

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

A Zoning Board of Appeals Meeting was held on Thursday, March 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 Blackwell; Ierulli; Jackson; and Kouri – 5. Absent: Commissioners Barry and Wagner.

Staff Present: Corporation Counsel Randy Ray, Gene Lear, and Polly Stainback

MINUTES

Commissioner Jackson moved to approve the minutes of the meeting held on February 10, 2011, as printed; seconded by Commissioner Ierulli.

Approved by viva voce vote 5 – 0.

ZBA 2934**VOTE TO RECONSIDER AND POSSIBLE ACTION**

Petitioners Joe Menefee & Dave Whitehurst, representing P & W Builders, are requesting that the Zoning Board of Appeals reconsider Case No. ZBA 2934, which was originally heard on February 10, 2011, based on concerns regarding the following: 1) The lot numbers needing a variance; 2) Concerns over the Staff recommendation; and 3) The original intent of the Ordinance as it pertains to the required height of retaining walls. If the reconsideration is approved, the Petitioners are requesting reopening Case No. 2934 to grant 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 and 30, containing existing retaining walls, and Lots 26, 27, and 28, not having retaining walls, all in Autumn Ridge Subdivision.

Chairperson Weaver announced Case No. ZBA 2934.

Randy Ray, Corporation Counsel, City of Peoria, Legal Department, explained the motion should be made first, and then Commissioners could proceed with discussion.

MOTION:

Commissioner Ierulli motioned to reconsider Case No. ZBA 2934. The motion was seconded by Commissioner Kouri.

Commissioner Ierulli indicated that he made the motion per Staff's request.

Gene Lear, Senior Urban Planner, City of Peoria, Planning and Growth Management, read Case No. ZBA 2934 into the record.

DELIBERATION:

Commissioner Blackwell questioned why Commissioners would reconsider their decision. He referred to the Petitioners' photographs which were distributed to Commissioners and commented that each case is considered on its own merit. He mentioned that the photographs appear to be photographs of other walls with a similar issue. He said he saw no reason to reconsider his vote. Commissioner Jackson concurred.

Commissioner Jackson questioned if there were additional lots with walls. Mr. Lear responded, "No," that the package before the Commissioners was the package that the Petitioners distributed; and he imagined the photographs were other walls within the City.

Commissioner Ierulli asked that Corporation Counsel Randy Ray be allowed to address Commissioners on matters, if any, that he thought needed to be addressed before the vote, and to allow P & W Builders to address the Commission.

Corporation Counsel Ray explained that for reconsideration, someone on the prevailing side had to make the motion. He explained that if a variance is denied, it could be brought before the Board for reconsideration. He also indicated that he believed that Mr. Lear made sure that proper notification was given. He pointed out that if the motion to reconsider passed, then the process would be at the original motion.

Chairperson Weaver mentioned the Petitioners' confusion regarding the original letter that was mailed to them and the fact they did not come fully prepared at the last meeting. He referred to the fact that he offered them an opportunity to defer if they did not feel prepared, but they chose to proceed with their case.

Chairperson Weaver granted Privilege of the Floor to Petitioner Menefee to discuss reasons for reconsideration.

Ms. Stainback swore in those planning to give testimony.

Joe Menefee, Petitioner, representing P & W Builders, apologized for not coming fully prepared last time. He indicated they had an excellent working relationship with Mr. Lear. He mentioned receiving Staff's letter and then stopping "doing their homework." He discussed the following three points:

1. Letter from Staff: When they received Staff's letter, they had the impression that they had Staff's backing.
2. Misinterpretation regarding the other lots because they were placed on the same variance application: It was never their intention to run a wall down the entire lots; the only lots they were ever concerned about were the two lots with existing walls. The second wall is between Lots 28 and 30, but technically, on Lot

30. It was never their intent to build walls on the other lots. He also mentioned the following main points:

- The photographs distributed showing other walls were not to complain about them, but rather to show that P & W is doing what everyone else does to make a lot work.
- In this particular case, in order to further their investment in the area, they felt it required those existing walls.
- In researching retaining walls with others doing this type of business, no one told them that they could not go over three feet.
- The walls were put up and then they learned there was an Ordinance.

3. Intent of the Ordinance: Mr. Lear's interpretation regarding the reason for the Ordinance was "safety." Mr. Menefee said he believed, based on what he knew about his own landscaping wall, that walls were intended to be no larger than three feet because if they were over three feet, there was a lot of work to do so that walls do not fall.

- Mr. Menefee stated that their lot backs up to a neighbor, who not only supports the wall, but helped plant the bushes. Although the neighbor was not able to make it to the meeting today, it was his understanding that the neighbor sent a letter of support.

Mr. Menefee indicated the information above is the type of information they would have had if they had known what they were up against, as far as the City's recommendation. He stated that they wanted to let Commissioners know their interpretation of the Ordinance; what they intended to do; and the reason that they wanted the variance in the first place, which was because of the depth of the lots, not because they were trying to excavate the entire subdivision.

In discussion with Chairperson Weaver regarding a summary of the reasons for reconsideration, Mr. Menefee stated: Not prepared; Mr. Lear's interpretation of safety as the intent of the Ordinance; and the misinterpretation that they were trying to come across the back of the lots. He commented that he thought Mr. Lear was trying to be helpful, but he thought there was prejudice in what they were trying to do. As far as aesthetics, they took a big gamble because the home is not contracted and they would be selling it. They were trying to make the house more saleable.

In discussion with Commissioner Jackson regarding the other lots, Mr. Menefee reiterated that they never planned to put retaining walls on the other lots. He referred to one of the distributed photographs which they did not build and commented on its being a better example for a reason for a variance. He said their variance would only affect two homes,

Chairperson Weaver summarized Mr. Menefee's reasons and commented on each reason as follows:

- Not prepared: The petitioners were given an opportunity to come back, but decided to present their case.
- Prejudice during discussion: "We see that a lot." Once the case is closed, the petitioner wishes they had clarified some issues.

In discussion with Mr. Menefee, Chairperson Weaver said by the time Commissioners deliberated, they knew they were only dealing with two lots.

Chairperson Weaver indicated that Mr. Menefee may have a valid argument regarding, No. 3. Interpretation of safety as the intent of the Ordinance because Commissioners relied on it as a safety issue, and Mr. Menefee presented it as a construction issue.

In discussion with Chairperson Weaver, regarding proof that Commissioners decided improperly by making it a safety issue, Mr. Menefee described in detail how a wall has to be constructed to ensure there is not so much push in the design. He said without the proper measures, the walls could wash out and ruin the landscape and also could result in a serious safety issue, but it would be more of a construction issue. He said the construction blocks they used were not the typical residential construction blocks, which was the reason they used them in the first place. He said he did not know if they were given enough credit for the actual structure.

Mr. Menefee stated that from their standpoint, if it is an arbitrary enforcement, and only a complaint-driven Ordinance that nobody is aware of. He said he thought they were "persecuted" because the interpretation was that they should have known about this regulation; but in talking with other people, he did not see how they should have known this. He also stated that once it was brought forward, they had to go ahead with the variance.

Chairperson Weaver granted Privilege of the Floor to Mr. Neaveill.

Greg Neaveill, a nearby homeowner, stated that he did not think they should be here today and that he thought Commissioners made the right decision, which was fair. He said he did not think that not being prepared was an excuse. He expressed concern that two Commission members who voted to deny the variance were absent today. He commented that in presenting their case, they had a chance to rebut everything that he said.

Lynne Reynolds, nearby homeowner, indicated her neighbor is the person who the Petitioner said was very happy with the wall. She said the neighbor had been very unhappy because his yard was washing away. She said she had no problem with the wall because it is attractive. She indicated that she could not imagine their having to tear it all down. She also said it was a very nice house.

In discussion with Mr. Lear, Chairperson Weaver acknowledged that this was not an open hearing.

Referring to the issue of whether or not there was prejudice, Commissioner Blackwell said that had no bearing in looking at the two walls. He said he was not prejudice.

Commissioner Ierulli asked Mr. Lear if he had any other issues that needed to be addressed. Mr. Lear referred to the issues that have come forth today and at the last meeting and said that it is never Staff's intent for anyone to be confused. He said that if the Commissioners also thought there was confusion, it was Staff's position to give them an opportunity to reconsider; and if so, both sides could make a presentation. He explained that if Commissioners felt they made the correct decision, then it stopped there.

Commissioner Jackson expressed concern regarding the letter distributed at today's meeting. Referring to the second paragraph, she said it appeared confusing to her that when P & W came in for two lots, Staff said that because the lots were similar, they might as well put them all together. She said she had voted to deny the variance, but was now giving her decision a second thought. She indicated the need for more communication from Commissioners, regarding if they also were confused that Staff asked for something which possibly was not needed. Commissioner Kouri indicated his agreement.

There being no more comments, Chairperson Weaver called for a vote.

The motion to reconsider Case No. ZBA 2934 passed by roll call vote 4 to 1.

Yeas: Ierulli, Jackson, Kouri, Weaver;
Nays: Blackwell.

Mr. Neaveill suggested postponing the case until next month. Mr. Lear indicated that would be within the confines of the Commission.

In discussion with Chairperson Weaver, Mr. Lear said that because it was listed on the agenda as an action item, they could vote today should they choose.

Commissioner Blackwell indicated that he would like to have all the Commissioners present, as well as others who may want to speak. Chairperson Weaver and Commissioners Ierulli and Jackson concurred.

Motion:

Commissioner Jackson motioned for deferral of Case No. ZBA 2934 until the next Regular Meeting on Thursday, April 14, 2011, at 1:30 p.m., City Hall, Room 400, 419 Fulton Street. The motion was seconded by Commissioner Blackwell.

The motion passed unanimously by roll call vote 5 to 0.

Yeas: Blackwell, Ierulli, Jackson, Kouri, Weaver;
Nays: None.

2011 ZONING COMMISSION ANNUAL REPORT – RECEIVE AND FILE

Chairperson Weaver announced the request to receive and file the 2011 Zoning Commission Annual Report.

Motion:

Commissioner Ierulli motioned to receive and file the 2011 Zoning Commission Annual Report. The motion was seconded by Commissioner Blackwell.

The motion was approved unanimously by viva voce vote 5 to 0.

CITIZENS' OPPORTUNITY TO ADDRESS THE ZONING BOARD OF APPEALS

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

ADJOURNMENT

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

The motion was approved unanimously by viva voce vote 5 to 0.

The Zoning Board of Appeals Meeting adjourned at approximately 2:10 p.m.

Gene Lear, Senior Urban Planner
Planning and Growth Management Department

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