

8425 Airport Road

Berkeley Missouri 63134-2098

(314) 524-3313

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## NOTICE OF PUBLIC HEARING

**NOTICE IS HEREBY GIVEN** by the City Council of the City of Berkeley that a public hearing will be held at 7:00 pm on Monday, November 07, 2016 in the City Hall Council Chambers, 8425 Airport Road, Berkeley, Missouri 63134, for the purpose of considering the following proposition:

**Case # 16-18: Shall the Zoning Code be Amended by Grandfathering Non-Conforming Lot Sizes Section 400.110, "R-3" Single Family, in the City of Berkeley, Missouri?**

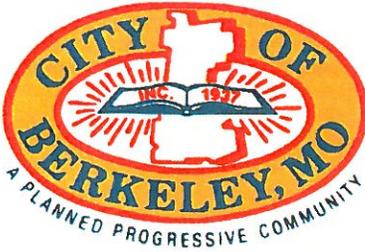
All interested parties shall be afforded, at such public hearing, a reasonable opportunity to express their views regarding the item set forth above.



Deanna L. Jones – City Clerk, MPCC/MMC

If you are a person with a disability and have special needs, please notify the City Manager at (314) 524-3313, no later than 48 business hours prior to the meeting. The City will make reasonable accommodations upon your arrival at the meeting.

Posted: Tuesday, October 18, 2016 by 5:00 PM



## REPORT TO CITY COUNCIL

**TO:** The Honorable Mayor and Members of the City Council

**FROM:** Debra Irvin, Municipal Services Manager/Building Commissioner

**DATE:** October 14, 2016

**SUBJECT:** **Case 16-18:** Amending the Zoning Code by grandfathering non-conforming lot sizes in Section 400.110 "R-3" districts regulating single family homes.

### ZONING DESCRIPTION

This action item is a request for the Board of Adjustment 2012 to grandfather the existing lot sizes in Section 400.110 R-3 Single Family zoning districts so that they do not have to meet the 6,000 sq. ft.; and 50 ft. wide.

**PLAN COMMISSION RECOMMENDATION:** Recommends the approval by amending the Zoning Code by grandfathering non-conforming lot sizes that are less than 6,000 sq. feet in Section 400.110 R-3, and less than 50 ft. wide, Section 405.

### SUPPORTING DOCUMENTS

- -Staff Report
- -Ordinance
- -Board of Adjustment Minutes 5/14/2012
- -Zoning Map

### OPTIONS OF THE COUNCIL

1. -Approve request.
2. -Deny request.

A Public Hearing will be held by the City Council on **Case 16-18:** Amending the Zoning Code by grandfathering non-conforming lot sizes Section 400.110, "R-3" Single-Family

## Chapter 405. Subdivision Regulations

### Article III. Design Standards

#### Section 405.120. Residential Lot Design Standards.

[CC 1961 §22.04(A); Ord. No. 1987 §1, 11-19-1973]

A. The size, shape, and orientation of lots shall be designed to provide desirable building sites logically related to topography, natural features, streets, and adjacent land uses. Due regard shall be given to natural features such as large trees; unusual rock formations; water courses; and sites which have historical significance, scenic views, and similar assets, the preservation of which would add attractiveness and value to the subdivision.

The following minimum standards are set forth as guides to these goals:

1. Each proposed lot containing an area of less than five (5) acres shall front upon an accepted street improved to the standards and specifications of Berkeley.
2. Lots with double frontage should be avoided, except where necessary to provide separation of development from traffic arteries, or as otherwise required by topography or similar conditions.
3. Where additional widening strips are dedicated on existing streets, calculations of the area of a lot shall not include widening strips in determining the gross area of the lot.
4. *The lot area shall meet the requirements of the Zoning Code. No lot shall have a width of less than fifty (50) feet at the building line.*
5. The minimum frontage required for a lot fronting on a circular turnaround may be measured along a line parallel to the street right-of-way line, at a distance from the street right-of-way line equal to the depth of the required front yard plus ten (10) feet.
6. The minimum frontage at the right-of-way line for lots fronting on a circular turnaround shall not be less than thirty-six (36) feet.
7. Side lot lines shall be at right angles to straight streets and radial to curved streets, except when said radial lot lines detract from the desirability of the lot, in which event some deviation may be allowed.
8. Where there is a question as to the suitability of a lot or lots for their intended use due to factors such as rock formations, soil conditions, steepness of terrain, flood conditions, or other adverse natural physical conditions, the Commission may, after adequate investigation, withhold approval of such lots until engineering studies are presented to the Commission which establish that the method proposed to meet any such condition is adequate to avoid any danger to health, life, or property.
9. Building lines shall be shown on plats of all lots intended for residential use, and on commercial lots adjacent to residential areas; and shall not be less than the setback required by the Zoning Code.
10. Corner lots for residential use shall have adequate additional width to permit for appropriate building setback from both streets.

## Chapter 405. Subdivision Regulations

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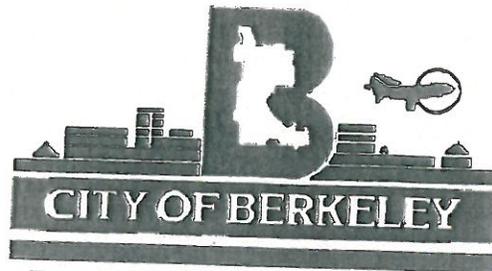
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**BOARD OF ADJUSTMENT**

**May 14, 2012**

**MINUTES**

**Attendance:**

Charles Gholson (Chairman, BOA)	Present
Gary Grotegeers (BOA)	Present
Lisa Evans (BOA)	Excused Absence
Thelma Wiley (Co-Chair, BOA)	Present
Richard Schmitt (BOA)	Present
Babatunde Deinbo (Council Representative)	Excused Absence
Assistant Fire Chief Jeffrey Collier (Fire Dept)	Present
Debra Irvin (Building Commissioner)	Present
Henry Williams (Interim City Manager)	Excused Absence
Yolanda Cooper (Secretary)	Present

**Guest:** Jerry Meyer, Rubicon Corporation – Berkeley Manor, LLC

Charles Gholson, Chairperson, called meeting to order at 7:00 p.m. Roll was called and four BOA Members were present. Meeting was duly publicized as required by law and published at the site. All applicant fees were paid and Public Hearing Notices were placed in newspapers. Radius Letters were submitted to residents/property owners in the vicinity of applications. Rules and procedures for this public hearing and all testimony will be recorded for later review and minute preparation. Decision is determined by sufficient demonstration on the record for practical difficulties or unnecessary extreme hardships, which will justify the variance requested. Please speak loud and clearly for recording purposes. Due to 4 Commission members being present, to obtain a variance all members must vote affirmative in order to pass the variance per state law. Or, applicants can request a later date for their hearing; when 5 members would be present. We will conduct the hearing if you so elect to but when we take a vote with one negative vote the variance will not be approved. Otherwise I will adjourn the meeting for another month.

Jerry Meyer, Rubicon Corporation, states I am going to take my chance with the 4 votes.

Chair, Do I have permission to ask questions as to why? We went through this a month ago with putting 2-story houses on the lots and satisfying

Meyer, That was a different issue those were corner lots and we were going to ask for a variance on front yard and side yard setbacks so that we could put a ranch home on those lots. At the meeting we decided we could put 2-story homes on those lots and it would not require a variance. Now, what we have in front of you is basically almost every lot that we purchased requires 6,000 square feet minimum which is a total different issue. All the vacant lots that we purchased were 50x110' or 50x120' so we got 19 lots that don't meet the 6,000 square feet minimum. We are not building 2-story homes, we are building the ranch homes.

Chair, somebody didn't do their job or homework. Originally, the ordinance required a lot size that was compatible with the homes that were being built on those lots. We got to go back to the 50s & 60s whenever the ordinance was rewritten they rewrote it in dreamland that would gee we are going to require building another house that has 6,000 sq feet. You can't do that you are wiping out everybody that had homes sitting on smaller lots. No one anticipated a wholesale destruction of the homes and going back and rebuilding. I am looking at this as a City mistake as I recall they contracted the rewrite of the code book to some outfit in California (dreamland) and did not use the citizens in our community on the Planning Commission and otherwise to sit down and labor through it and try make it a workable document. It looks real good if you just change numbers and from now on you will be compatible with X code in Colorado but it is not doing us any good today.

Meyer, To answer that, What I have seen in a lot of other municipalities is similar situations where they have no ordinance requiring the new lot size to be bigger but they grandfathered all the existing lots. If they had done that I wouldn't be in front of you today. But they didn't and now I have all these vacant lots that require variances.

Chair, everybody has ignored the fact that what happened could happen.

Meyer, There is only one exception in these variances. There are 19 of them. They are all for the minimum lot size but I have one lot that did not meet the minimum frontage. It was an existing lot. There is still a house on it but it's only 38 feet wide and the required new frontage is 50. So that one lot we are asking for a variance both for two. One lot is 8403 Short and we are asking for a variance for the required frontage and the total footage. Most of them were around 5,000 to 5,500 Sq Ft.

Chair, Your house plan is designed to go on a 6,000 Sq Ft lot.

Meyer, We got plans that could fit on a smaller lot.

Chair, But do they have to have waivers in on the side and front setback?

Meyer, No. We are not asking for any of those. The plans that we are proposing sit on the lots as they sit. So we are not asking for any side, front or back yard variance. Only for the lot sizes itself. All of our plans fit on the lot the way they sit right now.

Chair, the only problem then is one that the City of Berkeley made for itself in declaring that in order to build a house in that neighborhood you have to build it on 6,000 sq ft lot. What would you ask this board to do in way of variances?

Meyer, I would ask that they grant variances to allow us to build on these lots that are less than 6,000 sq ft.

Chair, As with established by code and everything when the homes were built? In other words, grandfather them in.

Meyer, we also had the re-subdivide process in 7 months where we were buying 110 ft lots and dividing them into two. In that case they weren't lots of record but we were granted subdivision by the Planning Commission that approved them. So we are asking for variances for lot size on those lots also. We are asking to be able to build on lots that are less than the 6,000 sq ft. One lot I am asking for a variance from the required 15 ft setback. That lot is only 38 ft wide. There is a house on it now and we own the lot behind it so we are going to feed that one with a rear entry garage. So we are still going to build a nice size house with a one car garage.

Co-Chair Richard Schmitt, you have people out here, what have they got.

Chair, Are there people here to talk on this subject?

Audience – States, "Yes there are."

City of Berkeley vs. Rubicon Corporation  
Debra Irvin, Building Commissioner Jerry Meyer

Addresses of requested variances:

6009, 6036 and 6048 Evergreen  
6007, 6008 and 6017 Garfield  
6037, 6041, 6045, 6049, 6053, 6057, 6062, 6066, 6102 and 6106 Jefferson  
8403 Short  
6037 and 6109 Washington

### CITY'S PRESENTATION OF EVIDENCE

Debra Irvin, Building Commissioner presented to the Board letters dated April 24, 2012, to Jerry Meyer of the Rubicon Corporation denying Building Permits on all established properties above. This denial was due to Berkeley Zoning Municipal Code 400.110: R-3 Single-Family Residence District, Section F. Area Requirements, which states that "1. *Minimum lot area per family. Six thousand (6,000) square feet.*" His request is in conflict with the existing lot size of 6,000 square feet as stated in this code.

### DELIBERATION

City Representatives heard residents and further discussion from Jerry Meyer. Minute review of entire hearing may be reviewed. You can schedule to review tape with Secretary Yolanda Cooper at (314) 524-3313, Ext. 3752.

### MOTION

Motion was made to allow requested variance for the 19 properties in question.

**The Chair requested Roll Call Vote:**

Roll was called with the following results:	Charles Gholson	YES
	Gary Grotegeers	YES
	Thelma Wiley	NO
	Richard Schmitt	NO

The Motion was moved and the variance was denied.

A drafted resolution decision will go on file.

**The Chair announced the vote on the above variance as denied due to the lots being too small is unacceptable to grant a variance.**

Chair Gholson proposed that a letter be prepared for Henry Williams stating the variance was denied and a copy issued to Jerry Meyer of Rubicon Corporation and Debra Irvin, Building Commissioner.

Minutes of March 12, 2012 Board of Adjustment Meeting were unanimously approved by Commission.

The meeting adjourned at 8:45 p.m.

Respectfully submitted by  
Yolanda Cooper

**Adoption of New Zoning Ordinance**

Date	Ordinance Number
TBD	TBD

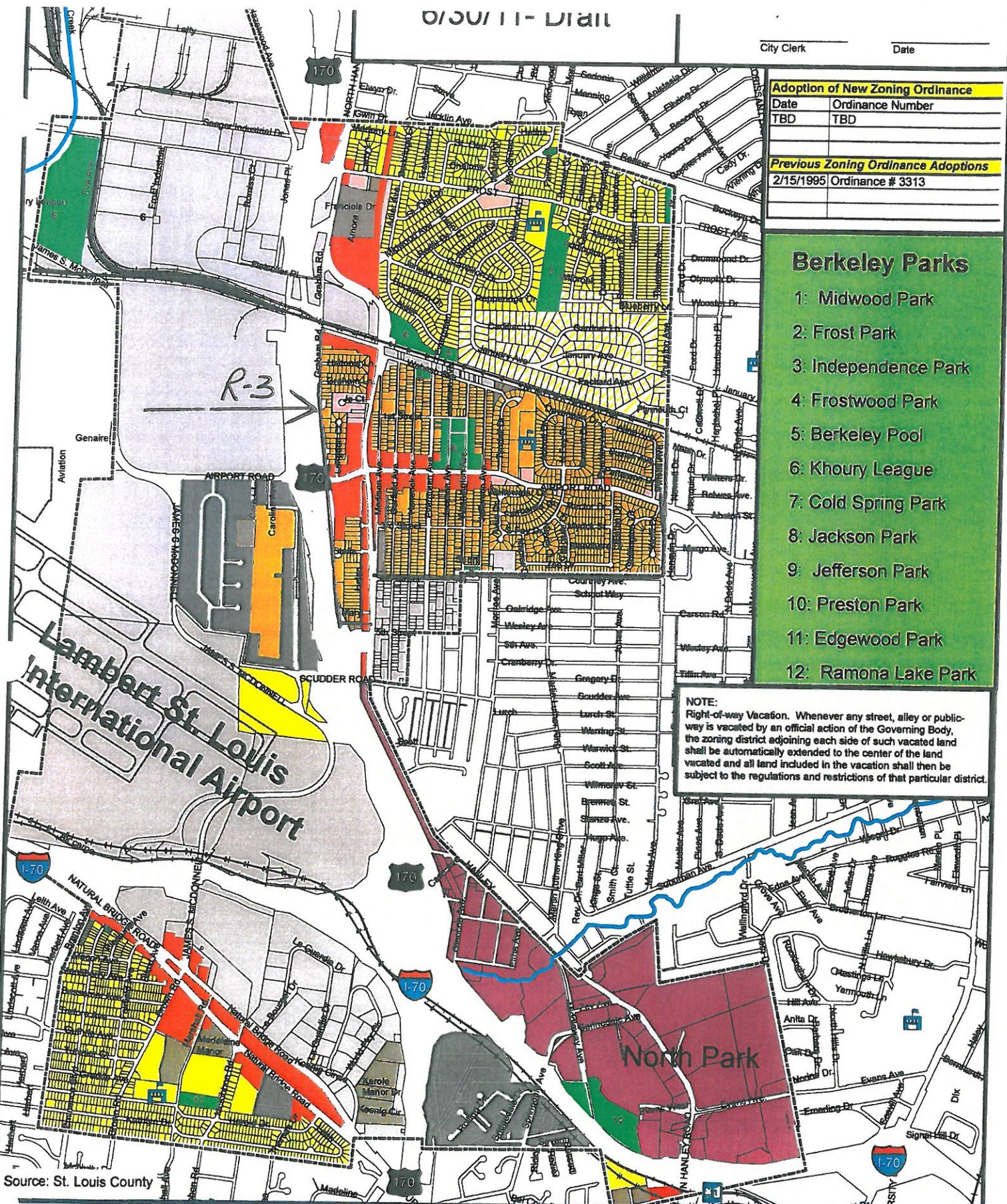
**Previous Zoning Ordinance Adoptions**

2/15/1995	Ordinance # 3313
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**Berkeley Parks**

- 1: Midwood Park
- 2: Frost Park
- 3: Independence Park
- 4: Frostwood Park
- 5: Berkeley Pool
- 6: Khoury League
- 7: Gold Spring Park
- 8: Jackson Park
- 9: Jefferson Park
- 10: Preston Park
- 11: Edgewood Park
- 12: Ramona Lake Park

**NOTE:**  
Right-of-way Vacation. Whenever any street, alley or public-way is vacated by an official action of the Governing Body, the zoning district adjoining each side of such vacated land shall be automatically extended to the center of the land vacated and all land included in the vacation shall then be subject to the regulations and restrictions of that particular district.



Source: St. Louis County

**Legend**

- City Limits
- 

**Zoning**

- "R-1" Single Family Residence District
- "R-2" Single Family Residence District
- "R-3" Single Family Residence District
- "M-1" Industrial District
- "M-2" Planned Research & Ind. Dist.
- "AD" North Park