

The Town Meeting

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ELK RAPIDS, MICHIGAN

Residents challenge village's denial of variance

A decision of the Elk Rapids Zoning Board of Appeals regarding a 5-foot sideyard setback variance has landed the village in 13th Circuit Court.

The attorney representing James and Rita Hresko claims the ZBA did not properly review their request and erred when denying the setback June 15.

The village has countered by saying the board acted properly, and that while circuit court is the place to appeal such decisions, the time frame to do so has passed.

According to court papers filed by the Hresko's attorney, **Lawrence LaSusa**, the problem started in April when furnace and air-conditioning work was being done at the Hresko's Traverse Street home. At that time, it was discovered a copper pipe which delivers natural gas to the residence had a cracked fitting.

Because of difficulties associated with re-hooking a gas meter to the home, the decision was made to pour the foundation for a bathroom off the west side of the building which would easily accommodate a meter.

It has been argued the bathroom would be located off the Hresko's bedroom, a convenient location for the 74-year-old couple who have health problems.

When the foundation for the addition was being poured, Ben Eynon, the then zoning administrator who has since passed away, visited the home and issued a stop work order on the job, telling the Hresko's they first needed a permit.

The addition would rest within a foot of the property line. A 19-foot section of the home already exists inside the 5-foot sideyard setback - a nonconformity grandfathered in when the village zoning ordinance which was adopted in 1974.

On June 15, the village zoning board of appeals denied the request for a variance to construct the bathroom.

The Hresko issue was again before the ZBA July 20, Aug. 17 and Sept. 18, but they stood by their previous decision.

During the summer, the Hreskos met LaSusa, an Illinois attorney. LaSusa has friends and family in the Elk Rapids area, and after talking with the couple, offered to represent them free of charge.

The Hreskos have asked that if they are awarded any fees by the court during the

case, the money be donated to the Kathy Johnson Memorial Fund set up for chaplains serving at the Children's Hospital.

The attorney has been critical of the village, saying they have "thrown a road block" at the Hreskos in their attempt to obtain the variance, and have not explained why the variance was denied.

"They never gave the Hreskos any, I'm telling you, any assistance for submitting the application for a variance," LaSusa said to the Town Meeting.

On Sept. 29, the county clerk's office received a court filing by LaSusa appealing the ZBA's decision to deny the variance.

A hearing was scheduled for Oct. 16 before Judge Philip Rodgers Jr. to review LaSusa's motion for a protective order preserving all documents the village has pertaining to the variance request and a motion for a speedy trial.

There were no Elk Rapids representatives in the court that day, and Rodgers granted the motions.

The judge also awarded the Hresko's \$1,547 to cover attorney costs as sanctions against the village for failing to appear in court.

However, subsequent court filings by attorney Michael Kronk on behalf of Elk Rapids suggest papers notifying them of the hearing were not properly served.

The village indicates that information was served to two members of the ZBA, but not to a village board member or manager - the individuals who should receive such notification.

In LaSusa's filing, he says that in August, ZBA member Tom Eckenberg called his office. According to court filings, LaSusa says Eckenberg stated, among other things, that he believed no other members of the ZBA visited the Hresko's home nor properly reviewed the village code to determine if the variance request met all the necessary criteria.

Kronk's answer claims LaSusa did receive a call from Eckenberg, but his comments were irrelevant as they were made as a private individual and not as a ZBA representative.

He also stated LaSusa called Eckenberg back and made statements about the variance review without allowing

opportunity for discussion. In addition, Eckenberg may have stated he "didn't know" if the other ZBA members visited the home and reviewed the zoning code, but can't recall saying they did not.

In addition, Kronk stated the three ZBA hearings following their initial decision June 15 in July, August and September were not to consider the variance application, but to consider whether there was "new evidence and proof of changed conditions to merit a new hearing" on the application.

The village's attorney also argues that while the circuit court is the proper venue to appeal a ZBA decision, the deadline to do so has expired. The 21-day time frame began July 20, the day the ZBA approved its minutes from the meeting at which they initially denied the variance.

LaSusa filed court documents on behalf of the Hreskos at least two months after the minutes were approved.

The two sides are scheduled to appear before Judge Rodgers Nov. 20 to review motions from the village, including one request to set aside sanctions and another to dismiss the case because Elk Rapids officials were not properly served notice of the October hearing.

Village manager Robert Peterson declined to comment on the case. "It's in litigation and it wouldn't be appropriate," he said.