

CENTERVILLE PLANNING COMMISSION
REGULAR MEETING
Tuesday, July 31, 1990

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

Attendance: Mr. Robert Hosfeld, Chairman; Mr. Arthur Foland; Mr. Peter McMahon; Mr. Bernard Samples; Mr. Stanley Swartz; Mr. Scot Stone (where noted). Absent: Mr. James Durham. Also present: Mr. Alan C. Schwab, City Planner; Mr. Steve Feverston, Assistant City Planner; Mr. Robert Hunter, Legal Counsel.

Approval of the minutes of July 10, 1990:

MOTION: Mr. Foland moved to approve the Planning Commission minutes of July 10, 1990, as written. Mr. McMahon seconded the motion. The motion was approved unanimously 3-0-2 with Mr. Hosfeld and Mr. Swartz abstaining.

PUBLIC HEARINGS

Board of County Commissioners, Montgomery County, Ohio -
Variance/Planning Commission Special Approval

Mr. Schwab reviewed the Variance and Special Approval applications submitted by the Board of County Commissioners, Montgomery, Ohio, for the purpose of constructing a second water tower on their R-1d, single-family residential zoned land located north of Johanna Drive adjacent to the Tower Heights Middle School. The proposed 2 million gallon water tower to be located on the 1.627 acre parcel would require a total of 4 variances. Two (2) side yard variances are being requested to allow a 25 ft. and 20 ft. setback; a lot size variance is being requested for a 1.627 acre parcel rather than a required 5 acre parcel; and, a variance to allow the location of the tower in the middle of a neighborhood and has access to a residential street. A utility facility is required to be situated at the edge of a neighborhood and have access to a major roadway.

Mr. Stone arrived at this time.

Mr. Schwab stated that the use of the property for a public utility is permitted. The main issue is the variances that are being requested to allow the construction as proposed which will increase its legally-nonconforming status.

Staff recommended that the variance be denied based on no unique circumstance or uniqueness to the property. Mr. Schwab stated that the property owner has been given reasonable use of the property and to grant a variance on this property would not be fair to those who request a variance of the same type and also have no uniqueness to their property.

Staff further recommended approval of the Special Approval application subject to the following conditions:

1. The Planning Commission approve all setback and location variances.
2. Architectural Elevations of the water tower shall be subject to approval by the Planning Commission.

Mr. Schwab stated that the City has met with the County over a number of months discussing this issue. Staff is convinced that there is a need for an additional water storage facility in this area, however, based on the zoning requirements a recommendation for approval cannot be made. He stated that regardless of the outcome of the action taken on this application, an appeal can be made by either the applicant should the applicant be denied or any person in opposition should the be approved.

Mr. Hosfeld opened the public hearing.

Mr. John Garner, Director of Sanitary Engineering, stated that there is general need of 40 million gallons of water per day in the County. The storage capacity at the present time is 20-25 million gallons which is the purpose of constructing additional storage units. He stated that when the original storage tank was constructed back in 1960 on the site in question, the average daily demand was 7 million gallons per day in the southern suburbs. During the current month of July, despite the large amount of rainfall, the average daily demand in the southern suburbs is 23 million gallons per day. Since the construction of the original 2 million gallon water tank, the use has tripled. The County Commissioners were very concerned by the obvious shortage of storage and authorized a study of the southern water supply. The findings of the study were that there should be storage to equal the amount of the average daily demand. The study also showed that when the southern section of the County is completely developed, the water demand will be 36 million gallons per day with a peak day at 74 million gallons. The County is proceeding the best way they can by implementing the storage recommendations. The plan is to equal the current 23 million gallon demand by constructing an additional 6 million tank in Kettering, a 2 million gallon tank in the Walnut Grove Estates area south of Centerville, and the 2 million gallon tank in Centerville. Mr. Garner stated that they have selected this site for several reasons. The first tank was constructed on the south portion of their property with the intent that at some future time a second tank would be constructed to serve the additional demand. The site is also located on high ground which means that the height of the tank can be minimized in comparison to larger tanks at other considered sites. This particular site is also the most economical as it fits with the current trunk lines and the County would not have to acquire additional property.

Mr. Garner stated that 4 alternate sites were studied. The Loop Road and Alex-Bell Road site would cost an additional \$535,000; the High School on East Franklin Street would cost an additional \$445,000; a site along Spring Valley Road at Stubbs Park would cost an additional \$927,000; and, a site at SR 725 and Paragon Road would cost an additional \$1,458,000. Mr. Garner pointed out that no federal funding program is available for such projects and, therefore, the monies for construction would only be available from an increase in water rates. In order to hold the cost of the project to a minimum, as well as the other stated reasons, the Centerville site was selected. He stated that there is obviously no way to hide a tower of this size, however, any of the sites available for construction would be visible from residential areas.

Mr. Roger Nelson, Woolpert Consultants, made a slide presentation of computer generated photos which visually located the different styles of tanks on the site.

Mr. Garner stated that Centerville residents benefit from other public utilities not located in the City. As regional citizens, it is the City's turn to share in the construction of some of these regional facilities. He stated that 95% of the residential development in the area was constructed after the water tower was in place so if property values did in fact decrease, the purchasers benefitted from it. He stated that additional land could be acquired to adjoin the existing County property, however, it would not accomplish anything. The additional property would be there to satisfy the setback requirements, however, the tower would still be in the same proposed location. He stated that the only other variance would be the lack of access to a major roadway, and if forced, the County could for the link of the streets in the area in order to satisfy the Ordinance. Mr. Garner stated that is not something the County or the area residents would want, but if accomplished, the requirements of the Zoning Ordinance would be satisfied.

Mr. Garner stated that the Variance application is unique based on the land having the highest elevation in the area, it would enhance the public safety and increase the water storage, and it would be in the best interests of the entire community.

Mr. Theodore Cook, resident adjacent to the property since 1947, stated that when the first tower was constructed debris of all types was pushed over on his property and was never cleaned up accordingly. He stated if this second tower is approved for construction its location will be approximately 80-85 feet from his back door which was the reason for his objection to the project.

Mr. Rick and Clee Rodus, 180 North Johanna Drive, stated that when the tank was last cleaned, an EPA official was on the site during the process. That official informed Mrs. Rodus that toxicity frequently occurs as a result of the sludge that builds up inside the tank. The residents were told that should any house or car

paint be damaged or roof materials were damaged, to notify the EPA immediately. Mr. Rodus stated that they let the trees grow without any type of trimming along their adjacent property line in order to screen the tank from their view as the County's property is ill maintained. He stated that it is their feeling that another site in the City should be selected to share the danger and the responsibility.

Mr. Edward Novak, 120 North Johanna Drive, stated that he objected and was concerned about the threats used throughout the County's presentation warning of the increases in water rates which would be even higher should the storage tank not be approved for their selected site. Mr. Novak stated that the Loop Road/Alex-Bell Road site is an ideal site based on the commercial zoning it now has and the trunk lines are available to the site. The additional cost would probably be fractional compared to the entire cost of the project.

Mr. John Tunk, 160 North Johanna Drive, stated that the additional storage size seems to be of such an insignificant amount that it is not worth the sacrifice. He stated that the existing tank was probably located at the south portion of the site because it was the highest point, not because a second tank was planned. He stated he resented the threat of the County to connect the streets in the area was a possibility in order to satisfy the requirements of the City zoning. Mr. Tunk stated that he agreed the Loop Road site would be the best site.

Ms. Marilyn Tills, 220 Lakeview Drive, stated her opposition to the construction of the water tower. She stated that when they constructed their home in 1967, they planted evergreen trees to help screen the tower. She stated that perhaps the tower did not affect the property value, however, a second one definitely would.

Mr. Donald Hime, 181 North Johanna Drive, stated the he did not want to look at two towers from his property. He stated that if the County did purchase additional property from the schools, it would eliminate the play area for the children since the additional property would be fenced.

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

Mr. Swartz asked what type of access is now provided to the property.

Mr. Garner stated that there is no easement of record at the present time, however, it is still under review. Although there was some type of agreement prior to the school taking ownership of the land, the County is searching the records back to the late 1950's to determine what occurred at that time.

Mr. Swartz asked what the additional costs would be for the Loop Road site.

Mr. Garner stated that additional costs would be approximately 30-40% more than the proposed site. Those costs would be for the purchasing of property and the additional tank size.

Mr. Hosfeld asked if the County had considered doing any extensive landscaping to the lots in the immediate area of the site.

Mr. Garner stated they would be open to the City and residents suggestions as to color and style of the tank, and requests to reasonable landscaping to the site. He stated further that the debris that was left on Mr. Cook's property is totally unacceptable and would not occur again.

Mr. Stone asked about the concern of toxicity.

Mr. Garner stated that the EPA official on the site at the time of cleaning the tank did not make any of those concerns known to the County.

Mr. McMahon asked if it is wise to place two (2) tanks on the same site.

Mr. Garner stated that depends on the individual circumstances being faced, however, there will be several different locations for construction of the new tanks as the project progresses.

Mr. Samples stated that he had heard no compelling reasons to grant the variance and would, therefore, support the recommendation of staff.

Mr. McMahon stated that the size of the variance would be rewriting the zoning requirements. He stated that rewriting the requirements is the function of the Council.

Mr. Stone stated that unfortunately the Planning Commission is faced with the situation that has a great public need which the Commission is normally not confronted with. Most variance applications deal with situations that there is not a great overriding benefit that would be derived from granting such a variance. Mr. Stone stated that it was his opinion that this need creates a unique circumstance and would, therefore, be inclined to approve the variance.

Mr. Foland stated that he agreed with Mr. McMahon and felt an alternative location should be selected.

Mr. Hosfeld stated that he felt there is a need for the additional storage, however, that is not the charge of the Planning Commission. The variances requested are significant. He felt that the matter should be determined by Council.

Mr. Swartz stated that if no alternative sites were available, it would be a different matter. Since other sites are available, a site should be selected that addresses the zoning standards.

MOTION: Mr. Samples moved to deny the Variance application submitted by the Board of County Commissioners, Montgomery County, Ohio. Mr. Foland seconded the motion. The motion was approved 5-1 with Mr. Stone voting no.

MOTION: Mr. Samples moved to deny the Planning Commission Special Approval application submitted by the Board of County Commissioners, Montgomery County, Ohio. Mr. McMahon seconded the motion. The motion was approved 4-2 with Mr. Stone and Mr. Foland voting no.

The applicant representative was reminded of their right to appeal.

A 5 minute recess was taken at this time.

Hills Developers - Major Use Special Approval

Mr. Schwab reviewed the Major Use Special Approval application submitted by Hills Developers for a 33.2662 acre parcel located east of Bigger Road and south of future Clys Road. The current zoning on the parcel is 28.4 acres of R-PD, Residential Planned Development and 4.8662 acres of R-1c, Single-Family Residential. The request is to construct a 208 unit condominium project at a density of 6.25 dwelling units per acre. Road improvements will be required to future Clys Road as a part of this development. Parkland dedication will also be required.

Mr. Schwab explained that there is currently negotiations between Hills Developers and John Black Enterprises to submit a rezoning application which would include changing 4.8 acres of the Hill's property from R-1c to R-PD as well as a change in zoning of the Black property from R-PD to Single-Family which would be the last phase of Thomas Paine Settlement. Should this change in zoning be approved, the percentage of acreage zoned in each classification would basically remain the same. Hills Developers is dividing there project into two (2) phases, the second phase containing the 4.8 acres which would be the subject of the rezoning application. Mr. Schwab stated further that should the rezoning application be approved, the variance of density for the Hill's project would not be necessary as the density would meet the requirements of the Zoning Ordinance.

Mr. Schwab stated that three (3) types of building units are being proposed for this particular project. The three (3) styles include the standard garden style unit buildings, garden style with one-story ranch style wings on each end, and two-unit range style buildings will be constructed. The buildings will be constructed of brick and wood siding, and private streets will be used throughout the project.

Staff recommended to approve the application subject to the following conditions:

1. Prior to the approval of this Major Use Special Approval Plan by the City Council, the 4.8662 acre Phase II portion of the proposed development must be rezoned to R-PD, Residential Planned Development. This land is currently zoned R-1c, single-family residential and does not permit the construction of double or multi-family units.
2. The City Council shall specifically approve a variance to increase the density of the development to 6.25 dwelling units per acre. Phase I has a density of 6.0 dwelling units per acre. The developer has requested that the density (38 dwelling units) from the 4.8 acre portion of Thomas Paine Settlement south of Clio Road be transferred to the Phase II portion of this development.
3. The property owner shall petition the City to be assessed for a portion of the cost to construct Clio Road through their development.
4. The property owner shall dedicate the full right-of-way for Clio Road across their property.
5. A deed restriction shall be placed on the multi-family zoned acreage located north of future Clio Road requiring this land to be maintained as open space and prohibit the development of this land. This restriction shall be subject to the approval of the City Attorney.
6. All private streets shall be constructed to City standards and subject to approval by the City Engineer.
7. The interior street layout shall be revised subject to the approval of the City Planning Department to incorporate the followings:
 - a. The plan shall provide a minimum intersection sight distance of 200 feet at all intersections within the development;
 - b. A minimum sight distance of 200 feet shall be maintained on the street circling the lake, particularly, the curve located at the northeastern part of the street;
 - c. All streets shall intersect perpendicularly to other streets;
 - d. A minimum street offset of 125 feet shall be provided for the two (2) streets intersecting the main driveway situated west of the lake; and

- e. Blisters of pavement shall be provided at the ends of all parking areas to allow vehicles to conveniently exit from the end parking stalls.
8. All sidewalks shall be setback a minimum of 4 feet from the curb on the private streets.
9. All walkways shall be designed in a manner that eliminates all angled turning movements subject to approval by the Planning Department.
10. The main entrance from future Clyo Road shall be redesigned to widen the "throat" area of the street subject to the approval of the City Engineer.
11. The proposed public street located south of the development shall intersect Bigger Road directly across from the driveway to the Village at Willow Creek subject to the approval of the City Engineer.
12. Sidewalks, 4 feet wide, shall be constructed on both sides of the public street. The sidewalks shall be located at the edge of the right-of-way and not abutting the curb.
13. Bigger Road has a right-of-way of 55 feet measured from the centerline. The plan shows a 43 foot right-of-way. All buildings and the tennis court shall be moved to the east a minimum of 12 feet to maintain the required 50 feet building setback. No variance shall be granted to permit a reduced setback.
14. A stormwater drainage plan shall be approved by the City Engineering Department showing stormwater drainage calculations and incorporating retention and/or detention and erosion control during construction in accordance with the provisions of the City Stormwater Drainage Control Ordinance.

No stormwater drainage plan nor preliminary stormwater drainage calculations were submitted with this application. In addition, no preliminary grading plans were submitted showing the elevation of the building pads in relation to the elevation of the lake. Some buildings around the existing lake at its current elevation are within 2 feet from the surface and situated within 10 feet from the edge of the water. The City Engineer has stated that the elevation of the lake, if used as a detention basin, shall be lowered and the area regraded to provide a 6:1 slope from the buildings to the basin and a 3:1 within the basin. All buildings shall be setback a minimum of 15 feet from the basin.

15. Adequate covenants approved by the City Attorney shall be recorded to provide for the future private maintenance of the proposed stormwater detention/retention basins.
16. An easement shall be required to the retention basin to allow emergency access by the City.
17. Prior to the issuance of any building permit by the City, the developer shall dedicate 1.802 acres of parkland within this development in accordance with the provisions of City Ordinance 15-86, The City Parkland Dedication Ordinance. In lieu of this parkland dedication, the developer, at their option, may dedicate 1.802 acres of parkland on land currently owned by the developer and adjacent to this development subject to the approval of the City Council.
18. All dumpsters shall be screened subject to approval by the City Planning Department.
19. Exterior lighting shall be approved by the City Planning Department.
20. All street names shall be approved by the City Planning Department.

Mr. Hosfeld opened the public hearing.

Mr. John Koverman, attorney representing Hills Developers, stated that they had no objections to the staff recommendations. He stated that they would like approval of the application in order to start the project yet this building season. Phase I meets the requirements of the Zoning Ordinance and, therefore, construction could begin immediately. Once the rezoning application is filed, should it be approved, single-family units would be constructed to the east of Phase I. If the rezoning application is not approved, a redesign of the 4.8 acres would be submitted for approval to accommodate the street access to the property.

Mr. Foland asked Mr. Koverman if the duplex units being considered in Phase I met the parking requirements being 2 garage spaces, 2 driveway spaces plus one (1) additional space.

Mr. Carl Hartman, architect for the project, stated that the plan for the two-family units incorporated 2 garage spaces, 2-20 foot driveway spaces that will not block sidewalks or street areas, as well as one (1) additional space required by the Ordinance that is available in the form of on-street parking on the private 28 foot wide streets throughout the project. The garden style buildings have aggregate parking areas which provide 2.5 parking spaces per unit.

Mr. Schwab stated that the parking as proposed for Phase I in the fashion described by Mr. Hartman would meet the parking requirements outlined in the Zoning Ordinance.

Mr. Foland asked for assurance that a vehicle parking in the driveway area would not block the sidewalk.

Mr. Hartman stated that a parked vehicle would not block the sidewalk area.

Mr. Foland asked that the parking issue be made a condition of approval and be specifically placed in the motion.

Mr. Koverman stated they would have no objection to that issue being included in the recommendation for approval.

Mr. Byron Hall, 6425 Little John Circle, stated that he wanted to commend Hills Developers for a very nice plan and for the cooperation and good fellowship that they have shown towards the Thomas Paine Estates. He, therefore, spoke in favor of their proposal.

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

Mr. Foland asked if conditions 1 and 2 should remain a part of the motion.

Mr. Hunter stated that in discussing the matter with Mr. Schwab, the City would feel comfortable with removing conditions 1 and 2 and replacing them with a condition that describes the new phase line.

Mr. Schwab asked that an additional clarification be included in the motion that what Hills is stating in the phasing is that the new phase line as proposed tonight versus the one shown on the plan is the one being approved.

Mr. Swartz asked if the conditions should also address any concerns of the Fire Department.

Mr. Schwab stated that the Fire Department did have some concerns about some turning radii within the development and a potential change to the access to the site.

Mr. Swartz expressed concern as to eliminating conditions 1 and 2.

Mr. Schwab suggested leaving conditions 1 and 2 in place with the additional language labelled as conditions 2.a.:

Notwithstanding conditions 1 and 2, unconditional approval is given to the Phase I, as described tonight and incorporated in the print submitted tonight, that is not predicated upon the rezoning being granted.

MOTION: Mr. Foland moved to recommend approval of the Major Use Special Approval application submitted by Hills Developers for the 33.2662 acre site east of Bigger Road and south of future Clyo Road subject to the following conditions:

1. Prior to the approval of this Major Use Special Approval Plan by the City Council, the 4.8662 acre Phase II portion of the proposed development must be rezoned to R-PD, Residential Planned Development. This land is currently zoned R-1c, single-family residential and does not permit the construction of double or multi-family units.
2. The City Council shall specifically approve a variance to increase the density of the development to 6.25 dwelling units per acre. Phase I has a density of 6.0 dwelling units per acre. The developer has requested that the density (38 dwelling units) from the 4.8 acre portion of Thomas Paine Settlement south of Clyo Road be transferred to the Phase II portion of this development.
 - a. Notwithstanding conditions 1 and 2, unconditional approval is given to the Phase I, as described tonight and incorporated in the print submitted tonight, that is not predicated upon the rezoning being granted.
3. The property owner shall petition the City to be assessed for a portion of the cost to construct Clyo Road through their development.
4. The property owner shall dedicate the full right-of-way for Clyo Road across their property.
5. A deed restriction shall be placed on the multi-family zoned acreage located north of future Clyo Road requiring this land to be maintained as open space and prohibit the development of this land. This restriction shall be subject to the approval of the City Attorney.
6. All private streets shall be constructed to City standards and subject to approval by the City Engineer.
7. The interior street layout shall be revised subject to the approval of the City Planning Department to incorporate the followings:
 - a. The plan shall provide a minimum intersection sight distance of 200 feet at all intersections within the development;

- b. A minimum sight distance of 200 feet shall be maintained on the street circling the lake, particularly, the curve located at the northeastern part of the street;
 - c. All streets shall intersect perpendicularly to other streets;
 - d. A minimum street offset of 125 feet shall be provided for the two (2) streets intersecting the main driveway situated west of the lake; and
 - e. Blisters of pavement shall be provided at the ends of all parking areas to allow vehicles to conveniently exit from the end parking stalls.
8. All sidewalks shall be setback a minimum of 4 feet from the curb on the private streets.
 9. All walkways shall be designed in a manner that eliminates all angled turning movements subject to approval by the Planning Department.
 10. The main entrance from future Clyo Road shall be redesigned to widen the "throat" area of the street subject to the approval of the City Engineer.
 11. The proposed public street located south of the development shall intersect Bigger Road directly across from the driveway to the Village at Willow Creek subject to the approval of the City Engineer.
 12. Sidewalks, 4 feet wide, shall be constructed on both sides of the public street. The sidewalks shall be located at the edge of the right-of-way and not abutting the curb.
 13. Bigger Road has a right-of-way of 55 feet measured from the centerline. The plan shows a 43 foot right-of-way. All buildings and the tennis court shall be moved to the east a minimum of 12 feet to maintain the required 50 feet building setback. No variance shall be granted to permit a reduced setback.
 14. A stormwater drainage plan shall be approved by the City Engineering Department showing stormwater drainage calculations and incorporating retention and/or detention and erosion control during construction in accordance with the provisions of the City Stormwater Drainage Control Ordinance.

No stormwater drainage plan nor preliminary stormwater drainage calculations were submitted with this application. In addition, no preliminary grading plans were submitted showing the elevation of the building pads in relation to the elevation of the lake. Some buildings

around the existing lake at its current elevation are within 2 feet from the surface and situated within 10 feet from the edge of the water. The City Engineer has stated that the elevation of the lake, if used as a detention basin, shall be lowered and the area regraded to provide a 6:1 slope from the buildings to the basin and a 3:1 within the basin. All buildings shall be setback a minimum of 15 feet from the basin.

15. Adequate covenants approved by the City Attorney shall be recorded to provide for the future private maintenance of the proposed stormwater detention/retention basins.
16. An easement shall be required to the retention basin to allow emergency access by the City.
17. Prior to the issuance of any building permit by the City, the developer shall dedicate 1.802 acres of parkland within this development in accordance with the provisions of City Ordinance 15-86, The City Parkland Dedication Ordinance. In lieu of this parkland dedication, the developer, at their option, may dedicate 1.802 acres of parkland on land currently owned by the developer and adjacent to this development subject to the approval of the City Council.
18. All dumpsters shall be screened subject to approval by the City Planning Department.
19. Exterior lighting shall be approved by the City Planning Department.
20. All street names shall be approved by the City Planning Department.
21. Garage and parking spaces explicitly meet all zoning requirements and that the print be changed to reflect the issue.
22. With consultation of the Fire Department, streets and radii be subject to discussions between the Fire Department and approval of the Planning Department.

Mr. Samples seconded the motion. The motion was approved unanimously 6-0.

UNFINISHED BUSINESSReid E. and Joy Patterson - Variance of Fence Material

Mr. Schwab reviewed the variance application submitted by Reid E. and Joy Patterson requesting a variance for a section of brick wall (fence) in the front yard of his residence located at 154 East Franklin Street. The zoning on the property is R-1d, Single-Family Residential. Mr. Schwab stated that prior to the adoption of the 1986 Zoning Ordinance, a 3 foot high brick wall was legally constructed in the front yard of this property. Recently, there was an additional section of fence (wall) along the opposite side of the driveway which extends from the driveway to the east and then turns south for approximately a 37 foot total length. Mr. Schwab stated that there is nothing unique about this property to grant the new section of fence to be constructed in the front yard of the property. The applicant contends that the original fence was constructed legally and that is the basis for granting a variance to allow a continuance of the fence. Staff disagrees with that position.

An issue raised in the applicant is one of interpretation of the Zoning Ordinance. That issue is that the staff's interpretation of a section of the Zoning Ordinance which provides an exemption for front yard locations for short sections of fence that are decorative and are of a non-enclosing nature. It is the applicant's contention that the fence is exempt from the fence standards based on his interpretation that the fence is decorative and non-enclosing in nature, therefore, no variance is necessary.

Mr. Schwab informed the applicant that an appeal to the staff interpretation of the Zoning Ordinance would have to be filed and the applicant has not done so at the current time. Since the exemption issue was raised by the applicant, Mr. Schwab stated that the intent of the Zoning Ordinance was to allow one (1) section of fence, typically 8 foot in width, to be used for decorative purposes and not enclosing purposes. Staff's interpretation is that if the fence as constructed on the property in question is not enclosing in nature, then virtually any property in the City could construct a brick fence in their front yard as long as it did not enclose the driveway.

Staff recommended to deny the variance application. The fact that a brick wall was legally constructed in the front yard of this property under a previous ordinance is not grounds for granting this variance.

Mr. Schwab stated that the City Zoning Inspector and the Planning Department do not agree with the interpretation of the applicant that this wall is permitted by virtue of its exemption in the ordinance as a short section of wall that is primarily of a decorative rather than an enclosing nature.

The claim by the applicant that this wall is exempt from the prohibition against brick walls in the front yard is not the proper subject of a variance application, but should be heard as an appeal application.

Mr. Hosfeld opened the public hearing.

Mr. Samuel McCray, attorney representing the applicant, was present to review the application. He stated that the applicant purchased the property and spent twice that amount to establish the setting on the property. The entire remodeling incorporated the use of brick into the setting. This newest section of fence, using the brick material, is in keeping with the harmonious architectural setting that the applicant is trying to continue. Mr. McCray stated that the requirements of the Zoning Ordinance would allow the applicant to have the fence configuration of fence on the property, however, the material would have to be split rail, wrought iron, etc. If those materials were used, they would not fit into the setting that has been established. Mr. McCray stated that whether it is a variance or an appeal of the interpretation of the Zoning Ordinance, the Planning Commission must make the decision. He stated that whether the Planning Commission determines to consider it an exemption or a variance situation, he requested that the action be taken to attach the problem and grant the use of the fence as it was constructed.

Mr. Swartz stated that the issue of interpretation should be determined before a variance application is reviewed.

Mr. Schwab explained that an appeal although it is a separate application issue would be determined by the Planning Commission and not Council.

Mr. McCray stated that they are seeking action on both an appeal and a variance.

Mr. Stone stated that based on the Variance application, he could not approve the application to extend a nonconforming use.

Mr. Hosfeld stated that most of the wall was constructed under the requirements of the old ordinance which allowed such construction. At this point in time, the applicant has chosen to finish the wall. He stated that if the applicant used a permitted fence material, it would not fit in with the existing fence.

Mr. McMahon stated that he did not want to see the wall having to be removed, but did not want to grant a variance.

Mr. McCray stated that is why they are requesting an appeal to the interpretation of the ordinance.

Mr. Patterson stated that he was given no notice that he was in violation until two (2) days after the first hearing was set on the variance.

Mr. Schwab stated that the applicant was given verbal notice of the violation by the Zoning Inspector and that was the purpose of the variance application.

Mr. Patterson stated that the Zoning Inspector spoke to him in his driveway during a 5-minute meeting and told him to notify the City Planner to file a variance for the completed section of fence that was in violation of the Zoning Ordinance.

Mr. Schwab stated that the applicant did come to the Planning Department to get an application. He stated that at that time, he explained to Mr. Patterson the appeal rights of the staff's decision and that could be used in the applicant's defense.

Mr. Samples asked what the applicant was appealing.

Mr. Schwab stated that he is not appealing anything formally at this time since no appeal application has been submitted.

Mr. Hosfeld stated that he felt that the property was unique and he could rationalize a variance for the new section of wall. He stated that he did not regard this as an exemption even if the appropriate application had been filed.

MOTION: Mr. Swartz moved to approve the Variance application submitted by Reid E. and Joy Patterson to permit brick as a fence material at 154 East Franklin Street. Mr. Samples seconded the motion to further the discussion.

Mr. Samples stated that he would support the wall, this not being a fence, with a clear message that Centerville does not want brick, enclosing walls. He stated that this is not an interpretation issue and clearly is a variance situation.

Mr. Foland requested a roll call vote.

Mr. Samples, Mr. Swartz and Mr. Hosfeld voted in favor of the motion. Mr. Foland, Mr. Stone and Mr. McMahon voted against the motion, thereby resulting in a 3-3 tie vote. The tie vote determined that the Variance would not be approved.

Mr. Hosfeld explained that the appeal of the Planning Commission decision must be filed within 15 days.

There being no further business, the meeting was adjourned.

Arthur H. Foland
Acting Chairman