

The Board of Zoning Appeals of the City of North Royalton met on **July 28, 2008**, to hold a Public Hearing, in the Council Chambers at 13834 Ridge Road. The meeting was called to order by Chairman Neil Price at 8:00 pm

Present: Chairman Neil Price, Paula Recker, Tony Caraballo, Prosecutor Donna Vozar, Zoning Inspector Joe Hartman, Assistant City Engineer Dan Collins, Secretary Julie Broestl.

Chairman Price: I need a motion to excuse Dan Kasaris and John Ranucci.

Moved by Paula Recker, seconded by Tony Caraballo to excuse Dan Kasaris and John Ranucci from the Public Hearing of July 28, 2008.

Chairman Price: Call the roll.

Tony Caraballo: Yes.
Paula Recker: Yes.
Chairman Price: Yes.

Ayes – all. Nays – none.
Motion carried. (3-0)

(BZ08-19) Scott Goldberg/Saks Harvey Et Al request a variance to **Chapter 1480 “Sidewalk Construction”, Section 1480.01 “Construction Required: Waiver”, paragraph (a) and (b)** of the City of North Royalton Codified Code, for relief from the **required sidewalk** that should be installed on this property located at the corner of **Riverview Drive and State Road, PPN: 486-19-030.**

Chairman Price: Before we start I would like to say that there are only three of us Board Members here tonight, so the vote would have to be unanimous in order to pass. So, I would advise the applicants of that and if the applicants want to wait and attend the next meeting they have that option. There are five on the Board and two are absent. You have to have a majority vote for anything to pass, and there is only three of us here the vote would have to be unanimous. If the applicants wish to go with the unanimous vote tonight in order to have the variance pass. They will need all three yes votes. Otherwise, they can wait until the next meeting when there will be two more people and then you would have the majority. Then it could be three out of the five. It is up to the applicant. Anyone wish to speak on number 19?

Scott Goldberg: Would the Public Hearing be rescheduled if the matter is tabled?

Chairman Price: Yes.

Scott Goldberg: When would it be put off?

Chairman Price: The Open Meeting. There is never a guarantee that there is going to be five members, but chances are that there might be at the next meeting. You need a majority to have the variance approved. The majority tonight is everyone.

Scott Goldberg: Is there any reason that the Public Hearing portion could go forward?

Chairman Price: Mr. Kelly?

Mr. Kelly: Mr. Chairman. The Public Hearing portion of the application obviously is intended to give the members of the public who have been given notice of the application the opportunity to speak and be heard. It would seem to me that if the applicant wishes to pursue the application at a later date, the Public Hearing should be held now to afford those people who are here today to be heard by you and the members of the Board, and then recessed and reopened at that next meeting so that these same people or in the alternative the additional members of the public who wish to be heard on the matter may be heard at that time as well. That would be my suggestion Mr. Chairman.

Chairman Price: That would be up to the applicant.

Scott Goldberg: We are all here to speak either for or against any of the items that appear on the agenda tonight, so I certainly would be agreeable to go forward with the Public Hearing portion.

Chairman Price: I'm in favor of the Public Hearing because these people have taken the time to come up here to City Hall and show an interest.

Scott Goldberg: When would the next meeting be scheduled?

Julie Broestl: September 22nd. We are off in August.

Scott Goldberg: Anyways, my name is Scott Goldberg, 5866 Broadview Road, Cleveland, 44134.

Chairman Price: Raise your right hand please. Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Scott Goldberg: Yes. I'm the applicant. Tonight I'm seeking the variance from the sidewalk construction requirement. at least in so far as it appears on the improvement plans for the first phase of Pinestream Subdivision. What was brought to our attention recently in the process of seeking the release of a sidewalk bond that was provided for this first phase of Pinestream is a sidewalk that is more or less parallel to State Road within the green area of the subdivision that runs along State Road. In that area also is a retention basin with an overflow and an open ditch along State Road. The sidewalks that are required to be installed within the subdivision have been installed, and this is the only remaining issue in this first phase of Pinestream Subdivision. The sidewalks would stop right at the property line for a couple different reasons. One, we were not aware that they were actually shown on the improvement plans, the sidewalks along State Road. Those sidewalks appear with other improvements within the subdivision like water sewers, and so forth, that were not in the right-of-way lines as well for State Road. They were easily seen and I think that we would have taken that issue off at the time the improvement plans were submitted to the City. There are no sidewalks that go to the north along State Road or Edgerton within the subdivision. This is the only section that would lead to an area south of us that has no sidewalks and since the subdivision was approved by the City the surrounding land was rezoned for rural residential with large lots and relaxed development standards which included no sidewalks in that surrounding area. We also have topography with the open ditch along State Road that would really limit itself well to the construction of a sidewalk and an addition the overflow from the retention basin from that first phase of Pinestream. What we are seeking here tonight is an agreement, I suppose you could call it that, or at least a waiver or variance from the improvement plans that show the sidewalk along State Road so that the area would remain as you see it now and the rest of the subdivision itself has sidewalks within it. Thank you very much.

Chairman Price: Thank you. Anybody else? Come up to the microphone.

John Zalenka approached the microphone.

Chairman Price: Raise your right hand please. Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Zalenka: I do.

Chairman Price: State your name and address.

Mr. Zalenka: John Zalenka, 5449 Riverview Drive, in the Pinestream Development. Mr. Zalenka read the letter that is attached to the back of these minutes.

Chairman Price: Thank you. Mr. Kelly?

Mr. Kelly: Mr. Chairman. I haven't had a chance to study this but it appears to be just a petition signed by all the homeowners. I recommend that the Board receive it and make it a part of the record.

Chairman Price: Anybody else?

Victor Morshanko approached the microphone.

Chairman Price: Raise your right hand please. Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Rorshanko: I do.

Chairman Price: State your name and address.

Mr. Rorshanko: My name is Victor Morshanko. I live at 5430 Riverview Drive. I guess it is more of a question if anything else, if this variance is granted, but there is a requirement for the sidewalk, and the City decides that a sidewalk has to go in who would pay for it after the variance is granted, or is this a permanent waiver or what?

Chairman Price: You took my thunder.

Mr. Kelly: Mr. Chairman.

Chairman Price: Yes.

Mr. Kelly: Are you going to throw that ball to me or what? Do you want me to respond?

Chairman Price: Please.

Mr. Kelly: The requested relief that is sought is from Section 1480.01 (a) and (b). In particular the reference is to subsection (b), in which refers to the opinion of the Building Commissioner. So, there is clearly a requirement that the sidewalk be constructed. It was on the subdivision plans that the developer submitted. The developer seeks a waiver from the Building Commissioner and there is no indication in the Ordinance what happens five, ten, fifteen years from now. The appeal is to this Board from the denial of that application by the Building Commissioner. My sense of it is that at some future date, if the City were inclined to require the installation of those sidewalks, they would be required to be installed and then the property owner whoever it is that owns that property, and I don't know if it is the developer or if it is the homeowners association, but whoever owns that property would be required to install those sidewalks, or the City would install them and then certify the costs to the tax duplicate and then paid then from the property taxes that is assigned to that parcel that is improved.

Mr. Rorshanko: Which sounds like right now it is in the green area.

Chairman Price: Green area or common ground.

Mr. Rorshanko: Yes. So, it sounds like at some point in time once the association passes to the association verses the developer now at this point in time, then the association would be liable for those sidewalks if the City decides.

Mr. Kelly: Correct. Whoever the subsequent owner is would be, not only in theory but in law, responsible for the cost of the improvement.

Mr. Rorshanko: Kind of sounds like the sidewalks should go in, in my opinion. Thanks.

Chairman Price: Anybody else?

Ellen Chay approached the microphone.

Chairman Price: Raise your right hand please. Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mrs. Chay: I do.

Chairman Price: State your name and address.

Mrs. Chay: Ellen Chay, 5459 Riverview Drive. I agree with Mr. Morshanko now that everything has been clearly defined to us that the developer is responsible for putting these sidewalks in. Like John said, we are a very active walking community and these sidewalks would be used by us and appreciated and if it was on the original plan he should pay for it. My husband and I both agree that he should pay for them and not be granted the variance.

Chairman Price: Anybody else? I need a motion to move BZ08-19 to the Open Meeting.

Moved by Paula Recker, seconded by Tony Caraballo to move BZ08-19 to the regular order of business.

Chairman Price: I have a motion and a second, call the roll.

Paula Recker: Yes.
Tony Caraballo: Yes.
Chairman Price: Yes.

**Ayes – all. Nays- none.
Motion carried. (3-0)**

(BZ08-20) Michael Stone requests a variance to **Chapter 1286 “Nonconforming Uses”, Section 1286.06 “Extension Prohibited”, paragraph (a)**, of the City of North Royalton Codified Code, for relief from the **nonconforming building** so that an **addition** may be constructed onto his home located at **5275 Wiltshire Road, PPN: 486-15-015.**

Michael Stone approached the microphone.

Chairman Price: Raise your right hand please. Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Stone: I do.

Chairman Price: State your name and address.

Mr. Stone: Michael Stone, I live at 5275 Wiltshire. Thank you to the Board for hearing our appeal. I can't share any statutory evidence, I'm not familiar with those issues, but I can share some anecdotal information. I have a fourteen year old son in a 12 x 12 bedroom. If you were ever a parent you know that there is abundant energy there and I need somehow to displace all that. Like all parents, I wish the best for my son and provide him with the greatest opportunities, so I wish to add five-feet to his bedroom, which would be concern to only squirrels and coyotes on the far side of the house, and some to my one neighbor who is in full agreement with this addition. So, if there is any other information I could offer that is my request.

Chairman Price: Anybody else on BZ08-20? A motion to move.

Moved by Paula Recker, seconded by Tony Caraballo to move BZ08-20 to the regular order of business.

Chairman Price: I have a motion and a second, call the roll.

Chairman Price: Yes.
Paula Recker: Yes.
Tony Caraballo: Yes.

**Ayes – all. Nays – none.
Motion carried. (3-0)**

(BZ08-21) Karen Buckley requests a variance to **Chapter 1270 “Residential Districts”, Section 1270.05 “Schedule of Area, Yard and Height Regulations”, and Chapter 1286 “Nonconforming Uses”, Section 1286.06 “Extension Prohibited”, paragraph (a)**, of the City of North Royalton Codified Code for relief from the **nonconforming building and side yard setback** for an **addition** that she wishes to construct on her property located at **6534 Royalwood, PPN: 488-01-009**.

Kenneth Buckley approached the microphone.

Chairman Price: Raise your right hand please. Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Buckley: I do.

Chairman Price: State your name and address.

Mr. Buckley: Kenneth Buckley, 11218 Mount View, Garfield Heights. I’m speaking in behalf of my daughter. I have a notarized letter to speak for her. We would like to put an in-law suite on the back of her home. My wife has Alzheimer and I need the help from my daughter. She consented to having us live with her on her property. That’s all I can say.

Chairman Price: Okay. Thank you. Anybody else? I need a motion to move BZ08-21 to the Open Meeting.

Moved by Paula Recker, seconded by Tony Caraballo to move BZ08-21 to the regular order of business.

Chairman Price: I have a motion and a second, call the roll.

Tony Caraballo: Yes
Paula Recker: Yes.
Chairman Price: Yes.

**Ayes – all. Nays – none.
Motion carried. (3-0)**

Chairman Price: I need a motion to adjourn the Public Hearing.

Moved by Paula Recker, seconded by Tony Caraballo to adjourn the Public Hearing.

Chairman Price: Call the roll.

**Paula Recker: Yes.
Tony Caraballo: Yes.
Chairman Price: Yes.**

**Ayes – all. Nays – none.
Meeting Adjourned. (3-0)**

Public Hearing adjourned at 8:20 pm.

The Board of Zoning Appeals of the City of North Royalton met on **July 28, 2008**, to hold an Open Meeting, in the Council Chambers at 13834 Ridge Road. The meeting was called to order by Chairman Neil Price at 8:23 pm

Present: Chairman Neil Price, Paula Recker, Tony Caraballo, Prosecutor Donna Vozar, Zoning Inspector Joe Hartman, Assistant City Engineer Dan Collins, Secretary Julie Broestl.

Chairman Price: I need a motion to excuse Dan Kasaris and John Ranucci for cause.

Moved by Paula Recker, seconded by Tony Caraballo to excuse Dan Kasaris and John Ranucci from the Open Meeting of July 28, 2008 for cause.

Chairman Price: Call the roll.

Tony Caraballo: Yes.
Paula Recker: Yes.
Chairman Price: Yes.

**Ayes – all. Nays – none.
Motion carried. (3-0)**

Chairman Price: I need a motion to approve the minutes of June 23, 2008.

Moved by Paula Recker, seconded by Tony Caraballo to approve the minutes of June 23, 2008.

Chairman Price: I have a motion and a second to approve the minutes. Call the roll.

Paula Recker: Yes.
Tony Caraballo: Yes.
Chairman Price: Yes.

**Ayes – all. Nays – none.
Minutes approved. (3-0)**

(BZ08-19) Scott Goldberg/Saks Harvey Et Al request a variance to **Chapter 1480 “Sidewalk Construction”, Section 1480.01 “Construction Required: Waiver”, paragraph (a) and (b)**, for relief from the **required sidewalk** that should be installed on this property located at the corner of **Riverview Drive and State Road, PPN: 486-19-030**.

Paula Recker: Mr. Chairman. Before I make this motion I would like to explain to the residents that are in the audience tonight as a courtesy basis, all motions are presented in the affirmative form and then a discussion and then the vote. So, when you hear the word approved it doesn't mean the variance was passed.

Moved by Paula Recker, seconded by Neil Price to approve a **variance for relief from the requirement of Section 1480.01 (a) and (b) of the Zoning Code with regards to the installation of a sidewalk with the condition of a waiver be signed and held on file in the Building Department stating that the owner will comply if the City mandates that sidewalks must be installed.**

Chairman Price: I have a motion and a second. Discussion?

Paula Recker: Mr. Chairman.

Chairman Price: Mrs. Recker.

Paula Recker: Based on the Public Hearing both the applicant and the residents, and understanding that the City itself, at some point, would like to see sidewalks installed in North Royalton. I have a question for the Law Director if I may address him?

Chairman Price: Go ahead.

Paula Recker: Mr. Kelly. I'm probably not going to phrase this properly, but would it be feasible seeing as the developer is in the process of turning this over to the association, would it be possible to put into an escrow account monies that would be held in that account, and I don't know if you would attached the X number of years to it, I do feel the same way as the residents feel; that it is not correct that these plans show the sidewalk. The developer did a nice job in Pinestream, but he will be long gone. It is not fair to the association to have to pay for these sidewalks in total. I feel that it is up to the developer to do that as he agreed to it whether he saw it on the plans or not, would that be feasible at this time? Then the waiver itself would then have to still be signed?

Mr. Kelly: Mr. Chairman and members of the Board. I suppose that is one potential solution. Mrs. Recker, what you described would be in the nature of a private resolution of the dispute or the claim arguably of the homeowners association against the developer. It isn't something that the City should be involved in. Now, we do take bond money and the City does hold cash bonds against performance requirements. I suppose we could probably develop something along those lines, but to be honest, it is not something that the City should be actively engaged in. We have a process that we have to follow. Our process is in the Codified Ordinances. The developer seeks some relief and this Board should either grant the relief or deny the relief on the basis of the merits and leave it go at that. That is my advice.

Paula Recker: Based on that advise from Mr. Kelly, and I thought that you would say that because of the City, I would suggest to both the developer and to the association, and I would like it on the record, that seeing as we go into recess in August, that we table this and it would give the association, residents of Pinestream, and the developer a month to possibly to work out something in regards to this. Do you think that it would be a good idea Mr. Law Director?

Mr. Kelly: Certainly any opportunity for resolution of a dispute is a good thing. In what we have here is an application from the developer an opposition from the homeowners, it is really in the nature of a dispute. To the extent to motion to table might afford them the time to work out their differences, which is obviously a good thing. It doesn't jeopardize the developer's opportunity to be heard and have his application either voted up or down, and it doesn't jeopardize the homeowners because they have another opportunity then to be heard at the next meeting. That would be my suggestion.

Paula Recker: Mr. Chairman, Mr. Goldberg would like to speak.

Scott Goldberg approached the microphone.

Mr. Goldberg: We certainly wouldn't have any objection to waiting until the September meeting. I certainly wasn't aware of any opposition to our request until tonight. The sidewalks were on improvement plans that were submitted some time ago. So, another two months certainly wouldn't matter. I have no objection to labeling it tonight.

Chairman Price: That is what I was going to ask you. When was this plan submitted?

Mr. Goldberg: The improvement plans date from almost ten years ago, 1998 I believe. This was the first phase of Pinestream subdivision. Thank you.

Victor Rorshanko approached the microphone.

Chairman Price: Name and address for the record.

Mr. Rorshanko: Victor Rorshanko, 5430 Riverview Drive. I'm not sure there is a dispute necessarily between homeowners and the association quite honestly, because the association is the developer. If the developer is required by law or by the plans to put sidewalks in, its not between us and the developer, its really the City allowing the developer to not put the sidewalks in, so I'm not sure what kind of resolution we should try to resolve here because I'm not sure if there is one to that effect. We object to it, there would be a waiver, right? Allowing him to walk away from a sidewalk, but.

Mr. Kelly: Mr. Chairman.

Chairman Price: Mr. Kelly.

Mr. Kelly: Mr. Roshanko, I characterized it as a dispute, maybe that was a bad choice of words on my part. But, as in any circumstance like this, the Board can vote it up or down, and that leaves one party, and I don't care who it is, one party satisfied and one party dissatisfied. You and all the people who signed the petition have an interest in seeing to it that the sidewalks are in, and he has an interest in seeing that he gets his waiver. That sounds to me like two opposing parties. Now, to the extent that there be some compromise available, if there is any compromise, the opportunity for that compromise is lost if the vote goes today. If the vote goes against Mr. Goldberg, he has to put the sidewalks in. If the vote goes in favor of Mr. Goldberg he won't have to put the sidewalks in and then the homeowner association may get stuck with it. Rather than see that kind of gross disappointment on face or another, the Board here is offer both sides the opportunity for a little discussion, which apparently hasn't taken place.

Mr. Roshanko: Not to my knowledge, you are absolutely correct.

Mr. Kelly: Right. So, to the extent that you have spokes people who are here tonight and want to be heard and to the extent Mr. Goldberg is here and wishes to participate in that discussion, it might make sense for all of you to get together and talk this out. That can only happen if Mrs. Recker's motion is approved and the matter is tabled for another time. That is not up to me. I don't get a vote, so it's up to the members of the Board.

Mr. Roshanko: One more questions. Has the applicant decided to go with the vote today or wait until there are more members of the Board?

Chairman Price: We are going to get to that.

Mr. Roshanko: Thank you.

Mr. Allan Carroll approached the microphone.

Chairman Price: Raise your right hand please. Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Carroll: I do.

Chairman Price: State your name and address.

Mr. Carroll: My name is Allan Carroll. I live at 17478 Waterbridge Drive, in Pinestream Subdivision. I'm new to the development. As I understand it there is no homeowners association, but at some point in time based on the circumstances in the development, the developer will turn over the operation of the association to the residents. I would like to know what dates that will occur and what circumstances will bring that about. If we are going delay the waiver proposal could we end up being the homeowners association by the time this is decided?

Mr. Kelly: Mr. Chairman. Mr. Carroll, my suspicion is, and I don't know this to be true, but great Suspicion is that there is a homeowners association. It is created the moment that the developer files documents with the recorders office. The difference is that the developers in control of the homeowners association until a date certain it's called for in the declaration by-laws covenants and restrictions that run with the land and a copy of which you should have been given when you bought your home. It is part of the title exchange. So, the defined moment when that transition is to take place should be in the documents some place. So, it's definable but I couldn't define it for you. Mr. Goldberg might be able to define it for everyone and maybe he will volunteer that information, in which case it is possible that an elected representative homeowners association board of trustees might very well be in a position to negotiate this with Mr. Goldberg and that might be the healthiest way for this to happen.

Paula Recker: Mr. Chairman.

Chairman Price: Mrs. Recker.

Paula Recker: My personal experience from my own development, yes, the developer is in charge of the association, and based off the documents, just as Mr. Kelly said, is when it gets turned over whenever the document states. This does not mean that you can't have a discussion with the developer. It worked very nicely in my development and helped the transition period between the developer to the association. Mr. Chairman, is there any further discussion on this?

Chairman Price: Come up here. We are not going to go back and forth between the audience, just the applicant. We have the question period now. Go ahead.

John Zalenka approached the microphone.

Chairman Price: State your name and address.

Mr. Zalenka: John Zalenka, 5449 Riverview. Just as a side, Mr. Goldberg said that up till tonight he wasn't aware of any dissension for the waiver of him not putting the sidewalks in. The problem is that without the notice that we got from the Secretary we wouldn't have known that there was a motion going forward. So, there is no communication at this point. So, he is the association, and none of us are a part of any discussion or any remedy at this point for anything. As long as he is in control of this whole process it puts all of us in the back seat because he is trying to get the waiver and down the road we are looking at the potential expense if the City expands and decides to have sidewalks for safety reasons that will put the burden on your tax payers, your residents, for something the developer should have done.

Chairman Price: Thank you. Mrs. Recker.

Paula Recker: Mr. Chairman. I'm still inclined to table this and give Mr. Goldberg the opportunity to give them the thirty days to discuss this. Or we can vote on this as it stands.

Chairman Price: Is that a form of a motion?

Paula Recker: No, that is a form of a statement. I don't know how you and Mr. Caraballo feel.

Chairman Price: The applicant have any thoughts about tabling it?

Mr. Goldberg approached the microphone.

Mr. Goldberg: In the discussion I stated I was in favor of tabling it. I would make myself available to meet with any of the homeowners there. First of all to show them what the variance request is entailing. I don't know if there is any resolution but certainly I would meet with them as future trustees of the association because the ones here tonight are probably most interested in the future of the homeowners association and that is always an issue with any homeowners association that ask for trustees to spend their time. I would favoring tabling and give us time to talk and answer any questions.

Chairman Price: Okay. Thank you.

Moved by Paula Recker, seconded by Tony Caraballo to table BZ08-19 until the September 22, 2008 meeting.

Paula Recker: Is that when the meeting is Julie?

Julie Broestl: Yes. September 22nd.

Chairman Price: I have a motion to table BZ08-19. Call the roll.

Chairman Price: Yes
Tony Caraballo: Yes.
Paula Recker: Yes.

**Ayes – all. Nays – none.
Motion carried to table. (3-0)**

Mrs. Broestl: I just want to inform everyone that they will not get another notice.

Chairman Price: That meeting day was?

Julie Broestl: September 22, 2008. Same time and place.

Paula Recker: I would suggest that as long as there is the amount of residents here and Mr. Goldberg is here, I would take this discussion outside. It can get to noisy in this building so, if you would meet outside and set a date, and who is going to speak that would help the process move faster.

Chairman Price: BZ08-20.

(BZ08-20) Michael Stone requests a variance to **Chapter 1286 “Nonconforming Uses”, Section 1286.06 “Extension Prohibited”, paragraph (a)**, for relief from the **nonconforming building** so that an **addition** may be constructed onto his home located at **5275 Wiltshire Road, PPN: 486-15-015**.

Moved by Paula Recker, seconded by Tony Caraballo to **approve a variance for relief from Section 1286.06(a) of the Zoning Code for a one time variance permitting an addition to constructed on the east side of this residence.**

Chairman Price: Discussion?

Paula Recker: Mr. Chairman. After viewing the property the other day, I saw some practical difficulty and I think that it would be an improvement to his property value. And as he stated than his son could run around and get rid of some of that energy.

Tony Caraballo: Mr. Chairman.

Chairman Price: Yes.

Tony Caraballo: When I reviewed this property, that five foot built out extension that he wishes to construct over there on the east side of the building, I see no difficulties over there, no infringement on the neighbors side, so I will be voting for this.

Chairman Price: I also went out to see the property and I don't thin that the addition of five feet is going to alter the character of that neighborhood. The expansion is limited. The drop off in the back on the driveway side and the variance is minimal considering the location and the neighbor's setback. You are not going to affect any services. Nobody is going to really notice it back as far as you are. So, I'm in favor of it. Mr. Kelly consensus?

Mr. Kelly: Mr. Chairman. If I heard you all correctly, the Board finds that there are in fact exceptional circumstances that exist that are unique to this particular applicants situation property, that there are practical difficulties found with the application of the Code as it currently reads. That the matter in the application and the variance sought are not materially detrimental to the public welfare. They are not in fact contrary to the general purpose and intent and objectives of the Zoning Code.

Chairman Price: Any additions? Call the roll.

Paula Recker: Yes
Tony Caraballo: Yes.
Chairman Price: Yes.

**Ayes – all. Nays – none.
Variance granted. (3-0)**

(BZ08-21) Karen Buckley requests a variance to **Chapter 1270 “Residential Districts”, Section 1270.05 “Schedule of Area, Yard and Height Regulations”, and Chapter 1286 “Nonconforming Uses”, Section 1286.06 “Extension Prohibited”, paragraph (a)**, for relief from the **nonconforming building and side yard setback** for an **addition** that she wishes to construct on her property located at **6534 Royalwood, PPN: 488-01-009**.

Moved by Paula Recker, seconded by Tony Caraballo, to **approve a variance of 3-feet less than the minimum side yard setback requirement as prescribed in Section 1270.05 and relief from Section 1286.06(a) of the Zoning Code permitting an addition to be constructed on this nonconforming building.**

Chairman Price: I have a motion and a second.

Paula Recker: Again, after reviewing this property and the conditions to which they have attested to here tonight and also with the owner of the property when I was there, I saw a lot of practical difficulty. I wish them well if this variance passes.

Chairman Price: I would just like to ask the applicant a question if I may. Come up to the microphone please.

Mr. Kenneth Buckley approached the microphone.

Chairman Price: With the addition being as close to the fence and the hedges, can that be left and the addition still go ahead?

Mr. Buckley: I don't understand the question.

Chairman Price: Will the fence and the hedges remain or do they have to be removed or whose are they?

Mr. Buckley: They belong to my daughter. The fence and the shrubs belong to my daughter. The shrubs will probably have to go but the fence we would like to put back up after the construction. They will be in the way.

Chairman Price: Okay. That's what I thought. Kind of tight. Same style?

Mr. Buckley: Yes. About the same style.

Chairman Price: Shingle siding?

Mr. Buckley: Aluminum siding. So, yes the same.

Chairman Price: Now, that will extend back to the neighbor's garage or past it?

Mr. Buckley: No. It will be eight foot, diagonally away from the neighbors. And we do have a letter that the neighbor signed that they have no objections. Do you need the letter?

Paula Recker: No. We have copies.

Mr. Buckley: Okay. Thank you.

Chairman Price: I think that it is going to be minimal and the extension is boarded. The neighbors don't object. The aesthetics are not going to be affected. From the street side you aren't going to notice anything. Anybody else?

Tony Caraballo: Mr. Chairman. Also for review this property, especially seeing that the neighbors are conforming to this and it would not be an eyesore to them. You will not see this from the street and they have plenty of depth there. Given that the neighbors have given it a green light on this, I see no difficulty with it and I will be voting for it.

Chairman Price: Thank you.

Mr. Buckley: I would like to thank the Board for their consideration.

Chairman Price: Mr. Kelly.

Mr. Kelly: Mr. Chairman. As I understand your comments and the Boards comments, you find that in fact exceptional circumstances do exist that are unique to this applicant and this property. That practical difficulties are found with the application of the Code. That the strict application of the Code would render and work an unnecessary hardship on the applicant. That the application and the change in the variance requested is not materially detrimental to the public welfare, nor contrary to the general purpose and intent and objectives of the Zoning Code and the Master Plan.

Chairman Price: Any additions? Call the roll.

Tony Caraballo: Yes.
Chairman Price: Yes.
Paula Recker: Yes.

**Ayes – all. Nays – none.
Variance granted. (3-0)**

Chairman Price: Anything under miscellaneous?

Moved by Paula Recker, seconded by Tony Caraballo to **adjourn the Board of Zoning Appeals meeting of July 28, 2008.**

**Ayes – all. Nays – none.
Motion carried. (3-0)**

Approved: _____
Chairman Price

Date: _____

Attest: _____
Julie Broestl, Secretary