



MEETING MINUTES

Board of Zoning Appeals

Thursday, February 25, 2021

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 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."

ROLL CALL

Board Members present: Mr. Deschler, Mr. Nigh, Ms. Miller, Ms. Cooper
Board Members absent: Ms. Herbert [excused]
Staff present: Ms. Noble, Mr. Hounshell

ACCEPTANCE OF DOCUMENTS AND APPROVAL OF MINUTES

Mr. Deschler moved, Ms. Miller seconded acceptance of the documents into the record and approval of the January 28, 2021 meeting minutes

Vote on the motion: Ms. Cooper, yes; Mr. Deschler, yes; Mr. Nigh, yes; Ms. Miller, yes.
[Motion carried 4-0.]

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

CASES

1. Haas Residence, 7099 Old Prose Court, 21-001V, Non-Use (Area) Variance

A request for approval of a Non-Use (Area) Variance to Zoning Code Section 153.023(C)(4) to permit a swimming pool to encroach 2 feet into a required 28-foot rear yard setback, and a second Variance to Zoning Code Section 153.074(C)(3) to permit a swimming pool to encroach 3 feet, 1 inch into the required 10-foot distance from the principal structure to the edge of the swimming pool. The 0.28-

acre site, zoned Suburban Residential District, is located west of Old Prose Court, approximately 150 feet northwest of the intersection with Fitzgerald Road.

Staff Presentation

Ms. Noble stated that this request is for a Non-Use (Area) Variance to allow a swimming pool to encroach two feet into the 28-foot required rear yard setback and for a second Non-Use (Area) Variance to allow a swimming pool to encroach three feet, one inch into the ten-foot minimum separation between a primary structure and an in-ground swimming pool. This application originally was scheduled for the January 28 meeting. Due to the complexities of the case, it was tabled to permit further work on the application; however, the decision was made to proceed with the original application. The site is a 0.28-acre, irregularly shaped tract of land located on the west side of Old Prose Court, approximately 150 feet northwest of the intersection with Fitzgerald Road. The existing home is located on a cul-de-sac within the Hemmingway Village subdivision, zoned R-4, Suburban Residential District, located west of Coffman Road and north of Post Road. The site contains a concrete, screened patio with circular seating and an outdoor fireplace. The applicant is proposing to build a pool approximately 648 square feet in size, which would encroach into the rear yard setback by approximately 2 feet and would encroach into the required 10-foot separation from the house by approximately 3 feet 1 inches. The applicant has submitted a statement that the proposed pool location is due to: (1) the irregularly shaped lot, and (2) no other size is available for this pool. Staff believes the primary restraining factor is the existing screened patio and fireplace, which were constructed by the applicant. Staff has reviewed the application against the applicable criteria and recommends disapproval of both variances. Because in-ground swimming pools typically come in a variety of shapes and sizes, staff believes there may be other options that would meet the required setbacks.

Applicant Presentation

Brian Lorenz, Contractor, 4111 Village Club Drive, Powell, OH, stated he and the property owners have been working with staff for three or four months attempting to identify the most feasible layout for the pool. The irregular lot layout and chimney extension create a hardship. The homeowners' greatest concern with the pool location is family safety. The children's grandmother, who is often at the house watching them, has some mobility issues. The proposed pool placement is the minimum necessity possible. The pool was selected not only for entertainment purposes but to meet the therapy needs of the grandmother, as well. When their application was originally submitted, their understanding was that the pool was available in only one size. They have continued to look at pool size options and are able to modify the pool size, thereby alleviating the setback issue. The primary hardship is the proximity of the pool edge to the chimney.

Board Questions/Discussion

Mr. Deschler inquired how the chimney presented a safety factor.

Sarah Haas, 7099 Old Prose Court, Dublin, OH responded that the chimney is built onto the screened-in patio and extends from the patio wall. There are only two feet between the chimney and the pool, which would be neither aesthetic nor safe for the children, their grandmother, or any adults, next to water.

Mr. Lorenz responded that it would create a site visibility issue, as well. It is essential to have a greater distance between the pool edge and the chimney from a health, safety and welfare standpoint.

Mr. Deschler stated that, given that a pool of less width is available, the variance related to the distance from the chimney would be the primary focus. He noted that the difficulty with meeting one of the criteria for that variance is that the covered porch construction was by the homeowner.

Mr. Nigh agreed that is the difficulty, particularly given how the Board has ruled on past cases where the issue was created by the homeowner, albeit unintentionally. This cul-de-sac lot is not unique; the shape of the lot is similar to the other lots on that street. He agrees that 2 feet between the chimney and pool is not enough; however, the difficulty is finding a solution given the constraining parameters.

Ms. Noble noted that a 10-foot separation is required between the primary structure and the pool. Typically, there is an ingress/egress from the exterior elevation nearest the pool. However, unique to this case, there is no egress on that elevation; that doorway is located on the side elevation.

Ms. Miller stated that if safety were the main concern, the Board would not want to grant a variance to safety requirements.

Ms. Noble responded that the distance requirement is between the primary structure and the pool. The side entrance is more than 10 feet from the pool; therefore, there would be sufficient time to respond. The Building Department has indicated that, as an additional safety measure, the Board could require a sound device on the back door. It may be less difficult to meet the intent of the criteria for the separation variance than to meet the criteria for the setback variance.

Mr. Deschler referred to the site plan and inquired what distance the proposed pool is required to be from the covered porch.

Ms. Noble responded that a separation of 10 feet from the rear of the covered porch to the edge of the pool is required; however, as currently proposed, only a 7-foot separation is provided.

Ms. Cooper stated that the 7-foot measurement is from the pool to the corner of the structure; it is not from the corner of the fireplace.

Ms. Noble responded affirmatively.

Ms. Cooper inquired if the existing chimney would be the closest point from which to measure.

Ms. Noble stated that is correct, but Code language indicates it is measured from the primary structure.

Ms. Cooper inquired if the covered porch and fireplace were considered part of the primary structure.

Ms. Noble responded that the porch is considered part of the primary structure, because it has a foundation and is permanently affixed.

Ms. Miller inquired if we are saying that the chimney is the appropriate point from which to measure, not the wall of the covered porch. If so, that further reduces the separation space.

Ms. Noble stated that there is no egress from the exterior of the covered porch. The intent of the regulation is to ensure a 10-foot separation from an egress and the pool edge.

Mr. Deschler stated that the egress is located on the west side of the covered porch, near the main structure, which is more than 10 feet from the pool.

Ms. Noble stated that is correct, which therefore, could be considered to meet the intent of the regulation. As written, however, there must be a 10-foot separation from the most exterior wall of the structure.

Ms. Miller expressed a concern about setting a precedent for allowing large, covered porches to change how the Board interprets the regulations.

Mr. Deschler stated that the variance could be considered due to the location of the door.

Ms. Cooper observed that the Board previously has approved a variance to the pool-patio separation requirement.

Mr. Deschler stated that the previous variance approval was for a home in the Riviera subdivision, and it was, similarly, separation of less than 10 feet from a pool to a covered porch with a foundation. If the Board were to grant a variance to the separation requirement for this case, what width must the pool be to comply with the rear setback requirement?

Mr. Lorenz responded that the application was for a pool 18 feet in width, but the applicant is willing to reduce the pool to a 16-foot width, thereby eliminating any encroachment into the rear yard setback.

Mr. Nigh stated that since safety is a greater concern, the preferred solution could be to permit a two-foot encroachment into the rear yard setback, increasing the separation from the pool to the house. Ms. Noble responded that solution was discussed; however, the application must meet the "special circumstances" criteria. Unfortunately, the distance issue is due to an action of the homeowners, who constructed the enclosed porch.

Ms. Cooper noted that a 28-foot rear setback is significant, particularly in view of the fact that this property is entirely fenced in.

Public Comment

No public comments were received on the case.

Ms. Cooper inquired if a 28-foot rear setback was a community-wide requirement.

Ms. Noble responded that in the Hemmingway Village subdivision, the setback is calculated as a percentage of the rear yard.

Ms. Cooper noted that she has more difficulty with the variance related to the rear setback than the variance related to the required separation between the home and the pool, as the latter could meet the hardship criteria, due to the existing covered porch.

Mr. Deschler stated that he also has fewer concerns with the separation variance due to the location of the egress, which is a sufficient distance from the pool. It would be a greater issue if the door was located where the fireplace is located. He inquired what the applicant's response would be to Mr. Nigh's suggestion of permitting a 16-foot pool to encroach two feet into the setback.

Ms. Hass responded that she would much prefer that solution. It is what they had wanted initially. 28 feet is a significant amount of space, and she would prefer the pool be located further back within their yard and further away from the house. It would address the safety concern and would be a more aesthetic solution.

Mr. Nigh noted that while he prefers that solution, the difficulty is that the criteria is not met for that variance.

Mr. Deschler inquired if there had been confirmation of the setback ratio from the homeowners' association.

Mr. Hounshell responded that the requirement within this subdivision is that setbacks be 20% of the average of the two side yards. He did verify that the 28-foot setback is correct.

Mr. Nigh inquired if the pool was available in a 14-foot width, which would resolve both issues.

Ms. Haas responded that she was unsure.

Ms. Cooper noted that would be nearly a 20% reduction in the pool width, which is significant.

Ms. Miller noted that she would be more supportive of an encroachment of two feet into the rear setback, if there were supportive comments from the neighbors.

Ms. Cooper responded that a large, public notice sign has been located in front of the property since the previous anticipated hearing date, so the fact that no public comments were received is not due to unawareness. In addition, there is a privacy fence around the entire yard, so the entire 28-foot setback is located within the privacy fence.

Ms. Haas stated that because their entire yard is fenced in, the setbacks have no impact on their neighbors.

Ms. Cooper inquired if the privacy fence was located on the lot line.

Mr. Lorenz responded that it is located on the lot line.

Mr. Nigh stated that when no public comments are received, he is inclined to interpret that as no neighbor is opposed to the proposed project. In this case, he would prefer to locate the pool further back. The problem is meeting the three criteria.

Mr. Deschler inquired if there is a requirement to notify adjacent property owners of a pending public hearing.

Mr. Hounshell responded that there is a requirement that all neighbors within 150 feet of the property must receive written notification. In this case, the neighbors have been notified twice, before the previous anticipated meeting date and for this meeting.

Mr. Lorenz stated that the applicants have spoken to the neighbors, and no one voiced any opposition. He believes any notice requirements have been met.

Mr. Deschler stated that it would be preferable to permit a 16-foot pool to encroach into the setback, but that criteria is not met. However, he is supportive of permitting a smaller, 16-foot pool to encroach in the 10-foot required separation from the primary structure, on the basis that the intent of the Code is satisfied due to the location of the egress. Because there is greater than a 10-foot separation from the closest egress, he has no position on requiring a sounding device.

Ms. Cooper stated that she also is in favor of granting the variance request to extend 3 feet, 1 inch into the required separation. The homeowners' insurance company would dictate what safety devices would be required on the door. Additionally, the property is entirely fenced in.

Ms. Miller stated that the application does not meet the criteria. The Board can either approve it without the criteria being met, which encourages more variance requests, or require the applicant to reduce the pool width and meet the criteria. She agrees that there is a 10-foot separation between the pool edge and the closest egress, so could consider that variance with the understanding that a pool of less width is installed.

Mr. Nigh inquired what the distance would be between the chimney and the edge of the pool. He assumes that the edge of a 16-foot wide pool would remain in the same location, which would not change the distance between the pool and house.

Mr. Lorenz responded that there would be a separation between the chimney and pool edge of 2.5 to 3 feet.

Mr. Nigh stated that distance would be almost too small for a person to walk through.

Mr. Deschler inquired if that is the distance with or without the variance.

Mr. Nigh stated that the variance does not move the location of the pool; it permits it to be located in the proposed location, which would result in a very narrow walkway between the chimney and the pool. That is a safety concern – one would have to walk sideways through that space.

Mr. Lorenz noted that it would be the approximate width of a sidewalk.

Mr. Nigh inquired if the Code provides any safety regulations in regard to that.

Ms. Noble responded that she had contacted the City's Building Codes division to obtain their input. They indicated that there were no other safety concerns than that related to pedestrian movement.

Mr. Nigh stated that he would be able to support the separation variance with the understanding that a pool of the smaller width would be substituted for the proposed 18-foot wide pool.

Mr. Nigh moved, Mr. Deschler seconded disapproval of a Non-Use (Area) Variance to Zoning Code Section 153.023(C)(4) to permit a swimming pool to encroach 2 feet into a required 28-foot rear yard setback.

Vote on the motion: Ms. Cooper, yes; Mr. Deschler, yes; Ms. Miller, yes; Mr. Nigh, yes.
[Motion to disapprove carried 4-0.]

Mr. Deschler moved, Ms. Miller seconded approval of a Variance to Zoning Code Section 153.074(C)(3) to permit a swimming pool encroachment of 3 feet and 1 inch into the Minimum Separation Requirement of ten feet from the primary structure with the following condition:

- 1) That a pool with a width of 16 feet replace the proposed 18-foot wide pool.

Vote on the motion: Mr. Nigh, yes; Ms. Miller, yes; Mr. Deschler, yes; Ms. Cooper, yes.
[Motion carried 4-0]

COMMUNICATIONS

- The next BZA meeting is scheduled for 6:30 p.m., Thursday, March 25, 2021. Due to term limits, Chair Martha Cooper noted that the March meeting would be her final BZA meeting.

ADJOURNMENT

The meeting was adjourned at 7:40 p.m.

Martha Cooper

Chair, Board of Zoning Appeals

Judith K. Beal

Assistant Clerk of Council