

MINUTES OF THE MEETING OF THE ZONING COMMISSION OF THE VILLAGE OF OTTAWA HILLS, OHIO HELD ON MARCH 19, 2009 AT 5:00 P.M.

Mayor Kevin Gilmore called to order the March 19, 2009 meeting of the Ottawa Hills Zoning Commission. Roll was taken with Commission members Katherine O'Connell, Zac Isaac, Sam Zyndorf and Mayor Kevin Gilmore present. Commission member Jack Straub was not present but was expected momentarily. Also in attendance were Village Solicitor Sarah McHugh and Village Manager Marc Thompson.

Members of the audience included Rick Prokup of Saba Homes, Tom Backoff, Larry Yunker, Nasrin Afjeh, Tony Bassett, Mr. & Mrs. Devin Denner.

~~Mrs. O'Connell made a motion to approve the minutes from the December 3 meeting. Mr. Isaac seconded the motion which passed unanimously.~~

Mayor Gilmore then administered the oath to Marc Thompson, Rick Prokup, Tom Backoff, Mr. & Mrs. Denner, and Larry Yunker.

Mr. Straub entered the meeting at this time.

At the request of Mayor Gilmore, Mr. Thompson provided review of the variance request for the property at 3321 Pelham Rd.

At this location a new home is being proposed by Saba Custom Homes. The proposed home requires two height variances, one for the main structure and one for the detached garage. The Zoning Code establishes a height maximum of 30 feet and the proposal is for a height of 32 feet on the main structure. The Zoning Code establishes an accessory structure maximum height of 15 feet and this request is for 17 feet.

Mr. Thompson reported that homes on either side of the proposed home are approximately 27 feet in height and provided photographs of the street. Those photographs indicate that there is a substantial variety in height and style of homes in the 3300 block of Pelham Rd.

Mr. Prokup stated that the proposed home was designed to fit in with other homes in the neighborhood and that they had surveyors look at the height of the nearby homes. He confirmed that the heights of homes on this street varied substantially. One of the determining factors was having nine foot ceilings on the first floor of the proposed home which is common for new homes. Mr. Prokup provided a series of photographs showing the new home and its relationship to the nearby homes.

In response to a question from Mr. Zyndorf, Mr. Prokup commented that this home was being built on a speculative basis. He said that many home buyers like the benefits of a new home being placed in an established neighborhood. The home will be sided with beige siding and white trim. He also commented that the proposed home will sit one foot lower at grade than the other homes due to the nature of the lot.

After brief additional discussion Mrs. O'Connell made a motion to approve the variance with the main structure being at 32 feet and the accessory structure being at 17 feet. She stated that the basis for her motion was that it would be an improvement to the overall appearance of the neighborhood and that the home is designed to blend in with the existing homes on the street.

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Mr. Straub seconded the motion which passed unanimously.

The next item on the agenda was a request for a lot split at 2550 and 2570 Westchester Rd. Mayor Gilmore asked Mr. Thompson to provide the staff report for this request.

Mr. Thompson reported that the Boice family purchased the home in 1974 and at that time the minimum size for a buildable parcel was 15,000 square feet. In 1978 the Village adopted a Zoning Code establishing 35,000 square feet as the minimum size for a buildable parcel.

In 2004 the Boice family sought a determination as to whether the existing parcel they owned at 2570 Westchester Rd. was "buildable". They were told that since the minimum size was 35,000 square feet and this parcel was approximately 32,000 it was not buildable.

In 2004 the Boices then sought a variance to allow building to occur on the lot and subsequently sought a lot split to increase the size of the lot.

Mr. Thompson reviewed requirements of Ordinance 94-10 which establishes how property in Ottawa Hills may be subdivided and reviewed how this proposal meets those requirements. This information was provided to the Zoning Commission in written form and addressed issues such as fronting on the public right-of-way, utilities, streets and other facilities, compliance with zoning and subdivision regulations, minimum requirements for buildable parcels, maximum depth of parcels and adverse impact on surrounding properties.

The Zoning Commission also is required by Ordinance 94-10 to consider the size of nearby parcels, general aesthetics of the surrounding neighborhood including the amount of green space maintained, population density in the neighborhood in which the parcel is located and any other relevant considerations as set forth by the evidence presented by the parties involved or the Zoning Commission or other relevant statutes regulations and/or case law.

Mr. Thompson then provided a review of square footage of surrounding parcels, green space on surrounding parcels, average frontage of surrounding parcels including in the general neighborhood and specifically on Westchester Rd. Additionally, he provided information regarding the distance between the homes on Westchester Rd.

Mr. Thompson also reviewed the effect of the proposed subdivision of property on the residual lot at 2550 Westchester Rd. He pointed out that the proposed subdivision would create a side yard on the 2550 Westchester Rd. parcel of 17 feet which is below the minimum 22 feet required by the Zoning Code.

The Zoning Commission was provided with a variety of correspondence related to the request including correspondence from the applicant, Mr. & Mrs. Denner, Mr. & Mrs. Stein, Mr. & Mrs. Backoff and Susan Parker.

They were also provided with minutes from the August 19<sup>th</sup> meeting and a variety of photographs of the site.

Mayor Gilmore then called upon Attorney Larry Yunker from Barkan & Robon, representing the applicant. Mr. Yunker provided a variety of graphic representations including the possible

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location of a home on the proposed lot, photos of the vacant area, photos with a home superimposed on the vacant area.

Mr. Yunker also provided some history stating that the Village approved the current lot configuration in 1973 when the minimum size for a buildable parcel was 15,000 square feet. He also stated that in 1973 that there were no side yard requirements for such a lot. In 1974 the Boices bought the property and in 1978 the Zoning Code was amended to establish 35,000 square feet as the minimum lot size.

Mayor Gilmore asked if the Boices objected to the change in the lot size requirement in 1978.

Mr. Yunker stated that he did not believe that the Boices were aware of the proposed change and did not realize that a problem existed until 2004 when they sought a variance and subsequently a lot split to comply with the Zoning Code. The proposed subdivision of property created a violation of the side yard on the adjoining property. At that time the Boices were not represented by legal counsel. Mr. Yunker stated that Mr. Thompson did not mention a portion of the Zoning Code that required the Zoning Commission to consider any other relevant information.

Mr. Yunker then referred to two drawings he submitted, one showing the footprint of a home on the proposed parcel at 4,251 square feet and another one showing a footprint of 4,544 square feet. He then reviewed a photograph of the vacant parcel with a home superimposed on the location. The photo was of an existing home on Falmouth Rd. He continued stating that the size of the proposed parcel is not out of character with the neighborhood and that a home of 4,200 square feet to 4,500 square feet could be placed on the lot. The foot print of other homes on the street was reviewed.

Phil Navarre entered the meeting at this time.

Mr. Yunker continued by stating that he and his client wish to find a compromise to fit the needs of the Village as best as possible while representing the interest of his client.

Mr. Yunker reviewed extensive research in case law on subjects of this nature sighting *Magin vs. The Board of Zoning Appeals of the City of Mentor, Ohio* in 2008 as a very similar issue. He continued by stating his clients hope to find something that works for everyone but otherwise there may be an issue of a regulatory taking on this property. He also mentioned a 2007 case in Amberly Village in southern Ohio.

Mr. Yunker also said that with a home built on the property, maintenance would probably improve because the current situation does not create a vested interest on the part of the land owner. His belief was that there would be improved maintenance. He concluded by stating that he hoped the Zoning Commission would consider all of the equities and try to make an accommodation which would allow for everyone's interest.

Mayor Gilmore then called on citizens who wished to comment. Devin Denner stated that he lives next door to the proposed lot and that with all respect to the attorney there are other things to consider. He recognized that the Zoning Commission has a very difficult task in determining

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the best overall value for the Village. He said he could appreciate the position of the Zoning Commission members.

Mr. Denner continued by stating that consistency in issues of this nature provides important benchmarks for future decisions. He referred to Ordinance 94-10 which creates a depth to width ratio as well as other specific requirements related to the parcel. He also stated that based on the information provided the proposed parcel would be 7,000 square feet less than the average of the other parcels on Westchester Rd. He pointed out the violation of the side yard requirements at 2550 Westchester which would occur if the proposed subdivision of land occurred. He stated that the side yard requirements were established for a specific reason and that those standards should be maintained.

Mr. Denner emphasized a portion of Ordinance 94-10 which states that the creation of a buildable parcel must not adversely affect the value of surrounding properties. He said that any compromise which would be made would decrease the value of surrounding properties.

Mr. Denner informed the Zoning Commission that he moved to Ottawa Hills in 2004 from St. Louis and greatly enjoys the appearance of the community particularly in his neighborhood. He appreciated the work done by the Zoning Commission and asked the Zoning Commission to continue to use the Zoning Ordinance as its criteria for decision making.

Tom Backoff stated that he initially was not going to oppose the request because he understood the Boice predicament. However, when he learned that the existing structure on the adjoining property would be too close to the lot line if the Boice proposal was approved he decided to oppose the land subdivision. He was very concerned that the Zoning Commission should not create a violation of the Zoning Code by diminishing the side yard below the minimum required on the adjoining property.

Mr. Straub then provided what he identified as Zoning Commission Exhibit 1, which was an alternative that Mr. Boice brought to the Zoning Commission meeting in 2004. At Mr. Boice's direction the Zoning Commission focused on another proposal for the subdivision of property and did not formally consider this proposal.

Mr. Straub stated that a significant portion of his 2004 opposition was based on creating a violation of the side yard for the adjoining property at 2550 Westchester. With a substandard side yard a new home could be built too close to the existing home which would not be good for the neighborhood. He continued by describing the estate section with large lots and an obligation to maintain certain aesthetics there. He also stated that if a 35,000 square foot lot could be created without compromising the existing Zoning Code his opinion may be different. He asked that Zoning Commission Exhibit 1 be made part of the record.

Mr. Straub said that had that proposal been advanced in 2004 he could have supported that proposal because it would not have resulted in a side yard violation on the adjacent property. It would have required that the frontage on the Boice parcel be diminished but he was less concerned about that. He commented that the spacing between the homes was more important than the frontage. He also commented that this was the most difficult decision that he ever faced while a member of the Zoning Commission.

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He expressed disappointment that after five years the Zoning Commission was presented with the identical proposal that was rejected in 2004. He stated that it did not make sense in 2004 and does not make sense now. He commented to Mr. Yunker that his clients, the Boices, had put themselves in this position and that they are suggesting that the Zoning Commission was wrong when it voted five years ago. Mr. Straub stated that he did not think that the wrong decision was made then. He said that there was a way to take care of the problem and did not know why that wasn't addressed.

Mr. Yunker said that he understood the concerns regarding the side lot on the adjoining property and that he was first made aware of the other proposal (Zoning Commission Exhibit 1) by Village Solicitor McHugh earlier that day. His client had informed him that smaller frontage would be less in character with the neighborhood than the proposal as submitted. His client made a decision in 2004 to get an option on the property specifically identified in the description and that Zoning Commission Exhibit 1 came to his attention very late in the process. He also mentioned the 12 month prohibition against re-filing if a request was turned down.

Mayor Gilmore asked why the Boice family did not get both options from the Siebenalers when the Siebenalers bought the adjoining property.

Mr. Zyndorf commented that he was not on the Zoning Commission in 2004 and had never seen Exhibit 1 until this Zoning Commission meeting. He mentioned the possibility of making the setback issue less significant by assuring through deed restrictions that the setback on the Boice parcel be expanded to at least 27 ½ feet on one side so that the distances between the homes would meet the intent of the Zoning Commission.

Mr. Denner commented that the house would not be centered on the lot if that were the case and that there would be a degradation in value of neighboring properties.

Mr. Zyndorf responded by stating that the house would be centered between the houses even if it was not centered on the lot.

Mr. Denner asked that the Zoning Commission adhere to the guidelines established by the Zoning Code.

Mr. Yunker commented about the difficulty in marketing the lot if it was not clearly a buildable lot. He also commented that the person most directly affected by the side yard issue, the Siebenaler family, had consented to the proposal.

Mrs. O'Connell stated that Mr. Yunker has done a nice job in clearly presenting the position of his client. She was disappointed that his client was unwilling to provide a survey of the current proposal with identification on the property for visual inspection by the Zoning Commission.

She also stated that the idea that a specific parcel has been identified between the Boice family and the Siebenaler family does not mean that they could not go back and renegotiate. She stated that the proposal that the Zoning Commission has before today is incomplete.

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Mr. Yunker stated that the company who did the original survey was out of business and therefore a new survey would have to be done from scratch. He also stated that his client was unlikely to be willing to start over again without some type of advisory decision from the Zoning Commission. He did not want to proceed without some assurance that additional efforts would be well received. He commented that the Zoning Commission might be playing games with this project in order to get a few more square feet.

Mr. Yunker also mentioned two other exhibits that he provided to the Zoning Commission. Those were letters from Mr. Thompson to nearby property owners identifying vacant properties as buildable lots. Those properties are platted lots less than 35,000 square feet in size. They were not asked to make any changes to increase the size of the lot to comply with the current code. He reiterated that his client would be willing to compromise to whatever extent is reasonable and suggested that Mr. Zyndorf's proposal would be a better option than changing the requirements.

Mayor Gilmore reminded Mr. Yunker that the proposal is identical to the one submitted five years ago and that there has been no effort on the part of the client to make any reasonable compromises to date. Mr. Yunker said that if he came back to the Zoning Commission there might be another issue which would cause further delay and that he did not think 4 ½ feet of side yard should be sufficient to disrupt this proposal.

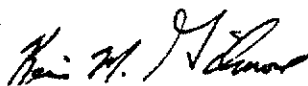
Mr. Isaac said that a 7% - 8% lot coverage commitment may be less troubling than the Zoning Code maximum of 13%. He also stated that he was very troubled by creating the non-conforming side yard on the adjacent property. He continued by stating that Exhibit 1 was moving in the right direction and that land configuration with a 7% - 8% lot coverage understanding might be appropriate. He concurred with Mrs. O'Connell stating that items are renegotiated all the time and that the land issue can be dealt with.

Mr. Navarre left the meeting at this time.

After brief additional discussion Mr. Yunker stated that he would like to table the proposal until the meeting of next month. Mr. Isaac then made a motion that the request be tabled. Mrs. O'Connell seconded the motion which passed unanimously.

Mr. Denner asked if there would be notice provided to all of the adjoining property owners before the issue would be brought back for consideration by the Zoning Commission. Mr. Denner was assured that he and all of the neighbors who received notice of this meeting would receive notice of any subsequent meetings on this subject.

It was agreed that the next meeting of the Zoning Commission would be on May 14, 2009 at 5:00 p.m. There being no further business the meeting was adjourned.



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Mayor Kevin M Gilmore