

**MINUTES OF PUBLIC HEARINGS
BRECKSVILLE BOARD OF ZONING APPEALS
Community Room – Brecksville City Hall
March 11, 2013**

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

Absent: Bruce McCrodden

Others: Building Inspector Synek, 20 guests

APPEAL 2013-03

J. Barker Landscaping Company for Mr. and Mrs. John Kramer, for a variance from Section 1151.25(d) of 396.07 sq. ft. from the maximum allowed 144 sq. ft. to 540.07 sq. ft. for the construction of a pergola located at 7775 Sunstone Drive, PP# 602-14-078.

Jeff Barker of J. Barker Landscaping Company, spoke to the Board regarding the Mr. and Mrs. Kramer's appeal. Mr. Barker stated that their request is to increase the square footage of a pergola that will be part of a large landscape project. It will entail a waterfall, pond, rain garden and a large patio. A 144 sq. ft. pergola would not be in proportion with the rest of the home or landscape layout, it would look out of place. As you view the property to the east, there is another home there that has a small pergola, to the west, there are very large evergreens. In the summer, the area that they are designing will be affected by the sun, and they would like to shield the patio. The pergola is just a wood structure and does not have a roof. Mr. Barker stated that he knows the Board might have a concern about the driveway being on the other side and Mr. Kramer turning this into a car port. He wanted to assure everyone that Mr. Kramer had no intention of turning it into a car port at anytime. The structure itself will have womanized posts but will be wrapped in cedar, which is a better quality, and will have different levels to it. Mr. Kramer did talk with his neighbors and they have all been receptive to the project. The Kramer's entertain quite often. He has a large family and Emerald Woods is a very social neighborhood. Mr. Barker stated that it will add value to the Kramer's home and the homes around it. Mr. Barker stated that e also lives in Emerald Woods and welcomes a project of this nature. Their hardship is that proportionally, a 144 sq. ft. pergola, would not look right. They also would like to shield the area from the sun.

Mr. Rose wanted to clarify that they will be meeting all the setbacks for the pergola. Mr. Barker stated that was correct, there will be no encroachments. Mr. Rose asked Mr. Synek, if the home was attached to the pergola in some manner, they would not need a variance. Mr. Synek stated that was correct, the only question would be the dimension to the rear lot line. Mr. Rose explained that he knows it would not be feasible to attach it to the home, that there would be no other option but to make it free standing. Mr. Barker stated that a free standing appearance is spectacular; he would ask that the Board not request to attach it to the home. Mr. Rose clarified that he was not asking him to do

that, and knows that it would destroy the layout that they were attempting to achieve. Mr. Barker stated that he did not bring pictures in, but if they saw Mr. Kramer's house, it is very high, and the pergola would not fit in. Mr. Rose stated that while this code applies, it is more for an outbuilding or shed than a structure that is open in all directions.

Mr. Hasman asked if the evergreens on the west side of the property were the applicant's. Mr. Kramer stated that three were his and three were his neighbor's. They are all 25 ft. high. Mr. Rose asked if they will all remain. Mr. Kramer stated that was correct. Mr. Hasman asked if the neighbor on the west side had any issues with the project. Mr. Kramer stated that they did not.

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

APPEAL 2013-04 - TABLED

American Pools and Fountains, LLC., for Mr. and Mrs. Michael Szubski, for a variance from Section 1151.25(d) of 456 sq. ft. from the maximum allowed 144 sq. ft. to 600 sq. ft. for the construction of a pavilion located at 2375 Springside Oval, PP# 604-19-047.

APPEAL 2013-05

Valore Builders for Ronald Leonhardt, Jr., for (1) a variance from Section 1151.26(7) of 3ft. from the minimum required 3 ft. lot line setback to 0 ft. setback for the construction of a driveway to be at the lot lines (driveway also extends into adjoining properties easement area), and (2) a variance from Section 1151.26(8) of 10 ft. from the minimum required 10 ft. side yard setback to allow 0 ft. setback for a terrace (terrace steps and sidewalk extends into an adjoining property easement area), and (3) a variance from Section 1151.23(a)(2) of 29.59 ft. from the previously established front building line setback to allow the construction of a house in front of the building line, and (4) a variance from Section 1151.24 of 20 ft. from the required 20 ft. side yard setback to 0 ft. for the construction of a house on an irregularly shaped lot, and (5) a variance from Section 1181.11(a) of 7.5 ft. from the maximum allowable overall height of 40 ft. to allow a 47.5 ft. overall height for the construction of a new house located at 8455 Timber Trail, PP# 601-22-065.

Mr. Tony Valore spoke to the Board, regarding Mr. Leonhardt's appeal. Mr. Valore began by stating that the history of the project goes back to 2007 when there was another submittal and approval. Since then the property went back on the market and Mr. Ron Leonhardt has purchased it. He is a long time Brecksville resident and owns a successful business in the city, which is expanding. The property itself is an unusual piece of property; it was originally 22 acres and now is 14.22 acres. There was a giving back of the retention pond and some land as well. Mr. Leonhardt currently lives down below this particular parcel. There has been a lot of consideration on what to do with the property and what to build. There is a view easement that runs down the right side of the property as you drive in. It sits along approximately seven properties, although there is one property that does not have an easement. Mr. Valore stated it is in the deed, and when Mr. Leonhardt bought the property he had a right to the view easement, and it clearly

states what his rights are. A copy was submitted to the Board. To summarize, the deed basically states that he can put a driveway and or a pathway, he can landscape, and maintain the property in sense of use, and it cannot be built on. It also states that the seven property owners that sit on the other side of the ravine cannot do anything with the property. Mr. Valore went on to explain the easement area to the Board on the diagram. There was one portion of the driveway that will be going on to the Nestor property and the Alches property approximately 24 to 25 ft. Although the property is 14 acres, there is only 1 ½ acres that is usable, and there is a gas well and hillside slopes that they have to contend with. Mr. Valore stated that Mr. Leonhardt's home will enhance the community, and except for the winter time, will be visible to no one. The properties on Timber Trail to the right are approximately 580 to 600 ft. deep and there is a ravine approximately 50 ft. behind them as well. Mr. Valore stated that he could not imagine any of those neighbors going thru their back yard across their ravine to use approximately 35 ft. of property.

Mr. Valore went on to explain the variances that were being requested. He stated that when you drive into the property there is a hillside that drops down to a natural watershed that is behind the homes on Timber Trail and Thorntree, it is all collected into the retention pond below. Their first variance is a request to go right to the property line with the driveway. If they can't obtain that variance they will have to build a retaining wall and driveway structure that will move this project up farther than what they anticipated. Mr. Rose asked to see the topographical survey. Mr. Valore explained where the culvert pipe was. He explained if they couldn't get the variance, they would have to move the driveway over which will push them more into the hillside and would create a construction issue. Mr. Valore also pointed out the location of the utilities, i.e., water, gas and electric, that is on the other side of the property, which was also creating another unnecessary issue for them. Their desire is to keep the utilities outside of the driveway. They did try to obtain an easement from those affected properties, but were not successful. Mr. Valore stated that even though there were several obstacles, Mr. Leonhardt still wanted to commit to this project because of his desire to build this home and be a Brecksville resident. Mr. Valore felt that Mr. Leonhardt was going above and beyond what he should to make this work, and he commended him for that.

The second variance is regarding the side yard setback. The side yard of the building is determined by the setback from the property line. Because of the view easement, they felt they are not doing any harm to anyone by moving the home over to the property, still maintaining the structure on Mr. Leonhardt's property. The hardship was created because there is a small building block to work within. Mr. Valore stated, if the Board remembers the first submittal back in 2007, that house was pushed back and hanging over the hillside.

The third variance is regarding the building setback line which they created in 2007. It was recommended per the City Engineer, rather than go thru the whole process again, to establish a new building line, and ask for a variance of 29 ft. Mayor Hruby stated that the Planning Commission established the building line setback for the house. Mr. Rose stated that if they wanted to, they could go back to Planning Commission to have the

building line be reset so that they did not need a variance. Mr. Valore stated that it would be their desire not to do that, because of the timeline. Mrs. Redinger clarified that they could not physically fit the house on the buildable space behind the building line. Mr. Valore stated that was correct, due to the hillside, and it being an unusual piece of property.

Variance four is regarding the side yard setback. The requirement is 20 ft. and they are asking that it be 0 ft. because of the view easement. Mr. Rose stated that Mr. Valore mentioned several times that the reason for the variance is the view easement. He asked him to explain why that view easement makes them set the house where it is. Mr. Valore stated that the view easement doesn't make them set the house where it is, they are asking that, because of the view easement, can they place the house there. Mr. Rose clarified that whether or not there is a view easement, they are asking to put the house right on the property line and the reason for the variance or the hardship, is the buildable space of the lot, the terrain, and the size of the house. He asked Mr. Valore how large the house will be, and Mr. Valore stated that it will be approximately 6000 sq. ft. for the first floor footprint.

Variance five is regarding the height of the house. The city has a height restriction of 40 ft. The overall house is less than 40 ft., and Mr. Valore showed the Board on the diagram the section of the house that was above the 40 ft. restriction.

Mr. Valore went on to explain that they are just trying to be a good neighbor. He met with each one of the residents that were affected by this project to listen to their comments and concerns and discussed the view easement to find out if they had any objections. At one point they even suggested giving them a right to buy. Mr. Valore stated that for whatever reason after communicating effectively, there was a sudden discomfort. One of the things that were mentioned in talking with them, was the headlights from a car shining in their direction. He stated that in the spirit of cooperation, it was set up by that one request, and they turned the house slightly so that it would not happen. He explained that they were proactive in talking with everyone to explain the scope of the project. Mr. Valore stated that they will install some type of a gate system and landscaping to identify his property as private property from Timber Trail.

Mr. Rose asked Mr. Synek to clarify that the height issue was due to the grade. Mr. Synek stated that this is on level grade, and it had to do with the size of the house. Mayor Hruby asked how many feet of the house is above 40 ft. Mr. Valore stated that it is approximately 20 to 24 ft. Mayor Hruby asked if they tried to design it to code. Mr. Valore stated that it was part of the design. The section above 40 ft. is called a "widow's watch" or a "star retreat". Mayor Hruby asked if they tried the elevation at 40 ft., sometimes architects will tell the Board that it will not work for a variety of reasons. Most of the time it is because they cannot put a proper roof for the elements. Mr. Valore stated that was correct, they have to have a gable roof with run-off.

Mr. Hasman asked, from a safety perspective, does the City's fire equipment reach up to 40 ft. Mayor Hruby stated that it does, it can reach up four or five stories. Mr. Valore

stated that the driveway section in the front of the house was driven because of the Fire Department's request. Mr. Valore installed a fire hydrant on the property, and asked to make sure they had access to the property to get in and out.

Mr. Opatrny asked how the first floor elevation of the new house compares to the first floor elevation of the existing homes. Mr. Valore stated that Mr. Leonhardt's first floor elevation is 581 and most of the existing houses are at 584.

Ms. Roberts had a question regarding the history of the land. She stated that Mr. Valore made an interesting comment that the street looked like it may have been extended, and asked how long had this parcel of land sat, and under whose ownership. Mr. Valore stated that Dr. Picha had originally owned this land and then Mr. Steven Demetriou. Mr. Valore did not know who owned it before Dr. Picha, and Mayor Hruby clarified that it was Moshannon. Ms. Roberts asked for the span of time that the land was owned by various people. Mr. Valore stated that it dates back to the 1980's, which was the date of the easement and the birth of the whole project. Ms. Roberts made the point that all the neighbors in this vicinity, had an appreciation in one way or another, that the property was owned, but had not yet been developed. Mr. Rose stated that the property owners knew there was an easement on their property as well.

Mr. Hasman wanted to make the observation that with a 0 ft. setback, if there were workers that had to go along side the building and work on a ladder, and they happened to fall and injure themselves, who would be liable for the injury if the bottom of the ladder was on the neighbor's property. Mr. Valore stated that with the easement there is obviously insurance protection. On the liability side, they would first go to the contractor, second to the builder and third to the owner and fourth to the city that approved it.

Mayor Hruby clarified with Mr. Valore that the easement allowed entry. Mr. Valore stated that was correct. The Mayor asked Mr. Valore about the property and all the easements, and clarified that there are easements on the other side of the property. Mr. Valore showed the Mayor where the easements were, and labeled it a scenic view easement. Mayor Hruby asked if it allowed them to walk on it. Mr. Valore stated that it did. Mayor Hruby explained, that was the point Mr. Hasman was trying to make, would someone be able to stay within their rights to walk on that property if it was at the 0 lot line. Mr. Valore stated that was correct. Mr. Hasman clarified that all the variances are into an easement. Mr. Valore stated that the only variance in the easement is the side yard and it is not in the easement it is on the edge of the easement. Mr. Rose clarified with Mr. Valore that he is not building on anyone's property. Mr. Valore stated that was correct. He explained that they are only going to use that land to landscape and have a portion of the driveway up by the house, because of the request of the Fire Department. Mr. Valore went on to read the Warranty Deed out loud so that the Board and the audience could understand it further. Mayor Hruby asked, if the Board granted the variance for the 0 lot line, how many feet is it from that 0 lot line to the residents that are already there. Mr. Valore stated that the lots are anywhere from 594 to 600 ft., plus there is approximately 400 ft. behind them and then a large ravine. There are many trees and

you can hardly see back there in the winter much less the summer. Mayor Hruby stated then, the setback is approximately 400 ft. for most of the homes. Mr. Valore stated that was correct. Mr. Hasman asked how wide the easement is. Mr. Valore stated that it was 120 ft. wide, and went on to explain the measurements of the different property owners involved in the easement area.

Mr. Rose stated that his understanding of this issue was, that the easement was granted to Mr. Leonhardt to install a driveway and to landscape, which means that all the owners of that property cannot do anything with it. What is in front of the Board this evening is the driveway which is going to be into the easement. Mr. Valore stated that is correct, the driveway going into the easement is the 0 and is at the corner. Mr. Rose asked to see the drawing that showed the house. Mr. Valore stated that the terrace is on the 0 lot line. If they have to make it a little smaller and pull it back 2 ft. that would be fine. His concern for Mr. Leonhardt is you have to be able to protect and service this house should something go wrong, and be able to turn around. Mr. Rose asked Mr. Valore, as opposed to being at 0 with the side of the structure and having to go on to someone else's property to maintain it, they are at a point where they still can access most of the structure thru the property. Mr. Rose also stated that if there wasn't an easement issue, he didn't feel that he could grant someone the right to build right on the lot line, because if the neighbor wants to build on their lot line, there is a problem. In this case no one can ever build up against it because of the easement. Mr. Valore stated that they wouldn't have asked for the 0 lot line if they didn't have the view easement.

Mr. Rose opened up questions to the audience. Mr. Steve Barta, 6569 Thorntree Drive, spoke to the Board. He stated that he felt the reason there are so many issues regarding this lot is that he was not quite sure this property was ever suppose to be built on. When they bought their house, and in looking at the original plans in 2007, he thought it was designated as a green space, an open space. That is why the road looks the way it does. Lot 161 does not look like it did when it was originally built. It has been pieced together so that you can build on it. He bought his house 14 years ago with the thought that he would have access to the back of his lot thru that open green space and when Mr. Leonhardt builds he will no longer have access to it. He also asked the Board if they were assuming this appeal would pass, because there are already improvements being done to the property. Mr. Rose stated there are two things he could assume. The first being that nothing has passed, or has been considered before this evening. The second thing is, they own the property and if they want to make improvements to it now, before being passed, that is their decision. Nothing has been pre-judged by this Board or City Council. Mr. Barta asked Mayor Hruby what the intended plan was for that land. Mayor Hruby stated that he would like to research that parcel before answering. Mr. Barta stated that he came to pull the records back in 2007 and it stated that it was original green space. Mayor Hruby stated that it would be on the original plat. Mr. Rose asked Mr. Synek if he had the plat. Mr. Synek stated that he did not. Mr. Barta's main concern was that he will never have access to the back of his property, he is land locked. Mayor Hruby clarified with Mr. Synek that Paul Grau, our Law Director at the time, had reviewed this property in 2007 when Mr. Demetriou was going to build. Mr. Synek stated that he could not find any documents that referenced the driveway. Mayor Hruby

wanted Mr. Synek to research it. Mr. Valore showed the Barta property on the screen. He stated that he doesn't know what was designated back then; he only knew what the deed said now. Typically in a subdivision submittal, they allow for approximately 35% green space for the entire subdivision, not for a specific lot. Mr. Rose stated that because it says green space it is not necessarily designated as public space. Mr. Barta stated that it was not designated a green space, it was designated a public space, and asked that we look on the first original development plan. Mayor Hruby explained that the only recollection he had, was that Dr. Picha had planned on building a house there, and when he sold, those buyers planned on the same. Prior to that he would have to research the records that we have, he did not recall any common land in this development.

Mr. John Robert, 8453 Timber Trail, spoke to the Board. He wanted Mr. Valore to go over the plans to the entrance. He stated there were a number of trees taken down today that looked like they may be in their backyard. Mrs. Melissa Roberts stated that according to the survey that they have from their mortgage company a number of trees that were taken down were on their property. She also stated that the silt fence that runs along the back is on their property as well. Mr. Valore stated that they could consult with the City Engineer, Gerry Wise, but they are not on her property. They were very careful, and Mr. Wise would not have given them an approval. They had to have a permit for the utility improvements and the driveway. He offered to meet them out there to review it. The utilities in that area had to be run to the left of the property and that is why those trees came down, there were two or three trees that were not any good. Mrs. Robert stated that she agreed with him in regards to those trees. Her concern is that according to her survey given by the mortgage company her lot line goes straight back. Mr. Valore stated again, that he had no problem meeting with them to clearly show the plan to them. Mr. and Mrs. Robert asked Mr. Valore to stop removing trees until they meet, and there is a mutual understanding where the lot line is. Mr. Valore suggested he meet with them to show them the pins, because they are clearly within their rights and on Mr. Leonhardt's property. He stated if the silt fence is on their property he will remove it. Mrs. Robert stated that she is not trying to be problematic; she just wants to make sure of the property lines. Mr. Valore stated that they are here in the spirit of cooperation; they will fix what they have to fix and make sure they are not going on anyone's property.

Mr. Brian Nestor, 8545 Timber Trail, spoke to the Board. He asked Mr. Valore how many more trees will be coming down. Mr. Valore stated that they had to submit a tree survey, and have clearly committed to Charles Owen, the City Arborist, that they are staying on their property and not cutting trees down on any adjacent lots even though they have an easement, until they get through this process. The trees that were taken down are on Mr. Leonhardt's property. The trees were marked and identified both on and off of his property. Mr. Nestor stated that at present, his view is pretty well covered with the trees, but if more trees come down it will change that. Mr. Valore explained that they would like to keep as many trees as possible. Mr. Nestor's concern was that cutting down more trees will make a difference in the site line. Mr. Valore stated that he will most likely see it in the winter, but didn't feel that he will be able to see back there in the summer. Mr. Valore stated that the reality is, that something in the distance will change the view. Mr. Nestor's second concern was building in front of the established building

line. Mr. Valore stated that back in 2007 they had to go to Planning Commission and establish a building line setback because of the house that was going to be built at that time. Now, they are going to build in front of the setback line so that they can still have some type of back yard. Mr. Rose stated to Mr. Nestor, that this issue goes to Planning Commission all the time and they set the building line. This is not a normal situation where all the houses are in line. Mr. Nestor's last concern was if there would be a vial swale built there. Mr. Valore stated that he was unsure if specifically a bio swale would be built, but there will be something in terms of not letting the water run his way. Mr. Nestor also wondered if piping would be installed, and was concerned that if in the future it would break, and it happens to be on his property, would he be held responsible for it. Mr. Valore stated that he would not be responsible for anything that they do. The storm plan that is in place will push all the water down the hill into Mr. Leonhardt's property and will pick up the storm and sanitary main that is running through there. Mr. Rose clarified with Mr. Valore that the plan was approved by the City Engineer. Mr. Valore stated that was correct. Mr. Valore explained that there are natural water sheds there, and he didn't want to sound ungrateful, but whatever they do, they could not possibly create any issue that this natural watershed wasn't already doing.

Mr. George Alches, 8549 Timber Trail, spoke to the Board. He stated that there is a point that comes to his property line, and asked what they were building on that point. Mr. Synek showed the diagram on the screen, and Mr. Valore explained that what was being built was a terrace. Mr. Alches asked if it was elevated. Mr. Valore stated that it will be elevated 2 ft. 6 in. Mr. Rose clarified that back in 2007, the house was at the 0 lot line and this time it is not the house, it is the terrace. Mr. Alches asked the square footage of the house. Mr. Valore stated that it is approximately 6000 sq. ft. Mr. Synek showed the survey of Mr. Demetriou's house from 2007 for comparison and to help clarify.

Mr. Robert Burge, 6581 Thorntree Drive, spoke to the Board. His question was in regards to the first variance. He explained that his property is 10 ft. higher and comes down to about a 60 degree angle. He was worried about them undermining the hill, and asked if the hill would start to fall as well as the trees, who would be responsible for the hill sliding down on to his driveway. He was also concerned about the backing up of the culvert. He did not want to be held responsible in either situation. Mr. Valore stated that the culvert is not changing, nor is the hillside. Mr. Valore explained the culvert on a drawing to address Mr. Burge's concerns. Mayor Hruby gave Mr. Valore pictures to help him explain it to Mr. Burge. Mr. Burge stated there used to be a gas well there with a driveway. Mr. Valore stated that there still is. He showed the existing driveway that had been there as well as the pin is in the middle of the existing driveway. Mr. Valore explained that is why he came to Mr. Burge to ask if they could buy 30 ft. of property. Mr. Valore showed him the property pin at the 0 lot line on that corner, and showed where the utilities would run. He explained that he talked with Mr. Leonhardt and suggested that he talk with the residents that would be affected, and see if he could obtain an easement there to move the driveway over and take it out of the hillside. The trees that might be in harms way is on Mr. Leonhardt's property. Mr. Burge was still concerned about not wanting to be held responsible for something that was undermined during the construction process. Mr. Valore stated that everything has already been

undermined and established, and showed him the culvert. He stated that they are going around it, and if anything they are going away from his property not towards it. Mayor Hruby asked Mr. Valore if he was cutting that piece of the hill away that is on Mr. Leonhardt's property. Mr. Valore stated that they would like to leave it the way it is. Mayor Hruby stated that if they were to cut it away, Mr. Burge has a valid point, it could slide. Mr. Valore stated that the pin there created an issue so they had talked with the neighbors. Mr. Rose clarified that the way the road is now; it is right up against the lot line. Mr. Rose stated that he then is encroaching. Mr. Valore brought up the 21 year Constant and Continued Use, but stated the reality is they are not on anyone's property, they are moving away from it. Mr. Rose clarified they are moving it over. Mr. Valore stated that was correct, they will be moving away from what you see now.

Ms. Jennifer Vergilli, 6577 Thorntree Drive, spoke to the Board. She stated that she is the left side of the triangle that Mr. Burge was speaking of. She stated that she appreciates a beautiful new home being built in the City. She congratulated Mr. Leonhardt and stated that she was sure things would work out in the end. She also stated that she appreciates the Board and their work. Ms. Vergilli stated that Mr. Valore had several conversations with them about the corner lot, and had offered them money back in 2007 as well as six months ago, and each time they said no. Ms. Vergilli also stated that Mr. Valore mentioned this evening, that the back 35 to 40 ft. of their property was not accessible, but their kids play back there regularly. She explained that the pin that was there they can't find anymore, which she felt was ironic; it was in the middle of the road. The road was expanded significantly from the little gravel driveway that was there. She felt that Mr. Valore has encroached on their property. Ms. Vergilli stated that one of the reasons for granting a variance, is an undo hardship. Both of the conversations that she had with Mr. Valore and again in listening to him tonight, she feels they have the room to move it over 3 ft, it is just a question of money. She stated that she brought her counsel this evening and she will discuss the legal aspect of this. Ms. Vergilli stated that the Board should not grant something that she is not willing to sell for free when it can be done. Mr. Rose clarified that Mr. Valore is not asking to go on anyone's property, and didn't feel her statement was fair about granting something that she is not willing to sell. Mrs. Vergilli stated that the current pin is missing, and was the only pin missing in the area, but when the pin was there a couple months ago it was in the middle of that existing structure. That tells her the driveway doesn't have to move 3 ft. it has to move 10 ft. over to be 3 ft. from her driveway and to be out of the middle.

Mr. Ronald Leonhardt spoke to the audience. He stated that everyone here this evening feels this is a great piece of property. He has been back there several times and there have been people walking around back on his property, which he was fine with, and never said anything about. Mr. Leonhardt stated that the reality is, if they want it to stay the way it is, they should buy the property from him. He stated that Ms. Vergilli felt that he did not have an undo hardship. Why would he put in a retaining wall that would cost him \$50,000 instead of asking for a variance, when he is not on her property, he is on his property. He stated that he wasn't sure how she viewed that as an undo hardship. Mr. Leonhardt stated again, he is remaining on his property.

Mr. Rose understood Mr. Leonhardt's point and wanted to say a few things regarding Ms. Vergilli's statements. It was said this evening that terrain is the issue. A terrain issue is always money, and that is definitely a factor. He clarified that Ms. Vergilli's statement that "it is only money", is not correct, otherwise there would be no terrain variances. Mr. Rose stated that you can do anything you want with money, but that is the reason we have it. If you have a terrain issue, money is going to be an issue and that is a factor.

Mr. Leonhardt stated that the previous owner was willing to put in an elaborate retaining wall; he explained that he does not make that kind of money and does not want to install one. Everything he is trying to do is to not interrupt the property, they want to take down the least amount of trees as possible, and the gate is no where near there.

Ms. Vergilli stated that they are trespassing on her property all the time with trucks going back and forth and they did not ask her permission, so she has a trespass claim now.

Ms. Carla Rodgers, Calfee, Halter & Griswold, 1405 E. 6th Street, Cleveland, spoke to the Board; she is counsel for Ms. Vergilli. Jennifer has indicated all the various reasons why this 3 ft. variance is a detriment to her property. She stated that clearly the undo hardship, while it may be a terrain issue, is a factor to consider. Other factors to consider are if the property owner had knowledge of the zoning regulations when they acquired the property, and, is the request for a variance substantial, and in this case a request of 0 ft. from the lot line is a substantial request. Also, is there another way the problem could be resolved without granting the variance, and it can be. It can be moved, there may be an additional cost, but there is another way to solve this issue without granting the variance. Ms. Rodgers stated that one of the final factors to consider, is it within the spirit and intent of the zoning code to grant this variance. The Vergilli's bought their property and developed it, as all the other neighbors did within the spirit and intent of the zoning code, and that is why they are here this evening along with the other neighbors in attendance. Ms. Rodgers stated that they would respectfully request that the Board deny this particular variance with respect to Section 1151.26.

Mr. Valore stated that her property is 505 ft. deep and her house is approximately 440 ft. from the corner they are talking about. They are asking to put the driveway to the edge of that corner and will respect the pin and location. It does mean a lot for them to go that extra 3 ft. to the right, and he didn't think that undo hardship is undo reasoning. Mr. Rose asked Mr. Valore, if he did have to move the driveway, how long of a retaining wall would he have to build. Mr. Valore stated they already had one drawn up with Mr. Demetriou which was 66 ft. long and went down almost 25 ft. They would need one approximately 15 ft. long for Mr. Leonhardt, and it would be a big deal.

Robin Wilson, 8529 Timber Trail, spoke to the Board. She stated that her comments would echo that of Ms. Vergilli's lawyer regarding what your responsibility is as a Board, and the factors that you have to look at in order to determine whether or not to grant a variance. She stated the zoning code was put in place to protect the citizens of Brecksville, and when you start moving the setback lines of what is required, and the Board doesn't work within the parameters of the zoning code that you instituted, then you

are basically setting yourself up to be appealed by the people here tonight. She also stated that the variances that affect the property owners that have the recorded easement on their property, that is not an issue of jurisdiction of this Board to determine a benefit or a burden. She stated that the Board cannot determine whether or not they can grant these variances on these property lines, based on the fact that there is an easement there, because it is not their jurisdiction to determine. Mayor Hruby asked Ms. Wilson, and mentioned that she did not have to answer this if she did not want to, but did she think this Board should take into consideration the distance from the property line to her house. She stated that she thinks there's a problem with doing that because her son also plays on that hill and they use that property. That site variance is something that is supposed to be used in common. They are encroaching on their property and she thinks you have to look at the property line.

Mr. Greg Caniglia, 8541 Timber Trail, spoke to the Board. Mr. Caniglia stated that his house is the one without the easement. He stated that the questions of whether 400 ft. makes a difference, there is nothing in between his house and that hill. It puts him in a situation where he looks out his family room window that points right in the direction of where the house will be built. He stated there is a 16 ft. excavator back there now and it seems like an overwhelming site and can only imagine what a 47 ft. structure will look like in that same spot six months out of the year. He felt that everyone on that side of the street purchased the property because of their views. He passed out pictures to the Board of the pictures he took from his family room window, so that they could see the impact it will have from his house. The issues he had with the variances are the height of the house and the angle of the house, and bringing it 30 ft. closer to the property line. He also wanted to know that if they pass both variances is there a way to put shrubbery or trees to stop that view from being obtrusive.

Mr. Leonhardt stated that he is going to landscape as much as possible because he does not want to see any of their houses either. He explained that he specifically bought where he did, so that he would not have anyone around him. He would be happy to let them help plant trees to screen the view. He went on to state that there are people back there all the time walking their dogs, and if everyone is so adamant about him building there, he again suggested buying the property from him. Mr. Leonhardt also stated that he was trying to do the right thing and offered to buy a sliver of their properties so that he would not have to put the driveway on an easement and deal with the mess that he is dealing with now. Mr. Rose wanted to make the comment that you don't own a view, and it is never a valid argument. Everyone is going to say they like looking at trees but not something else. Mr. Caniglia stated that he doesn't have an issue with him building; it is the height and the angle of the house coming 30 ft. closer. Mr. Leonhardt stated that he will be able to see the house no matter what. Mr. Valore stated that they turned the angle of the house because of Mr. Caniglia, and if they turn it back where it was, he will complain even more. Mr. Caniglia stated that if they built behind the building line he would not have any complaint at all.

Mr. Terry Gramlich, 8553 Timber Trail, spoke to the Board. His question is the side yard setback from 0. It seems to him the property lines were known originally, and the plans

for the house were meant to go to 0. He felt that they were trying to squeeze the house in, rather than fit it in correctly.

Mr. Leonhardt stated that they had to be able to accommodate the fire department. He is also trying to avoid hanging over a cliff. The City Arborist does not want him to cut any other trees down, and if they move the house back they would have to. He also wanted people to keep in mind that this is in the middle of the woods. It is winter now; in the summer you will not be able to see it. All of these issues are based upon the property itself. He does not want to build a house that hangs over a cliff, unless the Board doesn't grant his variance, and then he will not have a choice. He would like to stay within his property lines and ask for a variance, without going on anyone's property. He stated that he was sure that the other houses on Timber Trail were not built without some variances. He explained that he is not trying to be unreasonable; he has pushed the house back as far as he can go, and felt the variances were not unreasonable. Mr. Leonhardt also stated that they have changed it ten different times and have spent a lot of money getting it to this point. He is going to keep going, and the house is going to be built.

Mr. Rose made the point regarding topography, that everyone's property is not the same. The beauty of Brecksville is also challenging building lines. The reason that this Board exists is that there is recognition that everyone's property is not the same, and that there are not uniform rules that would apply for everyone. There is a procedure to have a hearing to listen to what everyone has to say, and the Board makes their judgment on all kinds of factors based on code that governs how they use the property and the code of granting variances.

Mr. Jerome Yurch, 10620 Whitewood Road, spoke to the Board. His question was regarding the back end of this property and who owns the lake. Mayor Hruby and Mr. Rose answered that the City owned it. He also wanted to know if there would be a connection between the Glen Forest property that Mr. Leonhardt now owned and the new property on Timber Trail. Mr. Valore stated no, there is an easement to the left of Mr. Leonhardt's existing home at the bottom that gives the City the right to go back into the property. It was given to the City to access and maintain the pond. Mayor Hruby answered Mr. Yurch's question, that the answer is no, they do not connect. Mr. Yurch stated that the property was 22 acres and now is 14 acres and wanted to know if the lake was part of the 22 acres. Mayor Hruby stated that was correct.

Ms. Vergilli had one more request. She asked to look at what she had regarding lot lines and look closely at the tree survey and compare the two. Mr. Valore offered to meet her on the site to go over it. Ms. Vergilli stated that she has a survey ordered because of the pin that was there a couple of months ago and is no longer there. Mr. Valore stated that he could show her the pin, it is driven in the ground, and she could save her money. They have no intention of going on her property. Mr. Rose stated that Ms. Vergilli has a right to obtain a survey. Ms. Vergilli asked that they do not go on her property until that survey is obtained.

Ms. Roberts wanted to make an observation regarding tonight's meeting. She felt that this was a very civil meeting among residents, the land owner and the Board. She stated that what strikes her, subliminally or otherwise, is the ownership and the provenance of this property. She felt that in the back of everyone's mind there always was a possibility that this property could be developed. Ms. Roberts stated that she found it interesting that now because this is moving forward, it seemed to be a great violation, but this land was owned and one day was going to be developed.

Motion by Mayor Hruby, seconded by Mr. Hasman to close Public Hearing. **MOTION CARRIED**

**MINUTES OF REGULAR MEETING
BRECKSVILLE BOARD OF ZONING APPEALS
Community Room – Brecksville City Hall
March 11, 2013**

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

Absent: Bruce McCrodden

Others: Building Inspector Synek, 20 guests

APPROVAL OF THE 2012 BOARD OF ZONING ANNUAL REPORT

Motion by Mayor Hruby, seconded by Mrs. Redinger to approve the 2012 Board of Zoning Annual Report as written.

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

MOTION CARRIED

APPROVAL OF THE REGULAR MEETING MINUTES OF JANUARY 7, 2013

Motion by Mr. Opatrny, seconded by Mrs. Redinger to approve the Regular Meeting Minutes of January 7, 2013 as recorded.

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

MOTION CARRIED

APPEAL 2013-03

Motion by Mayor Hruby, seconded by Mrs. Redinger, that the Board of Zoning Appeals recommend to City Council approval for a variance from Section 1151.25(d) of 396.07 sq. ft. from the maximum allowed 144 sq. ft. to 540.07 sq. ft. for the construction of a pergola located at 7775 Sunstone Drive, PP# 602-14-078.

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

Abstain: Mrs. Redinger

MOTION CARRIED

