

The Board of Adjustments met Monday, September 18, 2023, at 5:00 PM at the City Municipal Complex, 161 N. Section Street in the Council Chambers.

Present: Anil Vira, Chairman; Cathy Slagle, Vice-Chair; Donna Cook; Frank Lamia; Ryan Baker; Hunter Simmons, Planning and Zoning Director; and Cindy Beaudreau, Planning Clerk.

Chairman Vira called the meeting to order at 5:02 PM.

**Approval of Minutes**

Ryan Baker made a motion to approve the minutes from the July 17, 2023, meeting.

Cathy Slagle seconded the motion and the motion carried with the following vote:

Aye: Chairman Vira, Cathy Slagle, Donna Cook; Frank Lamia, and Ryan Baker.

Nay: None.

**BOA 23.08** Public hearing to consider the request of the Owners, Kenneth and Kathleen Still, for a 9.2' variance to the rear setback requirement for property zoned in the Rock Creek PUD. The property is approximately 0.48 acres and is located at 139 North Drive. **PPIN#: 206127**

Hunter Simmons, Planning and Zoning Director, presented the request for a 9.2' variance to the rear setback requirement for property located at 139 North Drive. Mr. Simmons shared the zoning and aerial maps and the PUD plat. Mr. Simmons stated that this property came before the Board of Adjustments in 2010 for the exact same request and was denied due to no hardship being proven. There is an uncovered deck in the rear setback existing in the footprint which is allowed. It appears that sometime between 2016 and 2021, a roof was added to the deck. Between 2010 and 2016 an open-air pergola was installed which is not in violation. All of this was completed without a permit. Now the new owners began replacing the existing roof without a permit and a stop work order was issued which triggered a review by Planning and Zoning. The current survey provided by the applicant showed the proposed new construction outside of the required building setbacks.

**Recommendation:**

Staff recommends denial of Case BOA 23.08.

Mr. Kenneth Still, 139 North Drive, explained that they purchased the house in February 2022, and when they purchased it, there was a porch with a roof on it. The roof was leaking and there is also a drainage problem in the backyard. He added French drains for drainage and designed the roof to drain into the French drains. He spoke to the HOA who were in support of his plan. Another reason he wants to replace the roof is for privacy and he would like to add a small, uncovered deck. The neighbor's house is above them and looks right onto the porch. He stated that the HOA and two builders told him that he would not need a permit. He would like to replace the roof due to the weather and privacy. Another issue is there is no cover over the entrance way into the house. He would not be able to have a cover over his entrance way unless he was able to extend the rear setback. He discussed non-conforming versus conforming lot and the setbacks.

Ms. Kathleen Stills explained they moved here to be near her sister and bought their dream house. With Alabama being a non-disclosure state, they were hit with a lot of surprises after the purchase, which has impacted their retirement savings. As they were fixing the drainage problem, she hoped to fix the roof at the same time. These improvements would increase the property value along with the neighbors having something much nicer to look at. The existing roof was moldy, mildewed and leaked everywhere. She explained the big financial commitment they made in May 2023 to start the whole project to beautify their property. She stated that their physical and emotional health is being affected. They did not know about a 35' setback and did not know that the roof was illegal. They were told if they replaced a roof, no permit was needed. She listed many physical ailments that they have had to deal with. The HOA board and their neighbors have told them how much better everything looks. She asked the Board of Adjustments to consider the extreme emotional and financial burden that they are experiencing and do the right thing that is beneficial for everyone.

Ryan Baker stated that he drove by the property and that there is already a roof there and asked if they were just replacing the shingles. Mr. Still replied that they had begun putting the new roof on and the stop work order was issued. Mrs. Still stated that the builder did not think they needed a permit because it was an existing structure. Mr. Still listed all the improvements that they have already made to the property.

Cathy Slagle stated that when this case was before the Board of Adjustments in 2010, a conversation was had about putting the structure on the northwest side of the house where the setback lines are not as deep. Mr. Stills stated that he could not do that because that is where the drainage is and the water goes down the back. He also stated that the living room windows are in that location. Mrs. Stills stated that they only have a front door, a back door, and a garage. Without the roof over the porch, there is not a cover over the back door. Ms. Slagle stated that, looking at the plat, there is room if it can be done per the building setback that is 7.5' rather than the side with 35'. Ms. Slagle asked who, at the HOA, approved this project. Mr. Stills stated that David Kaplan, on the Architectural Committee stated that it would look nice. Mr. Stills gave the information to Mr. Kaplan who gave it to the HOA who approved it.

Frank Lamia reminded the Stills that it was the HOA that approved it, not the City. The HOA does not review a project for zoning or building permits, etc. Mr. Lamia suggested building a trellis for partial privacy. Mr. Simmons explained that the evolution of the open deck, then the pergola with a trellis and then a cloth stuck to the top of the pergola, then a flat roof that was then significantly covered in 2016. Mr. Simmons explained that the Planning Department is always available to discuss projects with the public and this is a buyer beware state. Mrs. Still asked how bad it could be to just allow that little portion so that they could have a roof over their porch and back door. Mr. Simmons stated that sometimes these decisions appear heartless, but precedents are set and when one person is approved, then everyone expects to be approved. Mr. Simmons continued that there is very clear guidance on what to give a variance for and they are given sparingly. Legal counsel has always stated that a variance is not granted for financial hardship, it cannot be about what is built even if it was built by the previous owner. It is always about the size, shape, and topography and if there is another solution. Mr. Simmons stated that Ms. Slagle shared an alternate solution in 2010 even though there would be challenges to get there. Anil Vira asked if a retractable awning would be acceptable. Mr. Simmons and the Stills reviewed the plat to see where the doors were. Mr. Simmons stated that a 2' stoop is allowed which is a covered area and that he is not

comfortable with a removable awning, but there is room in the set back to accommodate some shade. Mr. Baker asked with a 2' stoop, would that accommodate approximately 4' of covered area over the door? Mr. Stills replied, no, the setback only allows for approximately 10". Mr. Baker asked if they could build an accessory structure connected by a breezeway. Mr. Simmons stated that it might require the existing deck to be removed completely, but there is potential for that idea. Mr. Baker explained that it makes it difficult for the Board of Adjustments when they did not go through the proper channels. Mr. Stills asked for clarification. He believed that a corner lot had a 20' setback. Mr. Simmons replied that because this is a PUD, which is site plan driven, the developer proposes setbacks that may be unique to that PUD. That is what controls development on that land. The developer wanted the 35' setback with an allowance for 7.5' setback for corner lots. This PUD Ordinance was approved by the City Council and the setbacks cannot vary. Ms. Stills asked if there was any recourse. Mr. Simmons stated that the appeal process would require going to court. Mr. Stills asked if the portion over the setback must be removed. Mr. Simmons stated that the Board of Adjustments must vote first, but that staff will work with the Stills to propose different options. Donna Cook asked if any of the neighbors had complained about the work. Mr. Simmons replied that staff had not received any letters in favor or in opposition. Mr. Stills stated that the neighbors behind them are in favor. Mr. Simmons did state that their construction is an improvement over what was previously there. It just happens that there are two illegal structures on the property. Ms. Cook asked if the drainage flowed to the front of the lot. Mr. Stills stated that the French drains flow to the street level in front. Ms. Slagle asked if it drained to North Drive or Sandy Shoal Loop. Mr. Stills stated it drains to Sandy Shoal Loop.

Chairman Vira opened the public hearing at 5:36pm. Having no one present to speak, the public hearing was closed at 5:36pm.

Mr. Baker asked Ms. Slagle if the significant drop in grade was considered a hardship the last time this case was heard by the Board of Adjustments. Ms. Slagle replied that the previous Board of Adjustments felt that there may be other options. Ms. Slagle stated that they thought maybe a door could be knocked out of the living room to give the space that was needed and not infringe on the setbacks. Ms. Still stated that there is a fireplace and all windows in the space that Ms. Slagle suggested. Mr. Baker noted a door on the side that comes out of the garage and asked if that could be accessed from inside. Mr. Stills stated that you can go inside from the garage. Mr. Baker stated that there appears to be enough space to potentially cover that door to walk in and out of that door. Mr. Still stated that a garage door is not an entrance door. Mr. Baker replied that the garage door is another door that could be covered to enter the house.

**Motion:**

Frank Lamia made a motion to deny BOA 23.08.

Cathy Slagle seconded the motion and the motion carried unanimously with the following vote:

Aye: Chairman Vira, Cathy Slagle, Donna Cook; Frank Lamia, and Ryan Baker.

Nay: None.

Mr. Stills asked for confirmation that he could still work inside the setback. Mr. Simmons stated that there will be a permit required, but the part in the yellow triangle will need to be removed and that Mr. Stills could bring his proposal to the Planning Department for review prior to submitting to the Building Department.

**Old/New Business**

Chairman Vira asked if there were any items for the next meeting. Mr. Simmons stated that there are two cases for next month. Chairman Vira asked for the date of the next meeting. Mr. Simmons replied October 16, 2023.

**Adjournment**

Cathy Slagle made a motion to adjourn.


The motion carried unanimously with the following vote:

Aye: Chairman Vira, Cathy Slagle, Donna Cook, Frank Lamia, and Ryan Baker.

Nay: None.

Adjourned at 5:41 p.m.

  
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Anil Vira, Chairman

  
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Cindy Beaudreau, Secretary