

**ZONING BOARD OF APPEALS
AUGUST 28, 2013**

CALL TO ORDER

Chairman Celske called the meeting to order at 7:00 p.m.

Gig Weber, long time resident of Fox River Grove, was sworn in as a member of the Zoning Board of Appeals by Chairman Celske

ROLL CALL

Dal Compo polled the members present: Zoning Board members Celske, Dufern, Karls, Murren, Rosch, Schneider and Weber. Also present were Karl Warwick, Village Administrator as staff to the Zoning Board, and John Donahue, Village Attorney.

Village President Nunamaker and Trustee Schiestel were also in attendance.

APPROVAL OF THE MINUTES

A motion was made by Murren and seconded by Dufern to approve the minutes from the April 30, 2013 meeting with two changes. A voice vote followed with one abstention. The motion carried.

Chairman Celske swore in all the witnesses for all the cases on the agenda.

ZONING BOARD CASE 2013-06 SPECIAL USE PERMIT, DAYCARE FACILITY IN THE B-4 DISTRICT: TURTLE EXPRESS DAY CARE AND CHILD CARE 750 W. NORTHWEST HWY—

Chairman Celske recognized Donna Penney, Owner of Turtle Express Child Care. Chairman Celske accepted the proof of delivery notices. Mrs. Penney explained that she has all necessary licenses in place except for the DCFS license, which she is working on. Chairman Celske said that there was a similar business in the building prior and asked if there had been any substantial changes. Mrs. Penney explained that at the playground, they are taking out the grass and replacing it with mulch to a depth of 6”.

Member Dufern asked Mrs. Penney how long she has been in the child care field. She said 15 years. He further asked if she had any offenses from DCFS. She said no. A similar special use was granted for this building but it was particular to the previous day care center so it did not carry over. Member Karls asked when the business opened in this location; she was told that they wanted to open on August 26th but couldn't.

Village Attorney Donahue said that he recommended incorporating A,B,C and D from the previous motion. Member Karls asked if B should be left out in this particular case. It was agreed to leave out B. Special conditions would be that all required permits must be in place.

A MOTION was made by Karls and seconded by Murren to accept the findings of fact with regard to the Turtle Express Day Care facility at 750 W. Northwest Hwy and recommend for approval the special use permit, conditional on all applicable state licenses A roll call vote was taken. Celske—yes, Dufern—yes, Karls—yes, Murren—yes, Rosch, yes, Schneider—yes, Weber, yes. Motion Carried.

Chairman Celske explained that the Zoning Board only makes recommendations to the Village Board, who will have the final say. The application next goes to the Public Health and Safety Commission, who meet the first Tuesday of the month.

Case 2013-06 was concluded at 7:15 p.m

ZONING BOARD CASE 2013-05 REZONING OF TWO PROPERTIES AT 212 GARDNER TO R-2 SINGLE FAMILY RESIDENTIAL

Chairman Celske recognized Attorney Mark Salat, representing Michael Graft, LLC. Chairman Celske accepted the proof of mailings. Their application is for a re-zoning of these properties. The annexation portion of the petition is a different matter which will go before the Village Board.

Chairman Celske explained that this hearing is to discuss the propriety of re-designating the properties as R-2 and making them from three parcels into two. This will include changes to the sewers. Attorney Salat said that Michael Graft wishes to build a home for a family who is present at the meeting this evening. The properties in question are located at the northerly end of Gardner Rd.

Chairman Celske accepted as Exhibit A the document “Annexation Exhibit lots 30, 31 and 32 at 1926 subdivision.” The lots are currently zoned A-1 in McHenry County. The designation of R-2 is pursuant to the annexation of two homes on three lots. Michael Graft builders and Linda Peterson, who own the properties, would benefit from the connection to the Village sewer. Mr. Graft would like to have the properties zoned and annexed into the Village.

Chairman Celske introduced Jim Condon of Trother and Associates. He will be the engineer relative to the sewer systems. He has done a topographic survey of the area to the village main. The Village engineer reviewed the survey and it was changed as noted by the Village engineer. Mr. Condon noted that there must be compliance with Village ordinances. McHenry County gave some comments on the area. Some soils are marginal. Connecting the sewer to the Village puts the water into a monitored facility. There are many benefits to hooking up to the Village sewer, and it may also help other homeowners who might want to tap into the lower pressure sewer main.

Chairman Celske asked what the dimensions are. Mr. Condon said that the total is 150 feet, one property is 72 feet wide and the other property is 78 feet wide.

Chairman Celske accepted as Exhibit B the plat of annexation/plat of survey. Member Weber asked what will happen to the adjacent private park. Mr. Graft said that the private park will remain private. Member Karls asked Administrator Warwick if the Village has ownership records and if there have been any gaps. She was told that the ownership records are in order and there have been no gaps.

Member Rosch asked which lot will be built on, and what the proposed square footage of the home will be. Mr. Graft said that the 72 foot lot will be built on, and the proposed square footage of the home will be 2,500 and two stories.

Member Murren asked for more details regarding the sanitary sewer and mini lift stations. Mr. Condon explained that each home will have its own grinder pump and a separate vault out in the yard. The electricity will be the homeowner's responsibility. Member Rosch asked if each pump goes up the hill then gravity takes it the rest of the way; he was told yes. Member Rosch asked if the Village would be responsible for maintaining the mini lift stations; he was told yes.

RESIDENTS COMMENTS

Jim Donnelly—owns house across the street/SE corner—He stated that he was speaking on behalf of the members of the homeowners association. Extending the village sewer system will upset existing vegetation. It will create a half mile construction zone. The proposed homes are less compatible with existing homes in the area. He feels that Mr. Graft's homes are more suitable for the Barrington Hills area. R-2 zoning would allow for 3,000 to 4,000 square foot homes. The planned home could have a \$700,000 to \$800,000 price tag. Most of the homes in the neighborhood currently have a \$300,000 tag. He further objects to the dumping of 3 to 5 feet of fill for the walk out basement. It would create an artificial hill and would affect the amount of water run off. According to McHenry County, the addition of a new home should not cause problems to existing homes. Mr. Donnelly is requesting a reasonable delay for obtaining more accurate descriptions.

Steve Zoltek—owns 218 Gardner, property to the west—He has concerns about storm water run off, as he is downhill of the property in question. It is now 3 feet higher than before. He had to install drain tile due to the property previously making changes without the proper permits. Mr. Zoltek would like to work along with Mr. Graft. Member Murren asked Mr. Zoltek if he had considered that there might be properties built subsequently at the time Mr. Zoltek bought his property. The house that was previously on the property was destroyed in a fire. Mr. Zoltek stated that the house previously was situated in the middle of the three lots. Member Murren observed that it seems the better choice to allow for only two houses rather than the three that could potentially be built there. Member Karls asked what the square footage of Mr. Zoltek's house is, she was told 2,700 square feet.

Chairman Celske accepted the photographs from Mr. Zoltek as Exhibit C.

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James Napolitano—8816 Gardner—He has concerns about the size of the house with the R-2 zoning. There are setbacks and restrictions that all homeowners have had to deal with. A 2,500 square foot home has a 40' x 30' footprint. Chairman Celske said that the petition would be limiting the properties to a maximum of two homes rather than three. All building is still subject to all permits, etc, when the plan is actually made. Mr. Napolitano asked what would happen to the mini lift stations in the event of a power outage. Mr. Condon said that there is some reserve capacity built in. Chairman Celske said that the Village also retains the services of an engineer who will review all plans.

Diana Kremer—She has concerns about setbacks. Administrator Warwick said that setbacks are 8 feet minimum from the edge of the property regardless. That is separate from Village jurisdiction—it is a county requirement. Mrs. Kremer said that Michael Graft builders wanted her stone walls to be taken down, and her driveway was cut into without her permission.

Kathleen Burnett—8903 Gardner—Mr. Graft assured everyone that if the properties are annexed, all the rules and regulations of Fox River Grove will be followed.

Sue Donnelly-- owns house across the street/SE corner—Mrs. Donnelly got the site plan and elevation study today. She is very concerned about the change in elevation due to the fill for the walkout basement.

Tim Loughney –He would like to know why Mr. Graft and Mrs. Peterson want the properties annexed, and why they can't use the existing septic. Mr. Graft explained that the sewer system is new technology that is available to install it in a very small area. He further explained that safe water quality is important, and that rain water carries alluvia into waterways. His company is trying to create higher standards and best practices. If others do not want to annex that is fine; it is their choice. He reported that a homeowner who chose to remain anonymous sent a letter to him saying that they had been intimidated by their own neighbors.

Mr. Napolitano said that in McHenry County A-1 zoning is a 25-50 foot setback, and thus a variance would be required.

Mr. Zoltek asked if annexation is required to bring in the sewer line.

Attorney Salat said that he found it surprising that the neighbors were upset about having a beautiful home built in their neighborhood. Mr. Zoltek's property will be considered if the new home is built.

Attorney Donahue noted that annexation will not change the school district boundary.

Member Karl asked if the builder is to incur all costs with regards to the sewer system. She was told yes.

Chairman Celske asked for a straw poll of the members as to the R-2 zoning petition.

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Murren: if the storm water/flooding issues are handled then he is in favor—likes the two homes instead of three idea.

Dufern: asked if Mr. Zoltek put in any fill when he built his home; he was told no. He also asked if the culverts would be removed. He was told no.

Mr. Graft explained that any water that falls off they are not allowed to dam or stop up in any way. Mr. Zoltek said that the water that falls down is the reason for the culverts and the fill that was put in makes the ground about 3 feet higher. If the water is directed around his property it would be different—previously it ran to the west.

Weber—The sewer would be an improvement.

Rosch: If someone wants to come into the Village and pay its property taxes he is for it. The zoning board does not deal with drainage issues. He likes the idea that the properties will have city sewer and water.

Karls: The petition meets and exceeds the R-2 standards, and she likes the idea of city sewer. She is in favor of the petition.

Schneider: He feels that the idea of having two homes rather than three on the properties is a benefit. Additionally, the zoning board cannot dictate the square footage of the house. He is in favor of the petition. He feels that having two nice homes on the property is a positive.

Celske: There are a lot of legitimate concerns that were raised this evening, but the ZBA does not address the square footage of a home. He feels that R-2 zoning is appropriate for this petition.

The following conditions are recommended:

- 1) Approval of the annexation petition (inherent)
- 2) Village law and ordinances as to b codes
- 3) Installation of sewer line extension at the expense of the owner/builder
- 4) Maximum of two subdivided properties neither to exceed 80 feet in width.
- 5) Following the recommendation of the village engineer as to preventing flooding, fill, etc.

A MOTION was made by Rosch and seconded by Dufern to accept the findings of fact with regard to 212 Gardner and to recommend for approval the R-2 zoning as requested in the petition with the conditions as outlined. A roll call vote was taken. Celske—yes, Dufern—yes, Karls—yes, Murren—yes, Rosch--yes, Schneider—yes, Weber--yes. Motion Carried.

Chairman Celske explained that the Zoning Board only makes recommendations to the Village Board, who will have the final say. The application next goes to the Public Health and Safety Commission, who meet the first Tuesday of the month.

Case 2013-05 was concluded at 8:25 p.m. A 10 minute break was taken. The board reconvened at 8:34 p.m.

ZONING BOARD CASE 2013-07 VILLAGE PETITION TO MAKE VARIOUS AMENDMENTS TO THE VILLAGE ZONING CODE RELATED TO ZONING DEFINITIONS, ACCESSORY USES, PERMITTED AND SPECIAL USES IN RESIDENTIAL DISTRICTS, HOME TOURS AND RELATED USES AND HOME DEFINITIONS

Attorney Julie Tappendorf from Ancil Blinck led the discussion. Her company often helps villages to draft zoning language and with zoning litigation. The language that has been drafted proposes to amend zoning codes. The following items were highlighted:

- Amend home occupation (ex. Having a firing range that didn't involve charging a fee shouldn't mean that it doesn't fall into that category)
- Defining home tours and relating issues
- Section 3, general changes—before had no language with regard to residential zoning, what are the differences, made purpose and intent clear

--Table of Uses

- added language as the following uses and no others: “if it is not listed, it is not allowed”
- difference between accessory use and principal use. Accessory use could be parking, signage, etc. home occupation permitted, subject to 6B2. Home tours and related uses.
- Cleaned up language of special use. Some special uses are relative to the owner, some are relative to the land, etc. (if it is important enough for principal use, it should be important enough for accessory also).
- Zoning administration will determine if a business is similar.

--Prohibited Uses:

- Home tours and related uses, only as a special use

Chairman Celske said that he had a reservation regarding home tours, and trying to come up with an adequate definition. What about an owner occupied residence vs. a leased one? Attorney Tappendorf explained that the operator must be the person lives in the home. This doesn't include things like showing one's home for real estate purposes.

Member Karls asked what would happen if your home was part of a garden walk through the Chamber of Commerce, for example. Attorney Tappendorf said that the Village Administrator would decide on an individual basis. Member Rosch asked what happens in the case of a business owner who lives part of the time in Florida, for example, and part of the time in the Grove. He was told the person could only run their business while they were physically present in the Grove.

RESIDENTS COMMENTS

Ted Johnson He asked Attorney Tappendorf if there was some particular reason she was approached by the Village. The line of questioning was deemed to fall under attorney/client privilege.

Chairman Celske said that Bettendorf Castle would fall under the purview of the home tour restrictions, but would not be limited to it. Basically, the idea is that issues like this must come to the zoning board on a case by case basis. Mr. Johnson stated that the State of Illinois has to decide if something has architectural or historical significance, not the Village Administrator. Attorney Tappendorf explained that these terms are not meant to be formal designations. Chairman Celske said that there will often be interpretation involved. Mr. Johnson further asked if the only way to change an ordinance was through a hardship. Attorney Tappendorf explained that hardship only applies to variances; ordinances are legislation.

Attorney Tappendorf explained that home occupations are standard in most communities. Chairman Celske added that there was no ordinance in force, but now there will be. This is for the benefit of the neighborhoods.

Attorney Tappendorf explained that she feels more language is needed with regard to special community events and activities, for example: banquet facilities and catered events.

Chairman Celske stated that if someone wants to do a home tour, they would have to go before the ZBA and go through an extensive procedure.

Chester Olencheck He asked if this will eliminate the castle issue. Chairman Celske said no.

Carol Pierpont-She asked about 6B2, home occupation. She was concerned about motor vehicle traffic, such as motor coaches. Attorney Tappendorf said that these give ideas about types of conditions.

Member Rosch asked about 6b. He felt that they need to add language regarding things like outdoor bands. Administrator Warwick said that this type of permission would be conditional in the process. Attorney Tappendorf further explained that conditions and limits can be put on an event during the hearing.

A MOTION was made by Karls and seconded by Murren to accept the amendments to the zoning definition as outlined. A roll call vote was taken. Celske—yes, Dufern—yes, Karls—yes, Murren—yes, Rosch--yes, Schneider—yes, Weber--yes. Motion Carried.

Case 2013-07 was concluded at 9:40 p.m.

OTHER BUSINESS-

Member Rosch asked if the signs for VCA Noyes are in compliance with ordinances. Administrator Warwick said that they are.

NEXT MEETING—(currently not known)

ADJOURNMENT

A motion was made by Murren and seconded by Karls to adjourn the meeting. Motion carried unanimously. The meeting adjourned at 9:41 p.m.

Daniel A. Celske, Chairman

Alison Dal Compo, Secretary

Date approved