In response to COVID-19 social distancing mandates, the meeting was held via audio conferencing.

The regular meeting of the City of Mountain Brook Board of Zoning Adjustment was held on October 19, at 5:00 p.m., via audio conferencing. The roll was marked as follows:

Board Present:  Norman Orr, Chairman  
Richard Simonton, Co-Chairman  
Gerald Garner  
Rhett Loveman  
Chris Mitchell  
Scott Boomhover, Supernumerary  
Noel Dowling, Supernumerary

Absent:  None

Also present:  Virginia Smith:  Council Liaison  
Dana Hazen:  Director PBS  
Tyler Slaten:  City Planner  
Glen Merchant:  Building Official  
Tammy Reid:  Administrative Analyst

Chairman Orr 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.

Mr. Orr 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 presented.

Chairman Orr stated that a variance approval will require four affirmative votes.

1. **Approval of Minutes – July 20, 2020, August 17, 2020 and September 21, 2020**

   Chairman Orr presented the listed minutes for consideration.

   Motion:  Mr. Garner, motion to approve the three sets of minutes listed.

   Second:  Mr. Loveman

   Vote:  
   Aye:  Garner  
          Loveman  
          Mitchell  
          Orr  
          Simonton  
   Nay:  None
2. **Case A-20-30: 3781 Village Lane**

Mark and Michelle Walters, property owners, request variances from the terms of the Zoning Regulations to allow an outdoor fireplace/chimney to be zero feet from the property line (west) in lieu of the required 10 feet.

**Hardship(s):** Small, corner lot.

Mark Walters, applicant, presented the variance request. He stated that the lot hardship is that it is very small. There is an approximately 10'-tall wall in the rear of the property; the proposed fireplace, masonry construction with stone, will be against that wall. The chimney height will be approximately 12’; 2’ above the wall. There have been similar fireplaces approved in this neighborhood.

Mr. Boomhover asked how close the fireplace will be to neighboring houses. Mr. Walters said that the fireplace will be 10 to 12 feet from the nearest neighbor’s house.

Mr. Simonton asked if the plate of chimney will be above the roof line in the rear. Mr. Walters said that it will be slightly lower, maybe a couple of feet.

Dana Hazen, Director PBS, asked if the homes in this area are two-story. Mr. Walters said that the rear of his house is 1 ½ story with a high pitched roof and the front is two story.

Mr. Mitchell asked the hardship of this lot. Mr. Orr stated that the small sizes of the lots present a hardship, and that in this particular RID zoning, houses are permitted to be five feet from the side property line and ten feet from the rear property line.

Glen Merchant, Building Official, stated that a chimney should be two feet taller than anything within ten feet of the structure; this includes the house on the subject property as well as adjacent house.

Chairman Orr asked Mr. Merchant: Should it be determined during the permitting process that the chimney should be taller, can he resolve the issue at that time. Mr. Merchant confirmed that he can manage the issue at that point.

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

**Motion:** Mr. Simonton, motion to approve the variance request as requested.

**Second:** Mr. Boomhover

**Vote:**

- **Aye:** Garner Loveman Mitchell Orr Simonton
- **Nay:** None

The variance request stands approved as submitted.
3. Case A-20-31: 3000 Southwood Road

John and Sumner Rives, property owners, request variances from the terms of the Zoning Regulations to allow the construction of a screened in porch addition to be 37 feet from the rear property line in lieu of the required 40 feet.

**Hardship(s):** The orientation of the existing home.

Alex Krumdieck, Krumdieck A + 1, 200 28th Street South, Birmingham, presented the application request for the applicants. The house sits back on the lot, there is a large topographical change and there are power lines; these issues create a hardship on the lot. The placement of the home toward the rear of the property and the angle to be parallel to Mountain Brook Parkway has resulted in the addition to the side of the home encroaching on the rear setback.

Chairman Orr confirmed the hardship of existing design constraint. He also noted that the requested encroachment, in his opinion, is minimal.

Chairman Orr called for public comments.

Sumner Rives, applicant, stated that she spoke with the adjacent property owners on either side of their property and they did not express any concerns; the adjacent property to the rear is not developed.

Chairman Orr called for a motion.

Motion: Mr. Garner, motion to approve the variance request as submitted.
Second: Mr. Loveman
Vote: Aye: Garner
Nay: Loveman
Mitchell
Orr
Simonton
None

The variance request stands approved as submitted.

4. Case A-20-32: 145 Euclid Avenue

John Boydstun, property owner, request variances from the terms of the Zoning Regulations to allow the construction of a fence 6 feet in height in lieu of the maximum allowed fence height of 4 feet in a secondary front yard.

**Hardship(s):** Corner-lot configuration.

Mr. Boydstun, applicant, presented the variance request that will allow the construction of a 6’-tall fence. This fence is requested to provide privacy and safety for his children. A 4’-tall fence is allowed under the current zoning regulations, but 6’ is requested because his children could potentially scale the lower height fence. The fence will be wrought iron construction, so it will not restrict visibility and will not interfere with sightlines at the intersection. There will be a
wrought iron gate attaching the fencing to the house. The lot is on a corner, presenting a hardship.

Chairman Orr confirmed the hardship of a small corner lot.

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

Motion: Mr. Loveman, motion to approve the variance request as submitted.
Second: Mr. Simonton
Vote: Aye: Garner
Nay: None
Loveman
Mitchell
Orr
Simonton

The variance request stands approved as submitted.

5. Case A-20-33: 128 Cherry Street

John and Sue Roberts, property owners, request variances from the terms of the Zoning Regulations to allow the construction of a covered porch to be located 2 feet from the side property line in lieu of the required 8 feet and allow the lot coverage to be 38 percent in lieu of the maximum lot coverage allowed of 35 percent.

Hardship(s): Small lot size; the lot is narrow at 50’ wide.

Scott Heywood, architect for the applicant, presented the variance request. The applicants also attended the meeting.

Mr. Heywood:

- The lot is narrow.
- The existing wooden deck is at grade level and extends to the property line. It has deteriorated and is not safe. The new porch construction will have concrete flooring which will provide a safe, long-lasting surface.
- The proposed porch will be roofed and the roof will extend into the existing side yard setback.
- The hardship is the small size of the lot, and the height of the house being constructed to the right of the property presents a privacy issue.
- The current house is one-story in height; the addition will be one-story as well.
- Also requested is approval of 38% lot coverage where the maximum is 35%.

Chairman Orr confirmed that the lot is small and consistent with others on the street. He noted that privacy is not an issue considered within the scope of the Board.

Mr. Mitchell asked why two feet from the property line was chosen rather than something less encroaching. Mr. Heywood said that the size was chosen in order to maximize the porch area and that even if they reduce the encroachment from two feet to three or four feet, it will still need a variance.
Mr. Simonton stated that the feels that the proposed variance is too close to the property line.

The applicant, Mr. Roberts:

- Cherry Street is steep. The basement of the new construction at 130 Cherry Street will be at the same level as Mr. Robert’s first floor; therefore, he will lose privacy. Also, some existing vegetation buffer will be lost during neighbor’s construction.
- If the porch is moved in 3 or 4 feet, it limits access to back yard.
- To cover the porch properly, the proposed size is needed.
- Greenspace will be added.

Chairman Orr stated that he feels the requested variance is too close to the property line and that something more consistent with neighbors might be more acceptable. Mr. Loveman agreed and stated that a similar setback already established might be a something to consider.

Mrs. Smith, Council Liaison, asked if the adjacent property (130 Cherry Street) had been granted a variance. Mr. Slaten stated that there was no record of a variance being requested/granted for that property. Mr. Merchant said that the construction on that property meets setback requirements.

Chairman Orr presented the following options to the applicant: A vote can be taken on the submitted request, an amendment can be submitted, or the case can carry over.

The applicant requested to carry over the case to the November meeting.

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

Motion: Mr. Mitchell, motion to approve the applicant’s request to carry the case over to the next meeting.
Second: Mr. Loveman
Vote: Unanimous voice vote in favor.

The case will carry over to the November 16, 2020 meeting.

6. Case A-20-34: 3080 Overton Road

Philip Yacko, property owner, requests variances from the terms of the Zoning Regulations to allow the creation of a Residence A lot that is 17,757 square feet in area in lieu of the required 30,000 square feet and 87.38 feet wide in lieu of the required 100 feet wide.

**Hardship(s):** This piece of property was left at a substandard size through other actions.

Ray Weygand, Weygand Surveyors, 169 Oxmoor Road, Homewood, represented the property owner that is requesting variances from the area and dimensional requirements of the Residence A District to create a substandard lot that does not meet the minimum requirement for square feet or lot width. The subject parcel is a remnant from surrounding subdivisions. Without a variance, the property will be unbuildable. The property has been owned by the same person since 2003, according to his records.

Chairman Orr confirmed that if the variance is not approved, the property will be
unbuildable. Mr. Mitchell agreed. Also, the sizes of the surrounding lots are small for the zone, so if approved, it would be consistent.

Chairman Orr stated for the record that if this variance is approved, it does not mean that other variances will be granted in the future due to the small lot size.

There being no further comments, Chairman Orr called for a motion.

Motion: Mr. Mitchell, motion to approve the variance request as submitted.
Second: Mr. Simonton
Vote:  
   
   Aye:  
   Garner
   Loveman
   Mitchell
   Orr
   Simonton

   Nay:  None

The variance request stands approved as submitted.

**Adjournment**: There being no further business to come before the Board at this time, the meeting stood adjourned at approximately 6:15 p.m. The next meeting is scheduled for Monday, November 16, 2020.

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Tammy Reid
Tammy Reid, Administrative Analyst