

Cuyahoga Falls City Council
Minutes of the Planning & Zoning Committee Meeting
April 6, 2009

Members: Diana Colavecchio, Chair
Kathy Hummel
Ken Barnhart

Mrs. Colavecchio called the meeting to order at 6:40 p.m. Mr. Barnhart was absent.

The minutes from the February 17, 2009 committee meeting were approved as submitted.

Legislation Discussed:

Temp. Ord. B-24

Temp. Ord. B-25

Discussion

Temp. Ord. B-24

An ordinance authorizing the creation of a minor plat for the reconfiguration of parcels 35-02289, 35-02288 and 35-02287 at 4476 & 4478 Quick Road and declaring an emergency.

Mr. Guerra stated that currently, there are two homes on one parcel. This is requesting to split it into three parcels. Each house would be on its own parcel with a third parcel for a future residence. The total acreage is 16.08. It needs approval from the Planning Commission and Council for the minor site plan. The parcel is a strange configuration inherited with the merger. The Planning Commission approved it on March 17 with three waivers. There will be an easement to allow all three properties to use the current drive and will limit access to three single family homes. Without a street, they can only have one additional home, however, they can later subdivide into a subdivision but would need to get approval and put in a cul-de-sac. The property is zoned R-1. That has not changed. Mrs. Colavecchio stated that they would have to come back to the Planning Commission for a zoning change if they wish to turn the parcels into a subdivision. Mr. Guerra stated if that is the case, it would be a major subdivision and that would come to the Planning Commission and to City Council. Mrs. Colavecchio added that there is also a pond on the property and both home owners share ownership of the pond. Mrs. Hummel asked where the cul-de-sac would come in if there were to be a subdivision. Mr. Guerra stated it would be difficult to create a subdivision here. The only way would be if the two current houses were torn down so the cul-de-sac could run through the middle of the property. Mr. Mader stated he is in total support of this legislation and encourages Council's approval. The property owners have tried to split this property for quite some time. Without this change, they would have to sell both of the homes which is difficult during these times.

Committee recommended bringing out Temp. Ord. B-24.

Temp. Ord. B-25

An ordinance authorizing and approving the site plan to construct a 15-unit Apartment Building on Parcel 02-18986 on Charles Street and declaring an emergency.

Mr. Guerra stated this is a site plan review of the site. The zoning issues have been dealt with by Mr. Arrington's legal opinion, which is based on the 1987 court order that keeps this as multi-family zoning. This plan was approved at the March 17 meeting of the Planning Commission. One issue that came up was allowing them to work with the Summit County Health Department to use part of the property for future expansion. An alternate reflecting that has been distributed to Council. It is for a 15-unit apartment building

on 1.49 acres. On Alternate 2, .83 acres are slated for the Health Department's future use. There are seven stipulations. The Planning Commission approved the site plan that was before it that night but wanted the project to look for better alternates. The new alternate would have a mounded area behind the Charles Street houses and also have pine trees for additional screening. This alternate plan meets the recommendations.

Jason Sherman, 2820 Castlewood, Columbus, is the engineer and spoke to the detention area. There have only been preliminary sketches done but he feels that a detention area would work. When comparing the alternate to the previous plan, the building will be repositioned approximately 100 feet to the east of its original position. Mrs. Colavecchio asked if there would be any restrictions in the City's Code regarding the additional parking that would be located on the Health Department property. Mr. Guerra stated there would be an agreement with the Health Department for those spaces. The Health Department was satisfied with the new site plan because it would allow them to expand. The additional parking would not be used often but it does meet with the City Code. Mrs. Colavecchio asked if the written parking agreement would be made a part of the file. Mr. Guerra stated the Code requires it. Mrs. Hummel asked if there would eventually be a sale of the rear portion of the property, which would require a lot split. Mr. Guerra stated a minor lot split would not need to go before the Planning Commission or Council. Mrs. Hummel asked if this would be the only building built by the CDC on this property. Mr. Guerra indicated it would. Mrs. Hummel stated this was a good alternate and a good compromise for the site. It provides an excess to Graham Road businesses and to the Health Department for the residents so they would not have to go out Charles Street. She is in support of the plan. Mr. Walters asked about open space requirements. Mr. Guerra stated the only thing the City requires is the development cannot be more than 65 percent of the entire site so 35 percent would be landscaped. Right now, they are at 53 percent. The remainder would be grass and landscaping. Mr. Walters asked about the Health Department's plans. Mr. Guerra indicated the Health Department was concerned about its future expansion plans. They do not have plans right now but could always add to their building to address additional needs. They would not need a zoning change because the City allows public buildings in residential neighborhoods. Mr. Walters asked if people could park at the Health Department for events held at Ross Park. Mr. Guerra stated people currently park there on the weekends and cut through the parcel to go to games. They will probably continue to do so. Mr. Walters asked if CDC would retain ownership of the whole parcel. Corliss Newsome stated they need to find out what the Health Department plans to do and then make adjustments. Mr. Walters asked how the CDC found the property. Ms. Newsome stated there was an appraisal done last summer. Her organization gets deeds on a regular basis. There was no formal relationship with the current property owner. She added they have a fund reservation from HUD but there is nothing formally committed yet. Mr. Walters stated he will not dwell on the zoning. One thing he would ask is for a legal opinion on Mr. Arrington's legal opinion and whether it is binding. Mr. Arrington stated his opinion is that his legal opinion is correct and City Council is bound by the Law Director's opinion. Individuals can hire someone but Council cannot. Mr. Walters stated that the consensus is there is not a lot of case law on this situation. The R-4 zoning was passed by Council. He feels the multifamily zoning is not proper. He asked if the detention pond will be adequate due to its shape. Mr. Demasi stated the alternate plan has not been officially approved so he cannot speak on its adequacy. The project will not be built if it is not approved. Mr. Walters asked if trees would now need to be removed due to the change. In the prior plan, there were trees that would remain along the property line but it appears the new plan shows them being removed because of the pond. Mr. Sherman stated there are actually more trees than before. Only three or four may have to be removed. Mr. Walters asked if there were any outstanding issues and asked what still needed to be submitted. Mr. Guerra stated the developer is submitting things now and his department will review their plans. They will go through normal plan approval through the Building Department. The only thing now is approval from City Council. Mr. Arrington added that there is not a lot of case law out there on this fact pattern. Mrs. Colavecchio asked since there is nothing in writing other than Mr. Arrington's opinion that defines the property as R-5, was there something Council needed to do to officially make that change. Mr. Arrington stated the Court Order is the only thing in writing combined with the City's redefinition, so the R-4 zoning is invalid in terms of the Zoning Code. To the extent that Council zoned this property anything other than R-14 or R-5, the Order would make that zoning illegal. Council does

not need to correct it before proceeding with this legislation. It would actually be considered a clean-up issue. Mrs. Colavecchio asked if Council would need to amend this legislation next week to include the alternate or would it be a substitute. Mr. Arrington stated it wouldn't be an amendment but Council could do a substitute. There is no language change in the ordinance. It would just be the exhibit.

John Gaglio, 3390 Charles Street, stated at one time his house was part of the property and water drains from his property onto the back parcel. If mounding is put in place, it will cause flooding on his property. It seems to him that putting in mounding would stop the natural flow of water, which will be creating more problems. If he has flooding, he will then be coming to the City's Moral Claims for reimbursement for damages. He accepted the original plan but now the building is too near the property line. Overall, he does not like the way this project has been done. The property owners were never notified until information was placed in their mail boxes giving them only two days to respond. They had no time to find out any details or determine the affect if would have on their properties. With regard to the water runoff, Mr. Demasi stated he would work with the architect and the civil engineer to alleviate and problems. Mrs. Colavecchio asked how close Mr. Gaglio's house was to the mound. Mr. Gaglio stated his detached garage was very close. Mrs. Colavecchio recommended that Mr. Gaglio spend some time talking to the developer and the City's engineering office to work with them to help with the issues he raised regarding water run-off. Mr. Gaglio stated all he's heard is that this is a done deal. No one has given him any kind of helpful hints at all. Mrs. Colavecchio indicated that everyone has heard that term. There is a process in place. It began with the Mayor's meeting and other meetings, and here it is today. It is not a done deal until this Council votes on it. The residents have had many opportunities to voice their concerns. Council will vote on what it has before it and that is this development.

Scott Cadwallader, 3410 Charles St., stated he agreed with his neighbor. He does not understand why this has to be rushed through. What if the developer is wrong. All he has heard are threats, including from the Law Director who said the project would be approved within 60 days and that if Council voted against the project, it will be sued. Residents elect people to work in their constituents' best interests so those officials should be able to vote how they want without being threatened by the Law Director. He wondered why there is a Council if the Law Director is going to direct everything. He asked what the big hurry was. The land has been vacant since the court ruling. Mr. Arrington stated that the 60 day requirement is in the City's zoning code. A matter is offered to the Planning Commission. If the Commission takes no action within 60 days, a project is automatically approved. It has been 57 days. Concerning the potential of personal liability or individual liability, it is his duty to advise his clients of the possibility of being sued.

David Kerekes, 3309 Hudson Drive, commented on the legislation being declared an emergency. Mrs. Colavecchio indicated that language occurs on legislation passed by Council so it can be acted upon immediately by Administration. Mr. Arrington stated it is in each ordinance. If Council passes an ordinance and that language is not there, then the ordinance does not take effect for 30 days. If it is there, it takes effect as soon as the Mayor signs it. In development ordinances when a property owner has the right to do what he wants with his property, there is no reason to wait. Mr. Kerekes added that the parcel is a swamp. It retains a lot of water and will require a lot of money to be spent to prevent water damage to adjacent areas. Also, if people are in wheelchairs, it is a low-lying area so they will have to go uphill to leave the property. It is a safety factor.

Mr. Gaglio felt there was no way to predict how long the building will be there to house these residents. What if the CDC vacates the building. Mr. Sherman stated the organization is entering into a 40-year agreement with HUD to keep the property up.

Mrs. Colavecchio stated that Council has been listening to the residents and have talked among themselves in terms of trying to sort out the best direction to go. The project will get Council's full attention. If residents

want to see the outcome, they should attend the Council meeting next week when the voting occurs. Council is mindful of the residents' concerns.

Committee recommended bringing out Temp. Ord. B-25.

The meeting adjourned at 7:40.