



**BOARD OF ZONING APPEALS
MINUTES OF THE PROCEEDINGS OF THE PUBLIC HEARING
JUNE 24, 2014**

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

PRESENT: Board Members Matthew Jones, Robert Swisher, Bryan Baesel, Scott
Fatzinger

ABSENT: Jeff Neverman

ALSO PRESENT: Law Director John Wheeler and Clerk of Commissions Nicolette Sackman

SELECTED CORRESPONDENCE

Docket 2014-13

6/16/14 email received from Kevin Dahlhausen of 28627 Touchstone in favor of the variance request

6/24/14 letter received at the meeting from Ronald and Diana Felgenhauer of 28573 Stonegate Circle opposed to the variance request

DOCKETS

Docket 2014-12

Applicant: Scott & Ann Fleming

Premises: 3403 Canterbury Rd., PP# 215-18-047

Requesting to construct a swimming pool (and equipment) in the side yard at variance with 1211.04(g)(2)(B) which states a private swimming pool shall be permitted provided that the pool and all mechanical equipment is located only in the rear yard and is not less than 10' from any lot line, requesting require a side yard location variance. (Note: this is a corner lot).

Mr. Fleming, sworn in by Mr. Wheeler, explained he wishes to install a pool in his backyard. His house is on a corner lot facing Canterbury Road. However, Rose Road is considered the legal front of the lot so the house technically faces the side yard. The proposal is to place the pool behind the house which the functional rear yard but due to the layout of the house on the corner lot is technically the side yard which is why he needs a variance. Mr. Fleming presented photos of his house and property and showed that the pool will be placed behind the house.

Members of the commission agreed that the proposed location is the functioning rear yard but being a corner lot is technically the side yard. They were in favor of the proposed location as it would be behind the house.

After a careful review of the plans and testimony of the applicants the Board finds that:

1. The lot and residence is on the northeast corner of Canterbury and Rose roads and consequently is a corner lot.
2. Although the front of the house faces Canterbury that side of the lot is legally a side yard.
3. The legal front of the lot is on Rose Road; the functional backyard of the property is legally a side yard.
4. Placing the pool and equipment in the legal side yard would be the most appropriate place for the pool and equipment and there is no room for placement in what would legally be the back yard.
5. The Board found that due to the unique shape of the lot and its existence as a corner lot that the side yard requested by the applicant was the better location for the pool and equipment, that there would be no detrimental effect on the neighborhood and the spirit of the code would not be violated in granting the variance.

Motion: Mr. Fatzinger moved, seconded by Mr. Swisher to approve a side yard location variance for the pool for Docket 2014-12.

ROLL CALL:

Yeas: Jones, Swisher, Baesel, Fatzinger

Nays: None, motion carried

Docket 2014-13

Applicant: Yazan Al-Madani

Premises: 28651 Touchstone Circle, PP# 216-18-022

Requesting a building permit to construct a deck approximately 10' within his rear yard setback at variance with 1211.09 which requires a minimum 30' foot rear yard setback; a 10' rear yard setback variance (for an area of approximately 110 sq. ft.).

Mr. Al-Madani, sworn in by Mr. Wheeler, explained he wishes to construct a deck at the rear of his house. One rear corner of his house is located 10' from the property setback line. The deck will be 20' deep so a portion of the deck requires a 10' setback variance as it will sit 10' into the rear yard setback. His lot is on a cul-de-sac and it is an odd shape so the house sits on an angle on the lot. One corner of the deck that is approximately 110 sf. ft. requires a variance. The proposed deck is 20' x 32' in area. It was questioned if the deck could be redesigned and shifted to the other side of the house and possibly be more toward the side of the house so no variance was needed. Mr. Al-Madani stated that it could but the proposed location is more in line with the rear door of the house and nothing else can be put in this location due to the house being so close to the rear yard setback line. Members of the board felt the deck could be redesigned in a manner that would not require a variance and if privacy was a concern landscape material could be installed to provide screening.

Ms. Diana Felgenhauer of 28573 Stonegate Circle, sworn in by Mr. Wheeler, stated she was not opposed to a deck being constructed but it should be constructed to code and not 10' into the rear yard setback. She felt the codes should be followed and were in place for a reason. She lives behind the applicant's property and the proposed deck would be close to the property line. She stated that the deck could be redesigned so no variance is required and requested that the variance be denied.

After a careful review of the plans and testimony of the applicants the Board finds that:

1. The lot is in a residential neighborhood and is triangular in shape with a residence located on the lot.
2. The end of the house in the rear yard has a door that applicant wishes to enter onto the deck.
3. The applicant has room on the other side of the rear yard to construct an extension without violating any set back requirement as to the rear yard or side yards.
4. The applicant gave no further reason for requesting the variance other than the desire to have the rear door to the deck from the residence be on one side of the deck.
5. The Board found that the applicant's deck could be extended on the other side without violation of any set back requirements and that the lot was not of such a nature that a variance was appropriate, given the alternative of extending the deck on the other side of the house; further, the Board found that the lot was not of such a unique nature or shape to require a variance and that the spirit as well as the letter of the code would be violated by the granting of the variance.

Motion: Mr. Fatzinger moved, seconded by Mr. Swisher to approve a 10' rear yard setback variance for an area of approximately 110 sq. ft. for Docket 2014-13.

ROLL CALL:

Yeas: None

Nays: Jones, Swisher, Baesel, Fatzinger, motion failed

Docket 2014-14

Applicant: John Ault

Premises: 1491 Adelaide St., PP#213-21-005

Requesting a building permit to install a generator 7'2" off the side lot line at variance with 1211.20(e) which states central air conditioner, heat pump, etc. may be located in the side yard of a lot providing such unit shall be no closer than 20' from the front building line, 10' from the side lot line and is not visible from the street on which the lot fronts; a 2'10" side yard setback variance.

Mr. Dustin Pettrey (contractor), sworn in by Mr. Wheeler, explained they are seeking a variance to place a generator in the side yard on the left side of the house with a setback of 7'2" off the property line. This location is next to the main gas and electric lines. He showed photos of the property which is landscaped with many outdoor features so the proposed location is the only location where the generator can fit. The generator will be screened with landscape and in the proposed location is not visible from the street. He reviewed the rear of the house and placement requirements and demonstrated that the unit would not fit in any location in the rear yard. They spoke to the adjacent property owner who does not have an issue with the request as that side of their house does not have any windows where the unit would be visible and it is the location of the neighbor's garage. Mr. Pettrey explained the code requires a 10' setback and the unit must be located 5' off the house so it will be setback 7'2" off the property line.

Members of the board reviewed other possible locations but none would allow enough space for the unit or would still require a setback variance. It was discussed that there is a lot of existing landscape but they would like to see the generator screened further, especially so the neighbor to the north cannot see the unit and it should not be visible from the street. Mr. Pettrey explained the unit is not a standard unit and is what is known as a quiet sound generator with 64DBI which

is much quieter than most units.

After a careful review of the plans and testimony of the applicants the Board finds that:

1. The lot is in a residential development on Adelaide Street and there is a substantial residence on the property.
2. The main gas and electric lines are connected to the house on the north side of the house which makes that side the best location for connections to a generator.
3. The generator cannot be installed on the south side of the house due to a lack of access to utility lines.
4. The backyard (east) side of the house has a large deck and hardscape which is against the building.
5. Due to existing landscaping the generator would not be visible from the neighbor's house and the neighbor has no windows on that side of the neighbor's house; further, the neighbor does not object to placement of the generator at the requested location.
6. The applicant agrees to screen the generator from any street view presently as well as any view from the north; further, the applicant agrees that in the future the generator must be screened from any street view.
7. The Board found that due to the unique shape of the lot, the location of utilities and the existence of landscaping, a deck and hardscape the location of the generator was best suited for the area requested by the applicant; further there would be no detrimental effect on the character of the neighborhood and the spirit of the code would not be violated by granting of the variance.

Motion: Mr. Fatzinger moved, seconded by Mr. Baesel to approve a 2'10" side yard setback variance for Docket 2014-14 with the condition that the unit be screened to the north as well as from the street and that all landscape in the future must screen the generator from street view.

ROLL CALL:

Yeas: Jones, Swisher, Baesel, Fatzinger

Nays: None, motion carried

APPROVAL OF MINUTES

Motion: Mr. Fatzinger moved, seconded by Mr. Baesel to approve the minutes of May 27, 2014

ROLL CALL:

Yeas: Jones, Swisher, Baesel, Fatzinger

Nays: none, motion carried

FINDINGS OF FACTS

Motion: Mr. Fatzinger moved, seconded by Mr. Baesel to approve the findings of fact for Docket 2014-10 Trust Properties L.L.C.

ROLL CALL:

Yeas: Jones, Swisher, Baesel, Fatzinger

Nays: none, motion carried

Motion: Mr. Fatzinger moved, seconded by Mr. Swisher to approve the findings of fact for Docket 2014-11 Vichill

ROLL CALL:

Yeas: Jones, Swisher, Baesel, Fatzinger

Nays: none, motion carried

MISCELLANEOUS - None

ADJOURNMENT

Chairman Jones adjourned the meeting at 8:15 P.M.

Matt Jones, Chairman

Nicolette Sackman, Clerk of Commissions

Approved: _____