

MINUTES OF THE MEETING OF THE ZONING COMMISSION OF THE VILLAGE OF OTTAWA HILLS, OHIO HELD ON SEPTEMBER 6, 2011 AT 4:30 P.M.

Mayor Kevin Gilmore called to order the September 6, 2011 meeting of the Ottawa Hills Zoning Commission at 4:32 p.m. Roll was taken with Zoning Commission members Zac Isaac, Jack Straub, Katherine O'Connell and Mayor Kevin Gilmore present. Commission member Sam Zyndorf was absent from the meeting but expected momentarily.

Also in attendance representing the Village of Ottawa Hills were Village Solicitor Sarah McHugh and Village Manager Marc Thompson.

Members of the audience included Michelle Laser, Mr. & Mrs. George Archambault, Todd Berman, Jeff Stopar, Dee Isaac, Dr. & Mrs. Haselhuhn, Tim Bockbrader, Todd Kime, Nasrin Afjeh, Court Reporter Mary Tammarine, Joe VanWagner, Jim Ostrowski and D. Jean Haefner.

Mrs. O'Connell made a motion to approve the minutes of the meeting of August 3, 2011. Mr. Straub seconded the motion which passed unanimously.

Mr. Zyndorf entered the meeting at this time.

Mayor Gilmore stated that he had a conflict related to the second issue on the agenda and would not be able to participate or vote on that item. He also commented that he needed to leave the meeting at approximately 4:50 p.m.

The oath was administered to everyone intending to speak to the Zoning Commission. Those taking the oath included Michelle Laser, Mr. and Mrs. George Archambault, Todd Berman, Jeff Stopar, Dr. and Mrs. Greg Haselhuhn, Tim Bockbrader, Zac Isaac, Todd Kime, Joe VanWagner, Jim Ostrowski, D. Jean Haefner and Marc Thompson. Dee Isaac and Nasrin Afjeh did not take the oath.

Mr. Thompson then described the first variance request involving the property at 3950 W. Bancroft St. This request involved an existing non-conforming side yard and a request to expand the home by the construction of an additional attached garage. The Zoning Code would require a 47 foot aggregate side yard and the proposal before the Commission would have an aggregate side yard of 16 feet, 5 inches. The Zoning Code also requires the minimum side yard of 18 feet, 8 inches and the proposed minimum in this case would be 6 feet.

Todd Kime, representing the applicant Michelle Laser then addressed the Zoning Commission. Mr. Kime explained that the existing garage is extremely small and is a rear loading garage. It can accommodate one car currently and was not originally designed for cars of today's size. Its size and location greatly limit its effectiveness.

The applicant recognized that the proposed variances are significant and would result in a noteworthy reduction of the side yard. Mr. Kime said that he thought it was an aesthetic improvement and that there were limitations in terms of alternatives. Mr. Kime mentioned that the property falls off towards the river in the rear and that there are floodplain considerations which would make a detached garage very difficult.

Prior to the meeting the Zoning Commission was provided with a letter from George & Janet Archambault of 3942 W. Bancroft St. Also provided were additional photos of the area between the 2 properties showing the existing retaining wall.

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Mr. Archambault of 3942 W. Bancroft St. then addressed the Zoning Commission stating that he understands the needs and problems of getting cars into and out of the garage at 3950 W. Bancroft. He stated that his home also had a 1930's style garage and he sympathized with the Lasers and their problems.

Mr. Archambault objected to the proposed variance because it would reduce the side yard on that side of the Laser property to six feet. This reduction in side yard would make access to the rear yard extremely difficult. He hoped that the proposed garage could be moved further to the rear of the property and to the west.

He explained that his garage is well below grade and that there is a large retaining wall between the two properties. He expressed concern about the construction of a new structure so close to the retaining wall may cause damage to the wall. He said it seems like an exceptionally large footprint for the lot.

Mrs. Archambault stated that she had an alternative solution for consideration which she had provided to the applicant.

After brief discussion Mr. Kime commented that the proposed alternative would be problematic. He also said that another, more difficult alternative might be a detached garage as indicated in his drawing or changing the existing garage to a front load garage. Discussions continued regarding the size of the existing garage and various options and locations. The floodplain at the rear of the property was also mentioned in the discussion.

Mrs. O'Connell stated that she visited the property and read the letter from Mr. Archambault. She said that she thought the proposed height and the closeness to the lot line were considerations. She has a similarly sized garage and while she understands the problems that it creates, it was a decision she made when her family bought the property. She said that she thought the proposal as submitted was not appropriate.

Mr. Straub asked about the possibility of an expanded front loading garage and would that solve the problem. Mr. Kime said that the proposed alternate location of a detached garage would still require a variance.

Mr. Archambault expressed concern that if the variance was granted it would be like living next to a four car garage complex. Mr. Kime mentioned the possibility of expanding the garage and then removing the existing garage doors from the existing undersized structure.

Mr. Issac asked about the possible location of a detached garage and how access to the garage would occur.

Mr. Kime provided an alternate drawing which showed a detached garage which may be less attractive from an aesthetic standpoint particularly for the adjoining neighbors.

Mayor Gilmore reviewed the portion of the Zoning Code that states that a variance which is denied cannot be reapplied for a period of one year. He suggested that the applicant may wish

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to withdraw the variance request as opposed to having it be defeated and then the applicant would have to wait a year before resubmission. Ms. McHugh read the portion of the code relating to re-application once a variance is denied.

Mr. Zyndorf said that he thought the design was good in concept but that it was too tight to the side yard and that he did not want to grant a variance which was opposed by the most impacted neighbor and might adversely affect the neighbor's property.

After brief discussion the applicants withdrew their request for a variance.

At the conclusion of this item Mayor Gilmore left the meeting and Mr. Straub took over as Chair of the meeting.

Mr. Straub then introduced the next item as a request for a variance at 2620 Underhill Road.

Before commencing the next agenda item, Commission member Isaac said that he would recuse himself from participating as a member of the Zoning Commission since he was the immediate next door neighbor of the applicants and since he had sold to them a portion of the property involved in the variance request. At that time Mr. Isaac vacated his seat at the Zoning Commission table and took a seat in the audience.

Mr. Thompson described the next variance request at 2620 Underhill Rd. as a request to place an accessory structure, in this case a swimming pool in the side yard. The Village Code requires accessory structures to be in the rear yard. Mr. Thompson referred to correspondence received earlier in the day from Mr. Ice and Mrs. Bayer, both in opposition to the variance requested.

Mr. Straub pointed out that since Mayor Gilmore had left the meeting and since Mr. Isaac had recused himself from voting all three members remaining in attendance would have to vote in the affirmative.

Jeff Stopar spoke on behalf of the applicants stating that he was representing the Haselhuhn family and was a member of the Eastman & Smith law firm. Mr. Stopar passed out a package of information to the Zoning Commission and commented that this was an area variance request intended to allow placement of a swimming pool in the side yard. He reviewed the definition of a rear yard as contained in the Zoning Code. He also mentioned that the Haselhuhns were looking very much forward to moving into Ottawa Hills. He continued by stating that the request was for a 34 foot variance which would allow the entire swimming pool to be located in the side yard. He stated that although that seems like a large variance, this is a very large lot which should mitigate the size somewhat.

He called on Todd Berman, the builder of the Haselhuhn home to add more detail. Mr. Berman stated that the front edge of the pool would be approximately 180 feet from the road and approximately 120 feet from the Isaac residence. The pool would be 34 feet in front of the rear yard and said that the primary reason for the variance was that there was not room behind the house due to the location of the Ottawa River.

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Landscape designer Tim Bockbrader then addressed the Zoning Commission regarding the screening that is contemplated to be placed around the pool. He displayed a full sized version of the drawing that had been provided to the Commission. He described a continuous evergreen hedge perhaps made of arborvitae completely screening the pool from the street and the Isaac property. The pool would not be seen from either the street or the Issac property. He estimated that the evergreen screen would be 10 to 12 feet in height.

Attorney Stopar then addressed the Zoning Commission referring to a Supreme Court case of Duncan vs. Middlefield which identifies factors for consideration by Zoning Commissions when addressing a variance request. He briefly reviewed some of the standards contained in the Duncan decision and then reviewed the Zoning Code Section 8.5 which deals with accessory structures. He commented that the Code requires accessory structures. He acknowledged that the Code requires accessory structures to be place in the rear yard and to minimize visibility from the street and neighboring properties.

Mr. Stopar continued by stating that this pool would be positioned in a manner to be behind the old stables on the Isaac property so that it would be well screened from both the Isaac property and the street. He mentioned that the photographs confirm that the pool would well screened from the Issacs.

One of the factors in the Duncan decision involved whether or not the property owner knew of the restrictions at the time they purchased the property.

Mr. Berman, in a response to Mr. Stopar, said that he did not make the Haselhuhs aware of the requirement. Dr. Haselhuhn said that he and Mrs. Haselhuhn were not aware of the requirement that accessory structures or swimming pools would be required in the rear yard.

Mr. Stopar continued by stating that the screening and the distance from the Isaac property and from the street seems to mitigate some of the issues identified in the Duncan ruling.

Village Solicitor Sarah McHugh then reviewed the specifics of the Duncan vs. Middlefield ruling of the Ohio Supreme Court, as follows

--Will the property yield a reasonable return or can there be a beneficial use of the property without a variance?

--Is the variance substantial?

--Would the variance cause an alteration in the essential character of the neighborhood or cause a "substantial detriment" to the adjoining properties?

--Would the variance adversely affect the delivery of governmental services?

--Did the property owners purchase the property with the knowledge of the zoning restrictions?

--Could the problem be solved in some other manner?

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--Would the variance preserve the "spirit and intent" of the zoning requirement and would "substantial justice" be done by granting the variance?

Mr. Zyndorf commented that the property in question had received a variance from the Zoning Commission about two years ago and he recalled that there was a swimming pool as part of that proposal.

Mr. Berman stated that originally the plan had an indoor pool on the north side of the property opposite where the proposed outdoor pool would be located. He said that much has been changed since then and that the indoor pool had been eliminated and that the house floor plan had been reversed.

Mr. Berman continued by stating that the proposed pool on the north side was an indoor pool and natural shade from the large trees was not an issue. With the house reversed an outdoor pool in the initial location would require removal of several trees. He also commented that the reversal of the house floor plan meant that the north side location for the pool was no longer adjacent to the primary living area of the home.

Mr. Zyndorf commented that the proposed drawings look very nice but that when the most impacted neighbor and other neighbors are in opposition, the proposed variance did not set well with him.

Mrs. O'Connell stated that she thought it looked like the pool could fit on the north side and she understood the issue as it relates to sun on the pool. She commented that the problem could have been avoided in the planning process. She expressed concern that from a precedential standpoint this pool is 100% in the side yard and that substantial difficulty is created therefore.

Mr. Stopar commented that the pool could be moved to a location where it is partially in the rear yard but it would be more visible to the Isaac's property at that location. Mr. Berman confirmed that the pool could be moved back about 15 feet so that some of the pool would be in the rear yard.

Mr. Straub commented that it appeared that it could be entirely in the rear yard if it was moved to the left side (north side) of the property.

Mr. Stopar said that the original design with the indoor pool on the north side of the property had the living areas of the on the north side of the home as well. Mr. Berman reviewed the original intention and plans for the house. Eventually the house was "flipped" and the owners were no longer considering a pool at that time.

Mr. Isaac, speaking from the audience, asked that his correspondence of August 4 and 29, and correspondence recently received from Howard Ice, Joan Bayer and Thomas Tuschman be made part of the official record.

Mr. Isaac continued by stating that Dr. & Mrs. Haselhuhn will be great additions to the community and they look forward to having them as neighbors.

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Mr. Isaac then provided some history regarding his acquisition of lots 24 and 25 and subsequent sale of half of the north lot to the Haselhuhs. As part of the deed restriction related to the sale of half of the lot there were restrictions regarding buildings which would allow only encroachment of 10 feet onto the half lot. The rest of the lot was to remain green. At that time, the 2009 variance application showed an indoor pool on the north side of the property. He commented that the Haselhuhs were represented by Gene Abercrombie of Eastman & Smith, a very well respected real estate lawyer. The restriction on the lot sold by the Isaacs to Haselhuhn included buildings but did not include a pool because at that time the pool was shown as being on the left side of the property and within the structure.

Mr. Isaac said that the Haselhuhs had received a variance allowing a front yard setback of 119 feet. The actual construction of the home has a front yard setback of 136 feet so that the Haselhuhs moved the house back 17 feet from what was permitted by the Zoning Commission. Had they not moved the house back an additional 17 feet there would have been room at the rear of the property, according to Mr. Isaac. He mentioned that this is a self inflicted hardship. He mentioned that there are no side yard pools on either Underhill or Edgehill Road.

Mr. Isaac continued by stating that in the spirit of the deed restrictions and in light of the other locations of swimming pools in the neighborhood the variance should not be allowed. He also said the application of the standards mentioned in Duncan vs. Middlefield does not point to allowing a variance in this case. He reviewed the individual standards identified in the Duncan case and applied those standards to the application. He concluded by asking the Zoning Commission not to approve the requested variance.

Mr. Stopar commented that he did not think that the deed restrictions were relevant consideration for the Zoning Commission. He also said that the parcel of land was purchased by the Haselhuhs for \$176,000 and continued by stating they probably would not have bought the land had they understood that it could not be used for anything other than open space. Mr. Stopar said that the proposed swimming pool will also constitute green space and that it will be very well screened. One of the motivating factors, according Mr. Stopar, for moving the house to the rear was to avoid the need to remove a very attractive maple tree from the front yard.

Mr. Berman commented that moving the swimming pool to the opposite side and in the rear yard would require removal of several large existing trees. He also said that he believed that no part of the house encroached on the lot purchased from the Isaac family.

Mr. Stopar stated that usually, the "self inflicted" aspect of the Duncan standards occur when the structure is already built. Mr. Stopar confirmed that the Haselhuhs did not know of the restriction and that no action was taken by the Haselhuhs which in any way "thumb their nose" at the Zoning Commission.

Dr. Haselhuhn stated that his discussions with Mr. Isaac were about buildings in the area between the homes, not about structures or swimming pools. He also commented that he would not have purchased the property with a restriction that would have prohibited a swimming pool. Dr. Haselhuhn stated that Mr. Isaac wrote the deed restriction.

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Mrs. Haselhuhn said that she was very saddened by this development and she did not know the Isaacs well. She said that she and Dr. Haselhuhn wanted to be very good neighbors and would be the first to withdraw any request that would have a negative impact on any neighbors. They hired Mr. Bockbrader to landscape the pool so that it would be hidden. She said that they were clueless regarding the zoning requirements and that they were caught by a surprise when they learned of the restrictions. She continued by stating that she thought she and her family had the right to enjoy their property and that they are respectful and considerate people. She hoped that commission members had been on the property to see the actual location of the pool. She also stated there was very little concrete in the proposed design.

Mr. Isaac commented that he had a great deal of respect for Attorney Abercrombie who worked with the Haselhuhs on the purchase of the property. He is certain that Mr. Abercrombie understands the Zoning Code and that he should have known that a variance would be required to place a pool in the side yard.

Mrs. Afjeh asked if deeds typically include language about compliance with existing local ordinances. Mr. Straub responded by stating that he could not speak for all deeds but that generally any deeds involving the transfer of property include a statement that the property owner is to comply with all local ordinances including zoning ordinances.

Mr. Straub said that he did not see this as an issue of a deed restriction. However, it is clearly a zoning issue. He continued by stating that the Haselhuhs received three variances in August 2009, one of which allowed the house to be moved forward to a point where the front yard setback was less than required by the Zoning Code at 119 feet. He recalled that the proposed plan which was considered by the Zoning Commission at that time included an indoor pool. He also indicated that the Zoning Code does not allow pools in the side yards, despite that there are large side yards in the neighborhood which could easily accommodate pools. He added that the fact that the testimony of Mr. Isaac about the location of all the other pools in the area of the Haselhuhn home being in the rear yards confirms the presumed validity and community acceptance of the restriction on the "no side yard" location of pools.

Mr. Straub continued by stating that the decision to move the house further to the rear and to change the design of the house did not justify putting the pool in the side yard, in his opinion. He said that the existing ordinance can be complied with by placing the pool at the northeast corner in the rear yard.

Mr. Zyndorf stated that the Haselhuhs had previously requested three variances in order to construct the home and that each of the variances was approved. The site plan provided at that time showed green space in the area. The original intent evidently of the Haselhuhn was to have it be open space.

Mrs. O'Connell stated that the Haselhuhs have received three variances previously so to say that they were not aware of the Zoning code sounded hollow. Mrs. O'Connell said there were many changes in the design. She commented that she is not inclined to approve the variance when it was not actually needed.

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Mr. Straub asked if there were any other comments from Attorney Stopar. Mr. Stopar asked to have a moment to review the situation with his clients. Mr. Straub reviewed the need for 3 affirmative votes. At that time Mr. Stopar and his clients left the Council Chambers.

Mr. Stopar and his clients returned to the Council Chambers and requested that the Zoning Commission take a vote.

Mr. Stopar asked for some clarification about the notices sent regarding the variance request. Mr. Thompson replied that 14 notices were sent out and included a letter from the applicant, a black and white copy of the drawing that was shown to the commission and the August 4 letter from Mr. and Mrs. Issac.

Dr. Haselhuhn asked if a letter of objection was typically sent out with the meeting notice. Mr. Thompson responded that letters in favor or in objection are not typically received before the notices go out, but in this example such a letter of objection had been received, so it was included with the notice.

Mrs. Haselhuhn asked about the number of notices that were sent to nearby property owners. Mr. Thompson responded that there were 14 notices sent and the zoning code requires notice to be sent to property owners within 200 feet. The Village errs on the side of sending more notices rather than fewer notices.

Mrs. O'Connell made a motion to approve the variance to allow a swimming pool in the side yard at 2620 Underhill Rd. as requested. Mr. Zyndorf seconded the motion. Upon call of the roll Commission members Zyndorf, O'Connell and Straub voted in opposition to the motion. No members voted in favor of the motion.

Given the lateness of the hour it was decided that the discussion items including solar panels, accessory structures and a fountain in the front yard on W. Bancroft St. would be deferred.

Discussion followed involving Jean Haefner and Joe VanWagner of the Monticello Condos on W. Bancroft St. They expressed concern regarding maintenance issues at the Avis property at 4105 W. Bancroft St. Dr. Haefner said that some of the condo units that face the Avis property have been sold recently at low prices. She did not blame Avis for this but said that it may be a reflection of the general economic situation. She also said that Avis has been making a conscious effort about keeping the rental trucks on the south side of the property away from Monticello.

Discussion revealed that other aspects of property maintenance have not been particularly well handled. Lawn care has been a problem periodically. The property needs work and the parking area and the tree line has been a constant source of problems. Dr. Haefner said that she works to keep the property line clear.

Mrs. VanWagner said that during the summer the trees and bushes have screened the Avis property but in winter months the property will become more visible.

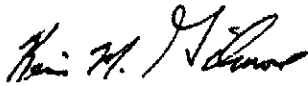
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Mr. Straub commented that the Zoning Commission was inclined to support the concerns of the Monticello property and suggested that contact be made with the Avis Company and perhaps a meeting will occur.

Mr. Straub read the minutes from the meeting which allowed the variance resulting in rented of trucks at this location.

It was agreed that Mr. Thompson would try to arrange a meeting involving the Village, Monticello property owners and a representative of Avis.

There being no further business the meeting was adjourned at 6:59 p.m.



Mayor Gilmore