

BOARD OF ADJUSTMENT

July 7, 2021

The Urbandale Board of Adjustment met in regular session on Wednesday, July 7, 2021. Meeting minutes will be transcribed, and upon approval, will be available via the Community Development Department. Chairperson Katie Wheeler called the meeting to order at 6:00 p.m.

Board members present were Katie Wheeler, Aaron Cavazos, and Sarah Kautz. Staff members present were Kristi Bales, Community Development Manager/Chief Planner and Cheryl Vander Linden, Administrative Specialist.

Ms. Wheeler, Chairperson, said Urbandale strives to promote and model the principles of Character Counts, and we expect all participants in this evening's meeting to conduct themselves in a manner that adheres to the principles of trustworthiness, respect, responsibility, fairness, caring and citizenship. This is an informal meeting open to the public. In order to properly handle each appeal, the Board's procedures are as follows. The agenda shall be followed for each appeal. The person making the appeal shall first explain the circumstances of the appeal and why a variance or conditional use permit, as the case may be, should be granted by the Board. Next all persons in favor of the appeal shall have the opportunity to address the Board. At that point, any person opposed to the request will have the opportunity to address the Board. The Zoning Administrator shall then present the position of City Staff, supported by legal counsel if desired. The person making the appeal will then be given time for rebuttal, if desired. At that time, the public hearing will be closed, and the Board will begin its deliberations. The Board may ask for additional information before arriving at a decision which will be announced this evening. The agenda and Staff recommendations for each case were mailed to those requesting variances or conditional use permits. An official notice for each appeal was published in the community publications, Urbandale/Johnston Register. In addition, a copy of the official notice was mailed to property owners in the vicinity of the subject property, in accordance with adopted procedures. She asked if there were any objections to any of the notices? Please let the record reflect there are none.

Ms. Wheeler said this is a 5-member board and the Code of Iowa requires 3 affirmative votes to grant any variance or conditional use, regardless of how many members are present or may have a conflict of interest and be unable to participate and vote on a particular appeal. A minimum of 3 members must be present to constitute a quorum and allow the meeting to be held. In such case a unanimous vote is necessary. A vote of 2 to 1 in favor, or 2 to 1 with one abstention, if 4 were present, as examples, would constitute a denial. Knowing that, anyone who wishes to have his or her item deferred until a future meeting may do so by requesting a deferral now or at any time prior to a motion being made. Once a motion has been made, it will no longer be possible to request deferral. If denied, a variance or conditional use cannot be resubmitted for the

Board of Adjustment Meeting Minutes

July 7, 2021

Page 2

Board's consideration for a minimum of one year. Everyone should mute your electronic device to lessen background noise but also remember to unmute your electronic device at the time of discussion, questions, and voting. For each item, the chair will recognize one person to speak on behalf of the application. We ask that each person addressing the Board state their name and address for the record prior to making their presentation. The chair will also make time available for anyone who may wish to speak in favor or in opposition to any item. Please wait until that time to unmute your device and request to speak.

The first item on the agenda was to approve the minutes from the June 2, 2021, meeting. Ms. Kautz moved, and it was seconded by Cavazos, to approve the June 2, 2021 meeting minutes. On roll call; Ayes: Kautz, Cavazos, Wheeler; Nays: none. Passes: none. Motion carried.

The next item on the agenda was the Swallow Rear Yard Setback Variance, 14305 Alpine Drive, Case no. 011-2021-01.02.

Ms. Sandi Swallow, 14305 Alpine Drive, said I want to thank you guys for allowing me the opportunity to present my variance request tonight. I really greatly appreciate your time. I am very nervous, I'm not a public speaker, so that's why I have my notes so that I am sure to give you all the information that I want you to hear. I really understand and I respect the Board and the need for rules and regulations, and I can appreciate those. I also understand that I'm going to be asking you to deviate in a certain respect from the literal interpretation of the rear yard setback rules. However, I really feel passionate about my request, and I believe I will do my due diligence to provide you with enough information that you feel comfortable with approving this request, knowing there are no negative implications for the community or my neighborhood. Most likely you've all had an opportunity to review my variance request that Kristi and Annika have helped me with. You're aware that I moved from Waukee to the Walnut Lake association in 2013. As you can see by the picture, this is my house. It's small, it's about 1,100 to 1,200 square feet on the main level. But it's cute, I love it. At the time that I moved, the house size was perfect for me. I was widowed unexpectedly just about 18 months prior to that and my daughter and her family lives one mile east of me in the Urbandale Day's Run II subdivision. But over the past seven years that I've lived there, like everyone, our lives have changed and so has my family and my needs.

Here I am tonight, just pleading my case for you to approve this request. I'm asking for the approval for me to contract with Sunroom Escapes to remove the current 10 by 10 deck and replace it with a four-seasons sunroom that's 10 by 14. Sunroom Escapes has over 40 years of experience providing superior full-service installation of patios, screen rooms, custom decks and sunrooms, including many in the Urbandale and central Iowa area. They just recently completed a sunroom in the Walnut Lake association division, in which a lot easement was approved. I share this with you because I want you to better understand that this is quality product that's going to be added to my house and to the neighborhood. Most importantly, though, the sunroom size increases the east to

west dimensions, so it will not be encroaching on the lot line at all, from what the current deck already is, thus not allowing me any special privilege that I don't already have with the deck being there and it will keep the lot depth and configuration of the neighborhood intact.

My variance request went into a lot of detail as to why I would like to add a four season room. Out of respect for your time, I'll just skim over a few of these things. First, it will enhance the use of the space. A four season sunroom is useable year-round versus the deck, which faces the north and is very hot in the summer and it's extremely windy back there, so most days in the spring and the fall are too windy to use it. A four-season room would increase the market value of my home, making it more in line with the other homes in my neighborhood that already have sunrooms. As I walk the association, I've identified over ten homes that have sunrooms. But most importantly I would like to add the sunroom to increase the living area on the main level, allowing for more space when my out of town grandchildren visit and as my family, my sisters and I are entertaining the idea of where my father, who's 89 years old, will move when he's no longer safe to live independently. We know that we will have a far better quality of life living with me than in a nursing home. So I'd love to be able to offer him more space on the main level with sunshine and fresh air year-round, create a better living environment for him and myself, and as a healthcare worker, I could quote you multiple studies about why keeping the person at home and with family care givers is very important, how it improves the quality of life, reduces hospital readmissions, and reduces the cost of care. I could go on and on about that, but I think you guys have the picture there.

So let's talk about the spirit and the intent. I've talked a lot about how it affects me personally, but I'd also do my due diligence on how it affects my neighbors and the public safety and welfare. I spoke with my brother-in-law about the ordinance and the purpose of this ordinance because he is a retired public works director for a community about the size of Urbandale, and I wanted to be able to better understand the "why" it was there. And he explained the concern for safety between the higher traffic on a major street such as Meredith, and if a car was pushed off or ran off the road, the setback buffer allows for space to hopefully avoid hitting your structure. He recommended sharing this particular picture there on the left that shows you the evergreens that back my house up against Meredith. So obviously these are huge evergreens, and they would stop a vehicle before it ever got into my yard to hit the structure. There's a sidewalk in between there, also. He also alluded it would be safer for a person to be in an enclosed addition rather than on a deck, if there was such an unfortunate situation with a vehicle that was able to break through the trees. One of the other concerns that I know that you guys have is maintaining or enhancing the character of the neighborhood. So I reached out to my immediate neighbors on the east and the west and all around me. All of them are willing to sign a petition of support which I have copies of that, but it's also there on the screen. No one expressed any concern about the character of the neighborhood or felt that it be altered negatively in any way. I also did do a variance request with the Walnut Lake board of my HOA because I would have to do that anyway if this got approved, and they unanimously approved the sunroom

variance.

So lastly, I entertained alternative solutions to the sunroom. None would meet my needs of increasing the living space on the main level of my home. For example, a covered porch or a patio would give me a few more days per year of use, but that too requires a 50-foot setback, so that would require a variance. Electronic awnings, I researched those. But those are really not feasible because of the wind tunnel that's back there. Those awnings don't hold well in wind, and they wouldn't give me many more days of use. I could construct a larger deck that was 10 by 14 this way, but it really wouldn't fit my needs of having more living space on the main floor year-round. The best alternative option is to sell my house and buy a larger home. I'm 64 years old. I'm not looking to move into another house or move. I love where I live, I love being close to my daughter, I love the neighborhood, and financially it really wouldn't be feasible for me to do that with the housing market right now. So that's why this sunroom is the best option for me. So just a few key points I want to summarize before closing. My request may vary by 10 feet from the Comprehensive Plan and regulations. I'm asking you to keep in mind and consider the hardships that this variance creates for me because a setback variance does not allow me to create a better living environment. It doesn't allow me to approve amenities to my home, it doesn't allow me to promote efficient and economical use of the land, and it keeps the value of my home lower than other homes in my neighborhood. Also take into consider that the tree barrier allows for the health and welfare and public safety to be preserved. When making your decision, taken into consideration the signatures of support from my neighbors and the Walnut Lake board that this addition will not alter the neighborhood in any negative way, and lastly take into consideration that other homeowners in the association have had variances approved for fences and lot easements. Thank you very much for your time. I'd be happy to answer any questions that you might have.

Ms. Wheeler said I do have a question for you. This was very thorough, so thank you very much for putting that together. You hit a lot of the key points that we're looking for. One thing that I have a question for you on, there's a spot in here where we have to talk about the uniqueness of the lot, or the uniqueness of the property and I feel that you didn't really touch on that. So do you have anything you can add for us on that?

Ms. Swallow said I guess it would be the lot depth, the depth of where everything ends. When I look down from the back of my house, I assume that's what you're talking about, the rear of my house, I look at where my deck ends and everybody else's deck ends, etc., if I kept that structure in line with everybody else's, because I would only go out 10 feet, then we would all still be in line with the same depth from the lot line, instead of being a deck it would be a sunroom. It would be that addition. But otherwise that character would stay the same.

Ms. Wheeler said I know that you mentioned that you walked the neighborhood, so in those same townhomes and you said you notice other sunrooms. Are there are other sunrooms that back to Meredith on the same street as yours, that would also have had

to have a variance then?

Ms. Swallow said my association has two builders, it has Regency Builders that has duplexes and then it had the Hubbell builder that took over. So there are 5 or 6 different style of homes. So some of the ones with sunrooms, their style of home is a little bit different, so that sunroom comes out to about where my current deck is. Here's their sunroom and then they have a deck right here, and here's the bedroom probably, I'm not even sure. And then the ones that have the duplex, that have the sunrooms, many of those are across the street from me that have the pond, and they've had to get variances. And the ones I know that have had added, they've had to have easement variances because of the pond. I don't know if that helps you at all.

Ms. Wheeler said okay. I'm just trying to understand, because it sounds like you're replacing an existing structure that's the same size, and if all the lots are the same size and others have sunrooms, that's why I'm asking. Because it seems like there had to have been something that was granted in the past, or the lots aren't the same size, or something.

Ms. Swallow said no, I think those were built by Hubbell, all of those, and I think they were just built with that particular model. And mine did not have a sunroom, it's just a different model that didn't include the sunroom, if that helps.

There was no one present who wished to speak in opposition.

Ms. Bales said the action required on this item is to approve or deny a variance of approximately 10 feet from the 50-foot minimum building setback required by the "Houghtaling-Deason Property" Planned Unit Development Master Plan and by Section 160.03 (D) of the Zoning Ordinance.

The appellant, Ms. Sandra Swallow, is requesting a rear yard setback variance to be able to remove an existing deck on the back of the house and construct an additional room in roughly the same location.

This property is zoned P.U.D. "Planned Unit Development" and the original language of the "Houghtaling-Deason Property" Master Plan required a 50' setback along Meredith Drive and 142nd Street, consistent with development standards throughout Urbandale. The Walnut Lake Townhomes Plat 1 Final Plat was recorded in Book 2004 Page 20611 showing the 50-foot building setback along Meredith Drive and 142nd Street (and is also listed on the Plat under the required setbacks). The plat includes special language that specifies that decks and patios may be constructed if they meet a 40' setback along Meredith Drive and 142nd Street.

Ms. Wheeler asked can I ask you a question before I forget? You mentioned that the 50-foot setback was a requirement of the P.U.D.?

Ms. Bales said yes.

Ms. Wheeler asked is it also then a requirement of the City, is that what you're saying?

Ms. Bales said yes. When the city prepares a P.U.D. master plan, we usually account for the type of the development, are there any modifications they need in terms of density, parkland, setbacks, some of our standard requirements are though access spacing, where streets have to come into the arterial pattern, for detention, for site plans, and setbacks such as this, a standard requirement.

Ms. Wheeler said so even if this was not a P.U.D., the setback would be the same, regardless.

Ms. Bales said yes. They do have the added benefit, though, in this master plan to have an uncovered deck or patio that can encroach into that 50 feet, 10 feet already. So her uncovered deck took advantage of that 10-foot. So you'll see along this strip of Alpine, one of the questions was about lot size. You can see the lot depths are consistent. They're a consistent width, they're consistent with the deck about the same depth through there, so it's a very consistent requirement. Her neighbors left and right have the same requirement, the same lot size, the same lot dimensions.

The purpose of the P.U.D. District, per chapter 160.24 of the Urbandale Zoning Code, is "to promote and encourage development or redevelopment of tracts of land on a planned, unified basis by allowing greater flexibility and diversification than is normally permitted by conventional single lot development in other zoning districts, because of the substantial public advantages of planned development. Although Planned Unit Developments (P.U.D.s) may appear to deviate in certain respects from a literal interpretation of the Comprehensive Plan, regulations adapted to such... development are intended both to accomplish the purposes of zoning and other applicable regulations to an equivalent or higher degree..., and to promote economical and efficient land use, an improved level of amenities, appropriate and harmonious variety, creative design and a better living environment." In this case, with respect to each unit having a designated outdoor space along an arterial street, the City agreed that uncovered decks and patios (rather than a structure such as a sunroom or covered porch/patio) would be allowed with a minimum setback of 40 feet recognizing that if those spaces were required to meet the full 50-foot minimum setback it would be impractical, and could have other negative implications for the rest of the development project.

Surrounding properties to the south, east and west are also regulated by the same "Houghtaling-Deason Property" Planned Unit Development Master Plan. The subject property is a residential single-family home in what is commonly referred to as a stand-alone townhome configuration. Properties to the north of Meredith Drive are regulated by the "Calvert Property" P.U.D. Master Plan and are of a similar design and are also required to meet the 50' building setback along Meredith Drive.

Ms. Bales said Staff analysis is as follows:

1. The property does not appear to be unique with respect to lot depth or configuration of the house on the lot. The property is part of the Walnut Lake Townhomes subdivision. In this subdivision, nearly all of the lots have a very similar lot depth of 74', and every single lot that backs up to Meredith Drive, i.e., each lot that is subject to the 50' building setback, has the exact same dimensions. The 50' building setback along arterials is also standard across all new residential developments in Urbandale. An encroachment of a building structure into the 50' setback may appear to grant this landowner a special privilege unavailable to other landowners.
2. The Subdivision Ordinance requires a 50' setback along all arterial streets or the minimum required by the Zoning Code, whichever is more. Both Meredith Drive and 142nd Street are categorized as arterial streets and the 50' setback is applied consistently within all new developments within the City (Chapter 159.07.F.2.)
3. The Ordinance does not appear to create a hardship. The P.U.D. Master Plan in this case is specifically written to take into account the lot dimensions and locations. The 50' minimum building setback which applies to this property and surrounding properties, attached and stand-alone townhomes alike, has been in place since the approval of the original rezoning of the property to P.U.D. in 2003, as well as throughout the site plan and preliminary plat process, at the time of final plat, prior to construction of this house, and prior to the applicant's ownership of the property. The layout of the subject property was determined by the developer and builder, and the layout was reviewed and approved by the Urbandale Planning and Zoning Commission and City Council at each step of the process including at the site planning stage.
4. The 50' minimum building setback requirement, and generally the associated landscaping buffers, along arterial streets are part of an overall design strategy to mitigate existing or potential land use conflicts through proper orientation, open space setbacks, landscaping, grading, traffic circulation and architectural compatibility. The increased setbacks help to create a more open viewshed and an appropriate buffer between the higher traffic on an arterial street and the adjacent structures. Finally, it increases safety by providing a wider physical separation between vehicles and structures.

The proposed encroachment of 10 feet does not appear to meet the spirit and intent of the ordinance based on the type of proposed structure, which is enclosed with a roof and intended for indoor living space, and therefore has a larger bulk and visual appearance than a deck or patio. Because the 50' building setback along arterial streets is one of the most consistent development standards held across all new projects within the City, and because this setback was confirmed by the City Council to be appropriate for this development during the P.U.D. Master Planning process,

the Platting process, and the Site Planning process, any encroachment of a building into that setback may not appear to meet the spirit and intent of the ordinance.

5. Alternatives include leaving the deck as-is, which was the intent of the development process.

Therefore, the Board could find that the property is not unique; no hardship exists; the proposed variance could be detrimental to health, safety and welfare; that the spirit and intent of the Ordinance has not been satisfied; that a reasonable alternative exists; and that the requested variance should be denied. Or, the Board could find that subject property is unique; hardship has been created by the Ordinance; the proposed variance does not create a negative impact upon the character of the neighborhood, and the spirit and intent of the Ordinance have been satisfied; health, safety, and welfare have been preserved; no reasonable alternative to the variance exists; and that the requested variance be approved.

Ms. Bales said Staff recommends DENIAL of the variance of 10 feet from the 50-foot minimum building setback required by the "Houghtaling-Deason Property" Planned Unit Development Master Plan, and by Section 160.03 (D) of the Zoning Ordinance.

Ms. Wheeler asked can you explain why covering it causes such an issue?

Ms. Bales said covering it changes the setback requirements, so then it becomes an enclosed or covered structure. And so decks that are 30 inches or less off the ground don't have to meet the building setbacks. But once you go with higher decks, or you put a roof, or you enclose them, they become a structure as defined by our code, and have to meet the building setbacks.

Ms. Wheeler said the setback reason is for safety?

Ms. Bales said yes, it's for safety, it's for aesthetics, it's for the general look of the corridor. These arterial streets are higher classified streets, so these are the busier streets. These are the streets where people want some space from the noise off the street, that sort of thing.

Ms. Kautz asked is it possible that Meredith could end up being widened at some point, so then that 40 feet becomes 30 feet?

Ms. Bales said I don't envision that coming. Meredith Drive has already been reconstructed and widened, so our typical street cross-section is two lanes each direction and then the median in the middle with the turn lanes in accordance with the spacing that's allowed. So I don't envision Meredith ever getting widened beyond this and I think something that kind of backs that up is, this is the new section of Meredith between 128th and 142nd and it was just built to those same standards. They didn't say we better build it bigger now, they stuck with that standard design. And that's standard

for arterials – 142nd, 156th, Waterford, Douglas, two lanes each way, the middle/median for turn lanes.

Ms. Wheeler said the applicant has referenced that other people in the development have sunrooms. Are you saying that if it was located on Greenbelt, for example, it wouldn't follow because it wouldn't be next to an arterial street?

Ms. Bales said correct. She referenced the pond, and so I believe the sunrooms are what you can see probably here, they face that internal pond, they don't back up to a street. Those are likely what she referenced. But if you look in this area, none of the other houses have that enclosed deck/sunroom. It's very likely that there are enclosed sunrooms back here, but they back up to the pond.

Ms. Swallow said I totally appreciate what Ms. Bales was saying and understand where she's coming from. Right here we have a house that a fence was added totally against HOA guidelines and your guidelines but that was approved. It's been over 7 years ago. These homes right here, she didn't go quite down as far, these homes right down the street from me, against Meredith, these are the ones I was referring to that have sunrooms and then have a deck in between that probably do hit the lot line where they're supposed to hit the lot line and aesthetically look appropriately, too, just a different style of home. These right here, also. So I just wanted to point that out, too, why I'm saying. I understand reasons for rules and regulations. I feel like I have done my due diligence to make sure that I'm not encroaching any more on the lot line than anybody else or that I would have been with my current deck. The only think I'm doing is making the deck wider and not further out, and adding cover to it. None of my neighbors have any objections to this. They've all received letters from you guys. None of them have called with any concerns and all of them have signed a letter of support. Public safety-wise, with those trees back there and the sidewalk, between Meredith and the sidewalk are the trees, to my house and my neighbors' houses. Again, if a car would come down, that's a 35-mph road, if a car would come down there and break through those trees, I'd rather it hit my addition than hit my deck, if I'm sitting on it. So that's my rebuttal.

Ms. Wheeler asked can you scroll back over on Meredith, not the ones that have decks in between because those don't come out as far so they're within the setback but keep going. Are these two covered? They don't look covered. 14417 and 14415, are those covered?

Ms. Swallow said I honestly can't tell you that.

Ms. Wheeler said they don't look like they are.

Ms. Swallow said I don't remember that they are.

Ms. Wheeler said the one that you're referencing, you understand because it doesn't

stick out as far, it doesn't extend into the setback, right?

Ms. Swallow said correct, it does not cut into the setback. However, it does allow them to have a higher market value for their home. And so that's the hardship, one of the things I have to prove to you guys is I have hardships because of this variance. The hardships that I have are I cannot economically utilize my land to the most efficient use because I can't put a sunroom on it and my property cannot be of as high of value as some of the ones with sunrooms because it doesn't have a sunroom. There are some on 142nd Street, but there again, they are built in a little bit different style than the ones up over here. But these along 142nd Street, which I'm sure meet the lot line requirement, the setback requirement, two or three of these right here have sunrooms, too.

Ms. Wheeler said as much as we always want to grant variances because we want property owners to be able to utilize their property to the best of their ability and intent, but we have to be able to prove all four items, including uniqueness of lot. And a lot of these that you're referencing where other folks have sunrooms, their property sits so that they're not encroaching, so that's where the problem lies, unfortunately.

Ms. Swallow asked why was this person right here issued.....?

Ms. Wheeler said I can't speak to that issue. That's not a covered structure, it's a fence, so the fence requirements are different.

Ms. Bales said I don't know the history on it. I don't know if it was built with a permit or not built with a permit. I have taken down the address and can look into it a bit further, but I don't know the history on it at all. Setbacks for fences is different though than for structures.

Ms. Wheeler said isn't it 10 feet? Or 20?

Ms. Bales said fences can be on the property line, but it depends on whether there are any easements, how tall is it, etc.

Ms. Swallow said I'm not trying to get anybody else into trouble. The person that put that in no longer lives there, anyway. I'm just saying, obviously, variances have been approved in this area for things, including this one right here that just put a sunroom, 14316, just put the sunroom right here. They put a 3-season room and they had to have an easement, a lot line easement, and that was approved. He didn't even have to come through you guys, I don't think.

Ms. Wheeler said right, we don't deal with easements. Easements are different from setbacks.

The Board members discussed.

Board of Adjustment Meeting Minutes

July 7, 2021

Page 11

Ms. Kautz moved, and it was seconded by Cavazos, to deny the Swallow Rear Yard Setback Variance, 14305 Alpine Drive, of approximately 10 feet from the 50-foot minimum building setback required by Houghtaling-Deason Property PUD master plan and Section 160.03D of the Zoning Ordinance because the property is not unique, no hardship exists, the proposed variance could be detrimental to health, safety and welfare and that the spirit and intent of the ordinance has not been satisfied, and a reasonable alternative exists. On roll call; Ayes: Kautz, Cavazos, Wheeler: Nays: none. Passes: none. Motion to deny carried.

Ms. Wheeler said I'm very sorry, but our powers are limited, unfortunately.

Regarding Staff reports, Ms. Bales said there are no cases yet, but the deadline hasn't passed yet. So, we may or may not see you in August.

Ms. Wheeler said update on Tom, the last I heard from his son, he is at home and is continuing to rehab, but has a ways to go yet. If I hear more, I will let you know.

The meeting adjourned at 6:37 p.m.