



MINUTES OF THE REGULAR MEETING
BOARD OF ZONING APPEALS

November 7, 2013

A. Call to Order – 7:30 p.m.

1. Roll Call - the following members present: D. Falcoski, B. Seitz, R. Hunter, L. Reibel and C. Crane. Also present was D. Phillips, Chief Building Inspector, and L. Brown, Director of Planning and Building.
2. Pledge of Allegiance
3. Mr. Hunter moved to approve the October 3, 2013 minutes, seconded by Mr. Falcoski and the minutes were approved.
4. Affirmation/swearing in of witnesses.

B. Unfinished Business

1. **Variance** - Setbacks – New House – **6636 McBurney Pl.** (Trevor Custom Homes)
BZA 39-13

Motion made by Mr. Falcoski to remove the item from the table, seconded by Mr. Hunter and all members voted “aye” thereon.

Discussion:

Mr. Phillips reviewed the staff memo.

Ms. Crane asked for staff to give a brief summary of how this differs from the original proposal. Mr. Phillips stated the major difference is that the original proposal was for the thirty foot rear yard setback line to be physically moved to about fifteen feet and the side yard setback to be moved from ten feet to five feet. Now they have elected to leave the setbacks as they are and propose a variance to allow the structure in the setbacks. Ms. Crane asked if there is a proposed structure and Mr. Phillips said there is a proposed footprint.

Catherine Cunningham, 65 East State Street, said with her is Steve Goebel of Trevor Custom Homes and Warren Hasting the proposed buyer. She stated Mr. Hastings has worked with the architect to come up with this footprint and the stairs are actually going down to the basement, visually they will not be seen above the ground except for the railings.

Warren Hastings, 5956 Baronscourt Way, stated they have met with neighbors and believes they have addressed some of their concerns.

Steve Goebel, 6814 Whitetail Lane, stated this house will fit well with the size and quality of homes in the neighborhood.

Ms. Crane asked if there were any questions from the Board.

Ms. Crane asked if there was anyone in the audience to speak for or against this proposal.

Finding of fact:

1. This property is in the R-10 district, with the lot being created as part of The Woods of Lawndale subdivision in 2006. With the subdivision approval, required setbacks were included.
2. The applicant is proposing to construct a 2 story dwelling with a portion of the dwelling within a rear yard setback, from 19.6 feet to 16.2 feet from one of the rear property lines. The requested variance is from 10.4 feet to 13.8 feet. The applicant is also proposing a stair, a portion to be within another rear yard setback, 5.9 feet from another rear property line. The requested variance is 4.1 feet.

Conclusion:

1. The stair variance request is not substantial.
2. Due to the unique shape of the property, and relationship to adjacent properties, these variances would not alter the essential character of the neighborhood.
3. The delivery of governmental services should not be affected.

Mr. Seitz moved:

THAT THE REQUEST BY TREVOR CUSTOM HOMES FOR A VARIANCE FROM CODE REQUIREMENTS FOR REAR YARD SETBACKS TO CONSTRUCT A DWELLING AT 6636 MCBURNEY PLACE, AS PER CASE NO. BZA 39-13, DRAWINGS NO. BZA 39-13 DATED OCTOBER 24, 2013, BE APPROVED, BASED ON THE FINDINGS OF FACT AND CONCLUSIONS IN THE STAFF MEMO AND/OR PRESENTED AT THE MEETING.

Ms. Reibel seconded the motion and all members voted "aye" thereon.

C. Items of Public Hearing

1. Variance – Fencing (Dumpster Enclosure) - 48 W. New England Ave. Parking Lot (City of Worthington) BZA 40-13

Mr. Hunter made a motion to table, Mr. Falcoski seconded the motion and all members voted “aye” thereon.

2. Variance – Fencing for Swimming Pool – 6064 Olentangy River Rd. (Jamie & Matt Beckett) BZA 41-13

Discussion:

Mr. Phillips reviewed the staff memo.

Ms. Crane asked why this is before the Board and Mr. Phillips replied there was a complaint filed about a swimming pool without a fence and after an investigation a notice was sent, ordering the property owner to erect a fence. One of the options the property owner has is to seek a variance from this Board.

Ms. Crane stated since this variance is not transferrable, if the property changes hands then the new owner would be required to erect a fence or seek a new variance. Mr. Phillips replied that is correct. Mr. Phillips also stated there is an email in front of the Board from the neighbor two properties to the north in support.

Matt Beckett, 6064 Olentangy River Road, stated he believes the pool has been there for about forty years and there is only one way to access the pool which is through his driveway to the back of the house. Mr. Beckett said he does have a pool alarm because he has three children under the age of six and does have a wrought iron fence bordering the pool and the pool house.

Ms. Crane asked for location of the fence and Mr. Beckett said if you are looking at the house from Olentangy River Road it is on the right side of the house. Ms. Crane asked the entire yard could be fenced or just around the pool and Mr. Phillips replied that is correct.

Mr. Falcoski asked to see a photo looking south and then stated that basically it is the north side that is open. Mr. Hunter said normally he would be concerned, but in this situation he is not.

Mr. Hunter asked to talk about the nature of this variance and the pool alarm. Mr. Phillips replied the motion as drafted by staff, which the Board can adjust, is that when the pool is full of water it must have an alarm, but when it is empty and has a cover on it, the alarm does not have to be functional.

Ms. Crane asked if there is an accident and the Board did not require a fence, can the City be held liable. Mr. Phillips said he did not know the answer, but could ask the Director of Law. Ms. Crane stated she would like to know the answer prior to approving this.

Mr. Hunter stated he feels in this situation the area is so isolated and believes this pool to be in the same category as fencing a creek or fencing the Olentangy River, which is a drowning hazard and an attractive nuisance. The fact that this is private property is the only difference. Mr. Hunter did state that the Chair brought up a good point with the liability issue of the City.

Mr. Seitz asked if the property maintenance code has a specific distance that the fence has to be away from the pool and Mr. Phillips replied it does not.

Mr. Falcoski stated he believes it would be very hard for someone to stumble upon this attractive nuisance unlike a more densely populated area.

Ms. Crane said it is logical to table this item for one month until information is received from the Director of Law and there is no hardship to wait a month since there will be no swimming in December.

Ms. Crane asked if there was anyone in the audience to speak for or against this proposal.

Eric Skaug, 348 East Granville Road, asked what is a pool alarm. Mr. Beckett replied the pool alarm sits in the pool and anything over 12 pounds entering the pool will trigger a siren type alarm. Ms. Crane said it would depend on someone hearing it to be effective and Mr. Beckett responded absolutely. Ms. Crane asked how the alarm is powered. Mr. Beckett said he believes it is electric with battery backup.

Findings of fact:

1. This property has an existing in-ground swimming pool over 30 inches in depth.
2. The property maintenance code requires a 6 foot high fence enclose the swimming pool.
3. The applicant has a pool water alarm to alert the owner when someone or something had entered the swimming pool.
4. Property maintenance code variances that are granted are not transferable to the next property owner.

Conclusion:

1. This property is not a typical suburban setting whereby a young child may wander onto the property, attracted by the swimming pool. There is a ravine to the south, a limited access highway to the east, portions of the property to the north is fenced, and the property is nearly 4 acre in size. Access to the property from the west is limited by Olentangy River Road, which is signed 35 miles per hour and has no sidewalk.

Mr. Hunter moved:

THAT THE REQUEST BY JAMIE AND MATT BECKETT FOR A VARIANCE FROM CODE REQUIREMENTS FOR FENCING A SWIMMING POOL AT 6064

OLENTANGY RIVER ROAD, AS PER CASE NO. BZA 41-13, DRAWINGS NO. BZA 41-13 DATED OCTOBER 9, 2013, BE APPROVED, BASED ON THE FINDINGS OF FACT AND CONCLUSIONS IN THE STAFF MEMO AND/OR PRESENTED AT THE MEETING CONDITIONED UPON THE WATER ALARM SYSTEM IN THE POOL BE OPERATIONAL AND MAINTAINED WHEN THE POOL IS FILLED WITH WATER.

Mr. Seitz seconded the motion and all members voted “aye” except Ms. Crane voted “no”.

**3. Variance – Side Yard Setback – Window Wells- 638 Seabury Dr. (James Bihari)
BZA 42-13**

Discussion:

Mr. Phillips reviewed the staff memo.

James Bihari, 638 Seabury Drive, said they are putting covers over the window wells that will hold five hundred pounds.

Ms. Crane asked if there was anyone in the audience to speak for or against this proposal.

Findings of fact:

1. This property is an existing lot of record in the R-10 district with a minimum side yard setback of 6 feet. The existing dwelling is approximately 6 feet from the east property line.
2. The applicant is proposing to install 2, 61 inch wide by 43 inch deep by window wells within the north side yard setback, 29 inches from the north property line. The requested variance is 3 feet 7 inches.

Conclusions:

1. The requested variance is not substantial.
2. The essential character of the neighborhood should not be substantially altered.
3. The delivery of governmental services should not be affected.

Mr. Seitz moved:

THAT THE REQUEST BY JAMES BIHARI FOR A VARIANCE FROM CODE REQUIREMENTS FOR SIDE YARD SETBACK TO ALLOW THE INSTALLATION OF 2 WINDOW WELLS AT 638 SEABURY DRIVE, AS PER CASE NO. BZA 42-13, DRAWINGS NO. BZA 42-13 DATED OCTOBER 11, 2013, BE APPROVED, BASED ON THE FINDINGS OF FACT AND CONCLUSIONS IN THE STAFF MEMO AND/OR PRESENTED AT THE MEETING.

Mr. Falcoski seconded the motion and all members voted “aye” thereon.

4. **Variance** - Accessory Structure Area – **348 E. Granville Rd.** (Erik Skaug) **BZA 43-13**

Discussion:

Mr. Phillips reviewed the staff memo

Eric Skaug, 348 East Granville Road, stated the existing garage sets back far away from the home and they are wanting a garage attached to the proposed addition.

Ms. Crane asked why are they keeping the existing garage and Mr. Skaug replied to store their lawn equipment, and they plan to keep their children's bicycles also in the existing garage.

Ms. Crane asked if there was anyone in the audience to speak for or against this proposal.

Findings of fact:

1. This property is in the R-10 district and total accessory structure area is limited to 850 square feet.
2. The property contains an existing 30.5 feet by 28 feet detached garage in the northeast corner of the property. The existing garage is 854 square feet in area.
3. The applicant is proposing to construct additions to the existing dwelling including a 35 foot by 24 foot attached garage. The new garage is 840 square feet in area. The applicant further proposes keeping the existing garage. The total existing and proposed accessory structure area is 1,694 square feet. The requested variance is 844 square feet.
4. The property is subject to, and the additions have been approved by, the Architectural Review Board.

Conclusions:

1. The maximum accessory structure area is absolute regardless of the size of the lot. In this particular case, the lot area is more than 4 times larger than the minimum for the district. This mitigates the substantial nature of the variance request.
2. The essential character of the neighborhood should not be substantially altered.
3. The delivery of governmental services should not be affected.

Ms. Reibel moved:

THAT THE REQUEST BY ERIK SKAUG FOR A VARIANCE FROM CODE REQUIREMENTS FOR ACCESSORY STRUCTURE AREA TO CONSTRUCT AN ATTACHED GARAGE AT 348 EAST GRANVILLE ROAD, AS PER CASE NO. BZA 43-13, DRAWINGS NO. BZA 43-13 DATED OCTOBER 17, 2013, BE APPROVED, BASED ON THE FINDINGS OF FACT AND CONCLUSIONS IN THE STAFF MEMO AND/OR PRESENTED AT THE MEETING.

Mr. Seitz seconded the motion and all members voted “aye” thereon.

Mr. Seitz moved to adjourn, seconded by Ms.Reibel and the meeting adjourned at 8:15 P.M.