



## STAFF REPORT

May 14, 2008

To: Board of Zoning Appeals  
Fr: Paul Greeley, Deputy Director  
Re: Application No. AU-BZA-2854

### APPLICATION INFORMATION

**Applicant:** Jason Meier

**Owner:** Home Rehab LLC

**Requested Action:** Variance to allow: 1) an accessory structure in front of a primary structure, and 2) a 19-foot side yard setback for an accessory structure where 25 feet is required

**Purpose:** To construct a 660 sq. ft. detached garage (22 ft. x 30 ft.)

**Legal Description:** Lot 5, Windmill Springs Subdivision

**Site Address/Location:** 3692 W. 179<sup>th</sup> Terrace

**Existing Land Use and Zoning:** Residential; RN-1, Residential Neighborhood One

**Existing Improvements:** House

**Site Size:** 2.5 acres

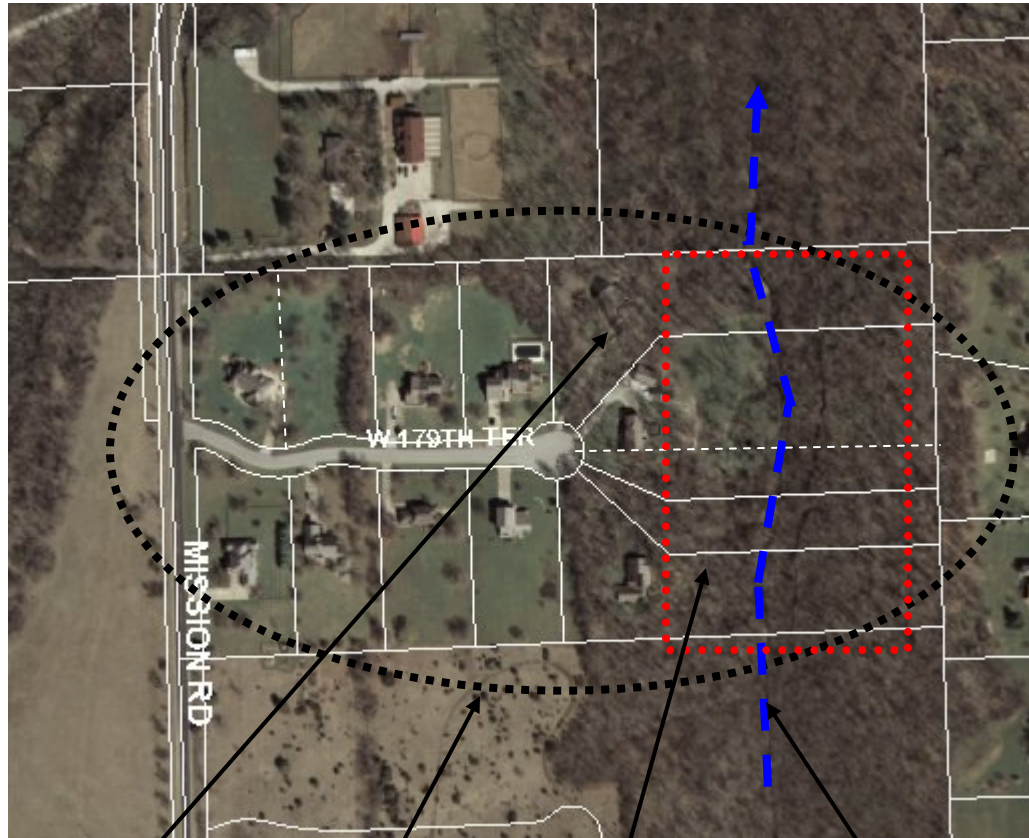
**Proposal:** This is a two part variance request to allow a detached garage in front of the existing house and to allow the garage within 19 feet of the side property line.

### BACKGROUND INFORMATION

**Subdivision/Zoning History:**

Windmill Springs was platted in 1978. The property has been residentially zoned since at least 1982.

The subdivision consists of 12 lots that contrast in size and shape. The subdivision is served by a paved, cul-de-sac (dead-end) street. The front eight lots have fairly typical 300 ft. x 150 ft. depth-to-width dimensions (2:1), are 1 acre each, and have 150 ft. frontages on the street. The rear four lots are atypically shaped having depth to width dimension of 600 ft. x 100 ft. with narrow frontages on the street. These lots are about 2.5 acres each and two of the four lots are flag-shaped, including the subject property. There is a stream way that bisects the 4 rear lots roughly through their center. About 2/3rds of the each of these lots is unbuildable due to the stream way, floodplain, steep slopes or inaccessibility.

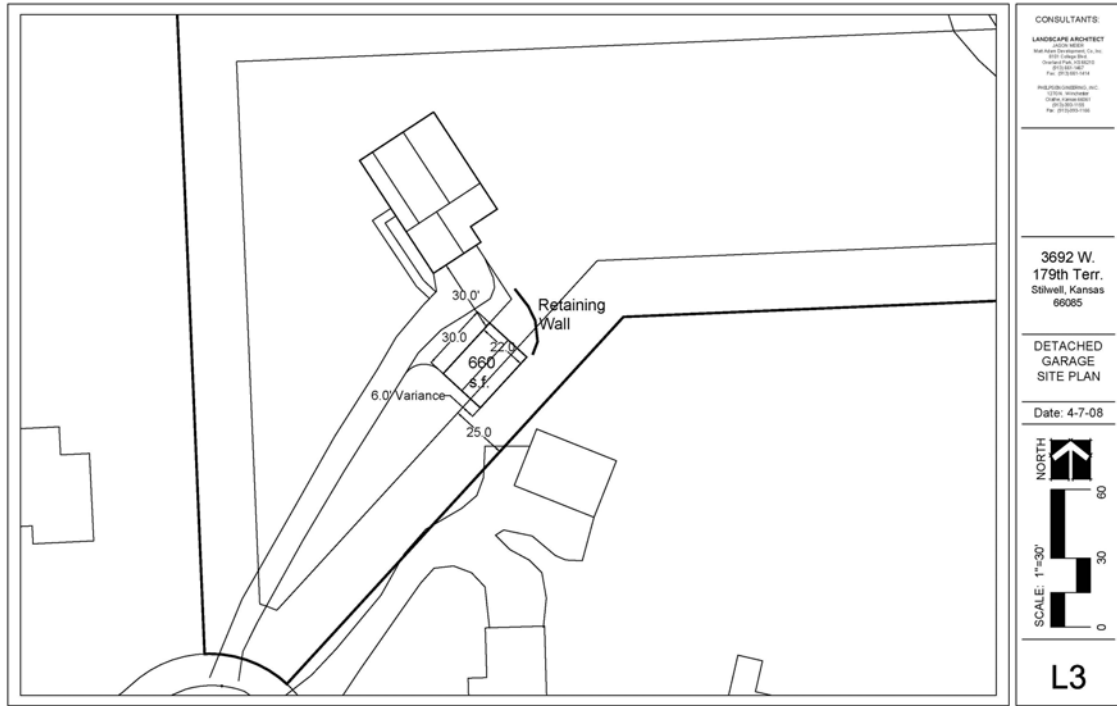


Subject Property    Subdivision Area    Unbuildable Area    Streamway Area

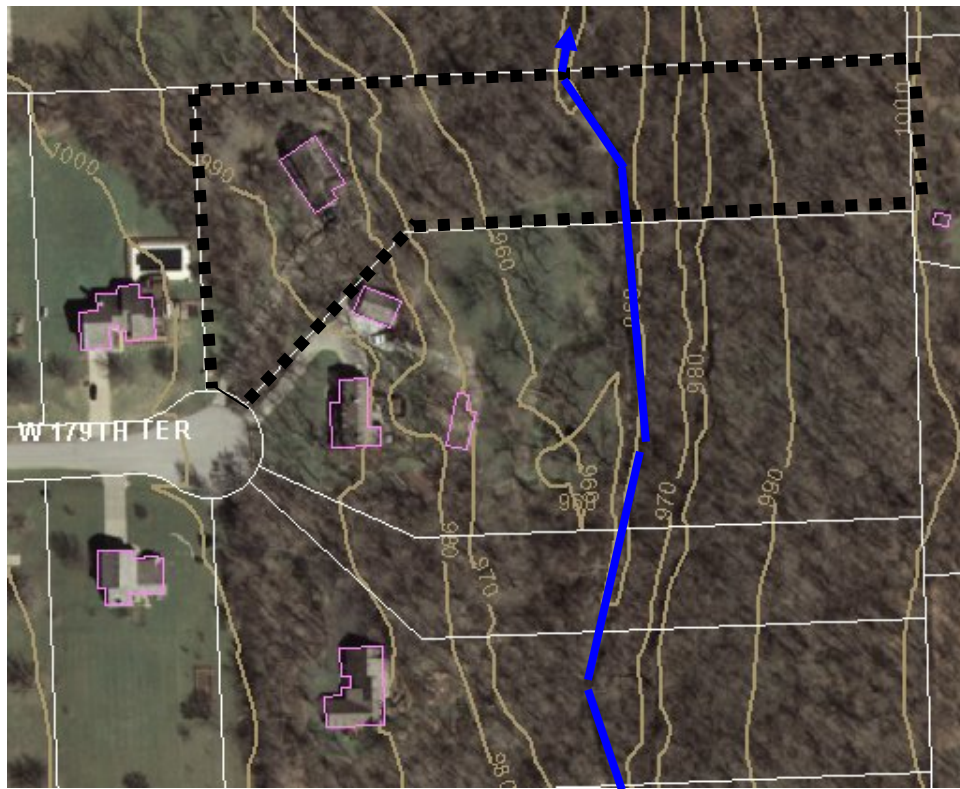
**Area/Property Description:**

The subject lot is flag shaped and at the end of the cul-de-sac street. The house on the subject lot is located about 180 ft. back from the front property line (see below). The eastern 2/3rds of the lot is unbuildable due to steep slope, streamway and inaccessibility.

The eight front lots are conventionally shaped (rectangular) and have houses located about 65 ft. back from the front property line. The four lots at the end of the cul-de-sac (including the subject property) are atypically shaped with out-of-proportion depths-to-widths, narrow street frontages, and front yard setbacks that vary from 60 ft. up to 180 ft.



Subject Property with Proposed Garage



Subject Property and Surrounding Property

The proposed detached garage will be located about 150 ft. back from the front property line along the outside of the existing driveway near where it culminates at the attached garage. The existing garage is side entry. The proposed garage would also be side entry. Side entry garage doors do not face the street. As can be seen in the aerial photo, the house is located in the bend of the flag-shaped lot. This is the widest area of the lot, but even then, there is not enough room for the detached garage. If the original owners had constructed the house off-set to the other side of the lot there would probably have been enough room for the garage. This is also the location where the steep slope begins.

**Comprehensive Plan:**

The *Rural Comprehensive Plan: A Plan for the Unincorporated Area of Johnson County* (Plan) indicates this site is within the Blue Valley Planning Area, Urban Fringe Area, and is designated as Existing Residential. The proposed accessory structure complies with the designated use for this property. The Plan does not directly speak to requests for variances.

**General Character of the Area:**

This area of Aubry Township, also known as the area east of Camp Branch Creek, consists of medium to large (40 to 100+ acres) tracts of undeveloped land interspersed with residentially zoned subdivisions established in the 1970's. In the last decade modest expansions of the existing development pattern have occurred where existing subdivision were expanded or new subdivisions created. Except for a fire station at 183<sup>rd</sup> and Mission, there are no services for residences in this area. Mission Road is the primary north/south arterial serving this area. Mission is a paved, county-maintained two lane road with steep sided, open ditches.

Residential accessory buildings such as detached garages, barns, shops and sheds are common in this area. The majority of homes in the area were built in the 1970's and 1980's and are of a size and character of that era.

**BZA AUTHORITY**

The BZA has the authority to grant a variance from the specific terms of the zoning regulations which will not be contrary to the public interest where, due to special conditions, a literal enforcement of the provisions of the regulations will, in an individual case, result in unnecessary hardship for the applicant and provided that the spirit of the regulations shall be observed, public safety and welfare secured, and substantial justice done. The Board of Zoning Appeals shall not have the power to act upon variances regarding uses permitted within zoning districts. The Board of Zoning Appeals shall be limited to granting variances on matters including, among others, building height, setbacks, lot size and lot dimensions, as provided by the zoning regulations.

Planning staff has reviewed the variance requested in terms of the following criteria in accordance with Article 3. Responsible Authorities and Administrative Duties, Section 5. Board of Zoning Appeals, subsection F(2).

- a. *The variance requested arises from such condition which is unique and which is not ordinarily found in the same zoning classification, and is created by the zoning regulations and not created by an action or actions of the property owner or applicant.*

The request is to locate a detached garage 19 ft. from the side (east) property line and in front of the house. The lot is flag-shaped. Only one other lot in the subdivision is similarly shaped. The lot shape is a unique condition and is not normally found in the same zoning classification. The regulations require a minimum front setback of 50 ft. In this subdivision most of the houses are setback 65 ft. The house on the subject lot and one other house in the subdivision are setback about 180 ft. Also, the regulations do not allow placement of an accessory buildings (a detached garage) in the front yard. The front yard is defined as that area between the house and the front property line. On all lots, but the subject lot, this area is established at 65 ft. On this lot the front yard is established at 180 ft. The subject lot is unique because the previous owner chose to construct the house further back, thus limiting accessory building options. This condition was created by the actions of the previous owner and also the regulations because they did not anticipate large setbacks.

- b. *The granting of the variance will not adversely affect the rights of adjacent property owners or residents.*

Eight of the twelve lots in this subdivision are about 1 acre in area. None of these 8 lots presently have detached accessory buildings. All these lots are entitled to and could have an accessory building. The four rear lots in the subdivision are about 2.5 acres. The lot immediately adjacent to the subject property has a detached garage which appears to be within 10 ft. of the subject property line (see aerial photo on Page 3). This garage is behind its primary house but closer to the street than the proposed garage. The existing garage was built under previous regulations which allowed 10 ft. side yard setbacks. The subject property is at the end of the cul-de-sac and except for two next door neighbors, one of which also has a detached garage, no neighbors will pass by or see the proposed garage. The garage is behind the homes on the two adjacent lots. It is staff's opinion that granting the variance will not adversely affect the rights of adjacent property owners.

- c. *The strict application of the provisions of the zoning regulations of which the variance is requested will constitute an unnecessary hardship upon the property owner represented by the application.*

The existing house is located in the middle of the widest part of the lot. If the house had been placed to one side, the proposed garage could possibly be built without the need for a variance. The house was built in 1982 by others. The front 1/3rd of the lot adjacent to the street is the only accessible and buildable portion of the lot. The rear 2/3rds of the lot has steamway, a steep slope and is inaccessible. Therefore, the only remaining accessible and buildable area is in front of and to the side of the existing house.

Due to the existing conditions, it would be an unnecessary hardship to deny the variance as the property has no other options.

- d. *The variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.*

The variance request is to allow an accessory structure in front of the primary structure and reduce the side setback by 6 ft. from 25 ft. to 19 ft. Given that most of the lots in this subdivision are developed and that the subdivision is inclusive to itself and the subject lot is at the end of the cul-de-sac and heavily treed, the granting of the variance will not adversely affect the public.

Granting the variance would not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.

- e. *Granting the variance desired will not be opposed to the general spirit and intent of the zoning regulations.*

There is a detached garage on the adjacent property within 10 ft. of the subject lot's property line. The house on this same lot is closer to the street and will not have a direct view of the proposed detached garage. The applicant intends to construct the detached garage of materials and design similar to the existing house. Given the lot is at the end of a cul-de-sac street and the proposed garage would be setback from the street 150 ft., and that the existing house and proposed garage are in a heavily treed area, the setback, visual and aesthetic goals of the regulations are met. Staff is of the opinion that given the character of this subdivision and that this is a minor deviation, the variance would not be opposed to the spirit and intent of the regulations.

**Public Works Department Staff Comments:** none.  
**Environmental Department:** none.

## **RECOMMENDATION**

Planning staff recommends **approval** of the requested variance to allow a 19-foot side setback where 25 feet is required in order to construct a detached garage, subject to the stipulations as follows:

1. That relevant Regulations and Codes of the Johnson County Environmental Department shall be continually met.
2. That the proposed garage location be staked and constructed in the location as shown on drawings as approved by the Board of Zoning Appeals.

## **REASONS FOR RECOMMENDATION**

1. There are unique topographical, lot shape and primary building setback conditions on this property to warrant variation from the prohibition of accessory buildings in the front yard, and a variance to reduce the side yard setback; and, that these conditions were created by the regulations and not the actions of the current property owner.
2. An unnecessary hardship exists if the request is denied, as the topographical, lot shape and primary building setback conditions on the property preclude locations for constructing the garage in a location that complies with the Regulations.
3. Granting the variance will not adversely affect the rights of adjacent property owners.

4. Granting the variance would not be opposed to the spirit and intent of the accessory building prohibition and 25 foot setback since there are no options to conform to the Regulations due to the topographical, lot shape and primary building setback conditions on the site.
5. The requested variance will not affect the public's health, safety, morals, or general welfare.

#### Written Decision

Article 3, Section 5(G) of the Johnson County Zoning and Subdivision Regulations provides in part that "The BZA shall render its decision in writing within ten (10) days of the conclusion of the hearing. Therefore, if the BZA decides to approve the requested variance, the following motion, and finding and conclusions, may be adopted as the written decision.

#### Proposed Motion (BZA)

I move that the Board approve Application No. AU-BZA-2854, for the reasons set forth in the Proposed Findings and Conclusions set forth within the staff report and with the stipulations recommended by staff.

#### Proposed Findings and Conclusions

##### I. Preface

In its review of the subject application, the BZA has summarized the written reasons that form the basis of our decision, which appear below. It was not intended, nor should it be considered, that the summarized reasons are exclusive in nature, as the entire record of the proceedings regarding the application remain, and is, ultimately the supporting rationale of our decision.

##### II. Findings and Conclusions

###### 1. A. FACT

The lot is flag shaped. The existing house is setback from the street 180 ft. Houses on adjacent lots are typically setback 65 ft.

###### B. CONCLUSION

There are unique topographical, lot shape and primary building setback conditions on the subject property as compared to adjacent property.

###### 2. A. FACT

There is a house and detached garage on the adjacent lot. The garage is 10 ft. from the side property line of the subject lot. The proposed detached garage would not be in the sight line of the house on the adjacent lot. The subject lot is at the end of the cul-de-sac and is not visible to the other houses in the subdivision.

###### B. CONCLUSION

The granting of the variance would not adversely affect adjacent property owner rights.

###### 3. A. FACT

The lot is flag shaped. The rear 2/3rds of the lot is unbuildable due to streamway, steep slope, and inaccessibility. The existing house is in the back 1/3<sup>rd</sup> of the remaining buildable area of the lot.

**B. CONCLUSION**

Denying the variance would constitute an unnecessary hardship upon the property owner he has no other options.

4. **A. FACT**

The subject lot is at the end of a cul-de-sac (dead-end) street and is not visible.

**B. CONCLUSION**

This request would not adversely affect the public's health, safety, and general welfare.

5. **A. FACT**

The regulations require a 25 ft. setback in order to promote the free movement of light and air and allow for open space. The proposed setback is 19 ft. The existing house is 180 ft. from the front property line. The required front setback is 50 ft. The proposed garage will be 150 ft. from the front property line.

**B. CONCLUSION**

The proposed detached garage is well behind the 50 ft. required setback and is just.

Alternate Findings and Conclusions

If the BZA decides to deny the variance request, rather than approve it, the BZA should summarize, for inclusion in the minutes of the meetings, its reasons for denial, which will serve as its written decision on the application.

Stipulations

In acting upon a variance, the BZA may recommend appropriate reasonable conditions and safeguards which relate to the actual implementation of the variance allowed and which may include, but not be limited to, planting screens, fencing, construction commencement and completion dates, lighting, road access restrictions, and parking requirements which are reasonably related to the variance upon a finding that they are necessary to fulfill the purpose and intent of the Zoning Regulations.

Attachments: Vicinity Map  
Applicant's Narrative and Site Plans