

CITY OF AURORA
OHIO
BOARD OF ZONING APPEALS
Meeting Minutes
September 14, 2011

The Aurora Board of Zoning Appeals met in a regularly scheduled meeting Wednesday, September 14, 2011 in the Council Chambers at City Hall. The meeting was called to order at 7:30 p.m. by Chairman Don Arbuckle.

ROLL CALL:

Present: Bernard McCarrell
Don Arbuckle
Peter French
Terese Fennell
Tony Gramm
Absent: Jeff Iammarino
Also Present: Doug Paul, Legal Advisor
Rich Wehrenberg, Director of Planning, Zoning and
Building
Denise Januska, City Planner
Susan Dombeck, Clerk

WORK SESSION:

Mr. Arbuckle explained the procedure for the work session.

OLD BUSINESS:

AURORA PREMIUM OUTLETS (FOR LONGABERGER BASKET CO.), 459 SOUTH CHILLICOTHE [1105005]

Two variances are requested.

- *From Section 1159.16(b)(4)(B)(1)(c) of the Aurora Codified Ordinances to allow a second wall sign*
- *From Section 1159.16(b)(4)(B) of the Aurora Codified Ordinances to allow the possible second sign to have 10.5 square feet of sign area, 10 square feet over the maximum allowed*

Mr. Arbuckle suggested having the applicant informed that the item will be removed from the next agenda if there is no communication.

NEW BUSINESS:

Mr. Arbuckle announced the variance requests for the following applicants:

CLASSIC HOMES INC. 204 EAST GARFIELD ROAD [1107011]

Three variances are requested from Table 1155.01 of the Aurora Codified Ordinances to allow:

- *Front parking setback of 10 feet instead of the minimum required 50 feet*
- *Front building setback of 26 feet instead of the minimum required 50 feet*
- *Rear building setback of 37 feet instead of the minimum required 50 feet*

ATWELL (Agent), N CHILLICOTHE & TREAT ROAD [1108012]

A variance is requested from Section 1153.03(p)(4)(D) of the Aurora Codified Ordinances to allow a 35 foot setback from the development's boundary for the perimeter of a conservation development instead of the minimum required 75 foot setback

Mrs. Januska stated that most of the issues that this development has are not dealt with by this board nor has relevance to the variance request. They are issues that are dealt with in other areas. She said that the board should focus on the seven factors for variances and not aesthetics or land use issues.

Mrs. Fennell mentioned that she asked the Clerk to print and distribute an e-mail received from Jeff Clark so it can be dealt with in a public meeting as opposed to it being simply an e-mail sent to the board.

MEETING:

Mr. Paul gave the oath to the staff and audience members that planned to speak during the meeting.

AMENDMENTS TO THE AGENDA:

There were no amendments to the agenda.

APPROVAL OF MINUTES:

MOTION: To approve the minutes of August 10, 2011 as printed.

Mrs. Fennell moved for approval; Mr. McCarrell seconded, and the motion carried, 5-0, on a roll call vote.

Yeas: Mrs. Fennell, Mr. McCarrell, Mr. French, Mr. Gramm, Mr. Arbuckle
Nays: None

OLD BUSINESS:

AURORA PREMIUM OUTLETS (FOR LONGABERGER BASKET CO), 459 SOUTH CHILLICOTHE [1105005]

Two variances are requested.

- *From Section 1159.16(b)(4)(B)(1)(c) of the Aurora Codified Ordinances to allow a second wall sign*
- *From Section 1159.16(b)(4)(B) of the Aurora Codified Ordinances to allow the possible second sign to have 10.5 square feet of sign area, 10 square feet over the maximum allowed*

Mr. Arbuckle asked the others for their input on informing the applicant that their item will be removed from the agenda if there is no further communication. Mr. McCarrell suggested removing it from the agenda immediately.

MOTION: To remove this item from the table.

Mr. McCarrell moved for approval; Mrs. Fennell seconded, and the motion carried, 5-0, on a roll call vote.

Yeas: Mr. McCarrell, Mrs. Fennell, Mr. French, Mr. Gramm, Mr. Arbuckle

Nays: None

MOTION: To remove this item from the agenda.

Mr. McCarrell moved for approval; Mr. Gramm seconded, and the motion carried, 3-2, on a roll call vote.

Yeas: Mr. McCarrell, Mr. Gramm, Mrs. Fennell

Nays: Mr. French, Mr. Arbuckle

NEW BUSINESS:

CLASSIC HOMES INC. 204 EAST GARFIELD ROAD [1107011]

Three variances are requested from Table 1155.01 of the Aurora Codified Ordinances to allow:

- *Front parking setback of 10 feet instead of the minimum required 50 feet*
- *Front building setback of 26 feet instead of the minimum required 50 feet*
- *Rear building setback of 37 feet instead of the minimum required 50 feet*

Ed and Tom Wurm were present to offer information to the board. Ed Wurm introduced the architect, Jeff Meyers, to give a presentation to the members.

Mr. Arbuckle noted that one letter against the project was received because the writer, who moved to this town 32 years ago, stated that promises were made regarding wooded areas and wetlands which have not been kept.

Mr. Meyers stated that they are requesting three variances. He stated that a letter was submitted that explains the practical difficulties they would have developing the site without the variances. He added that they are asking for as little as possible to have a functional site.

Referring to the site plan, Mr. Meyers explained the layout. The parking and building setbacks adhere to the local neighborhood setbacks. The building is actually further back than some others in the area. The setback for the rear is to create an area for a client to drive in and pull around without having to back up.

Per an inquiry by Mr. Arbuckle, Mr. Meyers explained that the code requires a minimum area for a parking lot as well as the size of the spaces, which is why variances are needed. There will be only one curb cut. As for the building, there will be twelve treatment rooms. There was a short conversation on some of the details of the applicant's dental practice with regard to what is needed in the building.

Mrs. Fennell asked about the parking lot and how it relates to drivers being able to pull around. Mr. Meyers described it as someone being able to drive onto the site, circle around and then drive back out facing forward. He said that some of the lots on SR82 can get congested with the amount of space in front of their building, while drivers are backing out, turning around, etc. He added that this applicant wants to avoid those types of issues, especially for safety reasons.

Mr. Arbuckle asked about past submittals, and Ed Wurm responded that it was submitted as a commercial project years ago and ended up in litigation. He stated that the lots are currently three separate lots that will be combined into one. Mrs. Januska said that the consolidation is a requirement of the Planning Commission, so it will be done.

Resident George Mazzaro stated that he has no problem with this being a C-1 site or with the plan for the building. However, he wondered how the site got the C-1 zoning because it never has been officially noted. There was litigation on the site, which the court threw out because the zoning was unconstitutional. He explained that only City Council can change zoning due to a court order, or the zoning can be changed by the electorate. He had an issue with the process, and questioned how it could be a C-1 property without Council's approval. Secondly, he questioned whether the project would cause flooding of basements in the future.

Mr. Arbuckle said that this board is not the group to deal with how the C-1 zoning was obtained. Mr. Arbuckle asked for any input on the situation. Rich Wehrenberg said that the property was the subject of a lawsuit. In 1997 the court ruled that the R-3 zoning was unconstitutional and ordered the city to rezone it to something more in line with some type of commercial use. The court was vague on that and left it up to the city. The city then put it on the ballot to rezone it to T-1, but it was turned down by the electorate. At that point, the city stopping pursuing it, so since 1998 it sat with a court order stating that the zoning was unconstitutional. The city tried and couldn't get it rezoned. Mr. Wehrenberg added that putting it on the ballot is the only way a site can be rezoned, because City Council cannot declare a zoning for a site, only a vote of the residents can change it.

Mr. Wehrenberg stated that this was submitted to the city and the staff decided that the best approach, rather than return to the voters, is to just treat it as a C-1. It has not been rezoned, the zoning on it is still unconstitutional, and Planning Commission wants to try to get this through so the developer is not held up further. Mr. Wehrenberg noted that this project has been held up, but not through the fault of the developer. The project will eventually go to City Council, and at that time the Planning Commission is anticipating sending a request to Council with the final site plan asking that Council look into rezoning the site appropriately through a referendum. He reiterated that the zoning has been

declared unconstitutional, but it is the administration's feeling that we should proceed as if the site were a C-1, and the applicant agreed to it, even though it has not been rezoned.

Mr. Arbuckle said that it sounds like it is in limbo, and thought that the property owner and developer are taking a lot of risks and may have the cart before the horse. He felt that whatever action is taken by this board, it is weakened by the possibility of what can happen in the future with the voter referendum. He said that anytime a site is suggested for commercial zoning, it is a tough sell. Mr. Arbuckle said he wanted the record to show that there are some questions with regard to the zoning and the risks involved.

Mr. Wehrenberg replied that it was a problem the staff inherited and they thought that it is the best and most efficient solution to let the applicant develop the property.

Mr. French asked about the zoning situation, and Ed Wurm explained that the Portage County Court said that the city should zone it for an appropriate use. He said that means that it could be commercial use, transitional zoning or even a new zoning written for that site. He added that if it is turned down at the city level it won't stay with the city. A reasonable use will be presented by the applicant to the county and they would then see what the judge decides to do. Mr. Wurm noted that it will be zoned commercial, and said that they purchased the site with the advice of City Council that it will be a commercial property.

Ed Wurm stated that they feel a commercial zoning is a reasonable use. He pointed out that it is not a retail business or a restaurant, where they are open in the evening or have a lot of heavy traffic. He said that the proposed use is ideal. They tried to minimize the variances the best they could.

Mr. Arbuckle said that it does sound like a sensible use for that property, but there are those present who disagree. He noted that even if the judge states that the zoning is to be changed to a commercial zoning, it still has to go to a referendum vote. Mr. Wurm said he didn't believe it would go for a vote a second time. Mr. Arbuckle stated that he just wanted everyone to be aware of the risk involved because the zoning for the site has not been set.

Ed Wurm felt that the board should just consider if the proposed use is a good one. Mr. Arbuckle thought that it can be considered a reasonable use of the property. He said that the official zoning is in limbo, but this board can probably take action on the variance.

Mr. Gramm raised the subject of the water runoff and felt that those reviewing the plan are qualified and will do what is best. Ed Wurm stated that the drainage and storm water issues were brought up during the Planning Commission review. He noted that it is the law that the storm water runoff must be less after the project is completed than it was before construction.

Mr. Wehrenberg stated that the site plan is actually a preliminary site plan. The applicants will return to the Planning Commission with a final site plan, which is when all

of the storm water issues will be handled. At that point, all of the ordinances will be observed or the engineering department won't approve the plan. The applicant wants a preliminary site plan approval because they can't move forward with the final plan until they have an understanding of what they are allowed to do. Mr. Arbuckle said he realizes that it is not an issue for the board, but the subject did come up and he felt it was best to clear the air on the subject.

Jill Brown, of 183 Garfield Road, said that she lives just north of the property and is concerned about the wetlands. She wondered when the wetlands will be discussed with regard to this plan. She said that the zoning of the site should be considered and dealt with first. Ms. Brown expressed concern about the runoff situation. Whether the amount of runoff is less or more than now, there will be pollutants to deal with. Another concern of Ms. Brown's is the parking space. After looking at the site plan, she felt that a lot of parking is being taken up by the proposed turn around. She questioned whether other options have been reviewed. Ms. Brown asked the board to consider whether the parking space is too much.

Mr. Arbuckle reminded everyone that drainage and runoff are really not issues for this board to examine.

Ms. Brown explained some of the issues she and neighbors have regarding runoff. She also mentioned concern regarding future expansion of the proposed building. Mr. Meyers said that they don't expect to expand the building outside of the current shell at this time.

Mr. Arbuckle asked the members to address the variance request with regard to the parking lot. He asked the applicant to explain the request in further detail.

Ed Wurm said there is currently ten parking spaces in front of the building, and the balance is on the west side of the building. Their goal was to minimize the front parking and put as much on the side. He noted that the main issue is safety and how vehicles can enter and exit the site as easily as possible. He added that they will not impact the wetlands or ground water.

Mrs. Fennell wondered if fewer parking spaces would also need a variance, and Mr. Wurm said that it would. Mrs. Januska said that it would not and explained that the code bases the amount of parking on the building size, and if less parking was desired it could be granted by the Planning Commission during their review, but the applicant would have to justify why those parking spaces are not needed.

Mr. Arbuckle asked if employee parking would be located in the general lot, and Ed Wurm said it would. Per an inquiry by Mrs. Fennell, Mr. Wurm confirmed that the amount of parking spaces on the plan is the same amount required by the code. Mr. Wurm stated that the only way to reduce the parking would be to reduce the building size. He explained the problems with doing a reduction.

Gene Arter, of 620 Prestige Woods Boulevard, said that the Wurm brothers have done a fantastic job building in the community. He felt that their projects are top notch, and he had no problem with the variance requests. He explained why he felt that it is a good project for the city and how the engineering regulations will keep it from causing major problems.

Robert Hicks, of 58 Glenview, asked for an explanation for the 50 foot setback requirement. Mr. Arbuckle said that in most cases that is the code and it was felt that it was appropriate in addition to the normal right-of-way. Mr. Hicks responded that his concern is the request to go from fifty feet to ten feet, which is a significant amount. He thought more consideration needs to be given to the request since things will be moved close to the street as well as the houses on Hurd Road.

Mr. Arbuckle explained that reducing the amount of parking would cause the building size to be reduced. Mr. Hicks said that the building size and parking should then be reduced. Mr. Arbuckle pointed out that one of the first conversations with the applicant was to question the need for the building size, which they explained. He added that the members will have to make a serious decision since a denial would destroy the entire project in its present form. Mr. Arbuckle noted that a parking space is 200 square feet.

Mr. Hicks said that the parking would have to be reconfigured and wondered how many parking spaces will be lost if the forty feet is eliminated. After reviewing the site plan, it was determined that nine parking spaces would be eliminated, and Mr. Arbuckle stated that it would mean about 1800 square feet would have to be removed not only from the parking area but from the building as well.

Mr. Wehrenberg stated that one of the reasons that the administration is supporting the variance requests is because the lots that are C-1 along the south side of State Route 82 are not as big as your typical C-1 lots. He said that parking is a problem on that street because they are essentially old houses that were remodeled and not given the appropriate setbacks that a commercial property would have. He added that there really is not the room to follow the required C-1 setbacks and still have a reasonable opportunity to develop the site.

Mr. French asked if the city is concerned about people using this parking lot and then walking to neighboring sites, and Mr. Wehrenberg said that it would be a concern for the building owner. He gave details of other area sites that had that problem and how it was handled.

Susan Nelson, of 185 Hurd Road, said that the proposed building will be immediately behind her property. She said that while there are trees, during the winter everything behind her lot can be seen. Ms. Nelson added that she too felt the cart was before the horse. She commented that the plan and variance requests almost sound illegal because the site has not been zoned. She asked Mr. Paul for an opinion, and he explained that this board's role is not to interpret or consider the court order when deciding a variance. Ms. Nelson said that pollution is an issue of concern with regard to

this project. She stated that runoff is another issue.

Ms. Brown wondered how the board members could consider the requests when there is no zoning.

Ed Wurm explained that the plan has been before the city for quite awhile now and significant engineering and architectural work has been done along the way. This is the sum of the best solution and use for the site. He said that not receiving the variance on the west would cause a domino effect, first with the parking, then the building size, and then a denial of reasonable use. He said that their property does not include any wetlands. The wetlands are to the west and are owned by the city.

As for legalities, Mr. Wurm noted that an argument can be made that the city has been negligent by not acting on a court order to zone the property. He felt a better argument can be made that when a judge tells the city to zone it properly, the applicant is not required to take any steps. The site was purchased with the settlement in place and knew it would be zoned commercial. It was not their obligation to force the city to do the zoning change, it was the city's obligation to do it and it wasn't done. He commented that the city is doing their job today.

Mr. Mazzaro questioned whether there is any legal authority to refer to the site as C-1. He stated that this should have gone to City Council first for a resolution to the zoning situation before coming for variances. He asked the board to deny the variances.

Mr. Wurm said he thinks the zoning will be C-1, as it is a reasonable use, and that they are within their legal rights to request that.

Mr. Arbuckle began a review of the checklist for all three variances. He said if the front parking variance for forty feet is denied, it would have a complete impact on the total project. It would reduce the number of parking spaces and the size of the building, and that would probably cause the termination of the project. So it would have a significant economic affect. Mr. McCarrell stated that it could still be done, just with a smaller building.

As to whether the variances are substantial, Mrs. Fennell said that, based on the lot's configuration, and the location on SR 82 and the need for ingress and egress, she didn't feel that the variance is substantial as it appears by numbers only. She remarked that she has seen vehicles backing up onto SR 82, which is a safety issue. Mrs. Fennel said that the numbers look like substantial variances, but based on the actual lot size she did not feel they are substantial amounts.

Mr. Arbuckle said the submittal was more for safety reasons to avoid having people backing out onto SR 82 and letting them turn around on the site. He said the board has to determine the concern for safety and whether it is an important one in relation to the variances. Mr. McCarrell agreed with Mrs. Fennell.

Regarding the essential character of the neighborhood, Mr. Arbuckle felt that this project would be an improvement to the immediate area, especially in relation to other current commercial sites. Mr. French agreed and stated that the variances do look substantial but are not when compared to other sites in the neighborhood.

According to Mr. Arbuckle, the governmental services would probably not be affected. Mrs. Fennell noted that with the proposed turnaround in the parking area, it would be easier for emergency vehicles to have access.

Mr. Arbuckle said that the board has to determine whether or not the owner purchased the property with the knowledge of the zoning regulation. He commented that it is an issue that could still be a problem, but it is not up to this board. The board is just to determine if the variance requests are appropriate. Mr. French stated that the board is voting on variances based on regulations for a C-1 district. Mrs. Fennell noted that it is at the applicant's risk, and Mr. French added that if the zoning does not end up to be C-1, then the project won't happen.

Referring to the owner's predicament, Mr. Arbuckle stated that it could feasibly be solved by eliminating the variances and creating fewer parking spaces as well as building a smaller building. He felt, however, that doing so would destroy the project.

As for observing the spirit and intent of the zoning regulations, Mr. Arbuckle said they have to consider the safety factor and the wetlands. He said that the applicant has assured everyone that the runoff situation would be better afterwards. The members had no further comments or questions.

MOTION: To approve the variance request for Classic Homes Inc. from Section 1163.02(c)(4) of the Aurora Codified Ordinances for property at 204 East Garfield Road where the code provides for a total front parking setback of 50 feet to allow for a total front parking setback of 10 feet.

Mrs. Fennell moved for approval; Mr. French seconded, and the motion carried, 4-1, on a roll call vote.

Yeas: Mrs. Fennell, Mr. French, Mr. McCarrell, Mr. Arbuckle

Nays: Mr. Gramm

MOTION: To approve the variance request for Classic Homes Inc. from Table 1155.02 of the Aurora Codified Ordinances for property at 204 East Garfield Road where the code provides for a total front building setback of 50 feet to allow for a total front building setback of 26 feet.

Mrs. Fennell moved for approval; Mr. French seconded, and the motion carried, 3-2, on a roll call vote.

Yeas: Mrs. Fennell, Mr. French, Mr. Arbuckle
Nays: Mr. McCarrell, Mr. Gramm

MOTION: To approve the variance request for Classic Homes Inc. from Table 1155.02 of the Aurora Codified Ordinances for property at 204 East Garfield Road where the code provides for a total rear building setback of 50 feet to allow for a total rear building setback of 37 feet.

Mr. McCarrell moved for approval; Mrs. Fennell seconded, and the motion carried, 4-1, on a roll call vote.

Yeas: Mr. McCarrell, Mrs. Fennell, Mr. French, Mr. Arbuckle
Nays: Mr. Gramm

Mr. Arbuckle announced that the three variances have been approved, but the client still has hurdles ahead with the zoning situation. He advised those in attendance who wanted to address this project to attend the Planning Commission meeting.

ATWELL (Agent), N CHILLICOTHE & TREAT ROAD [1108012]

A variance is requested from Section 1153.03(p)(4)(D) of the Aurora Codified Ordinances to allow a 35 foot setback from the development's boundary for the perimeter of a conservation development instead of the minimum required 75 foot setback

Mr. Arbuckle explained the variance request.

John Lateulere, the Project Manager for Atwell, represented the applicant, which consisted of three separate property owners. He referred to the site plan to explain the location and layout. He stated that it is to be a residential conservation development. The property is 38 acres and they propose to have 91 homes on the site, four lots less than allowed. They are preserving 40 percent of the site for open space, which will contain a large existing wetland feature in the southwest corner. Mr. Lateulere said that the code's intent seems to be to preserve the natural open spaces and sensitive environmental areas.

Mr. Lateulere stated that the parcel is an oddly shaped parcel with frontage on two roads. He said that the parcel surrounds a CEI substation located on Treat Road, and has an area of land that backs up to an old railroad right-of-way. He submitted a drawing of the plan to the board members, and began a discussion on the planned development.

Mr. Lateulere explained that the underlying R-4 zoning would require a forty foot setback. They propose to meet, with the setback of a building, a total of 75 feet which meets the intent of the Conditional Zoning Certificate (CZC). He said they would still have a 35 foot preservation area and would give the owners the use of their rear yards. Using a drawing, he showed the members what the underlying zoning's 40 foot setback would be, then what the 75 foot setback looks like with 35 feet for conservation, leaving the remaining 40 feet. Also shown is the CZC's 75 foot setback with an additional 40 foot setback, for a

total of 115 feet.

According to Mr. Lateulere, they wanted to illustrate that proposed setback compared to the overall setback requirement under the CZC, which is 115 feet, is a 35% reduction. He stressed that point because the exact language presented makes it appear they are requesting to reduce a 75 foot setback to a 35 foot setback. He added that in terms of the way the code deals with the variance and what it seeks to achieve, the distance from the back of a building to the property boundaries, is actually a reduction of only 35 feet. If it were to be developed as an R-4 district compared to their request, they are increasing the setback by 80% by apply the CZC.

With regard to the seven factors this board considers when reviewing variances, Mr. Lateulere offered to address each one and how this proposed plan relates to them.

Referring to the first, if the property will yield a reasonable economic return or beneficial use if the variance is denied, Mr. Lateulere reiterated that the lot is oddly shaped. He noted that there are two very narrow areas on Treat Road, and should the 75 foot setback be required plus an additional 40 feet, it would eliminate those areas to be developed for homes. It would eliminate all of the lots in that area. Eliminating those lots would cause undue harm to the financial ability to develop the parcel. Mr. Lateulere pointed out that the current owner has had the property for twenty years and has actively marketed it with no other viable economic use coming forward.

As for the variance being substantial, Mr. Lateulere reminded the members they are asking for a 35% reduction. He noted that the R-4 zoning district is not prolific throughout the city. He said the request is not really substantial.

Whether the essential character of the neighborhood would be altered was the next item. Mr. Lateulere stated that to the west is property that is zoned industrial as well as the substantial parcel to the north. There are residential properties east of SR 306 and south of this parcel that are very low density. The CZC in the R-4 are used more as transitional areas to step down from more intense land uses to less intense uses. He said that in terms of the character of the neighborhood, the industrial to the west and north will not be substantially altered due to a more intense use. The properties to the east and the south would not be substantially altered because there is a state route running through the middle, and the homes will be set back further from the boundary lines.

Mr. Lateulere spoke of governmental services and said they would actually be enhanced by this project because it will provide the ability for properties surrounding this site to be able to tie into public water and sanitary sewer.

Regarding the property owner purchasing the property with knowledge of the zoning, Mr. Lateulere said the original owner has had it since 1991 and actively marketed it for development. It was not purchased with the knowledge and understanding of the Residential Conservation Development zoning.

As for solving the predicament through another method other than the variance, Mr. Lateulere mentioned that the other economic uses that have been proposed have not gone forward. He did not believe there is any other option as dictated by the market. He felt that there is no other way to financially or feasibly address the situation.

Referring to the spirit and intent behind the regulations being observed, Mr. Lateulere said if it was developed as an R-4 district, the homes would be forty feet from the property boundaries. Their proposed plan would increase the distance. He did believe that substantial justice would be done if the variance is granted.

Per an inquiry by Mr. McCarrell, Mr. Lateulere explained that the homes will be approximately 2000 square feet, and with available options, many homes would be 2500 square feet or more. The average size lot is about 60 feet wide by 130 feet.

Mr. Arbuckle noted that they are allowing 40 feet for a rear yard. He stated that the 75 foot perimeter setback was required for a reason. Referring to the unbuildable area to the south, he commented that the applicant is using it as a justification for the formula. Mr. Arbuckle said that the area couldn't be used for anything. Mr. Lateulere replied that the issue of buildability can be debated, and whether or not you can build on it is not ardent to the discussion since it is between the state and the property owner, and that the issue of buildability is relative. Mr. Arbuckle agreed but pointed out that the applicant is using it as a feather in the cap, to show that the applicant is environmentally sensitive.

Mr. Lateulere referred to the CZC and said that the conservation development ordinance is to preserve environmentally sensitive areas, which this plan does do. As for the 75 foot perimeter, he said he thinks it is to help reduce any potential incompatibilities between the adjacent larger uses and a smaller lot conservation development. Being bordered to the north and to the west by industrial areas, that incompatibility is more of a marketing concern for the single family homes and not the adjacent properties. The parcels on SR 306 are quite a distance from the road but they are also by the state route. The property owner to the south has both developable and undevelopable land.

Mr. Arbuckle said that in the past there have been several attempts to develop this property, and each one has been turned down or found not feasible. He said that is a message and is a call for this board to look at the variances to finally put a plan for a development together.

Mrs. Fennell wondered, if the applicant stays with the requirements of the conservation development, if the lots would just simply be smaller. Mr. Lateulere responded that if the variance was not granted, there are a few options. One would be the elimination of units, and another would be the use restrictions for the rear yard.

Mr. Arbuckle stated that there is some very tight housing and some of the units will face a CEI substation. Some of the others will have backyards facing SR 306. Mr. Lateulere said that they believe the market will correct for that.

Mr. Arbuckle mentioned for the record that the members received an e-mail from someone against the request. Mrs. Fennell said that she just wanted it to be on the record as received so it is not deemed as inappropriately received by the board. Mr. Arbuckle explained that the issues listed in the letter are not ones that this board deals with. He said that there are other committees that would address those concerns.

MOTION: To accept on the record an e-mail from a citizen expressing his concerns on this issue.

Mrs. Fennell moved for approval; Mr. Gramm seconded, and the motion carried, 5-0, on a roll call vote.

Yeas: Mrs. Fennell, Mr. Gramm, Mr. McCarrell, Mr. French, Mr. Arbuckle

Nays: None

Mr. McCarrell said that with about 20 lots being affected, he wondered if the applicant would consider having 71 lots instead of 91. Mr. Lateulere did not see it as a feasible option. He said it would be a revenue reduction of about 25%.

Mr. Arbuckle stated that the applicant came to this board knowing they would be requesting a substantial variance. He noted that they went ahead with the preparation of the plans etc. Mr. Lateulere responded that this board is to hear requests on a case by case basis where the strict application of the zoning code may not be what is just and fair in all cases. He felt that whether or not it is a substantial variance is something up for debate, and he did not feel it is a substantial request. He stated that Mr. Arbuckle is correct in that they did apply and it does require a variance.

Mr. Arbuckle asked for comments from the audience. Mr. Wehrenberg explained that the city owns one of the parcels included in this proposed development. He noted that if the e-mail accepted for the record is considered, he would like to address it point by point since almost all of them are inappropriate for consideration by this board. Mr. Arbuckle pointed out that the members would not be considering it because, as mentioned earlier, the issues listed are not ones for this board. He suggested having the Planning Commission deal with it for the record. Mrs. Fennell again explained that she only brought it up because she did not feel it was appropriate for the members to receive an e-mail without it being made public record, whether or not it has bearing on the issues for this board.

Mr. Wehrenberg said that the point of the residential conservation development is to allow the preservation of sensitive areas. It lets the developer step aside the usual setbacks for R-4 zoning on here and lets them put houses closer together. In that way, they can preserve the ecological property to the south and west. He said that, while it is not under consideration at this meeting, the wetlands in the west are also part of a much larger wetland system that extends to the south. Mr. Wehrenberg noted that it was why this development was brought as a residential conservation development, to preserve that sensitive area. He mentioned that storm water is a problem in the city and that this is a

tool in the zoning code that allows the city to account for that up front. He said they can increase the density to preserve the wetlands to the south. Mr. Wehrenberg pointed out that there is nothing to stop a developer from going to the Army Corps of Engineers to get a permit to fill the wetlands and develop the area with full-sized R-4 lots. He said that is what they are trying to avoid.

Referring to the 75 foot perimeter setback, Mr. Wehrenberg said that it is a common regulation across the country with the theory being that when homes are clustered together, there should be a separation, or buffer area, from adjoining properties. He stated that in this case, that purpose would be fulfilled by the variance since there are industrial properties to one side and a substantial buffer to the east. The area to the south will be buffered because of large lots and the area to the north is across the road. Mr. Wehrenberg then pointed out that with this variance, it will give the future homeowners a backyard outside of a conservation area.

Mr. Wehrenberg informed the members that there was another development approved for this with a conditional zoning certificate several years ago that was for fourplexes. That is still a viable option but it is less desirable from the city's point of view. He added that he thought the variance request was reasonable.

Gene Arter, 620 Prestige Woods Boulevard, said that he is in favor of the variance request and thinks it is a good use. He mentioned that the city is requesting a similar type of variance for 50 feet for ballfields, and he felt that the city shouldn't request a variance but follow their own rules.

Resident George Mazzaro stated that he is opposed to the request. He explained that during an earlier Planning Commission meeting, the applicant was asked how they would deal with a denial of their request, and they responded that they would have around 61 houses instead. Mr. Mazzaro referred to the small lots in the Geauga Lake area and the problems those residents have with additions and building garages, etc. He did not think it was constructive development for the city, especially if SR 306 is widened. He asked the members to vote no on this request.

Dave Benson, 1001 North Chillicothe Road, stated that he is representing the Benson Baker family. The family came to the city in the 1830's and is responsible for the mill. He said that the frontage on his farm runs from Treat Road to the Geauga County border, and the possibility of shoehorning many homes into a small area could impact his property. He spoke about how his family wants to keep the property as green as possible and how much impact this area can handle before things are destroyed.

Mr. Wehrenberg said that there is no contemplation of widening SR 306. He explained that he saw the traffic report and there is not enough traffic to justify the expenditure of widening that road. He then spoke about how the city will be built out within 20 years and commented that the growth should be a controlled growth. Mr. Wehrenberg urged the members to approve the variance request.

Jill Brown said that there are codes in place and she feels that a developer can use the area they have to follow the code while still making money. She stated that her property has wetlands and she respects that area.

Mr. Mazzaro mentioned that the state is increasing the width of the road in Bainbridge at SR 422. Mr. Wehrenberg responded that there are no current plans for widening the road.

Mr. Lateulere said that in the overall general development of the city he did not believe this 38 acres is a very large development. He said that they are actually building at a lower density than what is permitted in a R-4 zoning district, which is how the land is currently zoned. He stressed that they are permitted to build 95 homes but are only building 91. Mr. Lateulere noted that other developments in the city are much larger and some are developed at their full density on the full area. He said the proposed smaller lots do fill a market need.

Rob Benjamin, Vice President of Heritage Development, gave some background on the rezoning for the Barrington development. Several years ago the parcels for this development were on the ballot for rezoning, which was approved by the electorate. There has only been one proposal since that rezoning, and none were presented before the rezoning. Mr. Benjamin said they feel that with today's market this development would work. He asked the board to approve the variance request.

Mr. Arbuckle referred to the variance review checklist and said that the board must determine if the property would yield a reasonable economic return or have any beneficial use if the variance is denied. He said that the profit motive has never been a reason and should not be one to approve a variance.

Mr. Arbuckle stated that the variance is a substantial one and goes against the intent of the setbacks allowed in a conservation development. Mrs. Fennell commented that the members should consider the shape of the property as well as what the applicant plans to do. She is concerned about the small lots, but the damage that could be done to the wetlands because of the loss of backyards could be worse.

According to Mr. Arbuckle, the area does not have a lot developed, and there really is no set type of character for the neighborhood. He didn't think this project would have an effect on the neighborhood. Mrs. Fennell said that the other properties on SR 306 are very large properties. Mr. French disagreed and felt that it would completely change the character of the neighborhood, and Mr. McCarrell agreed. Mr. French said there is no development in that immediate area, and the Barrington development nearby is a completely different character.

Referring to the governmental services, he said the addition of the water and sewer lines would be helpful to others in the area as well.

The property was purchased twenty years ago, but there was plenty of time to have

alternate plans that may not need variances. The applicant was aware of the need for the variance when they went to the expense of the current plan.

Whether the property owner's predicament could feasibly be solved through another method, Mr. Arbuckle said it would be easy to say "just build bigger, fewer houses". But, he added, the applicant claims that would not be economically feasible.

With regard to the spirit and intent of the zoning regulations, Mr. Arbuckle said the members have to consider health, safety, welfare and the conservation of natural features and open space. He stated that the proposal flies in the face of the spirit and intent of the regulations which states "to conserve natural features and open space."

Mr. French said it is already zoned R-4, and he wondered if that zoning designation flies in the face of the code more than the proposal. Mr. Arbuckle noted that the conservation development aspect of cluster homes might be considered less desirable.

MOTION: To approve the variance request for the three property owners of record, Breezy Point Ltd. Partnership, the City of Aurora, and Carol Walasiewicz, for a variance from Section 1153.03(p)(4)(D) of the Aurora Codified Ordinances for the property located at North Chillicothe Road and Treat Road in an R-4 residential district where the code provides that a 75 foot setback is required for the development boundary, to allow for a 40 setback from the development's boundary for the perimeter of a conservation development.

Mrs. Fennell moved for approval; Mr. McCarrell seconded, and the motion was **DEFEATED**, 1-4, on a roll call vote

Yeas: Mrs. Fennell

Nays: Mr. McCarrell, Mr. French, Mr. Gramm, Mr. Arbuckle

Mr. Arbuckle announced that the request was denied.

Mr. Wehrenberg asked the board for a motion to reconsider.

Mr. Arbuckle responded that the board does not have a vote of reconsideration as they decided against that action several years ago.

MISCELLANEOUS:

Mr. French raised the subject of a variance request for a parcel whose zoning doesn't exist. He wondered how they ended up before this board to decide on a variance for a zoning district when the property isn't zoned for that district. He wondered how they made it to the point of appearing before the Board of Zoning Appeals without zoning. There was a short conversation on the past events with the court and zoning situation.

Mr. McCarrell stated that when the board informed Mr. Wehrenberg that there is no reconsideration, he responded that it was illegal to not consider it. Mr. McCarrell then asked Mr. Paul if it was illegal to deny a reconsideration, and Mr. Paul said it was up to the board to make it's own policy. There was a short discussion on a similar request that happened years earlier and the board's decision to no longer do reconsiderations.

Mr. Mazarro said that the question about the C-1 zoning should have been handled by City Council first, rather than going to other committees without the zoning designation and handling that at a later time. He wondered what would happen if City Council decides against that zoning and the time and work for Planning and this committee is wasted. Mr. Arbuckle noted that he told the applicant before the vote that doing it in this order was at their own risk.

ADJOURNMENT:

Mrs. Fennell moved to adjourn at 10:10 p.m.; Mr. Gramm seconded, and the motion carried, 5-0, on a voice vote.

Don Arbuckle - Chairman

Susan Dombeck - Clerk
AUDIO TAPE ON FILE