



CITY OF OLMSTED FALLS  
PLANNING AND ZONING COMMISSION  
MINUTES  
July 17, 2019  
7:30 PM  
COUNCIL CHAMBERS

Commission Members Present: Brett Iafigliola, Gary Pehanic, Garry Thompson (arrived at 7:39 p.m.), Peter Carpenter, Michelle Hawkins, Cornel Munteanu, and Dave Fenderbosch. Audience: 3

Chairman Brett Iafigliola called the public meeting to order at 7:31 p.m.

**1. Planning & Zoning Case #19-2019** - A request made by Jerry Toich, owner of 9266 Lindbergh Blvd, PP# 291-28-018 for a lot coverage variance of 14% to Section 1240.09(a)(2) to permit the driveway to cover 44% of the front yard in lieu of the Code maximum of 30% and a variance of 28 feet to Section 1240.09(a)(2) to permit a driveway 40 feet in width in lieu of the Code maximum of 12 feet.

Chairman Iafigliola administered the oath.

Mr. Toich indicated that he was unaware of the 50-foot setback due to this being a new home and he is new to the city. He believed that he would be able to utilize a driveway and a small parking area for people to turn around to exit the property. He has however found that the northbound traffic is brutal when backing out of the driveway and there is a small incline to the curve and the vehicles are on top of you by the time you back out. He stated that this is a hazard for guests and deliveries to back out of the drive. Therefore, he went into the building department to discuss obtaining a variance. He stated that the neighbor to the north and south of him have no objections.

Mr. Smerigan stated that there are two variance requests, one is for the percentage of the front yard that will be covered with impervious area. The code states that 30% of the front yard can be covered with a paved surface and the whole idea is to cover run off in order to prevent the entire yard from being asphalt or concrete. Based on the calculations done on the submitted plans the applicant's property would be at 44% and would be 50% over what is permitted. The code states that the driveway maximum width is 12 feet in a residential district except where it widens at the garage. He stated that the applicant has created a loop and at that point he is approximately 40 feet in width. He believes that this can be completed in some that involves less pavement.

Mr. Iafigliola read an email from City Engineer Mr. Don Sheehy dated July 1, 2019 (see attached).

Mr. Pehanic asked the applicant if he has considered other means to accomplishing his request. Mr. Toich stated that he considered not installing the small parking area that he did but rather completing a loop. He was unaware that the loop was going to be as wide as Mr. Smerigan mentioned. He believed that the loop would be 12 feet and come around and end in the apron of the driveway. Mr. Pehanic asked how wide the loop

would be. Mr. Toich indicated that he believed it would be 12 feet, like the current driveway, and then meet at the apron. Mr. Smerigan stated that as you approach the garage there is a 24-foot entrance to the garage. The farthest point of proposed loop is approximately 40 feet wide. He stated that historically the Commission has permitted "turnouts" which are also 12 feet wide as long as the request does not exceed the 30% front pavement coverage. Mr. Pehanic indicated that when he went to look at this property he did pull into the drive and it is challenging to back out of the drive. Mr. Smerigan indicated that he does not disagree that there is an issue but he believes that the safety concerns can be addressed in another way.

Mr. Thompson stated that there is a slight turn out already in place but seems to only extend six to eight feet and wonders if the solution would be to extend this turnout.

Mr. Carpenter stated that he has lived on Lindbergh for over 30 years and was warned at the time he purchased the home that backing out of the driveway would be challenging. Most of the residents in this neighborhood have solved the problem by installing turnouts.

Mr. Toich indicated that he also believed the turnout would solve the problem but if someone is parked in the turn around there is not enough space for another vehicle to turn around.

Mr. Pehanic asked if it was the applicant's intention to use the loop as an area to park guest vehicles. Mr. Toich indicated that when everyone pulled in they would all be parked in the same direction so if someone had to leave they could loop around and pull out, which was the original intention but he was informed he would need a variance during building which is why he settled on the small parking area.

Mr. Munteanu indicated that when there is a party or gathering at a residents on Lindbergh the guests actually pull off of the driveway and park in the lawns, which does happen regularly.

Mr. Carpenter asked if there was any information that would indicate that the proposed concrete would adversely affect storm sewer capability. Mr. Iafigliola indicated that he believes you be hard pressed to say that any small amount of that nature would significantly impact anything, however, you could also argue if there was a vacant lot next door and a house was built with a normal size driveway it would be many times the size of the addition the applicant is proposing. Mr. Smerigan indicated that the Commission is obligated to treat all applicants the same but if everyone takes their front yard from 30% coverage to 44% coverage then we will have storm water problems.

Mr. Toich indicated that he could possibly discuss other possibilities with his contractor. Mr. Iafigliola indicated that the Commission could table the issue, at the applicant's request, until he is ready to present a revised proposal.

Mr. Iafigliola moved to **table** Planning & Zoning Case #19-2019 until such time as the applicant returns with additional information, at his discretion; Mr. Thompson **seconded**. Poll: 7 ayes; 0 nays. **Motion carried**.

**2. Planning & Zoning Case #20-2019** – A request made by Samantha & Danny Calvert, owners of 26154 Hickory Lane PP# 291-07-061 for a variance of 3 feet to Section 1274.03(a)(1)(A) to permit a fence on the corner side yard to be 6 feet in height in lieu of the maximum 3 feet.

Mr. Iafigliola administered the oath to both applicants.

Ms. Calvert indicated that they would like to install a six-foot shadow box fence, same design as her neighbors across the street from her. They have two rescue dogs and one is young and able to jump a three-foot fence. Mr. Calvert indicated that he has cables screwed into the ground for the dogs but his wife was pulled off a chair when the dog sees another animal.

Mr. Smerigan indicated that front and side yards on corner lots the code only permits a three-foot fence. The only portion of the yard for the variance is from the side setback of the home to the street. The applicant's have indicated that the fence would be 6 ½ feet from the sidewalk and are not fencing any area of the front yard. No view obstructions would be created if the variance was granted. The Commission has granted similar requests in the past.

Mr. Pehanic indicated that within several years the Commission did approve a fence variance for this applicant's neighbor. Mrs. Calvert indicated that was correct. She indicated that she will be utilizing the same company and design as her neighbor.

Mr. Thompson moved to **approve** Planning & Zoning Case #20-2019 for a three (3) foot variance to Section 1274.03(a)(1)(a) to permit a fence on a corner side yard to be six (6) feet in height in lieu of the maximum three feet, with the condition that the fence be six (6) feet away from the sidewalk on Ironwood; Ms. Hawkins **seconded**. Poll: 7 ayes; 0 nays. **Motion carried**.

**3. Planning & Zoning Case #13-2019** – A request made by Pamella Briggs, owner of 25401 Tyndall Falls Drive for approval of a riparian setback variance of 108 feet to Section 1470.10(b)(2) to permit installation of a deck, railing and stairs extending to within 12 feet in lieu of the required 120 feet.

Mr. Iafigliola indicated that the applicant is not present. Mr. Smerigan indicated that the applicant specifically requested that she be placed on tonight's agenda and informed that her case would be on tonight's agenda.

Mr. Iafigliola indicated that the applicant appeared before the Commission on May 15, 2019 at which time additional information was requested by the Commission. He read an email dated June 26, 2019 which states "I request my variance be placed on the upcoming Building Council meeting schedule. I substantially decreased the footprint, blueprints showing the change of the structure support system goes from relying on ground support to utilizing existing structure which is built upon the homes foundation for support. The bullets points which were needed for clarification are addressed as such: slope tree canopy destruction, construction of footers, harming of trees, and length of structure versus slope maintenance versus eyesore." He stated that on one hand he is uncomfortable discussing an application without the presence of the applicant.

Mr. Munteanu indicated that he was not present the first time the applicant appeared before the Commission and he would like to hear what the applicant has to say. Mr. Pehanic believes tabling this issue is appropriate.

Mr. Iafigliola indicated that we can confirm that we have additional information. He would also suggest tabling this issue until the applicant can appear or send correspondence indicating that she does not desire to be present. Mr. Smerigan indicated that since this is a variance the Commission needs to obtain testimony under oath. While we have an email from her indicating that she has reduced her original request the Commission needs testimony to that affect. He believes it would be unwise to act without the applicant present. He indicated that the applicant can send her contractor to speak on her behalf as long as she authorizes him to represent her interests.

Mr. Thompson stated that the Commission requested additional information which is not included in her new packet. The Commission requested an engineering study or survey be completed. The information provided in the new packet only increases his questions regarding what the applicant is planning. There is no information from an engineer indicating that the disturbance of the river bank will not cause a problem. Mr. Smerigan indicated that the Commission requested that the applicant return with someone who had technical expertise to provide testimony that if she did build her proposed deck it would not be detrimental. Instead she submitted, in her own words, and she is not a technical engineer and has no expertise, indicating that it would not cause any issues and that is not what the Commission requested. So, short of receiving a formal report from someone or having them come and testify he does not believe the Commission has received what they requested. Mr. Pehanic stated that the applicant has changed her whole approach, as she is no longer going as far into the riparian. Mr. Smerigan

stated that her original request was 108 feet to get within 12 feet and now she has reduced that to 75 feet to get within 45 feet. He believes this is a substantial and positive change and believes she understood the concerns trying to build all the way down the hillside. What has not been resolved is whether or not the proposed foundations for the lower level deck will create any of the concerns that Mr. Sheehy raised as city engineer. He indicated that Mr. Sheehy also asked that the applicant provide someone to give him information and to his knowledge he has not received anything of a formal nature from anyone who is either an engineer or geo-technical person so he is unsure if those questions were answered. Now, if she reduces it far enough that the Commission feels comfortable moving forward that's fine but he still believes she needs to be present and put on the record.

Mr. Iafigliola stated that in reviewing the new information there is an email from the applicant talking about the five concerns he previously read. The next two pages look like a plan view but he does not see any stairway or ramp. Mr. Smerigan indicated that the stairs have been removed from her plan based on the concerns of the Commission. Unfortunately, the only information given to the Commission is a drawing from a fence company the applicant hired to build the deck. He is unsure if the fence company would rise to the level of a technical expert that the Commission requested she get regarding whether or not this would have an impact. Mr. Thompson stated that is his concern, if the Commission tables this issue and the applicant returns in September and still does not have this information, we will inform her that a decision will not be made until that information is received. Again, the Commission requested the information and it was not provided. He is willing to table the issue until she can provide the requested information. He wouldn't move forward on this issue tonight even if the applicant was present because she did not submit the information requested by the Commission. Mr. Smerigan stated that we can send her a letter informing her that her request is tabled until she addresses the questions and will not place her on an agenda until the information is submitted. He stated that he has no problem with her bringing in someone to testify rather than writing a report but at this point something needs to be placed in the record formally.

Mr. Pehanic indicated that the Commission had concerns because she was taking the stairs all the way down and with the number of footers that would be put in place and how that impacted the whole riparian but if she was putting in 15 footers but has reduced that to two or three does she still need the report. Mr. Thompson stated that his concern is that there are a lot of houses along that bank which are side by side and close. He understands that you would dig a hole then pour the footer but he does not know how stable the soil is and if it would start to slide down. This would not only just collapse her but her neighbor's and everyone else that falls into the river. Mr. Smerigan indicated that was exactly the point; if there is a failure the failure will not stop at the property line. Mr. Thompson replied no it would keep going the whole river bank. If she is digging down to the rock and the engineer says that's okay then he will be okay with

the decision. Mr. Carpenter stated that if it was viable there would be a row of stairways there by now. Mr. Thompson replied that there are lot of stairways but they have never been approved by anyone and that is part of the issue. Mr. Smerigan stated that some are not in great shape either.

Mr. lafigliola stated that on Page 3 he can almost make out a foundation on the lower deck and then there is an arrow pointing to what might say tie back beam and that maybe a potential engineering solution which a normal structural engineer can say we think that this will suffice but someone does need to say that. Mr. Smerigan stated that there is no seal or signature on the drawing to indicate that it was prepared by someone with some engineering expertise which is a concern for him because that is specifically what both the Commission and city engineer requested. If we had that information we might be in a position to move forward but we don't.

Mr. Carpenter moved to **table** Planning and Zoning Case #13-2019 until such time as the previously requested engineering report is provided to the Commission; Mr. Munteanu **seconded**. Poll: 7 ayes; 0 nays. **Motion carried**.

**4. Planning & Zoning Case #18-2019** – Review of Ordinance 33-2019 – “AN ORDINANCE AMENDING SECTION 1470.10 OF THE OLMSTED FALLS CODIFIED ORDINANCES ENTITLED “ESTABLISHMENT OF DESIGNATED WATERCOURSES AND RIPARIAN SETBACK” AND SECTION 1470.11 ENTITLED “ESTABLISHMENT OF WETLAND SETBACKS” AND DECLARING AN EMERGENCY” (Council is requesting that Planning & Zoning Review and submit comments, if any, prior to their adoption)

Mr. Smerigan indicated that at a previous meeting the Commission requested information regarding how other cities handle this issue. He provided examples of other city's code showing how they handled the riparian setback. He stated that what the city has is a word for word a model regulation that was developed by the watershed partnership which is an environmental organization that they handed out to all the cities as a recommendation for protecting water courses, riparian areas and wetlands. He stated Olmsted Falls, like other cities and villages, adopted the model word for word as it was drafted without tailoring it to the circumstances of the city. The problem is that the suggested setbacks are substantial. The first reaction can be if someone is building a new home they can build further back but this city does have rivers and is a feature that attracts people so if you cannot get near them are they a feature you can use to attract anyone to your city. This setback applies to not only anything new but to everything in the city, if you apply these setbacks virtually all of downtown is in violation of the setbacks. The problem is anytime someone has a non-conforming structure if the structure is damaged it cannot be re-built as it was; it has to be rebuilt in conformance or they have to obtain a variance. For example, if the shopping center in downtown burnt down they would not be able to rebuild because they violate the setback, their

parking lot violates the setback and the condominiums across the river violate the setback, therefore, none of these structures could be rebuild as they exist today and that is a big problem. With the current regulation we have made all of these structures technically non-conforming. He stated that another problem, which he runs into in every city he works in, if an owner refinances or decides to sell any good appraiser will see this setback regulation in the code and will call to confirm whether or not the owners are compliant with the code or non-conforming, when he has to say that they are non-conforming all the red flags go up and the very next question he receives is “if they are non-conforming and the structure is destroyed can they rebuild” and his answer has to be “no” because that it was the code states. He has killed more financing deals than anyone can count because banks do not want to make a loan on a structure that is used as collateral can disappear overnight. By adopting this the way, it was written and the fact that we have made so much of the city non-conforming is a problem not just for new structures but for those who have businesses or homes here. He admits that reducing the distances is a quick fix to reduce the extent of the impact. He does not believe this is the final solution but there are a lot of issues in the code that need to be cleaned up. During discussions with the law director he provided this draft as the first step to minimize the impact. He believes that eventually him and Mr. Sheehy will attempt something that is different, this is just to get the process started. As he indicated in his email if you travel around Northeast Ohio you will find some communities that have the same language, but, most of those communities do not have major rivers running through them. The communities that do have found that this current language becomes problematic that creates a lot of non-conformity. The bigger issue is not creating something new but rather creating all the non-conforming situations that hurt people with financing or sales.

Mr. Fenderbosch indicated that Berea now has wetlands in an area that did not use to be wetlands because of runoff and asked if that was because the setback was not far enough. Mr. Smerigan stated that it is a balancing act, the intent behind this regulation was a legitimate intent but when you arbitrarily draw a line 300 feet away from the high water mark you take in a large area. The Army Corp and Ohio EPA state that if you have something that is designated a wetland you have to protect and preserve it or you have to go through mitigation issues. Now you have this wetland you have to preserve and protect it and then we say you can't use any land that is within 120 feet of that. Essentially you are making enormous areas unbuildable when in fact they are quite buildable. If you recall, when the Clover Development was approved, we had a waiver for the wetland setback because they had wetlands on their site that they preserved and protected but their buildings were closer than the distance to those wetlands. If you visit the site the wetlands are still there and are roped off so the contractors don't touch the area but if they couldn't build within 120 feet they couldn't have built on the property. Mr. Fenderbosch asked if Mr. Smerigan's number would be the right number. Mr. Smerigan stated that he believes it is a more reasonable number and sees this as a first step. He believes what is current in the code is unworkable and believes this is a more

reasonable approach. He has spoken with the Mayor and will meet with Mr. Sheehy to write something that is specifically tailored for Olmsted Falls as opposed to taking it off a shelf and trying to fit it into our community. If there were no streams or the Rocky River coming through town then taking this model would have had minimal impact on the community; but given where we are it just impacts too much of this town. He would like to design something specifically for Olmsted Falls this is just a quick fix because this issue keeps coming up on such a regular basis and he was finally asked to do something.

Mr. Munteanu stated that when this was first presented to him, he did not understand riparian setbacks. He googled Ohio Riparian Setback examples and what came up was Cuyahoga, Chagrin and Rocky Rivers and what Mr. Smerigan has proposed is the general distance of all the other communities that he reviewed. Mr. Smerigan replied that these numbers are fairly common.

Mr. Pehanic indicated that he believes common sense should also be applied. A good example was a request from a resident that wanted to build an attached breezeway. Mr. Smerigan stated that the request was to build a breezeway between the garage and the house. Mr. Pehanic replied that the house was entirely in the riparian and in order to build that breezeway they needed a variance. He believes that is where common sense should come in, when the building department sees something like that type of request they should have enough authority to say there is no need for a variance. Mr. Smerigan stated that the only thing on this property that was not in the riparian setback were the steps coming off the front porch which is why the property owner did not understand and because she was not getting any closer to the river.

Mr. Thompson stated that he does not have any issue with the proposed distances but his concern is once adopted by Council that any further amendments tailored for the city. He wants to make sure that future recommendations and tailoring are completed if the Commission does recommend that Council adopt the legislation and amendment.

Mr. Fenderbosch stated that he lives in the Mill River condo's and does not have to have flood insurance which is not the same in other areas of the city and asked what would be the proper setback number. Mr. Smerigan indicated that the reason he does not need flood insurance is because the Army Corp of Engineers determined that water would not come to his property but, he would still fall within the setback regulations if he did any building by his unit even though the likelihood of him impacting the river would be pretty slim. Theoretically if the association decided to repave the parking lot a variance would be needed because you would be working in the setback area even though there would be no expansion. For example, the last phase of Falls Pointe that was just presented to the Commission the contractor was putting in a detention basin which was actually improving the runoff situation because they were capturing the water in that basin but the basin was in the setback so he had to come here and obtain a

variance even though what he was doing was an improvement rather than a detriment but the way the code is written if he grades anything in that riparian setback he has to obtain a variance.

Mr. Thompson stated that Mr. Smerigan mentioned if the condo's burnt down they couldn't be rebuilt; is there any way to preserve the non-conforming area in our code. Mr. Smerigan replied that he could draft an amendment that would say that if the only thing that makes the area non-conforming is the riparian setback that we would not consider it to be non-conforming for purposes of rebuilding. Mr. Thompson indicated that would make sense as long as it does not change or alter the area. For example, the Chandler's Lane condominium fire if that building would have been closer to Plum Creek and in a riparian setback then no rebuilding would change the character of the whole city, unintentionally. Mr. Smerigan stated that the city's downtown and the housing and the river is what gives Olmsted Falls its character; if we say anything that gets destroyed cannot be rebuilt, we are essentially turning our back on the character that created the community. His recommendation is to move forward with this to clean things up and he will also prepare a draft amendment to the code that provides an exception to the non-conformity if that is the only thing that makes the structure non-conforming. Mr. Thompson stated he would like would like that. Mr. Munteanu stated that if we move forward with Mr. Smerigan's recommendations most of downtown would still be in the setback.

Mr. Iafigliola stated that there are things he would like to include with our recommendation to Council. He wants Council and the Commission to understand that this is a really big deal and he has made that statement before. You are dramatically changing property values in ways you don't realize, not saying that is a bad thing but you have to understand that people who buy property say that certain that this type of property is essentially worthless because it has wetland; then we made a change to one little number and now it becomes very valuable. He stated that he is not familiar with the people who wrote the sample language however, there are people who advocate strongly for riparian setbacks because they have a different view of the coin. He agrees with what Mr. Smerigan is saying but there is another side of the coin that he does not necessarily prescribed to personally but knows it exists; so, when you hear all these comments about stopping a development you have to understand there are people who feel very strongly the opposite. These numbers are abstract for someone like him to understand; a minimum of 100 feet both sides draining greater than 20 square miles is hard for him to understand what that really is. For example, agenda item #3 tonight, the house that wanted to add the stairs, the river probably drains more than 20 square miles and his point is would we consider going to a map based system because that would at least remove some ambiguity because you could then look at almost a type of zoning map and know exactly where your property is. The current system has the applicant verifying what that is and then the engineer confirms. Mr. Smerigan replied that is technically what the code says but is not how it happens because the average person

who is trying to put an addition on their house isn't going to do an engineering study of the Rocky River to determine what the drainage area is or what the mean high water level is; the cost for them to do that would be so great they would never be able to do the addition. We have information available to us, like we did with Ms. Briggs and others, we calculate where we believe the setback is on their property and that is part of our obligation as the city. We have accepted the responsibility of telling residents what is in and what is out of the riparian setback. Mr. Iafigliola stated that in actuality maybe that should be changed in the code and if we changed to a map-based system it would clarify that responsibility. Mr. Smerigan indicated that there is a lot that needs to be changed and updated in the code but in order to do that we will have to complete some fairly heavy updating and he has a very substantial list at this point.

Mr. Iafigliola stated that another issue we should consider recommending to Council is that Council make sure that updates continue; the next issue is draft an amendment regarding the non-conformity issue indicating that if the riparian setback is the only reason the lot is non-conforming a replacement can still be done. Mr. Smerigan indicated that the amendment will be drafted because the entire downtown area is at risk. He stated that the risk is not that the Commission would not grant a variance but rather that no one would receive financing to rebuild.

Mr. Iafigliola **moved** for Planning and Zoning Case #18-2019 for the purpose of providing comments from the Commission for amending Section 1470.10 entitled "Establishment of Designated Water Courses and Riparian Setback" and Section 1470.11 entitled "Establishment of Wetland Setbacks" with the following included in the comments: (1) recognize it is a big deal; (2) consult with more environmental people whether it be the EPA or sewer district; (3) consider a map based system; (4) strongly implore Council that even though the suggested changes are a good first step it cannot be the last step; and (5) if nothing else draft an amendment to allow for an exception to resolve a non-conforming situation if the only reason it is non-conforming is the riparian setback in the case of destruction; Mr. Thompson **seconded**.

Mr. Iafigliola stated that there are some dimensions but it seems that they are reasonable based on a comparison with what other cities in our general area have in their codes. Poll: 7 ayes; 0 nays. **Motion carried**.

**COUNCIL LIAISON REPORT** – Mr. Munteanu indicated that Council briefly discussed the riparian setback legislation and are awaiting the Commission's recommendation.

**OTHER BUSINESS** – Mr. Pehanic indicated that during the last meeting there was an appeal filed and asked if Council addressed the appeal. The Clerk indicated that Council upheld the Commission's decision.

**APPROVAL OF MINUTES** – Mr. Thompson moved to **approve** the minutes of May 15, 2019, as amended, Mr. Pehanic **seconded**. Poll: 6 ayes; 0 nays; 1 abstain (Munteanu). **Motion carried.**

Mr. Thompson moved to **approve** the minutes of June 5, 2019; Mr. Munteanu **seconded**. Poll: 7 ayes; 0 nays. **Motion carried.**

Mr. Iafigliola asked that the minutes of June 19, 2019 be approved during the September meeting.

**ADJOURNMENT:** Mr. Pehanic moved to **adjourn**; Mr. Fenderbosch **seconded**. Poll: 7 ayes; 0 nays. **Motion carried.** Meeting adjourned at 9:16 p.m.

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Planning & Zoning Commission Clerk

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Date

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Planning & Zoning Chairman

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Date