

ROLL CALL

Present:	William Weber	-Member
	Mark Naes	-Member
	Kurt Krueger	-Alternate Member
	Joshua Arnold	-Member
	Lynn Sprick	-City Planner
	Lyndee Rodamaker	-Attorney
	Bryson Baker	-City Engineer
Absent:	John Hassis	-Member
	Larry Smith	-Member

APPROVAL OF MINUTES

Copies of the minutes of the February 23, 2023, Board of Adjustment meeting were distributed to the members for their review. Mr. Naes motioned to approve the minutes as submitted. Mr. Arnold seconded the motion, and they were unanimously approved.

NEW BUSINESS

It should be noted that the following five petitions were heard simultaneously but voted on separately.

A-07-23 Application for a Variance, submitted by Olga Despotis Perpetuities Trust, to vary the contents of a "Type C" landscape buffer from the required 10

ornamental trees, 10 canopy/evergreen trees and 50 shrubs to 4 ornamental trees, 17 canopy/evergreen trees and 0 shrubs for a new development at 3825 South Lindbergh Boulevard (UDO Section 4.2.2-4).

A-08-23 Application for a Variance, submitted by Olga Despotis Perpetuities Trust, to vary the building setback from a residential property line from the required seventy-five feet (75') to fifteen feet (15') for a new development at 3825 South Lindbergh Boulevard (UDO Section 3.3).

A-09-23 Application for a Variance, submitted by Olga Despotis Perpetuities Trust, to vary the parking lot setback from the required five feet (5') to zero feet (0') for a new development at 3825 South Lindbergh Boulevard (UDO Section 4.1.7b).

A-10-23 Application for a Variance, submitted by Olga Despotis Perpetuities Trust, to vary the building setback from a residential property line from the required seventy-five feet (75') to twenty-five feet (25') for a new development at 12406 Court Drive, 3851 and 3863 South Lindbergh Boulevard (UDO Section 3.3).

A-11-23 Application for a Variance, submitted by Olga Despotis Perpetuities Trust, to vary the parking lot setback from the required five feet (5') to zero feet (0') for a new development at 12406 Court Drive, 3851 and 3863 South Lindbergh Boulevard (UDO Section 4.1.7).

Ms. Rodamaker stated that exhibit 1 is the Unified Development Ordinance (UDO), exhibit 2 is the application for A-07-23, exhibit 3 is the staff report for A-07-23, exhibit 4 is the site plan for A-07-23 through A-09-23, exhibit 5 is the petitioner

information for A-07-23 through A-11-23, exhibit 6 is the public hearing information for A-07-23 through A-09-23, exhibit 7 is the application for A-08-23, exhibit 8 is the staff report for A-08-23, exhibit 9 is the application for A-09-23, exhibit 10 is the application for A-10-23, exhibit 11 is the staff report A-10-23, exhibit 12 is the staff report for A-09-23, exhibit 13 is the site plan for A-10-23 and A-11-23, exhibit 14 is the public hearing for A-10-23 and A-11-23, exhibit 15 is the application for A-11-23, and exhibit 16 is the staff report for A-11-23.

Ms. Sprick was sworn in and stated correspondence was received from several residents. Bernita Born Wolf is opposed to A-07-23 through A-11-23. She stated the Court Drive citizens and the residents along West Watson Road are opposed to the credit union and the variances that would enable it. Pat Peterson, of 12425 Court Drive, requested the properties be left as residential. She stated setback minimums ensure safety and privacy. She would like the minimum setback and green space to be left as is. A letter was received from the Board of Aldermen which stated that they are aware of the variance requests. They have no authority for a recommendation but have no problem with the Board of Adjustment approving them.

Ms. Rodamaker asked if the letter from the Board of Aldermen was sent to the applicants, as well.

Ms. Sprick replied, yes. Lot one is currently zoned commercial. The request for setback variances are identical to prior variances that were approved, but have expired. 12412 Court Drive has been removed from the commercial development and is proposed to stay residential to provide a buffer for existing residents. The 5-foot setback variance request, for the parking lot, is to keep the development as far from the Court Drive right of way as possible. The Change of Zoning request from Residential to Local Commercial and the Conditional Use Permit would have to be approved by the Board of Aldermen if the proposal was to move forward. All commercial developments must be presented as a Planned Development to the Board of Aldermen, as well. Staff recommends conditions for the last two variances.

Mr. Weber asked if the two residential properties meet all Code requirements.

Ms. Sprick replied yes.

Mr. Weber stated this provides a buffer between the proposed development and the existing residential properties.

Jim Hall, with Hall and Associates, was present, sworn in, and stated all parcels were subject of a recent court ruling. During the court case, they were asked to leave the two residential properties residential to be used as a buffer. Doing so caused some of the variance requests to be necessary. There will be a Type C buffer, with extensive landscaping. The 75-foot buffer crosses over the front building line and makes the lot unbuildable. They are attempting to get back to the previously approved variances, while still having a landscape buffer. There will be a Type C buffer for the middle parcels. The 75-foot building setback would only allow a 20-foot-wide building. 3851 South Lindbergh Boulevard is restricted under a private indenture. The setback variance for parking is due to them attempting to get the development as far away from Court Drive as possible. There will be two commercial properties abutting each other and the cross-access agreement will enable them to align with the entrance across South Lindbergh Boulevard. There will be a 15-foot buffer on the lot to the south.

Mr. Weber asked if there will be a 6-foot high, site-proof fence on the east side.

Mr. Hall replied yes.

Mr. Weber requested the smooth side of the fence face toward the residential properties. He stated the landscaping along Court Drive is not shown. He asked if it is possible to put landscaping there.

Mr. Hall stated the document is a Concept Plan. Once finalized, during the Development Plan, they do not have an issue with adding extensive landscaping along Court Drive.

Mr. Krueger asked who owns lots two and three.

Mr. Hall stated they are under contract to the Trust.

George Despotis was sworn in and stated lots two and three are owned by the Gast family but are under contract for purchase.

Mr. Naes asked who would maintain them.

Mr. Despotis stated they will be sold as residential, and homes will be built.

Mr. Weber asked who will maintain the properties until they are sold.

Mr. Despotis stated the current owners.

Mr. Baker asked if the development is approved and the Trust purchases them, then who will maintain them.

Mr. Despotis stated the Trust.

Mr. Krueger asked what the contingencies are on closing on the properties.

Mr. Despotis stated he cannot disclose that information. The contract is contingent on the rezoning of the properties. They are requesting the variances as part of the settlement agreement. The city asked the proposed residential properties to be kept residential. This caused the variances to be necessary.

Mr. Naes stated any variance should be contingent upon the Trust acquiring the properties.

Mr. Hall stated the variances will go away if the Trust does not purchase the properties.

Mr. Despotis stated lots 2 and 1 have always been approved for commercial development.

Ms. Rodamaker stated the property to the north of lot 1 is already commercial. The variances on the other residential lots will not be necessary if the rezoning does not occur. It would be fair to condition those variance requests on the rezoning being approved.

Mr. Hall stated lots 3 and 4 meet all requirements besides the setbacks. The new owner of lot 3 would be aware that they are abutting a commercial property.

Mr. Weber asked why they were requesting the variances for lots 3 and 4 to be approved in perpetuity.

Mr. Hall stated because of the requirement that the approval is only good for 90 days at a time. They ran out of the ability for extensions in the past. As they go through the settlement, they do not want to have to come back for the variances again.

Mr. Despotis stated they are trying to reach a settlement with the city. There are no potential tenants at this point, but the Trust wants the assurance that the variances will still be accepted when it is time.

Mr. Weber stated he is not willing to approve them in perpetuity.

Mr. Despotis stated there must be decisions made in the court room. The only way to proceed with the settlement is to have these variances approved.

Ms. Sprick asked if they could approve them for longer than six months that is allowed in the UDO.

Ms. Rodamaker stated the Code allows the Board to grant extensions without a notice or hearing.

Mr. Baker asked if they could not limit the number of extensions.

Mr. Despotis asked if the Board is obligated to approve the extensions or if they can choose to deny them.

Ms. Rodamaker stated there is always a possibility that they may make that decision.

Mr. Naes stated 3825 South Lindbergh has had variances for 13 years and nothing has been developed, due to their desire to have them be commercial lots. They are being left unmaintained.

Mr. Despotis stated there is a reluctance for tenants to go into a space with such controversial items. Once there is a settlement, development will happen quickly.

Mr. Weber stated he would be okay with the extensions, but not approving the variances in perpetuity.

Mr. Despotis stated there cannot be a real settlement agreement without the variances in perpetuity. They need a binding agreement.

Ms. Rodamaker stated the settlement is a separate matter from the variance approvals. The decision should be based on the application, the materials in front of them, and what they are hearing from the applicant. The Board does not have to grant a variance if they do not desire to.

Mr. Despotis asked if the Board of Aldermen could provide assurance that future Boards must comply with the settlement agreement.

Ms. Rodamaker stated the settlement agreement is handled in court.

Mr. Krueger asked if the perpetuity of the variance approvals could be handled in court.

Ms. Rodamaker replied yes.

Mr. Weber stated they would not need the variances if it was not for the court order.

Mr. Hall stated they need to know if the variances are acceptable to move forward with the settlement.

Mr. Weber stated he likes the buffer of a residential lot being between the commercial and existing residential properties.

Mr. Despotis stated if they must go beyond the Board for the perpetuity aspect, they could.

Mr. Weber stated perpetuity is not included in the petition.

Ms. Rodamaker stated the applicant is aware that they must receive four positive votes.

Paul Kraus, of 12420 Court Drive, was sworn in and stated he owns the new home that is most directly affected by the development. Residents of Court Drive would not like to see the properties developed as commercial. The proposed home would be a great idea. He asked that the Board support the residents by keeping the area residential. He likes the compromise of the residential buffer rather than the previous proposal where it was all commercial. He would like the properties to be developed tastefully.

Pat Fribis, of 9843 Sunset Greens Drive, was sworn in and stated the letter that was sent by the Board of Aldermen was unethical. She asked Ms. Rodamaker to confirm the lawsuit is in appeal.

Ms. Rodamaker replied yes.

Jackie Tyra, of 12440 Court Drive, was sworn in and stated the lot that has been sitting vacant for 13 years is unsightly. The owners of the properties have been tied up with the contract with no chance of developing them. She asked why the variances are being discussed if it is in court and being appealed. This case is setting a precedent on how developers can get Sunset Hills to change their zoning and it is not ethical.

Vincent Lindwedel, of 12437 West Watson Road, was sworn in and stated past Aldermen stood up for the community. They could finish the subdivision as residential with no issues. He could purchase those properties and build them residential if the contract did not go through. Property value and safety are a concern. He asked if the variances are denied if they can go to another entity.

Mr. Baker stated no, they can appeal the decision to St Louis County Circuit Court.

Ann McMunn, of 12431 Court Drive, was sworn in and stated the letter from the City Administrator was in direct violation of the City Code and did not have full support of all Board of Aldermen. The judgement did not mandate the rezoning to commercial.

Lot 1 has always been commercial, and the variances have already been approved, but nothing has been built. Mr. Despotis has no tenants and stated it could take years, while residential properties are in high demand.

Ms. Rodamaker stated the Board must consider the procedure under the Code requirements. The status of the lawsuit may or may not be the reason for the request, but it does not affect the decision.

Mr. Weber stated the first three variance requests have already been approved. They are adding additional landscaping. The two last ones are the only new ones. All they are considering are the variances and how they apply to the property.

Mr. Weber called for a vote on A-07-23 Application for a Variance, submitted by Olga Despotis Perpetuities Trust, to vary the contents of a "Type C" landscape buffer from the required 10 ornamental trees, 10 canopy/evergreen trees and 50 shrubs to 4 ornamental trees, 17 canopy/evergreen trees and 0 shrubs for a new development at 3825 South Lindbergh Boulevard (UDO Section 4.2.2-4). A roll call vote was taken.

William Weber	-aye
Mark Naes	-aye
Kurt Krueger	-aye
Joshua Arnold	-aye

With 4 aye votes and 0 nay votes, the petition was approved.

Mr. Weber called for a vote on A-08-23 Application for a Variance, submitted by Olga Despotis Perpetuities Trust, to vary the building setback from a residential property line from the required seventy-five feet (75') to fifteen feet (15') for a new development at 3825 South Lindbergh Boulevard (UDO Section 3.3). A roll call vote was taken.

William Weber	-aye
Mark Naes	-aye
Kurt Krueger	-aye
Joshua Arnold	-aye

With 4 aye votes and 0 nay votes, the petition was approved.

Mr. Weber called for a vote on A-09-23 Application for a Variance, submitted by Olga Despotis Perpetuities Trust, to vary the parking lot setback from the required five feet (5') to zero feet (0') for a new development at 3825 South Lindbergh Boulevard (UDO Section 4.1.7b). A roll call vote was taken.

William Weber	- aye
Mark Naes	- aye
Kurt Krueger	- aye
Joshua Arnold	- aye

With 4 aye votes and 0 nay votes, the petition was approved.

Mr. Weber called for a vote on A-10-23 Application for a Variance, submitted by Olga Despotis Perpetuities Trust, to vary the building setback from a residential property line from the required seventy-five feet (75') to twenty-five feet (25') for a new development at 12406 Court Drive, 3851 and 3863 South Lindbergh Boulevard (UDO Section 3.3)

Mr. Krueger made a motion to amend by adding the conditions that A-11-23 and all associated applications to the Planning and Zoning Commission (lot consolidation, change of zoning, development plan and conditional use permit, if necessary) are all approved, as well.

Mr. Weber asked if landscaping along Court Drive can be added.

Mr. Krueger made a motion. Mr. Arnold seconded it and the motion to amend was unanimously approved. A roll call vote was taken.

William Weber	-aye
Mark Naes	-nay
Kurt Krueger	-aye
Joshua Arnold	-aye

With 3 aye votes and 1 nay vote, the petition was denied.

Mr. Weber called for a vote on A-11-23 Application for a Variance, submitted by Olga Despotis Perpetuities Trust, to vary the parking lot setback from the required five feet (5') to zero feet (0') for a new development at 12406 Court Drive, 3851 and 3863

South Lindbergh Boulevard (UDO Section 4.1.7), as amended. A roll call vote was taken.

William Weber	-aye
Mark Naes	-nay
Kurt Krueger	-aye
Joshua Arnold	-aye

With 3 aye votes and 1 nay vote, the petition was denied.

ANY OTHER MATTERS DEEMED APPROPRIATE

Mr. Weber asked if there are any items for the April meeting.

Ms. Sprick stated the church at 10151 Sappington Road would like a second monument sign.

ADJOURNMENT

Mr. Naes made a motion to adjourn the meeting at 8:18 P.M. Mr. Arnold seconded the motion, and it was unanimously approved.

Recording Secretary



Sarina Cape