

MINUTES OF THE PLANNING AND ZONING COMMISSION

Tuesday, January 8, 2019 6:00 p.m.

At 6:00 p.m. Mayor Bernie Hovey called the Organizational meeting of the Planning Commission to order.

The following members were present and responded to roll call:

Mr. Don Brown, Mr. Brian Lapolla, Mr. Jeff Heintz, Mr. Dennis Stoiber, and Mr. Lou Ciraldo

Roll call of the Commission: All members present

Others in attendance:	Mr. Neil Luketic	2986 Silverview (Steere)
	Mr. Tony Luketic	2986 Silverview (Steere)
	Mr. Denny Baughman	2986 Silverview (Steere)
	Mr. Jeff Anderson	2921 Hastings Rd

Mayor Bernie Hovey

Suzanne Lipan, Administrative Assistant

Mayor Hovey thanked the members of the Planning Commission for their service and stated the Commission does good work.

Mayor Hovey swore in Mr. Jeff Heintz, Mr. Dennis Stoiber, and Mr. Don Brown.

Mayor Hovey asked for nominations for a Chairman for the Planning Commission.

Mr. Dennis Stoiber nominated Mr. Jeff Heintz to serve as Planning Commission Chairman, seconded by Mr. Don Brown.

There being no further nominations, Mayor asked for a voice vote.

All members in favor stated aye. No members were opposed.

Mayor Hovey turned the meeting over to Mr. Heintz.

Mr. Heintz asked for nominations for Vice- Chairman.

Mr. Don Brown nominated Mr. Dennis Stoiber to serve as Vice-Chairman, seconded by Mr. Lapolla.

There being no further nominations, Mr. Heintz asked for a voice vote.

All members in favor stated aye. No members were opposed.

Mr. Heintz said two members of the Planning Commission will need to be appointed as liaisons to the Citizen's Housing Committee.

Mr. Stoiber nominated Mr. Brian Lapolla and Mr. Lou Ciraldo to continue to serve as liaisons to the Citizen's Housing Committee, seconded by Mr. Don Brown.

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All members in favor stated aye. No members were opposed.

Mr. Heintz stated the dates and times for the Planning Commission meetings are currently held on the 2nd and 4th Monday's of the month, beginning at 6:00 p.m.

Mr. Stoiber made a motion to continue the current dates and times for the 2019 Planning Commission meetings, seconded by Mr. Brown.

All members in favor stated aye. No members were opposed.

Mr. Heintz asked for a motion to continue governing by the Robert's Rules of Order and to continue using the informational packet given to applicants.

Mr. Stoiber made a motion to continue governing by the Robert's Rules of Order and to continue using the informational packet given to applicants, seconded by Mr. Brown.

All members in favor stated aye. No members were opposed.

Mr. Heintz thanked the members for their service and stated he looks forward to working with everyone in 2019.

Mr. Heintz said he agrees with the Mayor, the Planning Commission does good work and he appreciates the contentiousness with which each member approaches this job.

Mr. Lapolla made a motion to approve the minutes of the November 12, 2018, meeting, seconded by Mr. Ciraldo.

All members in favor stated aye. No members were opposed. Minutes are approved.

Plan No.: 2019-01 Mr. Jeff Anderson/Ms. Martha Peterson, 2921 Hastings Road, Lot #77 All, Silver Lake Estates.

Application to install a new window in the rear of the dwelling.

Mr. Heintz asked Mr. Anderson asked if the siding would match.

Mr. Anderson said the siding will match.

Mr. Stoiber said he likes it.

There being no further discussion, Mr. Stoiber made a motion to approve Plan No.: 2019-01, seconded by Mr. Brown.

All members in favor stated aye. No members were opposed.

Plan No.: 2019-02 Plan No.: 2019-02 Mr. and Mrs. Bruce (Mary Helen) Wright, 2949 Silver Lake Blvd, Lot # 223, Silver Lake Estates.

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Application to remove existing brick walkway to install a new side access walk with failures on the north side of the house.

NOTE: This work has already been done without benefit of a permit.

The impervious surface worksheet has been submitted.

The existing impervious surface is 7,272 square feet divided by the lot area (26,561) equals 27 percent.

The proposed impervious surface is 7,266 square feet divided by 26,561, which equals 27 percent.

There will be no change in impervious surface.

Mr. Heintz and Mr. Stoiber said the walkway looks nice.

There being no further discussion, Mr. Ciraldo made a motion to approve, seconded by Mr. Brown.

Mr. Heintz and Mr. Lapolla signified their approval by saying aye.

Mr. Stoiber abstained from vote.

Plan No.: 2018-38 Mr. Bill Steere, 2986 Silverview Dr, Lot 11, Silverview Estates Reallotment.

Application to demolish existing house to rebuild a new house.

Tabled at the December 10, 2018, Planning meeting. Further information regarding the riparian issue is needed.

Mr. Heintz stated once again that Mr. Steere is a client of the law firm he is associated with and will therefore abstain from any vote.

Mr. Luketic said the plans have not changed from the first submittal except for the removal of the boathouse.

We are looking for three requests.

1. Recommendation from this Board and referral to the Board of Zoning Appeals for a rear yard setback variance.
2. A review and conditional approval for the additional impervious surface area.
3. Review and approval of the riparian corridor encroachment.

Mr. Luketic started with the rear yard setback.

There are parts of the house, two wings of the house that extend past the rear yard by roughly 23 – 24 feet. To keep things simple, we are asking for instead of 125.66 feet of rear yard, which is

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half the depth of our lot, we are asking for a 100 foot rear yard setback. That ends up being a 20 percent encroachment.

Mr. Stoiber asked how many feet is the encroachment.

Mr. Luketic said about 24 feet.

Mr. Stoiber asked Mr. Luketic to step forward to show him where the 24 feet is.

Mr. Ciraldo said there will be a basement underneath with a 2nd floor above.

Mr. Luketic said the material pallet will be forthcoming.

Mr. Luketic said the second item is the impervious surface.

Mr. Luketic submitted an Impervious Area Storage Calculations for submittal to the Village engineer.

The maximum allowable impervious area is 26 percent. The lot is 31,014 square feet, which is .71 acres. Our existing project is 27 percent cover and our proposed project is 32.9 percent coverage.

Mr. Stoiber asked Mr. Luketic to explain the approach to mitigate the overage.

Mr. Luketic said Professional Engineer, Mr. Joseph Mosyjowski, has given them two options.

Option #1: Stone Drywell:

627.7 c.f./40 percent void space (nos. 1 & 2 rock)= 1,569 cubic feet of stone (approx. 58 c.y.)

Use 5' w x 60' l x 5.25' d stone trench (1,575 c.f. of stone)

Option #2

Mr. Luketic: The Village's riparian ordinance has unintentional consequences if applied based on these ordinances. It can effect resale value if the riparian rules are applied the way they are written.

This project has 1,900 square feet in the riparian. We are allowed to add 15 percent over what is currently in the riparian. That equates to 285 square feet that we are requesting, in perspective, is the width of this room.

We have three options to resolve the riparian situation:

Option #1 1169.07 which is a lawful nonconforming use.

Option #2 1169.08 which is boundary interpretation.

Option #3 1169.09 which is a variance.

Mr. Ciraldo: What is planned for the 285 square feet?

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Mr. Luketic: A little bit of building and a little bit of rear terrace area.

Mr. Ciraldo: What watermark?

Mr. Luketic: The edge of the lake. The lake is at a 100 year flood plan elevation. There is no rising water.

Mr. Ciraldo: That is stable.

Mr. Luketic: There is no movement of water. The third option is the variance, I think, is a complicated process, something we prefer to avoid.

The second option is the boundary interpretation. I cannot lean on any engineering data that tells us that line is in the wrong place. In general reasoning, I don't see the purpose on how it helps or hurts this property, to have the overlay of riparian on this particular parcel.

The 100 foot setback would be more than reasonable. It starts at 75 and if you want to push it to 100 that is more than reasonable. It would cover all the steeper sloped area within our project.

One advantage if we want to look at a boundary re-interpretation that would all be done by the Planning Commission not by the Board of Zoning Appeals.

The option that works best for us is option #1 which is lawful nonconforming use. The key word in 1169.07 is uses. The way the property is being used, which is residential property. Under 1169.07 (a) Structures and uses within the Riparian Setback, existing on the effective date of these regulations, that are not permitted under these regulations, may be continued but shall not be expanded except as set forth below.

(b) If damaged or destroyed, these structures or uses may be repaired or restored within two years from the date of damage/destruction, at the property owner's own risk.

(c) A residential structure or use within the Riparian Setback existing upon the effective date of these regulations, may be expanded subject to the provisions of subsections (c)(1) through (3) below:

- (1) The expansion conforms to existing zoning regulations.

With the exception of the rear yard setback, which the BZA will look at.

- (2) The expansion must not impact the stream channel or the 100-year flood plain.

We have already determined the 100 year flood plain is at lake elevation and we have no stream channel. So there is no impact on either one of those.

- (3) The expansion must not exceed an area of fifteen percent of the footprint of existing structure or use that lies within the Riparian Setback.

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That is what we are proposing is 15 percent. If we go over 15 percent, it goes on to say we could apply for additional area in the riparian. Then we would have to go to the BZA. I don't think that is a simple step to take, when we could resolve this here, with this Board.

Mr. Heintz said there are a couple observations. I appreciate that you have made some observations about applicability of the ordinance on your project based on unreasonable inflexibility with regards to these standards. I get that. This is still the law of the land as we sit here today. And it may be as we, and you, go through this process, it may come to Councils attention that there needs to be changes made to legislation, but as we sit here today, this is what we are dealing with.

The fact that you think this is a bad law, I get it, but that is what we are dealing with today.

I do believe that you have hit upon an interpretation of non-conforming use that is different as it relates to the riparian setback from the way non-conforming uses are evaluated and considered in other contexts where in the code section for everything else under the zoning ordinances it is limited to structures. So that the structure cannot be expanded beyond the applicable percentage.

I think that has an impact on the question of whether or not upon the destruction of the existing residence you would have abandoned your non-conforming use.

The fact that this legislation uses the word uses in addition to the word structures is a different width of distinction.

Mr. Heintz asked for any questions from the Board.

Mr. Stoiber: I certainly second the Chairman's comments about the fact you have pointed out within the language of this code some areas where simply cutting and pasting from the counties it required some addition modification, some thought, which didn't come to play and that is certainly a basis for your argument.

I see your arguments to be reasonable; however, as the Chairman said, this is what we are dealing with at this point.

Mr. Heintz: I guess your point is you want 15 percent variance than what would be the riparian setback if it were applied as written.

Mr. Luketic: That is correct.

Mr. Heintz: You believe that there is an avenue within the existing legislation to allow us to grant you that deviation.

Mr. Luketic: That's correct, 1169.07.

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Mr. Heintz: I think I agree with you on that.

Mr. Ciraldo: The real question is there is a non-conforming use that has been asked for. Secondly the house that has been built there also built within the riparian setback so there is a non-conforming approval down the road.

If I am looking at the pure what has happened in the past as to what they are proposing to do, it is a non-conforming use. Purely.

Mr. Heintz: To the extent that it is limited to a 15 percent expansion.

So it would seem to me that we are in the position to consider the request for a variance as it relates to item 1 on your presentation, rear yard setback, with a recommendation to the Board of Zoning Appeals that they favorably consider it.

Secondly, we would approve your proposed treatment of the increase, or deviation, of your project over what would be the applicable impervious surface standards subject to a determination by the Village engineer that your engineer's application of a 10 year 24 hours storm as the standard by which your remediation procedures have been designed is not unreasonable.

Third, that we would approve the application as it relates to an encroachment into the riparian setback, literally applied, by finding that your 15 percent increase in the encroachment into the riparian setback is within the permissible under 1169.07.

Mr. Stoiber: Should we solicit the input from the law director on the third option.

Mr. Heintz: We could.

Mr. Stoiber: That's what seems reasonable. As far as that portion of the code, I am not clear on how that applies.

As I understand Mr. Luketic's presentation, you have identified how much of the existing structure, presently falls within the delineation of the riparian setback and you have made a calculation that 15 percent above that is the amount that you would propose to build into the riparian setback with the new structure.

Our code calls a structure a house, a shed, a garage. We need to be sure we are clear on the definition of a structure. Because this (the code) says you may expand that structure within the riparian setback by 15 percent.

Mr. Heintz/Mr. Ciraldo: Or use. That is the key.

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Mr. Denny Baughman: That property is being used as a residential property. We are saying use. So the useful space, the useable residential space, is going to be reassumed by a new structural footprint with an additional 15 percent useable space.

Mr. Stoiber: That seems real nebulous to me.

Mr. Heintz: Here is what I propose to do. I would propose that we do what I described a minute ago. We advise the law director that we have done it. Let him opine as to whether or not it is proper application of the code/ordinance. Because if it is, they can go on about their business and if not, we will cross that bridge when we get to it.

Mr. Stoiber: If we make a decision that says you are good to go as a non-conforming use how do we rescind that when the law director comes back and says no.

Mr. Heintz: They have to go to the BZA on the first item. There is going to time for Mr. Heydorn to weigh in.

Mr. Stoiber: If Mr. Heydorn weighs in and says no, you can't use this and the only other option you have is the variance.

Mr. Heintz: We are going to have to reconsider it.

Mr. Stoiber: Then they would have to go back to BZA.

Mr. Heintz: Then we would have to come back and vacate what we did, which we would, if we were advised by the law director that what we have done violates the ordinances. Then we would take up one of the other alternatives.

Mr. Luketic: In ordinance 1103.26, "Use" means any purpose for which buildings, other structures or land may be arranged, designed, intended, maintained, or occupied; or any occupation, business activity, or operation carried on in a building or other structure or on land.

So that is another reference to land. We are looking at the structure and use both being non-conforming.

Mr. Stoiber: So when you showed us the picture where they have been mowing, they have walls and this and that, the entire mowed area is use.

Mr. Luketic: I'd say it is.

Mr. Heintz: The question is fairly simple as to what the law director is going to be asked. Whether or not our application of the 15 percent is proper or improper under the code. How we got to where we are we are going to have to visit on another day. It occurs to me we are going to have this problem over and over are other properties change hands around the lake. Again I want to emphasize the contentiousness in which you have approached this and the deliberate manner in which you have made your presentation.

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All of us have learned something about this riparian setback ordinance.

Mr. Heintz said we will need a motion. Mr. Steere is a client with the law firm that I am with, therefore, I will abstain from vote.

Mr. Ciraldo made a motion as to the following:

As it pertains to the first item, I make a motion to deny the application as it relates to a rear yard setback, with a recommendation to the BZA that they grant a variance.

Seconded by Mr. Lapolla.

Roll call: Mr. Heintz-abstained
Mr. Brown-approve
Mr. Lapolla-approve
Mr. Stoiber-approve
Mr. Ciraldo- approve

Mr. Ciraldo made a motion as to the following:

As it pertains to the second item, it will be a determination by the Planning Commission that the Village engineer review the calculations and a deviation above what would otherwise be the upper limit of the impervious surface limit that applies to this lot and be approved subject to a determination by the Village engineer that the application by the applicant's engineer of a 10 year 24-hour storm measure be found by the Village engineer not to be unreasonable.

Seconded by Mr. Lapolla.

Roll call: Mr. Heintz-abstained
Mr. Brown-approve
Mr. Lapolla-approve
Mr. Stoiber-approve
Mr. Ciraldo- approve

Mr. Ciraldo made a motion as to the following:

As it pertains to the third item, the applicants proposed plan with respect to the encroachment into the riparian setback in that it will not be greater than 15 percent of what is already there, as a lawful non-conforming use, under Section 1169.07 (c). And that the law director be advised and asked to weigh in on that interpretation by the Board.

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Seconded by Mr. Lapolla.

Roll call: Mr. Heintz-abstained
Mr. Brown-approve
Mr. Lapolla-approve
Mr. Stoiber-No
Mr. Ciraldo- approve

Mr. Stoiber: The reason I voted against the third item is because I don't know that we have well enough identified what the existing use is that is in the riparian that would allow us to make that calculation of the 15 percent more and without that definition I'm not going to vote for it.

DISCUSSION

Update on Ordinance No.: 80-2018 (Rezoning - Silver Lake School)

Mrs. Lipan informed the Commission that she spoke to Mr. Heydorn reference the Commission's request for a title search to be done on the school's property and he instructed her to contact Wigley Title.

Wigley Title said it would be done before the January 7th Council meeting, but they are not finished with it.

Preservation of Trees

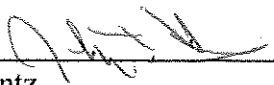
Mr. Heintz reported to the Commission on his meeting with Mrs. Polly Bloom, 3025 Silver Lake Blvd, reference preservation of trees throughout the Village. Mrs. Bloom is on the Village's Tree Committee. This issue may be something that will come before the Planning Commission.

Sign in front of Village Hall

Mr. Heintz said he understands there is talk about an electronic sign in front of Village Hall. I believe it has been said it will require Planning's approval and he has also heard the Village is exempt from this. Mr. Heintz said he does not believe the Village is exempt from Planning approval.

There being no further discussion, Mr. Stoiber made a motion to adjourn, seconded by Mr. Brown, all members signified their approval by saying aye.

Meeting adjourned at 7:40 p.m.



Jeff Heintz
Chairman