

**SAGAMORE HILLS TOWNSHIP
ZONING BOARD OF APPEALS MEETING**

Wednesday, October 27, 2021– media notified

The meeting was called to order by Chair Mr. Christian Drago at 7:00 p.m.

Mr. Drago asked everyone in attendance to please silence all cell phones and other electronic devices so that the meeting could be conducted without interruption. Mr. Drago thanked everyone in attendance for their cooperation.

All present recited the Pledge of Allegiance to the flag of the United States of America.

R/C: Gambosi-present; Spangler-present; Drago-present; DiGirolamo-present;
Tim Black-present.

Mr. Drago stated the functions of the Board of Zoning Appeals.

Topic for the Evening:

A. An application requesting an area variance has been applied for by Ed Ostry and Christine Drabicki of 7804 Nakita Court in the Red Hawk Cluster Development for a side yard variance for an accessory structure. An accessory structure, i.e., a roofed patio, has been partially constructed approximately 18 ft. from the right-side setback of the lot. The poured foundation is approximately 12 ft. by 16 ft., for a total square footage of 192 sq. ft. The accessory structure is visible from the street, i.e., it is not confined completely within the sight line of the rear lot in accordance with Section 5.11(b) of the Sagamore Hills Township Zoning Resolution. Further, at the time of construction, no permit had been submitted and/or granted by Sagamore Hills Township, nor had permission from the Red Hawk HOA been obtained.

The variance requested is as follows:

1. Section 5.11(b) of the Sagamore Hills Township Zoning Resolution states that “The accessory structure shall be in the rear lot, be a minimum of (10) ten feet from the rear lot lines, a minimum of ten (10) feet from the side lot line, and confined completely within the sight line of the rear lot as defined by the front and rear corners of the widest section of the residence”.
2. The requested variance is to allow the accessory structure to be built outside the complete confines within the sight line of the rear lot as defined by the front and rear corners of the widest section of the residence.

Mr. Drago requested anyone planning to speak on this matter to please stand for the "Oath for Participation".

Mr. Drago administered the Oath for Participation as follows: “I do swear and affirm that the information and testimony given as part of this proceeding is true and accurate to the best of my knowledge and belief.”

Mr. Drago asked whether notices were sent out. Ms. Taylor replied yes.

Mr. Drago asked whether there was correspondence received. Ms. Taylor and Mr. Fantozzi replied no.

Mr. Drago turned over the floor to Ms. Drabicki.

Ms. Drabicki confirmed that everyone on the board received a copy of the appeal for the application.

Ms. Drabicki of 7804 Nakita Court presented her reasons for the requested variance.

The intention is to have a structural building for entertainment. The positioning of her lot provides no liberal shade area or privacy in the back. In 2009 when they spoke with an architect to plan all of their landscaping, the area back in the corner was for this type of building. One of the main problems with the new guidelines in regard to the site line of the building is her very short back yard. When the home was built it was positioned on the lot at the furthest back point because of the pie shaped lot on the cul-de-sac and to provide privacy for the neighbors. The distance behind their home to the 10-foot border of trees is only 32 ft. A structure cannot be built that close to their home without destruction to green space. Their back yard has pine trees for privacy from the property owners on N. Gannett as well as arborvitae in the area that they are proposing to plant. The location of the structure back near the wooded area and the landscaping plan that is proposed for the south side will provide a lot of visual privacy from the cul-de-sac where the street is. Ms. Drabicki's neighbors knew in advance what they were doing and had no issue.

Ms. Drabicki reviewed some of the documents and photos that were included in their appeal application, and asked that they approve their request for a variance.

Ms. Drabicki asked whether there were any questions with the information that was provided.

Mr. Fantozzi made a few comments in regard to the visibility of the structure.

Mr. Drago closed public discussion at 7:10 p.m.

There was a discussion amongst the board members.

Mr. Gambosi stated he took a ride to see the property, and spotted the structure immediately. It stood out as he came to the cul-de-sac. Mr. Gambosi stated he was surprised that Mr. Ostry, being the Vice President of the HOA, didn't know enough to get a permit to build the structure. Mr. Gambosi asked Mr. Ostry was there a reason he didn't get a permit, or that he didn't know he was supposed to get a permit. Mr. Ostry pled the Fifth Amendment.

Mr. Gambosi asked whether the property next to theirs was common ground. Ms. Drabicki replied yes. Mr. Gambosi confirmed their property in the back was all a wooded area as they stipulated. Mr. Gambosi asked whether they could take a parcel out of the wooded area and put the structure in the middle. Ms. Drabicki replied there are existing large Maple trees back there and a lot of old trees. Removing them would change the entire appearance of the back yard. Additional trees were also planted to provide privacy for the neighbors and themselves.

Mr. Gambosi confirmed their hardship was they have no other place to put the structure, and no way to remove any trees to fit the structure in the wooded area. Ms. Drabicki replied yes.

Mr. DiGirolamo asked what the accessory structure was to be used for. Ms. Drabicki replied it is an outdoor living space. Their intent is to have a three sided screened in space more like a porch/patio area for entertaining. Mr. DiGirolamo asked about enclosing their existing patio. Ms. Drabicki replied it would be hard to do that with that particular structure because of the way it is designed in the back with the landscaping and the patio. Mr. DiGirolamo asked whether the proposed water feature was there. Ms.

Drabicki said no. The design is from 2009. They have done their landscaping in stages since 2009.

There was a discussion regarding the riparian setback.

Mr. Drago asked whether there was an existing HOA when they moved in. Ms. Drabicki replied yes. Mr. Drago asked whether the by-laws for the HOA allowed structures. Mr. Ostry said it still does. Mr. Drago asked when all of the landscaping was planned and the house was built were any permits for the structure applied for at that time. Ms. Drabicki replied no.

Mr. Drago asked Mr. Snell whether the location of the proposed structure would impinge on the riparian right-of-way. Mr. Snell said it doesn't touch their lot but is really close. Mr. Spangler asked whether it encroached on their lot. Mr. Snell said he looked at the official GIS and it shows it doesn't touch the lot.

Ms. Drabicki asked what a riparian setback was and Mr. Snell responded with a brief explanation.

Mr. DiGirolamo asked whether they were aware of any amendment to the resolution that they were standing in violation of 5.11(b) that was amended January 6, 2021 or whether they participated in any of the meetings held in regard to this. Ms. Drabicki responded no. Mr. DiGirolamo asked whether they did any research regarding what type of accessory structures are permitted in their type of development. Ms. Drabicki responded they did some research on line and saw the 192 sq. ft., but didn't understand what the site line was. They thought it meant the property line until they met with Mr. Fantozzi.

There was a lengthy discussion regarding accessory buildings behind structures in cluster and planned unit developments in Sagamore Hills Township. Mr. Snell said there was a long process including a moratorium to come to an agreement regarding the amendment effective January 6, 2021 to the zoning resolution on accessory buildings in Sagamore Hills Township.

There was a brief comment from Mr. Fantozzi about another resident in Red Hawk that has also built an accessory building on his property without a permit.

Mr. Snell read the standard for an area variance so if Ms. Drabicki wanted to address these items she could.

The factors to be considered and weighed in determining whether a property owner seeking an area variance has encountered practical difficulties in the use of the property include but are not limited to:

- A. Whether the property in question will yield a reasonable return and whether there can be any beneficial use of the property without the variance.
- B. Whether the variance is substantial.
- C. Whether the essential character of the neighborhood will be substantially altered or whether adjoining properties will suffer interference with their properties future development and rights as a result of the variance.
- D. Whether the variance will adversely affect the delivery of governmental services.
- E. Whether the property owner purchased the property with knowledge of the zoning restriction.
- F. Whether the property owner's predicament can be obviated through some method other than a variance.
- G. Whether the spirit and intent of this Zoning Resolution will be observed and substantial justice done by granting the variance.

Mr. Drago asked Ms. Drabicki whether she wanted to address any of these before he closed public discussion. Ms. Drabicki asked Mr. Snell to repeated A, B & C.

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Mr. Ostry replied to the first standard. A lot of fill was put in the area to make the land useable, it was cleared, a patio was put in and a lot of money was invested in the landscaping. Mr. Ostry believes this is an enhancement to the property.

In regard to the third standard, Ms. Drabicki and Mr. Ostry have received positive feedback from the neighbors.

Mr. Drago asked whether there was a further public discussion.

Dr. Koncal, chairman of the zoning commission, made a few comments and gave some background history on how the process started in regard to amending the zoning resolution on accessory structures. This process took about eighteen months when normally it takes about six months to amend the zoning resolution because the zoning commission also considered planned unit developments, not just cluster developments. In this particular case we cannot think about what is there now, but what might be there in 25-30 years from now when Mr. Ostry and Ms. Drabicki are not there, would it be maintained in the same way.

Dr. Koncal said the Board of Zoning Appeals could put conditions on this request for a variance such as landscaping.

Mr. Chasar said the rules as they stand now are for the protection of residents in clusters so that any sheds put up would be out of the site line of anyone driving through the cluster development so that particular community or development would look more attractive. This provides more protection for the property value.

Mr. Drago closed public discussion at 7:48 p.m. and stated he would entertain a motion from the board.

Mr. Gambosi made a motion to grant the variance to construct the 12 x 16 pavilion on the south side of the property. Motion seconded by Mr. DiGirolamo.

There was a discussion amongst the board members.

Mr. Gambosi stated the structure is already up and they are going to plant evergreens. What happens three years from now if the evergreens die and they decide not to replace them. Now the structure would be seen from the road. Mr. Gambosi asked the board about a fence.

There was a discussion regarding a fence (living wall).

Mr. Drago asked Mr. Snell if the board amends the motion to grant the variance providing a living fence obscuring the structure is maintained, will that travel with a sold property. Mr. DiGirolamo mentioned a deed restriction. Mr. Snell said it would be a deed restriction. Their decision could be recorded as it relates to the property.

There was a discussion on the fence (living wall) location, details and restrictions.

Mr. Spangler made a few comments to Mr. Ostry and Ms. Drabicki. The board understands their frustration and their neighbors spoke up for them nicely, but they did not do everything in accordance with the law and regulations. They became impatient and spent a lot of money. Mr. Spangler did not feel sympathetic and does not condone that type of action. The fact that other properties are breaking the law does not matter. We are trying to guard against whoever owns the property maintains it.

Mr. Spangler said provided the structure cannot be seen from the street, he liked Mr. Gambosi's motion, but it has to be in perpetuity.

There was a discussion regarding changing Mr. Gambosi's motion and the location of the living wall.

Mr. Black asked whether we can base this upon on a landscape plan. Mr. Black would like to see a landscape plot plan that we can approve. Mr. Black appreciated the zoning commission members being present and their extensive work done on this in PUD's and all the areas.

The discussion continued.

Mr. Drago asked whether they would be making this contingent on a landscaping plan, which the board has done in the past.

Mr. Drago asked Mr. Ostry whether he had a landscaper. Mr. Ostry said they use Rossi Landscaping. Mr. Black would like to see a full plot plan and any future plans. Mr. Ostry said they could sketch out the landscaping plan themselves.

Mr. Ostry shared his frustration with the reason his project will be delayed. Mr. Snell commented he understands his frustration but all the board wants is a landscaping plan to move forward. Mr. Snell asked Mr. Ostry how long would it be for him to come up with a landscaping plan. Mr. Ostry replied he would have a landscaping plan done by the weekend.

Mr. Snell commented if the board knows they will have a landscaping plan, this meeting could be continued to a date certain. This is a public meeting that was advertised. We can continue this meeting without a new public notice.

There was a discussion among the board members regarding a date to continue this meeting. The board agreed on Tuesday, November 9, 2021 at 7:00 p.m. Mr. Ostry agreed to have a landscaping plan to Joanne by Monday. The plan will be circulated to the board.

Mr. Gambosi withdrew his motion. Seconded by Mr. Spangler. R/C Vote: all in favor

Mr. Drago took a motion to continue this meeting until November 9, 2021 at 7:00 p.m. Motion made by Mr. Spangler. Seconded by Mr. Gambosi. R/C Vote: all in favor

Mr. DiGirolamo made a motion to approve the minutes from February 24, 2021. Seconded by Mr. Spangler. R/C Vote: all in favor

Mr. Drago asked whether there was any further business. Mr. Fantozzi said there will be another meeting coming up due to a lot split.

Mr. Spangler made a motion to adjourn at 8:25 p.m. Seconded by Mr. Gambosi. R/C Vote: all in favor