

CENTERVILLE PLANNING COMMISSION

Regular Meeting

Tuesday, October 24, 2006

Mr. Clark called the meeting to order at 7:30 P.M.

Attendance: Mr. Paul Clark, Chairman; Mr. Jim Briggs; Mr. Jim Brunner; Mr. Jeff Gammell; Mrs. Carolyn Meininger; Mr. Mark Leonard. Absent: Mr. Jim Durham.. Also present: Mr. Steve Feverston, City Planner; Mr. Ryan Lee, Planner; Mr. Scott Liberman, City Attorney.

Excuse Absent Members:

Mr. Clark explained Mr. Durham was unable to attend the meeting as he had made arrangements to be out of town since this was not the regular meeting date.

MOTION: Mr. Brunner moved to excuse Mr. Durham from the meeting as he gave prior notice to Mr. Clark and staff. Mr. Briggs seconded the motion. The motion was approved unanimously 6-0.

Approval of Minutes:

MOTION: Mr. Brunner moved to approve the Planning Commission minutes of the September 26, 2006, as written. Mr. Gammell seconded the motion. The motion was approved 4-0-2 with Mr. Clark and Mr. Briggs abstaining.

UNFINISHED BUSINESS

County Down Village - Planning Commission Special Approval

Mr. Feverston stated the City of Bellbrook had reviewed the County Down Village project and their Planning Commission recommended James Karras Drive extend to Wilmington Pike, but not be utilized until all construction traffic is done. Construction would be required to enter from the north along Alex-Bell Road which would require construction of the bridge.

The members stated that prior to the project being removed from the agenda, all issues should be resolved concerning access to the site.

Hodges, Diana - Variance of Side Yard Setback Requirement

Mr. Feverston reviewed the Variance application submitted by Diana Hodges requesting a variance of the side yard setback requirement for property located at 2142 Pelwood Drive. The zoning on the property is R-1c, Single-Family Residential, which requires a twelve (12) foot side yard setback and the applicant is requesting a side yard setback of eight (8) feet. The purpose of the request is to construct an additional garage space to the existing garage structure.

In reviewing the standards for warranting a variance, staff found no practical difficulties demonstrating hardship on the use of the property. It was, therefore, staff's recommendation to deny the variance request.

Mr. Clark asked if any variances had been approved for this type of project.

Mr. Feverston stated there had been no variances concerning a side yard setback variance for this type of project in the Pelbrook Farm neighborhood.

MOTION: Mr. Briggs moved to remove the Variance application submitted by Diana Hodges from the table. Mr. Gammell seconded the motion. The motion was approved unanimously 6-0.

Mr. Clark continued the public hearing.

Mrs. Diana Hodges, applicant, stated she wanted her husband, Mr. Samuel Hodges, speak in her behalf.

Mr. Hodges demonstrated the size of the requested variance by placing measuring tapes on the floor to the Planning Commission indicating the small amount of encroachment to occur as a result of the garage addition. He stated their feeling is that the Planning Department is using the wrong standard of review in reviewing the request. Ohio courts have ruled there are two types of variance requests being one for use and one for area. The courts have demonstrated the variance for use must clearly state proof of hardship. The variance for area must not change the character of the zoning district and the neighborhood considerations are not as strong as a use variance. Also, an area variance allows for the development of property in a manner which is generally not permitted by the applicable regulations. The standards for granting a variance which relate solely to the area requirements should be a lesser standard of review. In various cases, courts have stated that the tests to be applied are not one of hardship, but that of practical difficulty. This is clearly an area variance request and should, therefore, fall under the lesser standard of practical difficulty. Mr. Hodges stated one option was to locate the addition to the rear of the existing structure. He stated trees would have to be removed and would violate the Zoning Ordinance standards stating improvements should be made to property to minimize the impact of cutting trees and changing the character of the land. Locating the addition as proposed would protect the intent of the neighborhood.

There being no other speakers, Mr. Clark closed the public hearing.

Mr. Clark asked Mr. Liberman for input as to the legal cases Mr. Hodges had referenced.

Mr. Liberman stated in this case the Planning Commission is acting as a Board of Appeals (BZA) which has a different function than a Planning Commission. A typical BZA only handles area variances. Approximately ten (10) years ago, the Zoning Ordinance was amended to include practical difficulty as one of the variance standards. The task of the City Planning Commission is to determine whether a practical difficulty exists by considering the staff's evidence and the evidence of the audience. A variance procedure is designed to allow consideration of situations that the Code does not anticipate. This particular situation is that the Council set the side yard setback requirement at twelve (12) feet and is this applicant suffering a practical difficulty to build what he wants to build on their property. The consideration of the Planning Commission must be are there other options the applicant has to be less of a burden on having to grant an exception to the standards. What must be determined is whether the applicant is suffering a practical difficulty in the use of their property.

Mrs. Meininger asked if a variance of this type had ever been approved in the entire City.

Mr. Feverston stated that since 1984, one (1) variance had been granted based on a practical difficulty involving a slope and stream on that property leaving no other alternative for the property owner and would have deprived the owner reasonable use of his property. He stated that the house on the applicant's property was constructed as part of the Pelbrook Farm subdivision meeting the minimum setback requirements as were most of the houses in the neighborhood. Although there is not an opportunity to construct this addition in the area the applicant would prefer, there are other opportunities on the property to locate an addition.

Mrs. Meininger stated that although the area variance does not appear to be extensive in the demonstration presented by Mr. Hodges, she felt the standards in the Ordinance must be maintained and would she would not support this variance request.

Mr. Briggs agreed with Mrs. Meininger's conclusion.

MOTION: Mr. Briggs moved to deny the Variance application submitted by Diana Hodges for property located at 2142 Pelwood Drive. Mrs. Meininger seconded the motion. The motion was approved unanimously 6-0.

Mr. Clark advised the applicant of her right to appeal this decision to City Council.

COMMUNICATIONS

Mr. Feverston advised the members an amendment to the Zoning Ordinance will be presented at the next regular meeting to update the code to include referencing Greene County as a result of the Dille annexation.

The Miami Valley Planning and Zoning Workshop will be held in December and should any member want to attend, they should contact staff to make the reservations.

There being no further business, the meeting was adjourned.



