



Board of Adjustments Minutes

July 28, 2020 at 4:30 p.m.

Virtual Meeting

Present

Robert Trompke (Chair), Michael Clary (Vice-Chair), Tom Sims Jr, Charles Steinberg, Ann Higbie and Steven Heller. Director of Building, George Wiggins and Recording Clerk, Theresa Dunkle. Absent: Aimee Hitchner

Meeting called to order

Election of chair

Ann Higbie made a motion to elect Robert Trompke as the new Board of Adjustments Chair; the motion was seconded by Steven Heller. The motion was approved by a vote of 6-0.

Ann Higbie made a motion to elect Michael Clary as the Board of Adjustments Vice-Chair; the motion was seconded by Steven Heller. The motion was approved by a vote of 6-0.

Approval of minutes

Motion made by Michael Clary to approve the February 18, 2020 minutes. Tom Sims Jr seconded the motion. The minutes received approval by a vote of 6-0.

Opening statement and public comments

Robert Trompke explained the rules of procedure for variance cases and opened the floor for any disclosures, public comments or questions. No disclosures or public comments were made.

New business

1. Request of Ed Walker for a variance to allow the construction of 6-foot (opaque) vinyl fencing to the water's edge of a stream, in lieu of providing substantially open fencing within 50 feet of a stream.

Located at 1430 Bonnie Burn Circle, Zoned: R-1AA

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

Due to the pandemic, this item was rescheduled from March 17, 2020.

This residentially zoned property is located on the stream that runs from Lake Sue to Lake Virginia. This fence variance request is very similar to a variance requested last month to allow a 6' opaque vinyl fencing to extend to the shoreline of Lake Killarney and replace open metal fencing. That request was denied due to the applicant's inability to provide a unique hardship that relates to the applicant's property. This applicant also wants to install 6' opaque vinyl down to a stream and within the 50-foot setback.

The purpose of this Zoning Code requirement, which applies to both lakes and streams throughout the City, is to provide open views along shoreline for the last 50 feet of setback for these water bodies.

We have received two letters of non-objection from the abutting property owner at 1420 Bonnie Burn Circle who is on the west side of the applicant's property and a letter of objection from the owner at 1410 Bonnie Burn Circle which is one lot further west and not abutting the applicant's property. One letter of objection from a property owner across the stream from the applicant's property.

Understanding that it may be difficult to prove a hardship as seen by last month's denial, the applicant has indicated agreement to accept a limited variance by placing the opaque fencing 10 feet back from the stream or perhaps there is another distance back that will serve the purpose of providing privacy as indicated in the application.

In response to a question by Board member Steven Heller regarding whether streams are treated differently than lakes, the Mr. Wiggins said streams and lakes are reviewed the same in same manner with regard to requiring open fencing, and that this has not changed since the late 1980's.

The applicant Ed Walker, who resides at 1430 Bonnie Burn Circle, explained his home sits approximately fifty feet from the creek. The fifty foot required setback for opaque fencing means he has no opportunity for rear yard privacy. Mr. Walker stated there is a difference between streams and lakes. He felt his hardship was a stream front property with no option for privacy, specifically from the neighbor's pool.

Board member Michael Clary asked if the applicant would consider a 25ft setback. Mr. Walker agreed to the compromise, although he would prefer a ten to fifteen foot setback. In addition, Mr. Walker also agreed to install wood fencing, in lieu of vinyl.

In closed session, Michael Clary acknowledged he lives on the other side of the stream and next door to the neighbor in opposition of the request. Mr. Clary did see a difference between a lake and a stream and thought a maximum setback of twelve feet is reasonable. He preferred pressure treated wood for the fencing material. Mr. Clary felt the hardship is the enforcement of Lake Setback requirements on stream front properties. Steven Heller was in agreement with Michael Clary's amendments to the request.

Board members Charles Steinberg, Tom Sims Jr., and Ann Higbie did not see a hardship. Ann prefers landscaping as a means to privacy.

No one from the public spoke concerning this request.

Findings

Some board members felt the hardship was the code applies the same fence setbacks to both streams and lakes. Others felt the City Commission should revisit this ordinance and determine if a reduced fence setback should uniformly apply to all stream front properties.

Action

Based on these findings, Michael Clary made a motion, seconded by Tom Sims Jr to approve the request. The requested variance was denied by a vote of 0-6.

Michael Clary made an amended motion to approve the request with a 25-foot rear setback with 3ft high hedges; Tom Sims Jr seconded the motion. The amended motion was denied by a vote of 3-3, with Charles Steinberg, Tom Sims Jr., and Ann Higbie voting in opposition.

2. Request of Ian Duffy for a variance from to allow the construction of a two-story addition to be located 14.9 feet from the street side lot line on the first floor and 17.4 feet from the street side lot line on the second floor in lieu of the required setback of 20 feet to each floor.

Located at 2463 Whitehall Circle, Zoned: R-1A

George Wiggins Director of Building gave the following summary:

Due to the pandemic, this item was rescheduled from March 17, 2020.

In order to provide additional living area and storage space onto an existing two story home, the owner proposes to enclose both floors of a balcony to increase the usable floor area. However, the end wall of this home is on a street side setback which today requires a setback of 20 feet and when the home was built in 1962 the street side setback was 10 feet for all homes on a corner which back up to rear yard another home on a corner which is the case here. Different rules applied when the rear yard of a corner lot backed up against a front yard of another corner lot.

The balcony and first floor enclosure result in an additional gross area of 188 square feet, which results in a total area of 2,502 square feet, which is well below the permitted area of 3,910 square feet (43% FAR). A minimal additional area of impervious coverage (27 sf) is needed for this project. In addition, no sidewall articulation is required on a street side yard. In addition, for this additional side wall area no articulation is required on the interior side yard if the addition is less than 12 feet or does not result over 36 feet of wall.

We received five letters of non-objection from nearby residents of Whitehall Circle.

No one from the public spoke concerning this request.

The Board felt they could render a decision without further discussion based on the information provided.

Findings

The board members agreed with the information presented. The hardship is that the home was built in 1962 when the street side setback was half of what it is today. The additional square footage is minimal and is within the existing footprint.

Action

Based on these findings, Charles Steinberg made a motion, seconded by Michael Clary to approve the request. The requested variance was approved by a vote of 6-0.

3. Request of Kyle Goone, on behalf of Paul & Amanda Smerge, for a variance to allow the construction of a new dock to extend approximately 50 feet into Lake Spier, in lieu of the maximum permitted distance of 30 feet.

Located at 2050 St. George Avenue, Zoned: R-1A

George Wiggins Director of Building gave the following summary:

Due to the pandemic, this item was rescheduled from March 17, 2020.

The marine contractor handling this request sent some photos showing that the existing dock had deteriorated and gave two examples of the water depth. The water depth at the end of the dock is 4 feet and at some point perhaps closer to shore, the depth is 22.5 inches. In addition, in looking at aerials of other docks on Lake Spier from the Orange County Property Appraiser site, the adjacent property to the south also has a dock that extends out more than 30 feet and appears to be 40 feet out into the lake.

The reason this boat dock variance is coming to this Board without having gone first to the Lakes Board is that their plan reviewer looked at this request and approved the dock thinking that this is a conforming boat dock replacement, which, by ordinance, does not require a Lakes Board review. In discussing this request with Don Marcotte, Assistant Public Works Director, he is fine with letting this proceed to the Board of Adjustments and recommends that if a variance is granted then the applicant can be placed on the agenda for the Lakes Board meeting where there will be another matter discussed involving Lake Spier concerning a petition from lakefront homeowners asking the Board to restrict boats on this lake to non-motorized watercraft.

We received one email inquiry regarding this proposed request asking for clarification on the request. They stated they would attend the meeting. The inquiring person did not state whether they objected to this request. They reside in the townhomes on Lake Spier, which are two properties to the north of this applicant's property.

In response to Board questions, Mr. Wiggins clarified, the applicant is not requesting to build any further out than the existing deck. However, they are requesting a larger platform.

The applicant, Paul Smerge, who resides at 2050 St. George Avenue, responded to board questions noting no vertical construction beyond the top of the floor deck is proposed.

Findings

Reducing the existing dock length in reconstruction would eliminate feasible boat mooring due to the shallow water depth. The Board members found the hardship was the deteriorating existing boat dock that requires replacement and recognizing the shallow depth of the water level.

No one from the public spoke concerning this request.

Action

Based on these findings, Charles Steinberg made a motion, seconded by Tom Sims Jr. to approve the request. The requested variance was approved by a vote of 6-0.

4. Request of Ruben Portalatin for a variance to allow the construction of a 6' high fence located 5' from the street side lot line, in lieu of the required setback of 15'.

Located at 1671 Berkshire Ave, Zoned: R-1A

George Wiggins Director of Building gave the following summary:

This request includes removing a non-permitted and nonconforming fence that was built by a prior owner and is only 22 inches from the Clay Street sidewalk and lot line. The adjacent home along Clay Street on the north side at 1750 Westchester Avenue obtained a variance to allow a 6' fence placed 5 feet back from the street side lot line with a condition requiring a substantial hedge to buffer view of the fence.

This applicant states that when he purchased the home in May 2019 this fence was existing, having been replaced by a previous owner apparently without a permit. In addition, survey provided does show a wood fence along the west street side lot line.

Minutes from 1/18/2005 Variance Hearing:

#1 Request of Frederico Bowen for a variance to allow the construction of a six-foot wood fence to be placed 5 feet from the Clay Street lot line extending from near the front of the home under construction to the rear lot line in lieu of the required setback of 20 feet.

Located at 1750 Westchester Avenue. Zoned: R-2.

FINDINGS:

Lee Pecci, Assistant Building Official, stated the applicant is seeking a variance to allow the construction of a new six-foot wood fence to be located 5 feet from the Clay Street lot line along the sidewalk and extending from the rear lot line to a point approximately 49 feet from the front lot line on Westchester Avenue.

Applicant stated multiple homes in the neighboring area also have block walls up to the sidewalk and the surrounding area is mostly commercial property and the wall would protect his property from the environment of the surrounding businesses. The applicant has letters from surrounding neighbors supporting the block wall up to the property line.

The Board stated the hardship is the location of the home and the surrounding semi-commercial environment

ACTION:

Based on these findings, Ms. Morse made a motion, seconded by Mr. Larsen, to approve the request with the requirements that the fence will be painted or stained, appropriate landscaping is added and an irrigation system be installed. The request was approved 5-1 with Ms. Shirer voting in opposition.

Some of the potential findings the Board could make with this request include the following:

In favor of granting a variance:

- 1) A pre-existing 6' fence had existed at or near this location for many years.
- 2) This property is directly across the street from commercially zoned properties and having a privacy buffer from commercial activities is a customary requirement in the City Zoning Code.
- 3) The applicant is willing to re-locate this fence back to 5' from the lot line and provide an irrigated landscape hedge to buffer the view of the fence from the street in a similar manner as the abutting property on the north side of this applicant's property.

In opposition to granting a variance:

Having nonconforming, 6' fencing lining a street entering the City as close as 5' is not a pattern that should be set for other residential properties along commercial corridors.

Alternate request consideration:

Locate the 6' fencing back 8-10' from lot line to not line up with adjacent property and provide landscaping buffer as proposed.

The applicant provided two letters in support of the request.

No one from the public spoke concerning this request.

Board member Tom Sims Jr. noted in closed session that this area is not the main thoroughfare into Winter Park. He highlighted the property is adjacent a gas station, sits near an apartment complex and a church.

Mr. Wiggins reiterated that hedges in front of the fencing are included as part of the request to help buffer the view of the fence.

Ann Higbie asked for a motion based on the information provided.

Findings

The Board found the hardship is the unique location of the lot, which sits aside heavily traveled Clay Street and adjacent commercial properties.

Action

Based on these findings, Charles Steinberg made a motion, seconded by Tom Sims Jr. to approve the request, with hedges in front, as stated. The requested variance was approved by a vote of 6-0.

5. Request of Sheila Cichra, on behalf of John & Shelley Rife and Harry & Claudia Falk, for a variance to allow the construction of a boathouse located zero feet from the common lot line of 720 & 724 Via Bella, in lieu of the required side setback of 5' and allow 150 square feet of additional boathouse area at 720 Via Bella.

Located at 720 & 724 Via Bella, Zoned: R-1AAA

George Wiggins Director of Building gave the following summary:

The applicants requested joint variances to allow the re-construction of a boathouse located zero feet from the common lot line of 720 & 724 Via Bella, whereas the required side setback is 5' and allow approximately 70 square feet of additional boathouse area at the 720 Via Bella property.

Prior to 2001 a boathouse was built at 724 Via Bella with an encroachment across the extended side lot line of 720 Via Bella a distance of 3.4' to 9.5'. We can find no record of a permit; however, from viewing property appraiser aerials apparently it was built before 2001.

The proposed boathouse will be constructed within the allowable area, height and distance into the lake and was approved by the Lakes Board on June 9, 2020.

The owners of each property are having their attorneys prepare an agreement to be executed to protect each other's interests with regard to the encroachment, addressing use and maintenance of the new boathouse.

One of the main reasons for rebuilding the boathouse at this location is to maintain views of the lake. In late 2010, a boathouse was built on the property at 720 Via Bella in conformity with the Code and directly abutting the existing encroaching boathouse. If the encroaching boathouse is moved further to the south along the shoreline of 724 Via Bella, the resulting lake views of both properties will be further reduced, particularly due to the pie shaped lots that are much wider at the street frontage than at the lake.

No letters were received concerning this request and notices were mailed to property owners within 200 feet.

No one from the public spoke concerning this request.

Findings

The Board found the hardship is that rebuilding the boathouse within the required setback would further obstruct the both neighbor's view of the lake. They considered the fact that the existing boathouse has been there for over twenty years and the affected neighbors are in agreement with rebuilding in the same location.

Action

Based on these findings, Michael Clary made a motion, seconded by Steven Heller to approve the request. The requested variance was **approved** by a vote of **6-0**.

6. Request of Sandi Swanson to reinstate a variance to allow the construction of a garage to be located in line with an existing nonconforming carport located 17 feet from the front lot line in lieu of the required front setback of 20 feet, which was approved by the Board of Adjustments on April 17, 2017.

Located at 2600 Western Way, Zoned: R-1AA

George Wiggins Director of Building gave the following summary:

If a variance is not implemented within one year, then it expires and is no longer valid unless the Board has granted an extension. In this case, no action was taken to utilize this variance by obtaining a building permit and constructing the garage proposed in the variance. Typically, the criteria to consider in granting a reinstatement is whether there have been any changes in the Zoning Code that would impact the reinstatement of this variance. The answer in this case is that no change have been made that would require any different consideration by the Board.

No letters were received concerning this request and notices were mailed to property owners within 200 feet.

No one from the public spoke concerning this request.

The Board felt they could render a decision without further discussion based on the information provided.

Findings

The hardships established previously were determined valid, since no major Zoning Code changes took place since the initial approval. The established hardship is the corner lot setbacks make it difficult to locate an enclosed garage anywhere else on the lot.

Action

Based on these findings, Ann Higbie made a motion, seconded by Michael Clary to approve the reinstatement of the variance for one year. The requested variance was approved by a vote of 6-0.

7. Request of Jordan Strasberg, on behalf of Andreas Kunert & Brit Kelley, for a variance to allow the construction of a swimming pool, screen enclosure and cabana to be located 5' from the rear lot line, in lieu of the required setback of 10'.

Located at 3032 Temple Trail, Zoned: R-1A

George Wiggins Director of Building gave the following summary:

The property backs up to a nature preserve owned by the City and will not be developed with any structures impacted by this request. Under the Zoning Code, when residential properties have their rear yard adjacent to a non-residential or multi-family zoned districts, dwellings may utilize a rear setback of 10 feet to both floors of the dwelling. In this case, one of these structures (roofed patio) is part of the dwelling and the other accessory structures are typically required to have 10-foot rear setbacks. Therefore, they all require a variance in order to be 5 feet from the rear lot line.

The pool screen enclosure will have a maximum height of 13 feet with a 10 foot height across the rear. The cabana or ("elite roof") structure apparently is proposed to be screened and has an area of 536 square feet. The cabana in this case can be referred to as a screened or open porch and with up to 500 square feet not included in the floor-area-ratio calculation for this property.

We received two letters expressing non-objection from the abutting property owners.

The applicant, Brit Kelley, who resides at 3032 Temple Trail, stated she has two small children. She intends to use the proposed outdoor area for spending time with family and friends.

No one from the public spoke concerning this request.

The Board highlighted the property backs a nature preserve, and felt they could render a decision without further discussion.

Findings

The Board found these rear setback requests reasonable. Primarily, the request is for outdoor accessory structures that will back up to a nature preserve. Therefore, no residents are affected.

Action

Based on these findings, Steven Heller made a motion, seconded by Michael Clary to approve the request. The requested variance was approved by a vote of 6-0.

8. Request of Tommy Watkins, on behalf of Ken Cornell, for variance to allow the construction of a new home with a front setback of 15.5,' in lieu of the established setback of 22'.

Located at 443 Carolina Ave, Zoned: R-1A

George Wiggins Director of Building gave the following summary:

For new homes in the single family zoning districts of the City, the required front setback for a new infill home in an established neighborhood is based on the average setback of 2 abutting homes on each side of the property where a new home is to be built. In this case, the front setback was determined to be 22 feet.

This contemporary designed home has a second floor 4.5-foot bump out with a partially enclosed balcony on the front of the home. Open first floor front porches can project up to 5 feet into the required front setback. Excluding this second floor, cantilevered area would result in a front setback of 20 feet, which is still encroaching into the front setback.

Typically, the Board has very rarely granted variances to a proposed new home on a vacant lot or a lot in which a demolition of a previous home has taken place since the designer has all options available to provide creating a home conforming to all of our setback criteria.

The few times that variances have been granted on a vacant lot include unusual circumstances such as a steeply sloping or oddly shaped lot.

Preliminary plans for this newly designed home were reviewed and not approved due to the requested front setback of 15.5 feet earlier this year.

The applicant provided three letters in support the day of the meeting.

Mr. Wiggins added there are other substantial rebuilds on this street and the current home is setback two feet from the property line.

In response to board questions, Mr. Wiggins said the garage is proposed to be buildt at the minimum rear setback of 10 feet.

Board member Charles Steinberg noted the home on the west side does not have a garage, making it dissimilar. Therefore, he felt that house setback should be omitted in calculation of the average of the front setback calculation.

The applicant, Tommy Watkins with Phil Kean Designs, spoke. He noted the existing home is only two feet from the property line and the rear garage design provides greater street front appeal. Mr. Watkins clarified the lower level is setback 20 feet.

Mr. Tommy Watkins stated his hardship is the small narrow lot, which does not allow for enough outdoor area, specifically with the rear placement of the garage. His client does not want children to have to play in the front yard for safety reasons. Mr. Watkins stressed that he hoped the Board would weigh the benefit of a rear garage and approve the variance to achieve this streetscape improvement.

In response to Board questions, Mr. Wiggins said the relief for small lots pertains to short lots which are 105 feet in depth or less. He also confirmed there was an alley across the rear, which is now abandoned.

In closed session, Mr. Steinberg restated that he felt including the lot without a garage in the front setback calculations is arbitrary and unfair.

Findings

Most of the board members could not find a hardship. They were concerned that approval might cause others to request variances for new construction projects.

Action

Based on these findings, Michael Heller made a motion, seconded by Ann Higbie to approve the request. The requested variance was denied by a vote of 1-5. Charles Steinberg was the only member in support.

The meeting adjourned at 6:20 pm.

Theresa Dunkle, Recording Clerk