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**MINUTES OF THE PUBLIC HEARING AND REGULAR MEETING OF THE
RENSSELAER ZONING BOARD OF APPEALS HELD ON FEBRUARY 17, 2004 IN
THE SECOND FLOOR CONFERENCE ROOM AT 7:00 P.M.**

REGULAR MEETING:

Vice Chairman William McLoughlin called to order the Regular Meeting of the City of Rensselaer Zoning Board of Appeals at 7:00 pm.

The role was called, and it was determined there was a quorum.

MEMBERS PRESENT:

William McLoughlin, Vice Chairman; Doreen Foust; Nancy Johnson; and Paul Ryan.

ALSO PRESENT:

Katya Bednaya; Luigi Cicero; Linda Dorsey; Ann Douglas; George Douglas; Christopher Eastman, Assistant Planner; Jackie McGinnis; Daniel Moore, Building Inspector; Marybeth Pettit, Director of Planning; Karen Smith; and Tom Smith.

MINUTES OF THE OCTOBER 20, 2003 MEETING:

Vice Chair McLoughlin said he would entertain a motion to approve the minutes of the October 20, 2003 meeting of the City of Rensselaer Zoning Board of Appeals.

Ms. Foust motioned for and Mr. McLoughlin seconded approval of the minutes of the October 20, 2003 meeting. All in favor. Motion carried.

ADOPTION OF 2004 MEETING SCHEDULE:

Vice Chair McLoughlin announced that the next order of business would be the adoption of the 2004 Meeting Schedule for the Zoning Board of Appeals. Ms. Johnson motioned for and Mr.

Ryan seconded adoption of the 2004 Meeting Schedule as presented. All in favor. Motion carried.

Vice Chair McLoughlin then motioned that the Board postpone election of officers until Daniel Dwyer, Chairman of the Zoning Board, is in attendance.

Ms. Foust seconded his motion. All in favor. Motion carried.

OLD BUSINESS: None

PUBLIC HEARING ON NEW BUSINESS:

Vice Chairman McLoughlin opened the public hearing portion of the meeting at 7:10 pm and announced that the first item on the agenda, an application for a use variance for a freestanding sign at 9 Third Avenue, had, at the request of the applicant, been taken off the agenda and would be considered at a future meeting. Remaining on the agenda are requests by Cicero Builders for four area variances.

1. Cicero Builders, Area Variance Application for 4D Sterling Ridge Drive:

The building at 4D Sterling Ridge Drive projects five inches over its 15-foot west side setback.

There was no one to speak for against the requested variance. Vice Chair McLoughlin, therefore, closed the public hearing on 4D Sterling Ridge Drive.

2. Cicero Builders, Area Variance Application for 1 Neil Court:

One corner of the building projects four inches over a 25-foot front yard setback; another corner projects three inches over a 30-foot rear setback.

Karen Smith, of 58 Sterling Ridge drive asked how the setback violation occurred. Dan Moore, Building Inspector, and Vice Chair McLoughlin explained that the stamped plans indicated that the building would meet the setback, and when the final survey was conducted it was revealed that the setback had been violated slightly.

Ms. Smith asked why construction on the building has continued even though a variance is needed. Vice Chair McLoughlin explained that the builder has a permit and the Board would likely not require him to move the building over such a minor violation.

Linda Dorsey, of 2A Sterling Ridge Drive, asked if there are inspections after the foundation has been completed but prior to further construction. Mr. Moore answered yes, but surveys are not conducted at every inspection. The final survey took place prior to the transfer of property to a new owner.

Marybeth Pettit, director of planning, reminded members of the Zoning Board and the public that one of the criteria comprising the “test” to determine if an area variance is warranted asks if the variance request is substantial. A variance of several inches, she added, is not substantial.

Vice Chair McLoughlin asked the builder, Luigi Cicero, why the homes were not built within their designated setbacks. Mr. Cicero replied that in the case of 1 Neil Court the initial survey was flawed.

There were no further comments from the public on 1 Neil Court, so that portion of the public hearing was closed.

3. Cicero Builders, Area Variance Application for 31 Sterling Ridge Drive:

One corner of the building at 31 Sterling Ridge Drive projects six feet over a 25-foot front yard setback.

Luigi Cicero spoke in favor of the variance, arguing that no neighbor was impacted by front yard setback violation and that there remains a generous setback of 19 feet from Sterling Ridge Drive to the corner of the townhouse. Once again, there was a mistake in the survey. The buildings are designed in such a way that it would have fallen within the setback had the porch faced the utility boxes. The builder never intended it to be built with that orientation, but the surveyor thought that was how the house was to be constructed. The setback violation was not discovered until the final survey was conducted.

Karen Smith said that the houses are built, and she asked what can be done at this point.

Christopher Eastman, assistant planner, reminded the members of the public at the meeting that given the high density of much of Grandview Estates, the setback violations being considered are relatively minor.

With no further comments from the public, Vice Chair McLoughlin declared closed the public hearing on 31 Sterling Ridge Drive.

4. Cicero Builders, Area Variance Application for 2G Sterling Ridge Drive:

Marybeth Pettit, director of planning, informed members of the Zoning Board and the public that the zoning on the three parcels at the east end of Sterling Ridge Drive is R-1, not Planned Development, so the side setbacks must together add up to 20 feet, with the minimum on one side being eight feet. She asked Mr. Cicero what his plans are for the lot to the east of 2G. He replied that he intends to build another house on that lot. She reminded him that the lot must have 60 feet of frontage to be built upon in an R-1 district.

Ms. Pettit explained further that the configuration of the lot on which 2G was built is problematic. It meets the City’s zoning law’s minimum standards for a single-family house, but the Planning Commission would today likely not permit a subdivision of the configuration of 2G.

Mr. Cicero explained that he had thought the land in the easement between 2G and Ms. Dorsey's residence was City-owned property, but it belongs to Ms. Dorsey, and when he asked Ms. Dorsey for a copy of her deed she refused to provide it to him.

Ms. Dorsey told Mr. Cicero that she didn't provide him a copy of her deed because he disputed the ownership of the property containing the easement.

Mr. Cicero explained that once again there was a mistake in the survey, but with the easement between the houses 2G is considerably more than 20 feet from Ms. Dorsey's townhouse.

Ms. Dorsey distributed to everyone at the meeting the survey of 2G that illustrates its setback violations and explained that she moved into her unit in 1990 and for several years thought the land to the east of it would remain undeveloped. But then it was subdivided in 1995. Construction began on 2G Sterling Ridge Drive in 2002, and crews dug on her property to extend water lines. She complained that they "tore up [her] side yard to build that house" and that no one asked her permission to be on her property. She then suggested that the because the house on the lot next to hers—2G—could not have been moved to fit within its allowed setbacks that the builder intentionally violated the setbacks.

Ms. Dorsey went on to describe that the fill used on the lot to the west of her house, where 2G is now, had, as she sees it, caused drainage problems on her property.

Jackie McGinnis, of 27 Sterling Ridge Drive, then described a drainage problem in her neighbor's house at 29 Sterling Ridge Drive, that she believed might be a result of poor grading.

With no further comments from the public, Vice Chair McLoughlin closed the public hearing portion of the meeting.

DISCUSSION OF NEW BUSINESS:

1. Cicero Builders, Area Variance Application for 4D Sterling Ridge Drive:

The members of the Zoning Board of Appeals reviewed the criteria to consider for the granting of area variances and applied it to their discussion of 4D Sterling Ridge Drive. The criteria ask, in summary, if the variance would be detrimental to the health, safety, and welfare of the community; if it would change the character of the community; if the same benefit sought can be achieved by a feasible method other than an area variance; if the variance sought is substantial; if the variance would result in a negative impact to the environment; and if the difficulty was self-created.

The members of the Zoning Board discussed each and determined the application for 4D passed the "test" because it had not been demonstrated that granting the variance would threaten the health, safety, and welfare of nearby residents.

Ms. Johnson motioned for and Ms. Foust seconded the following resolution:

“The Zoning Board of Appeals of the City of Rensselaer hereby grants the five-inch area variance requested for the west side of 4D Sterling Ridge Drive.”

All in favor. Motion carried.

2. Cicero Builders, Area Variance Application for 1 Neil Court:

Members of the Zoning Board reviewed the above criteria in reference to 1 Neil Court and reached conclusions similar to those of the discussion of the variance request for 4D Sterling Ridge Drive.

Ms. Foust motioned for and Mr. Ryan seconded the following resolution:

“The Zoning Board of Appeals of the City of Rensselaer hereby grants the requested four-inch side and the three-inch rear area variances for 1 Neil Court.”

All in favor. Motion carried.

3. Cicero Builders, Area Variance Application for 31 Sterling Ridge Drive:

The members of the Zoning Board of Appeals discussed the possibility that a drainage problem had been created for 29 Sterling Ridge Drive when 31 Sterling Ridge Drive was constructed and agreed the building inspector should look into whether the setback violation has had any effect on the alleged drainage problem.

Mr. Ryan motioned for and Ms. Johnson seconded the following resolution:

“The Zoning Board of Appeals hereby grants the requested six-foot front yard area variance for 31 Sterling Ridge Drive.”

All members voted in favor of the resolution except for Ms. Foust, who voted against it.

Christopher Eastman, assistant planner, reminded members of the Zoning Board of Appeals that for the Board to act on an application a majority of the entire Board, not only those present, would have to vote in favor of a resolution, and since the Zoning Board had present only a minimum quorum the vote, for any action to be taken, the vote in favor of the resolution would have to be unanimous.

Ms. Foust explained that she voted against the resolution because of the possible need to mitigate the drainage problem at 29 Sterling Ridge Drive. She motioned instead for the following resolution, which Mr. McLoughlin seconded:

“The Zoning Board of Appeals of the City of Rensselaer will reconsider the request for the six-foot front yard variance for 31 Sterling Ridge Drive after acceptable mitigation—if the building inspector determines the setback violation at 31 Sterling Ridge Drive has influenced the drainage problem at 29 Sterling Ridge Drive—has been proposed.”

All in favor. Motion carried.

4. Cicero Builders, Area Variance Application for 2G Sterling Ridge Drive:

The members of the Zoning Board of Appeals briefly discussed possible mitigation measures that would have to be fulfilled for the area variance for 2G Sterling Ridge Drive to be granted. Linda Dorsey, the owner of 2A Sterling Ridge Drive, to the immediate west of 2G, distributed to the members of the Board a list of her requests for mitigation, including removing fill that she claimed Mr. Cicero's crews dumped on her property, a re-survey of her property line, an examination by a landscape architect of the erosion and drainage problem she described, and erection of a fence along the property line between her house and 2G.

Mr. Cicero offered to pay for a soil engineer's examination of the drainage problems on Ms. Dorsey's property and said he was willing to meet with Ms. Dorsey to discuss exactly where a fence should be constructed along the property line between her house and 2G.

Ms. Dorsey asked how the mitigation would be guaranteed.

Vice Chair McLoughlin replied that the variance is contingent on the applicant's fulfilling the terms of the mitigation agreement.

Mr. Cicero, Ms. Dorsey, and Mr. and Mrs. Douglas (the couple who live in and intend to buy 2G Sterling Ridge Drive) agreed to meet at the site with staff of the Rensselaer Planning and Development Agency to discuss the details of the mitigation.

Ms. Johnson motioned for and Ms. Foust seconded the following resolution.

"The Zoning Board of Appeals of the City of Rensselaer will reconsider the application for the requests for area variances for 2G Sterling Ridge Drive after acceptable mitigation has been proposed."

All in favor. Motion carried.

ADJOURNMENT:

There being no further business to come before the Rensselaer City Zoning Board of Appeals, Vice Chair McLoughlin said he welcomed a motion for adjournment. Mr. Ryan motioned for adjournment. All in favor. The meeting adjourned at 8:33 pm.

Respectfully submitted,

Marybeth Pettit
Secretary

MP:ce