

MARIEMONT PLANNING COMMISSION
REGULAR MEETING HELD AUGUST 30, 2018

The Mariemont Planning Commission met August 30, 2018. Chairman Carl DeBlasio called the meeting to order at 5:30 p.m. Present were Ms. Schwartz, Ms. Reed, Mr. Rich, Mayor Policastro and Mr. Vianello. Also in attendance was the Building Administrator Don Keyes.

The first request was from Kevin & Melissa Taylor, 6710 Mariemont Ave, Mariemont, to replace a split rail fence with a natural stone wall, six feet in height with an iron gate connecting the property with the property next door. In addition, there is a desire to extend the current slate flooring on the porch to make a patio extending to the wall.

Finding of the Building Commissioner: Fences and walls extending from the front of the house toward the rear may be 6 feet in height and situated next to the property line with no setback per Mariemont code section 151.103. It was inaccurately cited as 151.102. The height of the fence may not exceed 75% of the side yard setback of the house, which is the case here. The stone patio requested is designed to extend to the fence line, as is the case for the existing brick patio next door. Mariemont code section 151.087 calls for patios to extend toward the property line no more than 18 inches from the side yard setback limits, however, walkways to an entrance are allowed to extend 3 feet into a side yard. In this case, the request for a patio to extend to the fence is across the fence line from a patio area that is already extending to the fence line and has been there for many years.

Mr. DeBlasio said Mrs. Garber submitted a letter and asked that it be made part of the permanent minutes:

Dear Don,

I have received the information for the Application of Graham Martin Construction, Inc. to renovate the entire structure of the property located at 6941 Cambridge Ave. to add a second floor and a 24 foot by 20 foot addition at the rear of the dwelling and the application of Kevin and Melissa Taylor to replace the split rail fence with a natural stone wall 6 feet in height with an iron gate connecting to their neighbors and to extend the slate floor on the porch to make a patio extending to the stone wall.

I am unavailable to make the meeting on August 30th but have reviewed the Applications, supporting materials and the Village of Mariemont Zoning Code and have the following comments which I would appreciate being read into the record regarding the code provisions as they relate to these applications. 6941 Cambridge Ave., Mariemont, Ohio - Application of Graham Martin Construction, Inc. to renovate the entire structure of the property to add a second floor and a 24 foot by 20 foot addition at the rear of the dwelling.

1. The lot size for this residence is 35 ft. By 138 ft. and the dwelling was built in 1926.

a. Section 151.085 (B)(1)(b)- (7)(a) provides - Lot width - no residence shall be erected in a residential district on a lot less than 40 ft. In width unless such lot is recorded on a plat of subdivision in the Office of the County Recorder as of April 23, 1942.

151.085 (B) (1) (b) - (7)(b) provides - In such instances, the minimum side yard and total side yards required shall be the same as required for a lot of 40 feet in width. So in this instance the 35 foot wide lot must meet the 40 foot wide lot requirements for setbacks.

151.085(B) (1) (b) - (8) provides - minimum area, yards, and other open spaces required by this Chapter shall also apply to all structures existing as of 4/23/42.

151.085 (B) (1) (b) -(9) provides - The minimum yards and other open spaces required in this chapter for each and every building existing as of 4/23/42 or for any building erected or structurally altered shall not be encroached on or considered as yard or open space requirements for any other building

or structure regardless of any change in ownership of the land included within those yards or other open spaces.

Section 151.085 (B) (1) (b) (3) provides side yard setbacks shall be determined in accordance with Section 151.086(C):

Section 151.086 (C) requires a 6 foot side yard setback for a building up to 30 feet (not 5 1/2 as set forth in the notice) with the sum of both sides 14.25 since the code requires the 40 ft. wide lot to be used to compute it. The side yard setback for this property is 2 feet 10 inches. If there is an overhang of 18 inches, there would only be 16 inches of side yard to the property line.

Further, Section 151.086 (A) provides that a single family detached dwelling must have a minimum lot size of 6,750 square feet and this lot is only 4, 830 square feet.

This property was built before Mariemont was incorporated as a village and before the zoning laws were put into effect and so as to the original construction it is grandfathered and may remain. However, the zoning code specifically addresses this issue and requires these properties to follow the code provisions going forward.

NO building would be permitted on this property today since the lot width is smaller than the minimum lot requirement of 40 feet and the lot size is only 4.830 square feet and 6,750 square feet is required for a detached dwelling.

The Applicants are requesting to increase the size of this building, which already exceeds what is permitted today, from approximately 840 square feet to approximately 2160 square feet on a lot that is less than 70 percent of the permitted lot size. The side yard setback requirement of 6 feet, is only 2 feet 10 inches, less than half of what is required and if any overhangs exist of 18 inches it would be only 16 inches from the lot line.

Additionally this property has a one car garage underneath and no space to put a garage in the back so that with additional size there will be many more people occupying what is currently a 5 room house with the corresponding additional cars, etc. in a very densely populated area. Parking is a critical issue and these codes are set up to assist in that regard.

This request is not a request for a variance, but is a request to totally ignore the zoning code and ordinances and permit a landowner to use his property however he chooses to his advantage, but to the detriment of the community.

Application of Kevin and Melissa Taylor, 6710 Mariemont Avenue, Mariemont, Ohio to replace a split rail wood fence with a natural stone wall 6 feet tall with an iron gate connecting the Zaveri and Taylor property and to put a blue stone patio in the side yard of the Taylor property up to the property line.

With respect to the wall. Mariemont Code section 151.102 set forth in the notice is NOT the correct code section since that section only applies to corner lots and this is not a corner lot. The correct code section is 151.103 and has different provisions from 151.102 which was cited in the notice.

Section 151.103 provides: (A) It shall be unlawful to construct or erect a fence or a wall more than four feet in height, except that in Residence A, B, and C Districts these structures may be constructed or erected to a height not to exceed 6 feet at any point **ALONG THE LOT LINES** (emphasis added) bounding side or rear yards, provided , the height of the structure shall not exceed 75% of the width of any adjoining side yard or 75% of the depth of any adjoining rear yard.

Section 151.104 (A) provides: Materials used for construction of all fences or walls shall be subject to the approval by the Building Commissioner and therefore, he will need to decide if a solid stone wall is acceptable.

Pursuant to section 151.103 (A) the stone wall which the applicant is requesting may NOT exceed four feet in height from the house to the Zaveri property line as set forth in the second photo that says "new stone wall" since that portion would be visible from the street and the front of the dwelling and is NOT located "ALONG THE LOT LINE" for the side yard.

With respect to the blue stone patio being added right up to the property line, I was not furnished with any information as to whether the stone patio will be more or less than six inches above the ground which will determine which code provision (1) or (2) set forth below applies. The operative code section is 151.087 which provides: " a required yard or court shall, at all times and in every part, be unobstructed by any permanent or temporary human made object from its lowest point to the sky; however, the following obstructions shall be permitted:

Code section 151.087 (I) provides: paved patios, paved terraces and decks may be erected in accordance with the following:"

151.087(I)(1) -When constructed more than six inches above the ground level, they may project not more than one foot six inches in a required yard; provided, that those patios, terraces or decks do not extend more than three feet above ground level any point.

151.087 (I) (2) provides: -When constructed less than six inches above ground level, they may be no closer than the minimum side yard requirements less one foot six inches to any side or rear property line...

In provision (2) the required side yard setback for this property is 11 feet, less the one foot six inches is 9 and 1/2 feet to the side property line. Therefore the blue stone patio may not be closer to the side property line than the minimum side yard setback of 11 feet less the one foot six inches, making it 9 and 1/2 feet from the side property line, so only two feet would be permitted from the house, since there is 11 and 1/2 feet from the house to the side property line. These provisions were put in the code to keep greenery between properties and not used patio areas, providing residents more privacy. The current neighbors do not object, but the code is to protect not just the current residents, but future residents as well.

Code section 151.087 (H) quoted in the notice regarding walkways extending 3 ft. in the side yard does not apply since this applies only to side entrances and there is no side entrance on this property.

Applicants must furnish to the commission the necessary information as to whether the stones are six inches more or less in height so that the commission may apply the correct code provisions regarding the request for the slate patio.

Respectfully Submitted,
Valerie Garber, Planning Commission Member

Mr. Keyes said the patio can extend, whether it is 6" or whether it is less than 6" high toward the property line no more than 18" from the setback according to the code.

Mr. Rich said his interpretation was the wall height could not exceed 75% of the setback of the adjoining property up to a maximum height of 6'. He is disputing the determination that it can be 6' regardless of what the width of the setback is. We are determining the variance for the height of the wall parallel to the street and whether the patio can go to the property line.

Mr. Kevin Taylor said the patio will be at grade with a step down. He wants to put in a grilling area and wanted something with some privacy. He explained that he is 6'1" and a fence shorter does not serve a purpose. The neighbor's primary backyard is on the other side of the house. The wall does not go around all of the property and does not go to the rear property line. The neighbor wants the wall as well for privacy. It will allow for light as the trees there leave droppings and the area is muddy and moldy. Mr. Rich asked if anyone drew a picture of what it will look like with a six foot stone wall as opposed to an iron

gate. He does not think it will be an attractive solution with the wall. Ms. Reed said a six foot wall is tall and suggested a 4' angled wall. Mr. Taylor said it will match the rest of the house. Ms. Schwartz said the house at 6931 Mt. Vernon has a six foot wall.

Discussion ensued regarding the code and the allowance of six foot fences.

Mayor Policastro moved, seconded by Mr. DeBlasio to allow for the variance for the six foot fence/wall area based on code section 151.024(3)(2)(c)(d)(e)(f). On roll call; four ayes, two nays (Mr. Rich and Mr. Vianello)

Mayor Policastro moved, seconded by Mr. Vianello to allow for a variance for the patio based on Code Section 151.024(3)(2)(c)(d)(e)(f). On roll call; six ayes, no nays.

The second request was Request from Graham-Martin Construction, Inc. and Principals Matthew Graham and Kelly Martin of 6818 Hurd Ave, Cincinnati, OH 45227 to renovate the house at 6941 Cambridge Ave, Mariemont. The desire is to renovate the entire structure including adding a second story to the house and building an addition to the rear of the house.

Finding of the Building Commissioner: The property on which the house sits is 35 feet by 138 feet providing 4830 square feet of lot for the dwelling. The minimum lot for a dwelling in Mariemont is 6750 square feet. However, the existing house and lot are in place and grandfathered into the code. The minimum side yard setback for a house up to 18 feet high is approximately 4 ½ feet (Mr. Keyes said according to Ms. Garber this is incorrect as stated in her above referenced letter) for the 35 foot lot size. Increasing the house to 2 stories, up to 30 feet, causes the size of the side yard setback to be increased to 5 ½ feet. The current side yard setback on the East side of the house is 2 feet 10 inches but the house next door has an angled setback of 7 feet 1 inch or more, making the setback seem more reasonable since there is a total of between 10 and 11 feet between dwellings on the two properties. No other dimensional irregularities exist for the property.

It was clarified that the house is on a lot long enough to allow the addition on the back of the house which is not an issue. Extending the house toward the rear is not a problem. The setback of the addition on the side of the house is a problem and the house is no longer “grandfathered”. The new structure violates the setback requirements.

Ms. Reed asked when an addition is added do they have to go by the current setbacks not grandfathered. Mr. Keyes said if we do then we will have to change the way we do things. Mr. Rich said it is a good point because many of the additions put on are larger than the original house.

Mr. Matthew Graham said the property was built before Mariemont was incorporated as a Village and therefore predates the rules used to satisfy the current code enforcement. The term grandfathered is used to allow the structure to remain even though they do not comply with current code. Should a party wish to build a new home by demolition of an existing home the current Village code would prohibit any building to replace it. This lot being 35 feet does not fall within Village rules because the rules start at 40 feet. The square foot minimum is not met. It can lead to a dangerous precedent. Accordingly not affording all landowners full benefit protection of ownership, especially land developed before the current rules were in place, selectively puts encumbrances on these properties. He suggested if Council does wish the Planning Commission not to trap property owners into these hidden encumbrances, the Village should take steps at the time of acquisition of this section of Mariemont to write covenants into the titles to warn buyers of the limitations of the use of their own land.

Mr. Rich said if the buyer does their due diligence they should know that. Ms. Reed agreed that that should be done. Mr. Graham said, as a realtor, it would be required to disclose defects and none were disclosed to him. His neighbor, Bonnie Schantz, was there in support and also to voice frustrations with the limits on what she can do with her property. He is not here for a variance to break the rules. When this property was incorporated into Mariemont it was already out of code.

Mr. Rich said when those properties were incorporated into the Village the zoning laws did not exist. It was only when the zoning laws were adopted that those properties became non-conforming. This body exists to deal with non-conforming issues. Ms. Reed said typically if a buyer wants to add on to a house they would do their due diligence prior to the purchase. Mr. Rich said the property owner bought the property to resell and would think that puts the onus on the buyer since he is in the business.

Mr. Graham said he has an active demolition permit and has done the demolition process but not to the point of changing the bones of the building. The proposal is to add more square footage to the house. Mr. Keyes said if they want to do two stories the side setback has to increase on both sides by one foot. The setback is smaller than the law presently allows.

Ms. Reed said if we have 35' lots in the Village why do we not have rules for them. Mr. Keyes said back in 1941 what was defined that a minimum buildable lot was 6750 square feet. Mr. Rich said for him what makes the problem worse is that this house and the neighbors have the smallest setbacks on the entire street. He was concerned if there was a fire that it could jump between the two structures. Mr. Graham said the addition would not have a second story but it would have high ceilings.

Mr. Rich moved, seconded by Mr. DeBlasio to grant the variance based on code section 151.024H(3)(2)(a), by adding additional setback on the east side of the property, where the setback is currently too small but is grandfathered. A one foot additional setback is to be added to the second story and to the addition on the rear to accommodate the building code, which states that a 2 story house requires one more foot of setback than a 1 story house. The setback on the west side of the house is adequate. On roll call; six ayes, no nays.

Mr. Rich moved, seconded by Mayor Policastro to approve the minutes as written for, March 21, 2018 April 24, 2018 and May 15, 2018. On roll call, six ayes, no nays.

Mr. Rich said at a previous meeting a variance was granted to remove a tree on Cambridge with the stipulation that a tree be planted. To date that has not occurred and the property is for sale. Mr. Keyes said he will contact the homeowner

The meeting adjourned at 6:15 p.m.

Respectfully Submitted,

Ms. Mary Ann Schwartz
Secretary

