

**NORTH RIDGEVILLE BOARD OF ZONING & BUILDING APPEALS
MINUTES FOR THE REGULAR MEETING HELD MAY 24, 2018**

TO ORDER: The meeting was called to order at 7:00 p.m. with the Pledge of Allegiance.

ROLL CALL: Present were members Mario Cipriano, Neil Thibodeaux, Alternate Planning Commission Liaison Jim Smolik, Vice Chairperson Linda Masterson, and Chairman Shawn Kimble.

Also present was Chief Building Official Guy Fursdon, Assistant Law Director Toni Morgan, Council Liaison Michelle Hung and Deputy Clerk of Council Donna Tjotjos.

MINUTES:

Chairman Kimble asked if there were any corrections to the minutes dated April 26, 2018. Hearing none, those minutes will stand approved as presented.

PLANNING COMMISSION REPORT(S):

Chairman Kimble addressed Planning Commission Liaison Jim Smolik and asked if there were any reports from Planning Commission.

Member Smolik responded no report.

OTHER REPORTS OR CORRESPONDENCE:

Chairman Kimble asked if there were any other reports or correspondence. Hearing none, he moved the meeting on to the public hearings. He asked the Clerk to read the application.

PUBLIC HEARINGS:

APPLICANT: Patrick Scullin, 32289 Chestnut Ridge Road

OWNER: Same

REQUEST: A variance to allow occupancy of dwelling without the required installation of a sidewalk per NRCO Section 1024.05

LOCATION: 32289 Chestnut Ridge Road in an R-1 District
Permanent Parcel No. 07-00-004-108-116

Application was read along with comments from Zoning Inspector Joe Voros.

Chairman Kimble asked if there was a representative present and if they could state their name and address for the record.

Patrick Scullin, 32289 Chestnut Ridge Road was sworn in.

Chairman Kimble asked the representative to give a brief explanation of his application.

Patrick Scullin explained they started construction of a house on Chestnut Ridge. They built a 4300 square foot ranch home with a five car attached garage. In the process of building the costs obviously went beyond their budget. It has created a hardship for them. The ordinance says that each new house has to have a sidewalk put in. For them; because of the location and the way the land is structured as they are downhill, they have already brought in over one hundred truckloads of dirt to try and compensate for the proper drainage. He stated it would cost over \$5,000 just to put a sidewalk in. The sidewalk would lead to nowhere. There are only two properties on the south side of the street that have sidewalks and his neighbor is one of them. There are no parks and there are no schools in that area. Just recently with the reconstruction of Lear Nagle to Chestnut, there were no sidewalks put in for that project. The bridge there is not wide enough and there will never be sidewalks there. Even if that street put sidewalks in, they would never have access or connection to the other side of Lear. He spoke regarding the drainage and if sidewalks were put in it would interfere with all of that. Mr. Scullin spoke to the Building Inspector and he said that he would grant the variance for this, but he didn't want to make a decision on this because he felt other people that he lives near should have a voice on this issue. Mr. Scullin knows all the neighbors and they weren't present.

Chairman Kimble stated for years, the practice with the city has been to require sidewalks when new homes are built. He knows that the ordinance has changed a bit through time. At one point there was a 1,000 foot measurement. His concern is that as a Zoning Board, they actually have to have an actual hardship in order to make a determination. He asked if the representative could explain a little more. He asked the applicant if his neighbor has a sidewalk in.

Patrick Scullin stated yes, that is correct.

Chairman Kimble asked where approximately the nearest sidewalk further from this location is.

Patrick Scullin stated down the street and several properties over. His frontage is roughly 400 feet. That is a huge section. He understands with new construction that sidewalks need to be put in if he was in a new development but considering the area they built in, it doesn't look like that street will ever have sidewalks all the way through. It would take a lot of movement in drainage. Again, once you get to the corner of Lear and Chestnut, there is nowhere to go because they didn't put sidewalks in with that project.

Member Masterson stated that the house seems to be sticking out of the ground and asked if there is a reason why they set the house at that point. She asked if it was because of the elevations. She asked if there was a requirement that he set the house at that elevation.

Patrick Scullin stated they had talked to the builder when they purchased the property that if you stand where the house is it is six feet. The neighbor next to them has a walk out basement and so, they asked if they could do the same as they wanted a basement. The builder stated absolutely not a problem. Well, it became a problem. They are literally up to 150 truckloads of dirt that had to be brought in to get them up to that level.

Member Masterson asked if there was a problem with the basement.

Patrick Scullin stated he felt that the builder made a mistake in what the depth actually was and so, when they did the small dig for the basement, they ended up being tall. They are adding dirt around and they aren't done yet. They had to wait until spring again for the people to start filling in.

Member Masterson stated that the applicant hired a builder. That builder came out and the applicant told him exactly what he wanted, which included a walkout basement and what the applicant didn't know was that the builder had to build the house so high in order to meet that expectation. This caused the applicant to have to put in a lot of extra dirt at a lot of extra cost.

Patrick Scullin stated that it isn't what they had envisioned.

Member Masterson asked if this was the first house they built.

Patrick Scullin stated no, it is actually the second.

Member Masterson asked if this one was the first one outside of a subdivision.

Patrick Scullin stated yes.

Member Masterson explained that the Chairman is trying to establish a hardship and maybe one of the hardships is that the builder didn't give the best advice and they have a lot of frontage.

Patrick Scullin stated the expense for the house has gone well over budget.

Member Masterson asked out of curiosity, if he would be willing to put a sidewalk in if there was a sidewalk to the other side.

Patrick Scullin stated if the city was going to put in sidewalks he wouldn't have an issue, but if there is only going to be a couple of sidewalks that lead to nothing, he doesn't understand why they would be required. He stated that anything that does walk on the road, which is minimal because of the traffic, they walk right passed his neighbor's sidewalk. It's not like they are walking on the side of the road and see a sidewalk and go walk on it. He showed the properties that are near him on the drawing he provided.

Member Smolik asked the applicant to elaborate on the drainage and the waterways not being able to facilitate putting in a sidewalk.

Patrick Scullin showed on the drawing a few areas where he believes the city or county put them in, which is for the water. He showed another section that look like sidewalks, but they aren't. They are installed for water quality management.

Member Smolik stated that it isn't on the parcel in question and asked if that was correct.

Patrick Scullin stated that it is directly across the street from them and then it is on the west of them as well.

Member Smolik stated that there was a security deposit down and asked if that was to finish the grading.

Patrick Scullin stated it is for the rest of the concrete work that they have to do such as the driveway and a patio. The house is pretty much ready to move in and he isn't allowed to move in until this sidewalk issue is resolved so, he is kind of homeless right now. He literally has to wait until BZBA resolves this. He stated either one way or the other; the issue needs to be resolved tonight. Either way, he is going to have to do what he has to do. If he has to put a sidewalk in, then he has to put it in.

Member Smolik stated that within the application, there was a topographic map (topo). He asked if that was the approved topo for the house.

Patrick Scullin stated that they hired a company to do the topo and the City Engineer approved it.

Member Smolik stated that it sounds to him that there is a lot more fill that needs to be placed here and asked if the applicant would be revising that topo.

Patrick Scullin stated that the numbers that are on the topo are the numbers they are going to build to. There have been some questions in reference to that and whatever that says is whatever they are going to make it. If you go passed the house now and obviously it's not done, they don't have the rest of the fill in, but it will be what Member Smolik is seeing on the topo. That is what they are required to do.

Chairman Kimble stated that the reason the ordinance is in place is so eventually, as time goes by, and homes are torn down and properties are developed, more and more sidewalks go through. In a perfect world sidewalks would be all over town, but in reality it is somewhat unrealistic. He understands the reason for having the ordinance, but there are certain instances where it simply doesn't make sense and there are random homes around town that have sidewalks just in front of them and truthfully in his opinion, they look odd and they stand out. He understands why the

applicant is here. It is a reasonable thing to request but from the Board's standpoint, but that doesn't necessarily mean that it is reasonable to approve. That is what is being worked out. He asked if there were any other comments from the Board members.

Member Cipriano stated he does travel down there all the time. If others there were going to do the same, they would have to come up quite a bit to the edge of the road to get a sidewalk there. There would have to be quite a bit of fill there to level it off and then it would drop off still. He understands why the city needs sidewalks but he is really not sure why there has to be one there when there aren't any others which is kind of a paradox, but it is quite a bit of remediation to get a sidewalk in there. He has put a lot of fill in, but if you look down the road a little bit, that is quite a drop. He addressed the Chief Building Official and asked if there was some requirement if someone puts in a sidewalk would that section of the sidewalk where there will be a drop off be required to be graded in order that the person walking doesn't fall off the edge.

Chief Building Official Fursdon stated to make it safe, absolutely.

Member Smolik stated back to the elevation as it doesn't necessarily need to be higher than the road, it can have a reverse pitch. In other words it could be a tad bit lower than the road. Traditional sidewalks are always higher than the road but in situations like this, it could be lower as long as the cross slope meets ADA requirements. He addressed the Administration and asked if there were any plans on a sidewalk program throughout town. He knows some City's initiate programs where they say this quadrant of the city will have sidewalks put in. They'll hire a contractor and assess the property owners. He asked if there has been discussion on that for this area of town.

Chief Building Official Fursdon stated not that he is aware of. They had a program for certain distances from schools, but he believes those sidewalks have all been put in.

Assistant Law Director Morgan stated from time to time, this subject comes up because everyone wants sidewalks and they are incredibly expensive especially when you have to go back in. The plan has never come to fruition yet. They would like one, but there isn't one in place at the moment.

Chairman Kimble stated in a perfect world where the City had endless funds to tap into, he is sure that could happen, but he doesn't see that happening any time in the near future.

Member Smolik stated that the City wouldn't pay for it, the property owner would be assessed.

Chairman Kimble asked if there were any other questions from the Board Members. Hearing none, he asked if there was anyone in the audience that would like to speak on behalf of this.

Dennis Oblak of 35451 Chestnut Ridge Road was sworn in. He stated there was a bunch of stuff brought up here and everyone likes sidewalks just as the Assistant Law Director pointed out and they are incredibly expensive. These people are building \$300,000 to \$400,000 homes and they knew it going in what they had to do. He has a five year old son that lives near there who would love to walk on the sidewalk. His neighbor is in the same situation as he has 400 feet of frontage and somehow he didn't put one in. That address is 35399 for the record. He didn't pour his sidewalk and he received his occupancy permit. The Assistant Law Director indicated that there is no plan in place to do anything, but he went in and spoke with Mr. Armbruster regarding a plan to do it, which would be cost effective. He is a truck driver and went to work for a company for one week before he realized he couldn't do it. He found that they are throwing away 18 yards of concrete a day. They are dumping it at the salvage. He presented it to Mr. Armbruster when he stopped in to complain about the fact that his neighbor didn't pour his sidewalk and yes, there is a way as they are dumping 18 yards or 10 – 20 yards a day over at Reeds Salvage and the city can simply have two men and a dump truck and they could be working on it. He suggested that the applicant be granted some time to do it because it will be difficult, but it has been an ordinance for 24 years and he asked if the public shouldn't expect something by now and shouldn't the city have put something together and done something. He has offered that suggestion of getting the 18 yards that is dumped on a daily basis. He stated that the other salvage company on Sugar Ridge has the same concrete being dumped there too. He doesn't know whether or not Mr. Armbruster has acted on that suggestion yet. He has lived on Chestnut Ridge for 15 years and never has he had a trick-or-treater. Kids are too scared to walk down that road and there is nowhere to go. He stated that the city has started a plan and they have to follow through with it. It is a safety thing for the children, everyone likes them and this has been a law. It ties the community together. He stated that these homes are being built in the hundreds of thousands of dollars. These people can certainly afford to put a sidewalk in. This plan can be done. He then passed around pictures of his neighbor's house stating that he can pour all this brick and stone, but he can't put a sidewalk in. He proceeded to ask about the people that have already put in sidewalks. He asked if the city was going to reimburse them. He stated if you pass a law, you need to follow through with it.

Chairman Kimble stated the purpose of this Board is to make exception to the law and or ordinances. That is the whole purpose this Board exists. He pointed out that it doesn't mean that the Board grants every variance because they clearly do not. It isn't up to this Board as this Board is not the City Administration by any means, the members are all volunteers on this Board and none of them are paid employees. It isn't up to this Board to reimburse a neighbor. They have to look at every application as its own individual entity.

Dennis Oblak stated that they all knew this going in.

Chairman Kimble stated it was a valid point.

Dennis Oblak stated that people were forced to do it.

Member Masterson asked if the resident lodged a complaint with the Building Department.

Chief Building Official Fursdon asked the resident how long ago was his neighbor's house built.

Dennis Oblak stated that he took occupancy in 2016.

Chief Building Official Fursdon asked if it was a brand new house.

Dennis Oblak stated yes. He took occupancy officially July of 2017.

Chief Building Official Fursdon stated that two things could have transpired. The Building Department may be still holding his deposit or the former City Engineer signed off on it and didn't require the sidewalks and he would check to see which applies to this. There is a provision in the ordinance for the City Engineer to sign off on the sidewalk requirement.

Member Masterson recommended that the resident follow up with the Chief Building Official.

Dennis Oblak stated that he has already talked to them.

Member Masterson asked if he talked with Mr. Fursdon as he is the Chief Building Official.

Chairman Kimble asked if there was anyone else in the audience that would like to speak on behalf of this matter. Hearing none, he opened the floor to the Administration.

Assistant Law Director Morgan reminded the Board as she has numerous times to look at the Duncan factors and of course the size of the variance. This application is 100 percent and this is a pretty hefty one to look at. It is less a variance and more an abolishment.

Council Liaison Michelle Hung read section 1024.05 for the Board members. This ordinance went into effect in 1994 and her belief is uniformity at this point. If the city is requiring it of one, and she understands the hardship, but believes the Board should consider staying uniform.

Chairman Kimble asked why there aren't sidewalks on Bagley Road in front of the apartments.

Chief Building Official Fursdon stated that the Board would have to ask the Administration as he didn't have the answer to that. He had nothing to do with that.

Chairman Kimble stated he figured as much but thought he might by chance know.

Chief Building Official Fursdon stated like he said there are exceptions to this and it is difficult to enforce. He understands that the city wants sidewalks but for twenty-six years they have tried to wrap their head around a way to get sidewalks. The only way to truly do it is bite the bullet

and get the property owners to agree to an assessment. Even if this gentleman was granted a variance, it would still be his responsibility in the future to put them in because the City isn't going to go and put sidewalks in for one when they haven't done it for anyone else in the past.

Member Masterson stated that in the last case that was being spoke of it was indicated that there could be a sidewalk deposit for that one. She stated she couldn't understand why these people who built a brand new home are not allowed to occupy their house if a sidewalk isn't put in.

Chief Building Official Fursdon stated that is a misinterpretation of that ordinance from his department. He can occupy the house. He is holding a sidewalk bond. He is holding a grading bond and if not, the Building Department will ask for that before he can occupy. But he can occupy. He stated that they let people move in houses in the winter time all the time with no driveway or sidewalk, otherwise they would be without a house for three months.

Patrick Scullin stated they requested a permit for occupancy and the first thing the Inspector told him was that even if everything passed, he would not be granted occupancy unless the sidewalk was put in.

Member Masterson asked who told him that.

Patrick Scullin stated he didn't know the Inspector's name.

Chief Building Official Fursdon stated that was his backup while he was out sick. If the applicant makes that request to him, it will be granted. He stated that they are reading that ordinance but they don't have 26 years of experience in how we handle things here in the City of North Ridgeville. Every winter, the Building Department has issued occupancy permits for dozens of homes; otherwise they wouldn't be moving in until spring.

Patrick Scullin stated he was shocked when he heard that as well.

Chief Building Official Fursdon apologized and stated the Inspector is new.

Patrick Scullin stated that he was just doing what they told him to do and here he is asking for a variance.

Member Masterson stated that the applicant does seem to have several hardships and as the Chief Building Official stated, there is a sidewalk bond. She stated that if the applicant is putting in all this grade, he wouldn't want to put a sidewalk in until the fill settles.

Chief Building Official Fursdon stated unless he compacts it, which can get even more expensive.

Member Masterson stated that the applicant thought that the builder was giving him good information and she wasn't trying to defend this case. She stated that the hardship is that maybe the builder gave him very bad advice.

Member Cipriano addressed the Chief Building Official and stated that it is within the ordinance for the other Inspectors to make a decision not to require a sidewalk as he mentioned. He asked what would be the criteria that they might use to grant that.

Chief Building Official Fursdon stated there are two provisions. Under 1224.06 (B) 5 states compliance is impractical due to site conditions, safety concerns or engineering concerns as determined by the City Engineer and documented in writing. Number 6 states extreme financial hardship if it was to result that the land owner is indigent or would become indigent if we required to install the sidewalk as determined by the Safety-Service Director and documented in writing.

Member Cipriano stated this is done by the Engineer.

Chief Building Official Fursdon stated that one is done by the Engineer and one is done by the Safety-Service Director.

Member Cipriano asked if the applicant spoke to the Engineer.

Patrick Scullin stated that he spoke to him and he said that it was possible for him to grant that variance, but wanted the Board to have a say so. He stated he didn't want to make the decision. He stated he would rather him seek a variance from the Board.

Chairman Kimble stated that the term uniformity has been discussed here and stated that this ordinance was written back in 1994.

Chief Building Official Fursdon stated it has been amended several times over the years.

Chairman Kimble stated that if everyone here was to look and see if every structure that was built between that time and now was guaranteed to have a sidewalk no matter what the conditions were, he believed that this Board would be in a slightly different ball park than what they are in right now. There are a number of areas that he can think of off the top of his head where houses have been built or subdivisions have been built, different structures that have gone up, that do not have a sidewalk; for whatever reason that may be, it doesn't make sense. He understands that if there was a plan put together where the city was going to put all these sidewalks in and assess the home owners, he is sure the applicant would be more than happy at that time because a sidewalk would make sense. Currently, today, that plan does not exist and it would be great for the kids to go trick-or-treating down the road. He lives on a road where there isn't a sidewalk on his side of the street and kids don't come to his side to trick-or-treat but end

up going on the other side because there is a sidewalk. He understands the comments made by the resident but he doesn't necessarily know if it is his responsibility today or to be truly fair to be forced to put this in when there is no other sidewalks and there is no other plan. Say you do put sidewalks in and decades later; this plan does come to fruition the sidewalks would need to be replaced anyway. The applicant's request seems to make sense to him.

Member Smolik addressed the Chief Building Official Fursdon and asked when the topo was approved for the house; it doesn't seem to show a sidewalk. He asked if that was correct.

Chief Building Official Fursdon stated that he didn't see one on the topo either but the builder did file a sidewalk deposit. It was in the form of a bond. It was a bond deposit.

Chairman Kimble asked if there was anyone else in the audience that would like to speak.

Bruce Abens, Ward 3 Councilman, of 9371 Kenmore Way was sworn in. He pointed out that there are several properties along Chestnut Ridge up for sale. He stated that if the Board grants the variance tonight; he suggested the Board be prepared as those folks will come in front of this Board asking for the same variance. One of the reasons for this ordinance was to start North Ridgeville down the path of putting in sidewalks. He asked how you eat an elephant... one bite at a time. The sidewalk issue is the same thing...one bite at a time. He understands that it is an extra expense, but if you go into the developments, everyone there had to put in sidewalks. He has had a number of residents along Sugar Ridge, Island Road and Chestnut Ridge call him asking for sidewalks. Right now, the city is actually putting in sidewalks, a little at a time along Center Ridge and over on Aurensen. When a new house does go in a sidewalk should be required. Eventually, it may take 20 to 30 years but at least there is a start with something. It is just one of these costs for an individual homeowner to have to pay as part of building a home. He hears all the time that the City is going to pay for it. The City is not going to pay for it unless you want to pay more in taxes. He restated that there are a number of properties along Chestnut Ridge Road that are up for sale and by setting a precedence tonight, they may have to grant more variances for this very same thing.

Chairman Kimble stated that the Board treats every individual application as its own entity. They don't tolerate going by precedence.

Member Masterson stated that the city may have caused this applicant to overreact and ask for this variance. Had the person that was in charge.... This seems to be an excessive requirement from the person who is covering for the Building Official when he was out on medical leave. She believes that there has been a mistake. It shouldn't have gotten to this point.

Chief Building Official Fursdon stated that has nothing to do with the sidewalk and whether the Board grants the variance or not. The occupancy should not have been denied, that is correct. The Building Department had paperwork in place to allow that.

Member Masterson asked if the Board should table this then.

Chief Building Official Fursdon stated that they are the Board; they can do what they want and added that the topo that Mr. Smolik pointed out was approved by the former City Engineer Scott Wangler. The current City Engineer had nothing to do with its approval and as a new Engineer; he may not have felt comfortable trying to waive any requirements with this and referred it onto the Zoning Board for a variance.

Chairman Kimble stated that alone is somewhat of a hardship. There was one City Engineer who approved a topo for him to start construction without a sidewalk and the new Engineer comes in and says that it is needed.

Chief Building Official Fursdon asked the Board to remember the fact that they did put up a sidewalk deposit as a bond.

Member Masterson addressed Chief Building Official Fursdon and asked how the drawing says that it is approved if this topo isn't signed.

Chief Building Official Fursdon stated that it is on there.

Member Masterson asked where.

Patrick Scullin stated as far as the bond that was posted, the initial drawings didn't have the sidewalks and the bond was posted when they were told that they had to resolve this issue. It is his understanding that the bond is for the concrete for the driveway.

Chief Building Official Fursdon stated that the driveway has nothing to do with that. It was strictly a sidewalk bond. The driveway and anything else with the grading of the lot would be covered under the grading bond, which is a \$2,000.00 bond by city ordinance and he hasn't been asked as to whether that was posted as the grading has not been complete.

Patrick Scullin stated that he did post the one for the sidewalk because they wanted to get an occupancy permit. He posted the bond because that is what was holding them up from an occupancy permit.

Chief Building Official Fursdon stated that we have those bonds and if we passed the inspections down there, there is no legal necessity for him not to issue the applicant an occupancy permit.

Patrick Scullin stated that everyone keeps saying that they knew a sidewalk had to be put in, but he had no idea. When he purchased the property, shame on him that he didn't know about the ordinance, but he looked at it as there were no other sidewalks. He understands about the

thought in putting sidewalks in but obviously, when the city put the project in at Lear and Chestnut Ridge, they didn't put sidewalks in. That would tell him that the city isn't planning putting a sidewalk there. Even if he puts a sidewalk in and everyone else does, it will leave that corner on Lear and Chestnut without a sidewalk.

Assistant Law Director Morgan addressed the Chair and asked if the design of the driveway would differ depending on whether there was a sidewalk going in or not.

Chief Building Official Fursdon stated that the only way the driveway would change would be dependent on the elevation the sidewalk was set at. If they raise it up higher than the street then the driveway will go up like a roller coaster with the apron and then down in or they will have to put a lot of fill in there to get back to the house. If they brought it down then it would be more gradual. It wouldn't look like a roller coaster ride.

Assistant Law Director Morgan asked if the applicant needed an answer to the question before the driveway goes in.

Patrick Scullin stated no, the driveway is all set. One way or the other, sidewalks won't affect the driveway.

Chief Building Official Fursdon stated that he will either have to ramp the sidewalk up to the driveway or build everything up to run it into the driveway.

Council Liaison Hung stated that she spoke of uniformity before and Mr. Abens spoke about that. When these issues come up; as representatives of the City they start looking around. She drove from Route 83 to Root Road on Lorain Road and she can see Mr. Abens point because clearly you can see some of those homes were built after 1994 and the sidewalks were put in at different times and for the most part, the south side there is a pretty good connection and so, she believes it was a good start at that time, which eventually connected up and uniformity will come but the zoning ordinance is in place for a reason.

Chairman Kimble stated that yes, if that ordinance had been followed from 1994 until today, 100 percent without question; he believes it would have made their decision a lot easier. But the weighing factor in his mind is that there are places in the city, new places in the city, that for one reason or another were built and not had a sidewalk installed. He doesn't know the specific details as to why and doesn't want to point any fingers, but the facts are that there are places built that have no sidewalk that have been done in the last few years. The point he is trying to make is the ordinance has not been followed.

Member Cipriano stated that he respectfully submits that as the Board considers each application de novo, that he doesn't know a reasonable person that would articulate the thoughts that the Chairman has but everything is decided de novo and it he doesn't think that the criteria for the

decision should be whether or not it has been followed in the past. The Engineer can make an exception for sound engineering reasons, and those are his thoughts regarding other parts of the city even relevant to this application.

Dennis Oblak provided suggestions on all those structures that were built after 1994 without sidewalks. He asked that the applicant be given time to install a sidewalk as he has to bring in dirt. He can live in his house and bring it in later on. He stated that the city has to clean up their mess. Anyone since 1994 that hasn't put a sidewalk in has to be made to do it.

Member Masterson addressed the Chief Building Official and stated as she recalled when she worked for a builder that her approved topo showed a sidewalk on it. She knows that this topo is not the approved topo and asked if the approved topo signed by the Engineer shows the sidewalk.

Chief Building Official Fursdon stated he doesn't believe it shows a sidewalk. He stated he could go down and print a copy of it for the Board.

Member Masterson addressed the Chairman and asked if the Board could take a five minute recess to see what Mr. Wangler approved.

It was moved by Kimble to adjourn to recess.
MOTION CARRIED

Meeting recessed at 7:50 p.m.
Meeting resumed at 7:55 p.m.

Chief Building Official Fursdon returned with the topo. There is no sidewalk indicated and the City Engineer's signature is there for approval.

Chairman Kimble stated that Mr. Fursdon did provide the topo and it appears that it is the same that is in the packet, but this one does have the City Engineer's signature as an approved topo without a sidewalk.

Member Cipriano asked if that is exercising the Engineer's prerogative under the ordinance to waive the requirement. He asked if that is what is being said here.

Chairman Kimble stated that it would be hard to know definitively what Mr. Wangler was thinking but his experience with him is that he is a very particular Engineer and it isn't like he would accidentally miss and sign off on a topo and forget to notice the sidewalk wasn't there. He would be remiss to say that happened. So, he is sure that he signed off in his mind at that point and had some sort of specific reason why the sidewalk would not be required.

Member Cipriano addressed the Chief Building Official and stated he knows that what he was about to ask was an Engineering question, but if such a sign off occurs, what is the formal process for that. He asked if there was something that they sign that says they give approval for this and is it recorded in order to exercise that under the ordinance there would have to be a record.

Chief Building Official Fursdon stated that he signed the topo as approved.

Assistant Law Director Morgan stated that is the only thing we have.

Chief Building Official Fursdon stated that he couldn't assume what he thought. Mr. Kimble is correct, he was very thorough and if things were required and he would have usually noted that and asked them to do that, but he didn't want to put words in his mouth. However, we have a sidewalk deposit bond, but he didn't remember asking for that. If he would have looked at that topo, he would have assumed the City Engineer wasn't requiring the sidewalk. A year ago, I don't remember the thoughts that he had.

Member Cipriano stated he needs to get to a place where it is not a matter of recollection or knowing what the person thought. He is asking very specifically what constitutes the exercise of that Engineer's authority in relation to the ordinance; he asked what document proves that.

Assistant Law Director Morgan stated what Member Cipriano is asking is to be the judge and jury of what may have been in the Engineer's mind. All we know for a fact is that he was a thorough City Engineer and he approved a topo without a sidewalk, but beyond that she wouldn't venture to guess what was in his mind. There is nothing specifically required by the ordinance. The wording says that the City Engineer has the authority to do that. It does say it has to be in writing, but the drawing is considered a writing as well. So, would it qualify if someone wanted to take it that far, it is for a judge to decide and that is for the Board of Zoning and Building Appeals to decide whether they are satisfied with that and she wouldn't venture as far as giving a legal opinion on that. She doubted if there was anything in case law that covers it and that is part of why this Board is here. It is part of the Board's discretion to make those decisions and to interpret those ordinances for us and that is why the Board is here and why the Board is appreciated.

Chairman Kimble stated that case law sure makes it easier.

Member Cipriano stated that it seems to him if that is an official document and it was signed by the Engineer; he didn't care what was in his mind, her mind and he doesn't even have to know them, but if that is a document as we are talking about in ordinance and empowerment in that ordinance for someone to take a lawful action, then there has to be something to sign off on to record that action, and if that is what the Board has, then that is an action.

Member Smolik addressed the Chief Building Official and asked when was the bond posted for the sidewalk. He asked if that was recently.

Chief Building Official Fursdon stated he didn't know 100 percent, but he believes that was posted when the permit was issued back in July of 2017.

Member Smolik stated then that might nullify the fact that Scott waived the sidewalk if they posted a bond.

Chief Building Official Fursdon stated he didn't have the answer for that but he knows that the builder has built in the city for a number of years and maybe he may have assumed. Like he said earlier, he didn't remember if he asked for the bond because they can either put up a bond or a cash deposit and there was nothing in the computer that showed a cash deposit was put up, but he was told by his staff that the bond was put up for the sidewalk. He did not know how that bond arrived to be there.

Member Smolik asked if the bond came in last week.

Chief Building Official Fursdon stated no.

Member Cipriano asked if it wouldn't ordinarily be the case where the application was completed that it would be a normal process to require a bond for the sidewalk and then subsequent to that when the Engineer looks at the property and decided to exercise their discretion under the ordinance to waive it. In other words just the existence of a bond itself is not a conclusion. He asked if it was there every time someone builds a house for a sidewalk.

Chief Building Official Fursdon stated if he understands his question correctly, the decision whether or not you have a sidewalk deposit in the form of a bond or cash is made at the time the permit is issued. At this point, he can't clearly remember or tell the Board how that bond was in the city's possession because he doesn't remember asking for the bond. Someone may have made an assumption or the builder indicated that he isn't going to put a sidewalk in and he didn't want to put up a cash bond for all that linear footage, he then decided to buy a sidewalk bond from his insurance company and post that, which is legal under the ordinance.

Member Cipriano stated that if he wanted to build something and came in for permits, just the fact that he gets bonds to be safe about what is going to happen, doesn't mean that the Engineer would not exercise his discretion later and state that a sidewalk doesn't have to be put in.

Chief Building Official Fursdon agreed and stated that is true.

Chairman Kimble stated that for a sidewalk this is a complicated hour long meeting. He has a unique experience and background being a member of this Board and having a fairly significant

construction background being involved with home building companies and building and developing subdivisions for resident, commercial property development and from his personal standpoint, which he tries to veer away from when he is up here, as much as he can. There was never a project that he has been a part of which is hundreds of homes throughout his life and being raised in the business was a topo ever submitted that a sidewalk was required that did not show a sidewalk. That has never happened in his personal experience. That is not to mean that this didn't happen here, but as a builder; if he was in the shoes of the applicant in this situation, he would stand at the Engineering Department and say hey, you signed off on the topo and at this point, you cannot make me go forward. He understands that could lead to other places that the Assistant Law Director referred to, but to him the strongest hardship at this point is, that this homeowner was issued a permit with a signed topo that does not show a sidewalk being required and is now being told improper things recently. To him, that is this applicant's hardship and it makes it a very unique application that is front of this Board.

Member Cipriano stated that he is really looking for the hook from his perspective where the Engineer exercised his authority under the ordinance and it seems to him that document is the exercise of that authority.

Chairman Kimble stated that there have been homes that he has constructed where he had to put a sidewalk in where there was a sidewalk to nowhere and then there were other places where they weren't required because they were "x" amount of feet from the nearest sidewalk, which is part of the exceptions in the ordinance. It is not as clear cut, as both the Council members have mentioned, and as uniform. It is not. There is a whole long list of potential exemptions that the Engineer can go by. He has been on both sides of it personally.

Member Smolik stated unfortunately, the Board doesn't know as it could have been a simple oversight. The one thing that the Board does know is that there was a bond posted. He assumed the applicant, when the permit was issued, didn't ask the Engineer to waive the sidewalk. He is not sure why he would arbitrarily just waive it without the applicant asking him. He has that right. Unfortunately, the Board just doesn't know. He doesn't see the hardship on this and that is how he feels. He believes the sidewalk could be put in. Yes, a little bit more soil needs to be put in along the roadway, but with reverse pitch going against the road, the sidewalk doesn't have to be higher than the road. There can still be drainage there and so, this is where he sits.

Chairman Kimble stated that he appreciates his background and Planning Commission experience as he made some very insightful comments tonight. He asked if there were any other comments regarding this application.

It was moved by Kimble and seconded by Masterson to approve the variance as submitted.

Chief Building Official Fursdon pointed out before the roll call vote, that what the Board is granting is not a permanent exception to the sidewalk. It is just an exception to it now.

Chairman Kimble added that if the City comes in with a plan and decides to assess him, he would absolutely have to abide by that.

Chief Building Official Fursdon stated he wanted to make that clear on that point.

Yes, 3 No, 2 (Cipriano, Smolik)

Deputy Clerk announced that the motion was approved by a vote of three yes and two no.

ADJOURNMENT:

Chairman Kimble stated that since there is no other business, he adjourned the meeting.

The meeting was adjourned at 8:10 p.m.

Chairman

Secretary Donna Tjotjos

June 26, 2018