

Milton Township
Zoning Board of Appeals
Meeting Minuted
November 11, 2021

Members present: Chairman Anderson, Gray, Burdo, Hefferan, and Atkinson

Members absent: Jankowski, and Kopkau, excused

Also present: Kopriva, Peterson and two audience members.

Anderson called the meeting to order at 7:02 pm and the Pledge was recited

Public Comment:

No one wished to speak

Approval of agenda:

Motion to approve the agenda by Atkinson/Gray. Motion carried.

Approval of meeting minutes dated October 14, 2021

Correction: Pg 2: Change to say Kopkau requested that any questions be discussed with the ZA prior to the meeting.

Motion to approve as corrected by Atkinson/Burdo. Motion carried.

Old Business

None

New Business

A. #2021-03 Steven Piatt, 11076 S. West Torch Lake Drive, Parcel Number 05-12-655-053-00; 25 ft front yard setback variance for new single family dwelling.

Kopriva provided an overview of the property in the packet which included a survey, adjacent land uses, schedule of regulations and dimensions, notices.

Anderson discussed the process for the hearing.

Steven Piatt gave his presentation, which he provided via a printed Power Point presentation. Starting with the justification, he's between a rock and a hard place regarding a steep slope and a right of way for streets that were never built. If you look on the slide, it shows the location by Deepwater Point. Piatt discussed the survey so you can see in relation to the property line and what is requested and the unbuilt streets. The next slide discusses the neighborhood impact and the letters he has from his neighbors regarding the project. One neighbor, Amy Russell is here to review the process as well. The next slide is photos from the property with the general layout. If you know the area, I've spent a lot of time and money trying to get this to work without the setback, but we are at a point where we can't safely excavate into the hill. We will have to put in a retaining wall, but at this point it's not safe to go back further. The next picture you can see the

two orange stakes in relation to the hill and I'm having a hard time trying to build a house in that 20 foot section. It also shows the steepness of the hill. The next slide shows the orange stake at the edge of the road and the ground stake would be the front NE corner of the home building footprint. It's about 2.5 feet from that stake to the edge of the house and you also see the distance from the road as well. The next picture is showing the layout of the 50 ft versus the 25 ft and the relationship to the road. The next slide is a picture of the house we've gotten designed to put there. It's very modest. We aren't trying to build the biggest house we can. Without the 25 foot setback, we can't build that house. If there is any additional space we could get, we would be happy for that and design around whatever you would allow us to have. As a general note, the only property that could be affected is the Russell property and that's in front of me. The right of way goes between my property and the Russell's and they have some concerns. I don't believe the location will affect my neighbors including the Russell's. The right of way extends to the north through the property.

Amy Russell, the property owner in front of the Piatt property, asked if the deck is within the setback? Piatt said the overall dimensions includes the deck, which ends at the hill. It will not hang over the hill.

Letters in Support:

One letter received from Daniel and Laura Dahlquist
One letter received from Timothy and Michelle Bell
One letter received from Adam and Jennifer Morris

Letters in Opposition:

None

Motion to go into board deliberations by Atkinson/Burdo. Motion carried.

Atkinson said the easement isn't being abandoned and the easement should not be discounted, Atkinson asked for clarification of how the home is to be positioned on the lot. Piatt clarified the overhangs, the front porch, and the deck. It will be 52x48 including the deck.

Atkinson asked questions based on her site visit and for clarification about the building site. How deep is the plateau? 52 feet. Burdo asked for clarification on the deck and how it relates to the requested variance. There will be a walk out and a retaining wall behind the house. How deep is the Russell property? It's about 40 feet. It's shallow. The variance can't affect the Russell property because nothing can be built there. If you add in the easement, plus the variance, It will be 45 feet away from their property.

Atkinson said the future use of the easement is still an option. Anderson asked how long he's owned the property? September of 2020.

Anderson asked about room for a septic? The parcel in front of us, we had that evaluated for a perk test and we have options. We could put it on the hill beside our home or down over the hill just to the south there is an area there but I will probably do a drip septic field that will go on the side of the house so it doesn't affect the space or the neighbors. I'm waiting to pursue approval.

until we go through this variance process with the health department application on hold pending the variance request.

Burdo asked about the drip septic? Piatt said it's the same principle as a drip irrigation. He explained the system in detail.

Anderson asked Kopriva if there is a practical difficulty with a lot and you want to put your home on it, we cannot deny use of property. But if someone buys a piece of property and they knew a practical difficulty existed I'm trying to understand that. Kopriva said practical difficulty starts on Pg. 4, this would be something that the ZBA would want to talk about if that plays into it at all. The property is what it is. The house there previously didn't meet setbacks, but it was probably done before zoning. You would want to look if there are other options or a lesser variance. Item E talked about a smaller amount. You're looking at similar characteristics of the neighborhood. If the ZBA decides he knew about it, then at the same time the variance process is here to give relief to property.

Atkinson said the unique characteristics of this property is the hill. Other homes in the area are smaller, thinner, ranch style homes. I'm also concerned about the easement. A 25 ft variance request is huge. The min, square footage is 960 sq feet and that building would fit into the area he has already within the setback. The neighboring homes are smaller, so he's not being denied the same use that other people have. You could meet the minimum criteria and stay within your setbacks.

Piatt said the homes in the neighborhood works to my benefit because of the road in front of us, if you drive down Lake Ave, there isn't a single home that is more than 25 feet from the street. Atkinson said those homes were done prior to zoning. Atkinson said the biggest issue is setting a precedent of for future variance requests.

Russell said she didn't get to put a roof on her porch because of the required setbacks.

Piatt said he's asking to build a modern home. Anderson said we have to keep in perspective that there are properties that aren't ideal for building. If we granted this variance we will be setting a precedent for others building on a hill.

Hefferan clarified the purchase date of Oct. 2020. Did you look at any of this prior to purchase? Yes. He had a survey done before he bought it. I didn't realize because of the soil type how far into the hill I could go. I looked at the setbacks and the zoning ordinance but we thought we could make it work with the hill but we can't go back into the hill farther.

Hefferan said you can't go into the hill farther. If money was no object could you go farther into that hill? Piatt said he's not sure and he can't answer that question. There is also a 35 foot issue on the back with a road.

Hefferan said he raises that concern if money is no object, could we not potentially encourage him to dig that hill out further and what are the ramifications of that?

Burdo had no comments.

Gray noted the soil conditions along N. West Torch Lake Drive where the slope has slid into the road and created a landslide, therefore, as steep as that hill is, I would want some solid engineering if I was building a retaining wall. In terms of precedent regarding a past hearing on SW Torch, north of Hicken, they were looking for a back yard setback because of a severe drop off. We granted that. Now we have the reverse here. With regard to precedent it would be tied to the terrain as it was with the other applicant. If we allowed this variance and we had others come in, we could have a different reason to approve or deny. Anderson said he knew what the property was when he bought it. Doesn't that play into the decision? In the previous approved request, they wanted the same use. What about the road easement? Anderson said we aren't saying he can't put something there, but he might have to reconfigure it so it lessens the variance and saves more room for the easement. He's about 125 feet from SW Torch Lake Drive. Only the front half of the home would be what's affected by this.

Amy Russell said there is a lot of property that we own and if it were to turn into a subdivision, it may become a subdivision. She's not for this or against it because she doesn't know how it will affect her in years to come.

Hefferan asked if this is a created difficulty since he knew the property was a problem when he bought it.

Piatt said the practical difficult is he can make a 960 square foot home, but that's not a modern home. To me the difficulty is the topography of the land, but he thinks a 960 foot house is a like a mobile home and that's not acceptable. This is his last resort.

Burdo asked about the survey and you've got a 50 ft line and a 25 ft line. It fits. Piatt said it won't fit because of the hill.

Hefferan asked about the master plan and if it's related to the ZBA? No. Kopriva suggested walking through the findings of fact in 116.2205

Anderson asked Russell if she would like to comment in support or opposition. Russell said it all impacts us. We were always told it was unbuildable property, that's why we don't own it. I don't care as long as it doesn't impact what I'm going to do if I sell the property to someone else or how they get to their property since this road runs all the way through and around. Atkinson asked if that road runs along the back of the property? Russell said it used to be platted as a park.

Board Discussion on Findings:

A. That strict compliance with area, setbacks, frontage, height, bulk or density requirements of this ordinance would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity unnecessarily burdensome:

Finding:

Atkinson: No

Anderson: No

Gray: Yes

Burdo: No
Hefferan: No

B. That the requested variance, or a lesser variance, would do substantial justice to the applicant as well as to the other property owners in the district and give substantial relief and be more consistent with justice to others; provided, however that the existing non conforming conditions on nearby properties shall not be regarded as a basis for granting a variance that would not otherwise meet the requirements of this section.

Atkinson: No
Anderson: No
Burdo: Yes
Gray: Yes, due to the other variance granted on the steep slope.
Hefferan asked Kopriva if length of ownership is relevant. No, there is nothing that talks about the length of ownership. Hefferan answer: No

C. That the need for the variance is due to unique circumstances characteristic of the property.

Atkinson: Yes
Anderson: Yes
Burdo: Yes
Hefferan: Yes
Gray: Yes

D. That the need for the variance is not occasioned by the actions of the current and/or previous owners

Anderson: No
Anderson: No
Hefferan: No
Burdo: No
Gray: No

E. That the granting of the requested variance, or a lesser variance will insure that the spirit of the ordinance is observed.

Anderson: No
Atkinson: No
Burdo: No
Gray: No
Hefferan: No

Motion to deny the request due to the finding of fact of 117.205, 117.603B, 117.704, 117.2205 by Atkinson. Seconded by Burdo.

Roll Call:
Gray: Yes based on 117.2205

Atkinson: Yes based on the finding of fact 117.205, 117.603B, 117.704, 117.2205

Burdo: Yes based the findings of fact 117.205, 117.603B, 117.704, 117.2205

Hefferan: Yes based the finding of fact 117.205, 117.603B, 117.704, 117.2205

Anderson: Yes. based on 117.205, 117.603B, 117.704, 117.2205

Motion carried.

Old Business

Anderson read Kingon's resignation letter and thanked him for his 12 years of service. Anderson welcomed Hefferan aboard.

ZBA Member Comments

None

Report from Planning Commission Representative

As presented by Hefferan

We had a meeting Tuesday which was brief and Monday we have a special meeting regarding the Torch River RV Park so they can introduce it to us. We've canceled December's meeting since we don't have anything else to discuss.

Adjourn

Motion to adjourn at 8:27 pm by Atkinson/Burdo. Motion carried