

PLANNING & ZONING COMMISSION
May 11, 2010 – 7:00 P.M.

The Planning Commission met at City Hall on the above date.

Present: Commission Members Hrabak, Mazur, Councilwoman Richmond, Mayor Drucker, Shana Samson – Law Department, Planning Director Frankland, Secretary McConoughey

Absent: Commission Member Newberry

Also Present: Fire Lieutenant Benedict

The following items remained on the Inactive Agenda:

- A. Thornbury Subdivision – Forest City Land Group – Dedication Plat for phases 7 and 8
- B. Carrington Court Senior Housing Project – Gross Builders - proposal to modify look-alike home provisions
- C. 34050 Aurora Road – BP America – Number of signs variance (to permit 16)
- D. Hawthorne Estates Subdivision – TransCon Builders
- E. 6820 SOM Center Road – Solon City Schools – lot area variance, lot width variance and side yard setback variances
- F. 6784 SOM Center Road – Solon City Schools – lot area variance, lot width variance and side yard setback variances

NOTES OF CAUCUS DISCUSSION:

(Secretary's note: Agenda items not mentioned under Notes of Caucus Discussion are items that were not pertinently discussed during Caucus.)

Chairman Mazur reviewed the agenda and no pertinent discussion took place during the Caucus.

The caucus ended at 7:08 P.M. and the meeting convened at 7:30 P.M.

CHANGES TO THE AGENDA:

There were no changes to the agenda.

COMMENTS FROM THE AUDIENCE:

There were no comments from the audience.

APPROVAL OF MINUTES:

Motion by Mayor Drucker, seconded by Mr. Hrabak to approve the minutes of the April 27, 2010, meeting as presented.

Roll Call: Aye: Drucker, Hrabak, Mazur, Richmond
Nay: None

Motion Carried

NEW:

1. 6135 Kruse Drive – Automotive Realty, LLC 031-2010
 - Number of wall signs variance

Mr. Al Wangenheim, Davis Development Group, displayed a site plan and indicated the location on the building where the requested sign will be installed. He said this building was an addition to the original BMW building and presented samples of the sign material which will display stainless steel lettering on charcoal and white. Mr. Wangenheim said they will remove a "Service" sign and the replacement sign will state "Certified Pre-owned."

Mr. Mazur said this request is basically to relocate a sign.

In response to Mr. Hrabak's question, Mr. Frankland said the square footage requirements have been met.

Motion by Mr. Hrabak, seconded by Mayor Drucker to approve the number of wall signs variance.

Roll Call: Aye: Drucker, Hrabak, Mazur, Richmond
Nay: None

Motion Carried

2. 33346 Lisa Lane – Heinz & Cheryl Akers 032-2010
 - Variance to permit 2 accessory structures
 - Accessory structure location variance

Mr. Heinz Akers and Mrs. Cheryl Akers were present. Mr. Akers said they are requesting approval to install a 6' x 8' structure in the rear yard located near the garage to shelter a grill from the elements. He displayed photographs of the yard indicating the pine trees which will screen the structure from the neighboring property.

Mayor Drucker said for clarification purposes, the reason for the variance to permit 2 accessory structures is due to a shed located in the rear yard. Although the new structure is merely an arbor/pergola, it is still considered a structure. She said no variance would be necessary if the structure was attached to the house.

Mr. Akers said it is a roof that will be supported by poles and will not be enclosed. He said he did not attach the structure to the house because he recently had new siding installed on the house.

Motion by Mr. Hrabak, seconded by Mr. Mazur to approve a variance to permit 2 accessory structures.

Roll Call: Aye: Drucker, Hrabak, Mazur, Richmond
Nay: None

Motion Carried

Motion by Mr. Mazur, seconded by Mayor Drucker to approve an accessory structure location variance.

Roll Call: Aye: Drucker, Hrabak, Mazur, Richmond
Nay: None

Motion Carried

3. 35675 Pettibone Road, PP#'s 956-08-001 and 002 – David Hric 033-2010
- Lot consolidation
 - Variance to permit 2 accessory structures (detached garages)
 - 5' side yard setback variance for detached garage
 - 31% variance to allow detached garage to exceed 50% of dwelling footprint
 - 92 sq ft variance to allow detached garage to exceed 900 sq ft

Motion by Mayor Drucker, seconded by Mr. Mazur to schedule a public hearing on May 25, 2010, for a lot consolidation of PP#'s 956-08-001 and 956-08-002 located at 35675 Pettibone Road.

Roll Call: Aye: Drucker, Hrabak, Mazur, Richmond
Nay: None

Motion Carried

4. 7285 SOM Center Road – David Zocchi 034-2010
- 520 sq ft total amount of accessory pavement variance
 - 25' accessory pavement setback variance

Mr. David Zocchi was present. A drawing was displayed indicating the locations where he would like to add pavement to expand the driveway. Mr. Frankland explained the necessity for additional vehicle maneuverability is apparent since it is located near a very busy four-lane area of SOM Center Road.

Mayor Drucker said since SOM Center Road has been widened, the Council has approved variances for residents located on SOM Center Road to assist with safety issues.

In response to Mr. Hrabak's question, Mr. Zocchi said he currently has 3 vehicles.

Motion by Mayor Drucker, seconded by Councilwoman Richmond to approve a 520 sq ft total amount of accessory pavement variance.

Roll Call: Aye: Drucker, Hrabak, Mazur, Richmond
Nay: None

Motion Carried

Motion by Councilwoman Richmond, seconded by Mr. Hrabak to approve a 25' accessory pavement setback variance.

Roll Call: Aye: Drucker, Hrabak, Mazur, Richmond
Nay: None

Motion Carried

- 4A. 32420 Tracy Lane – Yuriy Zingerman – (Europa Cement) 035-2010
- 5' rear yard setback variance

Mr. Taras Yarmoshik, Contractor, was present representing the applicant. Mr. Yarmoshik explained the patio was installed prior to the Commission's approval due to a misunderstanding with the concrete company. Although he received approval to pour the cement for the stoop, the order for the entire patio had been placed and upon requesting only the yard of cement necessary for the stoop, a miscommunication occurred and the entire concrete order which was valued at \$2,500 was delivered. A time-consuming color enhancement was added to the concrete and, therefore, Mr. Yarmoshik made the decision to install the entire patio to avoid a costly loss.

He displayed photographs of the property and indicated the patio location is adjacent to preserved green space which is very damp and makes it difficult to maintain vegetation. Mr. Yarmoshik displayed photos of the patio and indicated the substantial amount of woods surrounding it and said the closest neighbor is approximately 150' away.

Mr. Frankland said a permanent restrictive covenant is adjacent to the rear lot of the applicant's property and a 15' setback is required. The patio is located 10' off of the property line, therefore, a 5' variance is required.

Mr. Yarmoshik said he is a registered contractor with the City of Solon and has been installing patios in the City for at least 5 years. He was apologetic for his error. However, he felt compelled to utilize the concrete and complete the installation rather than waste \$2,500 worth of concrete. In addition, he had to wait for more employees to arrive to assist since it was a large installation. He said he was well aware that he would be held accountable for his actions and hopes the incident does not jeopardize future work in the City.

Mr. Hrabak said after viewing the photos, he understands why Mr. Yarmoshik made the decision to install the patio. He said if the concrete had been a typical gray it might have been possible to use it elsewhere but since it was colored concrete, that option was more difficult.

Mr. Mazur said after hearing Mr. Yarmoshik's explanation, he understands the situation. However, he said there is a technicality that the patio was installed without the proper building permit and the ramification will be in the form of a fine. He noted the fine will be minimal when compared to losing \$2,500 worth of concrete.

Motion by Mr. Hrabak, seconded by Mr. Mazur to approve a 5' rear yard setback variance.

Roll Call: Aye: Drucker, Hrabak, Mazur, Richmond
Nay: None

Motion Carried

- 4B. 34045 Maple Drive – Michael Cicek – (Shaw & Ott Medical) 036-2010
- 11' front yard setback variance

Mr. Dan Van Harlingen, Shaw & Ott Medical, displayed a site plan and explained the request to install a handicap ramp. He indicated the location of the proposed ramp on the property and said currently, the house does not conform to the 40' setback. Mr. Van Harlingen said in order to meet ADA requirements, the ramp will be quite long and end at the sidewalk.

Motion by Mayor Drucker, seconded by Councilwoman Richmond to approve an 11' front yard setback variance.

Roll Call: Aye: Drucker, Hrabak, Mazur, Richmond
Nay: None

Motion Carried

Mr. Mazur said he would prefer a contingency requiring the ramp be removed if the home is sold in the future.

Mr. Van Harlingen said the property owner requested the ramp be removed if the current tenant vacates the property.

COUNCIL REFERRAL:

5. Proposed "Rental Occupancy Permit" Ordinance

006-2010

A public hearing was continued and Mr. Mazur asked for comments from the audience.

Mr. and Mrs. Mike Behnke, 38715 Flanders Drive, were present. Mrs. Behnke read a prepared statement which is attached as a matter of record. Mr. and Mrs. Behnke support the need for rental occupancy legislation.

Mrs. Behnke displayed photographs of properties in her neighborhood that are being used as rental units. She indicated unkept yards, an unrepaired, boarded up window and siding that is peeling off a home. Another photograph depicted what was described as a typical move-in, move-out situation; with very little belongings.

Mrs. Behnke said, in addition, there are vacant properties in the neighborhood that have dirt driveways and no yards. She advised, the house next door has been under construction for 5 years. To her knowledge, the house is being used primarily as a storage unit for various builders.

Councilwoman Richmond asked Mr. and Mrs. Behnke if they know who owns the house across the street from them. Mrs. Behnke said a newspaper article indicated the home went into foreclosure in 2007 and reviewed various information provided in the article. However, the Cuyahoga County Auditor still has the same owner on record. She said payment of the taxes is current and she is curious as to who is paying the taxes and who is collecting the rent for the different tenants living there.

Mrs. Behnke said the home has 5 bedrooms, 3 baths and one kitchen and, to her knowledge, there have been at least 4 individual groups renting the home at the same time.

Mr. Behnke said current legislation basically allows a "hotel" across the street from them in a residential, single-family neighborhood.

Mrs. Behnke believes the individuals who stay at the house across the street do not live in apartment complexes because too much information is required to live in the apartments. The current situation makes it easier for transient residents to move in and out of and conduct whatever business they are in.

Mr. Behnke said the types of people that this situation attracts are detrimental to the City and the schools. Mr. Behnke said he is aware that others have suggested the proposed legislation infringes on the privacy of individuals. However, he questioned his right to privacy. He said there is a bullet hole in his dining room window which is directly opposite the house being used as a "hotel." Although the police cannot determine with certainty that it was caused by the people in the "hotel", he said it serves as a daily reminder of the unscrupulous people who are staying there.

Mrs. Behnke believes the whole situation is due to insufficient restrictions regarding rental properties in the City. She said no rules lead to chaos.

Mr. Hrabak referred to the home still under construction next door to the Behnke's and asked why the driveway was still unpaved.

Mr. Frankland explained installation of the driveway is required when an occupancy permit is issued and because the home is unfinished, an occupancy permit has never been requested. The Zoning Inspector will view the home to determine what items can be addressed from the Planning Department's ability to enforce the Code. However, some of the items brought up by Mr. and Mrs. Behnke can only be addressed through rental occupancy legislation.

Mayor Drucker said the situation the Behnke's described is similar to situations that are happening elsewhere in the City.

Mrs. Behnke said many of these types of rentals are a residual effect of the mortgage fraud situation. She is concerned because the taxes are being paid on the properties and rental income is received, therefore, the situation could go on indefinitely.

In response to Mr. Mazur's question regarding how many non-relatives can live in one home based on the Code regulations, Mr. Frankland said the Zoning Code defines a "family." Mr. Frankland said the situation Mrs. Behnke described is difficult to verify. He said this could be rectified with the rental legislation because every time a new occupant moves into a rental, they are required to adhere to the rental occupancy legislation. He said this will assist in keeping track of who is moving in and out of the rentals.

Mr. Mazur said if the ownership of the home doesn't change, there is still no way to determine if the occupancy has changed. Mr. Frankland said the legislation would

state, if the ownership changes or the person renting changes, a new permit is required. Mr. Mazur said this is unlikely to happen given the circumstances Mrs. Behnke described.

Mr. Frankland said it would be another tool to keep track of occupancy changes. However, the Building Commissioner will be enforcing this legislation and if verifiable proof, based on complaints is provided, the inspectors could follow up on these types of situations.

Mrs. Behnke said other municipalities have legislation which requires a separate entrance and mail box for every single rental unit which would assist in regulating the occupants.

Councilwoman Richmond agreed with Mrs. Behnke, however, is unsure if the proposed rental legislation would assist with the situation described by Mr. and Mrs. Behnke. She said additional legislation prohibiting a dwelling from being used to house multiple families might be necessary. She said it is possible that even if a home is inspected once a year, the people staying there might be gone during the inspection. If the inspection is planned in advance, it will give them the opportunity to vacate.

Mrs. Behnke believes that some inspection rules are better than no rules. She said diligence is important with this type of situation and if there are questionable activities taking place in a household and a City representative is coming to the house regularly, this might cause undesirable occupants to vacate to another location.

Mr. Frankland said legislation is in place. For example, Thornbury is zoned for single-family residential. He said a single-family residence is defined as four unrelated individuals living together as a single housekeeping unit or an unlimited number of related individuals. However, it is difficult when various people are coming in and out of a home and the owner says they are just visiting. Mr. Frankland said the proposed rental occupancy legislation will assist by administering regular inspections to ensure the homes are being utilized under the single-family residential code. The manner in which the current proposed legislation is written would allow inspections during the regular intervals determined or if the homeowner or renter requested an inspection. Mr. Frankland said additional language could be added to the proposed legislation requiring the Building Department to administer additional inspections based upon complaints about the property.

Mr. Mazur said in past discussions, it was suggested that the legislation be more reactive rather than proactive. He said Mr. and Mrs. Behnke's dilemma was not something he had considered in the past. He believed the proposed legislation would relate to the internal inspection of the property, which he believed to be intrusive and beyond the scope of what City government should be involved in. However, Mr. and Mrs. Behnke's situation is a significant problem that warrants further consideration and review.

Councilwoman Richmond asked Mrs. Behnke if she has contacted the Solon Police Department regarding illegal activity taking place in her neighborhood.

Mrs. Behnke said she has and two officers indicated they believe the house is being used for a meth lab, however, they do not have probable cause to enter the property.

Mr. Mazur said the Commission appreciated the comments made by Mr. and Mrs. Behnke which have given them a different view and perspective regarding this issue.

Mrs. Behnke emphasized the City should not be afraid to institute rules and she believes the rules should be stronger than proposed. She said the City should consider the policies of other municipalities.

In response to Councilwoman Richmond's question regarding neighbors' frustration with the issue, Mrs. Behnke said many of her neighbors are aware the Behnkes were attending the meeting and discussing this issue. Councilwoman Richmond asked Mrs. Behnke to encourage her neighbors to attend the meetings and share their concerns with the Commission.

Mayor Drucker expressed her appreciation to Mr. and Mrs. Behnke for their candor and said she realizes it is difficult for them to come forward to speak about the situation. She said she was made aware of many rental issues during her campaigning. Mayor Drucker said Councilman Russo was also made aware of rental issues and he requested Mr. Frankland consider legislation to address concerns.

Mayor Drucker said this is a difficult problem that cannot be ignored by the City. Although she is aware it is the opinion of some that government is becoming too involved, she believes it is necessary to ensure the integrity of the City's neighborhoods. For most people, their home is their largest investment and residents have the right to have their property and their personal health, safety and welfare protected.

Mrs. Behnke said some of the homes involved in the mortgage fraud scheme were previously occupied by criminals who were arrested for items related to mortgage fraud and for incidents totally unrelated to mortgage fraud. She said many of her neighbors are not in attendance because they either had other commitments or are afraid to come forward. Mrs. Behnke said many have told her that although they support her, they are too afraid to attend a meeting. Therefore, she represents others as well.

Mr. Hrabak requested a copy of Mrs. Behnke's prepared statement be provided to the Commission members.

Mr. Chuck Rudnay, 38475 Pettibone Road, said he previously spoke with former Councilman Scott and expressed his concern regarding proposed rental occupancy legislation. He believes government should stay out of residences. In addition, the inspection fees and HVAC fees are not appropriate. Mr. Rudnay said the proposed

legislation refers to additional steps in the process to be determined which will effect every homeowner.

Mr. Rudnay referred to the previous meeting when Mr. Horvath spoke about the proposed legislation and asked if he was hired specifically as a consultant for his knowledge about rental occupancy legislation. Mayor Drucker clarified Mr. Horvath is the part-time Chief Building Official for the City of Solon and assists when the full-time Chief Official is unavailable.

Mr. Rudnay said Mr. Horvath discussed wiring systems for residences at the previous meeting and asked if the wiring would be required to be replaced in older homes since they were compliant at the time of installation.

Mr. Frankland said this would only be required if a safety issue or fire hazard was found during the inspection.

Mr. Rudnay said it was inferred that apartment owners are pleased with the proposed legislation since their fees will be passed on to the renter. Therefore, the renter is not being protected but rather the apartment owner who is being protected. In addition, life threatening violations were discussed at the last meeting and Mr. Rudnay listed many of them. Mr. Rudnay believes they were over-exaggerated and none of the violations were life threatening.

Mr. Rudnay said this issue should be addressed by educating residents. The problems should be noted with an explanation on how to rectify them. The City can provide a safety kit which will include all of the proper testing equipment for a minimal deposit. The property owner can perform their own inspection and return the safety kit to the City and correct the issues. Mr. Rudnay said outside maintenance issues can be corrected by contacting the Zoning Inspector.

Mr. Rudnay said many issues are addressed during home inspections upon the sale of a home. He has lived in Solon for 20 years and the City provides many services. Mr. Rudnay said if the legislation is passed, the fees should come out of the general fund.

Mr. Mazur read a letter received from Zaremba Management opposing the proposed rental occupancy legislation (attached for the record).

Mr. Mazur said Mr. and Mrs. Behnke have provided a new perspective he was unaware of. He requested additional time to review the proposed legislation. However, he believes some exterior issues can be addressed within the appropriate departments. Mr. Mazur said this legislation needs more consideration and additional input is welcome and expected at this point.

Motion by Mr. Mazur, seconded by Mayor Drucker to table consideration of Item 5.

Roll Call: Aye: Drucker, Hrabak, Mazur, Richmond

Nay: None

Motion Carried

MINOR ALTERATIONS FROM THE PLANNING DEPARTMENT:

1. 30525 and 30500 Aurora Road – HDT Engineered Technologies

Mr. Frankland displayed a site plan and indicated the two properties where the applicant would like to install a walkway.

Commission members agreed no further review of this item was necessary.

COMMENTS FROM THE COMMISSION:

Mr. Mazur asked the Clerk to compile and forward a record of all comments and discussion regarding the rental occupancy legislation to the Commission and Council members.

COMMENTS FROM THE AUDIENCE:

There were no comments from the audience.

Motion by Mr. Hrabak, seconded by Councilwoman Richmond to adjourn the meeting at 8:40 P.M.

Roll Call: Aye: Drucker, Hrabak, Mazur, Richmond
Nay: None

Motion Carried

Chairman

Secretary