

DOCKET 1193

DATE OF HEARING	March 7, 2016
NAME	Mr. & Mrs. Harold Bean
DESCRIPTION OF PROPERTY	23 Berkley Lane
CAUSE FOR APPEAL	Relief from the ruling of the Building Official denying a building permit for an addition to the south of the residence which would encroach into the required 10 foot side yard setback by 7.5 feet which is prohibited by Sections V-C-1(a) & (b) and IV-D (8) of Zoning Ordinance #1175 which state that nonconforming structures cannot be enlarged unless such enlargement complies with Ordinance #1175 and every part of the required yard shall be open from its lowest point to the sky unobstructed
RULING OF THE BOARD	After a discussion of the facts presented, the Board approved the variance for the addition encroaching into the required side yard setback and the decision of the Building Official was overturned.

MINUTES OF MEETING
ZONING BOARD OF ADJUSTMENT
Monday, March 7, 2016

DOCKET 1193
23 Berkley Lane

A meeting of the Zoning Board of Adjustment was held at 4:00 p.m. on Monday, March 7, 2016, at City Hall.

The following members of the board were present:

Ms. Liza Forshaw, Acting Chairman
Ms. Laura Long
Ms. Elizabeth Panke
Mr. Daniel Welsh
Mr. Lee Rottmann

Also present were: Mr. William Penney, Building Official; Ms. Anne Lamitola, Director of Public Works; Ms. Erin Seele, City Attorney, Ms. Andrea Sukanek, City Planning Consultant

Ms. Forshaw called the meeting to order at 4:00 PM.

Notice of Public Hearing, as follows:

**NOTICE OF PUBLIC HEARING
ZONING BOARD OF ADJUSTMENT
CITY OF LADUE, MISSOURI
DOCKET NUMBER 1193**

Notice is hereby given that the Zoning Board of Adjustment of the City of Ladue, St. Louis County, Missouri, will hold a public hearing on a petition submitted by Mr. & Mrs. Harold Bean, 23 Berkley Lane, requesting relief from the ruling of the Building Official denying a building permit for an addition to the south of the residence which would encroach into the required 10 foot side yard setback by 7.5 feet which is prohibited by Sections V-C-1(a) & (b) and IV-D (8) of Zoning Ordinance #1175 which state that nonconforming structures cannot be enlarged unless such enlargement complies with Ordinance #1175 and every part of the required yard shall be open from its lowest point to the sky unobstructed

The hearing will be held at 4:00 p.m. on Monday, March 7, 2016, at the City Hall, 9345 Clayton Road.

The hearing will be public and anyone interested in the proceedings will be given the opportunity to be heard.

Pursuant to Section 610.022 RSMo., the Zoning Board of Adjustment could vote to close the public meeting and move to executive session to discuss matters relating to litigation, legal actions and/or communications from the City Attorney as provided under section 610.021 (1) RSMo.

Stanley Walch, Chairman
Zoning Board of Adjustment

Ms. Forshaw asked Building Official William Penney for an explanation with regard to the denial of the building permit. Mr. Penney stated that the applicant desires to construct an addition approximately 2.5 feet from the side property line which will encroach into the required side yard setback of 10 feet. The existing home encroaches 4.5 feet into the side yard setback and the proposed addition will partially be aligned with the existing encroachment and partially extend an additional approximate 1.75 feet into the side yard setback.

Ms. Forshaw introduced the following exhibits to be entered into the record:

- Exhibit A – Zoning Ordinance 1175, as amended;
- Exhibit B – Public Notice of the Hearing;
- Exhibit C – Permit denial dated December 21, 2015;
- Exhibit D – List of Residents sent notice of meeting;
- Exhibit E – Letter from the resident requesting the variance dated January 7, 2016
- Exhibit F - Entire file relating to the application
- Exhibit G – Two photos of the existing conditions

The court reporter administered the oath to Mr. & Mrs. Harold Bean, 23 Berkley Lane.

Mr. & Mrs. Bean addressed the Board. Mrs. Bean described the property and the permanent easement that exists on the adjoining property of 25 Berkley Lane. The driveway serving 23 Berkley Lane is physically located on the easement. She noted that the existing attached garage encroaches into the required side yard setback. She explained that they desire to construct an addition that will align with the existing encroachment for a portion of the addition and then extend an additional approximate 1.75 feet into the setback. There is a 10 foot setback on the property although the setback includes the area of a recorded driveway easement that has been in place for a longtime prior to their purchase of the home. The Beans, as property owners of 23 Berkley Lane, maintain the driveway that exists on the easement. They also have homeowners insurance covering the easement. They are not proposing to construct improvements on the easement. They are proposing to construct improvements behind the existing improvements with just a slight encroachment further into the side yard setback. Mrs. Bean stated that the improvements will not be visible from the street and that the addition will be harmonious with the neighborhood. They desire to maintain a large portion of the green space within their backyard.

Lorie Fumagalli, project architect, came forward. She described the project and explained that the proposed improvements will occupy an additional 252 square feet within the required setback area. It was clarified that the existing encroachment into the setback is approximately 110 square feet.

Chairman Forshaw inquired about a fence that existed between the two property lines. Mr. and Mrs. Bean explained that it was damaged during the recent improvements to 25 Berkley Lane, but for many years (they believe certainly more than 10 years) it physically separated the 23 Berkley Lane property including the driveway easement area from the remainder of the 25 Berkley Lane property.

Mr. Welsh stated that he has noted practical difficulties that exist on the property, but inquired about what the hardships that exists in association with this variance request. Mr. Bean explained that a member of his family cannot access the second floor of the home due to mobility issues and that they desire to construct an ADA bathroom and living space on the first floor for that family member. Mrs. Bean stated that the easement that has been granted for

perpetuity constitutes a hardship due to the fact that it cannot be included as part of their property for setback purposes.

Ms. Fumagalli stated that when viewing the property from the street the driveway, located within the easement, appears to be located in the side yard of 23 Berkley Lane.

Public Comments

No one from the public came forward to speak on this matter and the Public Hearing was closed.

Ms. Panke stated that the existing width of the home is being preserved at the front of the home. Behind that frontage, the width increases marginally. The existing home is over the side yard setback.

Chairman Forshaw stated that not counting the driveway toward the setback – because of the unusual situation of the driveway land being owned of record by the next-door neighbor - would be anomalous for the neighborhood, since the other houses are built quite close to their driveways.. She noted that the driveway easement area was fenced off from 25 Berkley Lane for many years and appeared to be part of the 23 Berkley Lane property. Adverse possession may be applicable.

Ms. Panke stated that if the addition were to comply with the setback, it would be very difficult to allow for the parking beyond a one car garage because the garage width would be significantly reduced.

Ms. Long inquired about why the two foot extension further into the setback is necessary.

Mr. Welsh stated that visually, that extension into the setback breaks up the space.

Chairman Forshaw noted the significance of the endorsement of the project by the adjoining property owner at 25 Berkley Lane who has record title to the land where the driveway easement is located. She stated that the hardship is that the record title (which is normally used for measuring side yards) does not reflect the actual utilization of the property which has not been utilized consistently with the title and underlying fee of the property, and in this case including the driveway within the required side yard would be consistent with the appearance of the other houses in the subdivision.

Mr. Welsh stated that there are practical difficulties with regard to the easement, but that the hardship as explained by the applicant is due to the desire to have ADA access on the first floor.

Ms. Long stated that there is not a self-inflicted hardship that is present.

Ms. Long moved that based on the evidence presented, a practical difficulty exists and the decision of the Building Official will be reversed, and a variance should be granted to construct the improvements consisting of the addition in accordance with the site plan dated January 7, 2016. Ms. Panke seconded the motion. Ms. Forshaw called for a vote with regard to this variance request and the vote thereupon was as follows:

Ms. Liza Forshaw	“Approve”
Ms. Laura Long	“Approve”
Ms. Elizabeth Panke	“Approve”
Mr. Daniel Welsh	“Approve”
Mr. Lee Rottmann	“Approve”

The request for the variance to permit an addition encroaching into the side yard setback at 23 Berkley Lane was approved.


Ms. Liza Forshaw, Acting Chairman