

MINUTES
Board of Zoning Appeals
April 11, 2023

The Wyoming Board of Zoning Appeals (BZA) met Tuesday, April 11, 2023 in the Council Chambers of the City Building. The meeting was called to order at 6:00 p.m. by Jennifer Eismeier, Vice-Chair. Attendance was as follows:

Members:

Jennifer Eismeier, Vice Chair
Bob Kearns
Chris Woodside

Absent:

Charlie Jahnigen
Abigail Horn

Staff:

Megan Statt Blake, Community Development Director
Tana Bere, Community Development Specialist

Approval of March 14, 2023 Meeting Minutes:

Mr. Kearns moved to approve the minutes as written. Mr. Woodside seconded the motion. By voice vote, Ms. Eismeier abstained as she was absent from the March meeting, all others voted yes, the motion carried.

903 Oregon Trail, Case #2-23, Rear Yard Setback Variance Request

Ms. Bere provided the background. Pam Geller, owner of the subject property, is requesting a rear yard setback variance to construct a rear covered porch addition on the rear of the house. The property is located in the 'AAA' Single-Family Residence District and is required to meet minimum rear yard setback of 30 feet for one-story elements, per §1153.04(c) of the Code. As shown on the site plan submitted by the applicant, the awning has a setback of 27'-6" from the rear property line, requiring a setback of 2'-6". The project fails to comply with this provision of the Code and a variance is being sought on this basis.

Ms. Geller addressed the Members and added that she has an existing patio and would like to have an awning installed over it to help control storm water from coming into her house.

Mr. James Myers, of BrightCovers, added that the proposed awning will be installed one foot past the edge of the patio to prevent rainwater from entering the concrete slab.

Ms. Bere stated that the City received communication via email from the adjoining property owner at 560 Cody Pass, who shares the west property line with the applicant. Ms. Bere read the content of the email:

Dear Board of Zoning Appeal:

This email is giving input into the request for a Zoning appeal for an aluminum framed awning at the rear of 903 Oregon Trail.

Our property line, 560 Cody Pass, shares the entire back yard of the property at 903 Oregon Trail. From our patio, kitchen, and dining room we look at the back yard of 903 Oregon Trail. We have lived at 560 Cody Pass since 1996. We have watched as the back yard of 903 Oregon Trail has changed over the years with different occupants. In 1996, there was a screened-in porch with a small open patio to the side of the porch. This was all hidden by a large pine tree on our property between the two yards. The next occupants changed the screened in porch and side patio into a full room addition. They also asked us to remove the pine tree because it was leaning on wires and were concerned it would damage their house. They were intending to plant a new tree. No tree has been planted.

Now the current resident, Pamela Geller, has installed the concrete patio directly behind the addition. This proposed aluminum awning appears to extend beyond the patio area.

Our concerns include ...

-The proposed awning area, if approved, could become another addition in the future or with the next owner.

-Lighting that may be included on this structure. It is very popular to hang outdoor lights around and spotlights on these patio structures. Currently, this owner has a back spotlight directed to light up her back yard for the dog. It is regularly on at midnight and is so bright it shines into and through our dining room into our living room. It is much brighter and directed straight towards our house than in previous years.

-There was no inclusion in the plan of possible landscaping to block the view from their yard to ours.

-In the appeal letter, Pamela Geller, mentions no neighbor can see the proposed structure. She has neglected to consider the neighbor who shares the entire back property line. We were not listed in the letter identifying neighboring parcels.

Thank you for considering these points when reviewing this appeal. We would prefer the exception not be granted.

*Sheri and Bryant Callaghan
560 Cody Pass*

Ms. Bere commented that although the adjoining property owner at 560 Cody Pass was not listed in the applicant's variance application, the City notified this neighbor of the hearing.

Ms. Geller stated that Ms. Callaghan had not talked to her about the spotlight being a nuisance to her and added that a prior homeowner had installed the light. She added that she turns on the light to let her dog out and turns the light off when the dog comes back in. Ms. Geller added that in the summer months the heavy vegetation between the properties prevents her from seeing the Callaghan's house from hers and added that when he purchased the house, she was unaware that there was a house behind her as it was completely blocked from view by the vegetation. Additionally, she added that the Callaghans removed a large on their property and since the tree has been removed, now

the Callaghans are able to see the spotlight on the rear of her house. Ms. Geller stated that she would like to plant a new tree along her rear property line to fill in the empty space that now exists. Ms. Geller addressed the Callaghans concerns about the awning potentially becoming an addition in the future and stated that the structure is an aluminum awning over a patio and is not a roof for a future addition and it is not her intention to build an addition.

Mr. Woodside asked for clarification if there will be any new lighting fixtures installed on the aluminum structure. Ms. Geller stated that she may install "fairy lights" but no significant or intrusive lighting will be installed. Mr. Woodside asked, from a conflict resolution standpoint, for what duration might the fairy lights be illuminated. Ms. Geller explained that her intention is to turn the fairy lights on while she is sitting on the patio using her solo fire pit. The fairy lights would be turned off when she is inside the house. Ms. Geller added that the patio is meant to be used as an outside extension and she does not plan to sit outside for an extended period. It is her desire to be considerate of her neighbors. However, if her dog must go outside at midnight, she is hesitant to let the dog out without the spotlight because of the heavy presence of coyotes in the woods. She is confident that she will be able to come to an agreement with the neighbors to find a solution to the natural barrier between the properties. However, she hopes that all the landscaping installation will not all be at her expense.

Mr. Woodside asked where the storm water would be directed from the awning. Ms. Geller stated that she does not anticipate storm water entering any of the neighbors' properties she anticipates it being maintained in her own yard. Mr. Myers added that there will be downspouts installed on each side of the awning channeling the storm water into an existing storm sewer drain. Mr. Myers added that there is a slight uphill slope to the rear of Ms. Geller's yard that would prevent any storm water from entering the neighbor's yard at 560 Cody Pass.

Mr. Kearns commented that the aerial view on Google Earth shows that the properties are very heavily covered with vegetation, and he asked if there has been a change to the landscaping since the image was taken. Ms. Geller stated that she has not done any trimming, however there are power lines that run through the rear yards on Oregon Trail and Duke Energy regularly trims the vegetation so that they do not affect the wires. Ms. Geller reiterated that she was not aware that there was a house behind her until the neighbors cut down the tree. Mr. Kearns asked if there would be any change with the current light that is already on the house. Ms. Geller stated that she had not made any changes to the existing light as it was already installed when she moved in.

Ms. Eismeier commented that as the vegetation and tree canopy are the visual blockage between the properties, she asked if any of it is honeysuckle. Ms. Geller stated that there is

some honeysuckle and general undergrowth and some evergreens as well and added that the Callaghan's have a few dead trees that should probably be cut down.

Ms. Eismeier asked for clarification on what materials the awning will be constructed of. Mr. Myers stated that the frames are black aluminum, and the panels will be a grey polycarbonate material. Ms. Eismeier asked Ms. Statt Blake where the rear yard setback is measured to, whether it is to the edge of the patio or to the edge of the roof. Ms. Statt Blake stated that the measurement is to the edge of the roof in this case.

Mr. Kearns motioned to adjourn to Executive Session. Mr. Woodside seconded the motion. By roll call vote, all voted yes. The meeting adjourned to Executive Session at 6:20 p.m. Executive Session ended at 6:25 p.m.

Ms. Eismeier stated that the Board suggests that, despite how or who removed the rear yard tree, that Ms. Geller extend an "olive branch" to the rear yard neighbors to work out a mutual agreement for the planting of jointly installed landscaping materials between the two properties. Mr. Kearns added that the homeowners can decide what plant material selections can be installed. However, it was recommended that a Spring Grove Arborvitae be investigated as a potential product. This Arborvitae is fast growing and grows columnar in design; it does not branch outward but rather upward and makes a good screen. Additionally, Hemlocks were noted as an excellent screen as well.

Mr. Woodside moved to approve the request as submitted with the noted caveats above. Mr. Kearns seconded the motion. By roll call vote, all voted yes, the motion carried.

713 Reily Road, Case #3-23, Rear Yard Setback Variance Request

Ms. Statt Blake provided the background for the Members. Gordon and Helen Ramsay, owners of the subject property, are requesting a rear yard setback variance to construct a rear covered porch addition. The property is in the "AAA" Single-Family Residence District and is required to meet a minimum rear yard setback of 30 feet for one-story elements, per §1153.04(c) of the Code. As shown on the site plan, the porch addition proposes a setback of 21 feet from the rear property line, requiring a variance of nine feet. The project fails to comply with this provision of the Code and a variance is being sought on this basis.

Ms. Statt Blake displayed an aerial view of the property and noted that it is not a corner lot but is uniquely shaped as much of the rear yard sits adjacent to the front yard of the neighbor next door. The property in general has a relatively tight building site, does not have a traditionally deep rear yard, and has some site conditions that are unique to the lot layout which makes it difficult to meet setbacks. The City has received one letter of support from an adjoining property owner.

Mr. Ramsay addressed the Members, and stated that he would like to build a roof over the existing patio to enable his family of six to use the outdoor space for as much of the year as possible. Additionally, he has hired a landscape designer to generate a landscaping plan for the front and rear yards to beautify his garden which will be grown in phases over the next year or so. The current patio is exposed to sun and has little shade. A covered patio will enable him and his family to spend more time outside.

Mr. Ramsay stated that he has shared his proposed plans with his neighbors. The Adkins next door were in support but did not send any correspondence to the City. He also shared his plans with the Hilltop School principal, and they too were in approval of the plan. Mr. Ramsay added that he considered other options such as a stand-alone pavilion which could be constructed five feet away from the property line, however he felt that this would be intrusive to his neighbor.

Mr. Ramsay brought a proposed landscaping plan with him and shared it with the Members. The Members reviewed the plan amongst themselves.

Ms. Eismeier asked if there are any existing storm water drainage issues. Mr. Ramsay stated that there are currently no drainage issues, the proposed roof structure will have new gutters that will tie into the existing downspouts to the west and east of the roof addition to manage the storm water.

With no further questions from the Members, Mr. Woodside moved to approve the request for variance as submitted. Mr. Kearns seconded the motion. By roll call vote, all voted yes, the motion carried.

103 Congress Run Road, Case #4-23, Retaining Wall and Driveway Width Variance Requests

Ms. Statt Blake provided the background. Mr. Ryan McCullough, owner of the subject property, is requesting a retaining wall variance and driveway width variance to stabilize the slope and expand their existing driveway.

Driveway request: The property is located in the "AAAA" Single Family Residence District and the maximum width of a driveway serving a multiple car front entry garage is 2 feet beyond the outside edges of the garage doors, provided the width does not exceed 25 feet unless additional width is necessary to provide vehicular access to the front entry garage per §1151.06(d) of the Code. The existing driveway is approximately 40 feet wide in the front yard, as measured by City staff, and the applicant is requesting to further expand that width by ten feet to the south.

Retaining wall request: Retaining walls have a maximum height of four feet, and a second tier retaining wall has a maximum height of 4 feet and a minimum setback of 4 feet from the lower wall per §1183.18 of the Code. As described in the application, the retaining wall is proposed to be 15 feet at the highest point, which would require a wall height variance of 11 feet.

Ms. Statt Blake added that the property is on a fairly unique site as it is on the switchback of Congress Run and the front of the house does not orient to face the street but rather the side of the house faces Congress Run. Additionally, the homeowner once had a standalone carport that has since been demolished, that was in fairly bad shape. From the street view, the driveway, and the single car garage that is on the side of the house, are what is seen from the public way.

Ms. Statt Blake commented that most of the lots on Congress Run Road have significant topographic changes to them, especially those that border Galbraith Road, such as the applicant's property.

Ms. Statt Blake stated that Mr. McCullough's engineer reached out to her about a year ago to discuss the construction of a retaining wall on the south end of the driveway in order for the applicant to potentially construct a new carport structure in the future and to review some general site conditions that exist on the property. The originally wall design had to be revised because it did not meet zoning because of the proposed height of the wall. The Zoning Code allows a retaining wall up to four feet in height above grade and requires a second tier with a setback if additional height is needed. The intent of this provision is that it retains a residential scale to walls. There were a few precedent installations where fairly massive walls were constructed on residential properties that were not well-aligned with the prevailing design elements of the residential areas.

Mr. McCullough's engineer submitted a two-tiered wall design which was issued a permit last year, however Mr. McCullough has since revised his plan and proposes to build a single expanse of wall, which has triggered a review by the Board. The City cannot administratively approve a wall taller than what the Code allows. The revised plan is asking that the wall be extended from four feet to ten feet. Ms. Statt Blake stated that the applicant has not submitted a revised drawing of the new wall height proposal as it is speculative at this point.

Ms. Statt Blake explained that on top of the retaining wall a four-foot-tall aluminum fence is proposed to be placed on top of the wall to prevent someone from falling off the edge of the driveway. A landscaped planting area is proposed to be installed by the applicant between the proposed fence and the edge of the new driveway extension.

Ms. Statt Blake explained that the triggering event for the request for a variance was the height of the retaining wall and through her conversations with Mr. McCullough recognized that there are longer term plans for the property which include the widening of the pavement of the driveway beyond what the Code allows. The Code allows for a driveway width of not greater than 13 feet unless it leads to a two-car garage or some other configuration of a garage. The intent is to limit the amount of pavement and the appearance of parking lots in front yards of residential properties.

Ms. Statt Blake stated that she is explaining the layout of the property to the Members so as Mr. McCullough steps through his plans the Board is aware that there is a longer-term goal to have an additional structure built that would likely trigger a future request for variance. It is better to let the Members know ahead of time, conceptually, in order for the Board to make a decision that it is comfortable with rather than to be surprised when the applicant returns to the Board for some additional element not previously known. The request for variance before the board this evening is for the width of the driveway and the height of the wall. She believes that it would be good advice to add a discussion about potential future plans and what they might look like in the overall design whether that be for a new structure or additional pavement.

Mr. Kearns asked for clarification why the Board is being asked to approve a ten foot high retaining wall without having plans for the wall. Ms. Statt Blake explained that the situation was found in the field as the wall was beginning to be built. Mr. Kearns clarified that there are no engineering plans or drawings for the proposed ten-foot wall, Ms. Statt Blake confirmed that is correct and added that if a taller wall is approved the Board can request revised drawings be submitted as part of the permitting approval. If the Board were inclined to approve the variance request, it could be contingent upon the city receiving engineered drawings stamped by an engineer.

Mr. McCullough addressed the Members and explained that, in the beginning he removed the structurally unstable carport that was previously installed on the property and began conversations with Outdoor Environments, Inc. who is the company installing the wall. Outdoor Environments, Inc. is a very good contractor and is highly recommended and has a very long wait list. Mr. McCullough shared an image of the existing site to show the Members the extreme condition of the existing slope showing that the existing wall along the edge of the driveway is falling over and that the slope directly below it is very steep and is eroding quickly. He stated that his goal is to stabilize the slope and create better access to his driveway and accommodate parking to create a space to turn around that is not on the street as that causes issues on the switchback.

Mr. McCullough explained that the engineer working for the contractor initially applied for the building permit for the four-foot wall. As the project progressed, it became apparent

that the wall should be one wall coming straight up instead of terracing. Terracing creates a hardship in this case because the sloped angle is difficult to accomplish with terracing. The only possible solution in that situation is to bury a good portion of the wall creating a heavy slope so only four feet is exposed. This defeats the purpose of a clean terrace aesthetically, and he expressed concern that the wall cannot make it up to grade with the existing slope, even starting at Galbraith Road it would be difficult to accomplish. One large wall provides maximum structure and will stabilize the extreme slope. Eventually, Mr. McCullough stated that he would like to build a larger carport in the place where the old one was in order to be able to park two cars under it and have them parked closer to the house.

Mr. McCullough provided additional insight to his request explaining that by building a 10-15-foot wall at its highest, will resolutely shore up the hillside, create slightly more parking, and anchor his drive on the extreme slope that he lives on. This wall faces the woods and will only be slightly visible from the street when really looking for it and no neighbors live in that direction as his property continues all the way down to Galbraith Road. The current zoning requirement of four-foot terracing creates a hardship on this project due to the extreme slope of his property. Allowing him to create more parking will help keep parking off the street which will help the neighborhood in total and finally, with no sidewalk coming to his house, this will create more functional space for his children and to maneuver vehicles.

Mr. McCullough explained that to expand his driveway to meet this new wall, he believes it is most important to look at the switchback Congress Run takes in front of his house. Backing in or out of his driveway at present is hazardous and when he has social gatherings, many people park on the street which he tries to avoid. He would like to create additional parking so he can stay off the street on the switchback which drivers already have trouble navigating. Additionally, this creates a hardship because he has dual frontage with neither yard actually being the front of his house so there are no other options for additional parking. He would like to keep cars off Congress Run for the benefit of other residents, widening the driveway will allow him to do so and due to the front limestone wall and evergreens passersby may not notice the additional parking area. Mr. McCullough shared a rough sketch with the Members illustrating the proposed layout, the diagram was not included in the application for variance therefore the Members were unable to review the diagram ahead of the hearing.

Mr. Woodside asked for clarification if Mr. McCullough was the homeowner when the carport was demolished. Mr. McCullough stated that he was the homeowner and was able to remove the structure himself; it was very old and unstable.

Mr. McCullough stated that as far as the driveway portion of the project, the area at its widest part is 43 feet and it an a-typical design with one wing slighting turning into the

former carport area and another wing turning sharply to the right and then back to the left leading to the single car garage. Mr. McCullough reviewed the proposed site plan with the Members as they discussed clarifying points of interest. Mr. McCullough stated that his goal is to not create a parking lot but rather provide some needed space to maneuver safely off and on to the switchback on Congress Run Road.

Ms. Eismeier asked Mr. McCullough to explain what is happening on the property with storm water drainage as that is generally a cause of wall failure and why it appears to be sliding down the hill. The addition of additional pavement and additional roof area would presumably exacerbate some of the drainage problems. Mr. McCullough showed the location of a new drainpipe that is installed through the current (new) wall and the water will be piped to an existing swale on the property. Stormwater from the roof will be pushed outward and into the existing storm drains as they currently are.

Mr. Kearns asked Mr. McCullough if he thought of using a semi-permeable surface material for the driveway, such as gravel or river rock, or anything different than solid surface asphalt. Mr. McCullough explained that the proposed fence will be two feet off of the wall and then a three feet wide area of river rock to soften this area, which is what can be seen from the street, after the three-foot-wide section of river rock, then the driveway surface area would begin. The overall expansion of the driveway will be ten feet from what is available now.

Mr. Woodside motioned to adjourn to Executive Session. Mr. Kearns seconded the motion. By roll call vote, all voted yes. The meeting adjourned to Executive Session at 7:12 p.m. Executive Session ended at 7:32 p.m.

Ms. Eismeier asked Mr. McCullough whether the existing pillar on the left side of the driveway will be removed and the existing pillar on the right side of the driveway that is connected to the limestone wall will be staying. Mr. McCullough stated that this is correct and added that the pillar on the right and limestone wall will be repaired but will be staying.

Ms. Eismeier asked Mr. McCullough to clarify the specific dimensions proposed from the edge of the wall to the fence and any landscape barrier from there to the start of a new driveway surface. Mr. McCullough shared the dimensions on the drawing he provided at the start of the hearing. The area from the top of the wall to the fence will be two feet in width. The area from the edge of the fence to the edge of the driveway surface will be three feet in width. The three-foot area will be a planting area with river rock and arborvitae, although Mr. McCullough stated that he is open to planting material suggestions.

Mr. Kearns moved to approve the request for variance with the following conditions:

1. The City receive an engineered drawing of a single tiered retaining wall, not to exceed 15' in height above grade. The engineered drawing shall be reviewed, approved, and permitted by the City.
2. There shall be a two-foot buffer between the top of the wall and the fence, which adheres to Code, and that the aluminum fence height shall not exceed four feet in height and shall include landscaping. A vegetated buffer strip not less than three feet from the fence shall be installed. A landscaping plan, along with the stamped engineered drawing, shall be submitted to the City for review.
3. The existing limestone wall will remain in place.
4. The new driveway area created by the new wall shall be a pervious surface of the homeowners choice but should either be a gravel surface or a permeable paver surface.

Although an additional variance will be necessary for the proposed two-car carport, the expanded driveway shall be a permeable surface at this time. Mr. Woodside seconded the motion. By roll call vote, all voted yes, the motion carried.

Miscellaneous:

Ms. Statt Blake reported that the Board may convene on May 9, 2023 to consider one case that will be a resubmittal to a variance that was issued in 2022 for a circular drive. This particular application may be rescinded by the applicant so confirmation will be provided to the Members soon.

Excusal of Absent Members:

Mr. Kearns moved to excuse Mr. Jahnigen and Ms. Horn. Mr. Woodside seconded the motion. By voice vote, all voted yes, the motion carried.

Adjourn:

With no further business before the Members, Mr. Kearns moved to adjourn the meeting. Mr. Woodside seconded the motion. By voice vote, all voted yes, the motion carried. The meeting adjourned at 7:48 p.m.

Respectfully submitted,

Debby Martin, Executive Assistant

Jennifer Eismeier, Vice-Chair