

Milton Township
Zoning Board of Appeals
June 14, 2018
Meeting Minutes

Members present: Chairman Anderson, Burdo, Kingon, Kopkau, Atkinson, Jankowski

Members absent: Gray

Also present: 7 audience members

Anderson called the meeting to order at 7 pm and the Pledge was recited

Approval of meeting minutes dated 5.10.18

Motion to approve the minutes by Kingon/Kopkau. Motion carried.

Approval of Agenda

Motion to approve the agenda Kopkau/Jankowski. Motion carried

Variance Request:

Kevin and Shannon Celarek and Abaigaeal F. Celarek, Property Tax #05-12-732-003-00. The Celarek's are requesting a 12' side yard variance on the west side of 13764 Rex Terrace Rd. For the purpose of a 12' wide deck to their home

Anderson discussed the variance request procedure. Anderson read from the Staff Report.

Kevin Celaret gave a presentation regarding the variance request. Rex Terrace is composed of about 20 homes on about 80 acres of property. No home has been built there in the past 40 years. It's a homeowners association run by a board. We have an annual meeting where association business is decided. Kevin introduced other homeowners who came to the meeting to support his request. His prior experience is in township zoning and local government. His understanding of zoning is to keep people from overbuilding on their property. Our home certainly isn't overbuilt. Other regulations for zoning is for safety. With that, he reviewed the letter he sent and reviewed the homes on Cedar Lane. It's a two rut, sand road used by two cottages. It's used as a private driveway. We don't want anyone using that road because we don't want more access. In the winter time there is actually a no trespassing sign goes up on Cedar Lane. Cedar Lane has no demarcation that this is a public road. This is a private driveway. Cedar Lane will never be improved more than what it is today because the association doesn't want more access into Rex Terrace. Even if someone wanted to, it would take the approval of the majority of the 21 cottages. If you drove down it, you could see we have seen seven cars go down the road and we believe four of those cars were people on this board. The point is that this is an unimproved road and no one wants it improved. You cannot drive more than 5 mph because it's all sand and ruts. We are asking for a 12 foot variance because we didn't have enough money to put on a deck when we built the house and now we are ready to do that. If there was any question from my point of view of safety or zoning or if it was a real road, I'd be 50 feet back from that road. However, it's a driveway. The neighbors are also very important to me. My neighbors are here

and they are in support of the request. We feel that this deck is similar to the rest of Rex Terrace. Because this is a low deck right off the house and we don't feel it's intrusive or would create a zoning issue. If I felt this deck was not approved by the people around me or a safety issue, I wouldn't be here. But it's comparable with the surrounding areas and it's necessary for the enjoyment of our summer home. It will be an asset to Rex Terrace. I appreciate you being here and taking the time to review this decision.

Don Anderson said he knows their possible builder and volunteered to excuse himself, but Kevin said he is fine.

Jankowski asked if the driveway serves two or three cottages? Three.

Kington asked for clarification on the map which houses/properties are serviced by which roads? Kevin clarified.

Shannon clarified which lots could use Cedar Lane in the future if the vacant lots are developed. There are two undeveloped lots. It's conceivable that there could be five properties that could use Cedar Lane.

Anderson said Mr. Doty said the access road is for three cottages now and up to five in the future. Kevin said this is correct.

Anderson said there are two sets of drawings. One from the first request showing 58 foot setback drawing. On the second drawing, it's a 50 foot setback. What happened to the 8 feet? Kevin said the actual cottage is 50 feet to the inch from Cedar Lane. We had inaccurate drawings from our builder.

Anderson said on the application on 4/23/18, you requested an 8x30 deck. Kevin said the reason for that is because Weinzapfel said he needed a set back and so he compromised and requested an 8 foot deck. But finding the measurements were wrong, he's coming to the board, he's going to ask for the whole 12 feet on the variance.

Anderson said on Doty's letter, the board approved an 8 foot deck. Mr. Doty clarified that either an 8 or a 12 foot deck would be approved from the association. That's why there are two different figures.

Anderson read the letter in support from Peter Doty
Anderson read the letter in support from Cynthia Clines and Robert Hall

Judy Bay owns Rock Ledge Cottage which is to the west of the Celarek home. We received the letter about the deck and because it falls within the easement that we had the right to object. We have no objection to the variance request.

Jim Patton, President of the Rex Terrace Association. Cedar Lane is nothing more than a driveway. Again, the total number of homes located there would be three. They aren't asking for the moon and we would appreciate your approval.

Janet Niesen is a neighboring property owner and she spoke in support of the variance request. We like the road to be maintained as they are, keeping the rustic character. The deck keeps with the atmosphere of Rex Terrace. The oldest house was built in 1904 and the most recent one was built in the 60s. We are the first ones to say it's not appropriate if it's not appropriate.

Jankowski asked if any of the roads are 40 feet wide? No. Any surfaced with road gravel? No. Mostly sand than gravel. The roads are less than 16 feet wide.

Kopkau said on 8/31/15 there is an application for a zoning permit, and it says adjust setbacks as discussed. Kevin said at that time, from the map from the builder, he thought the house was 58 feet back so that's why that was submitted. Kopkau asked when they decided to build the deck? It was originally designed. At the time, we thought Cedar Lane was a private driveway and it would have a 20foot setback, so Kevin requested 12 feet, but the Chris told me you have to have a 50 foot setback, that made me understand I needed a variance. Shannon said we essentially have two front yards.

Jankowski said the reason you are here is because of the second 50 foot setback. Jankowski asked Weinzapfel do ground level patios require setbacks? No. They can encroach in the setbacks. The deck is 24" up because it would get level to the French doors. If it was on the ground, it would have to be cement or bricks. We didn't like that and wanted a regular deck.

Anderson closed the public hearing for board deliberations.

Motion to go into closed session by Jankowski/Burdo. Motion carried.

Kopkau asked why the 50 foot setback on a corner lot? If you have roads coming both ways, then it's 50 and 50 and 10 and 10 for safety purposes.

Jankowski said looking at this I see some facts that aren't consistent. In the ordinance, on pg 19-2i says that a private road serving two or less cottages shall be considered a private driveway. Then it defines a private road as one that is min of 40 feet wide. There is no road in the whole association that is 40 feet wide. Most are less than 16 feet wide and many are less than that. I didn't see any that had a gravel base 12" in depth and with road grade process gravel. They are all less than 16 feet and it's been like always. I don't see them improving this into a subdivision. I can see having two 50 foot setbacks in a subdivision, but none of these roads are improved and there will never be traffic. If it doesn't meet the definition of a private road, then it can only be a private driveway, then their setback can be 20 feet. There is a section of the ordinance that says that a property that fronts a lake and is on a road end, it doesn't have to have a 50 foot setback, only a 20 foot. From Rex Terrace Drive, that's a paved road that goes right to the lake and that property there only has to have a 20 foot setback. Since this driveway doesn't meet the definition of a private road, it can only be a private driveway and doesn't require the 50 foot setback.

Atkinson said the setbacks have been determined.

Jankowski said no they haven't.

Kopkau said this is a named private road and it's called Cedar Lane. It is an access easement to all of these people. There is access to five lots.

Jankowski read from 19-2i and it doesn't meet those definitions of a private road. Anderson said if you look at the next statement and meet the following design standards? It meets one but it doesn't meet all, so therefore I'm agreeing with you.

Anderson said if you were to approve this and we have to clarify beyond a doubt, we would have to come up with some really good sections to list regarding the finding of fact. Jankowski said this in now way meets as a private road.

Kingon said a private road serves three parcels, which is how it complies with the private road ordinance. They will not bring those roads up to standards.

Anderson said 117.205, it says it is our job to interpret the ordinance.

Kingon said this is the job of the ZBA is to make exceptions. They wouldn't change the ordinance for one incidence.

This is a seasonal road. It is not maintained by the county or the township.

Kingon said there are other situations where this is the case. You have a private road that is in terrible conditions. It will serve three or more parcels so it's considered a road. Jankowski asked if it met the other standards? No. The point is if they are going to put in more parcels, they have to make road improvements.

Weinzapfel said the discussion of the private road ordinance allows what you need for a private road if you accessing private lots. If it's accessing only two parcels, it's a driveway and then actually finding out that it accessed three at this time and possibly four or five. The setback comes into effect, you are looking at the schedule of setbacks. Weinzapfel read from the setbacks. The road has a legal description as a legal easement. If I went and looked, everyone would have right of use to it. Right now, everyone in the sub could use Cedar Lane because of the condition. It's a legal easement, defined as a corner lot. As a ZA could I allow further land division? No, I couldn't until the roads are brought up to the private road ordinance, this is basically telling me that is a corner lot.

Atkinson said it wasn't our job here as the ZBA to question the setbacks deemed by the ZA. Our job is to look if there is practical difficulty no? Is it self created? Yes. Will others ask for the same relief? Yes. Is it a safety issue? No. Variances run with the land not the owners. It should be related to the characteristic of the land not the desires of the land owner.

Anderson said I agree with you. Variances are supposed to go on the definitions required for a variance.

Weinzapfel said because everything has been there, I wouldn't have authority to allow another land division unless they bring up the road. That doesn't change the fact, that is a legal described

easement on the survey and it makes it a corner lot. Kingon said that's how he reads it.

Jankowski asked who controls if the easement is open or closed? The association. Jankowski said if they were to put up a chain? No. It's a legal easement. If they want to vacate that road, they would have to sue everyone to go through a replatting. If they put up a barrier and require the other three people to come in from the other side? Weinzapfel said it's still an easement.

Anderson asked if people had enough information to make a decision?

Motion by Kopkau to deny the variance request 2018-01 based on 117.603B-9 and the staff report titled Celaret Variance Request. There is an option of going to a ground level patio. There is no hardship and this is self inflicted because if a survey had been done correctly, this could have been avoided. Seconded by Kingon.

Roll Call:

Burdo: Nay, because he doesn't feel it meets the road ordinance.

Kingon: Yea, it's unfortunate that there was a lack of communication regarding the 50 or 58 feet. This prevented you from putting in the deck you want. I agree you have the alternative to put in a ground level patio. That's a reasonable alternative.

Atkinson: Yea, based on 117.603B7. There are other options. This is a frustrating, difficult situation. But the broader situation is that if someone else comes along, it sets a precedence and it dilutes the ordinance. It's our job to interpret the ordinance. It's not a question of whether you can adhere to the ordinance, but rather if you want to.

Jankowski: Nay, based on 19-2I private road, driveway. The easement is a driveway on private property. The 50 foot setbacks wouldn't be required.

Kopkau: Yea, based on the facts discussed above.

Anderson: Yea. This has been difficult, but I do have to go with the ordinance and it is a corner lot and we must treat it as such under 117.603B7.

Motion to deny carried 4-2

Correspondence

No new correspondence

ZBA Member Comments

None

Old Business

None

New Business

None

Report from Planning Commission

Kingon gave a report on recent public hearings regarding accessory structures. The planning commission is looking at this section of the ordinance and if it should be kept in the ordinance.

We are also discussing a sign issue.

Jankowski talked about how the ordinance is a living document that changes

Adjourn

Motion to adjourn by Kopokau at 8:38. Seconded by Burdo. Motion carried.