

**CITY OF CHESTERFIELD
BOARD OF ADJUSTMENT
MEETING SUMMARY
Thursday, July 7, 2011**

The Board of Adjustment meeting was called to order at 7:00 p.m. on Thursday, July 7, 2011 by Ms. Ainsworth, Chair of the Board of Adjustment.

I. Introduction of Board and City Staff

The following individuals were in attendance:

Ms. Marilyn Ainsworth, Chair
Mr. Richard Morris
Ms. Melissa Heberle
Mr. Gerald Schwalbe, Alternate
Mr. Robert Tucker, Alternate

Mr. Harry O'Rourke, Representing City Attorney, City of Chesterfield
Ms. Aimee Nassif, Planning and Development Services Director
Ms. Kathy Reiter, Administrative Secretary
Court Reporter, Midwest Litigation Services

II. Approval of November 4, 2010 Meeting Summary

Gerald Schwalbe made a motion to approve the Meeting Summary. The motion was seconded by **Melissa Heberle**. Upon roll call, the vote was as follows:

| | |
|--------------------------|------------|
| Melissa Heberle | Yes |
| Richard Morris | Yes |
| Gerald Schwalbe | Yes |
| Robert Tucker | Yes |
| Marilyn Ainsworth | Yes |

The motion **passed** 5 to 0.

III. Request for Affidavit of Publication

The Chair noted that the Affidavit of Publication and exhibits for the Petition had been placed on the dais.

IV. Public Hearing Items:

The Chair read the Opening Comments for the Public Hearing.

A. **B.A. 01-2011 1500 Baxter Lane Court (James and Marilyn Simpson)**

A request for a variance from St. Louis County Ordinance Number 13,939 for a residential lot in the Estates at Baxter Lane subdivision to maintain an eleven (11) foot rear yard setback in lieu of the fifteen (15) foot required setback. (19S531889)

Staff Presentation:

Ms. Aimee Nassif, Planning and Development Services Director for the City of Chesterfield, outlined the exhibits supporting the request for a variance to permit an existing residence to maintain an eleven foot rear yard setback in lieu of the required fifteen foot rear yard setback.

Ms. Nassif stated the following:

- The property owners have requested a variance from St. Louis County Ordinance 13,939 to maintain an eleven foot rear yard setback in lieu of the fifteen foot required setback to construct a new deck.
- The petitioners live at 1500 Baxter Lane Court, which is a part of the Estates at Baxter Lane subdivision. The subdivision was zoned by St. Louis County in 1988 to an R-2 district with a Planned Environmental Unit. The home was built on a 14,400 square foot lot which backs up to common ground.
- The Department received a Municipal Zoning Application in April of this year to replace the existing deck which is in disrepair. The Department has no record of a permit for the existing deck, which was built before the current homeowners purchased the property. Consequently, there are no exact dimensions of the current deck or where it sits to determine whether it currently violates the setbacks or if it is within the yard requirements.
- Staff advised Mrs. Simpson that she could construct a new deck in the exact same footprint of the current one. Instead the Petitioners submitted a Municipal Zoning Approval for a larger deck with a new shape and design, which was denied by the Department because it encroached several feet into the rear yard setback.
- As explained in the Staff Report, the powers, duties and procedures for the Board of Adjustment are dictated by State Statute. The Chesterfield City Code states that *the Board can grant a variance to yard requirements when practical difficulties or unnecessary hardships exist when carrying out the provision due to an irregular lot shape, lot size, topography or other related matter.*
- Staff believes that a redesign of the deck or a different size of the deck would fit within the setbacks and meet all City Code requirements. Therefore, Staff cannot recommend approval of a variance for the property owners. The other threshold which Staff reviews if the first criterion is met is whether granting the variance

would have a detrimental effect on the public's health, safety or welfare, and Staff does not believe it would do so.

Petitioner's Presentation

Elizabeth Chostner was sworn in by the Court Reporter.

Ms. Chostner, an attorney with Hazelwood and Weber, 200 North 3rd, St. Charles, MO stated she is representing the Petitioners on their request for a rear setback reduction by four feet of a fifteen foot setback, thereby maintaining the eleven foot setback to replace their existing deck. She then presented their exhibits to the Board.

Ms. Nassif stated for the record that Staff has not seen these exhibits.

The presented book was marked as Exhibit 7.

Ms. Chostner then outlined the exhibits supporting their request for a variance as follows:

- **Tab A** is a copy of Ordinance 13,939.
- **Tab B** is a plat showing the layout of the subdivision, and showing Lot 8 backing to the widest part of the common ground. The common ground is in excess of an acre and no property abuts the Simpsons' lot.
- **Tab C** is the design of the proposed deck.
- **Tab D** includes photos of the house, common ground and the existing deck. The common ground is a retention basin so it is felt that this area would never be developed.

The existing deck is approximately 10' x 14'. The property is pie-shaped and the house is situated so that the rear of the house is 21' from the property line. This lot has the smallest backyard in the subdivision. With the required fifteen foot setback, there is only a six foot area for the deck.

The entrance on to the deck is from the rear of the house through a sliding glass door. The existing deck does not meet the fifteen foot setback; in fact it encroaches approximately seven feet into the setback. The main portion of the existing deck is 10 ft. by 10 ft. and the steps are fairly steep. As mentioned by Staff, the existing deck was built prior to the Simpsons purchasing the property and they have not been able to locate documents showing whether a permit was obtained. The replacement deck would actually provide a larger setback than presently exists and there are no abutting properties.

- **Tab E** contains letters from neighboring property owners and trustees who are in favor of the proposed deck.

Ms. Chostner then continued as follows:

- She felt the Petitioners are not creating the situation where a variance is needed. She said the Petitioners designed a deck that fits the contours of their property, noting that the house sits farther back on the lot than other houses in the area and has a very small back yard.
- The new design also accommodates a decrease in the number of steps and the steepness of the steps which is important to the homeowners. Because of a medical condition, Mrs. Simpson has been instructed to avoid or minimize the number of steps she takes.
- They do not feel that the deck design suggested by Staff to meet the setback requirements would be practical to meet the needs of the homeowners. If the deck is reconfigured so that only a six-foot section extends to the rear of the property, the portion of the deck on the side of the residence would need to be enlarged in excess of eighty-four square feet to accommodate the location of the stairs that are needed to accommodate Mrs. Simpson, as well as adequate traffic flow.
- They feel that replacing the worn deck with an aesthetically pleasing deck that reduces the size of the deck in the side yard is favorable to the neighbors because there is less direct view of the deck. They also believe that replacing the deck would increase the value of the houses in the neighborhood.
- In conclusion, the Petitioners are requesting a four foot reduction in the setback resulting in an eleven foot setback on the rear of the property. They believe it is not practical to re-design the deck since it would substantially increase the size of the deck, require an additional pier and it would impact the view from a neighboring property.

No Speakers were present to speak in favor of the petition.

No Speakers were present to speak in opposition to the petition.

DISCUSSION

During discussion, Mr. Schwalbe noted that the existing deck extends further back than the proposed deck but that no dimensions have been provided to the Board to confirm this. He felt that a smaller deck would be acceptable.

Ms. Nassif stated that in her discussions with the property owner, she explained that Staff would approve a deck if it was within the same building footprint or smaller. Staff never received any dimensions and is first hearing of it now.

Mrs. Marilyn Simpson was sworn in by the Court Reporter.

Mrs. Simpson testified that the existing deck is 9'8" inch square. When walking out the door, it is 9'8" square with a section cut out for the first step to go down and then the

stair case that makes the L, which adds another 4 feet to do the turn. The proposed deck goes out 10 foot.

Ms. Nassif stated that this is the first time the City has received the deck dimensions, and had they been given to her before the Hearing, it may have been approved. If the existing deck goes out wider on the side setbacks than what the existing footprint is, then Staff would not be able to approve it because it was built illegally in the first place.

Ms. Chostner stated that the proposed deck does not fit neatly within the existing footprint. It encroaches less on the setback than the existing deck. It also includes a new area of deck where there is no deck right now which is not encroaching on any setbacks in the side area.

Mr. Schwalbe stated that since the existing deck encroaches more than the one they propose to build, he is inclined to grant the variance.

Ms. Nassif was asked whether the side addition of the deck is a problem. Ms. Nassif replied that the issue is that the deck is not a grandfathered-in deck; it was illegally built by the previous owners. Since the new deck encroaches in the setback, Staff can't approve it. But the Petitioners were advised that if they would stay within the footprint of where the deck is now, it would be approved. The proposed deck did not have to be in the exact same location or built exactly as the existing deck to be approved. The stairs are not an issue; it is the hexagon shape bump out. If that were not there, it would have been approved by Staff.

Mr. Morris questioned Attorney Harry O'Rourke about proceeding to vote or whether it should just go back to Planning Commission. Ms. Nassif pointed out that the next Board of Adjustment meeting isn't until August 4th, and that the original application was received April 13th. Attorney O'Rourke stated that this requires a variance in any regard since it is in excess of the setback requirements so there is no reason to extend it.

CONCLUSION

Mr. Schwalbe made a motion to approve the variance to permit 1500 Baxter Lane Court in the Estates at Baxter Lane Subdivision to maintain an eleven (11) foot rear yard setback in lieu of the required fifteen (15) foot rear yard setback. The motion was seconded by Mr. Morris.

Mr. Tucker then asked for clarification that the proposed deck will not encroach any more than the existing deck. Mr. Schwalbe answered that it will actually be encroaching less.

Mr. Tucker made a motion to amend the motion that the variance be granted with the condition that the Applicant submit a plot plan with the existing deck and dimensions shown to scale and upon Staff review confirming that the dimensions

for the new deck do not extend beyond the dimensions of the existing deck. The motion was seconded by Mr. Schwalbe.

Upon roll call, the vote was as follows:

| | |
|--------------------------|------------|
| Melissa Heberle | Yes |
| Richard Morris | Yes |
| Gerald Schwalbe | Yes |
| Robert Tucker | Yes |
| Marilyn Ainsworth | Yes |

The motion passed 5 to 0.

Upon roll call, the vote **to approve the variance with conditions** was as follows:

| | |
|--------------------------|------------|
| Melissa Heberle | Yes |
| Richard Morris | Yes |
| Gerald Schwalbe | Yes |
| Robert Tucker | Yes |
| Marilyn Ainsworth | Yes |

The motion passed 5 to 0.

V. Adjournment

The meeting adjourned at 7:43 p.m.