

20-194V – MCKAY RESIDENCE

Summary

Two Variances to the Oak Park Development Text – Subarea A: “Park Homes” (III)(C) to permit an at-grade patio to encroach 5 feet into the 20-foot rear yard setback and 6 feet into the 6-foot side yard setback.

Site Location

Located south of Greenland Place, approximately 100-feet east of the intersection with Pleasant Drive.

Zoning

PUD, Planned Unit Development – Oak Park

Property Owner

Denise McKay

Applicant/Representative

Denise McKay

Applicable Land Use Regulations

Zoning Code Section 153.231(H)

Case Manager

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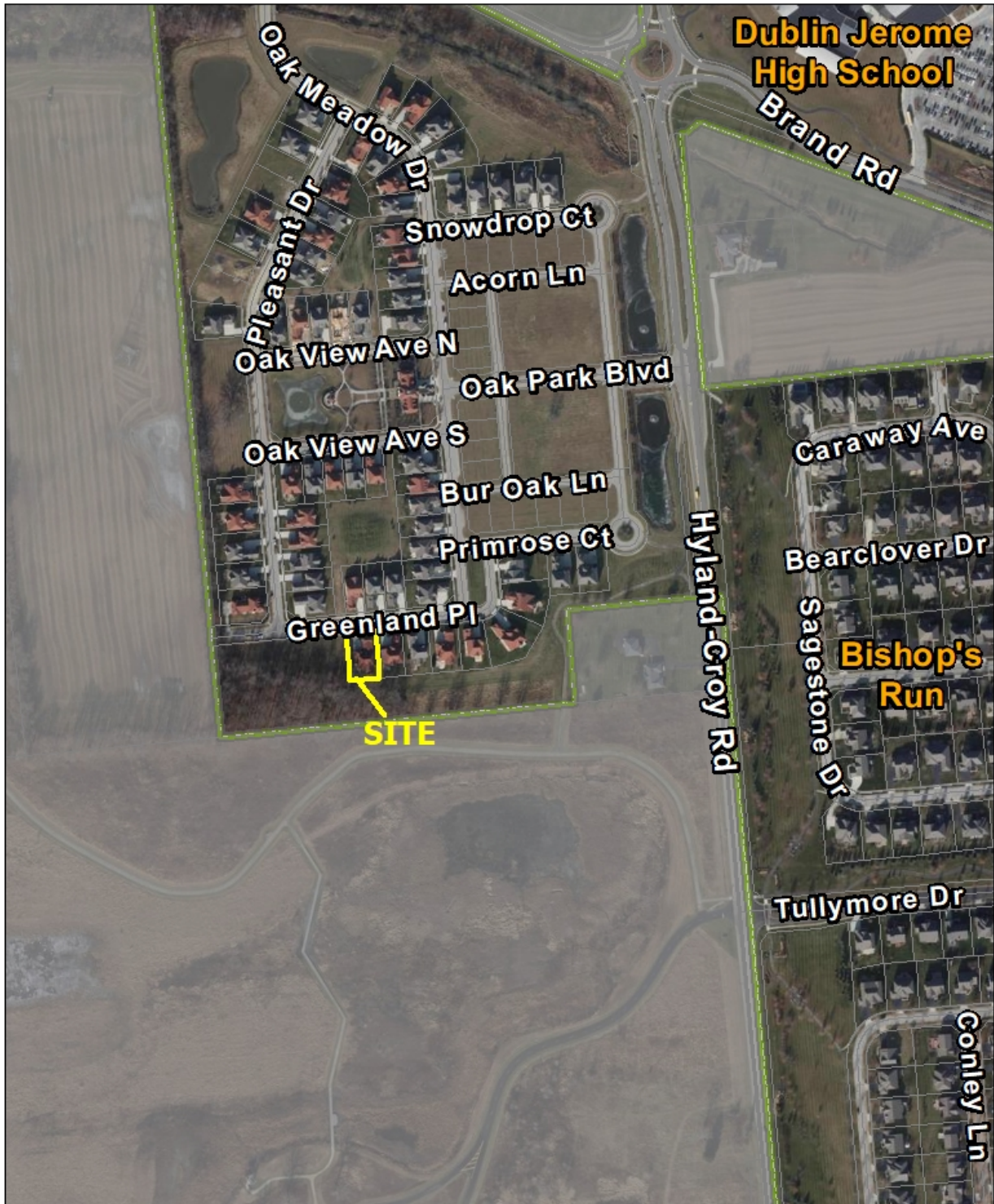
Next Steps



The Board of Zoning Appeals (BZA) is the final reviewing body for this application. Upon approval from the BZA, the applicant may apply for a Certificate of Zoning Plan Approval and Easement Encroachment. If denied, the applicant will need to revise the patio location to conform to all setbacks.

Zoning Map



1. Context Map



 <p>City of Dublin</p>	<p>20-194V Variance McKay Residence 7071 Greenland Place</p>	<p>0 155 310 Feet</p> 
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2. Overview

Background

Oak Park is a neighborhood located west of Hyland-Croy Road, southwest of Dublin Jerome High School. The property at 7071 Greenland Place is located on Lot 10 of the Oak Park subdivision, which was accepted by City Council in August 2007. The site is designated as a 'Park Home' in the Oak Park Development Text.

Site Characteristics

Natural Features

The site is adjacent to a reserve maintained by the City of Dublin to the south and west of the property. The site includes a 15-foot no-disturb zone to the rear of the property, which provides a buffer between the site and Glacier Ridge Metro Park.

Surrounding Land Use and Development Character

North: PUD, Planned Unit Development District (Oak Park)

East: PUD, Planned Unit Development District (Bishop's Run, across Hyland Croy Road)

South: Glacier Ridge Metro Park (Jerome Township)

West: Vacant/Farmland (Jerome Township)

Road, Pedestrian and Bike Network

The site has vehicular and pedestrian access on Greenland Place to the north.

Utilities

The site is serviced by public utilities.

Proposal

The applicant is requesting a Variance to the Oak Park Development Text – Subarea A: "Park Homes" (III)(C) to permit an at-grade patio to encroach 5 feet into the 20-foot rear yard setback, and a Variance to encroach 6 feet into the 6-foot side yard setback. The patio is currently installed at the property and this variance request would allow the applicant to maintain a portion of the existing patio. A portion of the existing patio is located within the no-disturb zone to the rear of the lot and would be required to be removed. Code Enforcement received notification of illegally installed patios within the Oak Park development that have been constructed in previous years. Planning Staff has consulted with the Law Director's office regarding these non-compliant items and identified that a Variance procedure is the appropriate route to consider these items.

History

The applicant is the original homeowner of the site and acquired the site in August 2010. The existing patio was constructed in 2011 by their contractor without obtaining required permits from the City of Dublin. The City notified the property owners in December 2011 that the patio required a permit with the City. The contractor submitted for a Certificate of Zoning Plan Approval in December 2011 and was disapproved. The matter was never followed up with by the City and the applicant was unaware that the permit was disapproved, as the contractor applied for the permit and did not notify the property owners. In October 2020, the City issued a zoning compliance letter regarding the existing patio again, outlining that a permit was never approved for the existing patio. A portion of the existing patio is located within the 15-foot no-disturb zone to the rear of the property, which is a platted requirement and cannot be alleviated by a Variance. City Staff has made the applicant aware that the portion of the

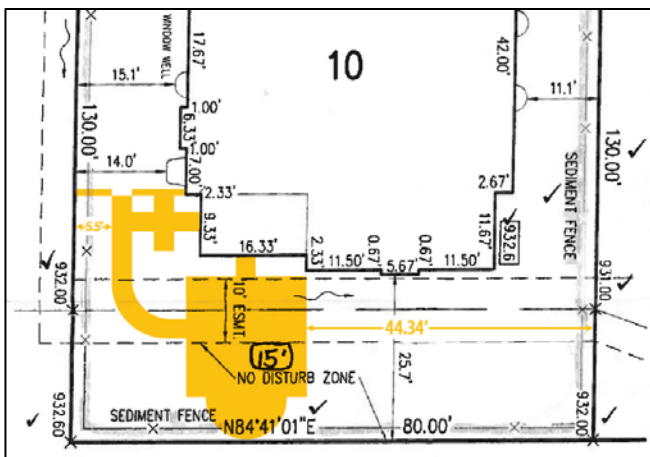
patio that is within the no-disturb zone is required to be removed, regardless whether a Variance is granted or not.

Proposal

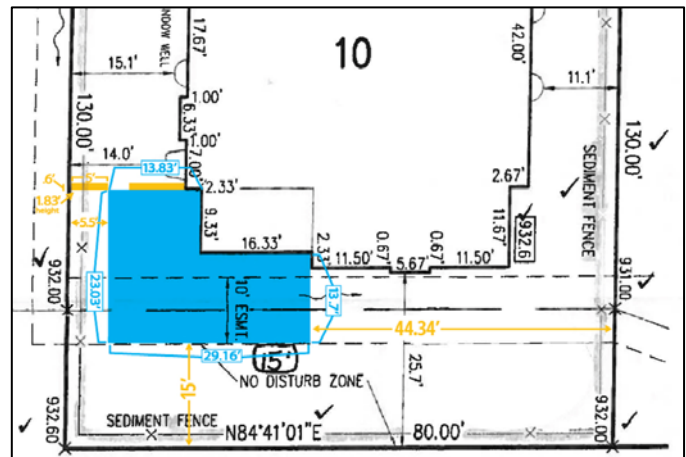
The applicant is requesting approval of an approximately 530-square-foot at-grade patio to the rear and side of the existing home. This proposal is an extension of an approximately 150-square-foot concrete slab that was built with the construction of the home. The applicant is requesting a Variance to both the rear and side yard setback requirements, requesting that the patio be setback 15 feet from the rear property line and 0 feet from the side property line. 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 development text also states that the minimum side yard setback is 6 feet. Although the applicant is proposing the main portion of the patio approximately 5.5 feet from the side property line, a decorative stone wall that accompanies the patio extends to the property line. The proposed patio also encroaches into a 10-foot easement to the rear of the home, which will require an easement encroachment with the City of Dublin, which requires a determination of approval or denial by the Engineering Division.

Staff Analysis

The request for a Variance to the rear yard setback is consistent with previous requests within the Oak Park development in the past year. This request, similar to the previous requests, is due based on Staff's understanding that the developer did not express the zoning requirements of the Zoning Code at the time of purchase of the site. The home was built to maximize the size permitted in the buildable area on the lot for the home with a side-loaded garage, leaving 25 feet from the back of the home to the property line, and 5 feet for rear amenity space behind the home. The site has a no-disturb zone to the rear of the lot, which is unique compared to other homes on the south side of Greenland Place. Additionally, the site is adjacent to an open space reserve that borders the south and west property lines of the site. Development to the west and south of this lot will not occur in the future due to the designation of the reserve. However, Staff would not recommend the Variance to the side yard setback due to the additional space being requested to the rear of the home, and the Variance in most part is requested to maintain the existing decorative wall that extends to the property line.



Existing



Proposed

3. Criteria Analysis

Zoning Code Section 153.231(H)(2) allows the Board of Zoning Appeals to approve requests for nonuse (area) variances only in cases where the Board finds there is evidence of a practical difficulty present on the property, and that the findings required in Zoning Code Section 153.231(H) have been satisfied.

Variance #1 – Rear-Yard Setback

A. Non-Use (Area) Variance Analysis [153.231(H)(2)]

All three of the following criteria must be met:

1) Special Conditions

That special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable to other lands or structures in the same zoning district whereby the literal enforcement of the requirements of this chapter would involve practical difficulties.

Criteria Met. The home was constructed on the lot to maximize the livable space, but not allow for rear amenity space on the lot. The home contains a side-loaded garage, which further pushes the siting of the home towards the rear of the lot. The site is adjacent to an open-space reserve to the south and west of the site, which both prohibit development adjacent to the site. Staff has identified these conditions as meeting the criteria.

2) Applicant Action/Inaction

That the Variance is not necessitated because of any action or inaction of the applicant.

Criteria Met. The applicant has stated that the contractor that constructed the patio was responsible for obtaining the appropriate permits with the City of Dublin. The property owner was not aware that their patio was non-compliant until City Staff notified them in October 2020, following initial notification in 2011. Due to this, the applicant is now required to correct the mistake of their contractor to allow for their patio through a Variance.

3) No Substantial Adverse Effect

Granting the Variance will not cause a substantial adverse effect to property or improvements in the vicinity or will not materially impair the intent and purposes of the requirement being varied or of this chapter.

Criteria Met. The area adjacent to the proposed patio is designated as an open space reserve that buffers Oak Park from Glacier Ridge Metro Park to the south. The improvements do not expand further towards the adjacent property to the east.

B. Non-Use (Area) Variance Analysis [153.231(H)(2)]

At least two of the following four criteria must be met:

1) Special Privileges

That a literal interpretation of the provisions of the Zoning Code would not confer on the applicant any special privilege or deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this chapter.

Criteria Met. The Board has granted variances for lots with similar conditions based on the design of the site and its proximity to land that is undevelopable, such as open space reserves. Previous cases have been approved to allow accessory structures such as patios and decks to encroach into the rear yard setback. If approved, this action will not offer special privileges to the property owner.

2) Recurrent in Nature

The variance request is not one where the specific conditions pertaining to the property are so general or recurrent in nature as to make the formulation of a general regulation for those conditions reasonably practicable.

Criteria Not Met. The Board has reviewed and approved requests to extend accessory structures/uses into the rear yard setback for multiple neighbors within the Oak Park development. All requests have been similar in asking for a rear yard setback variance for functional space of a patio. Staff has determined that this application would be recurrent in nature. Staff has notified the developer of these issues and will continue to work with Building Standards Staff to assure sufficient space for future building permits within this development.

3) Delivery of Government Services

The Variance would not adversely affect the delivery of governmental services (e.g., water, sewer, garbage).

Criteria Met. This request will not affect the delivery of governmental services.

4) Other Method Available

The practical difficulty could be eliminated by some other method, even if the solution is less convenient or most costly to achieve.

Criteria Met. The home is built to the 25-foot rear setback line, allowing only 5 feet along the rear of the home for a patio, which would be considered inadequate space for a usable patio.

Variance #2 – Side yard Setback

A. Non-Use (Area) Variance Analysis [153.231(H)(2)]

All three of the following criteria must be met:

1) Special Conditions

That special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable to other lands or structures in the same zoning district whereby the literal enforcement of the requirements of this chapter would involve practical difficulties.

Criteria Not Met. Although the site is adjacent to an open space reserve to the west, the expansion of the decorative stone wall to the property line is not warranted by special conditions of the lot and siting of the building.

2) Applicant Action/Inaction

That the Variance is not necessitated because of any action or inaction of the applicant.

Criteria Not Met. The Variance request could be eliminated if the applicant removed the decorative stone wall encroaching the side yard setback and adjusting the patio layout by 0.5 feet.

3) No Substantial Adverse Effect

Granting the Variance will not cause a substantial adverse effect to property or improvements in the vicinity or will not materially impair the intent and purposes of the requirement being varied or of this chapter.

Criteria Met. The proposed patio would not cause substantial adverse effects to adjacent properties, as the west property line is shared with an open space reserve, which will not be developed in the future.

B. Non-Use (Area) Variance Analysis [153.231(H)(2)]

At least two of the following four criteria must be met:

1) Special Privileges

That a literal interpretation of the provisions of the Zoning Code would not confer on the applicant any special privilege or deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this chapter.

Criteria Not Met. The Board has granted variances for lots with similar conditions based on the design of the site and its proximity to land that is undevelopable, such as open space reserves. However, a request to encroach the side yard setback to the property line would result in a special privilege to the property owner, as a variance to the rear property line is also requested for this proposal.

2) Recurrent in Nature

The variance request is not one where the specific conditions pertaining to the property are so general or recurrent in nature as to make the formulation of a general regulation for those conditions reasonably practicable.

Criteria Not Met. The Board has reviewed and approved requests to extend accessory structures/uses into the rear yard setback for multiple neighbors within the Oak Park development. All requests have been similar in asking for a setback variance for functional space of a patio. Staff has determined that this application would be recurrent in nature. Staff has notified the developer of these issues and will continue to work with Building Standards Staff to assure sufficient space for future building permits within this development.

3) Delivery of Government Services

The variance would not adversely affect the delivery of governmental services (e.g., water, sewer, garbage).

Criteria Met. This request will not affect the delivery of governmental services.

4) Other Method Available

The practical difficulty could be eliminated by some other method, even if the solution is less convenient or most costly to achieve.

Criteria Not Met. Other methods, such as removing the decorative stone wall that encroaches into the setback and modifying the patio layout by 0.5 feet, would eliminate the need for a side yard setback Variance.

4. Recommendation

Planning Staff recommends **approval** of the Non-Use Variance to the Oak Park Development Text – Subarea A: “Park Homes” (III)(C) to encroach within the required 20-foot rear yard setback for uncovered patios by approximately 5 feet.

Planning Staff recommends **disapproval** of the Non-Use Variance to the Oak Park Development Text – Subarea A: “Park Homes” (III)(C) to encroach within the required 6-foot side yard setback for uncovered patios by approximately 6 feet.