

BEAVERCREEK BOARD OF ZONING APPEALS
REGULAR MEETING, April 14, 2021, 6:00 PM

PRESENT: Mr. Althoff, Mr. Archibald, Mr. Bhatla, Mr. Essman, Mr. Porter

ABSENT: None

Chairman Archibald called the meeting to order followed by roll call.

Mr. Bhatla MOVED approval of the agenda, seconded by Mr. Porter. Motion PASSED by majority voice vote.

REORGANIZATION

Chairman

Mr. Essman nominated Mr. Archibald for chairman, seconded by Mr. Porter. There were no other nominations, so Mr. Archibald was selected as chairman.

Vice Chairman

Mr. Porter nominated Mr. Bhatla for vice chairman, seconded by Mr. Althoff. There were no other nominations, so Mr. Bhatla was selected as vice chairman.

Mr. Althoff MOVED approval of the October 14, 2020 minutes, seconded by Mr. Porter. Motion PASSED by majority voice vote. (Essman abstained)

PUBLIC HEARING

V-21-1, Niki Chaudhry, 3572 Eastmoor Drive

Clerk Gillaugh read the notice of public hearing on an application filed by Niki Chaudhry, 3572 Eastmoor Drive, Beavercreek, OH 45431, requesting a variance from Chapter 158.104 (G)(2) of the City of Beavercreek Zoning Code, requesting permission for a carport to remain in the side yard within a R-PUD (R-1A) District. The property is located on the north side of Eastmoor Drive, two lots east of the intersection of Eastmoor Drive and Clubside Drive further described as Book 1, Page 14, Parcel 39 on the Greene County Auditor's Property Tax Atlas.

Ifikhar Haq and Niki Chaudhry, 3572 Eastmoor Drive, were sworn in. Ms. Chaudhry stated they are requesting a variance for the carport they already had constructed. She said because of their ages, they are not able to clean the water and snow off the top of the RV. Ms. Chaudhry explained the neighbor on the corner has a permanent swimming pool and the fence restricts the view, and the carport is protected from high winds on the east and west side by the fence and the house. She stated moving the structure into the rear yard would bring the structure into the view of the neighbors to the east and puts the structure closer to the neighbors in the rear of their property. Ms. Chaudhry discussed the design and said the manufacturer installed it. She explained it would be expensive to move it and believed it was unobtrusive to the neighbors because they have heard so. Ms. Chaudhry requested the Board grant the variance.

Ms. Pereira summarized the staff report dated March 24, 2021, which stated the applicant is requesting to keep the already constructed carport in the side yard. She discussed the location of the property and the requirements of the Zoning Code

regarding carports. Ms. Pereira explained the City did receive a complaint about the carport, and the Zoning Inspector went out and notified the owners that a permit was needed for the carport. She said when a permit was applied for it was denied because it was located in the side yard. Ms. Pereira stated when reviewing the request, it has been determined there is a substantial amount of space in the rear yard to locate the carport, so staff is recommending denial of the case.

In written input, letters were submitted from William and Sherry McCauley, 3589 Timbrook Court; Marian Rodgers, 2451 Glenboro Drive; Robert and Barbara George, 3529 Eastmoor Drive, and a concerned Spicer Height resident requesting the case be denied.

Letters were submitted from Dianne Wolfe, 3569 Timbrook Court; Judith and Kenneth Holl, 3549 Eastmoor Drive and Donald and Mary MacLeod (McCloud) requesting the variance be approved.

There being no further public input, the public hearing was closed.

Mr. Althoff asked if the lot was a corner lot, and if that was the issue. Ms. Pereira said it was not a corner lot, and explained if a carport is detached the Code requires it to be located in the rear yard.

Mr. Essman said it appeared to him driving by the property and looking at the picture that there is no physical hardship that would prevent the carport from being placed in the rear yard. Mr. Pereira said it did not appear to be so.

Mr. Bhatla questioned if the applicants knew they needed to obtain a permit. Mr. Haq stated they did not until they were notified from the City. Mr. Bhatla stated not knowing is not an excuse. Mr. Haq said that was true, but if they move it back it is more exposed than now. He believed the RV looked more beautiful with the carport than without it, and felt it was in the least intrusive location now. Mr. Bhatla and Mr. Haq discussed another property that had a RV that was not covered by a carport. Mrs. Chaudhry explained they are requesting it for a couple years, and if they move the carport will be moved with them. Mr. Bhatla said the City has zoning regulations in place for the betterment of the community, and if the Board starts granting variances for things like this it starts to encourage other people to do the same. Mrs. Chaudhry said their oversight was not obtaining a permit, and explained they have water issues in the back yard that they would have to deal with if it had to be moved. Mr. Bhatla stated the structure caught his eye and it does bring attention to it.

Mr. Archibald asked if they have contacted the contractor to see why they did not obtain a permit for this. Mrs. Chaudhry said she did not ask them. Mr. Archibald thought they may have recourse there because he thought they should be well aware they needed a permit to comply with the zoning code. Mrs. Chaudhry stated she did ask if the company that put it in could move it back for them. She explained they told her they would not because the structure stability would be impacted by the move. Mr. Archibald said his main concern is this could be precedence setting. Mr. Archibald asked if there was a way they could attach it to the house and make it compliant. Ms. Pereira said she was not sure how it could be attached, but though it might be able to be done.

Mr. Porter asked what the height restriction was. Ms. Pereira explained it meets the 16-foot height restriction. Mr. Porter questioned if they would sell the property they would take the carport with them. Mrs. Chaudhry said yes, but the integrity of the structure would be lost and would have to be discarded.

Mr. Bhatla and Mr. Haq discussed how the integrity of the structure could be lost by moving the structure.

Mr. Porter asked if they have anything from the manufacturer that states that it cannot be moved. Ms. Chaudhry said she did not, but she talked to them on the phone and was told they will not move it.

Mr. Archibald said the applicant stated during their presentation they were asking for this variance based on a certain period, and asked if the variance can have a time limit on it. Ms. Pereira said no, the variance is tied to the property forever. She said for clarification there is a stipulation in the Code that states if a carport is attached to the house it must be architecturally compatible to the house and did not believe that would apply here.

Mr. Bhatla MOVED to deny V-21-1. Motion was seconded by Mr. Porter, and PASSED by a roll call vote of 5-0.

V-21-2, Daniel Smith, 3869 S. Ashleaf Lane

Clerk Gillaugh read the notice of public hearing on an application filed by Daniel Smith, 3869 S. Ashleaf Lane, Beavercreek, OH 45440, requesting a variance from Chapter 158.104 (B)(2) of the City of Beavercreek Zoning Code, requesting permission to construct an accessory structure that would encroach into the required front yard along Darst Road. The property is located on the south side of S. Ashleaf Lane, three lots east of the intersection of S. Ashleaf Lane and Redwood Blvd. further described as Book 3, Page 23, Parcel 138 on the Greene County Auditor's Property Tax Atlas.

Daniel Smith, 3869 S. Ashleaf Lane, was sworn in. Mr. Smith stated he wanted to have a shed installed in his yard. He said he is on a double frontage lot and said it would be a pre-fab shed. He stated it is behind the house and said it would not be seen from S. Ashleaf Lane and he has a row of trees along Darst Road.

Ms. Pereira summarized the staff report dated April 9, 2021, which stated the variance is requesting permission to construct a 12-foot by 8-foot accessory structure that would be located in the front yard of a double-frontage lot. She discussed the location of the property, and read the City of Beavercreek Zoning Code Chapter 158.104 (B)(2). Ms. Pereira said the required front yard setback in this development is 40 feet and the house sits 40 feet from the Darst Road property line, which prevents him from having an accessory structure anywhere on the lot. Since the applicant has no alternative, staff is recommending approval of the case with two conditions.

There being no public input, the public hearing was closed.

Mr. Essman assumed this property has no rear yard at all. Ms. Pereira stated that is correct. Mr. Essman said if this yard was configured differently and there was a rear yard, the applicant could have constructed a shed within that area even though his lot is a double frontage lot. Ms. Pereira stated that was correct, and if that were the case staff would not recommend approval because he would have area to construct the shed. Mr. Essman stated this was a rare situation that was based upon the platting requirements that were approved by the Planning Commission awhile back.

Mr. Bhatla asked if the 40-foot setback was from the centerline of Darst Road. Ms. Pereira explained it is a 40-foot setback from the property line along Darst Road which would be on the backside of the sidewalk closest to the house.

Mr. Archibald asked if this house was only constructed because it is a PUD. Ms. Pereira said there are a couple of areas in Beavercreek that do have similar situations, but it is something that staff tries to avoid. Mr. Archibald referred to a neighboring property that had a fence installed, and questioned if the City had installed it. Ms. Pereira said no, and there were several properties in the surrounding area that received variances to have a fence installed.

Mr. Porter asked if any other homeowners received a variance for a shed in the area. Ms. Pereira said no, and was unsure how the shed next door was installed.

Mr. Essman asked if the shed would be to the rear of the home. Ms. Pereira said yes. Mr. Essman questioned if Darst Road was considered an arterial road. Ms. Pereira stated it was a major arterial road.

Mr. Bhatla MOVED to approve V-21-2 with two conditions:

1. The approved site plan shall be that which is stamp dated "Received March 2, 2021 City of Beavercreek Planning Department".
2. An Accessory Structure Zoning Permit must be approved by the Planning and Zoning Department prior to the construction of the accessory structure.

Motion was seconded by Mr. Porter, and PASSED by a roll call vote of 5-0.

V-21-3, Michael & Amy Rettig, 3361 O'Hara Drive

Clerk Gillaugh read the notice of public hearing on an application filed by Michael & Amy Rettig, 3361 O'Hara Drive, Beavercreek, OH 45434, requesting a variance from Chapter 158.121 (A)(3) of the City of Beavercreek Zoning Code, requesting permission to keep the existing 4.5 foot fence with an automated pool cover and from Chapter 158.105 (C) to keep the existing 4.5 foot fence within the 40-foot required front yard within a R-1A District. The property is located on the southeast corner of Leigh Drive and O'Hara Drive further described as Book 6, Page 5, Parcel 85 on the Greene County Auditor's Property Tax Atlas.

Amy Rettig, 3361 O'Hara Drive, was available by phone.

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Ms. Pereira summarized the staff report dated March 24, 2021, which stated the applicant is requesting a variance to allow a 4.5 foot fence to enclose a swimming pool with an automatic pool cover and to allow a 4.5 foot fence to encroach 17 feet into the 40-foot required front yard. She discussed the location of the property, and reviewed Chapter 158.121 (A)(3) and Chapter 158.105 (C) of the City of Beavercreek Zoning Code. She explained the applicant does have an existing 4.5-foot tall aluminum fence that was constructed by the previous owners without a zoning permit, and a portion of that fence is located within the required front yard.

Ms. Pereira stated the applicant is planning to install a swimming pool with an automatic pool cover to the rear of the house. She said the Code requires a 5-foot high fence to enclose a swimming pool, and explained staff is currently working on a revision to the Zoning Code. She stated one of the proposals they are planning to bring forward to Council is if the pool has an automatic pool cover that the fence could be 4 feet tall. She explained since staff would be proposing this in the near future, staff is recommending approval of that portion of their variance request. Ms. Pereira explained the second portion of the variance was to allow the existing 4.5-foot fence to remain in the required front yard. She said that fence was installed prior to the current property owners moving in, however, with the installation of the pool a portion of the fence will have to be removed anyway to allow construction equipment to access the site. Ms. Pereira stated because there are no issues with the site that would prohibit the applicant from putting the fence in an approvable area, staff is recommending denial of that portion of the variance request.

In written input, two letters were received from Jon and Lisa McGarry, 441 Ashton Court and Amanda and Chris Kegebein requesting the variance be denied.

Mrs. Rettig referred to the Zoning Code section about setback and visibility requirements, and said their fence is more than the 25 feet back and is actually 34 feet from the centerline in the road. Ms. Pereira explained that portion of the Code is saying the fence still needs to be setback to avoid any line-of-sight issues. Michael Rettig said the whole 42-inch requirement is for visibility reasons, and said that fence sits a foot below the road, and is setback to where it would not impede the visibility of anything.

Dave Creamer, Knickerbocker Pools, stated they had staked the pool location once and realized there were issues because they were in the front yard. He said they then moved it to behind the house, and said to move the pool further towards the neighbors they are pushing the pool into the ground and retaining walls would have to be constructed. He discussed the location of the electric line, and explained it is also an issue. Mr. Creamer questioned if the pool was not happening, would the City be telling them to take the fence down because they are not the responsible party for putting it up. He explained when they will be putting the pool in they will be removing one post and two sections, not taking the fence down. He was thankful to hear staff was looking at changing the auto cover requirements.

There being no further public input, the public hearing is closed.

Mr. Essman and Ms. Pereira discussed what variance would need to be obtained tonight to keep the fence where it currently is. Mr. Essman asked how sturdy a pool

cover was. Ms. Pereira explained they are very sturdy, and a pamphlet was included in their packets sharing how they are engineered and how a substantial amount of people could stand on one. Mr. Essman asked how wide the front yard was. Ms. Pereira said it was 40 feet. Mr. Essman questioned if that was set by Code or by each house. Ms. Pereira explained it was set by Code.

Mr. Althoff asked if there was anything in the Code about the ground sloping away from the street. Ms. Pereira said no, it is from grade to top of fence. Mr. Althoff questioned if the height was for visibility concerns. Ms. Pereira said it was for visibility and aesthetic purposes.

Mr. Porter questioned what makes an automatic pool cover an automatic pool cover, and said what happens if they forget to shut it one night. Ms. Pereira said the same could be said for not locking a gate. She stated the property owners would be liable if something were to happen. Ms. Pereira said staff's proposal would be to put in the Code that if the pool was not in use, the pool cover would need to be closed. Mr. Porter questioned if the fence was caught because they were applying for a pool permit. Ms. Pereira said she could not speak for the Code Enforcement Officer, but she believed it was based on how long it has been there. Mr. Porter asked how long the fence had been there. Ms. Pereira said they aren't sure, and the property owners bought the house last year and it was already there at that point.

Mr. Bhatla said he did not have any objection to the current fence location because it looks nice. He stated if they would have to move the fence then they would have a lot of issues with the yard and the pool location.

Mr. Archibald questioned how confident staff was that Council would approve the proposed fence height with an automatic pool cover. Ms. Pereira stated they typically follow staff recommendations. Mr. Archibald referred to the fence and asked how far it encroached into the required front yard. Ms. Pereira stated it is approximately 23 feet from the front property line, and measures 17 feet out from the house. Mr. Archibald said if the fence were to be relocated to the red line on the site plan, he asked how far the pool would need to move to the right. Mr. Creamer said with an aluminum fence the pool would have to be moved 5 feet away from the pool or the fence would have to be completely bonded to the swimming pool. Mr. Archibald questioned if the pool was moved over five feet if it would encroach into the shed. Mr. Creamer did not believe the shed would come into play. Mr. Archibald stated aesthetically he did not have an issue with the fence. He said taking into consideration the slope of the property, it is key to installing an in-ground swimming pool, and said his concern was if they enforced the fence setback the Rettig's may not get their pool. Mr. Creamer said that is a possibility. Mr. Archibald and Mr. Creamer discussed where the electric line was located in the yard, and said to get them five feet from the electric supply they had to push the pool more towards the rear property line. Mr. Creamer said in regards to the questioned about safety, the cover is 485 pounds per square foot and he was one of 18 adults standing on one at one time.

Mr. Essman and Ms. Pereira discussed the different measurements regarding the setbacks on a property. Mr. Pereira also explained there is a 40-foot drainage easement in the rear yard, and a pool could not be located in that area.

Mrs. Rettig stated the fence is 16 feet from the house. Mr. Archibald said that makes it approximately 24 feet from the front property line.

Mr. Bhatla asked if any more aluminum fence was going to be installed. Mr. Creamer said it would just be what is existing there currently, and no more fence would be installed.

Mr. Bhatla MOVED to approve the variance request pertaining to Chapter 158.121 (A)(3). Motion was seconded by Mr. Althoff, and PASSED by a roll call vote of 5-0.

Mr. Bhatla MOVED to approve the variance request pertaining to Chapter 158.105 (C). Motion was seconded by Mr. Porter, and PASSED by a roll call vote of 5-0.

ADJOURNMENT

Mr. Althoff MOVED adjournment at 7:28 p.m., seconded by Mr. Bhatla. Motion PASSED by majority voice vote.

Melissa Gillaugh
Deputy Clerk