

CITY OF MOUNTAIN BROOK
BOARD OF ZONING ADJUSTMENT
REGULAR MEETING
MINUTES
December 19, 2022

The regular meeting of the City of Mountain Brook Board of Zoning Adjustment was held on Monday, December 19, 2022 at 5:00 p.m. The roll was marked as follows:

Board Present: Norman Orr, Chairman
 Richard Simonton, Co-Chairman Absent: Oliver Williams, Supernumerary
 Rhett Loveman
 Noel Dowling
 Russ Doyle, Supernumerary

Staff present: Tyler Slaten: City Planner
 Dana Hazen: Director of Planning, Building and Sustainability

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.

A variance approval will require four affirmative votes. The parameters for a favorable consideration of a variance are attached to the end of these minutes.

Regarding all adjacent property owners in each of the cases receiving legal notice of this hearing: Ms. Reid confirmed, based on the information supplied by the applicants, the adjacent property owners were notified.

Chairman Orr called the meeting to order. The agenda stood approved as presented and posted.

1. Approval of Minutes – November 21, 2022

Approval of the minutes will carry over to the January meeting.

2. Case A- 22-29: 401 Michael Lane, Andrew and Tiffany Linn

EXHIBIT 1

Andrew and Tiffany Linn, property owners, request variances from the terms of the Zoning Regulations to allow a retaining wall to be up to 10 feet in height in the front yard (Michael Lane) in lieu of the maximum allowed wall height of 4 feet.

401 Michael Lane (Carried-over from the October 17, 2022 and November 21, 2022 meetings.)

Mr. Boomhover recused himself and exited the room.

Tiffany Linn/Michael presented the request. She stated that the lot provides a topographical hardship due to the elevation change of 18% from the front right corner to the back left corner.

A required drainage plan was submitted to the city to acquire a permit. The retaining wall is necessary for the lot to function for the family and the driveway.

The final grade of the front yard will be 42 inches below the wall for safety. Since last meeting, we submitted a report from InSite Engineering providing the drainage plan and the importance of the wall for water retention and the water drainage system that is proposed. At this time, we are approximately 50 percent complete; conditions will only improve.

A landscape rendering was submitted that will help with the appearance of the wall. The wall provides a usable front yard space.

The applicant stated that they visited with neighbors in opposition and support of the request; the landscape plan was shared.

Chairman Orr: Should you decide to add anything to extend the height of the wall, wrought iron, etc., it would have to come back before the Board.

Chairman Orr stated that he would like to see what the lot was like prior to development. The applicant shared photos of the lot as it was initially. Mrs. Linn said that the whole neighborhood looks on top of other homes; it is a very hilly area. This is a difficult lot with elevation changes and it is oddly shaped. Originally, there were three lots with one house; now there are three houses.

Mrs. Linn stated that the report submitted from InSite Engineering concluded that, in their opinion, the best option would be maintaining the retaining wall height as previously designed.

Mr. Dowling: Did the builder consider a four foot wall as an option to meet city regulations?

Mrs. Linn: No. This was not discussed with us. We put our trust in the builder to be aware of all regulations. We apologize that this was not handled according to city requirements. We were not aware of this issue until last meeting.

Chairman Orr: We look at this as a new case, as if the misstep did not occur.

Mr. Simonton stated that he feels there are solutions for this lot to break down the scale to be more appropriate for the neighborhood.

Chairman Orr said that he appreciates the landscape plan submitted.

Mr. Linn said that one neighbor has withdrawn their objection to the wall, sighting that they feel the wall has actually helped runoff on to their property. Once the entire system is complete, it should help the entire neighborhood.

Public Comments:

BeeBee Goodrich, 3512 Mountain Park Drive: I approve of the request, but wish it could have been handled among the neighbors. It seems that they meet the requirements for a variance.

Randy Crane, 3420 Mountain Park Drive: He is glad that they are going to try to soften the appearance of the wall because it is the first thing he sees when he walks outside. He has had drainage problems; the runoff from that hill has actually flooded his basement; stopped up the drain in his driveway also. His grandparents lived in this house prior to him, and in 68 years there have never been flooding problems until work began on those lots. It is not just this house; all of the building up there.

Chairman Orr: Prior to construction on this lot, your grandparents in the past and now you have never had flooding problems until now? Mr. Crane: We are not currently flooding because I have taken steps on my property to prevent it, but the flooding did not start until the construction started.

Mr. Loveman: Did other lots impact your water issue? Mr. Crane: The first and third lots were issues; began approximately 2 years ago. I started rechanneling the water on my lot to help avoid flooding.

Glen Merchant, Building Official: Please contact our Public Works Department with these types of issues. They can handle public stormwater issues; they can look at the public right-of-away there to determine problem. He and Mr. Vaughn will be happy to assist. Mr. Linn said that it was not only an issue with the Linn's property. He feels that the curb and gutter system cannot handle the amount of water. He is not fully opposed; he does not like the looks of the project. He feels it was a problem that falls back to the builder.

Nicole Boomhooover, 3500 Mountain Park Drive: We feel that the builder is responsible for the issue. We have an eroded yard and sidewalk. We do not fault the Linn's totally and appreciate the proposed landscaping to soften the look of the wall.

Mr. Linn: Please consider that this wall is helping already and it will only improve as the system is fully functional. I do not know what the situation will be if the wall is lowered to four feet tall.

Tyler Slaten, City Planner: The city's engineer, Schoel Engineering, consulted on this project. Schoel agreed that the proposed plan would work.

Mr. Slaten asked Schoel if a four-foot wall would work. Schoel responded that it would work but would require substantial re-engineering of the entire system; the system in place should work and is a good plan with the existing wall.

Chairman Orr: Communication with neighbors is very important. This is a unique situation. We always want to protect the streetscape, but I am concerned about the water runoff.

Mr. Loveman stated that he is guessing that it is not the Linn's property alone that created this problem. It is not an ideal situation but there is a very elaborate system planned to retain water. He is concerned that changing the wall height may make the water issue worse. Chairman Orr agreed that changing the plan might make the situation worse.

Mr. Simonton said that it is very unfortunate that this was not brought to the board in the beginning. He feels that the board would have requested a different plan, without a 10 foot tall wall. He is having a hard time accepting this just because it has already been constructed.

Mr. Linn: The builder plans to grade up the dirt in front, approximately 18", to help visually with the height of that wall. There will be a detention pond as well.

Beebee Goodrich: How do we get involved moving forward? Where do we get involved if other issues arise?

Mr. Slaten: Reach out to the city and we will be happy to help. Chairman Orr added that a permit should be posted on the property where construction is happening as well.

Chairman Orr called for a motion.

Motion: Mr. Loveman, motion to approve the variance as requested.
 Second: Mr. Doyle
 Vote: Aye: Orr
 Doyle
 Loveman
 Nay: Dowling
 Simonton

The variance request is denied due to lack of required votes in favor.

3. Case A-22-31: 2929 Pine Haven Drive, Mr. and Mrs. Elliott Mills

EXHIBIT 2

Mr. and Mrs. Elliott Mills, property owners, request variances from the terms of the Zoning Regulations to allow a new single family dwelling to be 30.5 feet from the front property line (Pine Haven Drive), 20 feet from the rear property line (south), and to allow a detached accessory structure (garage) to be 20 feet from the rear property line, all in lieu of the required 35 feet. **2929 Pine Haven Drive**

Hank Long, Henry Sprott Long & Associates, 3016 Clairmont Avenue, Birmingham, represented the applicants. Currently there are two lots. The house on the lot was removed previously (Lot 134). There is an assumed easement between the lots. If approved, the applicants will go before the planning commission to resurvey the two lots into one lot. The lot is an unusual shape; limited buildable space. A detached garage is proposed that will meet the requirements in height and will serve as a garage with a small amount of storage in the rear; no living area. Hardships: The lot shape is not typical for the neighborhood; it is shallow; there is a topography issue. The applicant reached out to the neighbors regarding the variance.

Mr. Slaten stated that one letter in opposition was submitted at the last minute (John and Hayden Scott, 2920 Hastings Road). Their concern is flooding, mainly the relationship between the garage and the creek; there is a history of flooding. Mr. Long: The water running off of this lot will not be headed toward Hastings Road.

Mr. Merchant: The property in question requires a stormwater report for pre and post runoff water percentage changes.

Public Comments: None

Chairman Orr appreciates the hardships presented and the protection of the streetscape, and that the garage encroachment is not more.

Chairman Orr called for a motion.

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

The variance request stands approved as submitted.

4. Case A-22-32: 3750 East Fairway Drive, Mr. and Mrs. Harlan Prater

EXHIBIT 3

A-22-32: Mr. and Mrs. Harlan Prater, property owners, request variances from the terms of the Zoning Regulations to allow alterations to a detached accessory structure (garage) to be 6 feet 6 inches from the rear property line (north) in lieu of the required 35 feet; 7 feet from the side property line (west) in lieu of the required 12.5 feet; and to allow the building area to be 35.4 percent in lieu of the maximum allowed of 35 percent. **3750 East Fairway Drive**

Hank Long, Henry Sprott Long & Associates, 3016 Clairmont Avenue, Birmingham, represented the applicants. Mr. Prater also attended the meeting. The current accessory structure is approximately 1000 sq to accommodate four vehicles. The size will be reduced; no living quarters; a pitched roof will be added to match the pitch of the house and is below the maximum height limit. There will be a covered a breezeway. The amount of lot coverage will be reduced.

Mr. Dowling stated that the 35.4% lot coverage is a concern, but that he appreciates the improvement by reducing the garage size.

Public Comments: None

Chairman Orr agrees that the proposed is an improvement.

Chairman Orr called for a motion.

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

Second: Mr. Boomhover

Vote:	<u>Aye:</u>	<u>Nay:</u>
	Boomhover	None
	Dowling	
	Simonton	
	Orr	
	Loveman	

The variance request stands approved as requested.

5. Case A-22-33: 3305 Montevallo Road, Mac and Kit Fairley

EXHIBIT 4

Mac and Kit Fairley, property owners, request variances from the terms of the Zoning Regulations to allow a covered rear deck to be 23 feet from the rear property line (east) in lieu of the required 35 feet. 3305 Montevallo Road

Phillip Woods, homebuilder, represented the applicants. The hardships are existing design constraints and the shape of the lot; the existing deck does not have adequate footings. The deck footprint will not change; the roof covering will extend the entire deck.

Mr. Boomhover confirmed that the roof deck will extend over the entire deck and that there were no footings for the existing deck. He agrees with the hardships.

Chairman Orr: If they did not extend the roof, would they still need a variance?

Mr. Slaten: Yes

Public Comments: None

Chairman Orr called for a motion.

Motion: Mr. Dowling, motion to approve the variance as requested.

Second: Mr. Loveman

Vote: Aye: Nay:
 Boomhover None
 Dowling
 Simonton
 Orr
 Loveman

The variance stands approved as requested.

6. Case A-22-34: 2109 Montevallo Road, Maruerite Gray Morris

EXHIBIT 4

Maruerite Gray Morris, property owner, requests a variance from the terms of the Zoning Regulations to allow additions to an existing single family dwelling to be 12 feet 2 inches feet from the rear property line (north) in lieu of the required 40 feet. 2109 Montevallo Road

Scott Carlisle, Carlisle Architect, 2814 Petticoat Lane, MB, represented the applicant. Most of the home is non-conforming. The hardship is the odd shaped lot and existing design constraints.

Mr. Loveman confirmed the hardships of the irregular lot shape and existing design constraints. He stated that the proposed would not affect light and air because the adjacent property to the north and east is the Birmingham Country Club. Chairman Orr agreed.

Mr. Boomhover asked how he will handle water runoff. Mr. Carlisle said that the area is relatively flat and runoff should not be an issue.

Chairman Orr called for a motion.

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

Second: Mr. Boomhover

Vote: Aye: Nay:
 Boomhover None
 Dowling
 Simonton
 Orr
 Loveman

The variance request stands approved as requested.

7. Adjournment: There being no further business to come before the Board at this time, the meeting stood adjourned. The next meeting is scheduled for Tuesday, January 17, 2023.

Tammy Reid

Administrative Analyst