

## LEROY TOWNSHIP ZONING BOARD OF APPEALS

### Minutes

July 18, 2017

The Leroy Township Zoning Board of Appeals met at the Leroy Township Hall, 6684 Paine Rd., Leroy Township, on July 18, 2017.

Chairman Brian Crouse called the public hearing to order at 7:15 p.m.

As this was a continuation of a tabled hearing, only members present for the first part were allowed to sit.

Sitting members present were: Jerry Hausch, Brian Crouse, Rudy Veselko, and alternate, Sharon Noewer.

**Also present:** BZA member-in-audience, Susan Hanna; Attorney for Leroy Township, Ron Graham; and Zoning Inspector, Myron Telencio.

**Guest:** Ken and Sue Blakeley, representing Morning Star Property Preservation LLC; and Chad Edgar, Lake County Soil and Water Conservation District

**Audience:** David Novak, Consultant for the Blakeleys; W. Ryan Babcock, the Blakeley's surveyor.

The minutes of the June 13, 2017 meeting were read. Brian Crouse made the motion to approve as read, Sharon Noewer seconded, and all approved.

**Purpose of Meeting: BZA 0222:** The chairman read the following: We are here to continue the variance hearing for Susan and Ken Blakeley, representing Morning Star Property Preservation LLC. They have requested to decrease riparian setback on their property from 75 to 50 feet and from 25 to 20 feet. They also request a variance on the minimum size of the ranch-style house they wish to build from 1400 to 1200 square feet. We had heard the original remarks on June 13, 2017 and tabled our decision to gather more information.

The chairman confirmed that the publication of this meeting was posted in the News Herald on July 8, 2017, as well as the Township website.

Motion was made to take the variance off the table by Rudy Veselko, seconded by Sharon Noewer. All were in favor.

Brian Crouse reported that he met with Chad Edgar at the Blakeley's property and Chagrin River Watershed Partners (CRWP). Brian confirmed that everyone had received a copy of the memorandum sent by Christina Znidarsic of CRWP and requested comment on it.

Dave Novak of Barrington Consulting Group was sworn in. Mr. Novak commented as follows, concerning Ms. Znidarsic's comments and recommendations on page 2:

*The first item states that the least disturbance to the setback would be to build bridge crossings over the stream.* The issue with building a bridge strong enough to carry the load of trucks and so forth needed to build the house would be astronomical. If you take the 75' riparian setback on either side of the creek, the bridge would have to be over 150' long which would be not economically feasible.

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The second item, concerned the current setback not being shown on the drawing. He stated that they were there, but may not have been as clearly represented as they could have been and that he thought he had pointed them out at the last meeting.

The third item concerned the approximate 1600 square foot footprint of the house on the plans. Mr. Novak stated that the box that is being shown includes 400 square feet of garage space.

Item 4 concerns the recommendation that the minimum riparian setback be given preference over minimums for front, side and rear yard setbacks. Mr. Novak stated that part of the unique issue with this property is that the East Creek encompasses 80% of the frontage of the property and a gas line that traverses from the front to the back of the property along the side yard.

Item 5 regarded the recommendation that instead of turf grass, any revegetation of the setback be with native plants. Mr. Blakeley indicated at the first meeting that he would be willing to work with Soil and Water to select some vegetation that would help protect any area disturbed by the construction.

Brian Crouse asked about a statement Mr. Novak made in the first meeting concerning the 2009 Riparian Setback Requirements. Mr. Novak stated that what he intended to say was that the parcel existed prior to the 2009 requirements being instated. Mr. Blakeley stated that he owned the property for over a year. Brian Crouse then stated that the setbacks were instituted prior to the purchase by the Blakeleys. Mr. Novak stated that the Blakeleys were not aware of those requirements.

Rudy Veselko asked the Blakeleys if they would have purchased the property if they had known about the riparian setbacks. Susan Blakeley stated that their intent was to live there, and they would not have bought it had they known. Ken Blakeley agreed.

Myron asked why the Blakeleys would not just add a second story to accommodate the extra 200 square feet of living space needed to meet the zoning requirement. Mr. Blakeley cited his health and wasted dollars as reasons for not doing so.

Mr. Novak reiterated from last month's meeting, that his opinion is; that the impact to the riparian setback is so minor; that they are only asking for a reduction from 75 to 50 feet, so there would still be some protection; and the board must look at the practical difficulty standards when making a decision. He feels that there definitely are practical difficulties and the variance should be granted especially for the riparian setback.

Mr. Novak proceeded to read each criterion for considering an Area Variance, commenting and offering his opinion as he did:

1. *Will the property in question yield a reasonable return or can there be any beneficial use of the property without the variance?* Trying to cross the creek, financially does not make sense. Brian asked about cost analysis. Mr. Novak stated that the memorandum was just received between 10 and 11am and that was too short of a notice to provide one. He offered that a Concord project for an 8-9-foot c-span aluminum structure in Concord he spec'd out was \$26,000 for materials alone.

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2. *Is the variance substantial?* He restated his calculations of the protected area of the riparian setback, which in total would be an area over 58 acres and that the area that Mr. Blakeley would be disturbing is 5,400 square feet. Therefore, the proposed variance would only be two-tenths of a percent of the overall protected area. He also stated that the 34,000 lineal feet watershed buffer overall and the Blakeleys proposed disturbance is 300 feet, or .9% of the total which he feels is minimal.
3. *Will the essential character of the neighborhood be substantially altered or will adjoining properties suffer substantial detriment as a result of the variance?* Mr. Novak states the disturbance is so low it would not affect the neighbors in his opinion.
4. *Will the variance adversely affect the delivery of governmental services?* Mr. Novak does not feel it would.
5. *Did the property owner purchased the property with knowledge of the zoning restrictions?* Mr. Novak stated that Mr. Blakeley said he was not aware of that.
6. *Can the property owner's predicament feasibly be obviated through some method other than a variance?* Mr. Novak stated that putting in a bridge would not be feasible due to cost concerns or would impact the East Creek more so.
7. *Will the "spirit and intent" of the zoning requirement be observed and "substantial justice" be done by granting a variance?* Mr. Novak stated that they feel they have done as many things as they can to minimize the impact to the riparian setback. They are willing to work with Soil and Water to form a plan for special vegetation to help protect the creek and during the construction process, they have put together a soil and erosion control plan that Soil and Water would have to oversee.

Myron asked how they were going to access the other side of the creek and get the septic set up over there. Rudy Veselko clarified that the question was how the equipment would be gotten across the creek: What is the intended way to bridge across the creek temporarily to put in the septic system? Mr. Novak stated that they would work with Soil and Water, but that they would not need to get back there with any large pieces of equipment.

Rudy Veselko asked about encroachment on the natural banks that may have already been done during the clearing of the site. Mr. Novak stated there was no excavation of the site in the riparian setback. Mr. Blakeley stated that he had the permission of Soil and Water to clear the site as long as no soil was moved on the property. Mr. Blakeley stated that they have done no work around the creek, just clearing for the building. Chad Edgar concurred.

Brian Crouse asked about treetops that were laying on the riparian setback when he and Ms. Znidarsic visited the site. Mr. Blakeley stated that as he had explained at the time of the visit, he and his wife were there waiting for a machine that was going to grind the stumps and branches that were supposed to have been there, but that it was running late. He stated that everything was cleaned up and that he made sure that before he did anything he went to Soil and Water and got proper permission, knew what he was allowed to do, and followed the procedures.

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Chad Edgar was sworn in and gave the following comments and recommendations concerning Ms. Znidarsic's memorandum. He felt the memorandum was on point. The only thing he might add or change is the crossing language. An analysis of a crossing that doesn't span the entire riparian setback, but a crossing that does span some portion of the setback, that you can still pass your vehicles over, so that your footprint of the impact within that riparian setback is very minimal in nature for a crossing versus grading, establishment of a lawn and the house. It would have been nice to have an analysis of the cost of a span, but when we look at it as scientists we are not looking at it from a cost aspect, keep in mind we are looking at it from impact of the resource.

Myron asked what the riparian setback would be for a 1400 square foot ranch. Mr. Novak stated that it would still be within the 50-foot riparian setback, if the 1200 square foot house variance was not granted.

Rudy Veselko asked if all parties feel they have fully presented their viewpoints. Mr. Novak submitted the standards to the board that he read earlier.

Brian Crouse made the motion to go into executive session and Rudy Veselko seconded. All were in favor. Brian Crouse made the motion to close the executive session and Jerry Hausch seconded. All were in favor.

Brian Crouse motioned to approve the variance regarding the proposed reduction from the minimum house size of 1400 to 1200 square feet, Rudy Veselko seconded. No discussion was made. A roll call vote was taken. All were against. Motion was denied.

Brian Crouse motioned to approve the proposed reduction of the riparian setback, Sharon Noewer seconded.

Sharon Noewer stated that the board had been provided quite a bit of information. She stated that she had some issues with the credibility of the information that was discussed and she has concerns.

Rudy Veselko felt that the plans were not exact enough and that the means of access concerning the crossings of streams was not explained well enough.

A roll call vote was taken. All were against. Motion was denied.

Dave Novak asked for a copy of the minutes of the June and July hearings. The secretary stated that she would send the approved minutes to him, and Ron Graham stated the secretary could send a draft copy of the July meeting.

Brian Crouse motioned to adjourn the meeting, Sharon seconded. All were in favor.

Respectfully submitted,

Julie Himmelman, Zoning Secretary