

CITY OF MOUNTAIN BROOK
BOARD OF ZONING ADJUSTMENT
MINUTES
March 18, 2019

The regular meeting of the City of Mountain Brook Board of Zoning Adjustment was held on Monday, March 18, 2019, at 5:00 p.m. in the Council Chamber at Mountain Brook City Hall.

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

Also present: Virginia Smith: Council Liaison
 Dana Hazen: Director of Planning, Building & Sustainability
 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.

The agenda stood approved as printed.

1. Approval of Minutes – February 19, 2019

Motion: Mr. Hereford, motion to approve the minutes as printed.

Second: Mr. Simonton

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

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

2. Case A-19-06: 4200 Old Leeds Road

EXHIBIT 1

Randall and Melinda Curtis, property owners, request a variance from the terms of the Zoning Regulations to allow an addition to be 81.8 feet from the front property line (Old Leeds Road) in lieu of the required 100 feet.

Hardship: The hardship in this case is the existing design constraint; the house is located in the right front corner of the lot and is 86 feet from the front property line.

Ted Gibbs, Gibbs Construction Services, represented the applicant. The proposal is to add a 27' by 8' covered entry and porch that will protect the front of the home from solar elements. The original porch, that extended approximately 6' out from the structure, has been removed. The placement of the house presents a hardship; it is also noted that there is a steep cliff at the rear of the property.

Chairman Higginbotham affirmed the presented hardship.

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

Motion: Mr. Hereford, motion to approve the variance request as submitted.

Second: Mr. Orr

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

The variance request stands approved as submitted.

3. Case A-19-07: 100 Lake Drive

EXHIBIT 2

Scott and Maria Bellot, property owners, request a variance from the terms of the Zoning Regulations to allow a covered porch to be 30 feet from the rear property line in lieu of the required 35 feet.

Hardships: The hardships in this case are the shallowness of the lot (112 feet) and the existing design constraint (the house maintains a 39-foot front setback, where only 35 feet is required).

Martin McCayna, McCayna Construction, 5065 Pinehurst Terrace, Birmingham Alabama, represented the property owners, who also attended the meeting. The proposal is to add a screened porch on part of the existing brick patio at the rear of the house, encroaching 5 feet into the rear setback. The depth of the porch is approximately 13 feet.

Chairman Higginbotham confirmed that the lot is shallow and the existing structure is placed to the rear of the lot.

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

Motion: Mr. Hereford, motion to approve the variance request as submitted.

Second: Mr. Orr

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

The variance request stands approved as submitted.

4. A-19-08: 3800 Arundel Drive

EXHIBIT 3

Hafiz Chadiwala and Orooj Fasiuddin, property owners, request a variance from the terms of the Zoning Regulations to allow a new single family dwelling to be 30 feet from the secondary front property line (Overton Road) and 28 feet, 3 inches from the rear property line (west), both in lieu of the required 40 feet.

Hardships: The hardships in this case are the shallowness of the lot (approximately 133 feet), the size of the lot (20,000 sf in lieu of the required 30,000), the irregular shape of the lot, and the corner lot configuration.

Brian Roberson, bDot Architecture, 1201 2nd Avenue North, Birmingham, Alabama, represented the property owners, who also attended the meeting. The proposal is for a new single-family dwelling with three encroachments: two along the rear of the house and one along Overton Road. The proposed rear yard encroachments consist of livable area, and the encroachments along Overton Road consist of a porte-cochere and a three-car garage.

- The shallowness of the lot, its irregular shape and the fact that the structure is situated on a corner, impacts the buildable area of the lot.
- The proposed layout is similar to recently completed homes in the area for which rear setback variances were granted.
- A three-car garage is desired to meet the applicant's parking needs and is not uncommon in the area. There are no plans for the area above the garage at this time.
- The requested porte-cochere will encroach 4' into the secondary setback and will consist of two columns and a covering.
- The Overton Road side of the structure will be 1½ story in height; the main portion of the home will be between 1½ and 2 stories, in scale with neighboring homes.

Chairman Higginbotham affirmed the presented hardships.

Mr. Simonton said that he feels that three variances for a new construction is a lot to request. Chairman Higginbotham expressed some concern regarding the garage.

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

Motion: Mr. Hereford, motion to approve the variance request as submitted.

Second: Mr. Orr

Vote: Ayes: Nays:
 Higginbotham Simonton
 Hereford
 Orr
 Mitchell

The variance request stands approved as submitted; 4 to 1 vote in favor of approval.

5. Case A-19-09: 18 Peachtree Street

EXHIBIT 4

Thayer Moor and Gregory Mayberry, property owners, request variances from the terms of the Zoning Regulations to allow a new single family dwelling to be 4.8 feet from the side property line (northwest), in lieu of the required 10 feet, and 5.4 feet from the rear property line in lieu of the required 30 feet.

Hardships: The hardships in this case are the shallow lot depth (110 feet where a typical Crestline lot is 150 feet deep), and the existing design constraints.

Eric Dale, designer, 935 Landale Road, Birmingham, Alabama, represented the applicants, who also attended the meeting. The proposal involves the construction of a new single-family dwelling (new construction to conform to required setbacks), as well as the retention of a 1974 non-conforming addition at the rear of the lot to remain as located and to be attached to the new construction.

- There are two fences along the rear of the property that are approximately 1-foot apart, within the setbacks.
- A 20-foot wide unimproved alley, in a natural state, effectively brings the rear of the addition to 24.5 feet from the rear neighbor's property line.
- In 1974, a variance was given for an addition; this addition is still usable and in good condition; it would be a shame to tear it down. This portion will only have esthetic changes, like the siding and windows. The encroachments are 4.8 feet from the side property line and 5.4 feet from the rear property line.
- The new portion of the structure will meet setback requirements.
- The remaining portion of the structure will be a general use area (pantry, mudroom); not an everyday living space. Privacy for the neighbor will not change.
- Keeping the requested portion will allow the new structure to have a more open concept floor plan.

Board comments:

Mr. Orr stated that if the entire structure was new construction, a variance probably would not be approved; Chairman Higginbotham agreed.

Mr. Mitchell raised the point that a variance was given at some point for the existing structure to be placed in the setback.

Chairman Higginbotham agreed that the shallowness of the lot and the placement of the existing house present hardships; however, he struggles with the request because the lot is small and the proposed new structure is approximately 4,000 square feet.

Mr. Hereford said that the structure, as presented, will be close to both property lines; a tight fit on the lot. He said that the new structure is proposed to be 50 feet wide by 40 feet deep and two stories tall, equaling approximately 4,000 square feet. He asked the size of the structure that they are asking to remain. Mr. Dale said it is approximately 400 square feet.

Mr. Simonton asked the allowable changes to the existing portion. Mrs. Hazen, City Planner, stated that allowable changes would be new shingles on the roof and new siding, windows and doors.

Chairman Higginbotham: There is no provision in the code for existing partial structures. Should the Board vote to deny the variance request, the portion in question will have to be demolished.

Public Comments:

Sherri Robinson, 21 Spring Street, Mountain Brook, Alabama, addressed the Board. Her property is to the rear of the subject property. She is concerned about privacy. This has not been an issue in the past because it appears this portion of the house has not been actively in use, but by changing the purpose of the space to an active use, it will be possible to see into her backyard, sunroom and even the bathroom if she were to open the window.

Ms. Robinson stated that she has lived at this location for 20 years and would like to maintain the level of privacy that exists. She asked that should the variance be approved, could there be restrictions imposed, like there can be no further encroachment in the future. She feels the survey presented to the Board is not accurate because it does not match up with her survey from 2003.

Chairman Higginbotham stated that the Board must go by the certified survey presented with the application. He asked to see Ms. Robinson's survey.

Mr. Dale said, in response to Ms. Robinson's privacy concern, that the windows on the rear portion of the existing structure could be removed; however, the applicant stated that they prefer to keep the windows if possible and that the two small windows face an embankment because the property at 21 Spring Street sits higher than the subject property.

Mr. Orr stated that he feels it would be good to address the issues of the neighbor by removing the windows at the rear of the existing structure.

Glenn Merchant, Mountain Brook Building Official, stated that by moving the structure off of the property line by more than 5 feet will eliminate the requirement for the structure to be fully sprinklered.

Chairman Higginbotham asked if the applicant wants to amend their request. Mr. Dale stated that the applicant wishes to amend the original variance request as follows:

- Windows on the existing structure that are facing the back property line will be eliminated.

- The request for the structure to be 4.8 feet from the side property line (northwest) is withdrawn so that the structure will line up with the approximate 10-foot setback for the length of the structure.

Motion: Mr. Simonton, motion to approve the variance request as amended by the applicant:

- Windows on the existing structure that are facing the back property line will be eliminated.
- The request for the structure to be 4.8 feet from the side property line (northwest) is withdrawn so that the structure will line up with the approximate 10-foot setback for the length of the structure.

Second: Mr. Orr

Vote:	<u>Ayes:</u>	<u>Nays:</u>
	Orr	Higginbotham
	Simonton	Hereford
	Mitchell	

The variance request stands denied by a 3 to 2 vote.

6. **Adjournment:** There being no further business to come before the Board at this time, the meeting stood adjourned at approximately 5:51 p.m. The next meeting is scheduled for Monday, April 15, 2019.



Tammy Reid, Administrative Analyst