Board of Zoning Appeals

Public Hearing
Minutes
August 7, 2017

Chairman Stanard called the Board of Zoning Appeals meeting to order at 6:05 pm.

PRESENT AT ROLL CALL: Mr. Buczek, Mrs. Cooper, Mr. Pogatschnik, Mayor Renda, Mr. Stanard
ABSENT: Mr. Bolek

OTHERS PRESENT: Jeffrey Filarski, Village Engineer; Aimee Lane, Law Director; Paul Kowalczyk, Building Official; Theresa Dean, Assistant Clerk

Mrs. Lane administered the oath to anyone wishing to speak at this evening's meeting.

Mr. Buczek made a motion seconded by Mayor Renda to approve the minutes from the July 10, 2017 Board of Zoning Appeals meeting.

ROLL CALL:
AYES: Mr. Buczek, Mrs. Cooper, Mr. Pogatschnik, Mayor Renda, Mr. Stanard
NAYES: None
MOTION CARRIED

Rule-Hoffman Residence - Area Variance, Pool

36960 Chagrin Boulevard

Mr. Stanard opened the Public Hearing at 6:08 pm.

Mr. Rule-Hoffman was in attendance to present his project. He was requesting a variance from Sections 1151.07(f)(2) and 1323.03 for 5.03' side-yard setback variance from each side-yard property line to allow installation of a 12' by 28' lap pool.

Mr. Stanard asked Mr. Rule-Hoffman to confirm that this is same pool for which a variance request was previously granted in 2016. Mr. Rule-Hoffman said that it is, and it requires the 5.03' variance on both the east and west property lines. He was unaware that there was a time limit on variance approvals and did not pull his permit soon enough. He confirmed to Mr. Stanard that there have been no changes to the plan that was previously approved.

As no one in the audience wished to comment, the Public Hearing was closed at 6:10 pm.

Mrs. Lane reviewed the Findings of Fact: Richard Rule-Hoffman at 36960 Chagrin Boulevard is seeking two side-yard setback variances of 5.03' each from the east and west property lines to construct a pool in the rear yard. Mrs. Lane called the Board's attention to Mr. Rule-Hoffman's application (Appendix A) showing that the applicant has demonstrated practical difficulty in support of the variance request.

Mrs. Cooper made a motion seconded by Mr. Buczek to approve the Findings of Fact.

ROLL CALL:
AYES: Mr. Buczek, Mrs. Cooper, Mr. Pogatschnik, Mayor Renda, Mr. Stanard
NAYES: None
MOTION CARRIED

Mrs. Cooper made a motion seconded by Mayor Renda to approve the variance request at 36960 Chagrin Boulevard.

ROLL CALL:
AYES: Mr. Buczek, Mrs. Cooper, Mr. Pogatschnik, Mayor Renda, Mr. Stanard
NAYES: None
MOTION CARRIED

Lund Residence - Fence Variances

90 Meadowhill Lane

Mr. Stanard reported that the Lunds are seeking two area variances, from Sections 1151.13(p)(2) and 1345.02 to permit a six-foot (6') high, board-on-board privacy fence that would consist of less than 50 percent open space in their rear yard.

Mr. Stanard declared the Public Hearing open at 6:13 pm.

Dr. Lund said that she and her husband bought their property with the intention of having enough space to build a fence adequate for their dogs. They have three Jack Russell terriers; one of which can easily jump five feet into the air and climb an additional two feet. She referenced a packet of information provided to the Planning Commission about the Jack Russell breed. They have so far had to walk the dogs separately, but the dogs can be difficult to control due to their intense personalities and hunting instinct.

The Lunds wish to install a fence that is sufficient to contain the dogs and have selected a wooden board-on-board fence, which they feel is more elegant than other options. They consulted with ACME Fence Company, which suggested using a white vinyl fence that extended into the ground to prevent the dogs from digging under the fence; however, Dr. Lund felt that would be an eyesore. They have chosen a cedar, board-on-board fence rather than a solid privacy fence to eliminate potential horizontal footholds that the dogs could use for climbing. The proposed fence would be located behind the house

and not be visible from the road. Dr. Lund referenced a diagram showing the proposed location of the fence as well as a photo from ACME's brochure showing the style of fence. The fence is 25 percent open; when viewed from most angles, it offers some visibility into the yard.

Dr. Lund said she feels the board-on-board fence will reduce the likelihood of the dogs becoming too excited and either barking and disturbing the neighbors or attempting to get out. She added that, with her long work hours, it leaves her husband to walk the dogs, which is extremely difficult due to his movement disorder. She said he has fallen several times when walking one of the dogs.

Dr. Lund concluded by saying that they bought their home in January and moved in in February, which was before the ordinance prohibiting privacy fences in rear yards was passed.

Deborah Kidd, the neighbor at 80 Meadowhill Lane, was in attendance and stated that she and her husband bought their property two years ago. They are opposed to both the density and height of the proposed fence at 90 Meadowhill. They feel it is uncharacteristic for the neighborhood, which currently has no such fences. Mrs. Kidd said that other neighbors have dogs, including Jack Russells, and that other options such as a decorative iron fence should be explored. She also feels that a nearly 90-foot long fence that is highly visible from her property would negatively impact their quality of life. Currently, their view is park-like and tranquil; Mrs. Kidd circulated a picture taken from their back-porch and pointed out where the proposed fence would be located. She also referenced the recent resident surveys taken as part of the Comprehensive Land Use Plan process in which most residents cited open space, trees, and scenic views as being extremely important.

Mrs. Kidd went on to say that she was not under the impression that the proposed fence was 25 percent open based on its description. She felt that, given the length and height of the proposed fence, landscaping to block the view of the fence would very difficult. Mrs. Kidd added that that cedar wood greys over time, to which Dr. Lund replied that it would be treated and maintained, and that their other option was to choose white vinyl. She said they got the best quality fence they could and have a recommendation from ACME as to what treatment to use to prevent the wood from weathering. Mrs. Kidd suggested moving the fence over, but Dr. Lund replied that doing so would not fit the design of the house.

Mrs. Kidd said that she and her husband intend to retire in their home, so any fence is something they will be looking at for the next 20 to 30 years. She asked the Board if it was possible to continue this matter while more information was gathered.

Mr. Stanard declared the public hearing closed at 6:27 pm. He then said that, as a matter of procedure, if the Board of Zoning Appeals votes against a variance request, the applicant cannot bring that same application back in the future. However, if the applicant decides to delay the vote to the next meeting, it gives them an opportunity to work with their neighbors to hopefully reach some compromise on a modified design that the Board would be more likely to approve. Mr. Stanard also clarified that, regardless of the materials chosen for a fence, the same height and percent open requirements would apply.

Dr. Lund said she would be unable to attend the September 11 meeting due to her work schedule.

Mr. Kidd, who was also in attendance, asked if they would need to come back for a future Hearing if a compromise was reached. Mr. Stanard answered that another Hearing would be required if a variance was needed; however, if the fence meets both the height and percentage open requirement of the code, it could be permitted directly through the Building Department without BZA review. Mr. Stanard also acknowledged that a board-on-board fence is partially open, but Mr. Kowalczyk said that the view to be considered is when viewing the fence from 90 degrees.

Mrs. Cooper asked Dr. Lund if they have considered a picket fence, but she said that the dogs can squeeze through very small spaces. Mrs. Cooper asked how she would prevent them from escaping by digging. Dr. Lunch replied that she feels it is easier to prevent them from digging than from jumping. Someone would be in the yard with them at all times, so they could stop any digging quickly.

Mayor Renda asked if they have considered an invisible fence. Dr. Lund replied that the literature they've reviewed shows that a Jack Russell's hunting instinct is too strong and that invisible fences do not work. She reviewed some of the training attempts they have used with one of her dogs to no avail, including the use of an electronic collar. Mayor Renda suggested a combination of an invisible fence with a five-foot tall fence, but Dr. Lund feels her dog would "take the hit" and keep going. Mrs. Kidd again suggested the type of iron fencing used around pools, but Dr. Lund believes it would be too open.

Mr. Stanard stated that he had empathy for the Lund's issue but, as Chair of the Board of Zoning Appeals, is also highly respectful of neighbor's opinions and wishes to see all parties merge their interests whenever possible. He said he was advocating for both parties to take another look to see if there are other options that would result in finding middle ground.

Mrs. Cooper said it would be helpful to see actual samples of fencing materials.

Mr. Stanard asked if the Board could entertain a motion to continue. Mrs. Lane said that a motion to continue is to a date certain, and Dr. Lund will not be able to attend in September. Mrs. Lane recommended continuing to the October 2, 2017 meeting.

Mr. Kidd said that he and his wife want to be accommodating but that the fence will run along the majority of their yard and visually "be as much ours as hers." He would like to look at fence options with Dr. Lund before the next meeting and see what they can agree upon, as he would like to not come back for another meeting. Mr. Stanard said that the Kidd's attendance would not be mandatory and that any statement could be made in writing.

Mayor Renda made a motion seconded by Mr. Pogatschnik to continue the matter of the area variance at 90 Meadowhill Lane to the Board of Zoning Appeals meeting on October 2, 2017.

ROLL CALL:
AYES: Mr. Buczek, Mrs. Cooper, Mr. Pogatschnik, Mayor Renda, Mr. Stanard
NAYES: None
MOTION CARRIED

As there were no further items for discussion, Mr. Pogatschnik made a motion seconded by Mayor Renda to adjourn the Board of Zoning Appeals meeting at 6:44 pm.

ROLL CALL:
AYES: Mr. Buczek, Mrs. Cooper, Mr. Pogatschnik, Mayor Renda, Mr. Stanard
NAYES: None
MOTION CARRIED

Respectfully submitted,

Theresa Dean

Theresa Dean, Assistant Clerk

Board of Zoning Appeals
Area Variance Application Supplemental Information

Application for property located at: 36960 Chagrin Blvd. (East)

Variances from the terms of the Code shall not be granted by the Board of Zoning Appeals unless the "*evidence demonstrates that the literal enforcement of this Planning and Zoning Code will result in practical difficulty.*"

In determining "practical difficulty", the Board of Zoning Appeals will consider the following factors:

1. Do special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable generally to other lands or structures in the same zoning district? The lot is very narrow, measuring 61.94ft. wide by 89.73ft long. These are the backyard dimensions.
2. Will the property in question yield a reasonable return or can there be any beneficial use of the property without the variance? With the addition of a pool, the property in the future is anticipated to yield a more than reasonable return.
3. Is the variance substantial and is it the minimum necessary to make possible the reasonable use of the land or structures? The variance is the minimum deemed necessary to make the addition of a pool reasonably possible.
4. Would the essential character of the neighborhood be substantially altered or would adjoining properties suffer substantial detriment as a result of the variance? The variance is reasonable enough to not be a detriment to adjoining properties. The pool would be 24.97ft from both the east and west property lines.
5. Would the variance adversely affect the delivery of governmental services, such as water, sewer, or trash pickup? The variance is for the rear of the house, thus not affecting any of the above mentioned services.
6. Did the property owner purchase the property with knowledge of the zoning restrictions? It was known that only an in-ground pool was permited as opposed to an above ground pool.
7. Do special conditions or circumstances exist as a result of the actions of the owner? The pool design has been modified to meet the previous suggestions of the zoning board.
8. Can the property owner's predicament feasibly be obviated through some method other than a variance? No, the predicament of the property owner can only be obviated by a variance.
9. Would the spirit and intent behind the zoning requirement be observed and substantial justice done by granting a variance? Yes, substantial justice would be observed by granting this reasonable variance. Note that the ends of the pool would be 30ft from the south property line & 30ft from the rear of the house.
10. Will the granting of the variance requested confer on the applicant any special privilege that is denied by this regulation to other lands, structures, or buildings in the same district: No special privileges would be gleaned to the property owner by granting this reasonable variance.
11. Would a literal interpretation of the provision of this Code deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Code? Yes, a literal interpretation of the zoning code would deprive this applicant of rights commonly enjoyed by other pool owners in the Village.

Signature Richard C. Rude-Hoffman Date 17 July '17