

**NORTH RIDGEVILLE BOARD OF ZONING & BUILDING APPEALS
MINUTES FOR THE REGULAR MEETING HELD OCTOBER 25, 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, Planning Commission Liaison Jim Smolik, Neil Thibodeaux, Vice-Chairwoman Linda Masterson, and Chairman Shawn Kimble.

Also present was Chief Building Official Guy Fursdon, Prosecutor Cynthia Adams, Council Liaison Michelle Hung, Councilman Bruce Abens and Assistant Clerk of Council Tara Peet.

MINUTES:

Chairman Kimble asked if there were any corrections to the regular meeting minutes dated September 27, 2018. No discussion was offered. The minutes 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 he did not have a report for the evening.

OTHER REPORTS OR CORRESPONDENCE: None.

Chairman Kimble asked the Clerk to read the first application along with the Chief Building Official's comments.

PUBLIC HEARINGS:

APPLICANT: Thomas and Vicki Spicer, 37401 Sugar Ridge Road

OWNER: Same

REQUEST: A .1% lot coverage variance to construct a 10 by 20 shed

LOCATION: 37401 Sugar Ridge Road in an R-1 District; Parcel No. 07-00-035-102-019

(This case was postponed on 09.27.2018 to 10.25.2018)

Chairman Kimble asked a representative to come to the mic and give their name and address for the record and to sign the sign-in sheet.

Thomas Spicer, 37401 Sugar Ridge Road: (applicant was sworn in) stated he is renovating his house and his wife does extensive gardening and has many tools. He also noted he does woodworking and works on canoes and needed the space.

Chairman Kimble stated this is the smallest request he has ever seen and thought that people probably wouldn't see the difference.

Chairman Kimble asked if any of the Board members had any questions or comments. No discussion was offered.

Chairman Kimble asked if the Administration had any questions or comments. No discussion was offered.

Chairman Kimble opened the floor to the audience for questions and comments. No discussion was offered.

It was moved by Masterson and seconded by Smolik to grant the variance.

A roll call vote was taken and the motion carried.

Yes – 5

No - 0

APPLICANT: Fran Potter, 34570 Redwood Court
OWNER: Martha Torrez, 34570 Redwood Court
REQUEST: An appeal of the Chief Building Official's decision to require said applicant to keep shed 30 feet from rear property line. Applicant installed shed 27 feet from rear property line.
LOCATION: 34570 Redwood Court in an R-1 District; Parcel No. 07-00-013-000-384

Assistant Clerk of Council Peet read the application along with the comments from the Chief Building Official.

Chairman Kimble asked a representative to come to the mic and give their name and address for the record and to sign the sign-in sheet.

Fran Potter, 34570 Redwood Court: (applicant was sworn in) read a statement on behalf of Ms. Torrez. She stated the builder placed the shed in the wrong location and felt the contractor measured from the back left pin on the left side. It is forty-two feet from the pin which is twelve feet from the buffer zone.

Chairman Kimble stated it was a small portion of the shed in the buffer zone and thought it was just a mistake. He noted it was a unique situation. He thought it made sense to modify the Chief Building Official's decision which would allow the applicant to keep the shed where it is located today.

Ms. Potter noted the shed has been in place for seven year. She further added it is barely visible and someone called to complain.

Ms. Masterson asked if the shed was inspected seven years ago and if she owned the home seven years ago.

Chief Building Official Fursdon stated it was partly inspected.

Ms. Potter stated she did own the home seven years ago.

Chairman Kimble asked Chief Building Official Fursdon if the application meets the City's Ordinances but doesn't meet the HOA requirements.

Chief Building Official Fursdon stated it was required by a plan and the HOA bought into it.

Chairman Kimble asked if it was legal by City Ordinance.

Chief Building Official Fursdon stated yes.

Chairman Kimble stated he felt from the advice of the Law Department, all the Board needed to do was modify the Chief Building Official's decision.

Mr. Smolik asked if the HOA or the subdivision had a position on the matter.

Ms. Potter stated not to her knowledge.

Michael Chuparkoff, Esq., 6505 Rockside Road, Independence, OH: (individual was sworn in) stated he is representing Mr. Larkin. He noted that it was Mr. Larkin that assisted in negotiating the thirty foot buffer zone in 2005. Mr. Chuparkoff read an excerpt from zoning minutes from 2005. He stated that the warranty deed notes the restrictions to include the buffer zone. Mr. Chuparkoff stated the City is a party and member of the subdivision plat which also stated the restrictions. He stated this case was not as innocent as Ms. Potter was trying to claim. He noted that the applicant has installed solar panels knowing it was prohibited by the HOA. Her permit stated the shed needed to be thirty feet from the property line, but she did not follow the instruction. Mr. Chuparkoff stated he did not know how a contractor could be three feet off. He noted on her application to the City when applying for her permit, the drawings show a garage door. He noted the current building does not have the garage door. He stated he felt the shed was not being used as a shed as it has two floors, water, electricity, air conditioning and restrooms. He noted that the applicant has removed tree and shrubbery from the buffer. Mr. Chuparkoff stated he felt the building is actually ten feet in the buffer zone per the Auditor's website. Mr. Larkin can now see the property from his home. Mr. Chuparkoff stated he believed the City is covenant to the plat. He stated he is prepared to file suit for judgment and remedies. He added he preferred to not add the City to the suit, but the City is covenant to the plat.

Jim Larkin, 9106 Brian Street: (individual was sworn in) stated in the spring of 2004 he bought some of the property before the development was put in to keep privacy from the development. He noted that Century said that would be a problem for them in their development plans. They came up with the deed restrictions to protect the privacy. In July 2006, Mr. Larkin stated he came before the Commission and was assured by the City that his rights would be protected and the buffer would be honored. Mr. Larkin stated Ms. Torrez moved in and began removing vegetation. Mr. Larkin stated he continuously approached her through the years informing her she could not remove the vegetation and reminded her of the deed restriction. In June 2018 her neighbor to the west filed a complaint stating people were living inside the shed. Mr. Larkin felt the shed was being used for living quarters and not for plants. He felt the City should investigate it. He noted he felt the majority of the shed was in the buffer zone.

Chairman Kimble stated the only thing the Board can rule on is what is before the Board on the application. The Board cannot rule on the removal of vegetation or added gravel.

Mr. Chuparkoff stated he disagreed and added the Board needed to honor the thirty foot buffer zone. He further added he has sat on planning commissions in the past and felt the shed needed moved.

Ms. Masterson asked Mr. Chuparkoff if there was a deed restriction for each parcel listed on each deed.

Mr. Chuparkoff stated yes.

Ms. Masterson asked if he could provide it.

Mr. Chuparkoff stated yes and showed Ms. Masterson a Warranty Deed which was the deed issued before Ms. Torrez's deed.

Prosecutor Adams stated she would like to see the property deed and the subdividers agreement before the Board rules on the application.

Mr. Chuparkoff stated even if the developer forgot to input the deed restriction in Ms. Torrez's deed, the restriction still is in effect and it doesn't go away.

Prosecutor Adams asked if the City had actually gone out to the property to measure.

Chief Building Official Fursdon stated he didn't know.

Ms. Torrez stated Joe Voros and Paul Blanchette came out to her property and measured.

Ricardo Lopez, 9092 Brian Street: (individual was sworn in) stated Ms. Torrez's property is

directly behind him. He moved in November of 2005 and it was all wooded. When Ms. Torrez moved in, she began removing vegetation. He felt the shed needed moved out of the buffer zone.

Chairman Kimble asked why it has taken seven years to get to this point. He added it seemed like this issue was a neighbor dispute. He stated after hearing both sides, the subject matter seems more complex than he was originally led to believe. Chairman Kimble stated he has concerns about the liability for the City and if making a decision this evening puts the City in danger.

Prosecutor Adams stated it needed to be looked into.

Mr. Cipriano stated whether twenty-seven feet or thirty feet, that property belongs to the property owner.

Chief Building Official Fursdon stated that was correct.

Mr. Cipriano suggested pushing the application back to the Law Department and the Chief Building Official to see if a variance is needed. He added he didn't think it was a decision of the Board's.

Prosecutor Adams asked if he meant that the applicant needed to seek her legal rights rather than a variance.

Mr. Cipriano stated yes.

Prosecutor Adams stated she agreed and Ms. Torrez is not violating any City Ordinances.

Chief Building Official Fursdon asked Mr. Larkin if he spoke to the Law Director.

Mr. Larkin stated he spoke with the Law Director and the Assistant Law Director. He stated he felt the City agrees it is in violation of the buffer zone but not really a City issue.

Prosecutor Adams agreed.

Mr. Chuparkoff stated he wanted to meet with the Law Director.

Chief Building Official Fursdon stated this appeal came to the Board tonight at the direction of the Law Director.

Chairman Kimble stated the application is appealing the CBO's decision to honor the buffer zone.

Mr. Cipriano asked why the applicant is before the Board if there are no City code violations.

Chairman Kimble stated it was a violation of the permit condition.

Mr. Chuparkoff stated he didn't agree with Mr. Fursdon and asked the Board not to violate the deed restriction.

Ms. Masterson stated she lives in Ridgefield which has a strong HOA. She is concerned about the public taking of someone's property. She noted the Law Department sent this appeal to the Board asking the Board to make a decision.

Councilman Bruce Abens, 6405 Kenmore Way: (individual was sworn in) stated the buffer zone is actually a green space easement. He didn't think the easement could be negated. The City doesn't enforce easements but it is enforced by the courts. He suggested sending it back to the Law Department.

Chairman Kimble stated he appreciates Councilman Aben's input, but stated the Board does have the power to deal with easements and further added what is in front of the Board is not an easement, it was a buffer zone.

Mr. Chuparkoff stated it was in fact a conservation easement.

Chairman Kimble stated from the topo, it is listed as a buffer zone.

Prosecutor Adams stated easement is a technical term of law. It is an appropriation. It is a specific contract. The term easement is incorrect.

Mr. Chuparkoff disagreed.

Prosecutor Adams reiterated it was a deed restriction which was a completely different term of law.

Council liaison Hung asked why it was an issue now if it has been going on since 2011.

Mr. Larkin stated he has spoken to the HOA, Law Department and other departments about this for years with no resolve. He asked what venue is the proper venue to address the issue at.

Chairman Kimble stated maybe the court system.

Mr. Larkin stated approving the violation is a violation of the plat.

Ms. Masterson felt the matter should be tabled to have the Law Director present to defend the

application and also have the Building Department go out to the property and measure.

Mr. Smolik suggested the owner pay a surveyor to do the measurements.

Chairman Kimble and Ms. Masterson stated the Board cannot require the applicant to do that.

Ms. Masterson stated the cost could be close to \$2500.

Mr. Smolik stated the cost is about \$250. He also noted that the buffer is not owned by the City.

Chairman Kimble stated the Board was advised by the Law Department that a modification should be made to twenty-seven feet. Because of his concern of the liability, he stated he felt it should go back to the Law Department. He felt it should be postponed to let the legal minds and the Administration hash it out.

Moved by Chairman Kimble and seconded by Smolik to postpone the appeal to the next regular meeting.

A roll call vote was taken and the motion carried.

Yes – 5

No – 0

APPLICANT: First Class Delivery, Inc., 9180 Bender Road
OWNER: Froud Donald Stone, 9180 Bender Road
REQUEST: An appeal of the Chief Building Official's decision to deny the home occupancy permit based on said applicant's noncompliance of Section 830.02 (9) and (15) A of the Home Occupation Code.
LOCATION: 9180 Bender Road in an R-1 District; Parcel No. 07-00-048-000-041

Assistant Clerk of Council Peet read the application along with the comments from the Chief Building Official.

Chairman Kimble asked the representative to step up to the mic and give their name and address and to sign the sign-in sheet.

Froud Stone, 9180 Bender Road: (applicant was sworn in) stated someone on Sugar Ridge Road complained about his truck driving down Sugar Ridge Road and promised he will not drive down that road again. He stated he was dependent on his business and he doesn't have a junkyard.

Chairman Kimble stated the property was very nice and well maintained. He asked the applicant how many trucks he had.

Mr. Stone stated two.

Chairman Kimble stated vehicles weighing over 11,000 are over the gross weight limit per code.

Mr. Stone stated there are two CDL trucks next door to him and asked why his neighbor isn't being cited.

Chairman Kimble stated no one uses a CDL truck to go to the grocery store. He stated his truck is 11,400 which doesn't fit in the current City code. He further noted the applicant has been located at that address a long time.

Mr. Smolik stated no business is being run out of the home; it was just home delivery trucks.

Mr. Stone stated the trucks go out around 7:00 a.m. and return around 4:00 p.m. He noted he is not a warehouse.

Ms. Masterson stated it was a unique street. She noted the applicant is asking for a home occupation permit and it goes away if the applicant leaves.

Mr. Cipriano asked if the trucks harm the road since they are over gross vehicle weight.

Chief Building Official Fursdon stated no.

Mr. Stone stated he has received threatening letters from a group call REZCOM. He noted the Police Department did not have an issue with the trucks.

Mr. Cipriano asked why he doesn't store his trucks and plug them in somewhere else.

Mr. Stone stated he has four acres and didn't even know about the Ordinance.

Mr. Cipriano stated he now knows about the code requirement and asked what prohibits him from storing the trucks somewhere else.

Ms. Masterson stated many storage facilities don't usually have a plug in.

Mr. Cipriano asked what the hardship would be to the applicant if he had to go somewhere else to store the trucks.

Mr. Stone stated he has a rush business. When he receives a call, he is out the door. Storing at another location would mean time wasted and inconvenience.

Mr. Smolik asked if he employed other employees.

Mr. Stone stated just his son who does not live with him.

Councilman Bruce Abens, 9373 Kenmore Way: (individual was sworn in) stated it is difficult to even see the trucks from the road. He stated he doesn't want to chase tax dollars out of the City. The roads are built to ODOT standard and can handle the weight of the trucks. He asked that the Board reverse the decision of the Chief Building Official.

Moved by Chairman Kimble and seconded by Smolik to reverse the decision of the Chief Building Official.

A roll call vote was taken and the motion carried.

Yes – 5

No – 0

ADJOURNMENT:

Chairman Kimble asked if there was any other business to bring before the Board this evening. Hearing none he adjourned the meeting.

The meeting adjourned at 8:44 p.m.

Chairman

Tara L. Peet, MMC
Assistant Clerk of Council

November 15, 2018