
Board Members Present: Mr. Lapolla, Mr. Ciraldo, Mr. Brown, Mr. Stoiber

Board Members Absent: Mr. Heintz

Officials Present: Robert Heydorn, Village Solicitor

Others in attendance: Mr. Justin Beichner, 3144 Harriett
Dr. AnnMarie Hipsley, 2941 Kent Road
Suzanne Lipan, Administrative Assistant

Call to Order

Approval of the minutes from February 11th and March 25nd.

Mr. Brown made a motion to approve the Planning minutes from the February 11 and March 25, meetings. Mr. Ciraldo seconded and all members signified their approval by saying aye.

Plan No.: 2019-04 Mr. Justin Beichner, 3144 Harriett Rd, Lot #13 All & Lot #14 N 30 feet, Silver Lake Hts.

Application to replace existing fence with 6-foot high white vinyl fencing with two gates as indicated on site plan.

Mr. Beichner said right now it's just a wood fence with chain-link over it. This fence would be removed and replaced with the white vinyl.

Mr. Stoiber asked if this fence would enclose the back yard.

Mr. Beichner said yes, it's just going to follow the exact same line as the existing fence with a gate on each side.

There being nothing further to discuss, Mr. Ciraldo made a motion to approve Plan No.: 2019-04, seconded by Mr. Brown, all members signified their approval by saying aye.

Discussion #1 Hipsley, 2941 Kent Road

Dr. Hipsley's application for a pavilion was approved two years ago by the Board of Zoning Appeals. No work was done. Per Section 1109.08 (a) the time has expired so Dr. Hipsley's application needs to go back to the BZA. Also, there was a very small garage on the property years ago. Village Code requires a garage.

Mr. Heydorn stated he wrote a letter to Dr. Hipsley to present plans to the Planning Commission and to complete the garage by a certain time.

We met with Dr. Hipsley in the Mayor's office and apparently the building of this garage is tied up with the building of the patio, and the variance lapsed. My feeling on this is to make sure that the garage is built and I suspect we'll be asked for the patio to be done first.

Once that is accomplished, there's much less motivation to put in the garage. My basic interest in this is to see that the garage is put in. I think it should be first or with the patio.

Mrs. Hipsley said the garage is a lot more expensive than the patio. The pavilion portion needs to be finished then I would refinance to get money to build the garage.

Unfortunately, my dad passed away and I had to stop everything and financially that was very draining. I wasn't planning at that time to have to spend \$50-\$60,000 of my savings to take over my dad's affairs. So, I did that and I wasn't planning to refinance my house at that time either. So, since the pavilion is a very quick process, one to two weeks, I'd like to start that first. I already started the process on my refinance to pay for the garage which is probably two to three times more expensive.

I am going to use the increase in my property value with the completion of the pavilion, they're waiting for me to finish this. I already have my refinance started and I started after our meeting that we had in the Mayor's office. Both of them are going up and I think Mr. Heydorn says I was supposed to get a letter but I didn't get one. You were going to send me a letter that said, as long as I got the garage built by the end of the year, December 2019, it would be okay for me to do the pavilion first.

Is that your recollection, Suzanne? Suzanne said yes.

Mr. Heydorn said the other point that was raised was this garage is so expensive because you're making a carriage house. Is that correct?

Mrs. Hipsley said we are going to put doors and a dormer. We took most of the dormer and all of that out. We pretty much crunched down the space on top in that space and even if we did a one-story garage, it's the windows, the finished work. I mean that's a lot more. Effectively it's a storage space. We shrunk the garage down to meet the impervious surface and the top of it is just attic trusses, which basically becomes a small storage section.

Mr. Heydorn said my concern was at that meeting you cannot have a second story on top of a separate garage.

Mr. Stoiber - At that meeting, the agreement was made that provided Dr. Hipsley built the garage by the end of the year, you were going to be satisfied with that?

Mr. Heydorn - I don't know if there was an agreement, but that came up right away.

Mrs. Lipan said the proposed garage has several issues. It's over the size of 500 square feet and it's over the height requirement.

Mr. Heydorn said the Planning Commission has to have a separate approval of the garage to be separated. It should be attached. If they want to separate it out then it has to have special approval. My suggestion would be that if you go ahead and approve a separate garage that approval is conditioned upon its being constructed by December 2019.

Mr. Stoiber - I think we're at least a step away from that as we sit right now looking at this plan. The garage is over square footage for an ancillary building and it's also taller than our height requirement. So, in both cases they will need a variance from BZA in order to approve that.

Mr. Heydorn said let me rephrase that. In order to make sure that this happens, you should make your approval of the pavilion conditioned upon building the garage by the end of the year.

Mr. Stoiber - The pavilion has already been approved, but has expired, correct?

Mrs. Lipan -- Yes.

Mr. Stoiber -- Do we need to reapprove this.

Mr. Heydorn said to grant a variance, you can put all the conditions on the granting of a variance that you want. That's clearly established. So, the Board of Zoning Appeals, if you guys say it meets the basic requirements, but it needs this variance, then really what I probably should be doing is telling the BZA that I'd like a condition on that variance.

Mr. Stoiber - The Board of Zoning Appeals can impose conditions? I didn't know that.

Mr. Heydorn - And if I look at the worksheet without the garage, there's another action. A variance, unlike what you guys do, is a covenant running with the land. If a variance is granted without that lapsing provision, somebody 25 years from now can do that.

It's going to go to the Board of Zoning Appeals. Then it's going to be between them and me. So that shouldn't concern you. If you come back two years later, once you read the variance, conditions have changed. I'll tell you what's changed. She didn't carry through on the garage. She has been in violation of the zoning code all this time. If then, because of the length of time of that violation, you want to add a condition to a variance, then I think that is up to the BZA.

I want to fashion what the time period is that they have for building the garage

Mr. Ciraldo asked Dr. Hipsley what she wants to do.

Dr. Hipsley - I want to finish the pavilion to support the garage. I don't have a problem being tied into what you're asking. I'm going to put the garage up anyway. I am stressed out about it because I don't even want to do this construction project, but I'm doing it to try to satisfy you and I think that these guys can do a good job. I found a good contractor. I think when we were at our meeting, Bob said get it done by December. I think these guys have scheduled it to facilitate that. If I had a reasonable reason, they'd say, hey, you can see it's being finished and the Village would be lenient on that.

We started construction on the pavilion two years ago. My Dad passed and I stopped it. So these guys are coming in to finish what's there. Everything's been done to the point where I want to say two more weeks. And he also said the garage was going to be perfect. I mean, what's the timeline to finish that? Two weeks. So we've got a good six months to get this thing done, so I'm okay with that.

Mr. Heydorn - I think even at the meeting, we basically asked you when you think you could reasonably get it done.

Mr. Stoiber - Let's be clear about what's going to happen next. You're going to go to the Board of Zoning Appeals. Suzanne can tell you the schedule for that. At the Board of Zoning Appeals, you're going to need to have an extension of the time to finish the pavilion. And at the same time, this plan that you sent us, there are two things that will need variances there. One is the area of the building, because you're at 780 square feet. The maximum allowable is 500 square feet. You could shrink it down and not have to have a variance but, but if you go to the Board of Zoning Appeals and say we want this building, we'd like you to give us a variance to have it larger.

Mrs. Lipan - Also look at it architecturally. If they have too small a building it will be out of balance with the area because her lot is one of the largest in the Village.

Mr. Stoiber - You'll need a variance for the height of the garage. We have a maximum height of 15 feet. And right now you're showing us 21 feet. One other thing that I noticed on your plan that you'll need to clean up before you come back to us for approval is you've shown us dimensions from the proposed garage to the dwelling to the rear yard and then to the street side. But you've given us a distance to the edge of pavement, not to the right-of-way line. So that dimension has to be how far the garage is from the right-of-way line, and does that comply with our setbacks.

Streets aren't always built in the center of the right-of-way. So you need to locate where the right-of-way line is and then give us that dimension and be certain. Check with the code so you know what the required setback from the right-of-way line is. All I'm advising you to do is once you find that right away line, make sure that what you're showing complies or you'll need yet another variance.

Mr. Heydorn - This is a corner lot.

Mr. Stoiber - They need to bring this back to us once they get their approval for these variances. You're going to come back to see us again. Once you have variances then we can review your project from a Planning and Architectural standpoint. Again, it's a side yard on a corner lot.

Mr. Heydorn - The code indicates 30 feet.

Mr. Stoiber - So the garage will have to be pushed further back off the street than what you are showing. Three things will need to be addressed, the location of the garage, the area (size), and the height. Find the pins and then you work off of that.

Discussion #2 Ordinance No.:80-2018 Silver Lake Elementary School

Mr. Stoiber - The latest rendition, in summary, of our discussion is that we recommend that the Council do not approve their present legislation for a variety of reasons. At the appropriate time, we recommend to Council that the Commission meets with them to discuss outcomes that would be beneficial for both ends

The Commission believes the best use of that property is now and continues to be an elementary public school.

And further, if it is ultimately determined that the school is to be closed, the Planning Commission believes the property should be rezoned to accommodate a combination of residential and park recreation uses so as to preserve the green space mandate presently existing on the site.

Once again we reiterated that before any legislation change, Council should identify and thoroughly review all the possible scenarios for the future of the school and meet with the school board in order to make those things happen. We offer that we are available to Council if they have any other questions or need anything else from us.

Discussion #3 – Riparian

Mr. Stoiber – The Commission had some modifications to the riparian code section that eliminated all mention of the lakes. Then we added the definitions for structure and use because they were in real question when it came to the lawful non-conforming uses. We specified the process for delineation and appeal of the riparian setback. We eliminated the requirement to do a recording of a plat based upon a riparian setback delineation. We included the term lawful nonconforming use in our text and we provided the 15 percent expansion could be applied separately to the structure and the use rather than one lump sum. We made allowance for the expansion depending upon obtaining a variance.

Mr. Heydorn – When the Steere's brought this to Planning, they enamored you guys by their presentation. By the time they got done, they did comply with the code without any changes. There were some ambiguities which had to be fixed by interpretation.

From a legal standpoint, I am not opposed to fixing those ambiguities. What I am opposed to, mostly from a citizen standpoint, is eliminating the code.

Just because the county passed something that addresses a particular problem, doesn't mean we have to follow it. We have the ability to defer from it. The riparian setback ordinance from a county standpoint applies to the townships. It can apply to us unless we produce something that is contradictory, which we have because we have a role and they know in their charter provides for allowing us to have the role.

So the question really comes not whether or not we conforming to their purposes, but whether or not we're conforming to our purposes. So the question is, what is our purpose?

As you can see from the purpose statements, it's pretty clear that one of the things that we were addressing in this is pollution. Now the question you are going to ask is are we only addressing or should be addressing only pollution from erosion.

I pushed for this ordinance to prevent pollution of the lakes. I didn't care about erosion. Nor did anybody on Council. We don't have a lot of water courses that meet this definition. At the time we were fighting like crazy to keep pollution out of that lake.

The trustees were going crazy at the time because their lake was getting smelly. It's been a dumping ground for pollution for years and years and years through the storm sewer system. Another reason was because the surrounding parts of those lakes were developed, trees were cut down, and wooded areas were denuded. We wanted to maintain a wooded environment close to the lake.

Grass is susceptible to have things put on it which find its way into the lake. We all know that most of the algae problems in the earth is by phosphorus. Phosphorus is an element that you find in fertilizers. Council doesn't have the guts to pass and outlaw fertilizers that have phosphorous, but at the time, we pushed heavily for that. But they wouldn't do that. They thought it impinged upon individual rights. Scientists will tell you that that lake suffers from a high phosphorous content. Wouldn't it be better to have the equivalent of a rain garden at the end of your yard then it would be to have grass all the way down to the lake.

The very purpose of this ordinance was to include the lakes from the word go. If the lakes are taken out of this, I doubt seriously that you're going to get any support from the trustees.

The trustees are currently on a mission to make sure that as much pollutants stay out of lake as possible. We have other safeguards in place. We have a zoning code that says that a certain amount of the backyard has to be free of a structure. A large one. It doesn't say that it can't be all grass all the way down to the edge.

I consider it to be almost a breach of duty by the previous Service Director, when the Hopkins terraced the rear area of their yard (on Silver Lake Blvd). I didn't even see it go in. They eradicated the woods and they got nobody's permission to do that. They had to have your permission to do that. Did anybody ever bring it to Planning? I'll bet not. Unfortunately our Service Director at the time was on the way out and he just didn't think it was a big deal. But that is blatantly against your current ordinance, literally.

Mr. Stoiber – As you mentioned, there are other protections that are already in place. The rear yard setback or anything on the lake or the river is half of the length of the lot depth. So it's a pretty good rule that they are not able to build on it, and you're right, they can plant grass.

If you're really want to point the finger at somebody relative to the Hopkin's project, there are a half dozen other projects around the lake. It's the trustees' land. In their own rules, they say that you may not do anything on their property. And by their own rules, that has to be maintained in a natural state. But yet they've let people put up retaining walls. They've let people have grass there and maintain grass on trustees' property. They're the ones who are in a position to have

something like an infiltration basin at the bottom of the slope that intercepts all that water coming down and filters it before it goes into the lake.

But they haven't had the courage to step up. They've been talking about doing demonstration projects. They know that there will be a lot of pushback from land owners who believe they own to the water's edge when truly they do not.

I had a discussion with Fred Johnson just a couple of weeks ago. He said when the weather gets nice, we're going to walk around and look at the places where the trustees have relinquished their claim on that land and their ability to maintain their own land.

Mr. Ciraldo - So the land owner is the trustees.

Mr. Heydorn - Yes. It's the land owner you want to enforce against.

Mr. Ciraldo - I, as a Planning Commission member, cannot enforce against the trustees.

Mr. Heydorn - You can because they are the landowner.

Mr. Ciraldo - How?

Mr. Heydorn - You can do it because they violated the riparian setback.

Mr. Ciraldo - Let's get the police down there and put a rit against them to fix up the lake.

Mr. Heydorn - It is the same thing when someone wants to build a place.

Mr. Ciraldo - When you wrote this in '08 you tried to do two things in one. A civil engineer can tell you, unless you control the lake level, up or down, you are not going to do anything to stop erosion. Erosion is caused by runoff. If you don't like runoff, then raise the height of the lake up.

Mr. Heydorn - But we're not talking about that.

Mr. Ciraldo - Yes we are, because a lake inside a community can be controlling the elevation of the water. Right now we can let it out. The riparian setback is strictly related to flowing water. Period.

Mr. Heydorn - Obviously you don't want to listen to that argument.

Mr. Ciraldo - It isn't a question of understanding. I understand it from an engineer's point of view.

Mr. Heydorn - If you seek to eliminate this from the riparian ordinances, maybe Council will buy it, I don't know.

Mr. Ciraldo – You can argue the point, but I'd like to be there to talk about engineering practice. The bottom line is you have created a document that is contrary to practice.

Mr. Heydorn – Oh.

Mr. Ciraldo – You have, because a lake controls the elevation.

Mr. Heydorn attempted to speak but Mr. Ciraldo asked if he could finish, saying Mr. Heydorn had his 10-15 minutes, he's going to be 30 seconds.

Mr. Ciraldo - If you want to control runoff, if you want to control fertilizers, if you want to control phosphorous, then the landowner needs to clean it up, period.

I know that aeration was added because they finally figured out they've got a problem. If they want to control the landowner, then they need to write or come up with zoning for that situation. But stop trying to bury it inside of a riparian setback document. That's my 30 seconds.

Mr. Stoiber - I don't think anybody disagrees with your desire and we all have the same desire to make sure the lake is clean. To my mind, the trustees are the big factor right now. The one other thing that came up with the Steere project was when we saw the delineation for the Steere project. We saw that half of the existing house and driveway was already in the riparian setback.

That is going to confront everybody whose house is at the top of the steep slope. If that now becomes a limitation to what people are able to do as far as their properties are concerned, the potential loss of value of that real estate is a pretty significant thing that I don't think any of us want to see happen either.

We think we've got a rear yard setback that is a significant thing. If there's a way that we need to say that there has to be an unmaintained buffer at the back of somebody's property, I suppose that is something we could do, but we need to get to the trustees. They have the land that's in position to intercept the runoff of fertilizer.

Mr. Heydorn - If the lakes are taken out of this, then somebody can come along with a proposition on the north side of the lake to knock down all the trees in the back of their property, all the brush, and putting the grass all the way down to the lake and the trustees go along with it you're ok with it?

Mr. Stoiber – I'm not saying that. There may be some other way that we require an unmaintained buffer at the back of those properties. Maybe that is another way of doing it.

Mr. Ciraldo - The riparian setback is not the type of document to create a buffer. If you want a buffer then let's zone one. It is very black and white.

Mr. Stoiber - It doesn't have any of the unintended consequences that we have just recognized with the Steere property. My suggestion would be that there'd be some sort of unmaintained buffer requirement. Unless it is shown that way that it's a buffer. If we say to people, if your property is on the lake, there is a certain 20 feet or 30 feet or whatever, that's got to be filtered.

I spent a long time researching the fertilizer situation and submitted some modifications that dealt with how people can fertilize, when they can fertilize, what their cleanup requirements are, all of that stuff. It wasn't submitted to Council for review. There are lots of things that can be done to help with the fertilizer situation, but specifically relative to these steep slopes going down to the lake, intercepting that at the bottom of the slope is really key to keeping those fertilizers out of the lakes.

Mr. Heydorn - This situation as it currently exists, what you're proposing or what you're thinking as an alternative would be allowing people to have a natural living environment in the back, they can all do that, as long as you put in some sort of buffer. You think that should be done by the zoning ordinance.

Mr. Ciraldo - I think it needs to be studied with the trustees to determine what they want to do with their property. It's got to be a systemic change within the trustees.

Mr. Heydorn - Is your motivation in doing this because you want to correct something that's not legal from your standpoint.

Mr. Brown - I agree with Lou that the trustees should be taking care of the property around the lake. I've been on the board at Crystal Lake for 27 years and we are constantly on the people around the lake to take care of the property. You can go around the estates property and they don't do it. We have to try to come up with something for them to protect the lake. It's already done at Crystal Lake.

Mr. Ciraldo - So where do we want to go with this?

Mr. Stoiber - I'm going to write up our comments and send them to all of you and Jeff saying we have discussed the issues with Bob and we'll say here was our thoughts on how to approach this thing.

Mr. Heydorn - I talked to Summit Soil and Water Cause and they applauded the Village for including the lakes in the riparian ordinance. I'm trying to deal with irresponsible trustees too. That's just the way it is.

If they don't do their job, I think the community's interest rises above. We had one side that said it's individual rights. If they want to use chemicals, they can use chemicals. There are times when the common good requires a limitation of individual rights. When we're talking about property values, that's going to be subject of some pretty good debate.

If you read the ordinance, it gives you that and it says that the idea would be that you're supposed to do things that encourage the vegetation to come back even if they have clarity. We're not

going to allow that kind of thing unless you build in a buffer or whatever you want to do at that point in time because you're the one that determines what goes on in the riparian setback. So in actual fact, if you want to look at the legality of it, what the purpose of anything is, the same kinds of things that you can accomplish with the zoning code, would be accomplished with the current mechanism. I know you don't believe that, but I just wish that you could think about it.

Mr. Ciraldo - I'll think about it, but it has to be zoned.

Mr. Stoiber - There's no reason why we couldn't have similar language that is in there for the riparian setback, now in an ordinance that establishes a buffer.

Mr. Stoiber – Asked if anybody else had any further comments? There being no further comments, the meeting was adjourned at 7:35 p.m.



Dennis Stoiber
Vice-Chairman