

**MINUTES OF PUBLIC HEARINGS
BRECKSVILLE BOARD OF ZONING APPEALS
Community Room – Brecksville City Hall
August 11, 2014**

Present: Carl Opatrny, Robert Hasman, Dennis Rose
Kim Veras, Bruce McCrodden

Absent: Mayor Hruby, Kathleen Roberts

Others: Building Inspector Synek, 11 guests

APPEAL 2014-36

William & Marlene Vanderbilt for (1) a variance from Section 1185.03(a) of 2 ft. from the maximum 4 ft. fence height to allow 6 ft., and (2) a variance from Section 1185.02(d) to install solid board and mesh type fences instead of the permitted types of fence located at 7021 Hilton Road, PP# 601-18-023.

Mr. Vanderbilt spoke to the Board regarding their appeal. Mr. Vanderbilt stated that he has lived in Brecksville for 38 years and has a wonderful neighborhood. When they moved in, there were a number of trees, but since then has added to it significantly, and stated that their backyard is quite a palace. Approximately five years ago they noticed that the deer population was expanding and they installed a light plastic fence that was approximately 4 ½ ft. tall around the perimeter of their yard to help keep the deer out. He stated that his wife had a hosta garden that they ate, as well as their arborvitaes. There was quite a bit of damage and they had to replace ten of the arborvitaes. Mr. Vanderbilt explained that what they are trying to do is to retain a perimeter fence for some protection against the deer. On one side they would like to install a solid fence, and on the other side of the yard, they would like to keep the mesh fence. The neighbors they have talked with, except for one, have been very receptive. When they moved in 38 years ago, the greenery was much denser, but over the years it has thinned out and more and more deer are coming in. Mr. Vanderbilt stated that they would like to retain the beauty and value of their house.

Mr. Rose asked why Mr. Vanderbilt was asking for a 6 ft. fence, if the 4 ½ ft. fence that they currently had sufficed. Mr. Vanderbilt stated that the deer are jumping over the 4 ½ ft. fence. He explained that at one time they had an electric wire that they purchased from an Amish company. It was a low voltage shock wire, and it worked very well. Approximately seven or eight years ago, when younger children moved into the neighborhood, they decided to remove it because they felt it wasn't a good idea, but the wire is still there. Mr. Vanderbilt stated that the fence was not the full answer, but that it would be better than no fence. Mr. Rose asked why he wanted to install a solid board fence along one side of their property. Mr. Vanderbilt stated that they were trying to achieve separation from their neighbor, who is not happy with them. The neighbor hasn't spoken to them about that problem, but he has called the Police and the Building

Department about the fence. Apparently he is dissatisfied with the fence, and rather than having a neighbor problem, he would rather do something to solve the problem. Mr. Vanderbilt stated that he has never had a neighbor problem in all the years he has lived there.

Mr. Rose opened up questions to the Board. Mr. Opatrny asked why Mr. Vanderbilt couldn't put up a 6 ft. mesh fence instead of the solid board fence. Mr. Vanderbilt stated that they would like to put the mesh fence up all the way around with the exception of the side with the wood fence. Most of the intrusion is from the west side because the deer come up from the woods and thru their neighbor's yard. Mr. Opatrny asked clarification on where the solid fencing would be placed. Mr. Vanderbilt showed him on the overhead screen and stated you could not see it from the street. Mr. Opatrny clarified with Mr. Vanderbilt that the solid fence is really a neighbor issue, not a deer issue. Mr. Vanderbilt stated that it was a deer issue first. Mr. Opatrny stated that the mesh fence worked for them on the other side. Mrs. Vanderbilt stated that was because there are trees there in the middle. Mr. Vanderbilt stated that there are arborvitaes all thru that area, and ten had to be replaced because of the deer.

Mr. Rose explained that what Mr. Opatrny was referring to, is that Brecksville is not a community where we use fences to solve our problems with our neighbors. Mr. Vanderbilt stated that he understood, and that the fence is for the deer first and foremost, because they are ruining their beautiful yard.

Mr. Rose opened up questions to the audience. Mr. Robert Sabados, 7011 Hilton Road, spoke to the Board. He is the Vanderbilt's neighbor. He stated that he took over his grandmother's house. His biggest concern is that they have a 9 month old child and a 5 year old child, and the Vanderbilt's took the deer's side before the safety of his family. He stated that the mesh fence is 12 inches off the ground and it is staked by conduit bought at Home Depot for electrical. Their landscaper pounded in conduit and zip tied it so tight that when his son, one morning, got underneath the fence, it caught him in the back of the neck. The landscaper also ran a special electrical conduit around the yard, but stated that they told him it would not be hooked up to anything, and that it is there to trip the deer. Mr. Sabados explained that he is concerned with having young children, that there is a possibility that the wire could be live. He saw a deer get stuck in the mesh fence and had to go out and free the deer. Part of the fence is solid wood and part of it is a wire mesh. He would prefer the whole thing to be a wood fence. Mr. Rose asked if his parcel was the combination of the two on the overhead screen. Mr. Sabados stated that was correct. Mr. Rose clarified with Mr. Synek that the fence was installed without a permit. Mr. Synek stated that was correct. Mr. Rose asked Mr. Sabados, that if the mesh fence was installed in a professional, safe manner, would that take care of his concerns and would he then agree to it. Mr. Sabados stated that he felt the mesh fence was an eyesore, and felt that that it should be all wood, and did not have a problem with it being 6 ft. tall. Mr. Sabados explained that if the deer came thru the mesh the first time, they will do it again. It is a safety concern, especially with his children and neighbor's children coming over.

Mr. Rose stated that he appreciated their comments, but Brecksville is not a tall fence community. Mrs. Vanderbilt stated that the fence is on the ground and is 2 ft. from the property line and wondered why someone would go 2 ft. onto their property. Mr. Rose reminded her that it was a five year old child. She also stated that she does not have electrical conduit running throughout her yard. The fence has been there approximately 15 years. Mr. Vanderbilt stated that Mr. Rose inquired about a permit for the fence. He was not aware 15 years ago that he would need a permit for the mesh fence. Mr. Rose explained that he only asked because if you obtain a permit, it should be installed in an appropriate manner according to code. Mr. Vanderbilt stated that he had a professional install it, and deliberately had it set in 2 ft. from the property line so that there would be no issue, and they come out every year to re-adjust it. They intended to go 100 to 150 ft. back with the solid wood fence, not around the entire property because of the expense. Mrs. Vanderbilt stated that she was unaware that her neighbors could choose the type of fence that you have on your property. Mr. Rose stated that the code dictates the type of fence that is installed, not your neighbor, and that is why they needed a variance.

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

MOTION CARRIED

APPEAL 2014-37

David Dross for (1) a variance from Section 1151.25(d) of 176 sq. ft. from the maximum 660 sq. ft. to allow 836 sq. ft., and (2) a variance from Section 1151.26(1) to permit an accessory structure in the side yard instead of the required rear yard for the construction of a detached garage located at 10400 Parkview Road, PP# 605-04-002.

Mr. Dross spoke to the Board regarding his appeal. He explained that with regard to the placement of the garage, he had a company come to look at the property and a location for the installation of the garage and he had too much of a slope in the rear, and he would have to put too much fill there. Mr. Dross went on to explain that at one time there was a barn on the property and it burned down. They suggested the side lot as a better location for it, there is a partial foundation there now. He also cannot move it back further because there are electrical lines running underground. Mr. Rose asked if a topographical survey was submitted. Mr. Synek displayed the site drawing on the overhead screen for the Board to view. Mr. Dross showed the Board on the drawing what he just previously explained. He stated there is a drive going to it right now because he had extended his driveway, and showed the location of the barn that used to be on his property. Mr. Dross explained that the garage will not be seen from the street or really anyone else because there are trees everywhere, even with the 48 ash trees that had to be taken down. He also mentioned that he withdrew his appeal last year for a shed, but that the Building Department considered it a garage, because of the overhead door. He would prefer that it fall under the shed ordinance because then he wouldn't have to worry about a concrete pad or a driveway. Mr. Dross stated that the garage is pole construction. Mr. Rose clarified with Mr. Dross, that the reason for the extra square footage, is because of the lawn equipment and other items that he needs to store. Mr. Dross stated that was correct. Mr. Rose also clarified with Mr. Synek, that if this variance was approved, Mr. Dross could still build a shed on his property in addition to the garage. Mr. Synek stated that

was correct. Mr. Dross stated that he had planned not to park any vehicles in the garage. It is a large yard and he has quite a bit of equipment, i.e., lawn mowers, tractors, etc. Mr. Rose asked Mr. Dross if he had spoken with any of his neighbors. Mr. Dross stated that no one has complained about it.

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

MOTION CARRIED

APPEAL 2014-38

Edmund Arnold for (1) a variance from Section 1151.24 of 2 ft. from the minimum required 25 ft. to allow a 23 ft. front yard setback for an addition and (2) a variance from Section 1151.39 of 2 ft. from the maximum 6 ft. to allow an 8 ft. projection into the front yard for the construction of a porch located at 6848 Daisy Avenue, PP# 601-33-018.

Mr. Arnold spoke to the Board regarding his appeal. He stated that the property is rather unique; there is no street in front of the house. The property line is 55 ft. from the house. He assumed at one point, back in the 1950's, that Daisy Avenue would have run straight thru. Since then, Brecksville West Condominiums and Chaffee Courts have been built, so he can't imagine that it would ever run thru. Mr. Arnold proceeded to explain the location of the property line on the overhead drawing, as well as the driveway and easement. Mr. Arnold explained that he moved here in 2000, and has since improved the value of his property quite a bit. Mr. Arnold stated that with regards to the second variance, the projection will only be 6 ft. which is allowed, so the second variance would not be needed. Mr. Rose clarified with Mr. Synek that a 6 ft. projection for a porch, is within code. Mr. Synek stated yes, but that he would still need the second variance, because the house is encroaching 2 ft. into the front yard, so that would subtract 2 ft. of the allowable footage of the porch. Mr. Rose asked if he had spoken to his neighbors regarding his project. Mr. Arnold stated that he had and no one really had much to say.

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

MOTION CARRIED

APPEAL 2014-39 – WITHDRAWN

Linda Roether for a variance from Section 1185.03(a) to permit a fence in the front yard as shown on the submitted drawings instead of the permitted rear or side yards located at 11200 Fitzwater Road, PP# 602-03-001.

APPEAL 2014-40

Pulte Homes of Ohio, LLC. for (1) a variance from Section 1181.11(a) of 1 ft. 1 inch from the overall maximum allowed height of 40 ft, to allow 41 ft. 1 inch, and (2) a variance from Section 1181.11(a) of 3 ft. 1 inch from the maximum building height of 30 ft, to allow 33 ft. 1 inch, and (3) a variance from Section 1181.11(a) maximum roof area over 30 ft is limited to 20% of ground floor, to allow 50% for the construction of a new house located at 10201 Woodlands Drive, PP# 605-22-012.

Mr. Keith Filipkowski spoke to the Board regarding their appeal. He explained that this is the first home in the Woodlands Subdivision, which will be their model home. They have exceeded the height criteria, because this lot will have a partial walk out basement. Most of the side and rear of the home where the terrain drops led to the height variance. Their hardship is that the terrain is not allowing them to comply with the code. Mr. Rose clarified with Mr. Synek that some of this is caused by the slope of the property. Mr. Synek stated most definitely, it is due to the walk out basement. Mr. Rose asked if the last variance is caused by slope as well. Mr. Synek stated that the variances are all dependant upon one another. Mr. Rose clarified with Mr. Filipkowski that if the terrain was flat it would be different. Mr. Filipkowski stated that if the terrain was flat they would be code compliant.

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
August 11, 2014**

Present: Carl Opatrny, Robert Hasman, Dennis Rose
Kim Veras, Bruce McCrodden

Absent: Mayor Hruby, Kathleen Roberts

Others: Building Inspector Synek, 11 guests

APPROVAL OF THE REGULAR MEETING MINUTES OF JULY 7, 2014

Motion by Mr. Opatrny, seconded by Mr. Hasman to approve the Regular Meeting Minutes of July 7, 2014 as recorded.

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

Before the vote, Mr. Rose explained that there are only five members and the appellants need 4 votes in order for their appeal to pass and to be recommended to City Council. He explained that they do have the option to table their appeals until next month. Before the vote for each appeal, Mr. Rose gave each appellant the option to table until the September meeting. All appellants went forward with the vote.

APPEAL 2014-36

Motion by Mr. Opatrny, seconded by Mr. Hasman, that the Board of Zoning Appeals Recommend to City Council approval for (1) a variance from Section 1185.03(a) of 2 ft. from the maximum 4 ft. fence height to allow 6 ft., and (2) a variance from Section 1185.02(d) to install solid board and mesh type fences instead of the permitted types of fence located at 7021 Hilton Road, PP# 601-18-023.

ROLL CALL: Ayes: None
Nays: Opatrny, Hasman, Veras, Rose
Recuse: McCrodden
MOTION DENIED

APPEAL 2014-37

Before the vote Mr. Dross asked if the appeal could be voted on as a shed instead of a garage. Mr. Rose explained that it could not be a 660 ft. shed, that is a different variance

and discussion. He asked Mr. Dross if he would like to vote individually on each appeal. Mr. Dross stated that he would.

Motion by Mr. McCrodden seconded by Mr. Opatrny, that the Board of Zoning Appeals recommend to City Council approval for (1) a variance from Section 1151.25(d) of 176 sq. ft. from the maximum 660 sq. ft. to allow 836 sq. ft.

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

(2) a variance from Section 1151.26(1) to permit an accessory structure in the side yard instead of the required rear yard for the construction of a detached garage located at 10400 Parkview Road, PP# 605-04-002.

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

APPEAL 2014-38

Motion by Mr. Hasman, seconded by Mr. Opatrny, that the Board of Zoning Appeals recommend to City Council approval for (1) a variance from Section 1151.24 of 2 ft. from the minimum required 25 ft. to allow a 23 ft. front yard setback for an addition and (2) a variance from Section 1151.39 of 2 ft. from the maximum 6 ft. to allow an 8 ft. projection into the front yard for the construction of a porch located at 6848 Daisy Avenue, PP# 601-33-018.

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

APPEAL 2014-40

Motion by Mr. Hasman, seconded by Mr. Opatrny, that the Board of Zoning Appeals recommend to City Council approval for (1) a variance from Section 1181.11(a) of 1 ft. 1 inch from the overall maximum allowed height of 40 ft, to allow 41 ft. 1 inch, and (2) a variance from Section 1181.11(a) of 3 ft. 1 inch from the maximum building height of 30 ft, to allow 33 ft. 1 inch, and (3) a variance from Section 1181.11(a) maximum roof area over 30 ft is limited to 20% of ground floor, to allow 50% for the construction of a new house located at 10201 Woodlands Drive, PP# 605-22-012.

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

REPORT OF COUNCILWOMAN VERAS

Councilwoman Veras reported that City Council approved all five appeals at the July 15, 2014 Council Meeting. She also reported that at the August 5, 2014 meeting, Council discussed the issue of the size of sheds currently allowed by code, and concluded that at this time, each individual request for a variance would continue to be the best course of action, particularly since the issue is relatively infrequent.

REPORT OF MAYOR HRUBY

No Report, the Mayor was not in attendance.

Motion by Mr. McCrodden, seconded by Mr. Hasman to close the Regular Meeting
At 8:15 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