

Docket Item #3
BZA CASE #2006-0040

Board of Zoning Appeals
October 12, 2006

ADDRESS: 1400 COVENTRY LANE
ZONE: R-20, RESIDENTIAL
APPLICANT: KURT F. AND MAYLA A. WALLSCHLEGER, OWNER

ISSUE: Variance to allow existing ground level solar panel water heating system for pool to remain in the required front yard.

CODE SECTION	SUBJECT	CODE REQMT	APPLICANT PROPOSES	REQUESTED VARIANCE
3-106(A)(1)	Front Yard	40.00 ft	5.50 ft	34.50 ft
3-106(A)(2)	Side Yard (South)	12.00 ft	7.50 ft	4.50 ft

Staff **recommends denial** of the request because the applicants have not demonstrated a hardship.

If the Board decides to grant a variance, it should contain the conditions under the department comments. The variance must also be recorded with the deed of the property in the City's Land Records Office prior to the release of the building permit.

(insert sketch here)

I. Issue

The applicants request a variance to allow existing passive solar panels used to heat an outdoor pool to remain installed in the required front and south side yards at 1400 Coventry Lane.

II. Background

The subject property, one lot of record, is located at the end of Coventry Lane with 152.26 feet of frontage on Coventry Lane, a depth of 177.81 feet and a lot area totaling 20,394 square feet. An existing single-family dwelling with a rear porch, deck and attached garage is located 44.60 feet from the front property line facing Coventry Lane, 24.70 feet from the south side property line, 36.00 feet from the north side property line and 44.00 feet (at its shortest point) to the rear property line. A concrete drive parallels the south side property line. In 2003, the applicants built a rear porch and deck followed by a swimming pool in 2004. The swimming pool located in the backyard of the property is approximately 27 feet by 50 feet pool built in compliance with the R-20 zone requirements. The property is screened by a six foot tall wood fence along the side and rear property lines. The existing fence also screens the backyard when viewed from Coventry Lane. The applicants have owned the property since 1998.

In order to use the outdoor swimming pool year round, in 2005 the applicants installed ground mounted passive solar panels in the front yard facing Coventry Lane. During cold weather a white tent like dome is installed over the pool. The solar panels are used to generate warm air inside the pool dome. The ground level solar panels are comprised of black plastic panels interlocked with plastic tubing filled with water. The water in the tubing is provided by a garden hose pumped from the pool shed. The heated water in turn is used to provide warm air supplied inside the swimming pool dome.

III. Description

In late 2005, a complaint was filed with the City that the existing ground mounted solar panels violated the zoning ordinance for placement in the required front yard of the subject property. The complaint also asked if a building permit was required. The applicants state that before installing the passive solar panels they contacted the City and were told no building permit was required nor was the placement of the solar panels in the front yard a violation of the zoning ordinance.



A field inspection was performed and although the inspectors advised the property owners that they did not need a building permit for the passive solar panels the applicants were encouraged to obtain a building permit. The applicants subsequently filed for a building permit. In January 2006, a building permit was released by the City. In 2006, the City Attorney ruled that the passive solar panels were (1) accessory uses under the zoning ordinance and not permitted in the required front yard, (2) local law is not trumped by Federal law as to the residential application of solar panel technology, and (3) a variance is required to allow the solar panels to be placed in the required front yard facing Coventry Lane.

Section 7-103 of the zoning ordinance states no accessory use or structure shall be located forward of the front building line, except as provided in section 7-200(A). Solar panels are not listed as a permitted use or structure in a required front yard. The panels are, therefore, not permitted. The building permit issued in January 2006 was erroneously approved by Planning and Zoning. Although the applicants strongly disagreed with the City's interpretation, the subsequently filed in August 2006 an application for a variance now before the Board of Zoning Appeals.

There have been no variances previously granted for the subject property.

IV. Master Plan/Zoning

The subject property is zoned R-20 and has been so zoned since adoption of the Third Revised Zoning Map in 1951 and identified in the Taylor Run Small Area Plan for residential land use.

V. Requested Variances

Section 3-106(A)(1), Front Yard: The R-20, residential zone requires a structure to be located no closer than 40.00 feet from the front property line. The existing solar panels are located 5.50 feet from the front property line. The applicants request a variance of 34.50 feet.

Section 3-106(A)(2), Side Yard: The R-20, residential zone requires a structure to be located no closer than 12.00 feet from a side property line. The existing solar panels are located 7.50 feet from the south side property line. The applicants request a variance of 4.50 feet.

VI. Staff analysis under criteria of section 11-1103

To grant a variance, the Board of Zoning Appeals must determine that a unique characteristic exists for the property. Section 11-1103 of the zoning ordinance lists standards that an applicant must address and that the Board believes exists and thus warrants varying the zoning regulations.

- (1) The particular physical surroundings, shape, topographical condition or extraordinary situation or condition of the property that prohibits or unreasonably restricts the use of the property.

- (2) The property's condition is not applicable to other property within the same zoning classification.
- (3) Hardship produced by the zoning ordinance was not created by the property owner.
- (4) The granting of a variance will not be detrimental to the public or other property or the neighborhood in which the subject property is located. Nor will the granting of a variance diminish or impair the value of adjoining properties or the neighborhood.
- (5) The granting of the variance will not impair light and air to the adjacent property.
- (6) The granting of a variance will not alter the character of the area nor be detrimental to the adjacent property.
- (7) Strict application of the zoning ordinance will produce a hardship.
- (8) Such hardship is generally not shared by other properties in the same zone and vicinity.
- (9) No other remedy or relief exists to allow for the proposed improvement.
- (10) The property owner has explored all options to build without the need of a variance.

VII. Applicant's Justification for Hardship

The applicants state the zoning ordinance amounts to a confiscation and prevents reasonable use of their property. The current placement of the solar panels represents the only feasible sun oriented location on the property. The type of solar panels installed cannot be placed on a roof because (1) the roof of the house is steep and (2) the weight of the water filled tubing style passive solar panels will produce stress on the roof. The roof pitch is too excessive for water flow through system to be safely installed on. The applicants state further that Federal law allows a homeowner to access solar energy in such a manner as not to be disruptive to adjoining properties. Placement of other types of solar panels on the roof will be more visually disruptive to adjoining properties than the ground level panels installed. Landscape screening has been installed to screen the panels, but require additional growth to completely block the view of the panels when standing at street level.

VIII. Staff Analysis

There is no legal hardship. As indicated in the attached photos, although a portion of the back yard is screened by tall trees, most of the pool area and the back of the house is bathed in sunlight. During the fall and winter when the tree canopy is gone the full yard will be exposed to the sun. The back of the house can be used to accommodate the passive water panels. The applicants can explore a frame system to tilt the panels to accommodate the solar panels position to optimize the sun's location without installing the panels on the roof. The zoning ordinance does not deprive the homeowners continued use of their property nor deprive them

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access to the sun to meet their needs. The applicants chose to place the solar panels in the front yard which creates a visual impact on the adjoining neighbors.

Staff **recommends denial** of the requested variances.

DEPARTMENTAL COMMENTS

Legend: C - code requirement R - recommendation S - suggestion F - finding

* The applicant is advised that if the variance is approved the following additional comments apply.

Transportation and Environmental Services:

F-1 No comments.

Code Enforcement:

F-1 No comments.

Recreation (Arborist):

F-1 No trees are affected by this plan.

Historic Alexandria (Archaeology):

F-1 There is no ground disturbance involved in this project. No archaeological action is required.