

## MINUTES OF MEETING

### HOOVER BOARD OF ZONING ADJUSTMENT

**Date:** March 28, 2022  
**Time:** 5:30 P.M.  
**Place:** Hoover Municipal Center  
**Present:** Mr. Curtis Jackson  
Mr. Dan Mikos  
Mr. Kyle Puchta  
Mr. Jim Brush  
Mr. Lawren Pratt

**Absent:** Mr. TJ Dolan

**Also Present:** Mr. Mac Martin – City Planner  
Ms. Vanessa Bradstreet – Zoning Assistant  
Mr. Phillip Corley – City Attorney

#### 1. CALL TO ORDER

The meeting was called to order by Mr. Mikos. The secretary had the roll call and a quorum was present. Mr. Mikos announced the voting members for this meeting would be Mr. Jackson, Mr. Pratt, Mr. Brush, Mr. Puchta, and himself. Mr. Mikos explained it took a super majority to grant a variance which would be 4 positive votes out of five.

2. APPROVAL OF MINUTES: Mr. Mikos asked if anyone had any additions or corrections to the minutes from the February 28, 2022, BZA meeting. There being none, Mr. Mikos asked for the minutes to be approved by acclamation.

*The following cases (#'s 3, 4, & 5) were continued from the February 28, 2022, meeting:*

3. BZA-0122-01 –Mr. Tim Lawson is requesting a 33.9' variance to his front setback along Farley Road, which would adjust the required setback to 35' at property located at 301 Park Avenue. Section 9.02.03.B.2 of the Zoning Ordinance requires the front setback of his lot to match that of his neighbor to the east since the street frontage of the block is over 40% developed. Mr. Lawson is the property owner and the property is zoned R-1 (Single Family District). (**APPROVED**)

Mr. Tim Lawson, 2215 Oak Ridge Circle, was present to represent his case. Mr. Lawson presented his revised site plan with the actual house plans they had intended to build. Mr. Lawson stated they had flipped the house several different ways to try to make it fit.

Mr. Mikos stated that according to his drawings, the setback on Farley Road would be basically 52 ft. Mr. Lawson agreed. Mr. Brush asked how many feet he was requesting. Mr. Lawson answered from the way he understood it was that it was 35 feet from the 10 ft line. He stated if you measured from Farley Road to the edge, that is 21 feet before you get to the 10 ft that was dedicated to the City of Hoover, so added to the 35' to that, you were at 56' feet before you start counting to get to the house.

Mr. Brush asked Mac Martin, City Planner, how much variance he was requesting. Mr. Martin answered that if the Board of Zoning Adjustment was so inclined, it might be best to structure the variance to where there was a build to line not less than 50' from the edge of the right-of-way. Mr. Martin stated that would give 2 feet of wiggle room on this one and if the build to line was not less than 50' from the edge of the right of way from this one, that would be a 10' difference from where the house next door was located with the right-of-way in line with the front property boundary. Mr. Martin stated there was a 10 ft offset. Mr. Brush then stated it would be 10'. Mr. Martin agreed.

Mr. Jackson asked Mr. Lawson if he planned to do any other additions on to that side such as porches, etc? Mr. Lawson answered no due to having to flip the plans.

Mr. Pratt asked for a point of clarification: when a case was continued, were the neighbors notified again. Ms. Bradstreet stated they were not notified again.

Mr. Martin added that the drawing shown that where they were proposing to put the front porch, the corner closest to the street, was still in line with the house next door and would be in compliance.

Mr. Mikos asked if anyone else on the board or in the audience had any questions or comments. There were none. Mr. Mikos asked for a motion. Mr. Brush made a motion to approve BZA-0122-01 that was amended to read that Mr. Tim Lawson was requesting a 10' variance to his front setback along Farley Road. Mr. Kyle Puchta seconded the motion. A roll call vote was taken with a unanimous vote to approve the variance.

4. **BZA-0222-03** - Mr. & Mrs. Russell Stringer are requesting a variance to allow a swimming pool to be built 5' off the property line instead of the required 10' on the left side of the lot at property located at **1545 Wilborn Run**. Mr. & Mrs. Stringer are the property owners and the property is zoned PR-1 (Planned Single Family District). **(APPROVED)**

Mr. Russ Stringer, 1545 Wilborn Run, was present to represent this case. Mr. Stringer thanked the board for having him do his homework and found out the fence company did not install the fence correctly on the property line and they were having them go back to fix this error.

Mr. Stringer had the builder come out and they determined they were 5.17 feet almost 63 inches both on the right and left side. Mr. Stringer stated that earlier they were asked about a 10 foot encroachment on the side for the house, what they were looking at, if they were going to be 5 ft off the fireplace so they would stay in compliance there, it would be 79 inches from the red square on the drawing (property line), and blue box they had to be 10 foot, it would be 19" to the existing patio. Mr. Stringer added that if they asked them to demo this, they would have to demo the entire wood box, hence, he was asking for a 41" (3.4 ft) variance. Mr. Stringer continued to show more slides of his yard from different angles showing slopes, etc.

Mr. Stringer showed several slides of his backyard near the patio and wood box. He added he was very happy to find the fence company had made an error and now had the opportunity to make this correct.

Mr. Pratt asked if he was asking to come into the 10 ft required, he was asking to come into the 10 ft by 3.4 ft. Mr. Stringer answered that 41” was all he needed in order to maintain the 5’ from the existing structure.

Mr. Martin stated he had spoken to the Fire Marshal regarding the distance between the fireplace and the edge of the pool and the Fire Department wanted to see the 5 ft maintained for safety precautions.

Mr. Mikos asked if there were any other questions from the board members or audience. Mr. Pratt asked if there was no way to build a smaller pool. Mr. Stringer answered it would be 2 years to get on that wait list.

Mr. Mikos asked for a motion. Mr. Brush was asking what exactly Mr. Stringer was requesting. Mr. Stringer answered that 3 ½ feet would be fine vs. his original request of 5’. Mr. Brush then made a motion to approve BZA-0222-03 as amended to read 3 ½ feet as opposed to 5’ off the property line. Mr. Puchta seconded the motion. After a roll call vote, the board voted unanimously to approve the variance.

5. **BZA-0222-04** - Mr. James Newman is requesting a variance to allow a fence to extend into the accessory front yard setback to the property line at property located at **1109 Guinevere Circle**. Mr. Newman is the property owner and the property is zoned R-1 (Single Family District). (***DENIED***)

Ms. Audrey Bence, 1109 Guinevere Circle, was present to represent this case. Ms. Bence stated again (since the last meeting her case was continued), she was there to seek a variance to finish building a fence to control the roaming dogs that aggressively come into their yard. She stated the fence was needed to protect her son from the dogs. She said the problem was the roaming dogs and she felt the solution was to build a fence so that she could enjoy playing with her son on the flat part of her yard. This area was where she was requesting the variance.

She stated she had come up with 5 (five) points and would like to discuss them. (only 4 were presented):

- (1) Potential sight problems that she had submitted numerous photos to show that was not an issue.
- (2) Effect on the neighbors – She stated that every neighbor that the fence would be effecting had written a letter stating they weren’t opposed to the fence.
- (3) Animal Control –described an incident where a pit bull was threatening she and her husband – called animal control – and were informed they left at 4:30 pm
- (4) Concern over the precedent of fences – had submitted photos of over 111 homes who were either building a fence or had just recently built one.

Ms. Bence emphasized again they were just trying to build a fence to protect their son. She stated at the last meeting the board asked for the measurements of the big oak tree. She stated the measurements were 18 feet from the street.

Mr. Mikos addressed Ms. Bence to say he had been on the BZA for a long time and corner lots had always been a problem. Mr. Mikos stated he was familiar with the areas that the photographs submitted were in as he had lived in Hoover since 1961. Mr. Mikos stated that many of the pictures that were submitted, the fences were built while that area was unincorporated Jefferson County, before being annexed into Hoover. Some of the homes were in Planned Unit Development (PUD) areas.

Mr. Mikos stated they had had in the past many requests of the same nature that had been denied. Mr. Mikos added that approving this one would become a precedence and then everyone would want the same thing. He added that saying the sight line was not an issue was not correct in his opinion. He added that building the fence all the way out there, someone could pull out in front of someone due to not being able to see because of the fence.

Mr. Jackson had some questions for Ms. Bence regarding the sight line and the positioning of the fence posts.

Mr. Brush confirmed with Ms. Bence that she had originally asked for 0 feet all the way to the property line, but now is proposing to ask for 6 feet off the property line with an amended request. Mr. Brush also confirmed the 18' distance from the tree which Ms. Bence agreed.

Mr. Mac Martin, City Planner, confirmed they were asking to extend the fence 29' feet out into the setback. Mr. Mikos asked to see the plat again. Mr. Pratt added the right of way was what they were governing towards so it would be 6 feet from the right-of way. Discussion was held regarding exactly where the tree was compared to the right-of-way, where the white stake was placed, etc. Mr. Mikos asked Ms. Bence if she would consider leaving the tree outside the fence. Ms. Bence answered with details about the tree and large root system that would be disturbed if they did that and problems that would cause with water drainage.

Mr. Martin added that he felt they would have the same issue if they pulled the fence back to the tree. Mr. Robert Maddox stated the root system was different on one side of the tree than the other but he did agree with Mr. Martin as he had asked the same question.

Mr. Pratt asked the length of the flat area and if it went all the way back to the house. Ms. Bence answered that it only went 6 to 7 feet and that was the only flat area. Mr. Mikos asked Mac Martin, City Planner, how many feet they were at if they gave them to the tree. Mr. Martin answered it would be 6 feet off the ROW to the tree which they would be 29' to the tree. Mr. Pratt pointed out that if they were talking about 6 feet from the ROW to the tree but can't put the fence at the tree, then it would have to go inside or outside which would change the number.

Mr. Mikos pointed out again that they had a large backyard and already had play toys out there. Mr. Mikos stated they had worked a couple of feet with people with corner lots and if they approved this variance, people would be back in asking why they weren't approved.

Mr. Robert Maddox pointed out that was probably because of the police report and other factual evidence presented which made this case different from the earlier cases referred to. Mr. Maddox stated this was not a normal request due to the hardship of the property and also the other facts surrounding the case.

Mr. Mikos asked how the city felt about the case. Mr. Martin answered that after reviewing the property itself, looking at physical characteristics of the property, how it lays out with the setbacks on the property, and given the layout and nature of the property itself, they had difficulty finding a hardship on the property.

Ms. Bence asked about putting the fence on the inside of the tree. Mr. Mikos stated that some of the board members would probably look at this case if they could move the fence inside the tree. Mr. Maddox stated they would like to make this request.

Mr. Mikos asked Mac Martin how to figure out how far that would be. Mr. Martin stated that they had 6' to the tree and they would need 3 to 4 feet to account for roots, then an even 10' should be good. Mr. Maddox then asked if they could resubmit with that because if the fence was going inside the tree, they would have to cut the roots down to move it inside the tree, but if that was what was acceptable, then they would request to put the fence inside the tree. Ms. Bence interjected that would be an extra \$5,000 just to let them know because of the root system.

Discussion was held regarding the tree problem.

Mr. Mikos asked Mr. Martin what the best way to handle this would be. Mr. Martin stated they would need to come up with a hard and fast measurement which would need to be requested by the applicant. Mr. Maddox then asked if it would be 27' off the ROW. Mr. Martin confirmed it would be a 27' variance which would put them 13' off the ROW boundary. Mr. Maddox concurred. Mr. Mikos asked if anyone in the audience was present to comment on this case. Nobody was present.

Discussion ensued regarding the dimensions and Mr. Maddox added that the first request was 29' originally, the 6' request they made tonight, 2' on the other side of that would be 27' or 26' and they would build over the roots. Mr. Brush asked Mac Martin to give them the info, with Mr. Martin stating that would be a consistent 8' from the property boundary that would equate to a 27' variance.

Mr. Brush discussed other options with the board members. Mr. Maddox interjected if they could allow the fence contractors to come in to see what they could do, if they were granted the variance to the tree, then if they needed to come in, they could, and if they could get to the tree, that would benefit the applicant.

Mr. Brush made a motion to approve BZA-0222-04 as amended to have the fence 8' from the property line or have a 27' variance. Mr. Jackson seconded the motion. A roll call vote was taken with Mr. Jackson voting "aye", Mr. Pratt voting "naye", Mr. Brush voting "aye", Mr. Puchta voting "naye" and Mr. Mikos voting "aye". Mr. Mikos stated the variance was denied for lack of a super majority. Discussion followed with Ms. Bence asking why the variance was denied and asking how long they had to bring it back to the BZA. Mr. Pratt answered in his opinion, it was just too much of a variance.

- BZA-0322-06** – Steven J. Barley is requesting a variance to construct a covered patio with fireplace 10’ into the required 20’ rear setback at property located at **4934 Ridge Pass**. The property is owned by Steven Barley and is zoned PR-1 (Planned Single Family District). **(APPROVED)**

Mr. Steve Barley, 4934 Ridge Pass, was present to represent this case. Mr. Barley was asked by Mr. Jackson if the HOA had granted approval. Mr. Barley answered the HOA and the ARC had approved his plans. Mr. Pratt asked if his intent was to leave his addition enclosed or open on the three sides. Mr. Barley answered it would be open on 2 sides. Mr. Barley explained that on the left side of the home, it would be just an extension on the home. He explained he was just asking for a variance for the back side of the home. Mr. Barley added he was asking for a 10’ variance. He added that the neighbors on both sides were fine with this project. He said that the neighbors on both sides had 6 ft fences all the way to their property lines. He stated that there would be two open walls and where the fireplace was would be a solid wall. Mr. Pratt then confirmed that it would be open to the rear and to his side of the yard and completely screened on the side closest to the fence. Mr. Barley stated that was correct.

Mr. Pratt asked Ms. Bradstreet if there had been any comments from the neighbors regarding this case since he knew this would block their view corridor. Ms. Bradstreet answered she had no comments or calls regarding this case. Mr. Martin confirmed that the property directly behind him was owned by the Magnolia Grove Residential Association so that was common area.

Mr. Mikos asked if there was anyone in the audience who wished to speak about this request. There were no comments. Mr. Mikos asked for a motion. Mr. Brush made a motion to approve BZA-0322-06 as presented. Mr. Pratt seconded with an additional amendment that this addition stay completely out of the sanitary sewer easement that appeared to be next to this property. With a roll call vote, the motion was unanimously approved and the variance was granted. Mr. Mikos stated to the applicant his case had been approved and to make sure he got a permit.

- BZA-0322-07**- Collin & Michelle Vaughan are requesting a variance to allow a covered deck to extend 10’ into the required 35’ rear setback at property located at **1900 Paulette Drive**. Mr. & Mrs. Vaughan are the property owners and the property is zoned R-1 (Single Family Residential District). **(APPROVED)**

Mr. Mike Carden, and Collin Vaughan, 1900 Paulette Drive, were present to represent this case. Mr. Carden stated the deck that was originally built on this case he had found to be non-compliant. Mr. Carden stated that the deck was built past the building line and he didn’t think it had ever been inspected. Mr. Carden pointed out that the house was angled to the property line in relation to being parallel to the house. Mr. Carden stated the house was not parallel. He stated that his design would not come out any further than the existing product. He added he had placed the steps to the wider end of the property. Mr. Mikos asked if anybody on the BZA had any comments or questions. Mr. Jackson asked if the covered deck faced the rear of the house next door. Mr. Carden answered it actually faced the back yard of that house. Mr. Puchta asked Ms. Bradstreet if she had any responses from any neighbors regarding this case and she answered she had not heard anything. Mr. Mikos asked if there were any questions from the audience. There was none. Mr. Brush made a motion to approve BZA-0322-07. Mr. Pratt seconded the

motion. After a roll call vote, the motion was approved unanimously. Mr. Mikos stated they had the variance approved and to make sure to obtain a permit.

8. **BZA-0322-08**- Mr. Efrain Horta, Horta Construction LLC, representing Dr. Sakina A. Kamal, is requesting a variance at property located at **5135 Lake Crest Circle** to allow a new attached garage to be built into the front yard to within 16' of the property line, closer to the street than the average front yard of neighboring properties. Dr. Kamal is the property owner and the property is zoned PR-1 (Planned Single Family Residential). (***WITHDRAWN***)

Mr. Efrain Horta, 3401 Watertown Place, Vestavia, 35243, was present to represent this case. Mr. Mikos said the question they were asking if there was any possibility of building this to the right side of the house or building a single garage that was parallel to the house in the front. Mr. Horta stated that building a single garage was a non-conforming factor in this neighborhood. He stated that the garage to the other side of the house would be on the low side of the house, so would take a great deal more materials and engineering due to it being on the low side.

Mr. Pratt asked if the property had considered an interior chair lift from the garage to the main level in lieu of an exterior non-conforming structure. Mr. Horta answered he had not discussed this with the owner.

Mr. Brush asked Mac Martin, City Planner, if the single car garage was the issue. Mr. Horta interjected that this was a two-car garage to be in compliance with the other homes in the area. A discussion ensued regarding which homes had parallel and which homes had perpendicular garages. Mr. Horta added that 5139 and 5142 were the closest homes with similar lay-outs.

Mr. Jackson asked Mr. Martin if he had any street views up and down the neighborhood, which Mr. Martin replied he did. He pulled some up on the screen and had taken some measurements regarding the distance from the street. Mr. Martin stated he had measured a couple of houses regarding the distance from the street, one being approximately 14' from the right-of-way and another at approximately 13' from the right-of-way.

Mr. Pratt asked if it was possible to see what the rectangular shape of this proposed addition would be adjacent to the house in this image as it effects the view corridor for the house just to the north if it's possible to do. Mr. Martin answered that would not be possible at this meeting, but added that after looking at these homes in the Lake Crest PUD, the original homes were spot located per the Planned Unit Development, therefore there was not a front setback specified when put in place. Mr. Martin stated their concern on this case was potential impact from neighbors as we had already had some calls.

Mr. Mikos asked if there was anybody in the audience who wished to speak to this case. Mr. Rudy James, 5199 Lake Crest Circle, stated he had been a home builder for 40 years and gave the reasons why he was opposed to this situation and would be a detriment to the neighborhood if approved.

Mr. Martin stated we did have documentation stating the Lake Crest Homeowners Association had

approved these plans and wondered if they gave any notice to the homeowners. Mr. James stated he had not been given any notification. Mr. Pratt added that the date on the HOA approval was dated May 2021.

Mr. Bill Heath, 1063 Valley Crest Drive, stated he was on the ARC and on the HOA Board stated when they gave the approval for the garage, they anticipated they would comply with all setbacks and that if the distance from the road put it outside of the setback, then they would have to adjust to conform to the setback, and the simple fact that they were here tonight, proves that they were asking for the variance which went against the original intent of the approval.

Mr. Heath stated if he was responsible for any confusion, he apologized. He said that a neighbor who had received the city's notice brought this to their attention. Since then, Mr. Heath discussed various points that the ARC and HOA had been in communication with the subject matter. He also stated that the board would consider a single car garage due to this situation.

Mr. William McKnight, 5131 Lake Crest Circle, the home next door, stated he had lived in his home for a couple of years. Mr. McKnight stated he was opposed to this situation and had spoken in person to Dr. Kamal regarding this situation and his concerns, one being home values.

Mr. Horta then addressed some concerns such as matching the brick, home values, the HOA approval letter, and the fact there were not any setbacks. Mr. Mikos asked Mr. Martin if that was true. Mr. Martin stated that since this was a PUD, it did not specify one. However, if there was a street or neighborhood that was developed beyond 40%, then you went into front yard modifications and with that the purpose was to attempt to match the average of the homes on either side so you didn't have a home jutting out and obscuring views, etc.

Discussion followed regarding various addresses and how close to the street they were. Mr. Mikos asked Mr. Heath if the people who purchased this home brought their packet to the HOA before they purchased the home and he answered they did. Mr. Heath then explained their rationale making that decision for approval and explained them approving a single car garage in this situation which would be a lot wider that would still not look out of place and still would be 16' from the street.

Mr. Horta stated he wanted to add they were building the smallest two-car garage they could fit without creating an eyesore but he thought putting a one car garage would be a greater dis-service to the neighborhood. He talked again about property values and the fact this would add more square footage to the home and add more property value.

Mr. Mikos stated they did not make their decisions based on home values, plus or minus.

Mr. Mikos asked Mr. Martin if he had any other comments. Mr. Martin stated he felt that were some options to look at other than pushing the 2-car garage off the front which would be upsetting the average setbacks between homes in this vicinity. Mr. Martin stated that all things considered, he was having a hard time seeing a hardship on this property.

Mr. Mikos announced they could vote on this at this meeting, and if declined, they could submit it again in 6 months. Mr. Martin stated that if an application for an alternate proposal still needing relief could come back as soon as the next month.

Mr. Mikos asked how far from the sidewalk this was. It was decided it was more than 16 feet.

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Mr. Pratt asked if Mr. Horta's desire was for them to vote on this at this meeting, continue it, or bring the case back with a different application. Mr. Martin stated this would be considered a withdrawal. Mr. Horta decided to withdraw the application.

With no further business, the meeting was adjourned.

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Vanessa Bradstreet, Secretary, Board of Zoning Adjustment