

**MINUTES OF PUBLIC HEARINGS
BRECKSVILLE BOARD OF ZONING APPEALS
Community Room – Brecksville City Hall
December 12, 2016**

Present: Kathleen Roberts, Eric Hall, Robert Hasman, Mayor Hruby, Kim Veras,
Bruce McCrodden, Dennis Rose

Absent: None

Others: Building Inspector Synek, 8 guests

PUBLIC HEARINGS

Mr. Rose started the meeting with an explanation of the code, the job of the Board of Zoning Appeals Committee, and the appeal process.

Appeal 2016-56

Richard Soeder for a variance from Section 1151.25(d) of 240 sq. ft. from the maximum 144 sq. ft. to allowed 384 sq. ft. for the construction of a pavilion located at 4730 Valleybrook Drive, PP# 604-02-072.

Richard Soeder spoke to the Board regarding his variance. He stated that he reviewed the previous appeals that came before the Board regarding other pavilions. He explained his hardship to be pretty much the same thing as the other appeals, the hardship being the code itself. Mr. Soeder stated that the pavilion he is planning on building is going over the existing patio. The code only allows a 12x12 structure and he is requesting approximately a 24x16 pavilion to go over the existing patio with a fireplace, so they can enjoy the area with enough room to fit people under it and enjoy the backyard.

Mr. Rose asked if the pavilion will be open on all sides, except where the fireplace will be placed. Mr. Soeder stated that was correct, the fireplace will be located on the back end of it and will be open on all sides. The architecture will match the house. Mr. Rose asked if he had spoken with any of his neighbors regarding this. Mr. Soeder stated that he spoke with a couple of his neighbors, and his neighbor from behind also came to talk with him, and they did not have an issue with it.

Mr. Hall asked Mr. Synek if the pavilion met all the required setbacks. Mr. Synek stated that it did.

Mr. Hasman stated that when he visited the home, he noticed there was an elevated section behind the home, and asked if that was the area where the pavilion will sit. Mr. Soeder stated that it is, it will be over the patio.

Mr. Rose opened up questions to the audience, and there were none.

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

APPEAL 2016-57

Rajiv Sahni for a variance from Section 1151.26(3) of 8 ft. from the minimum required 20 ft. to allow a 12 ft. side yard setback for the construction of a seat wall located at 7341 Crosswinds Lane, PP# 603-16-060.

Matt Boddy, Atmosphere Landscaping Exterior & Interior Living Spaces, LLC. spoke to the Board regarding Mr. Sahni's appeal. He stated that his hardship was that they have a fire pit that has to remain 25 ft. from the home and the seat wall has to be 20 ft, and they can't accomplish both. The seat wall is not in the right place and will be taken down and moved if the variance does not pass. The goal is to allow the fireplace to be 25 ft. off the house, which is more important, and they will add the seat wall to the back side of the fireplace.

Mr. Rose asked if this could have all been designed to have fit and be in compliance with code. Mr. Boddy stated that there was no where else he could put the fire pit except for on the other side, which was the less used part of the patio. Where they would like to put it is in the main area, or seating for the patio space. Mr. Rose asked what size the fire pit was. Mr. Boddy stated that it was 36" in diameter. Mr. Rose asked if they could make the fire pit smaller in some manner. Mr. Boddy stated that you cannot get much smaller because you would have issues with the radius, and the area becomes almost too small to build a fire.

Mr. Hasman asked him to explain their plan about dismantling the existing seat wall. Mr. Boddy stated that it is currently 8 to 8 ½ ft. off the property line, which was a mistake on his part. They want to bring it to 12 ft., and keep the fire pit 25 ft. from the house.

Mr. Rose asked Mr. Synek how this came to the attention of the Building Department. Mr. Synek stated that the Building Department received a complaint. Mr. Rose asked if it was built without a permit. Mr. Synek stated that it was. Mr. Rose asked Mr. Boddy if he realized he needed a permit. Mr. Boddy stated that he did come to learn that he needed a permit, and appreciated the patience of the City. He was not aware at the time, but since, has applied for a permit and is now registered with the City.

Mr. McCrodden stated that in the note that came with the variance application, he indicated that the distance that they are proposing was agreed with a neighbor as a compromise, and asked which neighbor that was, and if he had a conversation with both adjacent neighbors regarding this project.

Mr. Boddy stated yes, there are two neighbors in attendance. He also obtained letters from the other neighbor as well that had no issues with the project, and submitted them for the record.

(Kale Schulz, 9465 Glen Drive).

Mr. Rose opened up questions to the audience.

Donald Brinsky, 9475 Glen Drive spoke to the Board. He stated that this came about because Mr. Sahni has a beautiful pool house, which he assumed would be installed on the other side, away from the neighbors. He explained that he wasn't aware of any plans that were submitted, not that he should be privy to them, but didn't know what was going to be installed and out of curiosity he went over there and saw a large extension to the pool house. Mr. Brinsky stated that he was in attendance for another appeal a few months back and made a few points about the neighborhood becoming over-developed. Mr. Brinsky stated that Mr. Sahni was very kind after he raised the issue with him and apologized for not communicating. Mr. Brinsky stated that he understood it would be difficult for him to move the fire pit. They walked the property together and stated that if he landscaped behind the wall to screen it from his view that would be better, because from his house he has a clear view of the whole thing, his back patio looks directly at it. Mr. Brinsky stated that there are not many indoor pool houses in Cuyahoga County on the west side, and really did not expect something like this. If he softened it by landscaping he would not have a problem with it.

Mr. Rose clarified with Mr. Brinsky that if they landscaped as they said, he would not object to the variance. Mr. Brinsky stated that was correct, from what he can see, he intends to do what they have discussed, and he will support it. Mr. Brinsky wanted to make a statement that maybe the City should send out bulletins to the residents of Brecksville to make them aware to get a permit before doing these types of things, because now you have this situation, and maybe if it was planned differently, he would not have had to come to this variance meeting. Mr. Rose stated that it was an outstanding idea, and a valid point and will be noted.

Mr. Rose clarified with Mr. Sahni that he will soften the area with landscaping. Mr. Sahni stated that he absolutely will. He explained that right now there is a lot of stucco and stone, but with the landscaping it will be much softer and will hide a lot of it. Mr. Rose asked if Mr. Sahni would agree to amend the variance with the condition that he landscapes after the construction is done. Mr. Sahni agreed.

Sal Papalardo, 7345 Crosswinds Lane spoke to the Board, and stated that he supported Mr. Sahni and his project.

Motion by Mr. McCrodden seconded by Mr. Hasman to close Public Hearing. **MOTION CARRIED**

Appeal 2016-58

Kingdom Home Builders for Sal Papalardo for a variance from Section 1326.01 to install an air conditioning unit on the side of the house instead of the rear as required by code located at

7345 Crosswinds Lane, PP# 603-16-016.

Jeff Halpern, President, Kingdom Home Builders spoke to the Board regarding their appeal. Mr. Halpern stated that he is seeking a variance for the location of the air conditioner, which is currently installed. He stated that the master bedroom is on the side of the house where the air conditioner is located, also the mechanical room and furnace is located on that side as well and showed the Board on the overhead screen. He stated there are a few significant problems with moving the air conditioning unit, if you were to locate the air conditioner behind the house, there are bay windows on the master bedroom and the unit would be right below it. Also along the backside of the foundation on the lower level, is a finished play room and there are windows all across the back, the air conditioner would be right in the middle of those windows. Mr. Halpern explained that when the house was originally proposed by the architect, there were two units on the same side of the house and they were able to re-work the mechanics, this one would be well over 100 ft. and would not work. Mr. Halpern stated that Mr. Papalardo would be willing to landscape around the unit. He explained that the grade of the land slopes towards the back of the house and when you are standing from the sidewalk, you see very little of the unit. They also installed the unit on the garage side of the neighbor, and he is in attendance tonight. Mr. Halpern stated that they have spoken with the next door neighbor Mr. Zenczak, 7342 Crosswinds Lane, and his concern was the noise, their concern was more line of site, and that is why they thought it was appropriate to install it where they did. They had a discussion with Mr. Zenczak, and Mr. Papalardo stated that he would be willing to move the unit farther back, still on the side but on the back corner of the house, and that was acceptable to Mr. Zenczak. Mr. Halpern explained the location on the overhead screen.

Mr. Rose clarified that it will be behind the back wall of the house, but not around the corner on the back wall. Mr. Halpern stated that was correct. Mr. Rose explained to Mr. Halpern that this variance relates to a noise ordinance, and the neighbors concern about noise is actually the basis of this code. Mr. Rose stated that this was a concern to him, because it was installed first and then they came to the Board, instead of finding out what was required and then coming to the Board to see if it would pass before installing it. Mr. Halpern explained that it was originally presented by the architect's office. Mr. Rose asked Mr. Synek if he was aware of what happened. Mr. Synek stated that he did a review of this house, and three times in the plan review process, it was noted that it should be in the rear. Mr. Rose understood why most people wouldn't want the air conditioner in the rear, but for him it becomes troublesome, because he is coming after the fact.

Mayor Hruby explained that one of the responsibilities he has as Mayor is the enforcement of the code. He stated that they were notified three times and he still installed it on the side. Mr. Halpern stated that the drawings were presented to the architect before they became the contractor. The Mayor stated that they were notified. Mr. Halpern admitted that while building they didn't even think about it until the inspector pointed it out to them. They thought they were being cognizant of the Zenczak's in putting it there, and it not being a problem. They have had a discussion with him and will have no problem in moving the unit. Mayor Hruby stated

that he understood what he was saying, but his point was, that three times he was notified, and asked why he didn't take action. Mr. Halpern stated there may have been notification prior to, and it may have been on the drawings when they obtained the permit, but when they started building, they probably didn't look at that again, to be honest. Mayor Hruby stated that Mr. Halpern wasn't doing a good job of convincing him, he felt that he ignored it and just did what he wanted. Mr. Halpern stated that if he was doing that, he would have done that with other codes, it was purely an oversight with no ill intention, and no cavalier attitude.

Mr. Rose stated that they were told several times and went ahead with it anyway. Instead of coming to the Board and presenting it, they went ahead and installed it and are asking the Board for permission after the fact. Mr. Rose stated that any contractor that planned on doing work in the City should check what is expected of them, and said he personally felt skeptical about this.

Ms. Roberts stated that she felt Mr. Rose could not have phrased that any better. To feel the awkwardness of this situation and to doubt or to have questioned it, puts an uncomfortable burden on this Board. Ms. Roberts explained that she knows that is what the Board's job is, but it puts the Board in an uncomfortable situation. Mr. Rose added that it wasn't even the homeowner, Mr. Papalardo's fault.

Mr. Halpern stated that Kingdom Home Builders wasn't told three times, he assumed they were told when the permit came thru. They got the permit and built the house and they really didn't think about it until afterwards, and he stated he was sorry. He went on to explain that he was the former President of the Home Builders Association of Greater Cleveland, and also built in the Homerama in the City of Brecksville in past years. He stated he is not here to do anything wrong or to appear to have a cavalier attitude, that is not how they do business. It was a situation that they didn't quite think about, and only found out when the inspector came out and said they needed a variance on the unit, and they had no problem with coming to the Board.

Mayor Hruby asked why they could not just install it to code. Mr. Halpern stated that he was trying to be sensitive to the homeowner because there are all windows there and he would have to look at it and hear it. Also it will be right in the middle of the lower level that is finished.

Mrs. Veras asked Mr. Synek if the location of where Mr. Papalardo and Mr. Zenczak agreed to move the air conditioning unit would be to code, or would it have to go around the corner on the back. Mr. Synek stated that where they would like to move it would be to code and the Building Department would allow it, but that the Building Department has had no discussion regarding that to this point.

Mr. Rose clarified with Mr. Synek that the approved location between neighbors would be to code and would not need a variance. Mr. Synek stated that was correct.

Mr. Hasman explained to Mr. Halpern that there are sound blankets that can be used to deaden the sound on an air conditioner, and asked if that would be an option for him. Mr. Halpern stated

that he has never used that before and was unaware of such a thing.

Mr. Hall clarified with Mr. Synek that if the variance was denied, Mr. Papalardo would still be able to move the unit to the location that was discussed between him and his neighbor. Mr. Synek stated that was correct. Mr. Rose clarified that the logic behind that was the noise ordinance, and keeping it away from the side of the house would help the noise issue.

Mr. Rose opened up questions to the audience and there were none.

Greg Zenczak, 7342 Crosswinds Lane spoke to the Board. He stated not only is his garage on that side of the house, but his patio is as well. For him it is a noise issue. He felt that if they moved it to the back corner as discussed, he will only hear a third of the noise, and if they landscape around it, the noise will still be there but it will help it. He stated for the record that his units are on the back of the house under his bedroom window. Mr. Rose asked if he would accept it if they moved it to the other location that was discussed. Mr. Zenczak stated that he would.

Sal Papalardo spoke to the Board and affirmed that moving the unit to the back corner is fine with him. He cannot landscape around it now, but will do it in the spring.

Don Brinsky also mentioned that his units are against the wall in the back corner, where his bedroom is, and you do hear it with the windows closed.

Motion by Ms. Roberts seconded by Mr. Hall to close Public Hearing. **MOTION CARRIED**

**MINUTES OF REGULAR MEETING
REGULAR MEETING
BRECKSVILLE BOARD OF ZONING APPEALS
Community Room – Brecksville City Hall
December 12, 2016**

Present: Kathleen Roberts, Eric Hall, Robert Hasman, Mayor Hruby,
Kim Veras, Bruce McCrodden, Dennis Rose

Absent: None

Others: Building Inspector Synek, 8 guests

APPROVAL OF THE REGULAR MEETING MINUTES OF NOVEMBER 7, 2016

Motion by Mayor Hruby, seconded by Mrs. Veras to approve the Regular Meeting Minutes of November 7, 2016 as recorded.

ROLL CALL: Ayes: Roberts, Hall, Hasman, Hruby, Veras, McCrodden, Rose
Nays: None

MOTION CARRIED

APPEAL 2016-56

Motion by Mrs. Veras, seconded by Ms. Roberts that the Board of Zoning Appeals recommend to City Council approval for a variance from Section 1151.25(d) of 240 sq. ft. from the maximum 144 sq. ft. to allowed 384 sq. ft. for the construction of a pavilion located at 4730 Valleybrook Drive, PP# 604-02-072.

ROLL CALL: Ayes: McCrodden, Roberts, Hall, Hasman, Hruby, Veras, Rose
Nays: None

MOTION CARRIED

Mr. Rose wanted to make a comment to our Council Representative, Mrs. Veras, that maybe this is a topic that City Council should take a look at, because people have been coming forth to the Board for pavilions and pergolas, and a 12x12 structure might not be the right size for a pavilion. Maybe some research on what other communities do, and whether the code should be changed because it does seem like a true hardship, people can't build without coming this Board first for a variance.

APPEAL 2016-57

Motion by Mr. McCrodden, seconded by Mayor Hruby that the Board of Zoning Appeals recommend to City Council approval for a variance from Section 1151.26(3) of 8 ft. from the minimum required 20 ft. to allow a 12 ft. side yard setback for the construction of a seat wall **and amending, with landscaping of appropriate size to hide the wall from neighbor's view**, located at 7341 Crosswinds Lane, PP# 603-16-060.

ROLL CALL: Ayes: Hall, Hasman, Hruby, Veras, McCrodden, Roberts, Rose
Nays: None

MOTION CARRIED

APPEAL 2016-58

Motion by Ms. Roberts, seconded by Mayor Hruby that the Board of Zoning Appeals recommend to City Council approval for a variance from Section 1326.01 to install an air conditioning unit on the side of the house instead of the rear as required by code located at 7345 Crosswinds Lane, PP# 603-16-016.

Mr. Rose commented to Mr. Papalardo, that the Board is voting on whether or not this unit can stay where it is, not the alternative location that was discussed this evening.

ROLL CALL: Ayes: None
Nays: Veras, McCrodden, Roberts, Hall, Hasman, Hruby, Rose

MOTION DENIED

Mr. Rose explained to Mr. Papalardo that he had another solution regarding the location, and can go to the Building Department to discuss it.

REPORT OF COUNCILMEMBER VERAS

Mrs. Veras reported that at the November 15, 2016, City Council Meeting, three of the five variances that were recommended from the Board of Zoning Appeals were passed by City Council. The two that didn't pass were the fences on Greystone Parkway and Old Quarry Lane.

Mayor Hruby stated that he was somewhat taken back by the discussion with Council. There was already an approved fence in that area that came in front of this Board. Since that time, the Weaver's have spoken with Council, and the Mayor believed that they will be coming back with an alternative variance. A variance is granted when this Board recommends to City Council that the law could be set aside and someone could be granted a special variance. That is the decision we make that we recommend, and for anyone to take the position to vote no on everything greater than 4 ft. doesn't make sense, because if we did that for everything, then we do not need this Board. The Mayor felt that he and the Chairman should put something in writing to City Council to take another look at this issue and that City Council along with the Legislation Committee should talk about whether or not the fence ordinance should be as exact as it is, and whether they should recognize some things that the Board of Zoning has been taking into consideration. He stated that he did not recall anyone calling him to complain that someone installed a fence, after we had granted a variance for it. The Mayor also explained the original intent behind changing the fence ordinance to 4 ft.

Mr. Rose agreed with the Mayor, the Board has granted fences over the years that made sense.

REPORT OF MAYOR HRUBY

The Mayor wished everyone a Merry Christmas and a Happy New Year. He reported that they have the start of three Readings before City Council to re-zone the land on Rt. 82 and I77 that is residential. They are recommending that there is no retail there, but instead, office and office lab or possibly some minimum manufacturing. The Mayor felt it was better for the City and it will improve the tax base. It will also keep the activity there during the week day, not on the weekends, so as not to intrude on the neighborhoods along there.

The Mayor announced Ms. Roberts will be reappointed and will be back to serve on the Board next year which he was happy about, and thanked everyone for their services to the Board.

SUMMARY OF PROCEDURES

Mr. Rose stated that the changes have been made and can now be handed out to our residents. Mr. Rose commended the work of Mr. Hasman and Mr. McCrodden as well as Mr. Synek and Ms. Zdanowicz for getting this done. He felt it was an improvement to what we originally had.

Mr. Rose also stated that the previous comment from a resident made this evening was a good idea, which was to put out information from the City regarding obtaining a permit from time to time.

Mr. Rose wished everyone a Merry Christmas and Happy New Year.

Motion by Ms. Roberts, seconded by Mr. Hasman to close the Regular Meeting at 8:27 p.m.
MOTION CARRIED.

THE BRECKSVILLE BOARD OF ZONING APPEALS

DENNIS ROSE, CHAIRMAN

KATHLEEN ROBERTS, VICE CHAIRWOMAN

BRUCE MCCRODDEN, SECRETARY

Public Hearings and Regular Meeting recorded by Gina Zdanowicz