

CITY OF OLNEY
BOARD OF APPEALS
MAY 4, 2015

AGENDA #1 “CALL TO ORDER” The May 4, 2015, meeting of the Board of Appeals was called to order at 7:00 p.m. in the Council Chambers of the Olney City Hall, 300 S. Whittle Avenue, Olney, Illinois, with Chairman Tony Zuber presiding.

AGENDA #2 “ROLL CALL” The following Board of Appeals members were present: Kurt Ginder, Scott Jones, Belinda Henton, Greg Eyer, David Abell, Pat Everette, and Tony Zuber. Also present were City Manager Larry Taylor, Code Enforcement Officer Mike Mitchell, and City Clerk Kelsie Sterchi.

AGENDA #3 “APPROVE MINUTES OF THE BOARD OF APPEALS MEETING ON NOVEMBER 3, 2014” Mr. Jones moved to approve the minutes of the Board of Appeals meeting on November 3, 2014, seconded by Mr. Eyer. Mr. Ginder, Mr. Jones, Mrs. Henton, Mr. Eyer, Mr. Abell, Mr. Everette, and Mr. Zuber voted yes. There were no opposing votes. The motion carried.

AGENDA #4 “SWEARING IN” Mr. Zuber asked that anyone wishing to testify on behalf of the item being discussed to stand and be sworn in. City Clerk Sterchi asked them to stand and raise their right hands and “swear to tell the truth, the whole truth and nothing but the truth so help me God.” Matthew Miller, Steve Walser, and Terry Conour were sworn in.

AGENDA #5 “VARIANCE: 1219 CYPRESS ROAD” Matthew Miller submitted a Request for Variance for the property located at 1219 Cypress Road. He was requesting a variance in the front yard setback to allow a 4-foot front yard setback rather than the 30-foot front yard required setback. If the variance is approved, it will allow Mr. Miller to construct a garage. The setback requirements needed to be treated as front yard requirements because of the platted Mack Avenue easement.

Just prior to the meeting, Mr. Mitchell had provided the Board with copies of Page 7623 of Book 1993 of the South Cove Subdivision protective covenants. Also before the meeting began, Mr. Walser provided the Board with three letters of opposition to the variance request written by Terry Conour and Georgia Oswald, Douglas Tompson, and Steve and Shelby Walser.

Noting Mr. Miller’s application, Mrs. Henton asked if Mr. Miller did own 30 feet of the Mack Avenue easement. Mr. Miller replied that the sale was close to being final. Mrs. Henton then commented that if that area was purchased, Mr. Miller would not need a variance. Because Mr. Miller was not completely familiar with all processes, he wanted to be sure all areas were covered in case of any question.

Mrs. Henton thought that if the Mack Avenue easement was purchased, Mr. Miller’s portion would turn into a side yard, and Mack Avenue would no longer be able to be extended in that area. Mr. Miller replied that his understanding was that since Mack Avenue was originally platted in the area, if the Council wished to extend the road, they would be able to do so anyway.

City Manager Taylor then clarified that if the Council wished to extend Mack Avenue, but no longer had any right-of-way or title, they would need to acquire the property through negotiations or eminent domain. Mr. Taylor also pointed out that the copy of Page 7623 that Mr. Mitchell had provided stated that the 60 foot Mack Avenue easement is not dedicated to the public at this time.

For the purposes of the variance request, the Board decided to look at the application based on the current status of the area; meaning that Mr. Miller did not own the 30 feet of Mack Avenue easement.

Mr. Eyer asked how likely it would be for eminent domain to ever be used. Mr. Taylor indicated that if the area was desired, eminent domain would only come into play if the City and the owners could not come to an agreement. To Mr. Taylor's recollection, eminent domain had only been used once in the past 30 years.

Mr. Eyer then asked if Mr. Miller was aware of the required setbacks when he built his home back in 2002. Mr. Miller indicated that he was aware of the setbacks. Due to a waterway that existed on the south of his property, he did not wish to place his home any closer to the waterway than what was decided.

Mr. Eyer then wondered if Mr. Miller had considered placing his new garage in the same plane as his existing garage. Mr. Miller had considered that placement, but felt it would not be pleasing to the eye.

Mr. Eyer pointed out that a request for variance should be approved if there was an exceptional hardship that would result from denial of the request. He asked Mr. Miller if he felt there would be an exceptional hardship if he were not allowed to place the proposed garage in his desired area. Mr. Miller jokingly said that he would have a hardship with his wife, but honestly, he would not have any exceptional hardship.

Mrs. Henton asked how Mr. Miller's request fell in line with the subdivision's covenants. Mr. Miller explained that the covenants stated that the structure would need to be approved by an architectural committee after the City approved the request.

Mr. Conour addressed the Board and stated that he was a former trustee of the South Cove Subdivision Homeowners Association. He claimed that the procedure would be that the architectural committee would review the structure plans and make a recommendation to the trustees. From there, the request would be approved or denied before making its way to the City. At the present time, there was no functioning architectural committee. If no architectural committee was in place, a 90% approval would be required from all property owners. Mr. Miller indicated that a 90% approval from the property owners was not listed anywhere in the covenants. He brought a copy of the covenants with him, and invited Mr. Conour to show him where that requirement was listed. Additionally, Mr. Miller told the Board that he held a three year term on the architectural committee that ended in 2010. Since that time, many structures had been placed in the subdivision with no action from an architectural committee or property owner approval.

Mr. Eyer asked if the covenants superceded City requirement. Mr. Taylor replied that the covenants would supercede City requirement.

Based on the evening's discussion, Mr. Miller wished to formally retract his application for a variance. He thanked the Board for their time and consideration.

AGENDA #6 "PUBLIC COMMENTS/PRESENTATIONS" No other members of the public wished to speak.

AGENDA #7 "ADJOURN" Mr. Jones moved to adjourn, seconded by Mr. Everette. Mr. Ginder, Mr. Jones, Mrs. Henton, Mr. Eyer, Mr. Abell, Mr. Everette, and Mr. Zuber voted yes. There were no opposing votes. The motion carried.

The meeting of the Board of Appeals adjourned at 7:22 p.m.

Kelsie J. Sterchi
City Clerk