

Board of Zoning Appeals
Public Hearing Meeting
September 28, 2015
Minutes

The Regular BZA Meeting was called to order by Chairman Stanard at 6:03pm.

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

Others Present: Rick Loconti, Building Commissioner, Aimee Lane, Assistant Law Director, Sherri Arrietta, Clerk of Council

Mrs. Cooper made a motion seconded by Mr. Fritz to approve the minutes from the Regular BZA Meeting of August 24, 2015.

ROLL CALL:

AYES: Mr. Bolek, Mrs. Cooper, Mr. Fritz, Mr. Pogatschnik, Mr. Stanard,

NAYS: None

ABSTENTIONS: Mayor Renda

MOTION CARRIED

At this time, Mrs. Lane administered the oath to those who wanted to speak at either hearing this evening. Chairman Stanard declared the public hearing open at 6:07 pm.

Richard Rule-Hoffman

36960 Chagrin Blvd.

Area Variance(s) –

(2) Side Yard Setbacks (pool)

Fence Height Variance

Mr. Richard Rule-Hoffman, homeowner, and Al Gulliford, builder, were present at the meeting. Mr. Gulliford stated that he was contracted to a build custom round 24-foot pool in the rear yard. He stated that he read the codes wrong and apologized for that. He thought that only a 10-foot set back was required as opposed to a 35-foot set back. He further stated that the yard where the pool is going in is only 64 feet wide. Mr. Rule-Hoffman needs a variance of 5 feet on one side

and 17 feet on the other side. He would also like a 6-foot fence, for privacy. Mrs. Lane stated that it is her interpretation that a 1-foot variance will be required because 5-foot fences are allowed in the rear yard. Mr. Loconti clarified that the fence will run the entire length of the property and the requirement for side yard fences is 4 feet so a two-foot variance would be required on both sides. Mr. Rule-Hoffman would like the fence to be same height in the rear and on the sides.

Mr. Stanard pointed out a discrepancy between the application and Mr. Gulliford's statement that the lot is 64 feet wide. The application states that the property is 67 feet wide. Mr. Gulliford stated that originally they were guessing at property lines but they have been marked today at the request of neighbors.

No one present indicated that they wished to speak regarding the requested area and/or height variances. Chairman Stanard declared the public hearing closed at 6:11 pm.

Chairman Stanard stated that Ms. Lane indicated that the BZA members can discuss the items collectively and make one motion on all three items.

Mr. Fritz asked about the lack of permits and approvals being obtained before construction had begun. Mr. Loconti stated that the first the Building Department knew that there was going to be a pool built was when the electrical contractor requested an inspection. He went out to inspect and found that the pool was half way built. Since there were no permits or approvals, he issued a stop work order on the job. Mrs. Cooper asked when that occurred and Mr. Loconti replied that it was about a month ago. She pointed out that the pool was on the agenda for last month's meeting but no one showed up to present the project or answer questions. Mr. Loconti stated that the following day the electrical contractor called for the inspection. Mr. Fritz stated that in the previous requests for variances and the home design process, BZA and Planning Commission members worked well with the owner. The result was an improved design with limited variances. The fact that this project moved forward without any approvals and in the absence of any discussion is very disappointing.

Mr. Stanard stated that the contractor has done this type of work before and should have known there were approvals needed. He also stated that the chapter on pools in the village's ordinances was written in 1968 so it should not have come as a surprise to anyone. Mr. Gulliford stated that there was an application for a permit on file, he was out of town and did not know that his employees started the job, and, furthermore, he takes full responsibility. He is now trying to

make it right. He has been doing pools for 21 years and has never been involved in a situation like this before.

Mr. Bolek asked how much of the work has been completed. Mr. Gulliford replied that the hole is dug and the framing for the pool was installed and bonded. Mr. Bolek asked him to describe the pool. Mr. Gulliford stated that it is a 24-foot custom pool with a carbon fiber wall, with an 18-inch concrete barrier around it. The electrician bonds the pool and he had called for a bonding inspection before the pool was backfilled.

Mr. Stanard read from Chapter 1323 "Swimming Pools" from 1968: "Every pool hereafter built must be so located upon a lot or parcel as to allow a safe distance between the pool and the property lines so that children can be readily observed while approaching or in the vicinity of the pool. A distance of 30 feet from each property side line and rear line of a lot to which the pool is an accessory shall be presumed to be a minimum safe distance for such purpose." Thus the 30-foot rule has been on the books in Moreland Hills since 1968.

Mrs. Cooper stated that she is bothered that the work started before the appropriate approvals were obtained. However she is more concerned that this location is nowhere near a 30 foot setback. She stated that the village has determined that 30 feet is a safe setback and thus this is not a safe location. The safety issue is more of a concern to her than how the project was started. Perhaps the pool could have been rectangular which would have required a smaller setback but this group never had the opportunity to have that conversation. Mr. Gulliford stated that Mr. Rule-Hoffman's narrow lot does not allow for 30-foot setbacks. He stated that Mr. Rule-Hoffman does not have small children and the landscape plan dictated that the pool be placed where they put it. Furthermore the yard will be totally fenced in.

Mr. Stanard stated that we are here for perpetuity; future owners may or may not have small children. He stated that we rely on ordinances that have been in existence for years. He asked whether the fence height is a function of the fact that the pool cannot have adequate setbacks; in other words is it a safety consideration. Mr. Rule-Hoffman stated the height is more for safety because of the narrowness of the lot. Mr. Stanard explained that if there were a negative vote on this application, this same variance request could not be presented to the BZA again.

Mrs. Lane asked Mr. Rule-Hoffman to describe the landscaping plan. He first stated that it was his assumption that all permits were pulled before the project started; he would not have gone forward otherwise. To make full function of the space, the designer did not want to put the pool

in the middle of the yard. Mr. Bolek stated that there is no way any pool would fit in this backyard. He stated that there was a lot of discussion about how to make a house fit. He does not remember the pool being indicated at all. Mayor Renda asked if they had a discussion about the pool. Mr. Rule-Hoffman stated that a pool was indicated on the original drawing but there was no discussion. Mrs. Cooper remembers that he had asked about an above ground pool which is not allowed. That was the extent of the conversation. Mr. Pogatschnik asked if he would consider a different shape. Mr. Rule-Hoffman stated that aesthetically and functionally he prefers a round pool.

Mrs. Lane stated that according to the plan it does appear that the fence would exclusively enclose the entire rear yard. Mr. Rule-Hoffman stated that it would and will have two gates. He further stated he could not just put the fence around the pool because of the small area. Mr. Stanard stated that Pogatschnik was suggesting if Mr. Rule-Hoffman were willing to adjust the size or shape of the pool that the size of the variance could be reduced. Mr. Fritz reminded the board that modifications were made with the house and the process worked to make it a better project. He stated that if the project had been presented before construction had begun, the board could have made suggestions and worked with him to lessen the variances. The process that we already utilized on this property was not used in this instance.

Mrs. Cooper asked about the benefit of a round pool. She suggested he could have more length and smaller variances with a rectangular pool. Mr. Rule-Hoffman stated that a rectangular pool will take up too much space, and laps can be done in a circular pool. Mr. Fritz asked about hardships. Mr. Rule-Hoffman stated that the use of the property in the back would be a detriment. He stated that it is important to have it in the right spot to make full use of the property. He is trying to maximize the use and functionality. Mr. Pogatschnik stated he likes the pool, landscaping design, and overall layout. Mr. Rule-Hoffman reworked the house and the commission should take that into consideration.

Mr. Bolek stated that pool in middle of yard may be a good concept but until Mr. Rule-Hoffman does the exercise and looks at other possibilities we will not know if a design with a need for a smaller variance works. Mr. Bolek further stated that he cannot find a way to say yes without Mr. Rule-Hoffman doing due diligence to find a way to lessen the variance. Mr. Pogatschnik asked if he had other landscape designs with him. Mr. Rule-Hoffman state that he did not and that when they went with H&M, they liked the design that was provided.

Mr. Loconti stated that the homeowner to the east who would be most closely affected by the pool (the side with the 17-foot variance) stated that she has no problem with project as its shown.

Mr. Stanard asked Mrs. Lane if she would like to read the findings of fact. Mrs. Lane explained that she could do that but wanted to make it clear to the applicant that if the variance is denied, Mr. Rule-Hoffman could not come back with a similar design. She explained to him that this is the same position he was in with house, and at that time he decided to pull the project from consideration and reconfigure it. She stated that she can move forward with the next step if that is what the applicant wants. Mr. Gulliford stated that they may pull the project but it is his contention that the Village should look at its ordinance from 1968 and update it in light of the smaller lots that exist in the village.

Mr. Bolek stated that this board is not looking to penalize Mr. Rule-Hoffman. Alternate plans should be considered. He also stated that this is an usually small lot which is not indicative of the community as a whole. Mr. Bolek would not criticize the ordinance as it works well for 2 acre lots which are the norm in the village. Furthermore, this property was purchased with the understanding that it would present particular problems because of it being an unusually small lot. Mr. Rule-Hoffman reiterated that he wants a round pool and does not want a smaller pool. He is willing to listen to suggestions but he wants a 24-foot round pool. Mr. Pogatschnik suggested moving the sunbathing area. Mayor Renda suggested to Mr. Rule-Hoffman that he needs to look at placement options and size options to be able to ask for the least possible variance. She also stated that variances are based on hardship and he needs to be able to make an argument for hardship. She stated that Mr. Rule-Hoffman bought his lot knowing that it was a very narrow lot and that most lots in Moreland Hills are two acre lots. Thus he knew he would face difficult challenges. She suggested that he needs to compromise and then the board would compromise as well. Mr. Rule-Hoffman stated he wants to work with the board.

Mr. Rule-Hoffman decided to pull the item and re-work it. He will come back with some different ideas. Mr. Loconti would like an accurate site plan that shows the real width of the lot because he has heard 3 different numbers. Mr. Guilliford stated that they would submit and accurate plan.

Chairman Stanard declared the public hearing open at 6:44 pm.

Graffy Residence

32700 Jackson Road

Area Variance:

Front Driveway Gate

Mr. James Capwill, project manager, was present at the meeting. He stated that this residence was named among the top 25 private estates by the Wall Street Journal. It was formerly known as the Kraftmaid Estate. The owners budgeted \$418,000 to refurbish the property. So far they have put a million and half dollars into the project. They have done a lot of work on the outside as can be seen from Jackson Road. The estate was in a state of disrepair for about eight years. The previous owners tried unsuccessfully to sell it at auction on two different occasions. It is a very large house and Mr. Capwill stated that Mr. Graffy does not do anything half way. He stated that he only wants feedback this evening, not necessarily a decision. He stated that it is a very costly project and he wants to spend money wisely so he wants to get feedback from the BZA before getting too far into the project.

Mr. Capwill stated they have had some security problems at the site. Because it has been advertised nationwide, people from all over come onto the property to see it. He has found people in the house during the day; however, the driveway is the bigger problem. People drive in at all hours of the day and night and also use it to turn around. Mr. Capwill stated that he blocks the driveway with his personal car to keep people out when he is there. They have considered taking out one of the driveways altogether. Mr. Capwill stated that they are proposing a gate of some sort; it may be manual or electric, they are unsure at this time. As long as it keeps vehicles from turning around, height does not matter. He suggested they will probably have brick walls on both sides; they want to hide the fence with natural landscaping. He stated the situation at their residence is unique in that they have two driveways. He spoke with Chagrin Falls fire and the Police; they do not object to a gate as they will be able to get in if necessary.

Mr. Capwill stated one driveway would be accessible at all times and it will be plowed because it is shared with the Sutton property. He already has electric and water at the project site, it is just a matter of design and approval.

Mr. Stanard stated that the Sections of code that the applicant is asking for a variance from are 1151.13p6c and 1345.03a3c both of which clearly prohibit gates across driveways.

Chairman Stanard asked if anyone present in the audience would care to comment. No one responded. Chairman Stanard declared the public hearing closed at 6:51pm.

Mr. Capwill then handed out pictures of the driveway that needs to be fixed and/or closed off. He stated that there is about a 400-foot span between the two driveways.

Mr. Stanard gave history on the driveway gate prohibition. There is a long history in the village of prohibition of driveway gates. In 2012 the zoning code was rewritten and the prohibition was omitted inadvertently so Council took it upon themselves to insert it back into the code in 2013. It reads "No fence or gate shall extend across any portion of a driveway." (Chapter 1151). In Chapter 1345 the code states, "No gates shall be permitted." Mr. Stanard stated that gates are clearly prohibited and in driving through the village you notice an absence of gates.

Mr. Bolek stated that the construction activity may have encouraged sightseers. He also stated that if there were a record of any issues, that may help support the hardship argument. In absence of that, he suggested lighting and cameras to discourage trespassing. Mr. Capwill stated that all that technology currently exists but it still does not stop trespassers from driving into the driveway. Furthermore, the property does not look like a construction site now.

Mayor Renda stated that the recent publicity surrounding the sale of the house has brought attention and once it fades there will be less intrusive traffic. There are many other very wealthy and prominent people in Moreland Hills who do not have driveway gates. Granting a variance in this instance would most likely open a flood gate of requests, especially from the residents who were told no previously. Mr. Capwill asked if it would help if the gate were further from the road. Mayor Renda replied that the BZA members had recently had a conversation around that concept. Whether it can be seen or not, the gate is still there and still creates precedent. Mr. Capwill stated that the Police Department told him the driveway gate prohibition was a safety measure to allow 24-hour access to residents' property. He stated that he had two driveways so that the safety issue does not apply to him. Mr. Capwill said that they are planning to make one driveway the grand entrance and that it will be hard for passers-by to know that the driveway goes up to the house. Mayor Renda suggested that perhaps they could stop the trespassers by making those suggested modifications and taking out the other driveway altogether. Mr. Stanard stated that the safety issue is not the only issue. Mrs. Lane stated that there are codes for safety forces so that they can access a property even if there is a driveway gate, so safety is not the primary issue. Mr. Stanard agreed with the mayor and stated that if the driveway were hidden and the other driveway were removed, it would be much less inviting for people to use the drives inappropriately.

Mr. Fritz stated that we denied a very famous Cleveland Indian's request for a gate. As a career firefighter he agrees that safety is not the only issue; however, in the case of an emergency the more access the better especially since the square footage of this house is like a small mall. But safety is not the only reason for the prohibition of gates, aesthetics is important too. Moreland Hills is just not a gated community. Mr. Capwill stated that he too, likes the suggestion of going with the one driveway, removing the other and creating a turnaround at the house.

Mr. Capwill asked that the BZA pull this item from the agenda so the owner can review his options.

Chairman Stanard declared the public hearing open at 7:04pm.

Adams Residence

200 Glen Road

Area Variance(s)

Front Yard Setback

Front Garage/Pool Equipment Building

Side Yard Swimming Pool

Mr. Richard Siegfried with RSA Architects and Mr. Bret Adams, homeowner, were present at the meeting. Mr. Siegfried stated the house is located on a steeply sloping site. The lot is three acres, but there is no other spot for the pool because of the steep slopes in the rear of the house. They are asking for a variance for a side yard swimming pool and a third garage bay which will infringe on the front yard. Also the pool equipment building will infringe on the front yard. Mr. Siegfried pointed out that they have a letter from Jeff Filarski, Village Engineer, stating that there is no other place to put the pool. The pool is designed to be screened by the garage from the road. There is already a non-conforming use on the property in that the existing garage is in front of the house. The pool does conform to the side yard setback. The residence is in a heavily wooded neighborhood. Mr. Siegfried handed out Google Earth pictures of the lot. There are no neighbors really close to the site. There is already a detached garage on in the front, four houses away from theirs so there is precedent on that street.

Chairman Stanard asked if there was anyone in the audience who wanted to speak to this issue. No one present chose to speak. Chairman Stanard declared the public hearing closed at 7:09pm.

Mrs. Cooper stated that she thought it was a very good design to work in a pool in a place with hillside issues in the back. She stated that the creativity in design was terrific given the difficult situation.

Mr. Fritz looked at the property earlier and concurs with Mrs. Cooper. He stated that the design ties in well. He agrees there is definitely a hardship because they cannot put the pool in the back. His only concern is whether trees are coming down on the side yard. He asked that they give some consideration of removing trees and the effect it can have, especially on erosion. He asked that they keep that in mind in the overall plan and landscape design. Mr. Adams stated they wanted to keep tree line in the front and side of the house as intact as possible. The trees in the back are primarily pine trees so leaves will not be an issue for the pool. Furthermore, Mr. Adams would like to keep the property secluded. They will take down a minimum number of trees. The pool started as free form and became rectangular so that it can be covered.

Mr. Bolek stated there is no room behind the house. The alignment would look odd if it was moved back. Mr. Siegfried stated that this is not the only house that is non-conforming in that neighborhood. He stated that the topography has dictated the development parameters.

At this time Mrs. Lane read findings of fact. The property owners, Bret and Michelle Adams Road are requesting three (3) variances to their property at 200 Glen Road; related to an attached accessory building and a swimming pool; a variance from section 1151.13 to place a swimming pool in the side yard, a variance from Section 1151.13 to place an accessory building in the front yard, and a front yard setback variance from Section 1151.07 of 33 feet 4 inches for the accessory building:

1. Special conditions and circumstances do exist that are peculiar to the property, specifically the locations affected hillside at rear of the property which prohibits locating the pool and the accessory building in the rear yard. This has been confirmed by the Village Engineer's letter dated September 21, 2015, and additionally it has already been established that the existing house already encroaches within the front yard setback.
2. The property will yield a reasonable return and there can be beneficial use of the property without the variance, but certainly the property would be enhanced by granting this variance.
3. The variance may appear substantial because the Village does not permit accessory buildings in the front yard, but it has been established that there are unique circumstances to this property. Because of the protected hillside the pool and accessory

4. building cannot be placed in the rear yard and it has been established that this design is cohesive and relates to the existing structure.
5. The essential character of the neighborhood would not be substantially altered and adjoining properties would not suffer substantial detriment as a result of the variance. We have established that this is a large existing lot with a lot of screening that will remain on the lot. It has also been established that the pool will be screened from the road.
6. The variance would not adversely affect the delivery of governmental services.
7. The property owner purchased the property with knowledge of zoning restrictions.
8. There are no special conditions or circumstances that were a result of the actions of the owner.
9. The owner's predicaments cannot be obviated by through some method other than a variance because of the protected hillside in the rear yard
10. Granting the variance would serve the spirit and intent behind the zoning requirements.
11. Granting the variance request would not confer on the applicant any special privilege that is denied by this regulation to other lands, structures, or buildings in the same district.

A literal interpretation of the provision of this Code would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Code. Mr. Fritz made a motion seconded by Mr. Bolek to approve the findings of fact.

ROLL CALL:

AYES: Mr. Bolek, Mrs. Cooper, Mr. Fritz, Mr. Pogatschnik, Mayor Renda, Mr. Stanard

NAYS: None

MOTION CARRIED

Mrs. Cooper made a motion seconded by Mr. Fritz to approve the 33 foot 4 inch front yard setback variance, the variance to allow the front yard placement of the garage/pool equipment building, and the variance to allow the placement of the swimming pool in the side yard located at 200 Glen Road.

ROLL CALL:

AYES: Mr. Bolek, Mrs. Cooper, Mr. Fritz, Mr. Pogatschnik, Mayor Renda Mr. Stanard

NAYS: None

MOTION CARRIED

Mayor Renda made a motion seconded by Mr. Pogatschnik to adjourn the meeting at 7:21pm.

ROLL CALL:

AYES: Mr. Bolek, Mrs. Cooper, Mr. Fritz, Mr. Pogatschnik, Mayor Renda, Mr. Stanard

NAYS: None

MOTION CARRIED

Respectfully Submitted,

Sherri Arrietta, Clerk of Council