



MEETING MINUTES

Board of Zoning Appeals

Thursday, February 22, 2024

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, Dan Garvin, Joseph Nigh, Patrick Murphy, Joel Kretz
Staff present: Zachary Hounshell, Jayvon Henderson, Bassem Bitar

ACCEPTANCE OF DOCUMENTS AND APPROVAL OF MINUTES

Mr. Murphy moved, Mr. Nigh seconded acceptance of the documents into the record and approval of the 01-25-24 regular BZA Meeting minutes.

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

[Motion carried 5-0.]

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

CASE REVIEW

- **Case #23-137V - Faithful Friends Veterinary Clinic, Non-Use (Area) Variance**

A request for a Variance to Zoning Code Section 153.044(D)(2)(c) to permit a 0-foot side setback where 20 feet is required on a site zoned TF, Technology Flex District, and located southwest of the intersection of Liggett Road and Perimeter Drive.

Staff Presentation

Mr. Henderson stated that this is a request for review and approval of two variance requests to allow for a 0-foot side yard setback. The site consists of two undeveloped parcels totaling 3.55 acres. The northern parcel consists of 1.09 acres and is located in Union County. The southern parcel consists of 2.46 acres and is located in Franklin County. The site is zoned TF, Technology

Flex District, and is located southwest of the intersection of Liggett Road and Perimeter Drive; the site has vehicular access from Liggett Road. There are three key site features on this property – the Indian Run South Fork, the shared property line and the dense vegetation on the southern parcel.

The two parcels will be used to construct a veterinary office. The two variances are necessary due to the parcels being in separate taxing districts. Typically, where two properties under single ownership are limited due to setback requirements, a lot combination occurs. However, in this case, the jurisdictional line cannot be altered to remediate the setback requirements at this site. Both variances would be to Code Section 153.044(D)(2)(c). This Code section requires that for buildings with a height of 15-29 feet, the required side and rear yard setback is 20 feet. The applicant requests a variance to permit a 0-foot side yard setback for both parcels. All three criteria in Criteria A are required to be met. Staff has determined that the site is split by two separate parcels that are unable to be combined by either county. This creates a narrow northern parcel with limited ability to develop. Additionally, the location of Indian Run South Fork that runs southwest to the northeast of the property limits the developable area. Finally, the site is heavily wooded, which creates challenges in locating the development elsewhere on the site. With Criteria (B), two of the four criteria must be met, and staff has confirmed that all criteria in Section B are met.

Staff recommends approval of both variance requests without conditions.

Board Questions

Mr. Garvin requested clarification of the distance between the rear, west property line to the centerline. Does it meet the easement requirements?

Mr. Henderson responded that the distance is 22.54 feet where 20 feet would be required.

Mr. Kretz inquired if the applicant was able to combine the parcels if a variance be needed.

Mr. Henderson responded that it would not be needed.

Mr. Garvin inquired if the parcels were purchased at the same time as part of a single sale.

Mr. Henderson responded affirmatively.

Michael Hendricks, property owner, 6493 Deeside Drive, Dublin, stated that due to the site limitations, there is no access to Perimeter Road from the southern parcel. It is also necessary to avoid the floodplain adjacent to the stream. The size of the building needed for the veterinary clinic and the number of required parking spaces resulted in a building location that falls on the shared county line. Currently, his veterinary clinic is located on Woerner Temple Road where it meets Emerald Parkway, but they have outgrown that leased space.

Public Comments

There were no public comments.

Commission Discussion

Commissioners expressed consensus that the inability to combine the lots due to county line restrictions and the significant amount of natural features on the site led to a practical difficulty in applying the side yard setback requirements and were supportive of approving the requested variances.

Mr. Murphy moved, Mr. Garvin seconded approval of the Non-Use (Area) Variance to Zoning Code Section 153.044(D)(2)(c) to allow a 0-foot side yard setback for principal and accessory structures where 20 feet is required for building heights between 15-29 feet on the northern parcel (Union County).

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

Mr. Garvin moved, Mr. Murphy seconded approval of the Non-Use (Area) Variance to Zoning Code Section 153.044(D)(2)(c) to allow a 0-foot side yard setback for principal and accessory structures where 20 feet is required for building heights between 15-29 feet on the southern parcel (Franklin County).

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

- **Case #24-018V - Cook Residence, Non-Use (Area) Variance**

A request for a Variance to Zoning Code Section 153.074(C)(4)(c) to allow a swimming pool barrier to exceed the maximum 10-foot buffer from the edge of the pool. The 0.38-acre site is zoned PUD, Planned Unit Development District, Riviera and is located approximately 150 feet southeast of the intersection of Timble Falls Drive and Corna Court.

Staff Presentation

Mr. Hounshell stated that this is a request for a variance to permit a swimming pool barrier to exceed the maximum 10-foot buffer from the edge of the pool on a 0.38-acre site zoned PUD, Planned Unit Development District, Riviera and located approximately 150 feet southeast of the intersection of Timble Falls Drive and Corna Court. The site abuts the Riviera Reserve D1 to the east (rear), with single-family lots to the north and south. The site contains a single-family residence set back approximately 30 feet from the right-of-way; it is currently under construction for an approved patio and swimming pool.

Mr. Hounshell stated that, as a safety measure, a swimming pool fence barrier is required by the Zoning Code with the construction of every swimming pool. The Code views swimming pool fence barriers differently than regular fences. They are permitted to encroach within a required rear yard setback, as long as the barrier is within 10 feet of the edge of the pool. Once a barrier is outside the 10-foot buffer, it is required to meet all zoning setback requirements for the site. The image provided shows the currently constructed screened porch and the approved location of the patio and pool area. A new patio will accompany the swimming pool and will extend as close as 20 feet from the rear property line. Code permits at-grade patios to encroach up to 5 feet into the rear yard setback. The patio will then extend north between the approved screened porch and the swimming pool. The applicant proposes to enclose the entirety of the patio area with the pool barrier. This would extend the barrier outside the 10-foot buffer zone of the pool and require the fence to meet the setback requirements. The applicant is requesting a variance to permit the barrier to extend beyond the 10-foot buffer, up to as little as 11 feet from the rear property line, and enclose the whole patio area.

He noted that in November 2023, the property owner received an approved building permit for the construction of the swimming pool and patio addition. Prior to submission of that building permit approval, staff had worked with the applicant extensively to ensure the pool, patio, and

pool barrier fence met Code requirements. Included in that approval was a 4-foot tall aluminum swimming pool barrier, which met Zoning Code requirements.

Staff has reviewed this application for a swimming pool fence barrier variance against the applicable criteria. All three criteria in Criteria A are required to be met; staff found that none were met. In Criteria B, two of the four criteria are required to be met, and staff found that two criteria were met. Based on their review, staff recommends disapproval of the variance.

Board Questions for Staff

Mr. Nigh inquired if in the past, the City approved hard covers for pools and, at that time, fence barriers for pools were not required.

Mr. Hounshell responded that a pool cover is a Building Standards requirement, a separate and additional requirement.

Mr. Garvin referred to the Special Conditions criterion in the Criteria A category and inquired if the adjacent reserve area could be considered a special condition in this case.

Mr. Hounshell responded that based on staff's analysis, it does not prohibit the property owner from meeting the Code requirement, especially when there is already an approved site plan for a pool barrier.

Mr. Kretz inquired if the pool was constructed consistent with the November 2023 approved site plan.

Mr. Hounshell responded that the pool is being constructed consistent with the approved site plan, not the plan that is proposed tonight.

Mr. Kretz inquired what is the primary difference between the fence approved in their previous plan versus what is requested with this proposal.

Mr. Hounshell displayed a site plan drawing with the pool fence approved by Building Standards and a drawing showing the proposed pool barrier alignment. With both alignments, the built environment remains the same; only the fence is different.

Mr. Kretz stated that he does not understand the reason that obtaining an approved building permit is an action/inaction causing the need for this variance. Changing one's mind and submitting a revised plan would not cause a need for a variance.

Mr. Hounshell responded that staff's understanding is that the variance is being requested due to the fact that the applicant has now constructed the screened porch and patio and wants to enclose them entirely with the pool barrier. The patio currently extends to 20 feet from the rear property line, which is permitted. Patios are subject to a different scrutiny and are permitted more leverage. However, pool barrier fences cannot extend that distance.

Mr. Kretz inquired if the patio has been or is being constructed consistent with the November 2023 Building Standards approval.

Mr. Hounshell responded that he would defer to the applicant to clarify the status of the construction.

Mr. Garvin stated that the meeting materials indicated that the electrical lines running under the area where the pool fence would need to be built would be impacted. Would it be reasonable to

expect that the individual designing this project should have known the location of the electrical lines?

Mr. Hounshell deferred the question to the applicant.

Mr. Kretz inquired if the location of the utility line could be considered a special condition.

Mr. Hounshell responded affirmatively.

Board members viewed photographs of the requested fence alignment and a fence alignment that would not violate Code.

Mr. Garvin inquired if the setback requirement for the house also would be a factor.

Mr. Hounshell responded the setback for the house is 25 feet from the rear property line; it is the same for a house, fence or a patio.

Mr. Kretz inquired if the utility line for this pool is in a unique location, or if it is in a location consistent with most properties.

Mr. Hounshell responded that he is not aware of how utility lines are installed for pool construction on other properties; however, these lines were installed with the pool to service that pool. He would defer the question to the applicant as to whether the location of those lines pre-dates the pool.

Applicant Presentation

Tyler Cook, 8246 Timble Falls Drive, Dublin, stated that he recognizes that the existing Code requirement was adopted for a reason; however, there is also the "real world" interpretation of that. In regard to the inquiry concerning when the utility lines were constructed -- they were constructed with the pool construction, which was after the screened porch project was initiated. The underground utility lines include a water line for the pool, a gas line and an electric line; they have already been approved by Building Standards. However, he lacked the foresight to know the utility lines would be right on a 25-foot setback. Their site backs up to a nature preserve, so there is no adjacent neighbor. The nearest house is 300-400 yards to the rear of the property, and the neighbors to the left and right do not have a direct sight line of the pool fence. The applicant displayed renderings of the approved plan and their revised plan, which now accommodates the screened porch addition with an outdoor kitchen, which takes up a 12' x 12' area. The need to change the pool fence alignment was to avoid having it cut off access to part of the outdoor patio area. They have requested permission to extend the fence an additional 30 feet in a linear manner, right to left, on the property and connect it to the screened porch. When they built the screened porch, they did not yet plan to construct a pool. If they had known in advance that the utility lines would be an issue with the pool barrier, they would have adjusted them. They would be losing a significant amount of usable square footage if they are required to angle in the fence inward at the corner.

Board Questions for the Applicant

Mr. Kretz inquired if any of the utility lines existed in the current location before the pool was constructed.

Mr. Cook responded that they did not exist prior to the pool construction.

Mr. Kretz inquired if there are any factors causing a need for the variance that were not as a result of the applicant's actions.

Mr. Cook responded that the underground gas line was plumbed for a fire pit. With the current fence alignment, the fire pit would be approximately 3 feet from the pool barrier fence. To remedy that situation, it would be necessary to retrench the line. However, adjusting the pool barrier alignment instead would cause no harm to anyone.

Mr. Kretz inquired if he was responsible for having the gas line for the fire pit installed.

Mr. Cook responded affirmatively.

Mr. Garvin inquired if installation of the gas line for the fire pit followed the pool design.

Mr. Cook responded affirmatively.

Mr. Deschler inquired if the fence alignment would be in conflict with the utility lines.

Mr. Cook responded that it would conflict in certain areas. The utility lines are at a depth of 24 inches, the fence posts must be installed at a depth of 30 inches.

Mr. Nigh inquired if the fence sections would be six feet.

Mr. Cook responded affirmatively.

Mr. Nigh stated that there would be large gaps between posts, so it should be possible to ensure there is no conflict.

Mr. Kretz inquired if the utility lines are installed consistent with the original approved plan.

Mr. Cook responded affirmatively.

Mr. Garvin inquired if the landscape architect who designed the project did not recognize the issue concerning the installation of fence posts.

Mr. Cook responded that taking on the general contractor role himself was part of the issue.

Mr. Deschler inquired if he had discussed alternatives with City staff before bringing this appeal before the BZA.

Mr. Cook responded that there were many conversations and a site visit with staff.

Mr. Deschler inquired if it would be possible to eliminate one foot of length from the patio, so there would be no conflict in the area of the proposed fire pit.

Mr. Cook responded that if he could be granted a variance of at least 5 feet rather than 10 feet, the fire pit area would be functional.

Mr. Nigh inquired if the fire pit has already been constructed.

Mr. Cook responded that the gas line is installed, but the fire pit is not yet constructed.

Mr. Nigh inquired if it would be possible to locate the fire pit closer to the house and a distance from the proposed fence alignment.

Mr. Cook stated the base layer for the patio pavers already is installed, although the pavers have not yet been installed.

Mr. Kretz requested staff to clarify the swimming pool barrier requirements.

Mr. Hounshell responded that a swimming pool barrier is required for all swimming pools within the City; it must fully enclose the swimming pool. The house can comprise part of that perimeter, but if so, there are Building Code requirements concerning door and window locks. With this design, the edge of the house constitutes part of the barrier. The primary difference between a swimming pool barrier and a regular fence is the allowance for it to encroach into the rear yard

setback. In this situation, the pool is constructed 25 feet from the rear property line. The patio can be built 20 feet from the rear property line.

Mr. Kretz inquired if a regular fence could be the distance from the property line that is requested here.

Mr. Hounshell responded that it could not; a variance also would be required.

Mr. Garvin inquired if a variance would be required if the distance needed was 5 feet.

Mr. Murphy inquired if there are any requirements concerning the appearance of the swimming pool fence or spacing of the posts.

Mr. Hounshell responded that the Code requires that it be an open decorative fence 4 feet in height. Black aluminium fence barriers are typical. There are no post spacing requirements for pool fences.

Mr. Murphy inquired if there are no post spacing requirements, it would be possible to space the posts in such a way that they would not conflict with the gas line.

Mr. Hounshell responded that the contractor would need to answer that question.

Mr. Murphy inquired if the reason for the variance was to avoid the gas line.

Mr. Cook responded that it was to avoid the gas line and allow some usable space around the gas pit. He stated that he is requesting to extend the fence for an additional length of 30 feet to connect it to the right side of the screened porch at a 5-foot setback rather than 10 feet.

Mr. Garvin stated that the issue was if it extended behind the screened-in porch. He asked staff to clarify the property line.

Mr. Hounshell responded that the property line does not run parallel with the back of the screened-in porch.

Mr. Deschler inquired if the patio will extend to the 25-foot setback line.

Mr. Cook responded that staff has indicated that a patio is permitted to encroach an additional 5 feet into that setback, or 20 feet from the property line. If a variance of 5 feet were to be approved, it would eliminate the concern regarding the underground gas line, and the fence could be angled in to connect to the screened-in porch.

Mr. Deschler responded that although the patio is permitted to encroach the additional 5 feet, the swimming pool fence barrier could not.

Mr. Kretz stated that if the fence was not a swimming pool barrier, the requirement would be different.

Mr. Hounshell responded that regardless of whether it is a swimming pool barrier or a regular fence, it must meet setback requirements.

Mr. Nigh stated that he believes there might be other options available for the homeowner; however, he does not believe this application can meet the variance criteria. City staff is willing to help the homeowner explore those options and develop an alternate plan.

Public Comments

There were no public comments.

Board Discussion

Discussion continued regarding the setback requirements and the possible adjustments to the patio and fire pit location that more closely comply with Code.

Mr. Hounshell clarified that an approved variance would be necessary first; that would be followed by submitting a revised building plan application to Building Standards.

BZA members stated that all three criteria under Criteria (A) must be met. Although members expressed differing opinions on Criteria (A)(1) Special Conditions, all members found the application did not meet criteria (A)(2) Applicant Action/Inaction, as the applicant was unable to provide a reason they did not create the situation to request the variance. The Board encouraged the applicant to work with staff to either meet the zoning code requirements or come back with a different site layout that meets the criteria of a variance.

The applicant requested that his application be tabled to permit him to work with staff on a revised plan.

Mr. Nigh moved, Mr. Murphy seconded approval to table the variance request.

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

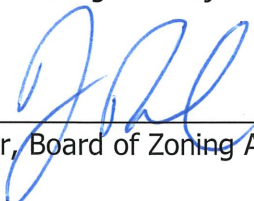
COMMUNICATIONS

There were no communications.

The next regular BZA meeting is scheduled for 6:30 p.m., Thursday, March 28, 2024.

ADJOURNMENT

The meeting was adjourned at 7:50 p.m.



Chair, Board of Zoning Appeals



Assistant Clerk of Council