

MINUTES OF THE REGULAR MEETING OF THE AMBERLEY VILLAGE  
BOARD OF ZONING APPEALS/PLANNING COMMISSION  
HELD AT THE AMBERLEY VILLAGE HALL  
TUESDAY, APRIL 4, 2013

Chairperson Richard Bardach called to order a regular meeting of the Amberley Village Board of Zoning Appeals/Planning Commission held at the Amberley Municipal Building on Tuesday, April 2, 2013, at 7:00 P.M.

Roll was called:

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

ALSO PRESENT: Scot Lahrmer, Village Manager  
Kevin Frank, Esq., Solicitor  
Steve Rasfeld, Public Works  
Nicole Browder, Clerk

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 March 4, 2013, meeting that had been distributed. There being none, Mr. Wolf moved to approve the minutes. Seconded by Mr. McGraw and the motion carried unanimously.

Board of Zoning Appeals Case No. 1066

Mr. Lahrmer reported that Daniel Stadtmiller of 7656 Gwenwyn Drive requested a variance to allow for the construction of an accessory structure (shed) with the principal access facing the street and for an exception to the side and rear setbacks. The proposed shed would be located with 12 foot setbacks to both the side and rear.

This area of the Village is currently zoned as Residence 'A', single family. Section 154.12(B) & (C)-Accessory Structures - (B)'No accessory structure shall be erected in any side yard within a distance from the near side lot line less than the least width of the side yard required for the principal building and its principal access may not face the street, road, or highway.' (C) 'Accessory buildings may be built in a required rear yard not nearer to the rear or side lot [line] than the side yard requirement for such lot. Principal access may not face any street, road, or highway.'

The resident indicates it is his belief that the doors would not be visible from the road. The spacing between the subject house and the neighboring house to the north is approximately 15', the subject property's house has a side yard setback of

approximately 8' on either side of the house the shed is proposed to be located in the northeast corner of the back yard, approximately 150 from the right of way line.

While this neighborhood is zoned Residence A, the development was created in 1946 while still part of the county and subsequently annexed into the Village by Ordinance #95 dated 1/10/1949. The typical depth of the lots is 175' on the east side of the street and 195' on the west side of Gwenwyn.

The subject lot is 75' wide and 175' deep yielding an area of 0.31 acres. The subject lot width is half of the Residence 'A' minimum, the lot area is slightly less than 1/3 the required Residence 'A' minimum area. The side yard setbacks of the existing house are approximately 8' on either side. The Residence 'A' minimum side yard setback is 20'.

The limited line of sight between the existing houses along with the existing trees on the north side of the subject house, staff recommends the approval of the setback variances as requested where the requested 12' setback is larger than either of the two existing side yard setbacks of the house (approximately 8' on either side) in compliance with 154.67 (C). As for the request to allow the principal access to face the street, the impact on the neighborhood must be evaluated and considered. The potential impact of this proposal should be determined by the Board based upon the merit of this case.

Mr. Stadtmiller commented that most of the shed doors in his area face the street. He referenced his preference for front facing doors due to landscape design and security.

Mr. Lauer noted that due to the elevation and trees it would not be seen from the street.

After the board discussed the code intention was to keep contents from view, Mr. Lauer moved to approve the request as submitted. Seconded by Ms. Rissover and the motion carried unanimously.

#### Board of Zoning Appeals Case No. 1067

Mr. Rasfeld reported that the variance request from Temple Sholom at 3100 Longmeadow was for modification of an existing conditional use / permitted use and the installation of an accessory structure (garden with raised beds, benches etc) and a fence in excess of the maximum height in a front yard as defined by the code.

The request proposes two alternate locations with the submission indicating they are seeking to construct one garden. The garden is proposed to be approximately 30 feet in diameter either to the north (front yard) of the principal building and parking lots or to the southeast (front/side yards) as shown on the proposed plan. The request involves raised planting beds; benches, fencing in excess of the maximum permitted height of four and a half feet and is located in a front yard.

Based upon both the proposed locations of the garden, staff recommends consideration of the location to the north of the existing main building. The unusual lot configuration, having three front yards and the proposed use as a garden, staff recommends the northern location for consideration of the garden portion of this project.

The proposed setbacks for this accessory structure located in the northern option are approximately 175 feet from the Ronald Reagan Highway right of way north (front yard) and 70 feet from the side property line to the east and approximately 275 feet from the property line west (the back of the parcel at 8508 Ridge) not measured from the front ROW at Ridge Road due to parcel alignment. Village Code Section 154.14 Limits the height of a fence to four and a half feet in height and prohibits fences in any part of a front yard.

Mr. Chris Kraus was present to answer the board's questions about the variance request. Ms. Rissover inquired about the materials to be used in the garden's construction. Mr. Kraus explained the heights of the beds will vary from 24" to 6". He also explained that the deer fencing will be the same type of fencing the Village used on the Amberley Green community garden. The purpose of the garden is educational and will be integrated into the school and holiday services as well as donating foods to food centers.

After brief discussion among the board regarding deer fencing type and height, Mr. Wolf moved to approve Location E for the garden location and required that the type of deer fencing be the same as what is used at the Amberley Green garden. Seconded by Mr. Lauer and the motion carried unanimously.

#### Board of Zoning Appeals Case No. 1068

Mr. Lahrmer reported that John and Christine Doyle of 6439 Kincaid Road are requesting a variance to allow for the construction of an accessory structure (garage) with the principal access facing the street.

This area of the Village is currently zoned as Residence 'A'. Village Code states, "no accessory building shall have floor space in it greater than 1,000 square feet or 25% of the floor space of the principal residence located on the property where the accessory building is located..." This submission is in compliance for this code provision. The only provision of the code this proposed structure does not meet is in regard to the principal access facing the street.

The rear of this property, the area behind the proposed location, is impacted by topography. Therefore, moving this structure back into the lot further in order to rotate ninety degree to accommodate a side (south) entry garage would likely involve extensive earthwork or require a significant retaining wall. As the application indicates, to create a side entry by rotating the structure in-place, a new driveway apron would be required along with a retaining wall to allow enough room to establish a turning apron sufficient to access the south facing garage entry.

Granting the variance would avoid negatively impacting the mature trees and hill side on the south property line, or creating a significant fill and or retaining wall further back into the property, in addition to the fact that the proposed location has a setback of more than 260 feet and is approximately 16' higher in elevation than the street level.

Standing on Kincaid Road at the curb directly in front of the proposed structure, the lower 8'-9' of the proposed building would likely not be visible. Considering the topography behind the existing house, the distance and topography to the front right of way line and the lines of sight from the street, staff recommends this case be reviewed on its merits.

Mr. Doyle commented that his neighbor across the street submitted a letter of support for his variance request. He also received a letter of support from the Rushing's—another adjacent owner.

Ms. Rissover commented that the project would be a very nice improvement.

Mr. Dale Eisel, resident at 3266 South Woods Lane, spoke in favor of the improvement.

Ms. Ronna Schneider, resident at 6445 Kincaid Road, was in support of the addition.

Mr. Greg Roth, resident at 3278 South Woods Lane, was in support of the improvement.

After other discussion, Mr. McGraw moved to approve the variance request as submitted. Seconded by Ms. Rissover and the motion carried unanimously.

#### Board of Zoning Appeals Case No. 1069

Mr. Lahrmer reported that Mr. Dale Eisel, owner of 3266 Southwoods and two adjacent undeveloped parcels is requesting authorization to allow for the creation of a panhandle lot while consolidating two undeveloped parcels into one buildable acre-plus (1.187ac) lot. The letter of request states that the original house on the original parcel will be sold intact after the creation of this undeveloped buildable lot. The Village Zoning Code requires approval from Planning Commission to create panhandle lots in the Village.

After presenting the staff report on the request, the staff finds no reason to prohibit (or no reason not to permit) the creation of this flag lot due to area or setback regulations since it is in compliance with the minimum required standards. Overall, panhandle lots tend to generate arguments on both sides of the issue, those who want to encourage more compact development through the efficient use of land versus those who seek to preserve existing neighborhoods as they were developed. The authorization of a panhandle lot must be considered on the merits of each proposal on a case by case basis.

Mr. Dale Eisel made a presentation to the board on his request. He noted that he met with a builder in advance of purchasing the property and the topography was noted as a good fit. Very few trees would be removed as there is already a cleared area. A storm water runoff solution was presented along with a driveway plan without a retaining wall.

Ms. Beverly Baker, resident at 3260 South Woods Lane, was not in agreement with the panhandle lot. She felt it would devalue her property and does not fit with the character of the street.

Mr. Baker, resident at 3260 South Woods Lane, commented that he had no objection to the panhandle lot.

Mr. Greg Roth, resident at 3278 South Woods Lane, opposes the panhandle. He noted his letter of opposition that was submitted to the board. He reviewed his letter and points of concern with Mr. Eisel's intention to place the property for resale rather than live in the home.

Ms. Ronna Schneider, resident at 6445 Kincaid Road, strongly opposed the panhandle. She commented that no home should be built in the backyard of another. The zoning code should protect this area from the proposed change and preserve green space. It would devalue her property and decrease her enjoyment as well.

Mr. John Schneider, resident at 6445 Kincaid Road, opposed the panhandle. He noted he is 33 year resident and rather than move his family or build a new home, he chose to expand their current home over the years. He commented that the proposed home would devalue the surrounding properties.

Mr. Willie Baker, resident at 3260 South Woods Lane, is in favor of the panhandle. He noted the area to be development will be isolated and unseen by most.

Mr. Doyle, resident at 6439 Kincaid, commented that he is immediate adjacent to Mr. Eisel and is in favor of personal property rights. His only concern is flow of water, land erosion and removal of trees.

Mr. Eisel explained there is a plan in place for water flow to be directed toward a ravine. He also commented that he was not appreciative of being personally attacked by Mr. Roth.

Mr. Lauer inquired as to whether or not the home would be built in the clearing. Mr. Eisel stated that the limits of construction are within 12 feet of the home.

Solicitor Kevin Frank explained that legally the request is not a variance. He noted the code section regarding flag lots was 154.15. He stated that board's role is to consider if the proposal is reasonable and a desirable lot. No conditions can be imposed. No control lies within the board's jurisdiction to allow or disallow a pool or tennis court. The property owner would have to come back to staff for any such approvals and variance requests would be with the board. Items to consider on this proposal is drainage; amount of excavation needed; property values; affect on surrounding area and whether it is a buildable lot that is desirable.

Mr. Wolf stated that it may be suitable, but it would change the character of the neighborhood.

Ms. Rissover commented that this was not a subdivision of property. The lots exist separately already and she disagrees with the opposition.

Mr. Lauer stated that the board cannot deny economic value of the lots whether it is an appropriate site to build or not. He noted he is in favor of personal property rights as well.

Mr. McGraw noted it appears that the original lots show the egress being the smaller lot to the larger lot. Mr. Lauer stated he felt that was intent for a panhandle to be created.

Ms. Rissover moved to approve the request as submitted. Seconded by Mr. Lauer and the motion carried.

Mr. Wolf stated that he disagrees regarding the intent of the Village code pertaining to panhandle lots.

New Business

Mr. Wolf moved to request that staff look into other community codes regarding panhandle lots to allow for the board to propose new language to clarify the code on this subject matter. Seconded by Mr. Lauer and the motion carried unanimously.

There being no further business, Mr. Bardach moved to adjourn, seconded by Mr. Lauer.

---

Nicole Browder, Clerk

---

Richard Bardach, Chairperson