

CITY OF IONIA
Zoning Board of Appeals
November 30, 2010
Meeting Minutes

CALL TO ORDER The meeting was called to order by Chairperson Mike Kirgis at 12:11 PM, Tuesday, November 30, 2010 in the Council Chamber of City Hall.

ROLL CALL Roll call revealed Board Members Jim Denny, Joe Dunn, Mark Jennings, Mike Kirgis and Jeff Winters present. No members were absent.

Also in attendance was City Manager Jason Eppler, Cathy Hoppough, Todd Hoppough, Kristopher Hoppough, Chris Ruthruff, Larry McKaig and Marc Daneman.

APPROVAL OF AGENDA Chairperson Kirgis reviewed with the Board the agenda for the meeting. After review, it was moved by Member Denny, seconded by Member Winters to approve the agenda for the November 30, 2010 meeting as presented. MOTION CARRIED.

APPROVAL OF MINUTES Chairperson Kirgis reviewed with the Board the minutes from the June 30, 2010 meeting. After review, it was moved by Member Winters, seconded by Member Denny to approve the minutes of the June 30, 2010 meeting as presented. MOTION CARRIED.

PUBLIC HEARING Chairperson Kirgis called the Public Hearing to order regarding a request from Mr. and Mrs. Louis Warfield for an administrative review of the City Manager's interpretation of Section 1278.02 and 1286.06(e) of the City Code regarding their lot located at 638 Skyview Drive.

The City Manager reported that notice of the Public Hearing was published in the November 14, 2010 edition of the *Sentinel-Standard* and notice of the Public Hearing was mailed to the owners and occupants of property located with 300 feet of the subject property. He further reported that one e-mail comment regarding the Administrative Review/Public Hearing was received from Mr. and Mrs. Mark Boward who own the vacant lot at 952 Southview Drive.

The City Manager further reported that the role of the Zoning Board of Appeals in and Administrative Review is to “hear and decide appeals where it is alleged by the appellant that there is an error in any order, requirement, permit, decision or refusal made by the Community Development Director or any other administrative official in carrying out or enforcing any provision of the Zoning Code”. He further stated that unlike processing a variance, there are not specific standards for the Board to follow in acting on an administrative review.

Chairperson Kirgis introduced Marc Daneman, attorney for Mr. and Mrs. Warfield. Mr. Daneman reviewed with the Board the application and associated supporting documentation he submitted to the Board as part of the Administrative Review request (dated November 13, 2010).

Mr. Daneman stated that he is appealing on behalf of his client’s the City’s interpretation of Sections 1278.02 and 1286.08 of the City Code. Mr. Daneman provided a history of the Warfield’s ownership of Lots 5 and 6 in the Franmar Estates subdivision and the foreclosure proceedings which resulted in the foreclosing of Lot 5 (which contains a dwelling) with the Warfield’s continued ownership of Lot 6. He stated that as a result of a court ordered foreclosure, the dwelling on Lot 5 was subsequently sold to Mr. and Mrs. Kristopher Hoppough with the Warfields continuing to own Lot 6. Due to the foreclosure proceedings, the dwelling on Lot 5 is now non-conforming due to not meeting the setback requirement on the north side of the dwelling. He stated that the City has deemed Lot 6 unbuildable due to the non-conformity of the structure on Lot 5. He further stated that his client’s lot complies with the size and minimum lot frontage standards contained in the zoning ordinance.

Mr. Daneman then proceeded to review with the Board his interpretation of Sections 1278.02 and 1286.08 of the City Code. He stated that Section 1278.02 applies to lots that do not meet the minimum lot size standards of the particular zoning district where the lot is located. He further stated that Section 1286.08 addresses lots in common ownership that do not meet the dimensional requirements of the zoning district in which the lot is located. He stated that both Lots 5 and 6 are conforming lots of record.

Mr. Daneman further stated that the City cannot use the zoning ordinance to enforce private contractual issues or differences. He stated that in this particular instance if Lot 6 was owned by a party other than the Warfields and unrelated to the past foreclosure proceedings and associated ownership of Lot 5, the City would likely find the lot buildable.

Finally, Mr. Daneman stated that to have a situation as referenced in Section 1278.02(b), there must be a voluntary severance by the Warfields of Lots 5 and 6. In this particular situation due the foreclosure proceedings directed by the court, the City cannot require that Lots 5 and 6 be recombined after they have been legally severed by an act of law, despite the lots previously both being owned by the Warfields.

Chairperson Kirgis recognized the City Manager. The City Manager stated that the City's position has been that Lot 6 is not buildable due to the severance of the lots creating a non-conforming structure on Lot 5. He directed the Board to the City Attorney's correspondence regarding the matter dated October 14, 2010. The City Manager also addressed the issue of the unity of title and reviewed the history of the transfer of ownership of Lots 5 and 6 since 1978.

Chairperson Kirgis called for public comments.

Mr. Larry McKaig addressed the Board. He stated that the issue of the unity of title is not really an issue of concern in this particular matter. He stated that he believed that Sections 1278.02 and 1286.08 (e) do apply in this particular situation and that the Warfield's are trying to take financial advantage of a situation that they created.

Mr. Daneman again addressed the role of the foreclosure proceedings in this particular situation and an Attorney General's opinion on the matter of partitioning of lots.

Mr. Kristopher Hoppough addressed the Board. He stated that a typographic error by the mortgage company created this particular problem and prior to his attempt to purchase Lot 5, Mr. and Mrs. Warfield were not aware of the typographical error and did not realize that they remained the owners of Lot 6. He stated that he attempted to purchase Lot 6 from the Warfields for \$500, such

payment to cover their "time and trouble". He stated that the Warfields placed a significantly higher price on the lot than the \$6,000 value that the mortgage company placed on the lot. Subsequently, the price that the Hoppough's paid for the Lot 5 was reduced by the mortgage company from \$152,000 to \$146,000.

Mr. Chris Ruthruff addressed the Board. He stated that he supported the City's position that Lot 6 is not buildable. He further stated that the Warfields should not financially benefit from a situation that they created.

Mrs. Cathy Hoppough addressed the Board. She reiterated that the Warfields were not aware that they still owned Lot 6 after the foreclosure. This was due to their understanding that both lots were collateral to their mortgage.

Mr. Daneman stated that the Hoppough's comments had no bearing on the issue before the Board due to the court ordered division associated with the foreclosure proceedings. He stated that the Board's role is to interpret the zoning ordinance based on the current facts, not the history of the situation.

The Board took a short recess so that Mr. Daneman could share with Member Winters the Attorney General's opinion that Mr. Daneman referenced in the application before the Board.

Chairperson Kirgis called the meeting back to order and recognized Member Winters.

Member Winters stated that he felt Section 1286.08 reads differently than interpreted by Mr. Daneman. He further stated that he did not believe that the Attorney General's opinion was applicable to the Warfield matter since the opinion referenced the partition of land under different circumstances.

There being no further comments, Chairperson Kirgis closed the Public Hearing.

PUBLIC COMMENTS

None.

OLD BUSINESS

Review of Draft Updated Zoning Board of Appeals Rules of Procedure. Chairperson Kirgis stated that the Board reviewed the proposed Rules of Procedure at the June 30, 2010 meeting. The draft currently before the Board, dated July 13, 2010, incorporates comments offered by the Board. After review it was moved by Member Winters, seconded by Member Denny to approve the July 13, 2010 version of the Zoning Board of Appeals By-Laws and Rules of Procedure and direct the City Manager to file the document with the City Clerk. MOTION CARRIED.

NEW BUSINESS

Administrative Review – Warfield, 638 Skyview Drive. Chairperson Kirgis introduced discussion on the request submitted by the Warfields.

The City Manager stated that Member Jennings has advised that he serves as the Certified Public Accountant for Mr. and Mrs. Kristopher Hoppough and based on Section 2.1 entitled Conflict of Interest of the Boards By-Laws and Rules of Procedure which states “a member of the Board shall disqualify himself or herself from a vote in which the member has a conflict of interest. Failure of a member to disqualify himself or herself from a vote in which the member has a conflict of interest constitutes malfeasance in office” he has a conflict of interest and cannot participate in the deliberation and voting on the Warfield’s request. Mr. Jennings left the meeting at 1:50 PM.

After further discussion it was moved by Member Winters, seconded by Member Denny to support the City staff’s decision to deny Lot 6 of Franmar Estates as a buildable lot due to the splitting of Lots 5 and 6 resulting in the structure on Lot 5 being non-conforming with the zoning ordinance which is contrary to the zoning ordinance sections cited in the Warfield’s application for Administrative Review.

ROLL CALL VOTE: Winters	YES
Denny	YES
Dunn	YES
Kirgis	YES

MOTION CARRIED.

MEMBER COMMENTS

None

ADJOURNMENT

Chairperson Kirgis adjourned the meeting of the Zoning Board of Appeals at 2:11 PM.

Respectfully Submitted,



Jason Eppler, Recording Secretary
for Joe Dunn, Secretary