



Board of Zoning Appeals
Jim Hrivnak Randy Duncan Janice Hitzeman Greg Short Ryan Brickner

MEETING MINUTES August 16, 2021

Chairman Jim Hrivnak called a meeting of the Board of Zoning Appeals to order on Monday, August 16, 2021 at 6:30 p.m. Members present included Jim Hrivnak, Randy Duncan, Janice Hitzeman, Gregory Short and Ryan Brickner. Also, present were Claudia Husak, Planning Director; Elise Schellin, Development Planner; Jesse Shamp, Legal Counsel and interested parties.

HEARING OF VISITORS FOR ITEMS NOT ON THE AGENDA

Chairman Hrivnak opened the citizen participation session for items not included on the agenda. Hearing none, he closed the public comment session.

APPROVAL OF MINUTES

MOTION: Board Member Brickner moved to approve the minutes of July 1, 2021 as written. Board Member Short seconded the motion.

VOTE: Y-5 N-0

APPLICATION FOR VARIANCE (Case 2021-29V)

Applicant: Gurgun Muharrem
Location: 476 Welwyn Drive
Existing Zoning: Liberty Township Farm Residence District
Request: Review and approval of a variance to the Liberty Township Zoning Code Section 8.07.C.2 to permit a setback of 15 feet from 60 feet along the eastern property line for a new single-family residence.

Claudia Husak, Planning Director – addressed the Board and thanked them for their flexibility with the rescheduling of the meeting. She discussed additional correspondence received today. She also introduced legal counsel, Jesse Shamp, from Yazan Ashrawi's office. Ms. Husak reviewed the Staff Report (Exhibit 1 - Staff Report).

Variance Standards:

1. **Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property.** Not Met – Staff has determined this standard can be viewed as not warranting the granting of a variance as it is likely a reasonable return can be yielded, if the home where built elsewhere on the lot.
2. **Whether the variance is substantial.** Met – An encroachment into a required rear yard of 45 feet appears to be a substantial deviation from the requirement and there may be other portions of the lot where a home could be built. Given the size of the lot, this encroachment could be considered similar to lesser encroachments granted for smaller lots. Additionally, even though the City of Powell Stream Corridor Protection Zone requirements do not apply to this lot, the location is preferred as it yields additional environmental protection.
3. **Whether the character of the neighborhood would be adversely affected or whether adjoining properties would suffer an adverse impact because of the variance.** Met – The lots of Welwyn Drive have a unique character due to their size, topography, environmental challenges and vegetation. The adjacency of the proposed home and driveway to the Liberty hills subdivision lots of this home is

limited and granting the variance will not adversely affect the character of the neighborhood. Directly adjoining properties will have a view of the home when vegetation is sparse in both the permitted and requested location.

4. **Whether the variance would adversely affect the delivery of governmental services (e.g., water, sewer, garbage).** Met – There will be no adverse effects to the delivery of governmental services.
5. **Whether the property owner purchased the property with knowledge of the zoning restriction.** Met – Knowledge of zoning requirements prior to purchase or entering into a purchase contract do not deprive an applicant from seeking a variance.
6. **Whether the property owner's predicament feasibly can be obviated through some method other than a variance.** Not Met – There are other locations for a home on this lot, as described in Standard 2 above, the environmental impacts of other locations may be less desirable for the City of Powell and associated cost may be less desirable to the applicant; however, there are other areas for construction of a home.
7. **Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.** Met – Granting of a setback variance in this particular instance is in spirit and intent of the zoning requirement and substantial justice is achieved by considering the irregular shape of the lot, topography, and floodplain.

Staff recommends approval of the following variance request at 476 Welwyn Drive to decrease the required east rear-yard setback from 60 feet to 15 feet.

Board Members asked staff for clarification on the floodplain and location of a potential home on the adjacent vacant lot still located in Liberty Township.

Chairman Hrivnak administered the oath to Gurgun Muharrem, 4706 Sibel Court, Powell, Applicant.

Mr. Muharrem: Satisfied with Claudia's report, however wanted to give more detail why setback is a hardship and not a drawback to neighbors. Setback is moving eastward not north, so it will not affect property owners. He wants to move envelope because area is very steep with almost a 25-foot drop. By moving envelope east, it will get it away from the steep drop. It will have a better foundation, less destruction of the slope, which would probably create erosion. He does not see how adjacent property owners could possibly question this request; accept for them not wanting to see a structure there, which is not fair to current property owner. Whether it is a 15-foot setback or 60-foot setback, you will still see the building when the leaves are down. The only issue is how close you get to the eastern property. He mentioned that this 3.3 acres property owner is going to be "hard pressed" to cross Tyler Run to be able to come west of this property and that it is practically impossible to build a structure there. It is cost prohibitive, and Corp of Engineers will never allow it. Stated you could build a shed on it with the 60-foot setback, but the deed restrictions require a minimum of 2500 square feet building, so unless you push everything to the north, which would give too much exposure to the northern properties.

Chairman Hrivnak opened the Public Comment portion and swore in the speakers.

Tim Burnham, 307 Bluff Ridge Court, Powell: Feels very strongly that not only will this variance have a significant impact on their home but also that the applicant has not met criteria for variance. Mr. Burnham gave a presentation on why he and his wife are against variance approval.

Brandon Pickworth, 289 Bluff Ridge Court, Powell: Voiced his concern for the variance and agreed with Mr. Burnham's presentation in supporting the opposition to granting the variance. His one reason in particular is the adverse ecological impact this variance will cause with further destruction of mature trees and natural habitat.

Paul Pratt, 261 Bluff Ridge Court, Powell: His property backs up to the lot in question. Has lived there 30 years and has seen the erosion from the tree removal as well. Agrees lot is buildable, maybe not for just any house, but a carefully built one due to the topography. Concerned about the effect on the neighborhood and decreased view. Feels it will be a detriment to the neighborhood.

Pat Kouskouris, 281 Bluff Ridge Court, Powell: Supports what Mr. Burnham has presented. Concerned about impact on the environment, particularly to the watershed area of Tyler Run with the removal of the black walnut trees. Thinks the Board needs to look at the big picture and a study should be done on ravine erosion.

John Block, 481 Welwyn Drive, Powell: Residence is on tract 2 but also owns tract 1. Feels he has a material impact due to the variance. Tyler Run Creek runs through both of his lots and is a big factor to his property. By allowing variance, it is a double loss of trees for him due to the 45 feet of driveway. Discussed major loss of canopy that will further increase erosion. Additionally, allowing this to move further east will further destroy more trees. Opposes the variance and fully supports what the others presented.

Tracy Mayberry, 446 Briarbend Blvd., Powell: Has lived in Liberty Hills since 1991. Agrees with other neighbors. Wants to reinforce it is a beautiful pristine wooded lot waiting for right person, right project, right house plan and right budget. It is not a hardship application, rather an application of convenience. Concerned about the dust and material damage to the storm sewer from sediment and gravel runoff.

Larry Heckman, 460 Welwyn Drive, Powell: Lives near property in question. Serves as Vice-President of Liberty Hills HOA. HOA Board unanimously has concerns about variance and appeals to the Board to reject request. Secondly, HOA is concerned they were not made aware of this project or given a chance to have their own hearing.

Chairman Hrivnak closed the Public Comment portion and gave the applicant a chance to respond.

Mr. Muharrem: Mr. Burnham is wrong about driveway setback because it would put them into the other lot. Secondly, Mr. Burnham talked about drainage issues on his property. Ninety-five percent of the drainage is to the south, there is practically no drainage to the north. Mr. Burnham's backyard is eroding because he has a 25 foot easement that contains 8 and 12 inch forced mains, which forces the sewage from the properties west of the Liberty subdivision through this area, plus there is a 12 inch waterline. The ground was already disturbed and it is Mr. Burnham's responsibility to maintain and insure his property does not erode. Does not understand the other comments about drainage because those properties are draining south to Tyler Run through this lot. Cannot comprehend Mr. Burnham's objection to variance when building at 60 feet will increase his view of the home. Mr. Muharrem is going to be respectful of the trees, but the deed restrictions do allow for clearing of trees on this property. He feels maybe the neighbors enjoy looking at the pristine lot and do not want anyone to build on it, which in that is the case then you buy the lot. Feels this is not fair to the owner of the lot. Asked the Board to consider granting the variance.

Chairman Hrivnak closed the applicant response portion and opened up for comment from the Board.

Mr. Short: Asked for clarification if property is part of Liberty Hills and governed by the HOA? Staff responded that it is not. Asked if there were deed restrictions regarding tree removal and staff responded there is.

Ms. Hitzeman: Asked for clarification from applicant on the concerns for building at the 60 feet. Mr. Muharrem responded it is to move away from the steep slope and cost of construction in order to protect it from erosion. Moving it will allow for better footers and a more secure foundation.

Chairman Hrivnak: Asked applicant if this is only house plan that he looked at for this lot.

Mr. Muharrem: Stated he is in the contract stage; and therefore has not invested money into additional studies on a property he may not buy if the issues cannot be resolved.

Chairman Hrivnak: Asked on the plans, what is the part that extends towards the floodplain?

Mr. Muharrem: Responded it is a family room looking down towards the water.

Mr. Duncan: He asked for a better understanding on the variation in grades and the effect on the footings.

Mr. Muharrem: He said if you look at footprint on both setbacks, the 60 foot shows it encroaching into the floodplain.

Chairman Hrivnak: Asked Staff if these are firm or general plans. Staff responded they are general plans.

Chairman Hrivnak: Typically, the Board has solid plans to review at this stage and it is difficult to understand the plans.

Chairman Hrivnak asked Board Members to give their opinion on the variance.

Mr. Duncan: Agreed that it is hard to envision the plan and need for the variance based on the evidence.

Mr. Short: Sympathizes with applicant since they are only in contract and not wanting to waste extra money if the Board will not approve variance. He feels applicant made it clear he does not want to encroach on trees. He feels neighbors are concerned about their views, but not considering the applicants views. While the Board can appreciate their concern for their view from their patios, it is not something the Board can take into consideration.

Ms. Hitzeman: Thanked the applicant and neighbors for helping the Board understand the impact of their decision. She does feel it is a substantial variance request and is not sure applicant has met seven factors.

Mr. Brickner: Agreed it was a thorough presentation by all parties involved. He feels based on the issue of the 15 feet versus the 60 feet setback that there are other options.

Chairman Hrivnak: He feels, according to the applicant, that no other alternatives were investigated. He thinks the request is based on size and location of the house and feels it is a self-created variance that could possibly be placed on the lot differently and not require a variance. He feels it is a substantial variance request.

Mr. Muharrem: He asked to present a document regarding an option that was looked at by a previous builder. He stated it did not work because there is an existing femoral tributary running over the proposed building site. He may or may not have sent this to Claudia Husak.

Chairman Hrivnak: Referred to legal counsel on the entrance of this new item.

Jesse Shamp, Legal Counsel, Frost Brown Todd: He advised that you could not deny this evidence into record however; this is something that should have been provided before the date of the hearing. Board should take it under advisement and look at it so that the applicant can say he was allowed to give all the evidence into record. Legal counsel does not know about the validity of it because they have not seen it.

Chairman Hrivnak: Before you begin, do we know the heritage of this document? Who made it? Where it came from?

Mr. Muharrem: A buyer's builder had a surveyor layout the document. He received it from the realtor. It shows surface drainage and that it is not a buildable location for soft footers.

Chairman Hrivnak: He said the Board would take the document under advisement. He explained that a motion to approve is given and then the Board votes to approve or disapprove. Before asking for the motion, he asked legal counsel for any recommendations.

Mr. Shamp: He feels the Board has focused their analysis on factors and evidence that has been presented and had nothing to add.

MOTION: Board Member Hitzeman made a motion to approve the variance as submitted. Board Member Duncan seconded the motion. The motion failed.

Vote: **Y – 1 (Short)** **N – 4 (Hitzeman, Hrivnak, Duncan & Brickner)**

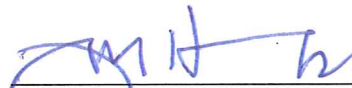
OTHER COMMISSION BUSINESS

Ms. Husak: An application has been received and there will be a meeting of the Board of Zoning Appeals on September 2, 2021.

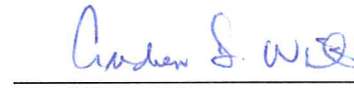
ADJOURNMENT

MOTION: Board Member Short moved to adjourn the meeting at 8:30 p.m. Board Member Duncan seconded the motion. By unanimous consent of the remaining members, the meeting was adjourned.

DATE MINUTES APPROVED:

 3-22-22

Jim Hrivnak
Chairman
Date

 3-22-22

Andy White
City Manager
Date

