



MEETING MINUTES

Board of Zoning Appeals

Thursday, September 24, 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 September 24 virtual meeting of the City Board of Zoning Appeals. 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 present time, we are holding our meetings online and live streaming those meetings on YouTube. You can access the livestream on the City’s website. 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 to the greatest extent possible and welcome your comments on cases. Please use a valid name and address when submitting your comments and 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.”

ROLL CALL

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

Staff present: Ms. Husak, Mr. Hounshell

ACCEPTANCE OF DOCUMENTS AND APPROVAL OF MINUTES

Mr. Deschler moved, Ms. Herbert seconded to accept the documents into the record and approve the August 27, 2020 meeting minutes.

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

(Motion carried 5 – 0)

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

CASE:

1. **Hubballi Residence, 8065 Pleasant Drive, 20-128V, Non-Use (Area) Variance**

Ms. Cooper stated that this is a request for review and approval of a Non-Use (Area) Variance to the Oak Park Development Text – Subarea A: “Park Homes” (III)(C) allowing an encroachment of an uncovered patio within the required 20-foot rear yard setback by approximately 9.1 feet.

Staff Report

Mr. Hounshell stated that this site is zoned PUD, Planned Unit Development – Oak Park and located approximately 90 feet southwest of the intersection of Pleasant Drive and Oak Meadow Drive within the Oak Park subdivision. The subdivision is located west of Hyland-Croy Road and southwest of Dublin Jerome High School and the intersection of Mitchell-Dewitt and Hyland-Croy roads. The Hubballi site backs up to a

large open space reserve to the rear and northwest of the site. Both lots adjoining this property are developed. The request is for a Variance to the Oak Park Development Text – Subarea A: “Park Homes” (III)(C), which refers to the 25-foot rear yard setback, to permit an encroachment of an uncovered patio within the required 20-foot setback for patios by approximately 9.1 feet. The applicant is proposing a new approximately 510-square-foot patio located to the rear (west) of the principal structure. Although the rear yard setback within the Oak Park Development Text states that Park Homes shall maintain a 25-foot rear yard setback, at-grade patios are permitted to encroach 5 feet into the required setback per the Zoning Code. This allows for a minimum 20-foot setback for patios within this subarea. The applicant is proposing to encroach farther into the rear yard setback to construct a patio, by approximately 9.1 feet, up to a 10-foot easement that runs along the rear property line. This is the third request for a waiver to the rear yard setback within the Oak Park subdivision for the purpose of construction of an uncovered patio. The previous two applications were approved, one in 2016 and the other on August 27, 2020. The applicant has provided a statement explaining that to accommodate the three-car garage on the front of the building, the house was pushed back, limiting the developable space to the rear of the home. The request of the additional 9 feet allows for a more usable and functional patio space for the home.

Staff has reviewed the application against the applicable criteria and recommends approval of the Non-Use Variance request.

Board Questions

Mr. Deschler stated that for the request last month, staff recommended disapproval; with this request, staff recommends approval. Are the factors for this case consistent with those for the case reviewed last month, which led to the Board’s decision? The previous case was approved due to the fact that the builder had misrepresented the garage that would be built. The applicant’s statement does not indicate that is the situation here.

Mr. Hounshell responded that he believes the three-car garage on this home has one double door and one single door. In terms of the amount of buildable space in the side and rear yards, this case is more similar to the Snowdrop Court application approved in 2016, which had minimal space to locate the patio in the side yards. With the application before the Board tonight, there is approximately 3-4 feet in the side yards, where the Code requires 5 feet to 9 feet for any uncovered patio. That factor did contribute to staff’s recommendation to approve this waiver.

Mr. Deschler inquired if the homeowners have a right to space for construction of a patio, even if it exceeds Code requirements.

Mr. Hounshell responded that they do not. The buildable area is for construction of any principal or accessory structure, but whatever structure is proposed, it would need to meet the requirements and fit within the buildable area. If it does not, approval of a variance request is necessary. The only exception to the 25-foot setback is at-grade patios are permitted to encroach 5 feet into the required setback per the Zoning Code.

Applicant Presentation

Ms. Hubballi, 8065 Pleasant Drive, Dublin, Ohio, stated that per the present Code requirements, they would have only 10 feet for construction of a patio. They are requesting permission to extend 9.1 feet into the setback. With the encroachment, 10 feet would remain within the easement. Because there is an open space reserve area behind their property, the encroachment would not negatively impact anyone else.

Ms. Cooper inquired if the Hubballi’s are the original homeowners.

Ms. Hubballi answered affirmatively.

Mr. Deschler inquired if they had opportunity to see the layout when they chose this model with the three-car garage option.

Sangamesh Hubballi, 8065 Pleasant Drive, Dublin, Ohio, stated that this is their first property, but it was a spec home already under construction. He did see the site layout, but was not advised that he would be unable to build within 25 feet of the property line. When considering the purchase, he actually was informed that a patio could extend ten feet into the easement. Consequently, they proceeded with the home purchase, thinking they could build a patio at a future time. Unfortunately, they were not made aware of the details regarding encroachment. They discovered this only earlier this year when they applied for a permit. They were also told that the easements are different for perimeter lots versus interior lots within the neighborhood.

Mr. Nigh stated that he was not a Board member in 2016 and requested Ms. Herbert to compare the 2016 application with the one presently under consideration.

Ms. Herbert responded that both she and Ms. Cooper were serving at that time. This application is nearly identical to the Snowdrop Court case. That home was built quite close to the property line, as well.

Mr. Nigh stated that his concern then would be the issue of precedence. Because the ARB has approved a variance request for the same situation, the Board is bound by precedence to approve this request.

Mr. Hounshell noted that one of the secondary "two of four" criteria is that the situation is "recurrent in nature." With this case and the one approved last month, the need has been identified for a staff discussion on the recurrent issue with this development. That issue would not be a deterrent for this case receiving approval, similar to the preceding cases.

Ms. Herbert stated that she recalls that with the review of the Snowdrop Court case, the Board noted that this could potentially be an issue for other homeowners within the subdivision. At that time, staff indicated that they would probably need to begin looking into a solution. It appears the time has come to do so.

Mr. Hounshell responded that staff has recognized that need.

Ms. Miller inquired if there is a way for staff to ensure this situation does not occur for future developments under consideration. The issue is that the developer can build the homes essentially to the property line, and the homeowner may be unaware of the issue. Rather than creating a downstream appeals process, the issue should be addressed when the home is built. The builder should be required to notify the prospective homebuyers of the issue.

Mr. Hounshell stated that once the PUDs are approved, staff is not involved with the homebuyers.

Ms. Miller stated that if builders construct the homes on the lot in such a way that any patio added later would encroach into the setback, it would appear the builder is "gaming the system." She would prefer to see more discussion regarding setbacks and ability to accommodate future patios.

Mr. Hounshell stated that there is current discussion by PZC regarding setbacks.

Ms. Cooper pointed out that this particular property backs up to a no-build area, which is consistent with the 7979 Pleasant Drive case reviewed by the Board last month. In these two cases, the proposed patios would impact no adjacent property owners, only greenspace.

Mr. Deschler stated that this situation needs to be proactively addressed by the City for this subdivision. He was not a member of the Board in 2016, but the case heard last month was different, because there was a misrepresentation by the builder. In this case, the spec home existed on the lot when the family considered purchase, and the builder provided them a copy of the plan. There were not any misrepresentations by the builder. With the Snowdrop Court property, he believes that applicant was the second owner of the home. He is not certain the necessary criteria are met in this case.

Mr. Hounshell confirmed that the Snowdrop Court applicant was the second property owner.

Mr. Nigh inquired what the staff's recommendation was on the Snowdrop Court property.

Mr. Hounshell responded that approval was recommended.

Mr. Nigh stated that staff recommended approval with the 2016 case. It is not fair to tell this homeowner, who has nearly the same circumstances, that their request cannot be approved.

Mr. Deschler responded that the circumstances are not the same. The applicants tonight are the original owners; the Snowdrop Court applicants were the second owners. This applicant did not need to buy the home.

Mr. Nigh stated that he understands his point that this property was an existing spec home. However, the situation was the same for the Snowdrop Court homeowners; they did not need to buy it. There is no difference.

Mr. Deschler responded that his point is valid. His concern is that most of these homes in this subdivision have insufficient space to construct a patio. This places the Board in a reactive position.

Mr. Hubballi stated that although he is the first owner of this home, he planned to build a patio. The builder specifically told him that, per City requirements, 10 feet must remain in the easement, and up to that, he could build a patio. With that assurance, he did not anticipate issues building a future patio. He would not have purchased the home otherwise. He recently spoke again with both the homeowners association (HOA) and the builder. Both said that he must leave 10 feet of easement, and were surprised that the City was asking for 25 feet of easement. Neither the HOA nor builder are aware that the requirement is more than 10 feet.

Mr. Nigh inquired if that conversation with the builder occurred before he purchased the property.

Mr. Hubballi responded that it did, but the builder continues to say the same.

Mr. Nigh stated that it appears the builder(s) may be telling prospective buyers this to encourage them to buy the properties. This makes this case similar to last month's, as well. There seems to be an action on the part of the builder that could be causing these situations. If homeowners have been led into this situation, the Board will continue to see these cases.

Ms. Herbert stated that the Board was concerned about this in 2016. As the earlier minutes will reflect, the Board identified this as an issue that needed to be addressed for the entire subdivision. She is supportive of this application.

Mr. Deschler stated that, unfortunately, it was not addressed, and four years later, the Board is addressing the same issue. He inquired how many additional feet the City would be permitting above what is allowed.

Mr. Hounshell responded that the request is for an additional 9.1 feet into the minimum 20-foot setback required for patios within this subarea.

Per Ms. Cooper's inquiry, Mr. Hounshell clarified the buildable area and required setbacks.

Ms. Cooper stated that per the site plan information, there is no development behind the home. In fact, a retention pond exists behind the property line. Similar to the 7979 Pleasant Drive case, these properties are located on the outer rim of the PUD.

Mr. Hounshell responded that both properties abut the open reserve area that extends north to south.

Ms. Cooper inquired if the PUD needed to be amended to accommodate the recurring problem and avoid the need for variances for each property.

Mr. Hounshell stated that the HOA could submit an application to PZC requesting an amendment to the Final Development Plan regarding the rear yard setback for the entire development.

Ms. Herbert inquired if the HOA is still under the control of the developer.

Mr. Hounshell responded that development is continuing in this PUD, so he assumes the HOA remains in the developer's control.

Mr. Nigh noted that with the request reviewed at the August 27 meeting, a side yard patio was possible, although undesirable. With this request, a sideyard patio is not feasible.

Mr. Deschler inquired if this "Special Condition" exists for every property in this PUD.

Ms. Cooper responded that it does not.

Mr. Nigh stated that it would not exist for the interior lots, only the lots on the outer edge.

Mr. Deschler stated that with the case reviewed last month, there was a compelling argument regarding misrepresentation leading to a concession from the builder. That homeowner had the only garage of that depth.

Ms. Miller responded that with the previous case, the builder acknowledged that an error had occurred.

Ms. Cooper stated that it appears that the builder has created the problem.

Mr. Deschler responded that this Board is not able to address the problem. It is a Planning and Zoning Commission issue and should have been addressed at the forefront, not by a reactive appeal process.

Ms. Miller concurred.

Ms. Cooper stated that she agrees that an adjustment should be considered for this area, rather than individual homeowners needing to pursue variances. However, she believes the Board should grant this variance request based on the fact that the existing potential for only a 5-foot patio is impractical, and that condition was not accurately communicated for this spec home. Additionally, the proposed patio would not encroach into an adjacent lot.

Mr. Nigh noted that, unlike the case reviewed last month, there is no option for a side yard patio here. Essentially, this homeowner cannot build a patio without a variance being granted, and there is no property behind this lot that would be impacted if the proposed patio were built. This case is very similar to the 2016 request that was granted.

Mr. Deschler stated that if this case were to be tabled, the HOA could pursue an Amended Final Development Plan in the interim. Following that step, the applicant would be able to have his patio. It does not seem appropriate to approve this request and continue to be in the same situation for the next request. He would prefer the application be tabled and the problem be addressed for the entire development.

Mr. Nigh inquired how lengthy of a process that would be.

Ms. Herbert noted an Amended Final Development Plan (AFDP) request must be heard by PZC.

Ms. Cooper stated that the suggestion is that the AFDP process occur before BZA acts upon the case before it.

Mr. Hounshell stated that, as it stands, a variance request is before the Board for consideration. The applicant does not desire to pursue the AFDP, which is a lengthy process that can take months to complete. Before submitting an AFDP application, the HOA first would have to submit the issue for a vote of the homeowners. It is not a simple process. Staff is aware of the issue, however, and will be looking into the best manner to address it for any future requests.

Mr. Nigh stated that if the Board denies this request tonight, we are saying that we find a Special Condition exists only if the homeowner is the second owner of the property. Because this was a spec home and partially built when they purchased it, the situation is similar to being the second owner. Both property owners had the option of not buying the homes, but chose to do so.

Public Comment

There was no public comment.

Ms. Herbert moved, Ms. Cooper seconded to approve a Non-Use (Area) Variance to the Oak Park Development Text – Subarea A: “Park Homes” (III)(C) allowing an encroachment of an uncovered patio within the required 20-foot rear yard setback by approximately 9.1 feet.

Vote: Ms. Miller, no; Mr. Nigh, yes; Ms. Cooper, yes; Ms. Herbert, yes; Mr. Deschler, no.
[Motion approved 3-2.]

COMMUNICATIONS

- Next Meeting Date

Following discussion, member consensus was that the BZA meeting on Thursday, October 29, 2020 be cancelled. Due to the Citywide “trick or treat” event the same evening, there would not be a meeting quorum. If an application is received for which an October hearing is needed, members will be contacted regarding an alternate meeting date; otherwise, the next BZA meeting will be at 6:30 p.m. on November 19, 2020.

ADJOURNMENT

The meeting was adjourned at 7:41 p.m.

Martha Cooper
Chair, Board of Zoning Appeals

Judith K. Beal
Deputy Clerk of Council