

The Tuesday, February 5, 2008 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.
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 2008-1

Mr. Ashe moved and Mr. Scherer seconded to approve the minutes for the Board's April 17, 2007 meeting but to dispense with the reading. Mssrs. Ashe, Kearns, Scherer and Brigham voted Aye. Motion carried.

The hearing in Case VA2008-1 (1135 Pontius) was convened.

Mr. Stahlheber asked the Board for the next few meetings to identify themselves when talking until such time as the new transcriber becomes familiar with their voices.

Mr. Stahlheber (sworn) advised that on November 16, 2007 the Department of Development Services received an application filed by Professional Design Associates for the construction of an accessory structure (detached garage) at 1135 Pontius. He commented that the application was denied on November 20, 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 1135 Pontius 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 accessory structure (detached garage) to be situated in the west side yard of the subjects premises; no Hillside Development Overlay District materials were submitted; the Township Zoning Resolution prohibits accessory structures in any yards other than rear yards and requires that all accessory structures greater than one hundred square feet located within the Hillside District be constructed in compliance with those district regulations. 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 December 10, 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

Exhibit "C" - elevation drawings

Exhibit "D" - letter from project engineer

Mr. Stahlheber clarified that the yard designations for the subject premises were determined at the time the subdivision for the property was approved, including the front yard being the south yard, the rear yard being the north yard (abutting onto Cleves Warsaw) and the side yards being the east and west yards.

To Mr. Kearns question as to if the requested variance sought was for the proposed garage to be located in the front or side yard Mr. Stahlheber responded the west side yard.

Jim Ritter, architect with PDA Associates, advised that he was representing the property owners, the Kirby's, and that Mr. Reeby the proposed builder was also in attendance. He commented that the appeal letter includes six or seven items in support of the variance requested. He noted that his client would like to build a 22' x 24' two car detached garage, 17' or 18' high, constructed in such a way as to be in character with the existing house.

Mr. Kearns advised that most of the Board has been to the subject premises.

To Mr. Kearns' question as to where in the west side yard the proposed garage would be situated Mr. Ritter responded at the location of an existing playhouse. Mr. Ritter advised that the playhouse would be removed.

To Mr. Kearns' question as to if the graded area along the rocks to the south side of the subject premises is where the proposed garage is to be situated Mr. Ritter responded that such area may not be part of the Kirby's property.

Mr. Brigham advised that he had visited the subject property and had no questions.

To Mr. Scherer's question as to if the letter submitted by PDA (Exhibit "D") satisfied the Hillside Development requirements Mr. Stahlheber responded in the negative noting that whereas such letter gives suggestions of some building techniques needing to be followed that it does not contain language required by the Hillside Development regulations. Mr. Stahlheber advised that one of two things need to happen in this regard, a letter and additional documentation will need be submitted to the Zoning Commission and for them to hold a hearing to determine as to whether or not the Hillside Development regulations will be complied with, or a letter will need be submitted by a geotechnical engineer requesting a modification to the Hillside Development submission requirements, such letter containing particular language assuring that all work to be done will be done utilizing the best geotechnical practices and will

result in no slippage. He commented that typically an engineer will not be willing to submit such a sign-off letter until there is an agreement between parties of interest for the engineer to monitor the construction so to make sure his recommendations are implemented, and further so that at the conclusion of the construction that the engineer can submit to the Township a summary letter confirming that the work done utilized the best geotechnical practices and that no slippage will occur. He noted that the letter submitted does not contain the necessary language to comply with the Hillside Development regulations.

Mr. Ritter advised that they would be willing to do whatever necessary to comply with the Hillside Development regulations.

Mr. Stahlheber advised that based upon PDA's letter (Exhibit "D") some additional building techniques will be required to be implemented to make sure the hillside is stabilized with construction of the proposed garage. He commented that if approving the requested this matter will still need to be addressed before a zoning certificate can be issued.

Mr. Ritter advised that based on the soil engineers' twenty five years of experience it looks as if they will work with good soils to work with.

Joe Scherer questioned as to if there was still some kind of approval that the Zoning Commission need give before construction of the garage can commence.

Mr. Stahlheber confirmed that the Hillside District regulations require that the Zoning Commissioner grant approval for excavation in the Hillside District unless a viable request for a modification to submission requirements is submitted. He advised that for smaller projects that requests for a modification to the procedures are often submitted and accepted.

Mr. Ashe stated that he has been to the site.

To Mr. Kearns question as to if any opposition to the variance request was submitted Mr. Stahlheber responded in the negative.

Kathy Kiel (sworn), 6480 Timberhill Court, advised that she and her husband Dave own the property directly south and uphill from the subject property. She commented that to date they have had a friendly relationship with the Kirby's and have always considered them good neighbors. She noted that irrespective of the Board's decision in this matter that she hopes this continues to be the case. She thanked the Board for considering her position on the requested variance. She advised that her north rear yard abuts the Kirby's south front yard.

To Mr. Kearns question as to if her property was directly south of the Kirby property Mrs. Kiel responded in the affirmative.

Mrs. Kiel advised that the Kirby's home was built in 1999 and she moved into her home in February 2002. She commented that the Kirby's home is visible from her street and backyard during the winter when the leaves are off the trees, and that at other times her backyard view is beautiful. She presented pictures of her backyard view.

Exhibit "E" - area map showing relationship of subject premises with neighboring premises

Exhibit "F" - photograph of subject premises taken from neighboring premises south

Exhibit "G" - photograph of existing garage at subject premises taken from neighboring premises south

To Mr. Kearns question as to if the pictures were taken from ground level Mrs. Kiel responded in the affirmative. To Mr. Kearns questions as to if the spot where the pictures were taken was lower than the level of her house Mrs. Kiel responded that they are at the same level.

Mrs. Kiel advised that due to the Kirby's lot being in the Hillside District that no more development should be permitted to occur on it. She commented that the building of the Kirby's house may have caused cracks in her foundation which she paid \$4800 to repair. She noted that should the variance be approved that she and her husband feel their property value will be negatively affected as the view of a proposed structure from her backyard would detract from the wooded view. She requested that the Township uphold the adopted regulations.

Mr. Brigham advised that Mrs. Kiel's concerns are what the Board wants to hear and that they do take such concerns into consideration.

To Mr. Brigham's questions as to if in looking out the back of her home Mrs. Kiel can see anything other than the roof line of the Kirby's home Mrs. Kiel responded in the negative.

Mr. Ashe advised that the plans show that the proposed garage would be 18' high at its peak which would be about 4' above the level of the Kiel's first floor.

Mrs. Kiel questioned the dimensions of the proposed garage.

To Mr. Brigham's question as to the size of the proposed garage Mr. Ritter advised 25' deep and 24' wide.

Bill Schmitt (sworn), 6486 Timberhill, advised that the proposed garage would be directly behind his house. He commented that he moved into his house in 1986, prior to the building of the Kirby's home, and that his backyard was all woods. He noted that he does not know the Kirby's. He advised that the garage would appear to be directly in his backyard. He commented that his main concern is for a garage of the size proposed being built on a steep hill behind his house.

Mr. Ritter advised that the Township regulations require for an engineer to be on site during construction. He commented that while the subject property is within the Hillside District that it in no way is similar to Mt. Adams which has slopes of 70%. He noted that the slope at the Kirby's property is less than 10%. He noted that the scale of the proposed garage fits the character of the neighborhood. He advised that the proposed site of the garage is the safest and most aesthetically pleasing location.

To Mr. Brigham's question as to if the possibility that the construction of the proposed garage could result in some instability of the neighboring properties can be taken into consideration by the Board Mr. Lane responded that directly it doesn't have an impact, but that such could be applied to the practical difficulty standard. Mr. Lane advised that the Board is charged with the responsibility to make sure that in granting a variance that such does no negatively or unduly impact adjacent property owners. He commented that typically it's not with structural issues. He noted that this issue is somewhat unique because the subject property is located within the Hillside District. He advised that if there would be structural problems there is already a mechanism within the Hillside District regulations to address it which would occur independent of the Board's discussion. He commented that if there was some great danger that there was going to be slippage and that overwhelming evidence that such was going to be the case was presented then the Board could consider such and would have a duty to do so.

Resolution 2008-2

Mr. Ashe moved and Mr. Brigham seconded to approve the variance as requested in VA2008-1 noting that the Hillside District regulations will be adhered to as the building is constructed. Mr. Ashe advised that he based his decision on the size and topography of the lot. Mssrs. Ashe, Scherer, Brigham and Kearns voted Aye. Motion carried.

Finding of Fact:

1. The case number was VA2008-1
2. The date of the action by the inspector was November 20, 2007 where a zoning certificate was denied for the construction of a detached garage for the reason that said garage (accessory structure) would be situated in the west side yard.
3. The applicant was James Ritter on behalf of the property owners Kathy and Steve Kirby.
4. The date the appeal was filed was December 10, 2007.
5. The address of the subject premises was 1135 Pontius.
6. The zone district of the subject premises was "A2" Residence.
7. Sections of the Zoning Resolution authorizing the Board to grant or deny the appeal included: 51.1, 69, 70, 61, 62, 62.13, 62.14, 62.14-2, 139, 139.2, 139.3, 139.4, 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. There were no Sections cited by the appellant as authorizing the Board to grant the appeal.
10. There was opposition present at the meeting expressing concern for:
 - a) the detracting of the aesthetic views from neighboring properties south;
 - b) possible damage to neighboring property south via construction of the existing residence;
 - c) possible negative impact the improvement may have on stability of the neighboring property south.
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 requirements after consideration of the following non-exclusive factors:
 - a) the property owner purchased the property with knowledge of the zoning restrictions;
 - b) the property owner's predicament feasibly cannot be obviated through some other method other than a variance;
 - c) the variance is substantial;

- d) the lot has irregular topographic 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 use of the property without a variance;
 - g) the variance would not adversely affect the delivery of government services.
13. The Board finds that the spirit and intent behind the zoning requirements 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 property owner is improving his property in character with the neighboring residential development;
 - b) there is little detracting from the view of neighboring properties south inasmuch as the garage will be constructed substantially downhill from them;
 - c) the design of the garage matches that of the house;
 - d) application of the Hillside District regulation will assure no detrimental effects to the neighboring properties.
15. The Board wishes to review any alterations regarding the variance.

The hearing in Case VA2008-2 (5505 Revmal) was convened.

Mr. Stahlheber (sworn) advised that on November 27, 2007 the Department of Development Services received an application filed by Champion Patio Rooms for the construction of a residential addition at 5505 Revmal. The application was denied on December 14, 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 5505 Revmal was located in Delhi Township, Hamilton County, Ohio and in the "C" Residence district as shown on the maps of the Township Zoning Resolution; the subject premises is a corner lot; at the time of the construction of the existing single-family dwelling at the subject premises the yard designations were determined including front yards being the north and east yards, the rear yard being the south yard and the side yard being the west yard; the submitted application and drawings indicated a proposed addition, that being a covered deck, extending from the south of the residence into the rear yard having a 26' yard setback; the Township Zoning Resolution requires that a zoning certificate be obtained prior to the construction of additions to existing residences and prohibits single-family dwellings, and additions thereto, having less than 30' rear yard setbacks in the "C" Residence District. The denial was also based on the following sections of the Zoning Resolution: Sections 51.1, 81, 82, 84.2-1, 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 January 3, 2008. 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
 Exhibit "C" - floor plan
 Exhibit "D" - roof plan
 Exhibits "E1-E3" - elevation drawings

Mike Bernert (sworn), advised that he is the installation manager for Champion Patio Rooms and requested a variance to permit construction. He commented that the south rear yard setback of the proposed addition is irregular due to the shape of the rear yard. He noted that the west corner of the addition extends into the required setback by 9", while the east corner of same extends 3'6" into the setback. He advised that only 27 square feet of the addition extends into the required setback. He commented that there are several adjacent properties with similar structures, albeit within the required setbacks. He noted that the Hills have lived at the subject property since 1989.

To Mr. Bernert's question as to why putting a roof on an existing deck changes the required setbacks Mr. Stahlheber advised that an uncovered deck is considered an accessory structure as long as it's in a rear yard and at least 3' from all property lines, but that putting a roof on a deck results in it becoming an addition.

Mr. Kearns advised that all members of the Board have been to the site.

To Mr. Scherer's question as to how much of the proposed addition would extend into the required setback Mr. Bernert reiterated about 27 square feet, less than 20%.

To Mr. Scherer's question as to the overall size of the addition Mr. Bernert advised 12' x 16'.

Sue Hill (sworn), advised she and her husband are the owners of the subject property and the reason they are putting a roof on the deck is because of the southern exposure which results in excessive heat building up inside their home. She commented that they have always wanted a cover over the deck and that what's proposed will be nice looking. She noted not believing that this will infringe on her neighbors.

Mr. Stahlheber advised that no opposition has been received.

Mr. Kearns advised that no opposition was present.

Resolution 2008-3

Mr. Ashe moved and Mr. Scherer seconded to approve the variance as requested in case VA2008-2. Mssrs. Ashe, Scherer, Brigham and Kearns voted AYE. Motion carried.

Finding of Fact:

1. The case number was VA2008-2.
2. The date of the action by the inspector was December 14, 2007 where a zoning certificate was denied for the construction of a residential addition for the reason that said addition would result in a less than required rear yard setback.

3. The appellant's name was Champion Patio Rooms for George and Sue Hill.
4. The date the appeal was filed was January 3, 2008.
5. The address of the subject premises was 5505 Revmal.
6. The zone district of the subject premises was "C" Residence.
7. Sections of the Zoning Resolution on which the denial was based included: 51.1, 81, 82, 84.2-1, 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: 184.6.
10. There was no opposition present at the meeting.
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 is a corner lot having an irregularly shaped rear yard;
 - 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 adjoining properties would not be adversely affected, noting that the rear yard of the subject property is adjacent the side of the garage of the neighboring property south;
 - b) the encroachment into the rear yard setback is very minor.
15. The Board wishes to review any alterations regarding the variance.

Old Business:

- Mr. Stahlheber apologized for not having completed the meeting minutes from the Boards' September 18 & October 22, 2007 meetings, noting he intends to have them done by the Boards' next meeting.

New Business:

- Mr. Stahlheber advised that Jerry Kearns has been reappointed to the Board for a new five year term.
- The Board received revised rosters.
- The Board received a copy of a newsletter from Hamilton County Regional Planning Commission.
- Mr. Stahlheber advised there were no cases currently pending.
- Mr. Stahlheber requested the Board keep the first three Tuesdays of the month open for potential meetings.

Mr. Ashe questioned how the Board deals with variances concerning over-sized garages. He commented on how easy it seems for applicants to twist facts around. He noted that in some instances a seven car garage doesn't seem as bad size wise as a pole barn. He questioned whether such reduces the affect of the size limitations imposed by the Resolution.

Mr. Kearns advised that he doesn't feel that anything is lost in the process. He commented that if a completely substantial view can be achieved then such can be applied to the standard of how substantial is the variance. He noted that he always looks at the variance requested wondering what could they do that may be worse than what they are asking to do.

Mr. Ashe requested the process in reviewing oversized garages be further discussed at a future meeting.

Mr. Stahlheber advised that several years ago the Board requested that the Zoning Commission take a look at the detached garage regulations and that such is still in the works.

Mr. Stahlheber advised that he will be discussing with the Zoning Commission getting away from the traditional way in which internally generated amendments to the text of the Zoning Resolution are addressed. He commented that an alternative would be to have the Commission discuss issues at open meetings whereby they would come up with ideas that will help him structure wording to address the issues. He noted that he would like someone from the BZA to serve as a liaison to the Zoning Commission and attend such meetings.

There being no further business on motion by Mr. Ashe and seconded by Mr. Scherer the meeting was adjourned 8:15 pm. Messrs. Ashe, Brigham, Kearns and Scherer voted aye.

Board of Zoning Appeals:

Thomas R. Stahlheber, Secretary