

MINUTES OF PLAN COMISSION MEETING
OF THE VILLAGE OF SOUTH BARRINGTON
HELD THURSDAY, SEPTEMBER 2, 2010
7:30 P.M.

CALL TO ORDER

The meeting was called to order at 7:30 p.m. by Chairman Michael McCombie.

Roll call was taken.

Present: Commissioner McCombie, Commissioner White, Commissioner Kwasek, and Commissioner Gillis. Commissioner Fox excused herself from the meeting as she was a petitioner.

Absent: Commissioner Murarka.

Chairman McCombie declared a quorum present.

Also present: Village President Frank Munao

Staff present: Attorney Melissa Miroballi, Village Building Officer Ray Wolfel, Village Engineer Mark Lattner.

Petitioners: Sheila Malec, Homeowner 22 E. Penny Road, South Barrington; and Dr. Louise Fox, Homeowner, 15 W. Penny Road, South Barrington

Others present: PedarFinberg, Engineer, EAF Heritage Engineering; Brandon Levitt, Solar Services, Inc.; Attorney Paul Conarty; Attorney Warren Fuller; Sharon Kissane, 15 Turning Shore, South Barrington; Paula McCombie, 32 Revere Drive, South Barrington; Dave Brown, 16 E. Penny Road, South Barrington; Joseph and Barbara Rygel, 17 W. Penny Road, South Barrington; Nancy Ebner and Joe Ebner, 8 Turning Shore, South Barrington.

The meeting was audio recorded.

APPROVAL OF THE MINUTES

Motion to accept the minutes of the April 22, 2010 meeting was made by Commissioner Gillis and seconded by Commissioner Kwasek. Motion was approved by majority voice vote. Commissioner White abstained.

PUBLIC HEARING

Chairman McCombie asked for a motion to open the public hearing concerning the proposed zoning variance at 15 W. Penny Road, South Barrington owned by Michael and Louise Fox. Commissioner Gillis motioned to open the public hearing and Commissioner Kwasek seconded. Petitioner Dr. Louise Fox stated that her attorney was running late. Commissioner White motioned to continue the public hearing and move to the second agenda item first. Commissioner Kwasek seconded; the motion carried by voice vote.

PUBLIC HEARING

Chairman McCombie asked for a motion to open the public hearing concerning the property located at 22 E. Penny Road, South Barrington owned by North Star Trust Company and consider a proposed variation from the A2 zoning classification front yard setback of 100 feet. Motion to open the public hearing was made by Commissioner Gillis and seconded by Commissioner Kwasek. The motion carried by voice vote.

Commissioner McCombie asked all persons who were to give testimony at the hearing to stand and assert that the information they provide is the truth. All witnesses took that oath.

Owner Sheila Malec and Engineer Peter Finberg addressed the Commissioners. Mr. Finberg stated that his firm was working with the owner to make the lot a buildable lot. To do so they are requesting a modification in the setback dimension on Penny Road to 35 feet and a setback dimension on Algonquin Road to 35 feet. Mr. Finberg stated that this was necessary in order to locate the septic system. Commissioner McCombie questioned the petitioner about the setback that was granted in 2003 that reduced the setback along Penny Road from 100 feet to 60 feet and the setback along Algonquin Road from 100 feet to 94 feet. He asked why they are back asking for additional variations in the setback. Ms. Malec stated that there is more room for the septic system on the Algonquin side and that they are considering moving the house closer to Penny Road. She added that there are other homes that have 25 foot setbacks on Algonquin and Penny Roads. Village Building Officer Wolfel confirmed that there is a side yard setback on one house located on Algonquin Road that has a 25 foot setback. There are also some rear yard setbacks that are 50 feet.

Commissioner Gillis asked what changes have been made since the last time you petitioned the Village in 2003. Ms. Malec stated that they realized that the septic system was very close to Rt. 62 and they wanted to save some of the trees. She requested that the trees be saved so as to keep a buffer from Algonquin Road. Mr. Wolfel stated that the setbacks granted in 2003 have since expired and the setbacks along both Penny and Algonquin Roads are now 100 feet.

Commissioner Gillis stated that he walked the property and saw a lot of water, some of it about 20 feet from the driveway. He stated that if the homeowner did not fix the water problem they will have more issues if they move the house closer to Penny Road. Mr. Finberg stated that part of the problem is that there are weeds covering the manhole.

Commissioners discussed issues relating to wetland filling and buffer as well as related flood plane adjustments and mitigation for the property. Village Engineer Latter made a pictorial presentation and stated that the drain tiles are disconnected to the storm sewer drain tiles. Mr. Lattner stated that there used to be a drain tile coming from a manhole at Algonquin that drained the wetlands. That drain tile collapsed. The plan is to use more field tile drains to move the water down. The plan is to relocate the floodplain and wetland to create a building pad.

Commissioner Gillis asked how they could drain 3-4 feet of water. Mr. Finberg responded this is a challenge because the wetland is within the floodplain and mitigating the wetland would cause the floodplain to fill. Therefore, additional floodplain storage is necessary. He added that the plan includes creating additional wetlands to the west. Mr. Lattner added that what they propose will not push the water west; rather, the main drain is coming from the Greensward subdivision and will drain under Algonquin Road. Commissioner McCombie asked is the mitigation will take place on this property alone and Mr. Lattner answered that it would. He stated that at issue is to minimize the amount of fill to get rid of the wetlands and the need for compensatory storage to prevent them from coming back. He stated that he felt confident that the installation of the field drain tiles will reduce the level of water and not adversely affect adjacent property. He also cautioned that the Army Corps of Engineers will soon be taking control of the wetland mitigation which may be more restrictive than South Barrington.

Commissioner White expressed concern about the water levels. Mr. Finberg stated that the septic system design is above the high water flood plain and the plan will work if they are given the variance on the setbacks.

Commissioner McCombie questioned the petitioner why she was requesting a variance to 35 feet when the plans as presented reflect that the house is 76 feet from the road. Ms. Malec stated that she was under the impression that whatever the Village decided now would be permanent and she wanted future homeowners to be able to add on to the house if they choose. Commissioner McCombie asked for clarification on the variance and whether it would become permanent if approved by the Village. Mr. Wolfel stated that if the 35 foot setback is recorded on the plat then, yes, it would become permanent. He explained that the reason the setback variances granted by the Village in 2003 were not permanent was because they were never recorded on the plat. Ms. Malec stated that she was asking for the 35 foot setbacks because it was keeping in line with other homes in the area that have 35 foot setbacks.

Commissioner Kwasek stated that setbacks on major highways are very different from setbacks on minor streets. He cautioned about building a house too close to the road not only for its unsightliness but also the noise from the traffic. He stated that he would be cautious about granting any setback that was lower than what was previously granted in 2003.

Ms Malec stated that if the Commission was not comfortable granting the 35 foot setbacks then she would like to request 60 foot setbacks instead. At 60 feet she could place the septic system properly.

Mr. Finberg asked what the procedure would be to negotiate a setback variance should the Commission decide not to grant the 35 foot setbacks from Algonquin and Penny Road. He stated that his client would accept 60 foot setbacks instead. Commissioner McCombie stated that in his opinion that a 70 foot setback on Penny Road and a 94 foot setback on Algonquin Road would be ample to build the house per the plans that were presented to the Commission. Mr. Finberg stated that his client would accept that.

STAFF REORTS

Chairman McCombie asked if there were any questions regarding the staff reports from the Village Engineer or the Village Building Officer. There were none. Mr. Wolfel stated that he did not have anything to add to the deliberations that have already taken place.

PUBLIC COMMENTS

Chairman McCombie asked for public comments. Resident Sharon Kissane stated that she was concerned about the effect the setback variance would have on the wetlands.

Commissioner McCombie asked the Village Engineer if the variance were granted at 75 on Penny Road and 100 feet on Algonquin Road whether it would mitigate any wetlands. Mr. Lattner answered that it would mitigate an acre or more, but that it will be relocated and, in the end, they will have a little bit more than an acre of wetlands. Resident Paula McCombie asked how much wetland will be mitigated. Mr. Lattner responded that there will be .12 acres fill-in and .16 acres will be added.

Resident David Brown stated that he owned the property next door and expressed concern about the water drainage. He appreciated that the homeowner was trying to save trees near Algonquin Road but suggested that if the owner is not going to build right away he that they fix the drainage first and then address the setback requests. Mr. Finberg stated that without the setbacks the lot is not buildable.

Chairman called for a motion to recommend to the full Board of Trustees the approval of the variations to the front yard setbacks for 22 East Penny Road at 70 feet on Penny Road and 94 feet on Algonquin Road. Motion was made by Commissioner Kwasek and seconded by Commissioner Gillis.

Ayes: Commissioner McCombie
Commissioner Gillis
Commissioner Kwasek
Commissioner White
Nays: None
Abstained: None
Absent: Commissioner Fox

Motion was made by Commissioner White to close the Public Hearing for revised setbacks for the property located at 22 E. Penny Road. Seconded by Commissioner Kwasek, the motion carried by voice vote.

PUBLIC HEARING

Motion was made by Commissioner Gillis and seconded by Commissioner White to reconvene the hearing concerning the proposed zoning variance at 15 W. Penny Road. Chairman McCombie asked all persons who were to give testimony at the hearing to stand and assert that the information they provide is the truth. All witnesses took that oath.

Attorney Paul Conarty, representing the homeowner Louise Fox, took the floor and stated for the record that the address located at 15 West Penny Road is 5 acres and zoned A1 with a 35 foot side yard setback. He stated that solar panels were constructed in 2006 on the side yard of the property 17 feet closer than the setback would allow. He also acknowledged that a Village building permit for the panels was not sought and not issued. He introduced Brandon Levitt from Solar Services, the company who installed the solar panels. Mr. Levitt testified that the roof of the house was the first choice to place the series of 10 panels but their size—40 feet east to west and 7 feet front to back—precluded them from installing them on the roof. He described the structure of the panels and stated that they produce over 10,000 gallons of water per month and are used for the heating and cooling of the residence.

Commissioner Gillis asked Mr. Levitt how they chose the location they did to construct the panels. Mr. Levitt stated that there were a lot of trees in the yard. He surveyed it, and due to trees, best use of the back yard and exposure to the sun, this was the best place for them to be constructed. He didn't want to put it in the middle of the back yard because it would limit the use of the yard. He stated that he was thinking of his client when he chose the location.

Commissioner Kwasek asked if there was ever a discussion about setback requirements. Mr. Levitt replied no and added that this was the first issue with setbacks he has ever encountered and that his company has been installing them for 30 years. He stated that the Foxes were

undergoing major home remodeling at the time and that he relied on the architect and general contractor to pull any required building permits.

Commissioner White asked if the panels could be moved to another location and still be effective. Mr. Levitt responded that to move the panels even 20 feet would be a hardship and cost a minimum of \$15,000 because they would have to remove the concrete peers and steel support, and dig up the underground pipe. Also, a brick patio has since been added to the property that would have to be disassembled which would incur additional cost.

Commissioner Kwasek asked Mr. Levitt if his contract with the homeowner required that they comply with all Village building codes and ordinance. Mr. Levitt stated that there is nothing in the contract that plays to that question. Commissioner Kwasek asked Village Building Officer Wolfel if the Village requires a permit to install solar panels. Mr. Wolfel responded yes. Mr. Levitt stated that he relied on the general contractor to pull all required permits. Mr. Wolfel acknowledged that it is not common for sub-contractor to pull permits. Usually the general contractor pulls all the permits. He stated that the Village had no knowledge that the panels were being installed until after the structure was erected.

Mr. Conarty stated that Mr. Levitt's candor about not pulling permits is tell-tale of what was going on. The Fox's were undergoing extensive remodeling of their home. They hired a general contractor and relied on him to make sure that all zoning codes and ordinances were adhered to. There was never any malice in Dr. Fox's actions. There was no intent to ignore the side yard setbacks; they were just unaware of them. Mr. Conarty argued that the solar panels system is now up and running and to move them 20 feet would not only be costly, it would not alleviate the complaints that neighbors have expressed.

Mr. Conarty presented photographs of the property and the solar panels. He stated that Dr. Fox spent over \$15,000 building berms and planting evergreen trees to camouflage the panels from neighbors' view. Mr. Conarty argued that if Dr. Fox is required to move the panels to satisfy the setbacks, they would still be viewed by the neighbors.

Dr. Fox took the floor and addressed the Commissioners. She recounted the timeline for the project which was planned in 2004 and completed in 2006. The project cost approximately \$44,000 less approximately \$17,000 in tax incentives. The solar panels were added on as part of an extensive home remodel and she assumed that the general contractor was in compliance with Village codes. She stated that she was not aware that they were out of compliance until 2007 when she received complaints from the neighbors. Dr. Fox stated that in response to neighbor complaints of their unsightly view of the panels a berm was put in on the property. She also described other landscaping that was completed to shield view of the panels from the neighbors.

Dr. Fox also stated that she approached the Village for clarification as to whether the panels were considered to be a structure as defined by Village code. In 2008 the Village told her that the panels were not considered structures but then a year later the Village reversed itself and informed her that they *are* considered structures. Dr. Fox acknowledged that the panels as located are out of compliance with Village zoning code, but to move them would be very expensive and, if moved to an area within zoning

compliance, would still be in view of the neighbors. She suggested that a better solution would be to plant more trees to hide its view from the neighbors. Mr. Fox asked the Commission for a variance on the side yard setback.

STAFF REPORTS. Chairman McCombie asked if there were any questions regarding the staff reports. There were none. Commissioner Gillis motioned and Commissioner Kwasek seconded, to place the Village Engineer Report and the Village Building and Zoning Administrator reports into the record. Motion carried by unanimous voice vote.

Attorney Warren Fuller, representing Joseph and Barbara Rygel, residents at 17 W. Penny Road, asked questions of Dr. Fox specific to the zoning ordinances and the subsequent identification of the solar panels as structures as defined by Village code. Dr. Fox acknowledged that the panels are considered a structure, that she and her husband along with the recommendation of the general contractor and solar panel installation company chose the location for the panels. Mr. Fuller asserted that the view from the Fox residence family room was obscured from the panels whereas the neighbor's view of the panels was not obscured.

Mr. Fuller asked Dr. Fox if she has sought remedy from the general contractor regarding the misplaced location of the panels. Dr. Fox replied that she has not. She stated that starting another lawsuit will not solve the problem presently at hand. Mr. Fuller argued that Dr. Fox has placed the blame for the misplaced panels inside the setback on the general contractor and suggested that Dr. Fox sue the contractor for recompense. He then asked questions about the cost of the project including the tax incentives.

Mr. Fuller questioned why Dr. Fox would go ahead with construction of a brick patio before a determination by the Plan Commission with regard to the setback variance. Dr. Fox stated that she did not know the extent of the complication of moving the panels.

Mr. Fuller asked Mr. Levitt questions about the specific size of the panels which are 40 feet long by 7 feet wide.

Mr. Fuller presented photos of the panels taken from the Rygel residence reflecting pictures of small trees whose foliage falls each year. He asked her if she would be willing to plant more suitable trees in an effort to obscure the visual effect of the panels from the Rygel residence as a condition of receiving a setback variance by the Village. Yes, Dr. Fox agreed, saying that that would be a more sensible solution.

Mr. Fuller summarized the facts of the case and restated his client's argument that the side yard setback are clearly written

PUBLIC COMMENTS

Chairman McCombie opened the floor for public comments.

Mr. Rygel stated that he objects to the view of the panels from his yard. There is a reflection of the sun on them and they have an unobscured view from their master bedroom. Mr. Rygel would like to see a berm put in to block this view but had reservations about whether there is enough room for the berm, stating that he measured only 17 feet to the property line. He felt that the best solution was to remove the panels and place them in another location. The

Rygels can see the panels from the bedroom, kitchen, family room and basement. He stated that more evergreen landscaping could help obscure the view but so far the little has been done to obscure his view of the panels.

Resident Joseph Ebner stated that his property is located directly behind the Fox residence. Mr. Ebner read into the record his harsh letter to the Plan Commission dated August 27, 2010 stating his objections to granting a setback variance for 15 W. Penny Road citing the owner's disregard for Village codes, insensitivity to neighbors and the potential negative impact on future home values. Mr. Ebner stated that the landscaping efforts made by the Foxes thus far to obscure the view of the panels from his residence have been unsuccessful. Resident Nancy Ebner echoed her husband's comments stating that the glare from the panels is unbearable.

Dr. Fox responded that she met with the Ebners as well as the Rygels to try and work with them regarding to solve the problems and to plant appropriate landscaping to camouflage the panels. She added that she did this in an effort to be a good neighbor and to be sympathetic to her neighbor's perspective. She stated that a berm was erected in response to the Ebner's complaints and many additional trees were planted.

They discussed the possibility of additional berming and tree planting. Commissioner Gillis asked Mr. and Mrs. Ebner about what landscaping could be laced that would satisfy them. Both the Ebners and the Rygels asserted that their preference was for the panels to be disassembled and moved to another location. Dr. Fox stated that moving the panels the required 20 feet will not address the issue that the neighbors object to.

The Commission discussed the possibility of additional landscaping to the south of the property. The chairman asked the neighbors which option they would prefer: the first would require Dr. Fox to move the panels 20 feet so as to be in compliance with the setback; the second would be to try to hide the panels from neighbors' view with landscaping. Commissioner Kwasek asked for clarification from the Village Building Officer. If the solar panels are moved and become in compliance with Village ordinance, can all of the landscaping that was put in place to obscure its view be removed? Mr. Wolfel answered yes; there is no Village requirement for any additional landscaping.

Commissioners discussed proposed solutions. One suggestion was to paint the metal piping in back of the panels which reflect light into neighbors homes. Another solution was to come up with an additional landscaping plan to better camouflage the panels.

Commissioner Kwasek motioned to close the public hearing on 15 West Penny. Commissioner White seconded, and the motion unanimously carried by voice vote.

Village Attorney Miroballi advised Commissioners that they may deliberate and decide a course of action tonight or they could continue the meeting to a later date perhaps when an additional landscaping plan is presented.

Chairman McCombie suggested that Dr. Fox and Mr. Rygel get together to devise a plan for additional landscaping that would be acceptable to all parties. He advised that they return to the Plan Commission for a subsequent decision on the request for setback variance. Mr. Rygel stated that he had his own landscaper and would be happy to consult with him and propose a plan of action. Dr. Fox stated that she is not comfortable meeting directly with her

neighbors landscape architects and preferred that each concerned party direct their own landscaper to compile a plan for presentation to the Plan Commission. Mr. Rygel agreed.

Chairman McCombie continued the meeting until September 30, 2010 where the Commission will render a recommendation to the Village Board of Trustees about the setback variance. He directed the parties to prepare a landscape plan to present to the Commission at that time and requested that written plans be submitted to the Village no later than September 23, 2010 so that the Commissioners could review them before the next meeting.

Motion was made by Commissioner White to adjourn the meeting. Seconded by Commissioner Gillis, the motion was approved by unanimous voice vote. The meeting adjourned at 10:34 p.m.

The September 2, 2010 minutes of the Village of South Barrington Plan Commission are respectfully submitted by Mary Lampugnano.