

Present: Vice-Chair Schafer; Members: Delaney, Donnelly, Eifrid, Fox, Mueller, and Raeder

Absent: Rass, Tillman and Verdi-Hus

Also Present: Village Manager, Chris Wilson
Council member, Mooney
Village Attorney, Ryan

Vice-Chairman Schafer called the meeting to order at 7:38 p.m. in the Village municipal building at 18500 W. Thirteen Mile Road.

APPROVE MINUTES OF ZONING BOARD MEETING HELD FEBRUARY 10, 2014

Motion by Delaney, second by Mueller, that the minutes of the regular Zoning Board of Appeals meeting held on February 10, 2014 be approved as submitted.

Motion passed.

CASE NO. 1263

Petitioner: Nolan Realty Investment c/o Norman Hyman, Ste 200, Bloomfield Hills, MI

Request: The petitioner requests interpretation of Zoning Ordinance Sections 22.08.290 and 22.23.11 regarding Site Plan Review Procedures

Schafer stated that the petitioner is seeking interpretation of Zoning Ordinance Sections 22.08.290 Site Plan Review and 22.23.11 regarding Village Center Overlay District, Administration. The applicant has stated that the Village ordinance requires that the Village Manager must forward the petitioner's application for site plan and overlay approval to the Village Council, which will refer it to the Planning Commission for review and recommendation back to Council.

Board members are in receipt of a letter dated January 16, 2014 from Manager Chris Wilson to the petitioner's counsel, Mr. Norman Hyman. The letter details Mr. Wilson's determination that the site plan application regarding 31555 Southfield Road did not comply with the Zoning Ordinance; therefore, he did not forward the application and site plan to the Village Council. Schafer asked that Village Attorney Tom Ryan present information on the ordinance sections in question. Attorney Norman Hyman asked that Village legal counsel not advise the Zoning Board members as to his interpretation of the ordinance.

Tom Ryan stated that this case concerns an appeal filed by Mr. Hyman on behalf of his client regarding site plan approval, specifically Zoning Ordinance Section 22.08.290. It seems to be a discreet issue relative to subsection 'c' as follows: *c. Application for Site Plan Approval. Application for site plan review shall be made to the Village by filing of not less than twenty-five (25) copies of the detailed site plan with the office of the Village Manager at least fifteen (15) days in advance of the regularly scheduled Village Council meeting at which the plan is to be first considered. Fees are required to be paid within the fee schedule in effect as established by the Council at time application is made.*

The Village Manager shall examine the site plan to determine that it contains all the necessary information. If it is incomplete, it shall be returned to the applicant owner. If complete and if it appears to comply with the Zoning Ordinance it shall be processed in accordance with this Ordinance.

Ryan said that the language under discussion is “If complete and if it appears to comply with the Zoning Ordinance it shall be processed in accordance with this Ordinance.” It is up to the ZBA to interpret what that language means relative to site plan approval and the processing of site plans.

Ryan outlined general rules of statutory and ordinance construction. The Zoning Board of Appeals is the viewing body to discern the intent expressed in the words of the ordinance itself. The words contained in the ordinance provide a reviewing body with the most reliable evidence of the intent of the ordinance. A reviewing body’s primary task in construing an ordinance is to discern and give effect to the intent of the ordinance.

The common and ordinary meaning of words of an ordinance provide the most reliable evidence of its intent. The first step in interpretation is to examine the plain language of the ordinance itself. The goal of ordinance interpretation is to give effect to the intent of the ordinance with the presumption that unambiguous language should be enforced as written.

When language is unambiguous, the reviewer should presume that the drafter of the ordinance intended the meaning clearly expressed such that no further construction is required or permitted and the ordinance must be enforced as written. A reviewer will construe the ordinance as a whole to harmonize its provisions and carry out the purposes of the ordinance. If an ordinance contains a specific provision and a related but more general provision, the specific one will control. An ambiguity in an ordinance may be found only if the language, as used in its particular context, has more than one common and accepted meaning. The provision of an ordinance is ambiguous only if it irreconcilably conflicts with another provision or when it is equally susceptible to more than a single meaning. The wisdom of an ordinance is for the determination of the governing body, and the law must be enforced as written.

Schafer explained the procedures that will be followed in review of this case. The petitioner and his counsel will have the floor to state their case. There will be questions and comments from the Board and from the public. Schafer asked that public comments be specifically related to the ordinance interpretation issue. The Zoning Board will entertain a motion; all motions are made in the affirmative. The petitioner must obtain five affirmative votes for the petition to be granted.

Attorney Norman Hyman stated that the petition before the Zoning Board of Appeals is for interpretation of the ordinance, which he contends would require the Village Manager to send the application for site plan and overlay approval to the Village Council for referral to the Planning Commission. The applicant is not present to discuss the merits of the proposal for a mixed use development on 31555 Southfield Road; the applicant is requesting the opportunity to go before the Planning Commission and Village Council.

Norman Hyman with the firm of Strobl & Sharp stated that he is representing Nolan Realty Investment and property owner Philip Vestevich. Present in the audience are Philip Vestevich and Bill Bowman representing Nolan Realty. Hyman distributed a letter to the Zoning Board

from Patrick Timlin representing Medical Village Partners supporting the position of Nolan Realty. For general information, Hyman distributed a concept drawing of the mixed use development proposed for 31555 Southfield Road.

Hyman referred to the written description attached to the petition. He believed that there was some confusion in the drafting of the ordinance. It is the charge of the ZBA to interpret the ordinance where there is a suggestion of confusion in the language. Hyman believes that Section 22.08.290(c) requires the Council and Planning Commission to review the site plan submitted by Nolan Realty. The issue tonight is whether the applicant is entitled to that hearing.

Hyman commented on the January 16 letter from Chris Wilson supporting his position that he can keep the proposed site plan from the Council agenda if he determines that the use proposed for the site is not permitted in the overlay zoning district. Hyman submitted that this position is totally unfair and deprives the petitioner of his rights under the Zoning Ordinance, the Michigan Zoning Enabling Act, and under the Constitution. He submitted that the Manager's position is not a fair or contextually fitting interpretation of the ordinance.

Hyman read the second paragraph under Section 22.08.290(c) requiring that the site plan must contain all necessary information. Subparagraph (d) lists the required information that must be included on all site plans. It was never indicated by Mr. Wilson that the site plan submitted by Nolan Realty did not include those items. The Manager made his determination based on the last sentence in subparagraph (c): "If complete and if it appears to comply with the Zoning Ordinance it shall be processed in accordance with this Ordinance." Hyman stated that the applicant complied with the section listing required information. He submitted that the Village Manager did not have the discretion to keep the petitioner from being heard.

Hyman stated that Nolan Realty is proposing a mixed use development on the land including a self-storage facility together with a small retail component, an office for the facility, and an apartment for the resident manager of the self-storage component. The overlay district sections of the ordinance state that there can be mixed uses including commercial and office uses. Hyman maintained that the applicant complies with the overlay language. He stated further that the applicant has a right to have the Planning Commission make a recommendation to Council on the overlay district use proposed. The Village Manager does not have the right to deprive Nolan Realty from a hearing. Hyman referred to the Zoning Enabling Act and the due process clause of the Michigan Constitution.

Vice-chair Schafer referred to the last sentence in subparagraph (c): "If complete and if it appears to comply with the Zoning Ordinance it shall be processed in accordance with this Ordinance." Mr. Hyman is suggesting that the phrase "and if it appears to comply with the Zoning Ordinance" is merely explaining the "if complete" language referring to the necessary information. Schafer disagreed with Mr. Hyman's conclusion. Completeness of the site plan is defined by reference to subsection (d). There would be no reason for the language "if it appears to comply with the Zoning Ordinance", if all that meant was that it is complete in terms of required information.

Schafer related that Mr. Wilson has determined that the site plan does not comply with the ordinance, and he is not required to pass the proposal on to the Village Council. The Zoning Board of Appeals has the ability to authorize a use that is not otherwise permitted under the Zoning Ordinance. Schafer affirmed that the applicant is not being deprived of the ability to have a hearing for a use variance.

Hyman replied that a use variance is a difficult hurdle and not something the petitioner should be required to pursue without being given a chance to have a Planning Commission hearing on the proposal. The Village Manager is prohibiting the applicants from putting their position on the record and to be heard on the merits of whether or not they comply with the ordinance. The Planning Commission or the Council may determine that the proposed mixed use is permitted under the overlay district language. Hyman contends that this is not the Village Manager's decision.

Fox said that Mr. Wilson determined that the proposal did not comply with the Zoning Ordinance because the proposed development is not a permitted use in the business district. It is the applicant's position that uses proposed in the mixed use development are permitted uses under the zoning ordinance. She questioned why the applicant did not come before the ZBA for an interpretation of the use question. Nolan Realty is not asking us to interpret the use provision of the ordinance; they are asking for an interpretation as to whether the Village Manager has the authority to determine that the proposal is not a permitted use under the ordinance and therefore is not required to go before the Council.

Hyman reiterated that the applicant is here tonight because neither the Planning Commission nor the Council has made a decision that the proposed use is not permitted. Nolan Realty cannot come before the Zoning Board for an appeal until Council makes a decision on the use. They are appealing Mr. Wilson's right to keep that decision from being made by the Planning Commission and Council.

Delaney referred to the language of the last sentence of Section 22.08.290 (c). He said that the word 'and' means that something different will follow that word. Hyman suggested that sections (c) and (d) were not read in context; Sections (c) and (d) both talk about the procedure and not the determination of whether the use is permitted.

Attorney Ryan was asked if he agreed with Hyman's contention that there was no decision to appeal to the Zoning Board at this time. Ryan stated that Mr. Hyman could have asked for an interpretation on the use at the same time or before he asked for an interpretation of ordinance section 290.08.290.

Schafer said that Mr. Hyman wants the Board to look at subsection (d) in interpreting subsection (c). Schafer referred to the second sentence in subsection (a): *It shall be the further purpose of this section to insure that each proposed use and its components, appearance, and function is in compliance with this Ordinance, other Village Ordinances and State and Federal statutes.*

John Mooney of 19111 Devonshire, Council member, commented that the question before the Zoning Board is whether or not Mr. Wilson has the authority to make a determination on forwarding a site plan to Council. Mooney believed that Mr. Wilson does have this authority; it is the intent of the ordinance to make sure a proposal is complete and complies with the

ordinance. If the ordinance were interpreted as suggested by Mr. Hyman, there would be no discretion on the part of Administration in terms of sending a plan to Council every time someone proposed to build a factory or warehouse on Village property. Mooney thought that the ordinance was clear that the Village Manager has to make this determination.

Schafer read a letter submitted by Patrick Timlin, Managing Member of the Medical Village Partners. Timlin indicated his support of the Nolan Realty proposal for redevelopment of the site on Southfield Road. He encouraged the Zoning Board to allow the development group the right to present their site plan to the Council and Planning Commission for a hearing.

Steven Satovsky, owner of the Beverly Hills Club, suggested that the proposed use of property at 31555 Southfield Road is neither specifically permitted by the Zoning Ordinance, nor is it stated that it is not a permitted use. The proposed construction is a mixed use with retail, office, residential along with the self-storage use. Satovsky suggested that the site plan and use issue be forwarded to the Planning Commission and Council for determination.

Rock Abboud of 18207 Gould Court stated that he has a vested interest in 18189 and 18199 Gould Court, family owned property. Abboud read from Section 22.08.290 (a) Statement of Purpose: *“The purpose of site plan review is to provide for consultation and cooperation between the land developer and the Village Council in order to accomplish the developer's land utilization objectives in harmony with the existing and prospective use and development of adjacent properties.”* Abboud asked why we are wasting Village time if the proposed land utilization is not a permitted use. He inquired why adjacent Gould Court residents were not contacted regarding this development. Abboud stated that he would not want a self-storage land use in front of his house.

Hyman concluded that the Zoning Ordinance includes a list of permitted uses in the overlay district. The proportion of uses on a site is not the Village Manager's decision to make. Property owner Phil Vestevich has a constitutional right to put his property to reasonable use. Hyman asked that the Village give him a hearing before the Planning Commission and Council.

Members of the Board discussed Ordinance Section 22.08.290 and the interpretation request. The following points were made. The ordinance indicates that a site plan could be referred to Council if the proposal was complete and follows the zoning ordinance. There was agreement that Mr. Wilson has the responsibility to make that determination and that the ordinance language in question is not ambiguous. It was suggested that the petitioner is asking the Zoning Board to change the ordinance. There is an avenue of appeal for the applicant's position that the proposed use is permitted. It was stated that not every lawful permitted use in any zoning district anywhere has to be permitted in every community in America.

Property owner Phil Vestevich commented on what he thought was subjective and arbitrary criteria imposed in Chris Wilson's letter of January 16, 2014 outlining his determination on whether the Nolan Realty proposal should be forwarded to the Village Council. He stated that the ordinance should not be used to make wide open interpretations by the Village Manager.

Schafer summarized the discussion prior to calling for a motion.

Decision: Motion by Delaney, second by Mueller, that the petitioner’s request for an interpretation of Zoning Ordinance Sections 22.08.290 and 22.23.11 regarding site plan review procedures be granted and that the Village Manager be directed to submit the petitioner’s application for site plan and overlay approval to the Village Council. The Village Council is required to refer the application to the Planning Commission for consideration and recommendation to Council.

Roll Call Vote:
Motion failed (7 – 0).

PUBLIC COMMENTS

None

ZONING BOARD COMMENTS

In response to an inquiry, Delaney was informed that notice would be mailed to residential and business properties with 300 ft. of 31555 Southfield Road if a variance was requested.

MANAGER COMMENTS

Wilson stated that the Northbrook Church request for approval of a changeable electronic message sign was heard by the Planning Commission at its February 26, 2014 meeting. The Planning Commission did not approve the sign request. However, there was discussion suggesting that possible amendments to the ordinance may be considered in the near future with respect to electronic signs. The petitioner asked that no further action be taken on the Zoning Board of Appeals petition. Wilson remarked that the Planning Commission will have further discussion regarding restrictions to changeable electronic signs.

Raeder stated that the Northbrook Church representatives have met with surrounding neighbors regarding their sign proposal. The neighbors are now more amenable to the sign being proposed.

Motion by Delaney, second by Fox, to adjourn the meeting at 9:03 pm

Motion passed.

Todd Schafer, Vice-Chair
Zoning Board of Appeals

Ellen E. Marshall
Village Clerk

Susan Bernard
Recording Secretary