

SOLON PLANNING & ZONING COMMISSION
January 26, 2021 – 7:15 P.M.

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

Present*: Commission Members Greenspan, Mazur, Newberry, Councilman Bentley, Mayor Kraus, Assistant Law Director Stolarsky, Planning Director Frankland, Secretary Letourneau

Absent: None

Also Present*: Director of Information Technology Gibbs, Assistant City Engineer Lyndon, Fire Inspector Eisenhuth, Councilman Shimits, Councilman Zelwin

*Due to the COVID-19 health crisis all those present appeared via video connection.

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.)

Councilman Bentley presided.

Due to the COVID-19 health emergency, the general public was not permitted to attend, however, were invited to phone-in to provide comments.

COUNCIL REFERRALS:

1. Proposed amendment to Section 634.10 of the General Offenses Code, Power Equipment and Hand Tool Limits (Noise Regulations): A public hearing was scheduled.

Mr. Mazur questioned when a proposed amendment will be available for review. Councilman Bentley expected a submission for the next meeting.

PENDING:

3. 5305/5315 Fairfield Oval – Richard Chandler for Susanne Svette (Estate of Robert Sundheim) – lot consolidation and accessory structure variances: A public hearing was scheduled.

4. 38600 Bainbridge Road – CEI/First Energy/AT&T – site plan for a cell tower modification: A public hearing was scheduled.

The caucus ended at 7:26 P.M. and the meeting began at 7:32 P.M.

CHANGES TO THE AGENDA:

There were no changes to the agenda.

COMMENTS FROM THE AUDIENCE REGARDING AGENDA ITEMS:

There were no comments regarding agenda items.

MINUTES:

Motion by Mr. Newberry, seconded by Mr. Mazur to approve the minutes of the December 15, 2020 meeting as presented.

Roll Call: Aye: Bentley, Greenspan, Kraus, Mazur, Newberry

Nay: None

Motion Carried

COUNCIL REFERRALS:

1. Proposed amendment to Section 634.10 of the General Offenses Code, Power Equipment and Hand Tool Limits (Noise Regulations)

A public hearing remained open from the last meeting.

Councilman Bentley asked Mr. Frankland to clarify the contents of the current noise ordinance.

Mr. Frankland said the current ordinance is outdated and includes prohibitions of steam whistles, radios, phonographs, etc. He explained the restricted hours for music, construction and decibel requirements. He said lawnmowers, chain saws and other power tools are not regulated by the Code. Mr. Frankland said he has suggested a time limit of between 9:00 P.M. and 9:00 A.M. which can be revised.

Councilman Zelwin opposes implementing the amendments proposed and finds enforcement will be difficult. He said it will restrict snow plow drivers to certain times and will affect residents. Councilman Zelwin does not agree with governing towards a minority of people who make noise complaints against their neighbors using tools at odd hours of the night. He said the appropriate resolution is for the neighbors to have a civil conversation.

Councilman Shimits believes any amendments to the ordinance should contain consistent time restrictions to accommodate businesses and residents who work odd hours. He agreed with Councilman Zelwin that a civil conversation between neighbors is the solution. He believes the Police Department has more important issues other than noise disputes.

It was discussed and determined that currently the ordinance is contained in the General Offenses Code and is enforced by the Police Department and not the Zoning Inspector.

Councilman Zelwin added that many noise complaints occur outside of the hours of the Zoning Inspector, however, he reiterated the Police Department could be addressing other issues rather than noise.

Mr. Frankland suggested the police enforce noise complaints over the required decibel level at certain times currently in the Code.

Councilman Bentley asked for comments from the public.

In response to Councilman Bentley's question regarding enforcement, Mr. Frankland said an amendment can be made to direct the Zoning Inspector to enforce noise complaints, however, the Police Department would need to respond during outside business hours of the Zoning Inspector.

Councilman Bentley said restricted hours were discussed at the last meeting and verbiage to exclude emergency situations such as use of generators and snow plowing.

Mr. Mazur agreed with inclusion of emergency situation verbiage and hours between 8:00 A.M. and 9:00 P.M.

It was determined to include verbiage regarding emergency situations and amended hours in the proposed amendment Mr. Frankland will prepare.

There were no comments, therefore, the public hearing will remain open until the next meeting.

Motion by Mr. Newberry, seconded by Mr. Greenspan to table consideration of Item 1.

Roll Call: Aye: Bentley, Greenspan, Kraus, Mazur, Newberry
Nay: None

Motion Carried

2. Proposed amendment to Section 1288.04(3)(d) entitled "Non-Commercial Opinion Signs" of the Zoning Code

Councilman Bentley said correspondence has been received from outside counsel, however, has not been reviewed yet.

Motion by Mr. Newberry, seconded by Mr. Mazur to table consideration of Item 2.

Roll Call: Aye: Bentley, Greenspan, Kraus, Mazur, Newberry
Nay: None

Motion Carried

PENDING:

3. 5305/5315 Fairfield Oval - 951-40-004 & 951-40-005 2020-0075 5
Susanne Svette – Estate of Robert Sundheim
- Lot consolidation
 - 2,709 sq ft accessory structure area variance

- Accessory structure location variance
- 1' accessory structure height variance

A public hearing was scheduled.

Councilman Bentley opened the public hearing and asked for comments.

Attorney Stolarsky stated in making a determination whether the requested variance is consistent with the public health, safety and welfare, the Planning Commission is required by Chapter 1293 (B) to apply the Practical Difficulties Test as specified by *Duncan vs. Middlefield*. Through that case, the factors to be considered and weighed in determining whether a property owner seeking an area variance has encountered practical difficulties in the use of his/her property include, but are not limited to:

- (1) whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;
- (2) whether the variance is substantial;
- (3) whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;
- (4) whether the variance would adversely affect the delivery of governmental services (e.g., water, sewer, garbage);
- (5) whether the property owner purchased the property with knowledge of the zoning restriction;
- (6) whether the property owner's predicament feasibly can be obviated through some method other than a variance;
- (7) whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.

Mr. Richard Chandler, 5305 Fairfield Oval, the applicant, was present. He said he is a long-term resident of Solon and built the house on Fairfield Oval. He noted he has owned and operated businesses in Solon and currently operates a business in Twinsburg. Mr. Chandler explained his proposal is to acquire the lot next to his property at 5315, remove the house from the property and consolidate it with his existing lot. He wishes to add a gazebo which he believes will enhance the neighborhood. Mr. Chandler indicated that at a Zoom meeting he organized, the majority of his neighbors agreed and consented to overlook the restrictions of the homeowners association (HOA). Mr. Chandler said he was joined on the call by Suzanne Svette who is the Executor of the Estate of the property he wishes to purchase at 5315 Fairfield Oval and by his Attorney, Michael Drain. He explained the proposed lot consolidation will bring the new lot size closer to the current one acre zoning code requirement for lot size. Although the existing code states accessory structures should be placed behind an existing home, the home on this parcel will be removed and the new accessory structure, the gazebo, will be located partially in the same footprint.

Councilman Bentley requested the drawings be displayed. Mr. Chandler explained the proposal was sent to the neighbors after which a Zoom meeting was held with most of the residents in attendance. The outline showed a 24x24 foot gazebo, an outdoor kitchen, barbeque and seating area that would be covered by a low stone 3' to 4' foot wall, depending on the topography, constructed of natural stone and cedar shake. Computer renderings of how the proposal would appear when completed was displayed. He said some of the engineering details were incomplete because they do not yet include the level of details that a builder would need and has not yet been submitted for approval by the Engineering Department. The lot was recently surveyed and is directly adjacent to the Metroparks which abuts the property on Hawthorn Parkway. He added the HOA covenants and restrictions were included.

Mayor Kraus said there is no practical difficulty or hardship associated with the request which necessitates the approval of the variances. Mr. Chandler said there is no hardship and said he and his wife would like a quiet outdoor private space for themselves in their retirement on expanded property in a way that is amenable to their neighbors. He said the house at 5315 Fairfield has not had any major enhancements or necessary maintenance and will be expensive to bring it to current standards. He is concerned that a new property owner will not be able to update the home and it would lead to the decline in the Fairfield Estates neighborhood.

Mr. Mazur asked if Mr. Chandler currently owns 5315 Fairfield Oval. Mr. Chandler replied no. It is currently owned by the Estate of Suzanne Svette.

Ms. Susanne Svette was present as a representative for her father in an attempt to sell the home.

Mr. Mazur asked Mr. Stolarsky if Mr. Chandler could consolidate lots that include a property he does not own.

Mr. Stolarsky assumed there is some type of contingency agreement in place. He is comfortable that if the consolidation and variances were granted this evening and by the Council, the property would be in a single owner name.

Attorney Michael Drain, Chagrin Falls, was present representing Mr. Chandler and said there is a written commitment to purchase the property conditioned upon the City's approval.

Mr. Mazur asked Mr. Frankland if there were any zoning violations on the property. Mr. Frankland said he is unaware of any but the zoning inspector has not yet done an evaluation.

Mayor Kraus asked if someone was living in the home. Ms. Svette said one of her sisters currently occupies the home.

Linda Gerhart, 5310 Fairfield Oval, said she resides directly across from 5315 Fairfield Oval and opposes the proposal. She submitted letters which are exhibits

to the agenda and summarized them. Ms. Gerhart said she is in agreement with many of her neighbors who are against the consolidation and variances necessary for this proposal. She asked the Commission to uphold the continuity of their neighborhood and the current regulations that exist. Ms. Gerhart said those who are opposed to the lot consolidation and variance are those that are in close proximity to the location and they believe the consolidation will alter the neighborhood. Ms. Gerhart is concerned that if the application is approved, their quality of life will be negatively affected. She said the applicant has not proven hardship or practical difficulty in this proposal and requested the application be denied.

Mr. Calvin Gerhart was present and said he is also opposed to the proposal. He believes the house should not be demolished and should be somebody's home. Mr. Gerhart is concerned safety issues will arise with the size of the proposed structure which he considers to be a party center. Issues such as additional traffic and parking due to many visitors could become a concern. He finds the proposal to be out of character with neighborhood. Mr. Gerhart believes the value of the homes may be negatively affected and is concerned that visitors to the Metroparks could mistakenly believe it is a Metroparks structure and is there for public use. He believes there is no hardship warranting approval and, therefore, requested the application be denied.

Bill Radin, 5265 Fairfield Oval, said he opposes the proposed lot consolidation and variances. He referred to a letter he submitted to the Commission and said the home is currently occupied. Mr. Radin said it was previously mentioned the home needs repairs but the repairs needed were unclear. He believes making repairs would be less burdensome than razing the house and creating a whole new structure. Mr. Radin finds the variances to be substantial and approval would set a bad precedent. Mr. Radin said the proposal will alter the appearance of the development as the existing houses are similar in size and lot size and it would be out of character with the neighborhood. He said the applicant was aware of the zoning restrictions when they made an offer to purchase the property and can accomplish their goals by other means. He asked the Commission to reject the proposal and listen to the residents that would be most affected by approval of the application.

Jay and Laverne Ross, 5240 Fairfield Oval, support the proposal. Ms. Ross said the home has been on the market for a long time and needs much updating to make it livable. She is concerned the purchase price of the house will reduce the value of other homes on the street. They believe the proposed structure will enhance the neighborhood and the applicant has agreed to accommodate their visitors' vehicles in their own driveway. She supports the plan.

Lisa and Michael Schechter, 5300 Fairfield Oval, said they submitted a letter requesting the Commission deny the variances. It was noted their property is one of the properties most affected. Mrs. Schechter is concerned the proposal will change the character of the neighborhood. She prefers to view a home rather than a fence and a wall. She said when they moved into the neighborhood almost 25 years ago, it was to live in a development with single family homes. She said five families did not approve of the change to the deed restrictions at the HOA meeting

and three of the families were the newest neighbors on the street and preferred a family purchase the home. She said other smaller variances in the neighborhood have been denied in the past and she feels this change is very substantial and will affect the value of her home. Mrs. Schechter is concerned that if they should decide to move, their home may be less desirable because it would face a lot that is not consistent with the other homes on the street.

Laurie Sadler, 5225 Fairfield Oval, said as a 38-year resident of Fairfield Oval, she is disappointed there is conflict among neighbors. She is concerned that the house is in poor condition and there are significant issues that will likely lead to safety problems. She questioned the cost of the needed repairs and would expect a new property owner to maintain the tradition of the street. She said the Chandlers have always maintained their property and is certain they will maintain the new lot and structure as well. She asked if there were any other credible offers made for the property.

Mr. Stolarsky believed this was not relevant to the issues before the Commission.

Mr. Newberry said the questions being raised do not apply to this application.

Mrs. Sadler said the safety of the home should be known as it could decrease the value of the other homes on the street.

Mr. Newberry advised the seven criteria for practical difficulty does not include sale amount of the property.

Mr. Chandler interjected that the economic effect on the whole neighborhood falls under the hardship criteria. He said any home sold at a distressed price is going to affect the values for the entire street and it was discussed at length on the Zoom call as the greatest concern to most people.

Mr. Stolarsky reiterated the criteria necessary in regard to Duncan vs. Middlefield.

Mrs. Sadler asked if the home was inspected to determine if the dwelling was worth repairing. Mr. Chandler said he entered the house and water is in the basement with quite a few other problems.

Mr. Newberry said any deficiencies in the structure would be found during the inspection phase.

Mr. Mazur said he checked and found no zoning violations.

Adam Savett, 31760 Woodsdale Lane, said he lives directly behind the two homes and is the President of North Hill Homeowners Association. He noted there have been properties in disrepair for sale in his development that were purchased and renovated. He said those below market sales did not depress the neighborhood; they did the opposite. Mr. Savett believes they were discarded from the comparables because a reasonable appraiser knows when a property is sold at a distressed sale.

Mr. Savett said he has no doubt the proposed structure will be appealing but strongly opposes it as it will be out of character for both neighborhoods. He understands the Chandlers have committed to having small parties, however, the future of the property is uncertain with future property owners. He is concerned that since he works from home and his children are learning remotely, it could impact his family's livelihood. He said they purchased their house because it backs up to the Metroparks, however, such a structure filled with impermeable stone could possibly cause flooding and other issues into his backyard. The plan as presented does not cover noise buffering or visual buffering.

Councilman Bentley referred to practical difficulty and said the applicant does not have a location for a structure of any size in their small back yard. In regard to the location of the structure to the Metroparks, Councilman Bentley said park visitors may believe the structure is part of the Metroparks, which occurs in other parts of the City too. Councilman Bentley said the actual structure size is 580 square feet, however, the variance calculation includes impervious area which he finds misleading. Councilman Bentley said one of the neighbors suggested that screening should be added and that the neighborhood will be enhanced with the removal of a house and the addition of a park.

Mr. Greenspan referred to Exhibit J and said if a structure is proposed in the applicant's backyard, they would still need a setback variance. He supports the lot consolidation and believes the plan will not be a detriment to the neighborhood. In regard to possible flooding issues, Mr. Greenspan said the Engineering Department will ensure that neighboring properties will not be negatively affected.

Mr. Mazur does not support the application and believes there are no practical difficulties. He agreed with the neighbors across the street and opposes the construction of an "event center". His decision is based on the number of neighbors who are opposed, the lack of screening and it is out of character with the neighborhood.

Mayor Kraus commended the applicant's proposal, however, he does not find a practical difficulty or hardship involved that meets the guidelines of Duncan vs. Middlefield. Based on those neighbors directly affected, he does not support the request.

Mr. Newberry referred to the documents submitted involving the homeowners association and asked if they were the official record of the HOA. Mr. Chandler said that he circulated the information after the Zoom meeting, however, he did not receive any objections to the information. Mr. Newberry said a majority of the homeowners do not object. He said there have been negative comments made about the condition of the home that the applicant intends to demolish, however, it is currently occupied. Therefore, he does not consider the condition of the home to be an argument for approving the variances. Mr. Newberry does not believe the criteria have been met using the guidelines of Duncan vs. Middlefield. He does not have an issue with the consolidation but would not approve the variances.

Councilman Bentley said if this is approved tonight, it will be forwarded to City Council. However, there is an appeal process if it denied.

Mr. Stolarsky said the Clerk of Council will provide notification to the applicant of the Commission's decision and instructions on how to file an appeal if so determined.

Mr. Greenspan said another option for the applicant is to table the application tonight.

Mr. Chandler said he will not table the application and prefers the Commission vote on it.

Mr. Lyndon requested that compliance with the Engineering Department memo of January 6, 2021 be a condition of approval of the application.

There were no further comments, therefore, the public hearing was closed.

Mr. Stolarsky said also as a condition of approval of the application, upon granting consolidation of the two properties, one of the residences has to be removed and compliance with the Cleveland Metroparks letter of January 25, 2021 should be added as a contingency to approval.

At Mayor Kraus' request, Councilman Bentley read the comments from Councilwoman Meany, which indicated approval of the application may set a precedent in the City.

Mr. Mazur said comments were received from Councilman Russo as well objecting to the application.

Motion by Mr. Newberry, seconded by Mr. Greenspan to approve the lot consolidation of PP#'s 951-40-004 and 951-40-005 with the contingencies as follows: compliance with the Engineering Department memo of January 6, 2021, compliance with the Cleveland Metroparks letter of January 25, 2021 and the requirement that one residence be removed.

Roll Call: Aye: Bentley, Greenspan
Nay: Kraus, Mazur, Newberry Motion Failed

Motion by Mr. Mazur, seconded by Mr. Newberry to approve a 2,709 sq ft accessory structure area variance.

Roll Call: Aye: Greenspan
Nay: Bentley, Kraus, Mazur, Newberry Motion Failed

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

Roll Call: Aye: Greenspan
Nay: Bentley, Kraus, Mazur, Newberry Motion Failed

Motion by Mr. Mazur, seconded by Mr. Newberry to approve a 1' accessory structure height variance.

Roll Call: Aye: Greenspan

Nay: Bentley, Kraus, Mazur, Newberry

Motion Failed

Councilman Bentley advised the applicant of their right to appeal.

Mr. Drain, legal representation for the applicant requested guidance on the appeal process. The procedure was explained by Mr. Stolarsky.

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| 4. | 38600 Bainbridge Road CEI/First Energy/AT&T | 2020-00076 | 3 |
| | ▪ Site plan (cell tower modification) | | |

A public hearing was scheduled.

Ms. Kathy Farina, Black and Veatch, was present representing the applicant.

Exhibit U was displayed and Ms. Farina explained the transmission tower is 123' tall with a monopole in the center. Ms. Farina said three antennas and other equipment will be added, however, nine antennas will be removed. Additional components will be added to the existing equipment shelter and will be contained within the existing structure.

Councilman Bentley opened the public hearing and asked for comments.

There were no comments from the public, therefore, the public hearing was closed.

Motion by Mr. Mazur, seconded by Mayor Kraus to approve the site plan for cell tower modification.

Roll Call: Aye: Bentley, Greenspan, Kraus, Mazur, Newberry

Nay: None

Motion Carried

NEW:

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| 5. | 30500 Bruce Industrial Parkway – Industrial Commercial
Properties LLC | 2021-00080 | 7 |
| | ▪ Site plan | | |

Mr. Denver Brooker was present representing the applicant and explained the proposal to improve the exterior of the building to attract new tenants. Mr. Brooker requested exhibits be displayed and indicated the location of the building. The applicant intends to brighten the appearance of the building with new paint. Mr. Brooker explained the plan to update and clarify a single new main entrance and a second entrance was re-clad in black metal panels. Mr. Brooker added that the spaces between the windows and door areas will be updated to offer a new, modern appearance.

The Commission members commended the applicant's plan.

Motion by Mr. Newberry, seconded by Mr. Mazur to approve the revised site plan.

Roll Call: Aye: Bentley, Greenspan, Kraus, Mazur, Newberry

Nay: None

Motion Carried

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| 6. | 37075 Broadstone Drive – Vikram Bisen | 2021-00081 | 1 |
| | <ul style="list-style-type: none"> ▪ 332 sq ft accessory pavement area variance ▪ 25' accessory pavement front yard setback variance | | |

Mr. James Arch, Vizmeg Landscaping, was present representing the applicant and explained the request to install a driveway that will extend beyond the garage and include a horseshoe design.

Councilman Bentley advised the proposed design is common for the neighborhood. Mr. Newberry agreed.

Motion by Mayor Kraus, seconded by Mr. Greenspan to approve a 332 sq ft accessory pavement area variance.

Roll Call: Aye: Bentley, Greenspan, Kraus, Mazur, Newberry

Nay: None

Motion Carried

Motion by Mr. Newberry, seconded by Mr. Mazur to approve a 25' accessory pavement front yard setback variance

Roll Call: Aye: Bentley, Greenspan, Kraus, Mazur, Newberry

Nay: None

Motion Carried

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| 7. | 27840 Aurora Road – PP#'s 951-17-012 & 953-02-001
Hawthorne Valley Country Club, LLC | 2021-00082 | 5 |
| | <ul style="list-style-type: none"> ▪ Lot split/consolidation | | |

Motion by Mr. Mazur, seconded by Mr. Greenspan to schedule a public hearing for February 9, 2021.

Roll Call: Aye: Bentley, Greenspan, Kraus, Mazur, Newberry

Nay: None

Motion Carried

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| 8. | 34825 Solon Road – Don Orsini | 2021-00083 | 4 |
| | <ul style="list-style-type: none"> ▪ 45'-8" front yard setback variance | | |

Mr. Tony Majc, RSA Architects, was present representing the applicant. Mr. Majc explained the proposal to renovate an existing home which will include a new front porch for an entrance that is currently asymmetrical. The new entrance will be located in the middle of the house. He noted the existing residences in the area fall outside of the requirements of the Code for front yard setbacks. Mr. Majc said the addition of the front porch will greatly enhance the property and the area. He said the property will be completely rehabilitated.

Motion by Mr. Greenspan, seconded by Mr. Mazur to approve a 45'-8" front yard setback variance.

Roll Call: Aye: Bentley, Greenspan, Kraus, Mazur, Newberry

Nay: None

Motion Carried

BOARD OF ZONING APPEALS:

9. Appeal from Attorney Brian Bonham, representing Liberty Investment Group, 32811 Aurora Road, regarding issuance of a zoning violations letter for prohibited property conditions

Motion by Mr. Newberry, seconded by Mr. Greenspan to table consideration of Item 9.

Roll Call: Aye: Bentley, Greenspan, Kraus, Mazur, Newberry
Nay: None

Motion Carried

COMMENTS FROM THE AUDIENCE:

Councilwoman Meany phoned in comments and thanked the Commission for listening to the concerns of the residents regarding Item 3, Fairfield Oval.

COMMENTS FROM THE COMMISSION:

Mr. Newberry commended the Commission for their consideration of the Fairfield Oval application and thanked everyone who participated.

Mr. Stolarsky said in regard to previous notification comments, he is confident the Clerk of Council's office follows requirements of Section 1293(g) of the Zoning Code by notifying property owners within a 100' radius of a variance request. Councilman Bentley agreed.

Mayor Kraus thanked the Commission for their efforts in reaching a decision in regard to Fairfield Oval. He thanked Mr. Stolarsky for providing guidance in regard to practical difficulty. He commended Councilwoman Meany for speaking with residents.

Mayor Kraus thanked Councilmen Shimits, Zelwin and Russo for their comments. He thanked Mr. Frankland for his efforts.

Motion by Mr. Mazur, seconded by Mr. Newberry to adjourn the meeting at 9:48 P.M.

Roll Call: Aye: Bentley, Greenspan, Kraus, Mazur, Newberry
Nay: None

Motion Carried

Chairman

Secretary