

Cuyahoga Falls City Council
Minutes of the Planning & Zoning Committee Meeting
September 7, 2010

Members: Vince Rubino, Chair
Jerry James
Ken Barnhart

Mr. Rubino called the meeting to order at 7:50 p.m. Mr. Barnhart was absent.

The minutes from the May 17, 2010 Committee meeting were approved as submitted.

Mr. Rubino stated he called this meeting to allow a resident to speak on PPN 02-02171.

Nick Maximovich, 2417 4th Street, felt the City did not abide by the Code under “Duties” in Section 111.08 with regard to a property located at 2400 Third Street. Construction started in July. He checked with the City to see what was being built and discovered it was a five-unit building on this small lot. He spoke with Mr. Guerra, who believed the property was zoned R-6 yet Mr. Maximovich stated the maps showed it was R-5. He was told the difference between the two zoning classifications was just the height of the buildings but, after checking, he discovered density was also impacted. He then contacted his Councilman. Mr. Ihasz met with Mr. Guerra to go over the plans. It was originally designed for four units but they did not meet Code so it was redesigned with five units that did meet Code. He sent a complaint through the Community Development web page about the minimum lot size. Mr. Guerra responded and said since these lots are not nonconforming, they allow people to use them for legal nonconformance. Mr. Maximovich felt that when you change the use of the property (in this case, going from a single family home to a five-unit dwelling), you lose the status of legal nonconformance and, therefore, must comply with the Code. Mr. Guerra stated the only problem was the width. It would be a minor variance. The Code states that a single attached multifamily dwelling width needed to be 120’. They called for a variance through the Board of Zoning Appeals. Mr. Maximovich wanted the project stopped. The permit should have been null and void by the Code as soon as the City found out there was a problem with the variance, however, the City allowed it to continue until the room was almost done. He felt that was because the City would have been sued by the developer since the City issued a permit to the developer. If the City would have stopped construction at the beginning, there would not have been such a huge financial risk. He submitted a third complaint for variance for 1,500 s.f. because this building is 2,200 s.f. He had no chance to review the documents at the Board of Zoning Appeals because the documents were not ready and there was an attachment missing. Two of the Board members requested additional time so that they could go to the property and personally view the project. Mr. Guerra talked about this as a use variance and not an area variance. At the end of the report he mentioned area but five pages were devoted to use variance. No copy of the Building Code was available in the room. He wondered how members could vote without knowing what the Code said. He assumed that a transcript of the meeting is a legal document, however, much of the information given at the meeting is missing. He fixed his home up and made it into a nice place. Now he has this huge thing in his backyard. It just does not fit.

Kathy Maximovich, 2417 Fourth Street, stated neighbor Ruth Pinkerton called the City Building many times to find out what was being built but no one called her back. Her driveway is directly impacted by this project. Another resident next to this building has no privacy because the units look directly down onto her property. Mrs. Pinkerton was promised the building would not be close to her property but it is. There is also a telephone pole with wires dangerously close to the building. The original application was for a four-unit building. There was never a second application. When she requested documents to see what was being built, no one could find anything other than the four-units originally planned. One thing

that was stated at the Board of Zoning Appeals meeting, but missing from the transcript, was Tom Sullivan mentioned that a posted notice is just a courtesy to residents. However, the Code states that a notice shall be posted on the property seven days prior to a hearing. That does not sound like a courtesy to her. Under 114.102, design elements protect the character of surrounding properties. There is no way this building portrays the character or helps the values. One of the BZA members was kind enough to state that he spent over 15 years as an accountant and in reviewing this application, he does not feel that having an apartment building here would help an appraisal. Mrs. Maximovich was told by an appraiser that they will lose money on property value with that structure in there. She also believes the property was surveyed incorrectly. There is no way they can live up to what they said in the BZA meeting.

Mr. Mader asked Mr. Guerra for his opinion. Mr. Guerra stated he did not want to debate the Code. He admitted the City made a mistake. Mr. and Mrs. Maximovich are looking at a different translation than how the City looks at the Code. The proper process is to go through the Board of Zoning Appeals. As soon as the City discovered its mistake, it stopped construction until after the Board of Zoning Appeals hearing. The Board looked at the matter and felt comfortable providing the variance for five units. It could have said "no." The house previously on the property had been vacant for 27 years and had numerous housing violations since 1967. That does not do a lot for property value either. Mr. Mader asked why this matter didn't come before Council. Mr. Guerra stated it is a Board of Zoning Appeals issue. There was a four-unit building that was originally applied for but because of other reasons on the property, the developer decided to go with a five-unit building. That is what he got his permit for. Mrs. Hummel stated she would like a copy of the staff summary that was provided to the Board of Zoning Appeals. She asked how many variances there were. Mr. Guerra stated there were two—area and width. Mrs. Hummel asked how the permit was issued prior to the Board of Zoning Appeals meeting. Mr. Guerra stated they were not aware there was a mistake. The developer's plans were approved and he was able to get the permit. Mrs. Pyke asked what the square footage was. Mr. Guerra stated it was 10,890 s.f. Mrs. Pyke asked at what limit did a project have to go before the Planning Commission and what was the square footage of the building. Mr. Guerra stated he did not have the square footage. He added that eight units would go to the Planning Commission. He stated for five units, they needed 12,000 s.f. They have 10,890. The width is 120' so the developer was granted 9% in area requirements. The project met all other setback requirements. Mrs. Pyke asked how far along the project was when the City discovered the mistake. Mr. Guerra stated the walls were being put up on three units. There was a stop work on the fourth unit. Mrs. Pyke stated she would also like a copy of the staffing report. Mr. Mader asked about the distance of the power lines from the building. Mr. Guerra stated that issue was reported to the Electric Department. The pole will be removed.

Mr. Ihasz stated this was for a four-unit building. At the Board of Zoning Appeals, the developer stated he changed from two 2-unit buildings because it was difficult to pull in for parking. Now the project is one 3-unit building and one 2-unit building. He wondered how there can be no problem with the parking with that configuration. Mr. Guerra believed the original buildings were longer. Also, the real problem was the driveway entrances. Mr. Ihasz asked if there were two 2-units, would there have been a problem with variance. Mr. Guerra stated that four units needed 96 foot width. Mrs. Pyke commented about whether the utilities should be located underground here and asked to be shown where the pole would go. Mr. Guerra stated the Electric Code does not require utilities to go underground. Mrs. Pyke stated it may not require it but she wondered how the pole was going to fit in here. Mr. Guerra stated the Electric Department said they will deal with that. He cannot answer that question. Mrs. Carr stated she would find out.

Judy Peverall, 995 Cooper Drive, stated she does not live in this neighborhood but felt a mistake has been made. It should have been corrected by the City at the time it was first brought to its attention. The Code is in black and white. A Board of Zoning Appeals was held without anyone having the book and it was passed without knowing what needed to be there. She felt it was to keep the City from paying for the

mistake. A resident had to point out to the City what the rules were. This building looks like a monstrosity.

Meeting adjourned at 8:40 p.m.