



MEETING MINUTES

Board of Zoning Appeals

Thursday, May 26, 2022

CALL TO ORDER

Ms. Miller, Acting Chair, called the May 26, 2022, meeting of the City of Dublin Board of Zoning Appeals (BZA) to order at 6:34 p.m.

ROLL CALL

Board Members present: Ms. Miller, Mr. Clower, and Mr. Murphy
Board Members absent: Mr. Deschler and Mr. Nigh
Staff present: Ms. Noble and Mr. Will

ACCEPTANCE OF DOCUMENTS

The Board unanimously accepted the documents into the record.
[Motion carried 3-0]

APPROVAL OF MINUTES

The approval of the minutes from the meeting held on February 24, 2022 was postponed to allow more of the members that attended that meeting to approve the minutes in the future.

CASE

1. Schlater Residence at 222 Clover Court, 22-064V, Non-Use (Area) Variance

Ms. Miller - This is an application for a Variance to allow an enclosed porch to encroach 12 feet into a rear yard setback. The 0.23-acre site is zoned Planned Unit Development District, Waterford Village and is located ±525 feet east of the intersection of Clover Court with Monterey Drive.

Mr. Will – He presented an aerial view of the site, which is an odd-shaped lot. The lot is triangular in shape, typical of lots located at the bulb of a cul-de-sac. The lot layout and siting of the home provided a south side yard that ranges ±24 to 35 feet in width to the south, which is larger than the typical lot in the neighborhood. The required setbacks are a minimum of 7 feet for the side yard and 17 feet for the total side yard; and 25 feet for both the front and rear. Code allows a patio to encroach 5 feet into a rear yard setback. Currently, there is an elevated deck, which is non-conforming at 23 feet by 12 feet encroaching into the rear yard setback and is believed to have been constructed with the home in 1977. The City did not regulate outdoor spaces at that time. There is also a creek-drainage easement on this property, 10 feet at the rear yard. The existing conditions of the site were shown with an aerial view of the property to show the exact position of the house with all the setbacks marked, etc. The existing home is a two story, split-level style. The rear (east) elevation of the home features one, first-story exit that is elevated ±5 feet above grade and one lower-level exit walkout [two photographs].

The applicant proposed a building addition for the rear of the home of an enclosed and elevated three-season room, 276 total square feet in size, [imagery of proposed enclosed porch] the same measurement and area covered by the existing deck (23 feet by 12 feet), which the applicant would like to remove. This

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request would require a Variance as this proposal would still be non-conforming. The applicant also proposed to construct a new, at-grade open and uncovered paver patio that would conform to Code.

This application was reviewed against the Non-Use Variance Review Criteria and staff provided an analysis of the criteria. Three out of three criteria in the first set need to be met along with two of the four criteria to be met in the second set for approval. Staff concluded with a recommendation of denial based on the criteria not being met.

Questions for Staff

Ms. Miller – Requested to review the criteria that were not met.

Mr. Clower – Staff stated the applicant's action/inaction was not met because the initial conditions were not met. If those two are so linked then what is the point of having a second condition?

Ms. Noble – There are instances where a special circumstance that the applicant created such as a topography issue, which the applicant created, then those two items would be linked. It is rare but the two simultaneously occur.

Ms. Miller – For special conditions, there is a stream that flows behind this lot.

Mr. Will – The creek passes through the neighboring property at the east and crosses at the very north end. There were City improvements in 2005 that made this a fortified channel creek, channelizing canals.

Ms. Miller – The applicant is not proposing to expand the size of the deck but rather putting the structure over the exact area of the existing deck. She asked if this was an issue because it is an enclosed structure.

Mr. Will – It is a building addition to be constructed over a non-conforming deck area in the setback when it should not be.

Mr. Clower – It is not non-conforming because it was grandfathered in.

Ms. Noble – When the deck was constructed, the City did not require permits for this type of outdoor amenities. It would have been required to meet the setbacks but there was no mechanism at the time to ensure that occurred. That is why we are giving it the latitude that it is not conforming. The previous owner was responsible. When the deck is to be removed and replaced with any construction, current requirements would have to be met.

Mr. Clower – The purpose of the requirement for setbacks was to allow green space and light and air to travel between houses for vegetation. It seems as though the applicants would be better served theoretically, building to the south of the house but am aware the applicant has reasons for not exploring that option.

Ms. Miller – The reason for not building on that other side of the house would not trigger the special condition?

Mr. Will – As long as setbacks and any other requirements were met.

Ms. Miller – Asked if the new structure was not closed in, same deck idea with pillars and open, if the application would then meet criteria. She asked if the roof and windows made a difference.

Ms. Noble - Anything other than an open and uncovered structure needs to meet the setbacks. For example, a trellis, pergola, or anything with a spatial component would need to meet the setbacks. The paver patio is eligible to encroach in a rear yard setback because it is open and uncovered.

Applicant Presentation

Matt Schlater, property owner, 222 Clover Court – The deck was built by the builder, who was also the previous owner, and was approved as part of the site plan. It was existing when the applicant purchased the home. The deck was constructed 30 years ago and will fall down at some point. The applicant will need a second exit. Because of the topography and water flow, the applicant needs a raised space of some sort in the rear and would prefer something other than a small platform with stairs. There is a 30-foot easement on the north side, which is 7 feet on the east side for additional easement to the City for the creek. With



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those easements and the topography, the applicant does not have a rear yard for kids to actually play. There is 90 feet on the south side and 154 feet on the north side with an 11-foot little shimmy towards the cemetery. The home was built within these constraints and not entirely sure if the 25-foot setback for the rear yard is applicable or not to unconditional spaces.

For many adjacent neighbors, the builders had it on the plat and on their site to build screened-in porches and sunrooms, all within this 25-foot setback. Additionally, there is a stormwater easement on the south side. All the water rushes down the center of the street, where the actual old stream was located. It was moved to allow for construction of homes. In the broader view, the home was built on a court, and confirmed with their next door neighbors that this is the best thing for this area between all of us. The two bulbs of the cul-de-sacs slam into each other, making their lots naturally only 90 feet. There is no room and that is why the request for the Variance. This property is elevated above the backyard neighbors due to the slope of the land and the applicant feels as if they are intruding on them when we are on the deck. The solution between all of us was to construct a structure that is nice and would increase the value of the home but also move our open space to where we can permit the kids to play, a little further away from the neighbor's porch and open patio. When above someone else, one tends to feel as though they are in the neighboring property's space.

In this neighborhood, this type of structure is not uncommon. The applicant could not find by driving around a sunroom, screened in porch, or open deck to the side of a house. The side of the applicant's house is where the flattest area is located. The plat is currently 80% open. If all these setbacks etc. were applied to a rectangular lot, it would only be 50% open. The proposal includes 79% open space with giving away the rest of the property for the City to use, which is currently flooded. This is one of the first subdivisions built in the City. The applicant indicated subdivisions have come a long way since then. The applicant's house is not very big at 2,100 square feet in size and certainly not considered oversized for the lot and medium sized in comparison to other houses in this neighborhood.

Mr. Schlater - This property has special conditions. As of applicant action or inaction, he was confused as to why it was referencing the special condition criteria. He did not cause an issue by wanting to enclose the current deck. An addition implies more of a substantive space; the proposal is for a three-season room. If he could even get a screened in porch approved it would be okay to deal with but would rather extend the use a little bit as this is in Ohio. The actual request to the Building Department and to Planning and Zoning was to fix the deck. It is not failing now but it is going to. Then decided if they were going to do this, they would do it right. After they remove the deck, they will use the right amount of concrete, up to today's building standards as a lot has changed since then. The applicant believes all the criteria have been met.

Today, the applicant found the 08-21 Ordinance for a new PUD development approved by City Council at Post Road and Hyland-Croy. The rear yard setback there is set at 12 feet. The reasoning behind green corridors can be met at 12 feet. This issue seems like a moving target. This proposal is to build like kind in nature to the rest of the subdivision and with support of the community. The applicant stated he did his due diligence at obtaining feedback from the community. As proposed, this is not asking for anything more than what has already been given to this subdivision. He brought a site map to show that if they have to build on the side of the house, it would probably devalue the home because the traffic would go through his family room, the side yard would no longer be useable for play space, affecting the use of the plat, and ending up with an odd layout, which still does not address the need for a rear egress. When the property was purchased, there was no identification on the plat of 25-foot rear yard setback. Nowadays that information is included on the plat.



Questions for the Applicant

Mr. Clower – In the application, there is a path over the creek connecting the two adjacent cul-de-sacs.

Mr. Schlater – That was built on his property but is only a place for kids to cross. Monterey Park is at the end of Clover Court. A lot of the neighborhood uses the north side yard. All the kids from the court get to play on the end. Sand boxes are set up, etc. in the side yard as a great use of space. From this vantage point, the applicant can watch the little ones near the street.

Ms. Miller – She asked about the other structures in the neighborhood the applicant had mentioned, earlier.

Ms. Noble – Six or seven sunrooms were identified but not analyzed for non-compliance. Staff ascertained the sunrooms met the setback requirements. Staff did not find any sunrooms built to the side of the main structures. And that would make for a different floor plan than what is typical of a residential community.

Ms. Miller – Asked if the sunrooms were encroaching or not.

Mr. Clower – Asked if Planning was working with other departments to look into these more to ascertain if they are permitted or not and within the setbacks or not.

Ms. Noble – That is not unusual for a larger subdivision and permits were not required. There was no ill intent at the time, construction just took place, not knowing the setbacks were in place.

Board Discussion

Ms. Miller – If other properties are not encroaching, would that not set up a special condition. This house without that same option is at a disadvantage or can be by not being able to use the property the same as the others. Now the Board understands how this came to that.

Ms. Noble – If there are other sunrooms or additions that do not meet the requirements, that this would not be adverse to the surrounding areas. It would be in context to the surrounding community and not unusual so that would lean towards the applicant's benefit.

Mr. Will – If they are permitted or not permitted, did not want to set a precedent for something that should not be there also. But for the ones that are permitted, and outside of the setback, they would not relate to this as this is being inside the setback. Neighbors are allowed to build outside the setback just like in this case.

Mr. Will – Sunrooms and three-season rooms are on the auditor's website. Unconditioned outdoor spaces that were constructed were added at the time to the site by the builder; the only way to get on the auditor's website. Sunrooms and three-season rooms are in the setback the same amount, if not more in some cases. He said they could look them up as he was not going to identify properties.

Mr. Clower – He understands the setbacks are already set but what determines a rear yard vs a side yard.

Ms. Noble – A front yard setback is standard as any property with road frontage would be the front yard. A traditional lot will have two side yards and one rear yard with the side being aligned with the neighboring setbacks. There are instances of oddly shaped lots. Staff would look at the neighboring lot and determine what brings the most benefit for the applicant and probably default to a side yard where the restrictions are less.

Mr. Clower – He asked if there are cases where there are more than two side yards such as pentagon shaped lot to which Ms. Noble answered affirmatively.

Mr. Clower – Lot 44 that is due south of this property at the end of old Spring Lane. He asked what the rear setback would be for Lot 44, as it has five sides.

Ms. Noble – The front set back would be along old Spring Lane. Two side yard setbacks would be congruent with Lot 43. The rear yard would run congruent towards the rear yard but it would be irregular because that shape of the lot is so odd.

Mr. Clower – He asked if it was like Lots 22, 23, 24, 26 and 27 and if those adjacencies were all rear yard setbacks. Ms. Noble answered affirmatively.

Mr. Clower – He asked if the same would apply for Lots 40 and 46 and assumed rear yard setbacks adjacent to 60 and 61.



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Ms. Noble - Answered affirmatively.

Mr. Clower – The applicant's lot (60), has something similar with the little wedge sticking out to the northern most edge, which right now is filled by the water drainage zone and cuts off that corner. It appeared to him that the rear yard was almost as much as a side yard as it is the rear yard compared to location. For Lots 64 or 65, it is obvious where the rear yard is but it appears very restrictive to have a triangular lot like that where the rear yard is cutting off a significant portion of the applicant's lot as opposed to Lots 63 and 62 where there is a huge difference in the amount of useable rear yard lot space equating to a very favorable rear lot without an extra wedge.

Ms. Miller – The Board does not potentially agree with Staff on one condition. The challenge is there are two others that are not met and it is uncertain if they can find a path to meet.

Mr. Clower – If the Board agrees Criteria 1 is met, the Board has ruled in the past that action/inaction does not just mean an applicant is building something in the backyard. That is not an action. An action would be if the applicant re-leveled the yard and then said oh well the water flows right by here. If condition 1 is met, then that means Criteria 2 is met, as well. The bigger question would be for Criteria 3.

Ms. Noble – Per the discussion of the shape of the lot, Mr. Clower is saying he believes the shape of the lot is unusual and lends to meeting the special condition so that would be Criteria 1. Criteria 2 the applicant did not create the shape of the lot so that criteria has been met. For Criteria 3, we should discuss whether recommending a Variance would be advisable.

Mr. Clower – He asked if this was still the question period or the debate period.

Ms. Miller – The Board seemed to transition to the discussion period. So at that point, she asked if any public comments were provided and if the applicant had anything to add.

Public Comment

Robert J. Schutz – Reported that he was that applicant's father-in-law, a registered land surveyor in Ohio and a professional engineer, former back-up building official and building inspector for the City of Dublin. Served on the voluntary committee in the 1970's to help write the original Dublin Zoning Code. Based on his participation as the State Chief Sanitary Engineer, representing the state of Ohio was our model for the Zoning Code. Dublin was one of the first communities to develop the Zoning Code and put it in place.

He did his own analysis for 10 years for the City of Powell. All the criteria are met on this project. He found no reason to not meet any of the criteria. Two important things the applicant has done was purchase a lot that is a polygon, not a triangle. There is no definition in the Zoning Code for a side yard or rear yard setback. As a land surveyor, they would look at the two rear corners of the house and move to the side yards and project anything from that point as a rear yard. If the typical lot was used, that is created in concert with Mr. Ruma and the subdivision developed before Dublin put standards in place. The State Zoning Ordinance that was recommended to Dublin, made a suggestion for 20% green space per corridor for the rear of the building. If the typical lot on this street was analyzed, 25 feet of green space on the rear yard and knowing these typical lots are 75 feet wide, would result in 1,875 square feet of green space. If the 20% standard that the State of Ohio recommended to Dublin, the result would be 1,800 square feet of green space, a difference of only 75 square feet. Dublin had to deal with these odd-shaped lots never seen before that Mr. Ruma and Mr. Duffy built (including the applicant's house) as part of a model neighborhood at the time. The house was not the standard found in the Parade of Homes but it was a model of the first type of cul-de-sac neighborhood developed with homes that sat back 25 feet from the street, which was an unusual setback for homes, and created homes of a different style for the entire Central Ohio area. The typical lots that are created are 75 feet by 120 feet. If 20% was taken of 9,000 square feet, the result is 1,800 square feet. Staff tried to figure out how to apply that to the lots using a 25-foot setback for a rear yard setback. There is no definition in Dublin's Zoning Codes for that standard. If his example was used as a land surveyor and used two back corners of the applicant's house and took all the area back to the property line there would be 4,000 square feet and technically there would be 4,333 square feet of rear



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yard. Almost double the 20% requirement that Dublin and Powell tries to strive for. The square footage of 4,333 is subtracting the applicant's proposed deck and patio. In the 1970's when that Code was being created, this subdivision was ahead of the ordinary in the establishment of those setbacks. Therefore, on the plat of Phase 1, rear yard setbacks were not recorded/noted. As a result, at least two attorneys who reviewed that abstracted titles and him as a surveyor, did not find any evidence that anyone knew of the 25-foot, rear yard setback. They knew this lot was encumbered with the building setback on the front, a storm drainage easement on the side yard. Besides with a buried storm sewer in it, but is a floodway to that creek. When the creek was repositioned in the back, a piece of land that is heavily landscaped in the backyard contains trees over 100 years old. That stream is 4.5 feet deep to the scone channel top and is 8 or 10 feet wide. The stream drains the Kroger shopping center area and the ponds across the street where Graeters used to be. Over the weekend when there was a brief storm, he put a stick in the stream and measured the flow at 37 mph in 4.5 feet deep water. Children cannot play there. Not only during a rain storm but for the length of time that it takes for those ponds to drain out, which can be a day. It already creates the green corridor that is strived for but is not usable as a play area but the side yards are. The other suggestion to move the addition onto the side yard is not appropriate for that property. It is better left for a green area where the children can play.

Ms. Miller – Thanked Mr. Schutz for his detailed testimony as well as his service to the City.

Additional Public Comment

Ms. Noble – Recognized that the neighboring community have been vocal on the applicant's submission but also after Staff's recommendation had been made.

Ms. Miller – Some of the neighbors commented specifically on the type of structure the applicant proposed that is a screened-in area with a roof. Not only did the neighbors state the proposal was appropriate for the neighborhood but that it would add to the value.

Board Discussion

Mr. Clower – Reinforced that it is great that the 20 neighbors or so were in favor of this submission but the Board cannot use that in any legal way. There was not one negative comment received for this application. He added the survey from Mr. Schutz was very detailed.

Ms. Miller – Since this is a Variance approval Board, the BZA is tied to criteria and the interest of the applicant. She asked to move forward based on those two items.

Mr. Murphy - What would happen if the applicant later decided to remove and replace the deck.

Ms. Noble – The same setback requirements would apply.

Mr. Murphy - Given the deck is weathered, exposed to the elements, is it not an incentive to not leave a dilapidated structure to rot away?

Ms. Noble – There are requirements for maintenance and could do incremental repairs to the deck without having to come into full compliance with the setback. If the deck is completely removed, the replacement deck would need to meet current regulations.

Mr. Clower – Criteria 1 is met as it is an irregular shaped lot. Criteria 2 is met because the applicant did not do anything to cause this. Criteria 3 – the intent purpose of the requirement. Based on the evidence we have been provided the purpose of the requirement is to provide for a nice usable and aesthetically pleasing area for the neighborhood as a whole. People are already traipsing through the applicant's backyard on a regular basis, adding a screened in area will feel more private to the homeowners and the adjacent property residents of the neighborhood. Even though this is an addition to the house and will encroach into the rear yard setback, it appears it will be more private for again the homeowners and the people traipsing through the backyard. Staff had stated there is no telling what future homeowners would



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think but it is very telling that all the homeowners that were surveyed stated they were in favor of this project as presented and unsuitable for the room to be added on the side yard due to the amount of water that runs through the property, besides being the only flat area on the site. The applicant is losing out on a significant portion of their lot to the drainage ditch and to the uneven terrain. If the applicant chooses to do anything with their property such as host a cookout, or play football, etc. those activities would have to occur on that side lot and it would be detrimental to this house in particular to build on the side lot, even though technically it is an area the applicant could build.

Mr. Murphy – He was inclined to agree with the rationale just stated by Mr. Clower. He fell back on the adverse nature of the incentive to make minor repairs over time but there is also the possibility that there be more extensive damage to the structure subject to the elements or the deck may fall apart in some unpredictable way. That alone is an incentive for the applicant to eliminate that incentive is reason enough to allow the applicant to remove the entire deck from the ground up rather than have a flimsy foundation needing constant updates to it. He would amend statements with that as to not create a negative public incentive to not improve structures upon operating in Dublin.

Ms. Miller – She was fairly certain that was not part of the intent of the Code to have people avoid maintenance. Because they were afraid if they tore down what they had, they could not replace it. The applicants have met at least two criteria.

Ms. Miller, the Acting Chair requested a motion to approve or disapprove the Non-Use (Area) Variance. Staff recommended disapproval.

Mr. Clower moved, Ms. Miller seconded, to approve the Non-Use (Area) Variance to allow an enclosed porch to encroach 12 feet into a rear yard setback.

Vote: Mr. Murphy, yes; Ms. Miller, yes; and Mr. Clower, yes.

[Motion carried 3-0]

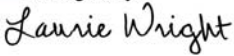
COMMUNICATIONS

The Board was asked to adopt the proposed meeting dates for August 25, 2022 through February 23, 2023. The three members present adopted the proposed meeting dates with the understanding that if a quorum of three members is not met for any meeting, the meeting would be cancelled.

Ms. Miller adjourned the meeting at 7:05 p.m.

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Alicia Miller
Acting Chair, Board of Zoning Appeals

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Administrative Assistant II, Recorder

