



**BOARD OF BUILDING AND ZONING APPEALS
MINUTES OF THE PROCEEDINGS OF THE PUBLIC HEARING
May 30, 2023**

The hearing was called to order at 7:30 P.M. by Chairman Baesel

PRESENT: Bryan Baesel, Karen Alfred, Cynthia Nolde, Brad Lamb, Robert Swisher
ALSO PRESENT: Clerk of Commissions Nicolette Sackman and Assistant Law Director
Nathalie Supler

DOCKETS

*Colette Gibbons 2023-08
28841 Weybridge Dr., PP#21613016, Ward 6
Requesting to construct an 8' high fence. §1211.04(b)(3): fences may be permitted along
the side or rear lot lines to a height of not more than 6' above the average finished
grade; **a 2' height variance.***

5/15/23 – request from Colette Gibbons to withdraw request.

*Doreen Turk Trust 2023-10
1844 Farr's Garden Path, PP#21216024, Ward 5
Installed a concrete slab along the entire left side of the house 1' from the property line.
§1221.11: parking pads shall not be located within side yard setbacks; **variance to allow
a concrete slab in the side yard setback.***

Correspondence:

5/22/23 – letter from Miriam Katcher, 1815 Farris Garden Path – support request
5/24/23 – letter from Marcella Love and Marek Wojcik, 1836 Farris Garden Path – support
request
5/29/23 – letter from Natt Chen, 1820 Farris Garden Path – support request

Mr. Turk, was sworn in by Ms. Supler, explained a permit was issued but the contractor poured the concrete in the wrong place. He stated that the contractor mistook his pool for the garage. When the engineering department came out for the inspection the work was denied as it was not in the correct location. They expressed concerns that the concrete pad would be used for parking vehicles. He advised that his lot is a large 1.5 acre lot and he has room to park 11 vehicles total in his garage and driveway. He has no intent to use the pad for parking and wishes to use it for storage. There is a fence that screens the view of the pad from the street, neighbor and the pad is located behind the fence. If he had intended to use the pad for parking he would not have installed a \$15,000 fence to only have to removed for a vehicle to park on the pad. There is a pavilion adjacent to the pad. He is requesting a variance as the pad is not a parking pad but an extension of the sidewalk along his house. He reviewed the concrete pad is 4" thick at a size of 60' x 7' (was also stated to be 55' x 6'). The pad is not the same height as his driveway and there

is a dirt space between the driveway and the pad – approximately 4’ to 5’. He stated the city’s code does not define what is considered for a pad (square footage, property size, depth of the concrete) and felt it was very arbitrary. He questioned why it is ok to put a concrete pad around a pool in the middle of his yard but what he is proposing is not permitted. It will be used to store equipment not as a parking pad and should not be treated as a parking pad. He stated that his neighbors were not opposed to his request.



Members of the board discussed the following: while the applicant has no intention to use the pad for parking, any variance granted stays with the property and a future owner could decide to use the pad for parking. It was questioned how a garage was confused with a pool regarding the location of the pad. Mr. Turk explained the pad was not to be installed around the pool and the contractor thought his pool was his garage and on the permit designed the pad to be out by the pool. He stated the contractor knew the pad was supposed to go next to the garage, but showed the pad in the wrong place on the permit. Mr. Turk was asked if he obtained a permit for a driveway extension, which Mr. Turk advised that extension was approximately 25 years ago.

Members of the board reviewed the setback of the pad to the fence, sidewalk along the side of the house, and setback to the driveway. The pad is approximately 6”-8” from his side of the fence and the fence is setback approximately 20” from the property line. There is also a gap of approximately 3” between the pad and the existing approximately 2.5’ wide sidewalk along the side of the house. Mr. Turk stated he did not understand why the location of the pad was an issue with the city. If he had known that the pad would be considered a parking pad he would have come to the city prior to the installation. The drainage was discussed with concerns expressed if water will drain correctly, which Mr. Turk stated that it would. He had a discussion with the engineering department questioning if he reduced the size of the pad if it would make a difference, which he was told it would not and he could not put concrete in the proposed location.

It was noted that letters were submitted by neighbors in support of the proposal, but a letter was not received from the adjacent neighbor. Mr. Turk stated the neighbor would have received the notice. He stated that the area where the proposed pad will be located currently does not drain and can be wet at times. He does not want to use gravel or mulch in the area as it needs maintained on a regular basis. It was discussed that the codes were revised a number of years ago and a parking pad is not permitted in the side yard, and in the future someone could use the pad for parking. It was Chairman Basel’s understanding that once there is a finished surface legally someone could park there as a variance stays with the property forever. Mr. Swisher noted if the variance were to be granted there should be conditions of approval. It was discussed that there will not be a roof or structure to cover the items stored on the pad.

After a careful review of the evidence and testimony, the Board made the following findings of fact:

1. Whether the property in question yield a reasonable return or whether there can be any beneficial use of the property without a variance – yes
2. Whether the variance is substantial – yes

3. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance – yes
4. Whether the variance would adversely affect the delivery of governmental services – no
5. Whether the property owner purchased the property with the knowledge of the zoning restriction – n/a
6. Whether the property owner’s predicament feasibly can be obviated through some other method other than a variance – yes
7. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance – no

Motion: Mr. Swisher moved, seconded by Ms. Alfred to grant a variance to allow a concrete slab in the side yard setback with the following:

1. Condition that drainage is approved by the city engineer.
2. Condition the pad is not used for vehicle storage.
3. Condition that during the life of the pad and future uses visual screening will be retained.

ROLL CALL:

Yeas: Swisher

Nays: Alfred, Basel, Nolde, Lamb, motion failed

Sheresa Fox 2023-11

4355 Bradley Rd., PP#21707001, Ward 6

*Requesting to construct a 288 sf utility building. §1211.04(k): a utility building shall be permitted in a rear yard provided that the maximum building size on lots 20,000 to 40,000 sf is 150 sf in area; **a 138 sf area variance.***

Ms. Fox, was sworn in by Ms. Supler, explained her lot is a corner lot that is approximately ¾ of an acre (approximately 30,000 sf). He house is 900 sf and the garage is 500 sf. She would like a larger size shed for storage purposes as she needs more room.

Members discussed if Ms. Fox had considered a garage addition as she is permitted more garage area, rather than a large shed variance, almost two times what is permitted; and then construct a shed at the permitted size. Ms. Fox wasn’t sure if that was a financial option but she had considered it. She did not want to expand the garage due to existing space limitations, and preferred a shed in the rear yard. She also did not want to block any of her neighbor’s view. Discussion ensued regarding various sides the garage could be increased as she wouldn’t need a variance to add 288 sf to her garage.

After a careful review of the evidence and testimony, the Board made the following findings of fact:

1. Whether the property in question yield a reasonable return or whether there can be any beneficial use of the property without a variance – yes
2. Whether the variance is substantial – yes
3. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance – no
4. Whether the variance would adversely affect the delivery of governmental services – no

5. Whether the property owner purchased the property with the knowledge of the zoning restriction – no
6. Whether the property owner’s predicament feasibly can be obviated through some other method other than a variance – yes
7. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance – no

Motion: Mr. Swisher moved, seconded by Mr. Lamb to grant a 138 sf area variance.

ROLL CALL:

Yeas: none

Nays: Alfred, Basel, Nolde, Lamb, Swisher, motion failed

Phil Philippou 2023-13

25715 Yeoman Drive, PP#21521068, Ward 2

*Requesting to construct an addition 48’ off of the front right of way line. §1211.09: minimum yard dimensions for a front yard in One-Family districts is 50’; **a 2’ front yard setback variance.***

Mr. Conlon, was sworn in by Ms. Supler, explained the applicant wishes to construct an addition to the front of the house. The addition will be at the same setback as the second floor cantilever. He reviewed the construction plans. Members of the board discussed that the addition will not be any closer to the front yard than the existing second floor and in line with that setback.

Members of the board discussed the following:

After a careful review of the evidence and testimony, the Board made the following findings of fact:

1. Whether the property in question yield a reasonable return or whether there can be any beneficial use of the property without a variance – no
2. Whether the variance is substantial – no
3. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance – no
4. Whether the variance would adversely affect the delivery of governmental services – no
5. Whether the property owner purchased the property with the knowledge of the zoning restriction – n/a
6. Whether the property owner’s predicament feasibly can be obviated through some other method other than a variance – no
7. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance – yes

Motion: Ms. Alfred moved, seconded by Ms. Nolde to grant a 2’ front yard setback variance.

ROLL CALL:

Yeas: Alfred, Basel, Nolde, Lamb, Swisher

Nays: none, motion carried

Michael Maloney 2023-12

23969 Stonehedge Dr., PP#21416044, Ward 1

*Requesting to install a hot tub 2' off the side property line. §1211.04(g)(2)(B): the pool [hot tub] and all mechanical equipment is located only in the rear yard and not less than 10' from any lot line; **variance to allow to a hot tub and equipment in the side yard, and variance for an 8' side yard setback.***

Mr. Maloney, was sworn in by Ms. Supler, stated that the zoning code pertains to pools and not hot tubs but they are treated the same as a pool. He explained the proposed location is the only place for the hot tub due to the uniqueness of the property. The proposed location for the hot tub used to be his rear yard but due to an addition, the location is now considered his side yard. The depth of his rear yard is 40'. There is a 15' swale at the rear, leaving a usable depth of 25'. His yard has a slope and the proposed location on the east side of the house is flat and a flat surface is needed to place a hot tub on the ground. There is an existing pool in the back yard but no room in that area, due to the pool, to provide a flat surface for the hot tub. The proposed location for the hot tub is concealed by a fence and due to the grade of his property being higher than his neighbor the hot tub will not be visible. It will also not be visible from the street. His neighbor's house does not have windows on that side of the house. The pump is a quiet running pump that will not be heard. He reviewed the design of the hot tub, which is 6' x 7' so it is not a large structure. Due to the depth of the rear yard, swale and grading of the rear yard the proposed location is the only place for the hot tub. As noted the location was his rear yard until an addition was constructed. This is also the location of the utilities. The variance request will not detract from the visibility of the property. He advised his neighbor does not object to the request.

Members of the board discussed the following: the hot tub is not a permanent structure and will be placed on gravel and can be removed; there is an existing 6' privacy fence; the rear yard is unique due to the grade, swale, shallow depth, and location of the utilities.

After a careful review of the evidence and testimony, the Board made the following findings of fact:

1. Whether the property in question yield a reasonable return or whether there can be any beneficial use of the property without a variance – no
2. Whether the variance is substantial – no
3. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance – no
4. Whether the variance would adversely affect the delivery of governmental services – no
5. Whether the property owner purchased the property with the knowledge of the zoning restriction – n/a
6. Whether the property owner's predicament feasibly can be obviated through some other method other than a variance – no
7. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance – yes

Motion: Mr. Swisher moved, seconded by Ms. Nolde to grant variance to allow to a hot tub and equipment in the side yard with the condition that it is screened so it is not visible.

ROLL CALL:

Yeas: Alfred, Basel, Nolde, Lamb, Swisher
Nays: none, motion carried

Motion: Ms. Alfred moved, seconded by Mr. Swisher to grant a variance for an 8' side yard setback.

ROLL CALL:

Yeas: Alfred, Basel, Nolde, Lamb, Swisher
Nays: none, motion carried

MISCELLANEOUS

None

APPROVAL OF MINUTES

Motion: Ms. Alfred moved, seconded by Mr. Lamb to approve the minutes of the April 25, 2023 Board of Building and Zoning Appeals hearing.

ROLL CALL:

Yeas: Alfred, Basel, Nolde, Lamb, Swisher
Nays: None, motion carried

ADJOURNMENT

Mr. Baesel adjourned the meeting at 8:45 P.M.

Bryan Basel, Chairman

Clerk of Commissions Nicolette Sackman, MMC

Approved: _____