

MINUTES OF THE REGULAR MEETING OF THE AMBERLEY VILLAGE
BOARD OF ZONING APPEALS HELD AT THE AMBERLEY VILLAGE HALL
MONDAY, APRIL 2, 2012

Chairperson Richard Bardach called to order a regular meeting of the Amberley Village Board of Zoning Appeals held at the Amberley Village Hall on Monday, April 2, 2012, at 7:00 P.M.

The Clerk called the roll:

PRESENT: Richard Bardach, Chairperson
Rick Lauer
Larry McGraw
Susan Rissover
Scott Wolf

ALSO PRESENT: Scot Lahrmer, Village Manager
Nicole Browder, Clerk
Kevin Frank, Esq., Solicitor
Steve Rasfeld, Public Works Supervisor
John Eisenmann, CDS Associates, Village Engineer

ABSENT:

Mr. Bardach welcomed everyone to the meeting and led them through the pledge of allegiance.

Mr. Bardach asked if there were any additions or corrections to the minutes of the March 5, 2012, meeting that had been distributed. There being none, Mr. Wolf moved to approve the minutes. Seconded by Mrs. Rissover and the motion carried unanimously.

Board of Zoning Appeals Case No. 1055

Mr. Wolf moved to reconvene the public hearing regarding the request from Congregation Sha'arei Torah for a conditional use permit for the purpose of constructing and operating a synagogue at 2400 Section Road. Seconded by Mr. McGraw and the motion carried unanimously.

Village Solicitor Kevin Frank conducted a group swearing-in of those who intended to speak during the hearing.

Mr. Bardach invited the applicant's attorney, Mr. Fran Barrett, to address the board. Mr. Barrett informed the board that it should have received a copy of the responses that were prepared by the applicant in response to the various staff reports that identified areas of the plan submitted where more information or conditions needed to be met. Mr. Barrett then reviewed each response with the board, a copy of the responses are attached in full hereto.

Mr. Lahrmer noted that a report prepared by KZF Design, dated March 23, 2012, was submitted to the board by the applicant regarding the load rating of the bridge structure, copy attached hereto. Due to vacation schedules, Mr. Lahrmer and the Village Engineer John Eisenmann did not have the opportunity to review this new information from KZF Design. Also submitted at this meeting was a copy of a site plan dated March 28, 2012, copy attached hereto.

Letters from residents were submitted by Michael Brown and Jon and Randi Chaiken objecting to the use of Brookwood Lane as pedestrian access for the proposed synagogue. The residents note in their letters that it is a private lane and regular public foot traffic could expose the private lane owners to potential liability. An email submitted by resident Joe Trevino expressed his opposition to the non-residential use of the property. Copies of the letters are attached hereto.

Mr. Lahrmer noted that staff prepared a checklist to assist the board, copy attached. The list currently shows 25 conditions to be met so far. Solicitor Frank mentioned that the conditions serve the purpose of providing remedy to adverse conditions that may arise. He also noted that the board could approve conceptual approval.

Mr. Bardach asked the board for any comments or questions. Mr. Lauer asked if the applicant had selected the location of external utilities. Mr. Michael Maltinsky, architect of this project, noted that the placement of the utilities has not yet been determined. Mr. Lauer then asked why the type of lighting proposed was selected over the use of bollard lighting. Mr. Maltinsky commented that bollard lighting would not provide enough cover. He stated that the lighting selected is to provide security level lighting. Mr. Lauer suggested island lighting be considered as well. Mr. Maltinsky commented that limited lighting and fixtures was the intent of the proposed lighting plan.

Next, Mr. Tim Burke, the attorney representing the interest of adjacent property owners, Steven and Christine Guyer, commented on the proposal. Mr. Burke and the Solicitor discussed that, as an attorney, Mr. Burke was not sworn in as he did not intend to present any evidence and would only present legal argument. Mr. Burke stated that he reviewed the site plan and it does not accurately depict the placement of the internal driveway shared with the Guyers. Mr. Maltinsky noted that the plan was obtained from CAGIS (Cincinnati Area Geographical Information Systems). Mr. Burke stated that the survey of the property shows the bridge is evenly divided by the properties, noting that half of the bridge is on the Guyer property. Mr. Burke asked if the additional liability being placed on the Guyers has been considered as a result of the proposed non-residential use of the bridge.

Mr. Tim Burke questioned Mr. Maltinsky regarding the width of the bridge from the street through to the back of the property. He asked Mr. Maltinsky to point out where the driveway could not be widened on the site plan map displayed. Mr. Maltinsky pointed to the area of steep grading and the location of a pond where those conditions impede widening the driveway. Mr. Burke asked Mr. Maltinsky the width of the bridge and he was not certain. Mr. Burke commented that the pinch point on the bridge would remain the current width of 16 feet, as proposed, and would not support two-way traffic. Mr.

Burke clarified that there are not two full lanes from Section Road to the proposed site of the synagogue.

Mr. Burke then commented on the fire access of the site. He stated that the Ohio Administrative Code requires 20 feet of unimpeded access all the way back to the building from the street. He stated that the bridge is only 16 feet. He commented that the Amberley Village code references the requirement to protect health and welfare. He stated that he felt the applicant could not meet the fire code as proposed. Mr. Burke cited section 503.2.1 of the Ohio Administrative Code.

Mr. Burke continued his report, stating that the property value of the Guyer's will be reduced by 20-30% if approved, which would be detrimental to the Guyers. He stated that the design of the synagogue will have adverse impact and that the bridge was never intended for public use. Mr. Burke concluded that if the applicant cannot meet the fire code, it would hinder delivery of public services.

Mr. Lauer commented that there was not a member of the Amberley Police/Fire Department present to comment on the fire code issue.

Mr. Matt Murtha, resident at 2471 Brookwood Lane, commented that use of the private lane cannot be permitted because it opens up the property owners of the lane to liability. He also stated that the applicant's attorney has not approached the Brookwood Lane owners regarding the proposed use. He noted that he is an architect and questions the site itself as an appropriate site for the proposed use, specifically making reference to the fire code issue. He commented that an occupancy change means the fire and safety code will be different from a residential use.

Mr. Murtha continued by stating that the Ohio Administrative Code calls for lane access (20 feet wide) from the main road to the building. He stated he did not feel the proposed plan meets minimum guidelines for fire access, the parcel is landlocked, and this issue places undue burden on the Village fire department to deliver services.

Mr. Jim Robinson, resident at 2051 Fair Oaks, commented that he has no problem with the congregants looking for a home. He does disagree with the non-residential use of the building in a residential area. He stated that he recently had an appraisal completed and the appraiser felt non-residential buildings impact the value of homes.

Mr. Robinson shared a story that he had a phone conversation with a friend who was interested in buying in Amberley. He commented that the home for sale was behind the proposed synagogue location. After informing his friend of the proposed building, he stated that his friend was no longer interested in the property because of the proposed non-residential use.

Next, Mr. Paul Wesselkamper introduced himself as a certified appraiser and provided a handout to the board outlining his credentials, along with an explanation of why he believes the construction of a non-residential building in this residential area will

negatively impact the value of the homes surrounding the proposed building site, copy attached.

In response to Mr. Wesselkamper's presentation, Mr. Lauer asked if there was a condition that could be imposed upon the applicant to lessen any such value impact. Mr. Wesselkamper said there would not be a condition that would change the impact. Mr. Wesselkamper commented that a majority of churches are located generally on corners and main roads.

Mr. Wolf commented that the law protects churches and places of worship, which makes it very difficult to prohibit the use.

Mr. Barrett then asked Mr. Wesselkamper if he utilized USPAP standards to complete his letter. Mr. Wesselkamper noted that the letter would not be required to be in compliance with the standards. He noted that the Robinsons' appraisal earlier this year was \$550,000 and he paid \$640,000 in 2006. Mr. Barrett posed further questions of Mr. Wesselkamper regarding his appraisal and whether his opinion of a reduced value was causally related to a nearby place of worship.

Mr. Andy Klafter, resident at 2415 Larkfield, stated that he has been a resident since 2000 and is a member of the proposed synagogue. He asked that the board consider whether or not it is true that the property values would be impacted; is it true that this proposed development would detract from the residential community; and inquire with the experts regarding the fire access issue. He stated that he trusts the board to follow its process. He noted that he wishes to be a good neighbor and raise his four children in Amberley.

Mr. Jeff Mumper, resident at 2506 Oak Ridge, commented that he was concerned with the possible expansion of the synagogue. He noted that he moved to Amberley for its residential environment.

Mr. Ethan Katz, resident at 7425 Elbrook, commented that he is a member of the congregation and an advocate for the conditional use permit. He stated that he appreciated the care being put into this process. He noted that he felt the opposition operates from a logic that it is a good idea, but do not build it next to me. He stated that the new project needs to be built. People should always expect the possibility of growth and change. He commented that the project has great value for the surrounding homes because he believes that families that walk to the synagogue would love to pay more for a home to live next to the synagogue. He noted that the congregation would be good neighbors and that this proposal is not for a mega-church.

Mr. Whitman, resident on Fair Oaks, commented that he believes if the fire code has a 20 foot lane width requirement, then all other information is immaterial until the fire code is met.

Mrs. Fisher, resident at 2635 Section Road, commented that when she was first considering moving to Amberley, one prerequisite was that she wanted to live near a

synagogue or it would be a deal-breaker if one was not accessible. She then shared information about a location called West Mount in Montreal that she felt was a similar community when compared with Amberley Village. She commented that West Mount has integrated places of worship. She noted that Amberley has heart and a sense of community, which she believes was established in part by having synagogues in the Village.

Mrs. Rissover then asked how it came to be that the congregants have no synagogue. Mrs. Fisher noted a difference in ideology and a vision of value to the larger community. Mrs. Fisher added that having this synagogue built is very compelling in their personal lives.

Ms. Lisa Murtha, resident on Brookwood, introduced herself and explained that she is a professional writer in the areas of real estate in the local Cincy Magazine, and has written about every high-end community in the county. She commented that one thing all of those communities have in common is the very strict enforcement of zoning codes. She stated that communities do not deteriorate overnight, but one variance at a time. She cited Roselawn was an example of what happens when zoning laws are non-existent or unenforced. She recalled that Kennedy Heights, Golf Manor, and Westwood were all solid residential communities, which slowly disappeared into non-residential and multi-family buildings.

Ms. Murtha continued by stating that Montgomery, Mariemont, and Indian Hill all have strict adherence to zoning laws, which restricts non-residential development. She then referenced an article called, 'Neighborhoods in Peril' and encouraged the board to read it. She noted that the board has approved two variances already; one for a synagogue on Section and another for a group home. She stated that every variance weakens the ability to uphold the code. Mr. Wolf clarified that the board did not grant a variance for a group home.

Mr. Tony Zimmer, resident at 6740 E. Beechlands, introduced himself as a professional engineer. He stated that he moved to Amberley for its residential character. He commented that you can try to hide it, but parking lot is a highly visible item. He noted that he felt, if approved, this proposed use would change the character of the Village.

Mr. Myles Haffer, resident at 7011 Fair Oaks, introduced himself as the husband of the former Mayor Gloria Haffer. He commented that most residents are against this development. He stated that 90 members in Brookwood defeated a previous development. There are other locations in the Village available. He believes a synagogue is a good thing, however, neighbors in this area do not want it.

Mr. George Fisher, resident at 3185 S. Farmcrest, commented about the Village's financial issues and stated that this type of use would not bring taxes to the Village.

Mr. Steve Guyer, resident at 2390 Section, stated that he is the affected owner of this proposed development. He noted that the safety of his family is his concern. He believes he will not be able to get out of his driveway and that fire trucks will not be able to get in. He then submitted a petition of 50 signatures opposing this development. He

commented that his liability is increase when 50-100 people start walking on the property and bridge. He noted that his insurance agent informed him that his insurability would be changed and viewed as abnormal exposure so he would not be insured. The agent recommended relocation or providing separate access.

Mr. Guyer continued by stating that he does not believe the proposed landscape is enough to block the light and noise that would be generated. He commented that his boss advised him that the driveway access also has an engineering problem and would require a 14-foot retaining wall to be installed for safety. He noted that the Amberley code cites that the proposed development cannot interfere with the quiet enjoyment of adjacent owners and should not generate noise, traffic or light. He felt that this development would cause all of those issues to exist.

Mr. Lauer then thanked everyone for their comments. He stated he has not had time to digest all of the information presented. He would also like to hear from the police and fire department and requested a staff report.

Mr. Lauer moved to table the request until the next meeting on May 7. He asked Mr. Lahrmer to have Chief Wallace prepare a report or attend to address the fire code issue. Mr. McGraw suggested that the liability issue be addressed, too. The location of the bridge needs to be determined, along with the property line, and review of the easement agreement would be preferred. Seconded by Mr. McGraw and the motion carried unanimously.

Mr. Bardach stated that there being no further business, the meeting was adjourned.

Nicole Browder, Clerk

Richard Bardach, Chairperson