

CITY OF MOUNTAIN BROOK
BOARD OF ZONING ADJUSTMENT
REGULAR MEETING
MINUTES
July 17, 2023

The regular meeting of the City of Mountain Brook Board of Zoning Adjustment was held on Monday, July 17, 2023 at 5:00 p.m. The roll was marked as follows:

Board Present:	Norman Orr, Chairman Richard Simonton, Co-Chairman Scott Boomhover Noel Dowling Russ Doyle, Supernumerary	Absent:	Rhett Loveman Oliver Williams, Supernumerary
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Staff present:	Virginia Smith: Council Liaison Dana Hazen: Director of Planning, Building and Sustainability Tyler Slaten: City Planner Glen Merchant: Building Official Tammy Reid: Administrative Analyst
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Chairman 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.

Chairman Orr stated that a variance approval will require four affirmative votes. He reviewed the parameters for a favorable consideration of a variance. These parameters are attached to the end of these minutes.

Chairman Orr asked if all adjacent property owners in each of the cases on the agenda received legal notice of this hearing. Tammy 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 was amended to move case A-23-27 to the August meeting.

1. Approval of Minutes – June 19, 2023

Motion: Mr. Simonton, motion to approve the June 19, 2023 minutes as presented.

Second: Mr. Doyle

Vote:	<u>Aye:</u> Unanimous approval	<u>Nay:</u> None
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2. Case A-23-22: Dr. Dick Briggs, 2925 Southwood Road

Dr. Dick Briggs, property owner, requests a variance from the terms of the Zoning Regulation to allow a detached accessory structure to be 6.6 feet from the rear property line (south) in lieu of the required 40 feet.

Scope of Work: The scope of work includes the construction of a new detached accessory structure.

Hardship(s): The hardships in this case are the existing design constraint and angled rear lot line.

Dr. Briggs, along with his contractor, Ryan Dempsey of Dempsey Built, presented the variance request.

- The structure will replace the one that was damaged by a storm.
- He would like to use the existing foundation, utility hookups and stone chimney.
- The original structure was built around 1929 and was 20' x 40'. The new structure will be slightly smaller.
- New building materials: a true log cabin.
- The cabin has served as a guesthouse in the past and recently his granddaughter has occupied the space.
- One-story; approximately same height as previous building.
- There is a house on the adjoining property to the rear.

Tyler Slaten, City Planner: Accessory structures 25' x 25' or smaller can be as close as 10' from the side and rear. The proposed structure exceeds that size, so the 40' setback applies.

Chairman Orr asked about the topography. Dr. Briggs stated that the property slopes downward from the street. The lot behind him is lower than his property. Retaining walls level the area.

Chairman Orr stated that the cabin cannot be used as a secondary home; limited appliances allowed. The proposed structure appears to be more conforming than the previous structure. There are topography issues and the rear property line is angled.

Public Comments:

Wess Brinkley, 2916 Mountain Brook Parkway, MB, adjoins the subject property at the rear. He objects because there were large windows on the previous structure that looked toward the back of his house; also, noise is an issue. He feels that the structure will be too close to the property line. Alabama Power removed the buffering vegetation. The structure was non-conforming and there is an opportunity to make it conforming.

Virginia Smith, Council Liaison, asked if the plan includes windows to the rear. Mr. Dempsey stated that there are only preliminary plans that will include windows at the rear; vegetation can be installed to screen.

Public Comments:

Louise Gale, 2937 Mountain Brook Parkway, MB, lives next door on the right side. There have

been problems with noise, sometimes until 1-2 o'clock in the morning. Windows on the rear and front will face her house. She feels that the new structure should be moved away from the property line to protect her privacy.

Chairman Orr:

- Understand the desire to use the fireplace.
- Board must take into account effect on neighbors. Two neighbors have complained of noise.
- Understand the desire to use existing utilities, but could be considered just a convenience.
- Considered moving toward the main house?
- The code provides protection from noise and light intrusion for neighboring properties.
- Reducing the size to meet the 625' square footage maximum provides an option to move forward without a variance or additional vegetation.

Mr. Dempsey said that they would like to use the water, sewer and utilities that have already been installed at that location. The fireplace is 20'-22' tall and moving it would not be an option. The new construction will have insulated walls that should help with noise. Three windows are planned for the rear, but they could be removed.

Mr. Slaten verified that should the square footage meet the 625 square foot maximum, it could be within 10' of the property line. Would not need a variance.

Mrs. Smith encouraged the applicant to continue the case to the next meeting to allow time for dialogue with neighbors.

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

Motion: Mr. Doyle, motion to carry the case to the August 16, 2023 meeting.

Second: Mr. Boomhover

Vote: Unanimous consent

Motion carries.

3. Case A-23-23: Leslie Bashinsky, 79 Country Club Boulevard

EXHIBIT 2

Leslie Bashinsky, property owner, requests variances from the terms of the Zoning Regulation to allow a new single family home to be 34 feet from the secondary front property line (Matthews Road) in lieu of the required 40 feet, and to allow a pool to be 1 foot from the side property line (southwest) in lieu of the required 10 feet. 79 Country Club Boulevard

Scope of Work: The scope of work includes the construction of a new single-family dwelling.

Hardship(s): Corner lot configuration.

Hank Long, Henry Sprott Long & Associates, presented the variance requests.

- New construction
- The non-conforming lot currently has an existing non-conforming residence to be demolished.
- The lot coverage for the new structure will be less than the existing; approximately 15.6% in lieu of the existing 20.4%.
- Requesting a plunge pool (7' x 14') to be 1' off of the right side property line in lieu of the

- required 10' setback for pools.
- Proposing an 8' tall masonry wall at the right side property line; pool will abut the inside face of the wall.
- The proposed pool equipment will meet the 10' setback requirement.
- The corner-lot configuration is the hardship of the lot; also the size of the lot – 24,230 sf in lieu of the required 30,000 sf.
- The basketball court will be removed.

Mr. Doyle asked if the proposed wall will cause water issues. Mr. Long stated that it should not. Also, if a fountain were proposed instead of a plunge pool, a variance would not be necessary. This is a feature in the garden.

Chairman Orr asked if the pool could be located in another area. Mr. Long stated that this is the best location as a feature of the garden. The rear is not a practical location.

Mr. Simonton: Personally has a problem that a precedent will be set by allowing the proposed. Chairman Orr agreed. Since this is a teardown, the variance request is more of a convenience than a hardship.

Ms. Bashinsky, property owner, said that the pool is a visual feature of the garden.

Mr. Merchant, Building Official, said that less than 18" deep and decorative in nature is considered a fountain. A safety barrier is not required. He and Mr. Slaten would need to investigate further – pool vs. fountain.

Mr. Dowling expressed concerns regarding the pool.

Chairman Orr suggested moving the structure on the property to allow the pool to meet setback requirements.

Public Comments: None.

Mr. Long asked to carry the variance request for the pool over to the August meeting and that the variance for the house portion is considered at this meeting.

Chairman Orr called for a motion.

Motion: Mr. Doyle, motion to approve the house portion of the variance request, and to approve the applicant's request to carry the pool portion of the request over to the August 21, 2023 meeting.

Second: Mr. Simonton

Vote:	<u>Aye:</u>	<u>Nay:</u>
	Boomhoover	None
	Dowling	
	Doyle	
	Orr	
	Simonton	

Motion carries.

4. Case A-23-24: Keith and Fran Anderton, 3724 Mountain Park Drive

EXHIBIT 3

Keith and Fran Anderton, property owners, request variances from the terms of the Zoning Regulation to allow additions and alterations to an existing single family dwelling to be 34.7 feet from the front property line (Mountain Park Drive) in lieu of the required 35 feet, and 5.7 feet from the side property line (southeast) in lieu of the required 9 feet.

Scope of Work: The scope of work includes the enclosure of an existing covered front porch and a new single story addition on the right side.

Hardship(s): The hardship in this case is the existing design constraints and exceptional narrowness.

Mr. Anderton (applicant) and Matt Costanzo (architect) presented the variance requests.

- Seeking approval to close in an existing, non-conforming porch; approximately 10' deep.
- Construction of a new single-story addition that aligns with the existing side façade of the house at 5.7 feet.
- Neither addition will increase the encroachment from what currently existed.
- The hardships are that the house is skewed toward the right side of the narrow property and existing design constraints.

Public Comments: None

Chairman Orr stated that existing design constraints and the narrowness of the lot are related to the requested variances. He called for a motion.

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

Second: Mr. Boomhover

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

Motion carries.

5. Case A-23-25: Blake Smith and Nancy Shinouda, 2119 English Village Lane

EXHIBIT 4

Blake Smith and Nancy Shinouda, property owners, request variances from the terms of the Zoning Regulation to allow additions and alterations to an existing single family dwelling to be 3 feet from the side property line (west) in lieu of the required 8 feet for portions of the building less than 22 feet high, and in lieu of the required 12 feet for portions of the building greater than 22 feet high. 2119 English Village Lane

Scope of Work: The scope of work includes a new second story addition and new cover to the porch in the rear.

Hardship(s): The hardships are the narrow lot width and existing design constraints.

Mr. Smith, applicant, presented the variance request to allow a new second story addition and new cover to the porch in the rear. The lot is narrow and the existing structure is non-conforming. The existing parking pad will stay and the porch will be over it. From the street, you are basically looking at the second story level. The roof structure does not appear tall from the street.

Mr. Boomhover asked for public comments. There were none.

Chairman Orr confirmed existing design constraints and that the lot is small. He feels the request is in harmony with the code.

Building Official, Glen Merchant, thanked the applicant and contractor for their understanding and cooperation with the city on this matter.

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

Second: Mr. Simonton

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

Motion carries.

6. **Case A-23-26: Sara James, 304 Dexter Avenue**

EXHIBIT 5

Sara James, property owner, requests variances from the terms of the Zoning Regulation to allow an addition to be 13 feet 4 inches from the rear property line (northwest) in lieu of the required 30 feet, and to allow pool equipment to be 5 feet from the side property line (southwest) in lieu of the required 10 feet. 304 Dexter Avenue

Scope of Work: The scope of work includes a rear addition, pool equipment, and pool. The pool does not need a variance.

Hardship(s): Lot shallowness and size of the lot.

History:

On June 19, 2023, the Board heard a request (Case A-23-18) to allow additions and alterations to be 24 feet 6 inches from the front property line (Dexter Avenue) in lieu of the required 35 feet, to be 12 feet from the rear property line (northwest) in lieu of the required 30 feet, to be 6 feet from the side property line (northeast) in lieu of the required 8 feet for portions of the building below 22 feet in height, to allow the maximum building area to be 39.9% in lieu of the maximum allowed of 35 percent, to allow walls to be as tall as 12 feet 9 inches in height in a front setback in lieu of the maximum front yard wall height allowed of 4 feet, to allow a wall to be as tall as 12 feet 4 inches in height in a side setback (northeast) in lieu of the maximum wall height allowed in a side setback of 8 feet, to allow a pool to be 0 feet from the rear property line (northwest) in lieu of the required 10 feet, and to allow pool equipment to be located 5 feet from a side property line (southwest) in lieu of the required 10 feet.

The Board approved the variances related to the front setback and walls. The Board denied the variances for lot coverage and the rear and side setbacks. The Board also approved the applicant's request to withdraw the pool and related pool equipment from the original request.

Robert Thompson, Thompson Architecture, presented the variance requests. This is a modification to the request presented at the last meeting.

- The non-conforming lot is 50' wide by 100' deep where most properties in this area are 75' wide by 150' deep.
- The hardship is that the lot size is 34% smaller than the minimum property size for this zoning classification.
- An addition to the rear that is smaller in scope than that which was denied by the Board previously.
- Adding back in the request for the pool equipment in the side yard (5 feet).
- Relocating the pool to meet setback requirements (no variance needed).
- Revising the rear addition to be 8 feet from the side property line (no longer needing a variance; originally 6 feet from the side property line).
- Reducing the lot coverage to meet the code.
- There will be an 8' tall masonry wall; stucco.

Public Comments:

Margaret Burg, 75 Main Street, MB, lives to the rear of the subject property.

- Opposed to addition being 13' from the property line.
- Stated hardships are self-imposed.
- Flooding issues already
- The proposed wall will effect water flow
- Over-building the property

Buck Wood, 300 Main Street, MB, southwest of the property is concerned about the decibel noise level of the pool equipment. Mr. Doyle stated that he is familiar with this type noise suppression and it works well. Chairman Orr said that the information supplied on the noise suppression cover indicated 75% quieter when used.

Chairman Orr stated that the lot coverage meets requirements. He does not feel the lot is being over built. He appreciates the amendments to the rear, allowing better light flow. Mr. Dowling agreed.

Mrs. Burg: Asked about overbuilding of the lot. Chairman Orr said that the lot coverage meets requirements; only the setbacks are in question at this point.

Chairman Orr called for a motion.

Motion: Mr. Doyle, Motion to approve the variances as submitted, with the following conditions:

- The 8' tall masonry wall is installed as proposed.
- Noise suppression equipment is installed and maintained on the pool equipment.

Second: Mr. Boomhover
Vote: Aye: Boomhover
Nay: None
Dowling
Doyle
Orr
Simonton

Motion carries.

7. **Case A-23-27: Daniel and Mary Balkovetz, 4217 Antietam Drive**

EXHIBIT 6

This case was removed from the agenda and moved to the August agenda.

8. **Adjournment:** There being no further business to come before the Board at this time, the meeting stood adjourned. The next meeting is scheduled for Monday, August 21, 2023.

Tammy Reid, Administrative Analyst