

MEMORANDUM

TO: Chapel Hill Board of Adjustment

FROM: Ben Hitchings, Director, Planning and Development Services
Jake Lowman, Planner II

SUBJECT: 108 Timberlyne Court: After-the-Fact Dimensional Variance
(PIN 9880-54-7497, Project #18-041)

DATE: November 1, 2018

RECOMMENDATION

Town Staff recommends that the Board of Adjustment review this request for an after-the-fact variance from dimensional regulations in the Residential – 1 (R-1) zoning district, in Appendix A, Article 3.8 of the Chapel Hill Land Use Management Ordinance.

INTRODUCTION

The applicants, Chris Diplock and Carol Manzon, are requesting an after-the-fact dimensional variance from the minimum interior setback. The subject property is located at 108 Timberlyne Court (Attachment 5), in the Residential-1 (R-1) zoning district, and Orange County Property Identifier Number 9880-54-7497.

The Board of Adjustment denied a dimensional variance for this property at the February 1, 2018 meeting. The applicant made changes to the existing structures and returned to the Board with a revised variance request. The Board tabled the item to the October 11, 2018 meeting.

The attached applicant's materials include an application form, narrative, statement of justification, site plan, survey, photos, elevations, area map, and related documents (Attachment 4).

EXISTING CONDITIONS

The subject 0.5-acre lot contains a 2-story home, with associated driveway and brick walkway, as well as a pond, deck, gazebo, brick patio, and shed in the rear. The lot has an average 5% downward slope, generally from northwest to southeast. There is a 30-foot wide drainage and utility easement that runs parallel to the rear property line, along with a 20-foot wide Duke Energy easement that also runs parallel to the rear property line.

BACKGROUND

2008: Gazebo, gazebo deck, and patio constructed by Chris Diplock & Carol Manzon without permits.

- September 5, 2017: After-the-fact variance application submitted by applicants.
- January 2, 2018: Revised after-the-fact variance application submitted by Applicants.
- February 1, 2018: Board of Adjustment denied an after-the-fact variance request by the applicant by a vote of 7 aye and 2 nay.
- May 1, 2018: Revised after-the-fact variance submitted by the applicants.
- July 12, 2018: Board of Adjustment tabled the item to the October 11, 2018 meeting.
- October 11, 2018: The Board of Adjustment meeting was cancelled, and the item was rescheduled for the November 1, 2018 meeting.

DESCRIPTION OF VARIANCE REQUEST

Property line setbacks on the subject lot are regulated by Section 3.8 the Chapel Hill Land Use Management Ordinance (LUMO). The applicant is requesting a dimensional variance to encroach into the 14-foot interior setback on the southwest property line.

The revised variance request is for a 3.3 ft. encroachment into the interior setback to accommodate the gazebo, constructed in 2008. Changes have been made to reduce the adjoining deck and brick patio setbacks, and eliminate the brick fire pit, as illustrated on the attached revised site survey, produced by Ballentine Associates, P.A, dated October 24, 2017 and revised December 14, 2017, with markups describing revisions provided by Chris Diplock, and associated plans (See Table 1 and Attachment 4). The result of this revision is that the only remaining structure that is encroaching in the property setback is the gazebo, the subject of the requested variance. The deck and patio are allowed a 5-foot setback from the property line, as they both meet the exemption requirements for structures 3 feet or less in height from grade.

There are also three easements that run more or less parallel to the rear property line: a 30-foot wide OWASA utility easement, a 20-foot wide Duke Energy easement, and a Charter Communications CATV easement, which are coincident with the subject lot's rear setback area. The applicant has been granted permission by the various utilities to encroach into their easements.

Table 1: Comparison of Former and Revised Variance Applications

Project Elements	Required Setback	<i>Former</i> 2-1-2018 Application Denied	<i>Revised</i> 5-1-2018 Application	Change
		Amount of Encroachment	Amount of Encroachment	
Gazebo	14 ft.	3.3 ft.	3.3 ft.	None
Deck*	5 ft.	2 ft.	0 ft.*	-2 ft.
Patio*	5 ft.	5 ft.	0 ft.*	-5 ft.
Fire Pit	14 ft.	11 ft.	None	Eliminated

*project elements less than 3 ft. in height above grade, in this case the deck and patio, are allowed a reduced 5-foot setback from the property line per LUMO Section 3.8.3(a)(5).

DISCUSSION

If the variance is granted for the existing gazebo encroachment into the interior setback the applicant would be required to obtain an after-the-fact Residential Zoning-Building Permit from the Town.

PROCEDURE

Section 4.12.2 of the Land Use Management Ordinance addresses variances from dimensional regulations. In order to grant the variances, the Board of Adjustment must make the following findings:

- A. When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the Board of Adjustment shall have the power to vary or modify any of the regulations or provisions of the ordinance so that provisions of the ordinance upon a showing of all of the following:
 1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
 2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
 3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
 4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

If the Board is able to make all the above findings for the requested dimensional variance, based on the evidence presented at the hearing, the Board may approve the variance request for the subject lot. If the Board fails to make one or more of the above findings, the Board must deny the request. The Board may also choose to approve a lesser extent for a requested variance or fewer than total number of requested variances.

ATTACHMENTS

1. Resolution A, approving the dimensional variance request.
2. Alternative Resolution A (without chair summary), approving a dimensional variance request.
3. Resolution B, denying the dimensional variance request.
4. Applicant's materials include an application form, narrative, statement of justification, site plan, survey, photos, elevations, area map, and related documents
5. Area map of subject lot.