



Board of Adjustments Minutes

August 17, 2021 at 5:00 p.m.

Hybrid Meeting

Present

In person: Robert Trompke (Chair), Michael Clary (Vice-Chair), Jason Johnson, Cathy Sawruk, Director of Building, George Wiggins & Backup Recording Clerk, Ashley Ong. Virtual: Ann Higbie & Charles Steinberg. Absent: Recording Clerk, Theresa Dunkle & Tom Sims Jr.

Call to Order

Robert Trompke explained the rules of procedure for variance cases and opened the floor for any disclosures, public comments or questions.

Consent Agenda

Jason Johnson noted the approval vote for item one on the July agenda, at 1881 Blue Ridge Road, was not unanimous. Jason Johnson and Charles Steinberg were in opposition of the approved amended request.

Cathy Sawruk made a motion to approve the July 15, 2021 minutes with the correction. Jason Johnson seconded the motion. The minutes, as amended, received approval by a vote of 5-0. Ann Higbie arrived after approval of the minutes.

Staff Updates

No action items brought forward.

Citizen Comments

No public comments or questions.

Action Items

No action items brought forward.

Public Hearings

1. **Requests of Momtaz Barq & Terra-Max Engineering on behalf of George Loutfi, for variances to allow the construction of a rear addition to be located 10 feet from the rear property line and 9.8 feet on the north side & 8.4 feet on the south side, in lieu of the required setbacks of 25 feet and 10 feet respectively, and without articulation on each side.**

Located at 633 Dunraven Drive, Zoned: R-1A

George Wiggins, Director of Building, gave the following summary:

This item was tabled at the July 15, 2021 meeting, per the applicant's request prior to that meeting.

With regard to required articulation along each side of the home, under the Zoning Code an existing wall without articulation can be extended a distance of 12 feet along the side lot line before articulation must be provided. In this case, the existing north sidewall of the home 54.8 feet in length and the south sidewall is 28 feet in length without any articulation. Therefore, since both proposed additions extend 19 feet a variance must be granted to allow these additions. On the north side, the new wall without articulation will be nearly 74 feet long.

This property is 114 feet in depth, which is typical throughout most of the residential area east of Lakemont Avenue and continuing to the east to the city limits except there are some lots only 110 feet in depth and some increase to 132 feet near Winter Park High School. Prior to major changes in the Zoning Code enacted within the last 15 years, the required rear setback was 10 feet. However, the City did further modify the rear setback requirements approximately 3 years ago to allow lots with a depth of 105 feet to

utilize a rear setback of 15 feet and lots with a depth of 75 feet or less to have a rear setback of 10 feet to the first floor and 25 feet to a second floor.

Related variance in the area:

Board of Adjustments Minutes: July 17, 2018

Request of Request of Elton & Elizabeth Sylvia for a variance to allow the construction of an addition located 15 feet from the rear lot line, in lieu of the required rear setback of 25 feet. Located at: 681 Dunraven Drive, Zoned: R-1A

George Wiggins, Director of Building, gave the following summary:

A building addition is proposed on the rear of the existing home to accommodate accessibility features for the owners. The existing home has a front setback to the garage of 30 feet and then a setback of approximately 51 feet to the remainder of the home resulting in the home being placed 34.6 feet from the rear lot line.

In order to achieve a master suite with sufficient area, the applicant proposes to add 19.3 feet of building area onto the rear of the home leaving a rear setback of 15 feet encroaching 10 feet into the rear setback.

The lot depth for this property is very shallow at 114 feet. Therefore, in order to minimize the amount of variance requested, the applicant seeks relief from the normal 25 foot rear setback.

A variance is also needed from the north side of this addition to allow it to be built at 8.5 feet from side lot line. However, this variance can be granted administratively with a letter of approval from the adjacent property owner. This was achieved through that process and therefore does not require granting a variance by the Board. The conditions of the administrative variance include the allowance to extend a nonconforming one story wall up to 24 feet in length with an approval letter from the adjacent property owner as long as the setback 5 feet or greater.

We received eight letters of approval after the Board packages were delivered.

Findings

The board members agreed [observed] that other homes in the area have a ten foot rear setback; therefore, this request would not be out of character for the street. They agreed the hardship is the limited area available to accommodate accessible facilitation.

Action

Based on these findings, Patrice Wenz made a motion, seconded by Charles Steinberg, to approve the request. The request was approved by a vote of 7-0.

The applicant refers to the property above, which obtained a rear setback variance and also 697 and 665 Dunraven Drive as homes with reduced rear setbacks. However, those two homes were built in 1963 and were with compliant with the required rear setback at the time were built. In addition, the home at 697 was able to utilize a 15-foot rear setback due to this lot having a short depth of 102 feet. Lots that are only 105 feet deep or less are permitted a smaller rear setback. In addition that same lot is a corner lot which allow the 15 foot setback along the north side of the home resulting in allowing a 10 foot setback on the west side of the home as a side yard setback.

The proposed area of the two rear additions proposed by the applicant is 732 square feet and not 1,411sf as shown on the Setback/Coverage Worksheet submitted by the applicant. However, this proposed additional area is within the allowable gross floor area and the additional impervious area is within the permitted 60% maximum impervious coverage.

If the applicant had obtained letters of approval from the abutting property owners on the north and south sides of this home then the side setback encroachments would not need variances for not meeting the required 10-foot setbacks. The Zoning Code allows the addition of a nonconforming one story side wall of a home to be extended a maximum distance of 24 feet along a side lot line with a letter of approval from the abutting property owner as long as the side wall is not closer than 5 feet to the lot line.

We received one email message from the abutting property owner directly to the rear of this applicant home with an expression of concern for these encroachments and requesting clearer elevations of the additions. However, the applicant may now have a letter of approval or non-objection to present at the meeting.

George stated the applicant wants to use differing materials to satisfy articulation, particularly on the longest sidewall.

The applicant, Momtaz Barq said he is representing his brother-in-law and sister who purchased the property a few months ago. Mr. Barq said the home was not built with desired accessible features. In terms of articulation, he stated different materials will be used on the longest side. Mr. Barq distributed an email from the neighbor to the rear stating they are no longer in opposition of the request given proposed landscaping would be installed along the shared rear fence.

In response to board questions, Mr. Barq confirmed the patio would be covered with a flat roof and his hardship is that the home does not accommodate an accessible suite for his mother-in-law. Mr. Barq said his request is not out of character with the surrounding homes.

Mirna Barq spoke for the owner, her brother George Loutfi, who plans to move into the home when he retires. She confirmed her family hopes to move their mother into the home; but a larger bathroom is needed. The opposite rear addition will balance the rear elevation. She confirmed they will invest in landscaping at the rear to accommodate their neighbors concern.

In closed session, Charles Steinberg stated he could not find a hardship. Jason Johnson did not feel the applicant has represented their burden. He felt the rear setback was a significant encroachment. Michael Clary was concerned of setting a precedent. Cathy Sawruk had a problem with lack of articulation on the long side. Ann Higbie said they purchased the property realizing it didn't fit with their needs.

Momtaz Barq noted there were other homes with ten-foot setbacks on the block. He would be open to changing his request to a fifteen-foot rear setback request and would provide articulation.

Findings

The applicant described a relatively shallow lot and a need for a mother-in-law space. Nonetheless, the Board did not see a real hardship stating the property was purchased with the realization that it did not fit with their needs.

Action

Based on these findings, Michael Clary made a motion, seconded by Jason Johnson to approve the request. The request failed by a vote of 0-6. Jason Johnson made a motion to allow the applicant to come back with modifications before the three-year waiting period. Cathy Sawruk seconded this motion which passed by a vote of 6-0.

- 2. Requests of Matthew Hurst & Melissa Morse requesting a revision to variances heard on June 16, 2021 to allow the construction of a swimming pool located zero feet from the lot line to the pool deck and 2 feet from the lot line to the water's edge of a swimming pool, in lieu of the required street-side setbacks of 5 feet and 10 feet respectively.**

Located at 801 Hamilton Place Ct, Zoned: R-2

George Wiggins, Director of Building, gave the following summary:

At the June meeting the board ruled the applicant could come back with modifications prior to the three year waiting period. Thus, the applicant hopes they will allow the pool deck to be set at the lot line, instead of at the approved a setback of five feet. The applicant would also like to place the pool's water edge at two feet from the street-side property line, instead of at the approved 5 feet setback.

Under the Zoning Code there's a special allowance for a pool deck to extend from the water's edge and come closer than 5 feet to the side lot line if the owner provides a six foot high masonry wall:

Sec 58-71(j)(2) Pool decks shall be located no closer to the side and rear lot line than 50 percent of the required setback for swimming pools. Pool decks may be permitted in the remaining area of the

required side and rear setbacks only if screened from the adjacent property by a six-foot masonry wall.

The intent of this provision is to help accomplish having a sound barrier and to avoid having to provide a very small green landscape space. For lots 60 feet wide or less the deck setback is only 3.75 feet, which is one-half of the required 7.5 foot side setback.

In this case if the Board is agreeable to a smaller setback to the water's edge of the pool then it would be logical to allow the remaining area to be pool decking even though the approved barrier is black metal opaque fence and not a masonry wall. In addition, there is no adjacent property owner next to this pool, deck and fence location.

The Board of Adjustments June 15, 2021 meeting minutes are as follows:

George Wiggins, Director of Building, gave the following summary:

Although the zoning for the Hamilton Place subdivision is R-2 where typically townhomes or duplexes are built, this development opted to create lots for single-family homes utilizing the zoning parameters permitted for one family dwellings, which in most cases, more generous setbacks and area coverages are permitted than for duplex or townhome dwellings.

On this property, when the home was constructed on this site, due to the unusual corner lot configuration, a special 10 feet street side setback was determined to be adequate along the Beloit Avenue frontage. Therefore, that same 10-foot setback is applied to this applicant's request for the proposed improvements. The Zoning Code limits wall heights to three feet within street side yards unless set back the required setback of the home, where they are permitted to be 6 feet. In addition, on other typical rectangular residential corner lots walls are permitted to have a height of 5 feet at a street side setback of 10 feet.

The home constructed has two corners located on the street side at setbacks of 10 feet and 12 feet, which meet the special street side setback given to this property. Although the water's edge of a swimming pool is required to be at the same 10 foot setback as the home, the deck of the pool is permitted to be set back at one half of that distance which is 5 feet.

The applicant points out the difficulty in providing a location for a small swimming pool in any other area on the lot in light of its configuration and the location of the existing dwelling.

With these proposed improvements including pool and decking, the allowable impervious coverage for this zoning district (65%) is not exceeded for this property.

We received 13 letters of support for this request from nearby property owners.

Mr. Wiggins pointed out the lot backs Pennsylvania Place Subdivision. He also highlighted that the property line is five feet from the sidewalk. Therefore, the proposed wall will set just inside the property line, with a zero setback distance.

In response to a Board question, Mr. Wiggins confirmed the request includes three setback requests. One is for the wall; the other two setback requests are for the pool and pool decking.

The applicant, Matthew Hurst, who resides at 801 Hamilton Place Ct., stated he updated the approval letter sent to his neighbors; clearly identifying the wall request is for a zero setback from the property line and five feet to the sidewalk. Mr. Hurst said he needs the pool to assist in the rehabilitation of his two hip replacements. He believes the proposed wall will add value to the community, enclosing Hamilton Place. Mr. Hurst noted his hardship is the irregularly shaped corner lot. Mr. Hurst responded to a Board question, noting the CMU wall will replace the existing fence to deaden sound, provide greater privacy and blend in more harmoniously with the neighborhood.

Terrance Barter, of 811 Hamilton Place Court, Troy Weyman of 808 Hamilton Place Court, and William Caldwell of 1169 Oaks Blvd., all spoke in favor of the wall.

In closed session, the board offered different opinions. Ann Higbie had difficulty finding a hardship. On the other hand, both Ms. Higbie and Ms. Sawruk acknowledged the significance of the neighbors' support. Tom Sims Jr. and Mike Clary favored the pool setback request only. Robert

Trompke and Charles Steinberg found the hardship is the shape of the lot and favored all of the applicant's requests.

As an alternative to the masonry or brick wall request, Mr. Wiggins suggested utilizing metal fencing that looks open but is opaque to provide a less massive appearance along this street frontage.

The applicant, Matthew Hurst said he is flexible regarding the wall material. He noted there are walls on Park Avenue one-foot away from the sidewalk. His proposed wall will be five feet from the sidewalk. He also agrees to a hedge in front of the wall. Mr. Hurst's wife, Melissa Morse felt a hedge inside the property line would not allow the pool to sit as close to the property line.

Board member Michael Clary felt there was opportunity to design an irregularly shaped pool and a smaller spa. He suggested a reduced request, allowing the pool with the requested five-foot setback; and allowing a six-foot high black opaque fence along the property line. Matthew Hurst responded he would accept black metal opaque fencing, in lieu of the proposed wall. Mr. Wiggins noted the amendment should include community association approval that the landscaping buffer will be provided and maintained on the outside of the fence. Matthew Hurst responded he would maintain the hedge in the right of way. He also hoped the board would reconsider a two-foot pool setback.

Findings

The Board found the hardship is the unusual corner lot configuration.

Action

Based on these findings, Michael Clary made a motion to approve as presented; Tom Sims Jr. seconded the motion. The request failed by a vote of 0-6. Michael Clary made an amended motion to allow the construction of a 6' feet high metal black opaque fence, located zero feet from the Beloit Avenue lot line and a swimming pool located 5' from the street-side lot line to the pool's water edge. The amendment included a community association approved landscaping buffer will be provided and maintained on the outside of the fence. Tom Sims Jr. seconded the amended motion which passed by a vote of 6-0. Robert made a final motion to allow the applicant to come back with modifications before the three-year waiting period. Cathy Sawruk seconded the final motion which passed by a vote of 6-0.

No additional approval letters received.

In response to a board question, Mr. Wiggins confirmed this request is for a reduced pool setback, from the previously approved 5 feet minimum setback to a two feet pool setback. Clarification is also requested for the established minimum pool deck setback. Mr. Wiggins stated our storm water runoff must be approved by our engineering department.

The applicant Matthew Hurst at 801 Hamilton Place Ct spoke. He was not sure why landscaping would be required behind an opaque fence because the landscaping would not be seen from the street. He stated maintaining green space between the pool and the fence would be a safety issue.

The contractor, Jason Tisdell with Cardell Construction at 1115 East Livingston Street, stated locating the pool farther from the home would allow for improved egress at the rear doors. The proposed pool is reasonable at ten foot wide. Mr. Tisell stated the lot is a unique shape, has a twenty-foot buffer and would be drained properly.

In closed session, Ann Higbie stated her opposition. In contrast, Cathy Sawruk felt a hardship was proved and an additional request of three feet is reasonable. Michael Clary could not support building a pool two feet from the property line. Jason Johnson said the hardship is the shape of the parcel and the minimal width of the pool. Charles Steinberg and Robert Trompke said the hardship was established last time. Michael Clary and Robert Trompke were concerned locating a deck right up to the property line; they could not recall ever approving decking right up to the property line.

Findings

The Board found the hardship is the unusual corner lot configuration.

Action

Based on these findings, Jason Johnson made a motion, seconded by Cathy Sawruk to approve the request. The request as presented failed by a vote of 3-3. Cathy Sawruk made an amended motion to leave the fence as previously approved and allow the water's edge of the pool to be set a minimum of two feet from the street-side property line, with a pervious surface only between the pool and the fence. Charles Steinberg seconded the motion, which passed by a vote of 4-2. Michael Clary and Ann Higbie voted in opposition.

The meeting adjourned at 6:05 pm.

Sofia Chatzidaki SC

Sofia Chatzidaki, Recording Clerk

September 21, 2021

Date of Board Approval