

Brookville Board of Zoning Appeals
August 2, 2017

The Brookville Board of Zoning Appeals Meeting was called to order by Chairperson Dafler at 6:43 p.m. on August 2, 2017 in the City Council Chambers. The Pledge of Allegiance was recited. Members Hummel, Kopf, and Reel; Law Director Stephan, Zoning Officer Snedeker, Manager Burkholder and Clerk Wheeler were present. Member Kirchofer absent.

Roll Call by Clerk Wheeler.

Motion by Dafler, second by Reel to approved the Agenda as presented. All yeas, motion carried.

Member Dafler opened the Public Hearing for Appeal 2017-01 for a variance for a storage shed at 930 Golden Beech Drive. She informed this appeal is for a request for a variance from 1157.03 (a)(7) requiring sheds to be located in the rear yard.

Law Director Stephan advised anyone wishing to participate tonight will need to be sworn in.

Law Director Stephan swore in witnesses testifying in the Public Hearing.

Chairperson Dafler inquired whether any members of the Board need to abstain from the Hearing.

Member Kopf stated she would abstain from the hearing process tonight.

Zoning Officer Snedeker reported Appeal 2017-01 is the request of John E. Bright, of 930 Golden Beech Drive, for a variance to permit a storage shed in the side yard of his residential property. He informed a notice of this Public Hearing was published in the Brookville Star, and a notice of this Public Hearing was also sent by first class mail to fourteen adjacent property owners in the neighborhood.

Zoning Officer Snedeker stated Section 1157.03 (a)(7) requires storage sheds to be located in the rear yard of a residential property. He provided Board Members with a copy of his notice of violation to the applicant regarding the storage shed that Mr. Bright has located in the side yard. He reported the applicant is requesting a variance to permit the storage shed to be located in the side yard. Zoning Officer Snedeker stated it is the City Staff's recommendation that the request for variance be denied. He stated the City has established the policy that storage sheds be located in the rear yard. There is adequate space in the rear yard of the applicant for the storage shed to be located and it is the position of the City Staff that the storage shed should be located in the rear yard of the applicant.

Paul Princi stated he is attorney and has been asked by Mr. Bright to help with his presentation tonight and if ok with the Board, he will ask Mr. Bright some questions and help Mr. Bright present several exhibits he has prepared.

Law Director Stephan stated there is no objection.

Mr. Princi explained Mr. Bright has been sited with a variance for his shed placed in the side of his yard within the City limits of Brookville. He asked if other yards in the community have sheds located in similar areas?

Mr. Bright stated he resides at 930 Golden Beech Drive and that he has been sworn in.

Mr. Bright presented pictures he had taken throughout the City of other sheds that he believes are in violation besides his. He stated he has no knowledge as to why he was sent a violation letter to begin with and feels he is being singled out. He displayed 13 photos of separate sheds to the Board Members. He stated one home pictured has three sheds in the same yard and others have sheds within ten feet of their home, which would be in violation as well. Mr. Bright stated the City's Zoning Department is sloppily ran, not being enforced and he his being singled out.

Mr. Princi asked Mr. Bright if he has talked with any of his neighbors?

Mr. Bright informed he has some written statements from some of his neighbors that have no objection to his shed. He presented a map of his neighborhood to Law Director Stephan and explained his neighbors across the street have no objection. He presented a few written statements from some of his neighbors that have no objection. He informed basically his shed is hidden by his fence except for roof of the shed. He stated all of his neighbors on the north side are in agreeance. He presented photos of his shed to Board Members.

Mr. Princi asked if he has placed a fence in the yard and why?

Mr. Bright informed from the street, the roof of the shed can be seen but he put up a fence to help conceal the shed, his generator, and a/c unit.

Mr. Princi asked if there is any reason he can't move the shed to the rear of the his property?

Mr. Bright informed there are drainage issues in the back of the property. He presented more pictures of some of his neighbor's yards after a rainfall and photos of easements behind his home. He informed the field behind him is actually higher than his yard. He stated in his opinion, it would not be a good idea to move the shed into his backyard.

Mr. Bright stated again that within an hour he drove around town and found several homes with sheds that would also be in violation. He stated some of the homes are not even older sheds like

they've just been there for many years. He stated he is being singled out even though his is disguised behind a fence and only a small portion can be seen.

Mr. Princi stated Mr. Bright wants to be good neighbor, which is why he put up a fence and it would be a hardship on him to move the fence to the back, especially with the easements and flooding in his backyard. He stated that Mr. Bright is concerned because there seems to be a lot of other sheds in violation and his shed seems less egregious than others.

Member Reel stated he can see the orange flags in the picture presented of his backyard. He asked if Mr. Bright can pinpoint the location of where the shed would have to be.

Mr. Bright explained it would be on the north side of the house. He described the three power lines and cable lines that run through the yard and makes it look like a raceway.

Member Reel asked where the shed would go in back yard?

Mr. Bright informed over three DP&L lines.

Member Dafler asked how far back is the tree line?

Mr. Bright informed the trees push back his ability of where he could put a shed which would make his shed sit right on top of the DP&L lines. He stated that is also where all the flooding is. He asked if Board Members would want to put a shed there if it were their home?

Member Hummel asked if he is just wanting to leave the shed where it currently is?

Mr. Bright stated yes.

Mr. Hummel asked if his neighbors have any problems?

Mr. Bright showed a diagram of the neighborhood and stated most of his neighbors do not have a problem with the location of his shed. He stated he is sure his neighbor, Margo Cantrell will have an objection to it though but everyone on the north side is ok. He stated the field behind his home is at a higher elevation than the street and the catch basin in the back of his property does not help.

Member Reel asked Zoning Officer Snedeker how this violation was originally noticed?

Zoning Officer Snedeker informed he was doing a valve study in the area and in driving by noticed Mr. Bright's shed in the side yard.

Member Reel asked why he initially did not have a permit?

Mr. Bright informed he thought it would be included in his original permit for his fence but due to time frame he was then told by Zoning Officer Snedeker that he made a mistake he would need to have another permit for the shed.

Chairperson Dafler asked if he put the fence up first?

Mr. Bright stated yes.

Member Hummel asked if the shed was pre-built or if he built on-site?

Mr. Bright informed it was built on site.

Member Reel asked if it is on a cement foundation?

Mr. Bright stated it is on a wooden foundation.

Chairperson Dafler asked for any public comments.

Bill Reedy, stated he resides at 919 Golden Beech Drive and he has been sworn in. Mr. Reedy stated his issue is that the covenants of the Homeowner's Association states no sheds are to be permitted. He stated the City of Brookville and the county approved the covenants back in 1995. He asked why are there sheds going up in the area if the covenants state no sheds? He stated that affects his property value.

Member Reel asked if the covenant specifies no sheds or if sheds can be made of the same materials the home is made of?

Mr. Reedy read from the covenant for his subdivision.

Member Reel asked if the covenant requires members to come before the governing body of the Association for permission first?

Mr. Reedy stated not that he is aware of, he doesn't see anything listed.

Member Reel stated he knows from experience, that unless he is willing to go to court and fight it, those covenants don't always mean a lot.

Sandra Eppheimer stated she resides at 912 Golden Beech Drive and has been sworn in. Ms. Eppheimer stated she is on the Board for the Homeowners Association. She explained it came up a few years ago, that a lot of people in the subdivision wanted to put up sheds, the topic came up several times and it was discussed what needed to be done in order to change the covenant. She informed they would have had to hire an attorney to go through the process of changing the covenant and it would have cost seven to twelve thousand dollars to move forward and the

Members did not have that kind of money and no one wanted to pay more in dues. She informed it was decided to let people put up sheds as long as they were in the back yard and tied in to meet the aesthetics of the subdivision. She stated she has seen no sheds that go against that and she knows of no one that has attended their Association Meetings complain. She stated that was voted on by the people who attended that Association Meeting.

Mr. Reedy stated he thought you couldn't just change a covenant by voting at a Board Meeting.

Ms. Eppehimer stated that is how it came about. She stated if a shed was built, it had to meet the City zoning laws, the aesthetics of the neighborhood, and be maintained.

Chairperson Dafler stated if they have issues with the covenant of their Homeowner's Association, then should discuss that at another time.

Ms. Eppehimer stated she has lived in her subdivision since 1999 and properties very well maintained and feel very safe. She stated she does not understand why Mr. Bright can put up a shed without approval and then decide to fight it because he received a violation and then bring the issue before this board. She asked if the City is going to go back to having a problem in this community again with sheds all over the place? She stated the problem was cleaned up once the shed law went into effect. She stated there is farm land behind the subdivision and the way the drainage of that farmland was coming down would create a river. She stated at one point years ago drainage tiles were put in to alleviate flooding in the street and if those were done correctly then why didn't Mr. Bright try to work with the City to try and have his flooding issue corrected? She stated it solved the problem on her end of the street once before. She stated she does not understand how you can just put up a shed and not follow the proper procedure and obtain a needed permit. She has had to obtain a permit in the past for her own property.

Mr. Reel asked if there are other sheds in the subdivision?

Ms. Eppehimer stated yes. She stated due to the cost to hire an attorney, and the money in the Association not having the funds, they decided to allow sheds. She informed most people with sheds have them in their backyards with a privacy fence.

Mr. Bright stated he did approach Zoning Officer Snedeker about a permit for his shed and was told he had to get another permit for the shed compared to the first time when he was told the shed could be included in his fence permit. He stated the draining tiles that were put in years ago are apparently clogged. He stated the driveway along Upper Lewisburg Salem Road has been closed due to flooding recently at least three times. He stated because of flooding off the land, the tile installed way back when is clearly not working.

Ms. Eppehimer stated she was talking about the south end of Golden Beach near Golden Meadows and that has nothing to do with the north end. She stated the problem she referenced was corrected for those two homeowners, she did not say anything about the boulevard flooding.

Mr. Bright stated he is glad that may have worked out for those two particular homeowners but that has yet to be taken care of for him. He stated the actual farm is located in Clay Township and not within the City. He stated he has heard one of the owners of farm is ill and does not have the money to make any repairs to the land. He stated ever since he has moved into his home, last June, there have been issues. He stated the farmer is not going to be able to make any improvements. He stated he know of himself and two other neighbors that are experiencing issues from this drainage problem.

Mike Oxner stated he resides at 516 Patricia Faye Court and he has been sworn in. Mr. Oxner stated the protective covenants of the Homeowner's Association have not been officially changed and are still in effect. He stated the covenant also requires approval for structures by the Homeowner's Association and to his knowledge that was not done. He stated he is unaware of drainage issues but feels there should be ample room for the shed in Mr. Bright's back yard. He stated Mr. Bright hasn't demonstrated enough of a hardship to have to relocate the shed to the backyard. Mr. Oxner stated that once it is allowed for sheds to be in the side yard then others are going to want to come back before the Board and do it too. He stated that is not what we want in the community because sheds should be located in a back yard behind the house.

Mr. Bright stated he has already demonstrated his reasons why he can't put the shed in the back yard. He stated he can't move it any closer to his home to have out of the flooding areas because he will then be in violation again because the shed would be within 10 feet of his home. He stated this board hasn't met in three years and he doesn't feel there will be a lot of other people who will want to do this or would have his unique circumstances. He stated these folks on the Board should know what is right or wrong, have the evidence in front of them and hopefully they will make the right choice.

Mr. Bright stated the covenants of the Homeowner's Association don't apply in this situation because he is here for a zoning violation not an HOA issue. He informed he received an ok from the homeowner president for his shed and she acted on the behalf of an elected official. He stated the covenants shouldn't event be discussed here tonight.

Tom Stachler stated he resides at 612 Golden Meadow Avenue and he has been sworn in. Mr. Stachler stated he lives down the street from Mr. Bright. He informed the drainage and flooding issues were heavily discussed at last night's City Council Meeting and the flooding issues actually start in his backyard. He is very well aware of the issue and City Council is trying to address the issue. He stated he wanted to correct the statement earlier that the shed in Mr. Bright's side yard actually went up before the fence was installed. He stated he walks a lot through the neighborhood and the shed was put in first. He agreed with Mr. Oxner that the laws of the covenant should be protected. He informed he is the Vice President of the HOA and he has not received anything from Mr. Bright on anything he has done except the fence, which he did sign off on. He stated Mr. Bright is in violation of several rules of the HOA covenants. He

stated he agrees allowing the shed to be in the side yard would open a can of worms. Mr. Stachler asked Mr. Bright if his shed is on his property line?

Mr. Bright stated yes it is.

Mr. Stachler stated per the standards, it should be three feet off of the property line.

Mr. Bright stated it is not on the property line. He thought Mr. Stachler meant off his property. He stated he can't tell, but it should be close.

Mr. Stachler stated it doesn't look like it is three feet off the property line. He stated he doesn't understand why it can't be moved to the backyard. Mr. Stachler stated that Mr. Bright was able put a patio back there with two gazebos but he can't put a shed back there.

Mr. Bright stated Mr. Stachler hasn't seen the pictures of the easements in his back yard. He stated he did receive a verbal ok from the President about his shed.

Mr. Stachler stated it still has to meet the covenants and the City requirements. He stated Mr. Bright just put his shed anywhere he wanted to without permission or obtaining a permit.

Mr. Bright stated when he approached the City about the permit. He also stated he tried to approach Mr. Stachler about his fence issue since his neighbor is the President and Mr. Stachler told him he didn't know anything about this, him being the Vice-President is just a title.

Jim Miller, stated he resides at 507 Patricia Faye Court and he has been sworn in. Mr. Miller stated Mr. Bright's shed had been up without any fencing for at least a month. He stated that after he received a letter for this Hearing was when he noticed Mr. Bright put up the fence. He agreed with Mr. Stachler that the fence is not within three feet of the property line.

Mr. Bright stated the fence permit was received earlier in the year and signed off by the Vice-President. He was late getting it installed because he had to send the fence back for issues. He informed he is doing all of the work himself with his friend. He informed he started working on the south side first. He stated he was not trying to disguise the shed, if so he would have started with north side first.

Mr. Reel asked who could he address on the utility easements? He asked if the shed was built in the back, would the utilities be impacted?

Zoning Officer Snedeker stated it would depend. He stated usually the homeowner is given a plot plan including the easements and if the shed ever has to be moved, it is at the cost of the homeowner.

Member Reel asked is there room to have the shed in the back yard without being on an any of the utility easements?

Zoning Officer Snedeker informed there is 4,238 square feet so yes, there should be.

Mr. Bright stated he cannot put it in the backyard, there is no room. He stated there is six to eight feet of tree line back there and he cannot bring the shed any closer to the house and also stay out of the water.

Member Reel stated the issue with the water a person could get around themselves by building up and over the flood area.

Mr. Bright stated then he would have to trudge through mud. He asked what about mold growth etc?

Member Reel stated his concern is the amount of utilities that seem to run through the back yard.

Mr. Bright informed OUPS mapped out the easements in his yard. He stated there are even more flags in his yard than the pictures presents because they are behind a shrub.

Mr. Oxner stated the shed mentioned has a temporary foundation or a non-permanent foundation. He stated it is not uncommon to build a shed over an easement, they are usually very seldom need. He stated if access to the easements were needed, the shed could be moved, it is rather inconvenient for a homeowner, but it can be done. He stated also on Mr. Bright's lot, there is a 7.5 foot easement on the north side of the property and 10 foot on the rear. He stated he is not sure the distance Mr. Bright's shed is from the property line on the north but this is not an unusual situation.

Mr. Stachler stated the shed is a plastic shed screwed together and could very easily be moved. He stated the shed is on 2x4s which is also easy to move and would not be a hardship to Mr. Bright. He stated the knowledge of needing a permit was ignored and if the right thing was done, than the shed would not be there. He stated the shed was put in ignoring the right thing to do.

Mr. Bright stated he approached Zoning Officer Snedeker about the shed.

Zoning Officer Snedeker stated when confronted Mr. Bright about the shed and the violation Mr. Bright told him he thought anything under 200 square foot was ok and did not require a permit.

Mr. Bright stated he thought it was going to be added on to the original permit for his fence.

Zoning Officer Snedeker stated was three months over the date

Mr. Bright stated he is not trying to avoid a permit, he has been more than compliant and open in discussing issues. He stated he tried to put it on his original permit.

Zoning Officer Snedeker informed when Mr. Bright first came to him he was told if he put the shed in the side yard he would get a violation.

Motion by Dafler, second by Reel to close the Public Hearing at 7:36 p.m. and go into deliberation. All yeas, motion carried.

Chairperson Dafler called the Meeting back into Regular Session at 8:14 p.m.

Motion by Reel, second by Kopf to re-open the Meeting. All yeas motion carried.

Chairperson Dafler stated Members have reviewed the standards needed to be met to approve a variance for this application. She stated according to the 2013 Ordinance Amendment, all sheds are to be placed or built in the rear yard of a property.

Chairperson Dafler stated in order to approve a variance, the application must describe the nature of the variance requested, and the proposed variance shall conform to the following standards:

1. Because of the particular physical surroundings, shape or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience if the strict letter of the regulations were to be carried out. The Board finds that the applicant has not demonstrated that a hardship exists, and the proposed variance does not conform with this standard.
2. The conditions upon which an application for a variance is based are unique to the property for which the variance is sought, and are not applicable, generally, to other property within the same zoning classification. The Board finds the proposed variance does not violate this standard.
3. The purpose of the variance is not based exclusively upon a desire to increase financial gain. The Board finds the proposed variance does not violate this standard.
4. The alleged difficulty or hardship is caused by this Ordinance and has not been created by any persons presently having an interest in the property. The Board finds the proposed variance does not violate this standard.
5. The granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located. The Board finds the proposed variance does not violate this standard.
6. The proposed variance will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion of the public streets, or increase the damage of fire, or endanger the public safety, or substantially diminish or impair property values within the neighborhood. The Board finds the proposed variance does not violate this standard.

7. The Zoning Board of Appeals may impose such conditions and restrictions upon the premises benefited by a variance as may be necessary to copy with the standard established in this section and the objectives of this Ordinance.

Motion by Dafler, second by Reel to deny the variance. Members Dafler, Reel, and Hummel voted yea. Member Kopf abstained. Motion carried with three yeas and one abstention.

Chairperson Dafler stated the hearing is now adjourned.



Meghan Wheeler, Clerk



Kathleen Dafler, Chairperson

