

**DRAFT MINUTES
BLOOMINGTON ZONING BOARD OF APPEALS
REGULAR MEETING - 4:00 P.M.
WEDNESDAY, FEBRUARY 15, 2017
COUNCIL CHAMBERS, CITY HALL
109 EAST OLIVE STREET
BLOOMINGTON, ILLINOIS**

Members present: Chairman Briggs, Mr. Brown, Mr. Bullington, Mr. Butts, Mr. Kearney, and Mr. Simeone

Members absent: Ms. Meek

Also present: Mr. George Boyle, Assistant Corporation Counsel
Ms. Katie Simpson, City Planner
Tom Dabareiner, Community Development Director

At 4:04PM, Mr. Dabareiner called the roll. With six members in attendance, a quorum was present.

PUBLIC COMMENT: None

MINUTES: The Board reviewed the minutes from January 18, 2017. A motion to approve the minutes as proposed was made by Mr. Simeone; seconded by Mr. Bullington. The minutes were **approved** by a 6-0 voice vote.

Mr. Dabareiner confirmed the agenda item was published and Chairman Briggs confirmed the case was carried over from the previous meeting. Chairman Briggs explained the meeting procedures.

Z-02-17 Consideration, review and approval of the petition for a variance submitted by Suzie McGuire for the property located at 3907 Rave Road to allow a rear yard setback of 14 feet in the R-1C district

Chairman Briggs introduced the case. The following people were sworn in: William C. Wetzel, the petitioner's attorney, 115 W. Jefferson Street, Bloomington; Sue McGuire, the petitioner, 3907 Rave Road, Bloomington; and Chris Haze, the petitioner's contractor, 1011 N. Evans Street Bloomington. Mr. Wetzel explained that the petitioner asked to lay over the item last month so alternative options for the porch could be considered. He described the petitioner's intention is to enclose a portion of the porch with screens. Mr. Wetzel stated the petitioner received a building permit for this project and, contrary to the City's records, the permit does not indicate the need for a variance. He explained the petitioner's contractor was issued a stop order by City staff due to the need for a variance. Mr. Wetzel explained the petitioner has since modified their plans from original petition by reducing the size and location of the enclosed area. Mr. Wetzel explained he shared the amended site plan with City staff earlier today and asked that the original petition submitted to the Zoning Board of Appeals for the variance be amended to reflect the reduced variance. Mr. Wetzel invited the petitioner to present her case and he invited the contractor to explain the changed proposal for the porch.

Mr. Bullington clarified the variance that would be considered today. Mr. Wetzel explained that the petitioner is significantly reducing the size of the requested variance. Chairman Briggs asked if the downgrade in variance required new publication. Mr. Boyle confirmed the intention of the notice is to provide interested parties with an opportunity to support or object to the petition and the amended petition is asking for a smaller variance. Mr. Boyle noted that the permit issue was presented to the City at 2:30 pm this afternoon and consequentially, the City is unable to provide a witness. Mr. Dabareiner marked the amended site plan as “Exhibit A” and it was incorporated into the record. The plan was distributed to the Board members.

Ms. McGuire explained she purchased the home in 2015 and at that time the realtor had informed her she could add a screened porch. Chairman Briggs asked if Ms. McGuire was the original owner of the home. She confirmed she was not and that she had moved in as is. Mr. Haze noted the home is positioned on the lot to have a larger front yard setback which limits the size of allowable screened in porch area to five feet. He explained the amended petition would reduce the depth of the porch to ten feet as size they feel is the smallest they could build the screen porch. Mr. Bullington asked Mr. Haze to explain the plans for the new porch building. Mr. Haze explained the new drawing shows shortening the screened portion of the porch to twelve feet by ten feet. He added that the requested variance has been reduced by six feet leaving twenty feet of required yard remaining. Mr. Bullington clarified the property has an existing sixteen foot by twenty two foot deck and that the intention is to now screen a twelve foot by ten foot portion of this deck.

Mr. Bullington asked if the property has physical characteristics that make strict adherence to the code difficult. Mr. Haze explained that the position of the house and the larger front yard setback makes adding onto the back of the house difficult. Mr. Bullington asked if it were possible to add an addition to the front of the house. Mr. Haze confirmed it was possible. Mr. Butts asked about the orientation of the lot and whether its shape could be considered. Mr. Haze described the lot’s position on the curved part of the road but stated he believes the house is square with the back of the lot line. Mr. Wetzel commented on the significant size of the existing deck. He stressed the position of the homes on the lot creates a physical challenge and reduces the ability to use the back yard. He emphasized the deck and orientation of the home existed when the property was purchased. Mr. Kearney thanked the petitioner for attempting to reduce the size of the screened in porch and asked if there were any special circumstances requiring a screened in porch rather than an open air porch. Ms. McGuire stated the intention of the screened porch is to reduce the impacts of bugs.

Chairman Briggs asked for the city staff report. Ms. Simpson stated the presentation she has prepared is on the earlier petition. Mr. Bullington asked if staff is prepared to give a report on the amended petition or if staff needs an opportunity to respond to the changes. Mr. Kearney asked if staff is would be changing their recommendation based on the new petition. Mr. Dabareiner clarified that because the amended petition is a reduction, staff is prepared to give a report and that a factor in staff’s analysis may change.

Ms. Simpson stated staff recommended against the original petition. She explained that although the amended petition meets one of the factors for a variance, due to the fact that all five factors were not met, staff would be recommending against the amended variance request. She referenced Division 2 of the zoning ordinance and explained the purpose behind the city’s zoning regulations. Ms. Simpson shared photos of the neighborhood and explained this subdivision was planned to have a sixty foot front yard setback—twice the size of the

setback required by the city code. An aerial photo of the neighborhood was shared. Mr. Dabareiner pointed out that this case the garage is built up to the setback line and the house is set back. He explained the house was built this way and the buyer was aware of it when acquiring the property. Chairman Briggs stated that the garage meets the average yard setback of the neighborhood. Mr. Dabareiner confirmed that other homes in the neighborhood have different designs and this particular design was provided for the property. He explained that when a buyer acquires a home the buyer is responsible for understanding the design and the potential restrictions. Ms. Simpson clarified that this neighborhood was built under the current zoning ordinance with a required setback and the block average consideration applies to properties built prior to the adoption of the initial zoning ordinance in 1960. She provided a zoning map and explained the dimensions of the property. Ms. Simpson noted this property exceeds the minimum area and width requirements for the R-1C zoning district as required by the zoning ordinance. She provided the original site plan and described the request for the variance emphasizing permitted obstructions in rear yards. Ms. Simpson explained open air porches are allowed in rear yards without a variance but enclosing the porch with a screen is not a permitted obstruction. She highlighted the purpose behind the rear yard separations for maintaining fifty feet of green space between homes and controlling density in the area.

Ms. Simpson explained the standards required for a variance. She stated staff was unable to identify a physical hardship on this property. She stated that, although, after reducing the size of the structure a variance could be considered to be the minimum action necessary, staff finds the other standards are still unmet and therefore cannot support the request variance.

Chairman Briggs asked about the size of the neighboring yards and whether they would be able to build a porch without a variance. Ms. Simpson stated the need to measure the other yards but that ultimately all property owners would be subject to the same twenty five foot setback requirement of the zoning ordinance. Chairman Briggs noted he feels the shape of the lot reduces the petitioner's yard. Mr. Simeone asked staff to provide explanation about the impacts reducing green space might have on public safety. Ms. Simpson explained the rear yard requirements contribute to the quality of life for residents by providing permeable surfaces to assist with water run-off and detention, and keeping homes from being built too close together which can also impact what neighbors are allowed to do with their homes. Mr. Butts asked if the amended petition would still provide the fifty foot separation contemplated in the zoning ordinance for this district. Ms. Simpson explained the separation is measured from the structure to the rear yard line; the variance would decrease that separation.

Mr. Butts asked for clarification on the difference between screening in the porch and an open porch. Mr. Dabareiner explained it is common for zoning ordinances to allow certain types of encroachments into the rear yard and at the time this code was created the distinction was important to the city. He explained that addition of walls and a roof increases to the mass of the structure. He noted controlling the massing is intended to protect view sheds and encourage light and air flow and is found in original zoning ordinances. Mr. Bullington clarified that evidence has not been provided, by the petitioner nor staff, showing that any other properties are granted special privilege over the petitioner. He asked if other options for expanding in the front would be possible. Ms. Simpson confirmed. Mr. Bullington clarified that the provision in the city code regarding the average yard setback does not apply to this property since it was built after the adoption of the code in 1960. Ms. Simpson confirmed that it does not apply.

Mr. Kearney asks if the curve in the street affects the placement of the house on the property. Ms. Simpson explained that staff does not feel the curve in the street does impacts the way the home is positioned. Mr. Dabareiner clarified that this house is situated in the straight section between two reverse curves of the road and is very close to rectangular. He explained if there was an impact it is maybe a couple feet, not significant enough to create this variance. Mr. Butts asked if the variance would allow the petitioner to then build on the footprint in the future or if they would be limited to only screening in the structure. Mr. Dabareiner explained that it would give them permission to expand it as a fully enclosed room and that we cannot put conditions on the variance. Ms. Simpson explained the variance stays with the property and not the property owner.

Mr. Kearney asked the petitioner's intentions to enclose the structure. Mr. Wetzel thanked the Zoning Board of Appeals for taking their roles seriously and asking clear questions. Mr. Wetzel stated he did not believe someone would be able to enclose the porch in the future. Mr. Wetzel stated he feels this is an unusual circumstance and the petitioner has made an effort to reduce the size of the variation. Mr. Wetzel explained there is no opposition from the neighbors and encouraged the Board to recognize the peculiar circumstances of the property.

There was brief discussion regarding the need for a motion to vote on the amended petition. It was determined that the amendment to the petition was made by the petitioner and a formal motion was not necessary. Mr. Kearney stated his understanding was that a roof and floor are permitted but walls are not allowed. Mr. Kearney also asked if it is possible to add a condition to the variance. Mr. Dabareiner explained the difficulty to enforce added conditions. There was brief discussion about the size of the room and what would be considered a habitable space. Other addition possibilities were discussed. Ms. Simpson explained seven feet is a minimum width necessary to be considered a habitable space by the building code.

Mr. Wetzel reinforced that he feels this is an appropriate circumstance for a variable and that it would be a hardship to not allow the petitioner to construct the room.

The Variance request for the amended petition of a five foot variance was **denied** with the following votes recorded: Mr. Brown—no; Mr. Bullington—no; Mr. Butts—no; Mr. Kearney—yes; Mr. Simeone—no; Chairman Briggs—yes. Chairman Briggs pointed out the petitioner has a right to appeal because the majority was less than five votes.

OTHER BUSINESS:

NEW BUSINESS:

Chairman Briggs asked for nominations for a new chair. Mr. Simeone announced he will not be reapplying to serve after his term expires in April. Mr. Butts nominated Mr. Bullington and the nomination was seconded by Mr. Brown. Mr. Kearney motioned to nominate Mr. Brown and the nomination was seconded by Mr. Butts. Both parties accepted the nomination. Mr. Bullington was elected chair with the following votes recorded: Mr. Brown—Mr. Bullington; Mr. Bullington—Mr. Bullington; Mr. Butts—Mr. Bullington; Mr. Kearney—Mr. Brown; Mr. Simeone—abstain; Chairman Briggs—Mr. Bullington.

ADJOURNMENT:

The meeting was adjourned at 5:13 PM.

Respectfully submitted
Katie Simpson, City Planner