

MINUTES
BOARD OF ADJUSTMENT
CITY OF CREVE COEUR
DECEMBER 18, 2008

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 7:12 p.m. on Thursday, December 18, 2008.

Upon a request for Roll Call, the following members responded:

Mr. Earl Schenberg, Chair
Mr. Ted Brown, Vice Chair
Ms. Rhonda O'Brien
Mr. Roger Levy
Mr. Richard Davie, Alternate

Mr. Brown made a motion, seconded by Mr. Levy, to approve the minutes of a regular meeting of November 20, 2008. With no corrections being heard, the minutes were approved.

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

The Affidavit of Publication was read by Chair Schenberg and marked as an exhibit.

Affidavit of Publication

1. To consider the appeal of David Nafar regarding property at 7 Sherwyn Lane, to allow a front yard setback of forty feet (40') where fifty feet (50') is the minimum required and to allow a side setback of eleven feet (11') where fifteen feet (15') is the minimum required in the "A" Single-family Residential Zoning District per Section 26-30.5(c), *Yard and Setback Requirements*, of the City of Creve Coeur Zoning Ordinance. The applicant is requesting the variances to allow several additions to the existing house.

Chair Schenberg requested all parties who wished to address the Board be sworn in. Whereupon, all parties to be heard were sworn in by Court Reporter Deborah McLaughlin.

Mr. Nafar distributed copies of his power point and presented a brief history of his house, which was built in 1955 and renovated in 1999, after being vacant for eight months. He noted that five new homes were built in his subdivision and other houses that had built on additions. Mr. Nafar's lot is one acre but a creek runs through his property, cutting his lot into two pieces. He explained the existing layout and pointed out the only location for the desired addition. He said he also wants to enlarge his garage to make room for two cars. Mr. Nafar presented signatures from his neighbors who favored the requested variance.

Ms. Judy Grand, 9 Sherwyn, spoke in opposition of the variance. She said that she was sympathetic, but expressed the following concerns: 1) does not know how the house will look, 2) will it fit in with quality of the new homes, 3) no elevations, renderings or building materials were presented. Ms. Grand felt it might be a good time to approach MSD with a request to cover the creek so Mr. Nafar can have a full, usable acre. She expressed concern that granting the variance would set a precedent for future homes that would exceed setback lines and be built larger than they need to be. A brief discussion followed.

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Mr. Jeff Bogard, 14 Sherwyn Lane, said he bought his home in 2001 and tore it down and built the home he now lives in. He also has a spec home nearing completion on Lot #12. Mr. Bogard stated that the home at #7 Sherwyn has always been an eyesore since he has lived in the neighborhood. He said the notion of David improving this homesite is very appealing to him but was concerned about what the exterior will look like. Mr. Nafar stated he does not want to build an eyesore or create something undesirable. A brief discussion followed.

Chair Schenberg asked Ms. Leppert, with Curtis, Heinz, Garrett & O'Keefe, P.C., if the Board members have the authority to place their judgment based on appearances. Ms. Leppert responded by saying "No, that the Board members are expected to look at the footprint...."

Mr. Langdon, Planning Director, displayed pictures showing the creek edge and the corner of the house very close together, which he feels does constitute a unique condition in this particular neighborhood and very unusual, if not truly unique, even within the City of Creve Coeur. Mr. Langdon said he thinks this property falls within the realm that variances were intended to cover—properties that just don't work because of something the property owner had no say in and can do nothing to correct. He alluded to other creek issues in the City and the fact that MSD has said there is no money for this kind of work as long as there is no eminent health threat. He presented another picture looking down the neighbors drive which showed substantial separation between the two. Mr. Langdon stated the question is "Does the design of the house, as unspecified as it may be, rise to the level of causing this variance to stand or fall?" He stated that the City of Creve Coeur does not have design review over houses in the City, that the home owner only needs to pass Building Code review after receiving approval of zoning.

Mr. Langdon said he feels the front variance will have a larger impact on the neighborhood, with the house appearing to be much closer to the street than most of the others, while bringing it more in line with the character of the other houses on the street. He pointed out that the applicant is faced with the additional dilemma of needing a variance for any structural alterations to the house even if this request is denied because the house already has legally pre-existing, non-conforming setbacks, and the Zoning Code will not allow alterations in such instances. Therefore, if the Board believes that some alteration, such as adding a second floor, is warranted, but the reduced setbacks are not, the Board should amend the request to allow the alterations within the pre-existing setbacks.

The City submitted the following exhibits into the record:

1. The Creve Coeur Comprehensive Plan.
2. The Creve Coeur Zoning Code.
3. The Board of Adjustment application and all items submitted therewith..
4. Mr. Langdon's report to the Board dated December 18, 2008, including plans submitted with the application.
5. Mr. Nafar's 30 page document outlining the powerpoint presentation.

Hearing no further questions, Chair Schenberg made a motion that the Creve Coeur Board of Adjustment approve the application of Mr. David Nafar at #7 Sherwyn Lane, to approve the reduction of the front setback to 40 feet where 50 feet is the minimum required, the reduction of the side yard setback to 11 feet where 15 feet is the minimum required, in the "A" Single Family Zoning District as discussed in the Staff Memorandum dated December 18, 2008 and represented in the applicants material attached thereto. The variance requested, after having found from evidence presented, arises from all the following circumstances:

- (a) The variance requested arises from a condition which is unique to the property in question and which is not ordinarily found in the same zoning district;
- (b) The variance requested is because of a unique hardship not created by the applicant or the owner of the property;
- (c) The granting of the variance shall not adversely affect adjacent property owners or residents;

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- (d) The strict application of the provisions of the Zoning Ordinance, from which a variance is requested, will cause severe practical difficulty or extreme hardship for the property owner represented in the application;
- (e) The variance desired will not adversely affect the public health, safety, order, convenience, or general welfare of the community, and
- (f) Granting the variance desired will not violate the general spirit and intent of this Chapter.

In addition, per Section 26-118.5, an applicant for an area variance or other non-use variances must meet the following criteria:

- (a) By reason of exceptional narrowness, shallowness or shape of the specific piece of property or whereby reason of exceptional topographical conditions or other extraordinary or exceptional circumstances that the strict application of the terms of the zoning regulations actually create a hardship to the property in a manner dissimilar to that of other similarly situated property in the zoning district in which it is located,
- (b) Granting a variance would not result in the diversion of additional stormwater that would adversely affect adjacent property.

Ms. O'Brien seconded the motion, with the resultant vote as follow, to-wit:

Mr. Davie...aye Ms. O'Brien....aye Mr. Brown....aye
Mr. Levy...aye Chair....aye

Chair Schenberg announced the variance is granted.

Chair Schenberg made a motion, seconded by Mr. Davie, that the Board instruct the Planning Staff to prepare Findings of Fact and Conclusion of Law consistent with the opinion of the Board in this matter for execution by the Chairman of this Board and further that this Board shall instruct the Staff to mail the findings to the Applicant and all interested parties immediately upon execution by the Chairman. The motion unanimously passed.

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 7:55 p.m.

Attest

Earl Schenberg, Chairman

Pat Rosenblatt, Secretary