



Board of Zoning Appeals
Randy Duncan Bob Hiles Janice Hitzeman Jim Hrivnak Greg Short

MEETING MINUTES

July 9, 2020

Board member Jim Hrivnak called a meeting of the Board of Zoning Appeals to order on Thursday, July 9, 2020 at 6:30 p.m. Members present included Randy Duncan, Janice Hitzeman and Robert Hiles. Board Member Gregory Short was absent. Also, present were Rocky Kambo, Interim Director of Development; Elise Schellin, Development Planner; Pam Friend, Planning & Zoning Clerk; Jennifer Koontz, Certified Senior Digital Reporter, US Court Support and interested parties.

CHAIRPERSON NOMINATION AND VOTE

Randy Duncan nominated Jim Hrivnak as the Chairman. Robert Hiles seconded the nomination. By unanimous consent of all Board members present, Jim Hrivnak was elected Chairman of the Board of Zoning Appeals.

Vote: Y-4 N-0 (Absent: Short)

STAFF ITEMS

Rocky Kambo, Interim Director of Development: Thank you all for your flexibility today with the meeting emails going back and forth regarding Covid-19 picking up. We were trying to figure out the best course of action for this meeting and I think we have good social distancing. Again, thank you for your patience while we were getting things in order.

Andy White, Powell City Manager: I want to introduce myself to the board and I want to thank you for your service and volunteering on behalf of the community. I think staff does a nice job with this board, planning and development in general.

HEARING OF VISITORS FOR ITEMS NOT ON THE AGENDA

Chairman Hrivnak: We will open the public comment session for items not on the agenda. Hearing no comments, he closed the public comment session.

APPROVAL OF MINUTES

MOTION: Board Member Robert Hiles moved to approve the minutes of March 12, 2020. Board Member Janice Hitzeman seconded the motion. By unanimous consent of all Board members present, motion passed.

Vote: Y-4 N-0 (Absent: Short)

STAFF REPORT

Chairman Hrivnak: The next item on the Agenda is the staff report. Do you have a report other than the two cases we are hearing this evening?

Elise Schellin: No and I believe we hear from the applicants first.

Chairman Hrivnak: This would be things not related to the two variances.

Elise Schellin: No, there is nothing additional other than the two-variance applications.

Mr. Kambo: Maybe this is a great time for me to jump in and talk about processes. Staff and in this case, Elise will be taking the lead today going over the staff report and I will supplement as needed. Applicant will give their introduction, and then Elise will go over the staff report. The BZA will ask any questions, deliberate and give their decision.

APPLICATION FOR VARIANCE

Applicant: Dave Petrozzi
Location: 240 Whitaker Avenue
Existing Zoning: (PR) Planned Residential District
Request: Approval of a variance to reduce the required 30' rear setback line to 24.67', in order to construct a three-season room.

Chairman Hrivnak: Good, thank you. All right, the first application for variance is from Dave Petrozzi at 240 Whitaker Avenue. The existing zoning is (PR) Planned Residential and the request is approval of a variance to reduce the required 30' rear setback line to 24.67' in order to construct a three-season room. Dave I have to swear in anyone that is going to make testimony in the case this evening. You or anyone else in the room that is going to talk regarding the case at 240 Whitaker. If you would raise your right hand please.

Dave Petrozzi, 240 Whitaker Avenue, Powell: I do hereby solemnly swear to tell the whole truth and nothing but the truth in this hearing.

Chairman Hrivnak: Thank you. Do you want to go ahead and tell us a little bit about your application? I will then call on staff for their report.

Mr. Petrozzi: I am Dave Petrozzi and I live at 240 Whitaker Avenue here in Powell. I am here because I have applied for a variance for building a screened in porch in my backyard. The screened in porch will extend into the 30' setback as shown on the picture here. It will be about 6' into that setback. We do have a tree-lined backyard so the people in the back of our house will not see the screened in porch. On the left side where we are going to place the porch, the other house is on an angle so their backyard does not even face into it. So at this point, I do not see it being a problem from a neighbor's perspective. We do have approval from the Homeowners Association. I have provided some pictures of my backyard and I can go through those if you like. What we are looking at on the right hand side is something like that as far as the screened in porch itself. We also have some pictures of the backyard. This is the front of the house so you can see on the left hand side that house is kind of angled away from our house so you will not be able to see into the screened in porch or even see the screened in porch from their backyard. Here is a little different angle on the side of the house from the left side of our house, then from the back looking into the street and then the next picture is our backyard. We will be placing the screened in porch on the back corner of the house. There is the tree line and you cannot really see any houses from our house. Next slide is a little better angle on the tree line. The screened in porch will be on the other side of that patio area. It will be the same material like the stucco on our house and same color. Are there any questions.

Chairman Hrivnak: Thank you Dave. Have a seat and I will have staff go through their report and if something comes up we will call you back forward.

Mr. Petrozzi: Thank you very much.

Chairman Hrivnak: Elise can you run us through the staff report.

Ms. Schellin: Yes, this application is straightforward and the applicant is just asking to build a 20 X16' three-season room on the northwest portion of his lot at the back of his house. It will only protrude into the rear setback by 5 1/3'. It is not too much into the setback and it is staying completely away from this scenic easement in the back, which does provide a lot of protection from the neighbor views. They will not be able to see it very well especially in the summertime and as Dave mentioned this home in the aerial view is angled so they most likely will not have a view of the three-season room. We did not get any complaints from neighbors after our public notice went out. Staff recommends approval of this variance as submitted.

Chairman Hrivnak: Thank you Elise. Any questions for staff? Is there anyone else in the room that would like to speak on the matter at 240 Whitaker Avenue? We will open up for public comment. Seeing none, we will close public comment. Discussion from the board?

Board Member Robert Hiles: It is straightforward.

MOTION: Board Member Robert Hiles made a motion to approve the variance as submitted. Board Member Randy Duncan seconded the motion. By unanimous consent off all Board member present, the motion passed.

Vote: Y-4 N-0 (Absent: Short)

APPLICATION FOR VARIANCE

Applicant: Pete Johnston
Location: 229 Glenworth Court
Existing Zoning: (PR) Planned Residential District
Request: Approval of a variance to locate a pool 12' from the property line within the existing drainage easement.

Chairman Hrivnak: The next item on our Agenda is application for variance. The Applicant is Pete Johnston, 229 Glenworth Court, and existing zoning is (PR) Planned Residential. The request before us is approval of a variance to locate a pool 12' from the property line within the existing drainage easement. Pete would you like to introduce yourself and tell us about your application.

Pete Johnston: Do I need to swear in first?

Chairman Hrivnak: Yes, thank you. Please raise your right hand.

Mr. Johnston: I will promise to tell the truth in this hearing.

Mr. Johnston: My name is Pete Johnston from 229 Glenworth Court here in Powell 43065. We filed for a variance because we have a 12' setback from our rear property line and want to put in a small fiberglass pool. We live on a corner lot and the side yard has a 40' setback from the street so we are not able to build there. Over the past few weeks, I did have OUPS come out and mark the lines. The city came out and reviewed the utility lines and there is nothing in the easement. Thinking it might be a possibility to put the pool right behind the porch there as you can see. We are an active family and we like to be outside all the time. The kids are big swimmers and we will continue to go to the Powell pool if it opens next year. My wife grew up with a pool with lots of good times and family memories. I was a competitive swimmer growing up as well. As a family, we would love to have a pool. We love our house and our neighborhood so we do not want to move.

Chairman Hrivnak: Any questions for Mr. Johnston?

Board Member Hitzeman: I have a question so that I can understand the layout. The pool is proposed to be over the easement and the easement goes out to the road?

Mr. Johnson: The road is on the left hand side. The pool would be at the back of the house. Right now, we have a 10' easement and a 12' setback from that easement, so 22' all together. We would put the pool in the setback but not the easement.

Mr. Kambo: Elise can better describe it.

Ms. Schellin: They have a corner lot and here is where they would like to place the pool. Their rear property line is here. This area is where the pool is proposed.

Chairman Hrivnak: Elise, if I am correct, based on the setback they cannot put it in the big side yard because it would be too close to the road.

Ms. Schellin: Correct.

Mr. Johnston: And that is a great soccer field.

Mr. Kambo: Just to be clear there is a setback from the rear yard and then there is a setback on the side. It is going to be 12' from the rear yard, required by code; Elise can talk about it a little better than I can. Really, what we are doing is encroaching on the easement's setback.

Ms. Schellin: Pete had brought forth a proposal where he was talking to both the Engineering and Development Departments about building a pool in the backyard. The problem with that is he has a 10' utility easement in his backyard and right now it is unused. The kind of compromise we came up with is get a variance for the pool so there did not have to be the 12' setback from the easement. The code states that a pool has to be at least 12' from any easement or property line. Therefore, essentially placing the pool here satisfies the 12' requirement from the property line but not to the easement. The engineers did not want to vacate the easement because as you can see in this aerial view these other neighboring homes have utility easements that are being used. By keeping this variance, we retain access to the utility easements on the other properties. There is also a 10' utility easement on this property. If a truck has to get back through here there is the 10' easement on this property as well as the 12' to the pool on Pete's property so it will allow 22' of access to get back to the other properties easements.

Chairman Hrivnak: Is there anything else from the staff report?

Ms. Schellin: Yes. We would recommend approval but we do have two conditions. One is from engineering that covenants and restrictions need placed on the property stating if the easement needs to be used and the proposed fence and pool decking need to be removed, that the applicant is responsible for replacing. This is something we do anytime a fence or patio is placed within an easement. Second, if the safety fence around the pool needs to be removed, an additional fence needs put up so no one falls into the pool and that satisfies the building code for safety reasons.

Mr. Johnston: I have a question on that part. Is that a temporary fence? Like an orange fence, you would see at festivals.

Ms. Schellin: Yes, I would think something like that if you get to that point, some type of temporary fencing that would block people from getting into the pool.

Mr. Kambo: There was one other item you might want to add and that is the type of fence around the pool, which is a rod iron like fence.

Mr. Johnston: We did get signatures from all residents within 250' of our property stating they had no objection.

Chairman Hrivnak: I do see that in your submittal. Thank you. Is that it for the staff report?

Ms. Schellin: Yes.

Chairman Hrivnak: Any questions of staff and their report?

Board Member Duncan: I have a question for staff. Do engineering and the fire department have a problem with the 22' access?

Ms. Schellin: Engineering was good with it.

Mr. Kambo: We did not reach out to the fire department. I am guessing that because they can access it from the street, I am sure it would be sufficient, but that is a great question. For engineering specifically, in order to get in there they were happy with it as Elise can tell you.

Ms. Schellin: Yes, we went out and walked the property with Pete.

Chairman Hrivnak: Any other questions or clarity from staff?

Board Member Hitzeman: I had one question and I think it might be something that was inadvertently put in the email from the Homeowners Association, which talks about Pete obtaining the necessary yard variance attached from the city. Was that some other type of variance that was granted or was that a misunderstanding?

Ms. Schellin: I think that was just a misunderstanding.

Mr. Johnston: I had sent them the application just so they could see it.

Chairman Hrivnak: If no other questions from staff, I will open this subject up to public comment. Is there any public comment regarding 229 Glenworth Court? Seeing none, we will close the public comment and I will open the discussion with the board. Any discussion from the Board? I will tell you I went out and visited the site. The easement is a utility easement that is not used behind the house now. I think staff is correct that it could encroach upon the setback, provided the applicant is willing to take that risk. If there were a need to access the utility easement and they are asked to take down the fence, they would do that. I think the chances of that are very slim because there is 10' on his property and 10' on the other. It would be difficult not to be able to get a truck down through a 20' easement so I do not foresee a problem there. The lot does have special circumstances being on a corner and irregularly shaped, there is not much room to put in a pool. I want to commend staff for working with the applicant and coming up with a plan that allows both parties to be satisfied. Thank you staff. That is the only thing I had. Does anybody else have anything? Janice do you have anything?

Board Member Hitzeman: I do have some concerns with the basis and special conditions with the layout of the building. I think staff did a great job. I think the basis is because it is a corner lot and the yard is small based on the area. I do not know if those bases alone are sufficient for me to vote in favor of this but I am open to discussion. I do not have questions; I think I understand the report and the application.

Chairman Hrivnak: At the end of our questions, we will have staff run through the categories that have to be satisfied.

Board Member Hitzeman: I guess I do have one question. The idea of putting additional conditions on to require the homeowner to take steps should that easement be necessary to utilize. Is it through a deed or written agreement? What is the process for that?

Mr. Kambo: Yes, that is correct, there is a legal instrument that is drawn up either by our attorney or the applicant's (in audible) that specifically states those requirements that if anything needs to be done, it is at the applicant's expense and at your own risk (in audible).

Chairman Hrivnak: We will have to come up with the language and then we will approve the variance with those conditions. Sounds like there might be three. The fence is to be constructed according to the Homeowner's Association requirements. If indeed the easement needs to be accessed and the fence and/or decking is in the way, the applicant will replace it at their own costs and if the fence were removed, a temporary fence would be installed to satisfy the safety requirements. Those would be the three conditions. Bob do you have any questions or comments?

Board Member Hiles: Rocky I believe that is all transferable if the house sells.

Mr. Kambo: Yes, absolutely.

Chairman Hrivnak: Rocky can you put up the Codified Ordinance 1127.06(e), to help answer Janice's question regarding what needs to be satisfied for us to approve a variance. Sorry to put you on the spot, we will give you a second, though I think there is a hotlink in the staff report.

Ms. Schellin: It is loading at this point.

Mr. Kambo: Under section narrative statements, supporting documentation establishing, and substantiating that the variance conforms to each of the following standards and there are seven standards. I will go through all seven. I might read them first and then go through them.

1) Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property;

As it stands, I think it is clear there is existing beneficial use of the property.

2) Whether the variance is substantial;

In staffs opinion it is not substantial, again we are going within the setback of an unused easement. We have to look at hardship. In this case, we have an existing easement that was put on a plat for potential future use, which again we talked about potential future use. Probability of use I am not sure, but again we are encroaching on the setback we are not impacting the easement.

3) Whether the character of the neighborhood would be adversely affected or whether adjoining properties would suffer an adverse impact as a result of the variance;

Again, staff is of the opinion that none of the neighbors would be adversely impacted. If anything, a pool is going to improve the property value.

4) Whether the variance would adversely affect the delivery of governmental services (e.g., water, sewer, garbage);

Again, we are not vacating the easement we are just allowing them into the setback of the easement. By still having that space and providing the requirements on the deed, we are not limiting our ability to service that area.

5) Whether the property owner purchased the property with knowledge of the zoning restriction;

I am sure that when the property owner purchased this the title search etc. showed that this easement exists.

6) Whether the property owner's predicament feasibly can be obviated through some method other than a variance; and

If we were to vacate the easement in its entirety that would have been the other option here. Our engineering department was not comfortable vacating that easement.

7) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.

Again, fortunately in their case by moving into that easement setback, they are still 12' from the rear yard setback but they still meet that code requirement. I hope that answered your questions.

Chairman Hrivnak: Is there any other discussions? Janice did that answer your questions.

Board Member Hitzeman: One more question. When I am looking at the drawing, I see the outline of the proposed pool. Would any of the decking be encroaching over into the easement itself?

Ms. Schellin: I believe maybe a foot or two.

Chairman Hrivnak: It is going to encroach on the setback not on the easement. On that drawing, the deck encroaches into the 12' setback. The line below the 12' setback is the 10' easement.

Mr. Kambo: Just to be clear on building code, the pool itself has to be 12' from the setback. The decking that goes around the pool can be within the setback (in audible).

Board Member Hitzeman: But neither are proposed to be within the easement itself?

Mr. Kambo: Right. It is only encroaching on the easement setback.

Chairman Hrivnak: Elise there is another drawing on the staff report that may help us. It is a plat from some time ago or a plot plan. Can you show us on where the street is?

Ms. Schellin: Here is the 10' easement on the property and the pool would be right around here. The decking would probably go up to about the easement line but not into the easement itself.

Chairman Hrivnak: The decking would be about 10' this way, is that what we are saying.

Ms. Schellin: It would stay out of the easement.

Chairman Hrivnak: The width of the pool Mr. Johnston?

Mr. Johnston: It will be 12 feet.

Chairman Hrivnak: You plan to put it how far from the back patio/screened in porch.

Mr. Johnston: 4'.

Chairman Hrivnak: That puts it at 16' from there and its 30' to the property line and that is 20', so nothing is going to be on the easement.

Mr. Kambo: You can make that a specific addition of your approval if you want it to be clear. You can make it a condition that no decking for the pool, etc. be a load on the easement.

Chairman Hrivnak: Any other questions or discussions. If not I will entertain a motion. Our motion would be with conditions if it were to be approved. Do I hear a motion?

Board Member Robert Hiles made a motion to approve. Board Member Randy Duncan Seconded the motion.

Chairman Hrivnak: We do have a motion and a second but I would like to clarify the motion before we vote. Mr. Hiles can you tell us what the conditions are?

Board member Hiles: The ones that the staff has recommended that transfer and (in audible)

Mr. Kambo: The two on the staff report plus the rod iron like fence, so three.

Board Member Hiles: Yes.

Board Member Duncan: I would like to consider adding another condition in the unlikely event the fence would have to come down temporary fence should be substantial enough to secure the pool to keep out the neighbor kids. There are many ways to accomplish that though a plastic fence would probably not be one of them.

Chairman Hrivnak: Can we leave that to the building department to establish what a substantial fence would be?

Mr. Kambo: Absolutely.

Chairman Hrivnak: So that does bring the total to three. The motion with conditions is as follows:

MOTION: Board Member Robert Hiles made a motion to approve the variance at 229 Glenworth Court subject to the following condition(s):

1. If access to the easement is required, the proposed fence and pool decking will need to be removed, the applicant/homeowner is responsible for replacing it;
2. A temporary fence would be required around the pool to satisfy the safety requirement of the building code, if the proposed fence would need to be removed to access the easement. The fence would be subject to approval of the building department;
3. Construct the permanent fence according to the Homeowners Association regulations.

Board Member Randy Duncan seconded the motion. By unanimous consent of all Board member present, the motion passed. Vote: Y-4 N-0 (Absent: Short)

OTHER COMMISSION BUSINESS

Board Member Hiles: I have been on the Board for 18 years and I think it is time to get someone else to step in. Tonight will be my last official meeting. Thank you everybody.

Chairman Hrivnak: Mr. Hiles you have been here quite some time. I am sure the City appreciates it. In fact, you were on it before I even moved to town.

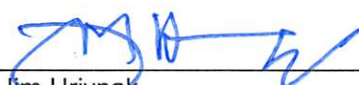
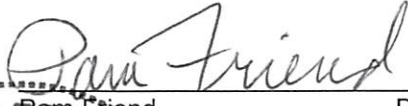
Board Member Hiles: Everybody has been great.

Chairman Hrivnak: We will have to check the charter to see what it is going to take. You may have to submit that in writing. We will try to let you go without a technicality.

ADJOURNMENT

MOTION: Board Member Robert Hiles moved to adjourn the meeting at 6:40 p.m. Board Member Randy Duncan seconded the motion. By unanimous consent of the remaining Board Members, the meeting was adjourned.

DATE MINUTES APPROVED:

	<u>3-26-21</u>		<u>3/26/21</u>
Jim Hrivnak	Date	Pam Friend	Date
Chairman		Planning & Zoning Clerk	

