

**MEETING MINUTES OF THE
FRANKLIN BOARD OF ZONING APPEALS
APRIL 4, 2019**

The Franklin Board of Zoning Appeals held a regular meeting on Thursday, April 4, 2019 at 6:00 p.m. in the City Hall Boardroom.

Members present: Gillian Fischbach
Frank Jones
Joel Tomlin

Staff present: Emily Hunter, Planning & Sustainability
Joey Bryan, Planning & Sustainability
Matthew Muenzen, Assistant City Attorney
Molly Pike, BNS Department

The agenda read as follows:

Review and approval of Minutes from March 7, 2019, BZA Meeting

Announcements

Variance Request by Jeff and Linda Fleishour for a 12-foot encroachment into the required 30-foot rear yard setback to construct a covered porch addition to the rear of the existing dwelling located at 3104 Bruce Gardens Circle (F.Z.O §3.3.3, Table 3-6 and §3.3.4, Table 3-8).

Variance Request by Steck Johnson and Staci Johnson to allow in-law suite to be detached from the primary structure on the property located at 3709 East McEwen Drive.

Variance Request by Steck Johnson and Staci Johnson to allow an accessory structure to be located in front of the primary structure on the property located at 3709 East McEwen Drive (F.Z.O §4.1.2(7)).

Chair Jones called the meeting to order at 6:00 pm.

Announcements:

Chair Jones requested to know if there were any non-agenda items.

Mr. Bryan stated no, there were no non-agenda items.

Minutes from March 7, 2019, BZA Meeting

Mr. Tomlin moved to approve the March 7, meeting minutes. Ms. Fischbach seconded the motion and the motion carried 3-0.

Variance Request by Jeff and Linda Fleisher for a 12-foot encroachment into the required 30-foot rear yard setback to construct a covered porch addition to the rear of the existing dwelling located at 3104 Bruce Gardens Circle (F.Z.O §3.3.3, Table 3-6 and §3.3.4, Table 3-8).

Mr. Bryan stated the applicant is requesting a 12-foot variance from the required 30-foot rear yard setback to construct a covered porch addition to the rear of the existing dwelling located at 3104 Bruce Gardens

Circle. Mr. Bryan stated the subject property is lot 292 in the Spencer Hall (Inverness) PUD Subdivision, Section 12, and is a lot of recorded that was created prior to the adoption of the current Zoning Ordinance. Mr. Bryan stated the property was originally zoned Planned Residential (PR 2.3) and was platted with a 30-foot rear yard setback in 2002. Mr. Bryan stated the property is currently zoned R-3 – Detached Residential 3 District, West Harpeth Character Area Overlay District - Special Area 2 (WHCO-2) and is designated as either Traditional or Conventional Development Standards. Mr. Bryan stated a variance was previously approved in July 2017 but has since expired. Mr. Bryan stated the size of the footprint of the porch has increased but the applicant is not requesting to encroach further into the setback than the 12-feet that was previously approved. Mr. Bryan stated Table 3-6 establishes the Site Development Standards for Conventional Areas and Table 3-8 establishes the Site Development Standards for Traditional Areas. Both Tables have a footnote that stipulates that “for lots in recorded subdivisions or approved PUDs, the setbacks and lot sizes, maximum densities, and primary façade widths shown in this table shall not apply, and the requirements shown on the final plat, the approved PUD, or conditions on existing lots shall govern.” Mr. Bryan stated therefore, the required 30-foot rear yard setback requirements established on the recorded plat supersedes the setback requirements stipulated in Tables 3-6 and 3-8. Mr. Bryan stated the Variance process is intended to provide limited relief from the requirements of the Zoning Ordinance in those cases where the strict application of a particular requirement will create an unnecessary hardship prohibiting the use of land in a manner otherwise allowed under the Ordinance. Mr. Bryan stated it is not intended that Variances be granted merely to remove inconveniences or financial burdens that the requirements of the Zoning Ordinance may impose of property owners in general. Variances are intended to address extraordinary, exceptional, or unique situations that were not caused by the applicant’s act or omission. Mr. Bryan stated in order, to grant the Variance Request, the BZA must determine that the applicant has demonstrated that all three standards required to grant the variance have been satisfied. Mr. Bryan stated the following as an analysis of the requested variances as they relate to the variance standards and approval criteria described above:

1. Where, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the enactment of this ordinance, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property is not able to accommodate development as required under this ordinance.
 - The subject property is an existing lot of record that was created prior to the adoption of the Zoning Ordinance. The property was originally platted as part of Section 12 of the Spencer Hall (Inverness) PUD Subdivision in 2002. The property is a standard lot in terms of size, shape, dimensions and setbacks as compared to other lots in the Spencer Hall PUD Subdivision. The existing home was constructed within the required rear yard setback per the information submitted by the applicant. The property is also located adjacent to an existing open space lot.
 - The applicant is wishing to demolish the existing 12’ x 20’ deck and replace it with a larger deck that includes a portion that will be covered with a roof. The proposed deck and covered porch would encroach into the required 30-foot rear yard setback up to 12-feet. The current Zoning Ordinance would permit a 5-foot rear yard setback if Traditional Standards were applied. However, since the subject property is a lot of record, the platted setbacks supersede the existing standards. The proposed deck and covered porch addition backs up to an existing open space lot and would not negatively impact adjoining property owners. The applicant received approval of the proposed addition from the Spencer Hall HOA Design Review Committee contingent upon the BZA granting a variance from the rear yard setback.
 - Based on similar variance requests granted by the BZA, Staff finds that the platted setbacks create a unique, exceptional, or extraordinary situations about the subject property that would prevent the applicant from complying with the requirements of the Zoning Ordinance if Traditional Development Standards were applied.

2. The strict application of any provision enacted under this ordinance would result in peculiar and exceptional practical difficulties to or exception or undue hardship upon the owner of such property.
 - The only place where the deck and covered porch can be located is to the rear of the existing dwelling. The rear of subject property is also located next to a public open space area. The strict application of the Zoning Ordinance provisions requiring conformance with the platted setback instead of the Traditional Development Standards would result in an exceptional hardship on the owner of the property. Ultimately, the Board must determine whether the inability to construct the proposed addition encroaching into the required rear yard on the subject property is a hardship or practical difficulty.
3. Relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zoning map and this ordinance.
 - The final standard the Board must consider is whether the requested relief granted would be a detriment to the public good or impair the intent and purpose of the Zoning Ordinance. Based on similar variance requests granted by the BZA, staff believes that granting the proposed variance would not be detrimental to the public good and would not impair the intent or purpose of the Zoning Ordinance.

Mr. Bryan stated the applicant must have demonstrated that all three of the standards required to grant a variance have been satisfied and based on the analysis presented above, staff recommends approval of the variance requested by the applicant because the applicant has met all three of the standards required for granting a variance.

Mr. Fleisher stated he no comment to add, except the HOA had approved.

Chair Jones requested to know if anyone from the audience wished to speak on this item and no requested to speak.

Ms. Fischbach moved to close the public portion of the meeting. Mr. Tomlin seconded the motion and the motion carried 3-0.

Mr. Tomlin moved to approve the variance request to vary the required 30-foot rear yard setback by 12 feet to construct a deck and covered porch addition to the rear of the existing dwelling because the standards for granting a variance have been satisfied. Ms. Fischbach seconded the motion and the motion carried 3-0.

Variance Request by Steck Johnson and Staci Johnson to allow in-law suite to be detached from the primary structure on the property located at 3709 East McEwen Drive.

Mr. Bryan stated the applicant is proposing to detach a proposed in-law suite from the primary structure on the property located at 3709 East McEwen Drive. Mr. Bryan stated the property was a lot of record prior to the adoption of the current Zoning Ordinance in 2008. Mr. Bryan stated the property is currently zoned ER – Estate Residential District, Seward Hall Character Area Overlay District - Special Area 1 (SWCO-1). Mr. Bryan stated the lot has extreme topographic conditions that limit where new construction can be located and where additions can be built onto the house and additionally, the Hillside Overlay District (HHO) encompasses the entire rear portion of the property and ends at the rear wall of the principal structure. Mr. Bryan stated the applicant has provided a concept plan showing the general area of the new structure in front of the primary structure. Mr. Bryan stated a similar variance was unanimously approved for this property at the July 7th, 2016 meeting. Mr. Bryan stated the previous variance has since expired, and the applicant is seeking approval for another variance. Mr. Bryan stated the Variance process is intended to

provide limited relief from the requirements of the Zoning Ordinance in those cases where the strict application of a particular requirement will create an unnecessary hardship prohibiting the use of land in a manner otherwise allowed under the Ordinance. Mr. Bryan stated it is not intended that Variances be granted merely to remove inconveniences or financial burdens that the requirements of the Zoning Ordinance may impose of property owners in general. Mr. Bryan stated Variances are intended to address extraordinary, exceptional, or unique situations that were not caused by the applicant's act or omission. Mr. Bryan stated in order, to grant the Variance Request, the BZA must determine that the applicant has demonstrated that all three standards required to grant the variance have been satisfied. Mr. Bryan stated the following is an analysis of the requested variances as they relate to the variance standards and approval criteria described above:

1. Where, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the enactment of this ordinance, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property is not able to accommodate development as required under this ordinance.
 - The subject property is an existing lot of record that was created before 2008, prior to the effective date of the current Zoning Ordinance. The lot backs up to Canterbury Rise. The lot's dimensions are 1,215 feet long and 222 feet wide which creates a narrow lot with an unusual layout. The Hillside Overlay District (HHO) is located immediately behind the rear plane of the primary structure. The purpose of the HHO is to, "protect the city's hillsides and hillcrests through the prohibition or restriction of development in a manner that will ensure that any development will protect the hillside's natural and topographic character and identity." The entirety of the rear yard is located within the HHO so construction of an enclosed addition is not possible directly behind the existing house.
 - The lot has extreme topographic conditions that limit where new construction can be located.
 - The Zoning Ordinance stipulates that all family members have "unlimited access" to the entire dwelling. The proposed detached in-law suite would maintain unlimited access for the dwelling despite it not being internally connected.
 - Staff finds that the topographic conditions on the lot as described by the applicant and the location of the Hillside Overlay District, create a unique, exceptional, or extraordinary situations about the subject property that would prevent the applicant from complying with the requirements of the Zoning Ordinance.
2. The strict application of any provision enacted under this ordinance would result in peculiar and exceptional practical difficulties to or exception or undue hardship upon the owner of such property.
 - The unique topography of the lot and location of the HHO limits where new additions can be constructed. Additionally, attaching an addition to the front façade could be a practical difficulty for the applicant by affecting the aesthetics and circulation pattern of the home. The strict application of the Zoning Ordinance provisions would result in an exceptional hardship on the owner of the property. Ultimately, the Board must determine whether the inability to construct the proposed accessory structure in front of the primary structure is a hardship or practical difficulty.
3. Relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zoning map and this ordinance.
 - The final standard the Board must consider is whether the requested relief granted would be a detriment to the public good or impair the intent and purpose of the Zoning Ordinance. Based on a recent variance approval of a similar nature for this property, how the location of the Hillside Overlay District limits where new construction can take place, and topographic constraints of the lot, the approval of the request would not be detrimental to the public good and will not impair the intent or purpose of the Zoning Ordinance.

Mr. Bryan stated the applicant must have demonstrated that all three of the standards required to grant a variance have been satisfied and based on the analysis presented above, staff recommends approval of the variance requested by the applicant because the applicant has met all three of the standards required for granting a variance.

Mr. Johnson stated he received an email from Mr. John Mathews who owns property to the east of his and the email stated Mr. Mathews approves of these variance request.

Chair Jones requested to know if anyone from the audience wished to speak on this item and no requested to speak.

Mr. Tomlin moved to close the public hearing. Ms. Fischbach seconded the motion and the motion carried 3-0.

Ms. Fischbach moved to approve the variance request to detach an in-law suite from the primary structure at 3709 E McEwen Dr. because the standards for granting a variance have been satisfied. Mr. Tomlin seconded the motion and the motion carried 3-0

Variance Request by Steck Johnson and Staci Johnson to allow an accessory structure to be located in front of the primary structure on the property located at 3709 East McEwen Drive (F.Z.O §4.1.2(7)).

Mr. Bryan stated the Variance process is intended to provide limited relief from the requirements of the Zoning Ordinance in those cases where the strict application of a particular requirement will create an unnecessary hardship prohibiting the use of land in a manner otherwise allowed under the Ordinance. Mr. Bryan stated it is not intended that Variances be granted merely to remove inconveniences or financial burdens that the requirements of the Zoning Ordinance may impose of property owners in general. Variances are intended to address extraordinary, exceptional, or unique situations that were not caused by the applicant's act or omission. Mr. Bryan stated the BZA may authorize, upon an appeal relating to the property, a Variance from such strict application of the Zoning Ordinance so as to relieve such difficulties or hardship only in accordance with the following three standards (FZA §§ 2.2.4 (b) and 2.4.5):

1. Where, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the enactment of this ordinance, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property is not able to accommodate development as required under this ordinance; and
2. The strict application of any provision enacted under this ordinance would result in peculiar and exceptional practical difficulties to or exception or undue hardship upon the owner of such property; and
3. Relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zoning map and this ordinance.

Mr. Bryan stated in order, to grant the Variance Request, the BZA must determine that the applicant has demonstrated that all three standards required to grant the variance have been satisfied. Mr. Bryan stated the following is an analysis of the requested variances as they relate to the variance standards and approval criteria described above:

1. Where, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the enactment of this ordinance, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property is not able to accommodate development as required under this ordinance.
 - The subject property is an existing lot of record that was created in 2008 prior to the effective date of the current Zoning Ordinance. The lot backs up to Canterbury Rise. The lot's dimensions are

1,215 feet long and 222 feet wide which creates a narrow lot with an unusual layout. The Hillside Overlay District (HHO) is located immediately behind the rear plane of the primary structure. The purpose of the HHO is to, “protect the city’s hillsides and hillcrests through the prohibition or restriction of development in a manner that will ensure that any development will protect the hillside's natural and topographic character and identity.” The entirety of the rear yard is located within the HHO so construction of an accessory structure is not possible directly behind or on either side of the existing house.

- The topographic constraints of the property also limit where new construction can be located.
 - Staff finds that the topographic conditions on the lot as described by the applicant and location of the Hillside Overlay District, create a unique, exceptional, or extraordinary situations about the subject property that would prevent the applicant from complying with the requirements of the Zoning Ordinance.
2. The strict application of any provision enacted under this ordinance would result in peculiar and exceptional practical difficulties to or exception or undue hardship upon the owner of such property.
- The unique dimensions of the lot and location of the HHO limits where new development can be constructed. The only location on the lot where the proposed building can be constructed and still meet additional regulations is in front of the primary structure. The strict application of the Zoning Ordinance provisions would result in an exceptional hardship on the owner of the property. Ultimately, the Board must determine whether the inability to construct the proposed accessory structure in front of the primary structure is a hardship or practical difficulty.
3. Relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zoning map and this ordinance.
- The final standard the Board must consider is whether the requested relief granted would be a detriment to the public good or impair the intent and purpose of the Zoning Ordinance. A similar variance was previously approved for this property in July 2016. The location of the Hillside Overlay District limits where new construction can take place and the topographic constraints of the lot limit where accessory structures can be constructed. Therefore, the approval of the request to place an accessory structure in front of the primary structure would not be detrimental to the public good and will not impair the intent or purpose of the Zoning Ordinance.

Mr. Bryan stated in order for the BZA to grant a variance, the applicant must have demonstrated that all three of the standards required to grant a variance have been satisfied and based on the analysis presented above, staff recommends approval of the variance requested by the applicant because the applicant has met all three of the standards required for granting a variance.

Mr. Johnson stated he had nothing to add.

Chair Jones requested to know if anyone from the audience wished to speak on this item and no requested to speak.

Mr. Tomlin moved to approve the variance request to allow an accessory structure to be located in front of the primary structure at 3709 E McEwen Dr. because the standards for granting a variance have been satisfied. Ms. Fischbach seconded the motion and the motion carried 3-0

Other Business.

No other business

Adjourn.

With there being no further business, the meeting was adjourned at 6:15.

 5/2/19
Chair