

APPLICATION FORM

BOARD OF ADJUSTMENT AND ZONING APPEALS ACTION

(See Boone County Zoning Regulations)

SECTION A (To be completed by applicant)

- 1. (Check One) Boone _____ Florence _____ Walton _____ Union _____
- 2. (Check One) Conditional Use Permit _____ Variance _____ Appeal _____
Change in Non-Conforming Use _____
- 3. Applicant's Name JOHN J. LANG
Phone Number (WORK: 971-0799) HOME: 283-1202
Applicant's Address 175 MT. ZION RD.
FLORENCE Ky. 41042
City State Zip
- 4. Description of Request: ALLOW REAR YARD TO BE ~~30 FT.~~
23 FT. INSTEAD OF THE REQUIRED 30 FT. (ASKING FOR A
7 FT. VARIANCE)
- 5. Name of Development CHRIS-CHAD SUBDIVISION
- 6. Location of Development OFF US. 25, NORTH OF WALTON ON
THE CORNER OF BROOKWOOD AVE & ASHWOOD AVE. LOT #152
- 7. Acreage Under Review 3.498 ACRES
- 8. Lot Number and Name of Subdivision (if part of a subdivision)
LOT #152 OF CHRIS-CHAD SUBDIVISION, SECTION I
- 9. Owner of Property JOHN J. LANG
Phone Number SAME AS S. ABOVE
- 10. Address of Property Owner SAME AS S. ABOVE
City State Zip
- 11. Proposed Use(s) On Site MOVING HOUSE CURRENTLY 26 FT. 10 IN.
WIDE ON TO LOT. ZONED SINGLE FAMILY, RESIDENTIAL.
- 12. Total Square Footage of Existing and/or Proposed Buildings
1698 SQ. FT. (1274 SQ. FT. OF LIVING AREA)
- 13. Current Zoning on Property SR-1
- 14. Deed Book 398 Page No. 254 Group No. 1348
- 15. Is the site subject to a zone change? NO
If yes, give date of approval _____
- 16. Have you submitted a Site Plan with this request? YES
- 17. Have you submitted a list of adjoining property owners with this request? YES
- 18. Applicant's Signature: John J. Lang
- 19. Property Owner's Signature: John J. Lang

SECTION B

(To be completed by Boone County Planning Commission Staff)

1. Date Received 6-21-89
2. Fee Received \$119
3. Is application complete? X Yes _____ No
4. Staff Reviewer _____
5. Scheduled Board Action Date _____
6. Board Action:
_____ Approval
_____ Approved With Conditions (See #7)
_____ Disapproved (See #8)
7. Conditions: _____

8. Reasons For Disapproval: _____

BCPC:7/11/88

STAFF REPORT

APPLICANT: John J. Lang
LOCATION: corner of Brookwood and Ashwood Drives,
Walton, Kentucky
ZONING: Suburban Residential One (SR-1)
DATE: July 13, 1989
6:00 p.m.
Walton City Hall

REMARKS:

The applicant is requesting a rear yard Variance of approximately 7 feet to allow the placement of a single-family residence. The 0.35 acre site, located at lot 152, Chris-Chad Subdivision, is zoned Suburban Residential One (SR-1) and is owned by John J. Lang.

The Boone County Zoning Regulations require a front yard setback of 30 feet, a rear yard setback of 30 feet, and a minimum side yard setback of 5 feet in SR-1 zoning districts. The Chris-Chad Subdivision (Section 1) has a recorded front yard setback of 50 feet. This setback, since it is recorded, must be maintained even though the current regulations would allow a setback of 30 feet. Since Mr. Lang's house measures 26 feet, 10 inches in depth, the 50 foot front yard requirements cannot be satisfied without a Variance. A plat of the lot showing the proposed location of the house is attached.

Staff can find no reason why, if granted, the Variance would adversely affect the public health, safety or welfare, would alter the essential character of the area, would cause a hazard or a nuisance to the public or would allow an unreasonable circumvention of the zoning regulations. Following is Staff's review of the considerations the Board must make when reviewing Variance applications.

1. The requested variance arises from the special circumstance of the recorded front yard setback. This setback is recorded for lots along Brookwood Drive, but is not recorded for those along Ashwood Drive. Also, since lot 152 is located on a corner, the 50 foot setback further restricts the building area of the lot.
2. Strict application of the setback requirements would allow the construction of a 1,930 square foot house. However, the dimensions of this structure would be an irregular 96.5 feet long by 22 feet deep.
3. The setback requirement is not a result of actions taken by the applicant after the adoption of the current zoning regulations.

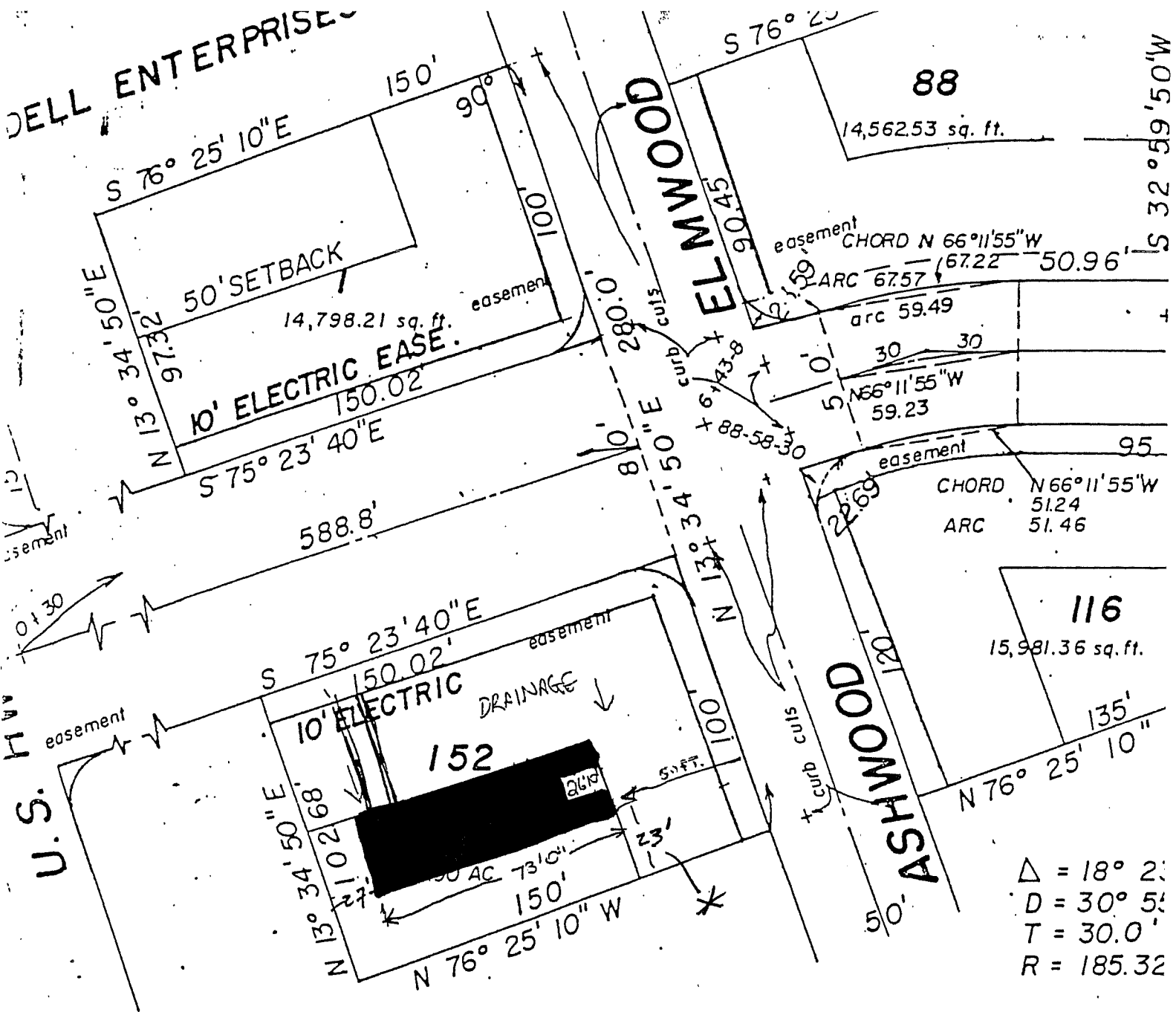
The applicant's response to these criteria is attached.

Respectfully submitted,



Thomas W. Breidenstein,
Zoning Enforcement Officer

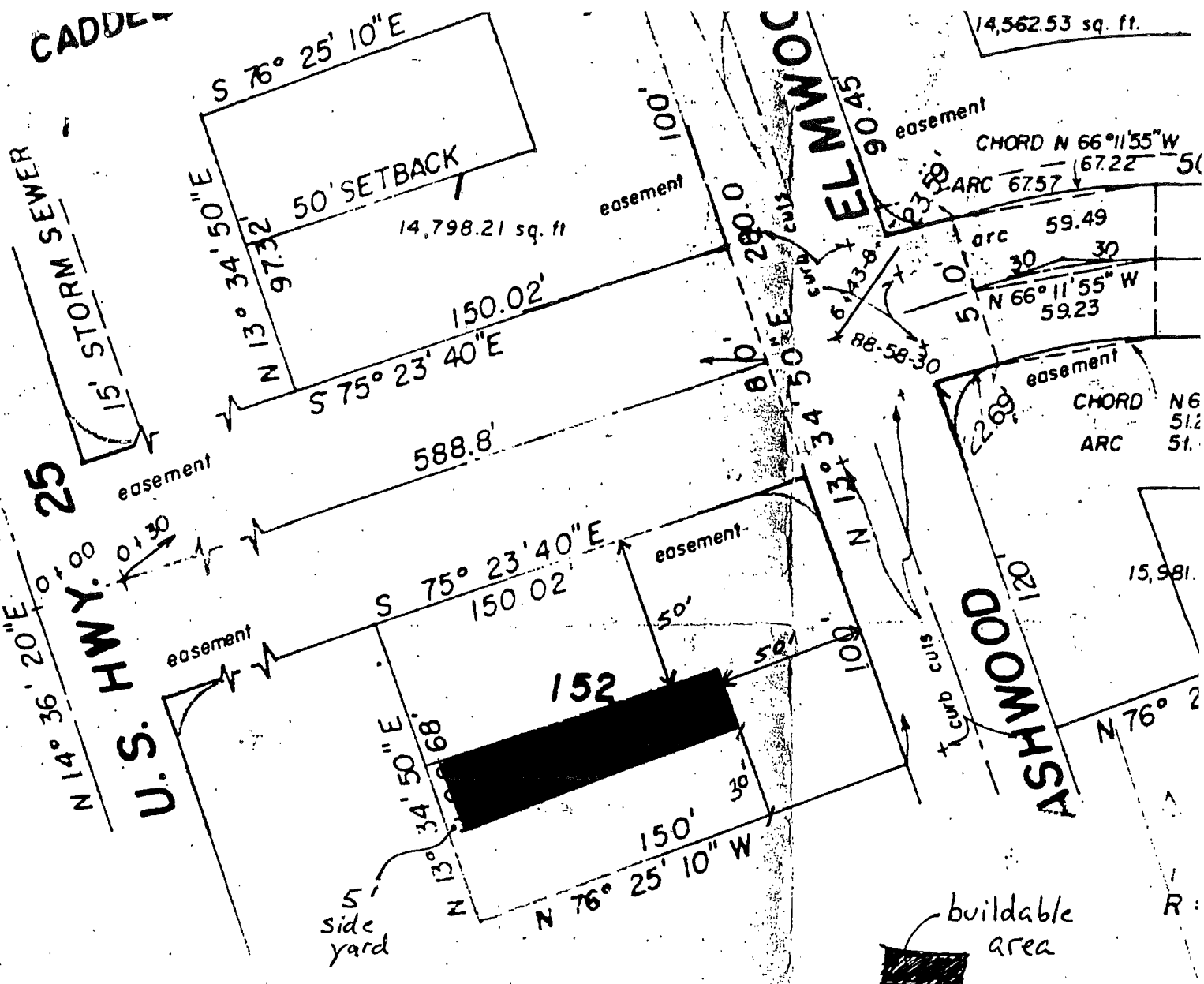
TWB:kat



IRIS-CHAD SUBDIVISION SECTION

- 50' front & side yards
- 27' side yard
- * - 23' rear yard setback (requires 7' variance)

John Lang
 - Variance request
 7-13-89, 6:00 pm



CHRIS - CHAD SUBDIVISION
WALTON

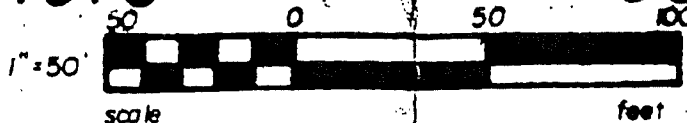
SEC
KE

CADDELL ENTERPRISES
3132 CHARTER OAK ROAD

PH: 341 - 2291
FT. MITCHELL

FEBRUARY 14, 1978

SCALE :



JAMES E. RANSOM, P.E.
KY REG. C.E. 673, L.S. 111



REFERING TO SECTION 244 - APPLICATION AND STANDARDS FOR VARIANCES:

- (1) THIS IS A SPECIAL CIRCUMSTANCE IN THAT THE LOT, WITHOUT A VARIANCE, HAS ONLY 20 FT. AVAILABLE FOR A HOUSE. THE SETBACKS OF 50 FT. FROM THE TWO STREETS ARE, NORMALLY, NOT RECORDED IN THE FINAL PLAT, AND, IF THEY ARE, CARE IS TAKEN TO NOT HAVE LOTS AS RESTRICTIVE AS THIS LOT (#152) IS.
- (2) FOLLOWING THE REGULATIONS AS SET FORTH WOULD NOT ALLOW ME TO PUT THIS HOUSE ON THE LOT PROPERLY.
- (3)
- (4) THE VARIANCE WOULD, ESSENTIALLY, ONLY AFFECT LOT #152. THE SIDE YARD OF THE LOT ON ASHEWOOD THAT BORDERS LOT #152 WOULD BE MORE THAN THE REQUIRED 15 FT. OR 5 FT. TO PROPERTY LINE, AS WOULD THE BORDERING LOT ON BROOKWOOD.

SURROUNDING PROPERTY OWNERS

ALL SURROUNDING PROPERTY IS OWNED BY:

- ① CADDELL, ARNOLD E. AND BEVERLY A.
P.O. BOX 6176
FLORENCE, Ky. 41042
- ② Hobert & Annette Johnson
1 Ashwood Dr
Walm. Ky
- ③ George L. Teremler / Patrick L. Conroy /
Paul J. Tuenter
P.O. Box 86
Walm., Ky.

CITY OF WALTON
BOARD OF ADJUSTMENT

July 13, 1989 - 6:00 P.M.

BOARD MEMBERS PRESENT:

Chairman Wally Wireman
Mr. Maynard Meadows
Mr. Earl Abshire

BOARD MEMBERS NOT PRESENT:

None

LEGAL COUNSEL PRESENT:

Mr. Dale T. Wilson

The meeting was called to order by Chairman Wireman at 6:00 P.M.

Chairman Wireman noted that each member had received a copy of the Minutes of the Walton Board of Adjustment Meeting of May 25, 1989. He stated that a correction needed to be made to the motion to adjourn. Mr. Abshire was not present at that meeting and this motion was from Mr. Meadows. Staff Member, Tom Breidenstein, made the correction to the original minutes with a ball point pen.

A motion was made by Mr. Meadows that the minutes be approved as corrected. Chairman Wireman seconded the motion. Mr. Abshire abstained from the vote due to his absence from that meeting. There being no further corrections, the minutes were approved and signed.

AGENDA ITEMS:

1. Request of John J. Lang for a Variance of approximately seven (7) feet to allow the placement of a single-family residence. The 0.35 acre site, located at Lot 152, Chris-Chad Subdivision, is zoned Suburban Residential One (SR-1) and is owned by John J. Lang.

Staff Member, Tom Breidenstein, presented the Staff Report which included a slide presentation (see Staff Report).

Chairman Wireman inquired whether the 50 foot front yard setback was set by the developer or the Planning Commission.

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Mr. Breidenstein stated that the requirement was probably a deed restriction. Mr. Lang is required to comply with the 50 foot requirement because the restriction is recorded with the plat. The later sections of Chris-Chad Subdivision were platted under the current regulations and can be as close as 30 feet from the road.

Mr. Meadows asked if Mr. Lang would have only a 30 foot setback if he turned the house to face Ashwood.

Mr. Breidenstein referred the Board members to the drawing enclosed in the packet. He stated that the 50 foot setback is required with the house facing both Ashwood and Brookwood Drives. Mr. Breidenstein further stated that this requirement not only restricts Mr. Lang's lot but the other three lots on the corners of Ashwood and Brookwood Drives. This requirement restricts the buildable area of these four (4) lots which creates the special circumstance of this request.

Mr. Phil Trzop demonstrated the original plat of the entire subdivision showing the original design of Brookwood Drive. The original plat shows Mr. Lang's lot being included in the preliminary design of Brookwood Drive and the buildable lots for Ashwood not starting until after Mr. Lang's lot.

Mr. Abshire asked how wide Mr. Lang's lot is.

Mr. Trzop replied that the lot is 100' x 150'.

Mr. Abshire asked who owned the lot with the two car garage behind Mr. Lang.

Mr. Homer Johnson replied that he is the owner.

Mr. Abshire asked if Mr. Johnson is in favor of the request.

Mr. Johnson stated that he is not in favor. He inquired whether the house is now placed where it will be when the foundation is poured or would it be moved another seven feet toward his property.

Mr. Breidenstein answered that he did not measure the placement of the house now, however, the foundation has not been poured.

Mr. Lang stated that the house is within two inches of its permanent placement.

Mr. Wireman inquired if Mr. Lang was aware of the setback requirements before he placed the house on the lot.

Mr. Lang stated that he was not aware of the requirement before he bought the lot. However, when he purchased the house, he was aware that he would need to seek a variance from the Board of Adjustment. The house is mounted on cement blocks at this time and the footer has not been poured.

Mr. Breidenstein asked Mr. Lang if he would like to explain the circumstances for purchasing the house before obtaining approval of a variance.

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Mr. Lang stated that he had to move the house from another site and was given special permission to go ahead and place the house on the lot until he could get a variance. Mr. Lang also stated in regard to turning the house the other way that the lot is only 100' deep down Ashwood.

Mr. Abshire asked what the City's position is on this request.

Mr. Trzop stated that he issued the building permit for the house to be placed on the lot with a contingency that no digging or building could occur until the variance was granted. Mr. Trzop further stated that the house will meet the Kentucky Building Code when it is done. A footer foundation will be poured, a 24' garage will be built on the side of the house (the house is now 49' long, therefore the total length of the house with the garage will be 73').

Mr. Abshire inquired whether Mr. Lang would later be able to add on to the back of the house (e.g. a 20' porch).

Mr. Breidenstein stated that the variance, if granted, would allow a 23' setback. Mr. Lang would not be allowed to build any additions to the back without seeking another variance from the Walton Board of Adjustment.

Chairman Wireman inquired if even a sundeck could be built.

Mr. Breidenstein stated that a patio could be poured, but no deck that would be up off the ground or porch or a room addition could be done without another variance.

Chairman Wireman asked Mr. Johnson what his objection is.

Mr. Johnson stated that he had been interested in purchasing the corner lot at the time he purchased in the subdivision, however he was required to purchase a home with a price of at least \$100,000 or the lot would not be sold. He was not able to do that so he settled for the next lot. He stated that the houses are closer together than he thought they would be when he purchased his lot. He does not feel that it would be good for the neighborhood to "jam" another house in. He is also concerned about the grading and whether the drainage would change.

Mr. Meadows stated that he did not feel that moving this house closer to Brookwood Drive would "unbalance" the neighborhood even if the house across the street gets setback 50 feet. Mr. Meadows also questioned whether the property to the east toward U.S. 25 is developed for building due to the grade.

Mr. Breidenstein stated that the property in question is zoned Commercial Two (C-2) and may eventually develop. The Planning Commission has not received any development plans for that site at this time.

Mr. Abshire asked if at the time of development the grade would have to be made the same as the subdivision.

Mr. Breidenstein stated that the property is not platted as part of the subdivision, therefore, there are many possibilities.

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Mr. Abshire stated that this is the only house that is really affected by the variance with the exception of Mr. Johnson's house. He further stated that he did not feel that this variance would make the houses that close together. He added that he understands that Mr. Lang's possibilities for future changes to his backyard will be limited but that he did not feel that the variance would change the environment of the neighborhood or worsen the appearance. He did express a desire that the house face Brookwood rather than Ashwood.

Attorney Dale Wilson stated that Kentucky law allows the Board to impose reasonable conditions should they decide to grant the variance (e.g. a condition restricting what can be behind or attached to the back of the house utilizing the 23 feet of backyard).

In reference to encroaching on the 50 foot setback from Brookwood, it wasn't on there as a deed restriction, in essence, or a restrictive covenant on that plat. It could probably be done there too because the zoning restrictions are only 30 feet. Kentucky law says that restrictive covenants or these private deed restrictions that developers put on a plat or put on a document that they record at the County Clerks office are separate from zoning regulations. You have to observe both restrictions, you have to meet zoning as well as these private restrictions.

Chairman Wireman inquired whether any Kentucky laws or City laws would be cut by granting this request.

Attorney Wilson stated that no state or city laws would be cut by granting the variance, but if you decide to try and make them go into that 50 foot, then it is questionable whether you could do that because all the other people who have developed in accordance with this first plat would say, "Hey we had to meet the private restrictions, you've got to too and the Walton Board of Adjustment did not have the authority to allow you to violate the private restrictions. They had the authority to grant you a variance of the zoning regulations but not a variance of the private restrictions." That's what you could run into.

Chairman stated his concern for setting a precedence for others in that area to come and request the same type of variance.

Attorney Wilson stated that since this is a corner lot, if you decide to grant the variance, you are probably going to be able to make some distinction saying that this was a different situation than others because Mr. Lang is having to maintain two 50 foot setbacks, one from each street. With the two 50 foot setbacks, this house could not be put on this lot and meet the rear yard setbacks.

Mr. Meadows stated that with the two 50 foot setbacks, he could not see that anything that would be considered good for the neighborhood could be put on that lot if the variance is not granted.

Attorney Wilson restated that the Board cannot do anything about the private restrictions.

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Mr. George Tuemler, adjoining property owner with commercial property across the road on the corner of Brookwood Drive and U.S. 25, questioned when the subdivision standards were changed to allow the homes being built on Ashwood now to be built with a 30 foot setback.

Mr. Breidenstein stated that this portion of the Chris-Chad Subdivision was platted in 1978. In 1980, the City of Walton adopted the new zoning regulations as a result of the requirements of the Supreme Court. Those regulations allow, in this zoning district, a 30 foot setback. After the new zoning regulations were adopted, the new section of Chris-Chad Subdivision was platted.

Mr. Tuemler stated that he knew a couple of people that live in the subdivision in the original homes on Brookwood straight on down the line and he knew that they were very upset with Mr. Finke's homes that were put down there. On the original plat that was made, a certain number of square feet were required on the first floor, then if a second story home was built there was a square foot requirement for the first and second floor. He thought that for a ranch style home the requirement was 900 square feet and for a two story home, 800 square feet. A lot of the homes down there are a lot less than 900 square feet on the Ashwood subdivision side and Mr. Finke was allowed to build those homes down there. Was that because of the Walton change?

Attorney Wilson stated that the required square footage of the dwelling unit would not have been part of the zoning regulations but a private deed restriction imposed by the developer. If that was violated, someone would have to be addressed by someone who had bought within that same section of the subdivision that would have the right to enforce that private restriction. The City of Walton or the Boone County Planning Commission would not have the authority to impose or enforce a private deed restriction. If this was a different builder developing a different section then sometimes you have one square footage under private deed restrictions for one section of the subdivision and another square footage in a different section.

Mr. Tuemler stated that due to the variety of "mess ups" down there, he is opposed to the variance.

Chairman Wireman stated that this request is unique in that it is one lot. He would feel differently about the request if there were a string of houses [lots] that would connect.

Mr. Tuemler stated that the subdivision has already been changed twice from the original plat allowing different types of construction on Ashwood. He felt that things seem to be "going down" each time a change is made. He discussed a development owned by Mr. Barker where there is one home built, one half-built, and a foundation on which the home will probably never be built.

Chairman Wireman stated that the 50 foot requirement for the front yard setback would still be met and that the Board is only dealing with the variance for the rear yard setback.

Mr. Tuemler stated that he did not feel that it would work because nothing could be added to this house in the front, back, or the sides. Mr. Lang would be stuck with just a house on a lot and nowhere to go.

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Chairman Wireman stated that a restriction could be placed in order to allow a sundeck to be built on the back.

Mr. Abshire asked if Mr. Lang had the 30 foot setback in the back and wanted to put a 12 or 16 foot deck, would he be allowed?

Mr. Breidenstein stated that if a deck is 3 feet above ground level, it must meet the setback requirements.

Mr. Abshire restated that Mr. Lang is in the same position for building purposes in his rear yard whether the setback is 30 feet or 23 feet. Therefore, the Board is only reviewing a 7 foot variance so that Mr. Lang can put a house on the property he purchased. Mr. Abshire stated his opinion that the house is not oversized and that anything smaller would be out of place.

Mr. Abshire inquired whether the house is being placed on the lot to sell or to be lived in by Mr. Lang.

Mr. Lang stated that he would be living in the house.

Mr. Meadows asked whether Mr. Lang would have plans for placing a deck on the back side of the house.

Mr. Lang stated that he understands that he could place a concrete slab for a patio with no problem, however, that if the structure became 3 feet or higher, he would be required to seek a variance from the Board of Adjustment.

Chairman Wireman inquired whether Mr. Lang would have to apply for a building permit to pour the cement slab.

Mr. Trzop stated that he would have to obtain a building permit, and that through this process the zoning is checked and a zoning permit is also issued.

Chairman Wireman inquired whether there was any more discussion from the floor.

Mr. Tuemler stated that he is concerned that if someone ever buys that house from Mr. Lang, they will be very unhappy when they realize that they cannot do anything with their backyard.

Attorney Wilson stated that if the variance is granted, there is a notice filed with the County Clerk's office where they keep deeds. Anyone doing a title exam will come across the fact that a variance has been granted if you decide to approve the request and will be able to determine what the conditions are at that time.

Attorney Wilson further demonstrated an example of a situation that could arise with a request for building a deck or building addition at a later date by Mr. Lang or anyone who might purchase the house. In seeking a variance, perhaps the property owner would offer to buffer his back yard from Mr. Johnson with landscaping so that he does not infringe on Mr. Johnson's privacy. If they are able to satisfy the Board that the screening is appropriate, and not be entreating on Mr. Johnson, the Board could approve a deck with that screening.


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Mr. Abshire acknowledged that, with this example, another variance could be granted even though restrictions are placed on this variance now. He further stated that since a permit is required to put anything in the backyard, he feels that it is not necessary to put any restrictions on this variance.

Mr. Abshire made the motion that the seven (7) foot variance be granted with no conditions regarding a deck being built. The motion was seconded by Mr. Meadows and carried unanimously.


There being no further business to come before the Board, the meeting was adjourned by unanimous consent at 6:50 p.m.

APPROVED:



WALLY WIREMAN
CHAIRMAN

ATTEST:



JOY D. HACKER
SECRETARY