



MEETING MINUTES

Board of Zoning Appeals

Thursday, April 23, 2020

CALL TO ORDER

Ms. Cooper called the meeting to order at 6:30 p.m. and made the following comments:

"Good evening and welcome to the first virtual meeting of the City of the Board of Zoning Appeals. We are living in extraordinary times. Both the State of Ohio and the City of Dublin have declared states of emergency. The Ohio Legislature passed several emergency laws to address the pandemic, including the ability for public entities to have virtual meetings. We appreciate this ability to maintain our continuity of government. For the duration of the Stay at Home Order, we will be holding our meetings online and live streaming those meetings on YouTube. You can access the livestream on the City's website. In order to submit any questions or comments during the meeting, please use the form under the streaming video on the City's website. These questions and comments will be relayed to the Board by the meeting moderator. We want to accommodate public participation and comment to the greatest extent possible. We welcome your comments on cases, but please refrain from making any inappropriate comments. This is not a perfect system, but we will do our best in these difficult times. We appreciate your patience."

OATH OF OFFICE

Mayor Amorose Groomes administered the Oath of Office to Board of Zoning Appeals (BZA) re-appointee, Satya Goyal.

ROLL CALL

Board Members present: Mr. Goyal, Mr. Deschler, Ms. Herbert, Ms. Cooper, Mr. Nigh

Staff present: Ms. Rauch, Ms. Husak, Ms. Martin and Mr. Hounshell

ELECTION OF OFFICERS

Ms. Herbert moved, Mr. Goyal seconded, to appoint Jason Deschler as Vice Chair for the term of 2020-2021 (April 2020 to March 31, 2021).

Vote: Mr. Nigh, yes; Ms. Herbert, yes; Mr. Goyal, yes; Mr. Deschler, yes; Ms. Cooper, yes.

(Motion carried 5-0)

Mr. Deschler moved, Ms. Herbert seconded, to appoint Martha Cooper as Chair for the term of 2020-2021 (April 2020 to March 31, 2021).

Vote: Mr. Goyal, yes; Ms. Herbert, yes; Mr. Nigh, yes; Mr. Deschler, yes; Ms. Cooper, yes.

(Motion carried 5-0)

ACCEPTANCE OF DOCUMENTS

Ms. Herbert moved, Mr. Goyal seconded to accept the documents into the record.

Vote on the motion: Ms. Herbert, yes; Mr. Nigh, yes; Mr. Deschler, yes; Mr. Goyal, yes; Ms. Cooper, yes.
(Motion carried 5 – 0)

APPROVAL OF MINUTES

Mr. Nigh moved, Mr. Goyal seconded to approve the January 30, 2020 meeting minutes as submitted.

Vote on the motion: Ms. Cooper, yes; Mr. Deschler, yes; Mr. Nigh, yes; Ms. Herbert, yes; Mr. Goyal, yes.
(Motion carried 5 – 0)

The Chair briefly explained the rules and procedures of the Board of Zoning Appeals and swore in any staff or member of the public who planned to address the Board during the meeting.

CASE:

1. Carpenter Residence, 8201 Riverside Drive, 20-065V, Non-Use (Area) Variance

Staff Presentation

Mr. Hounshell stated that this is a request for approval of a Non-Use (Area) Variance for the Carpenter residence at 8201 Riverside Drive. The site is zoned R-1, Restricted Suburban Residential District and backs up to the Scioto River on the west side of the property. The site has many elevation changes and natural features (photos of sign shown). The proposed detached garage will be located at the front of the home, approaching from the east. The photo of the rear and west side of the house show the steep elevation change, and the photo of the south side of the home shows the large ravine running from east to west. The applicant is requesting approval of a Variance to Zoning Code Section 153.074(B)(5)(a), which indicates that all accessory structures and detached garages should be located to the side or rear of the principal structure and no detached garage or accessory structure can be located forward of the principal structure. The applicant has proposed a detached garage approximately 20 feet forward of the house, and has indicated that, due to the unique topography and steep elevation changes of the site, the only suitable area in which to build a detached garage that would meet all applicable setbacks is the proposed site. Staff has reviewed this application against all applicable criteria and recommends approval with no conditions.

Applicant Presentation

Jennifer Carpenter, 8201 Riverside Drive, Dublin stated that where the proposed garage is shown on the site plan is the only possible location. She requests the Board's approval of a variance to permit them to build it.

Public Comment

No public comments were received.

Board discussion

There was no discussion.

Mr. Nigh moved, Ms. Herbert seconded to approve a Non-Use (Area) Variance to Zoning Code Section 153.074(B)(5)(a) to permit a detached garage to be constructed approximately 20 feet forward of the principal structure with no conditions.

Vote on the motion: Ms. Cooper, yes; Mr. Nigh, yes; Ms. Herbert, yes; Mr. Goyal, yes; Mr. Deschler, yes.
(Motion carried 5 – 0)

2. Boggs Residence, 6386 Albanese Court, 20-050V, Non-Use (Area) Variance

Staff Presentation

Mr. Hounshell stated that this is a request for approval of a Non-Use (Area) Variance for the Boggs residence located at 6386 Albanese Circle. The site is located within the Riviera subdivision. The subdivision is located north of the Belvedere subdivision, west of the Muirfield subdivision and backs up to a reserve area to the north. The applicant is requesting a variance to the Riviera Development Text – Section DS-1(IV)(A)(3)(c) to permit an 18-inch encroachment into the required 25-foot rear yard setback. The applicant is also requesting a variance to Zoning Code Section 153.074(C)(3) to permit a swimming pool to encroach 2 feet into the required 10-foot setback between the principal structure and the edge of the pool. The applicant has stated that the homeowner considered alternative pool shell designs that would meet the setback requirements; however, a pool shell with tapered entries and steps/shelves within the water is necessary due to the physical health limitations and physical therapy needs. This need can be accommodated only by a pool of this size, as the design is not available at a smaller size. These variances will permit development of a swimming pool and surrounding pool deck and patio on the site. Staff has viewed the application against all applicable criteria and recommends approval with no conditions.

Applicant Presentation

Glen Dugger, Attorney, Smith and Hale, 37 W. Broad Street, Columbus, 43215 stated that he is the representative for the applicants, who are friends. These minor variances are necessary to permit installation of the pool to address the physical therapy needs of one of the homeowners. The homeowners association has reviewed the application and provided a letter indicating that they are supportive of the application. Meeting the setback requirements would not be an issue if the front porch were not being considered part of the primary structure. Staff has indicated that consideration is based upon the fact that the porch shares the same foundation as the house. The adjacent property to the north is community open space; therefore, the pool would have no adverse effect any neighboring properties.

Public Comment

There was no public comment.

Board Questions for the Applicant

Board members indicated that there was no letter from the homeowners association in their meeting packets.

Mr. Dugger responded that he has it, but neglected to provide it with the other materials.

Mr. Deschler inquired if the home was a spec home or if the applicants built the home.

Mr. Dugger responded that they built the home.

Mr. Deschler inquired if they also designed the home.

Mr. Dugger responded that he is not aware of what point they entered the process, before or after design.

Mr. Deschler inquired how long it has been since the home was completed.

Mr. Dugger indicated that he could call the homeowners and inquire.

Ms. Husak stated that an aerial photograph of the site provided in the meeting packet reveals that in 2018, the site was vacant. This indicates the home was built since then.

Mr. Deschler stated that his question is based upon the fact that if the homeowners built the home with the intent of having a pool, they would have known the setback requirements and the needed variances at the time the home was built.

Ms. Husak stated that the pool was not part of the original permit for the home.

Mr. Deschler responded that he was attempting to confirm that the application met the second criteria, i.e. that the variance is not necessitated because of any action or inaction of the applicant.

Ms. Herbert stated that if the home was an inventory home or if the applicant was unaware of the need for a therapy pool at the time it was constructed, that could not have been part of their consideration at that time.

Mr. Dugger stated that although the homeowners built the home, they were not aware that as it was constructed, it would limit necessary space in the backyard.

Mr. Deschler stated that if they designed the home and had the plans drawn up, they were aware of the lot size and any subsequent limitations for additions. He understands the pool was an afterthought.

Mr. Nigh stated that the applicant has indicated the pool size is necessary to meet the therapy needs. Is it the width or the length specification that is necessary for the therapy?

Mr. Dugger responded that the length provides the required shallow entry distance; approximately one-third of the length is very shallow.

Mr. Nigh inquired if the proposed width is necessary, as well.

Mr. Dugger responded that the issue is that there is a limited library of pre-manufactured fiberglass pools in different widths and lengths. The proposed pool best meets the needs. No variance would be needed if the covered porch were not considered part of the home. The homeowners assumed the house and porch were two separate items. They did not understand that the covered porch is the point from which the setbacks are measured.

Mr. Nigh inquired when the applicant submitted this application.

Ms. Husak responded that it was within the last two months.

Mr. Nigh inquired if August was when the home was completed or when they purchased it.

Mr. Dugger responded that August was when they moved into the home.

Ms. Bryan inquired if, rather than encroaching into the 25-ft. rear setback, an alternative was considered for requesting just one variance, permitting it to be 18 inches closer to the covered porch.

Mr. Hounshell responded that other iterations were discussed, including meeting the 10-foot principal structure setback but encroaching more into the rear yard setback, and also vice versa. Encroaching more into either setback would eliminate encroachment into the second setback. The applicant selected this iteration, as it would have the least impact on both setbacks; however, it does require two variances.

Ms. Herbert requested confirmation that this request has the support of staff.

Mr. Hounshell responded affirmatively,

Mr. Deschler inquired how staff came to the conclusion Criterion #2 was met.

Ms. Husak stated that staff came to that conclusion because it did not seem that the homeowner was aware of the right questions to ask when they bought this house. The need for a pool for physical therapy was unknown at that time.

Mr. Nigh inquired if a pre-manufactured fiberglass pool is the only option. Could an alternative be a poured pool poured in a custom size?

Mr. Dugger responded that this particular pool was considered due to the shallow entry needs. A ranch house design was selected to accommodate the homeowner's needs inside the home. The only reason this review is necessary is that the porch counts as part of the house due to sharing the same foundation. The typical homeowner does not consider a porch to be the house, so they would realize that measuring a setback from the principal structure would mean from the covered porch.

Mr. Deschler inquired where that section of the Code is located.

Ms. Husak responded that it is in the Zoning Code under the Pools section.

Mr. Nigh inquired if the porch was not poured concrete, but pavers, would it have been considered differently.

Ms. Husak responded that the determination is based upon the fact that the porch shares the same foundation as the principal structure.

Ms. Herbert stated that the builder provides only a simple floorplan to a homebuyer. They do not receive copies of the blueprints that have the details such as the fact that the porch shares the same foundation as the house. She is supportive of this application.

Mr. Nigh stated that, strictly interpreted, similar situations with every house that is built could be considered, due to the action of the homebuilder. The only exclusion would be a pre-built house.

Mr. Deschler responded that in some cases, homebuyers have purchased homes with conditions they did not create. However, in this case, it appears as though other decisions could have been made with the house itself, such as a side-loaded garage. He inquired if previously, staff had ever received a request that a porch not be considered part of the principal structure.

Ms. Husak responded that she is not aware of such a request. Planning staff requested Building Standards staff's interpretation of this situation. They indicated that when the porch shares the

same foundation and roof, it is defined as part of the principal structure. This feature is a current trend with new builds; five years ago, this feature was not typically added during construction.

Mr. Nigh stated that in his opinion, the Board's decision is based upon whether the homeowner took an action that created this issue.

Mr. Goyal stated that a pool can be built any size desired, which could meet Code requirements. Ms. Herbert stated that there would be a significantly greater cost associated with a custom pool versus a prefabricated pool.

Mr. Nigh stated that one criterion addresses that: "Other Method Available - The practical difficulty could be eliminated by some other method, even if the solution is less convenient or most costly to achieve." Is a prefabricated pool the only option?

Mr. Dugger stated that any pool that met both setback requirements would be a very narrow pool. If the open, covered porch is not considered part of the home, and the pool is measured from the setback, the proposed pool complies with the Code setback requirements.

Mr. Nigh stated that the Board may agree, but it is not within our purview to say that provision in the Code does not make sense, and therefore, ignore it.

Mr. Dugger stated that there is a need to administer the Code with common sense. That is the purpose of the variance process. A common sense result would not be a custom pool or tearing out the foundation of the existing covered porch.

Ms. Cooper stated that tearing down the front porch and moving it back two feet in order to meet the setback requirement from pool would meet the definition of an extraordinary cost.

Mr. Goyal noted that a cement saw is capable of cutting through a cement foundation, as long as the foundation remains structurally sound.

Ms. Cooper stated that there is also the issue of the roof. The roofline is based upon the home's foundation.

Mr. Dugger stated that because the homeowner's health needs were present at the time the home was built, a ranch home was built, which has a larger footprint than a typical two-story house.

Ms. Cooper stated that she is comfortable with the explanation that the homeowner was unaware of the need for a pool for therapy reasons at the time the home was constructed; therefore, the situation is not due to their inaction. She inquired if the Board would be more supportive of permitting greater encroachment into the rear setback, thereby eliminating the need for the second variance.

Ms. Husak noted that if the Board does not intend to take action tonight on the application as it was advertised -- which was for two setback variances, it would be necessary to table the case to a future meeting.

Ms. Cooper inquired what the potential impact would be if the Board permitted these variances to the Code.

Mr. Goyal responded that there could be a potential effect on the home's foundation should there be water leakage from the pool.

Mr. Dugger informed the Board that the homeowners are watching the meeting live and have called him to provide additional information of which he had been unaware. When the house was built, they did not plan to install a pool. They moved into the house in August. Sometime later, their physician recommended and provided a prescription for a pool. They considered other pool options, including a poured, concrete pool, a vinyl pool and a prefabricated pool. A pool with a vinyl liner would not provide the required shallow entry. They indicated that there are other accommodations related to the placement of this pool. It is necessary to accommodate a wheelchair ramp from the porch and a handrail to enable the homeowner to enter/exit the pool. The proposed pool placement enables the accessibility issues to be addressed. The homeowner has attempted to achieve all of this with the minimum amount of variance from the existing setbacks.

Ms. Cooper thanked Mr. Dugger for the additional information. Does the Board believe the applicant has provided better information that satisfies the criterion related to the homeowner's action or inaction; and if so, does the Board believe there is a reasonable basis for the variance to be granted?

Mr. Deschler responded that the additional information is helpful; specifically, the fact that the medical prescription for the pool was received after the home was built and occupied. He inquired if the measurements are from the edge of the terrace surrounding the pool.

Ms. Husak responded that the measurements are from the water surface.

Mr. Dugger stated that the homeowner is willing to join the meeting by phone to testify under oath that the prescription was received after they occupied the home, should the Board prefer. Board members indicated that additional testimony from the homeowner would not be necessary. They are satisfied with the attorney's representation of his client.

Ms. Cooper stated that the homeowner has indicated the need for a wheelchair ramp from the house to the pool. A patio is necessary to provide a foundation for that connection between the house and the pool. In her view, the need has been demonstrated for a special circumstance, which is an appropriate reason for granting the variances.

Mr. Nigh noted that with the wheelchair ramp, having a covered porch to provide protection from weather elements is necessary.

Board members indicated that they had no further concerns/objections.

Ms. Husak noted that no public comments were received for this case.

Ms. Herbert moved, Mr. Goyal seconded approval of a Non-Use Variance to Zoning Code Section 153.074(C)(3) to permit encroachment by two (2) feet into the 10-foot required distance between the swimming pool and principal structure with no conditions.

Vote on the motion: Ms. Herbert, yes; Mr. Goyal, yes; Mr. Deschler, yes; Ms. Cooper, yes; Mr. Nigh, yes.

(Motion carried 5 – 0)

Ms. Herbert moved, Mr. Goyal seconded approval of a Non-Use Variance to the Riviera Development Text – Section DS-1(IV)(A)(3)(c) to permit encroachment within the required 25-foot rear yard setback by 18 inches with no conditions.

Vote on the motion: Mr. Deschler, yes; Ms. Cooper, yes; Ms. Herbert, yes; Mr. Goyal, yes; Mr. Nigh, yes.

(Motion carried 5 – 0)

There was no additional business.

Ms. Cooper stated the next BZA meeting is scheduled for May 28, 2020, if an application is submitted.

ADJOURNMENT

The meeting was adjourned at 7:35 p.m.

Martha Cooper
Chair, Board of Zoning Appeals

Judith K. Beal
Deputy Clerk of Council