

**MINUTES OF A REGULAR MEETING OF
THE BOARD OF ZONING APPEALS
CITY OF OAK HILL, TENNESSEE**

December 15, 2009

The Board of Zoning Appeals of the City of Oak Hill, Tennessee met in the City Office. Board members present were Tom Lawless, Tonya Matthews, and Steve Wasserman. Also present were City Manager Kevin Helms, City Attorney Bob Notestine, Assistant City Manager M. C. Sparks, and Administrative Assistant Patrick Steiner. Mr. Lawless chaired the meeting, and Ms. Sparks acted as secretary.

Following introductions and preliminary information, the following matters were considered and disposed of as indicated:

1. Call to Order. The meeting was opened at 5:05 p.m. by Mr. Lawless.

2. Update on First Presbyterian Church/Oak Hill – The Board of Zoning Appeals requested at the Special Meeting in September that the church return to make a report on the progress in addressing concerns of the neighbors around the church property. Mr. Tom White reported for the church, which has been holding meetings with neighbors; Mr. Stuart Gordon from First Presbyterian handed out to the Board a report on these meetings, which is in the case file. They have closed the rear gate on Saturday, which has helped with traffic issues on the weekend.

Mr. Bob Grohovsky, who is chair of the neighborhood commission, spoke on the activity of the past year, saying there has been great progress, but there is still work the commission can do. This process has been cooperative and open in his assessment, and the church has been proactive in their efforts. They feel it would be another good step to come up with an outline to show what actually will be considered progress or success.

Ms. Mary Wherry, Robertson Academy Road, said there has been progress but the neighborhood commission needs to be continued; work needs to be done to try to lessen the percentage of cars coming off Oak Valley Lane when arriving at school.

Mr. Jimmy Bradshaw, Robertson Academy Road, said he has a different view of the progress as a member of the commission, but at least the church is now trying to help. The problem is volume of traffic in a residential neighborhood; a proposal is needed on reducing volume.

Mr. Gordon, in discussing the report, said the primary traffic is moving from Lealand Lane, to Robertson Academy Road to Oak Valley Lane to access the property during school hours.

Mr. Billy Leavell, Churchwood Lane, said he feels they need more studies about traffic for the area, and then find what needs to be done, particularly routing traffic to Battery Lane, Franklin Road, and Tyne Boulevard.

Mr. Lawless thanked the neighborhood commission, and said he would like to see how the church now progresses by putting the onus on the church to continue improvements, and would like to dismiss this item from the Board consideration. If there is a need to reopen the hearing, then the neighborhood can bring this back to the BZA; at this time he would like to give the church a chance to continue improvements.

Mr. Brian McKurley asks what authority BZA has in this issue – Mr. Wasserman said all churches and school operate under a Conditional Use Permit, which set out parameters under which they operate. The Board of Zoning Appeals has authority over the C.U.P. Also asked was if the BZA controls the use of the back gate for the church property. Mr. Lawless said it would have to be investigated, but the regulation of the use of the property is with the BZA or the Board of Commissioners.

Mr. Leavell and Ms. Wherry requested to keep this issue open; they feel the church will not keep up the progress, and it will cause tension if the neighborhood has to come back to protest the Conditional Use Permit of the church.

Mr. Notestine brought up that the BZA authorized this commission, but the commission should be appointed by the Board of Commissioners. Perhaps a recommendation could be made to the Commission to continue this neighborhood group.

After discussion, on a Motion made by Mr. Lawless and Seconded by Ms. Matthews, the following was Passed two in favor and one abstention (Mr. Wasserman):

“Move that the review of the 2009 Show Cause Hearing involving the First Presbyterian Church/Oak Hill School Conditional Use Permit be concluded as presently situated, as per the results listed in the minutes of the September Special Board of Zoning Appeals Meeting and the results found in this meeting.”

4. Case 09-1: Mr. & Mrs. Bill Farmer (1028 Stonewall Drive) – A request was made for a variance to allow construction of a new deck and to reorient the garage; the deck would require a 35’ rear setback variance and the garage would require 12’ rear setback variance. Mr. and Mrs. Farmer appeared to present the case, along with Mr. Art Stinson, architect. A previous permit was granted on the premise that the house is a one story house, but it does have a second story, which changes the setbacks. This earlier permit may also have assumed that part of the Bridle Path belonged to the Farmer property. The Farmers would like to turn the garage orientation, as it is not accessible for use at this time; adding 6’ will make the garage useable. The deck will have steps eliminated to make more accessible.

Mr. Notestine said City might have assumed in the past that Bridle Path was abandoned – there is nothing to show it was ever a public road or easement. The staff’s position is the Farmers don’t own the Bridle Path property.

The neighbors were duly notified of the case. No comments were received by the city office.

After discussion, on a motion duly made by Ms. Matthew, and seconded by Mr. Lawless the following was Passed Unanimously.

“Moved that the variance as outlined in Case 09-1 is granted, the hardship being that there is no other way to accomplish the building project, there was confusion by all parties regarding the setbacks, and the consent of neighbors was received.”

A five minute recess was taken.

5. Case 08-27: Consider A Request By Mrs. Sharon Monroe, 1101 Stonewall Jackson Court - Ms. Monroe appealed the decision of the City to write a building permit for installation of utilities and building up an access easement for property at 5208 Granny White Pike, owned by Karl and Linda Van Becelaere. This case was heard in chancery court, and remanded to the City, with instruction that a finding of fact must be included in the decision of the Board of Zoning Appeals. There has been discussion between the attorneys and the boards, and there is a one hour limit for each side to present their cases; rebuttal is included as part of that time limit. The attorneys have also been asked to present findings as part of the case.

Mr. West cited a letter dated November 18, 2009, from Mr. Notestine on behalf of the BZA to Mr. West; Mr. West stated that the letter states they each party had one hour to introduce evidence; his presentation is based on time given in that letter. Mr. West was informed that this was not the case. He also introduced the entire box of documents as the evidence; Mr. Burns said the City has no objection to the entering of this evidence. Mr. Burns and Mr. West will get together after the meeting to verify the contents of the box.

Other documents identified as Exhibit 2 for identification purposes contain letter and other documents. The BZA, upon discussion, was in concurrence regarding the time limit for all evidence set in the letter from Mr. Notestine, that presentation of evidence, reading from transcripts, and rebuttal is one hour.

Mr. West read for 25 minutes, portions of the court reporters transcript of the previous hearing, which he would like to be part of the record, and submitted a paper copy. This included discussions of the definitions of steep slope lots, lot orientations and easements, Radnor Lake Impact Zones, and the permit in question.

(Mr. Steiner made notes from this point on to be translated into minutes.)

Mr. West stopped his initial comments at 26 minutes, and requested the rest to be used for rebuttal.

Mr. Bob Burns, with the assistance of his associate Mr. Tim Harlan, presented the case for the City. He handed out a copy of portions of the court reporters transcriptions of the previous meeting with his notes and highlights, and also read them into the record. This document was to be assigned Exhibit # 3 for identification purposes. He commented that the evidence to be considered by the Board is only to be from the witnesses of the October 2008 meeting, and asked to strike all comments which were read by Mr. West earlier contradicting this. The comments read included discussions of the reasons for approval of the permit and the plat, definitions of building permits, etc. Mr. Burns requested record be made to determine basis of any ruling made tonight. Mr. Burns points were:

- The question involves the issuance of the permit only, not the legality of the plat; nor deciding if house could be built on the properties;
- Expressing his disagreement with Mr. West's comment that this is a "building permit" not just a grading permit (see Exhibit #23). Installation of utilities does not dictate that a house is going to be erected on these parcels. The language of the permit is limited to installing utilities and "no other work to be done".
- Pointing out the City ordinances are applicable to this subdivision. Mr. Burns turned in as Exhibit # 5 the City ordinances; Mr. West objected to the BZA seeing the City's ordinances. It was found though that Exhibit # 53 entered by Mr. West was the City ordinances – therefore they are already part of the record. Mr. Burns pointed out the definitions of structures, buildings, etc. In countering Mr. West's argument that no permit should have been written on the steep slope lots, Mr. Burns stated that Oak Hill Ordinance 87-3, 4-219.1 declares no building permit for a building shall be issued; there are no references to anything other than a building, which is defined as "a structure with a roof, intended for the shelter or enclosure of persons or property."
- Regarding Mr. Burdette's comment regarding about Ordinance 87-3, 6-103 "Powers of City Manager Regarding Issuance of Permit" – Mr. Burdette said the City would have been sued for not issuing the permit.

In closing, Mr. Burns said that the permit was issued properly, and there is no evidence to change this fact. Mr. Burns introduced a list of Finding of Fact, which was then listed as Exhibit # 5.

Mr. West's Findings of Fact will be referenced as Exhibit # 6. Mr. West wanted the City to enforce the ordinances as written, including such items as: the City Manager must approve plans before a Building Permit is issued; according to the ordinances there is no such thing as site plan; plans and/or lots must meet ordinances; that even if a subdivision is approved and recorded, the plans must be reviewed to insure compliance with the ordinances; all three lots do not meet the ordinances; the plans were not properly reviewed for the Permit; the permit ignores the prior City Manager's position that the three lots do not exist. The Chancery Court remanded the case back to the Oak Hill BZA to review the issuance of permit.

Mr. West commented on his engineer's testimony concerning whether or not all three lots are steep slope lots. He asked that the Building Permit be revoked as no site plan was turned in or reviewed by Mr. Collier or Mr. Burdette.

At this point Ms. Matthews left the meeting; there was still a quorum present.

Mr. Burns finished by saying that the permit was issued properly.

Mr. Chris Was, attorney with Civic Bank, said the bank acquired interest in the property in a foreclosure sale. He agreed with Mr. Burns, that no action should be taken to invalidate the permit. Mr. Was answered points made by Mr. West:

- In regard to the comment that there was no steep slope review for the permit: steep slope is only reviewed by the Planning Commission for a building;

- In regard to Mr. West presenting an “expert witness” in the form of an engineer, the BZA would base decision on the City Engineer’s opinion;
- Despite Mr. West claim, the vast majority of the property is not steep slope.

Mr. Was said none of these points invalidate the plat. There are no proposals for building at this time on Lot 3, or the other lots. Mr. Was requested that the BZA make a decision as to which lots are steep slope lots.

Mr. West stated that all comments by Mr. Was were in contrast to the court decision; the plat does not meet all requirements at this stage. The bank sells all properties as they “stand in the shoes of developers”. The permit covers all three lots, and as all lots do not meet requirements, the permit should be revoked. Ms. Monroe turned in a complaint in 2007, and there was over a year to review this complaint before the permit was sought. He submitted that the permit should be revoked and declared void.

Mr. Lawless requested an executive session with the BZA and the City Attorney. Mr. West objected to an executive session, stating that Mr. Notestine should not be included as he was involved in the issuance of the permit. This was overruled by the BZA.

After a brief executive session was held, Mr. Lawless had questions for the concerned parties:

To Mr. West: On looking at the permit (Exhibit 23), where it is written “grading” in upper left hand, and seeing also there is a box marked to indicate the work to be done is only site preparation, does this not draw attention that document has limitations? Mr. West answered that there is no such thing as a site prep permit, but it is called in 5 places a Building Permit. Checking of the “site prep” box does not convert Permit 4138 into a site prep permit or being exempt from the ordinances.

Discussion was held regarding the ordinances, including definitions of “signs” and “structures”.

Mr. Burns objected to Ms. Monroe’s testimony being part of the record.

Mr. Lawless said that a building is specifically defined in the ordinances, therefore he is under the presumption that the Chief Building Official acted lawfully. Mr. West objected, saying that the BZA has a duty to enforce the ordinances regardless of staff interpretation.

Mr. Lawless said the BZA will take the case under advisement, and render an opinion at the January meeting. Mr. Notestine said that at the meeting it should be limited solely to items from prior meetings and not open to third party discussion or questions; the decision could reevaluate evidence, and the BZA could re-question prior testimonies of individuals.

6. Discussion of Meeting Schedule – Postponed until all Board members are present.

7. Approval of Outstanding Minutes of the Meetings - On a Motion duly made by Mr. Wasserman and seconded by Mr. Lawless, the Minutes of the November 2009 Meeting were approved as corrected.

There being no further business, the meeting adjourned at 9:38 p.m. by the unanimous vote of the Board.

Chair

City Recorder