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1	BEFORE THE
2	CITY OF FULTON
3	BOARD OF ADJUSTMENT
4	MEETING
5	APRIL 24, 2024
6	5:15 p.m. to 6:34 p.m.
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1	A P P E A R A N C E S
2	
3	BOARD MEMBERS PRESENT:
4	LES HUDSON, Alternative Chairman
5	ROB BARNES, Member.
6	AARON RIGDON, Member
7	BILL ERNST, Alternative
8	CAROLYN LASWELL, Alternative
9	
10	STAFF:
11	KATHIE RATLIFF, City Clerk.
12	
13	CITY OF FULTON:
14	KYLE BRUEMMER, City Engineer.
15	
16	FOR THE BLEYTHINGS:
17	CALEB COLBERT
18	
19	FOR THE MAUPINS:
20	DAVID BANDRÉ
21	
22	
23	Mr. Colin Wallis
	Lexitas Legal
24	711 North Eleventh Street
	St. Louis, Missouri, 63101
25	(314) 644-2191

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1	P R O C E E D I N G S
2	* * * * *
3	MR. BARNES: I'll call the meeting to
4	order.
5	MS. RATLIFF: That was Rob Barnes who
6	called the meeting to order. It's 5:15.
7	Generally, the clerk doesn't get involved
8	in a meeting, but, tonight, our chairman is not
9	here, so we need to elect an acting chairman.
10	That was not on the agenda, and it's really not
11	a formal motion, but between the members they
12	will select or volunteer to take the place of
13	the chairman for tonight. Is there anybody who
14	would like to volunteer? I believe it's
15	Mr. Hudson.
16	Mr. Hudson, would you mind joining me to
17	my left? You get to have the gavel. While
18	he's moving, if I could please remind the
19	audience to please silence your phone, so that
20	way it doesn't go off during the middle of the
21	meeting. And if you haven't signed our
22	check-in sheet, if you will do that before you
23	leave, we appreciate it. If there are any
24	exhibits tonight, you'll bring them to me, and
25	I'll introduce them as Exhibit A, Exhibit B,

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1 and we'll continue down the list. After the
 2 meeting, I will e-mail them to our court
 3 reporter through the agency of Lexitas. Is
 4 there anything else I can help you with, let me
 5 know.
 6 CHAIRMAN HUDSON: I'd love for you to help
 7 me a lot. I'm going to probably need a lot of
 8 help. And if I stumble, forgive me please. As
 9 already happened, we will call the meeting to
 10 order. The format will be three calls in favor
 11 of --
 12 MS. RATLIFF: Mr. Hudson, can we call
 13 roll?
 14 CHAIRMAN HUDSON: Sure, we can call roll.
 15 MS. RATLIFF: I'll share this one with
 16 you. Yes, sir. We'll take roll quick,
 17 although we've done this, but officially.
 18 Mr. Barnes?
 19 MR. BARNES: Here.
 20 MS. RATLIFF: Mr. Rigdon?
 21 MR. RIGDON: Here.
 22 MS. RATLIFF: Thank you. Carolyn Laswell?
 23 MS. LASWELL: Here.
 24 MS. RATLIFF: Bill Ernst?
 25 MR. ERNST: Here.

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1 MS. RATLIFF: Les Hudson.
 2 MR. HUDSON: Here.
 3 MS. RATLIFF: There's five members, quorum
 4 met.
 5 CHAIRMAN HUDSON: Okay. And we've now
 6 declared this hearing open. As I said, there
 7 will be three calls to speak in favor. Three
 8 calls to speak to those opposed to it. We will
 9 declare the hearing closed, discussion on the
 10 issue, a call to motion and second, any
 11 discussion on the motion and a roll call vote.
 12 MS. RATLIFF: If I may interrupt and add
 13 to that, we'll have -- we'll both have public
 14 hearings tonight; with each public hearing,
 15 there's a five-minute time limit, and you can
 16 speak once during each of the calls. We're
 17 going to give three calls. That doesn't limit
 18 it to three people speaking. You can just form
 19 a line, and we want to make sure that when we
 20 call this three times, everybody has heard us
 21 and no one has missed an opportunity to speak.
 22 There's no cap on the people who can speak
 23 tonight.
 24 CHAIRMAN HUDSON: Are we ready?
 25 MS. RATLIFF: Yes, sir.

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1 CHAIRMAN HUDSON: Okay, we will now --
 2 does anyone speak in favor of this --
 3 MS. RATLIFF: Is this hearing open?
 4 CHAIRMAN HUDSON: Yes, it is. The hearing
 5 has been declared open.
 6 MS. RATLIFF: Okay.
 7 CHAIRMAN HUDSON: Okay.
 8 MS. RATLIFF: Start right here.
 9 CHAIRMAN HUDSON: Okay, okay. This
 10 hearing is now called to hear the request of
 11 Travis and Karla Bleything.
 12 MS. RATLIFF: Karla Bleything.
 13 CHAIRMAN HUDSON: Bleything. Asking for a
 14 variance on -- asking a variance permit on the
 15 existing six-inch encroachment in the side-yard
 16 setback from what is located in City Code
 17 Section 120-31(c) for their home located at 315
 18 Tanglewood Way, Lot Number 93, Tanglewood
 19 Estates, Fulton, Missouri. Fulton City Code
 20 requires a ten-foot side setback from the
 21 property line. So we're asking -- they're
 22 asking for a six-inch encroachment into that
 23 10-foot. And we have three calls for anyone to
 24 speak in favor.
 25 MS. RATLIFF: Is there anybody who would

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1 like to address the Board?
 2 MR. COLBERT: Yes, sir. Mr. Chair, Caleb
 3 Colbert, attorney at 827 East Broadway in
 4 Columbia, Missouri, and I just wanted to ask a
 5 quick clarification question. So are we going
 6 to have a hearing on the side-yard setback, and
 7 then a vote, and then a second hearing on the
 8 front-yard setback and then a vote, or can I
 9 address them both at the same time?
 10 MS. RATLIFF: No, we'll have two separate
 11 hearings.
 12 MR. COLBERT: Okay. I will drive right on
 13 in then. Again, my name is Caleb Colbert. I'm
 14 an attorney in Columbia. I'm here on behalf of
 15 Travis and Karla Bleything to ask for your
 16 support on both a front yard --
 17 (Court reporter clarification.)
 18 MR. COLBERT: Before I dive into that, let
 19 me distribute some exhibits.
 20 MS. RATLIFF: You are welcome to pass them
 21 out, sir, I will just take one for my record.
 22 This is Exhibit A -- or B, I'm sorry.
 23 Exhibit 1. Exhibit 1 has been submitted, thank
 24 you. There's eight exhibits in the binder.
 25 There's one for each of you. I'll kind of

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1 reference some of the exhibits throughout my
 2 remark, but I just kind of want to run through
 3 what's in your binder.
 4 Exhibit 1 is sort of a timeline of events
 5 that explain kind of how we got here today.
 6 Exhibit 2 is a site plan. This is a
 7 survey prepared by Crockett Engineering, which
 8 shows both encroachments that we're here to
 9 talk about this evening.
 10 Exhibit 3 is our variance application that
 11 we submitted to the City.
 12 Exhibit 4 is the hearing notice and the
 13 map of property owners within 185 feet that was
 14 sent out by the City.
 15 Exhibit 5 is the Callaway County GSI map
 16 which shows the dimensions of lots in
 17 Tanglewood Estates.
 18 Exhibit 6 is the building permit that was
 19 issued with respect to Travis and Karla
 20 Bleything's home.
 21 Exhibit 7 is an existing variance for a
 22 front-yard setback that was granted as to 3312
 23 Tanglewood Estates.
 24 And Exhibit 8 is a verified copy of the
 25 City ordinances at issue.

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1 And, at this point, I would offer Exhibits
 2 1 through 8 into evidence into the record. I
 3 would just ask that the Chair acknowledge that
 4 those have submitted to the --
 5 CHAIRMAN HUDSON: We acknowledge that they
 6 have.
 7 MR. COLBERT: Okay. Thank you.
 8 (Exhibits 1 through 8 marked and admitted into the
 9 record.)
 10 MR. COLBERT: So let me just jump back to,
 11 how did we get here, what are we here to
 12 discuss this evening and what's sort of our
 13 proposed solution. I think the easiest way to
 14 run through that is to kind of talk through the
 15 timeline.
 16 Again, my clients are Travis and Karla
 17 Bleything that own Lot 93 in Tanglewood
 18 Estates. They contracted with Shad Salmons
 19 with Heart of Missouri Construction to design
 20 and build a home on Lot 93 in Tanglewood. Shad
 21 Salmons reached out to -- excuse me, the City
 22 of Fulton in July of 2023 to get clarification
 23 on how the City interpreted the setback
 24 requirements.
 25 And, at that time, Shad was advised that

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1 the City interprets the 25-foot front-yard
 2 setback as being calculated from the back of
 3 the curb, and was advised, again, then of the
 4 ten foot side-yard setback. Taking that
 5 interpretation, Shad designed a home for my
 6 clients, submitted those plans to Tanglewood
 7 Estate Homeowners Association, and these plans
 8 were approved.
 9 Once the plans were approved through the
 10 homeowners association, the developers, the
 11 builder, excuse me, applied for a building
 12 permit. A building permit was issued. Once
 13 the permit was issued, Shad laid out exactly
 14 where the building would be located on the lot.
 15 All the lines were staked. Anybody could see
 16 exactly where the building, the home, was going
 17 to be located on the lot. And the city, again,
 18 came out, inspected the stake lines, the lot
 19 lines, approved Shad to move forward with
 20 construction. So Shad poured concrete.
 21 Then throughout that construction phase,
 22 each time the City would come out and inspect
 23 the property, and I think four or five
 24 inspections occurred in total and Shad will
 25 come up and talk about that in a minute. But

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1 four or five inspections occurred, and each
 2 time the home was approved to move to the next
 3 phase of construction, and all that occurred in
 4 October and November of 2023.
 5 Fast forward to February of '24, and
 6 that's when we were first contacted by the City
 7 of Fulton, and we were advised that there was a
 8 neighbor that had a complaint about the
 9 location of the home on the lot.
 10 So, the City of Fulton came out, said,
 11 okay, here's the complaint; it relates to the
 12 side-yard setback, and there's a complaint that
 13 you're several feet into the side-yard setback.
 14 The City of Fulton completed its analysis,
 15 said, no, there's no encroachment; you can move
 16 to the next phase of the construction.
 17 At that point, my client ordered roof
 18 trusses and continued with construction. Three
 19 or four weeks later, there was another
 20 complaint from the same neighbor, that we
 21 understand, again, had some concerns about the
 22 location of the building on the lot.
 23 At that point, the City came back out and
 24 said, okay, we've looked at this again.
 25 Actually, the correct interpretation of the

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1 front-yard setback is -- it should be measured
 2 25 feet from the property line, not from the
 3 back of the curb, which, in turn, means that we
 4 have a home that is built into the front-yard
 5 setback under this new interpretation.
 6 Under the original interpretation that was
 7 explained to us, the home complies with the
 8 setback requirements. It was also determined
 9 at this time, there is one corner of the
 10 building, if you look at Exhibit 2, you can
 11 see -- that depicts the encroachment. There is
 12 one corner of the garage that is over the
 13 property line by, roughly, six inches. So all
 14 in all, we are talking about what is
 15 effectively a negligible encroachment into that
 16 five-yard setback.
 17 MS. RATLIFF: You've hit your five
 18 minutes.
 19 MR. COLBERT: Okay.
 20 MS. RATLIFF: Thank you, sir.
 21 MR. SALMONS: Good evening. I'm Shad
 22 Salmons. I'm with Heart of Missouri
 23 Construction. I was hired by Travis and Karla
 24 to build their house for them.
 25 MS. RATLIFF: Court reporter, did you find

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1 that? Was that was clear?
 2 THE COURT REPORTER: Yes, that was clear.
 3 MR. SALMONS: I'm just going to go over
 4 the time of the events of how we got to where
 5 we're at today.
 6 On July 29th of '23, I contacted the City
 7 of Fulton for setback requirements. I was told
 8 then it was 10 feet off the side property line
 9 and 25 feet from the street curb.
 10 10/05/23, I submitted the plans to
 11 Tanglewood Estates HOA.
 12 10/09/23, I received an e-mail from
 13 Tanglewood Estates saying they had been
 14 approved by the architectural committee and
 15 developers.
 16 10/11, I submitted a building permit
 17 application to the City of Fulton inspector.
 18 On that same day, 10/11, I was issued the
 19 permit.
 20 11/01, dirt work began to level out the
 21 lot.
 22 11/03, we laid the house out with string
 23 lines and wooden stakes, had the City of Fulton
 24 inspector come out to inspect it.
 25 11/06, that Monday, the City inspector

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1 texted me and said everything was good to
 2 proceed with the project.
 3 11/16, we dug the footers.
 4 11/17, footers were inspected by the City
 5 of Fulton inspector and was told to proceed
 6 with the concrete pour.
 7 11/20 through 11/22, we did the rough end
 8 of the plumbing for underneath the slab of
 9 concrete. City of Fulton inspected and told us
 10 we were to cover up plumbing, and also the City
 11 of Fulton came out and GPS all footings for
 12 City of Fulton mapping.
 13 The week of 12/04, the slab was inspected
 14 for steel. We were told to move forward with
 15 the concrete pour.
 16 12/18, lumber was delivered and framing
 17 began.
 18 January 31st of '24, framing of all
 19 exterior and interior walls were completed.
 20 February the 2nd, I received a text
 21 message from a neighbor stating that we were
 22 8 feet toward the property line, and I told
 23 him, you know, we got everything inspected
 24 with the City of Fulton; if we had questions,
 25 we needed to contact them.

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1 February 5th, those neighbors contacted
 2 the City of Fulton. The City came out to the
 3 job site that morning and told me I could
 4 proceed with the build.
 5 February 8th, trusses were measured.
 6 February 13th, trusses were delivered.
 7 And they're there on the job site as of today.
 8 February 29th, I get a call from the City
 9 inspector stating that John -- or David
 10 McDonald contacted the City of Fulton, which
 11 was contacted by the neighbors, met with the
 12 City inspector and the City engineer, and I was
 13 told then that we were 26 feet from the curb,
 14 and we needed to be 35 feet from the curb or
 15 50 feet from the center line of the street.
 16 The City of Fulton told us to stop the building
 17 process until we get this resolved.
 18 March the 1st, Tom Riley, he contacted me
 19 and he said he wanted all parties involved to
 20 meet on March the 4th at 3:15, all parties
 21 involved: Travis Bleything, myself, the City of
 22 Fulton, the Mayor, City Administrator, City
 23 Engineer and City Inspector, Tom Riley, two
 24 board members of the Tanglewood Estates of HOA,
 25 David McDaniel, Jim Glascock, the developers

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1 and the neighbors on the north side.
 2 We tried to make concessions with them.
 3 They told they wanted it in full compliance.
 4 At that meeting, we agreed to -- that I would
 5 pay to have Crockett Engineering to come out
 6 and survey the pins, so we could get exact
 7 measurements.
 8 They did that on March the 8th. On the
 9 front corner, we were 13 feet off the property
 10 line, and on the northwest corner we're 9 feet,
 11 6 inches from the property line. Do you have
 12 any questions?
 13 MS. RATLIFF: The Board cannot interact at
 14 this point but there may be a time later.
 15 Thank you.
 16 MR. SALMONS: All right, thank you.
 17 MR. BLEYTHING: My name is Travis
 18 Bleything. I'm the homeowner with my wife,
 19 obviously, at Lot 93 there in Tanglewood. I
 20 didn't really get involved until the meeting
 21 that they spoke of, with all of the players
 22 involved, where we kind of, with the urgency of
 23 Tom Riley, were supposed to meet and try to
 24 work through the problem; not so much address
 25 how we got there, but try to work through the

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1 problem to see if we come to some agreement
 2 before it got to all this.
 3 That, obviously, wasn't going to happen at
 4 that time, and we kind of began what I would
 5 call the negotiation process. Which in the
 6 beginning, I'll speak for myself, I wasn't
 7 really clear on who was supposed to take the
 8 lead or how to handle those negotiations. The
 9 neighbor and I spoke on the phone, kind of what
 10 have you heard, you know, it was cordial, but
 11 we really didn't have any answers at that
 12 point.
 13 Ironically, 3/16, we bumped into each
 14 other again in Columbia and kind of had the
 15 same conversation; and at that time, it was
 16 announced kind of we both had representation,
 17 so we knew it was going to go down a much
 18 different road. From 3/13 to 3, basically, 25
 19 there was a lot of -- not a lot, but there was
 20 not back and forth through the lawyers with
 21 some negotiations that we offered, that was
 22 sort of talked about, that was presented from
 23 me that was kind of followed with a note.
 24 So, at that point, with the urgency and
 25 the feedback from the City, it was to proceed

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1 with the variance, was the next step. So with
 2 the cooperation of them, Shad and Caleb, we
 3 went ahead and filed for the variance, and here
 4 we are. So that's all I got.
 5 MR. COLBERT: Well, with that in mind, let
 6 me jump back in here again.
 7 Again, Caleb Colbert, attorney at 827 East
 8 Broadway. So to kind of pick up the timeline,
 9 where we were, you know, we had the discussions
 10 with the neighbors. We weren't able to get
 11 everything worked out, and so that's why we are
 12 here tonight. We're asking for a solution, and
 13 the Fulton City Code creates that solution
 14 through this board. The Board of Adjustment
 15 has broad discretion to grant variances, which
 16 I'm paraphrasing, are necessary to alleviate
 17 unnecessary hardship based on special
 18 circumstances or special conditions, which
 19 apply in any particular scenario.
 20 In here, we think there are plenty of
 21 special conditions to justify granting the
 22 requested variances. In particular, let's talk
 23 about the lot dimensions of the property we're
 24 talking about, so Lot 93. If you look at
 25 Exhibit 5, and, really, the second page of

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1 Exhibit 4 as well, you'll see that this
 2 particular lot is a pie-shaped lot.
 3 Most of the lots in Tanglewood that are
 4 depicted there in Exhibit 5, are a 100-foot
 5 wide at the road frontage, 100-foot wide at the
 6 back. My clients' lot tapers down to 77 feet
 7 at the back. So, essentially, we don't have
 8 the full length of that lot to work with. So
 9 that is a unique condition of this, which is
 10 not applicable to every other lot in the
 11 subdivision. We, essentially, have to shift
 12 the building as close as we can to the road to
 13 make it fit.
 14 If you move further back in the lot,
 15 again, going back to the narrower portion of
 16 the lot, you just end up creating more of
 17 side-yard encroachment. So as a practical
 18 matter, the dimensions of the lot create sort
 19 of a special circumstance.
 20 The other special circumstance is the one
 21 we've already mentioned. I mean, this home and
 22 its layout and location on the lot were
 23 inspected and approved four or five times
 24 throughout construction. And in each scenario,
 25 it was approved to move forward to the next

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1 phase. So my client has spent tens of
 2 thousands of dollars in reliance upon those
 3 approvals and being permitted to move to the
 4 next phase of construction.
 5 If the variances aren't granted, we will
 6 have unnecessary hardship because at least as
 7 to the side-yard, we have to eliminate that
 8 corner of the garage, and the front-yard --
 9 again, I know we will talk about this later,
 10 but then we lose a functional garage. We don't
 11 have a garage that would fit vehicles if we
 12 were going to have to come into compliance with
 13 the setback requirements.
 14 So all and all, I think the Board has the
 15 discretion to grant the relief that is
 16 requested here, and it boils down to what's the
 17 right thing here?
 18 My client did everything that a reasonable
 19 homeowner would do. My client contracted with
 20 the homebuilder. That homebuilder went through
 21 the permitting process with the homeowners
 22 association. They went through the permitting
 23 process with the City, and at each step along
 24 the way, they were given approval. Then now,
 25 we're ready to enclose the structure and put

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1 the roof trusses on, we're told that, no, the
 2 home doesn't meet our requirements and you may
 3 have to tear things out.
 4 And, respectfully, that doesn't seem like
 5 a fair outcome, and the Board of Adjustment is
 6 here to make sure we end up with a fair
 7 outcome. So, again, I'd be happy to answer any
 8 questions later on in the hearing. Thank you.
 9 (Court reporter clarification.)
 10 CHAIRMAN HUDSON: Anyone else? If not,
 11 we'll move onto to the next phase. There will
 12 be -- we'll need -- we'll have three calls to
 13 speak in opposition. This is the first call.
 14 MR. BANDRÉ: Good afternoon, ladies and
 15 gentlemen. My name is David Bandré. I'm an
 16 attorney at 227 Madison in Jefferson City. I'm
 17 here representing Steve and Cheryl Maupin, who
 18 are the homeowners immediately to the side of
 19 this property.
 20 This is a bad situation. We acknowledge
 21 that this is a bad situation. We acknowledge
 22 this is not easy on the applicants or the
 23 builder or the inspector or anyone else, but,
 24 respectfully, this is not a situation where
 25 this board can just do what it seems is right

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1 or fair. Your code is very specific as to what
 2 circumstances a variance can be granted.
 3 Specifically, Section 120-31 sets out a number
 4 of items that you can consider in going through
 5 this.
 6 Can the land in question yield a
 7 reasonable return if used for a normal purpose?
 8 Is the plight due to unique and not to general
 9 neighborhood considerations? Does it alter the
 10 essential character of the property and on and
 11 on, but there is one necessity that your code
 12 calls for. That is an absolute requirement in
 13 order to grant the variance.
 14 And I'm quoting, "The applicant shall
 15 clearly establish that as a practical matter
 16 the property cannot be used for a permitted use
 17 without coming into conflict with restrictions
 18 of the zoning chapter." That is a requirement
 19 of the code.
 20 And while this is a terrible situation for
 21 everyone involved, it's also a terrible
 22 situation for my clients; and they have the
 23 absolute right to rely on the City Code; and
 24 the City Code to be followed. They have, is it
 25 six inches sure on the side lot. Are six

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1 inches a giant deal? I don't know. But the
 2 reality of the situation is, a variance is a
 3 variance, and it can only be granted if the
 4 property can't be used for the intended
 5 purpose. Here you have the proper layout of
 6 this lot.
 7 It is a pie-shaped lot. It's always been
 8 a pie-shaped lot, and a house will fit on it.
 9 Will this house fit on it? I don't know. But
 10 a house will fit on it. It has been
 11 significantly planted, and it can be used for a
 12 residential property. And with that, under
 13 your code, the rest of this, respectfully, is
 14 merely explaining why this is a bad situation.
 15 Precedent comes into play when we say, oh,
 16 it's only six inches; oh, it's only 10 feet;
 17 and that's why there have to be certain hard
 18 and fast standards that are set forth under the
 19 law. The law of the city is its code. And you
 20 all, just like every municipal volunteer, and
 21 God love you for that by the way, has sworn to
 22 uphold the code of the city. And the code of
 23 the city sets forth a very exacting standard of
 24 what should be here.
 25 Who should suffer from this? Not our

Page 25

1 place to say. The homeowners don't appear to
 2 have done anything wrong. But that does not
 3 entitle them to a variance. Has the City done
 4 something wrong? Has the inspector done
 5 something wrong? Has the builder done
 6 something wrong? Has the candlestick maker
 7 done something wrong? This is all,
 8 essentially, irrelevant for the purpose of
 9 today. This is not about right and wrong.
 10 This is about legal, allowable, permissible
 11 versus impermissible under your code.
 12 And when the code states that, "The
 13 applicant shall clearly establish that as a
 14 practical matter the property cannot be used
 15 for permitted use without coming into conflict
 16 with restrictions of the zoning chapter, and
 17 the Board is then to consider if the harm
 18 complained of in the variance application is
 19 the result of a self-inflicted hardship."
 20 Ultimately, at the end of the day, this house
 21 is in the wrong spot.
 22 And, again, fault, there is clearly more
 23 than enough to go around in this situation,
 24 but, respectfully, and with all deference to
 25 those who are in favor of the variance being

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1 granted, I would direct the Board's attention
 2 to Section 120-31 of your code because I
 3 believe it is crystal clear as to what can be
 4 done and what can't be done, and the rights of
 5 the appeal of something occurs that is not
 6 lawful under the code. Thank you very much for
 7 your time.
 8 As a matter, I am happy to stand up here
 9 and try to spew that out again at the second
 10 hearing when we reach that time, and I'm
 11 assuming that learned counsel and everybody
 12 else will say the same thing. I can tell you
 13 the same thing again later, or I can say ditto
 14 to this meeting because I know you all have
 15 things to do. Thank you.
 16 CHAIRMAN HUDSON: Okay, this is the second
 17 call.
 18 MR. MAUPIN: Good afternoon, Board. My
 19 name is Stephen Maupin, the neighbor to the --
 20 to the north here of proposed variance here,
 21 so --
 22 MS. RATLIFF: Mr. Maupin, could we have
 23 your address please?
 24 MR. MAUPIN: Yeah, it's 3503 Tanglewood
 25 Way. So Mr. Bandres spoke to the legal terms

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1 of why a variance should not be accepted here,
 2 and I just want to kind of give a -- just a
 3 background of us, and how we came to be in
 4 Fulton. Whenever Cheryl and I first got
 5 married, we lived over in Columbia, and,
 6 shortly, after we had our first -- first kid,
 7 Ralston, our boy, we were looking to move back
 8 to Fulton, so we looked all over the City
 9 trying to decide where we wanted to put down
 10 roots, and we ultimately decided on Tanglewood.
 11 Tanglewood is a great -- we wanted to be
 12 in a subdivision. We knew that. We wanted to
 13 be in a subdivision with covenants and
 14 restrictions and an HOA, so something like this
 15 wouldn't happen to us. We wouldn't have to
 16 worry about something being built next to us
 17 that we didn't want. We worked our butts off
 18 to build this house and to live there for -- to
 19 watch our kids grow. And by essentially
 20 allowing the variance, is it affecting the
 21 value of our home. There is no other way
 22 around it.
 23 Cheryl will talk later in the next hearing
 24 about the cases of how that happens, and the
 25 big thing for us, too, is the line-of-sight out

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1 of our front door. With this big of a setback
 2 issue in coming this far into -- in front of
 3 the street into our side house, we cannot see
 4 cars coming down the street. Our kids are
 5 going outside, our dogs, our pets, and they
 6 can't see cars because the house is too close.
 7 These type of setbacks are in place for a
 8 reason.
 9 And let's see here, and the big thing,
 10 too, is we have so many people that have come
 11 over for, just this past weekend, for a baby --
 12 or a wedding shower, from out-of-town, and
 13 everyone spoke to the fact of, what is going on
 14 with that house? They've had -- they're not
 15 from Fulton. They're from other states, other
 16 places, and they noticed it right off the bat.
 17 Why is that house so close to yours? What is
 18 going on with that?
 19 People from the golf course that don't
 20 live in Fulton, friends of mine, they all
 21 reached out, why is that house being built so
 22 close to your house? What is going on?
 23 That's just kind of our stance on the
 24 whole. We feel very, very bad for the
 25 homeowners. Us and the Bleythings had no part

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1 in this, whatsoever, but we're both asking, you
 2 know, to make consolations here, and we just
 3 don't feel that's right. So, thank you.
 4 MS. MAUPIN: I'm Cheryl Maupin, Stephen's
 5 wife, so I'm the neighbor adjacent to 3305
 6 Tanglewood Way. I'm also a licensed real
 7 estate broker in the State of Missouri, and our
 8 team is currently ranked seventh in the United
 9 States for transaction volume sold with our
 10 company. So I like to think I have some
 11 knowledge with regards to property values.
 12 I don't need to sit here and discuss how
 13 this negatively affects our property. It's
 14 obvious; it's real estate 101. Stephen's
 15 talked about some of the stuff we're dealing
 16 with already. You know, if we go to sell and
 17 neighbor doesn't -- and a homeowner -- buyers
 18 and stuff that are coming in have an issue with
 19 it -- I mean, everybody that came to our bridal
 20 shower and the baby shower, they noticed it
 21 right off the bat, right before they even came
 22 in our door.
 23 How would potential buyers not? How would
 24 they not give less for our home than another
 25 home? How would our sale of our home for less

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1 not affect that? That's basic real estate. I
 2 don't want to get into that, because I want to
 3 talk about an obvious lesser issue that I'm not
 4 sure everybody is taking into consideration.
 5 I'd say over 60 percent of buyers in this
 6 market right now, when they walk through the
 7 door, they aren't saying, I want to live in
 8 Fulton. They're saying, I want to live in one
 9 of five cities surrounding Columbia or Jeff
 10 City. Typically, Fulton is one of them. Small
 11 towns have such a tremendous opportunity for
 12 growth in this current climate right now, and a
 13 top thing for homeowners is location. They
 14 don't want, you know, if they're looking in
 15 subdivisions, which are a lot of them are, the
 16 first thing they say to me is, I don't want to
 17 be in a subdivision where the houses are on top
 18 of me.
 19 You know, they'll walk in and say, man,
 20 does the City of Fulton just let anything go,
 21 if we keep just letting sloppy work like this
 22 get done, and it was sloppy, no sugarcoating
 23 it. It doesn't matter whose fault it was, it's
 24 not within the setbacks and it ruins the
 25 aesthetic of a community.

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1 So are you going to allow it this time and
 2 not next time? Here or there? You know, I'm
 3 sure the lawyers would talk -- would be happy
 4 to discuss the implications of selective
 5 enforcement for a small fee, you know? These
 6 little decisions day in and day out that you
 7 make, the compounding effect affects the whole
 8 community. So, I mean, these little -- the
 9 little decisions that you are making will
 10 impact the growth and the death of Fulton
 11 Missouri.
 12 MR. GLASCOCK: My name is James Glascock
 13 or Jim Glascock. I'm the President and
 14 developer of Tanglewood Estates Corp. I'm not
 15 going to take --
 16 MS. RATLIFF: Mr. Glascock, if I may
 17 interrupt, could I please have your address,
 18 please?
 19 MR. GLASCOCK: My home address is 3713
 20 Southland Drive, Columbia, Missouri. My office
 21 is 209B East Green Meadows, Columbia, Missouri.
 22 MS. RATLIFF: Perfect, thank you.
 23 MR. GLASCOCK: And I've been over here
 24 developing this subdivision since 1996. It's
 25 not a quick fix. I want to bring something up

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1 that kind of concerns me in great degree. I'm
 2 not taking a side for or against either side,
 3 because it's not going to be happy for whoever
 4 wins and whoever loses. There's several points
 5 I want to make. One, Shad was not a buyer from
 6 Tanglewood. He bought the property from a
 7 previous owner. That property was sold a
 8 number of years ago, and he bought it from
 9 them.
 10 When we have a closing with a buyer, they
 11 get from us a plot plan that shows where the
 12 setbacks are required. It's done by our
 13 engineering company, which is Crockett
 14 Engineers. We provide it to everyone who
 15 builds at that thing. I'm sure Cheryl got one
 16 when they got it. So when they brought us
 17 their plans, we did not approve that house
 18 sitting where they put it. We approved the
 19 plan of that house, because they did not do
 20 what's called a plot plan, house-on-lot plot
 21 plan. That is required in Columbia, Missouri,
 22 totally.
 23 You will not get a permit if you don't
 24 bring in that piece of paper showing where that
 25 house is going to be on that lot. They don't

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1 approve it. I don't know if it's -- if it's
 2 not required here in Fulton, but it should be.
 3 Now, whose fault that is? Is it the City
 4 of Fulton, that's the builder, that's the owner
 5 of the lot, but it evidently did not happen
 6 because the architect of control, which I
 7 control, along with all members of the
 8 homeowners association, they approve it first;
 9 I approve it second; I have final decision on
 10 it. But that does not show the house as built
 11 on that lot in any way shape or form.
 12 So what was approved by us was not
 13 approved related to where it fits on the lot.
 14 I want you to know that. Beyond that, my only
 15 concern is you cannot do what maybe needs to be
 16 done, and that is change the lot lines or
 17 anything else. Only one person can do that,
 18 which I will not do, because I'm going to hurt
 19 somebody if I do it. So there's only one
 20 person who can alter any of the lot plans, the
 21 plot requirements and we will not re-subdivide
 22 that lot or anybody else's without their full
 23 cooperation, which will be Cheryl and Steve or
 24 without Shad. So those are two possibilities
 25 that you got to be considering.

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1 The third consideration I'd like you to
 2 make, and it's very difficult, you need to
 3 look, if you owned that house and this was here
 4 next to you, what would be your opinion?
 5 Beyond that, I have nothing else to say, but
 6 thank you. If you have any questions, you're
 7 welcome to give me a --
 8 CHAIRMAN HUDSON: Anyone else wishing to
 9 speak in opposition? Seeing no one, we will
 10 declare this hearing closed, and there will be
 11 discussion.
 12 MR. RIGDON: Aaron Rigdon here. I was
 13 looking through Mr. Colbert's write-up that we
 14 were given before this. I mean, the biggest
 15 thing that stuck out to me is, there's a
 16 suggestion that the City revise its
 17 interpretation of the setback calculations on
 18 February 29th, which kind of caused the
 19 encroachment.
 20 Was there a change in the building code at
 21 all that way, or can you dive into -- or
 22 anybody for that matter, if that would really
 23 change or if that's something that's always
 24 been in place.
 25 MS. RATLIFF: Before you speak, I just

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1 want to clarify that if the Board were to ask
 2 anyone to speak, they're going to ask for them
 3 to affirm and swear that the truth they're
 4 going to tell is everything to their knowledge.
 5 Mr. Hudson, if you would like to have Mr --
 6 speak, if you will read, ask him to state his
 7 name and then read this to him?
 8 MR. BRUEMMER: And just to make sure I got
 9 it right, did the rules change halfway in? Is
 10 that the question?
 11 MR. RIGDON: Pretty much.
 12 MR. BRUEMMER: The rule -- the rules
 13 didn't change. On -- I was noticing on Exhibit
 14 6 on what was presented earlier, it shows the
 15 building permit application. The building
 16 permit application also has a sketch of the
 17 property lines on it, and it shows the setbacks
 18 on it of 10 feet on either side and 25-foot on
 19 the front on it. Where the issue came is the
 20 interpretation or the judgment out in the
 21 field.
 22 There was, to my knowledge, no property
 23 line marked out in the field, staked out in the
 24 field, no survey done. Our inspector, you
 25 know, did not see those marks.

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1 MR. RIGDON: For a standard practice, it
 2 sounds like distance from the curb versus from
 3 the end of the lot line. Is there a standard
 4 practice where the lot lines just weren't
 5 marked very good, I'm making the assumption,
 6 but did somebody from the City do that line?
 7 Sorry to --
 8 MR. BRUEMMER: I think it was a judgment
 9 by our inspector out there of where that
 10 property line started and stopped. Not being a
 11 right-of-way professional or surveyor
 12 themselves, what they have to go by is what
 13 they're looking at on a plat, and what is --
 14 what is general.
 15 And, so, when they're looking at a plat,
 16 and they're saying, okay, 25 feet, if they made
 17 that interpretation and said 25 foot from this
 18 location or that location, that is a judgment
 19 call. Just like it would be on -- when they
 20 were out there with Mr. Salmons, or another
 21 builder is out there, they're making a judgment
 22 without, actually, locating the property pins.
 23 MR. RIGDON: That's quite a large
 24 discrepancy that we're talking about and --
 25 MS. RATLIFF: At this point, we're just

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1 specifically speaking about this hearing, but
 2 as long as we stay on topic to that.
 3 MR. BARNES: Mr. Bruemmer, Rob Barnes
 4 speaking. I assumed and you seem to have it,
 5 that with a building permit that is off on a
 6 sketch or drawing that would show those
 7 setbacks, I'm not finding that. Was that in
 8 the packet or --
 9 MR. BRUEMMER: I don't think -- looking at
 10 Exhibit 6 as it was presented, I do not see
 11 that sketch plat in that sketch with that. So
 12 I brought it with me, because I got that --
 13 MR. BARNES: You thought it might be
 14 important --
 15 MR. BRUEMMER: Right, I thought that it
 16 might be important. So I was interested to see
 17 if that was put on there, and I found it
 18 interesting that it wasn't in Exhibit 6.
 19 MR. BARNES: Carrying on with Aaron's
 20 comments, I, too, kind of noticed a reference
 21 several times in some of the documentation
 22 provided ahead of time of back of the curb; and
 23 I can only -- well, I don't want to draw or
 24 make an assumption, but I think if I'm playing
 25 this scenario out the best I can in my own

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1 mind, but somewhere along the way there became
 2 a realization the back of the curb and property
 3 line were not one and the same. And, in fact,
 4 they must have been seven to -- I don't know,
 5 ten feet difference.
 6 And I'm not sure my question and its
 7 subsequent answer really changes how I might
 8 ultimately decide, but I'll ask it anyway: do
 9 we believe that back of the curb was a
 10 reference made repeatedly where a person would
 11 have taken that as fact in the -- in their due
 12 diligence of staking -- a staking of a home, or
 13 and, Kyle, I know you probably can't -- some of
 14 what I'm trying to get to is you can't answer
 15 directly because you didn't make the statement,
 16 so it's probably unfair to even ask them.
 17 I guess I'll stick with the comment that
 18 I'm kicking around in my head, the difference
 19 between the back of the curb and the property
 20 line not being one and the same, at least
 21 that's what it appears to be. I'll guess I'll
 22 just I'll stop there.
 23 MR. BRUEMMER: I guess I would say that
 24 your statement that back of the curb and
 25 property line are not one and the same is

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1 accurate.
 2 And, you know, I think there was a
 3 judgment made, and that judgment was inaccurate
 4 by both the inspector and the builder.
 5 MR. RIGDON: Whoever could answer this:
 6 but were there any changes made to the plans of
 7 the house or how it's that -- or the side or
 8 both of the projects between getting approval
 9 and --
 10 MS. RATLIFF: Shad, you can come up and
 11 we'll get you sworn in.
 12 MR. RIGDON: Between getting initial
 13 approval and what it looks today as far as
 14 where it's --
 15 MR. SALMONS: No, there hasn't been any
 16 change to it.
 17 MS. RATLIFF: One second before you answer
 18 that.
 19 CHAIRMAN HUDSON: Please state your name.
 20 MR. SALMONS: Shad Salmons.
 21 (Shad Salmons sworn.)
 22 MS. RATLIFF: Thank you.
 23 MR. SALMONS: Aaron, we had -- these are
 24 the plans we've had from day one since we
 25 started this process. No changes have been

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1 made, you know, from when we submitted to the
 2 HOA, to the City, you know, all that, they've
 3 been the same house plans.
 4 MR. RIGDON: That house at that time fit
 5 on that lot?
 6 MR. SALMONS: By going by what we were
 7 told, yes.
 8 MR. ERNST: They didn't -- with the
 9 original building application, there was a plot
 10 plan included?
 11 MR. BRUEMMER: Correct.
 12 MR. ERNST: Was it correct?
 13 MR. BRUEMMER: Yes, it is correct
 14 according to our code.
 15 MR. ERNST: I mean, we're -- there's -- on
 16 the building application, there's a square.
 17 Did they have the dimensions of the lot right
 18 and all that stuff on there?
 19 MR. BRUEMMER: So what it shows, it's
 20 25 feet from what's labeled a property line to
 21 the structure in the front, and then on the
 22 side, 10 feet was labeled as the property line
 23 to the structure.
 24 MR. ERNST: But the dimensions of the lot,
 25 did they indicate the dimensions of the lot

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1 there?

2 MR. BRUEMMER: No, the specific dimensions

3 to that lot are not labeled on this.

4 MR. ERNST: Okay.

5 MS. RATLIFF: Mr. Rigdon, would you turn

6 your microphone on so we can here?

7 MR. RIGDON: The house on the lot was not

8 on there, or was it on the plot --

9 MR. BRUEMMER: It -- so what it is, is

10 just a generic map, if you will, where it shows

11 this inner rectangle as the building, and the

12 outer rectangle as the property lines for the

13 lot. And then it shows the dimensions for the

14 setbacks from property line, structure, front

15 to back or front to side. Aaron, would you

16 like to take a look at it? I'll pass it down.

17 MR. RIGDON: This isn't necessarily that

18 house on that lot. I mean, it's just 25 and 10

19 that it should be, but not necessarily as it

20 sits right there within that lot.

21 MR. BRUEMMER: Right. It's not the exact

22 measurements of the house or the exact

23 measurements of the lot. It's depicting what

24 the distance of the setbacks from the property

25 lines.

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1 MR. RIGDON: Okay.

2 CHAIRMAN HUDSON: Is there any more

3 discussion on the issue?

4 MR. RIGDON: We're basically just doing

5 this twice. Now, we're talking about the six

6 inch --

7 CHAIRMAN HUDSON: Yes, just the six-inch

8 side-yards. I'll call for a motion and a

9 second.

10 MS. RATLIFF: Could one of our members

11 make a motion whether to approve or reject the

12 six-inch variance?

13 MR. BARNES: The few opportunities that I

14 have had to participate in hearings such as

15 this, pale in comparison to the one we're faced

16 with tonight. Certainly not a motion that I

17 make easily. I think clearly there were errors

18 made. I think a builder relied on a statement

19 provided by the City. I did myself check that

20 City code. It is spelled out from the property

21 line and not back of the curb. It's

22 unfortunate that that term was heard and relied

23 on.

24 With no joy, I make a motion that we do

25 not grant the variance.

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1 MR. ERNST: Seconded.

2 CHAIRMAN HUDSON: We have a motion and a

3 second not to grant the variance. All those in

4 favor?

5 MS. RATLIFF: I'd just like to add to make

6 it clear to the public, this is to not grant

7 the variance for what reason or for what -- for

8 the existing six-inch --

9 CHAIRMAN HUDSON: For the existing --

10 MS. RATLIFF: -- encroachment?

11 MR. BARNES: This would be the six-inch

12 encroachment.

13 MS. RATLIFF: Thank you. Call for a vote.

14 CHAIRMAN HUDSON: Call for a vote. All

15 those in favor of a motion, please say aye?

16 MR. BARNES: Aye.

17 MS. RATLIFF: I'd like to take a role call

18 vote, please. For Mr. Rigdon?

19 MR. RIGDON: Aye.

20 MS. RATLIFF: Ms. Laswell?

21 MS. LASWELL: Yes.

22 MS. RATLIFF: Mr. Ernst?

23 MR. ERNST: Yes.

24 MS. RATLIFF: Mr. Hudson?

25 CHAIRMAN HUDSON: Yes.

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1 MS. RATLIFF: Mr. Barnes?

2 MR. BARNES: Aye.

3 MS. RATLIFF: All those in favor of not

4 granting the motion or not granting the

5 approval of the permit of an existing six-inch

6 encroachment on the side-yard setback from what

7 is indicated in the Fulton City Code, Section

8 120-31(c) for the home located at 3501

9 Tanglewood Way, Lot 93, Tanglewood Estates,

10 thank you.

11 CHAIRMAN HUDSON: Okay. Now, we will

12 declare the hearing of the second hearing open,

13 and that is for the hearing to hear the request

14 of Travis and Kayla Bleything, asking for a

15 variance permit -- asking for a variance

16 permitting the existing 9-foot encroachment of

17 the front-yard setback, from what is located in

18 the City Code Section 120-31(c) for their home

19 located at 3501 Tanglewood Way, Lot 93,

20 Tanglewood Estates, Fulton, Missouri. Fulton

21 City Code requires a 25 front-yard setback from

22 the property line.

23 There will be three calls in favor. Three

24 calls against and then we'll close the hearing

25 and we will have discussion. We will have

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1 three calls now for those in favor of the -- of
 2 the setback.
 3 MR. COLBERT: Good evening, Mr. Chair.
 4 Again, Caleb Colbert, attorney at 827 East
 5 Broadway in Columbia. And, again, we are
 6 asking for your support for the front-yard
 7 variance. A couple things I want to point out.
 8 Number one, there is a precedent for
 9 granting variances to the front-yard setback in
 10 Tanglewood. Exhibit 7 in your binder is a
 11 front-yard setback variance that was approved
 12 for 3312 Tanglewood Estates -- excuse me
 13 Tanglewood Way, and it was an identical issue.
 14 In that situation, the homeowner completed
 15 a structure. The City of Fulton, after the
 16 fact, flagged there was an encroachment into
 17 the front-yard setback, and the Board of
 18 Adjustment granted a variance. I want to -- I
 19 know we've been here a while this evening, but
 20 that hearing started at 5:43 p.m., and it
 21 concluded at 5:50. So in a matter of seven
 22 minutes, that homeowner -- this board gave
 23 that homeowner a front-yard setback variance
 24 for the exact same issue that we're talking
 25 about here.

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1 Again, the minutes reflect that a city
 2 inspector allowed a homeowner to construct this
 3 home into the front-yard setback. The Board of
 4 Adjustment granted relief in that scenario.
 5 I would offer, just for the record, the
 6 same exhibits, Exhibits 1 through 8 that I
 7 offered in the prior hearing. I offer those
 8 into the record in this hearing as well. Have
 9 Exhibits 1 through 8 been received?
 10 CHAIRMAN HUDSON: Yes.
 11 MR. COLBERT: Okay, thank you. A prior
 12 speaker mentioned the prospect of an
 13 encroachment creating damages to property
 14 values. Well, I think that's pretty
 15 speculative when you consider that there's an
 16 encroachment at 3312 Tanglewood Way, which
 17 doesn't seem to have impacted property values
 18 in the subdivision.
 19 And, number two, when balancing the harms
 20 of who is going to be impacted by the denial of
 21 the variance, whether there is impact of
 22 property values is speculative. If you never
 23 sell your home, there's never any impact there.
 24 But to the Bleythings, we know it's going to
 25 cost them tens of thousands of dollars to tear

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1 out this structure, if not hundreds of
 2 thousands of dollars to start from scratch.
 3 So in the balancing of the harms and
 4 trying to evaluate who is impacted the most,
 5 again, it seems like the party that suffers a
 6 concrete distinct injury today by the denial of
 7 the variance is my client, the homeowners.
 8 I did want to respond to Mr. Bandres'
 9 comments on the legal justification for
 10 granting the variance. The section that
 11 Mr. Bandres cited is subsection 2.
 12 I have to direct your attention to
 13 subsection 1, which says, "In order that the
 14 spirit of this zoning code be observed and
 15 substantial justice done, the zoning board of
 16 adjustment shall upon application or appeal,
 17 determine and vary the terms hereof by making a
 18 finding of fact that owing to special
 19 conditions, a literal enforcement of the
 20 provisions of this chapter would result in
 21 unnecessary hardship."
 22 I already went over sort of the special
 23 conditions and the unnecessary hardship in the
 24 prior hearing. I'll just sort of incorporate
 25 that testimony here. I don't want to, you

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1 know, repeat that; but, again, the standard is,
 2 is there unnecessary hardship here as a result
 3 of special conditions? Respectfully, I think
 4 there is. So we would, respectfully, ask for
 5 your support for the variance. I'd be happy to
 6 answer any questions. Thank you.
 7 CHAIRMAN HUDSON: Second call for anyone
 8 wishing to speak in favor.
 9 MR. TALBERT: Shane Talbert, 3411
 10 Tanglewood Way. I just want to reference
 11 Mr. Barnes spoke about that 25-foot. We were
 12 trying to decide if that was the property line
 13 or the pin or whatever you want to reference.
 14 I built a house right down the street from
 15 them. During that process, I got that same
 16 drawing. It shows a rectangle structure. It
 17 was always said and always referenced; pins
 18 were never said. Dennis Houchins was the
 19 inspector at that time. We never spoke about
 20 pins. We spoke about the curb. And it was
 21 always 25 feet from the curb.
 22 He said you can build all the way back to
 23 the back of your property if you want, you
 24 know, but you got to be 25 feet from the curb.
 25 Continually said, continually said and

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1 continually said.
 2 My house wasn't an issue because I built
 3 40 feet back. I wanted it back; I wanted a
 4 large driveway. Not effected. Now by me
 5 making that choice, I'm in the same predicament
 6 they are. I walk out my front door, I see my
 7 neighbor's house. I can't see down the street,
 8 but that was my choice. They had a choice to
 9 buy a lot next to them to not have anybody ever
 10 build next to them for their entire life and
 11 they chose not to do that.
 12 So I just wanted that on record to say
 13 that that -- that was always referenced 25 foot
 14 from the curb, 25 foot from the curb, 25 feet
 15 from the curb. Thank you.
 16 MR. SALMONS: Shad Salmons again.
 17 MS. RATLIFF: Mr. Salmons, can we have
 18 your address?
 19 MR. SALMONS: Well, 2602 Fairway Drive.
 20 MS. RATLIFF: Thank you.
 21 MR. SALMONS: Kind of stating his point,
 22 too, that's -- from day one, it was 25 feet
 23 from the curb. I mean, the inspectors even
 24 come out, and we measured 25 feet from the
 25 curb. So that's what I was told as well

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1 through this whole process. Thank you.
 2 MR. HELSEL: Heath Helsel. I'm building a
 3 house out there as we speak --
 4 MS. RATLIFF: Can I get your address?
 5 MR. HELSEL: Well, it's not really defined
 6 yet, but I think it's 3218.
 7 MS. RATLIFF: Thank you.
 8 MR. HELSEL: So you said that it was kind
 9 of taking the word of what Shad had from
 10 10 feet to 25 feet, the way I understood it,
 11 from the setback. I had the same problem. I
 12 was building too far back, because I was -- I
 13 had to be 25 feet off the back. I was never
 14 told 25 feet off the back, so I had a plot of
 15 about 4,000 square feet, because I wanted to
 16 make sure it got centered.
 17 The inspector came out and made an X on my
 18 lot to where I could not -- she was on hand
 19 talking to me, you cannot build in front of
 20 this X. It was defined to me after we had a
 21 little argument about it. I was 25 feet off
 22 the back, and she was there with me, told me
 23 this, so it's -- I could not build in front of
 24 that. She was not going to allow me to go. So
 25 I had a 25 -- it wasn't a guess. It wasn't

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1 somebody saying, I think this is where it is,
 2 or, Shad, I'm going to take Shad's word it's
 3 25 feet from the -- or 35 feet.
 4 From my experience, which is probably two
 5 weeks after this process or before this
 6 process, I got told with X, a red X, this was
 7 25; you cannot build inside of this. So I just
 8 wanted to tell you my experience from her.
 9 CHAIRMAN HUDSON: This is the third call
 10 for anyone speaking to speak in favor. Seeing
 11 no one come forward, we will move on to three
 12 calls in opposition. This is the first call to
 13 speak in opposition.
 14 MR. BANDRÉ: Again, your code in Section
 15 120-31 --
 16 MS. RATLIFF: I hate to interrupt. If
 17 you'd please --
 18 MR. BANDRÉ: I'm sorry, ma'am.
 19 MS. RATLIFF: That's okay.
 20 MR. BANDRÉ: David Bandrè, 227 Madison
 21 Street, Jefferson City, Missouri.
 22 Section 120-31 of your code is, part of
 23 it, is the chart that sets forth these setback
 24 area heights and lot regulations. It does
 25 provide that the 25 feet is front-yard, comma,

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1 from property line.
 2 Again, and I'm saying this for the record,
 3 I know I've said it, I'm not trying to drag
 4 this out, get that out there; but it is my
 5 belief that under your code, particularly
 6 Section 120-31, that if this property can
 7 lawfully can be used for a house that meets the
 8 requirements. In other words, it has 7,000
 9 square feet as required by a R-1 lot, there's
 10 room for 25 feet front setback from the
 11 property line; 10 feet side-yard from the
 12 property line; and 25 rear-yard from the
 13 property line, that you can't grant a variance.
 14 That's lousy for the homeowners and the
 15 builders and everyone else, but there has to be
 16 a correct forum within which to have those
 17 issues heard. Respectfully, this is not that
 18 forum because this is a limited forum. It is
 19 an important forum. It is a forum that has a
 20 lot of things come through. Precedent versus
 21 code is not a fair fight. Because code is
 22 binding, and code is enforceable.
 23 I don't know, my guess is the members of
 24 the Board don't know the reasons for the amount
 25 of the variance that was granted in other

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1 situations, but it is irrelevant for this
 2 issue, because what is relevant is that this is
 3 a valid and buildable lot, having, based on my
 4 terrible math, 7,500 square feet at a minimum
 5 of space. Although with a pie-shaped lot, I
 6 don't know.
 7 But it certainly is a lot that was
 8 developed, and I would trust that the developer
 9 has all of the lots out there in excess of what
 10 the code is. Again, my clients could have
 11 bought another lot. They could have bought up
 12 all the lots on the street, but what they have
 13 an absolute right to do is rely on the code.
 14 And rely on the protections that that code
 15 provides them.
 16 Going back to the Wild West, that is why
 17 people move to towns, so that they had the
 18 protection of the laws in those towns. And if
 19 those laws can easily be thrown away because
 20 mistakes are made by any third party, then
 21 those protections don't exist.
 22 It is our belief that the code is clear as
 23 to what a property line is. If a mistake was
 24 made by an inspector, a city employee, a
 25 secretary, whoever it was who gave that, I

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1 don't believe that enables the granting of a
 2 variance, and I know that does not grant a
 3 variance under your code because there's not a
 4 provision that allows it. Thank you.
 5 CHAIRMAN HUDSON: Second call for anyone
 6 speaking in opposition.
 7 MS. CZESCHIN: Good evening. I forgot the
 8 proper greeting on the sheet, what it said.
 9 Mr. Chairman and members of the Board, my name
 10 is Melody Czeschin. I live across the street
 11 from the property under discussion tonight at
 12 3502 Tanglewood Way.
 13 Let me begin by stating this may be the
 14 worse possible scenario under which to meet my
 15 future neighbors. Having built multiple homes
 16 ourselves, my husband and I absolutely
 17 sympathize with the Bleythings. We can
 18 appreciate the stress of building a new home
 19 under normal circumstances and the desire to
 20 move forward at all times. We do not wish to
 21 impede their progress toward their new home.
 22 We do, however, wish for their home to comply
 23 with city code. To live in a community means
 24 recognizing how the actions of one may impact
 25 another.

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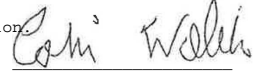
1 Some are expecting those who are
 2 blameless, us neighbors, to bear the burden of
 3 another's error. The burden of this error
 4 cannot be forced on the surrounding neighbors.
 5 Per city code, the builder is expected to have
 6 full knowledge of the rules and how to comply
 7 with them.
 8 We were raised here with the understanding
 9 that the rules meant something and that
 10 everyone is held accountable. How this
 11 mismeasurement occurred is indeed complicated
 12 and very unfortunate for all involved.
 13 Let's understand that this decision does
 14 not just impact homeowners within 185 feet of
 15 the situation, but a decision to allow this
 16 deviation can impact property values for anyone
 17 selling a home in our neighborhood of 90-plus
 18 houses, not to mention to the safety of those
 19 passed by the property and the legal precedent
 20 this will set for other builders to bend the
 21 rules throughout our city. Thank you.
 22 MR. CZESCHIN: Mr. Chairman, members of
 23 the board, my name is Jeremy Czeschin. I live
 24 across the street at 3502 Tanglewood Way. I
 25 first became aware of the situation, and the

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1 process when we all received our certified
 2 letter from the City. At that point, I reached
 3 out to Stephen and Cheryl. They shared with me
 4 a letter that their representation had provided
 5 to the Board. So I reviewed each case cited in
 6 that letter in detail, and I would like to
 7 highlight a few items that made me question why
 8 a variance is being considered.
 9 First, from the Missouri State
 10 Constitution, all four of the following items
 11 are required in order to support the legality
 12 of a variance. For a variance, an applicant
 13 must prove relief is necessary because of the
 14 unique character of the property rather than
 15 for personal considerations; and applying the
 16 strict letter of the ordinance would result in
 17 unnecessary hardship; and the imposition of
 18 such a hardship is not necessary for the
 19 preservation of the plan; and granting the
 20 variance will result in substantial justice to
 21 all.
 22 In one of the cases cited, Antioch
 23 Community Church versus Kansas City -- the City
 24 of Kansas City, it's stated that, "The general
 25 rule is that the authority to grant a variance

<p style="text-align: right;">Page 57</p> <p>1 should be exercised sparingly and only under 2 exceptional circumstances." 3 To reinforce this, in Hutchens versus St. 4 Louis, I quote, "Such counties should exercise 5 their power to grant a variance sparingly and 6 in accordance with the public welfare." 7 We've already heard about potential 8 effects on property value, but one thing is 9 certain where the house is located does create 10 a safety risk. There are the -- any cars 11 parked in the driveway would obstruct the 12 sidewalk, forcing people to walk around, and 13 the site lines that would obstruct from anybody 14 walking from the north end of the subdivision 15 to the south end are also impeded. 16 In this case, there was a mention of a 17 prior variance. I was in the subdivision when 18 that happened. I believe it is, approximately, 19 one foot. Now, we're talking about, 20 approximately, 9 feet, which is 36 percent of 21 the minimum required setback. Thank you for 22 your time. 23 MS. MAUPIN: Cheryl Maupin, 3503 24 Tanglewood Way. One thing I have a hard time 25 understanding is the builder, at the very same</p>	<p style="text-align: right;">Page 59</p> <p>1 if you look at what was sent out to all the 2 homeowners, it basically shows every house 3 quite a bit more than this house. So everybody 4 else, when they get their permit, it seems knew 5 it had to be 35 feet from the back of the curb 6 or 25 feet from the property line. Just to 7 reiterate, unless you got a question of me. 8 MS. RATLIFF: None at this time, thank 9 you. 10 MR. GARY CZESCHIN: I haven't planned to 11 speak, but my name is Gary Czeschin. I live at 12 3404 Tanglewood Way. And I have lived in this 13 subdivision almost 20 years. We were here at 14 the time when the other variance was approved. 15 And one of the reasons why it might have gone 16 through so quickly is that all of the neighbors 17 accepted and signed off, to my knowledge, 18 all -- that they were okay with that one-foot 19 variance on that particular house in that 20 particular situation. Thank you. 21 CHAIRMAN HUDSON: This is third and final 22 call for anyone wishing to speak in 23 opposition -- to opposition. Seeing no one 24 come forward, we're closing the hearing now and 25 will have discussion on the issue.</p>
<p style="text-align: right;">Page 58</p> <p>1 time on the other side of the lot, built his 2 home at the same time that the Bleythings' was 3 being built, and those meet the setbacks. So 4 why is that house setback, and the other one 5 meets all the setbacks and this one does not? 6 If they said that they didn't know what the 7 setbacks were? 8 MR. GLASCOCK: James Glascock, 3713 9 Southland, Columbia, Missouri. I want to make 10 the same point that was made by the previous 11 speaker, regarding the second house there. If 12 you take the item that was sent out to all 13 homeowners in the area, it shows the depiction 14 of all the fronts of all the houses. There's 15 only one, and that's this house here that does 16 not appear to be quite a ways back. I assume 17 you did this with some type of a drawing or 18 somebody had to measure that to make that 19 occur; is that correct? Is that correct, KC? 20 Can you tell me -- 21 MS. RATLIFF: I'm Kathie Ratliff. I'm the 22 city clerk. KC is not here tonight. Kyle 23 might be able to speak to that in time, but 24 thank you -- 25 MR. GLASCOCK: What I'm trying to say is,</p>	<p style="text-align: right;">Page 60</p> <p>1 MR. BARNES: Not everyone all at once. I 2 think there was a comment when this hearing 3 here, when the first hearing opened, when you 4 stand up and get to the second part, you pretty 5 well say ditto. Very complicated issues, and I 6 know no real outcome that's positive or good in 7 this particular scenario. A small community, 8 you know a lot of the folks that are in this 9 room. I know the builder in question, very 10 competent, a very caring individual, works 11 hard, does a good job. 12 Certainly, my heart goes to the folks 13 building a home. Been there, done that. It's 14 painful when things go well, as pointed out. 15 This particular member of the Board of 16 Adjustment would like to make a motion to deny 17 the variance in this particular case. 18 MR. ERNST: Seconded. 19 MS. RATLIFF: Court reporter, before I 20 call roll, I want to make it clear that Rob 21 Barnes made the motion and Bill Ernst was the 22 second, thank you. I'll start with Ms. 23 Laswell. Are you in agreement to deny the 24 variance? 25 MS. LASWELL: Yes.</p>

1 MS. RATLIFF: Mr. Ernest?
 2 MR. ERNST: Yes.
 3 MS. RATLIFF: Mr. Hudson?
 4 CHAIRMAN HUDSON: Yes.
 5 MS. RATLIFF: Mr. Barnes?
 6 MR. BARNES: Yes.
 7 MS. RATLIFF: Mr. Rigdon?
 8 MR. RIGDON: Yes.
 9 MS. RATLIFF: Five members are in
 10 agreement.
 11 MR. ERNST: I make a motion to adjourn.
 12 MS. LASWELL: I second.
 13 (Off the record at 6:34 p.m.)
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1 I, Colin Wallis, in and for the State of
 2 Missouri do hereby certify that the witness
 3 whose testimony appears in the foregoing
 4 Examination Under Oath was duly sworn by me;
 5 that the testimony of the said witness was
 6 taken by me to the best of my ability and
 7 thereafter reduced to typewriting under my
 8 direction; that I am neither counsel for,
 9 related to, nor employed by any of the parties
 10 to the action in which this examination was
 11 taken, and further that I am not relative or
 12 employee of any attorney or counsel employed by
 13 the parties thereto, nor financially or
 14 otherwise interested in the outcome of the
 15 action.
 16 
 17 within and for the State of Missouri
 18
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 20
 21
 22
 23
 24
 25

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