

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

September 9, 2016

The Forest Hills Board of Zoning Appeals (also referred to herein as the “Board”) held its regular monthly meeting on Friday, September 9, 2016 at the City’s Offices located at 6300 Hillsboro Pike, Nashville, TN, commencing at 8:00 a.m. Chairperson Janie Rowland presided. Also present were Vice Chairperson Jim Littlejohn; Specially Appointed Commissioner Scott Hayduk; Chad White, City Attorney; and Cynthia Despot, City Assistant Manager. Others present at the meeting are as shown on the attached sign-in sheet. A copy of the agenda for the meeting is also attached to these Minutes.

1. **Approval of the minutes of the August 12, 2016 meeting.** Mr. Littlejohn motioned to approve the minutes from the August 12, 2015 meeting. Mr. Hayduk seconded the motion, and the motion passed unanimously.

2. **5898 East Ashland Drive.** Mr. Daniel Burton seeks a variance for side setback relief in connection with the construction of a swimming pool and related improvements. The existing home is nonconforming and extends into the side yard setback. The proposed project includes the renovation/addition of a second story to the existing home. The proposed work to the existing structure does not increase the nonconforming nature of the structure’s encroachment into the side yard setback.

Mr. White introduced the application describing the current nonconforming nature of the home given the extremely difficult application of bulk standards to this corner lot. Mr. White described the proposed project. Mr. White reported staff recommendation of approval of relief sought by applicant generally, but noted staff deference to the Board with respect to the extent of the relief sought and possible abating conditions of approval that may be appropriate. Mr. White identified the Thakstons’ opposition letter and the grounds for opposition set forth therein. Mr. White also indicated that another neighbor, the Blondons, reviewed the applicant’s plans the day preceding the meeting and had no objection.

Mr. Mark Lynn, the architect for the project, provided some brief background on the proposed project and also indicated that Mr. Burton had met with the Thakstons to discuss ways to alleviate their concerns with the project. Mr. Lynn reported that the proposed new landscaping would be three times the intensity of the presently existing vegetation. Before discussing the application, Ms. Rowland asked for public comments. Ed Thakston of 2010 Priest Road spoke of his opposition to the project. Mr. Thakston’s home has a view of the rear and proposed pool site. Mr. Thakston had concerns with respect to the height of the proposed addition, the proximity of the pool to the property line, the removal of vegetation (which provides visual screening

and sound abatement between the properties), and noise that may be increased due to the removal of vegetation and the construction of an entertainment feature such as the pool.

Ms. Rowland reported that she had visited the property prior to the meeting. Ms. Rowland inquired about the size and shape of the pool and noted that the plans contained very few details concerning the proposed materials and other aspects of the proposed work. Both Ms. Rowland and Mr. Littlejohn noted that the pool appeared overly large in comparison to the overall size of the lot and small nature of the rear yard. Josh Hendrick, the applicant's landscape architect, reported that the pool was approximately 1,332 sq ft. Mr. Hendricks reported that the size of the pool maximized the available impervious surface allowed, but was still in compliance.

Mr. Littlejohn confirmed that the proposed second floor and improvements did not increase the structure's nonconforming encroachment into the side yard setback. Mr. Littlejohn repeatedly stated that the plans had very little detail and limited notes that would be typically expected so that the BZA members could thoughtfully evaluate proposed projects and determine the compatibility of same with the subject property and neighboring properties. Specifically, Mr. Littlejohn noted that the submitted materials did not include a grading plan or a drainage plan, and no basement plans enabling the Board to understand the relation between basement of the structure with the pool to be accessed therefrom. Mr. Littlejohn noted that there should be a balance between the size of an accessory structure, such as a pool, with the overall size of the lot and an area available to house the structure.

Mr. Littlejohn inquired as to how the pool was designed. Mr. Hendricks reported that the topography, existing garage access, and trees drove the design of the pool plans. Mr. Hendricks also indicated that the pool was positioned far enough from the home to prohibit jumping from the roof to the pool. Mr. Littlejohn inquired as to the reason for the size of the pool. Mr. Hendricks reported that Mr. Burton has two children and that they intend to entertain guests. Mr. Burton noted that the home had "good bones," but needed some renovation.

With all of the existing and proposed additional landscaping and vegetation, Mr. Littlejohn inquired if the applicant had considered the significant maintenance to be associated with such a pool. Mr. Burton indicated that he had made such consideration, and that a pool maintenance contractor was lined up to assist with the maintenance. Mr. Littlejohn inquired about potential blasting to install the pool. Mr. Burton indicated that if drilling and blasting were needed, he would not construct the pool. He had had experience with this process previously and has no intentions to drill and shoot on this property. Mr. Littlejohn indicated that the applicant may want to do some test pits to determine if the pool would be pursued given site conditions. Mr. Littlejohn noted that the inclusion of a surrounding properties map would be most helpful to the Board in considering the effects of the proposed project on surrounding neighbors.

Mr. Hayduk inquired about storm water and grade conditions to be affected by the work. Mr. Hendricks reported that there would be nominal changes to the storm water runoff with minimal disturbance of the present grade.

Acknowledging that some additional site investigation and potential revisions and additional plans and details, the applicant considered withdrawing the current application or requesting a deferral. Despite initially requesting a withdrawal, Mr. Burton requested, in the alternative, to have the matter deferred.

Mr. Littlejohn motioned to approve the request for deferral. Ms. Rowland seconded the motion, and the motion passed unanimously.

3. **1605 Otter Creek Road.** Mr. Joey Moi requested a building permit for demolition and new construction within the Hillside Protection Overlay District. The lot is zoned RA, but the lot is 5.89 acres. The current structure to be razed is 37' in height, and the proposed new structure would be reduced to 26' in height. The existing private drive will remain, except for the last 50 feet, which will be disturbed. Mr. White introduced the project as set forth above and reported that City's geotechnical consultant, Richard Hinkle, reviewed the report prepared by the applicant's geotechnical expert and found the plans to be acceptable. Mr. Hinkle's report noted test pits were dug and no colluvial soil was found. Mr. Hinkle did indicate that during construction, periodic observation should be made along the private drive; and if colluvial soil is found to be present and is disturbed, protective measures would need to be taken. Mr. White noted a similar construction project at 1609 Otter Creek Road, which presented similar drainage and erosion issues and past complaints from neighbors related to same. Based upon the City's past experience, Mr. White noted three conditions to be considered by the Board:

- 1) Erosion and settlement control measures need to be of the highest quality and consistently maintained throughout construction;
- 2) The private road must never be blocked, allowing for emergency access at all times; and
- 3) The private drive must be in the same or better condition following the completion of construction.

Mr. White noted that a neighbor, Ms. Gina Guglielmi, submitted a letter in opposition. Her objections focused on tree removal, erosion, construction debris, and construction traffic speeds and use of the private drive.

Mr. Tim Milton, the project's designer spoke about the details of the project. Specifically, the emphasis on the screening of the home and the reduced height reported as improvements to be made on the existing structure.

The Board opened the meeting to public comments. Ms. Beth Huff, a resident at the bottom of the hill reiterated that concerns identified in Ms. Guglielmi's letter. Ms. Huff also spoke about the families that walk in the area and the possibility of requiring warning signs during construction. Ms. Huff required about the removal of trees, and Mr. Milton reported that there is no intention to remove more trees than necessary. Ms. Huff stated that she was pleased to hear about the reduced height of the structure and the intention to retain trees. Finally, Ms. Huff inquired about private road ownership and taxes concerning same. The Board advised Ms. Huff that those matters would need to be addressed in an alternative forum.

Ms. Lisa Harrison, who lives on Robert E. Lee Drive, voiced concerns with respect to her downhill view of the structure above, as well as tree removal affecting same. Ms. Harrison also reported she was pleased with the reduced height of the proposed new structure.

Mr. Jacob Radford is the adjacent neighbor on the garage side of the subject property. He noted the possibility that the current turnaround drive may encroach upon his property. The proposed new plan would remove this encroachment, if same exists. Mr. Radford also echoed concerns related to erosion (noting the 2010 mudslide on the subject property) and the use and maintenance of the private drive.

The owner of 5323 General Forest Court stated that while he had had concerns as a downhill neighbor, upon hearing the plans and comments made during the hearing, he was comfortable with the proposed plan and the BZA's review and decision to be made.

Discussion was held among the Board throughout the public comments and responses by Mr. Milton to the concerns and inquiries raised. Ms. Rowland noted that the reduction in height of the structure was a positive, and Mr. Littlejohn noted that the minimal amount of disturbance at the site was also positive. Mr. Littlejohn noted that the geotechnical consultants, both for the applicant and the City, were capable and respected professionals. Mr. Littlejohn indicated that since the reports by these professionals note some potential yellow flags, he would like to see some additional language from the applicant's expert with respect to the stability of the slope and adequacy of proposed notes and requirements related to the work to be performed as proposed.

Mr. Littlejohn motioned to approve the application with the following conditions:

- 1) Applicant's engineer is to submit additional opinion concerning the stability of the slope and the adequacy of the notes and requirements in connection with same;
- 2) A plan be submitted related to construction staging and material storage on site during construction; and if same requires additional grading, that same be reflected in the plans for the project;

- 3) A tree clearing plan be submitted to reflect what trees are to be removed;
- 4) Caution signs be posted during construction;
- 5) The addition of some buffer landscaping along the property line on the garage side of the site;
- 6) A pre-construction survey be performed with respect to the private drive so that pre and post construction conditions may be compared enabling a determination as to whether remedial work is required to correct worsening conditions caused by construction and related traffic;
- 7) Erosion control measures be of the highest quality and consistently maintained throughout construction; and
- 8) The private drive shall not be blocked during construction so that same may always be accessible in the event of emergencies.

Mr. Hayduk seconded the motion with the conditions, and the motion passed unanimously.

4. **Adjournment.** The meeting was adjourned.