

**MINUTES OF PUBLIC HEARINGS
BRECKSVILLE BOARD OF ZONING APPEALS
Community Room – Brecksville City Hall
May 12, 2014**

Present: Kathleen Roberts, Carl Opatrny, Robert Hasman,
Kimberly Veras, Bruce McCrodden, Dennis Rose

Absent: Mayor Hruby

Others: Building Inspector Synek, 19 guests

APPEAL 2014-20

Kenneth Gibson for a variance from Section 1151.24 of 1.16 ft. from the required 60 ft. minimum rear yard to allow 58.84 ft. for the construction of a house located at 4730 Valleybrook Drive, PP# 604-02-072.

Mr. Gibson spoke to the Board regarding his appeal. He stated that he wasn't aware of the rear yard setback when he purchased the land. The house was 77 ft. deep which placed it 5 ft. more into the rear yard than what code allowed. He came to the Board a few years ago to build the house the way that it was drawn, and they turned it down, so he has since changed the plan. He ended up taking 5 ft. off the back of the garage. His hardship is, once you pull 2 cars in the garage, you do not have any room left over. He has a lot of tools and needs all the garage space he can get. He would prefer not to go smaller, because if he does, he would have to make the back of the house smaller as well, and he would have to change the plans which is expensive. Mr. Gibson explained the plan to the Board on the overhead diagram. He stated that he would also have to take some footage off the back of the bedroom. One of the things he loves about this plan, is the set up of the courtyard, it is a very nice looking property. He stated that he would like to avoid cutting any footage off the house if he could.

Mr. Rose asked if he had spoken with any of his neighbors. Mr. Gibson stated that he did, he spoke with the neighbors on either side of him, but not across the street, and they have no concerns or problems with it. Mr. Rose asked how large the bedroom on the plan was. Mr. Gibson stated that it was 13 ft. deep. Mr. Rose stated that the room next to it would also have to be scaled back. Mr. Gibson stated that was correct, he would have to take the bedroom down to 12 ft., and he would prefer not to, because that will actually be a bedroom for his parents and he needs all the room he can get.

Motion by Mr. McCrodden, seconded by Mr. Opatrny to close Public Hearing.

MOTION CARRIED

APPEAL 2014-21

United Homes for (1) a variance from Section 1151.23(a) of ~~31.97~~ 10.38 ft. from the maximum 70 ft. to allow a ~~101.97~~ 80.38 ft. front yard setback and (2) a variance from Section 1151.24 of ~~31.43~~ 13.78 ft from the minimum required 80 ft. to allow a ~~48.57~~

66.22 ft. rear yard for the construction of a house located at 2625 Hidden Canyon Drive, PP# 605-11-022.

Mr. Rose asked if the appeal was re-noticed. Mr. Synek stated that it was not, the change was for a lesser amount.

Mr. Kramp spoke to the Board regarding his appeal. He stated that he had a concern from the neighbor, so they shifted the house 20 plus feet and turned it away from his property to keep the swale and the water all on this property. Mr. Kramp stated that the hardship is that it is an irregular shaped lot, which made it very hard to position the house. When they first looked at the project the side yard was actually the front yard and the back yard became the side yard. There was no real definition of the front yard.

Mr. Rose asked Mr. Synek if being an irregular shaped corner lot was the issue here. Mr. Synek stated that was correct. Mr. Rose asked what property they were concerned with. Mr. Kramp stated that it was Mr. Zafrirau, 2631 Hidden Canyon, he just built his house. Mr. Rose asked if the concern was something he identified, or was it brought to his attention. Mr. Kramp stated that it was brought to his attention by the neighbor. Mr. Rose asked if he was concerned about the water flow. Mr. Kramp stated that he was, and they took care of it with the swale. His surveyor had the water going to the catch basin on the corner of the property, which was Mr. Zafrirau's catch basin, not a City catch basin, so they moved it. Mr. Rose asked if the City Engineer approved it. Mr. Kramp stated that he was okay with it, but would still like him to make a few changes. Mr. Rose stated that a smaller house could be built there and fit. Mr. Kramp stated that this individual came to him from Las Vegas, with the prints of what he would like to build. They all took the property as a side yard, but it was actually turned around the other way. Mr. Rose asked Mr. Synek, that if this house were to be built on the two other lots on either side of this one, would it be an issue. Mr. Synek stated that there would not be an issue if the house was not on the corner.

Mr. Rose opened up questions to the audience. Mr. Zafrirau spoke to the Board. He stated that he did have some concerns with the original plan, but with the moving of the swale, and the setbacks greatly reduced, he does not have any problem with it now at all.

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

MOTION CARRIED

APPEAL 2014-22

Michael Benza & Associates, Inc. for Snowville Joint Venture for (1) a variance from Section 1119.09(d) to not install the required public sidewalks to the boundaries of the subdivision, until such time that the City deems appropriate, and (2) a variance from Section 1185.03(b) permitting only a 3 ft. high split rail or post and rail fence on the side or rear property line of a corner parcel to allow the construction of a 4 ft. high wrought iron fence in the front and side yard of a corner parcel (Block A & C) along Snowville Road located at PP# 605-22-006 and PP# 605-22-001.

Mr. Bender spoke to the Board regarding his appeal. He stated that the first request not to install sidewalks on Snowville Road was a result of spending some time out there with the City Engineer and an Inspector reviewing the situation. Although the original plans were approved with a sidewalk on Snowville, it became apparent to everyone that there are some issues on Snowville Road, and they would be attracting pedestrians and children on bicycles out on Snowville Road, which may not be the safest or wisest thing to do, due to the fact that there are some grading issues there. Traffic travels at a fair to moderate high rate of speed there and there are no other sidewalks on Snowville Road. They would actually be inviting the residents and children to go out onto Snowville Road. The idea was to stop the sidewalk at the intersection of Woodlands Drive and Snowville, along with the ADA compliant ramps and will complete it to there. At a later date, when sidewalks are put on Snowville Road, they will be happy to install them.

Mr. Rose clarified with Mr. Synek that the City was also looking at having the partial sidewalks, until sidewalks go in on Snowville, for safety and other reasons. Mr. Synek stated that it is not unusual to eliminate sidewalks that lead to nowhere. Mr. Rose asked if there had been any other discussions regarding the safety issues. Mr. Synek stated that he did not know.

Mr. Bender went on to explain that with regards to the fence issue, there are two common blocks at the intersection that are owned by the Homeowners Association, which also contained two small retention basins. There is extensive landscaping as well as a brick entry wall with pillars that go across the frontage of the development. Mr. Bender brought in an example of the fencing which will provide completeness to the landscape package, and it will also stop the traffic going up to the retention basin, although it will be open on the back side for access for service in an emergency. It is partly a safety issue and partly a landscaping issue. The landscaping could be done without it, but stated that he felt it would be better with the fence, it provides completion and a finishing touch. Mr. Bender explained that the issue is that they are not building lots; they are blocks under the city code, which doesn't really relate to the city codes.

Mr. Rose clarified that it would really be a fence in the front yard. Mr. Synek stated that it is a fence along the right-of-way. By code you are permitted to have a 3 ft. post and rail or split rail fence. Mr. Bender stated that the reason they chose this fence is that it will blend in more with what is being put in the development and the community. Mr. Rose asked if the issue was more aesthetics. Mr. Bender stated that it is 50/50; he felt that the landscaping would still be okay without it, but it would look good, and it provides a measure of safety as well.

Mr. Opatrny asked if the sidewalks would still be installed within the subdivision just not on Snowville Road. Mr. Bender stated that was correct. Mr. Opatrny asked how they would terminate it then. Mr. Bender stated that they will terminate them into the handicap ramps, so it will hopefully direct traffic to the other side and return.

Mr. Hasman stated that the variance really is the 4 ft. height of the fence, and asked if he

was permitted to use a 3 ft. Mr. Bender stated that he was permitted to use a split rail fence. He didn't feel that the height was as much the issue as it is a fence. Mr. Synek clarified that it is really two things. It is the type of fence and the height.

Mr. Rose opened up questions to the audience. Gayle Cartledge 9110 Snowville Road, spoke to the Board. She stated that she did not understand what it meant by the rear property line and the side property line in the notice. Mr. Synek stated that generally the regulations and ordinance does not allow a fence along the right-of-way. She asked where the fence would be located Mr. Synek stated along the right-of-way. Mr. Rose asked Mr. Synek to explain why it said the rear and side property lines. Mr. Synek stated that these are unique lots, in that, they are not really buildable lots, and the code tries to apply a definition across the board. This is an interpretation, so if there were a house on the lot, the fence could only be in the rear yard, or a 3 ft. high split rail in the front yard. He explained that there will never be a house there, it is just a block of property, but they have to apply the regulations across the board to it. Mr. Bender went onto explain that as you drive down Snowville Road, you will see landscaping, stone pillars and rod iron fencing in between the pillars. As you turn onto the street, you will see tree lawn and then sidewalk and pillars with fencing. When you get to the first buildable lot you would then just see front yards. Ms. Cartledge confirmed that nothing will be placed behind the property lines. Mr. Bender stated that was correct. Mr. Bender asked where Ms. Cartledge lived, she stated that she lives directly to the west, she just didn't understand what the notice meant by rear and side property lines. Mr. Rose asked for the diagram to be shown again, and explained the location of the fence.

Motion by Mr. McCrodden, seconded by Mr. Hasman to close Public Hearing.

MOTION CARRIED

APPEAL 2014-23

Jeffrey & Rebecca Claridge for (1) a variance from Section 1151.24 of 5 ft. from the required minimum side yard of 20 ft. to allow a 15 ft. side yard on the east side, and (2) a variance from Section 1151.24 of 5 ft. from the required 40 ft. to permit the total of two side yards to be 35 ft. for the construction of a new house located at 12022 Glen Valley Drive, PP# 602-16-020.

Mr. and Mrs. Claridge spoke to the Board regarding their appeal. Mr. Claridge explained that they are currently living in the old ranch house on the property which is pretty broken down, and would like to stay in it, while they build. They had a house designed that will be a passive solar house, and will be very energy efficient. The footprint of the house will be slightly smaller than what they are currently living in. They initially asked the Planning Commission to have more of a variance to push the house as far forward as possible so that they could live in their house while it was being built. Mr. Claridge explained that the beauty of the area is the rear yard, and that will be their front lawn, which faces the valley. Their house will have a perfect orientation on the lot for the passive solar heating, and that is how they will primarily be heating their house. They need a large area of un-shaded property. Mr. Claridge stated that their lot is narrow and

becomes wider in the rear, and they needed the variance to move it back. The Planning Commission would not allow them to go up further. They have worked with the Planning Commission, and have come up with this current design which they approved, so they are asking for a 5 ft. variance on one side, and a total of 35 ft. for both side yards, and it actually increased the distance of the property line by 4 ft.

Mr. Rose asked if they have spoken with their neighbors. Mr. and Mrs. Claridge stated that both neighbors have written letters and they have no problem with it. Mr. Rose clarified that their issues are, that they will be living in the current house while building, and because of the type of home that they are building, they need the width of the home to be able to do the passive solar heating. Mr. Rose asked if the front setback was an issue. Mr. Synek stated that the Planning Commission established the setback.

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

MOTION CARRIED

APPEAL 2014-025

Ted & Maria Skapura for (1) a variance from Section 1185.03(a) of 1 ft. from the maximum allowed 4 ft. to allow a 5 ft. fence height and (2) a variance from Section 1185.03(a) to allow a fence to extend into the front yard beyond the building setback line of a nonconforming house located at 8517 Riverview Road, PP# 602-29-003.

Mr. Rose wanted to state that he received calls from both the Skapura's and the Michitsch's, but did not return either because he felt the public hearing was the best time to discuss any issues that they may be having.

Mr. and Mrs. Skapura spoke to the Board regarding their appeal. Mr. Skapura stated that they have two requests for a variance. The first one is the location of the fence, directly due to the setback on the property. Mr. Skapura explained the setback on the overhead diagram; they go approximately 900 ft. deep on the property. What they are asking to do is bring a fence from the rear of the property to approximately 150 ft. in front of the house which is still very well south of both neighbors next to them, one of the neighbor's, Mr. Skapura stated, was in the audience tonight. The logic is if their neighbor would want to put up a fence, they would be allowed to install the fence in the same exact location that they are asking for. In addition, due to the grade of the land and how the grade changes from the driveway down to the property line, if they went with the permitted 4 ft. fence, there would be areas where the fence would only be 3 ft. in height. Mr. Rose stated that the fence would still be 4 ft. high. Mr. Skapura went on to explain that their desire is to completely secure this part of their property line. Due to where they sit back on the property, they have had some issues, as well as some security concerns, and they would like to have this fence to give them the protection needed to prevent any future occurrences from happening.

Mr. Rose asked Mr. Synek if they had pictures of the sloping that he could display. Mr. Skapura explained the slope differences on the overhead diagram. He also explained

where the fence would be located. Mr. Skapura stated that they do not want to stockade their home, but they do need necessary protection at an appropriate height. Mr. Rose stated that in Brecksville, City Council has had the 4 ft. height ordinance in place for some time. Brecksville is not a community of fences. Mr. Rose asked if they have considered other natural solutions to their issue, like planting trees or something else. Mr. Skapura stated that they did have beautiful landscaping that unfortunately was consumed by hungry deer. The barrier lasted for a few years, but they have so much deer activity because of the neighboring land going back to the Metropark area. Mr. Skapura explained that Brecksville is a place that believes in safety for families, and he stated that he cannot stress enough, without getting into too much detail, that this is all about the safety of his family. Mr. Rose confirmed that the arborvitae had been their for a while. Mr. Skapura stated that every year he had burlaped the trees for the winter, but this year he had some back problems and made a bad mistake by not doing it, and as soon as the deer got hungry, the trees were affected. Mr. Skapura stated that even with the trees in place, they would like the fence due to other concerns they have. The arborvitae elements almost work against them, by protecting them too much from others nearby. When you are standing at the rear of their property, it is 900 ft. to the road, and that is their concern, no one can see trouble happening, and that is the challenge they have had living on the property for 15 years. They have had multiple issues, and they occur because of the natural camouflage on this parcel.

Mr. Rose asked Mr. Synek if the fence complies with regards to placement. Mr. Synek stated that it can be placed within one foot of the property line. Mr. Skapura stated that they have had their parcel surveyed and staked appropriately. Mr. Skapura stated that the placement of the fence is the simplest of their issues. He wished his two sons were here this evening, because before going out to play, they would have to look out the window and see who is nearby, which is a sad way to have to raise a child. This fence is their last resort, short of him carrying a gun at home. Mr. Rose stated that is no solution; obviously if he has those concerns, there are safety forces and the Mayor's office that can deal with those issues. Mr. Skapura stated that because of their situation they have called the Police on multiple occasions. Their situation is no secret in the City. Mr. Skapura explained that unfortunately, it takes someone to cause harm before you can act, and stated that he refuses to be a victim to anyone.

Mr. McCrodden asked Mr. Synek if this was a conforming house, how far would the fence be able to go. Mr. Synek stated that the proposal is 280 ft. from the road. Generally by today's code, for the front building line, if the house were in alignment, the front of a conforming house would be 125 ft. from the right of way. Mr. McCrodden stated that it could then go further. Mr. Synek stated that was correct. Mr. McCrodden also stated that they showed the slope along the property line, and asked if the line of trees were not there would they build a fence closer to their driveway and be on the top of the slope. Mr. Skapura stated that he would probably not. He would still like enough landscape area to give room for snow plowing. Having the flower beds close to the driveway, it takes away from where he can put the snow when he plows it, and he would prefer to keep the fence where it is proposed.

Mr. Opatrny asked Mr. Skapura to clarify the security issues that he was having. Mr. Skapura stated that they have had a lot of problems with this individual. Everything he is stating, he could prove in a court of law. When the issues started, they put a security system on their house, and there is a lot of video tape of the activity. This individual has trespassed onto his property multiple times. He has very violent behavior, and is very aggressive. He has exhibited this behavior in front of his wife and children. They can't even leave their house without being stared at, and the problem is, they are secluded, and it has been like a game to to this individual and his wife. Mr. Skapura stated that they harass them, taunt them and lie about it. The problem is you do exactly what they demand, or they will take issue. He stated that the City has learned a lot about this individual when the sewers were installed on Riverview Road. The Fire Department called the Police on them, and Mr. Skapura was sure that Mayor Hruby knew about this individual, there is a serious situation. In the Police report that they were asked to contribute to, he made it crystal clear to this individual's wife to keep her sick, violent husband away from his family. This is the type of individual they have had to live next to all these years. Mr. Skapura stated that he doesn't know who they think they are, but he has the ability to come over and kill them, and Mr. Skapura stated that he would like that recorded.

Mr. Rose stated that Mr. Opatrny's point, is that a 5 ft. fence isn't going to be much of a deterrent.

Mrs. Skapura spoke to the Board. She stated that her kids are older now, and they are very cautious about crossing the property line, and the arborvitaes provide a barrier. When they were younger and out playing in the yard they would be stared at, and the police said there is nothing they can do about them staring at them. She explained that she felt that a fence will provide some amount of privacy on the property. They sit so far back on the property, there are really no other neighbors around, it is almost desolate back there. She knows a fence doesn't necessarily provide protection from something terrible happening, but it will help with the privacy aspect.

Mr. Skapura showed a document that he has maintained since 2005, with details of every occurrence that they have been through with this individual. In addition, they have documentation they have on file with the Police Department, as well as years of video tape that he has accumulated. He stated he will not be pushed around by people like this.

Mr. Rose opened up questions to the audience. Mrs. Michitsch spoke to the Board. She stated that her understanding was that this was not a forum for what "he said, she said". Mr. Rose stated that was correct. Mrs. Michitsch felt though, that if they got an opportunity to articulate their concerns, so should she. Mr. Rose stated that he will give her the time to respond, but these issues that they are discussing, are not what the Board is reviewing this evening. Mrs. Michitsch felt that almost in a slanderous way, they were being accused of being aggressive and offensive, and that was unbelievable to her. Her husband was initially accosted by Mr. Skapura approximately eight years ago. She stated that ultimately the encounters were so intense, and the profanity on his part was so extraordinary, she said they should just not talk to one another. She went on to state that

two years ago in January, she was walking her dogs on a leash in her back yard on her property, and Mr. Skapura just violently started spewing expletives at her, so if he wants to show police reports, she can show police reports, if he wants to show videos, she can show videos. She stated that this is not what they want; she welcomes a fence, because she is terrified of him. Mrs. Michitsch stated that her husband is an old fashioned man, and when he was encountered by Mr. Skapura, he would never swear. He never once did anything to his children and the neighbors would testify to that. Mr. Rose asked if they object to the fence. Mrs. Michitsch stated that she doesn't object to the fence, but they have concerns. The first is that the regulation states that perimeter fences shall be located within a foot of the property line. She wanted to know what that meant. Mr. Synek stated that generally the Building Department does their best to make sure it is on the property, and that it does not cross the property line. Mrs. Michitsch stated then in that sense, it would necessitate Mr. Skapura being on their property when the construction and maintenance is done. Mr. Synek stated that he could not answer that question. She stated that is a concern, she does not want them on her property because she is terrified of him. Mrs. Michitsch asked if what was submitted was a survey. Mr. Rose stated that it is not a survey; it was just an aerial shot. She asked if he submitted a boundary survey. Mr. Synek stated that at this point in time the Building Department does not have a building permit application, so at that point when the application is submitted, we would require a survey. She asked if we would require a survey by a registered surveyor, not a mortgage survey. Mr. Synek stated that they would have to review the documents; we have a few approved types of mortgage surveys. Mr. Rose explained that the appellants stated they have a surveyed document that they will use. Mr. Michitsch stated that they have yet to see the survey. Mr. Rose explained that the City hasn't even seen it yet; they haven't submitted it to the Building Department. Mrs. Michitsch asked what is to prevent whoever occupies that home in the future to extend that fence. Mr. Rose stated they would need to come back to the Board for a variance. It is unique because of the way the houses are set up, but if they want to change it or extend it they would need to come back to the Board and seek another variance.

Mr. Michitsch stated that he would like to give a little background to all of this. He didn't know if the Board was aware of Jeff Caldwell, the previous owner of Skapura's property. Mr. Michitsch stated they did land grabs on her parent's side of the property. Mr. Michitsch explained he put a factory back there without any permits, and took land as he needed it within the community. He was never stopped, and her parents were too old to go back there. This issue continued with Mr. Skapura, because he didn't want to give up what he thought was the land grabs, and when they had the land surveyed that is what started the whole argument. The trespassing issues slowly got rectified, but it has been painful to get there because every time he went to Mr. Skapura, he would become enraged. He has gotten no help from the City, nothing to rectify this. They have had to hire a lawyer to threaten legal action. He just wants the trespass issues solved. Mrs. Michitsch stated that she believed they wouldn't be here today, and that most of the arguments have escalated due to property dispute issues. Mrs. Michitsch also added that neither she nor her husband is violent.

There was some interaction between the Michitsch's and Skapura's, and Mr. Rose had to remind them that this was not the place for that, he was not a judge and this was not a court. The only thing this Board is here for, is to review the fence. Mrs. Michitsch stated that they have concerns and do not want them on her property during construction. They want a survey done by an actual surveyor. Mr. Rose stated that the Building Department will make sure of it. Mr. Michitsch stated that he resented be called violent, and didn't know what else Mr. Skapura said, because he couldn't hear him.

Motion by Mr. McCrodden, seconded by Mr. Hasman to close Public Hearing.

MOTION CARRIED

**MINUTES OF REGULAR MEETING
BRECKSVILLE BOARD OF ZONING APPEALS
Community Room – Brecksville City Hall
May 12, 2014**

Present: Kathleen Roberts, Carl Opatrny, Robert Hasman,
Kimberly Veras, Bruce McCrodden, Dennis Rose

Absent: Mayor Hruby

Others: Building Inspector Synek, 19 guests

APPROVAL OF THE REGULAR MEETING INUTES OF APRIL 7, 2014

Motion by Mr. Opatrny, seconded by Ms. Roberts to approve the Regular Meeting Minutes of April 7, 2014 as recorded.

ROLL CALL: Ayes: Roberts, Opatrny, Hasman, Veras,
McCrodden, Rose
Nays: None
MOTION CARRIED

APPEAL 2014-20

Motion by Ms. Roberts, seconded by Mr. Opatrny, that the Board of Zoning Appeals recommend to City Council approval for a variance from Section 1151.24 of 1.16 ft. from the required 60 ft. minimum rear yard to allow 58.84 ft. for the construction of a house located at 4730 Valleybrook Drive, PP# 604-02-072.

ROLL CALL: Ayes: Roberts, Opatrny, Hasman, Veras,
McCrodden, Rose
Nays: None
MOTION CARRIED

APPEAL 2014-21

Motion by Mr. Opatrny, seconded by Ms. Roberts, that the Board of Zoning Appeals recommend to City Council approval for (1) a variance from Section 1151.23(a) of ~~31.97~~ 10.38 ft. from the maximum 70 ft. to allow a ~~101.97~~ 80.38 ft. front yard setback and (2) a variance from Section 1151.24 of ~~31.43~~ 13.78 ft from the minimum required 80 ft. to allow a ~~48.57~~ 66.22 ft. rear yard for the construction of a house located at 2625 Hidden Canyon Drive, PP# 605-11-022.

ROLL CALL: Ayes: Roberts, Opatrny, Hasman, Veras,
McCrodden, Rose
Nays: None
MOTION CARRIED

ROLL CALL: Ayes: Hasman, Veras, Rose
Nays: Roberts, Opatrny, McCrodden
MOTION DENIED

(2) a variance from Section 1185.03(a) to allow a fence to extend into the front yard beyond the building setback line of a nonconforming house located at 8517 Riverview Road, PP# 602-29-003.

ROLL CALL: Ayes: Opatrny, Hasman, Veras, McCrodden, Rose
Nays: Ms. Roberts
MOTION CARRIED

REPORT OF COUNCILWOMAN VERAS

Councilwoman Veras reported that City Council approved all the recommended variances from the Board of Zoning Appeals at the April 7, 2014 Council meeting.

REPORT OF MAYOR HRUBY

No Report, the Mayor was not in attendance.

Chairman Rose reminded everyone of Memorial Day and the parade, and any volunteers would be welcomed to carry the flag.

Motion by Mr. Hasman, seconded by Mr. Opatrny to close the Regular Meeting at 8:40 p.m. **MOTION CARRIED**

THE BRECKSVILLE BOARD OF ZONING APPEALS

DENNIS ROSE, CHAIRMAN

KATHLEEN ROBERTS, VICE CHAIRWOMAN

ROBERT HASMAN, SECRETARY

Regular Meeting recorded by Gina Zdanowicz