

BOARD OF ZONING APPEALS
Meeting Minutes
Wednesday, August 18, 2010

Call to Order

Those members present: Gary Meyer, George Prentice, John Barnhart, Todd Hollenbaugh, and Prue Dana.

Those members excused: None.

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

Staff members excused: None.

Executive Session

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

Adjudication Hearing*

BZA-09-2010 182 Ryan Drive, Variance to Sections 1141.01(a)(2)B, 1141.01(a)(3)A.1, 1141.03(e)3, to allow for the installation of an inground pool and fence in the side yard of a corner lot, Robert & Patricia Stephens, Owners/Applicants

Mr. Meyer made motion to adjourn to BZA-09-2010. Mr. Barnhart seconded the motion. All were in favor.

Ms. Dale provided an overview of this variance request. The Appellants proposed to construct a 16' x 38' inground pool with a supplemental walkway and patio around the pool. The property is a corner lot; therefore the Appellant wishes to place the pool in their side yard, which normally would be a rear yard. As stated before, corner lots have two front yards and two side yards. Ms. Dale stated the Appellants were also required to provide a 6' fence or hedge since the pool would be within 50' of the property line; however, only 4' fences are permitted in a front yard. Ms. Dale stated the Appellants were also requesting a variance for a privacy fence in the front yard.

Ms. Dale referred to the Appellants taking careful consideration into the placement of the pool so as to request the least amount of variances necessary. Ms. Dale stated the fence and pool area would be screened by an existing hedge line and the streetscape would remain unchanged.

Mr. Prentice inquired about the distance between the pool and fence and that placing the fence nearer to the pool still wouldn't obviate the variance needed.

Ms. Patricia Stephens, Applicant, was sworn in by Mr. Hollenbaugh. Ms. Stephens stated that

all setback requirements have been honored (fence, setback of the pool) and that she felt it to be a reasonable request as they felt the location of the pool was in their backyard. Ms. Stephens referred to her meeting with City Staff prior to applying for the variance.

Ms. Dana inquired how far away from the end of the lot line was the hedge. Ms. Stephens stated it was by the sidewalk (3-4 feet) and that you may be able to see the fence from Dana Drive a little bit (couple of feet). Ms. Stephens noted that she had contacted the neighbors who would be affected by this.

No one With Standing spoke.

Mr. Barnhart made motion to reconvene to the regular meeting. Mr. Meyer seconded the motion. All were in favor.

Mr. Hollenbaugh referred to Decision Standards. Ms. Dana stated there was a hardship when having a corner lot, since having no back yard. Discussion followed as to when corner lot language came about regarding no backyard; and it was speculated to be around 1990.

Regarding the requested variances, the BZA made the following Findings of Fact:

- 1.) The property in question will yield a reasonable return and can be used beneficially without the variance because the property can continue to be used as a single-family without the pool; however, any accessory enhancements to the property will require a variance.
- 2.) The request is not substantial as it relates to the other underlying zoning requirements and the Appellants' have ensured that the proposed pool does not encroach any closer to the street than the existing house.
- 3.) The essential character of the neighborhood would not be substantially altered by the variance and the adjoining properties would not suffer a substantial detriment as a result of the variance because the substantial, existing landscaping will screen the proposed fence and pool from the street and the streetscape will be unchanged.
- 4.) There were no comments received from the various City Departments indicating there would be a detrimental effect on government services.
- 5.) It is unknown if the property owner purchased the property with the knowledge of the zoning requirements.
- 6.) The property owner's predicament cannot feasibly be obviated other than a variance as there is no rear yard per the zoning code on corner lots and accessory uses, such as the proposed pool, are only permitted in the rear yard.
- 7.) The spirit and intent of the zoning requirement would be observed and substantial justice done by granting the variance.

After considering and weighing the facts and circumstances, the Board found that practical difficulty was shown sufficient to warrant granting the variance request and approved the application as presented.

Ms. Dana made motion for approval of BZA-09-2010 a fence and pool in sideyard; 6' height of fence; and relief of encroaching into the frontyard setback. based upon Decision Standards #3,

#6, and #7. Mr. Barnhart seconded the motion.

AYE: Gary Meyer, George Prentice, John Barnhart, Todd Hollenbaugh, Prue Dana (5)

NAY: None (0)

ABS: None (0)

BZA-10-2010 [5990 Contreras Road, Variance to Sections 1141.01\(a\)\(1\), 1149.04\(a\)\(3\), 1149.04\(b\)3, to allow for a lot split with an existing accessory structure/no principal structure; and allowing existing parking and driveway not meeting setback requirements, Peter & Connie McCarthy, Owners/Applicants](#)

Mr. Meyer made motion to adjourn to BZA-10-2010. Mr. Barnhart seconded the motion. All were in favor.

Mr. McCarthy, Appellant, referred to a conversation with Rob Jacques, Legal Counsel, prior to the start of this meeting and felt he needed clarification. Mr. McCarthy inquired if he could recess to discuss with Mr. Jacques.

The McCarthy's, along with Legal Counsel, Mr. Coe Potter, Mr. Greig Rutherford and Mr. John Harman met privately.

It was determined for the need to Table this case so that McCarthy's could be provided additional legal review.

Mr. Meyer made motion to remove from the table BZA-10-2010. Mr. Barnhart seconded the motion. All were in favor.

Mr. Meyer made motion to table BZA-10-2010. Mr. Barnhart seconded the motion. All were in favor.

BZA-11-2010 [6141 Vereker Drive, Variance to Section 1143.01\(c\)\(2\)A, to allow the installation of a porch encroaching into the front yard setback, Errol & Diane Huffman, Owners/Applicants](#)

Mr. Barnhart made motion to adjourn to BZA-11-2010. Mr. Meyer seconded the motion. All were in favor.

Ms. Dale provided a staff report. Ms. Dale stated the Appellant was proposing to construct an 8' x 27' covered front porch with a 7' circular step projection that would encroach into the required 30' front yard setback. Ms. Dale also noted that the edge of the circular steps would be approximately 20.3 feet from the front property line and that the covered porch would be 27.5 feet. The purpose of the porch addition was to provide a handicap ramp.

Mr. Barnhart referred to the circular steps and inquired about the additional 7'3" into the setback.

The Appellant, Ms. Diane Huffman, was sworn in by Mr. Hollenbaugh. Ms. Huffman stated she and her husband wanted something in front of the door so that a wheelchair could be covered from the weather and that there was enough room to turn around. Mr. Hollenbaugh stated 5' was ADA for turnaround. Ms. Huffman noted wanting to add beauty to the neighborhood; something a little different and felt the design would enhance the neighborhood.

Mr. Hollenbaugh clarified the location of the home on the street. Ms. Huffman stated she had spoke with the neighbors and that two neighbors were present.

Ms. Huffman shared that the ramp was a medical necessity and that they had considered other locations for the ramp. Public comments from persons With Standing were received in favor of the request.

Ms. Jessica Cobb, 6130 Vereker, was sworn in. Ms. Cobb felt the design would enhance the neighborhood, and agreed it needed built out so that a wheelchair could move around with someone helping. Ms. Cobb also noted that if in a wheelchair that person could come out and have space.

Ms. Sandy Huggins, 6152 Vereker was sworn in. Ms. Huggins felt the aesthetics of the house would increase and felt the ramp to be forward thinking.

Mr. Meyer made motion to reconvene to regular meeting. Mr. Barnhart seconded the motion. All were in favor.

Ms. Dana stated that the Decision Standards were clear for the case. Mr. Prentice stated he wasn't sure a wheelchair ramp enhanced the property.

The Decision Standards were reviewed:

Regarding the requested variances, the BZA made the following Findings of Fact:

- 1.) The property in question will yield a reasonable return and can be used beneficially without the variance because the property can continue to be used as a single-family without the porch addition; however, according to the Appellants testimony it may not be of benefit to them due to recent medical procedures and the necessity for wheelchair use.
- 2.) The request is not substantial as it relates to the other underlying zoning requirements.
- 3.) According to testimony received from neighboring property owners of standing, the essential character of the neighborhood would not be substantially altered by the variance and the adjoining properties would not suffer a substantial detriment as a result of the variance
- 4.) There were no comments received from the various City Departments indicating there would be a detrimental effect on government services.
- 5.) The owner was not aware of the zoning restrictions because the driveway was existing.
- 6.) The property owner's predicament cannot feasibly be obviated through some method other than a variance due to the ADA compliance regulations.

- 7.) The spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance because it is the minimum variance necessary.

After considering and weighing these facts and circumstances, the Board found that practical difficulty was shown sufficient to warrant granting the variance to Section 1143.01(c)(2)A to allow the installation of a covered porch encroaching into the front yard setback and voted 5-0-0 to **APPROVE** the application.

Gary Meyer moved to approve BZA-11-2010 6141 Vereker Drive, Variance to Section 1143.01(c)(2)A, to allow the installation of a porch encroaching into the front yard setback, Errol & Diane Huffman, Owners/Applicants 38 . John Barnhart seconded. The motion passed with the following roll call:

AYE: Gary Meyer, George Prentice, John Barnhart, Todd Hollenbaugh, Prue Dana (5)

NAY: None (0)

ABS: None (0)

[Approval of Minutes of the July 21, 2010 Regular Meeting](#)

Ms. Dana made motion to approve the minutes as written. Mr. Meyer seconded the motion. All were in favor.

[Old Business](#)

There was none.

[New Business](#)

Mr. Meyer voiced his concern to the Board regarding considering information that wasn't in their purview. Mr. Meyer referred to meetings where the Board gets off course on discussions that don't concern them. Mr. Meyer hoped in the future that the Board would remain vigilant to stay focused on the request at hand.

[Adjournment](#)

Mr. Meyer made motion to adjourn the meeting. Mr. Barnhart seconded the motion. All were in favor. The meeting was adjourned at 8:30 p.m.