



MEETING MINUTES

Board of Zoning Appeals

Thursday, April 27, 2023

CALL TO ORDER

Mr. Deschler called the meeting to order at 6:30 p.m. He stated that in addition to attending the meeting, the public can access the livestream on the City's website. The City welcomes public participation including public comments on cases. The Chair briefly explained the rules and procedures of the Board of Zoning Appeals (BZA).

ROLL CALL

Board Members present: Jason Deschler, Joseph Nigh, Dan Garvin, Patrick Murphy, Joel Kretz
Staff present: Tammy Noble, Zachary Hounshell

ADJOURN TO EXECUTIVE SESSION

Mr. Deschler moved, Mr. Nigh seconded to adjourn to executive session for the discussion of a personnel matter related to the appointment of a public official.

Vote: Mr. Murphy, yes; Mr. Garvin, yes; Mr. Kretz, yes; Mr. Nigh, yes; Mr. Deschler, yes.
[Motion carried 5-0]

MEETING RECONVENED

The meeting was reconvened at 6:45 p.m.

ELECTION OF OFFICERS

Mr. Nigh moved, Mr. Garvin seconded to elect Jason Deschler as Chair for the term of April 2023 through May 2024.

Vote: Mr. Garvin, yes; Mr. Murphy, yes; Mr. Nigh, yes; Mr. Kretz, yes; Mr. Deschler, yes.
[Motion carried 5-0]

Mr. Deschler moved, Mr. Murphy seconded to elect Joseph Nigh as Vice Chair for the term of April 2023 through May 2024.

Vote: Mr. Kretz, yes; Mr. Garvin, yes; Mr. Murphy, yes; Mr. Nigh, yes; Mr. Deschler, yes.
[Motion carried 5-0]

ACCEPTANCE OF DOCUMENTS

Mr. Nigh moved, Mr. Garvin seconded acceptance of the documents into the record and approval of the 10-27-22, 12-15-22 and 02-16-23 meeting minutes.

Vote on the motion: Mr. Deschler, yes; Mr. Murphy, yes; Mr. Nigh, yes; Mr. Garvin, yes; Mr. Kretz, abstain.

[Motion carried 4-0 with one abstention.]

The Chair swore in staff and members of the public who planned to address the Board during the meeting.

CASES

- **Aler Residence at 5474 Dublin Road, 23-026V, Non-Use (Area) Variances**

An application for variances to allow a detached accessory structure: to be forward of the principle structure; to have taller garage doors; to exceed the maximum square footage; and to exceed the height requirement. The 2.99-acre site is zoned Restricted Suburban Residential District and located southeast of the intersection of Tuttle Road with Dublin Road.

Case Presentation

Mr. Hounshell stated that there are four variances requested tonight for the proposed construction of a detached garage. The site is largely rectangular in shape, with a maximum lot depth of approximately 504 feet and a lot width of 240 feet at the front property line. The site is zoned R-1, Restricted Suburban Residential and is located southeast of the intersection of Tuttle Road and Dublin Road. The recently constructed single-family dwelling is set back approximately 300 feet from Dublin Road (west property line), 15 feet from the north property line, 100 feet from the rear (east) property line, and 110 feet from the south property line. The 2.99-acre lot was created through the combination of two single-family lots. The previously existing homes on both lots have been demolished, and a new single-family dwelling was constructed in 2022. The newly constructed home has one permanent access point extending from Dublin Road to the dwelling. The site features a row of mature trees along the north and south property lines, providing buffering between the single-family dwelling and proposed garage from the adjacent properties. The Scioto River runs along the east (rear) property line with the floodplain extending into the western portion of the site. The property continually slopes from Dublin Road to the Scioto River. There is an approximate 64 feet of grade change across the entire property, and the single-family dwelling is approximately 35 feet below the level of Dublin Road, which is located 300 feet away from the dwelling. The applicant is proposing to construct a detached garage forward of the principal structure approximately 30 feet southwest of the single-family dwelling. The detached garage is two stories in height and will store the homeowner's recreational and private vehicles on the first floor, while the second floor will contain a media room, home office, and other amenities.

Variance #1 is a variance to the maximum square footage for detached accessory structures. For lots between one and five acres, the maximum cumulative size of accessory structures is 1,000 sq. ft. plus 250 sq. ft. or fraction thereof over one acre, up to a maximum of 2,000 square feet. The maximum square footage permitted for this 3-acre lot is 1,750 sq. ft. for all accessory structures.

The proposed garage is 1,717 sq. ft. The site also contains an existing 175 sq. ft. boat dock shed on the property for a cumulative total of 1,892 sq. ft.

Variance #2 is a variance regarding the location of the structure. The Code requires that all accessory uses and structures, including swimming pools and associated decking, shall be constructed within the permitted buildable area of a lot, behind all applicable setback lines, and to the rear or side of the principal structure.

The detached garage would be located forward of the principal structure by approximately 20 feet.

Variance #3 is a height variance. The Code requires that all accessory uses and structures, including swimming pools and associated decking, shall be constructed within the permitted buildable area of a lot, behind all applicable setback lines, and to the rear or side of the principal structure. The front elevation of the proposed detached garage is under the code limit of 22 feet in height. The rear elevation exceeds the maximum height by 2 feet - 7 inches.

Variance #4 is a garage height variance. The Code states that garage door openings shall not be higher than nine feet. A garage door 10 feet in height is needed to accommodate a recreational vehicle.

Staff has reviewed the application against the applicable criteria. Because the criteria was not met, staff recommends the waivers regarding maximum square footage and accessory structure location be disapproved. Because the criteria was met, staff recommends approval of the waivers related to accessory structure height and garage door height.

Board Questions for Staff

Mr. Garvin inquired if the shed was not present, would the garage meet the square footage criteria.

Mr. Hounshell responded affirmatively.

Mr. Kretz stated that the second story of the garage would be a home office. Why would that not qualify as inaction of the applicant? The applicant could have their home office elsewhere, in which case, the accessory structure would not need to be as tall.

Mr. Hounshell responded that, in staff's view, the proposed structure would meet the requirements if the site were flat. The sloped site creates a special condition, which would require the applicant to provide less than what Code permits on all elevations. Staff believes the criteria is met due to that special condition.

Mr. Deschler inquired the distance of the accessory structure from the existing homes.

Mr. Hounshell indicated the distance is approximately 30 feet.

Mr. Deschler requested background on the waiver discussion with the applicant.

Mr. Hounshell responded that the primary reason for the location is to provide a buffer between the home to the south of this site and this new home. The location of the new home is essentially the same as the previous home. The previous home had a detached structure forward of the home, although it is doubtful a variance was obtained as it would have predated the Code requirements. Staff had recommended alternative ways to make the garage an attached structure, such as via a breezeway. Ultimately, the applicant opted for a detached structure.

Mr. Deschler stated that any kind of breezeway, even a pathway with a pergola or a trellis structure would satisfy Code.

Mr. Kretz inquired if the need for privacy could be met by another means, such as a large tree. Mr. Hounshell responded that we do not regulate landscaping, but it certainly could be used for privacy.

Applicant Presentation

Richard Taylor, architect, 48 S. High Street, Dublin provided background on the site. The applicants originally bought just the northern property to build the house, and during the planning of this home, the house to the south came available. They negotiated with staff to combine the lots and temporarily have two houses on one lot. The applicants stayed in the existing house while the old home was demolished and replaced with a new home. Subsequently, they moved to the new home and tore down the other home. In regard to staff's recommendation to disapprove the location waiver, the reason for the proposed location is to preserve views of the river from the house. If the position of the proposed detached structure is placed elsewhere, the view of the river would be partially blocked. In regard to the maximum square footage, he was not aware of the existing boat dock shed on the site. It is not a tall structure so easily missed. In the immediate area of this house, there are four other homes that have detached buildings that sit forward of the homes.

Kevin Cook, 8789 Locherbie Court, Dublin, indicated he is the builder. He explained that the existing boat dock shed has been there for quite some time. Due to its significance to the site, the Alers did not want to destroy it. They put a new standing seam roof on the stone structure to preserve it. The rear of this site is essentially a cliff, and the stone structure is built into the hillside. There is an approximate 15-20-foot drop-off from the backyard to the shed. He explained the reason for the proposed location forward of the home. The site drops 30 feet from Dublin Road to the house; there is no flat area for children to play. Placing the detached structure forward of the home will permit an area behind it to be levelled for a yard.

Mr. Deschler inquired if the garage door height waiver is to accommodate recreational vehicles. Mr. Hounshell responded that the intent is to make sure all garage doors are designed equally and remain residential in appearance. Based on staff's review of the criteria and previous cases and due the size of the lot, structure and setback, the intent is met. The structure appears residential, has the same material and design as the other garage doors, but is one foot taller.

Mr. Garvin inquired the use of the boat dock structure.

Mr. Cook responded that is used to store kayaks, lifejackets and recreation-related items.

Mr. Garvin inquired if that structure is in sound condition.

Mr. Cook responded affirmatively.

Mr. Deschler inquired if the shed has electric and plumbing.

Mr. Cook responded that it has electric. The Alers added a new roof, electric and security camera to the structure.

Mr. Kretz inquired what would be the reason to not call that an accessory structure.

Mr. Cook responded that it is a long existing structure on the site.

Mr. Deschler inquired if there was any consideration for a pergola and pathway from the principal structure to the proposed detached structure.

Mr. Taylor responded that based on his experience, the Building Department does not accept that as a connection. It must have a roof and sides to be considered a connection by Code.

Ms. Noble responded that the rules have been relaxed. While sidewalls were required, it now is required to have a roof only.

Mr. Nigh stated that this started as two lots, but they were then combined into one lot. If the lots had not been combined and one structure placed on one lot and the other structure placed on the second lot, would there have been no issue? Would that have impacted the calculation if the lot line had remained as it was?

Mr. Hounshell responded that it would have impacted not only the calculation but also what the property owner is permitted to do on the subplot. If there is not a principal structure on an individual lot, an accessory structure cannot be placed on it.

Mr. Nigh inquired if a garage with an apartment above it would suffice. The proposal is to have a party room and home office space above the garage.

Mr. Garvin inquired if there is a bathroom, as well.

Mr. Taylor responded affirmatively.

Mr. Deschler inquired if that would satisfy the principal structure requirements. We do not want the applicant to be penalized because they combined the lots.

Ms. Noble responded that the land use would be single-family. As long as the structure has the components of a single-family residential structure -- bedroom, kitchen and restroom facilities -- and can function as a freestanding home, it would meet the definition.

Mr. Nigh stated that if there were a kitchenette and a murphy bed, it could qualify. It could be a studio, without separate rooms.

Mr. Deschler inquired if the plans included a full bath.

Mr. Taylor responded affirmatively.

Mr. Deschler inquired if there is a kitchenette.

Mr. Taylor responded that there is no kitchenette.

Mr. Taylor stated that two residences on one lot are not permitted.

Mr. Nigh noted that if the site had remained two lots, it would be two single-family structures on two different lots.

Mr. Taylor responded that his client is an attorney, so he assumes his decision to combine the two lots was for a purpose.

Mr. Deschler responded that the Board does not want the property owner to be penalized for having combined the lots, as if he had not combined them, there would be no issue.

Mr. Nigh stated that if the consolidation of the lots is creating the situation, other than the total square footage, are there any other considerations in combining the lots?

Mr. Hounshell responded that lot combinations are handled through an administrative process with both the City and the County, which is similar to a lot split. With a lot split, however, the City confirms that both lots created are able to meet the minimum Code requirements. With a lot combination, the City's review is minimal.

Mr. Nigh stated that if they had built two structures on two separate lots and then applied to combine the lots, the process would have been handled administratively.

Public Comment

No public comments were received concerning this case.

Board Discussion

Mr. Deschler stated that in regard to the variances, he has no objection to Variance 2 – height of the structure and Variance 4 – height of the garage door, on which staff has recommended approval.

Mr. Kretz referred to criteria 2 for all four variances. In staff's view, is combining the lots an action of the applicant?

Mr. Hounshell responded affirmatively.

Mr. Kretz inquired if the applicant could request this case be tabled, separate the lots and submit a revised application.

Ms. Noble responded that she did not believe that would place the applicant in a more positive position, as the smaller the lot, the smaller the building footprint can be.

Mr. Kretz responded that he believes criteria 2 is not met because the variance is due to an action of the applicant. He could be supportive of the application, if the applicant separated the lots.

Mr. Hounshell noted that a single-family dwelling is a detached or attached building arranged or designed to be occupied by one family, the structure having only one principal dwelling unit. A single-family home would also need to meet the single-family residential development standards. Additional requirements would be applied that would not be applied to a garage.

Mr. Deschler inquired if the Building Department approved the plans for the detached structure, and the only thing needed are the variances.

Mr. Hounshell responded that the Building Department does not approve plans until they have been approved by BZA, if that review is needed.

Mr. Kretz responded that he would deny all four variance requests due to criteria 2, as the variance is necessitated due to an action of the applicant.

Mr. Deschler responded that combination of the lots would be related only to the variances related to the square footage and location, Variances 1 and 3.

Mr. Hounshell clarified how staff has interpreted the "action/inaction of the applicant" as creating a situation that could have been avoided. When looking at the height of the accessory structure, the structure is permitted to be 22 feet, regardless of the location, due to the lot size. Dwelling structures are allowed to be higher, but this is not a dwelling structure. Therefore, regardless of the lot split, the height for a detached structure would be the same.

Mr. Nigh responded that if the lots were not split, it would not be a detached structure, but a primary residence. Therein lies the struggle.

Mr. Hounshell responded that he is describing the situation as it is.

Mr. Kretz referred to Variance 4, garage door height, if it was a private residence, would it have met the height requirement?

Mr. Hounshell responded that all garage doors are required to be 9 feet in height, regardless of whether the structure will be attached or detached. The intent of that requirement is that the garage height maintains a residential scale for the development.

Mr. Kretz responded that if the lots were separated, the first 3 variances would be applicable, as the structure would be used as a private home. Regarding the 4th variance concerning garage door height, whether it is a private home or not, the variance would be needed. Therefore, if the applicant should table this request, separate the lots and submit a revised application, he would be supportive of all 4 variances. He is not advising the applicant to do so, he is clarifying his position.

Mr. Nigh stated that the applicant is not present. He questions if his representatives are authorized to request the application be tabled. He inquired if Mr. Kretz would deny the first 3 variances and approve the 4th variance.

Mr. Kretz responded affirmatively.

Mr. Deschler stated that the process of applying for a lot combination is not easy. He is not sure what the argument could be to have that re-done.

Mr. Murphy responded that approval from the County would be necessary for both. The County Commissioners' processes are not particularly expeditious. Are we recommending the applicant to apply for a lot split, then a re-combination, or are we speaking obsequiously, i.e., if that had been the process, we would be judging a different situation?

Mr. Nigh responded that he was posing it for thought-provoking purposes. He is not telling them to pursue lot separation/re-combination; however, he is struggling with how this would not be considered an applicant action. The applicant should not be granted a path that others would not be granted.

Mr. Murphy stated he was inquiring in an attempt to understand why the Board would not consider the site as it is. If a different process had been followed, the applicant would be in a different place right now, but it is what is.

Mr. Nigh inquired how he would consider it at this point.

Mr. Murphy responded that he would consider it as it stands, without the hypothetical consideration. However, he would like staff to clarify the parking requirements for a primary structure. If the lots were split, would a garage or parking structure be required for each primary structure?

Mr. Hounshell responded that a garage would not be required, but on-site parking would be required.

Mr. Kretz stated that the applicant might want to table the request and allow the property owner to explore the lot options. In his view, the variances are needed due to the property owner's action. The benefit of hindsight is not relevant.

Mr. Deschler inquired what percent of homes in Dublin are not within planned unit developments (PUDs) with homeowner associations. Is it less than 2 percent?

Mr. Hounshell responded that along Dublin Road, most of the homes along the river are not in PUDs.

Ms. Noble responded that citywide, most residential lots are platted.

Mr. Deschler stated that with regard to criteria #1 – Special Condition, one basis for a Special Condition is the use or development of the property immediately adjoining the property in question. He inquired if staff found that the Special Condition criteria for the variances was met.

Mr. Hounshell responded affirmatively.

Mr. Deschler inquired how the Board could differentiate a situation of applicant action/inaction versus special condition.

Mr. Hounshell responded that looking at the natural features of the site, there are a number of properties along the river that have similar conditions. Because this is a condition that does not exist in most other areas of the City, that is the basis for staff's recommendation. This is a larger than average lot; there is significant slope that minimizes where structures can be placed; and there is mature vegetation and some significant site changes at the rear of the property. Staff believes those factors meet the Special Conditions criteria.

Mr. Deschler invited the applicant's response.

Mr. Taylor stated that he appreciates the hypothetical discussion regarding the lot split, but the condition of combining the lots and the position of the houses would make that impossible at this point. However, his client is willing to demolish the boat dock shed. He has also conferred with his contractor and is able to raise the grade at the back of the property to eliminate the height issue.

Mr. Garvin inquired what is the limit of an action. Would buying a property that would require a variance be considered the applicant's action, thereby prohibiting many opportunities for variances?

Mr. Deschler inquired the Board members' positions on the requested variances with none of the actions Mr. Taylor has indicated his client would be willing to make.

Mr. Kretz stated that he is not supportive of Variances, 1, 2 and 3; he is supportive of variance 4. Mr. Garvin responded his is not supportive of Variance 1. He is supportive of the other variances due to the slope of property. If the boat dock structure is unique and the character is in keeping with Dublin, he would not want the structure to be removed.

Mr. Murphy responded that he is not supportive of Variance 1. He is supportive of the variances related to the topography of the site. He would not want to require the potentially significant structure on the property be demolished, which is only about 175 square feet.

Mr. Hounshell responded that, per the Auditor's website, the shed is approximately 175 square feet.

Mr. Nigh stated that he concurs with staff's recommendations for Variances 2 and 4. He struggles with how this is not due to an action/inaction of the property owner. He is supportive of Variance 3, due to the topography of the site. He is undecided about Variance 1. He would hesitate to require removal of a historical structure located at the edge of the property.

Mr. Deschler stated that due to past precedence, he would support all 4 variances.

Mr. Nigh requested clarification of Mr. Murphy's position regarding Variances 1 and 3.

Mr. Murphy stated that with Variance 3, he finds the topography of the site a compelling factor. With Variance 1, the fact that the proposed square footage exceeds Code is the critical factor.

Mr. Kretz stated that he would like to clarify his position regarding the inaction/action definition, referred to earlier by Mr. Garvin. For him, the definition is actions occurring after the purchase of the property. In this case, the applicant purchased the property, and then combined the lots.

Mr. Nigh moved, Mr. Garvin seconded approval of a Non-Use Variance to Zoning Code §153.074(B)(2)(e) to permit a Detached Structure to exceed the Maximum Square Footage by ±142 Square Feet.

Vote on the motion: Mr. Kretz, no; Mr. Garvin, yes; Mr. Murphy, no; Mr. Nigh, yes; Mr. Deschler, yes.

[Motion carried 3-2]

Mr. Nigh moved, Mr. Garvin seconded approval of a Non-Use Variance to Zoning Code §153.074(B)(2)(e) to permit a Detached Structure to exceed the Maximum Height by ±2 Feet, 7 inches.

Vote on the motion: Mr. Deschler, yes; Mr. Nigh, yes; Mr. Garvin, yes; Mr. Murphy, yes; Mr. Kretz, no.

[Motion carried 4-1]

Mr. Nigh moved, Mr. Garvin seconded approval of a Non-Use Variance to Zoning Code §153.074(B)(6)(a) to permit a Detached Structure to be Forward of the Principal Structure by +20 feet.

Vote on the motion: Mr. Nigh, yes; Mr. Kretz, no; Mr. Deschler, yes; Mr. Garvin, yes; Mr. Murphy, yes.

[Motion carried 4-1]

Mr. Nigh moved, Mr. Garvin seconded approval of a Non-Use Variance to Zoning Code §153.190(E)(1)(f)(3)(d) to permit a Garage Door on a Detached Structure at a Height of 10 Feet.

Vote on the motion: Mr. Murphy, yes; Mr. Garvin, yes; Mr. Deschler, yes; Mr. Kretz, yes; Mr. Nigh, yes.

[Motion approved 5-0.]

Mr. Taylor thanked the Board for their thorough and excellent review of the case.


COMMUNICATIONS

Ms. Noble reminded members of the following meetings:

- The Joint Board-Commission work session will be at 6:00 p.m., Wednesday, May 10, 2023.
- The next regular BZA meeting will be at 6:30 p.m., Thursday, May 25, 2023.

ADJOURNMENT

The meeting was adjourned at 8:03 p.m.



Chair, Board of Zoning Appeals



Assistant Clerk of Council