

BOARD OF ZONING APPEALS

Meeting Minutes

Wednesday, April 21, 2010

Call to Order

Those members present: Todd Hollenbaugh, Gary Meyer, William Houk, George Prentice, and John Barnhart

Those members excused: None.

Staff members present: Lynn Taylor, Rob Jacques, and Kathryn Dale.

Staff members excused: None.

Executive Session

Chairman Hollenbaugh invited a motion for approval of the agenda with the deletion of the Executive Session.

Mr. Meyer made motion to approve the agenda with the deletion of the Executive Session. Mr. Barnhart seconded the motion. The motion passed 5-0-0.

Chairman Hollenbaugh advised for a variance petition to prevail, an Applicant would have to garner three votes from the Board. Chairman Hollenbaugh noted that he would have to recuse himself from hearing BZA-04-2010 as he was a neighbor. Mr. Jason Reynolds, acknowledged the information, and wished to proceed.

Adjudication Hearing

BZA-04-2010 933 Silvoor Lane, Section 1143.01(c)(2)C variance for a deck in the side yard setback, Jason Reynolds, Owner/Applicant

Mr. Myers made motion to adjourn to Adjudication Hearing BZA-04-2010. Mr. Barnhart seconded the motion. All were in favor.

As earlier noted, Mr. Hollenbaugh recused himself from BZA-04-2010 discussion. Mr. Hollenbaugh is a neighbor of the Appellant.

Mr. Houk, Vice-Chair, conducted the Hearing.

Ms. Dale referred to a 2002 lot split of the property. During the lot split, variances were granted allowing for insufficient lot width and side yard setbacks. The family of the properties had wanted to create two lots. Ms. Dale stated the lot was split down the center of the property as well as it possibly could. Also, Ms. Dale stated during the time of the lot split, discrepancies in the surveys, legal descriptions and perception of where the property lines were located occurred.

Ms. Dale stated the Appellant was proposing to construct a 24'x30' deck addition onto an existing deck. Including the tie-in into the existing deck, the proposed deck addition would comprise of 777.6 sq. ft. The closest corner of the existing deck was approximately 8' from the side property line; the proposed addition would be approximately 5.7 feet. The total square footage of decking that would be located in the required 10' side yard setback was 98 sq. ft. (roughly 6% of the total deck area).

Ms. Dale stated the Appellant applied for and received a building permit in May 2009 for the deck addition. At the time of the building review, the Appellant showed being 12.67' from the side lot line. The zoning review concluded that the side yard setback was satisfied, and signed off on the permit and the permit was issued. Ms. Dale stated in March 2010 a concerned neighbor called inquiring if the deck was on her property. Ms. Dale stated that upon review the deck was not on the adjoining property, but was encroaching into the required side yard setback. Ms. Dale stated that the Appellant ceased working on the deck until the situation was taken care of.

The Appellant, Mr. Jason Reynolds, was sworn in. Mr. Reynolds stated he purchased the property in 2005 from the nephew of the neighbor who was located at 937 Silvoor. Mr. Reynolds described how the property line ran. Basing the

design of the new deck on how the current deck was placed on the property, Mr. Reynolds designed it square to the house. Mr. Reynolds explained the importance of the deck to him: that there was nowhere for the kids to play; no front yard; backyard consisted of a steep hill overlooking a wildlife sanctuary; no flat useable land and there being foot traffic of students in the backyard; the deck became the next best step and why it is so large. Mr. Reynolds believed he was 12.67 feet off the property line, had already installed the beams and joists. Mr. Reynolds stated the City came out to review when received the complaint and discovered the angle in (the closer to the house the farther away from the property line) in the corner back being only 5.7 feet away from the property line. Mr. Reynolds stated he wouldn't have built the deck if the neighbor's enjoyment was compromised.

Mr. Prentice inquired if Mr. Reynolds considered reconfiguring the deck so it would be in compliance. Mr. Reynolds stated the 16-foot posts would have to be removed; basically would have to tear out posts on that side.

Ms. Suzette Shahin, 937 Silvoor Lane, was sworn in by Mr. Houk. Ms. Shahin stated she has lived on Silvoor for 14-15 years. Ms. Shahin described how the properties ran; described how the entrances (driveways shared) ran. Ms. Shahin loved when Mr. Reynolds's moved in; has no problem accommodating Mr. Reynolds. Ms. Shahin stated she was afraid if Mr. Reynolds would sell what problems could occur; would the encroachment cost me later on if Ms. Shahin wished to expand.

Mr. Barnhart moved to close the Public Hearing. Mr. Meyer seconded the motion. All were in favor

Mr. Prentice inquired if, as a neighbor With Standing she was agreeable to his request. Ms. Shahin inquired about how this would cost her in the future if she wanted to build. Mr. Prentice stated that it wasn't within BZA's perview to answer; Ms. Shahin would have to apply for a variance permit, and present just like Mr. Reynolds's has; it is all based on the facts of the case and what is presented during the hearing and the law in effect at the time. Mr. Houk added that she could look at in a number of ways; ask yourself is there any reasonable way you would build 10 feet within where your house sits; we can't guarantee anything in the future; if you build something that encroaches into the 10' line you would be in the same position as Mr. Reynolds-asking for a variance.

Mr. Meyer stated it would not make it harder or easier for Ms. Shahin to get a variance; it wouldn't affect her getting a variance in the future. Ms. Shain stated she wanted Mr. Reynolds to stay; understood with children; attend the same church. Mr. Shahin stated she was upset with the City not returning her call. Mr. Houk apologized and stated we should have been more communicative.

Discussion followed. The BZA discussed possibly altering the deck by taking off footage on the edge in question; previous side yard setbacks granted prior to the establishment of the lot on which the subject property is located, the unique configuration of the lot and its relation to Ms. Shahin's property, the rugged topography of the property, and the Appellant's testimony regarding his belief of where the property lines were located, all were factored in.

The BZA deliberated and made the following Findings of Fact regarding the variance request to allow the deck to project into the side yard setback:

1. The subject property can continue to yield a reasonable return without the variance, as the underlying zoning permits single-family residential uses and the property can be used as such without the variance.
2. The variance is not substantial, considering that less than 10% of the total deck square footage would encroach into the side yard setback. Based on the previous variance granted for side yard setback encroachment on this side of the property, the requested variance is minimal.
3. The request would not affect the essential character or substantially alter the neighborhood, as the area is predominately wooded and buffered from neighboring properties. It is merely an extension of an existing deck. Although the Board heard testimony from the neighboring property owner as to unspecified concerns about the future development of her own property, these concerns were speculative and the neighbor expressly declined to object to the variance.
4. No reports were received from the various City Departments indicating any detrimental effect on the delivery of governmental services, and no such effect is anticipated.
5. The property owner was aware of the zoning restrictions for side yard setbacks, and made efforts to comply with the Zoning Code. The non-compliance was based on the property owner's mistaken, but reasonable, belief as to the

exact location of his property line. The error was not detected until a formal survey was conducted at the property owner's request.

6. The property owner could obviate the issue by removing support posts and concrete footings already installed and reducing the deck layout to conform to the setback requirement. While feasible, the Board finds that the minimal nature of the variance outweighs the extraordinary effort and expense required to do so.

7. The spirit and intent of the Zoning Code would still be observed, and substantial justice would be done, by granting the variance.

George Prentice moved to approve BZA-04-2010 933 Silvoor Lane, Section 1143.01(c)(2)C variance for a deck in the side yard setback, based on Findings of Fact. Gary Meyer seconded. The motion passed with the following roll call:

AYE:

Gary Meyer, William Houk, George Prentice, John Barnhart (4)

NAY:

None (0)

ABS:

Todd Hollenbaugh (1)

Approval of Minutes of the March 17, 2010 Regular Meeting

Mr. Houk made motion to approve the March 17, 2010 minutes as written. Mr. Barnhart seconded the motion. All were in favor.

Old Business

Mr. Meyer inquired about the Wal-Mart parking lot trees having been cut down. Ms. Dale responded by stating that Wal-Mart had supplied at the time of construction what was required and that the cutting down of the parking lot trees did not affect the level of the requirement. Ms. Dale noted that this was not a BZA issue.

New Business

Mr. Hollenbaugh shared some sign violations he had observed. The Subway sign was still flashing, pizza signs have been popping up all over town (at intersections, railroad crossings, etc.). Mr. Hollenbaugh also shared his concern regarding banners, larger than allowed, and over the amount allowed. Ms. Dale stated banner issues have been looked into, and that the violators have until April 30 to remove the banners.

Mr. Prentice inquired about the sign on front of Kroger' and if that was what they had approved. Ms. Dale stated the coffee shop signage initially was Starbucks but they changed to Seattle's Best, and that the sign now was actually smaller square footage; therefore, they were within or less than what was approved by BZA.

Mr. Meyer inquired about the RDI parking lot and their landscaping requirement. Ms. Dale stated the work had been completed, and the parking lot had been paved.

Adjournment

Mr. Houk made motion to adjourn the meeting. Mr. Meyer seconded the motion. All were in favor. The meeting adjourned at 8:33 p.m.