

Scott County Board of Adjustment

November 28, 2012

1st Floor Board Room Administrative Center

Members Present: Hittle, Gallin, Scheibe, Vollbeer, Dittmer

Members Absent: None

Staff Present: Timothy Huey, Brian McDonough, Larry Linnenbrink (health dept.)

Others Present: Bret Kuebler (applicant), Mike Cole (neighbor @ 24919 Valley Drive), Bill Cusack, Jim Hancock, Carol Earnhardt, Tom Sunderbruch, Larry Minard, Mary Thee (Assistant County Administrator)

1. **Call to order.** Chairman Scheibe called the meeting to order at 4:00 p.m.
2. **Minutes** – Hittle made a motion to approve September 5, 2012 minutes. Vollbeer seconded the motion. All Ayes (5-0)
3. **Public Hearing – Variance** – Bret Kuebler of 24965 Valley Drive, Section 7, Pleasant Valley Township

Mr. Huey presented the history of the building in question. There was a previous accessory building in the same location. It had recently been torn down. Because it has been torn down, Huey explained that the building had therefore lost any “grandfathered” or non-conforming status it may have held. Huey stated that the applicant had proceeded to construct a new accessory building on the old foundation of the previous building in the last few months. At the time of the meeting, the new building had been framed and walled. The County Building Inspector noticed construction occurring without a permit this fall, and posted a stop work order at the site. Upon receiving the stop work order notice, Mr. Kuebler applied for a variance, to allow the building to remain in its current location. Mr. Huey explained that the building sits directly on the applicant’s west lot line, with the roofline appearing to hang over the property line. Huey explained that staff reviewed this variance request as if construction of the building had not begun.

Chairman Scheibe asked the applicant, Bret Kuebler, if he wanted to address the Board.

Bret Kuebler (24965 Valley Drive): Mr. Kuebler stated that he did not realize he needed a building permit, because he reconstructed what was an existing building in its original location. He stated that he cannot move the building to the south because of his property’s topography, and that he cannot move it to the east due to the location of his septic system.

Chairman Scheibe asked if anyone else from the public wished to speak on the matter.

Mike Cole (24919 Valley Drive, shares west property line of 24965): Mr. Cole stated that he has lived in this area all of his life, and has lived at his current address for 22 years. He said that he would use the shed as much as Mr. Kuebler to store property maintenance equipment. Stated that he thought the original shed was built approximately 40 years ago. Mr. Cole concluded by saying that he was glad the old building was torn down and replaced because it enhances property values.

Chairman Scheibe asks for Mr. Huey's recommendation.

Mr. Huey reiterated an early point, that staff treated the review and recommendation for this variance request as if construction of the building had not already started. Huey stated that staff's recommendation was to deny the variance request due to the self-created hardship of the applicant, and due to the lack of significant evidence showing that the building could not be moved.

Bret Kuebler responded that he cannot move the building to the south because of topography, nor can he move it to the east because of the septic system.

Board member Gallin asked Mr. Huey for clarification on the grandfathered status of the building.

Mr. Huey explained that there was no evidence as to whether or not a variance was granted for the previous building. Furthermore, there was no building permit or other evidence which indicated that the previous building was legally constructed under now outdated rules. If there were evidence proving that this was a legal non-conforming building, that grandfathered status is lost once the building is destroyed by more than sixty (60) percent of its replacement value. Huey explained that this request is for a zero lot line side yard variance. In other words, the variance request was for no side yard setback. To Mr. Huey's knowledge, the Board had not granted zero lot line variances in the past.

Board member Gallin asked about the septic system drawing for the property, submitted by the Health Department.

Larry Linnenbrink (Scott County Health Department) explained that the septic system for the property is a "pit system." He noted that any building must be a minimum of ten (10) feet from the septic system.

Mr. Huey said that he was not aware of this ten (10) foot setback requirement between septic systems and any structures, and that in light of this new evidence he would amend his recommendation to approve the variance due to the practical difficulties caused by the unique circumstances of the property.

Chairman Scheibe noticed the aerial photograph presented during staff's presentation showed a pool on the applicant's property, which appeared to have been built over the east property line.

Mr. Huey responded that it is very difficult to prevent such violations when not everyone applies for a building permit, and when there is no complaint from surrounding property owners. He agreed that according to the aerial, the pool appears to be constructed partially over the applicant's east property line.

Bret Kuebler stated he located the property pin near the building for which he asked for the variance, and that the building, according to his measurements, is one (1) foot from his west property line.

Board member Dittmer said that he has sympathy for anyone trying to work around septic systems, due to his own experience.

Board member Hittle stated that he sees two courses of action for the board in this case. Either they grant a zero lot line variance to let the building remain in its current location or deny it, effectively resulting in a decision which would require the building be demolished. Because of the septic system and site topography, granting a lesser variance than zero feet is not an option.

Dittmer made a motion to approve a zero foot side yard setback variance, or a zero lot line side yard variance, to allow a 20-foot x 24-foot accessory storage building to remain in its current location at 24965 Valley Drive, due to the practical difficulties caused by the unique circumstances of the lot, particularly the steep sloping topography and the existing septic system in the rear yard. Gallin seconded the motion.

Vote: All Ayes (5-0)

4. Joint Meeting with the Board of Supervisors – Yearly meeting between the Scott County Zoning Board of Adjustment and the Scott County Board of Supervisors to discuss how the decision making of these two bodies interacts, and to discuss any other issues.

Tom Sunderbruch thanks the Board of Adjustment for their service.

Mr. Huey explains that the Board of Adjustment decisions have the force of law, and are not approved by the Board of Supervisors. However, the Board of Adjustment often suggests ordinance changes when they hear repeated cases of the same nature. For example, accessory structures are not allowed in front yards, but after hearing many variance cases for detached front yard garages, it was suggested that the ordinance be amended to allow front yard accessory buildings, so long as the house and accessory building are set back a minimum of one-hundred (100) feet. Mr. Huey suggested that the next ordinance amendment may address corner lots. Specifically, to allow the second front yard on a corner lot (the yard opposite of the way the house is facing, yet with road frontage) to have accessory structures which only have to meet side yard, and not front yard, setbacks. Mr. Huey also suggested that both Boards take a joint field trip sometime to get a firsthand look at some of these issues.

Discussion takes place on the County's Manufacturing zoning district. Specifically, which uses require a special use permit.

Mr. Huey explains that all Manufacturing district uses require a special use permit. He explained that all special uses are reviewed by the Board of Adjustment on the basis of their impact upon the neighborhood. This is a different, and to a large extent a "lesser" standard, than the practical difficulties and unnecessary hardship standard which applies to reviewing variances.

There was general agreement that the Comprehensive Plan needed stronger language relating to major economic development projects. Economic development potential needs to be given more weight when land use decisions are made, and this should be reflected in the Comprehensive Plan.

With no new business to discuss, **Gallin made a motion, seconded by Vollbeer, to adjourn.** The meeting was adjourned at 4:40 p.m.