



CITY OF DERBY
MEETING OF THE BOARD OF ZONING APPEALS
July 28, 2016
6:30 PM

MEETING MINUTES

1. MEETING CALLED TO ORDER AT 6:30 P.M.

2. ROLL CALL

Pat Baer	Present
Jessica Rhein	Present
Justin Smith	Present
Joe Waugh	Present
Van Willis	Present

3. CONSIDERATION OF MINUTES:

3. A. Minutes of the June 23, 2016 meeting.

MOVED by Justin Smith to approve the minutes of June 23, 2016 as presented,
Seconded by Joe Waugh.

VOTE: 4-0-1 (Jessica Rhein, Abstained)

4. NEW BUSINESS

4. A. DESCRIPTION: Variance of minimum required rear yard setback in
R-1 "Single-Family Residential District"

GENERAL LOCATION: West of Hilltop Rd. near intersection of E. Rushwood Dr.
Common Address: 1325 S. Hilltop Rd.

APPLICANT: Steve & Alicia Buehne, owner

REASON FOR REQUEST: Allow replacement and expansion of an existing deck
within the required rear yard setback

BACKGROUND:

- The owner of the residence at 1325 S. Hilltop Rd. has requested a variance from the zoning regulations requiring a minimum 25 ft. rear yard setback.
- The property is currently used for a single-family residence and accessory uses permitted within the R-1 "Single-family Residential" zoning district.
- A deck attached to the rear of the house was originally constructed with the house in 1998. Available City records indicate that the house was properly permitted, inspected

and approved. The attached deck was likely included as part of the home inspection, but the record does not have sufficient details to determine the precise location or dimensions of the deck.

- The existing deck extends approximately 17 ft. into the required rear yard setback.
- The applicant requests relief from Section 401.E.2.c of the zoning regulation which requires a minimum rear yard setback of 25 ft. on R-1 zoned properties.
 - The applicant is requesting the minimum rear yard setback be reduced from the required 25 ft. to 10 ft. in width.
 - The reduction is requested in order to facilitate replacement of the existing deck. An expansion to the deck is also proposed, but would not encroach further into the required setback than the existing deck.
 - The attached exhibit illustrates the proposed deck replacement and expansion.
- City staff recommends approval of a variance to reduce the minimum required rear yard setback, subject to certain conditions necessary to fulfill the intent of the zoning regulations.

STAFF COMMENTS:

General

- The Board is authorized to grant a variance to reduce the minimum required rear yard setback in accordance with the standards established by state law and described in Section 1003.C.
- The application area is legally described as Lot 1, Block 1, Southcrest 3rd Addition, Derby, Sedgwick County, Kansas.
- The request for a variance of the zoning regulations requires a public hearing:
 - The notice of public hearing was published in the *Derby Informer* on July 6, 2016.
 - Notices were mailed to neighboring property owners as prescribed by state law. The certified ownership list is on file at City Hall.
- At the time of this writing, staff has received written correspondence from one owner of property within the notification area. The owner supported the proposed variance (email attached).
- Approval of a variance requires adoption of a resolution.
 - A draft resolution was prepared by staff based upon staff's considerations of each finding as presented in this report. The draft resolution is attached.
 - The Board may instruct staff to modify the resolution as necessary to reflect the findings of the Board used as a basis for the Board's decision.
- The decision of the BZA on a variance request is final and does not require any further action.

Zoning

- Lot 1, Block 1, Southcrest 3rd Addition is located within the R-1 "Single-Family Residential" zoning district and is surrounded by R-1 zoning.
- Within the R-1 zoning district, all lots are required to provide a minimum 25 ft. rear yard setback. A required rear yard is defined as the unoccupied open space located between the furthestmost projection of a structure and the property line of the lot on which the structure is located.
 - No principal buildings (primarily houses in R-1 zoning) are permitted to be constructed within the rear yard setback.
 - Certain accessory structures may be permitted within the 25 ft. rear yard setback, but are required to be setback a minimum distance of 5 ft. from the property line (Section 600.C for permitted accessory structures).

- Certain permitted obstructions (awnings or canopies and open terraces or decks not over 4 ft. above grade) are permitted to extend not more than 5 ft. into a rear yard setback.
- A variance, if approved, would allow the applicant to construct permitted buildings and/or accessory structures nearer to the rear property line than would normally be permitted, ultimately allowing replacement and expansion of an existing deck.
- The proposed deck replacement and expansion is otherwise compliant with all other applicable City regulations.

FINDINGS OF FACT

- The Board is authorized to grant variances from the terms of the zoning regulations in specific cases which will not be contrary to the public interest and where, due to special conditions, a literal enforcement of the provision of the regulations, in an individual case, results in unnecessary hardship, and provided that the spirit of the regulations shall be observed, public safety and welfare secured, and substantial justice done.
- State law establishes, and Section 1003.C of the zoning regulations includes standards for the development of findings of fact which act to support the Board's actions. The Board may grant a variance upon making specific written findings of fact based upon the particular evidence presented to it at the hearing that all the standards required by state law have been met.
- The standards which must be considered for a variance are listed below with City staff's considerations of each of the findings included in *italics*:

Finding a)

That the variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district, and is not created by an action or actions of the property owner or the applicant;

Staff Considerations:

The conditions in this case are unique because the property involved consists of a platted lot which has a wide street frontage, but a shallow depth. The minimum lot depth required for R-1 "Single-family Residential" zoned lots is 100 ft., which the property only meets on one side. The second side is tapered down to a depth of only 70 ft., making more than half the length of the lot less than the minimum required lot depth. Additionally, an existing deck was constructed in 1998 at the same time as the house and has remained at its current location since that time.

Finding b)

That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents;

Staff Considerations:

The requested variance is proposed to allow replacement and expansion of an existing deck. The rear of the property is adjacent to a platted reserve and is limited to drainage purposes, open space and landscaping. The reserve is owned and maintained by the Homeowner's Association for the subdivision. The reserve contains a drainage pond, and no homes will be constructed immediately adjacent to the property's rear yard. Allowing a reduction of the required rear yard setback should not be expected to infringe upon the property rights, or be a detriment to the value of adjacent properties.

Finding c)

That the strict application of the provisions of the zoning regulations of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application;

Staff Considerations:

Strict application of the provisions of the zoning regulations would result in an inability for the owner to replace an existing deck that would otherwise be permitted within the R-1 "Single-family Residential" zoning district. Strict application of the regulations may necessitate removal of the portion of existing deck encroaching into the rear yard setback. The proposed replacement and expansion of the deck would otherwise comply with all other applicable zoning regulations. The inability to reconstruct the deck constitutes an unnecessary hardship upon the applicant.

Finding d)

That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare;

Staff Considerations:

Granting a variance to reduce the minimum required rear yard setback to 10 ft. will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare of the community. The rear yard of the subject property "backs up" to a drainage reserve and is not accessible or visible to the public. No adjacent private properties will be negatively impacted by a reduction of the rear yard setback on the property.

Finding e)

That granting the variance desired will not be opposed to the general spirit and intent of the zoning regulations;

Staff Considerations:

The minimum required rear yard setback for R-1 zoned properties is intended to ensure that an adequate amount of open space and landscaping is provided between adjoining residences. The required setback also ensures that neighbors are afforded some privacy from adjacent residences. Staff is of the opinion that granting a variance to reduce the required rear yard setback on the subject property will not be contrary to the spirit and intent of the regulations.

RECOMMENDATION OF PROFESSIONAL STAFF:

Based upon the preceding findings and due to the uniqueness of the lot and the conditions and specific to this location, City staff recommends that the Board of Zoning Appeals grant a variance to reduce the minimum required rear yard setback to 10 ft. on Lot 1, Block 1, Southcrest 3rd Addition.

City staff's recommendation is subject to the following conditions:

1. The minimum required rear yard setback shall not be reduced below 10 ft. in width; and,
2. The reduced minimum rear yard setback is to be used for purposes of constructing and maintaining a deck, covered or uncovered, and which may be enclosed, but is not to be used for any other addition to the principal structure or any detached accessory buildings.

RECOMMENDED MOTION:

Adopt a resolution granting a variance to reduce the minimum required rear yard setback on Lot 1, Block 1, Southcrest 3rd Addition, subject to retaining a minimum 10 ft. rear yard setback, and further subject to restricting uses within the reduced rear yard setback to prohibit any detached accessory buildings.

PUBLIC HEARING OPENED

Justin Smith, Chairman opened the public hearing and determined that a quorum was present.

Cody Bird, City Planner announced that proper notice had been given in accordance with state law.

Smith asked board members to report any *ex parte* communications. No *ex parte* communications were reported.

Baer commented that he knows the applicant and lived down the street from her in the past.

Bird presented the staff report.

Alicia Buehne, Applicant stated that she contacted the builder of her home for construction records and was told none were saved. She also stated that the proposed new deck will be smaller than the existing deck. She added that the Home Owners Association for the subdivision has already approved the design, subject to City permit.

Bird stated that utility companies were notified of the variance request. No utilities had any objections to the proposed variance.

PUBLIC HEARING CLOSED

The board deliberated the findings of fact and adopted the written findings as presented in the staff report, including the recommended conditions of approval.

MOVED by Justin Smith to adopt a resolution granting a variance to reduce the minimum required rear yard setback on Lot 1, Block 1, Southcrest 3rd Addition, subject to retaining a minimum 10 ft. rear yard setback, and further subject to restricting uses within the reduced rear yard setback to prohibit any detached accessory buildings, Second by Van Willis.

VOTE: 5-0

Bird announced that a BZA meeting has been scheduled for August 25, 2016.

5. ADJOURNMENT

MOVED by Smith to adjourn at 7:15 p.m., Second by Baer.

VOTE: 5-0

Stephanie Cox
Recording Secretary

Patrick S. Baer
Chairperson