

MINUTES OF THE BOARD OF ZONING & BUILDING APPEALS, JUNE 1, 2016

WEDNESDAY, JUNE 1, 2016, COUNCIL CHAMBERS, AVON CITY HALL

The meeting was called to order at 7:00 P.M. by Chairman Randy Fratianne.

Present: Bruce Klingshirn; Chauncey Miller; Mark Ladegaard; Kurt Schatschneider; Randy Fratianne; Pam Fechter, Economic Developer/Planning Coordinator; John Gasior, Law Director; Rick Schneider, Zoning Enforcement Officer; and Jill Clements, Secretary.

MINUTES OF THE REGULAR MEETING – MAY 4, 2016

A motion was made by Mr. Miller, seconded by Mr. Schatschneider to dispense with the reading of the minutes of Wednesday, May 4, 2016, and to approve said minutes as published. The vote was: “AYES” All. The Chairman declared the motion passed.

MARTIN DIFILIPPO APPEAL

Martin DiFilippo, 2719 Elizabeth St. is requesting a 5’ side yard variance from C.O 1262.08(c) (2) Minimum Yard Requirements to allow the construction of a driveway extension located at 2719 Elizabeth Street.

Marty DiFilippo is sworn in by Mr. Gasior. Mr. DiFilippo says that he would like to get the driveway concreted as the front is black top and the side is gravel. He would like to concrete the whole driveway and add more concrete to the side of the house as close to the property line as possible. Mr. Fratianne asks about the area around the building and it’s confirmed that all that is stone now and would like to make it all concrete. Mr. Schneider says the Mr. DiFilippo was granted a variance a number of years ago for the barn in the back. Mr. DiFilippo says he has letters from the neighbors and it was added into the record expressing they have no issues with the variance request. The letter read by Mr. Fratianne is Mr. Arkley and that is the neighbor that the extension would directly effect. Mr. Fratianne asks how far off the property line is the house and Mr. DiFilippo says its 13 feet off the property line.

A motion was made by Mr. Miller, seconded by Mr. Ladegaard to approve a 5’ side yard variance from C.O 1262.08(c) (2) Minimum Yard Requirements to allow the construction of a driveway extension located at 2719 Elizabeth Street. The vote was: “AYES” All. The Chair declared the motion passed.

JUSTIN DUNN APPEAL

Justin Dunn, 1548 Peach is requesting a 2’ side yard variance from C.O.1262.08(c) (2) Minimum Yard Requirements to allow the construction of a driveway extension for a basketball hoop located at 1548 Peach Drive.

Justin Dunn is sworn in by Mr. Gasior. Mr. Dunn explains that he filed for a permit to pour a small pad for a basketball hoop. Mr. Dunn says the pour was scheduled for the 20th and was hoping that the permit would be expedited and would like to have an inspection before the pour. The inspection was cancelled as they could not get out and the pour still took place. Mr. Dunn said that he did take pictures of the work prior to the concrete pour. Mr. Fratianne says it’s the 2 foot side yard setback and the front yard setback is also an issue. Mr. Fratianne says that any extension needs to be 10 feet from the right of way and they have made some changes to the front set back. The Board has made some arrangements and that is to allow them to go to the

MINUTES OF THE BOARD OF ZONING & BUILDING APPEALS, JUNE 1, 2016

sidewalk but cut it off at a 45 degree angle and even that Mr. Dunn would still not comply with requirement. Mr. Dunn says the extension is an oval. Mr. Fratianne says if the proper procedures were followed it would be an easier process and so many variances would not have been required and asks if things have been resolved. Mr. Fratianne says the zoning permit comes first before the building and that zoning permit would be when they would have mentioned to Mr. Dunn the issues. Mr. Klingshirn comments that he filed for the building permit on the 18th and the pour was on the 20th and asked when they applied for the permit did they give him approval. Mr. Dunn says he is not sure. Mr. Schneider says the building permit was granted and Mr. Dunn had to pay double the fees as he did not get inspections and follow protocol but a permit was issued after the building department reviewed the pictures supplied. Mr. Schatschneider says the only way to fix it is with a concrete saw. Mr. Fratianne then explains what the new formula they are looking to follow. Mr. Schneider says if they eliminate the apex on the bottom he could eliminate one variance and Mr. Fratianne says that he would still need two. Mr. Ladegaard says the idea of getting inspections are an important part of the process. Mr. Dunn says a neighbor was sending in a letter that states they have no objection as their kids are over playing now.

A motion was Mr. Miller, seconded by Mr. Klingshirn to approve a 2' side yard variance from C.O.1262.08(c) (2) Minimum Yard Requirements to allow the construction of a driveway extension for a basketball hoop located at 1548 Peach Drive. The vote was: "AYES" All. The Chair declared the motion passed.

A motion was Mr. Miller, seconded by Mr. Klingshirn to approve a 10' front yard variance from C.O.1262.08(c) (2) Minimum Yard Requirements to allow the construction of a driveway extension for a basketball hoop located at 1548 Peach Drive. The vote was: 4 "AYES" and 1 "NAY". The Chair declared the motion passed.

Mr. Fratianne wants Mr. Dunn to make it clear to any neighbors that this is not allowed and that there are certain requirements that they need to follow.

DISCOUNT DRUG MART APPEAL

Jim Doerr of Ellet Sign Company is requesting a 5' height variance from C.O. 1290.07 Maximum Height of Freestanding Signs to allow the construction of a new multi-tenant freestanding sign to be located at the corner of Nagel and Middleton Roads.

Jim Doerr of Ellet Signs and Mike McIntire of Drug Mart are sworn in by Mr. Gasior. Mr. Doerr says that the parcel of land on Nagel south of 90 has Levin and will have two other parcels as well. There is frontage on Avon and Nagel Roads and there will be frontage on Middleton Road. Mr. Doerr says currently there is no freestanding sign on site. Mr. Doerr says Drug Mart would prefer to have one larger sign instead of three signs. Mr. Doerr says the only way into those parcels will be on Middleton Road and it's a concern that people exiting the highway will not know what way to go and where to enter. Mr. Fratianne asks if the sign will be at Middleton and Nagel and it was confirmed yes. Mr. Doerr shows the proposed location and say it is 30 feet from the Middleton curb and 59 feet from the Nagel Rd. curb. Mr. Fratianne asks what they are doing with the property on the south side of Middleton Road and wonders if they will ask for a sign there. Ms. Fechter says this is the only monument sign they are requesting but there could be a smaller sign for the middle parcel when it develops on their property. Mr. Fratianne asks again about the south side of Middleton. Ms. Fechter says that there are no plans for the southern

MINUTES OF THE BOARD OF ZONING & BUILDING APPEALS, JUNE 1, 2016

parcel and Drug Mart is the property owner. Mr. Schneider says if it is to be developed, they are allowed a monument sign. Mr. Fratianne says the reason he is asking is if they allow this sign to be higher, the next guy is going to want to go higher too. Mr. Schneider asks if they staked out where the sign is going to be and says the utility department was out there marking off where the sanitary sewer is and the sign is right over that. Mr. Doerr says that needs to be considered when it comes to final placement of the sign and it might shrink up in length to accommodate that. Mr. Doerr says it may end up moving back closer to the private street that runs parallel with Nagel. Mr. Klingshirn says that he thinks the sign needs to be moved back as it's in the easement for the sanitary sewer. Mr. Fratianne asks what total footage is on the sign and it was determined they are within the square footage and their height request is 11 feet 10 inches and 10 feet is allowed. Mr. Doerr says the ground slopes and they want the sign to be seen. Mr. Schatschneider says that they talked about changing the height of the sign with the height of the road. Mr. Schatschneider asks if they know what the height of the road is and discussion is on what the possibility of what it could be. Mr. Fratianne says the elevation seems to be down and having that height of the sign isn't too unreasonable. Discussion continues about what the possible elevation of the area in conjunction to the highway is. Mr. Miller says if they are lower, the higher sign would be better than the wider and wants to make sure they stay off the sewer line. Mr. Ladegaard wants confirmation of the distance from the highway to Avon Road and it makes sense and is reasonable to him.

Bryan Witt of Speedway is sworn in by Mr. Gasior. Mr. Witt says that they have tried to work out a good sign that works best for the tenants and the marketing for Speedway. They came up with this sign and thinks it works best for visibility and pricing and allows them a better view of where they need to go.

A motion was Mr. Miller, seconded by Mr. Ladegaard to approve a 5' height variance from C.O. 1290.07 Maximum Height of Freestanding Signs to allow the construction of a new multi-tenant freestanding sign to be located at the corner of Nagel and Middleton Roads. The vote was: 3 "AYES" and 2 "NAYS". The Chair declared the motion passed.

SPEEDWAY, LLC APPEAL

Bryan Witt of Speedway, LLC and Michael McIntire of Discount Drug Mart are requesting a 2'5" height variance from 1270.08(b) Canopy maximum height is 20 feet to allow the construction of a proposed 22'5" canopy for a new gas station and convenience store to be located at the corner of Nagel and Middleton Roads.

John Ziegan of Richard L Bowen and Associates is sworn in by Mr. Gasior. Mr. Ziegan says that the board is familiar with the area and shows a colored rendering of the proposed Speedway. Mr. Ziegan shows a picture of the building elevations and the canopy roof is just below the building roof. Mr. Ziegan says it looks reasonable and they like the higher canopy allow them to help reduce the glare and they need the recessed lights. If the canopy is too low, a box truck or RV will cover the light and will shadow the area. Mr. Ziegan says that 16 feet is what works best from the bottom and they are asking for the variance since the earth isn't flat and then they slope the area to allow drainage. They request the variance for safety and allow the water to drain properly. Mr. Fratianne says that his concern was the lightening to make sure it doesn't shine onto neighboring property. Mr. Klingshirn says that across the street at Get Go they are

MINUTES OF THE BOARD OF ZONING & BUILDING APPEALS, JUNE 1, 2016

compliant and wonders why he can't follow. Mr. Ziegan says he cannot talk on Get Go as he doesn't know what they did. It was asked what Meijer's will be and Mr. Klingshirn says 20 foot and it's confirmed they have not submitted yet so it is undetermined. Ms. Fechter asks about the lighting that is used for Get Go and what the height of their building is in conjunction to their building for Get Go. Discussion continues on what elevation and height of the canopy is from end to end. Mr. Ziegan says it's impossible to have it one height without any slope. Mr. Schatschneider agrees with Mr. Klingshirn. Mr. Schneider says all the gas station canopies are 20 feet or less as they would have come in for a variance. Mr. Ziegan says that it's his experience that since the earth isn't flat and the ground varies that is why they ask for the additional 2 and a half feet. Mr. Fratianne says that after the discussions they are going to amend the variance to a 6 inch as Mr. Ziegan says they could live with that.

A motion was Mr. Miller, seconded by Mr. Ladegaard to approve an amended 6" height variance from 1270.08(b) Canopy maximum height is 20 feet to allow the construction of a proposed 20'6" canopy for a new gas station and convenience store to be located at the corner of Nagel and Middleton Roads. The vote was: "AYES" All. The Chair declared the motion passed.

RYAN HOMES APPEAL

Dave Pecorelli of Ryan Homes is requesting a 4'8" rear yard setback variance from C.O. 1262.04(d) (2) Yard Requirement to allow the construction of a new home to be 2507 Daegan Dr. s/l 45 Fairfield 3 Subdivision.

Katie Heper of Ryan Homes and Chuck Szucs of Polaris Engineering are sworn in by Mr. Gasior. Mr. Szucs says that about a month ago he was in for some variances for rear yard setbacks and it was advised that if they need more to come in with a specific home. Mr. Szucs says that for sub lot 45 they are asking for a 4'8" variance that backs up to the block with a bike path. Mr. Schatschneider asks is it for the morning room and Mr. Szucs confirms yes. Mr. Fratianne asks if they could put the morning room off the side and Ms. Heper confirms no that is not an option as that house plan is not an option.

A motion was Mr. Miller, seconded by Mr. Schatschneider to approve a 4'8" rear yard setback variance from C.O. 1262.04(d)(2) Yard Requirement to allow the construction of a new home to be 2507 Daegan Dr. s/l 45 Fairfield 3 Subdivision. The vote was: "AYES" All. The Chair declared the motion passed.

RYAN HOMES APPEAL

Dave Pecorelli of Ryan Homes is requesting an 11'2" rear yard setback variance from C.O. 1262.04(d) (2) Yard Requirement to allow the construction of a new home to be 2499 Daegan Dr. s/l 46 Fairfield 3 Subdivision.

Katie Heper of Ryan Homes and Chuck Szucs of Polaris Engineering are sworn in by Mr. Gasior.

Mr. Szucs says that sub lot 46 nothing is behind the house at all. Mr. Ladegaard asks what the block is. Mr. Szucs says the block is a pond for the detention of the whole subdivision.

MINUTES OF THE BOARD OF ZONING & BUILDING APPEALS, JUNE 1, 2016

A motion was Mr. Miller, seconded by Mr. Schatschneider to approve an 11'2" rear yard setback variance from C.O. 1262.04(d)(2) Yard Requirement to allow the construction of a new home to be 2499 Daegan Dr. s/l 46 Fairfield 3 Subdivision. The vote was: "AYES" All. The Chair declared the motion passed.

UN-TABLE ANETTE OSTER APPEAL

A motion was made by Mr. Miller, seconded by Mr. Schatschneider to un-table the Anette Oster Appeal. The vote was: "AYES" All. The Chair declared the motion passed.

ANETTE OSTER APPEAL

Anette and Kurt Oster are requesting a variance from 1051.06(a) Structures and Uses Prohibited in Riparian Zones to allow the construction of a new single family home to be located at 3410 Williams Court.

Anette and Kurt Oster, the property owners and Chris Howard of Bramhall are sworn in by Mr. Gasior. Mrs. Oster says they are seeking a variance to allow them to build their home on the parcel in question. Mrs. Oster says they are approximately 1500 feet north of the Creek and previously they lived 3 houses east of Williams Court for 29 years and have never had any water issues. Mrs. Oster has asked Mr. Schneider and Mr. Farmer who are neighbors to come share any knowledge they have about the property and area. Mr. Howard says that Council recently changes the ordinance to allow homes within riparian with a 1:1 compensatory storage. Mr. Gasior says correct it was 2:1 for compensatory storage. Mr. Fratianne asks if they complied with that and Mr. Howard says they have not done that yet. Mr. Howard says that the property is 1.37 acres and shows a map and explains what the colors are and what it means with certain elevation numbers. Mr. Howard says historically the property does not flood. Mr. Klingshirn asks on Williams Court by the ditch how far up does it come. Mr. Miller says that 2 years ago on May 12th that was a big storm and the highest he has ever seen the water and asks if the parcel got water. Mr. Howard confirms they did not get water and says the property owners next door would have a better answer. Mr. Howard says per the ordinance changing the compensatory storage has to be 1:1 and if you fill anywhere in the flood plain you need to move water to cover. The property is 1500 feet away and if you were closer it would make sense but in their location it doesn't seem reasonable. Mr. Klingshirn says that they shouldn't need a lot of fill as they are above and Mr. Howard says they will need to fill a small area but would need to create a hole in the back to replace that. Mr. Fratianne asks if there is a storm drain on the property and it was confirmed there is a 24" pipe. Mr. Howard says they will tie into the line and the storage is in the rear of the property. Mr. Fratianne asks what the issue the city engineer are and Mr. Howard are having a hard time mitigating. Mr. Howard says they ordinance has changed and isn't sure why they are in here. Mrs. Oster says she cannot speak on the specifics as she does not understand it all but at the last meeting with Mr. Cummins a comment was made that he would not acknowledge one of the lines without doing a study that could take some time. At that point they were told they should come back to the ZBA. Mrs. Oster says after 29 years being on Schwartz they never had any water and this house will line up with the location of their older house. Mr. Howard says that they were told their line could be fictitious and they would need to submit to FEMA and that is very time consuming. Mr. Howard says they will have to do a LOMAR F like the Vineyards did years ago. Mr. Fratianne asks if he feels that is more accurate then what FEMA is saying and Mr. Howard agrees yes, they did a hands on study.

MINUTES OF THE BOARD OF ZONING & BUILDING APPEALS, JUNE 1, 2016

Mike Farmer, 3400 Williams Court and Rick Schneider, 32370 Schwartz Road are sworn in by Mr. Gasior. It was added to the record that both of them are to testify as residents of the area and are familiar with the area. Mr. Gasior says they are not acting in their official capacity as City Employees.

Mr. Farmer says he built his house in 1996 and grew up at 32461 Schwartz Road where his parents still live. Mr. Farmer says in the years he has lived there and talking with his mom they have never seen water come past Randolph house which is right along the creek. Mr. Farmer has never had any water issues or flooding. Mr. Farmer says the storm last year, he and Rick took a ride down Williams Court there was no water up by their home. Mr. Farmer and Mr. Schneider show the location of their homes in conjunction to the parcel in question. Mr. Klingshirn says that he drove down Williams Court on a Sunday morning and stopped to talk with a woman walking her dog. Mr. Klingshirn asks if they ever get water and she says she was two houses from the Creek and says she has never had any water issues. Mr. Schneider says there are 12 houses and 17 accessory buildings between the ditch and the property that water would need to flow to get to the property. Mr. Schneider says the 35 years he has lived across the street he has never seen the property flood. Mr. Schneider shows some pictures from various locations with the flood plain map and shows how the houses are in the flood plain and do not get a lot of water. With all the pictures shown it was determined that the FEMA map in their opinion could possibly be inaccurate. Mr. Fratianne asks what they are determining with this. Ms. Fechter asks if they are looking at compensatory storage and it was said no. Mr. Gasior says what he thinks they have is the engineer is bound by what is on the FEMA map and he cannot do a waiver because it doesn't indicate a waiver based on the map. Mr. Gasior says that what was done was some evidence from people who live in the area despite the FEMA map indicates they have personally not witnessed any flooding on the property and are asking the body to grant the request to build on the lot without the waiver of the engineer. Mr. Gasior says if they grant the waiver it's on the evidence in front of them despite they are listed in the flood plain. Mr. Gasior says the parcels shown are irrelevant to what is going on in the area. Mr. Gasior says the evidence they are providing is in their experience they have not seen the property flood even though the FEMA map says it should. Mr. Gasior says they are in a good position to grant the relief despite the fact that the engineer cannot act as indicated until the issues are fixed which could take some time. Mr. Gasior says this is different since it's one lot and if a large developments comes in they will have to follow what is in the code. Mr. Gasior says the big thing is the testimony of the local residents is the best answer and suggests maybe the residents can go as far as saying they will not sue the City if their property were to flood in the future. Mr. and Mrs. Oster have no problem putting it on the record they will not sue the City if they ever flood. Mr. Klingshirn asks about flood insurance. Mrs. Oster says she has looked into that and if they need to get it, it is what it is, that is where they want to be. Ms. Fechter asks if they will still need to go to FEMA and it is confirmed by Mr. Howard they will still need to do a LOMAR.

A motion was made by Mr. Miller, seconded by Mr. Ladegaard to authorize the Oster's to move forward on their project providing all the engineering matches what the requirements are for a normal lot. Mr. Schneider asks about compensatory storage. Mr. Fratianne says yes it's eliminating that to move forward and there is no 1:1 compensatory storage. The vote was: "AYES" All. The Chair declared the motion passed.

MINUTES OF THE BOARD OF ZONING & BUILDING APPEALS, JUNE 1, 2016

UN-TABLE ROBERT SCHULER APPEAL

A motion was made by Mr. Miller, seconded by Mr. Schatschneider to un-table the Robert Schuler Appeal. The vote was: "AYES" All. The Chair declared the motion passed.

ROBERT SCHULER APPEAL

Robert Schuler, 3791 Williams Court is requesting a variance from 1051.06(a) Structures and Uses Prohibited in Riparian Zones to allow the construction of a new single family home to be located at 3791 Williams Court.

Ms. Fechter says that they have worked with Mr. Cummins and they have complied with the new requirements of the new ordinance.

A motion was made by Mr. Ladegaard, seconded by Mr. Miller to post pone the Robert Schuler Appeal indefinitely as the ordinance was amended and the City Engineer gave Mr. Schuler the approval to move forward. The vote was: "AYES" All. The Chair declared the motion passed.

COMMENTS

Mr. Fratianne says he doesn't know how they are going to resolve this. Mr. Gasior says the issue is the FEMA map and it's a complicated issue. Mr. Gasior says the City is working on diverting some water and it's very complex. Mr. Gasior says that is why the determined two different categories of property under 2 acres and then over 2 acres with certain requirements. The testimony of the local residents is very important when it came to the Oster's. Mr. Gasior says each case will be dealt with on a case by case basis. Mr. Fratianne says they will go into a Special Meeting after the meeting is adjourn to continue deliberation on the Avon 25 Appeal.

ADJOURN

A motion was made by Mr. Ladegaard, seconded by Mr. Klingshirn to adjourn. The vote was: "AYES" All. The Chair declared the motion passed. The meeting was adjourned at 9:04P.M

ATTEST

CHAIRMAN

DATE