

RAYMORE BOARD OF ADJUSTMENT AGENDA

Tuesday, April 20, 2021 - 6:00 p.m.

City Hall Council Chambers
100 Municipal Circle
Raymore, Missouri 64083

1. Call to Order
2. Roll Call
3. Pledge of Allegiance
4. Personal Appearances - None
5. Consent Agenda
 - a. Approval of Minutes from December 1, 2020 meeting
6. Unfinished Business - None
7. New Business
 - a. Case #21006 - Appeal of Enforcement Order, 400 N. Park Drive, Gary & Sarah Gaston
8. Staff Comments
9. Board Member Comment
10. Adjournment

Any person requiring special accommodations (i.e. qualified interpreter, large print, hearing assistance) in order to attend this meeting, please notify the City Clerk at (816) 331-0488 no later than forty-eight (48) hours prior to the scheduled commencement of the meeting.

THE **BOARD OF ADJUSTMENT** OF THE CITY OF RAYMORE, MISSOURI, MET IN REGULAR SESSION **TUESDAY, DECEMBER 1, 2020** IN HARRELSON HALL AT CENTERVIEW, 227 MUNICIPAL CIRCLE, RAYMORE, MISSOURI WITH THE FOLLOWING BOARD MEMBERS PRESENT: DAVID WOSTE, JERRY MARTIN, AARON HARRISON, PAM HATCHER, AND TERRI WOODS. ALSO PRESENT WAS CITY PLANNER KATIE JARDIEU, DEVELOPMENT SERVICES DIRECTOR JIM CADORET, AND CITY ATTORNEY JONATHAN ZERR.

1. **Call to Order** – Chairman Martin called the meeting to order at 6:00 p.m.
2. **Roll Call** – Roll was taken and Chairman Martin declared a quorum present to conduct business.
3. **Pledge of Allegiance**

Following the Pledge of Allegiance, Chairman Martin stated that he would be stepping down as Chairman for the Board. While he would be staying on as a voting member, with the meetings to be held at Centerview for the foreseeable future, he had a difficult time hearing in the room and nominated Board Member Pam Hatcher to be Chairman. Board Member Hatcher accepted the nomination. No other nominations were made.

Vote on Nomination of Hatcher as Chair:

Board member Hatcher	Aye
Board member Harrison	Aye
Board member Martin	Aye
Board member Woods	Aye
Board member Woste	Aye

Nomination passed 5-0-0

4. **Personal Appearances – None.**
5. **Consent Agenda –**

A. Approval of Minutes of November 17, 2020 meeting

Motion by Board Member Woods, Seconded by Board Member Harrison, to accept the minutes of the November 17, 2020 meeting.

Vote on Motion:

Board member Hatcher	Aye
Board member Harrison	Aye
Board member Martin	Aye
Board member Woods	Aye
Board member Woste	Aye

Motion passed 5-0-0

6. **Unfinished Business – None**
7. **New Business**

A. Case #20026 - Venue at the Good Ranch Setback Variance (public hearing)

Chairman Hatcher opened the public hearing at 6:04 pm.

Mr. Jake Loveless, of Griffin Riley Property Group, the applicant, gave a brief overview of the project stating that due to the three street frontages on the lot and the size of the development, they needed to increase the size of the amenity and thus needed the variance.

City Planner, Katie Jardieu, indicated the request is for a variance to the amenity setback requirement from the right-of-way as well as a variance to the PUD front yard setback requirement. Ms. Jardieu highlighted items from the staff report including the three street right-of-ways and front setbacks that are not typical to any lot in Raymore. Additionally the variance would only be moving the amenities closer to the street and not toward any homes or buildings. Ms. Jardieu recommended that the Board of Adjustment accept the staff proposed findings of fact and approve case #20026 as requested.

Board Member Woods asked to see the applicants statement that was submitted with the application.

With no public wanting to speak, the public hearing was closed at 6:09 pm.

Motion by Board Member Martin, Seconded by Board Member Harrison, to accept the staff proposed findings of fact and approve Case #20026 - Venue of the Good Ranch Clubhouse, requesting the amenity setback (pool and patio) from the right-of-way be reduced from thirty (30) feet down to thirteen (13) feet and reducing the front yard setback for the clubhouse building from twenty-five (25) feet down to fifteen (15) feet.

Vote on Motion:

Board member Hatcher	Aye
Board member Harrison	Aye
Board member Martin	Aye
Board member Woods	Aye
Board member Woste	Aye

Motion passed 5-0-0

B. Case #20027 - Berry Variance - 701 Lakeshore Circle - Side Setback Variance
(public hearing)

Chairman Hatcher opened the public hearing at 6:11 pm.

Mr. Steve Smith, the applicant and contractor for the project, gave an overview of the addition that was in progress to be added to the house.

City Planner, Katie Jardieu, indicated the request is for a variance to the side yard setback for the house, reducing the 10-foot setback by 2 feet. Ms. Jardieu stated that even with the variance, the addition and house would be 8 feet from the property line which is still more than other subdivisions require which can be 7.5 feet. Ms. Jardieu recommended that the Board of Adjustment accept the staff proposed findings of fact and approve case #20027 as requested.

The homeowners, Ryan and Stefanie Berry, along with their neighbor, Mr. Ziegler, 702 Lakeshore Circle, stated they had agreed to the encroachment and did not have issues. They will be recording a private agreement regarding the encroachment with Cass County.

Board Member Woods asked to see the applicants statement that was submitted with the application.

With no speakers, the public hearing was closed at 6:21 pm.

Motion by Board Member Harrison, Seconded by Board Member Harrison, to accept the staff proposed findings of facts and approve Case #20027 - 701 Lakeshore Circle, requesting the side setback be reduced by 2 feet.

Vote on Motion:

Board member Hatcher	Aye
Board member Harrison	Aye
Board member Martin	Aye
Board member Woods	Aye
Board member Woste	Aye

Motion passed 5-0-0

8. Staff Comments - Ms. Jardieu let the Board know that with no applications for the January 5th meeting, there would not be one held. She would let them know next month regarding the February meeting.

9. Board member Comment – None.

10. Adjournment

Motion by Board Member Woods, Seconded by Board Member Harrison to adjourn.

Vote on Motion:

Board member Hatcher	Aye
Board member Harrison	Aye
Board member Martin	Aye
Board member Woods	Aye
Board member Woste	Aye

Motion passed 5-0-0

The Board of Adjustment meeting for December 1, 2020 adjourned at 6:30 p.m.

Respectfully submitted,

Katie Jardieu



To: Board of Adjustment
From: Development Services Director Jim Cadoret
Date: April 20, 2021
Re: Case #21006 - Appeal of Enforcement Order

GENERAL INFORMATION

**Applicant/
Property Owner:** Gary & Sarah Gaston
Requested Action: Appeal to a Notice of Code Violation issued on 3/16/2021
Property Location: 400 N. Park Drive (Northwest corner of 58 Highway and Park Drive)
Existing Zoning: "R-1" Single-Family Residential District
Total Tract Size: 32,956 sq. ft. (.756 acres)
Subdivision Plat: Wedgewood Place Lots 1 & 2

REQUEST

Sarah Gaston filed an appeal to a Notice of Code Violation issued to her and her husband on March 16, 2021 regarding the keeping of chickens on a R-1 zoned property that is less than 3 acres in size. The notice required her to permanently remove the chickens being kept on her property located at 400 N. Park Drive by March 30, 2021.

APPLICABLE CODE PROVISION

City of Raymore Unified Development Code

Chapter 405: Agricultural and Residential Districts

Section 405.040 Additional Regulations *(Amendment 11 – Ordinance 2011-52 8.08.11)*

D. Keeping of Animals *(Amendment 26 – Ordinance 2018-008 1.22.18)*

- 1.** Cattle, cows, horses, sheep, goats and similar animals are permitted in the A and RE districts only.
- 2.** Chickens and similar fowl are permitted in the A and RE districts, and in the R-1 district upon properties of at least three acres in size.
- 3.** In the RE and R-1 (3-acre minimum lot size) district, maximum number of animals permitted per grazing acre, excluding building coverage, ponds and yard area around the principal dwelling, are:
 - a.** 1 head of cattle; or
 - b.** 2 sheep; or
 - c.** 2 goats; or
 - d.** 2 horses.

Limits for other animals not enumerated herein shall be determined based upon type or size of animal.

APPEAL PROCESS FOR AN ENFORCEMENT ACTION

- 1.** In accordance with Section 480.010, the Development Services Director is responsible for enforcing the Unified Development Code.
- 2.** As allowed under Section 400.080F, the Development Services Director has delegated authority to the Code Enforcement Officer [Drayton Vogel] to enforce provisions of the Unified Development Code.
- 3.** In accordance with Section 480.050B, for non-emergency matters the Development Services Director shall provide notice of a violation to the property owner stating the nature of the violation, time period for compliance, what corrective steps are necessary, and enforcement actions that may result if corrective action is not taken. The notice of violation indicates the right to appeal the notice, provided the request to appeal is made in writing within ten (10) days of the date of the notice.

4. Section 470.080 outlines the procedures for filing an appeal regarding the administration or enforcement of the Unified Development Code.
5. In accordance with Section 465.030I the Board of Adjustment is authorized to hear and decide appeals of decisions of the Development Services Director in the interpretation and enforcement of the Unified Development Code.
6. In accordance with Section 470.080D2, the Board of Adjustment will grant to the administrative official's decision a presumption of correctness, placing the burden of persuasion of error on the applicant. The Board may reverse or affirm wholly or partly or may modify the decision being appealed.
7. In accordance with Section 470.080E, an appeal will be sustained if the Board of Adjustment finds that the administrative official erred.
8. A concurring vote of four members of the Board is required to reverse any order, requirement, decision or determination of the Development Services Director.
9. Any person aggrieved by a decision of the Board of Adjustment may present to the Circuit Court of the County a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition must be presented to the Court within 30 days after the date on which the Board of Adjustment's written decision on the matter is filed in the office of the City Clerk.

BACKGROUND INFORMATION

1. The current code language contained in Section 405.040D2 of the Unified Development Code became effective on January 23, 2018:

“Chickens and similar fowl are permitted in the A and RE districts, and in the R-1 district upon properties of at least three acres in size”
2. A temporary Certificate of Occupancy was issued for the newly constructed home at 400 N. Park Drive on May 28, 2019. This was the first date the home could be occupied. When the final building inspection was completed on May 28, 2019 there were no chickens being kept on the property.
3. On June 24, 2019 City Council considered Bill 3458 [and companion Bill 3459], a proposal to allow Fowl (defined in Bill 3459 as “Hens, roosters, ducks, geese, turkeys, doves, pigeons, cornish game hens or other fowl raised for profit, hobby or kept as pets”) on properties zoned RR, R-1A and R-1 (on lots less than 3 acres in size). The motion to approve Bill 3458 failed on a 2 in favor, 6 opposed vote. With Bill 3458 failing to be approved, no action was taken on companion Bill 3459.

4. On September 19, 2019, by email, Ms. Gaston requested the City consider a pilot program to allow the keeping of chickens on a lot for a 1-year period. Ms. Gaston indicated that the provisions of Bill 3459 would be followed except for the securing of neighbor consent, specifically to see if *“the neighboring households even notice the chickens”*.
5. On September 20, 2019 City Manager Jim Feuerborn responded to Ms. Gaston’s request by stating *“The only way that a pilot program would be permitted would be to amend the Code. That would require a vote of the majority of the Council. It would be inappropriate of staff to bring such an item to the Council when they have recently and clearly denied such an amendment.”*
6. On February 4, 2020, by email, Ms. Gaston asked what the steps would be required to start a ballot initiative authorizing the unrestricted keeping of chickens and assorted fowl on R-1 properties . Development Services Director Jim Cadoret provided a copy of the City Charter language regarding placing an initiative on the ballot.
7. On February 4, 2020 by email Ms. Gaston asked about how grandfathering works. She noted a recent change in City Code language regarding the keeping of ducks. Ms. Gaston noted in the email *“I thought that if I cannot have chickens at this time, I might as well have a few quackers,”* Mr. Cadoret responded that the term “grandfathering” is often used when describing a situation where a property owner was in compliance with a requirement of the UDC, but when the Code was changed, the property is no longer in compliance with the UDC. On Ms. Gaston’s property, staff determined the keeping of chickens was never allowed, thus there is no legal non-conforming use or allowable “grandfathering” of the chickens. Ms. Gaston, by her statement “If I cannot have chickens at this time”, acknowledges that she knew chickens were not allowed to be kept on her property at 400 N. Park Drive.
8. On March 15, 2021 City Code Enforcement Officer Drayton Vogel, while traveling on 58 Highway, spotted several chickens in the fenced area to the west of, and in the rear yard area of, the residence at 400 N. Park Drive. Two photographs of chickens within the fenced area were taken [attached].
9. On March 16, 2021, Mr. Vogel sent a notice of code violation by 1st Class U.S. Mail to Gary & Sarah Gaston at 400 N. Park Drive [attached].
10. On March 19, 2021 Sarah Gaston sent an email to Mr. Vogel acknowledging receipt of the code violation letter. In the email Ms. Gaston indicated that she has had the “flock” for two years. Despite clearly knowing that she did not have authority under the UDC or by authorization of the City Manager, staff or the City Council, she stated that she started the [flock] as her own version of a pilot

program for urban chickens to see how long it would take for someone to notice that she had them. In the email Ms. Gaston indicated she wanted to start the appeal process.

11. On March 24, 2021 Ms. Gaston filed the appeal, which automatically places a stay on enforcement until a decision is made on the appeal request. Ms. Gaston included a letter to the Board of Adjustment as part of the application packet [attached].

STAFF PROPOSED FINDINGS OF FACT

Section 470.080E of the Unified Development Code states that every decision of the Board of Adjustment must be accompanied by written findings of fact that specify the reason for the decision. Staff proposes the following findings of fact for the Board to consider:

- a. **Section 405.040D2 specifies that chickens and similar fowl are permitted in the A [Agricultural] and RE [Rural Estate] districts, and in the R-1 [Single-Family Residential] district upon properties of at least three acres in size.**
- b. **The property located at 400 N. Park Drive (Wedgewood Place Lots 1 and 2) has been zoned R-1 since June 16, 1986.**
- c. **Gary and Sarah Gaston obtained a General Warranty Deed to the property at 400 N. Park Drive on June 29, 2018.**
- d. **Based on a plot plan completed by Huffman Land Surveyors, LLC on August 28, 2018, the property at 400 N. Park Drive is 32,956 square feet in size (.756 acres).**
- e. **The property located at 400 N. Park Drive is a R-1 zoned property that is .756 acres in size, well below the minimum lot size requirement of 3 acres that would allow for the keeping of chickens.**
- f. **On May 21, 2019 Sarah Gaston spoke at a public hearing held by the Planning and Zoning Commission regarding the proposed 30th Amendment to the Unified Development Code. This amendment was to allow for the keeping of chickens on residential zoned properties, including property zoned R-1 that is less than 3 acres in size. Ms. Gaston was aware at this time that chickens were not allowed on the property at 400 N. Park Drive.**

- g. On June 24, 2019 City Council denied the 30th amendment to the Unified Development Code. Sarah Gaston was present at the Council meeting when the vote was taken and the amendment was denied.
- h. On September 12, 2019, by email, Sarah Gaston requested the City consider a pilot program to be started with urban chickens. The program would be an experimental trial for a set time frame that would help everyone learn how a permanent code change would affect the City.
- i. On September 20, 2019 Sarah Gaston was advised in an email from City Manager Jim Feuerborn that the only way a pilot program would be permitted would be to amend the Code. Mr. Feuerborn stated it would be inappropriate of staff to bring such an item to the Council when they have recently and clearly denied such an amendment.
- j. On March 15, 2021 City Code Enforcement Officer Drayton Vogel noticed several chickens within a fenced-in area in the rear yard of 400 N. Park Drive.
- k. On March 16, 2021 Officer Vogel mailed a Notice of Code Violation to Gary and Sarah Gaston , owners of 400 N. Park Drive, stating that the keeping of chickens is not permitted upon the property and required the permanent removal of the chickens by March 30, 2021.
- l. On March 19, 2021 Sarah Gaston contacted Mr. Vogel by email confirming receipt of the notice of violation. She indicated she has had the flock for two years and that it started as her own version of a pilot program for urban chickens to see how long it would take for someone to notice that she has them.
- m. On March 24, 2021 Sarah Gaston filed her appeal of administrative decision. A stay was placed on any enforcement action and a meeting date was set for April 20, 2021 before the Board of Adjustment.

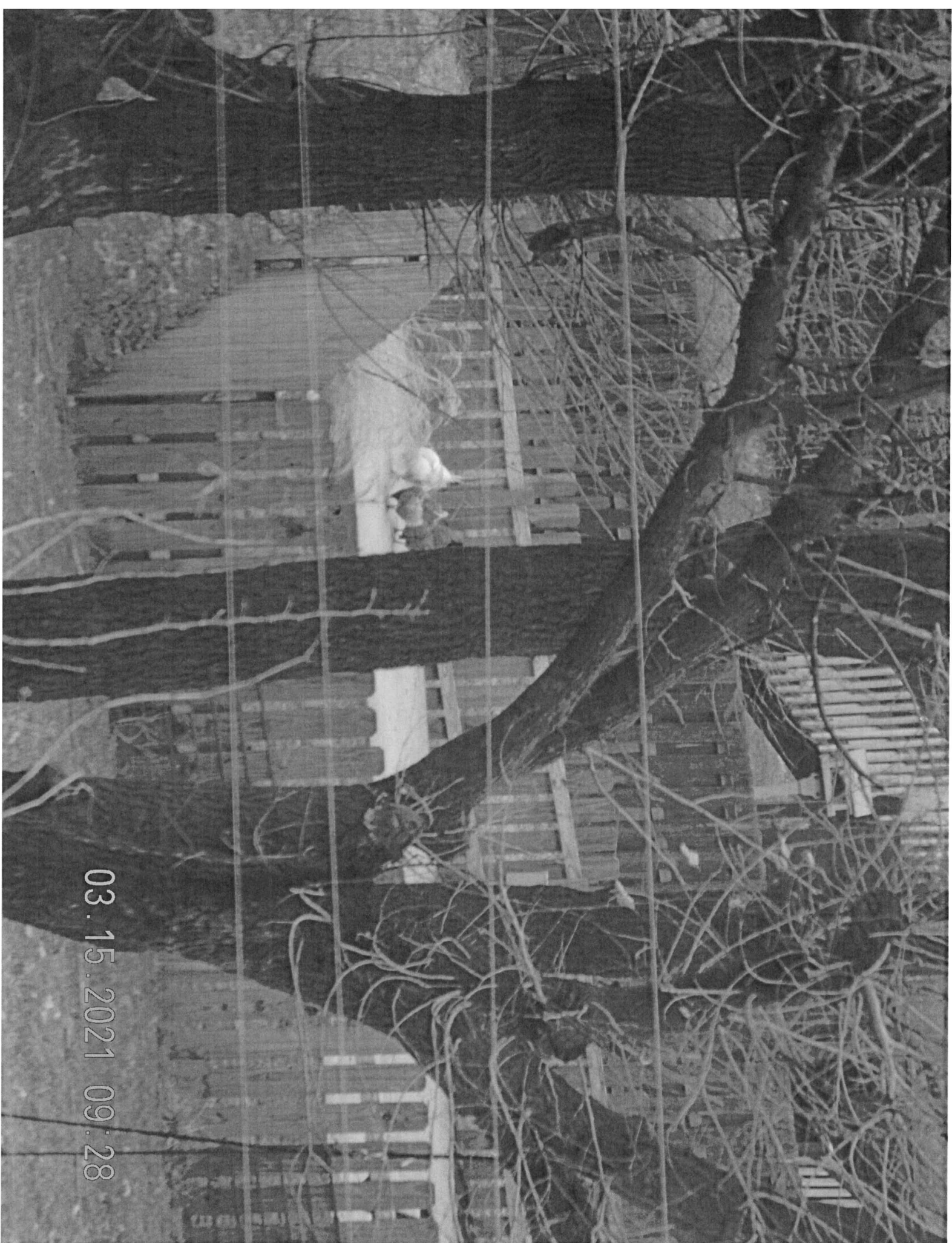
DEVELOPMENT DIRECTOR RESPONSE TO APPEAL APPLICATION

1. The Unified Development Code, including the 26th Amendment to the Unified Development Code that established the specific code language in question, were both adopted by the Raymore City Council after the statutorily required public notice and hearings were held by both the Planning and Zoning Commission and City Council.
2. Section 405.040D2 of the Unified Development Code became effective on January 23, 2018, well before June 29, 2018, the date the Gaston's secured

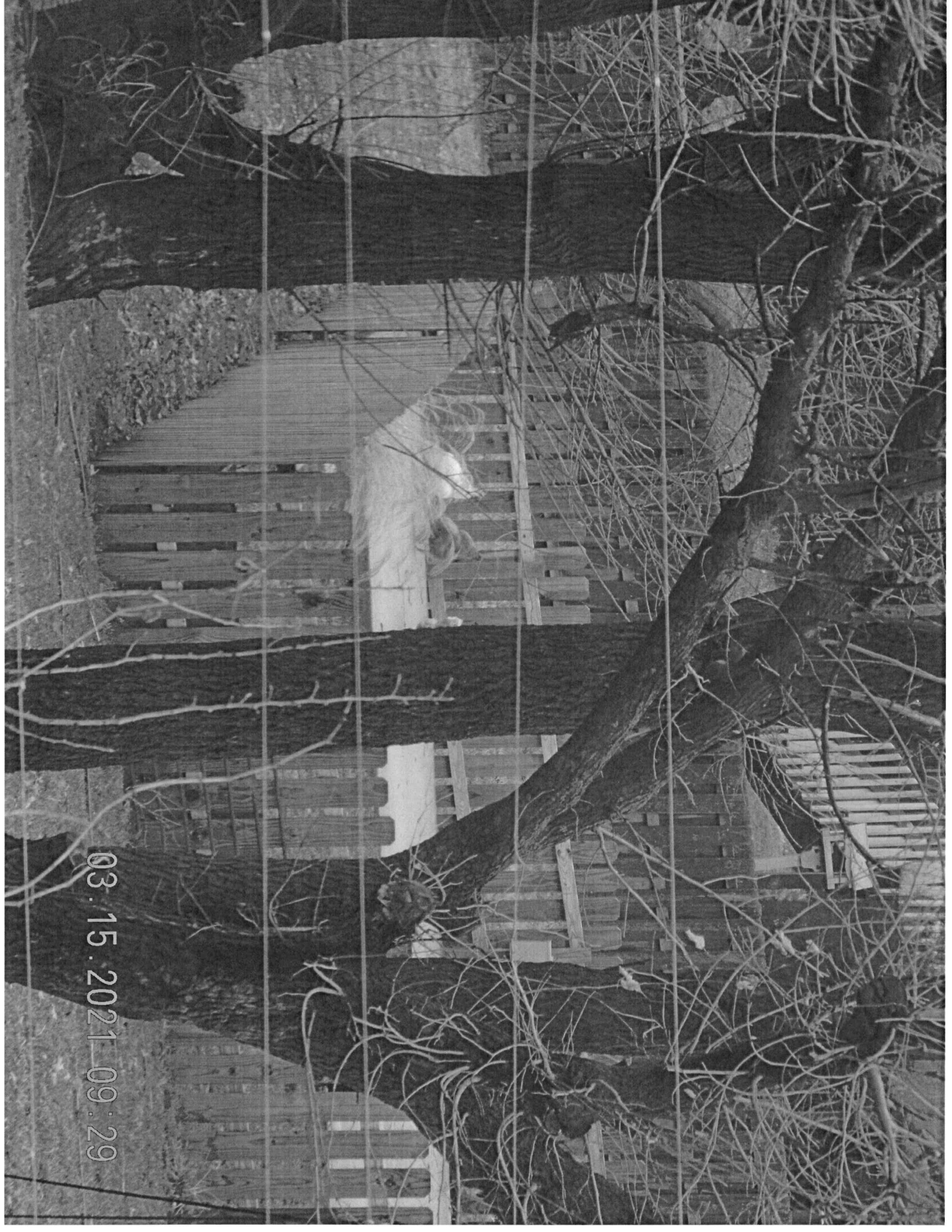
ownership of the property at 400 N. Park Drive. There were no chickens kept on the undeveloped lot at 400 N. Park Drive on, or prior to, January 23, 2018, thus there can be no claim of “grandfathering” of existing chickens or claim of a legal non-conforming use.

3. The language of the Unified Development Code in enumerating uses of land is permissive rather than restrictive. A permissive ordinance functions generally to prohibit uses of land unless they are expressly permitted as primary uses or can be found to be accessory to a permitted use. This method of ordinance writing is well documented.
4. Section 405.040D2 expressly permits chickens and similar fowl in the A and RE districts, and in the R-1 district upon properties of at least three acres in size. It would be redundant to then list all the zoning districts that the use is prohibited in.
5. The intent of the City Council when adopting Section 405.040D2 of the Unified Development Code was made very clear. The Council desired to expand the area that chickens and similar fowl are permitted to be kept. The prior code language limited the keeping of chickens and similar fowl to the Agricultural and Rural Estate Zoning Districts. The Council desired to expand the permitted areas to include any property zoned “R-1” Single-Family Residential that was at least 3 acres in size.
6. Ms. Gaston identified three court cases in her letter to the Board of Adjustment. Staff contends that (1) the ordinance was duly adopted in accordance with RSMo 89.010-89.370 and followed the prescribed notice and hearing requirements; and (2) that the ordinance language is not ambiguous.
7. Staff is unclear in the letter from Ms. Gaston on what “term” of Section 405.040D she finds is susceptible to more than one interpretation.
8. In one of the cases cited by Ms. Gaston, Coots v. J.A. Tobin Construction Co., 634 S.W.2d 249 (Mo. App. 1982), the Court stated “The interpretation placed upon a zoning ordinance by the body in charge of its enforcement and application is entitled to great weight.”

03.15.2021 09:28



03.15.2021 09:29





Notice of Code Violation

MARCH 16, 2021

GARY & SARAH GASTON
400 N PARK DR
RAYMORE, MO 64083

Location of Violation: 400 N PARK DRIVE, Raymore, Missouri
Legal Description: WEDGEWOOD PLACE LOTS 1 & 2

An inspection resulted in the identification of a violation of Section 405.040D2 of the City of Raymore Unified Development Code which states:

"Chickens and similar fowl are permitted in the A and RE districts, and in the R-1 district upon properties of at least three acres in size."

Your property located at 400 N. Park Drive is currently zoned R-1, but is not at least 3 acres in size, thus the keeping of chickens is not permitted.

What needs to be done to achieve compliance: Permanently remove any chickens from the property.

Deadline to achieve compliance: MARCH 30, 2021

If compliance is not achieved by the deadline date provided, the City Enforcement Officer may:

1. Issue you a citation and compel you to appear in City Court;
2. Seek an injunction or other equitable relief in court to stop any violation of the Unified Development Code; and/or
3. Seek a court order in the nature of injunction, mandamus, abatement or other action to abate or remove a violation or to otherwise restore the premises in question to its condition prior to the violation.

You have the right to appeal this notice. You may request a hearing before the Board of Adjustment by requesting in writing (completion of the Appeal application form) such a hearing within ten (10) days of the date of this notice. If no such hearing is requested, said right to hearing shall be deemed waived.

If you have any questions, please feel free to contact me at (816) 892-3027 or email me at dvogel@raymore.com

Drayton Vogel
Code Enforcement Officer

Dear Sirs/Madames,

Please consider this correspondence my appeal from the citation issued to me on March 16, 2021 for having allegedly violated Section 405.040(D)(2) of Raymore's Unified Development Code. I appeal on the following basis: Raymore's Unified Development Code does not specifically prohibit property owners in R-1 districts from maintaining chickens and similar fowl in properties less than three acres in size.

Nothing in the Unified Development code expressly prohibits me from possessing chickens and other similar fowl on my property.

Here, a comparison between Section 405.040(D)(1) (the ordinance controlling the keeping of cattle, cows, horses, sheep, goats and similar animals) and Section 405.040(D)(2) (the ordinance controlling the keeping of chickens and similar fowl) is illuminating.

§ 405.040(D)(1) provides that:

Cattle, cows, horses, sheep, goats and similar animals are permitted **in the A and RE districts only.**

Emphasis added.

§ 405.040(D)(2) merely provides that:

Chickens and similar fowl are permitted in the A and RE districts, and in the R-1 district upon properties of at least three acres in size.

While the enabling language of subsection (D)(1) specifically prohibits the keeping of cattle, horses, etc... by its use of the term "**only**," nothing in subsection D(2) restricts property owners from possessing chickens and other such fowl. Rather, the ordinance merely allows chickens and other fowl in R-1 properties of a certain size.

You should note that numerous Courts in Missouri have held that if a zoning ordinance is susceptible of more than one interpretation, the court will apply that interpretation which is least restrictive upon the rights of the property owner to use his land as he wishes. Branham, 969 S.W.2d at 338; Cunningham v. Board of Aldermen of Overland, 691 S.W.2d 464, 469 (Mo.App.E.D. 1985); Coots v. J.A. Tobin Construction Co., 634 S.W.2d 249, 251-253 (Mo.App.W.D. 1982).

Accordingly, I respectfully request that my citation for violation of Section 405.040(D)(2) of the Unified Development Code be overturned.

Respectfully,

Sarah Gaston