

CITY OF TWINSBURG
BOARD OF ZONING APPEALS MINUTES
JULY 10, 2019

Mr. Kancler called the meeting to order at 6:41 pm.

Present: Messrs.: Wilner, Kancler, Griffith and Rodin
Absent: Mr. Tom Brown

Also Present: Mr. Dale Steppenbacker, Building Department Representative
Mr. Sam Scaffide, City Council Representative

The Board recited the Pledge of Allegiance.

<p style="text-align:center">CITY OF TWINSBURG BOARD OF BUILDING AND ZONING CODE APPEALS WORK SESSION JULY 10, 2019</p>

Mr. Kancler explained to the applicant that with only four board members present, in the event of a tied vote, the variance would be denied. The applicant would then have an opportunity to appeal to City Council.

The applicant indicated that they would like to continue with the application this evening.

1. Appeal # 06-2019
Variances: 1145.04 Yard Regulations and 1187.33 Setback Railroad Tracks

A public hearing will be conducted at 6:30 pm on July 10, 2019 for the purpose of hearing an appeal for variances from Sections 1145.04 and 1187.33 of the Twinsburg Zoning and Development Regulations. Section 1187.33 establishes a 200' residential setback from a railroad track. Section 1145.04 establishes yard regulations for locating several buildings within a group apartment development. Specifically, a **30' variance is requested to the railroad track setback and various rear yard building setback variances are requested at the north, south and west property lines** for proposed one-story apartment buildings. The apartment development is to be located at 9422 Darrow Road in a Senior Residence District. This appeal is made by Sommers Real Estate Group of 8500 Station Street 300R, Mentor, Ohio.

Mr. Steppenbacker administered the Oath to Mr. John Monroe 1001 Lakeside Avenue Suite 1400 Cleveland, Ohio 44114.

Mr. Monroe explained that he represents the property owner, Darrow Development, LLC.

- They are seeking a series of area variances to develop the property in compliance with the existing R7 zoning classification for senior living.
 - Also present are Rick and Greg Sommers, members of Darrow Development, LLC.
- This is an approximately 11 acre parcel, slightly irregularly shaped with a gas line easement and a railroad track on one side of the property; these drive some of the variance requests.
 - The code requires a 200 foot buffer from the railroad track, up to 3 units are affected by that and the remaining variances are setback variances around the perimeter of the property.
- The developer had proposed an initial project consisting of three 3-story buildings and after meeting with City officials and the Planning Commission, it was felt that a lower

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scale development would be more appropriate, particularly in light of the condominium development to the west and south. The developer reconfigured the project to have single story ranch-type units which appear to be ranch homes but are actually apartments owned by the developer.

- Under the original plan there would have been 130 units, which is allowed by code; this revised proposal has 71 units, more in keeping with the density of the surrounding properties.
 - The lower scale plan has pushed the houses out toward the edges of the property and that is driving the variance requests for the rear setbacks.
- They believe that the proposal meets with the practical difficulty standard; these being area variances, they are required to meet a practical difficulty with strict compliance with the code, not an unnecessary hardship standard.
 - Their letter addressed the Ohio Supreme Court's requirements for determining unnecessary hardship; Mr. Monroe reviewed the letter with the Board.
 1. A code compliant plan would yield a higher return, there would be 134 units, not 71. Keeping with the senior living zoning, this is a more appropriate product and would have a reasonable return.
 2. The railroad variance would impact a couple of units with no more than 20 foot variance for the 200 foot setback, they feel that is fairly insignificant; the plan was designed specifically to place homes away from that area as well as from the gas line area, they want to stay away from the high pressure gas line. The storm water management was placed in the front by the engineers, which also impacts the configuration of the project. The developer is willing to take reasonable steps to insure that there is no runoff to the south and west; they are willing to place drainage tile on their property to prevent drainage runoff from their property onto the condominium development. This storm water management will be highly engineered at a subsequent step and there are regulatory agencies which oversee that.
 3. An apartment building is a permitted use so the use is not at issue. They feel that this type of home is more in keeping with the adjacent one story condominium development to the south and west.
 4. This is a permitted use that would utilize a private driveway which would be maintained by the property owner and open to the public (ungated) with all trash and other services being handled by the management company.
 5. The property owner was aware of the R7 zoning designation at the time of purchase, however, the variances were discovered upon meeting with the City and changing the design of the project.
 6. The gas line and railroad as well as the northward sloping topography of the site are existing conditions that cannot be changed and drive this location. Moving to one story units as was determined to be the best layout to accommodate less than half of the units permitted under the code.
 7. The use is, again, not an issue. It will be senior housing with one story living, no basements or upstairs with a design that allows residents to age in place without interior barriers such as bathtubs, steps, etc.

Mr. Monroe noted that the developer held a meeting on June 20 for the adjacent property owners to ask questions and receive feedback on the proposal.

- This project has been vetted through the city process and has come a long way.

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- It needs area variances to accommodate the lower density single story design.

Mr. Kancler asked what the practical difficulty under the existing zoning is.

Mr. Monroe replied that it is driven by the irregular shape of the lot along with the existing railroad line and gas line which push everything in one direction.

- That the three story buildings are permissible without variances and would yield substantially more economic benefit, however, after meeting with City officials, they did not feel that the three story buildings were in keeping with the single story development to the west and south, it would be out of place.
- This plan is more dispersed but compact height-wise.

Mr. Kancler commented that under the existing zoning that applies to this property they could build within the R7 without any variances at all, whether 1, 2 or 3 stories.

Mr. Monroe agreed.

Mr. Kancler stated that they do not have a practical difficulty under the Ohio Supreme Court ruling in Duncan, which is still valid in Ohio, if the existing zoning does not require any variances and can be built on.

Mr. Monroe explained that there would be no variances for the 3 story buildings, however, the City prefers a plan more like the single story development, which requires the variances due to the lower building heights pushing living spaces closer to the setbacks.

Mr. Kancler noted that the City cannot dictate what is built on a property as long as it meets the zoning code.

Mr. Monroe remarked that the purpose of the zoning district is to encourage senior living; if the City does not like a certain product, they want to provide a different one.

- While the City cannot dictate what is built if it is not what the city or residents want, they feel that it is logical to propose a different product and request variances for it.

Mr. Kancler replied that under Duncan, there is no practical difficulty if they are able to build pursuant to the code without a variance; that is the law in Ohio.

- That is the problem with having the City tell the developer that he cannot do what the code permits.

Mr. Monroe noted that with new construction, anything can be built within the code; if there was no intention of ever allowing variances to the code there would be no reason for the Board of Zoning Appeals. There are certain situations where strict compliance with the code does not make sense.

- In this case, the code allows a 3 story building next to homes, which would be imposing to the existing residents.
 - That is not what the City preferred so the developer offered a new plan.

Mr. Kancler pointed out that the Bel Mawr development is surrounded by trees which are 60-70 feet tall with a substantial density and the development area is relatively flat so he does not feel that a variance is needed.

Mr. Kancler noted that if the original 3 story, 134 unit plan were brought down to 2 stories, they would still have over 71 units.

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Mr. Monroe replied that the City did not want a multi-story development on the site.

Mr. Steppenbacker administered the Oath to Mr. Richard Sommers, 10585 Summerset Dr. Chardon, Ohio

Mr. Sommers spoke on behalf of Darrow Development, LLC.

- The City did not prohibit the developer from building a 3 story building on the site, Planning Commission suggested that they reconsider the plan and meet with the neighbors and that is how the 1 story plan came about.
- The meeting with the neighbors bought up discussion regarding the view with trees in winter with no leaves, parking lots and lighting for a multi-story apartment building, etc.
 - The Bel Mawr residents that attended the meeting agreed that they preferred the current plan with one story apartments.

Mr. Kancler pointed out that there are ordinances which require the lighting on properties not to interfere with adjoining properties.

Mr. Kancler observed that, as the zoning board, they are only permitted to do certain things and if they step over that line they become the legislators, which is illegal.

Mr. Sommers responded that the developers are trying to be good neighbors and work with the people that this project will have impact on; in an effort to minimize that impact, along with changing the building layout, they have discussed mounding, improving existing drainage situations for the Bel Mawr residents, etc.

- He feels that this proposed project with these variances is much better than the alternative.

Mr. Monroe explained that the code allows a process by which the Board of Zoning Appeals may grant relief from a strict compliance of the code and that is why this meeting is taking place.

- They are trying to make the situation better, not worse; the first proposal did not have any variances but would have made the neighboring residents unhappy.
- They are not asking the Board to do anything that is not permitted by the code, it states that the Board is allowed to grant reasonable area variances if the developer or property owner can show a practical difficulty in a strict compliance with the code.
 - They have shown that there is a physical situation with the railroad and the gas line going across the property as well as the irregular shape of the property.
 - There are 11 acres with much of the top portion subject to easements from the railroad and the topography placing the storm water basin in the front of the property.
 - They are trying to work with the City, and the Board has the authority to grant reasonable area variances to permit projects like this that can help a situation, not make it worse.

Mr. Kancler noted that the total percentage of variances being sought is approximately 30% which is a substantial variance.

Mr. Steppenbacker administered the Oath to Mr. Bobby Johnston with Mann, Parsons, Gray Architects 3660 Embassy Pkwy. Fairlawn, Ohio

Mr. Johnston Explained that the buildings will vary from 3, 4 and 6 unit buildings, all are 2 bedroom units and roughly 1200 square feet each. All having a 2 car garage, being single story and FHA compliant.

Mr. Kancler stated that the variances being requested are: 54 feet for building E, 45 for C, 26 for F, G and H, 22 for I and 21 for D.

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Mr. Johnston explained that buildings F, G and H are 4 units and E is 6 units; the code is written to the length of the building, which is why building E needs a larger variance than neighboring F, G and H.

- Typically builders want to attach as many units as possible but they do not want to do that here, they want to improve the overall look by going with lower units per building.
 - This costs the developer more money and could be considered a self-imposed hardship in order to work with the city and adjacent neighbors.

Mr. Griffith clarified that there are 9 buildings needing variances out of 15, which is more than half of the buildings.

- Of all the variances being requested, only building I does not back up to a residential neighbor.

Mr. Kancler indicated that he wants to be fair and do this correctly, his concern is that under the law regarding Duncan, as he understands it, if you can build under the existing zoning without variances then you cannot establish a practical difficulty; that is his understanding of the law.

- Would the applicant consider adjourning this meeting and asking the Law Director for an opinion on what can be done in this matter as a Board?

Mr. Monroe absolutely opposed the idea; why would the applicant be at this meeting if they were unable to get variances?

Mr. Kancler explained that, in some cases they are not able to grant a variance; there was a case with Marriott a couple of years ago where the variances were not able to be approved.

Mr. Kancler explained that, upon closing the work session, all comments made to this point are incorporated into the regular meeting.

- The first part of the regular meeting will be public participation.

Mr. Monroe stated that the applicant would like to table the application at this time.

Mr. Kancler noted that the next scheduled meeting would be July 24, 2019 if the applicant would like to be on that agenda.

There was a discussion regarding tabling and rescheduling the agenda item.

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Mr. Kancler called the meeting to order at 7:17 pm.

PUBLIC PARTICIPATION – NONE

1. 1. Appeal # 06-2019
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apartment development. Specifically, a **30' variance is requested to the railroad track setback and various rear yard building setback variances are requested at the north, south and west property lines** for proposed one-story apartment buildings. The apartment development is to be located at 9422 Darrow Road in a Senior Residence District. This appeal is made by Sommers Real Estate Group of 8500 Station Street 300R, Mentor, Ohio.

ITEM TABLED BY APPLICANT

COMMUNICATIONS- NONE

APPROVAL OF MINUTES – Dated June 12, 2019.

MOTION: TO APPROVE THE MINUTES DATED JUNE 12, 2019.

**MR. WILNER MOVED MR. GRIFFITH SECONDED.
UPON ROLL CALL MOTION PASSED UNANIMOUSLY.**

EXCUSE ABSENT – MR. TOM BROWN

MOTION: TO EXCUSE MR. BROWN FROM THIS MEETING.

**MR. RODIN MOVED, MR. WILNER SECONDED, UPON
ROLL CALL MOTION PASSED UNANIMOUSLY.**

ADJOURNMENT- The meeting was adjourned at 7:20 pm.

Ed Kancler, Chairman

Russ Rodic, Building Commissioner