

GENEVA ZONING BOARD OF APPEALS MINUTES
August 10, 2016 – Meeting No. 2016-15
7:00 p.m. – City Council Chambers – 22 S. First Street

Present: Chairman Kaindl; Members DuChesne, Hood, Hunz, Kerfoot, Konicek, Rittenhouse
Staff: Building Commissioner Dustin Schultze and Community Development Director David DeGroot; City Attorney Charles Radovich
Public Present: Janet Shanahan, 331 Sandholm Street, Geneva; Kate McCracken, Esq., 101 E. Main Street, Ste. G, St. Charles; James and Carol Carlson, 428 Ford Street, Geneva; Planet Depos Court Rptr. Joanne Ely

The meeting of the Zoning Board of Appeals was opened by Chairman Kaindl at 7:00 p.m. The building commissioner called the roll and a quorum was present with seven (7) voting members.

Approval of the July 27, 2016 Meeting Minutes

Minutes of the July 27, 2016 meeting were approved on motion by Mr. Hunz, seconded by Mr. Kerfoot. Motion carried by voice of 7-0.

Public Hearing

Chairman Kaindl read the opening statement and explained the protocol for the hearing. The public hearing for the following case was opened.

A. 102 Howard Street – In accordance with Section 11-14-5 of the Geneva Zoning Ordinance, the petitioner is requesting a variation from 11-3-5-C1 (Fences and Walls) to increase the maximum allowable fence height in the street yard on the south side of property from 42 inches to 48 inches for the purpose of meeting the DCFS' height requirement for Day Care Center fence enclosures. Petitioner, Ms. Janet Shanahan, 331 Sandholm Street, Geneva, introduced herself as the director of the Mansio Montessori School and said she was seeking a 48" inch fence height variance for the property at 102 Howard Street, on the south side of the property. She was replacing a 25 year-old fence and the Department of Children and Family Services was requiring the new fence be 48 inches in height. Photos of the current fence were distributed by Ms. Shanahan, with her stating the fence design would be the same except for the height and would be located in the exact location of the current fence.

No comments were received from the board members. For the City of Geneva, Mr. Schultze stated that other than what information was in the packet, the request met reasonable use. Staff reported the fence height was grandfathered in when DCFS changed its regulations. Allowing the height to remain at 42" inches was no different than other requests i.e., the fence is allowed to stay until improvements are made. Staff felt that since the use received site plan approval in 2005, to tell the petitioner that it could not use its outdoor space would not provide a reasonable return on the property. For unique hardship, the petitioner's use was unique and she had to have the height in order to use the outdoor space, which was through the variation. As to character of the area, Mr. Schultze stated that because the fence was set back from the street a bit, noticing a few inches in height would not be noticeable. And, the minimum variation was being asked by the petitioner. Staff felt the petitioner met each of the four variation standards. No further comments followed.

Mr. Hunz moved to approve a variation from 11-3-5-C1 (Fences and Walls) to increase the maximum allowable fence height in the street yard on the south side of property from 42 inches to 48 inches, and to include the city's rationale for the four variance standards. Seconded by Mr. Kerfoot. Roll call:

Aye: DuChesne, Hood, Hunz, Kerfoot, Konicek, Rittenhouse, Chairman Kaindl
Nay: None
MOTION PASSED. VOTE: 7-0

B. 428 Ford Street – (Continued discussion on appeal requested relating to an administrative decision.) Chairman Kaindl stated that he expected Section 11-14-7 of the Zoning Code, Paragraphs A, B, C, and D had been studied by each member of the board and stated a decision by the board in regards to Item 4 of the July 27, 2016 hearing would take place. He acknowledged that sworn testimony was given from David DeGroot, the City of Geneva as well as Kate McCracken, attorney for the Carlsons.

Chairman Kaindl confirmed with each member that they read the transcript and minutes of the last meeting. Mr. Rittenhouse stated he was unable to download the minutes/transcript. Mr. DeGroot conveyed that it was up to the board's election whether they wanted to continue without the participation of Mr. Rittenhouse, since he was unable to review the record, or continue the hearing.

City Attorney Charles Radovich affirmed that if a member reviewed all of the material presented and the evidence presented, it should be sufficient for the member to continue with the process and be a participant in the decision making of the board, but it was up to the board and Mr. Rittenhouse if he was capable of participating in the deliberations. Mr. Radovich stated he was asked to be present by Mr. DeGroot to provide input with regard to any legal issues that may arise.

Ms. McCracken voiced concern that there were references made at the last meeting regarding older deeds – specifically 1956 -- and referencing a legal description from 1956. She wanted to ensure that it was referenced in the transcript as a division of property in 1956 and she wanted to provide copies of same for the record. Mr. Radovich, in response, recalled from the record that Mr. DeGroot's PowerPoint had two deeds from 1988. (Copies were distributed to members.)

Referring to the City's letter dated May 12, 2016, Chairman Kaindl asked what a strawman process was. Mr. Radovich explained it was a method used to change the ownership of a parcel of property or a re-description of a property through a quit claim deed (no warranty) to be redistributed to another party. Details followed. Mr. Hunz discussed the legality of the second deed dated November 4, 1988. His understanding was that it was to merge the north and south parcels into one zoning lot with the same legal description, which existed prior to 1955. Mr. Radovich confirmed that the merger happened because it was prior to the trigger date of May 1, 1995 – the date for the non-conforming lots – and it was the condition of the title to Lot 6 with the westerly half of Lot 7.

Referring to the survey dated November 1, 1955, Chairman Kaindl noted the survey had a division of one parcel into two parcels. While he believed it could be true, Mr. Radovich said it was never recorded with the Kane County Recorder of Deeds. Referring to Ms. McCracken's copy of a deed dated January 21, 1956 where a transfer to create a division of Lot 6 and the westerly one-half (of Lot 7) to separate the southerly from the northerly portions of those properties, the survey itself, in Mr. Radovich's opinion, had no probative value currently because this was a recordation state and it was not recorded.

A member asked whether it was common practice during that time to record the plat as it was depicted in the document, wherein Mr. Radovich believed it was a common practice but did not know why it was done in this case. Asked if the document could have been mistakenly not recorded, Mr. Radovich could not confirm that. He surmised that a land surveyor prepared the plat and used the deeds as the means of establishing it.

Ms. McCracken interjected and pointed out that there was no free legal standing requirement to record a survey, even today. She concurred that the survey was prepared in contemplation of the 1956 deed that identified one single parcel, leaving a remainder parcel, and resulting in two parcels. However, Mr. Radovich found those premises irrelevant, explaining that in light of the zoning ordinance requirements for a non-conforming lot of record, there were two criteria that had to be met: 1) establish the division into two separate parcels, and 2) each one of them in accordance with the definition of a lot of record has to have a tax identification number. To his and staff's knowledge/research, as of May 1, 1995 a tax identification number for each of the parcels did not exist. Additionally, Mr. Radovich pointed out that premise also demonstrated in the second deed that was recorded in 1988 of some intent on the part of the property owner, at that time, to merge those properties back together. In summary, there was a division and then a merger back, and that conveyance from Sally Gossman to the Carlsons brought those parcels back together and remained that way past May 1, 1995.

Mr. Radovich further explained that the relevant points and facts in this case were those requirements found in the Zoning Ordinance at Section 11-13-3, and in the definition of "Lots of Record" at Section 11-2-2. In response, Ms. McCracken explained that two separate parcels existed prior to the date set forth in the ordinance and nothing was said that the parcels were merged or not merged. Again, she reminded the board that a pin number, by itself, did not legally determine a parcel and that she could request a single pin number for two parcels/lots of record. She pointed out there was the Recorder's entry for Parcel 1 and Parcel 2 and legal descriptions reflecting Parcel 1 and Parcel 2 and they existed prior to the appropriate date set forth in the ordinance.

In response, Mr. Radovich stated Ms. McCracken's explanation was not responsive to the ordinance and he proceeded to explain that the definition of a lot of record says whether it is a lot or a parcel, that the deed which is recorded in the Office of the Recorder showing title as a separate entity, and which is assessed as a separate entity for tax purposes -- that did not happen. Mr. Radovich proceeded to explain his side of the argument and that of the petitioner's attorney but pointed out Ms. McCracken's argument failed because it did not meet the definition of a Lot of Record as it pertained to the "separate entity for tax purposes." Moreover, Mr. Radovich noted that Ms. McCracken's argument was that pin numbers had no basis of ownership, but it was not the city's argument.

Further discussion followed regarding pin numbers and parcels. Mr. Radovich emphasized that pin numbers in this case were essential to the determination, under the city's Zoning Ordinance, as to what constitutes a legal non-conforming lot of record and it was an express element of the ordinance, of the law, as to what constitutes a legal non-conforming lot, as of May 1, 1995.

Asked what the remedy was for the Carlsons, assuming the interpretation was accurate the way it read, Ms. McCracken stated there was none. However, Dir. DeGroot explained that if the determination was upheld the alternative would be for the Carlsons to apply for a variation before the ZBA for a reduced lot size. However, he said the lot area requirement would not be met. Dir. DeGroot stated it would be very difficult to demonstrate compliance with the four hardship standards.

Dialog followed on how the board wanted to proceed. Again, for clarification purposes, Mr. Radovich summarized the issue before the chairman and the board and when the definition of "lot of record" came about, i.e., in 1995 during the city's comprehensive rezoning.

Mr. Hood asked Ms. McCracken for clarification of the parcels and their legal description. Dir. DeGroot referenced the document Mr. Hood was referring to (1st deed) which was describing one

ownership entity and one piece of property as Parcel 1 and Parcel 2 but he pointed out it did not demonstrate that it was assessed separately, as it relates to the definition of a "lot of record."

Dialog then followed on how the deeds were entered into the Recorder's book, with Mr. Radovich pointing out that the very next entry for the second deed shows the same date of recordation that combines the two pieces right back into the way they were originally. Asked if the owners could resubdivide their large parcel, Mr. Radovich stated they could not, under the city's current zoning ordinance, because the lots would not meet the minimum lot area requirements.

Both, counsel for the applicant and counsel for the city reiterated their arguments with Mr. Radovich recommending that the ZBA affirm Dir. DeGroot's opinion/decision because it was consistent with what the ordinance stated.

Mr. DuChesne made a motion to deny the appeal but to confirm Dir. DeGroot's opinion regarding this case. Seconded by Mr. Huntz. Roll call:

Aye: DuChesne, Hood, Hunz, Kerfoot, Konicek, Rittenhouse, Chairman Kaindl

Nay: None

MOTION CARRIED. VOTE: 7-0

Special Items – None.

Other Business – None.

Adjournment

There being no further business to come before the Geneva Zoning Board of Appeals, motion made by Mr. Kerfoot, seconded by Mr. Hunz to adjourn the meeting. Motion carried unanimously by voice vote of 7-0. Meeting adjourned at 8:10 p.m.

Respectfully submitted,



Chairman

/s/ Celeste K. Weilandt

Celeste K. Weilandt, Recording Secretary