

Board of Zoning Appeals
Public Hearing Meeting
November 23, 2015
Minutes

The Regular BZA Meeting was called to order by Chairman Stanard at 6:00pm.

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, Jeff Filarski, Village Engineer, Sherri Arrietta, Clerk of Council

Mrs. Cooper made a motion seconded by Mayor Renda to approve the minutes from the Regular BZA Meeting of October 26, 2015.

ROLL CALL:

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

NAYS: None

MOTION CARRIED

At this time, Mrs. Lane administered the oath to those who wanted to speak at the hearing this evening. Chairman Stanard declared the public hearing open at 6:01pm.

Richard Rule-Hoffman

36960 Chagrin Blvd.

Area Variances -

(2) Side Yard Setback Variances (pool)

Fence Height Variance

Mr. Richard Rule-Hoffman, property owner, was present at the meeting. He stated that the pool is 24 feet in diameter and his yard is 62 foot wide from the east to west side. The pool will be placed 35 feet from the house that he is currently building and 35 feet from the south property line of the neighbor. He is proposing to install the pool in the center of backyard; which leaves 19 feet from both the east and west property lines. He stated that he is therefore requesting an 11 foot variance from both the east and west property lines. Mr. Rule-Hoffman stated that he

wanted to point out that the east & west arc of the pool it is 19 feet, however, the amount decreases as it goes around being that it is a round shaped pool. He stated that since the pool needs to be secured and safe, he is putting a fence around the pool but would like to add another foot in height for extra safety. The fence will be installed by Henry Fence, per Village Code.

Mr. Stanard asked if there was anyone present that would like to comment on this application.

Mr. Gary Sherck, resident on Hiram Trail was present at the meeting. He asked if the pool has been approved. Mr. Stanard stated that it has not. Mr. Sherck stated that he does not think they should be talking about a fence for a pool that has not been approved yet. He asked if the pool has been relocated. Mr. Rule-Hoffman stated that the original contractor he had hired was untruthful about pulling a permit, which he found out about later and therefore the work was started but not completed because of the lack of a permit. He stated that he is now planning to be move the pool because of that situation.

Chairman Stanard declared the public hearing closed at 6:06pm.

Mr. Fritz asked about landscape screening. Mr. Rule-Hoffman stated that there was a landscape plan in the previously submitted plans, but it will need to be modified a bit for this application, if it is approved. He stated that he plans on putting in evergreens and other plants to help with drainage.

Mr. Fritz asked Mr. Rule-Hoffman what his hardship is for the extra foot of height for the fence. Mr. Rule-Hoffman stated that the only reason is for extra safety and security. Mr. Bolek stated that property was purchased knowing the restrictions; this Board worked with Mr. Rule-Hoffman on the house to obviate some of those issues. It was difficult but he did a good job working through it. He stated that he feels the pool is a different story and does not feel that Mr. Rule-Hoffman has demonstrated that he has investigated ways to install a pool without the need for a variance. Mr. Bolek stated to Mr. Rule-Hoffman that this board helped him with the house and maybe set a precedent by doing so, but he stated that he does not see any demonstrated need to increase the setback. He stated that he also does not see the fence indicated on the plan at all and feels the extra foot of height seems arbitrary. Mr. Bolek also stated that he does not see any thought on this submittal based on the last discussion this board had with him to try to make it work without a variance. Mr. Rule-Hoffman stated that he chose a pool contractor with 25 years' experience, who had references that spoke highly of him, so he stated that he was shocked to hear that he did not get a permit. He stated that the fence can be built on the property line

according to the Code, based on his understanding, but if not he would move it in a little bit. Mr. Bolek stated that the fence is not shown on drawing at all. He stated that he remembers from the last discussion that it was Mr. Rule-Hoffman's desire to have a round pool, not his builder's. The 24 foot diameter is the issue that encroaches within the setback. He stated that this board discussed with Mr. Rule-Hoffman about considering a different shaped pool to avoid that. Mr. Fritz stated to Mr. Bolek that even a rectangular pool would still need a variance. Mr. Bolek stated that is correct, however the variance would be much more minimized though. Mr. Fritz wanted to make it clear that Mr. Bolek's comments that Mr. Rule-Hoffman could have a pool without a variance are not correct. Mr. Bolek stated that is correct.

Mrs. Cooper asked Mr. Rule-Hoffman if he spoke to his contractor about changing the shape of the pool. Mr. Rule-Hoffman stated that since it has been paid for, they will not replace it or take it back. Mrs. Cooper stated that the contractor stated that he would fix it at last meeting and that it was his responsibility. Mr. Rule-Hoffman stated that only meant that he would move it. Mrs. Cooper informed Mr. Rule-Hoffman that a fence that is 5 foot in height in the rear yard is permitted; therefore a variance for the fence would not be required. There was some discrepancy about whether or not Mr. Rule-Hoffman wanted to install a 5 foot fence or a 6 foot fence because it was indicated on his application that he wanted to install a 5 foot fence. Mr. Loconti explained that the fence on the previous plan would require a 1 foot variance from 4' to 5' for the side yard portion of the fence, not the rear portion. Mr. Rule-Hoffman agreed with Mr. Loconti's explanation of the fence height request.

Mr. Fritz stated that to Mr. Bolek's point, this board did have an extensive discussion about other options. He asked Mr. Rule-Hoffman if he is now saying that it is a "hardship" because he cannot change the shape of the pool. Mr. Rule-Hoffman stated that was correct. Mr. Fritz stated that now this board has to look to see how much Mr. Rule-Hoffman has tried to minimize the variance. Mayor Renda stated that if the contractor makes a mistake, he should be liable. The mistake requires a shape change so he should be liable for fixing that for Mr. Rule-Hoffman since he put it in without the permits in the first place. Mr. Rule-Hoffman stated that he checked into it and he would have to take him to court. The contractor will move the pool but not take it back. Mrs. Cooper asked if they would have to re-dig the foundation anyway for the pool since it is off quite a ways. Mr. Rule-Hoffman stated that it is not that far from the center where it is located now.

Mr. Bolek stated again, that he was incorrect when he said that there could be no variance, however, he stated if he recalls the discussion, there is 64 feet, so if a 12 foot pool were to be put

in, it would essentially take the 30 foot setback down to 26 feet, which would only be a 4 foot variance request. He stated that his position is that Mr. Rule-Hoffman obviously purchased the property knowing the restrictions of the site. Mr. Rule-Hoffman stated that he purchased it only after having a conversation with our former Building Commissioner, Dave Strichko, who told him that he could build on but that he may need some variances. He stated that he did not do it without finding out first, so it was not done blindly. Mr. Bolek stated that we are not privy to that conversation. Mrs. Lane stated that what Mr. Bolek is trying to say is that when someone purchases a property, they are deemed to have the knowledge of restrictions that apply to that property.

Mr. Stanard pointed out that the variance would actually be reduced as it circles around the pool; it is not a solid 11 foot variance all the way around, since it is a circle. He stated that he agrees with Mayor Renda that it is not our problem that the applicant has issues with the contractor and in fact, the contractor should make good on his promise. Given this particular pool, the applicant has done what he can to minimize the variance. Mr. Bolek stated that even if a house diminishes in the area of variance, it is still that same variance amount. He stated that he still thinks that 4 feet for a rectangular pool is more workable for him than 11 feet. He stated that this board asked Mr. Rule-Hoffman to do that and he did not. Mr. Rule-Hoffman stated he did what he could within the bounds that he was able. He stated that the pool has been purchased and they will not take it back.

Mayor Renda stated that it is her understanding that a hardship cannot be financial. Mrs. Lane stated that is correct unless they can somehow show that they cannot make reasonable use of the property otherwise. Mayor Renda stated that she wanted to make it clear to Mr. Rule-Hoffman that his financial issues are not our issues. She stated that this board asked him to look at a smaller diameter or different shape pool; none of that was produced as Mr. Bolek stated. Mr. Rule-Hoffman stated he could not because he could not return it, so he just tried to reduce the variance amount. He stated that he tried to keep the variance as minimal as possible.

Mr. Fritz stated this is a problem when things are done without a permit; it is a difficult situation because this board sympathizes with the financial aspect but we cannot consider that and that makes it tough for us as well because we want to work with you. Mr. Stanard stated that typically hardships exist because of geographical constraints, hillsides, etc. and this is almost like a self-inflicted hardship. He suggested that there may not be a point in discussing the fence if Mr. Rule-Hoffman intends to withdraw his application.

Mrs. Lane spoke to the point that Mr. Sherck raised at the beginning of the meeting, regarding a fence for a pool that is not built. She stated that if a variance is granted, it could be conditioned upon the Planning Commission approving the pool. Mr. Stanard stated that Mr. Rule-Hoffman could also have a fence without having a pool. Mrs. Cooper stated that the variance could be eliminated for the fence if the fence in side yard was 4 feet in height. Mr. Fritz stated that in theory even if someone climbed over the 4 foot portion of the fence, they would still encounter a gate before getting to the pool.

Mr. Pogatschnik stated that the last drawing submitted was better and more thought was put into it. This drawing was less thought out and none of the other options discussed were considered. He stated that he thinks it is beneficial to see pool with the landscaping and the fence. Mr. Pogatschnik stated that putting the pool in middle of backyard may diminish the value of the property but it is hard to say when it is not thought out in the design and not depicted on the plan. Mr. Rule-Hoffman stated that the landscaping would be very similar, but it would need to be reworked.

There was a lengthy discussion regarding Mr. Rule-Hoffman's predicament with the contractor.

Mr. Bolek stated he is trying to balance the knowledge of the restrictions imposed on the property that he feels Mr. Rule-Hoffman should have been aware of. He asked Mrs. Lane, if there is something that the applicant can produce that would state in reference to his relationship with the contractor without the financial aspect, because this has a lot of pieces and parts to it. Mr. Bolek stated that he sees it as a hearsay case and would need something more substantial. He stated that he agrees with Mr. Standard to remove the request so that more thought can be put into it and more rational thought can be applied to the variance request. Mrs. Lane stated that she can speak to the fact that the applicant is providing testimony tonight under oath to the extent that he has had direct conversations with the contractor, which would be arguably reliable evidence. The Board can request any other type of evidence they may want to see, such as the agreement. Mr. Bolek asked how this board would balance a financial hardship in this case. Is there a trigger that shows that it is more than just a financial hardship? Mrs. Lane stated that it would be based on the factors; one of them being special circumstances exists as result or actions of the property owner where the actions of contractor can be attributed to the homeowner. She stated that the applicant would have to show that he cannot make reasonable return of the property, which is hard to establish with a pool. Mr. Rule-Hoffman could get some estimates on what it would cost to put in a rectangular shaped pool and show that he has spent "x" amount of dollars

already, so if he puts in a pool with a lesser variance it shows that it is a significant additional cost.

Mr. Rule-Hoffman stated that he spoke with Dave Strichko previously and had told him that he currently had a 24 foot above ground pool at his home and we would also want to have a pool in Moreland Hills. He stated that Mr. Strichko told him that above ground pools were not allowed in Moreland Hills but that he could have an in ground pool, so from that conversation, he stated that he had knowledge that he could put in a 24 foot round pool. Mr. Rule-Hoffman stated that with all that information, he bought the property. Mayor Renda stated that interpretation of the conversation with Mr. Strichko is a bit of a stretch. Mrs. Lane stated that when a zoning or building official makes a statement of that sort, it does not bind the Village because this is a decision for this body. Mr. Stanard stated that he does not think that is a fair interpretation of the conversation; Mr. Strichko could not possibly have known off hand the size of your lot.

Mr. Stanard stated to Mr. Rule-Hoffman that the situation is exceptionally unfortunate but this board is not likely to be prodded into an approval just because he has a pool that he cannot use. He stated that he does think there is additional work that can be done here and procedurally his options are to ask for a vote or petition to continue the matter in order to gather more information and study his options one more time. It is a good idea to present a financial comparison for this board to at least look at; but they do not necessarily have to be responsible that he was put into a hard spot by the contractor.

There was a discussion about regarding the responsibility of the pool contractor. Mr. Bolek stated that the way he sees it, the contractor made the misstep and Mr. Rule-Hoffman has cause to work it out with him. After that, he can then come back to this board. He told Mr. Rule-Hoffman that he really should go after the contractor to make it right.

Mr. Rule-Hoffman asked the board what an acceptable variance would be. Mr. Bolek stated that a hardship needs to be shown as to why a variance is needed. This board looks at it is to see if there are other ways the applicant can achieve what they want with a lesser variance. At the last meeting it was suggested that with 62 feet to work with, if a 12 foot pool was installed then it would reduce the variance request to only 4 feet. He stated that when it came to Mr. Rule-Hoffman's house, there was more of an understood hardship because a person has to have a home and this board did work with him to minimize those variances. Mr. Bolek stated that he would like to work with Mr. Rule-Hoffman in the same way for this pool, but Mr. Rule-Hoffman has not tried to alleviate the variance enough for him to vote for it.

Mayor Renda asked Mr. Rule-Hoffman if he wants to move forward with a vote or delay it. Mr. Rule-Hoffman chose to delay this matter at this time.

Mayor Renda made a motion seconded by Mr. Fritz to continue the request for two (2) side yard setbacks for a pool and a fence height variance located at 36960 Chagrin Blvd., to the January 2016 meeting.

ROLL CALL:

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

NAYS: None

MOTION CARRIED

34180 Moreland LLC

Preliminary Discussion

Gas Station Use

Mr. Richard Greaves and Mr. Mike Rajko, with 34180 Moreland LLC, were present at the meeting. Mr. Greaves handed out a packet of information relating to their request.

Mrs. Lane stated that she and the Mayor met with Mr. Greaves and Mr. Rajko last week. There is no formal application at this time, but they wanted to have a discussion with this board. The property in question is the former Sunoco station. This property has been in bank foreclosure for many years. The prior owner stopped selling gasoline in July 2014, and was actively pursued by BUSTR to obtain out of service permits. As you may recall, the property owner put tape up and parked vehicles to block the gas pumps. The property, under the prior ownership, was used as a gas station up until July 2014, and as an auto repair shop, both of which are non-conforming uses because it is in a Retail Business District. There is also a U-Haul business, as a conditional use permit granted by Village. Related to these uses, it appears that there is a small convenience area for snacks/drinks currently. That type of a use is acceptable and permitted in this district. The property was sold through a bank foreclosure proceeding to 34180 Moreland LLC. Mrs. Lane explained that our Codified Ordinances provide that if a pre-existing use is not used for a period of one year or more, it is deemed to be abandoned, therefore Mr. Loconti sent a letter to the owner about a week ago explaining that they could not sell gas per our Code because that use has been abandoned. The Mayor and Mrs. Lane set up a meeting with them last week where they discussed their plans for the property, which they will tell you about tonight. They will need to

re-institute the gas station use to make viable use of the property. She stated that she explained the application process to Mr. Greaves and Mr. Rajko and they wanted to discuss their plans with this board before they go down that road.

Mr. Greaves referred to the packet that he provided the members with. He informed them that included in it, was a letter from BUSTR acknowledging that they have paid all the back fees from BUSTR, in the amount of \$18,800. The insurance was re-instated and they have approval to use that facility under their guidelines to pump gas. He stated that he has also included information and pictures of another station that he just finished in Richmond Heights. Mr. Greaves stated that he wanted to show this board before and after photos of that station. He stated that he and Mr. Rajko own many gas stations separately, but they have partnered up on this one. Mr. Greaves stated that their plans are to sell retail gas and they would like to convert the existing bays into a convenience store, and clean up the property. The pictures of the Richmond Heights gas station show that the materials used would match the retail shops across the street. They intend to block two of the three bays and install some commercial store front windows, and a commercial double door.

Mayor Renda asked how many tires were removed from property. Mr. Rajko stated that 286 tires were removed. Mr. Greaves stated that all waste oil barrels have been removed as well. He stated that if they do move forward with the variance request, the station will look totally different; it is basically an eyesore now.

Mrs. Cooper asked if they intend to continue the U-Haul business. Mr. Greaves stated that as far as the U-Haul business, if this board feels that the Village has a need for this business, they will continue it and he assured them that they will comply with the conditions set forth as part of that use. The U-Haul is not a necessity to them, so if the Village does not want it to continue, they will not continue it.

Mr. Rajko stated that he gave the previous owner, Mr. Wilson, a 6 month lease for the repair shop and have limited him to the use of two bays. He stated that it is up to this board if they want that part of the business to continue. If they do, there is enough room to extend it to still have room for the store, which is what they did at their Wickliffe station; they kept the three bays and built a new store. Mr. Rajko stated that Mr. Wilson will only be temporarily involved and that he will not let him operate the station. He stated that they are ready to pump gas once they get approval from the Village. There is gas in the tanks that has been tested and they have

complied with all regulations and have paid all the fees. He stated that they have also paid all the back taxes in the amount of \$128,000. Mr. Greaves stated if we open as retail gas sales, Mr. Wilson will not be involved. If we convert to convenience store, remodel, he will not be involved then either.

Mr. Greaves stated that Mr. Rajko is also a distributor for Sunoco, so to them, the gasoline is the most important thing. Mayor Renda asked if the gasoline is the most important, would they be willing to compromise on other issues. Mr. Rajko stated if this board wants the U-Haul to go, it will go. He stated that he has no personal interest in it. They are not coming to the Village to be a nuisance. Mrs. Cooper asked how important the convenience store was to them. Mr. Rajko stated that it is very important because it provides what people want; lottery, cigarettes, snacks, etc. Mr. Greaves stated that their ideal goal would be similar to that of the station in Richmond Heights, which he has provided pictures of. He stated that he personally does not like the repair business and thinks that the convenience store is more appealing to the community. Mr. Rajko stated that they are also complying with Sunoco's standards. Mr. Stanard asked if they intend to have both service and retail sales. Mr. Rajko stated that there is room to put on an addition. He stated that he is interested in putting in what the community needs.

Mr. Pogatschnik stated that he likes the idea and think it fits in well, minus the U-Haul use. He stated that he thinks it is a great opportunity for a convenience store. Mr. Bolek stated that he also thinks it is a great idea. He stated that he is not sure what all is involved with the U-Haul and the agreements, but he feels that fuel and the upkeep of the property is most important.

Mrs. Lane stated with the use variance, this board makes a recommendation to council; therefore conditions can be put on that variance if/when they do apply for it. She informed the board again that the convenience store use is permitted under the current regulations.

Mr. Fritz stated that if this were a formal application for a conditional use permit, he would want to hear concretely what conditions they are willing to concede and the time frames left on the contract, etc. He stated that he would suggest that when they do come before this board with a formal application, that they provide that information.

Mr. Loconti stated that from his experience, the repair bays are the worst he has ever seen, anywhere. He stated that is why he would be hesitant to recommend to the Commission members keeping them because he has concerns about who will guarantee that they will be cleaned up and

look professional. Mr. Loconti stated that he is also concerned that the convenience store would look like the typical 7-11 because that is not reflective of Moreland Hills. Mr. Greaves stated that they can take additional photos of their current stations to provide them to this board. He stated that when they invest money, (cash out of pocket) they run these businesses right or they end up in the condition this one is in now.

Mr. Stanard stated that he can see the point where it may be difficult to take away a service (auto repair) that many people have used over the years. Mr. Greaves stated that he understands that because if you have trust in someone that provides that service to you, it provides comfort that they are not trying to over-charge you. Mrs. Cooper stated that she has used the mechanic and it is nice to have someone you know in the community. Mr. Greaves stated that they will come up with two options to present; one with the repair facility and one without the repair facility.

It was determined to have a Special BZA Meeting on Wednesday, December 9, 2015 at 6:00pm before the Council Meeting. That is when this board would define conditions and recommend them to Council for approval, who may then define more conditions.

Mike Ambrose

376 Miles Road

Third Accessory Structure Variance

Front Yard Accessory Structure Variance

Front Yard Setback Variance

Mr. Stanard explained that this matter was continued at the October meeting; the applicant is requesting additional time to present at the January Meeting.

Mrs. Cooper made a motion seconded by Mayor Renda to continue this application to the January 2016 meeting, so the applicant can provide additional information for the accessory building located at 376 Miles Road.

ROLL CALL:

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

NAYS: None

MOTION CARRIED

Mr. Fritz made a motion seconded by Mr. Bolek to adjourn the meeting at 7:31pm.

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