

MINUTES OF A SPECIAL MEETING OF
THE PLAN COMMISSION OF THE VILLAGE OF KENILWORTH HELD AT
THE KENILWORTH ASSEMBLY HALL, 410 KENILWORTH AVENUE,
AT 7:00 P.M. ON THURSDAY, JANUARY 12, 2006.

A special meeting of the Plan Commission of the Village of Kenilworth was held at 7:00 p.m. on Thursday, January 12, 2006. The following Commissioners were present:

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| Present: | Robert Smietana Tom Feeny Henry Mawicke Susan Hoopes Elizabeth Bannon Tolbert Chisum Dirk Degenaars Robert Cunningham | Chairman Member Member Member Member Member Member Member |
| Absent: | Gwen Sommers Yant Tim Dugan | Member Member |
| Other Village Officials Present: | Max Slankard Barb Adams Susan Criezis | Village Manager Attorney Community Development Director |
| Others Present: | George Luscombe Joe Katcha Pam Katcha Pat Babb Dorothy Parrott Jackie Bossu Mary Quinn Nefrette Halim Jerry O'Malley Reid Engelmann Richard Friedman Chip Hackley | 527 Warwick Road 528 Kenilworth Avenue 528 Kenilworth Avenue 349 Ridge Road 538 Kenilworth Avenue 614 Earlston Road 514 Greenwood Avenue 533 Roslyn Road 310 Glendenning Road 429 Warwick Road Neal & Leroy, LLC 517 Greenwood Avenue |

Chairman Smietana reviewed the minutes of the October 17th and November 17th meetings. Tolbert Chisum made a motion to approve both sets of minutes. Robert Cunningham seconded the motion and it was unanimously carried 7-0, with Commissioner Bannon abstaining.

Chairman Smietana advised that the Commission's deliberation on the 517 Greenwood subdivision is not a public hearing, but it is a public meeting. He advised that a number of the neighbors are represented by Mr. Richard Friedman of Neal & Leroy, LLC. The Chairman advised that the Commission would hear from Mr. Friedman. Mr. Friedman introduced himself as the attorney for the Yohanans, Muellers, Collins, Corrigan, Carranes, Quinns, Rodgers, O'Malleys, Tippens, Katchas and Caywoods. Mr. Friedman submitted a document entitled Citizens Objections to Application for Resubdivision Filed on Behalf of Owners of Property Known as 517 Greenwood Avenue, Kenilworth, Illinois. Mr. Friedman stated that the resubdivision as submitted does not comply with Kenilworth ordinances. The property has a

side yard that is not permitted and it is not at a right angle to the front lot line as required. A variation could be permitted, but the applicant has not stated a hardship. The owner knew what he was purchasing. A variation could be allowed, but it is very clear that the applicant is asking for a deviation from the established pattern. Mr. Friedman called the Commission's attention to Exhibit 4 of the citizen objections, showing the continuous rear yard open space along that block. What the applicant proposes is tabbed at Exhibit 5, with proposed setbacks which interrupt the open space. He said what the applicant would be entitled to is a rear yard with a 25 foot setback as in Exhibit 6, rather than an 8 foot sideyard setback as proposed. The setback should be designated as a rear yard as referenced in the ordinance, as it is the line most opposite of the front yard. He stated that if there is a 25 foot setback, the plat imposes very little on the use of the lot, as shown on Exhibit 7. Mr. Friedman stated that he has examined detrimental impact to the applicant of a 25 foot setback, and does not see any, as there would be no reduction in the size of the building that could be built.

Mr. Friedman said there is an additional technical ground. The owner does not have the storm water certificate required by Illinois law. There is an application pending to expand the impervious surface. The certificate is not on the plat. We do not know the proposed impervious and we do not know the sewer capacity. He hoped that the Commission would consider this matter carefully.

Chairman Smietana thanked Mr. Friedman. He noted that Attorney Adams had prepared a memorandum on the issues, and asked her to review these. Attorney Adams said the memo addressed a number of the issues Mr. Friedman raised. She read the text of Section 32-4(d)(1) of the Village Code to the Commission regarding a variation of the requirement that side lot lines be at right angles to the street line and said it seems you could consider whether the angle of the property line would be a hardship. We know that this angle was created with the original platting of the area in 1923. She said the Commission may consider whether the requirement for a right angle side lot line is a hardship or injustice in this circumstance. Chairman Smietana asked Attorney Adams to address the storm water certification issue. A member of the audience asked how hardship is determined. Chairman Smietana advised that would be addressed at a later point.

Attorney Adams said with regard to drainage, there is a requirement of the Plat Act which is pretty ancient that requires a certificate from a professional engineer that water run off will not additionally burden the adjoining land. There is a letter from the petitioner's engineer, Don Fielding, P.E., with the proper language. Chairman Smietana asked when the certificate would be signed. Attorney Adams advised it would be signed when the final plat is approved by the Village Board. She added that proposed buildings and structures are not required to be shown on the final plat.

Mr. Jerry O'Malley, 310 Glendenning, said he shares 60 feet of the fence line with the subject property. He said his concern is that meetings focus on floor area ratio and building height, which is important, but what is ignored is drainage and topography, and it is serious. His neighbors are all pretty dry currently. When more impervious surface is added, it will end up in his yard.

Mr. Robert Yohanan, 550 Greenwood, said there is always significant street flooding on Greenwood Avenue. He said it is a very real issue, so the statement by the engineer baffles him. To throw additional water into the sewer would only make the situation worse.

Ms. Mary Quinn, 514 Greenwood Avenue, said the street gets raft worthy after rain. Mrs. Carrane said Kenilworth Avenue from the 500 block east is inundated with water in a mild rain. Mr. Albert Tippens said in intense rain his back yard floods. Ms. Dorothy Parrot Hughes, 538 Kenilworth Avenue, stated that she thought Mr. Hackley said at the last meeting he was going to show plans for the new home proposed, and she did not see them. Chairman Smietana said the Commission said he could do so if he chose to, but it cannot be required. Ms. Hughes said this proposal is a hardship to everyone here and that's why everyone came. She said this will change the entire neighborhood, and it is not right. She stated that developers are ruining the neighborhood, and it is not right.

Ms. Alicia Tippens said no one had addressed the issue of heritage trees on the property. She expressed concern that the root structure of trees on her property would be damaged.

Chairman Smietana said he would like to re-center this discussion on matters within the Plan Commission's jurisdiction. The Commission is here to consider the moving of a lot line, not the design of a house. That will come later. The question is does the owner have the legal right to move the lot line and have a buildable lot. The petitioner will comply with the tree ordinance, drainage requirements, and design review if applicable. He hears what everyone is saying, but the Commission is here to look at the legal issue. He asked Chip Hackley if he would like to speak.

Mr. Hackley said regarding the document he received today, he believed he complied with the code requirements. As far as the drainage requirements go, he is not proposing any grade changes, and he is reducing the impervious surface with the existing house. With regard to the angular lot line, he has taken the Village's lead. He put a self-imposed sideyard setback of 15 feet along the angled lot line, which is almost twice the 8 feet that is required. He worked with a very preliminary site plan, which will impose a greater rear yard setback than that required by code. He said that while some say this doesn't do a whole lot, he is willing to do it.

Regarding heritage trees, Mr. Hackley said there are three in back and one may be affected, but two will remain. He asked that the Commission respond to some of these items. He added he is also willing to discuss how the property might change hands if the community is interested.

Mr. Friedman said he hears self-imposed setback, but it is not on paper. Attorney Adams stated her understanding that the petitioner is willing to do this. Chairman Smietana said the Commission would not take a promise unless it was legally binding. Commissioner Cunningham asked if Mr. Hackley has looked at a 25 foot setback along the angled lot line. If that were acceptable, this could be over very quickly. Mr. Hackley asked if that was what we were here to address. Chairman Smietana said we are here to discuss anything in regard to the approval process. He asked Mr. Hackley if he would agree to a 25 foot setback. Mr. Hackley said no, not without more time to think about it.

Mr. Friedman said the angular lot line is not a side yard line, and there is no hardship. We have not heard what it is. Mr. Hackley said this is not a variation hearing, and this is not a variance. Commissioner Mawicke said we have a disagreement between counsel on what is the side and what is the rear yard, and asked Attorney Adams to clarify on this issue. Ms. Adams read the language in the code. Ms. Susan Criezis added that the current interpretation of the angled line being a side yard line was also consistent with the interpretation of former Village Legal Counsel Bruce Wilson and former Village Manager Ken Terlip.

Commissioner Bannon asked if there was any case law on this. Attorney Adams said no. Mr. Friedman said to look at the very words of the Village Code. The Code requires right angles, and this cannot be approved unless a variation is given. Attorney Adams noted that the Commission does have the discretion to approve a variation. Mr. O'Malley said the house shape should be a triangle, and he did not think that would work well.

Chairman Smietana stated that the Village legal counsel says the angled lot line is a side yard. He said he would like to go back to the discussion of Mr. Hackley's previous offer to increase the side yard setback from 8 feet to 15 feet, and the increase the rear yard setback. He also said Mr. Hackley offered to do a layout footprint for a new structure, which Susan Criezis distributed to the Commission.

Mr. Hackley said he wanted to reiterate that he was not at this meeting for building review. He said what he has proposed is increasing the side yard setback from 8 feet to 15 feet and increasing the rear yard setback, which reduces the garage size. The proposed lot coverage is 10% under the maximum. With regard to the side yard, the building concept that is sketched is a saw tooth. He said someone could expand the current house to within 8 feet of the lot next door, but he did not want to do that. He said he could also make it a 1½ story house, but does not want to do that now. Mr. Hackley said he would agree to a 15 foot sideyard setback on the angled lot line and a 48 foot rear setback.

Commissioner Cunningham asked Attorney Adams if she could address Exhibit 1. He asked if these are things the Commission needs to address. Attorney Adams said the Commission should be looking at side lot lines at the street, and the pie-shaped existing boundary. Commissioner Cunningham asked if they need to find that a hardship exists. Attorney Adams read the language in Section 32-4 (d) and (f) of the Village Code, and advised that the commission would need to determine whether there was a hardship or injustice here in order to grant a variation. Commissioner Cunningham said on this existing lot, it is treated as a side yard, and asked why subdividing would change the zoning interpretation. He asked Mr. Friedman to address what there is about changing the lot line that changes the sideyard, in his opinion.

Mr. Friedman said the standards require a perpendicular side yard. He did not agree that the angular line is a side yard.

Commissioner Hoopes said on the existing lot, the piece that is parallel to the front of the lot, which is 18 feet long, makes it the rear yard. Commissioner Bannon asked if she was saying that Mr. Hackley consented that the diagonal line on lot 1 is the rear yard, but not on lot 2.

Chairman Smietana asked if there were any other comments or a motion. Commissioner Bannon asked if the Commission could vote with the self-imposed setback. Chairman Smietana said he would get there in a moment. Attorney Adams said one question from the last meeting was the restrictive covenants which required 6 foot side yards, and whether there were any other relevant covenants. She advised that there are not and noted that the covenant provided for a six foot yard along the angular line. Chairman Smietana asked if the Commission had received all documents. Ms. Criezis said yes, and this seems to be the boiler plate covenants for all lots in that subdivision.

Mr. Friedman said there is nothing on the original plat that says what the side yard is.

Commissioner Cunningham said there is a disagreement on the lot and the side yard or rear yard. The lot is an unusual size and shape, so a strict application of the standards would not be appropriate. Therefore, he recommended approval with the 15 foot side yard. To give a basis, he thought there were unusual circumstances with the lot configuration.

Chairman Smietana asked if he wanted to craft that into a motion to recommend approval.

Commissioner Cunningham made a motion to recommend to the Board of Trustees the approval of the tentative plat with the recognition that proposed Lot 2 is of an unusual size and shape and will potentially impact both the neighbors and the owner, and strict application of the standards would be a hardship to both the petitioner and neighbors, with this recommendation subject to the applicant's self-imposed 15 foot side yard setback and a 48 foot rear yard setback. Commissioner Bannon seconded the motion, and a roll call vote was taken as follows:

Yea: Cunningham, Bannon, Smietana, Feeney, Mawicke, Hoopes, Degenaars, Chisum
Nay: None
Absent: Dugan and Yant
Abstain: None

The Chairman declared the motion carried 8 to 0, and the tentative plat is recommended to the Board of Trustees for approval.

He announced that he expected this to go before the Board of Trustees on February 13, 2006.

Next, Elizabeth Bannon presented a report on fire prevention and life safety codes. Her report noted that the Village does not receive fire inspection services from the Village of Winnetka as part of its contract. Her report recommended to the Commission three actions. These include:

- 1) Request that the Police and Fire Committee consider expanding the fire contract with the Village of Winnetka to include Fire Prevention services;
- 2) Request that the Building, Planning and Zoning Committee consider updating the Building Code to begin an annual fire prevention inspection process, and make the requisite code changes to harmonize the Village's code with Winnteka's codes; and
- 3) Request that the Finance Committee consider including the costs for these changes in the upcoming budget.

Chairman Smietana noted that Winnetka has different building codes. Ms. Criezis said many villages did not adopt the 2000 version of the national building codes, but are adopting the 2003 IBC Code. Commissioner Mawicke asked if that code would replace BOCA. Ms. Criezis replied it would, as the IBC is the new organization for the building codes.

Chairman Smietana made a motion to recommend this to the Board of Trustees. Commissioner Cunningham seconded the motion which, upon voice vote, was unanimously approved.

Next, the Village Manager updated the Commission on submissions received from consultants in response to the Commission's RFQ. Six firms had submitted proposals, and he distributed copies of the submissions. He noted that a subcommittee including Commissioners Bannon and Yant, along with Chairman Smietana, had been proposed for evaluating these proposals. He added that Commissioner Hoopes had indicated interest in participating. Chairman Smietana directed, with the concurrence of the Commission, that Commissioner Hoopes serve in his stead. He asked that the subcommittee evaluate the qualifications, short list the firms as

appropriate, and set up an interview process for the next scheduled meeting on February 6, 2006.

There being no further business, Commissioner Cunningham made a motion to adjourn, which was seconded by Commissioner Feeney and unanimously approved.

Respectfully submitted,

Max Slankard
Village Manager