

LEE'S SUMMIT BOARD OF ZONING ADJUSTMENTS ACTION LETTER

Thursday, April 27, 2017

Chairman Shawn Geraghty called the April 27, 2017 Board of Zoning Adjustments meeting to order at 6:00 p.m.

OPENING ROLL CALL:

Mr. Shawn Geraghty, Chair	Present	Mr. Joseph Towns	Present
Mr. William Wilson, Vice Chair	Present	Mr. Joe Sauter (A)	Present
Mr. Mike Atcheson	Absent	Ms. Brenda Morin	Present

Also present were Christina Stanton, Senior Planner; and Nancy Yendes, Chief Counsel of Infrastructure and Planning.

APPROVAL OF AGENDA:

BOARD OF ZONING ADJUSTMENTS ACTION: On motion of Mr. Wilson and seconded by Mr. Towns, the Board of Zoning Adjustments voted unanimously by voice vote to **APPROVE** the Agenda as published.

MINUTES: An Action Letter for the April 6, 2017, Board of Adjustment meeting.

BOARD OF ZONING ADJUSTMENTS ACTION: On motion of Mr. Towns and seconded by Mr. Wilson, the Board of Zoning Adjustments voted unanimously by voice vote to **APPROVE** the Minutes as published.

PUBLIC HEARINGS:

1. **Appl. #PL2017-074 – VARIANCE** to rear setback for uncovered deck – 5421 NE Sunshine Drive; Nicholas Walker, applicant

Mr. Geraghty entered Exhibit A, List of Exhibits 1-17 into the record. Applicant was sworn in and stated his address as 5421 NE Sunshine Drive, Lee's Summit, MO 64064. Applicant thanked the Board for taking the time to hear him and stated that he and his fiancé had been working on various improvements (including landscaping and renovations to the upstairs) to the property for the past 6+ months.

Mr. Walker further stated that they had planned to install a deck on the back of the house, and were told when they went to get the permit that the 12' x 26' deck did not meet the setback requirements and to construct a deck of those dimensions would require a variance. Staff informed Mr. Walker that without a variance he could only install a deck that was 5' deep. They really didn't feel they could do much with only a 5' deck, it would be mostly a walkway, and what they really want to do is spend time with their family for dinner since it is right outside their deck. Mr. Walker stated that the neighbors to the north and south of them had similar sized decks. Two of the four houses behind them are on cul-de sacs and are over 100' away. He stated they ended up talking to all their surrounding neighbors and any abutting property owners in the rear. They asked their neighbors to sign statements that they have no objections. Mr. Walker also spoke with the HOA president who agreed to also sign a statement saying he has no objections. They were unable to reach residents in a few houses. Mr. Walker went on to state that his

BOARD OF ZONING ADJUSTMENTS, April 27, 2017

understanding was that the ordinance was in place to protect privacy and to keep structures from being too close. He stated that this is not an issue with what they are proposing. Also stated that he really just wants what everyone else has, and that what he is requesting is the same as what is found throughout his neighborhood.

Mr. Geraghty stated that it requires 4 yes votes in order to be granted a variance; 5 members are present so 1 member could vote no and the variance still be granted but if 2 vote no it would not be granted. Then, Mr. Geraghty stated that the Board is tasked with enforcing the Zoning Ordinance and they have certain criteria that they have to look for. One criterion is uniqueness related to the request. The Board has to be very careful when they are granting a variance that it is not essentially rewriting the zoning ordinance. There has to be some uniqueness, otherwise they would have to allow the same for everyone. Mr. Geraghty asked staff about the process for sending out notices. Staff explained what the City does and what is the responsibility of the applicant. Mr. Geraghty stated it was great that the applicant contacted all the neighbors and was able to obtain so many letters stating they had no objection. Mr. Geraghty stated that houses sell and someone new will move in may object later.

Mr. Geraghty stated he drove by the house and was surprised that it was within the 30' setback because there is so much land behind his house to the next. Mr. Walker stated that there is a lot and they could have drawn the property lines differently, then it wouldn't be an issue. Mr. Sauter asked the applicant whether there was a common area behind them. Mr. Walker's fiancé answer that there is not, it is owned by the Gordons and the Kelleys that live on the cul-de sacs. Mr. Walker stated that he thought the uniqueness was that there isn't anyone very close, directly behind them or butting up to their property. Mr. Geraghty stated he was struggling with uniqueness until he drove by and saw the configuration of the neighborhood. Mr. Geraghty asked staff whether the other, similar decks in the neighborhood had variances or whether they were in violation. Mrs. Stanton answered that she did not check for variances, but did check to see which ones have permits and that approximately half the decks in that neighborhood do not have permits.

Mr. Wilson asked whether 5401 has a permit. Mrs. Stanton checked her records and indicated that 5401 does not have a permit. Mr. Wilson went on to state that there was no way 5401 was meeting the setback in the UDO. Mr. Wilson further stated that some developments occurred prior to the current version of the UDO and at times interesting things occurred in the way in which lots were set-up and houses were built and so forth. Mr. Wilson stated that it appears to him that the applicant has two things occurring: 1) the property is dropping off quite a bit from M-291 Highway as you move east toward the applicant's property, and 2) while a deck such as the one they are requesting would not meet the UDO it is similar to several others found throughout their neighborhood.

Mr. Geraghty stated it looked to him as though there may have already been construction on the deck. Mr. Walker stated that the builder did start work over the weekend, before Mr. Walker told him he needed to stop and go get a permit. Mr. Walker further stated if the variance were not granted they would tear down what work had been done. Mr. Geraghty stated there needed to be some sort of course of action for the builder for starting work before getting a permit.

Mr. Sauter stated he appreciated the fact that Mr. Walker went through the process, especially since it sounds as though some of his neighbors may not have done the same. Mr. Walker's fiancée stated she was disappointed that staff recommended denial. She stated she was a City Councilmember in Harrisonville for seven years and served on the TIF Commission. Two options were listed: 1) build a 5' deck, or 2) build a patio. She stated these were not reasonable options. They are not looking to move, but if they were in the future she didn't feel a 5' deck was reasonable. She stated that was not usable space and said a deck of 5' was "nothing more than a hotel balcony". She stated their house is a reverse ranch and if they were going to build a patio they could build a gorgeous patio, they could build it all the way to the

BOARD OF ZONING ADJUSTMENTS, April 27, 2017

edge of the property line (which she felt was ironic). She continued to say such a patio wouldn't be very usable for eating because they would have to take their food through the basement. This was not what they were looking for. She felt staff was saying "we should deny because we've given them two options". Mr. Wilson stated that the City staff was basically required to fulfill the requirements specified in the UDO. Mr. Geraghty added that it was not unusual for City staff to recommend denial in similar cases. Mr. Geraghty went on to state that staff recommending denial or approval has not historically dictated what the Board will do, and he felt staff did exactly as they should have in his opinion.

Mr. Geraghty asked for comments or questions from the other Board members. Mr. Towns stated that this was a pretty simple matter; we've had some that have gone as long as 5 hours. Mr. Geraghty stated this one wasn't going 5 hours. Mr. Geraghty then said he echoed the applicant's comments and the thoroughness in which they actively sought the existing neighbors approvals. He stated that it has no bearing, necessarily, on their decision tonight, but has been historically looked upon very favorably to go through that process and make their case in manner in which they did. Mr. Wilson asked whether the Chair was ready to entertain a motion, Mr. Geraghty said he was, and Mr. Wilson moved for acceptance of the request for variance. Mr. Sauter seconded. Mr. Geraghty asked if there was anything in particular that Mr. Wilson wanted to add as to the uniqueness. Mr. Wilson said yes, noting particularly the general topography of the landscape and the fact that it is in context with the rest of the neighborhood. Mr. Geraghty asked whether Mr. Wilson cared if he added the fact that, in the spirit of the ordinance, it doesn't infringe on the property rights of adjacent property owners and that there is a substantial amount of land between their property and the next structure. Mr. Wilson did not object to the addition. Mr. Geraghty asked for a vote, it was approve unanimously.

BOARD OF ZONING ADJUSTMENTS ACTION: On motion of Mr. Wilson and seconded by Mr. Sauter the Board of Zoning Adjustments unanimously by voice vote to **APPROVE** the variance as requested.

OTHER ITEMS: None.

ROUNDTABLE: Mr. Sauter stated he liked the electronic packet

ADJOURNMENT – On motion of Mr. Sauter and seconded by Ms. Morin, the Board of Zoning Adjustments voted unanimously by voice vote to adjourn the meeting at 6:20 p.m.