

**MINUTES OF A MEETING OF
THE BOARD OF ZONING APPEALS OF
THE CITY OF FOREST HILLS**

September 21, 2012

The Forest Hills Board of Zoning Appeals (herein also the “**Board**”) held its regular meeting on September 21, 2012 at the City’s Offices, 6300 Hillsboro Pike, Nashville, Tennessee, beginning at 8:00 a.m. Member Jim Littlejohn presided. Also present were Member Mark Banks, and Matt Foster, City Attorney. Others present are shown on the attached sign-in sheet. A copy of the Agenda is also attached to these minutes.

1. Approval of Minutes of August 17, 2012. Upon motion by Mr. Banks, which was seconded by Mr. Littlejohn, the members unanimously voted to approve the minutes of the August 17, 2012 meeting.

2. Letters of Credit. No action required.

3. 2201 Harding Place: Request for variances to permit construction of an accessory use in a side yard, to encroach on a side yard setback, and to exceed fence height limitations.

Mr. Tony Cline of Botsko Builders, and Mr. Mike Jones, representing the owners of the property, presented a request to construct a tennis court in the side yard of the property. The request required the following variances: (1) A variance from Section 4.05(a) of the Zoning Ordinance, which requires accessory uses to be constructed in rear yards; (2) A variance from Table 4.02, which imposes a 50 foot side yard setback requirement; and (3) A variance from Section 4.08(b), which imposes a height restriction on fences.

Mr. Cline and Mr. Jones stated that the property owner desired to place the tennis court in the side yard, as opposed to the rear yard as is required, in order to avoid the loss of a number of trees and to reduce grading on the site. The alternative locations in the rear yard have steeper grades which would require substantial grading. Mr. Jones presented new topographic surveys, a tree survey, and drainage plans to support the variance requests.

Mr. Littlejohn opened the floor to members of the public. Mr. Steve Matthews, resident of 4 Northumberland, spoke in objection to the variance request, stating that the proposed accessory use would be too close to his master bedroom. He noted his family’s concern about noise, light, and water runoff from the new impervious surface.

Ms. Lori Scaife, representing the property management company for Northumberland, spoke in objection to the variance request due to the noise and light to be generated by the tennis court. She also relayed the concerns of Dr. and Mrs. Gold, residents’ whose property adjoins the subject property, who remain concerned about water runoff from the additional impervious surface. The members of the Board closed the public comment and began discussing the proposal.

The members expressed concern about the permitted time of play and the noise and light to be generated by the tennis court. Mr. Littlejohn noted that the proposed location made sense from the standpoint of topography and drainage, and that the plan reduced the number of trees that would be removed as compared to other locations on the lot. Mr. Littlejohn noted, however, that the proposal materially increased the amount of impervious surface on the lot, which could have a detrimental impact on water runoff to adjacent properties. Mr. Littlejohn noted that the site plan proposed new parking spaces for six additional cars and trailers, or both.

Mr. Banks noted that by locating the accessory use in the side yard, the location would encroach on the side yard setback by approximately twenty-six (26) feet. The applicant explained that placement of the tennis court within the setback was made to reduce grading and to permit a new entrance to the carport serving the residence. Mr. Banks noted there is good landscape screening for the tennis court, and that the photometric plans are acceptable. He also noted that the proposed location is preferable because to place the tennis court on the other side of the yard would reduce the number of trees and make the residence more visible to residents on Inverary. Mr. Littlejohn agreed that the proposed location is reasonable.

Mr. Banks made a motion to approve the variance requests contingent upon (1) final drainage plans being reviewed and approved by the City Engineer, (2) the property owner agreeing to limit the use of lights on the tennis court to the same hours permitted in Northumberland, (3) final plans being revised to reduce the parking area in size such that it extends only twenty (20) feet from the driveway, and (4) the tennis court be constructed to slope to the west, not to the east, to reduce runoff. Mr. Littlejohn seconded the motion, and the members unanimously approved the requests.

4. 5323 Stanford Drive: Request for a variance to encroach on a side yard setback and for issuance of a building permit in a steep slope area.

Mr. Nick Dryden, representing the owners of the property, presented a request to construct a new residence on the property. The request required the following variances and approvals: (1) A variance from Table 4.02, which imposes a fifty (50) foot side yard setback, (2) A variance from Section 2.06(d)(iii), which prohibits construction of structures within fifty (50) feet of a Steep Slope, and (3) Approval for a building permit, as required by Section 2.06(e)(ii).

Mr. Dryden reviewed the site plan, survey, landscape plan, and geotechnical studies supporting the request. Mr. Dryden noted that the lot is exceptionally narrow and includes steep slopes. Those features are such that strict application of the zoning ordinance would result in an undue hardship on the owners of the property. Mr. Dryden noted that the property owners had shifted the house south and away from the neighbor who would be most affected.

There being no public comments, the Board commenced deliberations. Mr. Littlejohn questioned how the retaining walls serving the property would be clad. Mr. Dryden stated that the retaining walls would be clad in stucco to match the exterior of the residence. Mr. Banks inquired about the steepness of the slope to be constructed at the front of the residence and whether it would exceed 20%. Mr. Dryden stated that the slope would be steep, but that they could feather out the slope if necessary.

Mr. Littlejohn made a motion to approve the requests conditioned upon the property owner agreeing (1) to cover the retaining walls in stucco to match the exterior of the residence, (2) that new slopes be feathered out such that the slope not exceed 20%, and that (3) the fourteen inch tree in the front yard be protected during construction. Mr. Banks seconded the motion, and the Board voted unanimously to approve the requests.

5. 4506 Carlton Drive: Request for variances to permit construction of a residence that exceeds the permitted maximum building cover ratio, encroaches on side yard setbacks, and exceeds the permitted impervious surface ratio.

Mr. Alan Looney, representing the owners of the property, presented a request to construct a new residence on the property. The proposed residence would exceed various bulk standards set forth in the Zoning Ordinance. The proposed residence would require (1) a variance from the Maximum Building Cover Ratio requirement, (2) a variance from the Side Yard setback requirement, (3) and a variance from the Impervious Surface Ratio requirement, all such requirements being contained in Table 4.02.

Mr. Looney acknowledged that the lot is flat, that it is not exceptionally narrow, shallow, oddly shaped, and does not contain an extraordinary or exceptional situation or condition rendering compliance with the zoning ordinance an undue hardship on the property owner. Mr. Looney did, however, note that other houses in the area are of comparable size and that the property owners have received support from neighbors. Mr. Looney stated that the lot is 1.07 acres, and that the ordinance penalizes his clients for having a small lot. Mr. Looney further stated that if the lot were 1.25 acres, the proposed construction would be closer to compliance with the zoning ordinance, but still would require the variances.

There being no public comments, the Board commenced deliberations. Mr. Littlejohn noted that the neighborhood was beginning to look like Northumberland with houses out of proportion to the lot size. Mr. Littlejohn expressed concern that the driveway as proposed would require grading on the neighbor's property to accommodate drainage and that the driveway adds substantial impervious surface to the lot.

Mr. Banks stated that the proposed impervious surface ratio was too much and that the requests were simply too great. Mr. Banks and Mr. Littlejohn agreed that no hardship had been demonstrated to warrant a variance.

Mr. Looney stated that the proposed house is normal in size and scope for the neighborhood, but offered to consider reductions in size. Mr. Looney requested the Board grant conditional approval of the variances provided that certain thresholds for building cover, setbacks, and impervious surfaces be met. Hearing no motion from the Board to approve such a request, Mr. Looney requested a deferral of the variance request. The Board unanimously agreed to permit the applicant to defer the request.

6. 20 Inverary: Request for variances to encroach on a side yard setback, to exceed fence height restrictions, and to exceed the maximum building coverage limit.

Mr. Ben Page, representing the owners of the property, presented a request to construct an swimming pool and pool house in the rear yard of the property. The request required the following variances and approvals: (1) A variance from the Table 4.02 to permit an encroachment into the side yard setback, (2) a variance from Table 4.02 to permit an increase in

the maximum building cover, (3) a variance from Section 4.08(a)(ii) prohibiting construction of retaining walls in excess of 10 feet, and (4) a building permit for construction in a steep slope area.

Mr. Page noted that the house presently constructed on the lot conformed to previous zoning ordinance requirements, but that the 2012 amendment made portions of the proposed project non-conforming. Mr. Page also noted that the property currently utilizes 16 foot retaining walls, and that the requested retaining walls would be smaller than those that currently exist. He further noted that terraces were used to reduce the footprint of the building and that landscaping would be used to screen the structure and to cover the retaining wall in the same fashion as currently exist on the dwelling.

Mr. Page requested clarification on the city's calculation of the maximum building coverage ratio. He believed the city had erroneously calculated floor area ratio instead of building cover. Mr. Foster acknowledged the error and advised the Board that no variance was required for the maximum building cover as the plans conform to Zoning Ordinance requirements.

There being no public comments, the Board commenced deliberations. After brief discussion, Mr. Banks made a motion to approve the requests, conditioned upon the property owner using a wall treatment on the new retaining wall to match the wall treatment used on the existing retaining wall. Mr. Littlejohn seconded the motion, and the Board voted unanimously to approve the requests.

There being no further business to be discussed and no further business to come before the Board, the meeting was adjourned.

City Recorder

Jim Littlejohn