

**CITY OF PEORIA
ZONING BOARD OF APPEALS MEETING
MAY 12, 2011
CITY HALL, 419 FULTON STREET, ROOM 400 —1:30 PM**

**REVISED
AGENDA**

- 1. ROLL CALL**
- 2. APPROVAL OF MARCH 10, 2011, MINUTES & APRIL 14, 2011, MINUTES**
- 3. REGULAR BUSINESS**

CASE NO. ZBA 2936

Petitioners Richard Haefli and Robert Haefli, representing Haefli Brothers Partnership, are requesting a variance from the City of Peoria Zoning Ordinance: Article 16.4.c, to reduce the existing required 21-foot transitional buffer yard to 0 feet in some areas and leave the remaining existing buffer yard the same for the expansion of a parking lot. The property is located at 201 E. Lake Avenue.

CASE NO. ZBA 2937

Petitioner Floyd J. Rashid is requesting a variance from the City of Peoria Zoning Ordinance: Article 16.4.c. (1), Transitional Buffer Yard Depth, to allow a building addition to encroach 11 feet into the required 16-foot transitional buffer yard. The property is located at 4711 N. Knoxville Avenue.

- 4. ELECTION OF NEW CHAIRPERSON AND VICE CHAIRPERSON**
- 5. CITIZENS' OPPORTUNITY TO ADDRESS THE ZONING BOARD OF APPEALS**
- 6. ADJOURNMENT**

Inquiries: Gene Lear, (309) 494-8604 or glear@ci.peoria.il.us

: 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

/ps

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

A Zoning Board of Appeals Meeting was held on Thursday, April 14, 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 Pro Tem Barry; and Commissioners Blackwell; Ierulli; Kouri; and Wagner – 5. Absent: Commissioners Jackson and Weaver – 2.

Staff Present: Olajide Giwa, Gene Lear, and Polly Stainback

MINUTES

Commissioner Ierulli moved to defer vote on the minutes of the meeting held on February 10, 2011, until the next regularly scheduled meeting on May 12, 2011; seconded by Commissioner Wagner.

Approved by viva voce vote 5 – 0.

ZBA 2934 **(Continued from the meeting held on March 10, 2011)**
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 Pro Tem Barry announced Case No. ZBA 2934.

Gene Lear, Senior Urban Planner, City of Peoria, Planning and Growth Management, read Case No. ZBA 2934 into the record. He pointed out the locations of the subject properties and noted a house had been built on Lots 25 and 30; and Lots 26, 27, and 28 were vacant with no retaining walls. He pointed out the location of the retaining walls on Lots 25 and 30 on the aerial photograph. Also, he reported Staff's recommendation as follow:

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 of 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.

Mr. Lear explained that the reconsideration was approved for the Board's action on this case today.

In discussion with Commissioner Blackwell, Mr. Lear indicated this is the same request as previously presented; and the Petitioners have the opportunity to separate the lots in terms of their request.

Ms. Stainback swore in those planning to give testimony.

Joe Menefee, Petitioner, representing P & W Builders, commented that some information would be duplicated since there were two Commissioners who were not present at the last meeting. He commented that P & W Builders does not build retaining walls for a living, but they constructed retaining walls using 24" deep, 24" tall, and 4' long blocks. He stated that in everything they do, they try to do it for the long term.

Mr. Menefee referred to the confusion regarding Staff's recommendation and the fact that there was a discrepancy as to why this Ordinance was put in place. He referred to there being no permit process for retaining walls for correct engineering, so there was no opportunity to correctly engineer a wall. He mentioned that he took photographs to the last meeting, which showed various neighborhoods and construction types. He referenced one of Staff's reasons for recommended denial, which was that they could have designed the home to better fit the lot. He explained that even if they dropped a garage into the basement and did a split foyer, there would always be wing walls.

Mr. Menefee indicated they researched different types of blocks, and they believe it is an engineering and design issue; and if properly engineered, there is no reason that it could not be done.

Commissioner Blackwell commented that the safety aspect of the wall is not how well it is built, but how people interact with the wall. Mr. Menefee questioned that if it is a safety issue, why it is complaint driven, rather than the City's job to enforce.

Mr. Lear clarified that not all departments enforce the codes the same way. Code Enforcement does systematic inspections, and they go out every day; in the Planning and Growth Management Department, there is not enough Staff to do systematic inspections. Staff's situation is such that we have to depend on someone to turn in a complaint, and Staff follows up. He also mentioned that it is not just a safety issue, but it is also an aesthetics issue.

Mr. Menefee continued his discussion. He said if the reason for the Code is safety, when there is a wall over three feet, there begins to be a lot of issues with the structure and durability of the wall.

As Mr. Lear displayed Mr. Menefee's photographs, Mr. Menefee commented on the various walls throughout the City which are not in compliance. He said the retaining wall they built fits in with the character of the neighborhood, with there being walls just a couple of blocks from their house. He pointed out that there is a 10-foot high retaining wall on University Street property, which abuts people's back yards and sidewalks. He commented that their retaining walls are on residential property, not 10-foot walls on major thoroughfares next to sidewalks.

Mr. Menefee stated that the reason for the Ordinance had to be engineering; and if a safe wall is done, a variance could be needed. He said that at the Home Show, he talked with contractors, who also were not aware of any Ordinance.

Regarding the retaining wall construction, Mr. Menefee assured that the walls were constructed properly with special blocks. He said they had to change the elevation to construct the house. He spoke about retaining walls and landscaping as storm erosion control. He also referred to the letter of support from Lynne Reynolds, who lives directly behind one of their lots and also Mr. Hodge, whose letter was read at the last meeting. He said the wall is helping their situations as far as their back yards.

Mr. Menefee referred to it being Staff's civic duty to report retaining walls over three feet as they drive through neighborhoods. He mentioned that the City Council should be made aware and that they felt P & W Builders was being singled out. He stated that the walls on private property are not being reported and addressed. He also recommended a permit process be put in place for retaining walls, so there would be someone going out and inspecting them.

Donald L. Hodge, neighbor, stated one of the retaining walls backs up to his lot. He said that due to a slope in the back of his lot, which backs up to an easement, there was a problem with erosion; and the wall solved the problem. He said he would appreciate if Commissioners would consider his property because if the wall had to be taken down, it would affect his property; and he would have a problem with erosion.

Gene Whitehurst, owner and President of P & W Builders, indicated that he was the one who made the mistake. He said he started P & W Builders 57 years ago this fall and has built 3,000 homes, and had never had a problem and always tried to do the right thing. He said that when they took over this subdivision, lots in Peoria were scarce. He said that soon after they purchased the lots, the newspaper addressed it as a crime area.

He said they did not have a model for this house, and because of the economy they did not have the money to build a model, so he used some of his retirement money to build this house. He explained that they had a plan and tried to figure out what to do. The idea came up to use a retaining wall, and he did not think the retaining wall was a problem.

Mr. Whitehurst indicated that when he talked with Mr. Lear, he did not really think that he had a problem. He said Mr. Lear suggested adding the other lots to the variance request to save money. He said that since then, he thought they had withdrawn the other three lots. He said he hoped that Commissioners would approve the variance request so that they could get the home ready and leave the wall the way it is.

Mr. Lear pointed out that he recommended adding the other three vacant lots to the variance request because they had the same lay of the land and same slopes as the other two lots. So, should they decide to build on those lots, they might as well include them at the same time. He indicated that even if the vacant lots had not been included in the Petitioners' request, the other two lots would still require a variance.

Chairperson Pro Tem Barry stated that at the moment they were looking at the five lots. Mr. Lear explained that the Petitioners could withdraw those other three lots from their variance request and by action of the Commission, those lots could be removed from the variance request.

Mr. Whitehurst said Mr. Lear's comments were probably true, but some of the neighbors thought they would do the same on the vacant lots. He said they would not, and do not need to put walls on the other lots.

Greg Neaveill, a nearby homeowner, stated that he noticed on December 8 that these two walls were completed. He expressed concern that they look out of place. He said that when P & W were notified around December 15, there was no construction of that lot above the foundation. He indicated that he asked Pat Landes for a stop work order, and she indicated she could not do that. He pointed out that they continued to build with the assumption that everything would be just fine.

Referring to the February meeting, in which the Petitioners indicated they were unprepared, the Chairperson gave them an opportunity to defer their case. Instead, they continued and when it did not go their way, they asked for reconsideration. He said it could have been built to Code, from what Mr. Lear's office is saying. As far as the erosion, it came when P & W took out a 12-foot wall of dirt.

Mr. Neaveill indicated that his position had not changed and that the walls looked just as ugly and out of place and did not belong in a residential neighborhood. He further stated that Ms. Reynolds said it looked fine, but she is a realtor and does not want to upset someone who builds homes. He pointed out that these walls were not safe. He said a company that had been in business for 50 years should know what they are doing.

Mr. Neaveill referred to Mr. Menefee's statement that when they went to purchase material, they should have been notified there was a code problem. He disagreed and stated that it would be the Petitioners' responsibility.

Mr. Neaveill also pointed out the following main points:

- They presented photographs of other walls without qualifying that many of these may have received a variance before construction. Others could have been constructed prior to the Code going on the books, so they would not be in violation.
- Approval of the variance would be setting a precedent.
- The Peoria SPRB recommended denial. It was not because of the complaint but because it is a serious violation.
- The homeowners disapprove of this construction.
- The vote was 5 to 2 to deny the variance; and there is no reason for a different vote today.

Mr. Lear read two letters of support of the variance, one from Lynne Reynolds and the other from Donald Hodge.

Mr. Neaveill reiterated that the walls could have been built in compliance.

Mr. Gene Whitehurst indicated that the walls could not have been built to Code because they did not have enough room to extend it further. He stated that he was proud of the wall; and he showed the wall to several people, who also thought it was beautiful.

Mr. Neaveill questioned if there had to be 15 feet from the house to this wall. Mr. Lear explained that the setback from the house to the rear property line had to be 25 feet. Mr. Lear further explained that since a wall is considered a structure, the house had to be at least 10 feet away from the wall.

Mr. Neaveill said the back yard has 24 feet, so there was room. Mr. Gene Whitehurst stated it is 24 feet but not enough for a lot either way; the back of that lot is a "V" in the center of the lot, so there would still be a problem up above.

Mr. Lear stated that even if 24 feet, they would be in violation. He explained that the submitted drawing showed 25 feet; and Staff did not sign off on 24 feet.

David Whitehurst, Petitioner, stated that they were not prepared at the first meeting. He said this wall took a long time to build, and Mr. Neaveill could not see it from his house; it does not affect his house in any way. He indicated that they had done their best to make this subdivision the best they could. He mentioned that he had trouble getting Mr. Neaveill to return calls. He said when he talked with Mr. Neaveill and guaranteed him there would no walls on the other three lots. He stated that Mr. Neaveill led him to believe that he might be interested in retracting this, if no trees were removed and there would be no walls on the other lots.

Mr. Whitehurst stated that they violated the Ordinance and pointed out that there are violations all over Peoria. He said the only reason they are there is because Mr. Neaveill complained. He referred to this not coming up very often, and that even the Board said there was only one other variance request for a wall, which was on commercial property. He said that with ravines, there have to be walls. He said they thought they were doing the right thing, and they did it the right way. He said that they are sorry they did not know the three-foot rule at the time.

Mr. Neaveill stated it would have been tiered. He said he returned at least two of Mr. Whitehurst's calls. He stated, "It is a pattern of fact versus fiction."

In discussion with Commissioner Blackwell to clarify that the setback is not an issue, Mr. Menefee indicated that the property line is 25 feet at the nearest point and 24 feet from the house to the first block; each block is 2 feet deep, and there is a setback between the two different tiers, probably 30 to 35 feet total.

Commissioner Pro Tem Barry closed the public testimony of this case.

In discussion with Commissioner Ierulli, Mr. Lear explained that since the Petitioners indicated they did not wish to place walls on the other lots, Commissioners could separate those three lots from the other two lots.

Commissioner Blackwell suggested separating Lots 26, 27, and 28 from Lots 25 and 30.

MOTION (Lots 26, 27, 28)

Commissioner Ierulli motioned to approve the variance for Lots 26, 27, and 28.

Commissioner Ierulli stated he was making the motion for the record, since the Petitioners did not formerly request that those lots be withdrawn for the Commissioners' action.

The motion was seconded by Commissioner Wagner.

DELIBERATION (Lots 26, 27, 28)

Chairperson Pro Tem Barry administered the Findings of Fact.

It was noted that there was no hardship or practical difficulty, but it was self-created.

Regarding the granting of the variance being detrimental to the public welfare or injurious to other property or improvements in the neighborhood, Commissioner Blackwell acknowledged that there was testimony both ways. He said the variance could alter the character of the neighborhood.

Commissioner Ierulli explained that he made this motion solely to take these lots off the table and address them separately and address the lots with the walls on them.

Commissioner Blackwell stated that they should not allow walls on those three properties because it would be detrimental to the neighborhood.

Chairperson Pro Tem Barry indicated that the International Building Code requires that any change in elevation greater than 30 inches, there has to be a guard of 42". He stated there is a safety issue in terms of children falling off the wall.

The motion was **denied** by roll call vote 0 to 5.

Yeas: None;

Nays: Barry, Blackwell, Ierulli, Kouri, Wagner.

(Therefore, there can be no retaining walls greater than 3 feet in height on Lots 26, 27, and 28.)

MOTION (To Split Lots 25 and 30):

Commissioner Blackwell motioned to split Lots 25 and 30 and begin with Lot 30; seconded by Commissioner Kouri.

The motion was **approved** unanimously by viva voce vote.

MOTION (Lot 30):

Commissioner Blackwell motioned to **deny** the request for a variance on Lot 30. The motion was seconded by Commissioner Wagner.

DELIBERATION (Lot 30):

Chairperson Pro Tem Barry administered the Findings of Fact

Commissioner Blackwell stated there was no hardship. Commissioner Ierulli stated he thought there was a hardship due to the topography issue.

Commissioner Blackwell stated the variance would be detrimental to the public welfare and would alter the character of the neighborhood.

Commissioner Wagner stated the variance could impair natural drainage or create drainage problems on adjacent properties; and it would endanger the public safety.

Commissioner Blackwell indicated that in looking at these properties, it appeared they could have done this within the Code by stair-stepping the walls.

The motion to **deny** the requested variance **passed** by roll call vote 4 to 1.

Yeas: Barry, Blackwell, Ierulli, Wagner;

Nays: Kouri.

(Therefore, there can be no retaining wall on Lot 30 greater than 3 feet in height; and the existing retaining wall which is greater than 3 feet must come into compliance or be removed.)

FIRST MOTION (Lot 25):

Commissioner Blackwell motioned to **deny** the Petitioners' request. There was no second.

The motion **failed** due to the lack of a second.

SECOND MOTION (Lot 25):

Commissioner Wagner motioned for approval of the variance on Lot 30; seconded by Commissioner Kouri.

DELIBERATION (Lot 25):

Chairperson Pro Tem Barry administered the Findings of Fact.

Commissioner Blackwell stated that a hardship did not exist. He said that he thought the wall could have been constructed with stair-stepping of the walls and would be within Code.

Commissioner Ierulli commented on the grade of the lot and that there was a substantial grade difference.

During discussion regarding if the hardship was self-created, Commissioners pointed out the following: Commissioner Wagner said that asking for the variance is probably self-created, but it is the depth of the lot, layout, and topography; Commissioner Blackwell: The topography is not self-created; Commissioner Wagner pointed out that the request for the variance is based on what they built; and Commissioner Ierulli stated the hardship is not self-created; the issue is the topography and the ground.

Commissioner Ierulli referred to one neighbor's testimony that this wall protected his property from erosion problems.

Commissioner Blackwell said he thought that public safety was an issue due to the wall height. He stated that the wall was a lot higher than it looked in the photograph. He said Commissioners would not be doing our job if this is allowed.

The motion to **approve** the requested variance **passed** by roll call vote 3 to 2.

Yeas: Ierulli, Kouri, Wagner;
Nays: Barry, Blackwell.

(Therefore, the heights of the existing retaining walls on Lot 25 are approved for their existing heights.)

Chairperson Pro Tem Barry recessed the meeting at approximately 3:00 p.m. He called the meeting back to order at approximately 3:05 p.m.

ZBA 2935 **Petitioners Allen & Pam Durr are requesting two variances from the City of Peoria Zoning Ordinance: Article 7.6.e, to allow a building addition to encroach 15 feet (later amended to 9 feet) into the required 25-foot front yard on Southgate Road and 3 feet into the required 25-foot front yard on High Point Road. The property is located at 136 E. High Point Road.**

Chairperson Pro Tem Barry announced Case No. ZBA 2935 and asked Mr. Giwa to read it into the record.

Olajide Giwa, Senior Urban Planner, Planning and Growth Management Department, read the case into the record and reported the following:

SPRB CONCLUSIONS AND RECOMMENDATIONS:

After reviewing the Petitioners' application and performing a site inspection, SPRB does not support the variance request for the following reasons:

1. The stated hardship of two front yards is not unique.
2. The property can yield a reasonable economic return if the variance is not granted.
3. The current owner would be creating the practical difficulty.
4. The granting of the variation will alter the essential character of the neighborhood.

In discussion with Commissioner Blackwell, Mr. Giwa concurred that there was a previous variance on this property in the past.

Ms. Stainback swore in those who were not present earlier.

Allen Durr, Petitioner, distributed a handout, which included the following: A site plan of the proposed site, which showed that there was no other place to put an addition; a rendering of the house; an aerial photograph, marked to show nonconforming homes on High Point and Southgate Roads; two letters of support from Thomas and Emily Jean Johnson and Cathie Crawford; and a petition signed by 23 neighbors, stating their support. Chairperson Pro Tem Barry marked the information as Petitioner's Exhibit 1.

Referencing the former variance, Mr. Durr explained there was approval for an addition on the west side of the home for a garage with a master bedroom above it. He stated his wife and he were asking for an 11-foot variance to encroach on the east front yard property line and a 3-foot variance to encroach on the north front yard to add a new efficient sunroom and a new bedroom for their children.

In discussion with Commissioner Blackwell, regarding the specific hardship, Mr. Durr stated that the addition could not be built anywhere else on the property: They could not building on the north side because it was not be in harmony with the neighborhood; and not on the west side because that is where they added a garage and master bedroom; and on the south side, there was no room; and it would decrease the back yard where the children play; and the east side could not be used because they could not see the children playing on the east side of the house.

Responding to Commissioner Blackwell regarding the lot size, Mr. Durr stated the subject property consists of a lot and a half, with dimensions of 132' x 66' in the front and 128' x 66' in the back.

The following neighbors spoke regarding their admiration of the Durrs and extended their support of the requested variances: Listed in the order in which they spoke: David Muchow, John Pusey, Paul Oakford, Andrew Weeks, and Jeff Johnson.

In discussion with Commissioner Blackwell, Mr. Durr stated that the existing sunroom wall would remain in its current location; and they would be going east toward Southgate, roughly 10 feet from the property line. Mr. Durr reiterated that the variances would be for 3 feet in the front yard and 11 feet on the east side.

Mr. Giwa concurred that the encroachment would be 11 feet.

Responding to Commissioner Blackwell, Mr. Durr explained that the current sunroom is 9 feet x 22 feet; and he was asking for 6 more feet.

Commenting on the handout of an aerial which showed other nonconforming uses, Mr. Giwa commented that it was known the types of nonconformities being referred to; so, Staff's position remained the same. He pointed out that the house to the south was encroaching already, so instead of 25 feet, they have 17 feet. He explained that in a situation such as this, to determine the required setback, Staff averages the setback of the adjoining properties, so in this case, the setback would be 22 feet, not 25 feet; so the encroachment would be a little less; but nevertheless, it is still encroaching.

DELIBERATION:

Chairperson Pro Tem Barry administered the Findings of Fact.

Commissioner Blackwell stated no hardship was presented.

Commissioners agreed that granting of the variances would not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood; would not alter the character of the neighborhood; would not impair an adequate supply of light and air to adjacent property or increase the danger of fire, or impair natural drainage or create drainage problems on adjacent properties; and would not endanger the public safety or diminish or impair the property values of the neighborhood.

Motion:

Commissioner Ierulli motioned for approval of the requested variances. The motion was seconded by Commissioner Wagner.

Commissioner Blackwell stated he would be voting against the requested variances because the lot has an addition already, and another addition would be "too much house for too small of a lot." Commissioner Wagner stated that he agreed to a certain extent, but there are several houses that are too much house for those lots.

Commissioner Ierulli indicated that in looking at the GIS map, he considered the lot lines do not incorporate in the right-of-way; so, this is not like the lot line goes right up to the right-of-way or the sidewalk. He pointed out that consideration should be given to the fact there is a substantial setback from the roadway.

The motion passed by roll call vote 4 to 1.

Yeas: Barry, Ierulli, Kouri, and Wagner;

Nays: Blackwell.

CITIZENS' OPPORTUNITY TO ADDRESS THE ZONING BOARD OF APPEALS

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

ADJOURNMENT

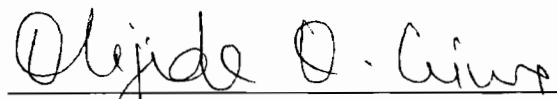
Commissioner Wagner moved to adjourn the Zoning Board of Appeals Meeting; seconded by Commissioner Blackwell.

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

The Zoning Board of Appeals Meeting adjourned at approximately 3:35 p.m.



Gene Lear, Senior Urban Planner
Planning and Growth Management Department



Olajide Giwa, Senior Urban Planner
Planning and Growth Management Department

/ps

TO: City of Peoria Zoning Board of Appeals Commissioners
THRU: Site Plan Review Board
FROM: Gene Lear, Senior Urban Planner
DATE: May 5, 2011
**SUBJECT: RECOMMENDATION FROM STAFF AND SITE PLAN REVIEW BOARD FOR
CASE NO. ZBA 2936**

PETITIONER: Petitioners Haefli Brothers

LOCATION: 201 E. Lake Avenue

BACKGROUND:

Petitioners Robert and Richard Haefli for Haefli Brothers are requesting a variance from the City of Peoria Zoning Ordinance, Article 16.4.c., *Transitional Buffer Yard*, to reduce the existing required transitional buffer yard to 0 feet in some areas and leave the remaining existing buffer yard the same for the expansion of a parking lot. The property is located at 201 E. Lake Avenue in the C-1 General Commercial District.

SPRB CONCLUSIONS AND RECOMMENDATIONS:

After reviewing the Petitioners' application and performing a site inspection, SPRB does not support the variance request for the following reasons:

1. The existing transitional buffer yard is intact and in compliance with the zoning ordinance and providing a buffer between the commercial use and the adjacent residential use to the north.
2. There is no hardship.
3. The current owner would be creating the practical difficulty.
4. The granting of the variation will alter the essential character of the neighborhood.



CITY OF PEORIA
APPLICATION FOR VARIANCE/ZONING BOARD OF APPEALS

APR. 5 2011

8 v 0 ZBA 2936

For Office Use Only

Date _____
Received: _____
Time: _____
Initials: _____

I. PROPERTY INFORMATION:

- A. Street address: 201 E. LAKE ST. Zip Code + 4 61614 - _____
- B. Tax ID number: 14-21-454-043
- C. Legal description (required to be on attached form, "Attachment A", Legal Description, typed, single-spaced, one inch (1") margins)
- D. Area (square feet or acres): _____
- E. Current property use: MULTI USE RESTAURANT-CREDIT UNION
- F. Current zoning district: _____

II. APPLICANT(S):

- A. Name: OAK CLIFF PARK
- B. Company name: HAEFLI BROS.
- C. Address (Street, City, Zip + 4): 121 E. LAKE ST - 61614
- *E-mail Address: _____
- D. Daytime phone number: 309-682-9683
- E. Interest in subject property: ☒ Owner ☐ Representative
- F. Applicant(s) signature(s): Robert I. Haefli Date: 4/5/11
Robert I. Haefli Date: 4-5-11

III. OWNER(S) OF SUBJECT PROPERTY:

- A. Name: HAEFLI BROS.
- B. Company: OAK CLIFF PARK
- C. Address (Street, City, Zip): 121 E. LAKE ST - 61614
- * Email Address: _____
- D. Daytime phone number: 309-682-9683
- E. Owner(s) signature(s): Robert I. Haefli Date: 4-5-11

*PLEASE NOTE: THIS FORM WILL BE USED FOR ALL CORRESPONDENCE UNLESS OTHERWISE REQUESTED.

CORRESPONDENCE/COMMUNICATION TO BE SENT TO: Select only one

___ Applicant X Owner

IV. VARIANCE INFORMATION:

A. 1. Variance being requested ADDITIONAL PARKING
TBY# VARIANCE

2. From what section of the zoning ordinance is a variance being requested? _____

B. What unique or exceptional characteristics of your property prevent it from meeting the requirements in your zoning district? (Check applicable)

Too narrow ___ Too small ___ Soil ___

Subsurface ___ Elevation ___ Slope ___

Too shallow ___ Shape ___ Other X

C. What is your hardship? Please be specific. NEED ADDITIONAL
PARKING SPACES

D. Are the conditions of the hardship, for which you are requesting a variance, true only of your property?
X Yes ___ No

If not, what number of properties are similarly affected? _____

E. If granted a variance in the form requested, will it be in harmony with the neighborhood and not contrary to the intent and purpose of the Zoning Ordinance?

X Yes ___ No

Please elaborate: _____

Oak Cliff Park

121 E. Lake Street
Peoria, Illinois 61614
Phone: (309) 682-0931

LEGAL DISCRIPTION

WOODLAWN PLACE SE ¼ SEC 21-9-8E BEG 50' N @ 390' E of SW COR SE ¼

SEC 21: THN 214.6' E 188.12' S 213.49' W 186.85' TO POB PT LOT 6

{ 92-26911 / 92-34167 / 94-23478

TO: City of Peoria Zoning Board of Appeals Commissioners
THRU: Site Plan Review Board
FROM: Gene Lear, Senior Urban Planner
DATE: May 5, 2011
**SUBJECT: RECOMMENDATION FROM STAFF AND SITE PLAN REVIEW BOARD FOR
CASE NO. ZBA 2937**

PETITIONER: Petitioners Floyd J. Rashid

LOCATION: 4711 N. Knoxville Avenue

BACKGROUND:

Petitioner Floyd J. Rashid is requesting a variance from the City of Peoria Zoning Ordinance, Article 16.4.c.(1), *Transitional Buffer Yard Depth*, to allow a building addition to encroach 11 feet into the required 16-foot transitional buffer yard. The property is located at 4711 N. Knoxville Avenue in the O-1 Arterial Office Commercial District.

SPRB CONCLUSIONS AND RECOMMENDATIONS:

After reviewing the Petitioners' application and performing a site inspection, SPRB does not support the variance request for the following reasons:

1. The proposed addition could be built elsewhere on the property in compliance with the zoning ordinance.
2. There is no hardship.
3. The current owner would be creating the practical difficulty.



CITY OF PEORIA
APPLICATION FOR VARIANCE/ZONING BOARD OF APPEALS

For Office Use Only
Date _____
Received: _____
Time: _____
Initials: _____

I. PROPERTY INFORMATION:

- A. Street address: 4711 N. Knoxville Zip Code + 4 616 - 14
- B. Tax ID number: 14-21-328-025
- C. Legal description (required to be on attached form, "Attachment A", Legal Description, typed, single-spaced, one inch (1") margins)
- D. Area (square feet or acres): 23,940 sq. ft.
- E. Current property use: empty
- F. Current zoning district: O-1

II. APPLICANT(S):

- A. Name: Floyd J. Rashid
- B. Company name: same
- C. Address (Street, City, Zip + 4): 2819 N. Knoxville Ave Peo IL 61604
- *E-mail Address: φ
- D. Daytime phone number: (309) 6885800 cell 4539505
- E. Interest in subject property: ☒ Owner ☐ Representative
- F. Applicant(s) signature(s): Floyd J. Rashid Date: 4/11
- Date: _____

III. OWNER(S) OF SUBJECT PROPERTY:

- A. Name: Floyd J. Rashid
- B. Company: Dentist
- C. Address (Street, City, Zip): 2819 N. Knoxville Ave Peo, IL 61604
- * Email Address: φ
- D. Daytime phone number: (309) 6885800 cell 4539505
- E. Owner(s) signature(s): Floyd J. Rashid Date: 4/11

*PLEASE NOTE: EMAIL WILL BE USED FOR ALL CORRESPONDENCE UNLESS OTHERWISE REQUESTED.

CORRESPONDENCE/COMMUNICATION TO BE SENT TO: Select only one

☒ Applicant ☐ Owner

IV. VARIANCE INFORMATION:

A. 1. Variance being requested for a reduced side yard setback
North of the subject property

2. From what section of the zoning ordinance is a variance being requested? _____

B. What unique or exceptional characteristics of your property prevent it from meeting the requirements in your zoning district? (Check applicable)

Too narrow ☒ Too small ☐ Soil ☐

Subsurface ☐ Elevation ☐ Slope ☐

Too shallow ☐ Shape ☐ Other ☐

C. What is your hardship? Please be specific. attached

D. Are the conditions of the hardship, for which you are requesting a variance, true only of your property? ☒ Yes ☐ No

If not, what number of properties are similarly affected? _____

E. If granted a variance in the form requested, will it be in harmony with the neighborhood and not contrary to the intent and purpose of the Zoning Ordinance?

☒ Yes ☐ No

Please elaborate: Existing property is run down and I intend to
remove all of the windows and replace them with New ones to match the existing new
addition. I will also remove the existing roof and replace them with an Architectural Roof
to match that of the new addition. The new addition will have a brick and stone fronting
knowing same as in the present dwellings. A new decorative fence will be installed
with ample landscaping in front of it to compliment all of the work above.

FLOYD J. RASHID
2819 N. Knoxville Avenue
Peoria, Illinois 61604
Phone 309/688-5800

After a survey of my property was completed, I had a retaining wall installed since the property North of mine is approximately 5'1/2 to 6' higher than mine, with the intention of installing a new fence in front of the property line along with landscaping between the fence and the new wall.

Plans were drawn by an architect and given to the contractor for a 20'x30' addition to the existing house in front of the existing garage to accommodate the reception room along with the receptionists.

The existing garage area will be used for 2 Dental rooms along with 2 existing Dental rooms in the existing house. The attached plat shows that there is presently 3'8" side yard and the survey pins placed by my surveyor shows a 10' side yard, a discrepancy of plus 6 plus feet.

Because of the discrepancy the width of the new addition will have to be reduced to 13'x30' to meet the present side yard set back.

Because of the above I am asking for a variance of the side yard set back to be reduced to 5' so I may start construction as soon as possible.

With the difference in elevation with the adjacent property North of me and the installation of a new decorative fence along with landscaping will in no way affect the property North of me.

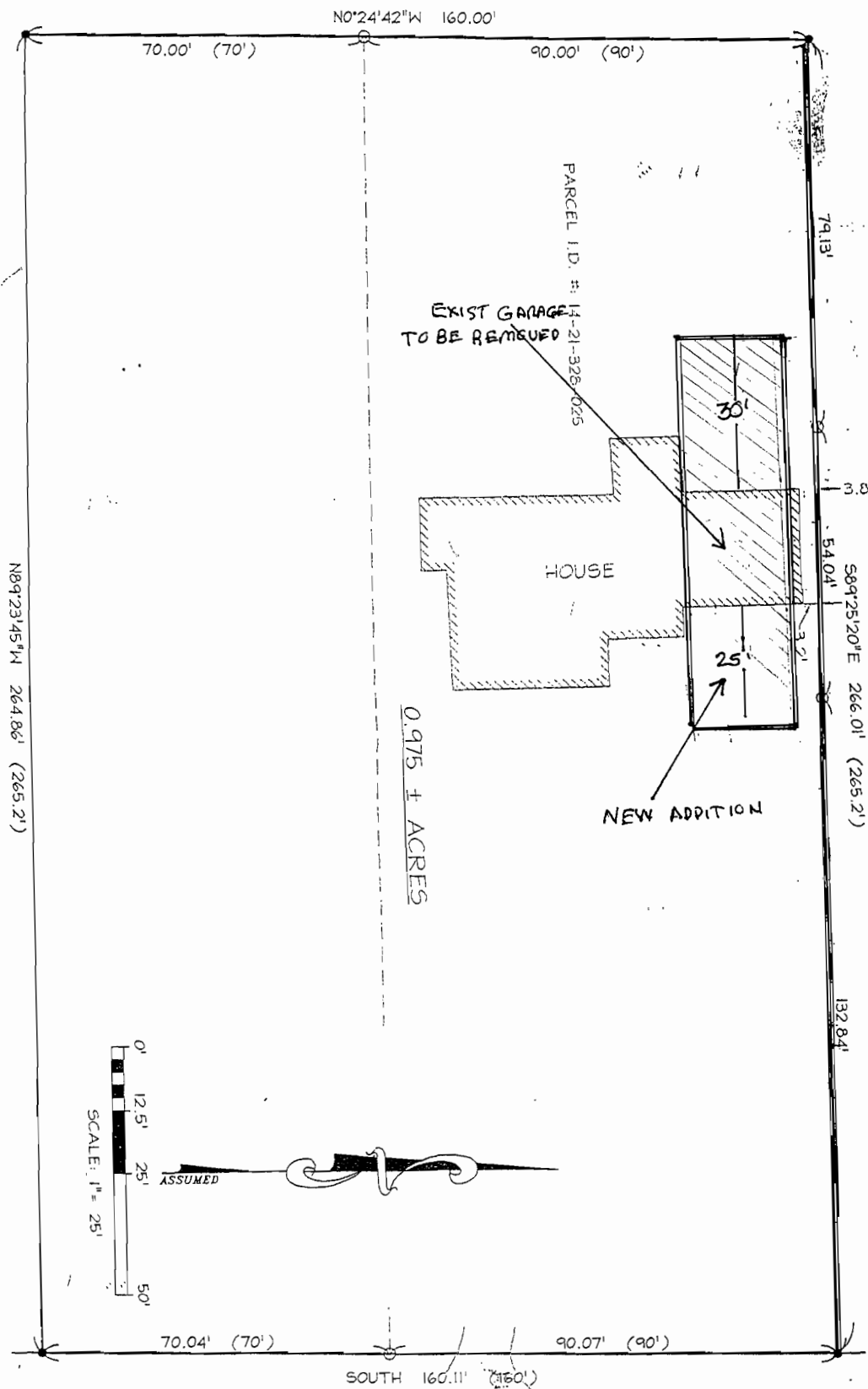
With the new addition to the existing house all windows and roofing will be replaced with new windows and an Architectural roof to match that of the new addition which would compliment both the adjacent property and those on the East side of Knoxville.

Part of Lot 1 of the Subdivision of the Southwest Quarter of Section 21, in Township 9 North, Range 8 East of the Fourth Principal Meridian, more particularly bounded and described as follows: Commencing at the Southeast corner of said Lot 1 and running thence North along the East line of Lot 1, 260 feet which is the point of beginning, thence West parallel with the South line of said Lot 1, 667.26 feet more or less to the West line of said Lot 1, thence South along the West line of said Lot 1, 160 feet; thence East and parallel with the South line of said Lot 1, 667.26 feet more or less to the East line of said Lot 1, thence North along the East line of said Lot 1, 160 feet to the Place of Beginning, EXCEPTING THEREFROM a part of Lot 1 of the Subdivision of the Southwest Quarter of Section 21, Township 9 North, Range 8 East of the Fourth Principal Meridian, according to the plat thereof recorded April 12, 1879 in Plat book "A", Page 186 more particularly bounded and described as follows: Commencing at the Southwest corner of said Lot 1; thence North 100 feet along the West line of Lot 1 to the place of beginning; thence East parallel with the South line of Lot 1, 350 feet; thence North parallel with the West line of Lot 1, 160 feet; thence West parallel to the South line of Lot 1, 350 feet to the West line of Lot 1; thence South along the West line of Lot 1, 160 feet to the Place of Beginning, in the City of Peoria, situated in PEORIA COUNTY, Illinois.

Permanent Index No. 14-21-328-025

Property Address: 4711 North Knoxville, Peoria, Illinois 61614

85-46158



KNOXVILLE AVE (IL RTE 40)