



**BOARD OF ZONING APPEALS
MINUTES OF THE PROCEEDINGS OF THE PUBLIC HEARING
MARCH 25, 2014**

The hearing was called to order at 7:30 P.M. by Chairman Jones

PRESENT: Board Members Matthew Jones, Robert Swisher, Bryan Baesel, Jeff Neverman, Scott Fatzinger

ALSO PRESENT: Assistant Law Director Sean Kelleher, Nicolette Sackman Clerk of Commissions, Law Director John Wheeler and Planning Director Jim Bedell

SELECTED CORRESPONDENCE

Docket 2014-02

2/24/14 letter received from Cleveland Metroparks – no objections

3/10/14 letter and revised plans from Donn Angus re: moving the entry feature back so it is at 198' off the right-of-way

Docket 2014-03

2/24/14 email from Daniel Zilka, 2972 Bradley – concerns & objection

2/18/14 email from Gary Williams, 2960 Bradley – concerns

2/19/14 email from Robert Kelly, Westlake Engineer – no issues with variance

2/12/14 letter from Philippe Mounier, 30961 Bellerive Court – no issues with variance

Docket 2014-04

2/23/14 email from David Sacco, 1006 Richmar – no objections

Docket 2014-05

2/16/14 email from William and Mary Anne Hahn, 28603 Stonegate Circle – concerns & objection

2/21/14 email from Denise Rosenbaum on behalf of Councilman Mike O'Donnell – not in favor

3/21/14 Correspondence from Attorney Anthony Vacanti regarding validity of side yard setback

Docket 2014-09

3/10/14 email from Architect L. Sampat advising garage area is 976 sq. ft.

3/24/14 email from Asst. Planning Director W. Krause advising that the Tugwell's submitted a lot assembly plat which will make the lot 24,497 sq. ft.

DOCKETS

Docket 2014-01

Applicant: Mr. & Mrs. Patrick Killian

Premises: 2519 Interlachen, P.P. #214-30-099

Requesting to construct an outdoor structure (pool enclosure) at variance with 1211.04(o) which states... “Free standing...open air structures...including, but not limited to gazebos, pergolas, arbors, pavilions, trellises, or similar structures...shall be as set forth permitted in the following... up to a 300 sq. ft. open air structure on a lot between 20,000 to 40,000 sq. ft.” Requesting a 1,920 sq. ft. enclosed structure. This will require two variances: a 1,620 sq. ft. area variance and a second for the enclosure of an otherwise open air required structure

Dr. Killian, sworn in by Mr. Kelleher, explained he amended his variance request since the last hearing and requests to withdraw the request in Docket 2014-01

Motion: Mr. Fatzinger moved, seconded by Mr. Baesel to withdraw Docket 2014-01

ROLL CALL:

Yeas: Jones, Swisher, Baesel, Fatzinger, Neverman

Nays: none, motion carried

Docket 2014-08

Applicant: Dr. & Mrs. Patrick Killian

Premises: 2519 Interlachen, PP#214-30-099

Requesting a building permit to install a 2,095 sq. ft. addition which will create a 5,275 sq. ft. structure on this property at variance with 1211.09 which states maximum lot coverage by main building shall be 20%, a +-2.03% lot coverage area variance (487.2 sq. ft.).

Dr. Killian, sworn in by Mr. Kelleher, explained he amended his request by moving the enclosed pool structure and attaching it to the dwelling via a greenhouse looking walkway. The greenhouse type walkway will attach to the garage and access the pool. He explained his lot is on a cul-du-sac and an odd shape. All setback requirements will be met with the new structure addition. Based on comments made by the board at a previous hearing he decided to attach the structure as the board implied they were not in favor of the previous variances being requested but would consider a lot area variance if attached to the main dwelling. His lot would permit 4,788 sq. ft. of main dwelling and he is requesting to have a dwelling that is 5,275 sq. ft., which would be a 2.03% lot coverage variance. The size of his lot is 23,939 sq. ft. The retractable pool structure remains the same as previously reviewed and discussed at a past hearing.

Members of the board questioned if the greenhouse type structure would be a greenhouse or a glass enclosed walkway. Dr. Killian showed photos of what he proposes to construct and it would serve as a walkway to the pool and the walkway would not retract. Mr. Jones felt what was being requested is preferred to the previous request in Docket 2014-01 and a 2% lot coverage variance is not substantial.

After a careful review of the plans and testimony of the applicants the Board finds that:

1. The proposed addition is, a 2,095 sq. ft. “greenhouse type walkway” that will attach to the garage and access the pool.
2. That, this will create a 5,275 sq. ft. structure on this property necessitating variance from 1211.09 which states maximum lot coverage by main building shall be 20%.
3. That, as proposed, the variance will be a +-2.03% lot coverage area variance (487.2 sq.

ft.).

4. That, the lot is on a cul-du-sac and an odd shape.
5. Members of the Board found that a 2% lot coverage variance is not substantial and the spirit of the code would not be violated by the granting of a variance.

Motion: Mr. Fatzinger moved, seconded by Mr. Swisher to approve a 2.03% lot coverage variance (487.2 sq. ft.) for Docket 2014-08

ROLL CALL:

Yeas: Jones, Swisher, Baesel, Fatzinger

Nays: Neverman, motion carried

Docket 2014-02

Applicant: Barry & Ray Sanders

Premises: 4985 Bradley Rd. PP#217-17-042

Requesting a building permit to install a landscape entrance feature that is 18' wide (on a 100' frontage) with a fence with a height of 5' (60") 35' off the right of way at variance with 1211.33 which states landscape entrance features may not enclose a front yard either visually or physically and may occupy no more than 10% of the parcel width, which will require an 8' (8%) length variance; and at variance with 1211.04(b)(1) which states ornamental fences shall be permitted in the front yard, or in connection with a site feature, to a height of not more than 2.5' above the average finished grade but shall not be constructed within 35' of a planned right of way, a 2.5' (30") height variance for an ornamental fence

Mr. Angus, sworn in by Mr. Kelleher, explained they are seeking two variances. One is for the width of the landscape feature and the other is for the height of an ornamental fence. The property is a very unique shape and located behind other parcels fronting Bradley Road. The lot shape and configuration are the result of various lot splits over the years. There is an existing fence that is on the property and adjacent parcels, which were once all one parcel. Mr. Angus reviewed the site plan showing the fence line and where on one parcel the fence can be up to 6' tall but on the applicant's parcel it is required to be 2.5' as it is the applicant's front yard but the rear yard of the other parcels. They are proposing to install a 5' ornamental fence. Currently there are existing wood and chain link fences which will be replaced with the proposed ornamental fence which is black aluminum and has the look of a wrought iron fence. Part of the proposal is to redo the driveway and install a landscape entrance feature and gate. The property width at the street is 100' wide but much wider behind the adjacent parcels. The entrance feature is proposed to be placed 198' off the right-of-way, placing it behind the adjacent neighbor's homes and is 18' in width. The code allows the entrance feature to be 10% of the width which would be 10'. They would like an 8' variance to allow the entrance feature to be 18' wide. He noted the parcel is an estate size lot, being over 5 acres and showed renderings of the proposed fence and landscape feature.

Members of the board expressed the proposal would not be detrimental to the surrounding neighborhood. The proposed fence is in the rear yard of the surrounding property owners and the property is a unique shape and has a unique location due to the large setback off the street.

After a careful review of the plans and testimony of the applicants the Board finds that:

1. The request to install a landscape entrance feature that is 18' wide (on a 100' frontage) with a fence with a height of 5' (60") 198' off the right of way is at variance with 1211.33 which states landscape entrance features may not enclose a front yard either visually or physically and may occupy no more than 10% of the parcel width.
2. That, additionally, as proposed, this will require an 8' (8%) length variance at variance with 1211.04(b)(1) which states ornamental fences shall be permitted in the front yard, or in connection with a site feature, to a height of not more than 2.5' above the average finished grade but shall not be constructed within 35' of a planned right of way.
3. That, the property is an estate sized lot that has a unique shape as the result of various lot splits over the years and is located behind other parcels fronting Bradley Road.
4. That, currently there are both wood and chain link perimeter fences which will all be replaced with a single design black aluminum fence (same in height and style as that proposed for the variance) which has the look of wrought iron and will add uniformity to the property.
5. Members of the Board found that there would be no detrimental effect on the character of the neighborhood and the spirit of the code would not be violated by the granting of a variance.

Motion: Mr. Fatzinger moved, seconded by Mr. Baesel to approve an 8' length variance for Docket 2014-02

ROLL CALL:

Yeas: Jones, Swisher, Baesel, Neverman, Fatzinger

Nays: none, motion carried

Motion: Mr. Fatzinger moved, seconded by Mr. Baesel to approve a 2 ½' height variance for an ornamental fence for Docket 2014-02

ROLL CALL:

Yeas: Jones, Swisher, Baesel, Neverman, Fatzinger

Nays: none, motion carried

Docket 2014-03

Applicant: Mr. and Mrs. Timothy Bihn

Premises: 30929 Bellerive Ct., PP#216-06-060

Requesting a building permit to install the pool (and equipment) in the side yard at variance with 1211.04(g)(2)(B) which states private swimming pools shall be permitted provided that the pool and all mechanical equipment is located only in the rear yard and is not less than 10' from any lot line, a side yard location variance; also requesting to relocate an existing utility building in a 20' storm sewer easement located at the rear of this property at variance with 1211.04(k) which states any utility building shall not be located within any easement area for storm sewers, a variance for this structure to be located in a storm sewer easement.

Note: 1211.22 allows for 3' encroachment into rear yard setback with unenclosed roofed porch &/or shading device. Applicant has advised overhang of attached "pavilion" /arbor is +- 27.16 off rear property line which is less than 3'- therefore no variance required

Mr. Jones stated that due to a conflict of interest he will abstain from discussion and voting but

will facilitate.

Mr. Schill, sworn in by Mr. Kelleher, explained the applicant is seeking a variance to allow the placement of a pool in the side yard (behind the rear line of the house). Code requires pools to be in the rear yard but this parcel is located on a cul-du-sac and has a very narrow rear yard with a storm sewer easement running through the rear yard. The lot is an odd shape with the majority of space in the rear yard being behind the house but jettison towards the side yard. There is no way to place a pool in the rear yard. The pool will be screened with landscape and there is an existing shed that is being relocated in the rear yard but in the storm sewer easement. Mr. Schill noted the next door neighbor to the pool, Philippe Mounier on 30961 Bellerive Court, did not have any objections to the proposal nor did the city engineer, Bob Kelly.

Mr. Neverman questioned why the pool equipment cannot be located on the opposite side of the pool so that it is in the rear yard. Mr. Schill explained the property owner preferred the proposed location as there were will a patio and landscape island at the other end of the pool. He advised the pool equipment is quiet compared to older models. Mr. Neverman felt aesthetics was not a reason to justify the proposed location of the pool equipment and Mr. Schill, who did not design the plans, thought the pool equipment could be relocated with the loss of some landscape. Discussion ensued that the proposed shed is being relocated. Members of the board agreed the lot is a unique shape with very little rear yard.

After a careful review of the plans and testimony of the applicants the Board finds that:

1. The request to install the pool (and equipment) in the side yard is at variance with 1211.04(g)(2)(B) which states private swimming pools shall be permitted provided that the pool and all mechanical equipment is located only in the rear yard and is not less than 10' from any lot line.
2. That, additionally, the request to relocate an existing utility building in a 20' storm sewer easement located at the rear of this property is at variance with 1211.04(k) which states any utility building shall not be located within any easement area for storm sewers.
3. That, this parcel is located on a cul-du-sac, has a very shallow rear yard, and the majority of space in the rear yard flows towards the side yard.
4. That, should the variance be granted for the location of a utility building within the easement, if the building needs to be moved for any reason to gain access to the easement, the expense will be bourne by the homeowner.
5. That, the pool will be screened with landscape.
6. Members of the Board found that because of the unique shape of the lot, the problem could not be reasonably solved in any other manner, there would be no detrimental effect on the character of the neighborhood, and the spirit of the code would not be violated by the granting of a variance.

Motion: Mr. Fatzinger moved, seconded by Mr. Swisher to approve a variance to allow a pool in the side yard for Docket 2014-03.

ROLL CALL:

Yeas: Swisher, Baesel, Fatzinger, Neverman

Nays: none, motion carried

Motion: Mr. Fatzinger moved, seconded by Mr. Swisher to approve a variance for Docket 2014-

03 to allow a shed in an easement with the condition if the city should ever need access to the easement the shed is moved or replaced at the applicants cost

ROLL CALL:

Yeas: Swisher, Baesel, Fatzinger, Neverman

Nays: none, motion carried

Motion: Mr. Fatzinger moved, seconded by Mr. Swisher to approve a variance to allow pool equipment in the side yard for Docket 2014-03.

ROLL CALL:

Yeas: none

Nays: Swisher, Baesel, Fatzinger, Neverman, motion failed

Docket 2014-04

Applicant: Mr. and Mrs. Shawn Sweeny

Premises: 999 Richmar Dr., PP# 212-10-031

Requesting a building permit to install an addition at variance with 1211.08(e) which states the width of either side yard of a lot shall be not less than the respective dimensions as set forth in §1211.09 (15'). The total width of both side yards of a lot and the width of two adjoining side yards on adjoining lots shall not be less than the total width as set forth in §1211.09 (30') except as modified in sections 1211.17 and 1211.18. Requesting to install the addition 11.75' off the side property line, a 3.25' setback variance. The total width of both side yards of this lot will be 27.33', a 2.67' variance. At the location where this project abuts an adjacent side yard, proposing a 13.46' setback (adjacent yard is 12.5' at this location), a 4.04' setback variance.

Mr. Sweeney and Mr. Young were sworn in by Mr. Kelleher. Mr. Young explained they are seeking three setback variances. Mr. Sweeney explained he is constructing an addition to his home at the rear of the home. The addition is setback within the existing footprint of the home but his existing house is not located 15' off the side yard. The addition is further away from the side lot line than the house but since it is a new addition it is required to meet the current setback codes. Both his house and the neighbor's adjacent home are not 15' off the side yard, they are both about 12.5' off the side yard so they do not comply with the required 30' setback between dwellings. Mr. Young showed photos of the property and renderings of the proposed addition.

Members discussed the proposal noting the existing house in one location is 9' off the property line while the addition is 11' off the property line. The existing house and garage are non-conforming. The parcel shape is not rectangular and narrows toward the rear of the property. It was questioned why the addition could not be revised so it would be 15' off the property line. Mr. Young explained it would narrow the addition and in that area is living quarters for Mr. Sweeney's mother in-law who needs ADA accommodations. There are also mature trees in the rear yard and the rear yard is not very large so to make the addition deeper on the lot would eliminate a sizable portion of the rear yard. The original garage was constructed in 1947. Mr. Young showed photos of the property noting the addition would not be visible from the street and it sits behind the house and inside the building footprint of the existing house. The addition will have larger setbacks than the existing house.

After a careful review of the plans and testimony of the applicants the Board finds that:

1. The applicants sought three setback variances.
2. That, the request to install the addition as proposed is at variance with 1211.08(e) which states the width of either side yard of a lot shall be not less than the respective dimensions as set forth in §1211.09 (15’).
3. That, the total width of both side yards of a lot and the width of two adjoining side yards on adjoining lots shall not be less than the total width as set forth in §1211.09 (30’) except as modified in sections 1211.17 and 1211.18.
4. That, the request to install the addition 11.75’ off the side property line requires a 3.25’ setback variance.
5. That, the total width of both side yards of this lot will be 27.33’, requiring a 2.67’ variance.
6. That, at the location where this project abuts an adjacent side yard, proposing a 13.46’ setback (adjacent yard is 12.5’ at this location) requires a 4.04’ setback variance.
7. That, the proposed addition (to the rear of the home) is setback within the existing footprint of the home.
8. That, the existing house is not located 15’ off the side yard and the proposed addition would be further from the side lot line than the existing house.
9. That, neither this house nor the neighbor’s adjacent home are 15’ off the side yard, they are both about 12.5’ off the side yard so they do not comply with the required 30’ setback between dwellings.
10. That, the existing house and garage are non-conforming.
11. That, the parcel shape is not rectangular and narrows toward the rear of the property.
12. That, there are mature trees in the rear yard and the rear yard is not very large, making it impractical to construct the addition deeper but narrower into the rear yard to avoid the necessity for a side yard variance.
13. That, the addition would not be visible from the street as it sits behind the house and inside the building footprint of the existing house.
14. That despite the side yard variances, the addition will have larger setbacks than the existing house.
15. Members of the Board found that because of the already non conforming construction of the home and unique shape of the lot, the problem could not be reasonably solved in any other manner, there would be no detrimental effect on the character of the neighborhood and the spirit of the code would not be violated by the granting of a variance.

Motion: Mr. Fatzinger moved, seconded by Mr. Swisher to approve a 3.25’ setback for Docket 2014-04

ROLL CALL:

Yeas: Jones, Swisher, Baesel, Fatzinger, Neverman

Nays: none, motion carried

Motion: Mr. Fatzinger moved, seconded by Mr. Swisher to approve a 2.67’ side yard setback for Docket 2014-04

ROLL CALL:

Yeas: Jones, Swisher, Baesel, Fatzinger, Neverman

Nays: none, motion carried

Motion: Mr. Fatzinger moved, seconded by Mr. Swisher to approve a 4.04’ setback for Docket

2014-04

ROLL CALL:

Yeas: Jones, Swisher, Baesel, Fatzinger, Neverman

Nays: none, motion carried

Docket 2014-05

Applicant: Drees Homes

Premises: 28639 Touchstone Circle, PP#216-19-087

Requesting a building permit to install a single family dwelling 15' off a rear property line at variance with 1211.08(f) and 1211.09 which states the rear yard setback shall be not less than the 30'; a rear yard setback variance of 15'

Mr. Jason Cassidy and Attorney Anthony Vacanti were sworn in by Mr. Kelleher. Mr. Vacanti explained the proposal is for a single family home on subplot 11 and the issue is with one of the property lines being a side lot line or a rear lot line, which Mr. Vacanti referred to as the disputed line. The recorded plat for the subdivision shows front property lines, rear property lines and easements but does not show the disputed line as a rear line on the plat. The other rear property lines are noted with a 30' setback and the disputed line does not note a 30' setback line. Side yards have a 15' setback not a 30' setback. Mr. Vacanti explained that the building department calculated the disputed line as a rear yard line not a side yard line, which he disagrees with. He will review the Duncan factors and interpretation. This parcel was interpreted by the building department to have three rear yard lot lines due to its unique shape while a normal parcel will only have one rear yard line. The parcel is narrow and interpreting the disputed line as a rear yard line with a 30' setback makes the lot even narrower so it cannot be built on. He is aware that adjacent homeowners have concerns with the proposal and what they can do move the house 4' over so there would be a 19' setback from the disputed line rather than the 15' originally proposed. Mr. Vacanti explained the subdivision was a result of a court settlement and the terms of the settlement were to approve 13 lots which would be buildable lots with modifications for non-conforming lot sizes and setbacks.

Mr. Vacanti questioned Mr. Cassidy regarding the purchase of the property and if he was aware the disputed line was a rear lot line which Mr. Cassidy stated he was not as the plat does not show it with a 30' rear yard setback and the other rear lot lines are labels on the plat with 30' setbacks. Based on the plat they designed the layout of the house on the lot with the disputed lot being a side lot line with a 15' setback since it was not labeled as a rear year with a 30' setback. Mr. Cassidy discussed that the parcel is a unique shape and if the disputed line has a 30' setback it makes the lot not buildable as a house would have to be too narrow and not desirable. He offered to shift the house closer to the opposite side line so it is on the 15' setback which would move the house in this area over by 4'. He estimated the proposed house would be approximate 81' from the adjacent house that shares the disputed lot line. It was discussed that the proposed variance request would not impact governmental services and the house is similar to the other houses in the neighborhood, being 2,600 sf. ft. in size. Mr. Cassidy reiterated that when the parcels were purchased for development the plat shows rear yard setbacks and this disputed line was not shown as a rear yard line. The plat shows both rear and front yard setbacks for the various parcels. Mr. Vacanti expressed that what is being proposed would be in keeping with the spirit and intent of the code, which Mr. Cassidy agreed was correct. With the offer to move the house 4' the new setback would be 19' off the property line. Mr. Vacanti reiterated this parcel is

a unique shape, part of a court settlement is to allow the lot to be a buildable lot, and the applicant has offered to place the house 19' off the disputed lot line.

Members of the board discussed the disputed lot line and that the building department had determined that the line was a rear lot line due to the calculations and the 45 degree angle in relation to the chord across the front lot line. The applicant has presented evidence as a different way to look at the disputed lot line. Mr. Vacanti reviewed section 1233.11(h) which addresses determining rear lot lines but the code does not say that a line is to be drawn across the front of the property (connecting the two end points of the parcel on this cul-du-sac lot) and to draw a line back to make the determination if the line is a rear line or not. There are locations on the actual curve of the cul-du-sac where when measuring the disputed line is not within 45 degrees and other locations where it is more than 45 degrees. Mr. Vacanti expressed the code is ambiguous regarding the determination so there are problems with the interpretation and it can be interpreted different ways. Concerns expressed by some members of the board were setting a precedence and if the request should be before the board. Mr. Kelleher advised that this is a matter that belongs before the board. He explained they have the ability to grant a variance to the building department's interpretation that this is a rear lot line and grant a setback variance if they so choose or determine that the interpretation is incorrect and this disputed line is a side yard line. Regarding precedence every lot is treated as unique so a precedent is not set and this particular lot has unique circumstances ranging from the exact shape of this lot, how to determine if the disputed lot line is a rear or side yard line, as well a court settlement which approved and established the subdivision and this particular lot. Discussion ensued reiterating previous points made.

Mr. John Wheeler, sworn in by Mr. Kelleher, explained this parcel and subdivision has a history as it relates to a previous owner and litigation that went on for numerous years resulting in a settlement in 2008. The intent of the settlement was for the subdivision to be approved with 13 buildable lots. The subdivision was approved as it related to the codes that were in place in 1992 when the litigation began and the subdivision was originally submitted. Part of the settlement is to allow modifications so all lots would be buildable lots. Mr. Wheeler noted a memo to planning commission prepared by previous Planning Director Robert Parry dated April 15, 2010 where this particular subplot 11 was referenced as needing modifications for "two non-radial side lot lines for subplot 11," which Mr. Parry supported. Mr. Wheeler explained the plat was approved as agreed upon as part of the settlement and that the lots would be buildable lots. He stated the circumstances are unique and part of the settlement of 16 years of litigation so there would be no precedent set regarding this parcel. The board can grant exceptions to the codes, interpretations and variances. The board needs to determine if they wish to grant a variance for a rear yard setback or a determination that the line in question is a side yard lot line. He reiterated that the litigation resolution in the settlement was that all the lots in the subdivision are to be buildable lots and recognize modifications for subplot 11.

Discussion ensued that the code has changed since 1992 and the lot size complied with the codes at that time. Members noted that if the disputed line was a side lot line a house could be constructed with a 15' setback while if they granted a variance to a 30' rear yard setback the house would have to be constructed with the proposed 19' setback as suggested by the applicant as that is what the variance would allow. They thought it was better to grant a rear yard setback so the placement of the house would comply with what the applicant offered this evening. The

exact dimension off the line would be 19.73'.

Mr. William Hahn and Mrs. Mary Anne Hahn of 28603 Stonegate Circle were sworn in by Mr. Kelleher. Mr. Hahn expressed the following: the area of the subdivision used to be a wooded lot; subplot 11 is still a buildable lot with a smaller footprint house as what is proposed is too big for the lot; a 30' setback is close and a 19' setback is even closer; there are several homes constructed in the subdivision which are not per ordinance; he has lived there for over 22 years, the residents in the neighborhood should get respect and this should not be approved. Mrs. Hahn expressed the following: the trees on the property have been removed; a tree on the edge of her parcel was removed and it was on her parcel but has yet to be replaced as she was told it would be; prior to construction there were property pins in place, which disappeared and have since reappeared; the development of this subdivision has been a nightmare; why can't the lot lines be changed to redesign the lots; she wants a buffer along her rear lot line; and she does not want to see a home on this parcel.

After a careful review of the plans and testimony of the applicants the Board finds that:

1. Applicant's request to install a single family dwelling 15' off a rear property line is at variance with 1211.08(f) and 1211.09 which states the rear yard setback shall be not less than the 30'.
2. That, there is a dispute with one of the property lines being characterized as a rear lot line rather than a side lot line.
3. That, this parcel was interpreted by the building department to have three rear yard lot lines due to its unique shape while a normal parcel will only have one rear yard line.
4. That, the plat, which includes this parcel, (known as subplot 11) was the subject of an agreed upon court settlement arising from lengthy litigation which contemplated that all 13 lots would be buildable lots with modifications for non-conforming lot sizes and setbacks.
5. That, the applicant offered a modification to move the house 4' additional feet so that the new setback would be 19' off the disputed property line.
6. That, given the proposed modification of 4' feet, members of the Board found that because of the unique shape of the lot, the property could not be reasonably used without the variance, the problem could not be solved in any other manner, and the spirit of the code would not be violated by the granting of a variance.

Motion: Mr. Fatznger moved, seconded by Mr. Neverman to approve a 10.27' rear yard setback variance for Docket 2014-05 with reference to the Westlake settlement proposal concerning this parcel dated 11/31/2008

ROLL CALL:

Yeas: Jones, Swisher, Baesel, Neverman

Nays: Fatzinger, motion carried

Docket 2014-06

Applicant: Westlake High School

Premises: 27830 Hilliard Blvd., PP#212 24 006 & 212 25 001

Requesting a variance pursuant to the requirements of section 1211.23(b) to permit the construction of two light poles at 60' in height, a 25' variance, and two light poles at 70' in height, a 35' variance.

Note: planning commission approved a development plan on 3/3/14 with a condition that the approval was contingent upon the applicant obtaining a variance for the pole height.

Mr. Tony Cipollone and Mr. John Kaufmann were sworn in by Mr. Kelleher. Mr. Cipollone explained they are proposing to install four light poles on the softball field. Two will be 60' tall and two will be 70' tall. They are similar to the existing poles that are on the baseball field and football field. Mr. Cipollone reviewed the site plan and explained the city's planning commission approved the development plan for the lighting on the softball field contingent upon receiving a variance. The footcandles at the lot line will be zero.

Mr. Fatzinger explained that planning commission did review and approve a development plan and there will be no spillover of light as the foot candles will be zero at the lot line. He was in favor of the request. Members of the board reviewed the site plan and the foot candles on the site. It was questioned if surrounding neighbors will see the light even though the foot candles show zero at the lot line. Mr. Kaufmann explained how foot candles are measured and that there will not be light spill off the site but if one were to look up they would see the lights. Mr. Neverman noted that the school board is not required to seek approval or any variances from the city and are doing so to be a good neighbor. It was noted that no new innings would start on the field after 10:00 pm.

Mr. Richard Ratzel of 1751 Taylor's Mill, sworn in by Mr. Kelleher, explained he has lived in his house for over 20 years. The lights from the baseball and football fields can be seen and this field is even closer. He stated he can read the paper in his back yard from the illumination given off by the other fields. Since the construction of the new high school they have removed all the woods that previously existed so they have even less screening and buffering than they used to. He felt this is not reflective of the character of the neighborhood and asked for respect of the neighborhood.

After a careful review of the plans and testimony on behalf of the applicants the Board finds that:

1. The Applicant is proposing to construct two light poles at 60' in height, and two light poles at 70' in height, for the Westlake High school softball fields and as such, pursuant to the requirements of section 1211.23(b) requires a variance "for any such structure over thirty-five feet in height if detached from the main building, or over twenty feet in height above the upper point of attachment to a main building." This is a 25' and 35' variance respectively.
2. That, the light poles are similar to the existing poles that are on the neighboring baseball field and football field.
3. That, the city's planning commission approved the development plan for the lighting on the softball field contingent upon receiving a variance.
4. That, there will be no spillover of light as the foot candles will be zero at the lot line.
5. That, for concerns of the peace and enjoyment of the residential neighbors, no new innings in any softball game would begin on the field after 10:00 pm.
6. Members of the Board found that there would be no detrimental effect on the character of the neighborhood and the spirit of the code would not be violated by the granting of a variance.

Motion: Mr. Fatzinger moved, seconded by Mr. Baesel to approve a 25' height variance for two 60' light poles for Docket 2014-06

ROLL CALL:

Yeas: Jones, Baesel, Neverman, Fatzinger

Nays: Swisher, motion carried

Motion: Mr. Fatzinger moved, seconded by Mr. Baesel to approve a 35' height variance for two 70' light poles for Docket 2014-06

ROLL CALL:

Yeas: Jones, Baesel, Neverman, Fatzinger

Nays: Swisher, motion carried

Docket 2014-07

Applicant: Tom & Holly Cooney

Premises: 3183 Creekside Dr., PP#215-11-095

Requesting a building permit to install a utility building 2' off the side property line, at variance with 1211.04(k) which states a utility building shall be permitted in a rear yard provided that the minimum side and rear yard setbacks are 10'; an 8' side yard setback variance.

Mr. Cooney, sworn in by Mr. Kelleher, explained he purchased the property last August. It is a wooded lot with a creek that runs through the middle of the back yard and a 50' drainage easement going through the yard. He wishes to install a shed and has limited locations in the rear yard to place it due to the creek location. He is proposing to place the shed 5' off the side lot line rather than the original 2' request. This location is on the same side of the creek as the house and is in a location where it will not be very visible to his neighbors. He did speak with his surrounding neighbors to review the location and come up with a location that was agreeable for all. Another possible location would be to place the shed next to the house (option 2) but that would need variance to be in the side yard and his proposed location is a better location due to visibility.

Members of the board discussed that the lot is an odd shape with a creek running through the rear yard, plus the drainage easement limits where a shed can be located, making this a unique lot.

Mr. Cooney also explained the shed will have a security system and reviewed that the doors will face his house.

After a careful review of the plans and testimony on behalf of the applicant the Board finds that:

1. The Applicant is proposing to place a utility shed 5' off the side lot line (rather than the original 2' request) of his property and as such is at variance with 1211.04(k) which states a utility building shall be permitted in a rear yard provided that the minimum side and rear yard setbacks are 10. This will require a 5' side yard setback variance.
2. That, the applicant's property is a wooded lot with a creek that runs through the middle of the back yard and has 50' drainage easement going through the yard.
3. That, alternate locations for the shed placement are restricted due to the creek location.
4. That, the proposed location is on the same side of the creek as the house and is in a location where it will be less visible to his neighbors.
5. That, an alternative location for placement next to the house would also require a

variance and is a less desirable alternative as it would be more visible.

6. That, the shed will be angled so that the doors will face the applicant's house.
7. That, given the proposed modification of an additional 3' feet, members of the Board found that because of the unique and odd shape of the lot, the problem could not be solved in another manner, there would be no detrimental effect on the character of the neighborhood, and the spirit of the code would not be violated by the granting of a variance.

Motion: Mr. Fatzinger moved, seconded by Mr. Baesel to approve a 5' side yard variance for Docket 2014-07

ROLL CALL:

Yeas: Jones, Baesel, Neverman, Fatzinger, Swisher

Nays: none, motion carried

Docket 2014-09

Applicant: Michael and Linda Tugwell

Premises: 23782 Cornwell, PP#214-09-045

Requesting a building permit to install three additions to their home (two small living spaces and one attached garage), at variance with 1211.09 which states maximum lot coverage by main building shall be 20%. Requesting to create a structure which will have a total area of 3458.88 sq. ft. which will require a +-3% (a 458.88 sq. ft.) variance for lot coverage. Additionally, the applicant is requesting to install one addition at variance with 1211.08(e) which states the total width of both side yards of a lot shall equal 30', a 4.75' variance. The 1058.93 sq. ft. garage addition is at variance with 1211.04(a)(2) which states garages on lots less than 20,000 sq. ft. in area shall be limited to 800 sq. ft. of maximum garage area, a 258.93 sq. ft. area variance. They are also requesting to install this garage 10' off the side property line at variance with 1211.09 which states minimum side yard dimensions shall be 15', a 5' side yard setback variance.

Mr. and Mrs. Tugwell were sworn in by Mr. Kelleher. Mr. Tugwell reviewed the application submitted which is for an addition at the rear of the house for garage and interior living space. There are two other additions or bump outs – one being 5' and the other being 2.5'. The additions need setback variances, a lot coverage variance and the garage space will need an area variance.

Ms. Sackman stated that the building department contacted the architect for exact interior dimensions of the garage and interior addition. Not all of the addition at the rear of the house is considered garage space as some of it is part of the house (stairs and bathroom). The corrected garage area is 976 sf. ft. which requires a 176 sq. ft. variance. She also noted that on March 24th the Tugwells submitted an application to planning commission to assemble their two lots. The vacant parcel was not considered for yard area when determining the existing variance request as the lot with the main parcel is only considered. When assembled the parcel will be 22,497 sq. ft. which would permit a 1,000 sq. ft. garage. However at this time the lot assembly has not yet been approved by the planning commission.

Members discussed once both lots are assembled a variance is not needed for the garage area but variances would still be needed for the setbacks and lot coverage. The new calculation for lot

coverage was not determined but it would be less than the 3% being requested for the existing lot, which is a non-conforming width. The addition would be keeping with the character of the neighborhood and it was determined to grant the variance for the garage area since the lots are not currently assembled so the applicant could begin construction. Once the lots are assembled the garage area variance becomes moot and is not necessary. It was also determined to grant the 3% lot coverage variance for the lot as it currently exists and once assembled the lot coverage will actually be less.

After a careful review of the plans and testimony on behalf of the applicant the Board finds that:

1. The Applicants are requesting a building permit to install three additions to their home (two small living spaces and one attached garage), at variance with 1211.09 which states maximum lot coverage by main building shall be 20%.
2. That as proposed the Applicants were requesting to create a structure which will have a total area of 3458.88 sq. ft. which will require a +3% (a 458.88 sq. ft.) variance for lot coverage.
3. That additionally, the Applicant's were requesting to install one addition at variance with 1211.08(e) which states the total width of both side yards of a lot shall equal 30', a 4.75' variance.
4. That, as proposed the 1058.93 sq. ft. garage addition is at variance with 1211.04(a)(2) which states garages on lots less than 20,000 sq. ft. in area shall be limited to 800 sq. ft. of maximum garage area, a 258.93 sq. ft. area variance.
5. That additionally, as proposed, the applicant s are also requesting to install this garage 10' off the side property line at variance with 1211.09 which states minimum side yard dimensions shall be 15', a 5' side yard setback variance.
6. That, not all of the proposed addition at the rear of the house is considered garage space as some of it is part of the house (stairs and bathroom). The corrected garage area is 976 sf. ft. which requires a 176 sq. ft. variance.
7. That, on March 24th the Tugwells submitted an application to the Planning Commission to assemble their two lots. The vacant parcel was not considered for yard area when determining the existing variance request as the lot with the main parcel was only considered.
8. That, if and when assembled the parcel will be 22,497 sq. ft. which would permit a 1,000 sq. ft. garage. However at this time the lot assembly has not yet been approved by the planning commission.
9. That, if both lots are assembled, a variance is not needed for the garage area but variances would still be needed for the setbacks and lot coverage. The new calculation for lot coverage was not determined but it would be less than the 3% being requested for the existing lot, which is a non-conforming width.
10. That, the addition as proposed would be keeping with the character of the neighborhood, and given the proposed lot consolidation making two variances moot, the spirit of the code would not be violated by the granting of a the variances.

Motion: Mr. Fatzinger moved, seconded by Mr. Swisher to approve a +/- 3% lot coverage variance conditional upon approval of the lot assembly by planning commission (clerks's note: the 3% variance is for the lot as it currently exists and not a 3% lot coverage variance once both parcels are assembled)

ROLL CALL:

Yeas: Jones, Baesel, Neverman, Fatzinger, Swisher
Nays: none, motion carried

Motion: Mr. Fatzinger moved, seconded by Mr. Swisher to approve a 4.75' side yard variance for Docket 2014-09

ROLL CALL:

Yeas: Jones, Baesel, Neverman, Fatzinger, Swisher
Nays: none, motion carried

Motion: Mr. Fatzinger moved, seconded by Mr. Baesel to approve a 176 sq. ft. garage area variance based on the existing lot size for Docket 2014-09 (clerks's note: the 176 sq. ft. variance is for the 976 sf. ft. garage for lot as it currently exists and not an additional 176 sq. ft. variance once both parcels are assembled)

ROLL CALL:

Yeas: Jones, Baesel, Neverman, Fatzinger, Swisher
Nays: none, motion carried

Motion: Mr. Fatzinger moved, seconded by Mr. Swisher to approve a 5' side yard variance for Docket 2014-09

ROLL CALL:

Yeas: Jones, Baesel, Neverman, Fatzinger, Swisher
Nays: none, motion carried

ELECTION OF OFFICERS

Motion: Mr. Fatzinger moved, seconded by Mr. Baesel to nominate Mr. Jones as Chairman

ROLL CALL:

Yeas: Jones, Baesel, Neverman, Fatzinger, Swisher
Nays: none, motion carried

Motion: Mr. Fatzinger moved, seconded by Mr. Baesel to nominate Mr. Swisher as Vice Chairman

ROLL CALL:

Yeas: Jones, Baesel, Neverman, Fatzinger, Swisher
Nays: none, motion carried

Motion: Mr. Fatzinger moved, seconded by Mr. Swisher to nominate Mr. Baesel as Secretary

ROLL CALL:

Yeas: Jones, Baesel, Neverman, Fatzinger, Swisher
Nays: none, motion carried

APPROVAL OF MINUTES

Motion: Mr. Fatzinger moved, seconded by Mr. Swisher to approve the minutes of February 25, 2014 as amended

ROLL CALL:

Yeas: Jones, Swisher, Baesel
Abstain: Fatzinger, Neverman
Nays: none, motion carried

FINDINGS OF FACTS - none

MISCELLANEOUS - none

ADJOURNMENT

Chairman Jones adjourned the meeting at 9:40 P.M.

Matt Jones, Chairman

Nicolette Sackman, Clerk of Commissions

Approved: April 29, 2014