

MINUTES OF THE MEETING OF THE ZONING COMMISSION OF THE VILLAGE OF OTTAWA HILLS, OHIO HELD IN THE COUNCIL CHAMBERS ON MAY 14, 2015 AT 5:00 P.M.

Mayor Kevin Gilmore called the May 14, 2015 meeting of the Ottawa Hill Zoning Commission to order at 5:07 PM. Roll was taken with commission members Sam Zyndorf, Katherine O'Connell, Paul Bishop, Zac Isaac, and Mayor Kevin Gilmore present. Also present representing the Village of Ottawa Hills were Village Solicitor Sarah McHugh and Village Manager Marc Thompson.

In the audience were Brian and Cindy Hoeflinger and Nasrin Afjeh.

Mr. Bishop made a motion to approve the minutes from the January 15, 2015 meeting. Mrs. O'Connell seconded the motion which passed unanimously.

Mayor Gilmore administered the oath to Brian and Cindy Hoeflinger and to Marc Thompson.

Mr. Thompson provided a report related to the variance request submitted by the Hoeflingers at 2524 Inlands Court.

He stated that the Hoeflinger family seeks a variance from the requirement that any swimming pool be fully enclosed by a fence at least 48 inches in height. The applicants wish to enclose a recently installed swimming pool in a manner consistent with the code except for an area that runs along the Ottawa River. Along the river they request a variance so that the pool was not completely enclosed by the fence but rather point to an existing retaining wall along with some terracing along the river which would serve as a barrier to access to their property. Their proposal is that no fence be located in that location. He concluded by stating that this is a fence location variance; the other portions of the proposed fence are consistent with the zoning requirements.

Dr. Hoeflinger stated that from the bottom of the river bank to the top of the retaining wall is at least 10 feet and in some areas as much is 18 feet in height. Photographs were shown which depicted the location of the pool and the proposed fencing as well as the area where the variance is requested. Photographs also depicted the size and nature of the retaining wall along the riverbank had been provided to the Commission.

Mr. Zyndorf asked if it was possible to walk around the end of the proposed fence. In response, Dr. Hoeflinger stated that it would be possible but it would require extra effort and the possibility of falling over the retaining wall into the river. Mrs. Hoeflinger are confirmed that the sides of the bank were very steep. She said it would be easier to climb the required four foot high fence than to scale the existing wall or get around the edge of the proposed fence

Mr. Zyndorf recalled a similar request about four years ago on a property in Riva Ridge Road. In that situation there was not a riverbank but a steep incline in a heavily wooded hillside.

Solicitor McHugh, in response to a question about swimming pool fencing requirements, said that there does not seem to be a requirement in the Ohio Revised Code but in unfenced pool might be considered an attractive nuisance.

MINUTES OF THE MEETING OF THE ZONING COMMISSION OF THE VILLAGE OF OTTAWA HILLS, OHIO HELD IN THE COUNCIL CHAMBERS ON MAY 14, 2015 AT 5:00 P.M.

Mr. Zyndorf asked if the Village of Ottawa Hills might be liable for damages if no fence was erected. Solicitor McHugh responded that the village has sovereign immunity except in five circumstances and this situation did not seem to meet any of those five exceptions. However, she also stated that simply being not liable does not mean that the village could not be sued and forced to defend itself.

Mr. Zyndorf stated that he was opposed and previously voted against the similar variance at the Riva Ridge location.

Mr. Isaac thought this situation was different than the previous variance request and that the river and the retaining wall created a more substantial barrier.

Ms. McHugh commented that homeowners insurance frequently require fencing around a pool.

Mrs. Hoeflinger stated that their insurance company, Pure Insurance, did not have such a requirement.

Substantial discussion followed regarding notice to the insurance company, other insurance questions both related to homeowners insurance and Village of Ottawa Hills.

Mrs. O'Connell said that it would be helpful to check case law to see if a retaining wall could substitute for a fencing requirement.

Mr. Hoeflinger stated that an 8 foot wall should supersede the requirement for a 4 foot fence from a legal standpoint. Mr. Zyndorf commented that logic does not always prevail in the legal arena.

Mrs. O'Connell stated that she had reservations about the proposed variance related to exposure of liability to the Village. Mr. Bishop stated that he thought the variance was supportable. Mayor Gilmore commented that he understood the desire for eliminating the fence at this location. He also asked about the potential for a deed restriction so that any conditions placed on the variance would carry on to future property owners.

After additional discussion Mr. Isaac made a motion to approve the fence location variance that would eliminate the fencing requirement along the river at the rear of the Hoeflinger property, consistent with the plan submitted with the conditions that 1) the homeowners insurance carrier be put on notice, 2) the village be named as in an additional insured, 3) a deed restriction be put in place which would require that future owners be notified and maintain the village as an additional insured on the property owners homeowners insurance.

Mrs. O'Connell seconded the motion. Upon call of roll, commission members O'Connell, Bishop, Isaac, and Gilmore voted in favor of the variance. Commission member Zyndorf voted against the variance.

MINUTES OF THE MEETING OF THE ZONING COMMISSION OF THE VILLAGE OF OTTAWA HILLS, OHIO HELD IN THE COUNCIL CHAMBERS ON MAY 14, 2015 AT 5:00 P.M.

Mr. Thompson then reported that an item from previous agenda, the deck and hot tub at 3432 Darlington Rd. has been moved back to the next meeting. This item had been tabled at the previous meeting and the property owners were unable to attend the May 14 meeting.

Lengthy discussion then followed regarding proposed amendments to the fence legislation. The process for amending the fence legislation was reviewed and proposed legislation was reviewed in significant detail.

Among the key modifications to the draft were:

Inclusion of shadowbox fences among the prohibited fences

Identification of 19 gauge wire as the wire that could be attached to split rail fence

The prohibition on use of the high gloss white polyvinyl chloride fencing

Inclusion of a new provision which states “existing nonconforming fences which are in a state of disrepair must be removed. Any replacement fence must meet the provisions of this ordinance.”

Proposed language related to privacy screens will be eliminated

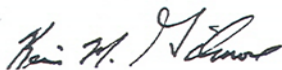
Additional definition and clarification will be provided related to the “50% open” requirement for any new fencing. The zoning commission endorses the concept and wishes to make certain that the specific language is enforceable and understandable.

Proposed language related to temporary fencing for safety purposes or other valid reasons was also approved for inclusion in the final draft.

It was agreed revisions would be made consistent with the discussions which occurred at the meeting. Those revisions will be forwarded to the zoning commission for their review. It is anticipated that the zoning commission will act on the proposed revisions at the next meeting.

Since there were no new, time sensitive pending items for a future meeting, no meeting was set for the zoning commission. The next meeting will be established when there are sufficient requests from citizens for variance consideration. On that agenda will be further consideration of the fence legislation and consideration of the requested variance at 3432 Darlington Rd. which has been tabled.

There being no further business the meeting was adjourned at 6:02 P.M.



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Kevin M. Gilmore