

Board of Zoning Appeals Minutes
May 15, 2023

Chairman Pekarek: Welcome to the Parma Heights Board of Zoning Appeals meeting on this May 15, 2023 at 6:00 p.m.

PRESENT: Kolezynski, Podany, Palmisano, Pekarek.

Chairman Pekarek: Please stand for the Pledge of Allegiance.

Pledge of Allegiance is spoken.

OTHERS PRESENT: Mayor Marie Gallo, CBO Marty Surella, Director Bob Sepik, Assistant Law Director Bryan O'Malley, and the Zoning Appeals Clerk, Barbara Allen.

Chairman: Approval of the minutes for the meeting held February 21, 2023. Are there any additions, deletions, or any changes? Seeing none.

Mr. Podany motioned; Kolezynski seconded the motion to approve the minutes

Clerk Allen: Roll Call: Aye: Kolezynski, Podany, Palmisano, Pekarek

Minutes Approved

Chairman Pekarek: Before us, is case 2023-02, Robin and Philip Campbell, 11900 Appleton Drive, PPN# 472-25-029; Chapter 906: Concrete Driveways. Who is here representing the property? Applicant came forward and was sworn in. Please state your name and address and reason for the request.

Philip Campbell, 11900 Appleton Drive. My wife and I own the property and we moved here in 2018 and when we moved here, we were specifically for a house that was one level planning for our older age. We would like to expand the driveway to accommodate my wife's van, my car and her daughter is now graduated from collage but will be staying with us until she finds her employment. Our driveway is currently 9 ft wide and if we ended up in wheelchair or anything were to happen it would be helpful to have a larger area to get in and out of our vehicles.

Chairman Pekarek stated that the ordinance calls for 10 feet, for single car garage homes. You are proposing 16 feet total, so you want a 6 ft variance. I have a couple questions, as you're facing your house, your 3 ft extension that you want will take you very close to that light pole, the 4 ft extension you are going into that grassy area that separates your property with the neighbor,

Philip Campbell stated that the light pole will be removed, there will be about a foot between the neighbors and I've spoken to Paulette and she's absolutely fine with what we are doing. Her fence is right on the property line and doesn't bother us a bit.

Mr. Podany asked about the sidewalk is existing and is that getting replaced.

Philip Campbell responded that yes, the sidewalk will be replaced. Something that is not on here we're also getting a sidewalk coming up to the front of the house.

Ms. Palmisano asked if it was a mirror of the neighbor's home.

Philip Campbell responded yes, pretty close, yes.

Mr. Kolezynski asked if the light pole was a government post?

Chairman Pekarek responded no it's a personal lamp post. Building?

Marty Surella added that the Building Department doesn't have an issue with what he's trying to do, I don't see that it negatively impacts anybody, he needs a double width and we face this all through the neighbors. We have a 10-foot law and it really doesn't meet everybody's needs today.

Chairman Pekarek asked if there were any correspondence that was submitted?

Clerk Allen responded no, not that I've received.

Chairman Pekarek asked Assistant Law Director O'Malley if he had any input he'd like to share?

Assistant Director O'Malley thanked the Chairman, and responded that he had no report to share at this time.

Chairman Pekarek asked for a motion. Mr. Podany made a motion to approve the variance for the 6 feet. Seconded by Ms. Palmisano.

Chairman Pekarek: We have a motion and a second. Roll call please.

Clerk Allen: Roll call: Aye: Podany, Palmisano, Kolezynski, Pekarek

Case 2023 – 02 for Robin and Philip Campbell, 11900 Appleton Drive, PPN# 472-25-029 Variance Approved

Chairman Pekarek: The next case 2023-03, Craig Adams, 7038 Greenbriar Drive, PPN 474-28-013; Chapter 1388.01 (e) Accessory Building and Chapter 1193.01 (f) Yard Structures and Landscape Features. Who is here representing the property? Applicant came forward and was sworn in. Please state your name and address and reason for the request.

Craig Adams, 7038 Greenbriar Drive. A couple of years ago we did a big remodel of the house brought the house out 27 feet and then we put a pool in we are looking to get a variance on the fence line and also for a pool house structure. There's no trees in the back yard. We're going to need some source of shade and somewhere to store the pool equipment, filter and heater for the pool. On the one side I would like to bring the fence up to the front, several houses on the street have this. On the other side just want to come up to the original back corner of the house before the addition was added.

Chairman Pekarek asked to begin with the shed. The ordinance allows for a 12 x 10 and you want 15 x 15.

Craig Adams responded that technically it's not going to be shed, it's going to be more like a pavilion with just one side covered. More for shade and storage. It's not going to be enclosed.

Chairman Pekarek asked if in the future it would be enclosed?

Craig Adams responded not that I can foresee.

Mr. Podany stated that this would be more like a gazebo than a shed. It's not going to qualify as a shed.

Ms. Palmisano asked if it will have electric?

Craig Adams responded yes. For the equipment and pool items.

Mr. Kolezynski asked if there is any other way to accomplish the same results another way, other than extending this to 225 sq ft?

Craig Adams said I can't do 10 x 10.

Mr. Surella added that it's still an accessory structure by our ordinance, he's limited to 120 square feet. He's asking for 225. I don't see where this negatively impacts anybody's, he's got a huge back yard, he's got plenty of room, he's way off the property line with where the pool house is going to be. This particular item, I'm not seeing an issue with.

Mr. Palmisano asked if it would fall under other outbuilding?

Chairman Pekarek no because it's not enclosed. Mr. O'Malley....

Assistant Law Director O'Malley added that procedurally, if you have opposing neighboring residents that might have questions for the applicant, you might want to ask the audience at this time.

Chairman Pekarek asked the audience if anyone had anything relevant to add to this discussion.

Attorney Gary K. Fry, Fry Law LLC, 4450 Beldon Village Street SW, Suite 300, Canton, Ohio 44718. Mr. Fry was sworn in and began a statement for the Commissioners. I am here tonight on behalf of the neighbors to the North, Blaine and Donna Dubbs, 7032 Greenbriar. The neighbors' concerns begin with the construction of this building including encroaching on their property, damaging their lawn, etc. They are against the application. The Ohio Supreme Court has set out guidelines when you're granting an area variance. There are 7 criteria that court has set out that have to be met in order to grant that.

1. The property will yield a reasonable return or beneficial use without the variance.
2. Whether the variance is substantial
3. Whether the essential character of the neighborhood would be substantially altered and whether adjoining properties would suffer substantial detriment as a result of the variance.
4. Whether the baring's would adversely affect the delivery of governmental services.
5. Whether the property owner who purchased the property with knowledge of the zoning restrictions.
6. Whether the property owner's predicament feasibly can be au gated through some method other than the variance.
7. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.

I'd be happy to answer any questions but it is mine and my client's opinion that both variances should be denied.

Chairman Pekarek asked for clarification on who he was representing, just the one client?

Attorney Gary K. Fry responded just the one client, husband and wife.

Mr. Podany asked for clarification on how far off the property line with the back of the pool house would be the distance from your property line?

Craig Adams didn't bring the exact measurement, but said it is substantial.

Assistant Law Director O'Malley stated that procedurally, you could offer them the opponents an opportunity to cross examine the applicant. It seems that the commission is providing what I call the opening statement, but you should invite him to question the evidence that's been put before you by the applicant.

Chairman Pekarek asked Mr. Fry if he has any questions for the applicant?

Attorney Gary K. Fry responded that he has no questions for the applicant at this time.

Chairman Pekarek asked anyone from the audience have any comments relative to this matter? Seeing none.

Attorney Gary K. Fry asked the Chairman to allow his clients to make a statement for the record.

Mr. Blaine Allen Dubbs, 7032 Greenbriar Drive.

Attorney Gary K. Fry asked if Mr. Dubbs was the property owner to the North? Answer: Yes, I am

Question: You've had a chance to review the drawings that they submitted for these variances? Answer: Yes

Question: You expressed concern due to the increased nature to both the building and the fence? Answer: Yes, I have.

Chairman Pekarek asked to hear Mr. Dubbs comments personally.

Mr. Dubbs stated that he thinks it will be close to where the property line would be. If the fence goes in, if it's not on the border line, it will be going over my property line. If he's going in that direction, he's cutting onto my property and taking my property on the side of the house.

Question: Do you feel that it would be an impact on you to have a larger wall facing your property than what is allowed by ordinance? Answer: Yes

Question: Do you feel it would an imposition on your property to allow them to have 30 feet of additional fencing up the side property line that you and your other neighbors are not allowed to have? Answer: Yes, it would make it un-uniformed.

Mr. Adams stated that there are several homes in the area that have fencing like what I'm trying to do. 7098 Anthony, 6921 Anthony, 6889 Anthony, 6856 Anthony, 6824 Greenbriar and 6912 Greenbriar Drive. Which maybe 3 of them do have the side door, but there's a good number of them that do not have side doors and they are up to the front of the house. I'm not going over his property line. I've sealed up the door on the side of the house, I can put it back. I'm allowed to come up 3 feet past that door, it's farther than what I'm asked for. That's on the North side. I'll put the door back in and run it up to what is allowed. I didn't want to come up that far.

Mr. Podany asked him to show him on the plans. Mr. Adams approached the commissioners and showed them where the door was originally located and where he was planning on putting the fence. Mr. Podany said it looks like about 25 feet from the north wall of the pool house to the property line. Mr. Adams approached again and shows the commission the numbers on the drawings.

Ms. Palmisano stated that the drawings are different.

Mr. Adams stated that we might have gotten an older one, but the pin numbers are there the other fence line numbers came in later but they are the same drawings.

After careful review it was determined that the drawings were the same, however some had a measurement added, this did not change the drawings everyone had.

Assistant Law Director O'Malley advised the Chair and the members of the board to conclude the evidentiary portion of tonight's hearing. I wouldn't, although you can and should deliberate amongst yourselves. You shouldn't permit interjection, if any board member has further questions, of either the applicant or the opponent I wouldn't recommend that you conclude that. I would not recommend that you invite counsel for the opponent or the applicant to interpose themselves into their deliberations while you're talking amongst yourselves about the facts. It appears that you have four items to consider.

Chairman Pekarek added that at this time, 6:40 p.m. we are calling a recess. Meeting resumed at 7:15 p.m. Going through the extensive 7 factor requirements for a variance we came up with the following. I'll turn it over to Chris to go through those.

Mr. Kolezynski stated that based on reviewing the factors online and the arguments we've heard today and the evidence presented we have concluded that the property as to factor 1; the property would yield a reasonable return and can have a beneficial use without a variance, factor 2; the building is over 100% of the increase in size and the fence would go far beyond the rear of the house so that would be a substantial variance, factor 3; the essential character of the neighborhood would be substantially altered – we do not believe so because the building cannot be seen from the street or visible anywhere else, we also don't believe it would be a deterrent to the nearby property owner, factor 4; as admitted by their attorney that it would not affect government services, factor 5; we recognize that public notice has been provided by the publication of these requirements and that is sufficient, factor 6; we have concluded that there are other options that will provide shade and other needs as stated by the applicant and factor 7; the requirement states specifically what is allowed therefore granting the variance would go against the intent of that requirement.

Chairman Pekarek thanked Chris. Mr. Adams would you like to withdraw your variance request on the fence?

Mr. Adams responded if we withdraw it then would reapply to the ordinance specifications, no, I would like to bring it up to the rear of the house.

Chairman Pekarek responded okay.

Mr. Podany made a motion to deny the variance request on the fence. Seconded by Ms. Palmisano.

Assistant Law Director O'Malley advised the Chair and the members of the board to always state the motion in the affirmative. To approve the variance as requested.

Chairman Pekarek responded okay; motion has been withdrawn.

Mr. Podany made a motion to approve the variance request. Seconded by Ms. Palmisano.

Chairman Pekarek: Roll call please.

Clerk Allen: Roll call: Aye: -

Nay: Palmisano, Kolezynski, Podany, Pekarek

Chairman Pekarek: Motion has been denied regarding the fence. We have another variance request on the size of the storage facility, gazebo, out building. Can I have a motion on that?

Mr. Podany made a motion to approve the accessory structure 1388.01. Seconded by Ms. Palmisano.

Chairman Pekarek: Roll call please.

Clerk Allen: Roll call: Aye: -

Nay: Pekarek, Kolezynski, Podany, Palmisano

Chairman Pekarek: Motion has been denied regarding the accessory building. I want to thank everyone involved in the long, difficult decision but we had to make it unfortunately.

Mr. Podany: Motion to excuse Mr. Paxson, Seconded by Palmisano.

Chairman Pekarek: Roll call.

Clerk Allen: Roll call: Aye: Podany, Palmisano, Kolezynski, Pekarek

Motion carries

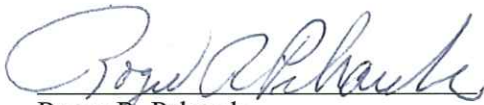
Chairman Pekarek: Motioned to adjourn. Seconded by Podany

Chairman Pekarek: Roll call please.

Clerk Allen: Roll call: Aye: Kolezynski, Podany, Palmisano, Pekarek

Chairman Pekarek: The Board of Zoning Appeals meeting is adjourned at 7:22 p.m. Thank you everybody.

Meeting Adjourned.



Roger R. Pekarek
Chairman, Board of Zoning Appeals



Barbara Allen
Board of Zoning Appeals Clerk