

**MINUTES OF PUBLIC HEARINGS
BRECKSVILLE BOARD OF ZONING APPEALS
Community Room – Brecksville City Hall
December 9, 2013**

Present: Kathleen Roberts, Carl Opatrny, Robert Hasman, Mayor Hruby,
Laura Redinger, Dennis Rose

Absent: Bruce McCrodden

Others: Building Inspector Synek, 16 guests

APPEAL 2013-46

Dan Chermonte for a variance from Section 1151.24 of 1 ft. 4 inches from the required 60 ft. front setback to allow 58 ft. 8 inches for a foyer addition located at 10501 Tanager Trail, PP# 601-11-035.

Mr. Chermonte spoke to the Board regarding his appeal. He explained that he would like to add a 5 x 8 foyer to the entryway of his home. Currently when you enter the house thru the front door it opens up right into the staircase that accesses the second floor, and there is no room for entry. They would like to create a space for guests to come in and be able to take off their coats. He stated that his dining room already extends out 60 ft., so he is just asking for 1 ft. 4 in. more. The addition would be placed where his front slab is now, and then he will add a front slab and steps to the addition. He stated that Mr. Synek told him he would not need a variance for the steps and landing.

Mr. Rose asked Mr. Chermonte when his home was built. Mr. Chermonte stated that it was built in 1968. Mr. Rose clarified that his hardship is the initial design of the home. Mr. Chermonte stated that was correct, that is how the home was built.

Motion by Mr. Opatrny, seconded by Mrs. Redinger to close Public Hearing.

MOTION CARRIED

APPEAL 2013-47

Mark and Patricia Yamsek for (1) a variance from Section 1151.24 of 6 ft. from the required 60 ft. rear yard to allow 54 ft., and (2) a variance from Section 1151.24 of 41 ft. from the required 125 ft. front yard setback to 84 ft. for the construction of a rear addition on a non-conforming house located at 8780 Riverview Road, PP# 602-17-021.

Mr. Yamsek spoke to the Board regarding his appeal. He stated that his home was built in 1935 and existed before the setback rules. Mr. Yamsek stated that he is surrounded by homes that have variances by default, and showed the Board the surrounding properties on the diagram. He explained that he would like to build a 14x14 addition on the back of the garage which will be used for storage and a work space for him to do woodworking. He stated that even though he could place it along the dotted line shown on the diagram, he would not prefer to do that, because it would not be aesthetically pleasing. He showed

the Board two drawings of his home, one showing the addition and one without the addition. Mr. Yamsek felt that the two drawings were very similar, and that the addition improved the look of his home.

Mr. Rose clarified with Mr. Synek that one of his hardships is due to an irregular shaped lot. Mr. Synek stated that it is an existing non-conforming house.

Mr. Yamsek explained that Mr. Synek notified him that the second variance was needed; even though he was not adding onto the front of the house, and went onto explain why.

Motion by Ms. Roberts, seconded by Mr. Opatrny to close Public Hearing.

MOTION CARRIED

APPEAL 2013-48

Anthony Randazzo for a variance from Section 1119.03(b) not to install the required hedge, fence or railing on a retaining wall that exceeds three feet in height located at 6875, 6885, 6895 Carriage Hill Drive, PP# 601-20-357 thru PP# 601-20-380.

David Brown, Vice President of the Homeowners Association for the Woods of Brecksville spoke to the Board. He stated that they are asking for a variance from the revised code not to plant shrubs above the newly replaced retaining wall in front of Building E. Mr. Brown explained that it would require approximately 85 shrubs covering approximately 260 ft. with each shrub touching. The project would cost approximately \$6500 to \$7000 to remove the stones above the wall and replace them with top soil and plantings. In addition to that, there would be a \$1500 a year maintenance fee to maintain the plantings. Mr. Brown went on to state that they have never had an incident in 37 years where anyone has fallen by or between those retaining walls. There are already trees behind the retaining walls. When the walls were recently replaced a drainage pipe was installed between the walls and the sidewalk to allow for proper drainage. He stated that as an alternative to the plantings, it would be less costly for them to install no trespassing signage there.

Mr. Rose clarified with Mr. Synek or Mr. Opatrny that the purpose of this variance was for safety. Mr. Opatrny stated that was correct. Mr. Brown stated that residents bought their condominiums because they love the woods and like to watch the animals.

Tony Randazzo, President of the Homeowners Association for The Woods of Brecksville spoke to the Board. He explained on the diagram that there is approximately 3 ft. between the front and back retaining wall. When they first took on this project they wanted to follow suit with the design of the other five buildings. The ordinance has since changed and now asks for 5 ft. with plantings. He stated there is a row of trees along the back. The City is asking for plantings 3 ft. high that have to be touching one another. That area right now is filled with slag and drainage and would have to be removed. Mr. Randazzo asked why the City determined the location for the plantings that they did, and the City told him it was because of safety, and in case anyone would walk and fall there.

Mr. Randazzo also stated that they have not had an incident there in 37 years, there is no one walking or trespassing in the woods. He went on to explain that this development is mostly seniors. The only things they see in the back are animals and that is why most people bought there. Mr. Randazzo stated that he is hearing a lot of static from residents regarding this, and didn't understand the logic behind the planting. He stated that if someone walks back there and falls they would fall 2 ft. on top of shrubbery, and stated it would take at least 8 years for the shrubs to grow taller. They would like to install signs.

Mr. Rose asked Mr. Randazzo what the reason was for the design on Building E as opposed to the design of the other buildings. Mr. Randazzo stated that he was told that they had to follow the new code. Mr. Rose asked Mr. Synek to expand on why he would not have been allowed to build it the same as the other buildings. Mr. Synek stated that he believed that did not come from the Building Department, that we would allow any design on the wall that they submitted, but any retaining wall over 3 ft. required a guard. If they designed it as one large wall, it would be up to their engineer to present a way to do that. Mr. Randazzo also pointed out where the drainage was installed, and they have not had any problem with heavy rains or water.

Mr. Opatrny stated that he had two comments. The first was regarding State Code, Section 312, which states that guards should be located along open-sided walking surfaces. Mr. Opatrny stated that the question that the Board would have to deal with is, if in fact, it is a walking surface or not. The second issue he had was if the Board decided to approve the variance, would there be any legal liability on the part of the City in case someone did fall off the wall.

Mr. Rose asked Mr. Randazzo to respond to the first question regarding the walking surface. Mr. Randazzo stated that they carry 2.5 million dollars insurance as well as 2 million on the building. Mr. Opatrny stated that his question really dealt with the City's legal responsibility. Mr. Randazzo explained and used an example where a traffic light was installed after an accident and asked if the City would have gotten sued then. He also stated that there are ravines all over and felt that it was more dangerous when people walked the ravine then it is behind the building. He reiterated that they have approximately 75% to 85% of seniors living there, and no one ever walks back there.

Mr. Opatrny stated that he would feel more comfortable having a legal opinion in this matter to protect the City. Mr. Rose stated that the Board could refer this to the Law Director to further comment on. Mr. Rose asked if the Section 1119.03(b) reference walkways. Mr. Synek stated that it is specific to retaining walls.

Motion by Ms. Roberts, seconded by Mr. Opatrny to close Public Hearing.

MOTION CARRIED

APPEAL 2013-49

The Pattie Group for Mark Jordan for a variance from Section 1185.03(a) of 2 ft. from the maximum 4 ft. fence height to allow 6 ft. for a fence located at 6553 Glen Coe Drive, PP# 603-18-042.

Mr. Brian Knader with The Pattie Group spoke to the Board. He stated that he had hoped everyone had a chance to read his proposal letter. He explained that when they began planning for this project they took it upon themselves to send letters and notifications to the homeowners association and the neighbors before the Board of Zoning sign was even posted. They did obtain two signatures from adjacent neighbors that have no problem with the fence, and one neighbor had come forward that did not approve. The primary purpose for the variance is because of Mr. Jordan's large dogs, they jump as high as 6 ft. and a 4 ft. fence would not be able to contain them. The secondary purpose is to design a new landscape space by Mr. Jordan's deck, and with the deer population, it would help keep them out, and would open up their selection of plantings that they can install. Mr. Knader went onto explain the elevation of the property. From a viewing standpoint the street level is 10 ft. higher than the lawn area of Mr. Jordan's back yard. You would still see a fence but it would not appear to be 6 ft. high at that level. The purpose of the fence would not be to screen or block views from any of Mr. Jordan's neighbors; it is designed for security and beauty.

Mr. Opatrny asked what type of dogs Mr. Jordan had. Mr. Jordan stated that they are two large breed terriers that stand pretty tall and can jump very high and felt that a 4 ft. fence would not contain them.

Mr. Hasman asked Mr. Jordan if he considered any alternatives, such as an invisible fence. Mr. Jordan felt that with a 100 lb. dog he would prefer a regular fence, and sited examples of other dogs in his neighborhood that run thru their invisible fences, and he would rather not take that chance. Mr. Hasman asked if they are allowed to freely run around the yard now. Mr. Jordan stated that they are not, they currently use a leash and they don't get to run around, so he has no worries of them getting loose or running away. Mr. Rose asked how many dogs Mr. Jordan has. Mr. Jordan stated that he has four dogs. Mr. Rose stated that the Board has heard both of the issues he has stated before, and explained that he is was personally struggling with what made this appeal unique from anyone else who had dogs that would jump higher than a 4 ft. fence. Mr. Knader stated that most dogs are not the size of Mr. Jordan's dogs. Mr. Rose stated that he can't remember the other types of dogs, but was sure they were large dogs as well.

Mr. Opatrny stated that Mr. Knader mentioned that he sent out letters out to Mr. Jordan's neighbors, and asked which neighbors did not have an issue with the fence. Mr. Jordan stated that his neighbors at 6557 Glen Coe Drive, 4390 Roxburghe Drive and 4386 Roxburghe Drive did not have an issue. He past out the letters to the Board.

Mr. Rose opened up questions to the Board. Mr. Ed Malaska, representing the Homeowners Association spoke to the Board. He stated that he lives behind Mr. Jordan,

two houses down on Roxburghe Drive, and the association had no issue with it, and he personally did not have an issue with it either.

Mr. Tim Brennan, 6549 Glen Coe Drive, spoke to the Board and stated that he is Mr. Jordan's next door neighbor and was opposed to the fence, he felt that a 6 ft. fence would not be aesthetically pleasing.

Motion by Mr. Hasman seconded by Mrs. Redinger to close Public Hearing.

MOTION CARRIED

APPEAL 2013-50

Mary Ann Hipsley for (1) a variance from Section 1151.25(d) of 1152 sq. ft. from the maximum allowed 144 sq. ft. to 1296 sq. ft., and (2) a variance from Section 1151.26(1) to allow an accessory structure in the side yard of a non-conforming house in lieu of the required rear yard, and (3) a variance from Section 1181.11(b) of 2 ft. 6 in. from the maximum 15 ft. height to allow a 17 ft. 6 in. height for the construction of a stable located at 11401 Snowville Road, PP# 605-18-003.

Hadden Hipsley spoke to the Board regarding their appeal. He explained that their land is just over 5.5 acres. The first variance he is requesting is regarding size. When building a barn/stable, there really are no codes or restrictions that defined what a stable is, so it follows under the shed ordinance which allows 144 sq. ft. That would be about the size of one stable, and when building a barn, you would need a variance for a larger size. With regards to the second variance and placing an accessory structure in the rear yard, the house is set in the rear of the property, so therefore the barn is also in the rear of the property, but the proposed location would be on the side of the house versus the rear. Mr. Hipsley stated that if the Board came to visit the site, they have a portion of their property which is solid woods with very large mature trees, and the proposed location for the barn is up against the woods. The third variance they are requesting deals with the height. Mr. Hipsley explained that a lot of that comes from the difference between a shed and a barn and the piece of the barn being relatively 22.5 ft., and has 12.6 sidewalls to allow head room for the horses. That makes the average of the barn 17 ft. 6 in. high, the hardship there, is the size relative to meeting the variance requirement. Mr. Hipsley stated that they included approvals from neighbors to their east, the Bowers, 11522 Snowville Road, and neighbors to the west, the Williams, 11259 Snowville Road. They both already have existing barns, and if you look at Snowville Road there are several others neighbors to the west that have barns as well.

Mr. Rose asked Mr. Synek why this appeal would not have fallen under the garage code. Mr. Synek stated that if it was presented as a garage then it would need a hard surface driveway and a solid surface interior floor. Mr. Hipsley stated that they would prefer a dirt floor for the stable.

Ms. Roberts asked if Mr. Hipsley would be clearing a paddock area. Mr. Hipsley stated that unfortunately the beetles have cleared an area for them already. They just took

down 21 ash trees a month ago. He showed Ms. Roberts where the paddock area will be located on the diagram.

Mr. Rose opened up questions to the Board. Mr. Dave Williams, 11259 Snowville Road, spoke to the Board. He stated that he signed an approval for the variance. He stated that Mr. Hipsley's barn design is almost a carbon copy of his barn, being a little higher for the horses. He stated that everyone in that area has barns or horses and explained that this project would totally be in the scope of the neighborhood and is not at all unusual.

Motion by Ms. Roberts, seconded by Mr. Opatrny to close Public Hearing.

MOTION CARRIED

**MINUTES OF REGULAR MEETING
BRECKSVILLE BOARD OF ZONING APPEALS
Community Room – Brecksville City Hall
December 9, 2013**

Present: Kathleen Roberts, Carl Opatrny, Robert Hasman, Mayor Hruby,
Laura Redinger, Dennis Rose

Absent: Bruce McCrodden

Others: Building Inspector Synek, 16 guests

**APPROVAL OF THE REGULAR MEETING MINUTES OF NOVEMBER 11,
2013**

Motion by Mayor Hruby. seconded by Mrs. Redinger to approve the Regular Meeting Minutes of November 11, 2013 as recorded.

ROLL CALL: Ayes: Ms. Roberts, Mr. Opatrny, Mr. Hasman, Mayor Hruby,
Mrs. Redinger, Mr. Rose

Nays: None

MOTION CARRIED

APPEAL 2013-46

Motion by Mrs. Redinger, seconded by Mr. Opatrny, that the Board of Zoning Appeals recommend to City Council approval for a variance from Section 1151.24 of 1 ft. 4 inches from the required 60 ft. front setback to allow 58 ft. 8 inches for a foyer addition located at 10501 Tanager Trail, PP# 601-11-035.

ROLL CALL: Ayes: Ms. Roberts, Mr. Opatrny, Mr. Hasman, Mayor Hruby,
Mrs. Redinger, Mr. Rose

Nays: None

MOTION CARRIED

APPEAL 2013-47

Motion by Ms. Roberts, seconded by Mayor Hruby, that the Board of Zoning Appeals recommend to City Council approval for (1) a variance from Section 1151.24 of 6 ft. from the required 60 ft. rear yard to allow 54 ft., and (2) a variance from Section 1151.24 of 41 ft. from the required 125 ft. front yard setback to 84 ft. for the construction of a rear addition on a non-conforming house located at 8780 Riverview Road, PP# 602-17-021.

ROLL CALL: Ayes: Ms. Roberts, Mr. Opatrny, Mr. Hasman, Mayor Hruby,
Mrs. Redinger, Mr. Rose

Nays: None

MOTION CARRIED

APPEAL 2013-48

Mr. Rose stated that before the vote, he wanted to get some thoughts on the questions that Mr. Opatrny presented regarding the City being liable if someone were to fall down the hill. There was also a concern regarding the walkway surface, and whether or not to ask the Law Director to comment on whether there would be any liability to the municipality to grant a variance like this, or this Board could let City Council rule on this issue.

After a small discussion, the Board decided to table the appeal until they refer it to the Law Director for comment.

Motion by Mr. Opatrny, seconded by Mayor Hruby, that the Board of Zoning Appeals table approval for Anthony Randazzo for a variance from Section 1119.03(b) not to install the required hedge, fence or railing on a retaining wall that exceeds three feet in height located at 6875, 6885, 6895 Carriage Hill Drive, PP# 601-20-357 thru PP# 601-20-380.

ROLL CALL: Ayes: Ms. Roberts, Mr. Opatrny, Mr. Hasman, Mayor Hruby, Mrs. Redinger, Mr. Rose
Nays: None
MOTION TABLED

APPEAL 2013-49

Motion by Mr. Hasman, seconded by Mrs. Redinger, that the Board of Zoning Appeals recommend to City Council approval for The Pattie Group for Mark Jordan for a variance from Section 1185.03(a) of 2 ft. from the maximum 4 ft. fence height to allow 6 ft. for a fence located at 6553 Glen Coe Drive, PP# 603-18-042.

ROLL CALL: Ayes: None
Nays: Ms. Roberts, Mr. Opatrny, Mr. Hasman, Mayor Hruby, Mrs. Redinger, Mr. Rose
MOTION DENIED

APPEAL 2013-50

Motion by Mr. Opatrny, seconded by Mrs. Redinger, that the Board of Zoning Appeals recommend to City Council approval for (1) a variance from Section 1151.25(d) of 1152 sq. ft. from the maximum allowed 144 sq. ft. to 1296 sq. ft., and (2) a variance from Section 1151.26(1) to allow an accessory structure in the side yard of a non-conforming house in lieu of the required rear yard, and (3) a variance from Section 1181.11(b) of 2 ft. 6 in. from the maximum 15 ft. height to allow a 17 ft. 6 in. height for the construction of a stable located at 11401 Snowville Road, PP# 605-18-003.

ROLL CALL: Ayes: Ms. Roberts, Mr. Opatrny, Mr. Hasman, Mayor Hruby, Mrs. Redinger, Mr. Rose
Nays: None
MOTION CARRIED

REPORT OF COUNCILWOMAN REDINGER

Councilwoman Redinger had no report, but wished everyone a very Merry Christmas and a healthy and Happy New Year.

REPORT OF MAYOR HRUBY

Mayor Hruby also wished everyone a Merry Christmas and Happy New Year. The Mayor stated that the four City Council members that were elected, will be sworn in on January 2, 2014, and everyone is welcome to attend. Mr. Bruce McCrodden will also be reappointed at that time to the Board of Zoning Appeals.

Motion by Mayor Hruby, seconded by Mr. Opatrny, to close the Regular Meeting at 8:23 p.m. **MOTION CARRIED**

THE BRECKSVILLE BOARD OF ZONING APPEALS

DENNIS ROSE, CHAIRMAN

BRUCE MCCRODDEN, VICE CHAIRMAN

KATHLEEN ROBERTS, SECRETARY

Regular Meeting recorded by Gina Zdanowicz