

MINUTES
Planning and Zoning Commission & Architectural Board of Review
City of Willoughby Hills, Ohio
March 20, 2008

CALL TO ORDER: 7:01 P.M.

PRESENT: Chairman Charlotte Schryer, Mayor Robert Weger,
Council Representative David Reichelt, John Lillich, and Dale Fellows

ABSENT: Madeleine Smith and Vice Chairman James Michalski (on leave of absence)

ALSO PRESENT: Building Commissioner Mario DiFranco, Architect Bill Gallagher, City
Engineer Richard Iafelice, BZA Representative Frank Cihula
and Clerk Katherine Lloyd

MOTION: Dale Fellows moved to excuse the absence of Madeleine Smith
Seconded by David Reichelt
Roll Call: Ayes Unanimous
Motion Passes

Disposition of Minutes: Meeting of March 6, 2008

MOTION: David Reichelt moved to accept the Minutes of March 6, 2008 as submitted.
Seconded by John Lillich

Discussion:

(Reichelt) The letter mentioned in the Chairman's Report should be attached to the minutes
(Schryer) It will be added

Roll Call: Ayes Unanimous
Motion Passes

Addition to the Agenda

We would like to add 35555 Chardon Road to the Agenda for Architectural Board of Review

MOTION: David Reichelt moved to add 35555 Chardon Road to the Agenda in Architectural
Board of Review
Seconded by John Lillich
Roll Call: Ayes Unanimous
Motion Passes

ARCHITECTURAL BOARD OF REVIEW

Public Portion

Public Portion opened at 7:05 P.M.

None

Public Portion closed at 7:05 P.M.

1. Thomas J. Flesher

Contractor: Unknown

35555 Chardon Road – New Single Family Dwelling – PPN: 31-A-011-A-03-025-0

Plans stamped received in the Building Department 1/29/08

Plans stamped received in CT 2/13/08

Plans stamped approved in CT 3/3/08

Present: Thomas J. Flesher

Owner/Representative Comments

- No samples or pictures were presented. He explained the drawings.
- Color will be a type of beige siding with stone accents on the profile of the house.
- There will be shake siding on the peaks and conventional siding all around.
- Shingles will be black
- There will be a walk-around porch in the front. In the back there will be an elevated covered porch overlooking lower land in back.

Architectural Comments

- Great set of drawings and design with plenty of detail and amenities.
- Are there any exclusion? *Cupola may not go up*
- Will the shingles be dimensional or three-tab? *Dimensional*
- Can you describe your plans for the stonework? *It will be a beige-type veneer on the lower portion of the wall. There will be accent pieces all around the house at different heights. On the back, we have planned an inside/outside fireplace inset. I have not found the style*
- Our concern is that stone trim pieces are installed so it terminates properly. You can use natural or man-made stone accessories. *That's what we plan.*
- What are the colors and materials of the windows and trim? *Trim will be white fyphon material. There will be white grills in the windows. Windows will be white clad? Yes*
- It looks larger than a 3 bedroom house.

Board Comments

(Lillich) Does the fireplace have a chimney? It is not on the plans. *It is a flue less, vent less, insert fireplace. I have not located it yet. There will be a fireplace there; it may not go outside or inside.*

(Gallagher) Will the corner boards and frieze board be an accent to match your white trim work? *Yes*

MOTION: John Lillich moved to accept the plans as submitted.

Seconded by David Reichelt

Roll Call: Ayes Unanimous

Motion Passes

Announcement

Under New Business, the Board will be reviewing the Proposed Chapter 1167 Protected Area Regulations. This will be the first review of the whole document by the Board. On the table for the Board, we have added the Ordinance number, the whereas and a map. Richard Iafelice has a larger map. These are the steps outlined in the Zoning Code for changing the text in the Zoning Code. David Reichelt may want to comment on what steps council is taking during his Council Representative Report. At our next meeting on April 3, we will have a Public Hearing

PLANNING & ZONING COMMISSION

Public Portion Opened 7:17 PM

John Klements, 2550 Dodd Road

I just want to ask if the public would have an opportunity to take part in the discussion of the Ordinance (*Schryer*) *No not tonight. This is our first run through.* Then during your discussion, will you pay particular attention to section 1167.04 that has deleted the silviculture exemption that Mr. Reichelt worked so hard to help me get into the Hillside Ordinance and that Mr. Weger signed off on in Council.

Paul Boyle, Lake County Soil and Water District

I saw this on the Agenda. Since I have been with the District for about a year and have not been here before, I felt it was an opportunity to meet everyone. Our District administers the Erosion and Sediment Controls for Willoughby Hills. I am happy to see you are considering this Ordinance. It has been a pleasure working with Mario DiFranco, Richard Iafelice and John Topolski.

Public Portion closed at 7:20 PM

Unfinished Business

None

New Business

1.) Review of Proposed Chapter 1167 Protected Areas Regulations

Richard Iafelice presented a large map and distributed copies of the Community Riparian and Wetland Guidance. This legislation has a lot of work behind it and it is unique in Lake County. It is unique because this city already had the 1167 Hillside Ordinance. The provisions in the Hillside Ordinance were found to be applicable to the regulations being considered for Riparian setbacks and the setbacks associated with Wetlands.

The genesis of the Proposed 1167 Protected Areas Regulation begins with the government. One of the main areas required under the “National Pollution Discharge Elimination System, Phase II Storm Water Requirements” is post-construction run-off control. Riparian setbacks are one of the best tools for that.

We have two distinct watersheds in the city. The Ohio EPA conducts TMVL studies on pollutants in the watersheds of the Euclid Creek and the Chagrin River. Those studies recommended setbacks to prevent future flooding and erosion and to maintain water quality.

In response to the Phase II requirement, Willoughby Hills is promulgated under the Federal Law because we are considered part of the Metropolitan District of Cleveland. We were required to put together a Storm Water Management program. We did that in 2003 with a Task Force in the city. In that program, we identified wetland setbacks, riparian setback, and illicit discharge. There will be further discussion on illicit discharge later this year.

The city is required to consider these provisions to prevent erosion and flooding and to maintain quality of water and of life. If the City does not adopt regulations such as this, we must have justification for it to the Ohio EPA.

I would like to highlight the main areas important to consider. The provisions in the legislation apply to grading, excavating, removing or destroying some natural features, except for normal landscaping, gardening, maintenance and, I believe, except for silviculture.

It also gives the City Engineer's office and the Planning and Zoning Commission the ability to waive part or all of the requirements based upon site-specific judiciously proposed impacts. By doing that, we attempt to maintain the spirit of the law and maybe recommend a variance be considered for a site as it is developed in order to pull it away from a protected corridor.

This legislation brings people to the table to negotiate these items and inhibit building and construction within the protected corridors without infringing on individual property owners' rights. The legislation has already gone through the reviews of the Ohio EPA and the other agencies we have mentioned.

This map shows the Hillside, Riparian and wetlands, plus the 100 year flood plain. The map is provided as a guidance tool for the Planning and Zoning Commission (PC&Z) and the Building Department and a reference for the city, the community and applicants. It is not site specific. Once again, it might be better to suggest a variance to a side, rear or front yard, rather than to infringe on the protected corridors. It gives some flexibility to the PC&Z while working with an applicant

The most important sections of the legislation that is different from the Hillside Ordinance

- 1167.01 Especially section (f) under Purpose of the Ordinance
- 1167.02 Definitions were added to define Areas adjacent to Wetlands and Category II and Category II wetlands (page 4)
- 1167.03 Defines criteria for setbacks for wetland (page 6)
- 1167.04 Identifies the setbacks for Riparian

Most of the rest of the legislation is the same as our Hillside Ordinance. I would also draw your attention to the following points:

- Pg 13 City Engineer may permit crossing of water during construction using best management practices
- Pg 14 Deals with landscaping
- The most significant additions are in the Administration and Appeals, especially 1167.08 (d), sections 1-8. They provide guidance on how to review a variance request and how the process should flow for the variance requests. It provides an appeals process for applicants if they disagree with the findings of the Engineer or the Planning and Zoning Commission

Board Members

(Lillich) We need to think to the future. Section 1167.01 (d) mandates protection of "flora and fauna". We need to be concerned about overpopulations of deer and possibly wild turkey. In the Nature Preserve, there are invasive species of flora that need to be controlled.

- (Iafelice) That is language that already exists in the Hillside ordinance
- (Schryer) Later in the document, there is a discussion about replanting a disturbed area with native species. This replaces the earlier ordinance.

- (Fellows) If we make an exception, then we must determine how things are defined.

(Lillich) On page 3, section 1167.02 (o), we define 'jurisdictional boundaries' on the day the Ordinance is adopted. Government agencies change. If those boundaries change, are we locked in with wording of "application of ordinance"?

- (Cihula) I think they mean that you follow the rules that are in effect when you start the project.

- (Fellows) I think that means that projects started before the date follow the old rules and that ordinance is “applied” to new projects.

(Lillich) If we specify replacement of “natural vegetation existing before construction”, we run into the discussion of invasive species again.

- (Schryer) This does contradict what is discussed later in the document regarding landscaping and replacing what is native to Ohio? So is this meaning correct?
- (Iafelice) It is not ‘native’; it is ‘natural’. Any of these questions regarding the Hillside Ordinance are not part of the adjustments.

(Cihula) Definition 1167.02 (r) is written backwards. *(Iafelice) That is the way the definition was given to us. We are not altering it.*

(Lillich) We had a discussion last week that related to the owner, developer, partnership or corporation having ‘sufficient proprietary interest’ We need to define what is “sufficient”.

- (DiFranco) It is a gray area.
 - (Schryer) Good common sense might dictate that definition.
- (Lillich) In section (a) 8, does the meaning of a ‘watercourse’ include anything that is man-made? *Wetlands refer to manmade or natural. It makes no differentiation.*

- (Iafelice) This is the Hillside Ordinance. It has not been altered.
 - (Schryer) I would think man-made would be included. It is a watercourse, in place and working.
- (Lillich) The definition of Silviculture was included in 1167 C. It has been omitted.
- (Schryer) Silviculture does not appear anywhere else in the document besides the Definitions.
 - (Iafelice) I am putting it back in

(Reichert) Under 1167.04, the outline only lists a (b) and a (c). There is not an (a). Sometimes formats change when Work files are downloaded into another computer. *(Iafelice) I will correct it.*

(Lillich) On page 11, Section 2 under Hydrological Controls, section (b) Controlled Run-off refers to ‘sheet flow’ of the run-off over land. Sheet flow will cause some erosion. Is there a better way to do it?

- Sheet flow is not as bad as concentrated flow. It inhibits worse erosion.

Lillich) On page 12 under section (i.) Inventory, subsection II says “All natural drainage channels shall be directed toward and away from the hillside area within fifty (50) feet of its perimeter”. I initially questioned the meaning of that.

Schryer) On the same page, under section (3) Vegetation and Re-vegetation, in subsection A. Exposure, it states that “temporary cover should be used during development”. What does that mean? *Use of mulch to minimize exposure of the land.*

(Lillich) Under Administration and Appeals (1167.05), perhaps Soil and Water or EPA should be involved closer to the time of application before the process gets to appeals process. It might be good to get professionals in earlier.

- The provisions are there for the Engineer to do that. It allows the Engineer to do just that.
- (DiFranco) John makes the point that a specific direction is not spelled out.
- (Cihula) It was changed from ‘shall’ to encompass small details in law and to avoid necessity for hiring experts when they are not necessary
- (Schryer) Under Permit Procedures (1167.05) in the application section at the top of page 7, the Building Department looks at compliance at time of application. Even the Planning Commission does not have to consult any one. Each project does not fit all of these provisions, so the Engineer would have discretion on what to apply. He does have to put his reasons in writing. At time of application, there is supposed to be a meeting in the Building Department where as many of the ideas and options available to the applicant are identified for review.
- (Weger) This is a framework with checks and balances. We do not want to over detail.
- (Cihula) It does say that the City, the City Engineer and/or Planning and Zoning Commission are authorized to consult with any necessary professionals as needed.

(Reichelt) Conceptually, I would like to address the concerns that the Council committee had about the risk to property owners' rights. In particular, the western part of the city is severely impacted by this because they are small lots. We considered the possibility of having a different standard for the eastern and western halves of the city, because the Chagrin River Watershed Partners said there is a different standard for Wickliffe than for Kirtland. The EPA said 'no'. We were comforted by the fact that the Engineer would have full discretion to waive any section of the Ordinance.

However, 1167.08 sub section B on page 15 specifically prohibits that.

- (Iafelice) If it complies, it cannot be denied. I re-read it many times myself. The Board has the ability to waive also. It provides for checks and balances
- (Cihula) You would have personal legal liability if you go against them.
- (Schryer) The Law Director always advises that we have very specific, detailed reasons which are well-documented for suggesting a different course of action. We would have to have other professionals involved.

(Reichelt) My point is that there is a fine line between protecting the environment and trampling landowners' rights. No department should have exclusive right without recourse.

- (Fellows) Every applicant has recourse in the Court of Common Pleas.
- (Schryer) The process allows for input all the way along. There are good checks and balances. The bottom line is that the EPA has mandated this. Water is a precious resource. We need to save it.
- (Iafelice) I feel the regulations have merit because I run into so many 'fix-it' situations. Encroachment degrades the water carrying capacity of the channel. That causes damage to property. We are trying to be a good neighbor to the surrounding communities.
- (Lillich) Some of the upstream communities enacted this legislation a long time ago. I think it has helped keep the Chagrin River in its banks
- (Fellows) Which property rights should we focus on? The person who has the developer or the person affected by the development or the whole group? The best way is not to develop in any of the protected areas. So should we do as much protection as possible?
- (Iafelice) It allows for collaboration. The reviewer has to communicate the intent for any variance.

(Fellows) Should we include a statement of intent to guide future boards and engineers and have all involved bodies sign off on it so it is clearly the intent of the community as a whole?

- (Iafelice) The Hillside Ordinance starts out stating that it 'permits development' with conditions because of property rights.
- (Schryer) If this is a resolution, then we need to direct it to David Reichelt because he is on Council.
- (Iafelice) We could add it to the "Whereas" section. They came from the Model as well.
- (Weger) It would not get codified and it would need to be.
- (Reichelt) A resolution would not get codified either, if you want it to be in the law book.

(Iafelice) How can we strengthen the language without infringing on property rights?

- (Iafelice) That first sentence is from the Hillside Ordinance. If we took out that sentence, then the Council would be concerned about the property owners' rights.
- (Schryer) At the Council meeting when they agreed on this version of the document, they still had concern about one person or one body having sole authority. The document describes a process that goes through many people.

(DiFranco) Because this is a Zoning Code, and to keep clarity, I would like the term 'Building Department' be replaced with the term 'Department of Building and Zoning' throughout the document. It would keep it focused on building and zoning.

- What is it referred to in the rest of the Code? It should mirror what is in the new code already.
 - It is called 'Zoning Administrator' in definition 190 in the Code Book
- (Fellows) Getting back to Purpose, we could change the term 'permit' to 'would limit' development on hillsides.

(Iafelice) We will create a document with highlighted versions and recommendations. We will include John's concerns about invasive species. We will substitute the word "limit" for the word "permit" under Purpose. We will replace 'Building Department' with 'Zoning Administrator'. I believe 'silviculture' was intended to remain. I will check with my colleagues.

(DiFranco) I was at a seminar with the Storm Water Management and the Ohio EPA sponsored by Cleveland State University. We discussed permits for new construction sites. At the preliminary stages of construction, there are Notices of Intent specific to the developer, general contractor and home builder. There, the key word is 'intent'. We are also trying to do the same thing. We are trying to determine the intent of the code and the intent of the administration of the Code and see where they are applicable and plausible.

(Cihula) I would like to raise a few points. We should define 'normal recreational activity'. Heavy ATV use may be normal for a particular family but it seems contrary to the intent of the ordinance. It causes erosion.

- (Fellows) Kirtland has an ordinance against ATVs
- (Lillich) It could be limited within a specified distance from a neighbor's property. It may also be contrary to a noise ordinance.

(Cihula) The wording in 1167.03 (B) leaves a hole in the ordinance.

(Cihula) Perhaps the wording in 1167.08 (c) on page 15 should be changed from the City Zoning Administrator and City Engineer "may advise applicants for permits to request variances" to 'advise applicant on their right to request variances.'

(Schryer) Please write up any questions that have to do with the BZA and direct them to the Law Director for his review. I plan to do the same with additional questions that I have.

2.) Discussion of 600 square foot accessory buildings

(Schryer) We have outbuildings brought before the Board without site plans. What we get shows the neighbor's house and perhaps other outbuildings. It never shows where the septic system and alternate system are. How does anyone in City know whether an accessory building has been put on top of the secondary system?

(Iafelice) It doesn't come to me.

(DiFranco) I spoke with the Terry Kent and Laura Kuns at the Health Department with regard to any structure going over the top of the septic system. It is the homeowner's prerogative. Access to the system is their problem. I thought there was a twenty (20) foot clearance but there isn't.

(Schryer) Let's have a discussion on the size of accessory buildings.

(Cihula) If you are going to change the number, change it to something that meets an actual building dimension. Most of our variances are for outbuildings.

(Reichelt) If it is attached to the house, it can be up to 1500 square feet. Sometimes people skirt the code and do not attach it.

(DiFranco) 600 square feet is a two-car garage. Willoughby has city lots and they require 600 square feet. Willoughby Hills has acreage. We can increase our requirements. However, there is a percentage of how much property can be covered.

(Fellows) People can run businesses out of larger structures.

(Schryer) A three-car garage is 900 square feet.

(Schryer) Should we write up a proposal of suggested changes and send it to Council? We will not have time at the next meeting.

(Lillich) The minimum square footage for house is 1200 square feet.

Mayor's Report

I received a letter dated today, March 20, 2008 from Dale Fellows. He is resigning from the Planning Commission and Architectural Board of Review effective tomorrow due to increasing schedule conflicts. He has been appointed to the Charter Review Commission. Therefore, we will be looking for another member for the Planning Commission and Architectural Board of Review.

Mr. Gallagher left at 8:45 P.M.

Council Representative's Report

None

Building Inspector's Report

I wrote an article that I want to put in the Willoughby Hills edition of the newspaper. It discusses the responsibility of the homeowner to keep debris and storage materials out of the water course that runs through their property. We have seen many instances of this. Copies of the article were distributed.

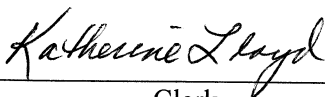
Chairman's Report

None

Adjournment

MOTION: John Lillich moved to adjourn
Seconded by David Reichelt
Voice vote: Ayes unanimous
Motion passes

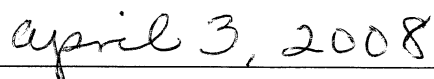
Adjourned at 8:48P.M.



Clerk



Chairman



April 3, 2008