

MINUTES OF THE REGULAR MEETING OF THE AMBERLEY VILLAGE  
BOARD OF ZONING APPEALS/PLANNING COMMISSION  
HELD AT THE AMBERLEY VILLAGE MUNICIPAL BUILDING  
TUESDAY, SEPTEMBER 8, 2015

Chairperson Richard Bardach called to order a regular meeting of the Amberley Village Board of Zoning Appeals/Planning Commission held at the Amberley Village Municipal Building on Tuesday, September 8, 2015 at 7:00 P.M.

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

ALSO PRESENT:   Kevin Frank, Esq., Solicitor  
                                 Scot Lahrmer, Village Manager  
                                 Wes Brown, Zoning & Project Administrator  
                                 Nicole Browder, Clerk

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 August 3, 2015 meeting that had been distributed. Mr. Wolf moved to approve the minutes as submitted. Seconded by Ms. Rissover and the motion carried unanimously.

Case No. 1093

Mr. Bardach introduced the case for 9091 Ambercreek Drive and requested Mr. Brown provide the staff report.

Mr. Brown stated that the proposal included a tennis court, basketball court, batting cage, 12 20-foot high mounted lights (7 of which are in the required side yard), 12' in height fencing for the tennis and basketball courts and 16' in height fencing/enclosure for the batting cage and a 3' to 4' high retaining wall that will be located between the facilities and the east property line. The proposal requires both a "use" variance and an "area" variance under Village Code Section 154.67(A) and (B).

Mr. Brown stated that the proposed uses for the property should be reviewed for compliance with the Village Code. Under Section 154.25(A), the primary permitted use for this Residence A property is single-family. Under 154.25(B), certain "accessory uses" are permitted in Residence A, including "Accessory buildings and uses customarily incidental to single-family occupancy." Staff concludes the tennis and basketball courts are likely customarily incidental to the single-family use of the property.

Mr. Brown reported that it was suggested to the property owner that a variance is not required for these uses. Similar uses exist elsewhere in the Village, and the size of this property is likely sufficient to accommodate the uses. Staff is not aware of any batting cages currently in use in the Village, although one or two are known to have existed at one time or another. Mr. Brown commented that the Board may make its own determination of whether these proposed uses are customarily incidental to single family so as to be permitted. If not, a use variance would be required under Section 154.67(A).

Mr. Brown reported that the plans calls for the construction of a 12' in height fence on the north, east and south sides of the tennis and basketball courts and 16' fencing/enclosure surrounding the batting cage. Village Code Section 154.14 states fence, wall and hedges not exceeding four and half feet in height may be permitted in any required side of rear yard. A variance to Code Section 154.14 is needed to allow for the 12' and the 16' fencing for the facilities.

Mr. Brown reported that the minimum setback for an accessory structure in Residence A is 20' from the side and 20' from the rear property lines, or 10% of the lot width, whichever is larger. Mr. and Mrs. Guttman's property is approximately 232' in width, therefore the side yard setbacks for an accessory structure would be 23' from the side and 23' from the rear property lines.

Mr. Brown reported that section 154.52 Yard Exceptions, allows for an open unenclosed porch, deck, patio or paved terrace to project into the required side yard not more than half of the required side yard setback. In Staff's opinion the tennis and basketball courts are similar to an open porch patio, and therefore may be situated within 10-12 feet of the side lot line without a variance, as the owner has proposed. The proposed setbacks for the batting cage are 23' from the side and 39' from the rear property lines.

Mr. Brown reported that the plans propose the installation of 12 light poles around the recreational facilities with a 20' light mounting height. In staff's opinion the light poles meet the definition of a structure that must meet setbacks. A variance is required for the light poles to be located within the 23-foot side yard setback. Mr. and Mrs. Guttman's letter did not speak about the lighting but Mr. Guttman has expressed a desire to be able to utilize the courts after dusk.

Solicitor Kevin Frank administered a sworn oath for all persons intending to speak to the Board on this matter.

Mr. Bardach invited the applicant, Mr. Guttman, to present to the Board. Mr. Guttman apologized for upsetting anyone. He stated that his goal was to enjoy his property in a healthy and safe way through playing ball and not inside on electronic games. He stated that he wanted to prevent chasing balls into the roadway or neighboring properties.

He noted that he has heard the feedback and would like to modify the request. The fence height would be reduced from 12 to 10 feet around the tennis and basketball courts and the lighting would be eliminated. He stated that he strives to do things right and has engaged with professional engineers and contractors, and there will be an adequate amount of landscaping. He commented that he is a life-long resident and hopes to enjoy the next 35 years in the Village. He thanked the board for their time and consideration.

Mr. McGraw noted his concern for the additional hard surfaces being added which may cause additional storm water drainage.

Mr. Guttman's engineer, James Watson of McGill's at 3700 Park Drive in Sharonville, was present to address the storm water plan. Mr. Watson stated that he anticipated a small storm water drain in the side yard area that would pick up drainage and be hard piped into the existing catch basin in the front yard.

Chair Bardach commented that his concern related to whether the applicant's homeowner's association has an opinion on whether this proposal would be permitted under the association guidelines.

Chair Bardach asked for elaboration on the landscape plan. Mr. Guttman stated that it was designed by a landscape architect and the goal was to screen any fencing whatsoever that is visible from any angle especially along the side yard. He stated he was open to contingency plantings. Mr. Watson stated that he observed 7 evergreen and 3 ornamental trees from the plan and the remainder are shrubs.

Chair Bardach asked if the proposed batting cage would include a machine shooting balls, what type of ball (hard or soft), and the type of bats to be utilized. Mr. Guttman stated that there will be a machine to shoot the balls, which are rubber coated balls that create a different sound, and the bats will be aluminum.

Ms. Rissover asked for clarification on whether this was a commercial product or residential product. Mr. Guttman stated that there are commercial facilities with cages and springs for pitching arms. He noted this product is sold as a residential product and would have two wheels that spin and balls are loaded to shoot through the unit.

Chair Bardach asked if there were any residential batting cages or enclosures similar to this application. Mr. Guttman stated he had one on Burning Tree many years ago in the 1980s and 90s. Mr. Lahrmer stated that staff would not necessarily know by reason about any existing.

Ms. Rissover asked about the location selection being the side yard versus the backyard. Mr. Guttman stated that he felt it was the best way to preserve the open space of the backyard rather than cutting it off.

Chair Bardach reviewed the email received from the following residents regarding the application: Ceilia Cappozzo, Phillip Kleinfelter, Paul Glassman, Danielle Shrenk,

Carrie Lipps, James and Giselle Weller—all were opposed to the construction as submitted.

Next, Chair Bardach stated that those interested in speaking would be given the opportunity to do so.

**Mr. Mike Gressel**, 3050 Glenfarm Court, stated his appreciation for the reduced fence height and eliminated lighting, but did not agree that it was enough. He stated reviewed the Village code section that lists the criteria to consider for a variance and noted he did not agree that the applicant has met that criterion.

He noted his concern for the increased the storm water run-off. He stated he believed the effective height of the fencing with the retaining wall will result in a 14 foot fence and asked the board to be cognizant of the height. He stated that he was not aware of any other existing batting cage in the Village and believed that suggested this is not customary, but extraordinary.

Mr. Gressel urged the board to reject the request and noted the proposal would substantially change the character of the Village, set a precedent and open the door to similar requests. He stated he would prefer the Board to defer until the homeowner's association approves a plan with the applicant.

**Mr. Alan Eichner**, 7550 French Park Place, stated he was the president of the homeowner's association and explained that when people chose to live in a planned unit development (PUD) certain rights are no longer available to the property owner, such as boat parking or business trucks parked in a driveway. He state that the association has not received a submission to review, however, the association has mailed a letter to the applicant to bring attention to the required approval for the proposal. He stated he has not heard back from the applicant.

Chair Bardach asked about the process for the association's review. Mr. Eichner explained that the association will walk the area and talk with neighbors prior to consideration. Chair Bardach asked if the homeowner's association could turn down the proposal in its entirety. Mr. Eichner affirmed that the association has that authority.

Mr. Wolf asked if there was anything in the homeowner's association guidelines and rules requiring applicants to gain pre-approval from Amberley Village. Mr. Eichner confirmed there was no such requirement, and noted the association has 30 days to consider a request.

Chair Bardach asked if there was any impression as to how the homeowner's association might rule on this proposal. Mr. Eichner stated that due to the size of the project it would be rejected.

**Mrs. Susan Glaser**, 9055 Rolling Ridge Court, stated that she was against all three variances. She commented her concerns address aesthetics, fence height, screening, storm water drainage, and noise (understanding the lighting proposal was removed).

She stated that the commercial look in an upscale residential neighborhood would impact property values. She stated that the proposed complex is against the homeowner's association rules. She noted her concerns of setting precedent. She stated that she personally surveyed various residents in the Village who agreed that the reason one moves to Amberley is the quiet and rural ambiance. She requested the board refuse the variances and encourage the applicant to comply with the homeowner's association rules.

Mrs. Glaser commented that she was concerned about portable lighting or the lights from Mr. Guttman's home being utilized at night should the variances be approved. Mr. Wolf commented that he believed the applicant would comply should the board impose restriction on lighting. Mr. Wolf stated that it is common to play basketball at night with lights such as floodlights attached to a house. He also noted that additional limitations can be applied such as landscaping. Mrs. Glaser stated that landscaping can die and become difficult to maintain if disease occurs.

Mrs. Glaser also commented that a green, or any chain link fence, would be visually unappealing. She stated that she heard the D'Souzas never gave the final okay that they are happy with the proposal. Mrs. Glaser provided a handout of her comments along with a petition which are attached and made a part of the record.

Mr. Lauer stated that he appreciated Ms. Glaser's comments. He reminded everyone that the board does not have the authority to enforce the homeowner's association agreement, which is strictly between the members of the HOA. He stated that the board can enforce the Village Code and has two decisions to consider:

- whether the proposal is an accessory use, and;
- whether a variance for the fence height will be granted.

**Mr. Mike Shrenk**, 9067 Ambercreek Drive (next to D'Souza), agreed with Mr. Lauer that the issues are the fence and the lot area width. Mr. Shrenk stated that he did not agree with the staff report in that the use was customarily incidental. He commented that there is a difference between a full court and a hoop on a driveway. He stated he did not agree that 14 tennis courts and 7 basketballs courts out of 1500 households justifies the use as customarily incidental.

Mr. Shrenk stated that he opposes the setbacks and encouraged the board, due to the noise impact, to restrict times of use. He also noted that the chain link fence was very close to the street.

Mr. Lauer asked Mr. Shrenk if he would be in support if the proposal was situated in the backyard. Mr. Shrenk said he would be less likely to oppose it.

**Mr. Craig Coppozzo**, 9074 Ridgeway Close, stated that he believes the applicant has the best interests of his family in mind, and they have a beautiful house and landscaping. He stated that he moved to Amberley 6 years ago and has been delighted

with the recreational resources available. He commented that he would have a prominent view of the proposed complex and his view would change from 60 foot tall trees to a retaining wall. He stated he was worried about his property's value and the level of noise created, along with the storm water drainage (noting his yard is already soggy often).

Mr. Wolf inquired as to whether the County would automatically inspect the storm drainage plan. Mr. Brown stated that the Village is responsible for its own storm water management and it would be handled through the Village Engineer.

Mr. Coppozzo commented that he has had water issues in his basement and that is the reason for his concern regarding storm water run-off. He stated that he is not protected by the homeowner's association and must rely on the Village Code for protection.

Mr. Lauer reiterated the board's two issues to resolve. He stated that the tennis and basketball court, in his opinion, are customarily incidental as such exists in Amberley now, and is less sure about the batting cage. He noted all are recreational uses.

Ms. Rissover stated that having a tennis court visible to the street would not be detrimental to property values based on her real estate experience. Noise related to a tennis or basketball court is likely less than in her experience of a neighboring pool full of kids echoing through the woods.

Mr. McGraw suggested that the applicant consider combining the tennis and basketball court into one area. Mr. Guttman stated that he has considered it, however, the posts from the tennis court net comes into play and would interfere with the basketball court. Mr. Lauer stated that this is something that would be considered during the homeowner's association review.

Mr. Frank reminded the board that if it decides that tennis and basketball courts are not customarily incidental then conditions can be imposed. If it is decided that they are customarily incidental, then conditions cannot be imposed.

Mr. Lauer commented that it would likely be unsuccessful to argue that the tennis and basketball courts are not customarily incidental and outside the character of residential property. Mrs. Rissover agreed.

Mr. Coppozzo interjected that it is not customarily incidental to have both a tennis and basketball court on one property.

Mr. Lauer commented that some may have a tennis court and a swimming pool, or a tetherball court. He noted one cannot be limited over the other.

Mr. Eichner asked if the board approved it would it set a precedent. Mr. Lauer stated that each case is considered on its own merits.

Mr. Wolf moved to approve the basketball and tennis court under code section 154.25(b) as an accessory use permitted for residence A, which is customarily

incidental to residential property. Seconded by Mr. Lauer. The motion carried, McGraw voted against.

Mr. McGraw asked about the suggestion of combining the courts. Mr. Wolf asked Mr. Guttman if he would like to investigate that option and return to next month's meeting with that information. Mr. Guttman stated that he would have to go through the expense of re-designing and may not be approved.

Mr. Lauer commented that the batting cage is a close call. He noted that their idea of a recreational facility for a family is different than others. He stated the Village has a noise ordinance to address that issue. He commented that it is difficult to agree that this is a customarily incidental use for a residence.

Chair Bardach stated that the batting cage height is 14 feet. Mr. Brown noted that the original plan submitted a height of 16 feet which the applicant lowered to 14 feet.

Mr. Wolf commented that he does not believe it to be customarily incidental.

Chair Bardach stated concern for the noise and height of the batting cage.

Mrs. Rissover stated she agreed with Chair Bardach as there is a mechanized element which requires extra equipment that is not required to play the sport.

Mr. Wolf asked for a vote. Mr. Lauer commented that he had not thought about the mechanized aspect.

Ms. Rissover moved to deny the batting cage as an accessory use customarily incidental to a single family residence. Seconded by Mr. McGraw and the motion carried, Wolf voted against.

Solicitor Frank clarified that the board could consider whether to grant a variance to allow the use and consider the hardship language. Or the applicant would come back to apply for the use variance.

Mr. Lauer commented that he is not prepared to make a motion on the use variance.

Solicitor Frank stated the next item to consider would be fencing of the tennis and basketball courts.

Chair Bardach stated that landscaping needs addressed.

Ms. Rissover inquired as to the height of the retaining wall from the street. Mr. Watson (Mr. Guttman's engineer) reviewed the plans with the board and explained that it would look higher from the side and maintain grade elevation in the front.

Mr. Lauer commented that these types of fences are fairly common and have been approved in the past. He noted his support of property owner's right to develop and use their properties. He stated that when a proposal for something new or different is presented, it is a common reaction to be cautious. But the Village is to enforce the code as written, not to ensure that everything remains the same forever. He stated he was in

favor of the variance noting a safety issue with balls in the street and on neighboring properties. He also stated the Village already has fencing at this height.

Mr. Wolf moved to approve the variance for a 10 foot fence on three sides as proposed with adequate landscaping to screen the fencing to be approved by Village staff as part of the motion. Seconded by Mr. Lauer and the motion carried unanimously.

Ms. Rissover commented that the ultimate authority on the proposed plan resides with the homeowner's association and the Village's approval is not the final consideration and outcome.

There being no further business the meeting was adjourned.

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Nicole Browder, Clerk

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Richard Bardach, Chairperson