

**CITY OF CHESTERFIELD
BOARD OF ADJUSTMENT
MEETING SUMMARY
Thursday, May 6, 2010**

The Board of Adjustment meeting was called to order at 7:00 p.m. on Thursday, May 6, 2010 by Ms. Laura Lueking, Chair of the Board of Adjustment.

I. Introduction of Board and City Staff

The following individuals were in attendance:

Ms. Laura Lueking, Chair
Ms. Marilyn Ainsworth
Mr. Leon Kravetz
Mr. Bruce DeGroot, Alternate
Mr. Robert Tucker, Alternate

Councilmember Connie Fults (*arrived at 7:29 p.m.*)
Mr. Rob Heggie, City Attorney, City of Chesterfield
Ms. Aimee Nassif, Planning & Development Services Director, City of Chesterfield
Ms. Mary Ann Madden, Office Manager, City of Chesterfield
Ms. Kathy Reiter, Administrative Secretary
Court Reporter, Midwest Litigation Services

II. Approval of November 5, 2009 Meeting Summary

Marilyn Ainsworth made a motion to approve the Meeting Summary. The motion was seconded by **Bruce DeGroot** and **passed by a voice vote of 5 to 0.**

III. Request for Affidavit of Publication

The Chair noted that the Affidavit of Publication and exhibits for the Petition had been placed on the dais.

IV. Public Hearing Items:

The Chair read the Opening Comments for the Public Hearing.

- A. B.A. 01-2010 16145 Walden Pond Lane (Bob and Patricia Rice):** A request for a variance from St. Louis County Ordinance 12914 to permit an existing residence located at the referenced address in Walden Pond Subdivision to maintain a three (3) ft. rear yard setback in lieu of the required fifteen (15) foot setback. (20T630929)

Staff Presentation:

Ms. Aimee Nassif, Planning & Development Services Director for the City of Chesterfield, outlined the exhibits supporting the request for a variance to permit the existing residence located at the referenced address in Walden Pond Subdivision to maintain a three (3) ft. rear yard setback in lieu of the required fifteen (15) foot rear yard setback.

Ms. Nassif gave a PowerPoint presentation showing photos of the site, which show the Petitioners' pool encroaching into their 15-foot setback.

In 1997, the Municipal Zoning Approval (MZA) was submitted to the City of Chesterfield on behalf of the Petitioners, Bob and Patricia Rice. Plans submitted with the MZA show that the pool is well within the 15-foot setback and were, therefore, approved by the Department. A photo was then displayed showing that the pool was actually built within the setback.

Recently, the Rices purchased additional property from the subdivision's common ground at the rear of their property. Measurements taken from the edge of the water of the pool to the current property line show the pool is now 14.5 feet from the property line vs. the required 15 feet.

Ms. Nassif then gave a brief history about this site:

- 2008 - Complaint received of water discharge from the rear of the property. Several inspections were made but Staff was unable to determine the water source. Since no violation could be found, no further action was taken.
- March 2009 - Complaint received again of water discharge. A new inspection was conducted whereby a drainage pipe was found to be discharging water within 10 ft. of the property line. This is a violation of the City's Nuisance Ordinance so a notice was sent to the property owners.
- March 2009 – City received information regarding a boundary dispute between the property owners and the subdivision Trustees regarding some common ground, which would affect whether the 10-foot violation actually existed. The City was asked to hold taking any action while attempts were made to settle the dispute.
- July 2009 – The City received the Boundary Adjustment Plat, which would adjust the Rices' rear yard. As a result, the water discharge would no longer be a problem as it would be more than 10 feet away from the property line; and the pool would no longer be in violation because it would be further than 3 feet away from the existing property line. After several submissions of the Boundary Adjustment Plat and difficulties with getting it to scale, Staff was still unable to process it.
- December 2009 – Staff met with the subdivision Trustees regarding their concerns about the water discharge. Staff inspected the property again at that time.

- December 2009/January 2010 – The Rices corrected the violation and it was abated. There were two options for abatement – (1) to cap off the drain pipes so the water wouldn't discharge so close to the rear property; or (2) to extend the pipes all the way across the property. The Rices extended some pipes and capped the main pipe, which according to City Code remedied the violation. Notice was sent to all parties that the violation was abated.
- January 2010 – Staff received a corrected Boundary Adjustment Plat, which confirms the pool is within the required rear yard setback and not built according to the approved 1997 plans. St. Louis County does inspections for the City and issues the final building permits. Somehow the County inspection missed the building error. All parties were then notified of the pool's violation.
- March 2010 – Since the Rices were unable to provide the City with an abatement schedule, a warning letter was sent to them.
- April 2010 – Staff began working with the Rices to be placed on the May Board of Adjustment agenda for a variance request.

At this time, there are no existing violations pertaining to water discharge or drainage on the site. The only existing violation is to the City's Zoning Ordinance pertaining to the pool being within the rear yard setback. If the requested variance is approved, the Rices will proceed with the Boundary Adjustment Plat to adjust their property line to reflect the additional property that has been purchased at the rear of their property.

Ms. Nassif noted that Staff has not been able to move the Boundary Adjustment Plat forward to City Council because City Code prohibits any project from proceeding forward when there is an existing violation on the site.

Mr. Kravetz asked how the situation came to this point and who determined how much property would be sold to the Rices. City Attorney Heggie stated that he would have the Petitioners respond to this question in their testimony.

Petitioner's Presentation

Mr. Bob Rice was sworn in by the Court Reporter.

Mr. Rice noted the following:

- When the violation warning was received in January, 2010, the Rices were waiting for an estimate from a pool company that would provide the costs and work involved to move the retaining wall and pool six inches, which would bring the site into compliance.
- The subject drain pipes are all tied to rain water run-off and do not have any connection to the pool.
- Responding to Mr. Kravetz's question, it was noted that in 2007, the Trustees discovered that the Rices had built within the common ground. The current Subdivision Indentures do not require a survey for the installation of fences and pools so the fence and pool were mistakenly built outside of the property line. Mr. Rice noted his responsibility in this mistake.

- The Trustees then proposed that the Rices purchase common ground property from the subdivision. The property proposed to be purchased was based upon where the fence had been installed by Chesterfield Fence in 1992.
- Over a period of two years, they were able to negotiate a settlement price to purchase this property. The entire subdivision approved the sale of the property to the Rices in December 2008. First payment for the property was made in October 2009.
- After this point, it was determined by the survey that the pool is still within six inches of common ground property.
- To purchase the additional required six inches involves the following issues:
 - On the other side of the Rices' fence is a park bench situated on a concrete pad two inches from their fence.
 - The fence would have to be moved, which would encroach upon the park bench.
 - The pool wall would also have to be moved.
 - All the homeowners would have to agree to any additional sale of property.
- There has not been an opportunity to reach a reasonable settlement to purchase the additional six inches of property.

Speakers – In Favor:

No Speakers were present to speak in favor of the variance request.

Speakers – Neutral:

Mr. Marty Ginsberg was sworn in by the Court Reporter.

Mr. Ginsberg stated that he is a Subdivision Trustee and “is a big proponent of fairness”. As a Trustee, he was “under the impression that the matter had been worked out with the City but unfortunately, it did not happen that way.” He has tried to view the situation as if he were in the Rices’ position. If a mistake was made, he does not understand why the necessary six inches can’t just be sold to the Rices.

Speakers – In Opposition:

Mr. Stu Leventhal was sworn in by the Court Reporter.

Mr. Leventhal identified himself as a Trustee of the Walden Pond Subdivision. Material was presented to the Board by Mr. Leventhal and marked as *Exhibit No. 7*.

Mr. Leventhal then noted the following:

- The first violation on the subject site for improper water drainage was issued on July 18, 2007 for storm water and pool water draining over the common ground and causing erosion issues.
- He believed nothing was done for two years while erosion was occurring on the common ground area. Another citation was issued to the Rices on March 25, 2009 for storm water run-off.

Chair Lueking noted that Councilmember Connie Fults joined the meeting at this point.

Mr. Leventhal continued with his presentation:

- As a result of the erosion from the Rices' storm water drainage, leaking pool and backwashing, 2 ½ feet of bank was lost from the common ground property. Two photos of the subject area from 2008 and 2009 were presented to the Board and marked as *Exhibit No. 8*.
- Violation dated July 18, 2007 was presented to the Board and marked as *Exhibit No.9*
- Violation dated March 25, 2009 was presented to the Board and marked as *Exhibit No.10*.

City Attorney Heggie pointed out to Mr. Leventhal that the issue before the Board concerns the requested variance – not the erosion issue.

Mr. Leventhal continued with his presentation stating the following:

- The reason the erosion problem is forefront in the discussion is because the 586 square feet that was purchased by the Rices had “*a two-year polarizing effect on Walden Pond because over this two-year period, the Rices claimed that the previous Trustees gave them this land and allowed them to do whatever they wanted to on this land.*” At subdivision meetings, this could not be proven.
- A lawsuit then was filed to retrieve the subdivision's land because of the erosion problem on the property, as well as the encroachment issue.

City Attorney Heggie asked if the Trustees and all the residents concurred in selling the land to the Rices. Mr. Leventhal responded that numerous proposals were made to the Rices, which were refused. Finally, after two years and just prior to going to Court, the Rices decided to purchase the property. The Trustees and residents concurred in this sale.

City Attorney Heggie reminded Mr. Leventhal that the Board's concern relates to the requested variance – not the erosion/irrigation issues.

Mr. Leventhal continued with his presentation stating the following:

- After the 586 square feet of property was deeded over to the Rices, it was thought that the Boundary Adjustment Plat was resolved. But during this time, erosion problems continued.

Mr. Bruce DeGroot asked why the Trustees oppose the requested variance. Mr. Leventhal indicated that the erosion problem has continued without any resolution on the part of the Rices. They feel that if the variance request is granted, the Rices will not take steps to correct the erosion problems. The Trustees know that the Rices need an additional six inches of property and have sent a number of letters to them asking them to meet with the Trustees in an effort to resolve the erosion problem. The Trustees and residents oppose granting a variance until the Rices correct the erosion problem around the pond. Signatures have been received from fifteen residents who live around

the pond indicating their opposition to the variance being granted because of the erosion problems not being corrected.

Mr. Leventhal continued with his presentation stating the following:

- Water is leaking from the pool liner and causing more erosion.
- The Trustees would like a remedy to the erosion and they feel their only remedy is asking that the variance not be granted so it can be used as leverage to negotiate with the Rices.

Mr. Leventhal was asked if there is a majority opinion of the Trustees. Mr. Leventhal replied that two of the three Trustees have agreed on this issue.

Ms. Laura Lueking asked if this is the only property that has erosion behind it. Mr. Leventhal stated that one other erosion problem was noted with a property owner, who worked with the Trustees to resolve the issue by extending the drainage pipes underground to the pond.

City Attorney Heggie noted that this Board sits in a quasi-judicial fashion so the concept of opposing the variance as a leverage to correct the erosion problem puts the Board in a very difficult spot.

Mr. Leventhal summarized the work the Trustees have done over the past few years in an effort to work with the City and the Rices to resolve the erosion issue, which is still occurring. The capped pipes have not stopped the water leakage and they are opposed to the variance being granted until the drainage problem is corrected.

An additional picture was presented to the Board and marked as *Exhibit No. 11*.

Mr. Kenny Lupardus was sworn in by the Court Reporter.

Mr. Lupardus identified himself as a Trustee of the Walden Pond Subdivision and stated that the water seepage has been going on for years. The ground is saturated and very muddy.

Mr. Robert Tucker then asked Mr. Ginsberg if he could provide information on the condition of the ground.

Mr. Ginsberg addressed the Board stating the following:

- There is definitely a water problem on the site and with water leaking from the pool. The Rices indicated that they would replace the pool liner but, to date, it has not been replaced.
- The City has stated that there is no problem with drainage.
- A letter was prepared to the Rices outlining what the Trustees would like done on the site in exchange for the variance being granted.
- There is concern that if the variance is granted, the Rices will not take any steps to correct the erosion problems.

City Attorney Heggie asked Mr. Rice if the ground is wet behind his home. Mr. Rice replied that tonight it is wet from the recent rain. They are at an impasse on this issue because he does not want to put any money into the pool until the variance issue is resolved. Until the variance request is voted upon, he does not know whether or not the pool will have to be moved.

City Attorney Heggie asked Mr. Rice what he is prepared to do to resolve the water issues. Mr. Rice stated that they plan to install a new pool liner once the variance request is granted. Their drain pipes are in compliance.

City Attorney Heggie asked if it is the Rices' intention and commitment to extend their three pipes directly into the pond. Mr. Rice stated he has no problem doing that but does not want to pay for the rock when the subdivision paid for rock for another homeowner.

At this point, City Attorney Heggie suggested that a recess be taken to allow both parties the opportunity to come to an agreement before the Board votes on the variance request.

Mr. DeGroot stated that the Board must follow the following "Approval Criteria":

1. In order to grant a variance, there must be proof that the applicant did not bring the burden upon himself through some action, but instead had the burden imposed on him.
2. An individual cannot create a situation and then claim he needs a variance.
3. The burden of proving the elements is on the applicant.

Mr. DeGroot stated that he has not heard any proof that the Rices have not brought this burden upon themselves.

The Chair called a recess of the meeting at 8:12 p.m. to allow the City Attorney to meet with all parties concerned.

The meeting re-convened at 8:35 p.m.

The Chair asked Mr. Levanthal if he would like to make a statement on behalf of the Trustees.

Mr. Levanthal thanked the Board for their help. The Trustees are now willing to support granting the variance request based upon the agreement that was entered into with the Rices this evening.

CONCLUSION

Robert Tucker made a motion to approve the variance to permit an existing residence located at the referenced address in Walden Pond Subdivision to maintain a three (3) ft. rear yard setback in lieu of the required fifteen (15) foot setback. The motion was seconded by **Leon Kravetz**. Upon roll call, the vote was as follows:

Marilyn Ainsworth	Yes
Leon Kravetz	Yes
Robert Tucker	Yes
Bruce DeGroot	No
Laura Lueking	Yes

The motion **passed** 4 to 1.

V. Adjournment

The meeting adjourned at 8:40 p.m.