

**Planning & Zoning Commission**

August 12, 2014

6:30 P.M.

Meeting called to order and a quorum established. Chairman Joseph Cyprian led prayer and Pledge.

**Present:** Chairman Joseph Cyprian  
Commissioner Art Arnold  
Commissioner Janice Burris  
Commissioner Bettye Boggs  
Commissioner John Ehrlich

**Also Present:** P & Z Secretary, Diane Sanders  
Village Attorney, Delbert Talley  
Village Engineer, Kiley Bates  
Village Inspector, Ray Treadaway

**New Business**

**Item No. 1 Request for variance on Lot #4 Marle Loop Estates-Hay Hollow Road—**

Chairman Cyprian opened floor for owners Leroy Heisser and Quint Walker from Heisser Construction to present speak. Mrs. Walker began stating that last meeting they brought the same type of variance for Lot #15 and it was approved and because the subdivision is mirror images we would like to get that same variance approved for Lot #4 and the variance is a utility servitude and we like to get that decreased from 47 feet to 20 feet. Chairman Cyprian then mentioned that there is no encroachment, for all property belongs to them, then opened floor for Commissioners to speak. Mrs. Bettye Boggs asked if they could clarify that the dimensions are the same on the Lot we approved the last time and Mrs. Walker stated that it is and Mrs. Boggs checked map that was pointed out to her.

After no further discussions, Chairman Cyprian motioned for approval, Motion moved by Commissioner Burris and seconded by Commissioner Boggs. Motion carried (4 Yeas 0 Nays)

**Item No II Request for Re-subdivision off Greenwood Rd. (Petitioner- Barney Core)**

Chairman Cyprian opened floor for petitioner to speak. Representative for Mr. Core, Jack Mendheim began stating as everyone may recall that that portion of Willow Street in front of Lot #10 was a request to revoke that street and it was granted by the Board of Alderman and the Mayor and that has been processed and finalized, so what Mr. Core wants to do now is take that one Lot and make use of Willow Street, taking Lot #10 and adding Willow Street to it and turn those two (2) Lots ( dividing Lot #10 into two (2) Lots A & B as shown on map) in a northern direction so they are fronting Greenwood Road.

Chairman Cyprian then asked for comments from Commissioners and there were none. Chairman Cyprian opened floor for motion. Motion moved by Commissioner Boggs to approve and seconded by Mr. Arnold. Motion carried (4 Yeas and 0 Nays)

**Item No III Request for Permit Approval for Daiquiri Shop (Wacky Daiquiri )**

Chairman Cyprian opened floor for petitioners Kelly and Raynell Rolf to speak, but first asking them where they are located, Mr. Rolf stated it is on corner of Hwy 25 and Bill Dyess Road. Commissioner Arnold then began speaking, stating that what we are missing is a drawing of the drainage on this particular Lot and said that if you look at the Lot facing the Lot from the Hwy on the west side there is a retaining wall on that piece of property so the property he has is much lower than that, at least a foot lower than that, the property behind is hilly and slopes down so drainage is not going to impact anyone else's property and there is a ditch on the roadside and a ditch in the back. Commissioner Arnold continued stating that he is going to make a motion and this is my motion, Commissioner Arnold then began reading from Motion (see attached).

Chairman Cyprian asked if there was a second on that motion and there was not. Chairman then asked if there were any discussion on the motion and Commission Boggs then began stating that according to our ordinance #18:351, "it states that a plot drainage plan shall be provided as part of the application otherwise a building permit cannot be considered for issuance." Commissioner Arnold then stated that he is asking that the ordinance be circumvented and that the drainage plan be circumvented because it impacts no one. Commissioner Boggs commented that whether it impacts someone or not I think we have an ordinance, unless we choose to change this ordinance... Commissioner Arnold stated again that we have the power to circumvent it. Mr. Rolf made the comment that he has never seen water run uphill to which Commission Boggs stated that she agrees that water does not run uphill but when we have an ordinance that states we cannot issue that building permit then basically we are saying that we are going to negate

our ordinance. Mr. Rolf stated that all he is doing is only trying to bring a business into the town which needs revenue. Mr. Rolf stated that he does not have \$5,000 to put up for this civil engineer that is not necessary. Commissioner Boggs questioned that cost. Commissioner Arnold then asked Mr. Talley the village attorney if they have the power to do this. Mr. Talley replied, "I do not believe that you do. I will have to research it for you but permits are non-discretionary and that means that every applicant has to meet every requirement to get a permit, also if they meet every requirement you cannot deny it. As long as he can A,B,C it, he gets the permit and if he does not meet A,B,C you cannot issue the permit."

Mr. Rolf made the comment that it has been waived in the past by past mayors and that Mr. Bates the village engineer told him so. Commissioner Arnold stated that "we are getting to the point where such rigidity of law is going to preclude any Mom & Pop businesses from opening in this town, and the Mom & Pop businesses are the lifeline of this town. We don't have any big box stores here, and if we are going to have to go to this rigidity for every business that's going to open, I don't feel we'll have any new businesses in this town."

Mrs. Rolf spoke saying seven years ago we put 4200 yards of fill into this property and we never needed a drainage plan then to do that and it never caused anybody any flood problems in the last seven years. Mr. Rolf added that no one said nothing, no one came and stopped me or anything and I am still below everybody, and there is a servitude behind me where the water runs to and across the street into Morgan's branch, it will never ever flood anybody. Mrs. Rolf continued stating that we know this is not the norm, but we are asking you all to do this so that we can move forward with this project because this is money that we did not plan on putting out to get started with this, we have the bank on hold, we put the bank on hold twice because we don't want to go to closing until we get our permit. Mr. Rolf commented that he is already out of pocket \$10,000.00 on this project without the loan."

Commissioner Ehrlich asked where they are planning to build the building and he stated that there was a chain wall on side where the seafood place use to be, of course that is not going to flow any water into your property, so my thought is where about are you going to put your building on there and are you going to have some mud dumped as far back as you to go with the slab. Mr. Rolf answered, "Very little for the slab, I don't want the slab no more than 10 inches off the ground and Mrs. Rolf mentioned that the building will be 50 feet from the road and that servitude is 30 feet wide in the back."

Village inspector Ray Treadaway spoke stating, "I think they submitted a drainage plan it just was not stamped by an engineer." Mrs. Boggs then asked, "What would it take that drainage plan and get it certified by an engineer, it can't possibly take \$10,000.00." Mr. Treadaway spoke saying, "What he told the applicant is that if you meet the town engineer's requirements, it is up to the town engineer whether he is going to accept it with or without a stamp on it." Mrs. Rolf spoke saying, "That the town engineer told us that he did not have a problem with it if the inspector did not have a problem with it so it

is being passed alone, so this is why we have to resolve this now so we can get our permit so we can start building, I can't put the bank on hold much longer, we are ready to start building and get on with this project, it has taken us six months to get to this point already." "Mr. Treadaway asked," Is there anything in that ordinance that says it has to be stamped by an engineer or does it just say you have to see the drainage plan?" Mrs. Boggs stated that it just says that, "A plot drainage plan shall be provided as part of the application otherwise a building permit cannot be considered for issuance," continuing saying so she imagine that Kiley Bates the engineer will be able to explain why the plot drainage plan is in question." Mr. Treadaway then stated that, "When I do a final inspection, I always request that the city engineer or public works send someone out to make sure of each towns requirements." Mrs. Boggs then asked, "If that was the only thing holding up the project?" and Mrs. Rolf stated, "As for as I know because I asked the engineer what was the purpose of it and he said so that I won't cause anyone else to flood." Mrs. Boggs asked Mrs. Rolf did she question Mr. Bates about the drainage plan that was submitted and Mr. Rolf stated that it does not have a drainage plan drawn because you have to have a civil engineer to draw it. Mr. Rolf stated that it has a site plan, with sewer on it and the way the water comes through it. Mrs. Rolf then stated that they did not have a problem getting the civil engineered drawing until both the Architect and Engineer was going to charge us \$5000.00. Mr. Rolf then said that they hadn't even gone to closing and that is going to cost us another \$3500.00 and I am already into this \$10,000.00.

Chairman Cyprian asked Mr. Talley if he had any further comments and Mr. Talley stated, "No, but if you would like me to research it, I would be glad to, but, as a general rule "Permits" are non-discretionary and they are designed that way because they want people to know when they come before you whether or not they have a right to do something or not, so if they meet the requirements of the Permits you cannot turn them down and if they do not meet the requirements you cannot give them the permit. Anything like this will have an impact on anything else you do, just like tonight people are going to say that someone else did it differently. I didn't realize before I came here exactly what the issue was and that you all might want to try to waive the requirement, generally speaking you cannot waive the requirement. Permits generally speaking are designed so that when people come before you they know exactly whether or not they will be able to do what they want to do, if they meet the requirements you cannot turn them down and if they cannot meet the requirements they do not need to come."

Village engineer Kiley Bates arrived (he had an earlier engagement elsewhere and had informed the office that he would be late). Mr. Bates introduced himself and asked, "Where are we in the discussion so far." Commissioner Arnold spoke saying, "Trying to acetate whether we can sign the drainage plan." Mr. Bates began explaining "As the engineer for the village you guys ask me to review all development, commercial and residential to see if they are in accordance with your current ordinances, so in order to do that I require certain information. From a developer I review utility plans, which is basically what they are doing with their water and sewer, how they tie in, I review grading, how are they grading the site, I review the drainage plan, developments cause increase in runoff, nine times out of ten unless you are building on an existing parking

lot. When you put a building in grass it creates more runoff, so I review that for the village. I'm pretty hard on drainage because that is usually where the village gets in trouble. If the village signs off on a development that happens to cause a drainage impact or flooding on an adjacent property owner, well the village has some liability in that. Also I review paving, I look at typical sections, but that is more to do with sub-divisions on the road. I have looked at this set of plans several times and I do review it from a drainage standpoint and it is lacking draining information, but it also lacks some of the other things that I look at, the grading plan, utility plan is not complete, so I have heard mention several times from a few different people that we are stuck on the drainage, well that is only one aspect of what I review for the village. This set of plans is done by an architect and not a civil engineer, a civil engineer was brought into the project and I spoke with the engineer and I explained to him what I normally review and he understood that, it is the same language the same lingo and he called on behalf of the owner and it's my understanding that that relationship between the owner and that engineer did not continue past his initial proposal and I believe it had to do with the amount of money it cost to put that information together. Be that as it may, when the village asks me to review something, I still have to have the information to review. So, I think that is where the standoff maybe has come to down to and maybe where we are now, the developer does not or has chosen not to supply that information. She and I have had multiple conversations about it and I understand her situation and this is a small development I grant you, but for me to sign my name I have to review it and I have to have the information to review."

Commissioner Arnold spoke afterwards saying, "That the property leans to the rear and the property on the left side is higher than that property, the drainage seems natural, where the water would go, in the gutter, it's not going to be any paving on this site." Mr. Bates stated that, "Well, there is some paving, the building itself is an impermeable surface." Mr. Bates finished stating again, "As it stands now I am not signing off on it, because I have not been able to review the information I have requested." Commissioner Boggs spoke stating, "As a commissioner, I think we have listened to an engineering opinion on this issue, a legal opinion on this issue, I'm not an attorney and I'm not an engineer, but these are the people that are guiding our decisions and our decisions could ultimately cause a liability on the village's part, that's what we pay these people for. So I think we have a responsibility to listen to the professionals here. If we have an ordinance that says something and we choose not to follow it for one person then basically what we have done is we have set a precedent, therefore the next person who walks in the door will say, oh but, you did it for this person. So I think we have a responsibility here and we have a legal responsibility here to follow our ordinance, if we choose not to have this ordinance then we have the alternative to ask the Aldermen to change the ordinance and that has to go through a vote by the Aldermen, but it's very difficult for me to make a decision when I have professionals here telling me what they are saying, I have to base my decision upon professionals."

After a pause, Chairman Cyprian asked if there were any further discussion, Commissioner Arnold stated, "I have a motion on the floor, I'll have to withdraw it." Chairman Cyprian tried to intervene by telling him that we never seconded that.

Commissioner Arnold stated while Chairman Cyprian was still speaking stating, "But, I make a new motion that we issue the permit." Commissioner Burris seconded it.

Chairman Cyprian made the statement that it was removed by Commissioner Arnold and seconded by Commissioner Burris. (3 Yeas and 1 Nay)

Chairman should have made another motion to approve or disapprove the permit.

Shortly after, Mr. Bates asked, "It was approved, right, so there will be know appeal?" The Board agreed. Commissioner Boggs then stated, "So we are going to issue the permit, and asked Mr. Bates what is his part in it legally?" Mr. Bates stated, "Nothing, I am out of it at this point." Commissioner Boggs then stated, "So any liability occurred will fall on the village." Mr. Bates explained, "If this development causes an issue that the village did not have approved by the engineer, then the village accepts that liability." Mr. Rolf spoke saying, "I will pay for it."

There being know further business, Chairman Cyprian made motion to adjourn meeting, motion made by Commissioner Arnold and seconded by Commissioner Burris. Motion carried (4Yeas and 0 Nays)

Respectfully submitted

Joseph Cyprian, Chairman

I attest that the above is a true and correct copy of the minutes taken at the Planning Commission meeting August 12, 2014.