

MINUTES
Board of Building & Zoning Appeals
City of Willoughby Hills, Ohio

July 12, 2016

CALL TO ORDER: 8:03 pm

PRESENT: Chairman Frank Cihula, Vice Chairman John Klements, Mark Kotoch and Robert Bartolotta
ABSENT: James Michalski
ALSO PRESENT: Law Director Thomas Lobe, Building Commissioner Fred Wyss and Clerk, Katherine Lloyd

MOTION: Mark Kotoch moved to excuse James Michalski.
Seconded by John Klements
Roll call: 4 Ayes.
Motion passes. Mr. Michalski is excused.

DISPOSITION OF MINUTES

Minutes of June 14, 2016 are not ready yet.

CORRESPONDENCE

E-mail dated 6/30/16 from Building Commissioner to BZA re: Case 2016-03 for 29010 Chardon Rd.
Notification dated 6/30/16 sent to News-Herald re: July 12, 2016 BZA meeting.

Procedure for BZA was explained. People giving testimony will be sworn in by the Law Director.

CASE 2016-3

Mr. George J. Argie, of Argie, D'Amico & Vitantonio, 6449 Wilson Mills Rd. Mayfield Village, for Michael D. Gatto, for WHOB LLC, 29010 Chardon Rd. requests to amend the restrictions of the Quit-Claim Deed adopted by the Board of Building and Zoning Appeals in Case No. 1986-6, 7-22-86 and recorded in Vol. 234 Pages 458-466, and as amended in BZA Case No. 2006-4, 8-8-2006, recorded as Document No. 2006R035882 of the Lake County Deed Records in order to limit the Deed Restrictions to the rear portion of the property Zoned R-1. The property is located at 29010 Chardon Rd.
(PP# 31-A-008-F-00-028-0), is owned by WHOB LLC and is known as Squires Square.

Notice was mailed to property owners within 500 feet of said property. Drawings were available for review in the lobby of City Hall. Legal notice was advertised in The News-Herald on June 4, 2016.

The appeal was heard on June 14, 2016 and continued until tonight's meeting.

PRESENT: Michael Gatto (owner of WHOB LLC)

Attorney Argie will not attend tonight but he wants this matter to proceed. He asked the Board to waive his appearance and allow Mr. Gatto to represent himself. Mr. Gatto stated that he would proceed by waiver without Counsel tonight.

Some evidence was taken at the last meeting. A short summary was made. It was determined that this property is unusual in that it is split-zoned. The front part is commercial; the back part is residential.

Modifications to the Deed Restrictions that were initially placed in 1986 and amended in 2006 have been prepared and forwarded to Mr. Argie and Mr. Gatto. Those modifications are in front of the Board for its consideration tonight. The three primary issues are parking, lighting and a dumpster.

Witnesses: Gatto was sworn in last month and, for purposes of the record, he is still under oath. No other witnesses are planned for this meeting. If there are, the Law Director will swear them in accordingly.

The property has been surveyed with the proper legal description done by a registered surveyor with stakes placed at the demarcation line between the R-1 part of the property and the B-1 part of the property. The pins are benchmarked with the surveyor's number on them. Gatto Exhibits 1 and 2, 2nd Day Hearing, July 12, 2016 were entered by the applicant and marked. The 4 photographs, marked 1A, 1B, 1C and 1D, and the site plan by Colpetzer-Thomas, Inc. dated 8/20/1986 were discussed.

The Declaration of Restrictions will be developed by Chairman Cihula.

Public Portion for Case 2016-3 opened at 8:49 p.m.

Questions or comments were limited to whether the dumpster is allowed to stay in the back at the end of the Residential portion of the property or whether it should be moved up to the Commercial portion of the property

Aldona Weiss, 29026 Chardon Rd.

Asked that the dumpster be moved to the Commercial Zone and requested clarification of some of the other restrictions.

Arnold Weiss, 29026 Chardon Rd.

Asked exactly what the restrictions on lighting, fencing and parking would be. He questioned the type of vehicles permitted to park in the Residential portion with respect to the building tenants, whether a business that rents space in the building can park vehicles overnight and whether a non-tenant can lease a parking space.

Building & Zoning Commissioner Wyss clarified the restrictions.

Public Portion for Case 2016-3 closed at 9:29 p.m.

Board's Discussion:

The Board discussed amendments to page 3.

MOTION: Mark Kotoch moved to accept the Declaration of Restrictions as amended on page 3 as read by Counsel for Case 2016-3 for the property located at 29010 Chardon Rd.
Seconded by John Klements
Roll call: 4 Ayes.
Motion passes.

Declaration of Restrictions were accepted.

MOTION: Mark Kotoch moved to approve Resolution 2016-1
Seconded by Robert Bartolotta
Roll call: 4 Ayes.
Motion passes.

Resolution 2016-1 was approved. The Resolution was signed by all the Board members who were present. Law Director Tom Lobe and Building Commissioner Fred Wyss left at 9:38 PM
There was a 10 minute Recess from 9:39 PM to 9:49 PM.

CASE 2016-7

Case No. 2016-7 Jennifer Varro, 2890 S.O.M. Center Rd, requests a variance to construct a fence with a height of 9 ft. along the north side yard beginning at the front of the barn and extending back 220'. The request is due to the grade elevation difference with the adjoining property. Section 1133.11(e)(1)(B) of the Codified Ordinances limits fences to 6' in height above natural grade in side yards.

Notice was mailed to property owners within 500 feet of said property. Drawings were available for review in the lobby of City Hall. Legal notice was advertised in The News-Herald on July 2, 2016.

PRESENT: Jennifer and Scott Varro

Stated reason for variance request:

The fence is presently 6' high. We want to start even with the barn where the wood gate goes across from the barn to the fence and then taper up to 9' and take it back 220'. The fence will taper back down as the grade between the two yards evens out.

Board Members:

The 220' will end approximately next to the adjacent neighbor's chicken coop. It starts by the gate in the front by the garage, approximately equal to the front of the barn and about equal to the front of the neighbor's house. The remainder of the fence is east of that area. It will be the same type of fence that is currently there. [Picture shown]

The 9' height is requested where the current 6' fence is adjacent to the neighbor's residence because the topography is raised.

Public Portion for Case 2016-07 opened at 9:55 p.m.

Rosalba Antonelli, 2884 S.O.M. Center Rd.

A letter was submitted opposing the request. [Entire letter was filed with the minutes.]

Tony Antonelli, 2884 S.O.M. Center Rd.

Opposes the request. Submitted pictures.

Public Portion for Case 2016-07 closed at 10:03 p.m.

Applicant stated that the fence would not be 9' on the neighbor's side. Their land is higher. The proposed fence will be tailor made. Klements observed that the grade difference between the two properties appears to be about 2-3 feet

The Board voted to re-open Public Portion.

Public Portion for Case 2016-07 opened 2nd time at 10:11 p.m.

Tony and Rosalba Antonelli complained about machinery noise and manure smell.

Public Portion for Case 2016-07 closed the 2nd time at 10:20 p.m.

The Building Commissioner has advised Chairman Cihula that Ms. Verro is in full compliance with the Animal Ordinance.

MOTION: John Klements moved to extend the time limit for the meeting to 11:00 PM.
Seconded by Mark Kotoch
Roll call: 4 Ayes.
Motion passes.

The time limit is extended to 11:00 PM.

Mr. Kotoch asked if it has to be a 9' fence. Can it be an 8' fence? The applicants amended their request to 8'.

Mr. Klements observed that there appears to be approximately a 3' grade difference between where the fence is and where the neighbor's driveway is. The spirit of the Code with the 6' fence would be upheld. From the neighbor's side, an 8' fence would visually appear like a 6' fence because of the grade difference.

MOTION: John Klements moved that the Board approve Case 2016-7 as amended and grant a variance for an 8 foot fence along the north side of the property beginning at the barn extending back 220 feet.
Seconded by Robert Bartolotta
Roll call: Ayes unanimous.
Motion passes 4/0.

The variance for the 8' fence was granted. A building permit is required.

CASE 2016-8

Case No. 2016-8: Gary Marsh, 32315 White Rd., requests a variance to construct a fence with the height of 8' along the east side yard beginning near the back of the house & extending back 75'. The request is to screen the utility structures to the east. Section 1133.11(e)(1)(B) of the Codified Ordinances limits fences to 6' in height above natural grade in side yards.

Notice was mailed to property owners within 500 feet of said property. Drawings were available for review in the lobby of City Hall. Legal notice was advertised in The News-Herald on July 2, 2016.

PRESENT: Karen and Gary Marsh

Stated reason for variance request:

Your description is correct. We need it to block the view. We are also the 3rd house in from the freeway. We are covering just the section of the backyard by the pool. It starts at the back corner of our house and moves 75' down past the pool to where our seating area will be. Pool filter located on the corner is also covered in that area by the house. We had it professionally surveyed. Stakes are in the ground. Our property line is 8 ½ feet off the side of our house. It is cautiously marked at 8'. We will maintain on the other side of the fence.

Board Members:

The applicant has already been to the Planning Commission for approval of the pool. The Planning Commission referred them to the BZA for approval of the proposed height of the fence. The requested fence will protect one side of the pool. Everything else is a 4' high standard aluminum pool fence. The construction of the 8' fence is solid wood. The applicant agreed to follow what Planning told them.

Public Portion for Case 2016-8 opened at 10:39 p.m.

No Public Input

Public Portion for Case 2016-8 closed at 10:39 p.m.

MOTION: Mark Kotoch moved that the Board approve Case 2016-8 for the property at 32315 White Rd as requested and grant a variance to construct a fence with the height of 8 feet along the east side beginning at the rear of the house and extend back 75 feet toward the rear of the property in order to conceal the utilities.
Seconded by John Klements
Roll call: 4 Ayes.
Motion passes.

The request has been granted. You do need to go back to the Building Commissioner. As long as that fence is part of the pool fence, then its approval will be part of the pool approval.

UNFINISHED BUSINESS

Lois Mitch, 2567 Dodd Rd., asked to address the Board. “In the light of how late the last meeting went, I came when I hoped it would be a lighter night. In light of the reason I had to come before the BZA back in June stemmed from a neighbor dispute. All of the issues we had to address and vote upon were all items and structures that had been there for a considerable amount of time. I would like to see something where it cannot happen again, either to me or others. \$7,000 later, attorney’s fees and a whole year of my life, I would like to see some way that we could put some sort of statute of limitations for something that has pre-existed.”

Ms. Mitch was reminded that she did not get permits for those three particular items that were the subject of the appeal. This community has required a permit for 62 years to construct anything. Had she applied for a permit for the 160 sq. ft. accessory building, she would have been told then that she could only build 100 sq. ft. The situation was very unique. That is why this Board exists to deal with something that does not apply to the rest of the city in general.

NEW BUSINESS

None

CHAIRMAN'S COMMENTS

The clerk is asked to put on the meeting’s Agenda, after the last appeal and before Old Business, the statement: *“Decisions of the Board of Building and Zoning Appeals shall be final within the Municipality, except that an appeal therefrom may be taken to any court of record in accordance with laws of the State of Ohio, by any proper and interested party including the Municipality.”*

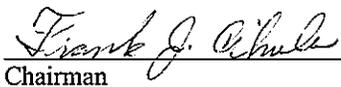
MOTION: Mark Kotoch moved to adjourn; seconded by John Klements
Voice vote: Ayes unanimous.
Motion passes 4/0

Meeting adjourned at 11:00 PM

*Note that it is the policy of the Board to make site visits to guide them in making their decisions.
Note that BZA meetings are recorded and recordings are considered a public record.*

“Decisions of the Board of Building and Zoning Appeals shall be final within the Municipality, except that an appeal therefrom may be taken to any court of record in accordance with laws of the State of Ohio, by any proper and interested party including the Municipality.”


Clerk


Chairman

10-9-16 kdl.

Date approved: 10-10-2016