

Minutes of a Meeting of the
City of Bay Village Planning Commission
Held June 3, 2020
7:30 p.m.

Present: Jeff Foster, Warren Remein, Rick Kirk, Sara Byrnes Maier, Kendra Davitt, Jennifer Lesny Fleming and Dave Maddux

Excused:

Also Present: Eric Tuck-Macalla (Building Director), Mark Barbour (Law Director), Councilman Kelly and Councilwoman DeGeorge

Audience: Residents signed in through Zoom technology and some had previously submitted comments to the Secretary of the Commission that were sent to the Planning Commission Members prior to the meeting. Emails are on file with the City Hall Building Department.

**Full recording of the meeting is permanently available on the City of Bay Village website under City Government /Planning Commission.*

Chairman Foster called the meeting of the Planning Commission to order at 7:30 p.m.

Ms. Byrnes Maier asked all audience members to mute themselves to help cut down on the feedback background noise. She explained that there is a chat function through Zoom where audience members can raise their hand to ask a question or write something.

Following roll call, Mr. Foster called for approval of the minutes of the Planning Commission meeting held February 19, 2020.

Motion by Kirk, **second** by Maddux to approve the minutes of the Planning Commission meeting held February 19, 2020 as edited, prepared and distributed.

Motion carried 7 yeas, 0 nays

Mr. Foster explained that in talking with Mr. Barbour, City Council has decided to reconvene their public meetings in person and they will start the following week. The next Planning Commission meeting will go back to in person review at the Dwyer Center in order to provide more space for social distancing. He acknowledged to everyone present on the call that is can be

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awkward to review a Planning Commission applications and plans via Zoom. The public venue with give a better opportunity for the applicant and their team members to present the project so everyone can have a full understanding of what is being proposed and give it a full review as well. He asked if as a group, anyone had an objections to in person meetings. No objections were heard.

Property Owner: 560 Forestview Road pp#20405007

Owner: Red Oak Investment Partners, LLC

Engineer: Polaris Engineering

Approval to split the lot 204-05-007 into four separate sections.

Chapter 1111- (Subdivision Design Standards)-(b) Location. All lots shall front and abut at the right-of-way lines by their full continuous frontage on a publically dedicated street or a street that has received the legal status as such.

Mr. Foster introduced the next agenda item and explained that this is a chance for the applicant to present their project. He explained that the planning approval process in the City is a two prong process. The first step in the process is the applicant has the opportunity to address the Board, present their project and view the plans with the Board. There will be a Public Hearing that will be called for after the Board has sufficiently reviewed the project and has called that Public Meeting. The current meeting is not the Public Meeting but the next meeting will be held on the 17th of June.

Mr. Foster asked who was representing the applicant.

Kevin Hoffman from Polaris Engineering and Surveying introduced himself and explained that he was representing the developer.

Mr. Foster asked if Mr. Hoffman had a screen to share and if he could walk through the proposal.

Mr. Hoffman put the proposal on the screen so it could be viewed by everyone in attendance. He explained that they basically have one existing property. There is an existing home at 560 Forestview Road. That home is going to remain and they will be adding a garage and making some alterations to clean up the façade. They are proposing that the existing home will be split off and that will front on the newly extended Red Oak Lane. They are proposing to extend it around 85'. There will be a new home on the Forestview frontage. The owner is building another home similar to it in the City. On the back end, where there is currently a flood plain per the FEMA map, labeled Block A is located on the west side of Red Oak Lane. They are currently proposing it is a block but they plan to put a house there. They are in the process of doing a hydraulic study of the flood plain as is required by the City ordinances to prove that any fill that would be placed in that lot would not increase the flood elevation within the vicinity of the project. He explained that some of the residents may have received a letter that they had completed their surveying and they are in the process of putting together the calculations to submit to the City. He stated that he was happy to answer any questions.

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Mr. Foster clarified that this is one parcel of property that is being divided up into three. He clarified that there are three lots with two that are buildable and one is unbuildable, the portion that is being dedicated for right of way for Red Oak Lane.

Ms. Byrnes Maier clarified that they propose to extend Red Oak Lane. She asked when that will occur because per the regulations, you need to have frontage onto the road.

Mr. Hoffman stated that that would occur at the same time because they would need the utilities for sub lot 2 and the existing home will need to be redirected back out to Red Oak Lane. Otherwise there would need to be an easement through sub lot 1. Sub lot 1 will utilize the connections for the existing home and sub lot 2 would have new connections out to Red Oak Lane. It would all be part of a subdivision.

Mr. Foster asked how their plan was addressing the ordinance need for having a 100' diameter turnaround at the end of a cul-de-sacs.

Mr. Hoffman explained that the previous road and the current road do not have one. When they last did Red Oak Lane on the north end, it did not have one either. They would ask for a variance. They could do a little turnaround. But seems like it has not been required previously.

Mr. Foster explained that two wrongs do not make a right in this case. There are recent subdivisions that have included that and as a Board they have always required that.

Mr. Hoffman explained that they could do a turnaround. He was not sure that they would have room for a 100' diameter cul-de-sac.

Mr. Tuck-Macalla stated that it does call for a cul-de-sac and it is a 100' diameter.

Mr. Hoffman stated then they would have to go for a variance. He explained that some other cities have allowed for a 60' diameter. He said that it would be tough to get a 100' diameter cul-de-sac in this area. They would love to connect it to the north end but the property owner in between is not interested in selling his property.

Mr. Foster said it is awkward that there are two Red Oak Lanes and they do not connect to one another but it is what it is.

Mr. Foster asked if there were other comments from the Board members.

Ms. Lesny Fleming stated that it would be helpful to have the recitation of all the variances that would be required for the project.

Mr. Foster asked if Mr. Tuck-Macalla had a list of them or if Mr. Hoffman had put together a list of the requested variances.

Mr. Hoffman said he has not. He assumed that the cul-de-sac diameter would be the only one.

Mr. Tuck-Macalla stated that there would be one at the turnaround at the cul-de-sac, 111.01(f) and one for the lot that is uninhabitable. (Block A) If the lots were split today, sub lot 2 would also be nonconforming.

Mr. Hoffman stated that they are proposing the whole subdivision. They would be interested in splitting the front half off right now and leave the back off. They could just connect the house back into the street at the dead end and have a temporary driveway.

Mr. Foster asked what the frontage would be for sub lot 2.

Mr. Hoffman explained that it would basically be where the dead end street is, 60' frontage.

Ms. Byrnes Maier stated that that is not in conformance with the ordinance.

Mr. Tuck-Macalla stated that he did not recognize that as being a frontage there.

Mr. Hoffman asked if 50' was Code.

Mr. Tuck-Macalla discussed ordinance *111.05(b) Location. All lots shall front and abut at the right-of-way lines by their full continuous frontage on a publically dedicated street or a street that has received the legal status as such.* So the whole frontage of the lot would have to be in that 50'.

Mr. Hoffman explained that extending the road with a turnaround is probably their only hardship as of now.

Mr. Foster explained that they still have a nonconforming lot with Block A.

Mr. Hoffman agreed and stated that it is not a sub lot it is a block. It is not buildable. They are hoping to have the flood plain study completed hopefully by the next meeting and have the engineer review it. That is why it is a block instead of a sub lot. Until that is done it would not be a buildable lot.

Mr. Foster explained that this Board has heard applications like this in the past and they traditionally do not approve unbuildable parcels. The City would end up with orphaned parcels which do not necessarily benefit anybody.

Ms. Byrnes Maier clarified that they have already gone to FEMA with the request for this.

Mr. Hoffman said they have gone to FEMA in regard to if the lot was in the flood plain but they have not done that actual request. They have looked on the survey for the study but they have not done the actual study. The City Code does not require them to submit to FEMA because they are under a certain acreage but it does have to be approved by the City Engineer to review. They will eventually submit a LOMA to FEMA but they do not have to do a map revision.

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Ms. Vincent asked for clarification for an audience member on what a nonconforming lot was.

Mr. Tuck-Macalla explained that a nonconforming lot that is listed in the City Codified Ordinances are not allowed to be created or recognized. There can be nonconforming lots in regard to location which would be a lot that does not abut onto a dedicated street. An uninhabitable lot, Block A, at this time is not buildable subject of flooding which is listed in the City ordinance. It is not necessarily wrong it is just does not meet the City's Code.

Mr. Hoffman explained that they do blocks for storm water management basins all the time and he does not see why they could not approve a block.

Mr. Foster said that they would have to show some sort of hardship. For storm water it would mean that they are dedicating it for a specific purpose. In this case, it is not being dedicated for specific purpose. Obviously there is a long-term plan for it but until that plan is something that can be executed, this Board is reluctant to accept that.

Mr. Tuck-Macalla explained that the City would have to approve the use of fill.

Ms. Byrnes Maier explained that what the engineer was talking about is the letter of modification to FEMA that oversees the flood plain. You can request a letter of modification proving that your property is not in the flood plain. The calculations are not exact and a study must be completed. What he is saying is that he has to do one that requires the use of fill and the City would have to sign off on the ability for him to use fill to raise the elevation of the lot to a point where the structure would be out of the flood plain. What they have done already is gone to FEMA and the requested letter of modification was denied.

Mr. Hoffman pointed out that the City Master Plan does show that these streets ultimately connecting. They are in the spirit of the Master Plan in showing that this road be extended. They think it is an improvement to the City. Once they get the FEMA/flood plain issue and study done and have the back half of the property removed from the flood plain, they think it is a good plan.

Mr. Foster stated that he understands but until that happens, that does not necessarily improve the situation as of right now.

Mr. Foster asked if Mr. Barbour had any comments from the Law Department.

Mr. Barbour explained that from his perspective, the applicant has gone about it in the wrong order. It would seem that that lot would need to be made inhabitable and conforming before the plan can be considered because otherwise they are creating a nonconforming lot which the City is not supposed to do. There is a risk that their plan will not be approved and they will have a house behind a house which the City does not allow. There will be insufficient frontage for the sub lot 2 and a road will have to be built to Block A which is uninhabitable. Which is not in the Master Plan.

Mr. Hoffman clarified that the Board is saying they should come back when they have the study done and the lot is buildable and removed from FEMA.

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Mr. Foster agreed with Mr. Barbour and explained that that is the impression the Board has as well. If you can eliminate the items in question, then they have an actual plan they can possibly approve.

Mr. Foster asked if any other Board members had any other comments.

Mr. Maddux had a question about the frontage requirement. If the Red Oak Lane extension were omitted from this, could sub lot 2 be considered a buildable lot.

Mr. Tuck-Macalla stated no, it still would not be fronted completely on a dedicated street. He does not really recognize the dead end as being the end of the right-of-way. That lot would have to be 50' wide and 80' long which would not be a buildable lot.

Ms. Lesny Fleming had a question in respect to the first lot on Forestview. She asked what the developers plan was with respect to the nature of that home that he has depicted there.

Mr. Hoffman explained that they are going to keep the house. They plan to put a garage addition on the north side of the house. The back of the house kind of looks like a front anyway.

Ms. Lesny Fleming pointed out that there is not a house on the first lot on Forestview.

Mr. Hoffman stated that she was correct and stated that there was a driveway that goes back to the house where number 2 is.

Ms. Lesny Fleming asked what the plan was for the first lot on Forestview.

Mr. Hoffman explained that is going to be a single family house coming off Forestview.

Ms. Lesny Fleming explained that she is asking this because she drove by this property earlier that day and the homes on either side are very small ranches. She asked if the home that is being contemplated to be put on Forestview is large two story.

Mr. Hoffman explained that it will be a two story. The setbacks are within the allowable setbacks of the property.

Ms. Lesny Fleming asked if the developer had the plans for that.

Ed Pavicic introduced himself. He is the Developer for this property. He explained that it is the same home that was put up at 360 Elmwood and 28519 Eaton Way. It is a 2,600 sq. ft. home and fits in with all the current Code and no variances would be needed once that lot is subdivided and approved.

Ms. Lesny Fleming stated that it will be a tall home next to the ranches on either side.

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Mr. Pavicic explained that the City allows up to 35' and the proposed home is only 28' tall. Across the street is a 34' structure. It is considerably less than that.

Ms. Lesny Fleming saw the one across the street but pointed out that the one across the street is very large but is also next to another two story home as opposed to two ranches.

Mr. Pavicic pointed out that Mr. Hoffman may have given an inaccurate assumption about the buildable lot. Black A is buildable as a slab as long as they do not displace anything with the flood plain. It is the same situation that they had on Red Oak when they put the homes on there. If the house is sized properly, they do not do basements and they do not displace the flood plain, it is a buildable lot. Many other cities put blocks in and are very common but ultimately he would not have bought the property unless they knew for a fact that it was not in a flood plain. The reason why he knows it is not in a flood plain is because they have already had two properties removed that are within 500' on Red Oak. (550 Red Oak and 546 Red Oak) Ultimately the reason why they have to go through the study is more of a procedural thing because FEMA has never designated this area as a Designated A area meaning that it was never determined. Basically people drew a line and said this is the flood line. If you go to the property you can see that the elevation is about 2' higher on this side of the creek than the west side. It was never determined and the study they are doing right now could determine what exactly the flood plain is by the City. They would find out that all the homes on Red Oak are out of the flood plain by the time this study is done. They have already done part of it for the other two lots mentioned above.

Mr. Hoffman added that the slab is only allowed per a variance.

Mr. Foster asked if the blue lot/shaded area is a flood plain.

Mr. Hoffman stated that it the flood plain based on the current FEMA map. It is a Zone A meaning that nobody has ever done the study of it. If it is an AE is means that someone has done the study and the levels have been determined. They have models but it is not based on exact topographic data as you would with an actual survey. It is based on old information.

Mr. Foster clarified that it is presumed because no one has ever approved it. But as it stands right now, it I still a flood plain until that study is complete.

Mr. Pavicic stated that they are still allowed to build on it as long as they do not displace it with slab construction.

Mr. Foster explained that what the Board is looking at as a submission says that they have a lot with half of which is showing that it is in a flood plain. The Board can only go with what they have currently. Once that information is provided, it can be submitted to the Building Department and it can be reviewed as a Board.

Mr. Foster asked if the grade lines on the plan are existing or proposed.

Mr. Hoffman explained that the dark ones are proposed. The dash lines are existing.

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Mr. Foster clarified that there is a significant amount of fill shown on this site.

Mr. Hoffman agreed and explained that you would have to get it out of the flood plain. Per Code is would need to be filled 1' above the flood plain.

Mr. Tuck-Macalla agreed.

Mr. Foster asked if Mr. Pavicic had anything else he would like to add.

Mr. Pavicic reiterated that this street and others were a part of 2-3 Master Plans and approved by City Council already. He is not sure if this Board has the power to grant any type of modifications to the current Code for variances as Mr. Hoffman stated with the turnaround. He mentioned needing clarification for that.

Mr. Foster stated that this Board has this authority but they typically only do that when there is a particular hardship. That hardship must be proven to the Board.

Mr. Foster asked if there were any questions or comments from the City Officials.

Mr. Tuck-Macalla had a question about the storm sewer easement and asked if there was any other information on that easement. It was indicated on the large set of plans.

Mr. Hoffman stated that not at this time and they still need to finalize all that. They were thinking that is how they will outlet their water. The only other place they can tie it into is south on Red Oak. They would work it out with the City Engineer.

Mr. Foster summarized that there a few open items on this that keep the Board from referring this on to a Public Hearing. He asked what was Mr. Hoffman's request or intention of this Board. Would he like it deferred until they can finish the study on where the flood plain is and address the turnaround issue?

Mr. Hoffman asked Mr. Pavicic his advice.

Mr. Pavicic stated that he was confused why Block A was not a buildable lot and they were extending the street accordingly to what was already granted from the previous City Council in allowing the dead end there. If there is a turnaround involved in it, they are fire code approved. It does not make sense when the street will eventually be extended somewhere down the line. He is not sure what else they need to figure out.

Mr. Foster asked when Red Oak Lane was put in.

Mr. Pavicic stated the north side was put in 2002.

Mr. Barbour stated that the south side was put in in 1985.

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Mr. Foster stated that the inevitability is not necessarily something they can bank on. Just because it was approved by Council in the past to have to dead end cul-de-sacs, does not mean they are going to perpetuate that. It will need to be addressed whether you make an alternative submission to the 100' diameter. Having a lot on the plan that is not buildable is not something the Board is going to approve currently. The information must be provided to prove that it is in fact buildable and it will not be in a flood plain. Those are things that need to be addressed.

Mr. Hoffman clarified that this meeting was a preliminary meeting. He suggested they table their request at this point until they have the study completed and they have a buildable lot.

Mr. Foster explained that they are happy to table this item for as long as needed. It was put on the agenda as a lot split but if that needs to change, it can be changed with the Building Department with their follow up submittal.

Mr. Foster asked if there was a motion to defer this to the June 17, 2020 meeting.

Mr. Barbour asked if they anticipate the June 17, 2020 meeting being a Public Hearing or just another meeting. If it were to be a Public Hearing they need to have a ten day notice through publication that will need to be made and it will need to be made right away.

Mr. Foster said no, the Board is not referring it to the Public Hearing.

Mr. Barbour clarified that the meeting on June 17, 2020 will just be another meeting of the Planning Commission.

Motion by Ms. Davitt, **second** by Mr. Warren to defer this application to the June 17, 2020 Planning Commission meeting.

Roll Call Vote:

Yeas – Foster, Remein, Kirk, Maddux, Byrnes Maier, Lesny Fleming, Davitt

Nays-

Motion Passed-7-0

Ms. Vincent asked if the meeting should be opened up for residents to speak or ask questions.

Mr. Foster explained that they will open up that up at the next hearing. It will be an in person venue and it will be easier for audience members to make comments. He would rather them review what has been updated as opposed to what was just shown. The applicant has an opportunity to makes changes and update the plans.

Mr. Barbour explained that the Planning Commission is not taking any action on this at the current meeting. It has been moved to the next meeting on the June 17, 2020 so the applicant can

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address the issues that were raised. There will not be a vote on whether this gets approved or not approved.

Mr. Foster stated that there will be two more opportunities to comment on this. There will be plenty of time to comment on this proposal.

Mr. Caputo stated that he hopes that that is the case and in the event that they are not able to attend, he asked if there is a process by which they can submit questions in writing.

Mr. Foster stated that questions and comments can be submitted at any time through the Building Department. If the Board and applicant can have questions ahead of time, it allows everybody to be more prepared.

Mr. Remein had a comment on any letters that are being sent to residents, etc. He requests that they are also sent to the Board so they can see what kind of conversation are going on.

Mr. Foster agreed and suggested they be sent to the Building Department as well.

Mr. Pavicic asked if Mr. Tuck-Macalla had a copy of the letters they sent out when they did the survey of the creek.

Mr. Tuck-Macalla stated that they do have a copy of that letter.

Ms. Byrnes Maier discussed the public comments portion of the future meetings and whether residents will be notified of that meeting. She stated that this is notification of the meeting right now. There is always public notification through the City's website for Planning Commission and on the electronic message board at City Hall but the letters that were sent will not be transmitted again from neighbors within 300'.

The other comments in the chat discussed the utilization of fill on Block A and how it would affect neighboring properties. It would be helpful for that next meeting for Polaris to be able to talk about that and address how the hydrologic survey and study would address the flooding concerns or neighbors and how storm water would be managed on the property.

Council Update:

Ms. Brynes Maier restated that they are going to start having live in person meetings again. They have had a few meetings via Zoom but they are technically under a suspension of their regular meetings until the end of June due to the Covid issue. The next meeting on June 8, 2020 at the Dwyer Center will either be at 6:00 or 6:30 and is open to the public.

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The Stay In Bay initiative (Zoning overlay for the commercial district) have been on hold. They are hoping to start that back up when things normalize a little bit more. The Planning Commission will have another chance to review it then.

The City has started on Coastal Management Assistance Grant which is done through Ohio Department of Natural Resources. They will be looking at Cahoon Park and completing a high level master plan for Cahoon Park and Bay Point. (The little area across from the Bay Boat Club) The City is undergoing a study with a consultant team and committee. They are looking at what Bay Point could be developed into and what are the concerns with erosion for the Lake front in that area. There will be public engagement as part of the study that will be going around throughout the summer/early fall.

Hopefully after the next City Council meeting, they will go back to a somewhat normal schedule and have more to share.

Mr. Foster asked if there were any other comments.

There being no further discussion, the meeting adjourned at 8:15 p.m.

Jeff Foster, Chairman

Kateri Vincent, Secretary