

Building and Zoning Appeals Minutes

Stow City Hall Boards and Commissions, Monday, August 12, 2013, at 6:00 p.m.

Members Present: Robert Knight, Richard Hodge, Edward Franks, Cycle Feldman, and Mike Svasta

Members Absent: None

Also Present: John Sorboro, Kari Sorboro, David Mann, Valerie Lysiak, Tom Kindness, Karl Schwarzingler, Barry Scheah, Rich Reedy, Bobbie Carper, and Mary Botts.

Meeting called to order by Mike Svasta at 6:02 p.m.

Approval of Minutes: Motion to move approval of the minutes of the July 29th meeting to the next meeting by Mike Svasta. Motion seconded by Edward Franks, all yea's, no nay's, motion passed 5-0.

Case #13-012

This is a request by David Mann, on behalf of John Sorboro, property located at 3251 W. Chase Circle, for a 725 square foot variance to permit construction of a 1,525 square foot accessory building. Access to the proposed accessory structure would be from a proposed driveway that would cross two other parcels. One parcel (5609824) belongs to Summit County Department of Environmental Services, and the other parcel (5611473) is private open space belonging to the Surrey Hills Estates Homeowners Association. The property is located in an R-3 District. Section 1143.07 limits the floor area of accessory structures on a parcel less than one acre to 800 square feet or 60% of the gross floor area of the principal structure, whichever is less.

Mr. Mann, from Mann Architects, stated he had a few drawings to show the Board and the audience. Mr. Mann stated that Dr. Sorboro and a few neighbors were there to speak in support of this project. Mr. Mann said I have documentation too that I am going to hand out that maybe we didn't have at the time we made the application so hopefully that is going to explain the situation and any questions. Mr. Mann said the first handout that I am going to pass out is basically for the aerals. The first one is of some GIS map sites and that is the parcel the Sorboro's and the Association property, so the Sorboro's property is located right here off the cul-de-sac and the Association property is located to the right. The Association property is 9.54 acres. It, of course, is common land for all of the residents in the Surrey Hill Development. There is a creek that kind of runs down the middle of it and heads across and this is, of course, River Road right here that passes underneath and there is a bike trail across there. So that is an aerial of that site. The white thing is the small little building right here which is the D.O.E.S. pump station. The next page is the blow up of the area and we have the pump station at the top, and we have a paved driveway that comes in off of their parcel and then

there is a large Association property and the Sorboro property, 88.415 feet of it, is contiguous to the Association property. Regarding D.O.E.S., the neighborhood has been in existence for at least 25 years, and the accessibility to the common property. They have been using the D.O.E.S. driveway to get to the land for maintenance and the rear of that Association property looks like this and that is located in the undeveloped area. The rest of this green space is for the enjoyment of the neighbors in the community. What our intent is to position an accessory building within the woods. It is heavily wooded, the topography from the Sorboro's residence goes downhill, of course, like everything would head towards the creek. We positioned the accessory building off of the common property. On the handout you have, if you go to the next page, this is a shot from North River Road and the asphalt and the pump station go in right here and then there is a little bit of an opening here. As you get closer, you will start to see an opening in the green in the forest and I am going to call it a grass road. The top picture is a close-up of that grass road and there is an even sign that has seen better days that talks about the Surrey Hill Homeowner's Association and common property. You can see the tracks in the grass road and then it kind of turns into mulch or something. It heads onto this area of the property which is maybe only 25ft. into the long 9-1/2 acres. The next shot is a little bit further down that grass road and you start to see that opening far away, which again is this area. To the left of the photograph #4, is the rear of the Sorboro property. The next two photos is a requirement of this Board to stake out where the building would be on the property so it is a two piece photograph because I could not get far enough back to take it, I would be back in the woods again so I only had the grass road to shoot from so there are two pieces that you have to imagine. The building is 52 ft. wide on the 88 foot long parcel so we have ample room on both sides of the building for setbacks. The rear setback to the accessory is 10 feet, our drawing shows 10 feet, we may even go a little bit further back, we are not sure quite yet, but we are indicating the 10 foot.

Mr. Mann said here is a letter, and I believe you have a copy, from D.O.E.S. Then the next page is an update that I would like to discuss. This letter is dated July 22nd and it is from the attorney for Summit County D.O.E.S. and it talks about receiving the easement and that it should be a matter of routine and they would expect the easement to be approved in the County Council business of August 12th, which happens to be today. Mr. Svasta said on this letter, the subject matter here is Surrey Hill Estates for Easement? Mr. Mann said what we are asking for is basically we came down to an agreement with D.O.E.S. that from the west property line, 32 feet in, which pretty much encompasses their driveway, like you saw in the pictures, the paved driveway, that they are granting a 32 foot wide easement from North River Road, across the D.O.E.S. property, to the back and then of course, the Association property is adjacent to it, and, of course, that goes to North River Road. The access point to the grass road, I call it, is right there so that would give the Association and everyone who is part of the Association, the easement of 32 feet in that location. The July 22nd letter is basically saying that final approval would be August 12th with County Council meeting which happened at 4:30 today and I am sure it is still going on. The second page I provided you was their Committee where they bring it up and decide they are going to take it to Council and pass it on

a 5-0 vote, allowing the 32 foot easement across their property to the common ground of Surrey Hill. I have provided documentation that the County Council will pass this tonight. They may have already but I don't have that knowledge. I won't know until tomorrow morning from their attorney. We think this buttoned up the accessibility issue across the D.O.E.S. property onto the Association property that abuts the Sorboro's. There is a letter from the two adjacent property owners, those two properties are on either side, and I believe one of them is here tonight (Karl Schwarzingger). Mr. Schwarzingger said I am two lots over. My one neighbor, Russell Chaboudy, couldn't be here tonight but he also signed the letter and he said if there are any questions, I can speak for him tonight. Mr. Mann said so this here, you know about the accessibility to the D.O.E.S. building and such, the topography goes downhill and heads for this creek, the next page that you have shows the building and our intent is to bury the building as much as we can so that the south elevation, which is the top left drawing, shows the side of the building, and we kept it as nondescript as possible, literally if we can paint this thing invisible we would, because the intent is what is going to be in the building and not the building. We are not trying to make any statements or any magazines with this building. It is simply just a functioning utility building that our intent is to color it with the materials that are going to make it blend into the forest as much as possible. We kept the sloping roof that went in one direction just to get water off the building, we did not do a peak or gables, we kept it as low as we could as well. The front, which is your west elevation, which is the right hand top drawing, we have some garage doors with some two story windows above, we may not even put those in, we are not sure. The garage doors will be metal doors which will become prefinished and again, a very camouflaging color. We don't want to draw too much attention to the building for a variety of reasons. The north elevation is a flip of the south, again we are shoving the building into the ground and trying to hide it, and then the east elevation, which will be on the back side facing the Sorboro's property, would be buried, would look even almost less than 8' tall, it will be fairly shallow. So that is our intent, to bury as much possible. The property, with all the trees on it and the photographs that I have shared tonight, really do mask this. The distance from River Road to the building is over 250 feet. I am sure you are not even going to be able to see this building from North River Road. The only folks that might be able to see this might be this neighbor or this one here, possibly through the woods. The property is .76 acres, a little over $\frac{3}{4}$ of an acre. If we were an acre, we would just stay within the 1500 and that would have been pretty simple. The contiguous relationship between the Sorboro's property and the 9.5 acres of the common land, I think what it does, in the spirit of trying to separate accessory buildings from other residences or other properties, is kind of really being accomplished by using that as a center point and seeing who is really affected. The Association owns a lot of property, even across the creek, all the way down here. Again, this is going to be nestled inside a forest. Going back to some of the pictures that I provided, when you look especially at pictures 3 and 4, and especially 4, this is not in the middle of a field and it is not visible from the roads. I think it is an ideal location to hide an accessory structure like this and we hope we will hear some favorable responses from you.

Dr. Sorboro said we have lived there close to twenty years. When we moved in, I spent a considerable amount of my own money to plant trees, to provide a cover between accessory pump station and my own house, along with newer plantings up towards my own home. My desire for this is for the majority of the building to be subterranean and to keep all of the foliage that exists there that we have already planted as possible. Whatever is lost will be replaced with new plantings around the building so as David pointed out, my goal here is to create a garage/office that is stealthy as humanly possible and it would only, if at all, be visible to the neighbor to the left of me, Mr. & Mrs. Chaboudy who have given their approval.

Mr. Schwarzsinger said I am one of the properties that abuts back to the right of way. There used to be a gas line that went through there so that right of way was necessary and it has always been a great avenue because people said they would build pathways and parks and all that stuff and that never happened so we took it upon ourselves to put that together and I pretty much maintain it right now. I maintained it for all of 25 years except for a year and a half when I had hip replacement surgery but I have gone back to maintaining it. People throw parties back there, emergency vehicles go through there so it is a great right of way. We always thought we had access but this is the first that we knew that we didn't have it. I think the builders told us we would have right of way and from the very first meeting we had in the Association, we thought we had right of way so I want to thank Mr. Sorboro here for getting proof for us, it is necessary for us. Mr. Sorboro said the project will vastly improve the right of way, part of the building will be to insure, part of that access road is a bit soupy and it is not that you can't get through but one of the improvements that we plan on making is to insure that there is a reasonable entrance way to the common ground for that building. Mr. Mann said on the heels of what Dr. Sorboro just said, that area, we are going to pave, which we show on the drawings, on the D.O.E.S. down the lane, would be this area including the soft spot that is right here and the proposed building would be right here on that side and I think also what Dr. Sorboro just said, if so inclined to make you feel more comfortable, we would plant evergreen trees on both sides of the building, again to screen it as best we can. We don't want to have a showpiece here, we want to have a functional utility building here that we can hide in the ground and hide in the forest.

Mr. Svasta asked if there was anyone here from the Homeowner's Association. Mr. Kindness said he was from the Homeowner's Association. He said the three of us here are with the Homeowner's Association and we are not specifically opposed to this project and it sounds pretty nice and everything, but we didn't find out about anything to do with this until this past Friday and we do have other people in the neighborhood, 39 or 40 other families, who have ideas to put things forward or are concerned about what goes up in the neighborhood. We do have restrictions to abide by and we are concerned that it just might run into problems so we would like to have a little bit of a time extension, at least before the project begins, to apprise the rest of the neighborhood of what is going to transpire and make sure that we can get everybody on board, otherwise, this will create problems in the neighborhood down the road and we have already seen some issues of this type in

the past, not quite as large as this garage that is going up but the potential is there and we would like to keep peace, more or less, before this thing starts. Mr. Svasta asked Mr. Kindness, the Homeowner's Restrictions, are they legal restrictions? Mr. Kindness said they were, yes, everybody was supposed to get a copy when they bought their lot. Mr. Knight said so they are by-laws of the Homeowner's Association? Mr. Kindness said yes. Mr. Kindness said we pay dues into the Association and these are the restrictions that apply and we do, in fact, have one right here (Mr. Kindness passed out the by-laws). Number 3 on the top about detached garaged and this is what I am talking about might be a problem, and we would like to get some of the stuff addressed so when the project begins, which I am sure it will, everything will be ironed out. Mr. Svasta asked how much time would the Association need? Mr. Kindness said to get a hold of the people and wait for their response, probably two weeks to a month. We have people coming back into town, so a month.

Mr. Feldman asked what is the Homeowner's stance on the easement? Mr. Feldman said if I lived there, I think I would want to be able to access it. Mr. Kindness said you mean the easement to the common area? Mr. Feldman said you thought you had one, is what I am hearing and now you found out you didn't and now you do, is that correct? Mr. Kindness said you mean down behind...Mr. Feldman said there is some trash down there, I don't know, do you maintain it? Does the Association doesn't maintain that area? Mr. Schwarzingler said I do. Mr. Feldman said so the use of the 9.74 acres is what? Mr. Mann said mostly his backyard and the forest. Mr. Feldman said what is it used for? Nothing? Mr. Schwarzingler said it is common ground back there and I put a basketball court and volleyball court and it is landscaped. We have had neighborhood parties in the past and even weddings. A lot of the neighbors come down and take pictures for graduations and so forth so it is a common grounds area. Mr. Mann said Mr. Schwarzingler has taken on sole responsibility for the considerable cost of up keeping the common ground area. Mr. Mann said the concrete area that he is talking about where he is going to place it in there, that is the area that really gets wet all the time. Once that is concrete, you would have access through there like a five lane highway, that will be fully accessible without any questions.

Mr. Feldman so back to the original question, what is the Homeowner's stance on the easement? Mr. Kindness asked for him to clear up the question. Mr. Feldman said I heard you thought you had an easement, then because of this project, it looks to me like there will be an easement, I heard an emergency vehicle used the easement, what is the Homeowner's stance on the easement because it is being granted by the Homeowner's Association. Mr. Kindness said you mean the easement from the street going back to that common area? Mr. Feldman said correct. Mr. Kindness said truly I don't think that much thought has been given to it because except for people who abut that particular easement, because it doesn't come up in our thoughts. Most of the adults that I know do not go down there. The kids may go down there and play. Mr. Knight said do you think the consensus of the homeowner's, your opinion, would be such that they would like to have that as a dedicated easement now versus something that they thought they had but

couldn't be enforced? If D.O.E.S. put a fence up there, you guys would no longer have access to that. It is their property and they have every right to put a fence up but now they are going to grant an easement. What is your opinion of granting an easement. Are you in favor of that or against that? Mr. Kindness said I would be in favor of that but I am only one person. Mr. Feldman asked are you representing the Association and Mr. Kindness said I represent the Association but in something like this, I have to go to the homeowners. If it is a big project, such as this, and question whether it is even against the homeowner's restrictions, then I have to and I should, in all decency and legally, go to the homeowner's and say this is what they want to do and what is your opinion. Mr. Feldman said I question that. I don't think you have to go to all the homeowners in the Homeowner's Association because who handled in the past all the decisions in the past the entire Homeowner's Association, that would take a lot of time. Mr. Mann said it is certainly precedent for other accessory buildings, fences, that are not consistent with the original requirements.

Mr. Svasta said with regard to this proposed easement, I see this is as totally separate from the need to pass through the D.O.E.S. property to get to his proposed garage. Whether or not the garage is built, the Homeowner's Association appears to still want the easement. Aren't these two separate issues? Mr. Mann said I don't see it that way. Mr. Svasta said did the Homeowner's Association request the easement or did Dr. Sorboro. Mr. Kindness said the Homeowner's Association did not because as I say, up until this past Friday, we knew nothing about it. Mr. Mann said I met the doctor one evening and he got the idea of where we could put the building and I thought it was great. We walked around to the back side and you could see the grass lane and so I walked down the grass lane and you could see the development and then to the right, is the rest of the road that goes down to the D.O.E.S. property so my first question was, you must have an easement for this because obviously you have been maintaining this common land for 25 years, I have no idea but we will find out, it is easy to find out. I went on GIS and County records and I did not see it from North River Road to the common ground. Now the common ground does own some land that touches North River Road and it would be unbelievably expensive and not ever be approved by EPA to do anything around that creek to try to get a connection to North River Road, which the part they own is the real steep property so that was kind of useless so basically, my non-legal interpretation and opinion is that the Association is maintaining that property and trespassing across D.O.E.S. property for 25 years. I told the Sorboro's that I would have to get something legal from them (D.O.E.S.) to at least allow the Association egress to North River Road which would benefit Dr. Sorboro's property, let's not kid around, that of course is why we pursued this, we get access to this accessory building, I am not too sure how successful I am going to be with D.O.E.S. I was amazed at how cooperative they were.

Mr. Knight said the easement is a completely unrelated issue to what we are looking at here. We are looking at a variance for a building on a property relative to our code and that is all we can deal with. I do have an issue that I like to relate because I do this stuff. Your development with this pavement and the building,

how much area does that encompass? Is it an acre or more? Mr. Knight said if you disturb more than an acre you have to do a water quality improvement and if you don't disturb an acre, you have to soil erosion and sediment control. Mr. Mann said the Sorboro's entire property is .76 acres so it is not likely to exceed an acre. Mr. Knight said getting back to the primary issue and that being the size of the out building relative to the code, it looks like half this building may fall within the code without a variance. So is this a garage? Dr. Sorboro said it will be an office and a garage and my intent is to use part of it as my office and storage facility. I run a number of medical clinics and I will use some for storage; certainly no hazardous materials, just testing materials. Mr. Knight said is this going to be an office? This is residential. Dr. Sorboro said a home office, I won't be seeing patients. Ms. Carper said it may require a home occupation permit. Mr. Knight said in addition to a building permit, zoning approval. Ms. Carper said if I can address your concern about the drainage, I spoke with Sheila Rayman, who is our Assistant City Engineer, and she is also a storm water expert, and she wanted to ask the Board, as a condition for approval, if that is how you decide to rule, that a detailed drainage plan be submitted to her and I have contact information for her. Mr. Knight said so the primary issue comes back to the size, relative to the code requirement allowance, and the second is the Homeowner's Association requirement that no separate detached structures.

Mr. Svasta asked Dr. Sorboro can you speak to the size for me because I was out there today and it is big. Dr. Sorboro said the majority of the building will be built into the hillside so the actual part that will be observable will not be very large. If you look at the area, it is staked, that is roughly the size of it but I am trying to get as much of it recessed into the hillside as possible to screen it. Mr. Knight said our issue is square footage. If it meets code and is 30 feet high, it is immaterial to this Board, square footage only.

Mr. Svasta asked if there was anyone else in the audience who had an opinion. Mr. Barry Scheah said I live in Surry Hill and I am a member of the Board of the Homeowner's Association. I have been, since day one, one of the original owners of property in Surry Hill. I have served on the Board off and on through the entire time. The problem we have found out over the years, is that when the Association members are not informed and not educated as far as what is going on within the Association and their properties, basically, questions become negative more than they do positive and in this case, we have just learned of this recently and have not had the chance to speak with any members of the Homeowner's Association as far as Tom mentioned, due paying members. So one of the issues I am concerned is that people, again, are not informed and not educated as to what Mr. & Mrs. Sorboro are trying to do, may create a problem. You mentioned earlier about an easement, whether we have or don't have, the easement is very important to the Homeowner's Association I would imagine. Just in past discussions with Karl over the years, whether we had or didn't have, okay, the issue of the building is separate in discussing with the Association, that is the biggest concern that I have. I maintain the properties for a certain degree, other than Karl's space down there, Karl takes care of that himself and does a fantastic job and over the years has done

a wonderful job of maintaining that. Mr. & Mrs. Sorboro, their property is maintained very well and they have always done an excellent job of everything in the past. My concern is just the education of the Homeowner's Association. Allowing time to get with them, whether we have to do it door to door, or a letter to get out to them to give them a timeline to get back to us. Just to expedite this so we don't run into a problem. I know timeline is an issue right now as far as the weather and everything, and that may be one way is to possibly get a letter out to all the members of the Association with a timeline on it to get back to us, yea or nay, or what their concerns would be that we can address. I think this would be the proper way to do this.

Mr. Schwarzinger said in reference to Mr. & Mrs. Sorboro, they asked me who the Board members are and I had no idea who they were and so I am not so sure who the board members are to speak to. Mr. Schwarzinger asked if a letter was sent out this year from the Board at all and Mr. Kindness said we have not. Mr. Schwarzinger asked how many meetings have they had? Mr. Kindness said maybe two. Mr. Schwarzinger said that has been the problem with our Board. Some years the Board is fully functional, other years it doesn't function at all. This year it doesn't appear it was very functional, no letters have been sent out, we didn't know who the Board members are so John really didn't know who to really approach. We had no idea who the President was. That is why this is a pressing issue at this moment.

Mr. Svasta said I think we need to allow time for the Homeowner's Association to review the Sorboro's proposal. Mr. Knight said I don't necessarily agree. I think the issue is a square footage issue relative to the code and as you have all heard me repeatedly, some things are too big for certain properties. We have a code in this City that was adopted by City Council, approved by the Mayor, whatever legal process, State of Ohio laws. We are five volunteers that live in the community and we like to overrule our elected officials on a regular basis. I am not a big advocate of that so I am thinking this structure is too big. Mr. Hodge said I think as far as the issue with the Homeowner's Association, whether we approve or disapprove it, you all can stop it in its tracks if you wanted to, I think that is a completely separate issue from what we have here.

Mr. Edwards asked Ms. Carper, the rear lot setback, does this building conform? He said he was going to build it 10 feet in. Ms. Carper said as an accessory structure on a residential property, if the property is less than an acre, the requirement is 6'. Mr. Edwards asked regarding Homeowner's Association, if someone presents construction of something that is in violation of your regulations, what is the process of dealing with that? Mr. Kindness said I don't think it has come up in my memory. Mr. Edwards said if regulations prohibit detached garage. Mr. Kindness said we could, if it was indeed such as this, we would take and tell our neighbors up there and get their opinion and go from there. Mr. Edwards asked in your mind, has the homeowner been required to get approval of the Board to do something that is not permitted by the regulation? Mr. Kindness said yes.

Mr. Svasta said I think the Homeowner's Association By-Laws are enforceable and I think that should have been done first before bringing this to the Board. As it stands right now, there are so many conditions for approval of the variance. The motion to approve would have to include vegetation, drainage plan, approval of the Homeowner's Association. Those are all things that we would want to have approved before we can consider granting the variance. I would like to move that we table vote on this variance to allow the Homeowner's Association thirty days to review the request of Dr. Sorboro and we can act on this at our regularly scheduled meeting in September. That is the motion. Motion seconded by Edward Franks. Motion passed with 3 votes (no vote Mr. Hodge, abstain by Mr. Knight).

Dr. Sorboro said in order to begin construction before the ground gets too hard, we would probably have to begin soon Mr. Mann said we have the drawings complete and when this all started, was submitted drawings to the Building Department and it got bounced back right away because of the variance that was needed. The drainage drawings are all done, civil drawings are all done. They were submitted months ago. I am not worried about that condition, I am not worried about adding vegetation around the building, those are easy things, but if we come back in September and the Building Department will not review the drawings until we have our variance and it is going to be October or maybe November before we can start to break ground. Ms. Carper said actually, if you have the drawings already submitted to the Building Department, there is nothing to stop you from submitting those. We had a case a few weeks ago that they had their plans submitted and the Building Department reviewed them in preparation for the Board's vote. The risk that you take with that is that if the Board doesn't approve the variance, then the drawings will have to change. That would be my suggestion.

Mr. Svasta said we have a motion and it has been seconded to postpone the vote on this variance until next month and I just want to make sure that everybody understands that even if the Homeowner's Association comes back with approval, that does not necessarily mean that we will grant the variance because as Mr. Knight said, and my feelings are the same, that it is just too big for the lot that you have there but we are willing to vote on the motion to postpone.

The Board voted to postpone the vote until next month and at that time, Mr. Mann will have to bring the decision of the Homeowner's Association to the Board. Mr. Mann said I think our intention is that we will present to the Association and show the facts to everybody so that they can get an opinion. We will also let you (the Board) know when that date is so that you can attend that meeting as well.

Adjournment: With no further business to be discussed, motion to adjourn by Mike Svasta, seconded by Robert Knight, meeting was adjourned at 6:58 p.m.

Mike Svasta, Chairman

Mary Botts, Secretary