



MINUTES
BOARD OF ADJUSTMENT
CITY OF CREVE COEUR

January 19, 2012

A regular meeting of the Board of Adjustment of the City of Creve Coeur, Missouri was called to order by Chair Earl Schenberg at the Creve Coeur Government Center, 300 North New Ballas Road, at 7:00 p.m. on Thursday, January 19, 2012. The roll was called; Mr. Jaffe, Mr. Balk, Mr. Levy, and Ms. O'Brien were also in attendance.

Mr. Balk was in attendance for Mr. John Becker who was absent.

Mr. Jaffe made a motion to approve the minutes of October 20, 2011. Mr. Levy seconded the motion, which unanimously carried.

Chair Schenberg outlined the procedures of the Board of Adjustment, stating that four affirmative votes are required for the granting of a variance.

City Attorney, Mr. Lumley, clarified that if the Board of Adjustment voted to approve the continuation of the first item of "New Business," it would not need to be advertised in the Countian again.

New Business

A. CONTINUANCE REQUESTED

Regarding property at 556 Oakhaven Lane:

A request for a variance from the required 45-foot front-yard setback in the "B" Single Family Residential zoning district to allow for the construction of a new house with a 35-foot front-yard setback.

Applicant/Agent: Virginia Harris
556 Oakhaven Lane
Creve Coeur, MO 63141

Ms. O'Brien motioned to continue the application for 556 Oakhaven Lane to the April 19, 2012 meeting. Mr. Jaffe seconded the motion with the resultant as follows:

Chair Schenberg – aye Mr. Jaffe – aye Mr. Levy – aye
Mr. Balk – aye Ms. O'Brien – aye

B. Regarding property at 868 Larkin Avenue:

A request for a variance from the required 45-foot front-yard setback in the "C" Single Family Residential zoning district to allow for the new deck on the front of the existing home that has a legally pre-existing non-conforming front-yard setback of 30.61 feet, thereby reducing the setback to approximately 19 feet.

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Applicant:	Qi Bo Ye	Applicant's	Hong T. Ye
	10820 Olive Blvd	Representative:	12074 Ladue Road
	Creve Coeur, MO 63141		Creve Coeur, MO 63141

Reporter Deborah McLaughlin swore in all parties who wished to address the Board.

Attorney Carl Lumley offered the following exhibits into the record on behalf of the City:

1. Creve Coeur Charter.
2. Code of Ordinances of the City of Creve Coeur.
3. The Creve Coeur Comprehensive Plan.
4. Staff's report to the Board, with The Board of Adjustment application and all attachments thereto.
5. A collective exhibit of materials received from the applicant, if any.
6. A collective exhibit of materials offered by the opposition, if any.
7. All communications and letters received by the City to this point regarding the application.

Mr. Will Sites, representing Ms. Ye due to a language barrier, 222 North Clark Street, Sullivan, MO 63080, gave some background on the property. Mr. Sites explained how the contractor hired to build the deck told Ms. Ye he would do the work and did the work without completing the job. The contractor is now nowhere to be found. Ms. Ye feels the deck is not intruding on neighbors or the neighborhood. She is asking the variance be granted because she has spent a lot of money on the house. Ms. Ye believes the contractor took advantage of her because of the language barrier. Ms. Ye also wants to keep the deck because she thinks it provides protection to her small children from running into the streets. Mr. Sites turned in a petition signed by neighbors in favor of the deck.

Ms. O'Brien asked why the deck was not put on the side of the house, to which the homeowners representative, Mr. Sites, replied there was no door or entry. Ms. O'Brien wanted to know if the option was explored to put the deck on the side of the house. Ms. Ye responded that it was not an option for her because it is too high up for her kids and there is no entry way on the side. Ms. O'Brien stated that there is a statute the Board must follow and wanted to know if the applicant and her representative had looked at those and determined if they met any of the statutes. Ms. Ye replied that she had not looked over any statute because the contractor told her he would obtain all permits and that everything was fine. Ms. Ye also stated the contractor told her everything was going ok up until the last inspection the City preformed, and at that time, the contractor said there might be some code violation.

Chair Schenberg asked Mr. Sites if he was aware that the original application said the deck was being replaced, not being built from scratch. Mr. Sites said after the fact he saw that. Mr. Schenberg also asked if Mr. Sites was aware that the first set of piers was approved and a second set that was not approved and a stop work order was issued, yet the contractor continued to finish the work. Mr. Sites said Ms. Ye was not aware of that and the contractor was leading her to believe everything was fine and everything was passing. After Ms. Ye paid the contractor he left town and has not been able to be found since then. Mr. Sites has tried to locate the contractor in Robertsville, Missouri and his house was burnt down.

Mr. Jaffe asked what the contractor meant when he told her everything was "good to go". Ms. Ye said he said that after he scheduled the final inspection, which was to happen the next day, that everything passed and when he called her to let her know about the final inspection that he also informed her that the deck might be too close to the street. Mr. Jaffe also asked if there was foundation around the deck. Mr. Sites said there was a retaining wall that comes out almost even to the deck.

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Comments and questions from the audience. Ms. Lynn Berry, 626 Graeser Road, spoke in favor of the variance. Ms. Berry sees the deck when she is walking the neighborhood and thinks it is much improved from the previous owner. Ms. Judy Wassermann, 272 Princetowne Drive, spoke in favor of the variance as well. Mr. Jaffe asked Ms. Wassermann if she thought it would be fair to grant the variance and set a precedent for this kind of variance in the City. Ms. Wassermann replied she thought every case should be handled on a case-by-case basis. Mr. Henry Klaus, 626 Graeser Road, wanted to point out the structure is not an occupied structure nor is it enclosed, but that it is only being used as an egress up to the front door. Mr. Klaus also asked if the deck was built over the building line for decks. Chair Schenberg replied that there is no argument to what Mr. Klaus is stating, however the Board does not want to set a precedent in the city and, yes, the encroachment is on the front setback.

Mr. Balk asked Staff, if the applicants had built the deck on the Olive side of the house, would there be any encroachment. Chair Schenberg stated that there is no room on the north [Olive] side of the house, just the south side.

Ms. Kelly presented on behalf of the City. Ms. Kelly stated the variance request arose from the pre-existing non-conforming lot size and front setback where the front and rear setbacks overlap and any modification to the structure would require a variance. While the City appreciates the work that the applicant has put into the home, the City has never approved a variance that effectively reduces the setback by such a large degree as this application. The applicant has not submitted any evidence to demonstrate the requested variance is the least necessary to restore equity to this property compared to similarly situated properties throughout the city. The stated purpose for the deck on the front of the home is that the slope of the yard and traffic noise from Olive Boulevard provides no other way to enjoy the front of the home. However, there are other options available that would not necessarily require a variance such as, an at-grade patio and the yard to the south of the property provides further screening from Olive Boulevard against the noise and traffic. The deck on the front of the home is a reflection of the applicant's personal choice, rather than the unique characteristics of the non-conforming lot. The proposed setback could adversely affect the adjacent property owners and residents by creating additional non-conformities on the property that could cause parking to back-up onto the already non-standard street. Granting the setback variance violates the general spirit and intent of Chapter 405 of the Code of Ordinances by effecting the public safety, and the convenience of adjoining and nearby properties, and it could impact the relationship between the buildings in this neighborhood and the street.

Ms. O'Brien asked if the section in front of the front door was out of compliance as well, to which Ms. Kelly replied that any at-grade patio could be permitted, therefore it would be allowed, because it does not have an overhang. Mr. Levy wanted to know if they put a small 3-foot catwalk going to the side of the house, putting more of the deck on the side, would that be allowable. Ms. Kelly stated that would require a variance as well, because the Larkin Avenue setback and rear setback of the property overlap.

Mr. Langdon addressed the Board in regards to the porch that existed before the deck was built. He referenced the visual photo. Mr. Langdon stated the new deck was sitting on the old concrete porch and that any on-grade patio surface is not subject to setback requirements. However, once you create a structure that has open air space underneath it and anything that comes off the house towards the street, due to the front of the house already being non-conforming, you need a variance.

Mr. Jaffe asked if the Board has a right to recommend that a 2-foot or 3-foot walk-way be placed along the site where the deck currently sits. Would that be within the regulations of the Board? Mr. Lumley responded the Board can deny the variance to the extent requested, but grant it to the extent of 3 or 4 feet, and the applicant can come up with a design they would like within the variance the Board has granted. Mr. Lumley did want to point out, if the variance was hypothetically

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granted to remain as is, staff is saying that the structure has to be reinforced and that will require another variance about the parking, which has not even been requested. Mr. Lumley asked that, if the Board was thinking of going in that direction, that the applicant is asked to request it and deal with the entire issue and not make the applicant come back for another hearing. Mr. Balk indicated that if the deck was reinforced without a new column, but in some other way, there is not a parking problem. Mr. Lumley stated that was correct, but the point is that if the Board is inclined to grant the variance as requested he would ask that a decision would be made about the parking variance now so the applicant knows how to design it, one way or the other, and they do not have to come before the Board again.

Mr. Balk asked, if the patio is allowed to encroach, can they put a fence around it? Ms. Kelly replied a fence would require approval by the Planning and Zoning Commission.

Chair Schenberg addressed the Board in regards to accepting or denying the variance request.

Mr. Sites spoke to the Board about the structural issues with the deck, as it stands. Those issues, Mr. Sites stated, would be corrected to the satisfaction of the city and to the Code, if the variance is granted. Mr. Levy replied that the problem is, if the structural changes required adding another post, then the parking is an issue and as Mr. Lumley stated, would require an additional variance. Mr. Sites wanted to know if it was not possible to have two car parking with the situation. Mr. Levy replied, if they could not get one car in underneath the structure then you could not have two car parking. Mr. Langdon interjected the alternative solution would be to double the width of the driveway.

Mr. Balk wanted to know how the applicant got the building permit issued. Mr. Sites stated that was one of the problems the applicant was having a hard time understanding. Mr. Sites stated that the contractor was showing the applicant paperwork saying inspections were being approved and everything was moving along smooth, until the final day when he told her she needed to talk to people at the City because there may be a problem with the deck structure. Mr. Langdon addressed the Board and explained what was submitted by the applicant and contractor. The original drawings do not represent what was actually built. The comment was made to the Plan Reviewer that the deck was replacing an existing deck. The Building department took the contractor's word and believed the deck was simply a replacement. As shown, that was not the case, and there was no connection between the front door and the side of the house, it was just a concrete patio. Mr. Langdon also stated the construction began, of what was believed to be a replacement deck, and there are inspections that show some pier locations being approved, only the ones nearest to the house, but once the pier locations began moving out from the house, the inspector had concerns about how they were being done and where they were being placed. Mr. Langdon stated the inspection request sheets are clearly marked as disapproved and many comments explaining why the inspections were disapproved. Mr. Langdon said the inspector, Mr. Bolls, investigated if there was ever an existing deck before the start of the current structure, and upon investigation discovered there was not, and that is when the error in assumption was found, but also the lie was uncovered by the contractor when he responded to the Plan Reviewer back in August. While it would be ideal to inspect sites before we issue permits, it is not feasible for the Building Division to do so, and we cannot assume that every statement given to the City is a lie. Mr. Balk asked, if the deck was bigger than what was on the plans, why did the contractor not stop work. Mr. Langdon said the inspector did in fact tell the contractor to stop the work, but the contractor kept going.

Mr. Lumley pointed out the structure was an optional addition to the house, a luxury, it was not a necessity.

Chair Schenberg then asked to make some closing thoughts and bring the meeting to a close. Mr. Jaffe then asked, if the Board denied the application, could the applicant come back with an alternative plan at any time they wanted. Mr. Lumley replied, yes, they can come back whenever

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they want. Ms. O'Brien wanted to know, if there was something presented to the Board with a lesser variance, would they be responsible for paying another filing fee. Mr. Lumley stated the Board can continue this application and invite the applicant to consider amending their application based on everything they have heard, and it would be the applicant's choice to do so or not. However, if the Board wants to give them a certain timeframe to think that over, it is the Board's decision. Chair Schenberg asked the applicant if they would like to continue their hearing to a later date, so they have time to revise their plans and bring back some different options. This way, the applicant will not be required to file a new filing fee. Mr. Sites stated the applicant would like to continue the hearing for two months.

Chair Schenberg moved to continue the application of Qi Bo Ye and Hong T. Ye to the March 15, 2012 meeting date. The motion was seconded by Mr. Jaffe and unanimously carried.

The Board also approved the calendar for the 2012 meeting schedule. Vice-Chair O'Brien motioned for approval, Chair Schenberg seconded and unanimously carried.

There being no further business to come before the Board, upon motion being made and duly seconded, Chair Schenberg declared the meeting of the Board of Adjustment adjourned at 8:15 p.m.

Attest:


Earl Schenberg, Chairman


Julie Lowery, Recording Secretary