

**ZONING BOARD OF ADJUSTMENT
Regular Meeting Minutes
April 28, 2022**

MEMBERS PRESENT

Vice Chair Brandon Mund
Cynthia Foster
Bonnie Leitch
David Lerch
Jenny Wilson

STAFF PRESENT

Jean Drew, Planning and Development
Services Assistant Director
Frank Onion, Assistant City Attorney
Stacy Snell, Planning Manager
Matthew Simmont, Senior Planner
Maddison O'Kelley, Planner
Laure Middleton, Planner
Kaitlyn Buck, Assistant Planner
Colton Barker, Planning Technician

Members Absent

Chair John Coker
Steve Quidley

1. CALL TO ORDER

Vice Chair Mund called the meeting to order at 6:05 p.m. The Board agreed to wait for the arrival of Member Wilson. Member Wilson arrived at the dais at 6:11pm and the board resumed their session.

2. ROLL CALL

Roll was called, and a quorum declared.

3. APPROVAL OF MINUTES

Motion by Member Foster, seconded by Member Leitch, to approve the minutes of the Zoning Board of Adjustment Regular Meeting of March 24, 2022. Motion carried (5-0-0).

4. INDIVIDUAL ITEMS FOR CONSIDERATION

(A) ZB22-0005 Hold a public hearing and consider a request for a variance to Section 5.3-2(b) to allow a proposed 6-foot tall privacy fence to be constructed within a front yard setback exceeding the maximum height of 3 feet for a solid fence constructed, addressed at 273 Rhine Road. (Applicant: Felix Alonzo; Case Manager: Laure Middleton)

Mrs. Middleton presented the staff report and stated the ZBA may authorize a variance from the zoning regulations only upon finding the following facts:

- 1) That there are special circumstances or conditions affecting the land involved such that the strict application of the provisions of this Chapter would deprive the applicant of the reasonable use of land;** (The applicant states that due to owning a double lot, his property is unique in the neighborhood. Additionally, the applicant believes that a 25-foot setback for a 6-foot privacy fence is effectively taking 2,500 square feet of his property from his use. Staff acknowledges that the subject property has been developed with a front orientation towards Rhine Road instead of Post Road, however, if that was the case then the fence along Rhine Road should be set back 25 feet. The adjacent lots front Rhine Road with 25-foot deep setbacks.) **and**
- 2) That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;** (The applicant states the variance is necessary to preserve the private use of his open yard area. The openness of the property has allowed several instances of criminals to vandalize his neighbors' houses due to using his unfenced property to stage prior to vandalization. Staff notes that adhering to a front setback along one of the streets would not remove the residential use of the property.) **and**
- 3) That the granting of the variance will not be detrimental to the public health, safety or welfare, or injurious to other property within the area;** (The applicant states the variance will not be detrimental to the public health, safety or welfare, or injurious to other property within the area. Staff acknowledges the treatment of Post Road as the front property line allows the

- development of a privacy fence along Rhine Road at the property line that is out of character with the neighborhood. Additionally, the fence placement at the intersection corner needs to comply with appropriate transportation visibility requirements.) **and**
- 4) **Granting of the variance will not have the effect of preventing the orderly use of other land within the area in accordance with the provisions of this Chapter;** (The applicant states the variance should not prevent orderly use of other land within the area. Staff acknowledges the treatment of Post Road as the front property line allows the development of a privacy fence along Rhine Road at the property line that is out of character with the neighborhood.) **and**
 - 5) **That an undue hardship exists;** (The applicant states that because he owns 2 lots and uses one as a side yard, the 25-foot front setback for a 6-foot privacy fence does not allow him the full use of the property. Additionally, the applicant states the front setback should not apply because no home is proposed on Lot 20. Staff acknowledges that the proposed privacy fence could be within 25-feet from the front property line if the height was adjusted to 3 feet at the start of the front setback, or 4.5 feet in height if visibly open a minimum of 50 percent.) **and**
 - 6) **That the granting of a variance will be in harmony with the spirit and purpose of these regulations.** (The applicant states granting of the variance will be in harmony with the spirit and purpose of the City's regulations and allow for new construction to reasonably fit in with the existing character of the neighborhood. Additionally, the applicant states the proposed privacy fence would not obstruct the view of the front of the house. Staff acknowledges that the subject property has been developed with a front orientation towards Rhine Road instead of Post Road, therefore, Post Road could be considered the corner side and Rhine Road would be the front with the privacy fence set back 25 feet. This would be in harmony with the adjacent lots that front Rhine Road. Staff notes the intent of the front setback requirement is to preserve an open character in the neighborhood and provide visual continuity of the block.)

Vice Chair Mund asked if there were any questions for staff.

Discussion followed on line of sight requirements.

Vice Chair Mund invited the applicant to speak.

Felix Alonzo, 273 Rhine Rd, elaborated on the request and provided clarification on the nature of the lot. Alonzo stated that the intent of the request was to prevent vandalism and promote the safety of the neighborhood, which he noted had become a problem for him and his neighbors.

Discussion followed on fence height, how the applicant intends to utilize the backyard, and police reports that have been made regarding the vandalism in the neighborhood.

Vice Chair Mund opened the public hearing and asked if anyone would like to speak.

Bonnie Weidner, 269 Rhine Rd, spoke in favor, and stated her house was the one that had been vandalized. Weidner commented on the line of sight and visibility, and that the neighborhood would benefit in regard to safety should this request be granted.

Vice Chair Mund closed the public hearing.

Vice Chair Mund asked if there was any discussion or a motion.

Motion by Member Foster, seconded by Member Leitch to approve the proposed variance to Section 5.3-2(b) to allow a proposed 6-foot-tall privacy fence to be constructed within a front yard setback exceeding the maximum height of 3 feet for a solid fence constructed, addressed at 276 Rhine Road. Motion carried (5-0-0).

(B) ZB22-0006 Hold a public hearing and consider a request for a variance to Section 5.4(c) to allow a proposed detached structure to encroach up to 13 feet and 4 inches into the required 15-foot corner side setback in the "R-2" Single-Family and Two-Family District, addressed at 705 W. Mill Street. (Applicant: Loetta Arrington; Case Manager: Maddison O'Kelley)

Ms. O'Kelley presented the staff report and stated the ZBA may authorize a variance from the zoning regulations only upon finding the following facts:

- 1) **That there are special circumstances or conditions affecting the land involved such that the strict application of the provisions of this Chapter would deprive the applicant of the reasonable use of land;** (The applicant states the encroachment into the side setback will not impact adjacent property owners because of the approximately 24 feet of city-owned property between the two parcels. Staff acknowledges the purpose of the side setback for accessory structures is intended to maintain separation between structures and minimize the impact of development on adjacent property, and for corner lots, ensure adequate sight-distance for passing vehicles. In this circumstance, the carport's proximity to the side property line will likely have minimal impact on adjacent property due to the 24-foot wide separation and the lack of vehicular activity.) **and**
- 2) **That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;** (The applicant states the variance is necessary to allow the proposed carport to be built in line with the existing driveway. Staff acknowledges the location of the existing driveway and existing detached structure on the property, however, the substantial property right to use the property for a residential dwelling is not removed due to the accessory structure setback requirement.) **and**
- 3) **That the granting of the variance will not be detrimental to the public health, safety or welfare, or injurious to other property within the area;** (The applicant states the variance will not be detrimental to the public health, safety or welfare, or injurious to other property within the area. Staff acknowledges the impact to the surrounding area is likely minimal.) **and**
- 4) **Granting of the variance will not have the effect of preventing the orderly use of other land within the area in accordance with the provisions of this Chapter; () and**
- 5) **That an undue hardship exists;** (The applicant did not provide an undue hardship to the land itself. Staff has not identified an undue hardship of the land itself that affects the buildable area of the lot.) **and**
- 6) **That the granting of a variance will be in harmony with the spirit and purpose of these regulations.** (The applicant states granting of the variance will be in harmony with the spirit and purpose of the City's regulations. Staff notes the intent of the corner side setback requirement is to ensure adequate sight-distance for passing vehicles and to maintain the line of sight for buildings of which there will be none on the city-owned property and interior side setbacks are to minimize negative impacts on adjacent property.)

Vice Chair Mund asked if there were any questions for staff.

Discussion followed on the nature of the lot and clarification was provided by Ms. O'Kelley.

Vice Chair Mund invited the applicant to speak.

Loetta Arrington, 705 W Mill St, elaborated on nature of the property and stated the intent of the request was to align an existing driveway with the proposed garage. Arrington noted that the property line that would be encroached is adjacent to an undevelopable and unintentional 24ft wide "easement" between her property and the neighboring residences.

Member Foster asked Arrington what the hardship was.

Arrington stated that she did want to curve her driveway to access the garage and that an existing iron fence comes very close to the driveway that she doesn't want to potentially hit.

Member Leitch commented that the hardship appears to be city induced and that the adjacent lot was configured the way it is unintentionally.

Discussion followed on the placement and composition of the driveway, the survey that was used to pave it, as well as the use of the existing garage.

Vice Chair Mund opened the public hearing and asked if anyone would like to speak.

No one spoke.

Vice Chair Mund closed the public hearing.

Vice Chair Mund asked if there was any discussion or a motion.

Motion by Member Wilson, seconded by Member Leitch to approve the proposed variance to Section 5.4(c) to allow a proposed detached structure to encroach up to 13 feet and 4 inches into the required 15-foot corner side setback in the "R-2" Single-Family and Two-Family District, addressed at 705 W. Mill Street. Motion failed (3-2-0) with Members Foster and Lerch in opposition.

(C) ZB22-0007 Hold a public hearing and consider a request for a variance to Section 3.3-2(b)(1) to allow a proposed main structure to encroach up to: 1) 3 feet into the required 25-foot front setback, and 2) 15 feet into the required 20-foot rear setback in the "R-2" Single and Two-Family District, addressed at 890 Elizabeth Avenue. (Applicant: Jennifer and Clay Hermann; Case Manager: Matthew Simmont)

Mr. Simmont presented the staff report and stated the ZBA may authorize a variance from the zoning regulations only upon finding the following facts:

- 1) **That there are special circumstances or conditions affecting the land involved such that the strict application of the provisions of this Chapter would deprive the applicant of the reasonable use of land;** (The applicant states the property has three 26" to 28" diameter oak trees with root systems and canopy growing inside the Southwest (Elizabeth Avenue) 15-foot wide corner side building setback. Staff acknowledges that disruption of the tree root systems would likely negatively impact the health of the existing trees, however there still remains sufficient buildable area that avoids the tree root systems. Therefore, staff has not identified a hardship that affects the land itself.) **and**
- 2) **That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;** (The applicant states the variance is necessary to allow for the preservation of the heritage trees and to maintain an adequate amount of buildable area on the property while preserving the character of the streetscape. Staff notes the subject property exceeds the minimum dimensional requirements for the R-2 District. The buildable area of the lot, subject to the required setbacks for a residential corner lot in the "R-2" district, is approximately 4,180 square feet (reduced to approximately 3,630 square feet when accounting for the proposed root systems protection area). Additionally, the substantial property right to use the property for a residential dwelling is not removed due to the front or rear setback requirements for main structures.) **and**
- 3) **That the granting of the variance will not be detrimental to the public health, safety or welfare, or injurious to other property within the area;** (The applicant states the variance will not be detrimental to the public health, safety or welfare, or injurious to other property within the area. Staff acknowledges the impact to the surrounding area is likely minimal.) **and**
- 4) **Granting of the variance will not have the effect of preventing the orderly use of other land within the area in accordance with the provisions of this Chapter;** (The applicant states the variance should not prevent orderly use of other land within the area.) **and**
- 5) **That an undue hardship exists;** (The applicant states the location of the three large oak trees with respect to the lot orientation and configuration are the conditions of the land itself that create the undue hardship. Staff recognizes significant value in the protection of the large trees; however, it is noted the buildable area of the lot is greater than a corner lot meeting the minimum standards within the "R-2" district, likely offsetting the area necessary to protect the tree root systems. Staff has not identified an undue hardship of the land itself that affects the buildable area of the lot.) **and**
- 6) **That the granting of a variance will be in harmony with the spirit and purpose of these regulations.** (The applicant states granting the variance will be in harmony with the spirit and purpose of the City's regulations and allow for new construction to reasonably fit in with the existing character of the neighborhood. Additionally, the applicant states the proposed site plan

would provide for the best use of the buildable envelope and remain in line with the health, safety, and general welfare of the public. Staff notes the intent of the rear setback requirement is to preserve open space for the use and enjoyment on residential property.)

Vice Chair Mund asked if there were any questions for staff.

Vice Chair Mund invited the applicant to speak.

Karen Braiser, 358 S Walnut Ave, and Jennifer Hermann, 803 Dallas St, elaborated on the request, discussed the configuration of the lot, and stated the intent of the request was to preserve existing oak trees and to form a more cohesive alignment of homes along street.

Member Lerch asked if there was an intent to demolish the home or just reconfigure.

Herrmann confirmed the intent was to demolish the home.

Discussion followed on the configuration and design of the proposed home, as well as buildable area, setbacks, tree preservation, and potential alternatives to a variance.

Vice Chair Mund opened the public hearing and asked if anyone would like to speak.

Cleo McCall, 7 Country Club Circle, spoke in favor, citing his desire to keep all the homes on Elizabeth Ave aligned and consistent.

Jody McCall, 7 Country Club Circle, spoke in favor, citing points in line with the previous speaker.

Vice Chair Mund closed the public hearing.

Vice Chair Mund asked if there was any discussion or a motion.

Discussion followed on setbacks, alignment of homes on Elizabeth Ave, and potential alternatives to a variance.

Motion by Member Lerch, seconded by Vice Chair Mund to approve the proposed variance to Section 3.3-2(b)(1) to allow a proposed main structure to encroach up to: 1) 3 feet into the required 25-foot front setback, and 2) 15 feet into the required 20-foot rear setback in the "R-2" Single and Two-Family District, addressed at 890 Elizabeth Avenue. Motion carried (5-0-0).

(D) ZB22-0008 Hold a public hearing and consider a request for a variance to Section 3.3-2(b)(1)(ii) to allow an attached carport with a deck to encroach approximately 23.6 feet into the required 25-foot front setback, addressed at 1021 Cole Avenue. (Applicant: Trish and Dane Hebert; Case Manager: Maddison O'Kelley)

Ms. O'Kelley presented the staff report and stated the ZBA may authorize a variance from the zoning regulations only upon finding the following facts:

- 1) **That there are special circumstances or conditions affecting the land involved such that the strict application of the provisions of this Chapter would deprive the applicant of the reasonable use of land;** (The applicant states the special circumstance affecting the land itself is the size of the subject property, which was configured due to the location of the former "main structure" at 1000 Elizabeth and the current main structure on the subject property at 1021 Cole Avenue having been a former detached garage. Additionally, the applicant states two bedrooms have subsequently been added onto the rear of the main structure but there is no covered parking over the driveway. Staff acknowledges the legal non-conformity of the main structure and that the subject property is approximately 3,000 square feet smaller than the minimum lot size of 7,000 square feet for corner lots in the "R-2" District.) **and**
- 2) **That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;** (The applicant states that, by not having covered parking

over the existing driveway, use of the driveway is limited due to golf balls from the adjacent golf course damaging vehicles parked on the property. The applicant further cites inclement weather as a reason that the variance is necessary. Staff acknowledges the concerns regarding risk of injury or damage due to stray golf balls, however, the substantial property right to a single-family dwelling is not removed due to the setback requirements in the Zoning ordinance and covered parking is not considered a substantial property right.) **and**

- 3) **That the granting of the variance will not be detrimental to the public health, safety or welfare, or injurious to other property within the area;** (The applicant states the variance will not be detrimental to the public health, safety or welfare, or injurious to other property within the area. The applicant further states constructing the carport will allow the applicants to park on the property rather than on the street and therefore will help with congestion on Cole Avenue. The applicant then describes Cole Avenue as a narrow road that, with cars parked on either side of the street, creates unsafe circumstances for passing vehicles, emergency vehicle access, and pedestrian safety. Staff notes Cole Avenue, from each edge of the pavement, is approximately 24 feet wide. Additionally, staff notes the intent for the front setback requirement is to maintain adequate sight distance for passing vehicles.) **and**
- 4) **Granting of the variance will not have the effect of preventing the orderly use of other land within the area in accordance with the provisions of this Chapter;** (The applicant states the variance should not prevent orderly use of other land within the area. Staff notes all neighboring properties are still required to comply with the setback requirements for any new construction.) **and**
- 5) **That an undue hardship exists;** (The applicant states the home was constructed in 1962 and met the city's adopted zoning ordinance of 1945. The applicant cites the lot's size and width as undue hardships of the land itself. The applicant further states a covered car port would fit the character of the neighborhood. Staff acknowledges the lot's width is 30 feet less than the minimum lot width of 70 feet and the lot's size is 3,000 square feet smaller than the minimum lot size of 7,000 square feet for corner lots in the "R-2" District.) **and**
- 6) **That the granting of a variance will be in harmony with the spirit and purpose of these regulations.** (The applicant states granting of the variance will be in harmony with the spirit and purpose of the City's regulations and allow the applicants to park on their property. Staff notes the purpose of the front setback requirement is to maintain a visual setback from the street and ensure adequate visibility for drivers. Additionally, the purpose of the related code sections which prohibit structures from being built within a 10-foot distance of overhead power lines are intended for preserving general safety of the public and protecting public infrastructure.)

Vice Chair Mund asked if there were any questions for staff.

Member Leitch asked what the structure looked like in 2004.

Ms. O'Kelley responded that the building was a residence in 2004 and the 2-story addition was built in 2005.

Member Leitch clarified her question referred to the carport and deck.

Ms. O'Kelley confirmed that the car port and deck never formally went through the variance process and were never approved and therefore never constructed.

Discussion followed that further clarified the request and established a history of prior requests.

Vice Chair Mund invited the applicant to speak.

Dane Hebert, 520 Elm Trail, clarified on current and prior requests, elaborated on building timelines, and discussed the history and configuration of house. Hebert stated the intent behind the request was primarily to provide cover for cars parked on the property from stray golf balls and inclement weather, and that their hardship was the narrow street width of Coll Ave that would result in damage to cars parked there. Hebert also noted miscommunication when it came to the permitting process.

Member Leitch asked if the Heberts currently live on the property at 1021 Cole Ave.

Mr. Hebert responded that at the original time of permitting they did live there, but the property now functions as a vacation home.

Member Wilson asked who submitted the building permit request?

Mr. Hebert responded that his contractor was the one who submitted for the building permit.

Member Lerch inquired into the location of the proposed carport.

Mr. Hebert stated there was an easement in the backyard.

Member Foster inquired about traffic visibility as a corner lot.

Discussion followed on structure configuration, protection levels offered by a carport, Hebert's car damage and the parking circumstance on Cole Ave.

Member Lerch asked if Mr. Hebert considered taking down the half-built structure to put up a more appropriate carport instead.

Mr. Hebert responded absolutely.

Discussion followed on the depth of the driveway.

Vice Chair Mund opened the public hearing and asked if anyone would like to speak.

Patricia Hebert, 520 Elm Trail, elaborated on the intent of the request, discussed communication efforts with neighbors, noted miscommunication issues in the permitting process, and addressed the configuration and design of the structure. Mrs. Hebert stated her hardship was due to property damage by stray golf balls, and the unusually small corner lot size of the property.

George Haley, 960 Elizabeth Ave, spoke in favor, citing property damage by stray golf balls.

Vice Chair Mund closed the public hearing.

Vice Chair Mund asked if there was any discussion or a motion.

Discussion followed on lot size, and potential to amend the variance request to approve the carport but not the deck.

Motion by Member Foster to approve the proposed variance to Section 3.3-2(b)(1)(ii) to allow an attached carport without a deck to encroach approximately 23.6 feet into the required 25-foot front setback, addressed at 1021 Cole Avenue. Motion failed due to the lack of a second.

5. STAFF REPORT

Mrs. Snell announced that this was the last meeting for Member Leitch as an official member of the Board, but that she will continue to serve until her position has been filled.

6. ADJOURNMENT

Vice Chair Mund adjourned the meeting at 7:21pm.

Chair

Date

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