

**MINUTES OF PUBLIC HEARINGS
BRECKSVILLE BOARD OF ZONING APPEALS
Community Room – Brecksville City Hall
November 10, 2014**

Present: Kathleen Roberts, Carl Opatrny, Robert Hasman, Mayor Hruby,
Kim Veras, Bruce McCrodden, Dennis Rose

Absent: None

Others: Building Inspector Synek, 12 guests

APPEAL 2014-53

Robert & Melissa Schroeter for a variance from Section 1151.26(2) of 9 ft. from the minimum required 10 ft. side yard setback to allow 1 ft. for a replacement storage shed located at 7891 Oakhurst Drive, PP# 602-03-026.

Mr. and Mrs. Schroeter spoke to the Board regarding their appeal. Mr. Schroeter explained that they were trying to determine how old their previous shed was and had determined that it was approximately 11 years old. They submitted pictures to the Board of both the old and new shed that was built in its place. Mr. Schroeter explained that they were going to just make repairs on the old shed, and when he started in on the project, the shed was more dilapidated than he thought and decided to do a complete tear down and build new. Mr. Schroeter stated that he was unaware, at that time, that a permit or variance was needed. He stated that they reviewed the street file in the Building Department and could not find a variance from the original shed when it was built. In talking with his neighbors they all believed that it had to be at least 25 years since the original shed was first constructed. Mr. Schroeter stated that he wanted to improve the shed by replacing what was there, and rebuild it in its original location. The new shed is 10x10 and looks identical to the old style shed, there was no change. He stated that the project was done in late June.

Mr. Rose asked Mr. Synek to display the site plan. Mr. Rose asked the Schroeter's where the site plan originated from. Mr. Schroeter stated that it was obtained from the Building Department. Mr. Rose asked Mr. Synek to verify, and Mr. Synek stated the site plan was obtained from our records. Mr. Schroeter stated that he used the site plan from the Building Department file and drew the shed location on that plan. Mrs. Schroeter wanted to add that their next door neighbor's, the Folkman's sat on their deck the whole time they were building the shed and watched them and never said anything about it, except to ask their son what color the shed would be. They never heard anything until a few weeks ago that someone reported that there was no permit for their shed. Mrs. Schroeter explained that they were at fault for not getting one, but thought that because they were replacing exactly the same thing in the same location they would not need one.

Mr. Rose stated that the Folkman's were unable to attend the meeting this evening, but did submit their concerns in writing to the Board. One of their concerns is the location, being 1 ft. from the property line. The Folkman's feel that it isn't 1 ft. and is encroaching onto their property. Mr. Rose asked if they had discussed that with the Folkman's. Mr. Schroeter stated that when they were installing it, they actually did make a comment about that, and they actually moved it 2 inches, as close as he could on the slab. Mrs. Schroeter stated that they even came over and asked their brother in law if that is where the shed was. They actually had to move it a couple inches to get it level, and the Folkman's commented that it was good they moved it because they would have hated to have them take it down. Mr. Schroeter stated that the original shed would have been encroaching for 25 years. Mr. Rose clarified with Mr. Synek that the Building Department has not made judgment on that, Mr. Synek stated that was correct. Mr. Schroeter said the only thing he did was to make a quick line from the back stake to the front stake.

Mr. Rose opened up questions to the Board. Mr. Opatrny asked Mr. Schroeter why the shed could not be moved. Mr. Schroeter stated that it is because of the grade, that there is a step down, and if moved, it would be on a slope which is not a level area. Mr. Rose asked about moving it sideways. Mrs. Schroeter stated that wasn't good either because it would be too close to another structure.

Mayor Hruby asked Mr. Synek if it was accurate that the shed was built without a permit. Mr. Synek stated that was correct. Mayor Hruby asked if the new shed was brought to our attention by a complaint from the neighbor. Mr. Synek stated that it was. Mr. Schroeter explained that when he first started the project, he was just going to repair a few things on the shed, but then discovered it was beyond repair and took the whole thing down. Mayor Hruby stated that, when people find out what they are doing requires a variance, they should come before the Board before it is built, not after. Mr. Schroeter stated that he understood and they made an error. Mayor Hruby stated that having said that, he wanted to make sure that what he read in the Folkman's letter was accurate.

Mr. Rose asked if the slab was already there. Mr. Schroeter stated that it was. Mr. Rose clarified that they built the new shed on the existing slab. Mr. Schroeter stated that they did.

Ms. Roberts asked the Schroeter's, to describe in their own words, how they would define their hardship. Mr. Schroeter stated that they have money into it already and would hate to move it or tear it down. Mrs. Schroeter stated that the shed would be below grade and they wouldn't know how to move the shed, and it was always there between their properties. Mr. Schroeter stated that in his opinion the shed is not encroaching. Mr. Rose explained to him that the encroachment is not the issue here, the issue is the variance.

Mr. Rose wanted the record to reflect an email that was sent to the Mayor and the Board from Carol and Edward Folkman, 7897 Oakhurst Drive, regarding issues on the

placement of the shed, and asking that a survey be performed if necessary to document their property line. They asked that the appeal be denied.

Mr. Rose opened up questions to the audience.

Mr. Tom Collins, 7879 Oakhurst Drive, spoke to the Board. He stated that he and his wife live two lots down from the Schroeter's. He stated that the shed is a great improvement and the Schroeter's have taken wonderful care of their property. The fact that they decided to replace the deteriorating shed is evidence of the care they take with their property. He stated that he is a little puzzled as to why the Folkman's would complain. The shed was there before they moved in their house. He stated that a few neighbors who were in favor of the shed, put a letter together, and he would like to submit it as part of the record. (Mrs. Lisa Payne, 7885 Oakhurst Drive, Mr. & Mrs. Louis Slavik, 7880 Oakhurst Drive, Mrs. Maureen Michal, 10439 Fitzwater Road, Mr. & Mrs. Jonathan Youssefi, 7872 Oakhurst Drive, Mr. & Mrs. Thomas Collin, 7879 Oakhurst Drive, Mr. Bob Sekerak and Mrs. Marisa Danese, 8886 Oakhurst Drive, Mrs. Florence Campbell, 7908 Oakhurst Drive, and Mr. & Mrs. James Clark, 7990 Oakhurst Drive).

Mr. Rose stated that he did not receive a copy of this letter, but Mayor Hruby did. Mr. Collins asked the Board to grant the variance.

Lisa Payne, 7885 Oakhurst Drive, spoke to the Board. She asked that the Board please read the letter before they make a decision on the variance this evening, because there are extenuating circumstances why all of the neighbors feel the Folkman's objected to it after it was installed, and why it was fine all the years prior. She stated that she has lived in her home since 1990 and the shed was there when she moved in. She stated that there is ill will on the part of the Folkman's in their neighborhood. The Schroeter's replaced a brand new shed in the exact same place where it was for over 25 years and everyone is thrilled with what they have done with the property, and she hoped the Board would take that into consideration.

Motion by Ms. Roberts, seconded by Mayor Hruby to close Public Hearing.

MOTION CARRIED

APPEAL 2014-54

H-M Landscaping, Inc. for Mr. & Mrs. Shaheen for a variance from Section 1151.25(d) of 39 sq. ft. from the maximum allowed 144 sq. ft. to allow 183 sq. ft. for the construction of a pergola located at 4851 Snow Blossom Lane, PP# 604-19-045.

Mr. Mark Barker with H-M Landscaping, Inc., spoke to the Board regarding the Shaheen's appeal. He stated that Mr. and Mrs. Shaheen were interested in expanding and renovating their back yard. They have three boys and would like to utilize it more often. Mr. Barker explained that when he was designing this project, they were looking for the ability to get some partial shade. Their woods are set back and there is no shade where they sit on the patio. With that in mind, he designed the concept of a pergola. The pergola was built to the size that their family of five could use and get a break from the

sun. Mr. Barker stated that they proceeded with the project not knowing it would require a variance.

Mr. Rose asked if he proceeded, not knowing that a permit was needed. Mr. Barker stated that they obtained a permit at the beginning of the project, but not directly when they started. They did obtain a permit once they started breaking ground, but what they didn't know, is that a variance was needed on the pergola.

Mr. Rose asked Mr. Synek if the pergola is measured post to post to determine the square footage. Mr. Synek stated that was correct, from the outside of post to outside of post. Mr. Rose asked Mr. Synek to explain. Mr. Synek stated that the Building Department considers 24 inches of an overhang architectural, and not part of the structure itself. Mr. Rose asked if the permit that was submitted showed the pergola at 183 ft. Mr. Synek stated that technically a permit has not been issued to date. The contractor made an application, but the drawings were rejected, and it took until now to get concrete details of what was being constructed. Mr. Rose clarified that the City was unaware of the size of the pergola. Mr. Barker stated that they submitted an application and are in front of the Board because of that application. Mr. Barker stated that the oversight came from within their office. He explained that the office does all of the permitting. In this particular case the supervisor who looked in the file overlooked pulling the permit. Mr. Barker went on to explain that anyone who visited the property would agree that the pergola is not something that is over the top or stands out. They are just asking for an additional 39 sq. ft. which overall is very small. The code states 144 sq. ft. and when you have an immediate family of five, it just doesn't give you enough room to move around.

Mr. Rose stated that the thing he is struggling with is that he could have built a structure with an overhang, and could have accomplished what he wanted without obtaining a variance. Mr. Barker asked for clarification and Mr. Rose explained that it is where the posts are placed. He would have been allowed an overhang, which would not have been part of the structure. Mr. Rose explained that the posts are what are causing the issue, and had he pulled a permit and submitted drawings, the Building Department could have suggested that and worked with it, but now it is after the fact, which puts the Board in a dilemma. Mr. Rose commented on the fact that he did a nice job, Mayor Hruby agreed.

Mayor Hruby stated that the contractor put the Board in a bad position. What would the Board tell him to do at this point if they don't agree with it, take it down. Mayor Hruby stated that he heard the contractor's explanation, and asked Mr. Barker if he had done work in Brecksville before. Mr. Barker stated that they had, across the street, but this was a misunderstanding. Mayor Hruby questioned the fact that it was a misunderstanding. He stated that if he had worked in the City before, he would have known that he needed a permit, and how could it be a simple misunderstanding. Mr. Barker explained that the office takes care of pulling all the permits, but there was an oversight. Mayor Hruby asked who designed the pergola. Mr. Barker stated that he did. Mayor Hruby asked him if he was aware of what the code was when he designed it. Mr. Barker stated that he was not aware that in Brecksville the pergola would fall under the shed ordinance. He stated that he personally has never built a pergola in Brecksville, but

has designed them in other cities. Mayor Hruby questioned him on how he could design something if he didn't know the code. Mr. Barker stated that most commonly, they are 200 sq. ft., but he did not check.

Mr. Rose asked if the project that he worked on across the street required a permit. Mr. Barker stated he didn't know, it was years ago before he was with the company.

Monica Shaheen, homeowner spoke to the Board. She stated that she felt as though she was in the middle of this situation. They lived in their home with their three boys for ten years, and they are financially at a point where they can upgrade and create something that is comparable with their neighbors. Right next door they have a pool and a beautiful deck, and there are other neighbors where there are pool houses. She is just asking for something to give them some shade, and she would really hate to see it torn down. They are just looking for an area to enjoy with family and friends, and stated it was nothing over the top, it is very subtle. She stated that she contacted her neighbors and no one had any objections to it. She did not know about the variance until a couple of weeks ago, and didn't think of getting letters from the neighbors, but if the Board required it she could. Mr. Rose asked if the Homeowner's Association had said anything to them about it. Mrs. Shaheen stated that they approved it.

Mayor Hruby clarified with Mrs. Shaheen that the questions he was asking were not really for her, but for her contractor, for his future behavior if he was going to do business in Brecksville again. Mayor Hruby stated that he thinks Mr. Barker will remember that he was asked those questions next time he goes to design something in our community. This in no way reflected on her, she just hired a contractor to do the work and this is a result of what happened. Mrs. Shaheen stated that she was very happy with the work that was done.

Ms. Roberts was curious about the background information the Board got from the Building Department on this appeal, and whether it was initiated from a complaint. Mr. Synek stated that it was. Mrs. Shaheen stated that she had no idea there was a complaint. Mr. Barker stated that the complaint came from the Homeowner's Association because they did not have the approval from them, but since then, have obtained it.

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

MOTION CARRIED

APPEAL 2014-55

Randi Lomis for County Line Saloon for (1) a variance from Section 1183.04(c) to allow 9' X 18' parking spaces instead of the required 10' X 20' parking spaces, and (2) a variance from Section 1183.04(c) of 4 ft. from the required 24 ft. drive aisle in a parking lot to permit a 20 ft. drive aisle, and (3) a variance from Section 1183.04(c) of 13.4 ft. from the required 24 ft. drive aisle in a parking lot to permit a 10.6 ft. one way circulation drive aisle, and (4) a variance from Section 1183.05 of 5 parking spaces from the

required 30 spaces to permit 25 spaces, and (5) a variance from Section 1155.32 of 15 ft. from the required 20 ft. parking setback from a collector street to allow a 5 ft. parking lot setback, and (6) a variance from the Section 1119.09(d) requirement that public sidewalks be provided to allow this development without public sidewalks and with the covenant that, at a future date should sidewalks be necessary, that they will be installed at the owner's expense, and (7) a variance from Section 1155.31(d) of 24.9 ft. from the required 40 ft. rear yard to permit a 15.1 ft. rear yard for parking lot improvements located at 13007 Chippewa Road, PP# 602-30-009.

Richard and Randi Lomis spoke to the Board regarding their appeal. Mr. Lomis explained that the ordinance stated that you have to have a hard surface drive to park. The site never had it before and now they would like to work with the City and the Fire Department to do so. They need the variances for the hard surface for parking.

Mr. Rose clarified with Mr. Lomis, that what is driving some of this issue, is the retention pond that is in the back. Mr. Lomis stated that the pond is there because of the hard surface, the water has to go somewhere. Their first plan was to install piping in the ground, but the cost was astronomical. It is a lot easier to move dirt and put in a retention pond then to bury the pipes in the ground. Mr. Rose clarified that they had worked with Planning Commission before, and due to economics did not follow thru and are back again. Mr. Rose asked what the differences were this time from the plan that was submitted in the past. Mr. Lomis explained the differences on the overhead drawing where the parking spaces would have been and the piping would be underground. Mr. Rose stated that the last time there were concerns about run off water, but now, the water will be directed to the pond away from Riverview Road and Chippewa Road. Mr. Rose asked about the parking space sizes and lanes which are now smaller, and asked if they have changed. Mr. Lomis stated that they went from 10x20 to 9x18. Mr. Rose stated that the lanes changed as well, Mr. Lomis stated that was correct.

Mr. Opatrny asked if the landscape plan was approved by Planning Commission. Mr. Lomis stated that he was unsure. Mayor Hruby stated that the overall plan has been approved by Planning, and the landscape plan was part of the submission. Mr. Lomis stated the landscape plan was submitted and everything will be landscaped. Mr. Rose asked Mr. Synek if he had a picture of it. Mr. Synek stated that he did not, but it was one of the contingencies that the City Arborist needed to approve. Mr. Rose asked if it was approved. Mr. Synek stated that he was unsure, but knew that the City Engineer and Arborist would have input in the matter. Mr. Opatrny stated that there is an old rusted metal pole on the south end of the property and wanted to know if it would be removed. Mr. Lomis stated that whoever owned the pole will be removing it at the time of construction, along with the existing meter base and the sign in the front yard.

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

MOTION CARRIED

**MINUTES OF REGULAR MEETING
BRECKSVILLE BOARD OF ZONING APPEALS
Community Room – Brecksville City Hall
November 10, 2014**

Present: Kathleen Roberts, Carl Opatrny, Robert Hasman, Mayor Hruby,
Kim Veras, Bruce McCrodden, Dennis Rose

Absent: None

Others: Building Inspector Synek, 12 guests

APPROVAL OF THE REGULAR MEETING MINUTES OF OCTOBER 13, 2014

Motion by Mr. McCrodden, seconded by Mr. Opatrny to approve the Regular Meeting Minutes of October 13, 2014 as recorded.

ROLL CALL: Ayes: Roberts, Opatrny, Hasman, Hruby, Veras,
McCrodden, Rose

Nays: None

MOTION CARRIED

APPEAL 2014-53

Motion by Ms. Roberts, seconded by Mr. Opatrny, that the Board of Zoning Appeals recommend to City Council approval for a variance from Section 1151.26(2) of 9 ft. from the minimum required 10 ft. side yard setback to allow 1 ft. for a replacement storage shed located at 7891 Oakhurst Drive, PP# 602-03-026.

Before the vote, Mayor Hruby commented that normally when there is an issue of a possible encroachment, the Board would typically say that someone should look at it and see whether or not there actually is, because if we are making it a 9 ft. variance to place the shed at 1 ft. and is the Board really making a 0 lot line or is the Board approving something that is encroaching. Mayor Hruby stated that the Schroeter's neighbor had twenty plus years to do that, and have not, and he wanted to go on record to say why he is personally ignoring this issue, because they had all the opportunity in the world to challenge whether you were encroaching on their property or not and they didn't do that. The Mayor stated that he will disregard that part of the Folkman's letter.

Mr. Rose also wanted to comment that in his view, this is an issue between neighbors, and if they want to do something with it, that is up to them. The Board is granting a variance 1 ft. from the property line which has been represented here. The Board cannot grant an encroachment, and if the Folkman's believe otherwise they will have to do whatever they believe is necessary.

Mayor Hruby stated that it is not the Board's responsibility to determine property rights.

ROLL CALL: Ayes: Roberts, Opatrny, Hasman, Hruby, Veras,
McCrodden, Rose

Nays: None

MOTION CARRIED

APPEAL 2014-54

Motion by Mrs. Veras, seconded by Mr. Opatrny, that the Board of Zoning Appeals recommend to City Council approval for a variance from Section 1151.25(d) of 39 sq. ft. from the maximum allowed 144 sq. ft. to allow 183 sq. ft. for the construction of a pergola located at 4851 Snow Blossom Lane, PP# 604-19-045.

ROLL CALL: Ayes: Roberts, Opatrny, Hasman, Hruby, Veras,
McCrodden, Rose

Nays: None

MOTION CARRIED

Mr. Rose stated after the vote, that this is the Board's recommendation. This was a situation where the homeowner was put in a situation by the contractor. Mr. Rose stated that for him personally, whether it was a clerical error or not on the part of the contractor, it puts the Board in a difficult spot. It is one thing if you are a homeowner and you were not aware that a permit should be pulled, but all contractors should be aware to pull a permit before starting a project like that.

APPEAL 2014-55

Motion by Mr. McCrodden, seconded by Mayor Hruby, that the Board of Zoning Appeals recommend to City Council approval for (1) a variance from Section 1183.04(c) to allow 9' X 18' parking spaces instead of the required 10' X 20' parking spaces, and (2) a variance from Section 1183.04(c) of 4 ft. from the required 24 ft. drive aisle in a parking lot to permit a 20 ft. drive aisle, and (3) a variance from Section 1183.04(c) of 13.4 ft. from the required 24 ft. drive aisle in a parking lot to permit a 10.6 ft. one way circulation drive aisle, and (4) a variance from Section 1183.05 of 5 parking spaces from the required 30 spaces to permit 25 spaces, and (5) a variance from Section 1155.32 of 15 ft. from the required 20 ft. parking setback from a collector street to allow a 5 ft. parking lot setback, and (6) a variance from the Section 1119.09(d) requirement that public sidewalks be provided to allow this development without public sidewalks and with the covenant that, at a future date should sidewalks be necessary, that they will be installed at the owner's expense, and (7) a variance from Section 1155.31(d) of 24.9 ft. from the required 40 ft. rear yard to permit a 15.1 ft. rear yard for parking lot improvements located at 13007 Chippewa Road, PP# 602-30-009.

ROLL CALL: Ayes: Roberts, Opatrny, Hasman, Hruby, Veras,
McCrodden, Rose

Nays: None

MOTION CARRIED

REPORT OF COUNCILWOMAN VERAS

Councilmember Veras stated at the October 21, 2014 City Council meeting, all three appeals were passed.

REPORT OF MAYOR HRUBY

Mayor Hruby reminded everyone that in a few weeks the City will have the Annual Christmas Parade and Tree Lighting on Sunday, November 30, 2014, as well as the Annual Brecksville Children's Christmas Play December 6 and 7, 2014.

Motion by Mr. Opatrny, seconded by Mr. Hasman to close the Regular Meeting at 8:20 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