

**Parkville Board of Zoning Adjustment
Wednesday, April 4, 2012, 5:30 p.m.
City Hall Boardroom**

Minutes

ITEM 1. CALL TO ORDER

Director Ackerson called the meeting to order at 5:40 p.m.

ITEM 2. ROLL CALL

Members present:

Carla Dods
Russ Downing
Bob Lock

Al McCormick
Ken Wright
Keith Cary

Also present:

Sean Ackerson, Assistant City Administrator / Community Development Director
Tracy Sisney, Assistant City Clerk / Department Assistant

ITEM 3. GENERAL BUSINESS

Community Development Director, Sean Ackerson stated that out of necessity, the Agenda would need to be taken out of order, due to the fact that since the last Board of Zoning Adjustment meeting, Chairman, Mark Sherwood has passed away, the Vice Chairman resigned due to a conflict of interest and the Secretary has not been reappointed. Ackerson recommended taking item 6A, Other Business, out of order so that officers can be elected first.

Item 6(A) Election of 2012-2013 Board of Zoning Adjustment Officers.

Director Ackerson explained that the election would be for a Chairman, a Vice Chairman and a Secretary and stated that the Secretary is not required to take minutes, but able to Chair the meeting should the Chairman and Vice Chairman be unavailable. He explained the nominations would be made by the members, of which 3 regular members were in attendance. Ackerson added that he would accept nominations for the Chairman and after elected the Chairman would take over the meeting.

Board Member Dods, nominated Al McCormick as Chairman, Board Member Downing seconded. Member Wright moved to close nominations, Dods seconded. Al McCormick is elected Chairman by acclamation.

Board Member Downing, nominated Carla Dods as Vice Chairman, Member Wright seconded. Chairman McCormick moved to close nominations, Downing seconded. Carla Dods is elected Vice Chairman by acclamation.

Vice Chairman Dods nominated Russ Downing as Secretary. Member Wright seconded. Chairman McCormick moved to close nominations. Wright seconded. Russ Downing is elected Secretary by acclamation.

Item 3(A) Approval of Board of Zoning Adjustment Meeting Agenda.

Chairman McCormick asked for a motion to approve the agenda as published.

Secretary Downing moved to approve the agenda. Vice Chairman Dods seconded. Motion passed 6-0

Item 3(B) Approval of Minutes from the July 7, 2010 Board of Zoning Adjustment Meeting.

Chairman McCormick asked for a motion to approve the minutes from the July 7, 2010 meeting.

Vice Chairman Dods moved to approve the minutes as presented, Chairman McCormick seconded. Motion passed 6-0.

ITEM 4. PUBLIC HEARING

Item 4(A) Case No. BZA12-01. Proposed special yard exception to allow a 5' reduction of the front yard setback on a corner lots and lots opposite or adjoining permanent open spaces. Lots 539, 540, 546-561, 577-580 and 595-597 of the Thousand Oaks 12th Plat. Applicant David Barth on behalf of Forest Park Development, L.L.C.

Chairman McCormick provided a brief description of the case to be heard and deferred to Director Ackerson for a staff report.

Ackerson read the exhibit list as provided in Board packets and added that he would like the Parkville Municipal code be entered into the record as an exhibit by reference.

Director Ackerson explained this applicant was requesting a 5 foot reduction in the required front yard setback. Parkville Municipal Code a 25 foot setback in the R-3 district. The applicant is requesting the setback be reduced to 20 feet in order to preserve the vegetation at the back of the lot. The Municipal Code allows a "yard exception on a corner lot or lots opposite or adjoining permanent open spaces, including parks and playgrounds". Ackerson said the section does not limit the exception to front, side or rear yard reductions but requires the BZA to find after consideration of hearing the evidence that is in the Board's opinion; as a matter of fact that such exception will not substantially affect negatively the uses of the adjacent and neighboring properties permitted by this title. Ackerson added that a letter had been distributed this evening by one of the homeowners and that he had not had the option to review it prior to this meeting. The letter from Christopher Smith, dated April 4, was distributed to the Board and entered into the record.

Director Ackerson added that staff had reviewed the application and supporting materials as well as made site visits. Ackerson added that the Board, as with any special exception, can require conditions, as necessary. Ackerson said that the reduction was requested for approximately half of the undeveloped lots 12th Plat. These lots were identified by the applicant as having steeper grades and being more challenging to develop. Generally, they were characterized by grade changes of 20 feet or more from the front to the back of the lot. The applicant has suggested building closer to the road to preserve the vegetation on the back lots. Staff determined that 5' closer to the street, would save the vegetation and not have a substantial impact on the front yard.

Staff also noted that while some of the abutting homes were built with 25 foot setbacks, many other homes were not built to that setback. Ackerson said according to our code, the 25 foot

setback is not a build-to line. Rather it is a do not build-past line. In reviewing the surrounding properties, Ackerson determined that setbacks in the surrounding area varied for that reason. He added that there were some homes in Thousand Oaks subdivision were approved to be built closer than 25 feet, although none were located in the 12th Plat. Ackerson pointed out again that the Board was authorized by the Municipal Code to approve special exceptions for a "lot or lots opposite or adjoining permanent open spaces."

Ackerson summarized the intent for setbacks including the provision for private open space, creations of minimum space for parking, area for landscaping and yard improvements, and in part to create a uniform street frontage so that views to one home is not substantially blocked by another home. Staff reviewed the application against the code and the intent of the setback and concluded that it would increase the opportunity to save the vegetation as requested, could reduce the height of the retaining walls, but did not appear to have a substantial impact on the intent of the front yard. It was also reviewed from a standpoint of the intent of the public property, off-street parking and the City's required parking standards. Ackerson summarized the parking standards and his conclusion that the 20 foot depth requested was still adequate to accommodate the required 18 foot minimum parking depth. He further explained that the sidewalk set 1 foot inside the right-of-way giving 21 feet to accommodate off-street parking without blocking the sidewalk. If the homes were not constructed to the setback as was the case on some lots, additional parking space would be provided.

Ackerson said staff looked at other applications where similar consideration had been given in the past and found that there had been similar lot exceptions. He noted, however, that they had applied uniformly to the entire plat and not to part of the plat as proposed.

Following these considerations, Ackerson stated he had concluded that this exception would not adversely affect the uses of adjacent neighboring property and he recommended approval of the application subject to preservation of vegetation on the rear of the subject lots and any other conditions that the Board deemed necessary. Ackerson added that this recommendation was based on the applications, materials and correspondence received prior to the meeting and did not take into consideration any additional testimony or any further evidence that may be received during the public hearing.

Secretary Downing asked if a 50 foot right-of-way, with 28 foot cross section (back of curb to back curb) was standard. Ackerson confirmed that 28 foot to 32 foot was standard. Downing pointed out that the distance from the back of curb to the property line would be 11 feet. Ackerson confirmed this. Downing stated that the total distance from the back of the curb to the closet point of the house would be a minimum of 31 feet. Ackerson agreed that it would be 31 feet.

Keith Cary asked if lot 551, which is right in the middle of the plat, had already been built. Ackerson believed that was correct. Mr. Cary then stated that lot should not be part of the consideration as it was already built. Discussion ensued.

Cary asked with regard to 5 lots that already had been or were in the process of being constructed under the 25 foot rule, would there be noticeable dissimilarity with regard to the 20 foot setback if approved between the houses that either are constructed already or will be constructed. Ackerson responded that staff did look at it from that standpoint and found that the setbacks on the constructed homes varied which led him to believe there would not be any more visual impact than currently existed. Director Ackerson added that one area of consideration was that these roads have a curve to them, so one would not be viewing the homes along a straight line were varying depths might be more evident.

Seeing no other questions from the Board, Chairman McCormick opened the public hearing.

David Barth, applicant, 6014 N. 9 Highway, Parkville, stated that they were trying to disturb the terrain as little as possible and that other subdivisions such as Riss Lake or The National have asked for and received similar variances. He added that currently there are 40 homes under construction whereas, two years ago, he only sold six homes the entire year. Mr. Barth stated development had really taken off in Thousand Oaks Phase 12 (the subject plat), but explained that builders are not buying the lots with steeper slopes because of the added cost for site prep, leaving the only option of building smaller homes or to do heavy tree removal and build the site back up in order to put the same size home on the lots.

Mr. Barth stated that with the 5 foot change in setback, the builders could keep the same size homes with much less disturbance to the surroundings, and keep the same price of homes that are being built and provide a little more flexibility to the builders. He added that not all of the homes would be built to the minimum setback; some of the very worst lots would be, but not all. He explained, that more than anything it would just give them additional flexibility and would help ensure larger homes could be built on the subject lots just as on the other lots in the neighborhood.

Vice Chairman Dods asked for a brief summary of the covenants and restrictions for Thousand Oaks and what would prohibit a home owner from moving in and then clearing out all of the vegetation to the back of their property. Mr. Barth answered that every home owner has certain rights and unless there is a natural restriction, which is not listed in the covenants, we could not tell them they could not cut a tree down in their backyard if they chose to. Discussion ensued.

Chairman McCormick asked Mr. Barth if he had access to the staff report. Mr. Barth confirmed that he had. Mr. McCormick asked if the Board were to approve with the recommendation that the extra 5 foot in the back be preserved vegetation, would there be a problem. Mr. Barth stated that he would meet with each builder on a case-by-case basis and possibly even put a restriction on it when the lot was purchased.

Christopher Smith, 15000 NW 66th Street, Parkville, Lot 551, stated they entered into a contract last year to build and wished he knew there was a chance to possibly get a setback variance, as they spent an extensive amount of money on site lines, when they determined where to place their house. Mr. Smith stated his issue with regard to setbacks is primarily safety issues and he does not understand the petitioned reason of preserving greenway. He added that these lots were very deep and added that once these lots were sold there are no restrictions for preserving the green space and that there are no restrictions from the home owner completely bulldozing the backyard and simply putting in sod.

He added that his concerns were the aesthetics of the street and generally, with the additional 5 foot setback it would not be as pleasing. He added that when homeowners come in, they know the rules and abide by them, as all the current homeowners have done in the past.

Keith Cary asked Mr. Smith if he would have built differently with a 20' setback. Mr. Smith replied that he probably would have chosen a different lot, but not built differently. Mr. Cary asked if part of the reason was that Mr. Smith did not like the rules changing mid-stream, Mr. Smith agreed.

Todd DeMint, 401 Main Street, Parkville, Co-owner and resident of Meyer Funeral Home, stated that he and his family had waited to select where they would buy their home and chose Thousand Oaks. He said they loved the subdivision and believe that 66th Street is one of the prettiest streets in Platte County.

Mr. DeMint continued that his reason for being here is primarily due to the setbacks posing a safety concern. He stated that if a house is only 20 feet back, you can only park one car there. He said that he counted the cars that were parked out of the driveways and in the street on 66th Street and there was only one car. He added that it was such a safe place, with no cars parked off street, kids driving around on their bikes and walking and playing and that it was an extremely safe place. Mr. DeMint said that because this was not just one property, but a lot of properties, there will be more on street parking and blocked sidewalks. Mr. DeMint added that he has five and seven year old children and he was really concerned about the safety issue. He said that his property was two months from completion and that he had a large beautiful lot and that a person from a lawn care service came out and looked at his trees, hoping to save them, and was told that the house could not be built around trees, so those trees were removed. Mr. DeMint added that he had a hard time believing the saving the vegetation part of this application. Discussion ensued regarding the necessary space for off-street parking.

Seeing no one else from the public, Chairman McCormick closed the public hearing.

Chairman McCormick suggested that the motion either for or against the application be subject to an additional 5 feet of vegetation on the rear of the subject lots, and any exceptions to that would need to be approved by staff.

Director Ackerson added that it would be appropriate to address the Board finding, in its opinion, that the proposed exception will not substantially adversely affect the adjacent and neighboring property by this title.

Vice Chairman Dods stated that it would also be prudent that the motion exclude any lots currently under construction.

Secretary Downing stated that in two different places on Mr. Barth's application, not only does it talk about the additional greenway, but it also states increased structural improvements and the need for retaining walls. Mr. Downing added that he was very familiar with the construction portion and with the letter that was sent to the property owners, it only mentioned the vegetation portion. Downing added that he thought it would be very beneficial from the 5 feet being moved up to reduce costs. He said it would make the houses sit better on the lot and wanted to point out that the letter that the homeowners received did not mention those highlights.

Secretary Downing moved to recommend approval of the proposed application as submitted subject to staff recommendations, that the motion exclude any lots currently under construction, that the motion be subject to preserving an additional 5 feet of vegetation on the rear of the subject lots, and any exceptions to that would need to be approved by staff and that the finding that the Board, in its opinion, as a matter of fact has determined that the proposed exception will not substantially adversely affect the adjacent and neighboring property by this title. Bob Lock seconded. Motion failed to pass by a voice vote tie 3-3. Ayes: Lock, McCormick and Downing. Nay: Dods, Cary and Wright.

ITEM 5. REGULAR BUSINESS

None

ITEM 6. UNFINISHED BUSINESS

See Item 6A above.

ITEM 7. OTHER BUSINESS

Director Ackerson stated that with the newly elected Mayor, permanent member appointments were expected in the future and thanked Keith Cary and Bob Lock for their voluntary participation in order to get us through this evening. They both agreed to short term participation and plan to resume their roles as Planning & Zoning Commissioners.

ITEM 8. ADJOURNMENT

Vice Chairman Dods moved to adjourn. Secretary Downing seconded. Motion to adjourn passed 6-0.

Meeting adjourned at 6:45 p.m.

Submitted by: _____
Tracy Sisney, Department Assistant

5/9/2012
Date