

Summit Township Zoning Board of Appeals
August 9, 2007

PRESENT: Kevin Thomson, Chairman; Larry Dunn, Vice Chairman; Richard Erhardt, Planning Commission Liaison; Scott Elliott, Township Board Liaison; Patricia Rayl, Alternate; James Bogie, Jack Shelby, and John C. Worden, Zoning Administrator.

ABSENT: James Brunner

The meeting was called to order by Chairman K. Thomson on Thursday, August 9, 2007 at 7:00 p.m. in the Township Hall meeting room at 2121 Ferguson Road.

Chairman K. Thomson informed all present meeting of the format in which the meeting would be conducted.

A motion was made by L. Dunn, and supported by J. Bogie, to approve the minutes of the Thursday, July 12, 2007 meeting as written. The motion carried unanimously.

CASE 07-08-0010 – South side yard variance from the required five foot as recorded in the Master Deed for the River Glen Site Condominium Development Unit #1 located at 6095 Riverview Drive – Marcus R. and Patreese S. James, Owners and Applicants

A public hearing was held on August 9, 2007, at the request of Marcus R. and Patreese S. James of 6095 Riverview Drive, to allow a south side yard variance from the required five (5) foot as recorded in the Master Deed for the River Glen Site Condominium Development Unit #1. Tamika Hale, applicants' attorney, addressed the board on their behalf.

T. Hale began by giving the board a letter from Dave Morris, President of River Glen Condominium Association, stating that the Association has no objection to the variance that the applicants were seeking. She further stated that the James purchased Unit #1 in 1999, and then built an addition that was finished in 2000. The applicants wish to have an equitable solution for all parties. Currently no purchase agreement has been made for the applicant to purchase part or all of the adjacent property.

J. Worden stated the Master Deed for side yard set backs in the development requires five (5) feet for side yards. The most recent survey of April 2007 shows the addition to be on the property line and would require a variance of five (5) feet.

M. James responded the surveyors were two (2) foot off when they staked out my property.

Chairman K. Thomson pointed out multiple surveys were included in the information packet.

T. Hale responded the mortgage survey was included because it was used when the construction of the addition was submitted when the applicants obtained the building permit. After obtaining the building permit it was discovered the survey used to obtain it was not accurate.

Chairman K. Thomson asked if an architectural control committee had received the survey.

T. Hale answered that the applicants were under the assumption that they did.

Chairman K. Thomson asked if the applicant was given approval from the developer to go ahead with the addition.

M. James, answered, that is correct. He reviewed the information for the addition with Mr. Dobben, but he did not think that he had submitted a copy to him. At the time of the addition construction, he did not know of the five (5) foot set back. He stated that his actions were unintentional.

R. Erhardt questioned the applicant about not knowing about the five (5) foot set back.

M. James responded that he did not know about the set back requirement because he was referencing the Master Deed which does not state anything about side yard setbacks.

T. Hale gave further explanation on the Master Deed explaining that setbacks for lots #1-#8 were not included on the Master Deed and it only showed boundary lines.

M. James added, when looking at the property, the driveway for Unit #1 is not all on Unit 1. The boundary line is located in the center of the driveway, making it an encroachment.

J. Bogie questioned why the applicant could not purchase some or all of the property that makes up Unit #2.

T. Hale answered a purchase agreement could not be reached.

Correspondence:

A letter from David Morris, President of River Glen Site Condominium Association, supporting the application. D. Morris was present at the meeting and added that he was not in support or in opposition of the application. He felt the matter was beyond the scope of the association and that he did not feel that the association should be the judge and jury for this matter. He voiced concerns that a similar situation could occur down the road.

Chairman K. Thomson responded answering that each variance request that comes before the board is decided on a case by case basis.

R. Erhardt asked if the association was controlled by the developer.

D. Morris answered it is eleven (11) votes both ways.

Public Comment:

In Opposition:

John Dobben, developer of River Glen, spoke in opposition of the application. J. Dobben spoke of the development of River Glen and the number of organizations and local entities that he had worked with to develop the site. Further, River Glen was developed with a building envelope for each property.

J. Dobben complimented the applicant as a person, but notes that the two were not on the same page. He stated that the applicant never supplied him with the information on the addition. The only access he had to the information on the addition was a sketch that, he believes, came from the applicants' builder. J. Dobben stated that he never saw a site plan. He questioned why the property needed to have five (5) different surveys in the last eight (8) years. He also pointed out that the survey from Cumberland has a penciled in section in the upper right hand corner where the addition was to be built, but this is not the location of the addition. He spoke to the applicant when the foundation was being built, and gave him written notice when the walls went up that the addition was being built on the property line.

Chairman K. Thomson questioned why J. Dobben did not get an injunction.

J. Dobben responded that he hated to do that and questioned why the Township Building Inspector could not have red tagged the addition.

Chairman K. Thomson answered that it was not the Township Building Inspectors job to do that.

J. Dobben offered to sell the applicants eight (8) foot of the adjacent property, enough to get him in compliance with the Master Deed, for \$9,000.00, which is the amount needed to cover the developers' costs for having a survey performed only.

Chairman K. Thomson questioned if the house was built as a spec house and if the driveway was encroaching on lot #2.

J. Dobben stated the driveway has an easement.

L. Dunn pointed out an eighteen (18) to twenty (20) foot utility easement was shown on the survey.

J. Dobben stated that until a month ago he did not know that the utility easement was there because it has nor been used and it should be removed.

John Ganton also spoke in opposition to the application. He agrees with and states that all statement previously made by J. Dobben were accurate.

Chairman K. Thomson asked J. Ganton if the variance were to be denied where it would leave the current situation.

J. Ganton responded that the applicant knew that the addition was not in compliance with the setbacks required by the Master Deed, that he had made a mistake, and as a result should pay the price by buying the land or removing the part(s) of the addition in order to comply with the ordinance.

T. Hale added that another problem exists with the home being located on a thirty-five (35) foot utility easement. The original drawing shows the house was to be located closer to the front of the property than it actually is. This error was caused by the developer on the Master Deed and they should try to resolve this problem equitably. The developers' solution was to offer five (5) foot of land to the applicants for \$20,000. The \$20,000 would go toward amending the master deed. T. Hale wishes the solution to be shared equally by both parties.

J. Ganton responded that the fault was not the developers but in the survey performed by Cumberland.

Chairman K. Thomson answered that the board is not structured to resolve that issue and that the board can only determine the five (5) foot side yard variance.

A motion was made by Chairman K. Thomson, supported by R. Erhardt, to approve the variance request of a five (5) foot side yard variance as the applicant has met all the requirements set forth in Section 7.3A 1-4 and Section 7.3 C, D & E of the Ordinance. A roll call vote was taken.

L. Dunn - Support

R. Erhardt - Support

S. Elliott - Support

P. Rayl - Support

J. Bogie - Support

J. Shelby abstained from the vote.

The motion carried unanimously.

A motion was made by Chairman K. Thomson, supported by J. Bogie, to adjourn the meeting. The motion carried unanimously. The meeting was adjourned at 7:56 p.m.

Respectfully submitted,

Richard Erhardt
Zoning Board of Appeals Secretary