

The Tuesday, March 6, 2007 meeting of the Delhi Township Board of Zoning Appeals was called to order by Chairman Jerry Kearns at 7:00 p.m. at the Administration Building with the Pledge of Allegiance to the Flag.

Members present:

Robert J. Ashe

Jerome H. Kearns

Joseph Scherer, Jr.

Charles Brigham III

Also present:

Thomas R. Stahlheber, Director of Development Services

David C. Lane, Law Director

Mr. Stahlheber certified that the requirements of Section 121.22 of the Ohio Revised Code and the rules adopted pursuant thereto had been completely complied with as they concerned the meeting.

Resolution 2007-01

Mr. Scherer moved and Mr. Ashe seconded to approve the minutes of the Board's October 17, 2006 and November 16, 2006 meetings but to dispense with the readings. Msrs. Kearns, Ashe, Scherer, and Brigham voted aye. Motion carried.

The hearing in Case VA2007-1 (3944 Delhi Road) was convened.

Mr. Stahlheber (sworn) advised that on November 22, 2006 the Department of Development Services received an application filed by Aaron Bouras for the construction of a deck and six-foot high solid fence at 3944 Delhi Road. He commented that the application was denied on November 30, 2006 with the applicant notified of the denial by certified mail on that same date. He noted that in the letter were stated the reasons for the denial which included: the premises known as 3944 Delhi Road was located in Delhi Township, Hamilton County, Ohio and in the "C" Residence district as shown on the maps of the Township Zoning Resolution; the submitted application and drawings indicated a proposed deck extending into the south front yard and a proposed (existing) six-foot high solid fence enclosing the north rear yard and extending into the east and west side yards; the Township Zoning Resolution requires that zoning certificates be obtained prior to the construction of accessory structures, including fences, and prohibits fences greater than four feet in height and those less than 75% open in any yards other than rear yards. The denial was also based on the following sections of the Zoning Resolution: Sections 51.1, 81, 82, 61, 62, 62.13, 171, 171.9, 191, 192, 194, 251, 281, 282 and 291. Pursuant to Article XVIII of the Zoning Resolution the applicant had the right to file an appeal of the denial within twenty days of the action with an appeal being filed in the form of an application received December 19, 2006. Pursuant to the requirements of the Ohio Revised Code the hearing was advertised in a newspaper of general circulation at least ten days before the hearing and those parties of interest were notified by first class mail at least ten days before the hearing.

Exhibit "A" – application

Exhibit "B" – site plan

Exhibit "C" – photos of the fence

Aaron Bouras (sworn), 3944 Delhi, advised that the reason for the variance was to permit the continued situation of a six-foot high solid fence extending into the east and west side yards at his residence. He commented that the fence was constructed in the side yards and without a permit. He noted that at the time he constructed the fence, existing overgrown shrubbery, bushes and a concrete stoop located to the rear of the house resulted in it being difficult to situate the fence at the northwest rear corner of the house. He advised that the fence provides privacy, confines his dog and prevents people from entering the rear yard. He commented on being concerned about the excessive amount of crime going on at the apartment complex across the street, and that the fence would provide additional safety and security deterring crime. He noted that his neighbor Steve McKinney recently had his truck broken into. He advised that he was in the home remodeling business and that he purchased the house knowing it needed some work.

To Mr. Ashe's question as to if there was access to the rear yard via a rear door Mr. Bouras responded in the negative, noting that access to the rear yard is via a door on the west side of the house. He commented that the fence also provides space for and screening of his garbage cans.

Ron Littlefield (sworn), 4398 Skylark, advised that his property was north of the subject property. He commented on having no objections to the fence. To his question as to what kind of business applicant was in Mr. Bouras reiterated that he was in construction, remodeling and landscaping.

Mr. Stahlheber advised that his department had not received any opposition to the request and that a letter of support from Mary Almon of 3950 Delhi was received.

To Mr. Scherer's question as to if there were any other issues other than the fence extending into the side yards Mr. Stahlheber responded in the negative.

To Mr. Scherer's question as to the location of the water spout serving the rear yard Mr. Bouras advised that such was located in the east side yard near the northeast corner of the house.

To Mr. Scherer's question as to what was the distance from the rear wall of the house to the fence on either side Mr. Bouras advised 13' 5" on the west side and 5' 7" on the east side.

Resolution 2007-02

Mr. Ashe moved and Mr. Scherer seconded to approve the variance as requested in Case VA2007-1. Mssrs. Brigham, Ashe, Scherer and Kearns voted aye. Motion carried.

Finding of Fact:

1. The case number was VA2007-1.
2. The date of the action by the inspector was November 30, 2006 where a zoning certificate was denied for the construction of a deck and six-foot high solid fence for the reason that said fence extended into the side yards.
3. The appellant's name was Aaron Bouras.
4. The date the appeal was filed was December 19, 2006.
5. The address of the subject premises was 3944 Delhi Road.
6. The zone district of the subject premises was "C" Residence.
7. Sections of the Zoning Resolution on which the denial was based included: 51.1, 81, 82, 61, 62, 62.13, 171.9, 191, 192, 194, 251, 281, 282 and 291.
8. Sections of the Zoning Resolution authorizing the Board to grant or deny the appeal included: 183, 184, 184.2, 184.6, 185 and 186.
9. There were no sections cited by the appellant as authorizing the Board to grant the appeal.
10. There was no opposition present at the meeting.
11. The Board finds no error on the part of the inspector.
12. The Board finds that practical difficulties exist as a result of an area zoning requirement after consideration of the following non-exclusive factors:
 - a) The property owner purchased the property with knowledge of the zoning restriction.
 - b) The property owner's predicament feasibly cannot be obviated through some other method other than a variance.
 - c) The variance is not substantial.
 - d) The lot has irregular topographic conditions present.
 - e) The essential character of the neighborhood would not be substantially altered and adjoining properties would not suffer a substantial detriment as a result of the variance.
 - f) The property in question would yield a reasonable return and there can be some beneficial use of the property without a variance.
 - g) The variance would not adversely affect the delivery of governmental services.
13. The Board finds that the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.
14. The Board finds that the granting of the appeal would not be contrary to the public interest, general welfare and adjoining landowners. Basis of finding:
 - a) The fence extends only slightly into the side yards and not out to the front yard;
 - b) The construction materials of the fence are in character with the house at the subject premises;
 - c) The proposed location of the fence provides better access to the rear yard and to a water spout;
 - d) The fence restricts/confines a dog
15. The Board wishes to review any alterations regarding the variance.

The hearing in Case VA2007-2 (5759 Cleves Warsaw) was convened.

Mr. Stahlheber (sworn) advised that on February 8, 2007 the Department of Development Services received an application filed by Jane Patton for a special zoning certificate for 5759 Cleves Warsaw. He commented that the application was placed on hold pending a hearing by the Board. He noted that in the letter submitted with the application were facts in support of the request which included: the premises known as 5759 Cleves Warsaw is located in Delhi Township, Hamilton County, Ohio and in the "A2" Residence district as shown on the maps of the Township Zoning Resolution; the two existing detached single-family dwellings at the subject property were built in 1926; neither Hamilton County nor Delhi Township recognize the two dwellings at the subject property as constituting a nonconforming use upon the adoption of their respective Zoning Resolutions; both dwellings have been continuously occupied; and both dwellings exceed 1,200 sq. ft. in floor area.

Exhibit "A" – application

Exhibit "B" – letter submitted in support of request

Exhibit "C.1" – site plan

Exhibit "C.2" – site plan showing subject property in context with neighboring properties

Exhibit "C.3" – aerial photo of site

Exhibit "D" – floor plan of the cottage structure

Mr. Lane advised that based on the circumstances of the case, limitations as set by statute and terms of the Zoning Resolution as related to the granting of special zoning certificates, that the Board may want to consider reviewing this case as a non-registered nonconforming use rather than a special zoning certificate. He commented that testimony should prove that the two dwellings lawfully existed at the time the Township adopted the Zoning Resolution in 1974 as well as when the County adopted their Zoning Resolution which affected the Township in 1959 and that use of either of the dwellings has not been discontinued for a continuous period of more than two years. He noted that if the Board should find that the facts presented during testimony do support a non-registered nonconforming use the Board could direct Mr. Stahlheber to issue a nonconforming use certificate, rather than issue a special zoning certificate, so to permit the continued use/occupancy of the cottage.

Mr. Stahlheber advised that the subject premise was not identified as a nonconforming use in 1974 when the Township adopted the Zoning Resolution nor was a nonconforming use certificate on file with the County who adopted a Zoning Resolution affecting the Township in 1959.

To Mr. Scherer's question as to how designating the subject premises a nonconforming use would affect things such as additions to the structures Mr. Lane advised that the dwellings would be subject to the nonconforming use provisions of the Zoning Resolution. Mr. Lane commented that the Zoning Resolution was amended some years ago to allow compatible nonconforming uses to be expanded subject to some particular criteria.

Mr. Patton advised that Blue Gables (the primary dwelling) was a well known landmark and that a driveway leads to the cottage (the secondary dwelling) to the rear of the property, the garage of which was not accessible and so has been used for storage. He commented that long before 1959 the cottage was in continuous use as a residence by the caretakers of the property dating back to the 1940s, the Flamm family dating to the 1950s, the Overbeck family dating to the 1970s who subdivided the property into the four acre tract as shown on Exhibit "C.1", and the Bruning family from whom they purchased the property in 1983. He noted that they purchased the property with the intention of continuing to use the cottage as living quarters for his mother, even though such never materialized and that they have had regular tenants living in it since that time.

Mr. Ashe advised that the use of the property has been and continues to be residential in nature that it has not been utilized as a business use.

Mr. Patton advised that the tenant currently living in the cottage has no intention of moving.

To Mr. Brigham's question as to if the owners have any evidence that would suggest that the use had been discontinued for more than two or more years Mr. Patton responded in the negative.

To Mr. Brigham's question as to if easements exist affecting the common driveway serving both dwellings Mr. Patton responded in the affirmative.

Mr. Stahlheber advised that at the time when the subject premises was subdivided the County's subdivision regulations did not provide for input from the Township.

Mr. Dan Sprawl, attorney speaking on behalf of his mother-in-law, the property owner adjacent to Blue Gables to the east, advised that he supports the designation of the subject premises as a nonconforming use inasmuch as it meets all of the statutory requirements of such uses as specified by the Zoning Resolution. He commented that the two dwellings on the subject property have had the same charm for as long as he could remember. He noted for the Board, with respect to the issue of discontinued nonconforming uses, that such discontinuances must be voluntary and that it is incumbent upon the governmental entity to establish the date and duration of the voluntary discontinuance, a statutory requirement superceding the Township's requirements as depicted in the Zoning Resolution.

Mr. Ashe advised that he agreed with Mr. Lane's interpretation in that the property met all requirements of the Zoning Resolution so to be considered a non-registered nonconforming use.

Resolution 2007-03

Mr. Ashe moved and Mr. Brigham seconded to consider the subject property a nonconforming use, to direct the Director of Development Services to issue a nonconforming use certificate concerning the two dwellings at the subject property and to

dismiss applicants request for a special zoning certificate. Messrs. Scherer, Ashe, Brigham and Kearns voted aye. Motion carried.

To Mr. Stahlheber's question as to if the Board would be required to do a finding-of-fact Mr. Lane responded in the negative advising that based on the Board's determination in the motion acknowledging that certain requirements had been met and based upon testimony presented that the standard finding of fact would not be required.

Mr. Kearns advised that he felt that it would be helpful to include a brief finding-of-fact.

Mr. Lane advised that it may be helpful to do a finding-of-fact incorporating evidence provided in support of the nonconforming use determination.

Finding of Fact:

1. The address of the subject premises was 5759 Cleves Warsaw;
2. The hearing provided evidence of the existence of an additional dwelling built in 1940 and of ownership of the subject premises from 1940 to date;
3. Testimony indicated that use of the subject premises as being strictly residential;
4. No improper use of the subject premises was determined by the Township upon the adoption of the Township's Zoning Resolution in 1974;
5. The subject premises meets all of the requirements to qualify as a nonconforming use.

Mr. Scherer advised that the dwellings had been in existence since the 1920s.

Mr. Patton advised that the first evidence of persons residing in the cottage was during the 1940s.

The hearing in Case VA2007-3 (Sisters of Charity/College of Mt. St. Joseph) was convened.

Mr. Stahlheber (sworn) advised that on January 12, 2007 the Department of Development Services received an application filed by Tom Heffernan with the Sisters of Charity for the construction of numerous signs at several properties within the vicinity of the intersections of Delhi & Neeb and Delhi & Bender Roads. He commented that the application was denied on January 19, 2007 and the applicant notified of the denial by certified mail on that same date. He noted that in the letter were stated the reasons for the denial which included: the premises known as Hamilton County Auditors Book 540, page 100, parcels 22 & 214 (commonly referred to as the College of Mt. St. Joseph's main or west campus) is located in Delhi Township, Hamilton County, Ohio, and in the "AA" Residence district as shown on the maps of the Township Zoning Resolution and is a corner lot; the premises known as Hamilton County Auditors Book 540, page 100, parcels 455, 456, & 457 (commonly referred to as the Villages of Bayley Place) are located in Delhi Township, Hamilton County, Ohio, and in the "DD" Residence District as shown on the maps of the Township Zoning Resolution, and are corner lots; the premises known as Hamilton County Auditors Book 540, page 100, parcel 21 (commonly referred to as the Sisters of Charity Motherhouse) is located in Delhi Township, Hamilton County, Ohio, and in the "AA" Residence District as shown on the maps of the Township

Zoning Resolution, and is a corner lot; the premises known as Hamilton County Auditors Book 540, page 73, parcel 22 (commonly referred to as the Mount St. Joseph east campus) is located in Delhi Township, Hamilton County, Ohio, in the “AA” Residence District as shown on the map of the Township Zoning Resolution, and is a corner lot containing a parking garage/lot; the premises known as Hamilton County Auditors Book 540, page 73, parcel 275 (the northeast corner of the intersection of Delhi & Neeb Roads) is located in Delhi Township, Hamilton County, Ohio, and in the “B” Residence District as shown on the map of the Township Zoning Resolution, and is an empty corner lot; the premises known as Hamilton County Auditors Book 540, page 73, parcel 24 (also known as 5673 Delhi Road) is located in Delhi Township, Hamilton County, Ohio, and in the “B” Residence District as shown on the maps of the Township Resolution; the premises known as Hamilton County Auditors Book 540, page 73, parcel 13 (also known as 5659 Delhi Road) is located in Delhi Township, Hamilton County, Ohio, and in the “B” Residence District as shown on the map of the Township Zoning Resolution; the submitted application indicated that at 540-100-22 & 214 a total of ten street lights with banners adjacent to the right-of-way of Delhi and Neeb Roads, three ground signs, five directional signs (one of which in the right-of-way) were proposed; at 540-100-455, 456 & 467 three directional signs (two in the right-of-way of Delhi Road) were proposed; at 540-100-21 one ground sign and two directional signs were proposed; at 540-73-22 one street light and banner adjacent the right-of-way of Delhi Road and one directional sign were proposed; at 540-73-275 four directional signs were proposed; at 540-73-24 one street light and banner adjacent the right-of-way of Delhi Road was proposed; at 540-73-13 two street lights with banners adjacent the right-of-way of Delhi Road were proposed; the proposed signage is part of a master, cohesive, identification, way finding signage plan for the subject properties; the height and square footage of the signs could not be determined inasmuch as the detailed sign drawing submitted were not drawn to scale; the Delhi Township Zoning Resolution prohibits signs from all right-of-ways in all zone districts, prohibits directional signs in the “AA”, “B” and “DD” zone districts and permits one ground sign per street frontage in all zone districts subject to particular setback, height, and square footage limitations.

Exhibit “A” – application

Exhibit “B” – overall site plan

Exhibit “C.1” – detailed site plan of the Delhi & Bender intersection, including proposed signage details

Exhibit “C.2” – detailed site plan of the college main campus and the village of Bayley Place, including proposed signage details

Exhibit “C.3” – detailed site plan of the Delhi & Neeb intersection, including proposed signage details

Exhibits “D.1” & “D.2” – details of the street lights and banners

Applicant Tom Heffernan (sworn), Executive Director of Support Services for the Sisters of Charity and the College of Mt. St. Joseph, introduced Ann Marie Wagner, CFO of the College of Mount St. Joseph, and Mr. Lee Ward, McGill Smith Punshon, a consulting firm assisting with the development of the signage plan. Mr. Heffernan advised that he was representing the College, the Sisters of Charity and the Senior Care Corporation

which operates the Bayley Place Nursing Home and the Village at Bayley Place.. He commented that development of the proposed signage plan was an involved process. He noted that new signage was needed in the vicinity to facilitate the growth and development that had taken place at the College, the Sisters of Charity and the Senior Care Cooperation properties. He advised that they had received approval from the County Engineer regarding the signs to be located within the right-of-way. He commented that every effort has been taken so to make the signage attractive, functional and reasonably inconspicuous in order to blend in with the nature of the community.

Lee Ward (sworn), McGill Smith Punshon, advised that his firm went to great lengths to prepare a detailed way-finding plan that includes easily identifiable graphics and the most suitable locations for the signs. He commented that by way of the proposed plan both the Sisters of Charity and the College will have distinct identities, blue signs for the Sisters of Charity and blue and gold signs for the College. He noted that the hope is to implement the plan over the summer. He advised that should the requested variance be granted that the plan will be submitted to the County Engineer for formal review so to confirm required site distances. He commented that poles containing the banners on Delhi east of Neeb will not include street lights.

Mr. Stahlheber advised that detailed information concerning the square footage of the proposed signs was submitted with the appeal materials (Exhibits "D.1" & "D.2"). He commented that all signs comply with the sign regulations, with two exceptions: two directional signs (not permitted in residence districts) and signs within the right-of-way (not permitted without the approval of the County Engineer). He noted receiving an email from the County Engineer confirming concept approval having been given to the proposed plan. He advised that a third issue needing addressed was that the Zoning Resolution does not address the signage needs of campus type uses, permitting only one ground sign per street frontage. He commented that the proposed plan included three ground signs for the main campus property, each having a distinct identifier providing distinct directions. He noted not receiving any opposition to the variance request.

Resolution 2007-04

Mr. Scherer moved and Mr. Ashe seconded to approve the variance as requested in Case VA2007-3. Messrs. Scherer, Ashe, Brigham and Mr. Kearns voted aye. Motion carried.

Finding of Fact:

1. The case number was VA2007-3.
2. The date of the action by the inspector was January 19, 2007 where a zoning certificate was denied for the construction of numerous signs for the reason that said signs would include multiple signs on particular properties, signs less than required setbacks and signs within right-of-ways.
3. The applicant's name was Tom Heffernan.
4. The date the appeal was filed was February 8, 2007.
5. The address of the subject premises included Auditors Book 540, Page 73, Parcels 13, 22, 24 & 275 as well as Book 540, Page 100, Parcels 21, 22, 214, 455, 456 & 457.

6. The zone districts of the subject premises include the “AA”, “B” and “DD” Residence districts.
7. Sections of the Zoning Resolution on which the denial was based included: 51, 51.1, 61, 62, 62.8, 62.14-7, 73, 74, 135, 135.1, 135.5-3, 312, 312.7, 316, 316.6, 192, 251, 281, 282, and 291.
8. Sections of the Zoning Resolution authorizing the Board to grant or deny the appeal included: 183, 184, 184.2, 184.6, 185 and 186.
9. There were no sections cited by the appellant as authorizing the Board to grant the appeal.
10. There was no opposition present at the meeting.
11. The Board finds no error on the part of the inspector.
12. The Board finds that practical difficulties exist as a result of an area zoning requirement after consideration of the following non-exclusive factors:
 - a.) The property owner purchased the property with knowledge of the zoning restriction.
 - b.) The property owner’s predicament feasibly cannot be obviated through some method other than a variance.
 - c.) The variance is not substantial.
 - d.) The lots have irregular shapes, topographic and other conditions present.
 - e.) The essential character of the neighborhood would not be substantially altered and adjoining properties would not suffer a substantial detriment as a result of the variance.
 - f.) The property in question would yield a reasonable return and there can be some beneficial use of the property without the variance.
 - g.) The variance would not adversely affect the delivery of governmental services.
13. The Board finds that the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.
14. The Board finds that the granting of the appeal would not be contrary to the public interest, general welfare and adjoining landowners. Basis of finding:
 - a.) The campus is in need of proper identification and directional signage;
 - b.) Safety of vehicular traffic in the vicinity of the campus will be enhanced;
 - c.) The proposed signage is aesthetically pleasing.
15. The Board wishes to review any alterations regarding the variance.
16. Further finding of fact:
 - a.) The County Engineer has expressed no objections to the signage proposed to be located within the right-of-ways.

Old Business:

- Mr. Stahlheber advised that per the Boards request in case VA2005-1 (6440 Upper) that his department did make periodic inspections of the property over a two year period finding no evidence of business activity. He commented that the variance request was to address the allegation of an excavation business being operated as well as a large garage that was constructed without a permit at the property. He noted that as assured at the hearing the business was relocated off-site and the garage is being utilized in conjunction with the agricultural use of the property. He advised that the property owners have been cooperative in giving

notice of their intent to bring commercial vehicles to the property for temporary use. He commented that in light of the above that effective March 1, 2007 he discontinued his periodic inspections of the property.

New Business:

- Mr. Stahlheber advised that one case was pending and two more were expected. The Board set a tentative meeting date for April 17, 2007.
- Mr. Stahlheber advised that with Joe Scherer's reappointment to another term that this year marks his 31st year of service on the Board.
- The Board received revised rosters.
- The Board received monthly department reports for July, August, September, October, November and December 2006 and January 2007.

There being no further business on motion of Mr. Scherer and seconded by Mr. Ashe the meeting was adjourned at 8:20 pm. Messrs. Ashe, Hendon, Scherer, Kearns and Brigham voted aye.

Board of Zoning Appeals:

Thomas R. Stahlheber, Secretary