

7071 Greenland Place – PUD / Non-Use Variance Application

Overview

We are requesting approval of encroachments on the 6' side and 25' rear setbacks that are part of the Oak Park PUD to be able to continue to use a portion of the paver patio, fireplace, benches and walkways added to our property 10 years ago.

As described below, our builder misrepresented that no such setbacks or restrictions existed, and the contractor that installed the improvements did not obtain necessary City of Dublin permits or approvals despite his commitment to do so, and statements to us that he did in fact obtain all necessary permits and approvals.

Given the small size of our backyard, the existing brick paver patio extends the entire 25' rear setback in a portion of the backyard, and contains a paver fire pit and bench in the back portion of the patio. A paver walkway extends less than 1' into the 6' setback in the side yard, and a brick decorative wall (1' w x 2' x 5') begins at the end of the walkway and extends into the remaining 5' of the side setback.

We became aware that a significant portion of the patio and improvements – including the fire pit and benches – are located on what we now understand is a no disturb zone included in the Oak Park PUD. Those portions of the patio and improvements will be removed, but we are asking for a variance to encroach into the 10' portion of the rear encroachment and less than 1' of the side setback to retain and rework the rest of the patio. We are also asking to retain the brick decorative wall that encroaches into the full side setback. The wall is only 8" in width, with a larger cap of nearly 1'.

Background

We 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 as scenic and useable backyard space was a high priority. Upon seeing the available lots, we focused on Lot 10 because two 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 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. In response, 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, at our request, we were shown plat plans, subdivision and lot information, none of which had any setback requirements or no disturb areas described or shown, other than expected utility easements.

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. Weeks later, 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 again 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 or non-disturb areas. At no time were shown the PUD, nor informed of its existence, which is especially appalling since the builder created the no disturb zone that impacts only two lots in the neighborhood – Lots 9 and 10.

We would never have returned to Oak Park nor paid a significant lot premium had we known that setback and no disturb 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 incomplete, inaccurate and false documents, that our planned use of the backyard was not only acceptable but encouraged. It is now clear that these were all significant misrepresentations by the builder, who in 2009 was focused on selling lots in the midst of the financial crisis. We know now that only 16 inches of space in the backyard (after the cement patio installed by the builder) is actually available for use without a variance.

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 the due date of our second child. We closed despite being appalled at the state of the backyard, which was far from undisturbed. It was a pit of compacted clay with deep treads from building equipment tracks filled with trash, construction debris and stagnant water that could not drain. Mosquitoes were rampant due to the standing water throughout the backyard. 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. We 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 request. 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/subdivision 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. 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 understood that 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 from the City or our contractor, and reasonably believed that 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. Since October 2020, we have been in contact with the City of Dublin attempting to resolve this situation. We applied for a variance in late 2020 that was delayed at the request of the City. Since that time, we have worked to find solutions that would allow us to retain our patio and improvements. Unfortunately, the only feasible solution is for us to remove a large portion of our patio and improvements. Through this variance request, are asking to be able to retain the portion of the patio in the rear setback and reuse the pavers we will remove in the areas currently used as planting areas to have a useable patio.

Review Criteria

- This request is supported by the unique circumstances and conditions of the property and development as well as the significant misrepresentations of our builder. As the City is aware, many Oak Park neighbors were also deceived by the builder and variances to encroach on the significant setback requirements have been granted to several neighbors. Our situation is more complicated due to the additional no disturb zone taking up most of our backyard. The NDZ impacts only us and one neighbor. We were never informed of the PUD, the NDZ or any setbacks by our builder despite numerous discussions. Similarly, our contractor was not informed about the existence of the PUD, the NDZ or any setbacks when he discussed our patio with the builder's representatives in their capacity of managing the HOA.

Rather than conferring a special privilege on us, if approved, this variance simply provides us the use of rights and expectations commonly enjoyed by homeowners in Dublin – the use of one's backyard. That seemingly basic use of a backyard was not simply assumed by us, but was specifically bargained for in the purchase of our home. However, the NDZ takes up 15 feet of the depth of the backyard, and with the additional 10 feet of rear setback zone, we would be left with 16 inches of usable space if this variance is not granted.

- This variance is not necessitated by our actions or inaction in that 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 clearly outlined needs. However, as outlined above, our diligence was responded to with multiple misrepresentations - both verbal and in false documentation - by our builder, and mistakes and omissions by our contractor who was misled by the builder.
- The variance will not cause a substantial adverse effect to the property or improvements in the vicinity. In fact, the variance will prevent some of the substantial adverse effect that will be caused by the removal of a significant portion of the patio and improvements. 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 area to the west of our home. The variance will allow us to maintain some of these improvements, for the benefit of the appearance of the neighborhood as well as our use of the property. As described above, the improvements we added were not only for our enjoyment but also to rectify the mess and drainage issues left by our builder at closing.
- The variance does not adversely affect the delivery of governmental services, in fact it does not impact these services in any way. There is an easement for the use of private utilities on a portion of the patio and approval from Carlos Gonzalez in the City's Engineering department was received by us via email. We understand that a formal easement encroachment will need to be filed if this variance request is granted.
- The variance we are requesting allows us to salvage only some of our significant investment in the patio and backyard. There is no solution that permits reasonable use of our backyard that

can be achieved with some other method, even if less convenient or more costly. This “solution” is not convenient as it requires a difficult removal of most of a professional installed paver patio, fire pit and benches with substrate and footers. We will have to rework some of the portion of remaining patio to avoid the no disturb zone, if the variance is permitted, and this process will not be inexpensive or easy. The solution allowed through this variance request, if granted, is not convenient or low-cost but allows us to retain at least some of the patio so that it is not completely wasted. In fact, removal of the patio will significantly disrupt the thriving ecosystem that is now in our backyard.

We are disappointed that there is not another outcome that does not cause so much waste and disruption, especially since we made these improvements to rectify the cesspool of a backyard left by our builder. We respectfully request the approval of this variance to salvage at least some of the improvements we added to our backyard at significant expense and effort.