



## MEETING MINUTES

### Board of Zoning Appeals

Thursday, April 29, 2021

#### CALL TO ORDER

Mr. Deschler 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.

#### OATH OF OFFICE

Vice Mayor De Rosa administered the Oaths of Office to Board of Zoning Appeals (BZA) reappointee, Jason Deschler and new BZA appointee, Robin Clower.

#### ROLL CALL

Board Members present: Mr. Deschler, Mr. Nigh, Ms. Miller, Ms. Herbert, Mr. Clower  
Staff present: Ms. Noble, Mr. Hounshell, Mr. Boggs

#### ELECTION OF OFFICERS

Ms. Herbert moved, Ms. Miller seconded to elect Jason Deschler to serve a BZA Chair and Joe Nigh to serve as Vice Chair for April 2021 through March 2023.

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

Mr. Herbert moved, Ms. Miller seconded to elect Jason Deschler to serve as BZA Chair for April 2021 through March 2023.

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

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

Ms. Herbert moved, Ms. Miller seconded acceptance of the documents into the record and approval of the March 25, 2021 meeting minutes.

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

[Motion carried 5-0.]

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

## **CASES**

### **1. Beckman Residence at 7047 Greenland Place, 20-219V, Non-Use (Area) Variance**

A request for a Non-Use (Area) Variance to allow an at-grade patio to encroach 5 feet - 3 inches into the 20-foot rear yard setback for a patio on the 0.24-acre site, located south of Greenland Place, approximately 375 feet east of the intersection with Pleasant Drive, and zoned PUD, Planned Unit Development – Oak Park.

### **Staff Presentation**

Mr. Hounshell stated that this a request for review and approval of a Non-Use (Area) Variance for the Beckman Residence, 7047 Greenland Place. The site is located within the Oak Park Development, which is a PUD in the northwest portion of the City. The subdivision is located at the intersection of Hyland-Croy Road and Brand Road and is adjacent to the Dublin Jerome High School. The site is also adjacent to an open space reserve to the south.

### History

The applicant contracted a landscape architect to install the patio on the site in 2012. City records reflect that the landscape architect submitted an application for a Certificate of Zoning Plan approval to replace the previous patio on the site. However, based on research of Planning and Building Department staffs, City records do not contain a permit or site plan reflecting what was approved in 2012. In September 2020, staff was notified of the non-compliant nature of this patio, as well as three other patios throughout the development. As installed, this patio is non-compliant with the regulations of the Oak Park Development Text; therefore, the location of the patio requires approval of a variance.

### Proposal

The applicant is requesting a Variance to the Oak Park Development Text – Subarea A: “Park Homes” (III)(C) to encroach within the required 20-foot rear yard setback for an uncovered patio by approximately 5 feet – 4 inches. The applicant statement indicates that when they contracted with a landscape architect in 2012, 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 illegal patio. The applicant has stated that the location of the patio was approved by the Oak Park development in 2012, and the location does not impair the green space to the south of the property. Staff has reviewed the application against the applicable criteria and recommends approval of the waiver request.

### **Board Questions**

Ms. Herbert inquired, if City records indicate an application for a permit was made, could the associated site plan have been deleted due to the City's records retention policy?

Mr. Hounshell responded that at the time the landscaper applied and received approval of a permit, Building Standards handled the process. Today, that permit process is handled by the Planning Department. Site plans have been required with any application, however, but no record can be found.

Mr. Nigh requested confirmation that the permit was approved, even though we cannot verify the exact patio dimensions that were approved.

Mr. Hounshell responded that is correct.

Mr. Clower inquired if the patio encroachment into the rear yard setback is based on the Oak Park development standards or also on City standards.

Mr. Hounshell responded that this subdivision is subject to the Oak Park Development standards; City standards do not apply in this case.

Ms. Noble clarified that if a subdivision development text is approved by the City, it is the zoning text. She noted that in the early 2000s, the City did not review permits for patios. Later, due to zoning restrictions, the City began to do so. Early records may reflect that change in practice.

### **Applicant Presentation**

Emily Beckman, 7047 Greenland Place, Dublin, OH, stated that they applied for a City permit and hired a reputable contractor. They were surprised to learn recently that there was an issue with the patio location. They have had no issues with its location. She has no additional comments.

### **Board Questions for the Applicant**

Mr. Nigh inquired if the applicant had contacted the builder and attempted to obtain a copy of the patio approval.

Ms. Beckman responded that they had contacted the builder, Simes Landscaping. However, due to the length of time since its installation, the company no longer has those records. She has emailed staff their copy of the plan from 2012.

Mr. Deschler inquired if there was a contract involved.

Ms. Beckman responded that she believes there was. However, they provided staff copies of all the 2012 documents they had.

Mr. Nigh inquired if there were any layout drawings included in that information.

Ms. Boeckman responded that there were. A copy of the layout drawing was provided to the City.

Ms. Herbert stated that she has viewed many of these contracts in her professional life; it is typical for the contractor to be responsible for obtaining the permit. The homeowner is responsible for contacting their homeowner association. City records indicate that process was followed. The Board has reviewed several patios within the Oak Park subdivision that have had a similar issue. It is helpful to see that the applicant followed the correct approval process and whatever was provided was approved. Therefore, she is inclined to approve the waiver.

### **Public Comments**

No public comments were received on this case.

### **Board Discussion**

Board members indicated that the applicants extended their best efforts to obtain approval. Although there is no record of that approval, City records indicate that it occurred.

Ms. Herbert moved, Mr. Nigh seconded approval of a Non-Use Variance to the Oak Park Development Text – Subarea A: “Park Homes” (III)(C), to permit an at-grade patio to encroach within the required 20-foot Rear Yard Setback by approximately 5 feet - 3 inches.

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

[Motion carried 5-0.]

## **2. Wilkoski Residence at 7781 Riverside Drive, 21-047V, Non-Use (Area) Variance**

A request for a Non-Use (Area) Variance to allow an attached garage to deviate 11 feet – 4 inches from the required 25-foot total for side yards on the 0.87-acre site located west of Riverside Drive, ±500 feet north of the intersection with Tonti Drive, zoned R-1, Restricted Suburban Residential District.

### **Staff Presentation**

Ms. Noble presented a request for a Non-Use (Area) Variance to allow an attached garage to deviate 11 feet – 4 inches from the required 25-foot total for side yards on the 0.87-acre site located west of Riverside Drive, ±500 feet north of the intersection with Tonti Drive, and zoned R-1, Restricted Suburban Residential District. The site is located on the east side of the river. The Donegal Cliffs subdivision is located west of this site, and Wyandotte Woods is located north of the site. The 98-foot-wide site is very narrow compared to the surrounding lots. A single-family home exists in the center of the lot and driveway access is from Riverside Drive.

### Proposal

The applicant is proposing to construct an attached 2-story, 898-square foot garage to the south side of the existing home. The second story will provide storage space for the home, which does not have a basement or a garage. There is a grade change from the east to the west due to the Scioto River to the rear of the property, as well as a grade change from Riverside Drive to the front elevation of the home. A 100-year floodplain located just to the rear of the building occupies the western half of the site. The site also has significant tree vegetation to the front of the property

leaving both the front and the rear of the property with a very limited buildable area. With the proposed garage addition, the applicant is providing an 8-foot setback from the southern property line, with an existing setback of 5 feet – 8 inches from the northern property line to the existing building. Although the northern side yard setback is 5 feet – 8 inches, the requirement is that only one side is required to be a minimum of 8 feet, which the southern side yard setback is meeting. The buildable area on the site is extremely limited. [Site photos shown.] Staff has evaluated the site and determined the following conditions:

- the lot is small and very narrow, compared to the surrounding lots;
- due to the floodplain and mature vegetation, the buildable area is very restricted;
- the site was developed in the early 1950s by a previous owner.

The proposed addition will be a distance of 80 feet from the adjacent neighbor's home, and additional vegetation will be added to the side of the structure to address visual concerns of the neighbor to the south. The previous garage was converted before the current homeowners acquired the property, resulting in significant storage issues for the homeowners.

Staff has reviewed the site against the applicable criteria and recommends approval of a waiver to Zoning Code 153.020 permitting the encroachment into the required sideyard setback.

Subsequent to the publishing of this meeting's packet, the property owner to the south has contacted the City with concern regarding the proximity of the proposed structure to her home. She has requested additional vegetation be provided along the shared property line and that the sideyard setback requirement be increased to 9 feet.

### **Board Questions**

Ms. Herbert requested clarification of the neighbor's request concerning encroachment.

Ms. Noble responded that she is requesting an additional foot.

Ms. Herbert inquired the reason for that request.

Ms. Noble responded that the neighbor is attempting to achieve as much separation as possible. She is concerned that the 2-story mass will be visually impactful.

Ms. Herbert noted that the neighbor's home is located on the southern portion of her property. In comparison, this homeowner is very constricted on a very narrow lot.

Mr. Clower inquired if there was any consideration of construction of a single-story garage and adding storage area to the home.

Ms. Noble responded that the area of the lot along Riverside contains a large amount of mature vegetation, which it is important not to impact. Consideration was given to adding the garage to the northern portion of the home. The difficulty is that the existing interior space is a bedroom. Attaching a garage to a bedroom can cause ventilation and egress issues. Consequently, it would be difficult to obtain a building permit.

Mr. Clower inquired if there was consideration for making the garage addition one-story and storage be added elsewhere to the house.

Ms. Noble deferred the question to the applicant to address during their presentation.

Ms. Miller inquired if there is any restrictions prohibiting a two-story addition on this property.

Ms. Noble responded that there are no zoning restrictions.

Mr. Deschler inquired if a front elevation view of the proposed garage was provided.

Ms. Noble responded that none were provided, but typically, elevations are not required for a variance.

Mr. Clower inquired the height difference between the existing house and the peak of the garage.

Ms. Noble stated that the applicant can respond more specifically, but could be potentially be 24 feet.

### **Applicant Presentation**

Robert Johnson, JH Architects, 5120 Nike Dr., #B, Hilliard, OH 43026, stated that they have been working with the City on this proposal since last summer to identify the best location for the garage on the site. Various options were considered, including a detached garage in front of the home, which, per City Code is not permitted. It became apparent that where vehicles are currently parked is the best location. A garage in this location also would be immediately adjacent to a mudroom adjoining the kitchen. Initially, they proposed a 3-foot setback, which was rejected. The proposed 8-foot setback is the minimum possible and still have room for a garage that will accommodate the homeowners' needs. He has constructed many additions, and he can provide assurance that this addition will appear to have always been part of the house. This home is the homeowners' final home. This past winter has been brutal for them to park outside and carry groceries into the home. It is a safety issue for them. They need to have a garage that they can pull their vehicle into, unload groceries and carry them into the house.

Ms. Miller inquired if the garage is constructed, will the temporary structure be removed?

Mr. Johnson responded that it would be removed. He noted that it was not possible to construct a garage addition to the front of the home, as the window egress from the bedrooms would be lost. This location is the best location. The homeowner has agreed to plant a double row of 6-foot arborvitae, which will eventually reach a height of approximately 16 feet. However, without any additional plantings, the vegetation between this and the adjacent property is so dense that the neighbor's home, which is 80 feet away, is barely visible. In regard to the neighbor's request for an additional foot between the homes, having that additional foot within the garage is more significant to the Wilkoskis.

Gery Wilkoski, homeowner, 7781 Riverside Drive, Dublin, stated that to address the neighbor's concerns, they have agreed to plant a double row of Emerald Green arborvitae at the front of the house, which will reduce traffic noise and visibility for both properties. Arborvitae will grow to 22 feet in height, so they will cover most of the exterior façade of the garage. However, the lot between the two properties contains many large trees. During the summer months, he cannot see the neighbor's home through the trees. The area between the two homes is a ravine, where no one will ever build. A question was asked regarding whether they had considered building a single-story garage and constructing storage space elsewhere. They have not, as it has been difficult to find an area for just a garage.

Mr. Johnson stated that there is no area available to build a structure at the rear of the new garage, which would elongate that structure further, making it appear even more out of place than a two-story structure.

Mr. Crowder suggested extending the proposed garage back and tucking additional storage space there, at the rear of the house next to the chimney. This would provide storage area on the same level as the rest of the home.

Mr. Johnson stated that the way in which the house is situated on the lot is not parallel to the property line. Moving to the rear of the lot, there is no available space on this lot. In addition, the intent is to provide an overhead door or double door for access to the lawnmower. If that area is blocked, there would be no way to get the mowing equipment to the back of the lot. The other side of the structure is planted, so it is not possible to move equipment through that area. Unfortunately, there are many restrictions with this lot. They have been working with Planning staff to look at all the options, and the proposed site is the best solution.

Mr. Nigh stated that it seems that a lot of effort has been expended trying to find design alternatives. Looking at the review criteria, he agrees with staff's recommendation to approve the application.

Ms. Miller expressed agreement.

Ms. Herbert noted that she also agrees. She is familiar with the neighbor's property to the north. The backyards of these properties are very steep. Putting anything on the back of this house would be a real challenge. The applicant has done a great job attempting to take into consideration the unique characteristics of this property, which sits along Riverside Drive. Each of the properties within this area are quirky and unique. She does not believe one foot will make much difference to the property owner to the south, if that is the issue. She does not find that reason persuasive. She noted that property owner is not present tonight, nor has she submitted a written request. The additional foot will make a big difference in this addition, however. The neighbor to the south already enjoys a thick buffer of vegetation, and this property owner will be adding even more. She would be inclined to approve this variance request.

Mr. Nigh stated that the addition of the two rows of arborvitae is a reasonable way in which to be a good neighbor. He agrees that the one additional foot will not make much difference to the neighbor, but would make a significant difference to the homeowner. That argument was not persuasive to him, either.

Ms. Noble noted that the adjacent neighbor had submitted the following statement to the Board.

### **Public Comment**

Jacqueline McKnight, 7775 Riverside Drive, Dublin, OH:

"As next door neighbors for 60+ years, we fondly refer to this part of Dublin as 'rural residential.' We empathize with our neighbors regarding a garage; however, it is unfortunate that they did not replicate the Code restrictions. We are willing to compromise with a setback of 9 feet rather than 10 feet, knowing that they would like 8 feet, with the understanding that the variance applies to the garage only and does not extend up to Riverside Drive or down to the river. The height of the garage, hopefully, will be no higher than the average garage with the second story blended with the roofline, as indicated, with no modifications. Since the garage will be one large, neutral color structure with no windows, evergreen screening will be essential, to which the applicant has agreed."

Ms. Noble stated that a condition could be added requiring vegetation to be added to the property line to provide additional screening.

Ms. Herbert requested clarification of the additional intended plantings.

Mr. Johnson responded that along the side of the garage, only a single row of arborvitae is needed. The arborvitae have a 3 to 6-foot diameter, when fully mature. They would be planted with the appropriate spacing so that when mature, the garage will be hidden. Their initial height at planting is 5 to 6 feet.

Ms. Herbert stated that the condition would be to add a single row of arborvitae along the southern side of the property.

Mr. Crowder stated that a single row would be better. A double row of arborvitae was mentioned earlier; however, there would not be sufficient room on the southern side of the garage for a double row there.

Mr. Deschler stated that because a request has been made, is the applicant stating that the additional foot, as requested, would not be possible.

Mr. Johnson stated that the space provided within the garage is already very narrow; it is probably already too tight, and one additional foot is significant when two cars must be parked side-by-side. In comparison, the neighbor would be unable to detect a difference between 80 feet and 81 feet.

Mr. Deschler stated that he was looking for clarity that, at this time, the applicant is not willing to consider the request from the owner of the home to the south.

Mr. Johnson stated that he would let the homeowner respond to that, but he would say, no, because it is important to have the space. They have been working with the neighbor, including an offer to purchase a strip of property. Although the neighbor initially considered the offer, she ultimately turned it down. However, after working on the issue for 6 months, they believe they have a logical plan. Reducing the garage area by a foot would be very detrimental. Instead of a 3-car garage, it may have to be a 2-car garage.

Mr. Nigh stated that in regard to the question posed to the homeowner as to whether they were unwilling to consider the request – it would appear that this homeowner has “over” considered how best to address the issue. He appreciates the homeowner’s attempts to consider alternatives, but he does agree that losing one foot would be substantial to the Wilkoskis and indiscernible to the neighbor.

Mr. Johnson stated that they and Planning staff have attempted to address the neighbor’s concerns.

Mr. Deschler stated that the Board appreciates their efforts. However, a public request has been made for consideration; therefore, for the record, he would need the homeowner to acknowledge the request and either accept it or reject it for the Board to proceed with making a decision.

Mr. Johnson stated that they were surprised at the request, because their neighbor had not mentioned it previously. At this point, their plans have been finalized. They acknowledge her comment, but they prefer to remain with the 8-foot setback. They will plant the trees and do the best they can to shelter her from the view of the new addition.

Mr. Crowder stated that it seems the homeowner has identified a good compromise.

Mr. Nigh moved, Ms. Miller seconded approval of a Non-Use Variance to Zoning Code Section 53.020(C)(3) to allow an attached garage to deviate approximately 11 feet – 4 inches from the required 25-foot side yard setback with one condition:

- 1) That the applicant add a single row of Arborvitae to the southern property line, which when mature will be approximately 22 feet in height, to buffer the two-story garage.

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

[Motion carried 5-0.]

The applicants thanked the Board for their consideration.

## **LEGAL TRAINING**

- **Education regarding the BZA's Role, Code of Ethics and Public**

Mr. Shamp stated that he is with the City's Law Department and works with Law Director Jennifer Readler and Assistant Law Director, Thad Boggs. He is covering for Mr. Boggs tonight. Their office provides new Board members a general overview of the legal aspect of their service on the Board of Zoning Appeals (BZA). The general authority of the Board comes from the City of Dublin's Charter and Section 153.231 of the City's Codified Ordinances. The purpose of this Board is to provide a means of interpretation of Zoning Code, applying adequate but controlled flexibility in the application of the chapter and to secure the health, safety and welfare of the residents of the City. The Board reviews administrative appeals of orders, requirements, decisions or determinations where it is alleged by the appellant that there is an error or misinterpretation. The Board reviews variances, construction appeals from the Division of Building Standards, stream corridor protection zone appeals for the Engineering Division and decisions related to nonconforming uses. Generally, the Board's reviews consist of administrative actions, as opposed to legislative. Essentially, that means the Board does not approve or create new laws; it applies the existing laws of the City. As an administrative board, BZA is required by the U.S. and Ohio Constitutions to provide procedural due process. That means there must be a notice to applicants, as well as those affected by any decisions, and a meaningful opportunity to be heard provided. The appeals process is a quasi-judicial process, rather than a formal, judicial process. It is required that testimony be given under oath, and applicants and opposing witnesses have the opportunity to be cross examined. The Board applies facts derived in the hearing to the Code and renders a decision. That decision is appealable, per Ohio Revised Code Chapter 2506. All discussions and decisions must be made on the record and tied to the standards applicable to the application. Mr. Shamp reviewed Ohio law requirements regarding open meetings, public records, conflict of interest and ethics. He encouraged Board members to contact the Law Director's office or staff if any questions arise in the performance of their duties.

## **COMMUNICATIONS**

- **Packet Materials**

Ms. Noble stated that consistent with the Board's last discussion and request for additional information to be provided in meeting packets to assist their reviews, staff attempted to provide additional details in this packet. If Board members have additional requests, please let them know. Mr. Deschler responded that he found the additional packet materials helpful.

- There will be a joint PZC, ARB and BZA meeting at 6:00 p.m., Monday, May 17, 2021.
- The next regular BZA meeting is scheduled for 6:30 p.m., Thursday, May 27, 2021.

## **ADJOURNMENT**

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

*Jason Deschler*  
\_\_\_\_\_  
Chair, Board of Zoning Appeals

*Judith K. Beal*  
\_\_\_\_\_  
Assistant Clerk of Council