

Zoning Board of Appeals Meeting & Public Hearing
November 19, 2007, 7:00pm
Village Municipal Center

Attendance: ZBA: Chairman Stephen Lynch, Members Kenneth Taylor, Edward Fish, Harry Haldt, and George Macura

Village Key Staff: Mayor Jay Niles, Village Attorney Michael Martin, Deputy Clerk-Treasurer Denise Davies, Sergeant David Williams, and Clerk-Treasurer Rick Roberts

Press: Matthew Rice, *The Granville Sentinel*

Others: Mr. Ronald & Mrs. Candace Combs, Mr. Joseph and Mrs. Theresa Macura, Mr. John Filer, Mrs. Janet Tucker

Chairman Lynch called the Public Hearing to order at 7:00pm.

The Chairman again reviewed the guidelines that speakers must adhere to when providing input to the ZBA. These procedures mirrored those employed at the first Public Hearing (for detail, please see Official Meeting Minutes of November 7).

Chairman Lynch then opened the floor to the first speaker.

John Filer, 5 Granview Court (Adjoining Parcel): Mr. Filer began by stating that it was his understanding that the draft version of the Meeting Minutes for the Public Hearing of November 7th stated that he had been escorted from the Meeting by the Police Officer assigned to monitor the Meeting. He disputed this claim and asked that this be verified through Officer Gregory Bourn. The Chairman advised that he would ask the Clerk to verify this through the Officer and report his findings to the Board. *Subsequent to this request, the Clerk followed up to Officer Bourn and he was advised that while Mr. Filer was visibly upset, he was not “escorted out”; the Officer merely accompanied Mr. Filer as he exited the Hearing to assure that order was maintained and that Mr. Filer kept his composure (which Officer Bourn felt that he did). The Draft Copy of the Official Meeting Minutes was so altered to reflect this change.*

Mr. Filer then explained that he took issue with a ZBA Member’s comments at the November 7th Meeting where he felt that the Member expressed that the issue at hand had been “dropped in their lap” and/or been a burden to the ZBA. Mr. Filer feels that this is the ZBA’s job under the Law, and while it may not seem that important to some members, this issue is very important to him and several other constituents that surround the proposed development. He has lived in this area for 17 years and further stated that between his home and that of Mr. Macura, some \$250,000 in assessed valuation exists. Mr. Filer hypothetically questioned whether he could seek relief from the Board of Assessors if his property became less valuable as a result of the proposed development. Mr. Filer stated that he likes his neighborhood and that he and his neighbors generally “get along”, but that a recent incident had occurred that he wanted to bring to the

attention of the ZBA where Mrs. Filer felt compelled to contact the local Police Department concerning the conduct of Mr. & Mrs. Combs. He does not feel that his wife is generally one to over-react in such situations; Mr. Filer does not feel that Mr. and Mrs. Combs acted in a civil manner in this case or in many other circumstances.

Mr. Filer feels that his comments at the meeting of November 7th may well have been a waste of time. He feels that the setback requirement should be 25 feet to all boundaries and does not agree with the ZBA's previous determination that the 25' requirement for side yards relates to *the sum of the two side yards*, rather than 25' for *each* side yard. Mr. Filer stated that all he wants is "what is right" and he feels that the concept of a Senior Housing Complex within this development is a myth. He also does not feel that Mr. & Mrs. Combs are out to better the community, but that they are just interested in turning a profit in whatever manner possible.

The Chairman then advised that Mr. Filer was the only speaker registered on the sign in sheet provided, and asked if any further parties wished to be heard prior to the closing of the Public Hearing.

John Winn, Esq., Representative for Mr. Ronald and Mrs. Candace Combs: Mr. Winn began by addressing several points from Mr. Filer's input as above:

- As Mr. and Mrs. Combs were not arrested by the Police Officer who responded to Mrs. Filer's complaint, he assumes that they did not violate any laws and thus Mr. Filer's statements amount to little more than hearsay.
- Mr. and Mrs. Combs do want to put in Senior Housing, but the legal details need to be worked out in this matter. There is no intention to attract young couples (i.e. "starter homes")—the development will be of quality construction and seniors will be the consumers who are targeted.

Mr. Winn then submitted a two-paragraph letter to Chairman Lynch that summarized the Combs position relating to the requested reversal of the CEO's decision to deny the individual building permit applications for the six (6) individual lots as contained within the proposed development.

Michael Martin, Village Attorney: Mr. Martin briefly reviewed Mr. Winn's correspondence as submitted. He stated that given that this was the first time that he had seen this documentation, and thus it would be somewhat difficult to respond to the same directly. However, Mr. Martin stated that as Village Attorney, his position remained unchanged that the Combs subdivision was likely illegal and/or a nullity, given that they did not obtain the proper DOH approval, DEC Approval, a SPEDES permit, or complete the proper SEQR review prior to recording the map and/or deeds relating to the development. In addition, Mr. Martin remarked that he also felt strongly that the Village had adopted proper subdivision regulations and noticed the applicant of the same in a timely manner prior to the recording of any documentation—this was another factor in formulating his opinion as to the legality of the subdivision as proposed.

Mr. Martin then proposed that both attorneys be allowed two weeks to submit their legal opinions to the ZBA, and he indicated that his opinion would address Mr. Winn's letter as submitted this evening. Following a period of discussion, it was agreed that Mr. Winn would provide a more detailed legal opinion in this matter within two weeks, which addressed the specific question of the legality of the subdivision, given the lack of the DOH stamp as required within the Public Health Law, the necessity of SEQR review, etc. The Village Attorney would then have one week to provide his position, and this position would presumably include any rebuttal of Mr. Winn's current and subsequent submissions to the ZBA as applicable. Said opinion would be due by Friday, December 7th, at noon. The Clerk-Treasurer would then distribute this information to the ZBA and they will meet on Monday, December 10th, to further consider this matter.

The ZBA agreed to this schedule as proposed, and conceptually submitted to adjourning the Public Hearing to this date to allow the public to have an opportunity to comment on the information submitted as well.

Mr. John Filer then asked the Chairman to be recognized a second time. The Chairman granted his request. Mr. Filer welcomed all members of the ZBA and/or the Village Attorney to his property in order that they could receive a direct perspective of the development as proposed "from his back yard". Mr. Filer emphasized that he felt that the main purpose of Zoning and/or Subdivision Regulations was to provide protection to adjoining property owners in the event that development occurs. He stated that he just wants this protection for himself and for residents within the surrounding development and/or community. Mr. Filer thanked the ZBA for their time and concluded his presentation.

There was no further public comment.

Chairman Lynch then read into the record a listing of the additional documentation that had been received in this case since the adjournment of the Public Hearing of November 7th:

- A copy of a letter from the Village Clerk to the County Clerk dated November 13th requesting copies of the DOH & DEC certifications relating to the Combs Subdivision.
- A letter from Michael Shaw, Senior Sanitary Engineer with the NYS DOH, explaining what qualifies a development as a realty subdivision and the requirements for Realty Subdivisions through the DOH, including their approval of the Water System prior to the commencement of any building on individual lots, and/or the offering of any individual properties for lease or sale to any individual corporation within the development, etc.
- Correspondence regarding relevant case law in this matter from the Village Attorney.
- Attorney Winn's letter as submitted earlier this evening summarizing his client's position relating to the subdivision/proposed development.

Mr. Fish then asked Mr. Combs if he had any prior experience with developments similar to the subject property. Mr. Combs responded that he had built numerous individual homes and/or duplexes in the past, but this was the first development with multiple homes that he had been involved with. Mr. Fish then questioned Mr. Combs if it occurred to him that he should have obtained a building permit before commencing work (digging cellar holes, installing water pipes, etc). Mr. Fish also asked if Mr. Combs was familiar with the DOH requirements concerning Realty Subdivisions. Mr. Combs responded that he was not aware of the Law concerning relating to the DOH certification, and that representatives from the DOH had advised him that the Village should have advised him of these requirements when he initially disclosed his intention to subdivide the property.

Chairman Lynch then inquired of Mr. Combs as to who had filed the “Realty Subdivision Checklist” with the Washington County Clerk. Mr. Combs replied that Attorney John Winn had handled this paperwork on behalf of he and Mrs. Combs. Chairman Lynch then asked Mr. Winn if he had experience with Realty Subdivisions in the past. Mr. Winn replied in the affirmative. The Chairman then asked Mr. Winn if he was aware of the requirement relating to the DOH certification and requested clarification as to why the Realty Subdivision Checklist was filed incompletely. Mr. Winn advised that he felt that the DOH certification applied only if the lots were to be developed and/or offered for sale. Several members of the Board pointed out at this time that the basis of the appeal in question concerned the issuance of building permits for the individual lots contained within the development and thus it would seem that the DOH requirements would now become applicable. The Chairman then summarized that justification would need to be provided in this matter in order to allow the ZBA render a decision.

Michael Martin, Esq. then asked Chairman Lynch if he could be recognized for a second time. The Chairman recognized Mr. Martin. The Village Attorney commented that he felt that a commercial development of this type imposed some expectation of professional administration upon the developer. Mr. Martin specified that it might be plausible to understand a builder or craftsman’s misunderstanding of an individual community’s zoning code, etc., but that there was a different level of expectation when someone acts as a developer and builds multiple dwellings “for profit”. The Village Attorney stated that he did not feel that it was up to the Village Clerk, Village Board, etc. to provide counsel to a developer relating to compliance with NYS Statutes. The developer should know this information or be provided with adequate counsel through his attorney in these matters. Mr. Martin then reiterated that the NYS Public Health Law requires a DOH Stamp/Certification prior to the recording of a Realty Subdivision and that the developer had not followed this procedure—as a result, it is conceivable that the subdivision is not legal and/or a nullity. Mr. Martin also stated that he felt that the Washington County Clerk should not have accepted the subdivision for filing without the proper certification(s) from the DOH.

Chairman Lynch then asked if there was any further Public input. There was no further Public comment.

Before accepting a motion to adjourn the Public Hearing, Chairman Lynch reviewed the specific information that would be required by the ZBA from Mr. and Mrs. Combs and/or their counsel, in order for the Board to reach a conclusion in this matter:

- Evidence of Compliance with applicable NYS Regulations (DOH, DEC, etc.), or illustration that compliance is not necessary.
- Evidence of Compliance with the State Environmental Quality Review Act (SEQRA), or illustration that compliance is not necessary.
- Justification as to the necessity (or lack thereof) of a SPEDES Permit for this project.
- Evidence of efforts to comply with all applicable NYS Building Codes in order to allow for issuance of Building Permits.

Following the presentation of this information, Mr. Haldt made a motion to adjourn the Public Hearing in this matter to December 10th at 7:00pm. The motion was seconded by Mr. Macura and carried unanimously.

The following participants then left the meeting: Mr. John Winn, Esq., Mr. Ronald and Mrs. Candace Combs, Sgt. David Williams, Deputy Clerk-Treasurer Denise Davies, Mr. John Filer, and Mrs. Janice Tucker.

Chairman Lynch called the Regular Meeting to order at 7:50pm.

Ratify Meeting Minutes: The Minutes of the Regular Meeting of October 15th were approved as published on a motion by Mr. Fish that was seconded by Mr. Haldt and carried unanimously. The Chairman directed the Clerk to verify the discrepancy raised by Mr. Filer earlier in the Meeting concerning the Minutes of the Public Hearing of November 7th. The Chairman advised that these Meeting Minutes would be considered for acceptance on December 10th following the resolution of this inquiry.

Old Business

Zoning Law Correction(s): Chairman Lynch advised that the subcommittee charged with the duty of recommending alterations, additions and/or corrections to the Village Zoning Code was proceeding with their duties and that they intended to complete this process by January 9, 2008. Any and all questions, clarifications, etc. should be submitted to Chairman Lynch, the Village Clerk, or Subcommittee Chairman Dean Hyatt at the soonest possible date in order to be included. The Board then commenced a period of discussion relating to the side yard setback requirements within the Code at present. Several members stated that they felt that while the ZBA had no other choice but to rule in a previous decision that the 25' side-yard setback requirement related to the *sum of both side yards* based upon direct language to this effect within the Code, that they felt that the Code should perhaps be changed to reflect a requirement of 25' setbacks for *each* side yard. Chairman Lynch advised that the Board could make a recommendation to the subcommittee by passing a motion containing said recommendations; however, no such motion was offered. Mr. Fish reiterated his suggestion relating to a checklist for

applicants/builders in order to avoid misdirection or confusion when tendering their requests. Mr. Haldt advised that he would be submitting a written list of suggestions to the subcommittee.

Announce Training Conference: Chairman Lynch announced that he had received confirmation of the Annual Planning Conference conducted by the Saratoga County Planning Department. This year's event is scheduled for Wednesday, January 30th; Chairman Lynch indicated that this was an excellent seminar and a good forum to exchange ideas and information in the Zoning and Planning fields. The Chairman asked the Village Clerk if he could register members who wished to attend and the Clerk indicated that he would. Chairman Lynch and Mr. Haldt asked to be registered, and the Clerk advised that he would take care of this.

Chairman Lynch advised that the next ZBA Meeting would be on December 10th at 7:00pm. He then opened the floor to any Public comment.

Mr. Joseph Macura questioned why the Planning Board's previous interpretation of the Zoning Code relating to the manner in which side yard setbacks were measured had been reversed by the ZBA. Chairman Lynch explained that this interpretation had been requested by the Village Attorney in conjunction with another application unrelated to the case at hand and that the Board had ruled unanimously that based upon the manner in which the Area & Bulk Schedule read within the Code, that their only choice was to provide an interpretation that corresponded directly to the wording employed and subsequently approved by the Village Board. An extended period of discussion followed, where Mr. Macura stated that he still felt quite strongly that the manner in which side yard setbacks were measured should equate to a 25' setback for *each* side yard. Following the extended period of discussion, Chairman Lynch advised Mr. Macura that the Village Board would be conducting a Public Hearing relating to any proposed changes to the Zoning Code in the near future and that this would represent an excellent opportunity for anyone to express such opinions in an effort to affect the changes as proposed.

Mr. Macura went on to extend an invitation similar to that offered by Mr. Filer earlier in the meeting relating to observation of the development. He asked that the ZBA Members consider their perspective of the development before rendering judgment in this matter. Mr. Macura also stated that he felt that the developer should have gotten all necessary permits before he initiated any excavation or development of the subject property. He feels that the fact that such permits were not obtained amounts to selective enforcement and that it does not set a good precedent.

Chairman Lynch then reviewed the ZBA's role in this process; he advised that the ZBA is an appellate jurisdiction and not that of enforcement (this is handled by the CEO or DOH, etc.). The ZBA hears appeals of the CEO's decisions and requests for Variances from the Zoning Code, and that some of the issues raised by Mr. Macura are not within the purview of the ZBA's authority. While this can be frustrating and a learning curve exists for all of us relating to various agencies' authorities, the law is the law and that one

of the ZBA's functions is to interpret to the best of their ability what the laws says, rather than what someone or some group thinks that the law *should* say. In the end, the ZBA is the final authority for the Village in matters of interpretation, appeal, and requests for variances from the Zoning Code, etc. but the ZBA's duties are limited to these specific functions. Following the Chairman's comments, a period of extended discussion continued between Mr. Macura and various members of the ZBA concerning the setback issue.

Mr. Fish made a motion to adjourn the meeting at 8:25pm. Mr. Taylor seconded the motion and it carried without objection.

Respectfully Submitted,

Richard H. Roberts
ZBA Clerk