

**Minutes**  
**Board of Zoning Appeals**  
**Tuesday, October 20, 2020**

**Call to order**

The "Zoom" platform meeting was called to order by Chairman Joe Dughman at 5:00pm.

**Board Members present**

Joe Dughman, Chairman                      Pete Zabaski, Vice Chairman  
Haley Dale                                      Gloria Sternberg                      Chris Tardio

**Staff Members present**

Beth Reardon, City Manager              Doug Berry, City Attorney  
Lyle Patterson, Assistant City Manager and Building Official  
Edie Glaser, City Recorder

**Conflicts: None**

**Consideration of the Minutes September 15, 2020**

**Motion to defer: Sternberg    Second: Dale    Vote: All aye**

**Old Business: None**

**New Business:**

1. The application of Jerry Hancock (20101) 213 Paddock Lane for a variance permitting the construction of a new single-family home. The replacement of a residential structure with a new residential structure is permitted in the zoning ordinance provided that no pre-existing non-conforming use, structure, and/or variance from the provisions of the zoning ordinance will be extended closer to the property line by reason of construction of such a new structure. The building permit has been denied for the following reasons.

- A. House is over allowed footprint.
- B. House is over allowed F.A.R.
- C. House is outside building setbacks in rear.

**Motion to defer for sixty days: Sternberg              Second: Dale**  
**Vote: All aye**

2. The application of St. George's Episcopal Church (20102) 4715 Harding Road, for a special exception extending the temporary use of a tent for worship services. The permit has been denied for the following reason.

- A. Under Appendix A, churches and schools, construction and alteration require BZA approval.

Staff recommends approval

**Presentation:** Martha Rodas, on staff at St. George's, we are asking to extend the use of the tent through the end of January. It has been a huge benefit to us. Our average Sunday attendance has gone from 20 inside to 120 under the tent where people can spread out and feel more secure. Our youth group, the preschool, and the boy scout troop has used it as well. We would like to request to extend it to the end of January having it down before February 1, 2021.

**Board Discussions:**

Sternberg, will there be sides put on the tent?

Rodes, we are not. Our plan is if we have inclement weather, which occurred some in the Summer with thunderstorms, we will move inside but most people do not come in. By the end of January, Legacy Hall will be open, and we will be able to have a big indoor space that is more user friendly for people to stay spread out.

**Motion to approve as submitted: Zabaski Second: Sternberg Vote: All aye**

3. The application of Sara Perry (20103) 311 Sunnyside Drive, for a conditional use permitting the construction of a swimming pool and pool cabana. The building permit has been denied for the following reasons.

A. Swimming pools require BZA approval.

B. Pool cabana requires BZA approval

Staff recommends approval.

**Presentation:** Scott Dismukes, with Firma Landscape Architecture and Planning Studio, we are asking for approval of a pool and pool house. Currently we are reworking the backyard and patios. The pool house is 17x17. It is closed on the back side. On the side facing Malone Place, this actually sits down a little bit because there is an existing three feet retaining wall. The overall height is 17 feet. There is a brick fireplace on the back side. The brick would match the house brick which is a Tudor color. There are two simple square columns on the front with a pyramid roof. Inside is the fireplace with some counters. The pool house sits back far enough that you will not see it from Malone Place. To the right and the left of Malone there is existing vegetation that we plan to keep. There is an existing wall that we plan to do some grading work to dig out and rebuild the wall to create more room for the whole deck and planting around the pool. On the plans there is a longer brick wall. The leader above it from there to the right is an existing brick wall and from there going left would be the rebuilt wall. The shorter wall is behind the cabana that is rebuilt in the same alignment as the current wall behind the pool house. There is partial fence along the property line that is used for the neighbor's pool. We may tie into it for the fence enclosure to meet Belle Meade requirements.

**Board Questions and Comments:**

Dughman, I see the pool equipment pad and you have an existing wall there; will that wall remain?

Dismukes, that wall will remain.

Dughman, the pool equipment will be behind that wall is that correct?

Dismukes, correct, there is a three foot grade change from the house. The small area where the pool pad is steps up about three feet where that wall is.

Dale, was there anything with the gates or fencing that we needed to look at or no Lyle Patterson?

Patterson, on the left side of the house no, on the other side you are supposed to go over the property line, but they did not want to do that they want to go straight back and preserve the green space.

Dale, they want to come back and reconnect to the opposite corner.

Patterson, they are going straight back, and over and tying back into the house. I prefer it that way personally.

Dale, I don't disagree. But is there a reason? Don't we have to go to the property line? Aren't you technically supposed to on both sides?

Patterson, no not when there is a street over here, Malone Place.

Sara Perry (applicant), I feel like we have tried to maintain the look of the home with incorporating the pool plan.

Zabaski, that fence going back, on the right hand side, back to the property line. I like that too, but it really does require Board approval, something I think might be changed by the Commissioners but at this point as the code reads that should be noted and approved. I am not sure it's not a non-issue and if Doug Berry wants to approve it, then he can approve it. But just looking at it it's a violation of codes.

D. Berry, this Board can approve things that violate code. It is not a variance request.

Zabaski, yes if it was noted, then we could vote on it. But it was not noted in the application.

Dale, I feel like I saw on their application that they noted it. It might not be on the agenda.

Dughman, it says associated fencing.

Sternberg, it reads associated fencing and grading.

Dismukes, that is what we were inferring by that note. But I understand if that is not written correctly.

Zabaski, that is good for me. I don't have a problem with that language.

Dale, I do feel like, for me, it is ok to vote on.

Zabaski, I agree.

**Board Discussions:**

Zabaski, looks good to me.

Dughman, Patterson what was your recommendation?

Patterson, recommend.

**Motion to approve as submitted: Zabaski Second: Dale Vote: All aye**

Sternberg, do we need to add something about the fencing?

Dale, it was approved as submitted but that is probably good to clarify for the minutes.

Dughman, are you suggesting it needs to be part of the motion?

Sternberg, that was the question since it was not on the Agenda, but it was on the application. Do we need to add something to the motion?

Berry, no, you are fine.

4. The application of Michael Schlosser (20104) 229 Deer Park Circle, for a variance to install a generator. The building permit has been denied for the following reason.

A. The generator is outside the building envelope.

Staff does not recommend approval.

**Presentation:** Charlie Rankin, I am the architect working with Michael Schlosser on the renovation project primarily interior to the house. Along with the project, they have requested a generator to be located on the property. Like a lot of lots on Deer Park Circle this is a smaller lot, only 24,000 square feet. As you can see on the plan that Lyle has pulled up the building envelope is fairly impractical for the size of the house it's on and did not leave us a legitimate option to put the generator in the building envelope. We have two possible locations for the generator. One is on the back right corner of the house. This is the location we are requesting. It is outside the building envelope. Generator location two is noted as being really what is the only viable option within the building envelope. This location has an existing Japanese maple there. It is a very mature tree around 20 to 25 feet tall. If we put the generator in this location the tree would have to come down. In addition, part of the interior renovation of the

house is the back family room/great room area. We are installing floor to ceiling windows on either side of a new fireplace. Obviously, the generator would sort of be sitting in line of sight of that window. The other detriment to that location is that there is more open yard on that side. The driveway comes down that side of the house and there is an open lawn area where the generator would be quite exposed. Location one however, even though it is outside of the building envelope, it is a more conducive location for equipment to be placed there because there is already equipment on that right side of the yard. The existing air conditioner, condensing units and grinder pump is there. It is more the utility side of the house. There is also a six foot tall privacy fence and heavily planted area there that offers some good screening from the neighbor's house. The generator has to be located five feet from any window, which eliminates pretty much every other spot in that corner which is really the only place inside the building envelope. Our request is to be able to put it in the back right corner location.

**Board Questions and Comments:**

Zabaski, generator location two how far is the maple tree from that wall that faces the rear of the house?

Rankin, the tree trunk is about three feet off of the wall. The side wall where the new window will be placed it is about seven feet from the wall.

Zabaski, are you putting a window in that wall?

Rankin, yes, the existing windows are being replaced by a larger double hung window, about 7ft tall and 3½ feet wide. Double hung window will be on either side of the fireplace.

Zabaski, the wall that faces the back are you putting a window there?

Rankin, we are not adding a window there.

Zabaski, how big is the generator?

Rankin, the generator specs are 71 inches long, 32 inches deep, and 37 inches tall.

Zabaski, how far away from the wall does it have to sit?

Rankin, it has to be eighteen inches away from the wall and five feet away from the closest window.

Zabaski, why can't you accomplish that on that rear wall and not bother the tree because it is going to be sitting up above ground isn't it?

Rankin, no it sits on the ground. Any foliage that would be over a generator like that would not survive and with the size of that unit it is going to get into that tree to place it there.

Zabaski, the generator is only going to be running a few days a year probably. Will it really damage that tree?

Rankin, there is really not the footprint to place it there without cutting down the maple tree.

Sternberg, is it possible to move it toward the other corner of the rear still in the building envelope?

Rankin, there are windows to the right and left of the fireplace so we would have the same issue with location there. Off of that is a porch and landscaping. To locate it in that area would be right in the middle of their lawn and right off of their entertaining porch.

Dughman, I'm confused of your belief that the generator will interfere with the tree. The generator is not going to go in the ground is it, it's laying on top of the ground correct?

Rankin, they would pour a concrete slab and set the generator on top of that slab.

Dughman, but it is not going to affect the tree roots?

Rankin, given where that trunk of the tree is there is not the footprint there.

Dughman, I don't understand getting into the trunk of the tree.

Rankin, the tree just occupies the area where the generator needs to sit.

Dughman, the tree trunk is not very wide is it?

Rankin, not really it is about 4 to 6 inches. It would be a tight fit and they would have to trim off the bottom of the branches.

Dughman, what is the height of the generator.

Rankin, 32 inches.

Dughman, those tree branches are higher than 32 inches. That is not going to kill the tree.

Rankin, the other location is right off their entertaining patio area.

Dale, I would not want to look at a generator off this entertaining area either but at the same time it is not the best reason for why we should violate one of the ordinances. I am wondering if you put a wall right above generator location two with plantings that direction that would stay in the building envelope and allow you to put the generator behind there. You could put planting then on the other side of the generator to hide it from view on either side and still allow for entertaining.

Rankin, yes that would give us more breathing room to the Japanese maple.

It's a possibility.

Dale, did they plant the maple?

Rankin, it was pre-existing.

Dale, over to the right of the building envelope surely there is somewhere we can put the generator.

Zabaski, I like the idea of a wall or wing wall or something to hide it. One of the problems is that the location number one, I am not sure we can approve it. We would have to talk to our Attorney because it is outside the building envelope and unless we agree that the lot qualifies as a variance, we have no authority to approve it there.

Rankin, I discussed with Lyle if this is a variance or special exception. I think the case for the variance was a hardship of a building lot where every corner of the house just about is outside of the building envelope and the location of that tree making it a little more difficult to place a generator potentially causing harm to the tree. That was the argument for it being a hardship and a variance as opposed to a special exception.

#### **Board Discussions:**

Sternberg, generator location one is close to the neighbors. Generators do make noise and do run a cycle every day. There may be a noise issue compared to the distance to the house off the rear of the house. That would be a concern as well. I would hate for them to lose their Japanese maple, but I think maybe you should try to come up with another location.

Tardio, perhaps we should defer this to get a little more information from the landscaper to see what the impact on the tree is going to be. I don't see this fitting with the definition of a variance.

Dughman, (read aloud the definition of the variance) there is nothing about that lot in my mind that fits the definition of a variance.

Zabaski, as I understand it if the applicant decides to put the generator in location two, he does not need Board approval. That is something he can do without coming to the Board. A deferral would only be if he wanted to sell that lot as a variance that he can do right now. If he wanted to put anything taller than a three foot wall extending that Haley Dale suggested, he would have to come back before the Board for approval of that wall.

Patterson, that is correct, a three foot wall would hide it.

Zabaski, if he wants the wall over three feet he has to come before the board.

Dughman, the application is for a variance for location one. Does location one qualify?

Dale, is all of the lawn new?

Rankin, that is not new. The firepit area, steppingstones from the covered porch area and a new sidewalk from the driveway to the back terrace area is new.

Dale, for me personally it makes more sense to go outside the building envelope to the rear versus the side near that neighbor.

Dughman, the application is for a variance to put the generator in location one.

**Motion to deny the application based on it not meeting the definition of a variance: Zabaski      Second: Tardio      Vote: All aye**

Meeting adjourned 5:55pm

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Chairman Joe Dughman

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City Recorder Edie Glaser