



**BOARD OF ZONING APPEALS**

Village Green Municipal Building, Council Chambers  
47 Hall Street  
Thursday, August 16, 2021  
6:30 P.M.

**1. VARIANCE (Case 2021-29V)**

Applicant: Gurgun Muharrem  
Location: 476 Welwyn Drive  
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 15-foot setback along the eastern property line for a new single-family residence.

Aerial Site Image: <https://goo.gl/maps/qELwRozq8yV5eseU8>

**Property Overview**

This submittal is for a new residential home on a ±2.184 acre parcel immediately south of the Liberty Hills residential subdivision. The Lot was platted with three other lots and is also known as “Tract 4”. All four tracts of the subdivision have a shared access point off Welwyn Drive. The site is an irregularly shaped flag lot that contains floodway zone for Tylers Run on the southern portion of the property. The lot is significantly wooded and also contains significant changes in topography, sloping from 898 feet in the northeast portion of the site to 866 feet along the southern property line. The southern 1/3 of the site contains floodplain.

All four lots (tracts), including 476 Welwyn Drive were annexed into the City of Powell in 2014; however, the land was never rezoned and retains Liberty Township zoning as FR-1 Farm Residence District. This zoning district permits single family residential homes (a copy of the applicable Zoning Code Section is included in the packet).

The request was postponed from the original meeting date of August 5, 2021 to allow the applicant and Staff to conduct additional research and thoroughly prepare for the packet publication.

**Proposal Overview**

The applicant is in contract to purchase the lot from the current owner and is proposing a new single-family residence. The home is proposed to be accessed off the current Welwyn Drive stub by an approximately 600-foot long gravel driveway along the northern property line. The Liberty Township Code permits gravel as a material within this Zoning District. The required width will be 14 feet with one pull-off area at a size of 6 feet by 40 feet. Upon permit submission, the applicant will be required to demonstrate adherence to the Township driveway requirements.

The application includes extraneous information regarding a Stream Corridor Protection Zone (SCPZ) limitation. As stated above, the property is under the zoning of Liberty Township, therefore the Powell codified SCZP regulations do not apply

The Liberty Township FR-1 District requires side yard setbacks of 25 feet and no principal structure shall be located closer than 60 feet to the rear line of any lot, and no accessory structure shall be located closer than 15 feet to the rear lot line. The applicant is proposing to locate the home 15 feet from east lot line. Given the irregular shape of the lot, it is unclear where the side and rear yards are applied. The north of the lot is adjacent to the rear of lots in the Liberty Hills, the eastern property line is adjacent to the rear property line of an undeveloped lot in Liberty Township. The south property line is adjacent to the rear of a developed lot, also in Liberty Township. The proposal from the applicant indicates the application of a side yard setback along the northern property line and a rear yard along the east property line. It is reasonable to consider the eastern property line the rear of the lot, as this is the side currently in question.

The applicant is requesting variance:

- 1) To increase the required east rear yard setback from 60 feet to approximately 15 feet.

#### Neighborhood Contact

Staff has communicated with several adjacent property owners who have expressed opposition to the variance request. Written communication has been received from neighbors Pratt, Heckman and the Liberty Hills Property Owners Association (LHPOA). All written communication is included in this packet and is opposed to the variance.

Additionally, numerous statements include concerns regarding the existence of deed restrictions and the subdivision plat. Neither the City nor the Board of Zoning Appeals have jurisdiction to enforce deed restrictions. The subdivision plat shows hatched lines off various distances from the lot lines of all four lots, however there are no notes on the plat that indicate the purpose of such lines nor do they coincide with the setbacks required by Code. The deed restrictions also prohibit the subdivision of the two lots to which they originally applied, however the two lots have been split into the four existing lots. All that being said, none of this information has any bearing on this variance review.

#### Process

While the property retains the Liberty Township zoning, the property lies within the jurisdiction of the City of Powell. Therefore, the process outlined in the City of Powell Zoning Code for a variance request must be followed.

#### Ordinance Review & Applicant Statement & Staff Comment

In accordance with the requirements of Codified Ordinance [1127.05\(a\)](#), the Board of Zoning Appeals may authorize upon appeal in specific cases such variance from the terms of this Zoning Ordinance as will not be contrary to the public interest where, owing to special conditions of the land and/or buildings that are unique to the property in question, and not self-created, a literal enforcement of the provisions of this Zoning Ordinance would result in deprivation of all beneficial use of the land. The ordinance also states no single factor shall be considered a determinative factor, and the factors shall be weighed and balanced in determining whether a variance is warranted. The applicant shall bear the burden of proof that the criteria for a variance is warranted. The applicant shall bear the burden of proof that the criteria for a variance have been met and that the application of the zoning requirement to the applicant's property would be inequitable.

The applicant's submission provided the following information in response to codified ordinance [1127.06 – Application Standards for Variances](#):

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

**Applicant statement:** The applicant states the variance would allow for beneficial use of the property.

**Staff Comment:** While granting the variance will allow the building to move to a higher elevation, farther away from the creek and will allow a home to be built on a lesser slope; there is no information that building the home within the required setback would not yield a reasonable return or limit the beneficial use of the property.

- (2) Whether the variance is substantial

**Applicant statement:** The applicant's statement indicates the variance is substantial because it allows for the building envelope to be situated on a higher elevation with higher stability against sliding movements and reasonable cost.

**Staff Comment:** The evaluation on whether the variance is substantial ought to center around whether granting an encroachment of a principal structure 45 feet into a rear yard is substantial. The Code allows an accessory structure to be located 45 into the rear yard.

- (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  
**Applicant statement:** The character of the neighborhood will not be adversely affected, the setback to the north will not change from 25 feet. The applicant also states the houses that front Bluff Ridge Court should not be negatively as this north setback does not change. The requested variance is to a vacant lot in Liberty Township and the building envelope of the lot would be far away from the subject property.  
**Staff Comment:** The move of the proposed home 45 feet to the east will cause the driveway to extend by this distance, however there is no limitation in the Code as to how long the driveway is allowed to be and it could extend farther west to access a potential accessory structure. The proposed location of the new home places it closer to Lot 1123 in Liberty Hills than the permitted location which is closer to Lot 1122. As proposed, the garage elevation is shown to the north.
- (4) Whether the variance would adversely affect the delivery of governmental services (e.g., water, sewer, garbage)  
**Applicant statement:** The variance will have no adverse impact of the delivery of governmental services.  
**Staff Comment:** Staff agrees with the applicant's assessment.
- (5) Whether the property owner purchased the property with knowledge of the zoning restriction  
**Applicant statement:** The applicant states that the property owner had no knowledge of the setback restrictions, to his knowledge.  
**Staff Comment:** While the property owner may not have been aware; the applicant was aware of the setback requirements. However, this, standard, expecting all property owners to know various zoning regulations does not prohibit an owner to request relief in terms of a variance.
- (6) Whether the property owner's predicament feasibly can be obviated through some method other than a variance  
**Applicant statement:** The applicant states predicament cannot be obviated through any other method unless having prohibitive foundation costs and disturbing untouched steep ground, higher storm runoffs and erosion.  
**Staff Comment:** Staff recognizes that a single-family residential home can be built on this lot and meet the setback requirements without a variance. However, staff understands the property owner's request for a location with lesser slope thus decreasing the footer and retaining needs and less disturbance to the slope.
- (7) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance  
**Applicant statement:** The spirit and intent behind the zoning requirement is observed and justice done by granting a 15-foot setback.  
**Staff Comment:** Given the fact an accessory structure is permitted at the requested setback, the requested location of the principal structure will have a similar impact. The natural restraints of the site, in terms of topography and floodplain, and the irregular shape of the lot are potential reasons to consider justice is granted and the spirit and intent of the requirement are observed.

#### Staff Analysis & Recommendation

As stated above, no single factor shall be considered a determinative factor, and the factors shall be weighed and balanced in determining whether a variance is warranted.

**Standard 1: Not Met**

Staff has determined Standard 1 can 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.

**Standard 2: 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.

**Standard 3: Met**

The lots of Wewlyn 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.

**Standard 4: Met**

There will be no adverse effects to the delivery of governmental services.

**Standard 5: Met**

Knowledge of zoning requirements prior to purchase or entering into a purchase contract do not deprive an applicant from seeking a variance.

**Standard 6: Not Met**

There are other locations for 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.

**Standard 7: 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.

Therefore, Staff recommends approval of the following variance request at 476 Welwyn Drive:

- 1) A variance request to decrease the required east rear yard setback from 60 feet to 15 feet.