

MINUTES OF MEETING  
BOARD OF ZONING AND BUILDING APPEALS  
JUNE 11, 2020

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Members Present: Wolf, Christ, Brandt, Farrell, Pempus

Presence Noted: Andrew Bemer, Law Director  
Raymond Reich, Building Commissioner

Council Members Present: Christina Morris, At-Large Council Member

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Mr. Pempus opened the June 11, 2020 Virtual Meeting of the Board of Zoning and Building Appeals at 7:00 p.m. via ZOOM.

**1. MATTHEW DEVENPORT – 20847 Stratford Ave. – PUBLIC HEARING – Variance to locate an air conditioner condenser 3’ from the side property line vs. 10’ side yard setback required (Section 1153.15(7)(j)).** Mr. Matthew Devenport, homeowner, is in attendance to present the variance request.

Mr. Christ read the meeting notice, which contains a list of names of the parties who received it. The applicant was sworn in. Mr. Pempus said that all of the Board members have had the opportunity to visit the property and they have reviewed the application for the variance. They also have a letter from the Gallagher family, who is in support of the variance request.

Mr. Devenport said that they are changing over from radiator heat and they need to add an air conditioner for the upstairs, which they hope to place on the right side of the house. If they put it in a legal position near their patio, then it will be closer to the neighbors’ when they are enjoying their patio space. This proposed location will be behind the chimney, about 3’ from the property line. They would like to put their grill on their back patio space and having to locate the condenser there would interrupt that plan.

Mr. Pempus asked about screening the unit and what will be done for sound reduction. Mr. Devenport said that the unit will be screened by the chimney and there is a wood fence along the property line that would act as a sound barrier. Mr. Wolf asked if he applicant has any details on the unit relating to sound. Mr. Devenport responded that the Carrier condenser has a dB level of 74. Mr. Brandt said that he would leave it up to the Building Department to check the specs of that particular unit.

Mr. Pempus said that they normally try to look at other options, but the sketch and his visit shows that there is a driveway between the houses, which adds distance between the units. Mr. Wolf said that he has the same Carrier Performance type unit and he can hear his neighbor’s unit louder than his when he is standing next to his unit. Mr. Christ asked about the fact that the applicant stated he did not see the ability to put it on his driveway side and he said it looked to him that he could actually locate it there. Mr. Devenport said that it would be much more difficult to drop the lines down the side of the house to locate it there,

rather than where they are proposing to locate the unit. The forced air unit that they have chosen to connect to is located in the attic, directly above where they are locating the condenser. Mr. Wolf said that the location where Mr. Christ is suggesting is just about the same distance to another house. Mr. Christ said that it would be a similar distance to what the applicant is proposing, but it would not require a variance. This Board is supposed to be looking at the most reasonable solution and the applicant's driveway side is the least objectionable from a Code standpoint. He added that knowing that it can't go on the east side because the lines would have to go through the entire attic to drop down onto the east side, presents the practical difficulty for why they need to install it on this side. Mr. Wolf agreed with Mr. Christ and said that the side they are proposing may be a little better screened with the existing conditions than if it was on the other side. He said that the critical item is for the Building Department to be sure that it is a quiet unit that is properly baffled and screened by the fence.

Mr. Farrell said that it doesn't look like the chimney will totally hide the unit, so he would like the applicant to agree to plant something to shield it from the street view if necessary. Mr. Devenport agreed to screen the condenser from view from the street if it is necessary. Mr. Brandt said that there is landscaping in the front of the house that will help with screening of this unit. If they located it on the east side, it would be much more visible from the street because there would be no screening near it. He likes the fact that this location is sort of tucked in and hidden and if it can meet the dB requirement, he is not troubled by this proposal.

Mr. Christ moved to close the public hearing. Mr. Brandt seconded.

5 Ayes – 0 Nays  
Passed

Mr. Christ applied the practical difficulties test aloud. The special circumstance that is peculiar to the land includes the location of the current unit in the attic aligns with the proposed location, which facilitates the connections, and is reasonable. Whether the property will yield a reasonable return is not pertinent. Whether the variance is substantial, he said that the applicant explained that it is not substantial and it is the minimum necessary to accomplish the goal. The character of the neighborhood will not be altered because this side of the house is less visible from the street than the other side, where a variance would not be required. This will not adversely affect the delivery of governmental services. Regarding whether the property owner purchased the property with knowledge of the zoning restrictions does not really apply here. There are no special circumstances that exist as a result of the actions of the owner. Trying to obviate the property owner's predicament feasibly through some method other than a variance would not meet the other requirements. The spirit and intent of the Code would be observed and substantial justice would be done by granting a variance and the granting of this variance will not confer any special privilege on the applicant. The literal interpretation of the provisions of this Code would deprive the applicant of rights commonly enjoyed by other properties.

Mr. Christ moved to grant a variance to Matthew Devenport, 20847 Stratford Ave., to locate an air conditioner condenser 3' from the side property line vs. 10' side yard setback required. As discussed, the applicant is meeting the practical difficulties in the proposed location and this is a reasonable solution. Mr. Brandt seconded.

5 Ayes – 0 Nays  
Passed

**2. GREGG MYLETT – 19800 Frazier Dr. – PUBLIC HEARING – Variance to locate two air conditioner condensers in the side yard, 5' from the side property line vs. 10' side yard setback required.** Mr. Tom Ferry, the General Contractor, came forward to present the variance request. Also in attendance on another matter is Dave Maddux, the Architect for the homeowner, who is familiar with the Applicant's site plan.

Mr. Christ read the meeting notice, which contains a list of names of the parties who received it. The applicant was sworn in. Mr. Pempus said that all of the Board members have had the opportunity to visit the property and they have reviewed the application for the variance. They also have a statement that the neighbor said that this location is fine with him. Mr. Ferry confirmed that the neighbor was sent an email with all of the details of the project and he responded with his approval of the proposal. Mr. Pempus said it is always helpful to have a sketch of not only the property requesting the variance, but of other properties that are involved. Even though they visit the site, this information being provided to them keeps them reminded of the application when they get to the meeting. Mr. Ferry responded that he went through the checklist for the submission and he thought he provided the information they needed on the site plan.

Mr. Brandt said that he is surprised by the planning of this entire project and that they are just now figuring where air conditioning will be placed. He expected that it would have been thought through quite a bit sooner. Mr. Ferry said that mechanicals are figured out at the outset of the project, but the fact that they added a generator as the project progressed affected this situation. They are trying to be considerate to both neighbors and not request to locate all of the units on the side where there is plenty of distance to the property line, but they would still need a variance for the amount of units they would be installing.

Mr. Wolf agreed that they want to see the whole picture when they are considering variances for additions, etc., so they can understand the implications of what they are approving earlier on in projects. Mr. Maddux, the project architect, said that the project has evolved and they have added a swimming pool which took up space for the mechanicals and they added the generator. Knowing that the properties on either side really value the lakefront side of the properties, it makes a challenging puzzle of where to place the condensers so they are least impactful. Splitting them between the two locations and requesting the variance where they are, seemed to be the least impactful approach. Mr. Farrell confirmed that the structure to the east is about 30' from the property line. Mr. Ferry said there is a little over 9' from Mr. Mylett's house to the property line, but he is not sure of the distance from the property line to the neighbor's house. Mr. Wolf said that the

survey shows 9' and then 30' to the neighbor's structure. Mr. Farrell asked if it would make any sense to place all 4 of the units on the east side since there is so much space there. Mr. Ferry said they are trying to be considerate to that neighbor by locating two of the units on the other side.

Mr. Christ said that he is very troubled because this was not part of the planning from the outset and these details should have been worked out when all of the other changes were being planned. A good time to plan for these units would have been before the addition of the generator. He said he thinks it might be more appropriate to put all of the units together and then go above and beyond to provide structural screening and sound mitigation all in one location. He thinks that the applicant has actually created this situation by not planning properly.

Mr. Wolf said that a generator is an emergency unit and it won't significantly add to the issues, so either side doesn't really matter to him. He said that the types of units they are proposing are substantially quieter than what a lot of them are used to, and he can't believe it would be an issue for a neighbor that is 40' away from the units. Mr. Pempus agreed with Mr. Wolf, but added that it will look like a commercial situation with 4 units as opposed to a residential situation.

Mr. Ferry asked if the Board would allow them to locate more than 2 units on the one side of the building. Mr. Christ said that he is trying to look at minimizing the impact of the options here, both of which require variances. Mr. Wolf asked if it is still mechanically possible to add the units on the other side and Mr. Ferry said that they need to locate these now to run the line sets because they are starting to close the house up with drywall.

Mr. Maddux said that they considered the location behind the kitchen on the northeast corner. It is right beside where the neighbor's outdoor entertaining area is and it is also where they placed pool equipment within a structure on that side, so that area is eliminated as a possibility to locate the units. The east side will be an access side for maintenance and a way to walk around the house because it will be the more accessible side. They are trying to maintain the balance between the location of these units and access to the rear yard and the mechanicals, as well.

Mr. Farrell asked if the Board members want to push for an alternate solution to this. Mr. Christ said that if they cannot get all of the units on one side with proper screening and noise mitigation, then maybe they should consider relocating the pool equipment so that the condensers can be placed in that location. Mr. Ferry said that the pool equipment is located in a room and Mr. Christ asked why they can't locate the condensers above that room. Mr. Ferry said that they were trying to limit the number of units on that side of the property. Mr. Christ asked why they could not construct some sort of an open room on that side to locate the units in and Mr. Ferry said he is not sure that is feasible.

Mr. Maddux said that he supposes it could be located on top of where the pool equipment is, but it makes it a little more visible and create more impactful sound transmission. While

they would be solving a variance issue, he thinks that they would be creating more of an impact by doing that. Mr. Ferry added that it is the living area of the neighbor's property, with their deck and gazebo being located there, and the left side is a garage side. Mr. Farrell said that it would have been nice to know that the pool equipment is located in that area, so it is not a viable zone. He would like to see information like that included as part of the submission. Mr. Brandt said that he would like to know what the true version of the landscape plan and fencing plan will be and what will happen between these two buildings since they had that same discussion with the previous applicant and he does not see that detail in this submission. He said that they can't tell by the submitted landscape plan that it will be adequate screening and whether or not there will be a fence between the two houses and he would like them to elaborate on that detail. Mr. Wolf said that he would also like to see the sound specs for the units and Mr. Ferry said that he submitted that detail. The units are at 70dB, which is within code, but they will be wrapping them with sound blankets also. Mr. Farrell said that he agrees that the house to the west has their garage, and they also have units over there already. He thinks that to abandon that side of the property for these units might not be the right way to go and just the screening of them may be the best solution. Mr. Brandt said that he agrees with Mr. Farrell. Mr. Wolf said that he agrees with Mr. Farrell and Mr. Brandt but would like to see a better plan for clarity. Mr. Ferry agreed and said that the location on the west side is the most logical and practical place, with the least impact on surrounding property owners. Mr. Christ said that if no other locations work that are within Code, then they need to come back and explain why they didn't work at those locations and why the place they are choosing is the only rational place to put the units. Mr. Pempus said that the Board has asked for more information and he suggests that the applicant come back.

The applicant agreed to return to the next meeting with additional information, as discussed.

Mr. Christ moved to table this item for up to 60 days. Mr. Farrell seconded.

5 Ayes – 0 Nays  
TABLED

**3. PHIL AND CHRISTINA KLENOTIC – 19339 Frazier Dr. – PUBLIC HEARING – Variance to construct a covered deck with 32.8% lot coverage vs. 28% lot coverage permitted (Section 1153.05(3)).** Ms. Christina Klenotic, homeowner, is here to present the variance request.

Mr. Christ read the meeting notice, which contains a list of names of the parties who received it. The applicant was sworn in. Mr. Pempus said that the board members have had the opportunity to visit the property and review the variance application. Ms. Klenotic explained that they have had some drainage issues in the back yard and their patio, balcony and driveway are deteriorated. They would like to replace their patio and add a deck that is covered to a portion of that patio space. When they remove the balcony that is on the second floor, they want to bump out the window by about 2'. The covered deck will

extend about 5 more feet from that point. Mr. Pempus said that the area of the yard would get considerable sun and he asked if they have considered a removable awning of some sort. Ms. Klenotic responded that they are removing the deteriorating balcony and they are replacing the slider anyway and the bump out will tie into the new roof, which would look more appealing and be a longer lasting solution. He said that the numbers the City has for their existing lot coverage are different than the numbers their architect has. Mr. Christ said that the existing lot coverage is over 28%, which is a bit of a mitigating factor. Mr. Pempus said that from visiting the property he found that the back yard has an open feel to it and it doesn't feel crowded to him, so this does not seem to have any massing impact on this property. Mr. Brandt said that this is a modest request and it is a nice improvement to the property that does not seem substantive. Mr. Christ said that they are eliminating the overlook balcony which is more visible to neighbors in some ways than the covered patio that they are adding. This is only 1 story and it is centralized in the back of the house and he is not troubled with this proposal.

Mr. Christ moved to close the public hearing. Mr. Brandt seconded.

5 Ayes – 0 Nays  
Passed

Mr. Christ applied the practical difficulties test aloud. There are no special circumstance that exist that are peculiar to the land. Whether the property will yield a reasonable return is not pertinent. He does not believe that the variance is substantial and what they are proposing is the minimum necessary to convert the existing patio into a covered patio and it will reduce the second floor overhang. The essential character of the neighborhood will not be altered because of the location and the configuration, this actually reduces any effect on the neighboring properties. This will not adversely affect the delivery of governmental services. Regarding whether the property owner purchased the property with knowledge of the zoning restrictions, does not apply. There are no special circumstances that exist as a result of the actions of the owner. It is not possible to obviate the property owner's predicament feasibly through some method other than a variance. The spirit and intent of the Code would be observed by granting a variance and the granting of this variance will not confer any special privilege on the applicant. The literal interpretation of the provisions of this Code would deprive the applicant of rights commonly enjoyed by other properties.

Mr. Christ moved to grant a variance to Phil and Christina Klenotic, 19339 Frazier Dr. to construct a covered deck with 32.8% lot coverage vs. 28% lot coverage permitted. The applicant has indicated the practical difficulties and this is a minimal change that will actually increase the favorability of the patio and reduce the deck above. Mr. Brandt seconded.

5 Ayes – 0 Nays  
Passed

**4. CHUCK AND LAURA SODER – 19520 Beachcliff Blvd. – PUBLIC HEARING – Variance to construct a 2-story addition and 1-story garage with a 4' – 10 ¾" side yard setback vs. 8' side yard setback required (Section 1153.07(f)(1)A).** Homeowner Laura Soder and Dave Maddux, Architect, are present to present the variance request.

Mr. Christ read the meeting notice, which contains a list of names of the parties who received it. The parties were sworn in. Mr. Pempus said that he has two letters in support of the variance request. One letter of support is from Dan and Linda Brogan and the other letter is from Ken and Pia Greaney. Ms. Soder said that she spoke to both neighbors who would be most affected by this variance. She has shown both of them the plans, and they both have written their letters of support.

Mr. Maddux explained that this corner house has a garage that is tucked back in the northwest part of the property. It is currently a detached garage that is attached by a breezeway and they would like to expand it to accommodate their special needs daughter. The flow on the inside of the house as well as the flow from the outside will be improved. They will be maintaining the side yard that presently exists, which is where they need the variance. This is the most reasonable way to add on and make the house functional without greatly impacting the neighbors. They are asking for the setback variance to be able to maintain the setback of the existing garage and be able to connect to it from the main body. He said they are doing a 2 story addition, but the garage itself is a 1-story structure. He said that the driveway will remain in the same location. They are creating a slightly larger kitchen with more room to flow through and are attaching a mudroom to that. There will be a more accessible porch off of the terrace and driveway side for ease of entry to the house on that side. They are maintaining the current style of the house and they believe they are actually enhancing it.

Mr. Brandt said he would like to commend the way Mr. Maddux has presented this request and Mr. Wolf agreed. Mr. Farrell said that he feels this is a good solution and he has no issues with this.

Mr. Brandt moved to close the public hearing. Mr. Farrell seconded.

5 Ayes – 0 Nays  
Passed

Mr. Christ applied the practical difficulties test aloud. The existing house is already set back a similar amount to this request, which is the special circumstance that exists which is peculiar to the land. Whether the property will yield a reasonable return is not pertinent. He does not believe that the variance is substantial and that it is the minimum necessary because it matches the existing setback with a slight articulation. The essential character of the neighborhood will not be altered because this is maintaining the character of the house and the neighborhood. This will not adversely affect the delivery of governmental services. Regarding whether the property owner purchased the property with knowledge of the zoning restrictions, does not apply. There are no special circumstances that exist as a result

of the actions of the owner. It is not possible to obviate the property owner's predicament feasibly through some method other than a variance. The spirit and intent of the Code would be observed by granting a variance and the granting of this variance will not confer any special privilege on the applicant. The literal interpretation of the provisions of this Code would deprive the applicant of rights commonly enjoyed by other properties.

Mr. Christ moved to grant a variance to Chuck and Laura Soder, 19520 Beachcliff Blvd., to construct a 2-story addition and 1-story garage with a 4' – 10 ¾" side yard setback (existing) vs. 8' side yard setback required. The applicant has indicated the practical difficulties and this is maintaining the existing conditions at the back of the house with a slight offset and this is a reasonable request. Mr. Brandt seconded.

5 Ayes – 0 Nays  
APPROVED

**5. TONY TABANJI – 2796 East Asplin Dr. – PUBLIC HEARING – Variance to construct a garage addition with a 36' front setback (on Laramie Dr.) vs. 40' front setback required (on Laramie Dr.) (Section 1153.07(a)).** Homeowner Tony Tabanji and Architect Craig Dixon are present to present the variance request. Also present is Mr. Byron Spooner, the next door neighbor to the north and Ms. Cindy Konold, 22467 Laramie Dr.

Mr. Christ read the meeting notice, which contains a list of names of the parties who received it. The parties were sworn in. Mr. Pempus said that he would like to disclose that he recognizes Architect Craig Dixon because they worked on a couple of projects together many years ago. He also knows the next door neighbor, Mr. Byron Spooner through a basketball relationship that their daughters had. However, he does not think these will affect his ability to remain objective regarding this variance. The parties expressed no objection to Mr. Pempus hearing the variance request.

Mr. Dixon explained that he would like to expand the existing garage to accommodate 3 cars. The front of the garage will be in line with the home to the west on Laramie Dr. They are requesting a 4' variance for only a corner portion of the garage because of the way the corner lot is configured on East Asplin Dr. and Laramie Dr.

Mr. Christ said that if they actually followed the property line they would be achieving the same triangle that they are looking at. To accommodate the setback requirement would complicate the architecture and the structure. He sees this as a very minimal request and it is simply accommodating the geometry of the streets. Mr. Pempus said that this will be a substantial improvement to the exterior. Mr. Brandt feels that there is a very reasonable request.

Ms. Cindy Konold, 22467 Laramie Dr., said that her concern is the timing of the project. She wonders if it will only take place during the time construction in the City is allowed, and she questions the purpose of the project. They have struggled with this neighbor with



noise and lights well into the middle of the night shining into their bedroom. She wants to be sure the project progression doesn't disrupt their living. She wonders if the garage will be used to fix the vehicle in that he continuously fixes and whether the noise will disrupt them well into the middle of the night. Mr. Pempus responded that this Board is not charged with determining other concerns in our City that are unrelated to the variance request, such as noise. He said that the Building Department can determine if there are noise or any other violations, and they will address them.

Mr. Wolf said that there is a construction noise ordinance that applies to commercial contractors and also to residents, such as when you can use your power tools, the decibel limits and the hours construction can occur. Law Director Bemer said that the Building Department is also charged with determining whether there is an ongoing home occupation occurring at a residence and demanding a resolution to any violations. Mr. Pempus said that Ms. Konold's concerns are well taken. Mr. Tabanji responded that he does not work on cars and he does not disturb anybody, except for perhaps on an occasional holiday. He does not stay up late because he gets up early in the morning for work and everything Ms. Konold is saying is false.

Mr. Farrell said that it looks like part of the reason Mr. Tabanji wants a 3-car garage is because he is promising to store his vehicles in the garage and not in the driveway. Commercial vehicles are not allowed to be stored in the driveway and Mr. Farrell would like Mr. Tabanji to keep that zoning ordinance in mind.

Mr. Christ moved to close the public hearing. Mr. Brandt seconded.

5 Ayes – 0 Nays  
Passed

Mr. Christ applied the practical difficulties test aloud. The special circumstance that exists that is peculiar to the land are the configuration of the two streets and the curve of the street which affect the construction of the house relative to the streets and this has a minimal impact on the neighborhood. Whether the property will yield a reasonable return is not pertinent. He does not believe that the variance is substantial and that it is the minimum necessary because of the configuration of the lot. The essential character of the neighborhood will not be altered because this is maintaining the character of the house and the neighborhood. This will not adversely affect the delivery of governmental services. Regarding whether the property owner purchased the property with knowledge of the zoning restrictions, does not apply. There are no special circumstances that exist as a result of the actions of the owner. It is not possible to obviate the property owner's predicament feasibly through some method other than a variance. The spirit and intent of the Code would be observed by granting a variance and the granting of this variance will not confer any special privilege on the applicant. The literal interpretation of the provisions of this Code would deprive the applicant of rights commonly enjoyed by other properties.

Mr. Christ moved to grant a variance to Tony Tabanji, 2796 East Asplin Dr., to construct a garage addition with a 36' front setback on Laramie Dr. vs. a 40' front setback required on Laramie Dr. The applicant has indicated the practical difficulties with providing an addition to the garage and this variance request is a reasonable solution that is driven by the configuration of the streets. As discussed, vehicles will be stored in this garage and it is not to be used for equipment warehousing or construction material storage. Mr. Brandt seconded.

5 Ayes – 0 Nays  
GRANTED

The meeting adjourned at 9:40 p.m.

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Eric Pempus, Chairman

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Richard Christ, Secretary

Date: \_\_\_\_\_