

MINUTES OF THE MEETING OF THE ZONING COMMISSION OF THE VILLAGE OF OTTAWA HILLS, OHIO HELD ON JUNE 19, 2008 AT 5:00 P.M.

Mayor Kevin Gilmore called to order the June 19, 2008 meeting of the Ottawa Hills Zoning Commission. Roll was taken with Commission members Sam Zyndorf, Katherine O'Connell, Zac Isaac and Mayor Kevin Gilmore present. Also present were Village Solicitor Sarah McHugh and Village Manager Marc Thompson. Commission member Jack Straub was not in attendance but was expected momentarily.

Members of the audience included Dr. & Mrs. Levy, Mr. & Mrs. Linn Petersen, Melody Binion, John Davis, Chris Burnett, Lea McChesney, Sam Nugent and Nasrin Afjeh.

Mrs. O'Connell made a motion to approve the minutes from the December 19, 2007 meeting. Mr. Isaac seconded the motion which passed unanimously.

Mayor Gilmore then administered an Oath to Dr. & Mrs. Levy, Chris Burnett, Lea McChesney, Mr. & Mrs. Petersen, Melody Binion, Sam Nugent, and Marc Thompson.

The first item on the agenda was a request for a variance at 3527 Indian Rd. Mr. Thompson reported that the O'Neil family requests a variance related to the height of a fence which they hope to place along their east property line. They wish to construct a six foot wooden privacy fence a distance of 96 feet from their rear property line to a point approximately midway along the side of their home. The O'Neal home abuts a school path which joins Brookside Rd. and Indian Rd.

Mrs. O'Neil reported to the Zoning Commission that they have tried to plant a natural barrier along the school path in order to provide privacy for their rear yard. She said that the large trees in the area provide a sun block and as a result the arborvitaes they have planted have not done well. She commented that other homes have similar fences along other school paths.

Jack and Pamela Straub entered the meeting at this time.

Dr. Levy of 3544 Brookside Rd. then addressed the Zoning Commission stating that he was a backyard neighbor and has lived in his home for a very long time. He stated that the school path is used primarily by elementary school children and neighbors and did not believe there was a lot of use of the sidewalk under any circumstances. Therefore, he did not believe that the requested fence was a privacy issue. He also stated that he thought the hedge planted by the O'Neil family was growing well and there were no major problems.

Dr. Levy continued by stating that he objected to the variance and did not want to create a tunnel like affect along the sidewalk which might be intimidating for young children.

Mrs. Levy then addressed the Zoning Commission stating that periodically someone gets hurt on the path, such as a skinned knee or a bicycle accident. It should be kept open so that the path has natural light and that any such injuries are easily notice, Mrs. Levy said.

Mrs. Petersen expressed concern that the proposed fence would create a blind spot in the path and expressed concern that the proposed fence would create a tunnel effect which would be detrimental to public safety.

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Mr. Petersen expressed similar comments stating that he believed placement of a fence at that location would create a safety issue and would encourage undesirable activity. He also commented that he and his wife walk the dogs late at night and appreciate the open nature of the sidewalk.

Mrs. O'Neil stated that some other fences along sidewalks are in excess of four feet high and that they are concerned about safety of their two daughters. She said she did not like having her children out in the rear yard alone.

In response to a question from Mayor Gilmore, Mrs. O'Neil confirmed that there is a four foot fence along the sidewalk now.

Commission member O'Connell stated that she and her family use this path quite often and expressed concern that it would become a tunnel and be frightening for children using the path. She also stated that the arborvitae appear to be doing well, in her opinion.

Mr. Zyndorf commented that a fence along a public sidewalk on Manchester Rd. was the only one that has been before the Board during his tenure. He commented that it is not six feet in height and that it replaced an existing fence.

Mr. Isaac commented that the Village did not want to become a gated community and that the Zoning Commission has been strict related to fence variances granting them along Secor Rd., along Central Ave. and along other places which have special circumstances. He commented that he did not see these special circumstances in this situation. Mr. Isaac continued by stating that the community is very safe and that Mrs. O'Neil should not be concerned about having children playing in a fenced backyard. He was concerned that it would create an alley like effect.

Mr. Isaac then made a motion to approve a six foot fence for a distance of 96 feet along the sidewalk to the east of the O'Neil property. Mrs. O'Connell seconded the motion. Upon call of the roll Commission members Zyndorf, O'Connell, Straub, Isaac and Gilmore voted no. Lengthy discussion followed regarding other fences in the Village.

Attention then turned to a requested fence height variance at 3533 Edgevale Rd.

Mr. Thompson reported that the applicants request a fence height variance which would allow them to install a six foot high fence along their eastern property line intended to reduce the noise from the air conditioning condenser unit belonging to their easterly neighbor. Mr. Thompson reminded the Zoning Commission that Section 8.7(b) states that "No fence which is more than four feet in height above the level of the established grade may be erected or constructed".

Mr. Burnett then addressed the Zoning Commission stating that he and his wife Lea McChesney were attempting to create an acoustic buffer because of the location of the neighbor's air conditioning unit. The location of the unit and the design of their home tends to direct the noise from the unit to the applicant's home. Mr. Burnett continued by commenting that they have recently moved into the Village because it is so pleasant and quiet but the air conditioning unit seems to be in constant operation.

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Mr. Burnett informed the Zoning Commission that the proposed fence would involve acoustic materials designed to reduce the sound from the air conditioning unit. The existing shrubs would be kept in place and additional plantings are anticipated. Mr. Burnett suggested that a higher fence would be more effective but he thought that a six foot request was appropriate.

Leah McChesney also stated that they have spoken with the neighbors and that the neighbors do not object to the proposed fence and were unaware of the noise issues. They have tried other methods to mitigate the noise problems but this seems to be the only solution which will be effective. Mrs. McChesney also stated that there is an outdoor terrace on that side of the property which they hope to use more often but the noise from the air conditioning unit is a deterrent from use of the terrace.

Mr. Isaac commented that, although not an engineer, he had questioned whether or not a six foot fence would actually help the problem.

Mr. Burnett responded by stating that experts suggested an eight foot fence would be more effective but he did not want an eight foot fence there. He also stated that they have put insulated windows on that side of the house to address the issue and committed to screen the fence through landscaping.

Mrs. O'Connell commented that an analysis done along Central Ave. indicated that landscaping was a more effective way of sound deadening than was an erection of a fence. She said she was sympathetic to the problem but not inclined to approve a fence variance. Mr. Burnett stated that he intended to erect a fence that was designed specifically for acoustic purposes. Mrs. McChesney said that the length of the fence could be reduced from the initial request.

Mr. Straub recently visited the site and said that the unit was not on at that time but that he was sympathetic to the noise issue.

Mr. Petersen commented that sound issues are difficult to solve and that an acoustical engineer is needed to look at this situation. He further suggested that insulation directly around the unit may be the best approach. He did not think that a six foot fence would solve the problem.

Mr. Isaac stated that if the request is withdrawn before the vote occurs the applicants are not precluded from returning within one year. After brief discussion Mr. McChesney asked to withdraw his variance request in order to keep open option for future such requests.

Because Mr. Straub was an applicant for a variance he stepped down from his position as a member of the Zoning Commission. Mr. & Mrs. Straub then took the oath.

Mr. Thompson reported that the applicants, Jack and Pamela Straub request a variance that would allow a 48 inch high split rail fence to extend beyond the front of their home along their east property line a distance of about 15 feet. He read the relevant portions of the Zoning Code including the definition of front setback. He reported that the majority of the requested fence did not require a variance and that the issue before the Zoning Commission was only that portion of the fence that would extend beyond the front of the home.

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Mr. Thompson also commented that an unusual situation exists in this example. He stated that the adjoining property owner at 4221 Brookside Rd. could erect a fence almost identical to the proposed fence and no variance would be required. This is because the adjoining property is set further forward than the property of the applicant.

Mrs. Straub then addressed the Zoning Commission displaying a diagram showing the relative locations of the two homes and the proposed fence. She said that the Straub house is set back from the street substantially further than the other homes on the street and the Code only allows the fence to come to the front of their home. She emphasized that the fence was not intended to enclose any property but to approve the appearance of both properties, particularly the areas between the houses. Mrs. Straub informed the Zoning Commission that she had explored the possibility of planting shrubs along the edge of their driveway but there is not sufficient room due to the location and the grade of the driveway and the retaining wall. Their initial plan was to place a split rail fence along the property line but there is insufficient room. Therefore, they seek a variance which would allow a wrought iron fence which would fit in the area and would be more consistent with the appearance of the home.

The Straub family asked the adjoining property owner, Sam Nugent, if he would make application because a variance would not be needed if he was the applicant. He declined to do so.

Given the location of the proposed fence Mrs. Straub thought that its ending point should relate to the front of the Nugent house not the front of the Straub house. If a variance was granted it would be beneficial to both properties, particularly Mr. Nugent.

Mayor Gilmore then called on Mr. Nugent for any comments he wished to make.

Mr. Nugent stated that he had several exhibits and handed out a packet of exhibits to every member of the Zoning Commission. He also stated that he did not want to feel rushed in his presentation as this issue is very important to him.

Mr. Nugent stated that the proposed variance cannot be supported in law or in fact and does not serve any public interest. He presented a petition of a half dozen property owners who have expressed their opposition to the proposed variance.

He stated that he believed that the proposed four foot fence would be too high when consideration was given of the existing retaining wall. He also said that it would be a highly visible artificial barrier.

He also stated that there were no special circumstances in this case and that the request is a "want", not a "need" and that there is no undue hardship that needed to be addressed by the Zoning Commission.

Mr. Zyndorf suggested that Mr. Nugent hear comments from the Board before proceeding with what appeared to be a long presentation. Mr. Zyndorf stated that he did not disagree that the proposed variance would improve the appearance of both properties but since the Nugent home was most directly affected Mr. Nugent's opposition was particularly important.

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Mr. Zyndorf stated that if Mr. Nugent did not object to the variance the Zoning Commission probably would not object either, but since Mr. Nugent did object it was difficult to proceed.

Mrs. Straub pointed out that the Nugents spend very little time on the side of the house where the fence would be erected.

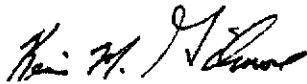
Mr. Gilmore stated that the Zoning Commission has frequently taken into consideration what the neighboring property owners have said and has been very concerned about the front yard setbacks.

Mr. Straub reminded the Zoning Commission of a recent request which was approved to place a wall in the front yard of a home on Underhill.

Melody Binion stressed to the Zoning Commission that this is a wonderful community and that this issue created a sad state of affairs. She stated that the fence would appear as if it belonged to the Nugent property and confirmed that she was opposed to the variance.

After additional discussion Mr. & Mrs. Straub agreed to withdraw the variance request.

It was agreed that the next meeting of the Zoning Commission would be on August 14. There being no further business the meeting was adjourned.



Mayor Kevin M Gilmore