

Minutes of the Board of Adjustment and Appeals of the City of Cherry Hills Village Held on

Thursday, December 5, 2013 at 6:30 p.m.

At the Village Center

### **CALL TO ORDER**

Chair Love called the meeting to order at 6:30 p.m.

### **ROLL CALL**

Present at the meeting were the following members of the Board of Adjustment and Appeals: Chair Suzy Love, Vice Chair Jamie Seitz, Councilor Mark Griffin, Board Member Earl Hoellen, Board Member Susan Struna, and Board Member Kerry Sullivan.

Present at the meeting were the following staff members: Robert Zuccaro, Community Development Director, Deputy City Attorney Marcus McAskin, and Cesarina Dancy, Community Development Clerk.

### **APPROVAL OF MINUTES**

Board Member Hoellen made a motion, which was seconded by Board Member Struna, to accept the October 3, 2013 minutes as written.

The motion passed unanimously.

Vice Chair Seitz disclosed that he has had previous business dealings with Nest Architecture, who is the applicants' representative for the first case on the agenda this evening. The project which they collaborated on did not come to fruition, and he has no current dealings with the firm. He stated that he feels he is able to make fair and impartial decisions regarding the agenda items this evening.

Chair Love asked were there any objections to Vice Chair Seitz sitting on the Board this evening.

No objections were raised.

### **AGENDA ITEMS**

Request by Bryan Hall and Pamela Guardo Hall of 79 Sedgwick Place for Variances to Municipal Code Sections 16-6-30(c) and (e) to Allow and Addition that Encroaches 14 feet and 6 inches into the 40-Foot Side-yard Setback and Encroaches 11 Feet and 4 Inches Horizontally and 4 Feet and 8 inches Vertically into the Bulk Plane for the R-2, 1 ¼ -Acre Residential District.

Mr. Zuccaro stated that the staff is presenting a request for a variance to Municipal Code Sections 16-6-30(c) and (e) to allow an encroachment of 14 feet, 6 inches into the 40-foot side-yard setback and encroachments of 11 feet, 4 inches horizontally and 4 feet, 8 inches vertically into the bulk plane. The variances are being requested in order to build a 916 square-foot, two story addition that would include a garage, storage space, and a mudroom on the first floor and a recreation room with covered balcony on the second floor.

Board of Adjustments and Appeals Meeting

December 6, 2013

Mr. Zuccaro said that the approval criteria and staff's findings are outlined in Table 1 of the staff's memorandum. Based on these findings, staff recommends denial of the request. Mr. Zuccaro spoke on two of the criteria which staff believes are not met. First, staff found that the criteria of a hardship were not sufficiently met. While the size of the garage is small in relation to those in the neighborhood, it is not due to any unusual property conditions. Second, there are other design alternatives, which could meet requirements or reduce the degree of the variance needed, such as a detached garage. In addition, if a setback variance were to be approved, the second story of the structure could be eliminated, which would reduce the amount of encroachment into the bulk plane.

Board Member Hoellen asked for more detail on the bulk plane restrictions.

Mr. Zuccaro stated that there are two areas of bulk plane, front and rear. The bulk plane essentially provides that a structure does not reach the maximum height allowance in a straight up configuration. Rather, the front bulk plane extends 21 feet vertically then at a 40 degree angle to the center of the structure until the maximum height of 35 feet is reached. The rear bulk plane extends 12 ½ feet vertically then at a 40 degree angle. Anything that exceeds these restrictions is considered an encroachment.

Board Member Struna asked if the swimming pool was allowed to be closer to the setbacks.

Mr. Zuccaro said that a pool and pool decking is considered as an accessory structure, and therefore can be located 25 feet from the side and rear setbacks. Homeowners are allowed 3 accessory structures in this district; the pool would be considered one.

Board Member Hoellen stated that the current garage already encroaches on the setback.

Mr. Zuccaro said that yes it does by approximately 1-2 feet. This was likely due to a previous code or a construction error. There was never a previous variance on this property.

Board Member Hoellen stated that adding an additional bay to the existing garage could encroach further into the setback.

Mr. Zuccaro stated that the goal is to reduce or eliminate encroachments on both setbacks and bulk plane.

Board Member Struna stated that there would need to be more concrete on the South side of the property with the staff recommended addition.

Mr. Zuccaro stated that yes there would be more driveway that would have to be located father back.

Board Member Struna stated that that might not be useful to access the pool or kitchen.

Mr. Zuccaro said that the homeowners would have to find a new path for access from garage to house.

Chair Love called for questions and stated that the public hearing was open.

Bryan and Pamela Hall, 79 Sedgwick Place, thanked the board for their consideration. Mr. Hall said that the garage at his residence has presented with a challenging situation. It is subscale in

comparison with the size of the house. He said it is a two car garage in name only. He said they are looking to add a small amount of garage space as well as some additional storage.

Mrs. Hall stated that they did not appreciate how small the garage was when they purchased the home. She feels that it is a 1 ½ car garage. She also stated that other neighbors who have two car garages are substantially larger. In fact, theirs is the smallest garage in the neighborhood. She said that the garage is a hardship because it is excessively small.

Mr. Hall stated that there were three main issues they considered while planning this project. First, extending the current garage by one bay would take away space from their great room, and the basement is underneath and would have to be able to support it. Second, the HOA of the neighborhood only allows for side loading garages, which is very hard to arrange with an appropriate turning radius. Third, using the alternate plan that staff suggests would necessitate taking down two old pine trees which all the neighbors enjoy.

Mr. Hall stated that they have presented their plans to the HOA, and the HOA approved them. The HOA liked the fact that they would not be disturbing any trees and that the addition would be two story one.

Mr. Hall said that the staff suggestion of a detached unit would make side access impossible, and would leave two feet between the house and garage. This could be hard to clean and look strange. He also stated that the neighbors would detest this. He also stated that this would put the garage right next to their pool.

Mr. Hall stated that three things have brought them to their current proposal: a subscale garage, the desire to blend harmoniously with the existing house, and the consideration of other possible solutions. He respectfully asked the board to grant the variance. He stated that if the pool was not in the current location, they would have other options.

Board Member Hoellen thanked the Halls for their presentation and stated that aesthetics and inconvenience cannot be considered by the board, and these items will not affect their decision. He asked when the house was purchased in April of 2012, were they aware of the size of the garage.

Mr. Hall stated that they initially had plans for interior renovations, and that there appeared to be several alternatives for the garage. He said he did not appreciate the turning radius at the time, and the other problems he did not fully anticipate.

Mrs. Hall stated that there was so much open space near the garage she never anticipated it would be a problem.

Board Member Hoellen asked if it would be possible to make the structure smaller and use it to store all garage items excluding the vehicles.

Mr. Hall said they have considered that. He said that the existing garage is too small regardless because the parking is too tight. Leaving cars outside is a problem with tree sap.

Mr. Hall also stated that it is a technicality that a garage detached by two feet would be approved but an attached garage would not.

Scott Parker of Nest Architecture distributed a site plan to the Board. He said that he appreciates what Cherry Hills Village does as it grows and evolves. The different possible locations of the garage are illustrated on the site plan. He stated why each zone was not feasible for building. He stated that the staff suggestion of building location would require cutting down two mature trees, which creates problems with the HOA as well as the adjacent neighbors. He stated that the design they are proposing does not encroach on the rear bulk plane. Another negative would be the amount of driveway required to make the staff plan feasible.

Chair Love asked if additional concrete would be needed to provide access between the new and old garage.

Mr. Parker stated that 385 square feet of concrete would be necessary to have the room to turn a vehicle around. He said that the character of the neighborhood is important and the HOA does consider aesthetics. He said another potential problem with the staff recommendation is that there will be nowhere to house the trash and recycling cans. They would be in a fenced area between the garage and the pool and would be visible from the street.

Board Member Hoellen asked would it be possible to take proposed design and shift it to the South in order to reduce amount of encroachment.

Mr. Parker stated that yes that would be correct. He also asked what measurement constitutes detachment.

Mr. Zuccaro stated that the city requires a minimum of three feet between detached structures to allow for access.

Mr. Zuccaro further stated that staff was intending to point out that there is a 20 x 20 foot area to design an alternative detached structure. Staff was not proposing a specific design, but the area to work in is feasible.

Mr. Parker stated that the only area suitable for building were the proposal of the homeowners and the staff proposal.

Board Member Sullivan asked if there were any alternatives which have not been discussed.

Mr. Parker said many alternatives have been discussed and nothing feasible has been discovered. He stated that the hardship has been proven.

Board Member Sullivan stated that hardship is not proven. He said that it is not a necessity. He stated that the board will need more information in order to grant any variance.

Board Member Hoellen stated that the job of the Board is not to set the standards. It is to ensure fair and just application of the code. City Council is responsible for changing the codes. He asked if this was a necessity or a convenience. He also asked were there any alternatives associated that could both provide benefit to the homeowner as well as meet standards of the code.

Mr. Parker stated that the environmental aspects are important when choosing a location. He said that there are alternatives such as height that could be discussed as to not include the second floor.

Board of Adjustments and Appeals Meeting

December 6, 2013

Board Member Sullivan said that he is not convinced and that a hardship constitutes something like weather disturbance or erosion. He said this sounds like an issue of convenience and to improve the aesthetics and value. He stated that there needs to be concessions on the part of the homeowners. He stated that as the proposal stands, it is contrary to all the rules which are in place.

Mr. Parker asked how he should proceed. He asked should he work on an alternate design.

Chair Love stated that a continuance could be issued so he would not have to completely start over.

Mr. Hall stated that the larger garage is a necessity. He said they have gotten their needs to the bare minimum. He said that the proposed detachment of three feet provides insufficient space. He said he would consider lowering the roof, with the garage attached, but there aren't many alternatives. He stated that there are elements of property protection associated with a garage.

Board Member Strum asked could the garage be extended through the family room and a family room addition be added to the rear of the house. This could allow for a four car garage.

Mr. Hall said that area of the family room is over the basement and much would be needed to support the weight, such as steel and concrete floors. He stated that there could be tremendous cost associated with that.

Board Member Hoellen said that there are alternatives that may not be ideal, but it is in the spirit of the code to reduce encroachments.

Mr. Hall stated that their design is attempting to have a low impact. The neighbors support their design. Mr. Hall stated that he would not build a detached garage because it does not make sense for it to be attached and be so close to the house.

Vice Chair Seitz stated that essentially they are asking for a detached structure to be attached. He stated that the house is noncompliant in both the northeast and southeast corners.

Mr. Hall stated that that is exactly what they are attempting to do.

Board Member Struna asked would it be cheaper to look into moving the pool.

Mr. Hall said if they move the pool they will still lose trees. They have not looked into pricing the pool.

Councilor Griffin asked could they go to their HOA and ask to have their garage facing the street.

Mr. Hall stated that they have been told directly by the HOA they will not be allowed to have a street facing garage. Mr. Hall also stated that southside neighbor has a street facing garage. He continued that a street facing garage would provide more design flexibility.

Councilor Griffin stated the dimensions of the existing garage. It is 24 feet deep by 18 feet wide. He stated the new garage is 20 feet deep by 29 feet wide. He asked about an additional room on the plans.

Mrs. Hall stated that is a storage area.

Mr. Hall stated that the existing depth is acceptable.

Board Member Hoellen asked could they go to the HOA and ask for a variance for a forward facing garage. He stated that the Board is not telling them exactly what to do; they are making suggestions. He stated that his opinion is that a variance of some sort will be needed.

Mr. Parker stated that the Halls have the smallest garage in the entire neighborhood. The next smallest garage in their neighborhood is larger by 100 square feet.

Chair Love asked if there were any additional public comments.

Chair Love suggested a continuance to give the homeowners a chance to talk to their HOA and work on design alternatives.

Mr. Zuccaro stated that continuances need to be to a date certain. Upcoming meeting dates are January 2, 2014 and special meeting dates can be discussed.

Mr. Hall stated that Mid- January is acceptable for them.

Deputy Attorney McAskin asked if that would give the homeowners sufficient time.

Mr. Hall said yes.

Mr. Zuccaro stated that if by January 16, 2014 the Halls needed additional time another continuance could be granted at that time.

Board Member Struna made a motion to continue the hearing to January 16, 2014 at 6:30 p.m. to allow for alternative designs within the current application.

Chair Love asked for all in favor.

The motion passed unanimously.

### **ADJOURNMENT**

The meeting was adjourned at 7:56 p.m.

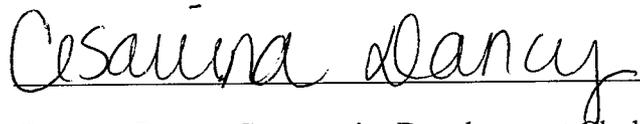
RECORD OF PROCEEDINGS

---

---



Suzy Love, Chair



Cesarina Dancy, Community Development Clerk