

The regular meeting of the September 21, 2005 Olmsted Township Board of Zoning Appeals was called to order at 7:30 p.m. Present were Vice Chairman Charles Cvitkovich, Gregory Engelking and Larry Maser. Also present were Building Inspector Robert Hayes and secretary Nicole Rosiu. Mr. Cvitkovich asked the audience to stand for the Pledge of Allegiance. Mr. Maser moved to approve the minutes of the July 21, 2005 meeting. Seconded by Mr. Engelking. Roll call, all approved.

Dickard Variance

The secretary read the public notice for Application #20055895.

Rodney Dickard was sworn in representing this variance. Mr. Dickard stated that the Building Department went to his house and told him he could only build a deck that extended 4 feet on one side and 8 feet on the other side. Mr. Dickard said that he would like to build a 16'x 14' deck. Mr. Cvitkovich asked Mr. Dickard if he wants to encroach the rear yard setback. Mr. Dickard said yes. Mr. Cvitkovich asked Mr. Dickard if the reason the deck is being proposed where it is, is because of the location of the patio door. Mr. Dickard said yes. Mr. Cvitkovich asked Mr. Dickard what is behind his house. Mr. Dickard stated that there is a field and a house going up on Sharp Rd. Mr. Cvitkovich asked if there are trees in between the properties. Mr. Dickard said yes.

Mr. Cvitkovich asked how close Mr. Dickard would be to the underdrain that is shown on the Topo. Mr. Dickard stated that he would be nowhere near it. Mr. Cvitkovich said that the drawing shows the deck being within only a couple feet of the underdrain. Mr. Dickard said he would not be close, he knows where it's at. Mr. Cvitkovich asked if the Building Department had any concerns. Mr. Hayes said Cuyahoga County would be concerned about drains. Mr. Hayes also stated that the drains are substantially below grade and should be below the frost line. Mr. Engelking asked Mr. Dickard what his reason is to not move the deck to the West. Mr. Dickard said privacy is an issue because he has 2 big windows in his living room. Mr. Engelking asked if the sliding glass door is in the middle of the house. Mr. Dickard said yes.

Mr. Engelking asked if Mr. Dickard would consider moving the deck to the West so it would not be near the underdrain. Mr. Engelking stated that from the drawing, he doesn't have any idea where the windows are. Mr. Dickard stated that the windows are located in the 4-foot bump out, West of the kitchen. Mr. Engelking stated that if Mr. Dickard moved the deck completely to the West, it would be completely within the building line. Mr. Dickard asked how he would get to the deck if he did that. Mr. Engelking said the same way as proposed. Mr. Dickard stated that he would like the privacy, and he does not want people looking in his 2 big windows. Mr. Engelking said that it would still give Mr. Dickard privacy. Mr. Dickard stated that he built the stairs on the deck 5 feet out from the house for added privacy. Mr. Engelking said that he could still build the stairs 5 feet out if the deck is moved to the West.

Mr. Dickard stated that he had his deck planned the way he wants it and the Building Department told him he couldn't do it without a variance. Andrew Dominick (27354 Tillerman Ct.) was sworn in. Mr. Dominick stated that Mr. Dickard's deck positioning is not only for privacy, but also for entertainment. Mr. Dominick said that Mr. Dickard's neighbors to the West and to the East would not be able to see the deck from their houses if the deck is placed in the middle of the house. Mr. Engelking stated that the property line is 20 feet from the house to the West. Mr. Dominick said that Mr. Dickard cannot see the next-door neighbor's deck from his house because the neighbor built the deck in the center of the house.

Mr. Maser asked if Mr. Dickard would be willing to build a 12' x 16' deck instead of 14' x 16' to remain further from the underdrain. Mr. Dickard stated that he would be willing to do that. Mr. Cvitkovich asked if there were any more questions or concerns. Mr. Engelking stated that his main concern is the underdrain. Mr. Engelking asked where the air conditioning unit is located. Mr. Dickard said it is on the far East side on the rear of the house. Mr. Engelking stated that with an "L" shaped deck, it would be further from the air conditioning unit, so there would be less noise.

Mr. Engelking moved to approve Application #20055895 as amended with the deck being 12' x 16' rather than 14' x 16'. Seconded by Mr. Maser. Roll call, all approved.

Hwang-Kim Variance

The secretary read the public notice for Application #20056130.

Dan Solomon from Ryan Homes was sworn in representing this variance. Mr. Solomon stated that the lot size is too small to build a large deck. Mr. Engelking asked where the stairs are going to be for the deck. Mr. Solomon stated that there would be stairs coming off of both sides of the deck. Mr. Engelking asked how high the deck would be off the ground. Mr. Solomon said there would be 4 stairs leading to the deck. Mr. Maser asked if the deck would be about 3 feet high. Mr. Solomon said yes, approximately. Mr. Cvitkovich asked if there is a patio there now. Mr. Solomon said no, that drawing with the patio that was submitted is just another option, if the board would rather have a patio there than a deck. Mr. Solomon said another option is to have an 8' x 10' deck or patio rather than 10' x 10'. Mr. Cvitkovich stated that to conform to the code, Mr. Hwang-Kim can only go out .5 feet.

Mr. Cvitkovich asked what was approved for Westfield Park's blanket variances in the past. Ms. Rosiu stated that Mr. Hwang-Kim's house is located in phase 2 of Westfield Park subdivision and that variance allowed them to go 5 feet into the setback and that variance expired June 16, 2004. Mr. Engelking asked if the drainage easement on Mr. Hwang-Kim's property is bigger than on any other property in the subdivision. Mr. Hayes said that the drainage easement is 15-feet on the exterior properties of the development and 7 ½' on the interior. Mr. Engelking asked if it is fairly flat about 15 feet out behind the house. Mr. Hayes said yes. Mr. Engelking stated that if the deck was built 10' out, there would be 12 ½' feet to the property line. Mr. Solomon said that there is a fence along the development behind Mr. Hwang-Kim's house. Mr. Engelking asked if the fence is behind the mound. Mr. Hayes said the fence is in front of the mound. Mr. Engelking asked if there is any drainage in the subdivision from the soccer field. Mr. Hayes said no.

Mr. Cvitkovich confirmed that the homeowner is asking for a 9 ½' variance that will encroach the drainage easement 2 ½'. Mr. Solomon said that is correct. Mr. Solomon stated that the way the house was designed, with the garage out in front of the house, it pushes back the living space. Mr. Engelking asked what the other option was. Mr. Solomon said to build an 8' x 10' deck or a patio that is either 10' x 10' or 8' x 10'. Mr. Maser said that the width is not a question, he could go across the whole back of his house if he wanted. Mr. Solomon stated that Mr. Hwang-Kim requested to build an 8' x 15' deck or patio.

Mr. Engelking moved to approve Application #20056130 as amended to construct an 8' x 15' deck. Seconded by Mr. Maser. Roll call, all approved.

Pride One Variance

The secretary read the public notice for Application #20056183.

David Conwill was sworn in representing this variance. Mr. Conwill stated that his company went through the approval process to construct single-story apartments at the West end of Cook Rd. Mr.

Conwill said that the Zoning Commission and the Trustees approved the plan. Mr. Conwill stated that the original plan had a street located by the wetland area and that he could have gotten a permit from the Army Corps of Engineers but Mr. Conwill wanted to get approval faster, so he moved the street and eliminated building units. Mr. Conwill said that other than that, the plan is the same as what was submitted and approved.

Mr. Conwill said that he increased the setbacks along the property lines to give neighbors additional setbacks. Mr. Conwill stated that he made negotiations with the Trustees and Zoning Commission. They are not typical apartments, they are older age-targeted single-story apartments. Mr. Conwill said that there is a deed restriction that limits the number of people allowed to live in each unit. Mr. Cvitkovich asked if the plan was approved by the Trustees and Zoning Commission pending approval from the Board of Zoning Appeals. Mr. Conwill said that the plan was approved, he just moved some units around, kept the setbacks from the neighbors, the distances between units. Mr. Conwill stated that gained final approval with 123 units.

Mr. Cvitkovich asked if it still had to go to the Building Department for approval. Mr. Conwill said that the design engineer discovered these 3 requested variances for distances between buildings. Mr. Conwill stated that the plans still need to be finalized by the EPA, County Planning Commission, Cleveland Water Department, Sewer Department and County Engineer. Mr. Cvitkovich stated that he needs to see evidence of practical difficulty. Mr. Conwill said that the plan first had 126 units, then 123 and now 120 units. Mr. Conwill stated that he agreed to a lot of deed restrictions and there is a 35-item resolution and one of the deed restrictions stated that Pride One has to run sanitary sewers up Cook Rd. Mr. Conwill said that the bank that Pride One used for this project was very concerned at the cost of the project.

Mr. Cvitkovich asked if the project would still go forward if the variance is denied. Mr. Conwill said that it would still move forward, he would just have to get a permit to build in the wetlands area, run sewers, erosion control, soil and water committee. Mr. Conwill stated that he just needs a little help from the Township getting 3 variances. Mr. Conwill said that he has been going through this whole process for a year with no attorneys. Mr. Conwill stated that if the board would like to speak to Trustee Straka about Pride One's reputation, they would receive a positive response.

Mr. Cvitkovich asked why Mr. Conwill doesn't just remove 3 units to accommodate the code. Mr. Conwill said that he would have to redesign, there would be a great topographical difference. Mr. Conwill said there is a big drop down at the rear of the development. Another issue at County Planning is a gas line. Mr. Conwill stated that they got final approval and the water guys said to save the pond, all the trees are staying, they lost 3 more units and they are now asking for 3 main wall to end wall variances. Mr. Cvitkovich stated that between 2 buildings the distance is 17.5 ft., between 2 other buildings, the distance is 22.75 ft. and between 2 others, the distance is 22.5 ft. The code requires 50 ft. Mr. Cvitkovich asked Mr. Hayes if he knew what the basis is for the 50 ft. dimensions between buildings. Mr. Hayes said that he wasn't sure what the intent of the code was for that requirement. Mr. Hayes stated that he believes the setbacks for RMF-A districts set forth in the zoning code were to limit the density.

Mr. Conwill said that the RMF-A zoning requirements addresses multi-story apartments like Evergreen Farms, but these are single-story apartments, like condos. Mr. Cvitkovich asked if there are any windows on the end walls. Mr. Conwill said yes. Mr. Conwill stated that there were many meetings with himself, his council, the Zoning Commission, the Trustees and the Township's former council, Mr. Kancler and came to agreement that the main wall is the wall facing the street and the end

wall is a wall adjacent to a main wall. Mr. Cvitkovich said that the code states there should be 30 ft. between 2 end walls and in the development plan, there is only 10 ft. in a couple places. Mr. Cvitkovich stated that something should be done to go over the plan and find all the variances that will be needed, because Pride One will keep coming back for more variances if something doesn't happen. Mr. Conwill said that he already got final approval of the plan with the end walls being that close. Mr. Conwill stated that the code that he was using was from the internet and that section has nothing written in it. Mr. Conwill said that he printed the zoning code off of the Township's website and for 2 years, while negotiating, the issue with the end walls never came up, because there is nothing written in that section of the code on the website.

Mr. Cvitkovich suggested that the Zoning Commission hear Mr. Conwill first and the Zoning Commission can approve it pending approval from the Board of Zoning Appeals or if the Zoning Commission denies it, then Mr. Conwill doesn't have to go through the Board of Zoning Appeals at all. Mr. Cvitkovich stated that Mr. Conwill is not done at the Board of Zoning Appeals, there are the end wall to end walls, side setbacks and rear setbacks that need variances. Mr. Engelking stated that he feels the Zoning Commission should review the plan first. Mr. Cvitkovich said he thinks Mr. Conwill can request a variance as is, but the problem is that he will be back additional times for variances.

Mr. Conwill requested to amend his application for variance as the applicants before him did. Mr. Conwill stated that he wrote a 4-page letter about the site and that there are physical hardships. Mr. Conwill said that the plan that was submitted is the bare bottom, he can't change it anymore, and he can't lose any more units. Mr. Conwill stated that if this is denied he will take it to court and get 12 units per acre. Mr. Conwill said that the Olmsted Falls School Board is thrilled with Pride One because they are proposing a development that limits the amount of kids in the school system.

Mr. Conwill stated that Mr. Sapienza, 27382 Cook Rd. (present), did not want this project to go through. Mr. Sapienza lives in one of the three houses this development will be surrounding. Tony Sapienza was sworn in. Mr. Sapienza said that he did work out compromises with Mr. Conwill and Mr. Conwill did make changes to accommodate him. Mr. Engelking asked if there would be a major problem tabling the meeting until next month. Mr. Conwill stated that the biggest problem is the engineering and grading on the site. Mr. Conwill said that there is a loan taken out for the property and every day, Pride One is losing more and more money. Mr. Cvitkovich said that what he would like to do is put everything out on the table so the Zoning Commission knows what the BZA's issues are with this project.

Mr. Conwill asked if he could amend his variance request to include the patio setbacks and any end wall to end wall variances, so that this plan could be approved as it is today. Mr. Cvitkovich stated that if the application is amended and disapproved, Mr. Conwill cannot apply again for 6 months. Mr. Engelking asked if it would still go to the Zoning Commission with an approval or a denial. Mr. Conwill said yes, with a revised site plan. Mr. Engelking asked what the problem would be if the BZA tabled this hearing until next month, after the Zoning Commission hears it. Mr. Conwill stated that there isn't really a big problem other than the delay. Mr. Hayes stated that a short term delay would probably be better if all of the issues are looked at and all variances are taken care of now, instead of down the road, where there may longer delays.

Mr. Cvitkovich stated that he would like to talk to the Building Commissioner on the other issues that the board thinks requires variances. Mr. Conwill said that he talked to Mr. Foulkes about the setbacks.

Mr. Cvitkovich said that he would like to talk to Mr. Foulkes himself regarding the setbacks and also get his interpretation of the main wall to end wall issues.

Mr. Maser moved to table Application #20056183. Seconded by Mr. Engelking. Roll call, all approved.

Kumar Variance

The secretary read the public notice for Application #20056182.

There was nobody present to represent this variance. Mr. Cvitkovich asked the board members if they thought this application should be tabled. The board members decided to review the application as submitted. Mr. Engelking stated that the request is for a 5-foot variance on a patio.

Mr. Engelking moved to approve Application #20056182 as submitted. Seconded by Mr. Maser. Roll call, all approved.

Floor Discussion

Mr. Maser moved to adjourn. Seconded by Mr. Engelking. Roll call, all approved.

Respectfully submitted,

Nicole L. Rosiu, Secretary

Charles Cvitkovich, Chairman Date