

Minutes of Zoning Commission

April 28, 2005

The regular meeting of the Bainbridge Township Zoning Commission was called to order by Mr. David Weiss, Chairman, at 7:42 P.M. Members present were: Ms. Chris Fine, Mr. Raymond Richards and Ms. Lorrie Sass. Mr. Donald Sheehy was absent.

MINUTES

Mr. Weiss made a motion to approve the minutes of the February 24, 2005 meeting as written.

Ms. Sass seconded the motion that passed unanimously.

Mr. Weiss made a motion to approve the minutes of the March 31, 2005 meeting as written.

Ms. Fine seconded the motion that passed unanimously.

NEW BUSINESS

Proposed Joint Zoning Meeting

Mr. Weiss reported that he has talked to the township trustees about a potential meeting with the trustees, board of zoning appeals and county officials.

CORRESPONDENCE

1. Bainbridge Township Board of Trustees Meeting Minutes, dated March 22, 2005, April 4, 2005 and April 11, 2005.
2. Bainbridge Township Board of Zoning Appeals Meeting Minutes, dated March 3, 2005, March 17, 2005 and April 7, 2005.
3. Memo from the Geauga County Planning Commission, dated April 5, 2005. RE: Agenda for April 12, 2005 – County Planning Commission Meeting.
4. Memo from the Geauga County Planning Commission, dated April 5, 2005. RE: Fireside Estates Subdivision – Variance Hearing.
5. Memo from the Geauga County Planning Commission, dated April 11, 2005. RE: Fireside Estates Subdivision – Auburn and Bainbridge Townships (Preliminary Plat).
6. Memo from the Geauga County Planning Commission, dated April 11, 2005. RE: Fireside Estates Subdivision – Auburn and Bainbridge Townships (Preliminary Plat).
7. Copy of letter from the Geauga County Planning Commission to Mr. Loren Henry, Henven Properties, dated April 13, 2005. RE: Chagrin Oaks Subdivision – Preliminary Plat.
8. Copy of letter from the Geauga County Planning Commission to Mr. Andrew Brickman, DHC Associates, dated April 13, 2005. RE: Edgewater Reserve Subdivision – Preliminary Plat Phases 1 and 2, Final Plat Phase 1.

9. Memo from the Geauga County Planning Commission, dated April 21, 2005. RE: Amber Trails Subdivision Phase 1 (Formerly Edgewater Reserve Subdivision – Final Plat.
10. Memo from the Geauga County Planning Commission, dated April 21, 2005. RE: Amber Trails Subdivision Phases 1 & 2 (Formerly Edgewater Reserve Subdivision) – Preliminary Plat.
11. Memo from the Geauga County Planning Commission, dated April 21, 2005. RE: Canyon Lake Colony Subdivision No. 11-A (Replat of Sublots 207 and 223) – Final Plat.
12. Zoning Inspector's Report, dated March 2005.
13. Copy of letter to Mr. Frank McIntyre from Keith R. Kraus, Dworken & Bernstein Co., L.P.A., dated April 12, 2005. RE: Application for Zoning Amendment: Harold & Gladys Nash and Mark and Jayne Nelson.

Mr. Weiss made a motion to recess the regular meeting.

Ms. Sass seconded the motion that passed unanimously.

The regular meeting was recessed at 8:01 P.M.

PUBLIC HEARING

Proposed Zoning Amendment Z-2005-1

Mr. Weiss called the public hearing to order at 8:02 P.M. Members present were Ms. Chris Fine, Mr. Raymond Richards and Ms. Lorrie Sass. Mr. Donald Sheehy was absent. Ms. Catherine Rodie of K.K. Foxx Court Reporters was present.

Proposed amendment Z-2005-1 is an application by Harold G. & Gladys M. Nash and Mark E. and Jayne C. Nelson that proposes to rezone properties at 16870 Chillicothe Road, 16850 Chillicothe Road and 16832 Chillicothe Road from Residential (R-3A) to Convenience Business (CB).

Mr. Weiss noted that the legal advertisement for the public hearing had been duly advertised in the News Herald on April 18, 2005.

Mr. Weiss then read into the record the recommendation of the Geauga County Planning Commission in a letter dated April 13, 2005 in which the planning commission recommended denial of Z-2005-1 with comments listed.

Mr. Weiss explained the application and stated that one of the parcels submitted with the application (16780 Chillicothe Road) is already zoned CB.

Mr. Keith Kraus, attorney for the applicant, stated that he wanted to clarify that he had sent a letter to Mr. McIntyre asking that the Nelson property be zoned to Professional Office District.

Mr. Weiss explained that the letter was received after the Geauga County Planning Commission had met and made their recommendation, so this proposed amendment will be for CB (Convenience Business) only.

Mr. Kraus said that he had talked to Mr. McIntyre and Mr. McIntyre said that these properties should be a buffer and added that there is no legal requirement that we have a site plan for these properties. He said the properties front on a state route and they would like their properties zoned the same as across the street and the Nash's would like to assemble the parcels and sell them to someone and Mr. Nelson feels that commercial property is the highest and best use and added that these parcels should be reviewed as one parcel and there is nothing that states we need a plan for these properties. He continued by saying that the restaurant is already zoned commercial and no one will build a house on those lots.

Mr. Tom McGlinn of 8386 Tulip Lane asked how the Dalebrook deed restrictions will be dealt with.

Mr. Kraus said he was aware of the deed restrictions and has read them and they make reference to an association like a condo development but he is not aware of any association in the development.

Mr. McGlinn said an association does exist and has for a number of years.

Mr. Kraus said he would like that information furnished if the deed restrictions have been enforced and followed.

Mr. Weiss asked if there were any questions as to what this change would involve and said he wants to help everyone understand what the proposed zoning amendment is.

Mr. Michael Cooper of 8428 Eaton Drive asked with this change, what could be built 20' from where his kids play.

Ms. Sass explained that in any given zoning district, there are permitted uses, conditional uses and prohibited uses and said if the zoning change would go through, any of those uses in a CB District could be constructed.

Mr. Weiss stated that the permitted uses for a CB District are office buildings, banks, restaurants, vocational schools, drug stores, etc. and retail stores and service establishments.

Mr. Cooper asked if the businesses permitted are the kinds that are on E. Washington Street.

Mr. Weiss said yes and service stations are allowed as a conditional use.

Ms. Sass said all of the items are clearly listed in the township zoning resolution.

Ms. Fine said they are located in Chapter 143 if anyone would like to look them up.

Mr. Joseph Oberle of 8197 Tulip Lane said the property across the street was mentioned.

Mr. Weiss explained that part of the property is zoned CB and the other part is Professional Office District.

Mr. Oberle asked if that property is directly across from these parcels.

Mr. Weiss said directly across the street is a house and he referred to the soils map and indicated the three parcels on that map that this amendment pertains to.

Mr. Cooper referred to the zoning map and asked where the Glynos property is located in relation to these three parcels.

Mr. Weiss explained that the southern end of the Glynos property is almost in line with these parcels.

Mr. McGlinn asked if Mr. Glynos is present.

Mr. Glynos stood up and acknowledged his presence but had no comment.

Mr. McGlinn said the application is defective in three areas because the applicant is requesting multiple zoning district classes and they cannot have a multiple choice. He said the proposed properties for the change are not identical and they should have separate applications and it is confusing to the zoning commission and the public and he referred to the contiguous property notification list submitted by the applicant and said that they listed Vi Besenyei as the owner of 8438 Eaton Drive and she is deceased.

Mr. Weiss said on the first part, it was dealt with through the planning commission and reviewed by them and only CB was considered.

Ms. Fine said that a letter was sent by the applicant to remove CR from the application.

Mr. McGlinn said the public was not aware of that.

Ms. Sass said it was clarified for the planning commission and the zoning commission. She asked Mr. McGlinn what he meant that the properties are not identical.

Mr. McGlinn said the zoning commission is being asked to consider the Nash restaurant, the Nash home and an empty lot.

Mr. Weiss said with regards to notifying the contiguous property owners, the current owner of 8438 Eaton Drive was notified and referred to the return receipt card.

Ms. Diane Osborne of 8438 Eaton Drive said she did get a certified notice on this hearing.

Mr. Oberle asked if the zoning commission recognizes the deed restrictions.

Ms. Sass said no and explained that the zoning commission and the township have no authority to enforce deed restrictions. She said they can recognize that the deed restrictions exist but they cannot be enforced from a township standpoint, only the association can enforce them.

Mr. McGlinn asked how the zoning commission has dealt with similar situations and asked if it has come up before.

Ms. Sass said it is a private issue with the homeowners association.

Mr. McGlinn said the zoning commission's job is to decide how land could be used and it would seem to him that any decision or action on this should be deferred. He said he moved here in 1980 because he was assured that this development would remain single family and was reassured to know that 422 would not go through Tulip Lane and that the gas station would not expand. He asked the zoning commission to delay any decision if the zoning commission is ruling in favor of this.

Ms. Sass explained that the zoning commission does not have the luxury to delay this under the law because there is a time limit and a ruling must be made in a certain amount of time and added that litigation could take a number of years.

Mr. Oberle asked if the county recognizes deed restrictions.

Ms. Sass said the county can acknowledge them but in terms of relying on them as a basis of re-zoning, a township can only zone on specific criteria that they are given according to the Ohio Revised Code.

Mr. Cooper asked if the zoning commission cannot deny a zoning amendment based on deed restrictions but they can think about it.

Ms. Sass said yes, they can think about it.

Mr. Oberle referred to a letter from the Geauga County Planning Commission where they mentioned the deed restrictions as a reason to decline this.

Ms. Sass asked if anyone has a copy of the deed restrictions.

Mr. McGlinn said they state single family dwellings only.

Mr. Weiss referred to the planning commission's letter and said he does not have a copy of the deed restrictions but does have a copy of the previous minutes and Mr. McGlinn said the deed restrictions run through the year 2000.

Ms. Sass asked if that could be on the deed restrictions and referred to the previous minutes.

Mr. Osborne referred to the planning commission's letter that they recommended denial of this proposed amendment.

Mr. Weiss said at some point, the zoning commission will take a vote and the recommendation will go to the township trustees and they will have their hearing and the only way to reverse the zoning commission's decision is by a unanimous vote by the township trustees.

Ms. Sass referred to the planning commission letter and said the zoning commission reads that letter in its hearing and added that this will have another public hearing in front of the township trustees and they will have the final decision for the re-zoning.

Mr. Osborne said he has kids and he wants to know what his kids will be playing next to.

Ms. Sass said that Mr. Kraus stated that there is no legal requirement to present a plan.

Mr. Weiss solicited comments for the amendment.

None.

Mr. Weiss solicited comments against the amendment.

Ms. Diane Osborne of 8438 Eaton Drive said her property abuts this property and asked how many shopping centers are the residents going to tolerate and it is vague as to what is going to be put in there and asked how they will get out of their development with all the traffic.

Ms. Colleen McCance of 8320 Eaton Drive said her concern is if these three properties are allowed to go to CB, it will open up the other properties to go commercial and asked where does it stop?

Mr. Cooper said his house is very wide because they cannot have a second floor so his house is close to the edge of the lot and he should not be punished because he followed the rules and when he moved here, the zoning was single family.

Ms. Mary Cooper said they have three young children and she is concerned about the safety of her kids and the residents don't need a drive-thru and they do not want to lose their kids to some pedophile. She said her property is right where those parcels are and she does not want to put her kids at risk. She said they have a wonderful development and they have great neighbors and asked what will happen to their property values and who will want their properties and she cares about her kids.

Ms. Oberle asked why the township would allow more retail when there is so much retail now and the stores are not filling up as it is.

Ms. Anne Patram of 8337 Tulip Lane made the following statement.

"First, I thank you for allowing me the opportunity to voice my opinion on the proposed zoning change requested by Mr. and Mrs. Nash.

I am opposed to their request of making the property adjacent to their restaurant changed to commercial.

I live on Tulip Lane in Dalebrook, which is the first street south of the Nash's property. Access to route 306 has over the years, with the commercial development of the E. Washington Street intersection, become more than challenging. There has been a significant increase in traffic and not only at peak rush hour times.

I understand that no one wants to be the house next door to commercialism. But I believe it has to stop somewhere, before the commercial creep takes over all of Route 306 all the way to Interstate 422.

I believe the application states that this change would serve the needs of all nearby residents and the township. As a resident of Bainbridge Township it would not serve my needs. I consider that I live in a settled residential area. With continued commercial re-zoning I fear someday exiting Tulip Lane will bring me into a parking lot.

I have no doubt that in any emergency our fine fire and police department services can reach our neighborhood, but when it is your personal emergency you want it to reach you in a timely fashion with no major traffic obstructions. And traffic is an issue in this area already.

With commercial clearance we have no idea what could fill up that area. There is the potential of loud disturbances to our residential neighborhood and views of backsides of buildings including dumpsters.

I am confident the Nash's want to maximize their property value before they sell. But that also means putting the value of other's property at risk.

I ask you to please maintain the area as residential and allow us to have all the qualities that residential life brings.

Thank you."

Mr. McGlinn said according to the 2000 Census, there are 11,000 people and 3800 homes in the township and asked how many restaurants there are already in six tenths of a mile of McFarland's Corners. He said there are 20 restaurants and he asked how many strip malls there are within one-half mile of McFarland's Corners. He continued by saying there are seven strip malls, five banks and two office malls. He said the south side has been residential except for the Rapisarda property and the Nash's said eleven years ago that four or five properties were not re-sellable, but the Nelson property belonged to the Bonifields and the Nelsons bought the Bonifield property. He said there are safety concerns and the state will not make Rt. 306 a four-lane road and everyone ignores the criss-cross lane at the intersection and it is a hazard. He said on E. Washington Street people ignore the left turn lanes and he hopes Tulip Lane will not be a turn-around use. He said this impacts the entire neighborhood and added that there have been six to seven accidents in the last year because of people trying to move across lanes and it is a hazard at the entrance to the Market Square shopping center. He said the occupancy is very low and referred to some of the empty buildings and it would not be serving the community by developing a residential area to the south.

Mr. Oberle said they moved into the development and thought it would stay residential.

Ms. Cynthia Krause of 8435 Tulip Lane said she understands the Nelsons predicament but if you start tearing down trees, we will see the ugly green awning in the strip mall and we can see all the city lights and green awning lights and we don't need more businesses in our community.

Ms. Linda Finney of 16890 Chillicothe Road said she is a direct neighbor of the Nelsons and if they get re-zoned, she and her husband will be by themselves.

Ms. Alice Kelly of 8415 Tulip Lane said that sewer and water are not available to those properties so their resources in the subdivision could be depleted.

Mr. Weiss explained the County 208 Plan and said the letter stated these parcels are not part of the 208 Plan.

Ms. Kelly said as a homeowner that relies on a well for water, it is enough to go against this.

Mr. Cooper asked if anyone has been 20' to 30' from a garbage truck picking up garbage in the morning.

Mr. Weiss asked if there are any other comments against the amendment.

Ms. Sass explained that once the public hearing is closed, the zoning commission cannot take any additional comments.

Mr. Weiss made a motion to close the public hearing at 9:04 P.M.

Ms. Sass seconded the motion that passed unanimously.

The regular meeting was reconvened at 9:04 P.M.

Mr. Weiss explained to those in attendance that the zoning commission will make a recommendation to the township trustees and then the trustees will have a public hearing and they would have to have a unanimous vote to overturn the zoning commission's recommendation. He also explained that a referendum could be initiated to reverse the decision of the township trustees and added that there is always a second chance for both sides.

Proposed Zoning Amendment Z-2005-1

Mr. Weiss made a motion to recommend approval of Proposed Zoning Amendment Z-2005-1.

Ms. Sass seconded the motion.

Vote: Ms. Fine, nay; Mr. Richards, nay; Ms. Sass, nay; Mr. Weiss, nay.

Mr. Weiss explained that the zoning commission did not recommend approval and added that the trustees will hold their public hearing in about 30 days.

Ms. Sass said that all contiguous property owners will be notified by regular mail.

Since there was no further business to come before this meeting of the Bainbridge Township Zoning Commission, Mr. Weiss made a motion to adjourn the meeting.

Ms. Fine seconded the motion that passed unanimously. The meeting was adjourned at 9:30 P.M.

Respectfully submitted,

Linda L. Zimmerman
Zoning Secretary

David Weiss, Chairman

Date Approved: May 26, 2005

