

ZONING BOARD OF ADJUSTMENT
Regular Meeting Minutes
October 22, 2020

MEMBERS PRESENT

Chair John Coker
Vice Chair Brandon Mund
Bonnie Leitch
Steve Quidley
Cutter Gonzales

STAFF PRESENT

Chris Looney, Planning & Development Services Director
Stacy Snell, Planning Manager
Frank Onion, First Assistant City Attorney
Maddison O'Kelley, Assistant Planner
Sam Hunter, Planning Technician

MEMBERS ABSENT

Cynthia Foster

Chair Coker called the meeting to order at 6:01 p.m. Roll was called, and a quorum declared.

APPROVAL OF MINUTES

Motion by Member Mund, seconded by Member Quidley, to approve the minutes of the Zoning Board of Adjustment Regular Meeting of September 17, 2020 with revisions. The motion carried (5-0-0).

PUBLIC HEARINGS

(A) Z-20-015 Hold a public hearing and consider a request for a variance to Sections 5.4(c) to allow an accessory structure to encroach 10 inches into the required 5-foot side setback, located at 2857 Oak Run Parkway. (Applicant: James and Cynthia Wissmiller; 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 area between the existing pool equipment and the side property line is less than the minimum required 5-foot side setback. Staff notes the support posts of the pool cover is an accessory structure which must be set back a minimum of 5 feet per the Zoning Ordinance. However, the eave of the pool cover is allowed to project into the required setback, to shade the pool equipment. Staff is unable to identify a special circumstance or unique condition of the property that is not also experienced by adjacent properties.) **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 be able to enjoy the property and to protect the pre-existing pool equipment by providing a protective cover over said equipment. The applicant further states the sun, rain, and other environmental conditions will damage the equipment if it is not covered. Staff does not recognize the substantial property right to a residential use of the property is removed due to the setback requirements for accessory structure requirements within the Zoning Ordinance.) **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 granting of the variance will not be detrimental to the public health, safety or welfare or injurious to other property within the area.) **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. Staff notes all neighboring properties are still required to comply with the setback requirements for accessory structures for any new construction.) **and**

(5) That an undue hardship exists; (The applicant states moving the location of the existing pool equipment is not an option as moving the equipment would create an undue hardship. The applicant further states the area between the pool equipment and side property line cannot be increased and moving the subject structure would leave the equipment vulnerable to the sun and weather. The pool equipment is above ground. Staff is unable to identify an undue hardship of the property that has not been created by the applicant.) **and**

(6) That the granting of a variance will be in harmony with the spirit and purpose of these regulations. (The applicant states the variance will be in harmony with the spirit and purpose of the city's regulations. Staff believes relocating the support posts of the shade structure in compliance with setback requirements can accomplish the goals of the applicant.)

Chair Coker asked if there were any questions for staff.

Discussion followed on the permitting aspect of the structure.

Chair Coker requested the applicant address the Board.

James & Cynthia Wissmiller, 2857 Oak Run Pkwy, addressed previously mentioned permitting concerns and reasoning for the request.

Chair Coker asked if there were any questions for the applicant.

Discussion followed on hardships on the land and clarification of the situation.

Chair Coker opened the public hearing and asked if anyone wished to speak in favor.

No one spoke.

Chair Coker opened the public hearing and asked if anyone wished to speak in opposition.

No one spoke.

There being no further comment, Chair Coker closed the public hearing.

Chair Coker called for a motion or discussion from the Board.

Commissioner Gonzales stated reasoning for support of granting the request.

Discussion followed.

Motion by Member Gonzales to approve the proposed request for a variance to Sections 5.4(c) to allow an accessory structure to encroach 10 inches into the required 5-foot side setback, located at 2857 Oak Run Parkway. With no second, the motion failed.

(B) Z-20-016 Hold a public hearing and consider a request for a variance to Sections 3.3-2(b)(1)(iii) and 3.3-2(b)(1)(v) to allow a proposed addition to a single-family home to 1.) encroach up to 3.2 feet into the required 25-foot corner side setback and 2.) encroach up to 15 feet into the required 20-foot rear setback in the "R-2" Single Family and Two Family District, addressed at 344 S. Washington Avenue. (Applicant: David Barkley; Case Manager: Maddison O'Kelley)

Ms. O'Kelley stated the case has been postponed due to a change in the requests and require a new public notice.

(C) Z-20-017 Hold a public hearing and consider a request for a variance to Section 3.3-2(b)(v) and Section 5.4(c) to allow 1) a proposed single-family home to encroach 2 feet into the required 5-foot side setback, and 2) a proposed accessory structure to encroach 2 feet into the required 5-foot side setback, addressed at 674 W. Edgewater Terrace. (Applicant: David Mills Custom Homes; 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 subject property is smaller than a typical lot within the City limits. The applicant further states the existing home is set back 1 foot from the side property and the proposed home would increase the setback by 2 to 3 feet if the variance is approved. Staff acknowledges the 50-foot width of the lot is smaller than the minimum lot width of 60 feet required within the "R-2" District, however, there are other single-family zoning districts in which a 50-foot wide lot is allowed and accommodate newly built homes. Furthermore, staff has not identified a special circumstance of the property that is not shared with adjacent properties in the neighborhood.) **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 an aesthetic front elevation by allowing the garage to shift over to show the front building façade. Staff does not recognize the substantial property right to a residential use of the property is removed due to the setback requirements for main and accessory structures within the Zoning Ordinance.) **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 granting of the variance will not be detrimental to the public health, safety or welfare or injurious to other property within the area as the applicant has built other homes where encroachment variances of similar nature were approved. Staff acknowledges the impact to the surrounding area is likely minimal, however, the ZBA is not authorized or obligated to grant a variance due to a similar variance having been granted in the past.) **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 nor set an unusual precedent. 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 an undue hardship of the land does not exist. The ZBA may only authorize a variance upon finding an undue hardship of the land itself that is not self-created, personal, or financial.) **and**

(6) That the granting of a variance will be in harmony with the spirit and purpose of these regulations. (Side setbacks are intended to preserve open area on residential property.)

Chair Coker asked if there were any questions for staff.

Mrs. Snell indicated the subject property also has a recommendation from HLC for Historic Designation in response to a demolition Building permit that is currently in process.

Discussion followed on clarification of the request and the previous variance approved in 2007.

Discussion followed on how the ZBA's decision will affect Council's decision on the potential Historic Designation.

Motion by Member Leitch, seconded by Member Quidley, to table consideration of the proposed request for a variance to Section 3.3-2(b)(v) and Section 5.4(c) to allow 1) a proposed single-family home to encroach 2 feet into the required 5-foot side setback, and 2) a proposed accessory structure to encroach 2 feet into the required 5-foot side setback, addressed at 674 W. Edgewater Terrace until a decision on Historical Designation is made by City Council. Motion carried (4-1-0) with Member Gonzales in opposition.

(D) Z-20-018 Hold a public hearing and consider a request for a variance to Section 3.8-4(ii)(5) to allow a proposed addition to a single-family home to encroach approximately 10 feet into the required 20-foot rear setback, addressed at 137 Magazine Avenue. (Applicant: Britt Etheridge; 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 circumstances affecting the property are the lot size and the size of the existing home. The applicant further states the backyard is currently 36 feet in depth and that, in order to expand the existing home, a variance is necessary. The applicant believes the rear 20-foot setback will not allow enough room for the addition. Staff acknowledges the buildable area between the

required front and rear building setbacks is limited to a maximum 39 feet due to the configuration of the lot, which is less than the minimum required depth for new lots in the "SND-1" district.) **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 because the right to the reasonable use of the property as a single family residence is affected by the limited size of the lot and the existing home. The applicant further states the 20-foot setback at the rear of the property restricts ability to expand the home. Staff acknowledges the buildable area for a residential home is restricted due to the lot depth.) **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 that granting 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 that if the variance is granted, there will be 10 feet of open space between the addition and the rear property line. The applicant states the rear yard adjacent to the addition will meet the required rear setback. Staff acknowledges that the impact to the surrounding area is likely minimal. Staff also notes rear setbacks are intended to preserve open area on residential property.) **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 nor set an unusual precedent. 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 lot size, in comparison to adjacent property, creates an undue hardship for reasonable use of the property for a primary residence. Staff acknowledges the buildable area of the lot is restricted due to its configuration and property immediately adjacent to the subject property is larger than 5,712 square feet.) **and**

(6) That the granting of a variance will be in harmony with the spirit and purpose of these regulations. (The applicant states the variance will be in harmony with the spirit and purpose of the city's regulations because granting the variance will not create a negative impact to the general public, additional traffic, create dangers, add to the undue concentration to the population, nor negatively impact transportation, water, sewage, schools, parks, or other public infrastructure. The applicant further states granting the variance will allow the applicant to construct an addition that is consistent with the character of the "SND-1" District and allow for the property to be used for its highest and best use.)

Chair Coker asked if there were any questions for staff.

No one spoke.

Chair Coker requested the applicant address the Board.

Britt Etheridge, 137 Magazine Ave, described the nature of the request.

Chair Coker asked if there were any questions for the applicant.

Discussion followed on clarification of the hardship and possible solutions.

Chair Coker opened the public hearing and asked if anyone wished to speak in favor.

No one spoke.

Chair Coker opened the public hearing and asked if anyone wished to speak in opposition.

No one spoke.

There being no further comment, Chair Coker closed the public hearing.

Chair Coker called for a motion from the Board.

Motion by Member Gonzales, seconded by Member Leitch, to approve the proposed request for a variance to Section 3.8-4(ii)(5) to allow a proposed addition to a single-family home to encroach approximately 10 feet into the required 20-foot rear setback, addressed at 137 Magazine Avenue. Motion carried (5-0-0).

ITEMS FOR INDIVIDUAL CONSIDERATION

A) Discuss and consider a recommendation to City Council regarding adopted size requirements for accessory structures in the "SND-1" Special Neighborhood District.

Ms. O'Kelley presented.

Chair Coker asked if there were any questions for staff.

Discussion followed on the possibility of providing a recommendation.

Motion by Vice Chair Mund, seconded by Member Gonzales, the city should look into creative development standards for accessory dwelling units as the city grows because this form of housing is needed. Motion carried (5-0-0).

Discussion followed on parking and traffic safety.

Member Gonzales asked if the motion could be amended to incorporate suggestions to look into the parking situation in addition to the current motion.

Discussion followed.

Motion by Member Gonzales, seconded by Member Leitch, to amend the original motion to include traffic patterns and safety components for SND-1 Zoning District. Motion carried (5-0-0).

Chair Coker asked for the amended motion to be read.

Mrs. Snell stated the amended motion as "The city should look into creating development standards for accessory dwelling units as the city grows, including traffic patterns and safety components for the SND-1 Zoning District, because this form of housing is needed".

Chair Coker opened the item for discussion and asked if anyone wished to speak in favor.

No one spoke.

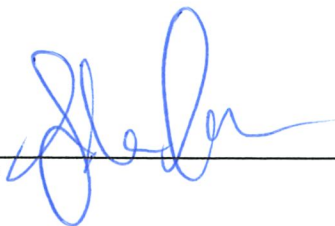
B) Identify code sections or topics the Board may want to discuss on a future agenda to consider a recommendation to City Council to initiate process to amend or revise.

Chair Coker expressed he would like to begin conducting in person meetings again if possible.

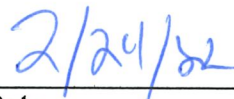
ADJOURNMENT

Chair Coker adjourned the meeting at 7:21 pm.

Chair



Date



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