

**CITY OF MOUNTAIN BROOK**  
**BOARD OF ZONING ADJUSTMENT**  
**REGULAR MEETING**  
**MINUTES**  
**February 20, 2024**

The regular meeting of the City of Mountain Brook Board of Zoning Adjustment was held on Tuesday, February 20, 2024 at 5:00 p.m. The roll was marked as follows:

Board Present: Norman Orr, Chairman                      Absent: Scott Boomhover  
                      Noel Dowling  
                      Rhett Loveman  
                      Russ Doyle, Supernumerary  
                      Oliver Williams, Supernumerary

Staff present: Virginia Smith: Council Liaison  
                      Tyler Slaten: City Planner  
                      Glen Merchant: Building Official  
                      Tammy Reid: Administrative Analyst

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.

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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.

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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, that the adjacent property owners were notified.

Chairman Orr called the meeting to order.

**1. Approval of Minutes – December 18, 2023**

Motion to approve: Mr. Doyle  
 Second: Mr. Loveman  
 Unanimous approval.

**2. Case A-24-01: Stuart and Mary Hurst, 20 Winthrop Avenue**

**EXHIBIT 1**

Stuart and Mary Hurst, property owners, request a variance from the terms of the Zoning Regulations to allow alterations to the existing non-conforming single family dwelling to be 30.4 feet from the front property line (Winthrop Avenue) in lieu of the required 35 feet.  
 20 Winthrop Avenue

Scope of Work: The scope of work includes alterations to the front of the existing non-conforming home, including the removal of a covered entry, a new door and front windows, and a new roof.

Hardship(s): The hardship in this case is the existing design constraint. Portions of the existing structure, including the front entry roof, are as close as 25.5 feet from the front property line. The main part of the structure is 30.4 feet from the front property line. This proposal would remove the roof structure over the front entry which would see the front encroachment reduced from the current 25.5 feet to 30.4 feet.

Mary Coleman Clark (architect) and Mary Stuart (applicant) presented the variance request. This is a non-conforming structure that presents design constraints. By removing the roof structure over the front entry, the existing encroachment will be reduced, allowing for more light and air flow to neighboring properties.

Chairman Orr confirmed the hardship of existing design constraint and noted that the modification to the front entry will reduce the encroachment; thereby, creating a better situation.

Public Comments: None

Motion: Mr. Williams, motion to approve the variance as submitted, based on the hardship of existing design constraint.

Second: Mr. Doyle

Vote:	<u>Aye:</u>	<u>Nay:</u>
	Dowling	None
	Doyle	
	Loveman	
	Orr	
	Williams	

Motion carries.

### 3. Case A-24-02: Matt and Allison Scully, 12 Alden Lane

### EXHIBIT 2

Matt and Allison Scully, property owners, request a variance from the terms of the Zoning Regulations to allow an addition to be 5 feet from the side property line (south) in lieu of the required 8 feet. 12 Alden Lane

Chairman Orr recused himself from this case.

Scope of Work: The scope of work includes the addition of a covered screened porch.

Hardship(s): The hardships in this case are the narrow and unusual lot shape, and existing design constraints. The lot tapers from 75 feet wide in the front to 20 feet wide in the rear. The right side property line is angled and squeezes in toward the existing single family dwelling. The proposed location of the covered screened porch is currently a raised terrace that is 3.8 feet from the side property line at it closest point.

Eric Dale, designer (935 Landale Road, Birmingham, AL), represented the applicant. The applicant would like to turn an existing raised masonry terrace on the right rear side of their house

into a screened porch with a roof cover; one story. The severely angled right side property line presents a hardship in developing the structure of the porch.

Mr. Williams agreed that the lot is an odd shape and tapers drastically to the rear, creating a hardship.

Mr. Dowling asked the state of the terrace right now.

Mr. Dale: There is an iron railing there now; approximately 18' off the ground. The back of the neighbor's garage faces the terrace, and they have large hollies in the area as well.

Mr. Slaten stated that all four neighboring property owners sent emails in support of the proposed project.

Public Comments: None.

Chairman Orr called for a motion.

Motion: Mr. Doyle, motion to approve the variance as submitted based on the hardships of exceptional narrowness, irregular lot shape, and existing design constraints caused by the existing raised terrace.

Second: Mr. Loveman

Vote:	<u>Aye:</u>	<u>Nay:</u>
	Dowling	None
	Doyle	
	Loveman	
	Williams	

Motion carries.

#### 4. Case A-24-03: Lib and Coates Covington, 14 Montrose Circle

#### EXHIBIT 3

Lib and Coates Covington, property owners, request variances from the terms of the Zoning Regulation to allow an addition to be 11.46 feet from the side property line (east) in lieu of the required 12.5 feet and to be 24.68 feet from the rear property line (south) in lieu of the required 35 feet. -14 Montrose Circle

Scope of Work: The scope of work includes the addition of a covered screened porch.

Hardship(s): The hardships in this case are the unusual lot shape and existing design constraints. The front of the lot is situated in a curve and the house is pushed back towards the rear corner of the lot. It is non-conforming as it relates to the side and rear setback. There is also an irregularly shaped lot line in the back corner of the yard.

Background: Variances were granted to allow side and rear encroachments prior to the house being constructed in its current location. The proposed porch area was anticipated by those variances and approved in the same location as what is currently being requested. The approved porch area was not constructed in this location when the house was initially built, and the applicants are now seeking approval for the same area as the original approval.

Carrie Taylor, architect, represented the applicant. The project includes the addition of a covered screened porch over an existing patio. This variance request is based on a previously approved variance wherein the footprint of the proposed project was approved but not fully constructed.

**Hardship:** The front of the lot is situated in a curve and the house is pushed back towards the rear corner of the lot. The same variance is requested that was previously approved in order to complete the project.

Mr. Doyle asked if the existing patio is uncovered. Ms. Taylor said that it is uncovered now and the plan is to fill in that portion. Doyle confirmed the hardship of existing design constraints.

Chairman Orr added that the irregular shape of the lot also adds to the hardship of the lot. In 2019, this same variance request was approved, but the approval expired prior to construction. The request now is actually less than the original request.

Mr. Dowling said that he feels the hardships relate to the requested variance.

Ms. Taylor stated that she has a letter of support from an adjacent neighbor.

Public Comments: None

**Motion:** Mr. Loveman, motion to approve the variance requests as submitted based on the hardships of irregular lot shape and existing design constraints.

**Second:** Mr. Doyle

<b>Vote:</b>	<u>Aye:</u>	<u>Nay:</u>
	Dowling	None
	Doyle	
	Loveman	
	Orr	
	Williams	

Motion carries.

## 5. Case A-24-04: Scott and Jenny Sobera, 14 Montrose Circle

## EXHIBIT 4

Scott and Jenny Sobera, property owners, request variances from the terms of the Zoning Regulation to allow a detached accessory structure (greenhouse) to be 5 feet from the rear property line (north) in lieu of the required 10 feet. 2824 Canoe Brook Circle

Scope of Work: The scope of work includes the construction of a detached greenhouse. The proposed greenhouse would be 19 feet 3 inches by 13 feet 10 inches. This is approximately 266 square feet in area.

Hardship(s): The applicant stated in the application that the corner lot configuration and topography are hardships.

Daniel McCurry, Father Nature Landscaping (4671 Appaloosa Drive, Birmingham, AL), represented the applicant. Proposed is a glass greenhouse. Three large evergreens will be added as a screen. The greenhouse will not be seen from the street.

Mr. Loveman asked about the topography and the height of the masonry wall.

Mr. McCurry: The driveway on the left is approximately ten feet lower than the back yard and the masonry wall is at least 9 feet tall.

Virginia Smith, Council Liaison, asked the height of the green house. Mr. McCurry said it is approximately 12 feet in height.

Mr. McCurry added that the neighbors are excited about the new location. An existing greenhouse will be removed. The corner-lot configuration presents a hardship.

Mr. Loveman agreed with the stated hardship of existing design constraints and feels the structure will not obstruct light or air flow to neighboring properties.

Chairman Orr asked if the structure could be moved closer to the house.

Mr. McCurry said that other locations were researched, but were not feasible.

Mr. Dowling asked about the existing brush. Mr. McCurry stated that all of the brush will be removed and three massive evergreens will be added.

Chairman Orr agreed that flow of air and light will not be obstructed by the structure.

Mr. Doyle said that he feels existing design constraints apply as well.

Public Comments: None.

Chairman Orr called for a motion.

Motion: Mr. Doyle, motion to approve the variance as submitted, based on existing design constraints.

Second: Mr. Williams

Vote:	<u>Aye:</u>	<u>Nay:</u>
	Dowling	None
	Doyle	
	Loveman	
	Orr	
	Williams	

Motion carries.

Mr. Williams departed the meeting.

## **6. Case A-24-05: Stephen Taylor and Catherine Agricola, 3822 Jackson Blvd.**

## **EXHIBIT 5**

Stephen Taylor and Catherine Agricola, property owners, request variances from the terms of the Zoning Regulation to allow an alteration to the existing non-conforming garage to be 9.4 feet from the left side property line (west) in lieu of the required 12.5 and a screened in porch addition to be 23.5 feet from the secondary front property line (Cherry Street) in lieu of the required 35 feet. 3822 Jackson Blvd.

Scope of Work: The scope of work includes a structural alteration to the existing non-conforming garage to add a second story within the current roofline with new dormer windows and a new roof over an existing deck to create a screened in porch.

Hardship(s): The hardships in this case are the corner lot configuration, irregular lot shape and existing design constraints. The secondary front lot line along Cherry Street is angled and creates an odd secondary front setback in relation to the existing home.

Tylor Agricola (applicant) and Greg Harper (Precise Home Design) presented the variance request. The scope of work involving the garage includes adding a second story within the existing roofline without adding additional height or changing the footprint. The existing deck will be covered to create a screened in porch. The side setback encroachment of the garage will not change. A dormer will be added to the rear; the only change to the roof. The hardships of the lot are the corner-lot configuration and the odd shape.

Mr. Dowling asked for confirmation that the encroachment into the setback will not increase. Mr. Agricola stated that the encroachment will not increase. Mr. Dowling asked if the height will increase with the improvements. Mr. Agricola said that it will not be higher. Mr. Dowling asked if the existing deck is uncovered. Mr. Agricola confirmed that it is uncovered now.

Public Comments: None.

Mr. Slaten said that he received an email in support from the neighbor across the street.

Chairman Orr confirmed the hardships of existing design constraints and an oddly shaped lot. He feels the request is minor in nature and appreciates that the encroachments will not increase.

Chairman Orr called for a motion.

Motion: Mr. Dowling, motion to approve the variance as submitted, based on the hardships of irregular lot shape and existing design constraints.

Second: Mr. Doyle

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

Motion carries.

## 7. Case A-24-06: James Howe, 18 Spring Street

## EXHIBIT 6

James Howe, property owner, requests variances from the terms of the Zoning Regulation to allow an addition for an elevator shaft to be 8.2 feet from the left side property line (east) for portions of the structure above 22 feet in height in lieu of the required 12 feet. 18 Spring Street

Scope of Work: The scope of work includes the addition of a new elevator shaft.

Hardship(s): The hardship in this case is the narrow lot width. The lot is 50 feet wide and qualifies for the side setback regulations for narrow lots to be 8 feet for portions of the structure below 22 feet in height and 12 feet for portions above.

Jason Kessler, KADCO Homes, presented the variance request. The applicant would like to add an elevator. The proposed elevator shaft would not encroach closer than the existing 8.2 feet, but would extend above 22 feet in height where the required setback moves to 12 feet. For esthetic purposes, the elevator shaft will be covered to look like a fireplace chimney. The elevator request was added after construction began on the home.

Chairman Orr added that the shaft protrudes from the second story upward. The lot is narrow and there are existing design constraints.

Mr. Doyle stated that he feels camouflaging the shaft as a chimney is a good plan esthetically.

Chairman Orr asked the size of the new house. Mr. Kessler: approximately 3,800 sf.

Chairman Orr noted that the new structure is being built within all setbacks.

Mr. Merchant stated that the actual footprint is slightly less.

Public Comments:

Johnna Noles, 16 Spring Street, MB; her property adjoins the subject property. A side door is being used as the main entry; it already protrudes towards her property. There is a 20' x 20' garage that could be used for the shaft or the master bedroom rather than having the shaft as presented. The proposed will not fit in with the neighborhood and will negatively affect the streetscape. She is not in favor.

Chairman Orr asked if the elevator could be included in the garage. Mr. Kessler stated that the access would not work with the floorplan. The garage does not have room for the elevator and room to park cars.

Chainman Orr said that this is a unique situation in that this is a new build.

Mr. Kessler said that the elevator shaft will look out of place without the 'chimney' aesthetic. The applicant plans to proceed with the elevator application, even if the chimney application is not allowed.

Mr. Dowling: Have other options been discussed? Mr. Kessler: Yes. Other options were not feasible due to plumbing and floorplan.

Virginia Smith, Council Liaison, asked if there is another chimney on the structure. Mr. Kessler: No.

Chairman Orr noted that the elevator is allowable in the location presented. The question is whether to cut it off or extend with the chimney façade.

Mr. Kessler: The façade will be real brick with a real chimney top.

Mr. Slaten stated that an email in option was received from a neighboring property. (Noles)

Mr. Dowling asked if there should be any external noise from the shaft. Mr. Kessler: No.

Chairman Orr called for a motion.

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

Second: Mr. Loveman

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

Motion carries.

**8. Case A-24-07: John and Lynnette Thurber, 32 Country Club Blvd.**

**EXHIBIT 7**

John and Lynette Thurber, property owners, request variances from the terms of the Zoning Regulation to allow pool equipment to be 6 feet from the rear property line (east) in lieu of the required 10 feet. 32 Country Club Blvd.

Scope of Work: The scope of work includes the installation of pool equipment including the pump.

Hardship(s): The applicant stated in the application that the lot is fairly tight.

Peter Falkner, landscape architect, and John Thurber, applicant, presented the variance application. The pool equipment will be surrounded by a masonry sound barrier to reduce the noise levels produced by the pump; noise suppression will be added as well. This location in the rear yard also abuts an alley which moves it farther away from the rear neighbors.

Mr. Doyle stated that he appreciates the steps taken for noise suppression.

Mr. Dowling asked how the equipment will be fully enclosed. Mr. Falkner said that the garage will be on one side, and stucco walls on the three other sides.

Chairman Orr said that he feels the request meets the spirit of the code.

Public Comments: None.

Chairman Orr called for a motion.

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

Second: Mr. Dowling

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

Motion carries.

**9. Case A-24- 08: Mike and Penny Fuller, 76 Country Club Blvd.**

**EXHIBIT 7**

Mike and Penny Fuller, property owners, request variances from the terms of the Zoning Regulation to allow additions and alterations to the existing non-conforming dwelling to be 13 feet 6 inches from the left side property line (north) in lieu of the required 15 feet, and to allow the building area to be 26.1 percent in lieu of the maximum allowed of 25 percent. 76 Country Club Blvd.

Scope of Work: The scope of work additions and alterations to the existing non-conforming dwelling which includes extending the existing left side of the structure that is 13 feet 6 inches from the property line. The proposal also includes the removal of an existing detached garage and the construction of a new detached garage.



Hardship(s): The hardship related to the side setback request is the existing design constraint of the non-conforming home.

Jeffrey Dungan and Sara Barr of Jeffrey Dungan Architects (1906 Cahaba Road, MB) presented the variance request. The existing detached garage will be removed and a new detached garage will be constructed. The left side is non-conforming.

Ms. Barr stated that a cistern will be added to assist with water flow.

Mr. Loveman agrees that existing design constraints applies to the hardship of the lot. Concerning water runoff, he asked for more details.

Mr. Dungan stated a plan will be engineered with a cistern in the rear yard, taking water underground, and then will leach out.

Chairman Orr: Could the structure be reduced slightly to meet the lot coverage requirement? It is hard to find a hardship in this circumstance.

Mr. Dungan stated that the lot is small.

Mr. Loveman stated that the lot is similar to others on the street.

Mr. Dowling asked where the majority of the square footage is being added. Mr. Dungan said mostly in the rear; a small amount in the front on either side.

Mr. Dowling asked if the cistern will be installed even if the variance is not granted. Mr. Dungan said it was to mitigate the lot coverage issue and probably would not be included if the variance is not granted.

Regarding reducing the size of the structure, Ms. Barr said that one issue with that is needing wheelchair accessibility. Also, a landscape engineer will be working with the lot regarding water issues.

Mr. Dowling suggested that the applicant look at reducing the lot coverage percentage.

Glen Merchant said that the impervious number, 42.5%, will require a total storm water system.

Public Comments: None.

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

Chairman Orr called for a motion.

Motion: Mr. Doyle, motion to approve the applicant's request to carry the case to the March 18, 2024 meeting.

Second: Mr. Dowling

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

Motion carries.

**10. Case A-24-09: John Montgomery, 25 Fairway Drive****EXHIBIT 7**

John Montgomery, property owner, requests a variance from the terms of the Zoning Regulation to allow a pool to be located 7 feet from the rear property line (south) in lieu of the required 10 feet.  
25 Fairway Drive

Scope of Work: The scope of work includes the installation of a new pool.

Hardship(s): The hardships in this case are the irregular lot shape and existing design constraints of the home. The lot is very oddly shaped with angled rear and side property lines. The existing home is set back deeply into the lot which limits the space in the rear and pools must be located to the rear of the principal dwelling.

Lee Anne Montgomery, applicant, and Carlton Rushing, pool contractor, presented the variance request. The elevation change limits the pool placement. The equipment will be against the home. There is an existing privacy fence and thick hedge between the pool area and the adjacent neighbor. The alley on the NW side of the property line presents a large amount of water runoff, which is a hardship of the lot.

Mr. Dowling asked the size of the pool. Mr. Rushing said 12' x 24', 3'.5" – 5' deep. He agreed that the odd shape of the lot is a hardship.

Chairman Orr agrees that the topography is also a hardship.

Public Comments: None.

Mr. Slaten: No neighbor responses were received.

Chairman Orr called for a motion.

Motion: Mr. Dowling, motion to approve the variance as submitted based on the hardships of an irregularly shaped lot and topography.

Second: Mr. Doyle

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

Motion carries.

11. **Adjournment:** There being no further business to come before the Board at this time, the meeting stood adjourned. The next meeting is scheduled for March 18, 2024.

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Tammy Reid, Administrative Analyst