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**BOARD OF ADJUSTMENT
MINUTES
September 19, 2023**

The **Rogers Board of Adjustment** met for a public meeting at Rogers City Hall at 301 W. Chestnut Street on September 19, 2023 at 7:00 P.M. The meeting was called to order by Chairman Mandel Samuels.

ROLL CALL

Board members attending: Ed McClure, Hannah Cicioni, and Mandel Samuels.

ACTION ON MINUTES

Previous minutes: September 5, 2023

Motion by McClure to accept the prepared minutes for the September 5, 2023 meeting of the Board of Adjustment as presented. Second by Samuels.

Voice vote: YES - Unanimous **Motion carried**

APPROVED

OLD BUSINESS

- 1. (VAR 23-30) A request by Kurtis and Haley Hahn for a variance to allow a reduction in the rear building setback at 5402 S. 45th Ct. in the RSF-5 (Residential Single Family, 5 units per acre) zoning district.**

Planner Nick Little stated the project is located at 5402 S. 45th Court, the request is for the reduction of the rear building setback for a new deck addition. The purposed design creates a significant setback encroachment. Staff received updated architectural plan on September 18, after close of business, those are not included in the report. The purposed plan shows a eight foot eight inch encroachment at its deepest point. Given the angle of the addition that puts the raised and covered deck extension roughly 12 feet away from the Western property boundary. The adjacent Western neighbor's property sits a bit lower than the subject property and is within a different subdivision, which is Warren Glen. The applicant states that their hardship on the particular property is abnormal geometry of the site. The applicant also states that the spirit and intent of the code varied from his being met due to the reduction being slight. The proposed addition is shown as being covered which will accentuate the visual nuisance for the neighbor to

the west. Staff also feels that the deck design could have been changed to lessen the encroachment or eliminate the encroachment altogether if it didn't utilize the square shape. After staff correspondence with the Western neighbors seems their attitude towards the addition may have changed since the last hearing. They did see the updated architectural plans and they seem to be more comfortable with the placement of the deck addition and roof slash screen design, as well as the preservation of mature trees on the subject property. However, because of lack of apparent site-specific hardship that would not allow the applicant to build within their setbacks, and that they're not necessarily attempting to meet the spirit and attendant, the code vary from staff is the recommended denial of the request.

Applicant Haley Hahn handed out photos for board members to get an idea of the newly revised purposed deck. She stated the setback reduction was being requested in order to prevent taking out two beautiful old maple trees and risk losing all the privacy that the new purposed fireplace would create. Haley also added that she had shared the revised site plan with neighbors Jeff and Anne and they were in support. If the variance was not approved the deck design would need to go long ways on the property to avoid the setbacks. This would require the two maple trees to come down and the fireplace location would provide no privacy.

Chairman Samuels stated with only two board members present; if it was a one to one vote the request would be denied.

CALL FOR RECESS

The meeting was recessed at 7:09 p.m. for legal clarification with Senior Staff Attorney.

CALL TO ORDER

The meeting was called to order at 7:11 p.m. and a third member of the board Hannah Cicioni has joined.

Chairman Samuels voiced they like input from neighbors. However, that's not the necessarily the deciding factor. We're looking at the law and what the law is guiding us to do. One of the big factors for these requests is the hardship.

Haley reiterated the setback reduction was being requested in order to prevent taking out two beautiful old maple trees and risk losing all the privacy that the new purposed fireplace would create.

Cicioni questioned if the applicant and the neighbors had come to a resolution? Neighbor Jeff responded that the variance route was the best option. He does not want all the trees taken.

Board members discussed.

Motion by McClure to APPROVE the variance. Second by Cicioni

Voice vote: APPROVE-UNANIMOUS Motion carried

APPROVE

NEW BUSINESS

2. (VAR 23-31) A request by Jiffy Trip for variance to allow an increase in height for an accessory structure at 1310 W. Walnut Street in the C-2 (Highway Commercial) zoning district.

Planner Christina Moore stated the project is located at the corner of West Walnut and 13th Street. The request is to vary from the 16-foot accessory structure height requirement. The applicant is requesting 24 feet eight inches. The applicant states that the requested height increase is for safety concerns and will prevent the canopy from being hit. The applicant also states that the canopy is a typical feature of a gas station. Again, the Jiffy Trip is requesting an increase of 24 feet eight inches and would provide a 20-foot eight-inch clearance. ArDOT's minimum height for an Interstate bridge is 16ft 6 inches. Staff sees no reason to approve a variance that would result in a ceiling height with greater clearance than an interstate bridge for this reason staff recommends deny.

McClure asked clarification staff doesn't see a reason to approve something that is higher than what the State of Arkansas does? Correct? Moore Confirmed.

Representative Rose stated they were asking for 24 to the top height and 22 feet for the clearance. They have found that there are instances of things that hit the canopies and cause damage. If they followed the ordinance it would be 16 feet to the top and with their four-foot perimeter, we are down to 12 feet for clearance. Jiffy Trip is only requesting to stay with the standard design. Rose added that he looked at previously approved variances for Kum & Go, they were at an 18-foot clearance to the bottom. Kum & Go's design has a three-foot perimeter so they get 21 feet total.

Chairman Samuels opened the public hearing.
The public hearing was closed.

Samuels questioned what vehicles are expected to hit the canopy? Rose responded they have had things sticking out of trucks, ladders that are on trucks, electrical boom trucks, and different things that can clip the edges. Rose added if he could just get the same 18-foot clearance as the approved Kum & Go.

Board members and applicant discussed.

Motion by McClure to APPROVE the variance. Second by Cicioni.

Voice vote: **APPROVE with overall height of 22-foot and 18-foot clearance** Motion carried
APPROVE

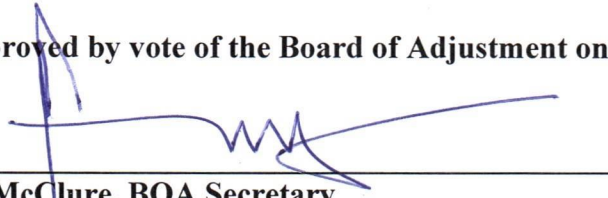
ADJOURNMENT

Meeting adjourned at 7:29 PM by Chairman Mandel Samuels.

As recorded by:
Karen Perez

Planning Technician
Community Development Department
City of Rogers

Approved by vote of the Board of Adjustment on:

A handwritten signature in blue ink, appearing to be 'Ed McClure', written over a horizontal line.

Ed McClure, BOA Secretary