



Ste. Genevieve Board of Adjustment
Joan Huck, Kathy Waltz, Dr. Tim Kuenzel, Joan Troeh, Randy Ruzicka
Alternate members – Bob Donovan, Connie Steiger-Schwent, Kristi Cleghorn

September 7, 2022
Regular Meeting Minutes

Call to Order at 6:00 pm by Acting Chair, Joan Huck

Roll Call: Board members Joan Huck, Kathy Waltz (via phone), Joan Troeh, and Randy Ruzicka were present during roll call as was Alternate Board member Kristi Cleghorn. Additionally, Community Development Administrator David Bova was present. Board member Dr. Tim Kuenzel was absent.

Approval of Agenda: Ms. Troeh made a motion to approve the Agenda as presented. Mr. Ruzicka seconded the motion, which passed 5-0.

Approval of Minutes: Ms. Cleghorn made a motion to approve the minutes from the November 10, 2021 meeting as presented. Ms. Huck seconded the motion, which passed 5-0.

Introduction of Evidence Mr. Bova asked that the Commission to approve the entry into the record of the Ste. Genevieve Municipal Code, the relevant staff reports and applications, and additional documents relevant to the applications. Mr. Ruzicka made a motion to accept the evidence into the record. The motion was seconded by Ms. Waltz and passed 5-0.

Old Business: None

New Business:

- Carl Noll, owner of 479 N Main, has submitted a request for a variance from Municipal Code Section 405.110 Neighborhood Commercial District Regulations. The applicant has requested a variance to the setback requirements in order to construct a residence with a side setback of six (6) feet.

Mr. Bova presented the application and staff report regarding the applicant's request. He mentioned that this lot is considered a "lot of record" within municipal code since it was

established prior to the adoption of the zoning ordinance, and asked if the board had any questions. Ms. Troeh asked why the side setback requirement was larger on street sides and Mr. Bova explained due to safety concerns and sight lines. At that time, Mr. Noll introduced himself and explained his reasons for asking for the variance including the small lot size due to the lot age, the oversized street right-of-way, and he would like to keep the trees also. Mr. Noll also discussed a similar house he built on Merchant Street as an example of what he would like to build. Mr. Ed Luttrell, owner of 399 N Main, asked some questions regarding the driveway and elevation of the proposed structure and Mr. Noll answered him. Ms. Lisa Herbig, owner of 151 Ziegler, stated some concerns with the proposed structure and variance; she would prefer no building be allowed there. Ms. Herbig and Mr. Luttrell also raised concerns of a modern building being built in the historic district. Mr. Bova informed the board and guests that Mr. Noll would also have to receive a Certificate of Appropriateness from the Heritage Commission before being allowed to build the proposed residence. Ms. Herbig also discussed that she thought Mr. Noll's lot was a flood buyout lot; Mr. Bova explained that it was not a flood buyout lot but those next to it along N Main are flood buyout lots. Ms. Troeh asked if Mr. Noll's lot was within the historic district and Mr. Bova stated that it was. There was some discussion regarding Mr. Noll's previous construction of a residence within the historic district. Mr. Bova relayed to the board the standards they need to consider before possibly granting a variance per RSMo Section 89.090. Ms. Herbig and Mr. Luttrell stated some additional objections to the variation including possibly decreased property values and the possibility that this would be rental property. Ms. Troeh inquired about property values of surrounding properties; she also stated she believed the value of one home there, specifically 539 N Main (mentioned as the "Streiler House"), was little to nothing. Ms. Waltz commented that while this project may indeed have to go through other steps of approval, she believes the variance should be approved.

Based on the discussed practical difficulties of the unusual circumstances of the small lot size and the size of the unused portion of the Ziegler Street right-of-way, and the discussed low degree of substantiality of the variance request and impact of nearby parcels, Ms. Waltz made a Motion to Approve the variance as presented. Ms. Troeh asked the applicant if there was another way the house could be situated with a smaller variance, while accomplishing his goals and not eliminating the trees. Mr. Noll stated no. Mr. Ruzicka commented that the trees are a huge asset to the neighborhood also. Mr. Luttrell inquired about the difference in the side setback; Mr. Bova stated it would be reduced from 25' to 6'. Mr. Ruzicka asked if a 6' side setback would be allowed if this wasn't a corner lot; Mr. Bova replied that it would. Ms. Troeh inquired whether the variance would be a problem for the view or for safety. Mr. Bova replied that determination was up to the Board and discussed that Mr. Noll stated that there is an additional 18' – 9' of grassy area beyond his property line that is part of the street right-of-way. Ms. Troeh then seconded that motion and the motion was passed by a vote of 5-0. The table below represents the vote of the board – 4 regular board members and 1 alternate board member were present and voted while 1 regular board member was absent. The Board of Adjustment is a 5 member board which allows alternate members to vote in place of absent regular board members per Municipal Code Section 405.220 and RSMo Section 89.080; the table below reflects the vote of those members.

BOARD MEMBER	YES	NO	ABSENT	ABSTAIN
Joan Huck	X			
Kathy Waltz	X			
Timothy Kuenzel				
Joan Troeh	X			
Randy Ruzicka	X			
Connie Steiger-Schwent - Alternate				
Bob Donovan - Alternate				
Kristi Cleghorn - Alternate	X			

- Thomas & Debra Rottler, owners of 780 Weiler, have submitted a request for a variance from Municipal Code Section 405.150 Height and Area Regulations. The applicants are requesting a variance to the setback requirements in order to maintain an above-ground pool with a side setback of one (1) to two (2) feet.

Mr. Bova presented the application and staff report regarding the applicant's request. He stated that these applicants are also seeking a variance to the side setback due to the fact that they encountered an unanticipated underground electric line when installing their pool. At that time, Mr. Rottler stated that he had submitted his pool permit showing a 10'-12' side setback but that when his installer arrived, they became aware of the underground line and then installed the pool about 8'-10' over from the permitted location. Mr. Ruzicka asked if was an electric line that the installer encountered, and Mr. Rottler stated that it was. Mr. Rottler continued to discuss the 5' side setback requirement for accessory buildings and that he wasn't aware of that at the time of the installation. Mr. Donald Rapp, owner of 745 Gettinger Street, stated he believed the variance should have been applied for before the pool was permitted. He and his wife, Ms. Mildred Rapp, asked if they could see photos from the staff report and were allowed to do so. Mr. Rapp then asked if the "underground" was part of the permit, referring to the underground utilities which lead to the incorrect placement of the pool. Mr. Bova stated that the site plan for a permit is prepared by the applicant and it should show utilities, however, this permit did not show the underground electric which led to the incorrect placement of the pool which led to today's hearing. Mr. Rapp stated that he and his wife object to the variance. Mr. Rapp also stated that he is considering placing an easement on his vacant lot (the neighboring property that sits next to the pool on the Rottler's property) and could this variance affect his easement. He also stated that he hopes to sell this lot in the future as it backs to his current home and he would like to offer access to his rear yard through this vacant lot; he believes that the pool sitting where it's currently at could affect his ability to sell the lots. Ms. Rapp stated that she believes the applicant should be holding their installer accountable to re-position the pool and not allowed to receive a variance since the pool placement varied from what was permitted. Mr. Rapp stated that he believes the applicant could have gotten a 15' pool and this variance would not be necessary; he also stated that he believes the city is remiss for not including the "underground" in the permitting process. Mr. Bova stated that it is the applicant's responsibility to denote the utilities on their site plan, not the city's. He also stated that when the pool was placed incorrectly, he informed Mr. Rottler that he had to take his pool down; Mr. Rottler is

appealing that decision in the form of this variance request. Ms. Waltz asked if the applicant has to take the pool down if he doesn't receive the variance. Mr. Bova replied that when he informed Mr. Rottler that the pool was placed incorrectly, he also informed Mr. Rottler that he had three options and those were to remove or relocate the pool, discuss buying additional land in order to satisfy the setback, or appeal the determination that the pool must be removed or relocated. Ms. Rapp asked if the variance has to be applied for first and Mr. Bova explained variances do not always work that way as in this case, which is an appeal. There was additional discussion about the side setback including that the Rottler's permit was based on a site plan showing a 10' setback but only 5' is required. Ms. Huck asked Mr. Rottler if he had spoke with his pool company regarding the error in placement. Mr. Rottler stated he did and the pool company suggested pursuing the variance. Mr. Rottler further stated that he did not wish to sue the installation company since they did a good job on the installation and that he didn't think they rushed the installation and that he believes they thought they were still 5' or more from the property line. Mr. Rottler also stated that it would be a hardship upon him to have to move or take down the pool. Ms. Rapp stated that she believes the Rottlers would not have to sue and that their installer has liability insurance that should cover this type situation. And that she believes this is negligence on the installer's part. Ms. Huck asked where the Rottlers would place the pool if they did have to move it. The Rottlers replied there is no other location the pool would fit in their yard. The Rapp's stated that the Rottlers could have purchased a 15' pool or moved the underground electric wire. Mr. Rapp stated that the pool installer did not perform due diligence and should be held accountable. Mr. Ruzicka stated that he agreed. Mr. Ruzicka asked if the Rottlers could move the pool closer towards their house; Mr. Rottler stated that there are gas lines located there and he could not. There was continued discussion regarding the pool placement and the low substantiality of the possible variance. Mr. Bova relayed to the board the standards they need to consider before possibly granting a variance per RSMo Section 89.090. Mr. Ruzicka stated that the only issue he could see is the possibility of affecting established property value. Ms. Huck pointed out that in discussions with an appraiser and the assessor, she had been told that a pool was not a "structure" and thus would not even be subject to these regulations. Ms. Rapp agreed with that but also stated she was concerned about possible future owners who may use this variance. Mr. Bova and Ms. Huck stated that if a variance is granted, it is for this pool on this property; it does not carry over to any other structure or any future structure. Ms. Rapp and Ms. Huck discussed the possibility of suing the installer. Mr. Rapp reiterated that the "underground" should have been marked as required. Mr. Bova stated that it is required but it obviously was not included and that is what has led to this appeal. Ms. Rapp stated again that should be neglect on the part of the installer to re-apply for the permit once that was discovered. Mr. Ruzicka stated he believes the contractor should have stopped once the underground electric line was discovered and discussed the placement with the applicants. Ms. Troeh stated that was true unless the installer states that the applicant approved relocating the pool then it becomes "he said, she said". There was further discussion on the possibility of suing the installer, and discussion on any fencing regulations and landscaping associated with a pool. Ms. Kleghorn asked for Mr. Bova to re-read the stipulations they must consider in possibly issuing a variance. Mr. Bova stated that their must be practical difficulties or unnecessary hardship present and re-stated the variance standards required per RSMo Section 89.090. Ms. Huck stated that she believes it is definitely a hardship to move a pool. Ms. Waltz asked how long the pool had been in this location; Mr. Bova responded that the pool has been there for approximately 6-8 weeks. There was additional discussion on hardship

and the possibility that the Rottlers should have gotten a 15' pool. Ms. Huck re-stated that moving a pool is a hardship.

Based on the practical difficulty of moving a pool and the unnecessary hardship given the low substantiality of the variance, Ms. Kleghorn made a Motion to Approve the variance as presented. Ms. Waltz then seconded that motion and the motion was passed by a vote of 5-0. The table below represents the vote of the board – 4 regular board members and 1 alternate board member were present and voted while 1 regular board member was absent. The Board of Adjustment is a 5 member board which allows alternate members to vote in place of absent regular board members per Municipal Code Section 405.220 and RSMo Section 89.080; the table below reflects the vote of those members.

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Kathy Waltz	X			
Timothy Kuenzel				
Joan Troeh	X			
Randy Ruzicka	X			
Connie Steiger-Schwent - Alternate				
Bob Donovan - Alternate				
Kristi Cleghorn - Alternate	X			

Other Business: None

Meeting Adjourned: With no additional business to come before the board, Ms. Kleghorn made a motion to adjourn at 7:01 pm. The motion was seconded by Ms. Troeh, which passed 5-0.

Respectfully submitted,

David Bova
Community Development Administrator