



## **MEETING MINUTES**

### **Board of Zoning Appeals**

**Thursday, November 19, 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 November 19 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  
[Ms. Miller departed meeting at 7:00 p.m. due to technical difficulties.]

Staff present: Ms. Martin, Mr. Hounshell, Ms. Noble, Mr. Boggs

#### **ACCEPTANCE OF DOCUMENTS AND APPROVAL OF MINUTES**

Ms. Herbert moved, Mr. Deschler seconded to accept the documents into the record and approve the September 24, 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)

#### **PROPOSED BZA MEETING DATES FOR MARCH 2021-FEBRUARY 2022**

Ms. Herbert moved, Mr. Deschler seconded approval of the proposed BZA meeting dates for March 2021 through February 2022.

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

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.

## **CASES:**

### **1. Shewring Residence, 7740 Fulmar Drive, 20-157V, Non-Use (Area) Variance**

A request for approval of a Non-Use (Area) Variance to Zoning Code Section 153.022(C)(4) allowing an encroachment of a sunroom into the rear yard setback by approximately 7 feet–2 inches.

#### **Staff Report**

Mr. Hounshell stated that this is an application for review and approval of a Non-Use (Area) Variance under the provisions of Zoning Code Section 153.231(H) to allow a sunroom to encroach into the rear yard setback. The site is located east of Fulmar Drive, approximately 100 feet south of the intersection with Enke Court, within the Hawk's Nest subdivision, which is an R-3, Suburban Residential District zoning. The neighborhood is located west of Muirfield Drive, south of Brand Road, and east of Avery Road. The Hawk's Nest subdivision was accepted by City Council in 1999, and this particular lot was developed in 2000. There is an approved patio located to the rear of the home. The applicant is requesting a Variance to the Dublin Zoning Code Section 153.022(C)(4) to permit encroachment within the required rear yard setback for the construction of an approximately 140-square-foot sunroom addition to the rear of the existing home. The home has an existing patio that was approved through a Certificate of Zoning Plan approval in 2002. The sunroom is proposed where a portion of the existing patio is located. The rear yard setback per the R-3 zoning is required to be 25 percent of the lot depth, not to exceed 50 feet. In cases where the two side property lines are not the same length, the average of two distances is multiplied by 25 percent to determine the required rear yard setback. Due to this, the property has a rear yard setback of approximately 32 feet-2 inches. The proposed sunroom addition encroaches approximately 7 feet-2 inches into the rear yard setback. The applicant has provided a statement explaining the reason for the request. The applicants were not the original homeowners of the site and were not involved in the placement of the structure on the site. There are some irregularities regarding the rear lot line. The applicant has requested the Variance due to the limited space at the rear of the site for additions to the home. The applicant has stated that the addition would not be visible to the two adjacent properties to the rear of the home due to a line of trees along the rear property line. The applicant also states that due to the orientation of the rear lot line, the rear yard setback occupies a majority of their rear yard, limiting any additions to the building within the permitted space. Staff has reviewed the application against the applicable criteria and recommends approval of the Variance with no conditions.

#### **Applicant Presentation**

Steve Foisy, Project Manager and Ken Adams, General Manager, JSB Home Solutions, Columbus, Ohio, stated that they are present to represent the homeowners and will be happy to answer any questions..

#### **Public Comment**

There were no public comments.

### **Board Questions/Discussion**

Mr. Deschler inquired if the homeowner had obtained approval from any adjacent homeowners. Mr. Hounshell clarified that, per the application process, staff notified all homeowners located within 150 feet of the site. No comments were received.

Mr. Deschler inquired if the applicant provided any statements from the adjacent homeowners confirming that they have no objections.

Mr. Hounshell responded that the applicant did not provide said statements, but that is not a requirement of the application. Perhaps the contractor has additional information. Mr. Foisy stated that they have not been in contact with adjacent property owners. As part of the homeowner's pursuit of a building permit, which was deferred in need of the Variance approval, he may have had conversations with the adjacent property owners, but their process does not require that.

Ms. Bryan inquired if the required setbacks are met for the proposed project. Mr. Hounshell responded affirmatively.

Board members had no additional questions.

Ms. Herbert moved, Mr. Nigh seconded approval of the Non-Use Variance to the Dublin Zoning Code Section 153.022(C)(4) to encroach within the required rear yard setback by approximately 7 feet–2 inches.

Vote: Mr. Nigh, yes; Mr. Deschler, yes; Ms. Herbert, yes; Ms. Cooper, yes; Ms. Miller, yes.  
[Motion passed 5-0]

### **2. Gunda Residence, 7055 Greenland Place, 20-180V, Non-Use (Area) Variance**

A request for approval of a Non-Use (Area) Variance to the Oak Park Development Text – Subarea A: "Park Homes" (III)(C) allowing an encroachment of an existing uncovered patio into the required 20-foot rear yard setback by approximately 2 feet-7 inches.

### **Staff Report**

Mr. Hounshell stated that this is an application for review and approval of a Non-Use (Area) Variance under the provisions of Zoning Code Section 153.231(H) to allow an uncovered patio to encroach into the rear yard setback. The site is located south of Greenland Place, approximately 125 feet west of the intersection with Oak Meadow Drive within the Oak Park Planned Unit Development (PUD), which was approved by City Council in August 2007. The neighborhood is located west of Hyland-Croy Road, southwest of Dublin Jerome High School. This property is adjacent to a reserve area south of the property, which is maintained by the City of Dublin. The reserve provides a buffer between Oak Park and Glacier Ridge Metro Park. The applicant has an approximately 605-square-foot patio located to the rear (south) 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 existing patio encroaches into the rear yard setback by an additional 2 feet–7 inches. The applicant has provided a statement explaining the reason for the request for a Variance. The applicant bought this home in May 2018, after the previous owner had installed the non-conforming patio. The applicant has made no modifications to the patio since becoming the homeowner and was unaware of the noncompliant nature of the patio until they received notification from City staff in October. The applicant has stated that since he was not the original homeowner, he was not involved in the placement of the building on the site. The placement limited the space for outdoor amenities to the rear of the home, due to the three-car garage that pushes the building to the rear of the lot. Staff has reviewed the application against the applicable criteria and recommends approval of the Variance request with no conditions.

### **Board Questions for Staff**

Mr. Nigh stated that Mr. Hounshell has indicated that an individual brought the noncompliant nature of the patio to the attention of the City's Code Enforcement officer. Was there a reason for their concern and subsequent report?

Mr. Hounshell responded that it was an anonymous report by an individual interested in constructing a patio within the subdivision. They reported that there were patios on the south end of Oak Park that were noncompliant. Code Enforcement researched the situation, and determined that four properties were noncompliant. Staff has contacted the property owners and advised them to come into compliance and obtain the required permits or remove the patios.

Mr. Nigh inquired the anticipation regarding the other three properties.

Mr. Hounshell responded that one of the three properties is also on tonight's agenda for consideration. An application has been received for one of the other properties; currently, the other property owner has not submitted an application.

Mr. Nigh inquired the reason staff considers this property to have a "special condition unique to this property," if there are other properties with the same issue.

Mr. Hounshell stated that the special condition for this property is the three-car garage and the open reserve area to the south between the subdivision and Glacier Ridge Metro Park. The "recurrent in nature" condition is reflective of the fact that other patios in this development have also needed to obtain Variances for their patios, as has been seen in previous BZA meetings. Staff has notified the developer of this recurrent issue with the hope that it can be avoided in the future.

Mr. Nigh inquired if the individual who notified the City of the noncompliant nature of these properties has been granted a permit for their construction.

Mr. Hounshell responded that they have received approval for a patio.

### **Applicant Presentation**

Rajendra Gunda, 7055 Greenland Place, Dublin, OH, stated that, as Mr. Hounshell explained, when he purchased this property in 2018, the existing patio was in place. Since the City made

him aware a few weeks ago of the encroachment by 2 feet-7 inches, he has pursued an attempt to become compliant.

### **Public Comment**

There were no public comments regarding the case.

### **Board Discussion**

Mr. Nigh stated that there is no residence behind this property, and this applicant took no action to create the issue. The applicable criteria has been met. He would have no objection. There was no further discussion.

Ms. Herbert moved, Mr. Nigh seconded approval of the Non-Use Variance to the Oak Park Development Text – Subarea A: “Park Homes” (III)(C) to permit encroachment within the required 20-foot rear yard setback for uncovered patios by approximately 2 feet–7 inches.

Vote: Mr. Nigh, yes; Mr. Deschler, yes; Ms. Herbert, yes; Ms. Cooper, yes. Ms. Miller abstained due to technical (audio) difficulties.

[Motion passed 4-0 with one abstention.]

[As the issue could not be resolved, Ms. Miller subsequently left meeting.]

### **3. Duncan Residence, 8831 Locherbie Court, 20-186V, Non-Use (Area) Variance**

A request for approval of a Variance to Zoning Code Section 153.231(H) to allow a swimming spa to encroach 4 feet into the 10-foot required setback for a swimming spa from the principal structure.

#### **Staff Presentation**

Mr. Hounshell stated that this is a request for review and approval of a Non-Use (Area) Variance under the provisions of Zoning Code Section 153.231(H) to allow a Variance to the principal structure setback for a proposed swimming spa. The site is located north of Locherbie Court, approximately 750 southwest of the intersection with Muirfield Drive, and zoned, PUD, Planned Unit Development – Muirfield Village. The Muirfield Village subdivision was approved in 1970 and is the largest development within the City. This lot was developed in 1986 and is located within Section 14 of the subdivision. The site is adjacent to The Country Club at Muirfield Village, which is located to the rear (north) of the site. There is a 50-foot no build zone to the rear of the property due to the proximity of the golf course. The applicant is requesting a Variance to Zoning Code Section 153.074(C)(3) to permit a swimming pool to encroach the required 10-foot distance between the principal structure and the edge of the pool by 4 feet. The applicant is proposing a new 135-square-foot swimming spa located within a proposed patio terrace. The water surface of the swimming spa would be 6 feet from the principal structure, encroaching 4 feet into the required 10-foot distance between the water surface of the swimming spa and principal structure. The location of the proposed swimming spa does meet the minimum side yard setback of 7 feet-6 inches. A swimming spa has many features that relate to a hot tub. Per Zoning Code, “Hot tubs

are permitted accessory structures, and may be either below or above grade, provided that they do not exceed 100 square feet in total water surface area, or depth or height as measured from finished grade." Since the proposed swimming spa exceeds the 100-square-foot maximum water surface area, the spa is considered under the requirements of a residential swimming pool. The applicant has provided a statement explaining the reason for the request. The location of the house being adjacent to the Country Club at Muirfield Village played a large factor in determining the location of the swimming spa. The applicant states that the location offers more privacy and better proximity to the house, while providing a safer location from the golf course and any potential stray golf balls that may land on the property. The applicant also states that the swimming spa is for water therapy and the residents' own relaxation. The applicant is requesting a Variance from the principal structure setback. Staff has reviewed the application against the applicable criteria and recommends approval with no conditions.

Ms. Herbert requested clarification of the statement under the "Applicant Action/Inaction" criterion that, "The development and innovation of outdoor amenities in recent years, the consideration for an amenity of this stature would not have been possible when the applicant originally purchased the site. The ability to add an outdoor amenity of this kind is only possible through a setback Variance due to the previously stated conditions."

Mr. Hounshell responded that these types of accessories and amenities were not available when the applicant developed this site in 1986, and due to the extensive amount of time the homeowner has resided on this site, staff determined that the criterion was met.

### **Applicant Presentation**

Gary Duncan, 8831 Locherbie Court, Dublin, Ohio stated that this is their second addition to the house. They attempt to abide by any rules, and their architect, Stock and Stone, has extensive experience in Dublin and in Muirfield Village. They originally placed the pool even closer to the house, but they were unaware of the required 10-foot setback from the house. Because of the shallowness of the pool and the crawlspace of the existing home, the architect did not believe there was an issue with it being located closer. The Muirfield HOA has given their approval for the proposed project.

### **Public Comment**

There were no public comments regarding the case.

### **Board Discussion**

Board members indicated that they had no objection to the requested Variance.

Ms. Herbert moved, Mr. Nigh seconded approval of the Non-Use Variance to Zoning Code Section 153.074(C)(3) to encroach 4 feet into the 10-foot required distance between the swimming spa and principal structure.

Vote: Ms. Cooper, yes; Mr. Deschler, yes; Ms. Herbert, yes; Ms. Herbert, yes.  
[Motion passed 4-0]

Mr. Deschler recused himself from discussion of the following case.

#### **4. Deschler Residence, 7023 Greenland Place, 20-190V, Non-Use (Area) Variance**

A request for approval of a Non-Use (Area) Variance to the Oak Park Development Text – Subarea A: “Park Homes” (III)(C) allowing an encroachment of an existing at-grade patio into the required 20-foot rear yard setback by approximately 5 feet-6 inches.

#### **Staff Presentation**

Mr. Hounshell stated that this is a request for a Variance under the provisions of Zoning Code Section 153.231(H) to allow an existing uncovered patio to encroach into the rear yard setback. The site is located east on Greenland Place, approximately 100 feet south of the intersection with Primrose Court within the Oak Park subdivision, approved by Council in 2007 and zoned PUD, Planned Unit Development. Oak Park is located west of Hyland-Croy Road and southwest of Dublin Jerome High School. The property at 7023 Greenland Place, located on Lot 4 of the subdivision, is adjacent to a reserve area west of the property, which is maintained by the City of Dublin. In 2013, the applicant contracted a landscape architect to install the patio, but the landscape architect did not obtain the appropriate permits to install the patio. Consequently, the patio is not approved and is non-compliant with the regulations of the Oak Park Development Text. Code Enforcement staff was notified in September 2020 of the non-compliant nature of this patio, as well as three other patios throughout the development. In October, the applicant obtained an encroachment agreement from the City of Dublin, as the existing patio extends into a 20-foot drainage easement along the rear of the property. A Variance is required; therefore, the applicant is requesting approval of an approximately 5-foot 6-inch Variance into the rear setback for their existing stone patio. The rear yard setback within the Oak Park Development Text states that Park Homes shall maintain a 25-foot rear yard setback; however, at-grade patios are permitted to encroach 5 feet into the required setback per the Dublin Zoning Code. This allows for a minimum 20-foot setback for patios within this development. The patio is approximately 14 feet–6 inches from the rear property line. The applicant has provided a statement that when they contracted with a landscape architect in 2013, it was their understanding that the contractor had followed all necessary requirements and obtained all applicable permits. It was not until they received a letter from the City of Dublin in October 2020, that the applicant was informed of their non-conforming stone patio. Staff has worked with the applicant to address the noncompliance issue, including their request before the Board for a Variance. This Variance would allow the applicant to maintain the patio as is. As noted, staff has been in communication with the developer of these homes, as well as the City Building Standards Department, to address issues with future applications for patios and for new builds within this development. This is anticipated to eliminate the need for future Variance requests of a similar nature. Staff has reviewed the application against the applicable criteria and recommends approval with no conditions.

#### **Public Comment**

Prasad Vempati, 7031 Greenland Place, Dublin, Ohio:

“I am a Dublin resident and live next to the Deschler family on Greenland Place. I understand they have a Variance request for their patio. They have a wonderful patio with very good landscaping around it, one of the best patios I have seen. As their neighbor, I am very supportive of their request for a Variance for this patio, which provides a wonderful view from

my home. I would like to request the Board of Zoning Appeals to consider approving this Variance request.”

### **Board Questions/Discussion**

Mr. Nigh inquired if this application is similar to the previous application in this subdivision, other than there being a different open space to the rear.

Mr. Hounshell responded that the application is similar to the Gunda application, other than the fact that the applicants are the original homeowners of the site, and it was their contractor who built the patio.

Ms. Cooper stated that this request is similar to a previous application reviewed by the Board where the homeowner had built the patio.

Mr. Hounshell responded that there were previous applications, but the last two, with which he was involved, were not for existing patios. However, the patio locations have been similar.

Ms. Cooper stated that the difference between this application and the previous one to which she referred is that the previous owner was requesting approval to build a patio that would encroach 5 feet into the rear setback. In this case, they have already built the patio, unaware that it was being constructed 5 feet-6 inches into the setback. The Board is requested to approve a Variance so that the homeowners do not have to remove it. The City has already signed the easement portion, and she is inclined to support this request.

Ms. Herbert stated that she is also supportive. The Board will continue to see these requests for Oak Park.

Mr. Nigh indicated that he is supportive, as well. Having reviewed similar applications, the Board is becoming familiar with these requests for this subdivision. It appears there would be three votes to approve the application.

Ms. Cooper inquired if the applicant would like the Board to proceed to a vote, or if they would prefer their application be deferred to the next meeting at which the absent BZA member is anticipated to be present. Would the applicant like to make any comments?

### **Applicant Presentation**

Rosemarie Deschler, 7023 Greenland Place, Dublin, Ohio stated that they would like the Board to proceed with a vote tonight. She thanked three City staff members who provided assistance to them: Mike Hettler, Planning; Carlos Gonzales, Engineering; and Zachary Hounshell, Planning. She and her husband contracted with Myers Landscaping to have the patio and surrounding landscaping built. Construction occurred in 2013, and it was their understanding that the architect had followed all the necessary requirements to do so. It was not until they received the 10-1-20 letter from Code Enforcement that they were informed otherwise. They have the support of their three adjoining neighbors, who have sent letters of support for approval of the nonuse Variance. They have responded to the City’s letter and believe they have met all the criteria for approval. They request the Board to consider all the statements and supporting documents provided in rendering their decision.

Board members had no further comments.

Ms. Herbert moved, Mr. Nigh seconded approval of the Non-Use Variance to the Oak Park Development Text – Subarea A: “Park Homes” (III)(C) to permit encroachment within the required 20-foot rear yard setback for uncovered patios by approximately 5 feet – 6 inches.

Vote: Ms. Cooper, yes; Mr. Nigh, yes; Ms. Herbert, yes.  
[Motion passed 3-0. Mr. Deschler abstained.]

### **COMMUNICATIONS**

The next BZA meeting will be at 6:30 p.m. on December 17, 2020.

### **ADJOURNMENT**

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

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Chair, Board of Zoning Appeals

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Deputy Clerk of Council