

The Tuesday, September 18, 2007 meeting of the Delhi Township Board of Zoning Appeals was called to order by Chairman Jerry Kearns at 7:00 p.m. at the Administration Building with the Pledge of Allegiance to the Flag.

Members present:

Robert J. Ashe

Jerome H. Kearns

Joseph Scherer, Jr.

Robert G. Hendon

Charles Brigham III

Also present:

Thomas R. Stahlheber, Director of Development Services

David C. Lane, Law Director

Mr. Stahlheber certified that the requirements of Section 121.22 of the Ohio Revised Code and the rules adopted pursuant thereto had been completely complied with as they concerned the meeting.

Resolution 2007-8

Mr. Hendon moved and Mr. Scherer seconded to approve the minutes of the March 6, 2007 meeting. Msrs. Ashe, Kearns, Scherer, Hendon and Brigham voted Aye. Motion carried.

The hearing in Case VA2007-07 (6863 Rapid Run) was convened.

Mr. Stahlheber (sworn) advised that on July 3, 2007 the Department of Development Services received an application filed by John Kraft for the construction of an accessory structure (swimming pool) at 6863 Rapid Run. He commented that the application was denied on July 12, 2007 with the applicant notified of the denial by certified mail on that same date. He noted that in the letter were stated the reasons for the denial which included: the premises known as 6863 Rapid Run is located in Delhi Township, Hamilton County, Ohio and in the "A2" Residence district as shown on the maps of the Township Zoning Resolution; the subject premises is located in the Hillside Development Overlay District as shown on the maps of the Zoning Resolution; the submitted application and drawings indicated a proposed in-ground pool to be situated in the west front yard of the subject premises; no Hillside Development Overlay District materials were submitted; the Township Zoning Resolution prohibits accessory structures in any yard other than a rear yard and requires that all accessory structures comply with the Hillside Development Overlay District regulations in their construction. The denial was also based on the following sections of the Zoning Resolution: Sections 51.1, 69, 70, 61, 62, 62.13, 62.14., 62.14-2, 139, 139.2, 139.3, 139.4, 139.4-1, 139.5, 139.5-1, 139.5-3, 139.8, 171, 171.7, 191, 192, 194, 251, 281, 282 and 291. Pursuant to Article XVIII of the Zoning Resolution the applicant had the right to file an appeal of the denial within twenty days of the action with an appeal being filed in the form of an application received on August 1, 2007. Pursuant to the requirements of the Ohio Revised Code the hearing was advertised in a newspaper of general circulation at least ten days before the hearing and

those parties of interest were notified by first class mail at least ten days before the hearing.

Exhibit "A" – application

Exhibit "B" – site plan

John Kraft (sworn), 6863 Rapid Run, advised that he was requesting a variance so to construct a pool at the only level portion of the subject premises, the west front yard.

To Mr. Kearns question as to what conditions exist at the property that make it difficult to comply with the rear yard location requirement Mr. Kraft advised of the sloping topography of the rear yard and it being the location for the cavetat system serving the house, reiterating that the only level ground on the property is the west front yard.

To Mr. Kearns question as to if the proposed location of the pool would be visible from any adjoining properties Mr. Kraft responded in the negative noting the size of the lots in the area and extensive tree cover.

To Mr. Scherer's question concerning the lack of Hillside Development Overlay District materials being submitted Mr. Stahlheber advised that no zoning certificate would be approved until the proper materials are submitted.

Mr. Stahlheber advised of receiving no opposition to the requested variance.

Mr. Ashe advised that based upon his inspection the location of the pool would not be visible from adjoining properties.

Mr. Scherer agreed that special conditions were present at the subject property.

Resolution 2007-9

Mr. Ashe moved and Mr. Brigham seconded to approve the variance as requested in case VA2007-07. Mssrs. Scherer, Ashe, Hendon, Brigham and Kearns voted Aye. Motion carried.

Mr. Lane advised that statements and facts presented in this hearing should be included in the Finding of Fact as reasons supporting a finding that practical difficulties existing.

Finding of Fact:

1. The case number was VA2007-7.
2. The date of the action by the inspector was July 12, 2007 where a zoning certificate was denied for the construction of an accessory structure (pool) for the reason that said accessory structure would be situated in the west from yard.
3. The appellants name was John Kraft.
4. The date the appeal was filed was August 1, 2007.
5. The address of the subject premises was 6863 Rapid Run.
6. The zone district of the subject premises was "A2" Residence.

7. Sections of the Zoning Resolution on which the denial was based included: 51.1, 69, 70, 61, 62, 62.13, 62.14, 62.14-2, 139, 139.2, 139.3, 139.4, 139.4-1, 139.5, 139.5-1, 139.5-3, 139.8, 171, 171.7, 191, 192, 194, 251, 281, 282 and 291.
8. Sections of the Zoning Resolution authorizing the Board to grant or deny the appeal included: 183, 184, 184.2, 184.6, 185 and 186.
9. Sections cited by the appellant authorizing the Board to grant the appeal included 171.7.
10. There was no opposition present at the hearing.
11. The Board finds no error on the part of the inspector.
12. The Board finds that practical difficulties exist as a result of an area zoning requirement after consideration of the following non-exclusive factors:
 - a) The property owner purchased the property with knowledge of the zoning restriction.
 - b) The property owner's predicament feasibly cannot be obviated through some other method other than a variance.
 - c) The variance is not substantial.
 - d) The lot has an irregular shape, topographic, and other conditions present.
 - e) The essential character of the neighborhood would not be substantially altered and adjoining properties would not suffer a substantial detriment as a result of the variance.
 - f) The property in question would yield a reasonable return and there can be some beneficial use of the property without a variance.
 - g) The variance would not adversely affect the delivery of governmental services.
13. The Board finds that the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.
14. The Board finds that the granting of the appeal would not be contrary to the public interest, general welfare and adjoining landowners. Basis of finding:
 - a) The character of the neighborhood would not be altered and the pool would not be visible from adjoining properties owing to the configuration of the lot and the house on it.
15. The Board wishes to review any alterations regarding the variance.

The hearing in Case VA2007-08 (762 Stoneridge) was convened.

Mr. Stahlheber (sworn) advised that on August 9, 2007 the Department of Development Services received an application filed by Steven Thiemann for the construction of an accessory structure (pool) at 762 Stonebridge. He commented that the application was denied on August 9, 2007 and the applicant notified of that denial by certified mail on that same date. He noted that in the letter were stated the reasons for the denial which included: the premises known as 762 Stonebridge is located in Delhi Township, Hamilton County, Ohio and in the "A2" Residence District as shown on the maps of the Township Zoning Resolution; the submitted application and drawing indicated a proposed in-ground pool to be situated in the southwest side yard of the subject property; the Township Zoning Resolution prohibits accessory structures in any yard other than a rear yard. This denial was also based on the following sections of the Zoning Resolution: 51.1, 69, 70, 61, 62, 62.13, 62.14, 171, 171.7, 191, 192, 194, 251, 281, 282 and 291. Pursuant to Section XVIII of the Zoning Resolution the applicant had the right to file an

appeal of the denial within 20 days of the action with an appeal being filed in the form of an application received August 10, 2007. Pursuant to the requirements of the Ohio Revised Code the hearing was advertised in a newspaper of general circulation at least 10 days before the hearing and those parties of interest were notified by first class mail at least 10 days before the hearing.

Exhibit "A" – application

Exhibit "B" – site plan

Exhibit "C" – construction drawings

Exhibit "D" – photo of the prototype of the pool

Exhibit "E" – photo of the proposed fence enclosing the pool area

Exhibit "F" – letter from Engineer @stability of rear yard

Exhibit "G" – aerial photograph showing location of other pools in the neighborhood

Exhibit "H" – site plan showing yard designations

Steve Thiemann (sworn), 762 Stonebridge, advised that a severe slope in the rear yard prevents the placement of the pool in the rear yard. He commented that his engineer has indicated the likelihood of failure of the rear foundation wall should the pool be constructed in the rear yard (Exhibit "F"). He noted that per the determined yard designations that the proposed location of the pool is in the southwest side yard. He advised that variances have been granted to several homeowners on Stonebridge to facilitate construction of other pools (Exhibit "G"). He commented that the appearance of the pool would be in keeping with the character of the neighborhood. He noted that he had notified the adjoining property owners on the private drive by letter of the proposed location of the pool in an attempt to appease them, and that in response to their comments the location of the pool was modified.

Testimony from Gary Powell, legal counsel representing the owners of 760 Stonebridge (inaudible).

Mr. Arar (sworn), 760 Stonebridge, advised that he objects to the side yard location of the proposed pool inasmuch as it would be visible from his house as well as while entering and exiting his drive and because the proposed fence would be in close proximity to his north property line. He commented that the Thiemann's had added a huge addition across the front of their home a couple of years ago.

At Mr. Powell's direction Mr. Arar advised of a meeting he had with Mr. Thiemann whereat he offered a land swap involving a portion of his rear yard going to the Thiemann's whereby their rear yard would be enlarged and could facilitate locating the pool in their rear yard.

To Mr. Kearns' question as to if the land swap would have included Mr. Thiemann giving part of his lot in exchange for some of his rear yard Mr. Arar responded in the affirmative.

To Mr. Kearns question as to what right he has to use Mr. Thiemann's property Mr. Arar advised of he and his neighbors having an ingress/egress easement for the private drive extending from the dead end of Stonebridge.

Mr. Brigham advised that there probably is not an easement as referred to by Mr. Arar, but rather a panhandle extending from Stonebridge to Arar's property.

To Mr. Brigham's question as to if the pale outline on Exhibit "G" was his swimming pool Mr. Arar responded in the affirmative.

To Mr. Brigham's question as to the location of his septic system Mr. Arar advised that when a new septic system was installed it was installed in the same location as was the original when he moved into the house in 1996. Mr. Arar commented that his existing pool is in the same location as was the original pool.

To Mr. Kearns' question as to if a variance was required for his pool Mr. Arar advised that he did not know. Mr. Stahlheber advised that the pool appeared to be in the rear yard.

To Mr. Scherer's question regarding the area of his property offered to Mr. Thiemann Mrs. Arar identified same on Exhibit "B".

To Mr. Kearns' question as to if he expected Mr. Thiemann to deed a portion of his front yard to him in exchange for a portion of his rear yard Mr. Arar responded in the affirmative.

Mr. Arar reiterated that his main objection is to the view of the proposed pool/pool area from his house. He commented on three real estate agents advising that the pool would negatively affect his property value.

Mrs. Arar advised that they recently made a \$250,000 addition to their residence and is concerned for the impact the Thiemann's' pool will have on the resale value of their residence. She commented on being aware of the zoning prohibition on side yard pools and that if they were aware that consideration for a variance for a side yard placement was to be proposed that they would have reconsidered their addition.

To Mr. Powell's' question as to if there was a concern for the placement of the proposed pool having a negative impact on the market value of their property Mr. Arar responded in the affirmative. Mr. Arar advised that he had three different appraisals done and that each drew the same conclusion that such would negatively affect the value of his residence.

Kurt Lamping (sworn), Star One Realtors, advised that he was Kathy Arar's brother but that he had no vested interest in her property. He advised that changing the view by making an improvement in the front of a piece of property detracts from the value inasmuch as it would no longer have a clear and unobstructed view. He noted that the proposed pool would negatively affect the property value of the Arar's.

Mr. Brigham's commented that the Arar's objection was not necessarily to the proposed pool.

Mr. Lamping advised that the objection was not to the pool but to the substantial permanent structure in the side yard of the subject premises. He commented that for a variance to be granted the lack of negative impact on neighboring properties needs to be proven.

Steve Papin (sworn), real estate appraiser, advised of two areas in which the pool would impact the thought process of a future buyer: curb appeal and external influence. He commented that the curb appeal of the house and the external influence would have a negative impact if the pool was installed in the proposed location. He commented that it would be very difficult to calculate the amount of value lost. He stated that it was his opinion that there would be a strong likelihood that a buyer would be willing to spend less for this property with the location of the pool in front of it.

To Mr. Brigham's question regarding when the pool would come into view while driving down the private drive Mr. Papin advised that as you approach the Thiemann's house, coming into full view as one approached the Arar's property.

To Mr. Brigham's question as to the noise level of the pool being in the side yard as opposed to the rear yard Mr. Papin advised that he could not answer that question.

To Mr. Brigham's question as to when the addition was made to the Arar's residence Mr. Papin advised that he could not answer that question.

Mr. Brigham advised that generally pools do not maximize the value of a residence. Mr. Papin concurred.

Mr. Thiemann advised that he manages commercial properties, apartment buildings, a real estate company and an appraisal company.

To Mr. Lamping's question as to if Mr. Thiemann does appraisals Mr. Thiemann responded in the affirmative but that such was not his main responsibility.

To Mr. Lamping's question as to if Mr. Thiemann's company sells residential property Mr. Thiemann responded in the affirmative.

To Mr. Powell's question as to if two similar residences were sold, one with a pool and the other not, which would have greater marketability Mr. Thiemann responded that he could not answer that question. He stated that it would be impossible to make an appraisal on his property applying assumptions as to what kind of impact a pool being located in his side yard would have on the property value. He advised that an appraisal, to be in conformance with the uniform standards of professional appraisal practice, would require three comparable property sales within the same market and in the same time frame. He commented that if he thought it would have a negative impact on the value of the Arar's home he would not put the pool in the proposed location. He stated that he strongly disagreed with the opinion that it would have a negative impact.

To Mr. Powell's question as to if the Arar's offered to give Mr. Thiemann land to facilitate the pool being located in the rear yard Mr. Thiemann responded in the affirmative.

To Mr. Powell's follow-up question as to what was Mr. Thiemann's response Mr. Thiemann advised that the offer was very much appreciated, however, they were not interested because the land offered was on a significant slope and the location would bring the pool closer to the Arar's septic system which, on two occasions, had given off an odor. Mr. Thiemann commented that he didn't consider it to be an equal swap.

To Mr. Powell's question as to if he could still use his residence as a residence without getting a variance Mr. Thiemann responded in the affirmative.

To Mr. Powell's question as to if at the time he purchased his residence Mr. Thiemann was aware of the yard designations affecting his property Mr. Thiemann responded in the negative.

To Mr. Powell's question as to if the zoning regulations concerning the placement of pools was checked at the time Mr. Thiemann purchased the subject premises Mr. Thiemann advised that adding a pool was not considered when he purchased the property.

To Mr. Powell's question as to if the project engineer did any test borings Mr. Thiemann responded in the negative.

To Mr. Powell's question as to if any other locations on the subject premises were considered for the placement of the proposed pool Mr. Thiemann responded in the affirmative, noting that his engineer inspected the property and determined the proposed location best inasmuch as it consisted of a more level area. He advised that it was the only level area on the property.

To Mr. Powell's question as to if constructing the pool in the rear yard where it is permitted would result in the retaining wall being constructed closer to the house (in between the pool and the house) Mr. Thiemann responded in the affirmative.

To Mr. Powell's question with respect to the ages of the Thiemann children Mr. Thiemann advised that he had three girls, ages 10, 12 & 13.

To Mr. Powell's question as to if Mr. Thiemann was the original owner of the subject property Mr. Thiemann responded in the negative, noting that he was the second owner.

To Mr. Ashe's question regarding the landscape/screening for the pool area Mr. Thiemann advised that it would be in keeping with the current landscaping on his property. He commented that the plan included a four foot retaining wall and a number of evergreens all the way around.

To Mr. Hendon's question concerning the distance of the pool from the property line Mr. Thiemann advised that at the closet point there would be a 5' setback. Mr. Thiemann commented that the original location of the pool was much closer to the front property line and that in an effort to be good neighbors it was moved back 20'.

To Mr. Hendon's observation that the design of the pool/pool area doesn't appear to leave much room for a significant number of plantings Mr. Thiemann took exception, noting that during the initial meeting with the Arars the landscape design was OK'd. He advised that they would do whatever they could to be good neighbors.

To Mr. Kearns's question as to if anyone submitted written opposition to the requested variance Mr. Stahlheber responded in the negative.

Mr. Thiemann advised that he was not afforded the opportunity to review the materials submitted by the opposition at the hearing. He commented that the Arar's offer was not an equal land swap. He noted that the view of the pool from the Arar property would be minimized if not eliminated by the planting of trees.

Mr. Papin advised that some of the items proposed would be favorable if the pool was permitted, the more pleasant you make it look and more private you arrange the setting the more favorable it would be. He commented that he maintained his opinion that the proximity of the pool and the view of it would detract from the Arar's property value.

To Mr. Thiemann's question as to if there would be a negative impact on the value and marketability of the Arar's home if trees were planted along the property line to screen the pool from their view Mr. Lamping responded that he was trying to compare something allowable under the Zoning Code (a row of trees) to something not allowable under the Code (an accessory structure in a side yard).

Mr. Papin advised that planting a line of trees in the same location as the pool would have little to no impact on the market value of the Arar's property. Mr. Lamping concurred.

Mr. Thiemann advised that he doesn't agree that a pool on his property, done in a tasteful manner, would negatively impact the value of the Arar's home. He commented that the yard designations affecting his property were prohibitive and that they should be changed. He noted that if the yard designations were changed he wouldn't need a variance. He advised that he wasn't afforded the opportunity to consider the impact the Arar's addition would have on his property. He commented on not having an opportunity to review the appraisal documents submitted by Messrs. Grady and Papin to the Board in the matter, noting that he didn't consider it to be a true appraisal inasmuch as it did not conform with the standards of professional appraisal practices. He requested that the Board grant the variance and to understand that some opinions included in the testimony received were biased.

Mr. Powell advised that the Zoning Resolution identifies the zoning inspector as the authority in determining yard designations and that they were established when the subdivision was reviewed/approved.

Mr. Lane advised that he could research the Zoning Resolution regarding yard designations should the Board so desire. He commented that irregular panhandle lots such as the Thiemann's typically make determining yard designations very difficult. He noted that the yard designations of the subject property were determined as they were for two reasons: if the rear yard extended all the way to the private drive you would have a rear yard intersecting a street resulting in accessory structures being permitted to be installed effectively adjacent neighboring properties front yards; the yard designations are determined without the benefit of building footprints being indicated on the subdivision plat.

Mr. Powell stated reasons in support as to the Arar's argument that the Board should deny the requested variance: the Arar's addition did not require a variance nor did it have a negative impact; the Arar's addition increased the market value of their home and the neighborhood; the evidence submitted by the applicant did not prove a hardship or practical difficulty; the proposed variance does not meet the spirit and intent of the Zoning Resolution; Mr. Papin, a disinterested witness, presented his opinion on the impact the variance would have on the market value of the Arar's property based on his professional experience; Mr. Thiemann was provided the opportunity to cross examine Mr. Papin; the yard designations affecting the subject premises (as stated in 171.19 of the Zoning Resolution) were established at the time of development of the subdivision in 1990, and were never challenged by the developer; the request was to locate the pool in the side yard; testimony provided from those in opposition stated that the pool would have a negative impact on the value and quiet enjoyment of neighboring properties.

To Mr. Kearns's question as to the argument that the pool would have a negative effect on the neighborhood Mr. Papin clarified that he meant that it would have an effect on the neighbors, in particular the Arar's.

To Mr. Thiemann's question as to what would have a greater negative impact, a tennis court, including an 8'-10' chain link fence around it, a concrete pad for a basketball hoop (both allowable by the restrictive covenants of the neighborhood) or a swimming pool Mr. Papin responded that anything substantial in the side yard, regardless of the nature, would have a negative impact on property values.

Mr. Powell advised that based on the Zoning Resolution a tennis court was not permitted in a side yard.

Mr. Kearns advised that the purpose and intent of the hearing was not to research the Zoning Code as to what structures were allowable in what locations.

Mr. Lane suggested the Board consider continuing the hearing in progress so to consider the testimony submitted and to facilitate a joint site inspection.

Mr. Scherer concurred with Mr. Lane's suggestion, noting that he would be interested in viewing the proposed pool location from the Arar's property.

Mr. Brigham also concurred, noting that he would like to visit the subject premises after hearing the testimony presented.

To Mr. Powell's question as to if it would be appropriate to ask questions of the Board during a site inspection Mr. Lane responded in the negative. Mr. Lane advised that the purpose of continuing the hearing was to determine if there would be a negative impact. He commented that the factual portion of the hearing, where testimony and presentations were provided could be considered by the Board to have been concluded.

Resolution 2007-10

Mr. Scherer moved and Mr. Hendon seconded to continue the hearing in case VA2007-08 in progress in order to facilitate a site inspection of the subject premises on Monday, September 24, 2007 at 5:00 p.m. and to set the continuation of the hearing for Tuesday, October 2, 2007 at 7:00 p.m. Msrs. Scherer, Ashe, Hendon, Brigham, and Kearns voted AYE. Motion carried.

Old Business:

- Mr. Stahlheber informed the Board that the edit of the April 2007 minutes was not yet complete.

New Business:

- Mr. Stahlheber advised that the Board had nothing pending. He encouraged the Board members to keep the first three Tuesdays available to facilitate meetings.
- The Board received departmental monthly reports for the months of February, March and April 2007. Mr. Stahlheber advised that the report would be done in a revised format starting in May.
- Mr. Stahlheber polled the Board as to who would like to receive their meeting packages via e-mail. Mr. Kearns and Brigham responded in the affirmative.

- The Board received the 2006 Annual Report for the department.
- The Board received new rosters, now including e-mail addresses.
- Mr. Stahlheber advised that the Township zoning inspector Linda Tong had resigned so to accept the Zoning Administrator position in Middletown, Ohio.
- Mr. Stahlheber advised that the Boards' requested modifications to the text of the Zoning Resolution were on hold pending the filling of the zoning inspector position.
- The Board discussed the annual departmental golf outing. Mr. Hendon agreed to host the outing and to put some potential dates together and get back with them.

To Mr. Hendon's question as to if the Township had any control over the type of signage utilized by the new Frisch's restaurant Mr. Stahlheber advised that they had the option to put up a pole or ground sign. Mr. Stahlheber commented that the occupancy permit for the new pole sign had not been issued inasmuch as it was too close to the sidewalk, and that he is working with the applicant to rectify the situation. Mr. Stahlheber noted that one of the recommendations of the Delhi Pike Task Force Study is to revisit the signage regulations.

There being no further business on motion of Mr. Scherer seconded by Mr. Ashe the meeting was adjourned at 9:00 pm. Messrs. Ashe, Hendon, Scherer, Kearns and Brigham voted aye. Motion carried

Board of Zoning Appeals:

Thomas R. Stahlheber, Secretary

