

The regular meeting of the July 19, 2006 Board of Zoning Appeals was called to order at 7:07 p.m. Present were Vice Chairwoman Genevieve Silveroli, Larry Maser and Brian McElroy. Also present were Assistant County Prosecutor Dale Pelsozy, Building Commissioner Keith Foulkes and Secretary Nicole Rosiu.

Ms. Silveroli asked the audience to stand for the Pledge of Allegiance.

Mr. Maser moved to approve the minutes of the May 17, 2006 meeting. Seconded by Mr. McElroy. Roll call, all approved.

Mr. Maser moved to approve the minutes of the June 21, 2006 meeting. Seconded by Mr. McElroy. Roll call, all approved. Ms. Silveroli abstained.

## **New Business**

### **Galway Bay Fence**

The secretary read the public notice for Application #20060901.

Matt Palumbo was sworn in representing this variance. Mr. Palumbo stated that Gross Builders would like to erect a fence along-side the Irish-American Club. Ms. Silveroli asked Mr. Palumbo if the addition of the fence is different from the original development plan. Mr. Palumbo said that there was no fence shown on the original development plan. Ms. Silveroli asked where the detention easement is. Mr. Palumbo said it starts at subplot 51 and continues all the way to the apartments. Mr. Palumbo stated that the fence will not be in the retention area, they will put it wherever the code allows them to. Ms. Silveroli asked what type of material the fence would be and how high it would be. Mr. Palumbo said it would be 6-feet high with 25% light and air on top with the lattice.

Ms. Silveroli asked Mr. Foulkes if had any comments. Mr. Foulkes stated that Gross Builders applied for a fence, a review was done and the application was denied. Mr. Foulkes said that Section 230.12 of the Zoning Code states that any changes to a subdivision have to go to the Zoning Commission. Mr. Foulkes said that the fence does not comply with Section 210.08, the uniformity of the 25% light and air. Ms. Silveroli confirmed that the lattice on top of the fence is what does not conform. Mr. Foulkes said yes.

Ms. Silveroli asked Mr. Palumbo why he did not go to the Zoning Commission for a change in the development plan. Mr. Palumbo stated that in the past, the Township's prior attorney did not believe this type of thing had to go to the Zoning Commission. Aaron Evenchik, attorney for Gross Builders, said that Mr. Foulkes mentioned Section 210.08 of the Zoning Code. Mr. Evenchik stated that Section 210.08 is for single-family homes and Galway Bay is multi-family, which is Section 230. Mr. Evenchik said that the Zoning Commission does not have the authority to review multi-family zoned land in the Township.

Ms. Silveroli asked if the letter from Mr. Grendell was written for the same issue with a fence. Mr. Evenchik said no, it was an opinion on changing the footprint of the houses for Pembroke Place and extension on an approval for Willow Grove. Ms. Silveroli asked if any structures were being added when the legal opinion was given. Mr. Evenchik said no, but the Township does not have the power, according to the Ohio Revised Code. Mr. Evenchik stated that the ORC says Townships have the authority to approve PRDs (Planned Residential Developments) but not multi-family developments. Mr. Evenchik said that the changes that are being proposed are minor to the development and the fences are being put up to protect the residents of the Township. Mr. Evenchik stated that the fence does comply with Section 230 of the Zoning Code. Mr. Evenchik said the Board of Appeals can grant this variance and not waste the Township's time and money to go to the Zoning Commission and Trustees.

Mr. Pelsozy stated that he has had conversations with Mr. Evenchik before and that Mr. Pelsozy does not agree with Mr. Evenchik's interpretation of Mr. Grendell's letter. Mr. Pelsozy said he had a discussion with Mr. Grendell regarding the letter. Mr. Pelsozy said that Mr. Grendell's letter specifically states that any future applications for building permits would have to be viewed on an individual basis by the Building Department and by the Township. Mr. Pelsozy stated that he believes the board does have the authority to review this application, but if there is a change in the site plan, which Mr. Foulkes believes there is, Gross Builders would have to go back through the process of getting approval from the Zoning Commission and Trustees. Mr. Pelsozy said that Mr. Grendell's letter is not a blanket approval.

Mr. McElroy asked if the reason Gross Builders came before the Board of Zoning Appeals is because it is a simpler process. Mr. Evenchik said that Gross Builders submitted because the code states that anyone who is adversely affected by the Building Commissioner's decision can apply to the Board of Appeals. Mr. McElroy asked if the land at Pembroke Place was zoned RMF when it was purchased. Mr. Evenchik said yes. Mr. Pelsozy asked if it is fair to say that the fence was not on the site plan when it was approved. Mr. Palumbo said it was not on the original plan. Ms. Silveroli asked what would be put in front of the fence. Mr. Palumbo said shrubbery. Ms. Silveroli asked if the shrubbery was on the original plan. Mr. Palumbo said no.

John Skinner was sworn in. Mr. Skinner asked what initiated the proposal for the fence. Mr. Skinner asked if there was a residential complaint. Mr. Palumbo said that Gross Builders would like to give privacy to residents. Samuel Pulice was sworn in. Mr. Pulice stated that he is in favor of the fence, that it will enhance the property and help with the headlights coming from the Irish-American Club. Mr. McElroy asked if the fence would be placed on common land. Mr. Palumbo said the fence would be on individual lots, but maintained by the Homeowner's Association. Mr. McElroy asked if Gross Builders would get authorization from the homeowners to have the fence on their properties. Mr. Palumbo said Gross Builders still owns the land, there are no houses yet, where the fence would be.

Mr. McElroy asked Mr. Foulkes if the fence would be in the easement or back away from the trees. Mr. Palumbo said the fence would be as close to the trees as possible. Mr. Foulkes said that the Township's consulting engineer did not have a problem with the fence being placed in the proposed location. Ms. Silveroli said that the board is deciding whether this issue should go back as a change to the development plan. Mr. McElroy said that Mr. Evenchik may be right or wrong on the law. Mr. McElroy stated that he has to follow the city ordinance, whether he thinks it is right or wrong.

Ms. Silveroli asked what the process is to go back for a change to a development plan. Mr. Foulkes said that Gross Builders would still need a variance for the type of fence, regardless. Mr. Foulkes stated that Gross Builders would go to the Zoning Commission and the Zoning Commission would then make a recommendation to the Trustees or the Board of Appeals for approval. Ms. Silveroli asked if Gross Builders would go for a variance for uniformity or 25% light and air. Mr. Foulkes stated that the fence has to remain the same on the vertical surface. Mr. McElroy asked if a picket fence would be okay. Mr. Foulkes said yes. Mr. Evenchik said that Section 210 is inapplicable because that section is for single-family. Mr. Evenchik stated that Galway Bay is multi-family, which is Section 230.

Mr. Foulkes said that in Section 520, Development Plan Review, it states that a change to the development plan must comply with the Zoning Code in its entirety. Mr. Evenchik stated that the code says the change should conform to the chapter, meaning Chapter 520. Mr. Evenchik said that Section 210 is not applicable to the Galway Bay site, only Section 230. Mr. Palumbo stated that the having a board on board fence defeats the purpose of blocking the lights coming from the Irish-American Club.

Mr. McElroy asked Mr. Pelsozy if the board could grant a variance contingent on the Zoning Commission's approval. Mr. Pelsozy stated that one of the problems is that Gross Builders is not asking for a variance. Mr. Pelsozy said that in the application, it specifically says no variance is needed. Mr. Pelsozy stated that if Gross Builders was asking for a variance they would have to demonstrate what the practical difficulty or hardship was. Mr. Pelsozy said that nobody has given any evidence to the board on what the hardship or practical difficulty is. Mr. Pelsozy said he does not think the board is in a position to grant a variance. Mr. Pelsozy stated that the alternative for Gross Builders is for them to go to the Zoning Commission. Mr. Pelsozy said that there is not a variance application in front of the board.

Mr. Evenchik read the end of Section 520, "Any changes in an approved plan shall be resubmitted for approval in accordance with this Chapter." Mr. Evenchik stated that he believes that Section means Chapter 520. Ms. Silveroli asked Mr. Evenchik if he agrees that the language in Section 520 states that a change in the development plan needs to go to the Zoning Commission. Mr. Evenchik said he agrees, but Section 520 is unconstitutional with Ohio Law. Ms. Silveroli said that the Board of Appeals does not decide that.