ZBA MEETING – AUGUST 23, 2007 (Time Noted – 8:09 PM)

POLHAMUS & CARSTROM 65 BALMVILLE ROAD, NBGH
(43-3-34.2) R-1 ZONE

Applicant is seeking area variances increasing the degree of non-conformity of the side yard setback, the maximum allowable surface coverage to build a rear addition to residence, to allow a tennis court in a front yard, tennis courts shall be screened from view and to allow a pool in a front yard.

Chairperson Cardone: Our next applicant Polhamus & Carstrom, 65 Balmville Road.

Ms. Gennarelli: All mailings are in order.

Mr. Coppola: So, my name is AJ Coppola I am the architect who has prepared the plans. This is actually our third appearance in front of the Zoning Board and I'll just go back in time and explain what we had originally proposed and how we've revised our application and what we are proposing as part of this variance request. When we first submitted this in the spring basically we submitted this for a 1-story rear yard addition to expand two existing bedrooms approximately 12 ft out from the house and 40 feet wide that went out to the rear. That part of the request is the same tonight as it was in April. The original request basically was just considering the front lot here the one that was on, the one that is on Balmville Road 43-3-34 and then basically as the Board probably remembers there were a whole bunch of questions about the rear lot which is in the same name and the tennis court and the pool which are on that rear lot. So basically the change that we're presenting tonight, we've, the owner has agreed to combine those two lots and I believe she has already done that and probably has that in the documentation that we submitted with this application. So, she went down to the Tax Assessor and we've combined the lots. So, now that we've combined the lots there are certain parts of our variance request that have changed. Some things have been deleted and some things have been added. As far as, well again, the side yard setback that hasn't changed because that deals with the proposed addition so that's the primary request that we're making. We're basically matching the line of the existing house; the house actually tapers away from the side yard and what we're proposing here is what you are going to end up with a side yard there (inaudible) that matches the existing. Two elements, one issue that went away from the original variance was the building coverage that's required to be 10%, what we're proposing is 6%. Again because we've added the lot, we get more lot area and that disappears. So that's not a variance request. The lot coverage is still part of our variance request what's required is 20%, what's proposed is 28% so we're asking for an 8% variance there. Again when we calculated the lot coverage for this application with everything all the impervious surfaces, the driveway, the existing house, the addition, the deck, the patio, the pool, I think even the pool, the tennis court, the shed and the gazebo that was all part of the calculation. So that even with the combination of the lot that's going to be, that's part of our request tonight. Then I think, I am going to let Code Compliance speak to this but I believe again part of the combination of the lots now the way you would look at this would be you have a house on Balmville Road, you have basically a tennis court and a pool behind it but if you look at this property from Chestnut Lane you would have basically a tennis court and a pool that are not behind the house, I guess, in the front yard. Even though they are set back from the front yard setback. So, I believe that's also part of our variance request. In combining the lots, the owners do not want to remove the tennis court or the pool so they are hoping they will be able to retain the use of both of those. One thing that I did pick up in the variance request again is I guess its the tennis court is required to be screened which the owner would have no problem doing so we could certainly propose something to that effect tonight. I did not know that before we submitted the drawings so otherwise we would shown that on the drawings. So, that's something I think we would definitely propose doing and the last and then I know now there is an issue with the wood shed and also the gazebo. What I've been told is that the wood shed is really not that important to them. I mean they would take it down or do whatever they needed to do. The gazebo they would like to leave where it is right now. I'm not quite sure what...again I'll let Code Compliance speak to that issue. So, in short what had happened since I had been to the Board last and the owners really considered all their options here about combining the lots or not combining the lots and basically we looked at other ways they could achieve this expansion of their house. I've looked at what we could do inside the footprint of the garage, which would not require a variance, and basically they came to the conclusion that, no, they really need what was originally shown on these drawings, they really need an expansion of the bedrooms to take care of Mrs. Polhamus' mother and that this original application is really what she wanted to do. So, you know as tough as it has been, she has come to the conclusion that this is really what they want and need.

Chairperson Cardone: I have a question then, have you applied for a Building Permit for the gazebo?

Mr. Coppola: Yes. I believe we applied for both Permits.

Mr. Mattina: They have applied for but they have not been reviewed yet.

Mr. Coppola: I thought we were denied on that.

Mr. Mattina: Joe, from Code Compliance, the Permits (applications) were submitted but they will be denied due to the fact that they are in the front yard, they are in your packets, but to sit down and deny them, I actually haven't gotten to all of them yet. I think the gazebo; the pool and a shed all have applications with this package.

Mr. McKelvey: Would the whole pool be now considered as two front yards, the part of it that was on the other lot?

Mr. Mattina: Right the accessory structure, the front yard goes from the plane of the dwelling to a street line.

Mr. McKelvey: I just wanted to make that clear.

Mr. Mattina: Everything is to a street line. (inaudible)

Mr. Coppola: That's the same issue with the gazebo because it shouldn't be in the front of the house is what you are saying?

Mr. Mattina: Correct. Accessory structures can't be closer to a street line than the plane of a dwelling, technically …

Mr. Coppola: From Chestnut Lane.

Mr. Mattina: Right.

Mr. Hughes: You have three front yards here now.

Mr. Mattina: Two.

Chairperson Cardone: Two, because there is a house on the other side.

Mr. Hughes: What about Balmville? Don't you get another one there too?

Mr. Coppola: Yeah, Balmville & Chestnut Lane.

Mr. Mattina: This one here and Chestnut.

Mr. Hughes: All right, so it's…may I? What you're telling us then by your chart on the bulk table is that you are supposed to have 150 ft in the width and you only have 109?

Mr. Coppola: Correct.

Mr. Hughes: And then your front yard is covered, your rear yard is covered but your side yards is required 30 ft and you only have 8.8?

Mr. Coppola: Correct.

Mr. Hughes: Both side yards your supposed to have 80 and you're looking at 39.64?

Mr. Coppola: That's correct.

Mr. Hughes: So, your building height, your lot coverage your lot coverage you are 8% over.

Mr. Coppola: Yes.

Mr. Hughes: So you've got five of them.

Mr. Coppola: I've got the side yard setback, the total of the two.

Mr. Hughes: Lot width?

Mr. Coppola: Lot width, I don't think that needs a variance because I am not changing the lot. I don't know, I mean…

Mr. Hughes: You are required to have 150 feet.

Mr. Donovan: No I think because you are increasing the degree of the non-conformity.

Mr. Mattina: That takes care of that one.

Mr. Donovan: So, in other words the side yards are what they are now but there is an addition going on which increases the degree of non-conformity. So you lose the non-conforming protection even though you are not increasing your side yards. But the addition causes you to lose that protection which is the reason for those variances.

Mr. Hughes: The furtherance of non-conformity.

Chairperson Cardone: And, if you recall, this Board had suggested that the owner combine the two lots.

Mr. Hughes: Well it certainly improves the position of the project.

Mr. Manley: Just so I get this right, the five that we're looking for…the five variances are having the accessory structures in the front yard; that's one variance. Yes? The second one would be the increasing of the degree of the non-conformity of the lot width?

Mr. Hughes: Yes.

Chairperson Cardone: For the side yard.

Mr. Manley: For the side yard. And, then you have the two other, the side yards and it needs to be 30 and the other one is 80, right? So, those are the two areas there?

Chairperson Cardone: Right.

Mr. Manley: And, the last one would be the lot coverage?

Mr. Donnelly: I think, let's try to run through it. We have tennis can't be in a front yard, pool can't be in a front yard, shed can't be in a front yard, gazebo can't be in a front yard. Although I think you are going to remove the shed? Is that your…?

Mr. Coppola: We would remove the shed, its not that important.

Mr. Donnelly: Increasing the degree of non-conformity relative to the side yard and the lot coverage.

Mr. Manley: O.K.

Mr. Donnelly: That's a summary of the variances.

Mr. Manley: Now the lot coverage is that calculated with all of these structures in there already?

Mr. Mattina: Yes.

Mr. Coppola: Yes, everything. And that's noted under the bulk table.

Mr. Manley: O.K. that's what I just wanted to make sure is that you're going up to 28% that's including the pool, that's including the tennis courts?

Mr. Coppola: Everything.

Mr. Manley: That's everything.

Mr. Mattina: The lot coverage actually went up due to the lot combination.

Mr. Manley: Right, when you combined the lots it brought the coverage up.

Mr. Hughes: And, I don't know if either of you gentlemen mentioned the lot width, it's supposed to be 150, it's 109.8.

Mr. Donnelly: Well, let's back up a second, we need lot…I think we just needed the side yard not the lot width because the lot width is what it is.

Mr. Hughes: So, that's excluded automatically because of the physical constraints?

Mr. Donnelly: Correct.

Mr. Hughes: Yes, I didn't understand it to be that way. I have nothing else.

Chairperson Cardone: Do we have any other questions from the Board? Do we have any questions or comments from the public? Yes?

Mr. Tierney: Hi, I'm Joseph Tierney I'm representing the next-door neighbor Ann Tierney. It appears the only thing that the applicant's don't have is a 'still'. They've got lots of non-conforming uses there. There are so many of them, you had to list them say like four or five. So let's just take it the easiest way I possibly think I can…is just to say as horrid as this hodgepodge has come out to be it's a lovely little…they've tried to make it an estate on barely two parcels that make up an acre, which is cool, but to squeeze in an addition at 8 foot boundary line that my, the person I'm representing is the neighbor and it's them who it's going to encroach upon. This lady right here this is who is going have the encroachment. She's tolerated 38 years of non-conforming use, of swimming pools and tennis courts because it's nice in the area, it looks fine and gazebos, all of this stuff with no Building Permits. I mean who cares that there's rules and regulations. Ten years ago the property was turned over to the applicants and they've had all this time to do something. They also have not done it and said that they would remove the non-conforming uses in order to get the variance and now they want to give you another front yard so they've finally done, they owned both properties why not combine them, drop the lot line which is the right thing to do but to try to convolute and confuse everybody with extra front yards and side yards, even one of the Board members, he thought there was three front yards now there is two. O.K.? So, is it a side yard variance for a non-conforming issue or is it a front yard variance? It really appears that there is a deliberate attempt to convolute and confuse the people on what the criteria is of the property. So, regardless if you approve the 38 years of non-conforming use and finally give them the permission to have it there since they didn't get the Building Permits, that's O.K. Keep the swimming pool, don't fill it in, keep the tennis court, don't rip it up just put some screening in it like you're supposed to. Keep the gazebo, take down the wood shed, I don't care but don't come over more closer to my mother's property, it's already 8 feet there. If they don't want to build in their garage, which could be done so nice, and it wouldn't cause anybody any commotion, I'm sorry, but you can't have everything. That's all.

Chairperson Cardone: Any other comments from the public? Any other questions or comments from the Board?

Mr. McKelvey: Ann (Tierney) your house is not directly along side this house is it?

Ms. Tierney: Are you talking to me?

Chairperson Cardone: If you could point out on the map exactly where your house is located?

Mr. McKelvey: Where your house is.

Ms. Tierney: I'm Ann Tierney, the neighbor, I'm right next-door, I'm 67 (Balmville Road) and Mrs. Nelson is 65 (Balmville Road).

Mr. Tierney: Right about here.

Mr. McKelvey: Could you bring that up?

Chairperson Cardone: Joe if you could point it out right here on this.

Mr. Tierney: Yes. I'll show you.

Chairperson Cardone: The actual location of your house.

Mr. Tierney: Yes, see everything up and down, she sees this everyday, she is right about here.

Chairperson Cardone: Right about there?

Mr. Tierney: Right, so here's her drive way and she comes down here and sees this everyday in and out, in and out, in and out.

Chairperson Cardone: In other words her house is not right here?

Mr. Tierney: No, her yard is right here and when they put this addition on here, see, there is already stuff there, patios and stuff and it's going to come right in here, it's going to crowd up in there and up on over here when it could be done here. But she will see it everyday boom, boom, boom, boom this way boom, boom, boom, up and down everyday in and out.

Chairperson Cardone: Thank you. Any other questions or comments? If not, I would entertain a motion to close the Public Hearing.

Mr. McKelvey: I'll make a motion we close the Public Hearing.

Chairperson Cardone: Do I have a second to that?

Mr. Manley: Second.

Ms. Gennarelli: O.K. Roll call.

John McKelvey: Yes

Ronald Hughes: Yes

Robert Kunkel: Yes

James Manley: Yes

Grace Cardone: Yes

Brenda Drake: Recuse

Ruth Eaton: Absent

Mr. Coppola: Thank you.

(Time Noted – 8:37 PM)

ZBA MEETING – AUGUST 23, 2007 (Resumption for decision: 9:42 PM)

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Chairperson Cardone: On the application of Polhamus & Carstrom at 65 Balmville Road seeking area variances increasing the degree of non-conformity of the side yard setback, the maximum allowable surface coverage to build a rear addition to residence, to allow a tennis court in a front yard, tennis courts shall be screened from view and to allow a pool in a front yard, also included a gazebo and a shed was also included.

Mr. Manley: I think what we are looking at here are quite a few approvals, the addition they are looking for approval on, they are looking for approval of a pool, a tennis court, gazebo and a wood shed. I think that it's extremely excessive especially based on the area they're in. I have no problem granting, provided they get the necessary approvals through Code Compliance with the tennis court and the pool. The gazebo is really not a big issue but it still needs a permit, in my mind, but I just think that adding the addition is going to just throw this thing way over.

Chairperson Cardone: We could vote on those separately. Vote on the addition by itself and then vote on the current structures that are in the front yard, the lot having two front yards. We have had many of those issues before us before where an applicant has had two front yards and what would traditionally look like the rear yard or a side yard actually becoming a front yard because it's fronting on a road but we could do that separately.

Mr. Manley: Right, because if they didn't combine the lots, had they not combined the lots they would not have been able to keep the tennis court.

Chairperson Cardone: Correct.

Mr. Manley: Now that they have combined the lots they can at least have the option of keeping the tennis court which they've opted to want to do. Mr. Canfield, according to the Code the tennis courts have to be screened, which currently they are not?

Mr. Canfield: That's correct.

Mr. McKelvey: The pool has to have a fence?

Mr. Canfield: That's correct.

Mr. Manley: So, I guess, if we're going to vote on it separately and we're going to…I would certainly make a motion for the items, the outstanding items, those items that the variance be granted but I would want to ensure that everything is properly set to Code.

Mr. Donovan: So then that would be, not to put words in your mouth, but if I understand it correctly it would be a motion to allow the tennis court in a front yard…

Mr. Manley: Correct.

Mr. Donovan: …to allow the pool in a front yard?

Mr. Manley: Correct.

Mr. Donovan: …to allow the gazebo?

Mr. Manley: Correct.

Mr. Donovan: …to allow the shed?

Mr. Manley: Correct.

Mr. Donovan: …subject to compliance with all applicable and required Building Codes?

Mr. Manley: Correct.

Mr. Hughes: And Permits.

Mr. Manley: Well that would be Building Codes.

Mr. Hughes: Without the addition, is that what you are saying?

Mr. Manley: Well, we are going to take that up separately.

Chairperson Cardone: We can take that up separately.

Mr. Hughes: Can we segment that?

Mr. Donovan: Yes you may.

Mr. Hughes: I have to agree with my colleague, I mean to me, if they are not willing to reconfigure that addition to go in back into the garage and …

Chairperson Cardone: Right now we are not discussing the addition though, we have a motion. Is that correct, Mr. Manley?

Mr. Manley: Correct.

Chairperson Cardone: We have a motion on the floor and we're looking for a second for the motion, which just involves those other structures.

Mr. McKelvey: Second.

Mr. Hughes: Can we have discussion now because I think we should on a couple of things.

Mr. Manley: Sure.

Chairperson Cardone: On those particular …

Mr. Hughes: Right. Are we legally within our confines by not including the lot width and all the other stuff besides what he …

Mr. Donovan: Well, lot width we decided does not require a variance.

Mr. Hughes: Yes.

Mr. Donovan: The remaining variance is the coverage…

Mr. Hughes: The percentage of the coverage.

Mr. Donovan: …and the side yard.

Mr. Hughes: Yes.

Mr. Donovan: And, I'm going to, there is going to need to be a separate motion for that after this.

Mr. Hughes: All right, I want to make sure that everybody understands what's going on here. I am not sure if I do completely myself.

Mr. Donovan: Well what part don't you understand because I can't have you not understand.

Mr. Hughes: I don't know how you are going to end up with another motion on top of this if the addition isn't included. The addition is not included in your …

Chairperson Cardone: No, the addition is not included in it.

Mr. Donovan: No. The motion is …

Mr. Hughes: Then I understand.

Mr. Manley: O.K.

Mr. Hughes: Thank you for clarifying that. But there has been a lot of hodgepodge here.

Mr. Donovan: I understand, not a lot gets me excited but when a Board Member says that I don't understand that gets my heart racing.

Mr. Hughes: O.K. I'll keep that in mind.

Mr. Manley: The only thing with regard to screening would be apparently that would be up to …

Mr. Donovan: Let me just ask Code Compliance. Now typically, I just see that it's in the Code, it doesn't appear to require any site plan review or anything. So, if an applicant came to you for a tennis court you would make the determination on appropriate screening?

Mr. Canfield: Yes, that's correct. The Code is very vague as far as the type and style of screening. I believe you are correct, 100 percent; yes it would be up to us to determine what is satisfactory.

Mr. Manley: Jerry, would screening be 8 foot fences with the interlacing things, so you can't see the tennis courts, so?

Mr. Canfield: Well, no, no.

Mr. Manley: Or, no?

Mr. Canfield: No. The screening has to somehow interact with the requirement of fence height, which is only 6 feet in a residential area. So, it would not exceed that.

Mr. Hughes: Even for a tennis court?

Mr. Canfield: No.

Mr. Manley: I guess the big question is, is the purpose of the screening for the sound, the noise or I'm trying to get an understanding of what…?

Mr. Canfield: Yeah, you're splitting hairs there, but, a…

Mr. Donovan: I think that in terms of the motion, its got to meet Building Codes and Code Compliance issues, that's covered.

Mr. Canfield: Right, I don't think it's a noise issue at all because screening, you know, is not going to stop the noise it's probably visual.

Mr. Manley: O.K.

Mr. Canfield: …for a visual effect.

Chairperson Cardone: Thank you. Are we clear? And do we have a second to Mr. Manley's motion?

Ms. Gennarelli: That was Mr. McKelvey, I believe.

Mr. McKelvey: I'll second if you need a second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Ronald Hughes: No

Robert Kunkel: No

James Manley: Yes

Grace Cardone: Yes

Brenda Drake: Recuse

Ruth Eaton: Absent

Ms. Gennarelli: And, Brenda Drake is recused.

Mr. Donovan: So, that's three affirmative votes that we had?

Ms. Gennarelli: That's three yes and two negative.

Mr. Donovan: O.K. so, the motion fails.

Chairperson Cardone: The motion fails. Now we go to the addition.

Mr. Donovan: Someone needs to make a motion.

Chairperson Cardone: Do we have a motion for approval on the addition?

No response.

Chairperson Cardone: Do we have a motion for disapproval?

Mr. Manley: I would, at this point, make a motion that we disapprove the addition.

Chairperson Cardone: Do I have a second?

Mr. Hughes: Second.

Ms. Gennarelli: Roll call.

Mr. Manley: Do you need the specific…?

Mr. Donovan: Let me just say, in terms of the denial of what we are denying the request for increasing the degree of non-conformity relative to the side yard and the overage on the maximum of the surface coverage.

Mr. Manley: Correct.

Ms. Gennarelli: O.K. Roll call.

John McKelvey: Yes

Ronald Hughes: Yes

Robert Kunkel: Yes

James Manley: Yes

Grace Cardone: Yes

Brenda Drake: Recuse

Ruth Eaton: Absent

Chairperson Cardone: The motion for disapproval is carried.

Mr. Donovan: The net result then is the entire application is denied.

(Time Noted – 9:50 PM)

BG 9/19/07