

AGENDA ITEM SUMMARY SHEET

City of Rollingwood

Board of Adjustment Meeting

April 15, 2024

Submitted By:

Staff

Agenda Item:

Public hearing, discussion, and possible action on a request for a special exception under Section 107-491(a)(1) of the City's Code of Ordinances to permit the reconstruction of a non-conforming driveway at 3220 Park Hills Drive

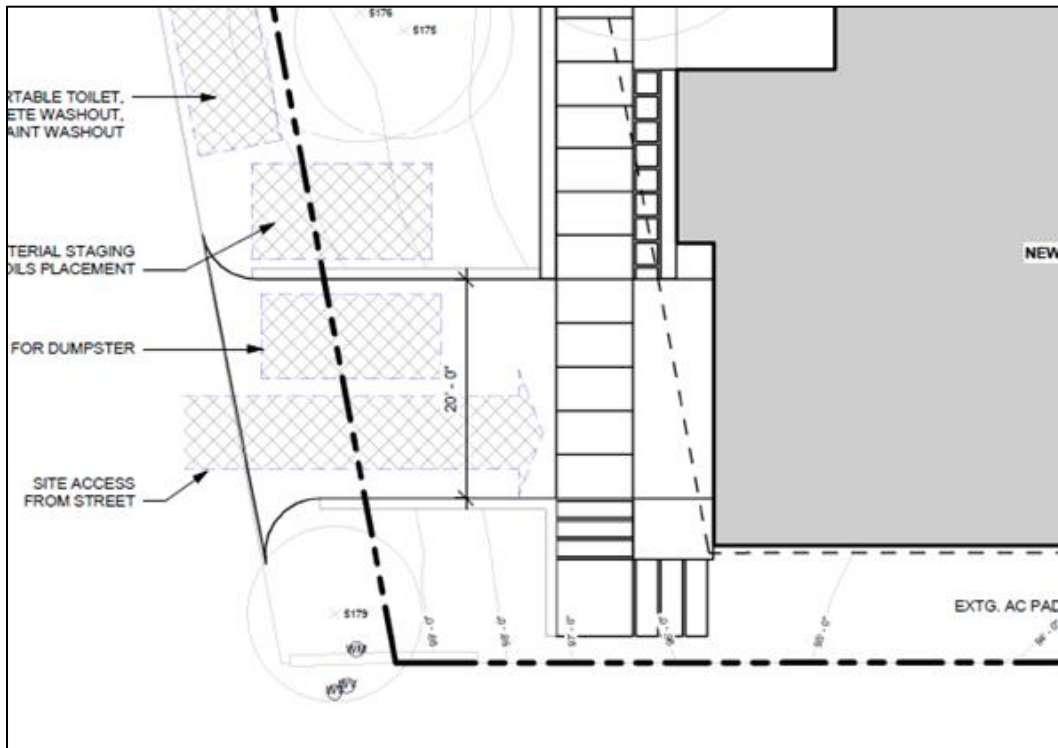
Description:

*Note: Steve and Norma Marcie are the property owners of 3220 Park Hills Dr. and have indicated that they are both the applicants for this special exception. Throughout this report if the singular term "applicant" is used, it means one of the applicants for this special exception.

The applicants own the property at 3220 Park Hills Drive. They received a demolition permit for the existing, single-family structure in July 2021. The existing, non-conforming driveway was not demolished at the time the original home was demolished.

In July 2021, the applicant applied for a building permit for the construction of a new single-family residence and received the permit in October 2021. The approved plans for the new residence included the demolition of the original, non-conforming driveway and construction of a new driveway, shown on the plans to be in compliance with the code. According to documentation provided by the applicant, the existing, non-conforming driveway was demolished and the new driveway constructed the weeks of March 20 and March 27, 2023 respectively. Upon inspection by City staff in April 2023, it was determined that the new driveway was not constructed according to the approved plans because it did not comply with Section 107-36 of the City's Code of Ordinances, which states: *"Each driveway shall be located at least five feet from a side lot line..."*

The contractor, who is also the responsible party for this project, was notified on April 24, 2023, that the new driveway was not constructed in accordance with the approved plans and was not in compliance with the Code which states that driveways must be located at least 5 feet from the side lot line. The following picture and screenshot of the approved plans were included in the contractor notification.



During following discussions with the applicant, the applicant explained to staff that, though the original plans did show demolition of the existing, non-conforming driveway and a new, conforming driveway to be constructed, he later decided to keep the existing driveway. It was then decided at a later time that the existing, non-conforming driveway would be removed and the driveway reconstructed as it was observed by staff on April 24, 2023. The City was not notified of any plan changes when these changes were made.

In May 2023 the applicant submitted a request for a Reasonable Accommodation to keep the driveway constructed as it was, not in conformance with the City's Code. After review of the information submitted and additional discussions with the applicant, it was determined that the application did not establish the necessity for a Reasonable Accommodation, and the request was denied by the City Administrator in July 2023. During the review period of this Reasonable Accommodation request, the applicant was granted a Temporary Certificate of Occupancy in June 2023, with the Certificate of Occupancy pending plan revisions/approval or construction of the driveway in accordance with the approved plans and the City's Code.

Subsequent to the denial of the Reasonable Accommodation request, the applicant requested the building official's approval post-construction for the reconstruction of the driveway under Section 107-422 of the City's Code of Ordinances which states:

Any nonconforming building or structure may, so long as it remains otherwise lawful, be continued subject to the following requirements and limitations:

- (4) If the nonconforming building or structure, other than a dwelling, is damaged or destroyed by fire or other accident or natural means, the building official shall, upon application by the owner thereof, issue a permit for repair or reconstruction of the building or structure, provided that the repair or reconstruction conforms with the construction materials standards set forth in section 107-107, the compatibility standards set forth in section 107-116, and will not increase the extent of the nonconformity of the building or structure.*

The building official determined that the City's Code does not provide for a post-construction request for continuation or reconstruction of a non-conforming structure, and denied the request in August 2023.

In November 2023 the applicant requested to make minor revisions to his construction permit reflecting the changes to the front hardscape. Because construction of the home and driveway had already been completed, the City responded that a post-construction revision to a filed building permit would not be authorized.

In December 2023 the applicant requested to proceed with a Special Exception Request to the Board of Adjustment.

Section 107-491 of the City's Code of Ordinances states:

(a) The board may, in a specific case, where the board makes the findings required under subsection (c) herein, grant the following special exceptions from the requirements of this division:

(1) Permit the reconstruction of a nonconforming building or structure that has been damaged by fire or other cause;

Analysis for Considering Approval of a Special Exception:

The City's Zoning Code, Chapter 107, has established guidelines for the evaluation of a special exception to zoning regulations. Section 107-491(c) of the Zoning Code states the following:

(c) Prior to granting a special exception, the board shall make a finding that it is empowered under this chapter to grant the special exception, that the public convenience and welfare will not be substantially or permanently injured in the granting of the special exception, and that the grant of the special exception will not adversely affect the public health, convenience, safety or general welfare.

Breaking down the statement above provides the following decision-making process:

1. Does the board find that it is empowered under this chapter to grant the special exception?
2. Does the board find that the public convenience and welfare will not be substantially or permanently injured in the granting of the special exception?
3. Does the board find that the granting of the special exception will not adversely affect the public health, convenience, safety or general welfare?

Additionally, Section 107-491(d) and (e) of the Zoning Code state the following:

(d) In granting a special exception, the board may prescribe appropriate conditions and safeguards in conformity with this division.

(e) The board shall prescribe a time limit within which the action for which the special exception is required shall be begun or completed, or both. Failure to comply with the time limits set by the board shall void the special exception.

If the Board desires to approve this request with conditions, they may do so. It is important to note that construction of the driveway in the configuration being requested has been completed at this time.

Intent of the City’s Code Regarding Nonconforming Structures and Uses:

Section 107-419 of the City’s Code of Ordinances communicates the intent of Part II, Chapter 107, Article IV Nonconforming Structures and Uses. This section states:

It is the intent of this article to permit nonconforming premises and uses to continue until they are removed, but not to encourage their continuation indefinitely. Nonconforming premises and uses are declared by this article to be incompatible with permitted uses in the zoning districts created under this article. It is further the intent of this article that nonconformities shall not be enlarged upon, expanded or extended, nor used as grounds for adding other buildings, structures or uses prohibited elsewhere in the same district.

Requested Action:

Staff requests that the Board of Adjustment review the facts presented in this case and decide whether to grant the Special Exception Request.

Fiscal Impacts:

N/A

Attachments:

BOA Rules of Procedure

Special Exception Request Application from Applicant

Staff Report – Special Exception Request for 3220 Park Hills Drive

Original Survey, Permitted Site Plan and As-built Survey of 3220 Park Hills Drive

Letter of Request for Special Exception from Applicant

Exhibits to Letter of Request for Special Exception from Applicant

As-Built Site Plan of 3220 Park Hills

As-Built Survey of 3220 Park Hills

Letters of Support

Notice of BOA Hearing

BOA Finding of Fact Form for a Special Exception