

7071 Greenland Place – PUD / Non Use Variance Application

Request

We are requesting approval of the encroachments on the 6' side and 20' setbacks that are part of the Oak Park PUD to be able to continue to use the paver patio, fire pit and paver walkways added to our property 9 years ago. As described below, our builder misrepresented that no such setbacks existed, and the contractor that installed the improvements did not obtain necessary City of Dublin permits or approvals despite his commitment to do so.

Background

My husband and I, Nick McKay, built this home and took possession in August 2010. We had searched extensively for a home or home site for building with a wooded lot in Dublin. We focused our home search on Dublin as we appreciated that the city put a premium on greenspace and preserving nature. We were focused on having a backyard space that was useable and scenic in a city with a strong school district.

Upon finding the Oak Park subdivision, we met multiple times with the builder and its representatives and expressed that we were only interested in a treed/wooded lot for our family. Upon seeing the available lots, we focused on Lot 10 because 2 of the lot's borders were greenspace - Glacier Ridge Metro Park in the southern side of the backyard and a subdivision greenspace on the western side.

Because a useable backyard was critical to us and our family, and we always planned to build a large patio to be able to use and enjoy the setting, we repeatedly asked about any restrictions on the use of the backyard. We were consistently told – by multiple members of the builder's sales team - that we could do anything we wanted with the backyard including installing an inground pool and deck covering the entire backyard. In response to being told we could install a large inground pool, we explained that we simply wanted to install a paver patio and fire pit. We were told, multiple times – and shown examples of large brick outdoor fireplaces - that of course that would be possible, and perfect for the home's setting. During these discussions, we were shown plat plans, subdivision and lot information, none of which had the significant setback requirements described or shown.

When we learned that Lot 10 had been reserved by another family, we informed the builder we would continue our search elsewhere as the lot that had the backyard setting we were focused on was no longer available. The builder called us later to let us know the lot had become available. We began negotiations to build our home and paid a \$15,000 lot premium for Lot 10.

As we decided on the model for our home, we inquired multiple times regarding use restrictions and the lot dimensions so that we could choose a model that maximized our use of the backyard given the small size of the lot. We again asked about restrictions on use of the property, especially since the lot bordered the metropark and greenspace. At our request, we were shown several times (before entering into contract and throughout the negotiation process) the subdivision's plat plan and a drawing of Lot 10, none of which noted any setbacks or no use areas. At no time were shown the PUD, nor informed of its existence.

We would never have returned to Oak Park nor paid a significant lot premium had we known that setback requirements essentially made it impossible to use the backyard space at all (given the small

size of the lot), and certainly not in the way we intended. The builder was fully aware of our intentions for use of the backyard and assured us repeatedly, both verbally and by showing us apparently incomplete and inaccurate documents, that our planned use of the backyard was not only acceptable but encouraged. It is now clear that these were all misrepresentations by the builder, who in 2009 was focused on selling lots in the midst of the financial crisis.

Patio Installation

We closed on our home in August 2010, months later than the promised closing date. We understood delays occur in the building process but were anxious to move in as we were less than 2 weeks away from our daughter's due date. We closed despite being appalled at the state of the backyard – it was a pit of clay packed from the building process, filled with trash, construction debris and stagnant water full of bacteria and mosquitoes. If it weren't for the fact that we were so close to having our second child, we would have refused to close until the unacceptable condition of the backyard was remedied. Given the circumstances, we included the backyard on the extensive list of other "punch list" issues to be addressed post-closing.

Following closing, we cleaned out the trash and construction debris and tried to seed grass in an attempt to address the stagnant water. We had repeated flooding and drainage issues on our property – water draining from our neighbor's yard and standing between our houses, and stagnant water on the packed clay in our backyard. We were forced to fight with the builder to have them install a French drain between our lot and the lot next door to handle the water flowing onto our property from that lot.

Because we always intended to add a patio, were having issues making the backyard useable and were concerned about the stagnant water that remained even after the French drain was installed, we hired a hardscaping and landscaping contractor with over 25 years of experience in Dublin. I followed up on references and recommendations for this contractor from homeowners in Dublin and Upper Arlington. He planned a patio and fire pit, per our desires. To address the packed clay and stagnant water issues, he planned to build the patio to our property line and to add an additional drain. We inquired about HOA and Dublin permits, and he assured us that he was very familiar with Dublin and would handle all city requirements as well as discuss HOA requirements with the builder (who was managing the HOA). Prior to starting the work, he confirmed to us that the builder informed him that there were no restrictions on the proposed improvements, and further assured us that all Dublin requirements were met.

The work was completed in the fall of 2011 – at a significant cost that we felt was necessary under the circumstances to achieve the intended purpose of our property and resolve the issues left by the builder. We began using and enjoying the patio and improvements, relieved that we had the useable backyard we intended and paid a premium for, and no longer had stagnant water and the resulting excessive mosquitoes in our backyard.

Notice from the City of Dublin

In December 2011, we received a notice from the City that we were not in compliance with Zoning requirements. We contacted the City and our contractor to discuss the situation as we had understood that all necessary permits and all City of Dublin standards had been met. 2 representatives of the City came to our house and met with us and our contractor. We explained the situation, as outlined above,

and our contractor confirmed that he thought all Dublin and HOA/subdivision requirements were met. He was informed by the City representatives that the requirements had changed from his previous understanding. Our contractor acknowledged it was his responsibility to obtain the permits and committed to work with the City to resolve. We finished the conversation with the understanding that our contractor would obtain the necessary permits and if anything further was needed from us, we would be contacted. Our contractor prepared the permit application and we signed as homeowners, again confirming that if anything further was needed, we would be informed.

Thereafter, our contractor sold his business. He informed us of that sale and that he would let us know if anything was needed for our backyard. Prior to the sale of his business – and well after he filed for the permit in December 2011 – the contractor’s staff was at our home replacing trees and adjusting the hardscape as required by our contract. At no point during these visits were we informed that the permit filed in December 2011 was denied or that any further action was needed by us.

For 9 years, until the notice received from the City in October 2020, we heard nothing further and reasonably assumed the situation was resolved based on the understanding reached with the City and our contractor during the meeting at our home in 2011, as outlined above.

Conclusion

We have been using and enjoying our patio and backyard improvements for 9 years, which was our expressed intent and planned use of the property - all of which was made very clear to our builder. We did our diligence with both the builder and contractor to confirm that we would be able to use this property as intended, and paid a premium to ensure we had purchased a lot that met our needs. However, as outlined above, our diligence was responded to with misrepresentations - both verbal and in documentation - by our builder and mistakes and omissions by our contractor.

Rather than detracting from the character of our neighborhood or creating a substantial adverse effect to the property or neighborhood, the patio has significantly improved the appearance and use of our backyard and the view from the greenspace areas. Our lot is unique with a location bordered by 2 protected areas and we have enhanced, rather than detracted from these areas. Removal of the patio would make our backyard unusable and return it to the previous conditions of stagnant water and packed clay in which nothing can grow. Further, removal of a professionally installed paver patio would be difficult, wasteful and disruptive to the ecosystem that has recovered in our backyard from the mess left by our builder. Numerous animals including blue tailed salamanders, leopard frogs, birds, owls, red tail hawks and red squirrels are now prevalent in the backyard, rather than stagnant water and mosquitoes.

Rather than conferring a special privilege on us, removal of the patio will deprive us of the rights and expectations commonly enjoyed by homeowners in Dublin – the basic use of a patio in one’s backyard. That seemingly basic use of a backyard was not just assumed but specifically bargained for by us in the purchase of our home. Though our specific situation may be unique, we understand that other residences on our street are also impacted by the significant setback requirements and would prefer that this situation be addressed for the neighborhood. However, we felt it necessary to apply for a variance to ensure that the situation is finally addressed, either for us individually, or the neighborhood as a whole.