

MINUTES
June 19, 2019
Plan Commission and Zoning Board of Appeals
City of Batavia

PLEASE NOTE: These minutes are not a word-for-word transcription of the statements made at the meeting, nor intended to be a comprehensive review of all discussions. They are intended to make an official record of the actions taken by the Committee/City Council, and to include some description of discussion points as understood by the minute-taker. They may not reference some of the individual attendee's comments, nor the complete comments if referenced.

1. Meeting Called to Order for the Plan Commission and Zoning Board of Appeals Meeting

Chair LaLonde called the meeting to order at 7:00pm.

2. Roll Call:

Members Present: Chair LaLonde; Vice-Chair Schneider; Commissioners Harms, Stark, Joseph, Peterson and Gosselin

Members Absent:

Also Present: Joel Strassman, Planning and Zoning Officer; Drew Rackow, Planner; Jeff Albertson, Building Commissioner; and Jennifer Austin-Smith, Recording Secretary

3. Items to be Removed, Added or Changed

Chair LaLonde welcomed the newest Plan Commissioner, Susan Stark, to the Commission. There were no items to be removed, added or changed.

4. Approval of Minutes: May 1, 2019

Motion: To approve the minutes from May 1, 2019

Maker: Peterson

Second: Stark

Voice Vote: 7 Ayes, 0 Nays, 0 Absent
Motion carried.

5. Final Plat of Muetze Acres Subdivision
39W100 Main Street, Unincorporated Batavia Township
James D. Muetze, applicant

Drew Rackow overviewed the memo with the Commission.

Motion: To recommend to City Council the Final Plat as proposed, subject to a condition that School and Park Land Cash Fees as stipulated under Title 11 of the Batavia City Code are paid prior to City signatures being added to the Final Plat

Maker: Schneider

Second: Peterson

Voice Vote: 7 Ayes, 0 Nays, 0 Absent

Motion carried.

**6. Public Hearing: Variance for An Addition at 861 Ravinia Court
Benjamin Wakefield and Anique Drouin, Applicants**

Motion: To open the Public Hearing
Maker: Joseph
Second: Gosselin
Voice Vote: 7 Ayes, 0 Nays, 0 Absent
Motion carried.

Strassman reported that Benjamin Wakefield and Anique Drouin, who reside at 861 Ravinia Court, propose to construct a rear addition to their house that continues the east side wall of the residence. The addition would replace an existing unpermitted deck with an enclosure. The property's R1-L Single Family Residence zoning district requires a 12-foot side setback; they are proposing a 9.35-foot side setback for the addition. The subdivision in which the property is located was developed pursuant to a now expired annexation agreement that allowed 7.5-foot side setbacks.

The applicants note that the changed setback requirement over time has made it difficult to add to their residence, the addition would not be very different from a covered patio that can have a 9-foot setback, and the addition would not alter the character of the area. The applicants have provided several letters of support from their neighbors.

Staff supports removal of the existing unpermitted improvements to add to the home. Staff acknowledges the expediency in continuing the east wall of house for the addition, but there is sufficient area to build an addition with a compliant setback. The applicants have not submitted evidence to show the proposed addition's location is the only viable location. Staff agrees that the proposed addition would not alter the character of the area, however, it feels only 3 of the 5 findings required for a ZBA recommendation for approval can be met as outlined.

The Zoning Board of Appeals (ZBA) must determine all findings have be met to recommend approval. Since staff believes that all findings cannot be met, staff recommends the ZBA recommend the variance not be granted.

Chair LaLonde swore in all who wanted to address the Commission.

Kevin Carrara, 300 East Roosevelt Road, attorney representing the applicants, addressed the ZBA. Carrara stated that they are asking for a side yard variation of 2.65 feet. The current side yard is 12ft. Twenty years ago in the annexation agreement these houses in the subdivision were built with 7.5ft setbacks. That has now increased by some 60% over time to now this 12ft setback that our clients are dealing with. Municipalities will put in zoning deviations that are authorized in annexation agreements so we don't fall into this situation of non-conformity twenty years later after something expires. This has become a several lot subdivision that is now non-conforming because the annexation agreement has expired. They were all built and permitted twenty years ago as they were built and brought online. If we still had the seven and a half foot setbacks we would

be fine. The proposed improvement would have been in compliance at the time the house was built. The current deck existed when the applicants purchased the house.

Handouts distributed to the Commission were titled as follows: Ravinia Court Subdivision aerial picture (Exhibit 1), Chapter 4.1 Site Regulations (Exhibit 2), and TimberBuilt Rooms Front Elevation for Ben and Anique Wakefield (Exhibit 3).

Cararra questioned Drouin about the yard, which Drouin stated contains trees, landscaping, raised garden beds and pavers. Cararra confirmed that this is not a three-season room and not an addition to the home. He asked if she had any plans on making this a three-season room or an addition to their house and Drouin answered no. Carrara pointed out that the design of the screened in deck was designed in proportionality to the back of the house. Carrara asked if it were fair to say that they did not want to block any windows or doors by shifting the design 2.5ft one way to comply with the setback requirement and Drouin stated that is correct. Carrara asked if this was designed to not have to remove any existing large trees in the backyard, pavers, flagstone walkways, and raised planter beds. Drouin stated that is correct.

Cararra stated that both neighbors were contacted about this variance and have been supportive. Drouin added that they sent notice to properties within five hundred feet of the house. Cararra stated certified letters from her neighbors have been submitted to the ZBA in support of the variance. Carrara noted that the letters are part of the packet.

Cararra read from the Zoning Code and opined that the proposed improvement fits the Zoning Code definition of a covered patio/covered deck that can extend 3 feet into the side setback. Cararra stated that they are only asking to encroach 2.6ft. By this ordinance we should be okay. Cararra stated that the proposed improvement has screens and no way of making this into a three-season room by any means. Carrara explained that generally a three-season room would have insulation, a heat source and windows. This merely has screens to keep the bugs out. He showed the Committee pictures of covered screened in patios on Google images. He pointed out that what they are proposing here is very similar to a covered screened in patio and not an addition to the house as staff is suggesting.

Cararra discussed the Findings of Fact. He stated that the evidence that they supplied meets the five standards that are required for approval. There is a hardship that the applicant will face with the setbacks. We have a non-conforming lot because when these lots were built was also non-conforming under the code. We have non-conforming side yards. The unique circumstances are all there from the size, the shape, topography and location of this property. We have all the hardships in place. We also have the spirit and intent of the ordinance in which screened in covered patios could be up to three feet in the side yard and are asking for an encroachment of 2.6 feet. We believe it is reasonable to consider the expiration of the annexation agreement because when this property was built and the deck was constructed it was under a 7.5-foot side yard setback. It would be unreasonable to not consider that as part of this process. For Finding A, we have a non-conforming lot size and non-conforming side yard setbacks. The house was built at a time when there were 7.5-foot side yard setbacks and that is a unique condition. For Finding C, we have non-conforming issues and the 60% increase from 7.5 to 12 feet. It would be unreasonable not to consider the 7.5-foot side yard setback. We also have the issues with permanent structures that are

already there: raised garden beds, landscape paths and trees. The rear of the house has doors and windows that are already there and it would not make sense to shift the structure 2.5 feet and it would block the doors and windows. Those are what they feel are issues that support the findings.

There was some question among the Commission members as to how to define this proposed project. The ZBA and applicant discussed the difference between three-season rooms and covered patios. Drouin stated that she visited the Timberbuilt showroom to see the difference between three season rooms and covered patios. The difference was the three-season room could be used March through November very easily and they did have heat sources, a wall with insulation, and windows. She and her husband agreed that they do not want a three-season room but rather an outdoor living space. Carrara stated that the ordinance requires a building permit for an addition or a three-season room. The ordinance specifically states that covered patios would not need a variation under that interpretation and that is difference we are talking about. Strassman stated that this would be a deck if it weren't for the cover and screens. The way the cover is attached, if the roof was solely supported by the wall of the house with no screens there could be some opportunity to look at this solely as a covered deck. The roof structure is not just supported by the house, it is supported by the posts. Strassman stated that it is staff's determination that, as designed, this structure requires a variance.

The PC discussed the Findings of Fact. Schneider stated that it has always bothered him that we, as a Board, have to find all of these findings in the affirmative to make a positive recommendation. He continued that he is sure that most on the ZBA would not have a problem with granting this variance. Peterson stated that this is a minor issue as to the definition of what this structure is and the side yard setback change causes this hardship. Peterson stated that she could answer all of the findings in the affirmative. Harms stated that she would like to keep the existing trees and commented that the definition of covered patios is vague. Albertson stated that he would not classify this as a three-season room, it would be classified as a screened porch. However, screened porches have the same setback as a three-season room or an addition. LaLonde stated that Albertson's comment changes his perspective on how we treat this.

Stark questioned if the addition could be made a little narrower to comply with the code. LaLonde stated that the proposed addition could be narrower or longer. The trees were discussed but there are no images of the trees to show that they would need to be moved or impacted if the structure were modified. He continued that the existing deck is an entirely different configuration than what is proposed. Carrara stated that they are decreasing the size of the deck.

Commissioner Susan Stark informed the ZBA that she had just realized the applicant's contractor is the family of her son's fiancée. Citing a potential conflict, Stark recused herself from this matter.

Motion: To find in favor of Finding A
Maker: Joseph
Second: Schneider
Roll Call Vote: **Aye:** Joseph, Schneider, Peterson, Gosselin, Harms
Nay: LaLonde
5-1 Vote, 0 Absent, 1 Recusal, Motion carried.

Motion: To find in favor of Finding B
Maker: Schneider
Second: Harms
Roll Call Vote: **Aye:** Schneider, Peterson, Gosselin, Harms, Joseph, LaLonde
Nay:
6-0 Vote, 0 Absent, 1 Recusal, Motion carried.

Motion: To find in favor of Finding C
Maker: Schneider
Second: Peterson
Roll Call Vote: **Aye:** Schneider, Peterson, Gosselin, Harms, Joseph, LaLonde
Nay:
6-0 Vote, 0 Absent, 1 Recusal, Motion carried.

Motion: To find in favor of Finding D
Maker: Schneider
Second: Harms
Roll Call Vote: **Aye:** Schneider, Peterson, Harms
Nay: Gosselin, Joseph, LaLonde
3-3 Vote, 0 Absent, 1 Recusal, Motion failed.

Motion: To find in favor of Finding E
Maker: Schneider
Second: Harms
Roll Call Vote: **Aye:** Schneider, Peterson, Gosselin, Harms, Joseph, LaLonde
Nay:
6-0 Vote, 0 Absent, 1 Recusal, Motion carried.

Chair LaLonde stated that he would entertain a motion for the variance that the ZBA is generally in concurrence with the proposed improvements and granting of the variance but are bound by State law with regards of the Findings of Fact and we could not find in the affirmative of all the findings. Schneider made the motion and Peterson seconded. Strassman recommended simplifying the motion to recommend approval of the variance. Schneider agreed and retracted his motion.

Motion: To recommend approval of the variance
Maker: Peterson
Second: Schneider
Roll Call Vote: **Aye:** Schneider, Peterson, Harms
Nay: Gosselin, Joseph, LaLonde
3-3 Vote, 0 Absent, 1 Recusal, Motion failed.

Strassman stated that the motion's vote resulted in a failure to recommend approval. Strassman added that this would go to the Committee of the Whole on June 25, 2019 noting the ZBA's general support of the project per its discussion.

Motion: To close the Public Hearing

Maker: Schneider
Second: Joseph
Voice Vote: 7 Ayes, 0 Nays, 0 Absent
Motion carried.

**7. Public Hearing: Amendment to the Zoning Code, Chapter 4.2: Parking Regulations &
8. Design Review for a Proposed Industrial Building
1501-1581 Louis Bork Drive
KRC Holdings LLC, Applicant**

Motion: To open the Public Hearing
Maker: Joseph
Second: Schneider
Voice Vote: 7 Ayes, 0 Nays, 0 Absent
Motion carried.

Rackow announced that agenda items seven and eight will be discussed concurrently since they are both related to each other. He stated that the items that are before the Commission tonight are to allow the construction of a 150,000 square foot industrial building at the southwest corner of Fabyan Parkway and Louis Bork Drive. The applicant is looking to put a speculative industrial building on that property. The text amendment is to amend the parking regulations of the City's zoning code that essentially dictate the number of parking lot islands and trees within parking lots (landscape requirements) for industrial properties. The applicant would like to modify the parking requirements to change what effectively is one island with trees per ten parking spaces to one for every fifteen parking spaces. Rackow noted that all of the information is include in the packet of information the commissioners received. He continued that the applicant has noted the Chicago market typically requires one per fifteen and the change would allow for greater flexibility in marketing the property because parking dictates what kinds of tenants the building would attract. The proposed application does conform to the Zoning Code. The conditions that staff are recommending are listed below:

- Plans shall be in substantial conformance with the plans attached to this memo
- Applicant shall provide necessary easements as requested by staff before issuance of a Certificate of Occupancy.
- Applicant shall provide a fee in lieu in an amount based on an Engineer's estimate approved by the City Engineer at the time of building permit for the cost of the sidewalk section at Fabyan Parkway.
- Staff approval of modifications to the landscape plan to provide additional clearance around electrical equipment.
- Final Approval of Engineering Plans by City Staff.

The Commission discussed the code requirements and screening requirements. Chair LaLonde swore in all who wanted to address the Commission and opened the floor for comment.

Rolf Anderson, applicant, 5N941 East Ridgewood Drive, St. Charles IL, addressed the Commission. He discussed the proposed project with the Commission. He stated that this is a Class A industrial building and addresses more of the modern-day industrial uses. He showed an aerial

rendering to the Commission. He stated that knowing the market in this type of industry with the target of e-commerce what they are requesting is consistent with the rest of the industrial park and on par with what they see in other markets. The requested one per fifteen brings the building up to standard with other communities. This change allows for flexibility of the building so that we could attract a wider variety of tenants with a high employee count. He stated that this type of building could house up to three tenants. Anderson stated that the staff conditions are all acceptable at this point. Commissioners discussed the proposed parking island change, discussing what has been observed in other communities and the overall balance of landscaping concerns vs. economic development concerns. Commissioners agreed that the change was an acceptable balance of providing flexibility to this and other developers vs. having well landscaped parking areas.

The PC viewed the rendering of the building. Anderson stated the building would have painted pre-cast, relief in the pre-cast for architectural relief. Chair LaLonde stated that this is an attractive building and Peterson concurred. Chair LaLonde stated he appreciates the extended berm.

Commented [SJ1]: Drew: add something here or in 2 paragraphs above about the PC liking the island change for econ development reasons...

Motion: To recommend to City Council to approve the proposed amendment to the text of the Zoning Code

Maker: Schneider

Second: Gosselin

Roll Call Vote: **Aye:** Schneider, Peterson, Gosselin, Stark, Harms, Joseph, LaLonde

Nay:

7-0 Vote, 0 Absent, Motion carried.

Motion: To find in favor of the findings for Design Review

Maker: Joseph

Second: Schneider

Roll Call Vote: **Aye:** Joseph, LaLonde, Schneider, Peterson, Gosselin, Stark, Harms,

Nay:

7-0 Vote, 0 Absent, Motion carried.

Motion: To approve the Design Review subject to the conditions provided by staff

Maker: Harms

Second: Schneider

Roll Call Vote: **Aye:** Harms, Joseph, LaLonde, Schneider, Peterson, Gosselin, Stark

Nay:

7-0 Vote, 0 Absent, Motion carried.

Rackow noted that this would go to the next Committee of the Whole meeting on Tuesday, June 25, 2019.

Motion: To close the Public Hearing

Maker: Joseph

Second: Harms

Voice Vote: 7 Ayes, 0 Nays, 0 Absent

Motion carried.

9. Public Hearing: Amendments to the Text of the Zoning Code
Chapter 4.4: Sign Regulations – Regarding Menu Signs
Michelle Freeman, Keyser Industries, Applicant

Motion: To open the Public Hearing
Maker: Harms
Second: Joseph
Voice Vote: 7 Ayes, 0 Nays, 0 Absent
Motion carried.

Strassman reported that the Zoning Code prohibits the use of electronic changeable message signs in the historic district. The applicant is seeking to amend the Zoning Code to remove this prohibition solely for menu signs. The applicant is submitting this request to benefit their client, McDonald's. Keyser Industries has stated that such menu signs could better serve the drive-through restaurant industry. The signs could be automatically dimmed. Staff sought input from the Historic Preservation Commission (HPC) on this topic. The HPC was generally accepting of the removal of this prohibition solely for electronic menu signs. Staff feels that the use of electronic menu signs can be compatible with the historic district provided that such signs are not readily visible from the streets. If necessary, screening could be required for these particular signs and screening could be part of a Certificate of Appropriateness reviewed by the HPC and the Building Permit review and approval by staff. Staff has outlined three sections of the Zoning Code to amend to allow electronic menu signs in the historic district in the staff report. Chair LaLonde swore in all who wanted to address the Commission.

Michelle Freeman, applicant, 10200 S Kedzie, Evergreen Park, addressed the Commission. She noted that McDonald's and others are adapting electronic screens in order to allow quick changes to offerings on the menu boards. She discussed how other historic downtown areas are changing the Zoning Codes to accommodate Electronic Changeable Menu Signs. It is sustainable and not visible from the street. In the case that screening is needed additional landscaping could be requested such as an evergreen tree between the street and message board.

Motion: To close the Public Hearing
Maker: Harms
Second: Schneider
Voice Vote: 7 Ayes, 0 Nays, 0 Absent
Motion carried.

Motion: To recommend the City Council approve the amendment of the Zoning Code to allow Electronic Changeable Menu Signs as proposed in the staff memorandum
Maker: Peterson
Second: Schneider
Roll Call Vote: **Aye:** Peterson, Gosselin, Stark, Harms, Joseph, LaLonde, Schneider
Nay:
7-0 Vote, 0 Absent, Motion carried.

Strassman stated that this would go to City Council's Committee of the Whole on Tuesday, June 25, 2019.

10. Matters from the Public (for items NOT on the agenda)

There were no matters from the public.

11. Other Business

The Commission discussed the findings of fact process for zoning variances and their frustration with the necessity of finding all in the affirmative.

Joseph stated that there continues to be debris or garbage in a resident's backyard that she discussed at the last PC meeting. Albertson stated that he would speak to her about this after the meeting.

12. Adjournment

There being no other business to discuss, Chair LaLonde asked for a motion to adjourn the Plan Commission. Gosselin moved to adjourn the meeting, Harms seconded. The motion carried. The meeting was adjourned at 8:58pm.

Minutes submitted by Jennifer Austin-Smith, Recording Secretary, on July 2, 2019.