CITY OF MOUNTAIN BROOK
BOARD OF ZONING ADJUSTMENT
MINUTES
April 15, 2019

The regular meeting of the City of Mountain Brook Board of Zoning Adjustment was held on Monday, April 15, 2019, at 5:00 p.m. in the Council Chamber at Mountain Brook City Hall.

Board Present:	Patrick Higginbotham, Chairman	Absent:	William Hereford
	Norman Orr		Rhett Loveman
	Richard Simonton		
	Chris Mitchell		
	Gerald Garner		

Also present:	Virginia Smith:	Council Liaison
	Hunter Simmons:	Zoning Administrator
	Glen Merchant:	Building Official
	Tammy Reid:	Administrative Analyst

Chairman Higginbotham asked if all adjacent property owners in each of the cases on the agenda received legal notice of this hearing. Ms. Reid confirmed that, based on the information supplied by the applicants, they had been notified.

Chairman Higginbotham stated that any variance which is granted today expires and becomes null and void twelve months from today, unless construction is begun in less than twelve months from today on the project for which the variance is granted. If construction will not be started within twelve months from today, the applicant may come back in eleven months and ask for a six-month extension.

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The agenda stood approved as printed. Chairman Higginbotham stated that approval of a variance will require four affirmative votes.

1. Approval of Minutes – March 18, 2019

Motion: Mr. Simonton, motion to approve the minutes as printed.
Second: Mr. Orr

Vote:	Ayes:	Nays:
	Higginbotham	None
	Orr	
	Simonton	
	Mitchell	
	Garner	

Motion carries by unanimous voice vote of those members who attended the March meeting.

2. Case A-19-10: 114 Calton Lane **EXHIBIT 1**

NJK, LLC, property owner, requests variances from the terms of the Zoning Regulations to

allow an existing outdoor chimney to remain as located 0.2 feet from the side property line (north) and 0.8 feet from the rear property line (west), both in lieu of the required 10 feet.

Hardship: The hardship in this case is the irregular shape of the lot.

Charles Kessler, NJK LLC, is the developer and contractor for the Calton Hill subdivision. He stated that a fireplace was installed at the subject property prior to obtaining a variance from the Board. Mr. Kessler:

- All of the properties around this lot belong to the applicant.
- There is a 16 (+/-)-foot tall retaining wall where the fireplace is located, with a wooden fence above it. There is an approximate 20-foot-wide alley between the wooden fence and the adjacent townhomes. This alley provides vehicle access to basement parking for the townhomes.
- The north property line of the subject property abuts a common area and the west property line abuts a parking lot for an office building.
- The distance between the house structure and the fireplace meet building code requirements.

Chairman Higginbotham stated that the lot is an irregular shape. He noted that the Planning Commission approved (March 4, 2019) a request for a lot line adjustment between the subject lot and the community association common property to the immediate north to contain the chimney totally on private property. Also, the Residential Infill District does not have required side or rear yard setbacks from property lines for principal structures. Accessory structures in this zoning district require a 10-foot side and rear yard setback for detached accessory structures.

Chairman Higginbotham asked why a permit was not obtained to build the fireplace. Mr. Kessler said it was an oversight.

There were no public comments. Chairman Higginbotham called for a motion.

Motion: Mr. Orr, motion to approve the variance request as submitted.
Second: Mr. Mitchell

Vote:	Ayes:	Nays:
	Higginbotham	None
	Orr	
	Simonton	
	Mitchell	
	Garner	

The variance request stands approved as submitted.

3. Case A-19-11: 8 Alden Lane **EXHIBIT 2**

Jack and Lane Bethay, property owners, request variances from the terms of the Zoning Regulations to allow a new screened porch to be 10 feet from the rear property line (southwest) in lieu of the required 35 feet, and for an existing fireplace/chimney to remain as located 8.5 feet from the rear property line (in lieu of the required 10 feet for a detached accessory structure).

Hardships: The hardships in this case are the irregular shape of the lot and the corner-lot configuration.

Mr. Mitchell recused himself from participating in this case.

Richard Long, Long and Long Design, 1616 2nd Avenue South, Birmingham, Alabama, represented the applicants. The requests are: To add a screened-in porch to the existing home; approval for the existing fireplace/chimney to remain as built.

- The hardships in this case: There is a small buildable area because of the corner-lot configuration; the lot is an irregular shape; the western property line is not parallel to the front of the house.
- A building permit was not obtained for the existing fireplace; the fireplace and patio were installed at the same time, after construction of the house.
- The height of the chimney will be raised two feet above the roofline; the porch will be approximately 12-feet tall and the chimney will be approximately 14-feet tall.
- Proposing to keep the existing footprint of the patio for the screened porch. The porch will connect to the firebox opening side; most of the brick work will be outside of the porch.
- There is a vegetation buffer along the fence line to the rear of the fireplace.

Chairman Higginbotham confirmed that the lot is shallow and the existing structure is placed to the rear of the lot. It is noted that a previous variance for a new single-family dwelling to be 22 feet from the rear property line (west) was granted in 2016 (Case A-16-11).

Board discussion:

- The fireplace and proposed screened porch are oriented to the side of the adjacent property, which faces Norman Drive.
- The requested encroachment is intrusive.
- The placement of the fireplace is a concern.
- It is noted that a building permit was not obtained prior to construction.

Mr. Orr asked if the fireplace meets building code. Glen Merchant, Building Official, asked the height of the chimney. Mr. Long said that he thinks it is 8 to 10 feet tall and that it is at least 10 feet from the house.

Mrs. Smith asked about the porch addition shown on the drawing on the right-hand side. Mr. Long said they plan to enclose the existing side porch and to add a new porch outside of the existing footprint of the house; these improvements are not part of the variance request presented. Mr. Merchant clarified that the existing 22-foot variance only covers the structure for which it was granted. Any additional changes will require a new variance approval.

Mr. Long proposed the possibility of demolishing the chimney and rebuilding two feet closer to the house. After further discussion, he asked for this case to carry over to the May meeting.

There were no public comments. Chairman Higginbotham called for a motion.

Motion: Mr. Orr, motion to approve the applicant's request to carry the case over to the May 20, 2019 meeting.
Second: Mr. Simonton
Vote: Ayes: Higginbotham, Orr, Simonton, Garner; Nays: None

The applicant's request to carry the case over to the May 20, 2019 meeting stands approved.

4. A-19-12: 940 Beech Lane **EXHIBIT 3**

Scott and Jennifer Settle, property owners, request a variance from the terms of the Zoning Regulations to allow an addition to be 29.6 feet from the front property line (Beech Lane) in lieu of the required 35 feet.

Hardships: The hardships in this case are the irregular shape of the lot, and the corner-lot configuration (curved, in this case).

Luke Cobb, CLC Construction Services, represented the applicants. Mr. Settle also attended the meeting. The existing house is non-conforming on the north side (9.7 feet from the property line in lieu of the required 10 feet), and on the south-facing front (29.5 feet in lieu of the required 35 feet). The proposal is to add an entry foyer to the west-facing front, to be 29.6 feet from the property line. Mr. Cobb:

- During this renovation project it was determined that the existing interior stairs did not meet building code requirements.
- Stairs were rebuilt to meet code requirements, which resulted in the bottom step being approximately 2 feet from the front door entrance.
- Adding a foyer will relieve this situation by providing additional space between the stairs and the entrance door.
- The foyer will extend approximately 8 feet out from the existing house.

Chairman Higginbotham affirmed the presented hardships of an irregularly shaped lot and corner-lot configuration. The house is currently non-compliant. He asked if a landing could be incorporated with the stairs so that they could turn another direction, thereby eliminating the need to extend the structure to the front. Mr. Cobb said that could be done, but that it would take up a lot of space and the object is to open up the floor plan to gain space.

Chairman Higginbotham stated that by extending into the front as proposed will change the streetscape because it appears that it would be the only house in this immediate area that extends that far toward the front property line. This Board is generally protective of the front setbacks.

The applicant, Mr. Settle, stated that this addition will give the house a better look because as is, the second floor overhangs/cantilevers two feet forward from the main front wall. Also, the front door hits the first step when entering.

Mr. Cobb asked for the opportunity to go to the subject property to look at alternative options. Chairman Higginbotham stated that this case will resume following the last case on the agenda. The applicant and representative left the meeting.

Following Case A-19-13, Chairman Higginbotham resumed Case A-19-12. Mr. Cobb stated that he would like to amend the original variance request. The new request is for only one foot of encroachment of the front property line, to allow an addition to be 34 feet from the front property line (Beech Lane) in lieu of the required 35 feet.

There were no public comments. Chairman Higginbotham called for a motion.

Motion: Mr. Mitchell, motion to approve the variance request as amended:
The property owners request a variance from the terms of the Zoning Regulations to allow an addition to be ~~29.6~~ **34** feet from the front property line (Beech Lane) in lieu of the required 35 feet.
Second: Mr. Orr
Vote:

Ayes:	Nays:
Higginbotham	None
Orr	
Simonton	
Mitchell	
Garner	

The variance request stands approved as amended.

5. Case A-19-13: 3021 Cambridge Road **EXHIBIT 4**

Charles and Ashley Parrish, property owners, request a variance from the terms of the Zoning Regulations to allow a new detached accessory building to be 1.6 feet from the side property line (northwest) in lieu of the required 10 feet.

Hardships: The hardships in this case are the irregular shape of the lot, the lot size (14,451 sf in lieu of the required 30,000), and existing design constraints.

Mr. Orr recused himself from participating in this case.

Katrina Porter, Katrina Porter Designs, 9 Office Park Circle, Birmingham, Alabama, and Mrs. Parrish presented the variance request. Ms. Porter stated that the existing one-story detached accessory building must be demolished due to termite damage; this structure is non-conforming in that it is 1.6 feet from the side property line in lieu of the required 10 feet. It is desired to construct a two-story accessory building in the same footprint.

Ms. Porter:

- The hardships are the size and shape of the lot, and placement of the existing structure.
- The second floor will have a kitchenette and restroom; bottom floor is for storage.
- Exterior (open) stairs will access the second floor, on the pool side.
- There is a 3 to 3 ½ feet wide walkway between the garage and the pool; French drains are there.
- The pool is above grade.

- There is some landscaping between the existing garage and the adjacent property that provides a buffer; more will be added.
- The lot adjacent to the structure is at a lower elevation by approximate 8-feet.

Chairman Higginbotham stated that the lot size and shape are hardships; however, there is concern about the requested amount of encroachment.

Public comment:

Billy Reed, 3017 Cambridge Road, Mountain Brook, Alabama, lives adjacent to the subject property, on the left side when facing from the road, and is the closest neighbor to the structure. He confirmed that there is a difference in elevation between the two properties of approximately 8 feet. A two-story structure, 1.6 feet from the property line, will negatively impact his view and enjoyment of his property, and he feels it will have a negative impact on the property value. He asked that an alternative plan be considered.

Mrs. Parrish said that the structure could not be moved further back due to the location of the swimming pool mechanical equipment; also, moving it would compromise the pool decking. There is a 4-5 foot step-up to the pool area. Also, the elevation prohibits use of the lot at the rear of the pool.

Chairman Higginbotham asked if a one-story building is an option. He feels the two-story structure increases the encroachment. Replacement using the existing footprint and height would be more amenable. Mr. Mitchell concurred.

Glen Merchant, Mountain Brook Building Official, stated that the structure will have to be sprinklered if it is habitable space and is less than 5' from the property line. This applies whether one-story or two. Storage/utility space with a restroom would not be considered habitable. This determination will be handled through the city's Building Inspections department.

Mrs. Parrish stated that the first floor is for much needed storage and that a bathroom is a must. There is no room for a restroom on the first level.

Ms. Porter discussed carrying the case over to the next meeting and possibly returning with a revision that will remove the second floor request and add the raising of the roofline from 8' to 9'; she subsequently asked to carry over to the May meeting.

Motion: Mr. Garner, motion to approve the applicant's request to carry the case over to the May 20, 2019 meeting.
Second: Mr. Simonton

Vote:	Ayes:	Nays:
	Higginbotham	None
	Simonton	
	Mitchell	
	Garner	

The request to continue the case to May 20, 2019 stands approved.

6. **Adjournment**: There being no further business to come before the Board at this time, the meeting stood adjourned at approximately 6:17 p.m. The next meeting is scheduled for Monday, May 20, 2019.

T. Reid

Tammy Reid, Administrative Analyst