

MINUTES OF THE REGULAR MEETING OF THE AMBERLEY VILLAGE  
BOARD OF ZONING APPEALS HELD AT THE AMBERLEY VILLAGE HALL  
MONDAY, SEPTEMBER 8, 2009

Chairperson Jon Chaiken called to order a regular meeting of the Amberley Village Board of Zoning Appeals held at the Amberley Village Hall on Monday, September 8, at 7:00 P.M.  
The Clerk called the roll:

PRESENT: Jon Chaiken, Chairperson  
Larry McGraw  
Susan Rissover  
Scott Wolf  
Elinor Ziv

ALSO PRESENT: Bernard Boraten, Village Manager  
Stephen Cohen, Village Solicitor  
Nicole Browder, Clerk

ABSENT:

Mr. Chaiken asked if there were any additions or corrections to the minutes of the August 3, 2009 meeting that had been distributed. Mrs. Ziv moved to approve the minutes as submitted. Seconded by Mrs. Rissover and the motion carried unanimously.

Board of Zoning Appeals Case No. 1039 (continued from August BZA)

Mr. Chaiken reminded the Board that at the August meeting the Board had considered the request of Kneseth Israel Congregation (Congregation Zichron Eliezer) to modify the existing sidewalk, which would provide a continuation of the sidewalk in order to create a connection at the end of the sidewalk to Section Road. At that meeting, the Board had decided to request an opinion from the Village engineer's office regarding this request. Mr. Chaiken read into the record the following email response from the Village engineer's office:

*"We received a sketch from KI showing a connection between the new walk at their east property line to the south edge of the Section Road pavement.*

*Since Section Road does not have any paved shoulders or sidewalks we do not recommend this connection. In our opinion it would imply that pedestrians leave the sidewalk and walk in the roadway. This is potentially unsafe and could create a liability for the Village"*

Mrs. Ziv stated that she felt that the Village engineer's opinion is just an opinion and the Board does not have to follow it. She stated that residents, due to their religious beliefs, will continue to walk in the roadway along Section Road.

Mrs. Rissover asked if a crosswalk could be installed in that area to slow traffic.

Mr. Boraten reported that Amberley Village has never taken action to recommend walking in the street.

Mr. Randolph, attorney for Kneseth Israel, stated that the intention of the sidewalk is to get walkers off of the roadway faster.

Mr. Chaiken stated that approval of this connection to Section Road would create a liability for the Village, according to the Village engineer's office.

Mr. Wolf stated that the Village engineer's recommendation against the connection does make it very tough; however, he is in favor of researching alternatives to make the area safer.

Mr. Randolph stated that if the Board denies the request, he felt that Amberley exposes itself to the liability of not creating a safer environment for walking in that area, as this request would be an opportunity to diminish that liability.

Wendy Saunders, resident at 6852 E. Farmacres, commented that the existing sidewalk in front of Kneseth Israel is currently a sidewalk to nowhere and that does not makes sense to her.

Mr. McGraw pointed out that liability is the issue the Village has to consider.

Mr. Randolph stated that the previous Board of Zoning Appeals actually approved the connector already in a plan where a "snaking" sidewalk was included on the plans and those plans had the connection onto Section Road, at that time. Mr. Randolph showed the 2002 plan to the Board.

Mr. Boraten stated that the proposed requested places the sidewalk connector in the right of way and, moreover, that the Village has an official recommendation against it and it is clearly unsafe.

Mrs. Rissover recommended a plan alternative that would extend the sidewalk to Fair Oaks.

Mr. Randolph pointed out that a precedent has already been set by the Village when the "snaking" sidewalk was approved in 2002.

Mr. Chaiken reiterated that the Village has to rely on the engineer's recommendations as part of the Board's decision. Mr. McGraw stated that he felt the 2002 plan was null and void once a new plan was presented and approved to replace the old plan.

Mr. Chaiken commented that it is possible that a crosswalk could reduce the Village's liability. He stated that this matter should be tabled for further review and suggested that the Village and Kneseth Israel meet with the Village engineer's to review alternatives to reduce liability.

Mr. Andy Radin, resident on Fair Oaks, commented that he has made many observations of walkers in the area in question. He stated that he has noticed people by-passing the sidewalk and continuing to walk in the roadway. He felt that walkers after dark are creating a high-risk

situation; however, it is not their fault. He commented that general signage could be posted to warn drivers of walkers in the area.

Mrs. Ziv then moved to approve the connection of the sidewalk onto Section Road as submitted. Seconded by Mrs. Rissover. Mr. McGraw, Mr. Chaiken and Mr. Wolf voted to oppose the connection, resulting in a failure of the motion.

Mr. Boraten stated that this matter should be taken under further review to ensure that this connection is permitted by the Ohio Department of Transportation.

Mr. Wolf stated that the Board should continue to work with the engineers to design a plan that will work for all parties.

Mr. Chaiken stated that all parties should come together for a meeting with the Village engineer to review alternatives for this matter. Mr. Boraten suggested a meeting at the Village engineer's offices.

#### Board of Zoning Appeals Case No. 1041

Mr. Chaiken announced that the Board would consider a request for two variances from Dina Wilhelm, resident at 2606 Fair Oaks Lane:

- 1) A variance from the zoning regulation that garages which are part of the dwelling must not have their principal access face street, road or highway. Code Section 154.25 (A) (1).
- 2) A proposal for 10 foot high fencing for the purpose of enclosing the tennis court, which would require a variance from the zoning regulation that fences may not exceed four and a half feet in height in any required side or rear yard. Code of Ordinances 154.14.

Mr. Larry Norris, architect for the Wilhelm's, explained that if the new garage placement is not approved, he will have to take down several large, mature trees, which will increase the cost of the project and remove privacy for the property owner and neighboring properties.

The Board then discussed the options of open versus enclosed fencing for the tennis court being proposed. Mr. Boraten stated that the current proposed location of the tennis court is not permitted due to the location being in the federal floodway. The floodway does not permit cut and fill. Resident Mr. Radin, in the audience and a neighbor to the property in question, stated his only request would be to ensure that the fence is color coated to blend with the environment.

Mr. McGraw moved to approve the 10 foot high fence for the purpose of enclosing the tennis court, however, that the plans be modified for the tennis court in order to be in compliance with the federal floodway regulations for cut and fill. Seconded by Mr. Wolf. The motion carried with one abstention from Mrs. Ziv.

Next the Board discussed the front facing garage variance. Mr. Chaiken stated that the basis for granting this variance is “practical difficulty” regarding tree removal and loss of privacy between properties.

The Board reviewed maps and video of the site. Mr. Boraten suggested that the Board include a requirement to maintain landscape for screening.

Mr. Wolf moved to approve the front facing garage, as submitted, with the requirement that landscape screening be maintained for the purpose of obstructing street view of the garage. Seconded by Mr. McGraw. The motion carried by a vote of 4-0, with one abstention from Mrs. Ziv.

#### NEW BUSINESS

Mr. McGraw commented that the Amberley Green is in need of trash cans for pet waste as residents are bagging the pet waste and leaving it on the property bagged.

Mrs. Ziv commented that she would like a 4-way stop at Fair Oaks and Section. There was general discussion regarding this option and it was decided that the request would be sent to the Roads Committee for further review and consideration.

There being no other business to discuss, Mr. McGraw moved to adjourn. Seconded by Mrs. Rissover and the motion carried unanimously.

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Nicole Browder, Clerk

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Jon Chaiken, Chairperson