



MEETING MINUTES

Board of Zoning Appeals

Thursday, April 25, 2024

CALL TO ORDER

Vice Chair Nigh 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 Vice Chair briefly explained the rules and procedures of the Board of Zoning Appeals (BZA).

ROLL CALL

Board Members present: Dan Garvin, Joseph Nigh, Patrick Murphy, Joel Kretz
Board Members absent: Jason Deschler
Staff present: Zachary Hounshell, Bassem Bitar

ACCEPTANCE OF DOCUMENTS AND APPROVAL OF MINUTES

Mr. Murphy moved, Mr. Garvin seconded acceptance of the documents into the record and approval of the 03-28-24 regular BZA Meeting minutes.

Vote on the motion: Mr. Kretz, yes; Mr. Nigh, yes; Mr. Garvin, yes; Mr. Murphy, yes.
[Motion carried 4-0.]

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

CASE REVIEW

- **Case 24-039V – Penchala Residence, Non-Use (Area) Variance**

A request for a Non-Use (Area) Variance to the NE Quad Development Text, Subarea 2, Yards and Setback Requirements to allow a patio to encroach approximately 14 feet into the required rear yard setback. The 0.28-acre site is zoned PUD, Planned Unit Development District, NE Quad and is located approximately 600 feet west of the intersection of Domnall Drive and Kelly Drive in the Wyandotte Woods subdivision.

Staff Presentation

Mr. Hounshell stated that the 0.28-acre site is zoned PUD, Planned Unit Development District. The site is located within Section 10 of the Wyandotte Woods neighborhood, which is a subarea of the

NE Quad District. Sections 9 and 10 of Wyandotte Woods were approved in 2016 as the final sections of the neighborhood. The Final Plat for Section 10 was approved by City Council in 2019. The homes are newly constructed or in the process of being finalized. The site is rectangular, with a lot width of approximately 100 feet along Domnall Drive. The site is slightly larger than other typical lots on the street, but smaller than lots along the corners of Domnall Drive. The site is not adjacent to any public open space or reserve, and backs up to the rear yard of a lot in Section 9. The site currently features a 2-story home with a side-loaded garage. Most of the homes on Domnall Drive and within Wyandotte Woods are front-loaded, but some homes throughout the Wyandotte Woods neighborhood are side-loaded. There are no natural features located on the site. The request is for a variance to the PUD Development Text for the rear yard setback. The development text states that the rear yard setback shall be 25% of lot depth, and the requirement is consistent for all the lots within Wyandotte Woods. This request is to allow a new approximately 760-square-foot patio to encroach approximately 14 feet into the required rear yard setback. The rear setback for the property is approximately 32 feet. Per the Zoning Code, at-grade patio structures are permitted to encroach 5 feet into the required rear yard setback. The proposed patio would encroach an additional 14 feet from the permitted 5-foot encroachment. The applicant has provided a Variance Statement addressing the reasoning for the request. The applicant explains that they were not aware of the setback limitations of the site when buying, and that the orientation of the house with the side-loaded garage is unique compared to the rest of the neighborhood.

Staff has reviewed this application against the applicable criteria. All 3 of the criteria in Criteria A are required to be met; staff finds that none of the criteria are met. In regard to Criterion #1 – Special Conditions, the site is a rectangular shape, similar to many of the adjacent lots in Section 10 of this development. There are no natural features limiting the development of the site, and the placement of the home is consistent with other properties in this neighborhood. Although the home does have a side-loaded garage, which is unique for this street, that orientation is not unique to the neighborhood of Wyandotte Woods. In regard to Criterion #2 - That the variance is not necessitated because of any action or inaction of the applicant, the applicant purchased the lot and built the home in 2023 in its current configuration with a lack of consideration for rear yard setbacks and buildable patio space. In regard to Criterion #3 - Granting the variance will not cause a substantial adverse effect to the property or improvements in the vicinity or will not materially impair the intent and purposes of the requirement being varied. In Criteria B, 2 of the 4 criteria are required to be met, and staff has found 2 of the 4 are met. In regard to Criterion #2 – recurrent nature, staff met with a developer representative last September, because the City has been made aware of a similar issue with lots in this neighborhood. Other lots have the same condition where there is not enough buildable area for a patio. Staff's recommendation was that an application be submitted to modify the development text to change the rear yard setback. The application can be submitted by either the developer or by the homeowners association (HOA), once it is formed and able to proceed with the application. There is no guarantee that it will be approved by the Planning and Zoning Commission (PZC), however. Absent such modification, Planning staff does not recommend approval of this variance request.

Board Questions for Staff

Mr. Nigh inquired if this variance is denied tonight, and later, the development text rear yard setback requirement is changed, the would applicant be able to pursue the variance again.

Mr. Hounshell responded that he does not believe that the same request can be re-submitted for a year.

Mr. Nigh inquired the length of time involved for a development text modification. He assumes it is not an overnight process.

Mr. Hounshell responded that the process is not necessarily quick, but this would be a relatively simple text change. At most, it could take 2 months, depending on the receipt of an application. PZC is the only body that would need to review that request.

Mr. Kretz stated that he does not understand the reason the applicant could not re-submit an application. If the rules have changed, the applicant would be requesting a variance to a different version of the rule.

Mr. Hounshell responded that staff would consult with the Law Director. He makes a good point that if the requirements have changed, it would refresh the timeline.

Mr. Garvin inquired if the house encroaches into the 32-foot rear yard setback. He is aware of the 5-foot permitted encroachment.

Mr. Hounshell responded that it does not; the house is located 32 feet from the setback. It meets the zoning requirements.

Applicant Presentation

Maruthi Penchala, Parvathi Penchala, Property Owners, 4094 Domnall Drive, Dublin, introduced themselves. Mr. Penchala stated that they signed the home purchase agreement with Trinity Homes in March 2021. The builder indicated that they were able to include a 20-ft. x 20-foot patio, which they turned down, as they preferred to have something other than concrete. They were not aware of the rear yard setback. They moved into the home in July 2023. A month later, they submitted a building permit request for a patio. They were denied with the information that they were limited to a 5-foot patio. His original patio design was for a 21 ft. x 40 ft., but learned it would encroach into the drainage easement. He reduced the size to 19 ft. x 40 ft., so it would not encroach into the drainage easement. His neighbors informed him that he could submit a variance request. He noted that the neighbor 3 houses away was approved for a patio construction and built a 10 ft. x 44 ft. patio. When he inquired the reason from the City, he was told that they made a mistake. His neighbor on the other side, who has the same amount of space at the rear of his home, also was approved for a patio permit. He inquired and his neighbors on both sides and to the rear indicated they had no objection to his building a patio. Subsequently, he submitted a variance request, for which staff is recommending denial. He does not know how to proceed. They have invested their life savings, but after what they have now learned, they are concerned they will need to move.

Ms. Penchala stated that if they had been aware that they could not have a patio, they would not have purchased the home. They have three children, so having a patio is a priority for them. At their previous home in Hilliard, they spent a large amount of time outside during the summer months.

Mr. Penchala indicated that the City told him he would need to contact the developer and ask that he submit a request to the City for a development text modification. He attempted to contact the developer for a month; they did not respond. Then he contacted the HOA, which indicated that they were not authorized to submit a request for a development text change at this time. They

indicated that in 2024, the developer was expected to turn over the HOA to the homeowners, then they could submit the application. Currently, however, the HOA is under the control of the developer. He reiterated that when he purchased the home, the builder offered him a 20 ft. x 20 ft. concrete patio, so he had no idea that he would not be able to build a patio. He realizes now that he should have accepted the concrete patio and built something on top of it.

Board Questions

Mr. Nigh noted that when a builder constructs subdivisions, the builder staffs the HOA until construction of the subdivision is completed, at which time the HOA is transitioned to the homeowners. Is it staff's understanding that at this time, this HOA remains with the builder? Mr. Hounshell responded that it is, and it is the individual with whom they met in September 2023.

Mr. Garvin inquired if Mr. Penchala had reached out to the builder, but they were not responsive. Mr. Penchala responded that Trinity Homes told him it was not their responsibility. He then reached out to the HOA, and they indicated that they were not familiar with the type of application he was requesting they submit nor did they have the responsibility to do so.

Mr. Garvin inquired if the builder had installed the 20 ft. x 20 ft. concrete patio at the time of the home build it would have changed the position of the house.

Mr. Penchala indicated it would not have.

Mr. Garvin inquired if what he is proposing is the same shape patio as what the builder offered.

Mr. Penchala responded that what he is proposing is similar, but his proposed 19-ft. x 40-ft. patio would extend further south.

Mr. Murphy inquired if the developer has provided a timetable for release of the HOA to the neighborhood.

Mr. Penchala responded that a neighbor asked the developer that question. The developer indicated it would be soon, possibly in the summer of 2024.

Mr. Nigh stated that the applicant has indicated that an approved patio exists next to them, which upon inquiry, the City indicated they had mistakenly approved.

Mr. Hounshell confirmed that a patio on this street was approved by Planning staff, which did not meet the requirements. The Legal Department has been aware of that. He is unsure of the status of that issue or possible resolution.

Mr. Garvin inquired if the builder-grade concrete patio would have required a variance.

Mr. Hounshell responded that any type of patio, whether the developer or the homeowner is constructing it, has to meet the requirement. If a concrete patio were to have been poured here that did not meet the setback requirements, a variance would have been required.

Mr. Kretz inquired if there has been any precedent where the City approved something, and addressed it either by citation or some other action.

Mr. Hounshell responded that he believes there have been such instances; however, he is not aware of how they were resolved. The City typically requires either the situation to be remedied to meet requirements or that a variance be obtained.

Mr. Garvin stated that he is inclined to disagree regarding its recurring nature, based on what was shared. Would a remedy for the homeowners be by granting a large-scale variance for the neighborhood or by changing the development requirements for that neighborhood?

Mr. Hounshell responded that a variance request must be site specific. The only way in which changes can be made for the whole development is via a development text amendment. That process would be separate from this variance request. Staff is aware this situation exists elsewhere and is trying to remedy the issue holistically, rather than with the variance process. The development text change would not alleviate all the issues. It would not permit homeowners free rein to construct large patio. The development text modification would attempt to be consistent with adjacent neighborhoods.

Mr. Penchala stated that a lot of patios have been built in the neighborhood. When he asked the City how those building permits were approved, he was told that if they were built without permission, the City cannot do anything to them.

Mr. Kretz responded that he mentioned "a lot" of patios. Specifically, how many patios are located on his street?

Mr. Penchala responded that there are three or four.

Mr. Kretz inquired if he became aware of the patio that the neighbor adjacent to him has before or after he moved in.

Mr. Penchala responded that he was not aware of it before he moved in.

Ms. Penchala stated that as soon as they moved in, they noticed the patio under construction.

Public Comment

There were no public comments.

Board Discussion

Mr. Garvin stated that he understands the homeowner's dilemma and their desire to have an outside area for their children. However, the Board is required to evaluate the application against the variance criteria. He disagrees with staff's evaluation only on the "recurring nature" criterion in Criteria B. He does agree with staff on their evaluation against the other criteria. Therefore, he is leaning toward disapproving the variance. He believes amending the development text is the best course of action, as this is a situation that exists for other homeowners in this neighborhood.

Mr. Murphy stated that he is also sympathetic to his situation. Unfortunately, the Board is bound by the current regulations. There are other residents in the neighborhood who have the same concerns, and they will have a stronger role and voice with this matter once the HOA has been turned over to the neighborhood. Because this is a new, recently constructed development, the issue cannot be considered as caused by things outside his control (Criterion 2). The homeowner did have some level of control in the home build process to ensure it met his goals for the property. Because the request does not meet the required criteria, there is no ability for a variance to be granted.

He concurs with City staff's determination.

Mr. Kretz stated that it is not possible to rationalize a special condition exists. The house was built in a manner that limits the space for a patio. Because he believes the request does not meet the required criteria, he also is inclined to disapprove.

Mr. Nigh concurred. With similar variance requests in the past, typically Criterion 2 has been difficult to meet when the homeowner has built the home. In the build process, the homeowner has some say in regard to location matters. Mr. Hounshell has suggested an alternative path for resolution of the issue in the neighborhood. It appears that all Board members would be voting against granting the variance. If the variance is denied, the applicant is required to wait another year to re-submit a variance. The applicant has the option to request his application be tabled. Two opportunities are available to the applicant: request the developer to submit an application for a development text modification or, when the temporary HOA now held by the developer becomes a permanent HOA under the control of the homeowners, the HOA can submit that application.

Mr. Hounshell explained that tabling is essentially placing a pause on the vote, while keeping the application open. He noted that staff is interested in achieving a correction for the neighborhood and will continue to engage with those currently in charge to obtain a formal request for a development text modification. He has spoken with another resident in the neighborhood, so is aware that there is interest in pursuing that process. It would be a better approach than a single variance.

Mr. Nigh stated that the Board is supportive of staff reaching out to obtain what is needed for that resolution. It is preferable to address the issue before numerous variance requests are received from other residents within the neighborhood.

Mr. Hounshell stated that he would make the Planning Director aware of the Board's recommendation.

Mr. Nigh inquired if the applicant preferred a vote or that his request be tabled.

Mr. Penchala responded that he would prefer his variance request be tabled.

Mr. Murphy stated that addressing the development text for the neighborhood would be a comprehensive resolution.

Mr. Murphy moved, Mr. Kretz seconded tabling the variance request.

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

[Motion carried 4-0]

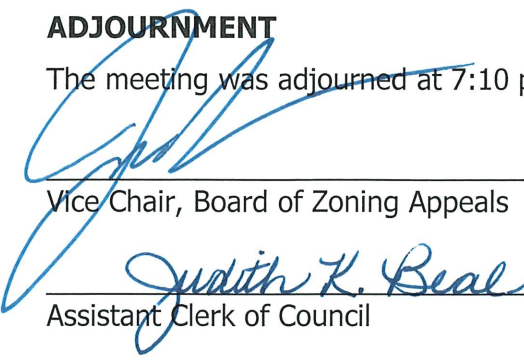
COMMUNICATIONS

Mr. Hounshell reported that:

- BZA member Jason Deschler is nearing the completion of his term on the Board; the May meeting will be his last. The City will be appointing a new member to his position.
- The next regular BZA meeting is scheduled for Thursday, May 30, 2024.

ADJOURNMENT

The meeting was adjourned at 7:10 p.m.



Vice Chair, Board of Zoning Appeals



Assistant Clerk of Council