

MINUTES OF THE REGULAR MEETING OF THE AMBERLEY VILLAGE
BOARD OF ZONING APPEALS HELD AT THE AMBERLEY VILLAGE HALL
MONDAY, MAY 7, 2012

Chairperson Richard Bardach called to order a regular meeting of the Amberley Village Board of Zoning Appeals held at the Amberley Village Hall on Monday, May 7, 2012, at 7:00 P.M.

The Clerk called the roll:

PRESENT: Richard Bardach, Chairperson
Rick Lauer
Larry McGraw
Susan Rissover
Scott Wolf

ALSO PRESENT: Scot Lahrmer, Village Manager
Rich Wallace, Police/Fire Chief
Nicole Browder, Clerk
Kevin Frank, Esq., Solicitor
Steve Rasfeld, Public Works Supervisor
John Eisenmann, CDS Associates, Village Engineer

ABSENT:

Mr. Bardach welcomed everyone to the meeting and led them through the pledge of allegiance.

Mr. Bardach asked if there were any additions or corrections to the minutes of the December 6, 2011, meeting that had been distributed. There being none, Mr. Wolf moved to approve the minutes. Seconded by Mr. McGraw and the motion carried unanimously.

Mr. Bardach asked if there were any additions or corrections to the minutes of the January 26, 2012, meeting that had been distributed. There being none, Mr. Lauer moved to approve the minutes. Seconded by Mr. McGraw and the motion carried unanimously.

Mr. Bardach asked if there were any additions or corrections to the minutes of the April 2, 2012, meeting that had been distributed. There was an amendment for page five to include the statement that Mr. Wolf noted that the board did not approve a group home. With the amendment, Mr. Wolf moved to approve the minutes. Seconded by Mr. McGraw and the motion carried unanimously.

Board of Zoning Appeals Case No. 1056

Mr. Rasfeld introduced the request from the Amberley Village Environmental Stewardship and the Public Buildings and Grounds Committees. The variance request

would allow the construction of a deer fence around the perimeter of the community gardens being established behind the old club house building on the Amberley Green property. The proposed fence exceeds the maximum allowable fence height per the Village Zoning Code.

Mrs. Merrie Stillpass, as Co-Chair of the Environmental Stewardship Committee presented additional details regarding the deer fence. She commented that the fencing is part of an effort to establish community gardens through a grant that was received from the Hamilton County We Thrive! grant fund. There are 39 garden plots. The goal of the We Thrive! program is to encourage and create health options in the community for residents to obtain healthier foods as well as promote active lifestyles.

Ms. Ronna Willis from Burning Tree Lane asked why the placement of the gardens was not further away from housing. She also asked why allow a higher fence here and not in other areas of the Village.

Mrs. Natalie Wolf as the Council Representative for the Environmental Stewardship Committee explained the three possible locations which were reviewed prior to the selection of the current location. Various obstacles were associated with each location and the selected location best suited the need for water and easy access.

Mrs. Rissover inquired about the history of fence variances in the Village. Mr. Rasfeld explained that prior variances were for areas that back up to the highway, corporation limits and tennis court fencing.

After discussion among the board, Mr. Wolf moved to approve the fence height request as submitted. Seconded by Mr. Lauer and the motion carried unanimously.

Board of Zoning Appeals Case No. 1055

Mr. Bardach announced that the board would reconvene the public hearing regarding the request from Congregation Sha'arei Torah for a conditional use permit for the purpose of constructing and operating a synagogue at 2400 Section Road.

Village Solicitor Kevin Frank conducted a group swearing-in of those who intended to speak during the hearing.

Mr. Bardach invited interested individuals to address the board.

Mr. Stan Cohen, 49-year resident on Royal Oak, expressed his concern for the age of the bridge and its ability to hold additional traffic, especially a fire truck. He also felt it was unfair to allow the use as submitted due to the impact on the Guyer property.

Mr. Kevin Murphy, 2326 Section Road, commented that he was opposed to the development because of the increased traffic, the opportunity to build elsewhere, and that the building would not add to the beauty of the village.

Mr. Mark Abel, 2504 Oakridge, expressed his concern for the lack of detail on the submitted plans. He urged the board to seek further detail prior to approval.

Mr. Bruce Lazarus, from North Whitetree, encouraged the board to ensure consistency when granting variances in residential areas.

Attorney for Mr. Steven Guyer, Tim Burke, provided a closing argument. He expressed that he felt this proposal would be inconsistent with the five other existing synagogues. He noted the drive access and variance issues highlight the inconsistent use. The fire code issue remains unresolved and he felt that the applicant had not met the three standards listed for conditional use permits under section 154.24.

Mr. Lauer asked Mr. Burke if the fire code is the board's authority to enforce. Mr. Burke agreed that it is beyond the board's scope to decide if a violation exists as it relates to the fire code; however, it is in board's purview to take it into general consideration.

There was some discussion as to the definition of a public building and whether or not the application meets such definition since the synagogue will not be open to the public.

Mr. Barrett expressed that this is not a zone change and is a permitted use with a conditional use permit. The use is not a commercial use. He felt that there was no credibility relative to economic impact. He reminded the board of the letter from James Heldman who lives next to the synagogue across the street from the proposed development site. Mr. Heldman's letter reflects positively on the synagogue and describes it as a positive impact on the area.

Mr. Barrett reiterated that the use is a very limited use and it is far less intense than the existing synagogues in the village. He commented that the bridge has a shared easement and he shared a copy of the case law from *Abrams v. Kneseth Israel Congregation* (copy attached), which he interpreted as supportive of commercial activity on the property. He noted that the applicant is willing to accept conditions for the use.

Mr. Lauer and Mr. Barrett discussed the burden of proof related to this development negatively impacting property values. It was agreed that the burden rests with the applicant. Mr. Barrett referred to the existing synagogues in the area and the letter from James Heldman. There was also discussion among the board regarding the easement dispute. Solicitor Frank clarified that any disputes related to the easement are between the owners and not the board. He also clarified that the board cannot interpret the fire code; however, the applicant has to adhere to the fire code.

Mr. Lauer asked if Chief Wallace had a chance to review the plans. Chief Wallace indicated that the applicant must meet the county's minimum fire code standards. He noted that detailed plans are needed for a proper review. Preliminarily, he would suggest widening the road, providing additional clearances, and the addition of sprinklers.

Ms. Shirley Werthaiser, 2321 Royal Oak, expressed her concern for the safety of the walkers in the area. She stated that there should be a path or increased safety because there are walkers on both sides of the street that are wearing dark clothing, which is difficult to see.

Mr. Yuden, 6885 Farmacres Drive, stated that he felt the synagogue would serve as an anchor in the community. Living close to the synagogue is convenient and saves time.

Mr. Bardach asked if anyone else wished to speak. The hearing was then closed and deliberations began. The board discussed at length the criteria and issues related to the application. After much discussion, Mr. Wolf moved to direct the solicitor to prepare fact-finding and conclusions to support an approval and a separate version supporting denial for the board to review. The approval criteria should include the requirement of separate access, enhanced landscape, elimination of the 12' lights, and pedestrian safety (crosswalk and/or path).

North Site District

Mr. Lahrmer reported that the board is ready to hold a public hearing on the draft of the North Site District. After the public hearing, it will be referred to council for it to hold a public hearing. Mr. Wolf moved to hold a public hearing on June 7 at 7 p.m. Seconded by Mr. McGraw and the motion carried unanimously.

Mr. Bardach stated that there being no further business, the meeting was adjourned.

Nicole Browder, Clerk

Richard Bardach, Chairperson