

The Tuesday April 1, 2008 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
Robert Hendon

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.

The hearing in case VA2008-3 (6549 Candlestick) was reconvened.

Mr. Stahlheber advised that the hearing was opened on March 18, 2008 and continued in progress to facilitate the applicant staking out the property lines and corners of the proposed residence as well as the Board members individually making site visits so to better understand the location of the residence.

Mr. Koeninger advised that during the continuation he did meet with the neighboring property owners discussing the proposed location/orientation of the residence. He commented that they expressed concern for three issues that were discussed at the hearing: the orientation of the residence, noting that the proposed site plan is the preferred orientation; the berm along the west property line, noting that landscaping will be added to the top of same so to enhance screening; and, that if a pool would be built in the future that its location would be limited to the east side of the rear yard, such location being the furthest from neighboring residences.

Mr. Koeninger advised that the driveway serving one of the neighboring properties west appears to encroach onto the subject property by two or three feet. He commented that they are willing to grant an easement so that the drive could remain as is.

To Mr. Kearns' question as to who owns the neighboring property with the encroachment Mr. Koeninger advised Kathy Reinhardt.

To Mr. Witterstaetter's question as to if the resolutions to the three issues previously discussed would be put in writing Mr. Kerns responded that if the variance is granted they would be.

Mr. Lane advised that the Board generally does not condition variances. He commented that where issues discussed at hearings form the basis for a variance that such are often incorporated into the Resolution approving or denying a variance. He noted, however, that if the Board wishes to condition the variance on the issues identified that it can.

Mr. Koeninger advised that if the Board would require the conditions to be noted on the site plan so to obtain the permit that the builder would be happy to do so.

Mr. Lane advised that all of the terms, condition and agreements that were discussed and reached will be reflected in the Boards' variance resolution.

Mr. Kearns advised Mr. Witterstaetter that it would be up to him to consult with legal counsel so to get the level of assurance he wants.

Mr. Lane advised that the Board takes into consideration their site visits, issues talked about, agreements reached, the physical characteristics of the lot, etc. in making their decisions.

Resolution 2008-8

Mr. Scherer moved and Mr. Ashe seconded to approve the requested variance in Case VA2008-3. Messrs. Hendon, Scherer, Ashe and Kearns voted aye. Motion carried.

Finding of Fact:

1. The Case No. was VA2008-3.
2. The date of the action by the inspector was February 8, 2008, and that he denied a Zoning Certificate to Appellant for the construction of a new single-family residence located at 6549 Candlestick Drive, for the reason that said residence would be situated having less than the required side and rear yard setbacks of 25' and 60' respectfully.
3. The appellants name was Mark Koeninger, KPS, Inc., on behalf of Hering Homes Inc.
4. The date the appeal was filed was February 28, 2008.
5. The address of the subject premises was 6549 Candlestick Drive.
6. The zone district of the subject premises was "AA" Residence.
7. Sections of the Zoning Resolution on which the denial was based included: 31, 31.9, 31.15, 31.30, 31.33-1, 31.49, 31.50, 31.51, 31.52, 51.1, 61, 62, 62.13, 64, 64.1, 64.1-1, 64.2, 64.3, 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. Sections cited by the appellant authorizing the Board to grant the appeal included: 31.51 and 31.52.
10. There was opposition present at the meeting expressing concern for:
 - a) the accuracy of the site plan;
 - b) the negative impact on neighboring properties brought about by the reduced setbacks.
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 owners' predicament feasibly can be obviated through some method other than a variance.
 - c) The variance is not excessive.
 - d) The lot has an irregular shape, topographic, and other conditions present.
 - e) The essential character of the neighborhood would not be substantially altered nor would adjoining properties 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 approving the variance.
14. The Board finds that the granting of the appeal would not be contrary to the public interest, the general welfare and adjoining landowners. Basis of finding:
- a) A residence will be constructed on the lot with or without a variance and that the proposed site location and orientation is preferred by the adjoining property owners since the variance area is minor and the orientation will minimize the rear elevation "wall effect".
 - b) The existing berm will be maintained, not removed, and enhanced with landscaping by Hering Homes, Inc.
 - c) If a pool is to be constructed in the future that it will be located in the eastern portion or the rear yard at the rear yard walk out level of the residence.
 - d) An easement would be granted in favor of the property at 6849 Rapid Run in the event it is determined that the existing driveway serving same encroaches onto the subject property.
15. The Board wishes to review any alterations regarding the variance.

The hearing in case VA2008-4 (5121 Foley) was re-convened.

Mr. Stahlheber advised that the hearing was opened on March 18, 2008 and continued in progress to facilitate the applicant considering moving the proposed site of the sign and the submission of an actual sized mock-up of the proposed reader board.

Mrs. Monahan distributed presentation folders to each member of the Board. She commented that the reader board could display thirteen 8" letters at a time on the 10" high cabinet. She noted that page one contained a mock-up of the summer program banner attached to the existing sign to give a visual representation of the existing sign, and that that sign measured 9'1" wide by 5'8" high. She advised that page two contained a mock-up of the proposed sign. She commented that page three contained a close-up of the existing sign showing its condition. She noted that page four contained a photo looking east at the park drive from the second house on Foley west of the drive. She advised that page five contained a photo showing the existing light fixtures on each side of the existing sign, and that each contained 70 watt halogen bulbs. She commented that page six contained a photo showing the existing lighting of the entire area. She noted that page seven contained a photo of the garden area of the park showing the type of planting to be done around the new sign. She advised that page eight contained the elevation drawings of the proposed sign as were originally submitted on March 18, 2008.

Mrs. Monahan advised of considering moving the sign further east but that her preference is to keep the sign as close to the driveway as possible so to mark the entrance to the park.

Mr. Kearns' question as to if the same driveway would be utilized to enter to the park Mrs. Monahan responded in the affirmative.

Mr. Stahlheber advised that the presentation folders had been marked as Exhibit "D".

Mrs. Fisher advised that the lighting of the existing sign is not that bright. She reiterated that the new sign should be placed at the Delhi Pike entrance to the park where it would be more visible rather than on a residential street.

Mr. Brigham advised that Foley Road is not just a residential street. He commented that west of the park there is an area of intense retail uses including a tire store, a convenient store with a car wash, etc. as well as a school and a church. He noted that the Township purchased the residence east of the park entrance as a transition area.

Mr. Kearns advised that the reason he requested to see what the new sign would look like was to make sure there would not be flashing lights. He commented that the new sign would be minimally invasiveness.

To Mrs. Fisher's question as to if the homes of any of the Board members were as close to the park as hers is how they would feel about the sign. Mr. Brigham advised that the impact of the sign on neighboring properties is something that the Board considers and that such was reason why they continued the hearing, so that they could get all the facts.

Mrs. Monahan advised that the message board can also accommodate two rows of 4" high letters and that she will use the one that is best for the community. She noted that the message board has six levels of illumination which could be adjusted by a dimmer.

To Mr. Kearns question to Mrs. Fisher as to if she had anything else to add she advised the use of smaller letters on the reader board would be preferred.

Miss Jessica Fisher commented that if the park needs a new sign to keep it small.

Resolution 2008-9

Mr. Ashe moved and Mr. Hendon seconded to approve the requested variance in Case VA2008-4. Messrs. Brigham, Hendon, Scherer, Ashe and Kearns voted aye. Motion carried.

Finding of Fact:

1. The case number was VA2008-4.
2. The date the of the action of the inspector was February 28, 2008 where a zoning certificate was denied for the construction of a ground sign for the reason that said sign would include an electronic changeable copy message board providing motion and/or intermittence.

3. The appellant's name was Sandra Monahan, Director of Delhi Township Parks and Recreation.
4. The date the appeal was filed was February 29, 2008.
5. The address of the subject premises was 5121 Foley 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, 310.1, 311, 311.12-1, 311.22, 312, 312.7, 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 of the Zoning Resolution cited by the appellant as authorizing the Board to grant the appeal.
10. There was opposition present at the meeting expressing concern for light bleed-over, the lighting drawing insects, the sign detracting from the residential nature of the area and the signs' negative impact on property values.
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 requirements after consideration of the following non-exclusive factors:
 - a) The facility needs something to direct people to the particular events that are going on and where they're being held in order to enhance use of the Lodge and activities which are being conducted as part of the community activities.
 - b) There are only two entrances to the park and applicant may or may not be able to use the sign at the other entrance.
13. The Board finds that the spirit of the zoning requirement would be observed and substantial justice done by approving the variance:
 - a) Messages on the message board will only scroll or be stationary.
 - b) There will be a balancing test period to determine which of the light intensity settings is best for neighboring property owners.
14. The Board finds that the granting of the appeal would not be contrary to the public interest, The general welfare and adjoining landowners.
15. The Board wishes to review any alterations regarding the variance.
16. Additional findings:
 - a) There is an existing lighted sign which is being replaced.
 - b) The proposed sign will be situated at the same location as the existing sign, will not create an additional light source, will be in character with the residential nature of the area, and the sign will be turned off when the park closes daily.

Old Business:

- Mr. Stahlheber advised that the minutes from the Boards' February and March 2008 meetings are not complete and that he would distribute them as soon as they are finalized.
- The minutes approved at the last meeting are in the minute book ready to be signed.

New Business:

- Mr. Stahlheber advised there is nothing currently pending.
- The Board set tentative meeting dates for May 13/20 and June 3/10.

There being no further business on motion of Mr. Scherer and seconded by Mr. Ashe the meeting was adjourned at 8:30pm. Messrs. Ashe, Hendon, Scherer, Kearns and Brigham voted aye.

Board of Zoning Appeals:

Thomas R. Stahlheber, Secretary