

: OFFICIAL PROCEEDINGS :**: OF THE CITY OF PEORIA, ILLINOIS :**

A Zoning Board of Appeals Meeting was held on Thursday, February 10, 2011, at approximately 1:30 p.m., City Hall, 419 Fulton Street, Council Chambers, Room 400, with Chairperson Weaver presiding.

ROLL CALL

The following Zoning Board of Appeals Commissioners were present: Chairperson Weaver; and Commissioners Barry; Blackwell; Ierulli; Jackson; Kouri; and Wagner – 7. Absent: None.

Staff Present: Gene Lear and Polly Stainback

MINUTES

Commissioner Barry moved to approve the minutes of the meeting held on January 13, 2011, as printed; seconded by Commissioner Jackson.

Approved by viva voce vote 7 – 0.

Chairperson Weaver explained the meeting procedures, and Ms. Stainback administered the swearing in for those planning to give testimony.

ZBA 2934

Petitioners Joe Menefee & Dave Whitehurst for P & W Builders are requesting a variance from the City of Peoria Zoning Ordinance: Article 18, Retaining Walls, to allow retaining walls to be constructed greater than 3 feet in height for the properties located at Lots 25, 26, 27, 28 and 30 in Autumn Ridge Subdivision.

Chairperson Weaver announced Case No. ZBA 2934 and asked Gene Lear to read the case into the record.

Gene Lear, Senior Urban Planner, City of Peoria, Planning and Growth Management, read Case No. ZBA 2934 into the record and reported the property characteristics. He displayed the site plan and elevation of Lot 25, as well as photographs of the subject properties. He pointed out there is a house being constructed on Lot 25.

SITE PLAN REVIEW BOARD (SPRB) CONCLUSIONS AND RECOMMENDATIONS:

After reviewing the Petitioners' application and performing a site inspection, the SPRB recommends **denial** of the variances requested for Lots 25 and 30, which have retaining walls built on them.

1. The Petitioners knew about the slope issue of the lots before they purchased the lots.
2. Retaining walls can be constructed in compliance with the Zoning Ordinance if a house is designed to fit the lot.
3. The hardship created was self-imposed.
4. The Petitioners could have inquired to the City for the requirements of retaining walls if they did not know the requirement of the retaining wall height.

In the case of vacant Lots 26, 27, and 28, the SPRB recommends **denial** of the variance requested for the following reason:

1. Even though the lots have significant slope, retaining walls can be constructed in compliance with the Zoning Ordinance if a house is designed to fit the lot. We feel that certainly this is the case now that the Petitioners are specifically aware of the height requirement for retaining walls.

There being no questions of Mr. Lear, Chairperson Weaver granted Privilege of the Floor to the Petitioner Menefee.

Joe Menefee, Petitioner, representing P & W Builders, spoke regarding the following main points:

- The lots are sloped extremely, either toward the street or back away from the street.
- The initial retaining wall on Lot 25 was constructed just before beginning the current process of building a model home.
- There has been a lack of growth in the subject area for the last three or four years.
- It is their desire to make the area family-friendly with enough back yards.
- The lots are unique, and they were trying to work with them the best they could.
- They were unaware of any retaining wall requirements and had never seen any restrictions on the retaining walls in his neighborhood that are six, seven, and eight feet high.
- It would be difficult to move the blocks. The blocks would not wash away or be blown out by any type of water overflow or heavy rains with a weight of approximately 2,100 pounds, and would be a permanent structure, not requiring maintenance.
- It is a very attractive type of block used, which would hold up and help retain the value in that neighborhood. It would help the neighbors above in this particular case because there would be a lot less erosion that would come rolling down the hill from their back yard.
- A retaining wall was necessary in order to create any type of yard.

Regarding height restrictions, Mr. Menefee reiterated being unaware that anything was in place. He stated he realized that ignorance of the law was no excuse; but now

having spent a large amount of money to work in an area that otherwise had not seen development in quite a while, they would like to continue.

Responding to Commissioners' questions, Mr. Menefee clarified as follows:

- The blocks are 24 inches high.
- Regarding terracing it back, perhaps two blocks high at a time, Mr. Menefee said without the knowledge of the height requirements, this was the easiest way. In order to meet lot lines, etc., they would have had to start the terrace prior to that and eliminated quite a bit of the home's rear yard, which was the reason for what they did in the first place.
- During the process of cutting the lot down and taking out the slope, it dramatically reduced the slope of the driveway. With the recent weather, the front of the home would still be accessible, without climbing boots.

Mr. Lear pointed out that the regulation for the height limitation is three feet for retaining walls, but it could be terraced back. He indicated that the limitation is three feet per terrace.

Mr. Menefee continued to respond to Commissioners' questions:

- They had previously built a house in Peoria with an even higher block masonry wall on Wilshire. They never heard anything on that and were not aware of anything else. He referred to his thinking that retaining walls are landscaping, not construction; and he was not aware of landscaping code requirements.
- Regarding if the back part was on the lot line, Mr. Menefee indicated it was very close. He explained that he was an office spokesman and did not do any of the layout or site work initially, which was done by their contractor, who does all the excavation.

David Whitehurst, Petitioner, representing P & W Builders, spoke regarding the following main points:

- A letter was received by mail which was signed by Gene Lear, as well as one received over the Internet.
- He was under the assumption that Mr. Lear was in agreement with the two walls that were already done.

Mr. Lear spoke in detail regarding his discussion with the people from P & W. He indicated that he had explained to them that Staff received a complaint and they could apply for a variance. He pointed out that since Staff understood there were some other lots in addition to Lots 25 and 30, they told them that they could also petition for a variance for Lots 26, 27, and 28, since they were planning to put retaining walls on the other lots also.

Mr. Whitehurst stated that he must have misunderstood this. He read from the letter which was mailed to him in which it stated that the SPRB did not object to the variance for Lots 25 and 30, which has retaining walls built on them, because Staff recognized the practical difficulty of removing the existing retaining walls. He noted that the letter read that the SPRB recommended denial of the variance for Lots 26, 27, and 28.

Mr. Lear stated his apology. He indicated that letter should not have gone out to them, but rather the letter that should have gone to them which stated exactly what he read earlier.

Mr. Lear explained that ultimately, Staff decided as part of their recommendation to deny those two lots also. He stated Staff's reasoning for denial was that if someone exceeds the law and comes back later and says they have no knowledge of the law, Staff would be setting a precedent.

Chairperson Weaver asked Mr. Whitehurst if the fact that he relied on that letter affected his ability to be heard today.

Mr. Whitehurst indicated that he would have done things differently because he thought the decision had been made on those lots. He said they have about a 23, 24-foot rear yard, and some of these lots have 27-foot elevation changes. They also have green space that they have to leave in the back of these yards. He stated there are two other houses on the street right now that have retaining walls over three feet. He said he did not understand why there were not complaints regarding other walls that they did not construct.

Chairperson Weaver explained this was complaint driven. Mr. Whitehurst indicated his understanding, and pointed out the difficulty in building on these lots.

Speaking about the difficulty of building on these lots, Mr. Whitehurst stated most of the lots have no rear yards at all; and they thought they were helping the neighborhood. He mentioned this was their business, and he hoped Commissioners would look at this and know they made a mistake. He also mentioned that there are several higher retaining walls located in the City.

Chairperson Weaver again asked Mr. Whitehurst if he felt he was prepared to deal with this today considering the fact that he relied on a letter and would like to continue the case so he could prepare or if he would like to proceed. Mr. Whitehurst responded that he would like to proceed.

Mr. Whitehurst reiterated that he thought they helped this neighborhood; and if the Board would check these lots, they would see the hardships. Regarding a hardship, Mr. Whitehurst referred to the following:

- Some of these lots have 27-foot elevation changes.

- When this subdivision was approved, the City wanted a tree barrier to be left in the back of the lots, which would be 25 to 45 feet on some of these lots;
- Lot 25 at the closest point is around 105 feet of total depth; it is an irregular shaped lot.
- The lot off Lot 30 is 95 feet deep on the one side, and it falls off into a ravine, so there is very little depth.
- Considering a 25-foot setback and 40 or 65 feet for a house, there is 40 feet total to get in the walls and back yard.
- If terraced every three feet with a 15-foot elevation change, with 5 walls spaced out, there would almost be no back yard at all.
- Since they own the rest of the lots, they do not want to do something that would deter from the subdivision.

During further discussion regarding the misunderstanding of Staff's recommendation, Mr. Lear explained that a recommendation was composed for further review. He further explained that after the completed review, the Staff recommendation was rewritten; but the original letter was inadvertently sent to the Petitioners.

Mr. Whitehurst indicated they have been in business since 1954 and try to do a good product. He said they bought the blocks from LaHood, who was not aware of the regulations. He reiterated that there are several high retaining walls, some higher than these, in Peoria.

Chairperson Weaver questioned if the next one with a retaining wall, was on Lot 30 or Lot 28. Mr. Whitehurst responded that it was between two lots.

During more discussion, Mr. Lear pointed out that Lots 25 and 30, both have walls. He also stated the three lots in between, do not have walls. He further clarified that the wall is not on Lot 28, but rather, on Lot 30, in the back of the lot. Regarding the reason for the three-foot retaining wall limitation, Mr. Lear referenced safety and aesthetics. He also mentioned that terraces would be a better solution than installing a large wall.

Greg Neaveill, a nearby homeowner, stated that his property is Lot 34 on the plat, which is adjacent to Lot 27. He indicated that approximately 10 years ago Mark Rosenberg purchased this Autumn Ridge development and assured him, along with his neighbors, that the integrity and feel of the neighborhood would be maintained. Mr. Rosenberg sold this development to P & W Builders, and construction began shortly thereafter.

Mr. Neaveill presented four photographs of area properties. Chairperson Weaver marked the photographs as Neighbor's Exhibit 1. The following are a summary of his comments regarding each photograph:

- Photograph No. 1 shows the first variance conflict, improper setbacks, construction 90% completed at 7248 Whippoorwill Lane, in which P & W Builders built the house 10 feet too close to the curb.

- He indicated that he did not object to that variance at that time, but he pleaded with P & W Builders to be a better neighbor in the future, follow the rules, and try to make future homes fit into the neighborhood as best they could.
 - He stated his understanding that variance requests should always precede construction, not come after a project is nearly completed, as was the case with the home at 7248 Whippoorwill Lane.
- Photograph No. 2 was taken from the upper elevation of Lot 25. In the foreground are commercial style blocks whose face measures 4 feet wide and 2 feet high, which might be found behind commercial properties, not something expected in a residential neighborhood.
 - The height of this wall is about 2 ½ blocks, or 5 feet high to the first level and 3 ½ or 7 feet high to the second level, which is more than twice allowed by Ordinance.
 - Mr. Neaveill expressed concern that the request for a variance was "after the fact."
- Photograph No. 3 shows a retaining wall on the back of Lot 28, at 6 feet high, also exceeding the guidelines of the City by a factor of 2.
- Photograph No. 4, the aerial, shows the intent of P & W Builders, which is to join the two walls, making for a continuous tiered structure from one end to the other.

Mr. Neaveill stated that other homes have been built in this neighborhood without the need for such retaining walls. He said that raised homes in the neighborhood are the norm and not the exception; they preserve the look of the neighborhood without "scalping" the ground, stripping the trees, and installing ugly, dangerous commercial grade retaining walls, six feet or more in height. He stated that this construction would work well for these four lots with homes built on the land. He said that the first home had already violated the integrity of the neighborhood; but fortunately, it was not too late to save the look and preserve the look and feel promised long ago.

Mr. Neaveill stated he wanted to respectfully ask that the variance requested by P & W be denied and that P & W be instructed to reconstruct these walls within City Ordinance specifications. He further requested that Commissioners encourage P & W to adopt a raised home construction technique on the three other lots that better fits into the neighborhood, as was done a block away on Whippoorwill in Autumn Ridge Subdivision.

Mr. Neaveill said that the hardships listed by P & W were of their making. He mentioned that Mr. Whitehurst said he was obligated to leave a barrier of trees. He pointed out on the aerial photograph, Photograph No. 4, no trees were preserved between the back of the house on Lot 25 and the home behind. He further pointed out that Lots 27 and

28 were almost all covered with trees; but in following the lot line to put any sort of tiered walls, they would have to sacrifice most of those trees.

Mr. Whitehurst responded to Mr. Neaveill's comments with the following main points:

- Two of those driveways mentioned by Mr. Neaveill have a wall over six feet high. He said that all of the lots do not have a tree barrier, the bigger lots have more back yard. He indicated that for a 105-foot lot, they did not leave tree barriers because there was not enough room to develop and leave a lot of trees on a lot with elevation changes.
- It was true that there had been a variance on a house; there was a young man who started working for them who laid it out. He explained that this was his first layout, and he made a mistake; but there had been very few variances over the last 54 years.
- This is a unique situation for as many homes as they have built in Peoria. He said they have not tried to harm anybody, but have tried to make lots that are more developable.
- Raised homes are great for a young couple, but not for Baby Boomers.
- They have elevation changes on driveways that are 15 or 16 feet, so they have had to do some circle driveways and unique things to get these driveways livable for some people.

Chairperson Weaver questioned if a raised driveway would not work for them. Mr. Whitehurst responded that on some of those with a normal setback, there could be a 7- or 8-foot incline of 25 feet, which could be done; but they would not be user-friendly.

In response to Chairperson Weaver's question regarding Lots 26, 27, and 28, Mr. Whitehurst said that if there is an issue, they would "back off the variance and make the lots work to what they have." Regarding the other two lots, he said he hoped Commissioners would concur with the letter which indicated the hardship of removing the existing blocks.

Mr. Whitehurst concurred with Chairperson Weaver's statement that he was withdrawing their variance on Lots 26, 27, and 28; and that they would only be considering Lots 25 and 30.

There was more discussion regarding Staff's recommendation. Mr. Whitehurst indicated that the first letter received was by email. Mr. Lear explained that the letter emailed was the letter that should also have been mailed. Mr. Whitehurst reiterated that he thought the mailed signed letter was correct. Mr. Lear pointed out the date on the Staff recommendation with the mailed letter was February 1; whereas, the emailed Staff recommendation was dated February 4.

Responding to Chairperson Weaver, Mr. Whitehurst indicated the letter he had with him was the last letter received. Chairperson Weaver received the letter into the record and marked it as Petitioners' Exhibit 1.

Mr. Neaveill commented that it was his understanding that Mr. Lear's part is not to approve or disapprove, but to make a recommendation, plus the letter did not come out in January, and they proceeded under the assumption that it was approved. He pointed out that house has been up for quite a while.

Chairperson Weaver asked Mr. Neaveill if he had any comments regarding the Petitioners' withdrawal of the variance for Lots 27, 28, and 29.

Mr. Neaveill expressed concern regarding Lot 28 abutting up to Lot 30. He stated he did not know how they could withdraw Lot 28, without affecting the request for Lot 30 because they are back to back. Referring to the aerial, he said they would probably backfill Lot 30, so that the height of the wall of 6 feet would be facing Lot 28, so even though on Lot 30, he did not know how they could take Lot 28 "out of the picture."

There being no more testimony, Chairperson Weaver closed the public testimony.

DELIBERATION OF CASE NO. ZBA 2934:

Chairperson Weaver administered the Findings of Fact.

Regarding a hardship, Commissioner Blackwell said he would say there was a practical difficulty, but he thought they could work around the large drop-off in the topography.

Commissioner Ierulli indicated that he thought a unique hardship does exist and spoke of the difficult topography being a practical difficulty.

Commissioner Jackson stated that she did not know how they could work around the topography. She indicated she agreed with Commissioner Ierulli, regarding there being a practical difficulty.

Commissioner Blackwell indicated he wanted to go on record stating that even though the lots are different, they all have a rolling topography, so he would say it is not unique and are applicable to other properties in the area.

Commissioner Jackson stated that the topography could not be self-created; Commissioner Blackwell concurred.

Commissioner Blackwell mentioned that the high walls distract from the neighborhood.

Commissioner Jackson indicated she thought the retaining walls alter the character of the neighborhood.

Commissioner Blackwell mentioned the safety issue with such high retaining walls.

Mr. Lear pointed out that the Commission may want to entertain a motion limiting the height of the walls, if they grant a variance for the three vacant lots.

MOTION:

Commissioner Blackwell motioned to **deny** the variance for Lots 25 and 30. The motion was seconded by Commissioner Barry.

AMENDMENT TO THE MOTION:

Commissioner Ierulli motioned for an amendment to the motion to grant the variance on Lot 25 and deny the variance on Lot 30. The motion for an amendment was seconded by Commissioner Jackson.

Commissioner Wagner referenced two statements that were made: 1) Because they wanted the variance for the back yard, meaning for families; and 2) They mentioned having higher walls because of Baby Boomers not moving in. Commissioner Wagner indicated his confusion regarding the target market. He said that Baby Boomers would not need a back yard.

VOTE ON AMENDMENT TO THE MOTION:

The motion to amend the motion **failed** by roll call vote 3 to 4.

Yeas: Ierulli, Kouri, Weaver;

Nays: Barry, Blackwell, Jackson; Wagner.

VOTE ON THE MOTION:

During discussion regarding the original motion, Commissioner Blackwell mentioned that without the variance, they would still be able to work with this property, so he would be voting for his motion.

Commissioner Wagner said that since the house is under construction, this could be fixed. Commissioner Blackwell concurred.

Chairperson Weaver indicated he would be voting against the motion because there could be a problem selling the house and also because the Petitioners withdrew their requests for Lots 26, 27, and 28.

The motion to **deny** the variance for Lots 25 and 30 passed 5 - 2.

Yeas: Barry, Blackwell, Ierulli, Jackson, Wagner;

Nays: Kouri, Weaver.

ZBA 2932**VOTE TO RECONSIDER AND POSSIBLE ACTION**

Petitioner Scott R. Richman is requesting a variance from the City of Peoria Zoning Ordinance: Article 7.5.e, to allow a building addition to encroach 5 feet into the required 25-foot rear yard for the property located at 511 W. Teton Drive.

Gene Lear, Senior Urban Planner, City of Peoria, Planning and Growth Management, announced Case No. ZBA 2932 into the record. He explained this is a reconsideration, and the public hearing would not be opened; only the motion would be reconsidered. He also explained that a reconsideration required a motion from the prevailing side, and there would be no more testimony. He also mentioned that the Board could review the minutes.

MOTION TO RECONSIDER ZBA 2932:

Commissioner Kouri motioned to reconsider the variance request; seconded by Commissioner Jackson.

Commissioner Jackson said she knew that area and had voted to grant the variance because she felt it would be a plus, not only for the house, but also for the neighbors and because it sits back on the street.

During discussion regarding the encroachment, Commissioner Blackwell said he believed the intent of the setback was that houses were not too close together so as to encroach on the neighbors. He pointed out the houses sit way off to the north, with a lot of open land.

The motion to **reconsider** passed by roll call vote 4 to 3.

Yeas: Blackwell, Jackson, Kouri, Weaver;

Nays: Barry, Ierulli, Wagner.

MOTION TO GRANT THE VARIANCE FOR ZBA 2932:

Commissioner Jackson motioned to allow the variance, seconded by Commissioner Blackwell.

Commissioner Blackwell pointed out a five-foot variance seemed insignificant with the size of the property. He reiterated that it was his opinion that the intent is to avoid building too close to the neighboring properties or encroaching on their privacy.

The motion to **approve** the variance passed by roll call vote 4 - 3.

Yeas: Blackwell, Jackson, Kouri, Weaver;

Nays: Barry, Ierulli, Wagner.

CITIZENS' OPPORTUNITY TO ADDRESS THE ZONING BOARD OF APPEALS

There were no citizens to address the Zoning Board of Appeals.

ADJOURNMENT

Commissioner Jackson moved to adjourn the Zoning Board of Appeals Meeting;
seconded by Commissioner Blackwell.

Approved unanimously by viva voce vote 7 to 0.

The Zoning Board of Appeals Meeting adjourned at approximately 2:50 p.m.

Gene Lear, Senior Urban Planner
Planning and Growth Management Department

/ps