

## **OXFORD PLANNING COMMISSION**

### **MINUTES**

**JANUARY 14, 2019**

The regular monthly meeting of the Oxford Planning Commission was called to order by the chairman, David Baker, on Monday, January 14, 2019, at 6:00 p.m., in the meeting room of the Oxford Community Services Building.

Other commission members in attendance were Bruce Beglin, Stephen Mroczek, James Reed, and Edwin Miller. Also in attendance was Town Administrator Cheryl Lewis.

The minutes of the meeting of December 4, 2018 were approved and accepted as distributed.

### **CONSULTATION**

A consultation was held with the property owner at 208 Factory Street, Friederikos Athanasopoulos, and his residential designer, Timothy Kearns, to discuss some changes Mr. Athanasopoulos is looking to make to his property. Mr. Kearns spoke stating that the property is continually wet and that a neighbor dispute between the past owner of this property and the neighbor next door with regards to the stormwater plan went through a legal process. He explained that his client, Mr. Athanasopoulos, is looking to make improvements to the stormwater system so that the property becomes more useful and functional as a yard. Currently the stormwater backs up along the side of the yard and into the homeowner's garage. Mr. Athanasopoulos has an electric car and the cable to charge the car runs through the stormwater. Part of the plan calls for the raising of the driveway and changing the grading of the property in order for the stormwater to flow better around the house, along with replacing the existing garage in a similar location, but raising it a foot higher, and attaching it to the house. Chairman Baker reminded Mr. Kearns that should the garage be attached to the house the setbacks would be that of the principal structure, not an accessory structure. Mr. Kearns went on to say that the new garage would house the mechanicals for the pool and HVAC units. This would help in keeping down the noise and well as keeping these units from the public view. In working to solve the stormwater problem, Mr. Kearns stated that a bio-retention pond would be best located where the existing swimming pool on the property is now located. A new swimming pool would be installed to the south of the new garage and the property setup like a courtyard, as the property basically has no backyard. An epoxy deck would be used to connect the house to the pool and the pool would be raised. An extensive planting plan would also be incorporated in the overall redesign of the property. Chairman Baker stated that the Planning Commission does not handle stormwater management. However, they do review other aspects of the permitting process, such as coverage. Chairman Baker reminded Mr. Kearns that should his client decide to go through with his proposed plans, he would need to break down how much coverage currently exists on the property and what the proposed coverage would be. He reminded both Mr. Kearns and Mr. Athanasopoulos that the property can only be covered up to 40%. Mr. Kearns presented

the commission with models of how the property would look after the changes were made to it. The existing house would remain, decks would be built at the floor level of the existing house, the garage would come up one foot, the entire yard would be fenced. Neighbor James Mylander addressed the commission to discuss the past stormwater plans that had been approved, drainage problems at the rear of the property, and a conflict of interest. Chairman Baker advised Mr. Mylander that tonight's meeting involved a consultation only and the commission would not be discussing the things that Mr. Mylander wanted to bring up to the members. Mr. Athanasopoulos spoke stating that the issue of water on this property was something that he would be facing for at least 6 months a year and that it was hard for him to go in and out of his property with all the water that runs into his yard. He added that he wanted to solve the stormwater issue, including the run-off of water from the neighboring properties onto his property. He added that he was waiting for the results of a stormwater study to inform him of the best way to handle the water situation. Mr. Miller pondered that even though the whole yard would be fenced in, what would happen if a child were to sneak through onto the property? Chairman Baker stated that nothing in the zoning ordinance addressed such a thing. Administrator Lewis spoke from the audience stating that the zoning requirement is that a pool be fenced in and that there are other precautions the homeowner can take, if he or she so chooses. Mr. Kearns mentioned that because the wall was within the building envelope it could be higher. Chairman Baker pointed out that one could not attach fencing and/or a wall to the main structure with the hopes of benefiting from the main structure's height. In looking over the amount of decking proposed for the property, Chairman Baker reminded the owner and Mr. Kearns that if dirt with mulching on top of it is kept under the decking, and that the decking had ¼" gaps in between the boards, it would not count as part of the impervious surface coverage. Chairman Baker asked Mr. Mylander if he had any final comments with regards to the proposed work to the property at 208 Factory Street. Mr. Mylander responded that he wanted to see the stormwater problem corrected and to see justice for the past stormwater mistakes that had been made. He also mentioned that the existing garage is over the property line. Chairman Baker responded that would be corrected as part of the plan is to remove the old garage. Mr. Kearns stated that care is being given with regards to the stormwater management in order to make it significantly better from what exists now. Chairman Baker thanked Mr. Kearns for his presentation and added that the plan looked nice.

## **DISCUSSION**

Chairman Baker addressed the members as to his thoughts about fences and how they are covered under Section 32.12 of the Oxford Zoning Ordinance. In Section 32.12, it states, in part, that no wall or fence shall be erected in excess of a height of 4', except that fence posts and ornamental gates may be 4 ½' in height, and that a fence or wall in excess of the height limitations shall only be permitted, if at all, by **special exception** use. Chairman Baker stated that his problem is that the measurement of the height of the fence is being viewed as a special exception. In looking at other special exceptions in the zoning ordinance, Chairman Baker stated he could find no other instances whereby a special exception had anything to do with height. He also noted that special exceptions are called out in the zoning ordinance (The Board shall have the power "to hear and decide only such special exceptions as the Board of Appeals is specifically authorized to pass on according to the provisions of the ordinance"),

unlike variances, which allow for an appeal in specific cases that would not be contrary to the public interest where, owing to special conditions, the enforcement of the ordinance would result in unnecessary hardship. Mr. Mroczek agreed adding that the use of a special exception for the use of fences did seem to be at odds with where it is used in other places of the zoning ordinance. In the case of a variance, there is a criteria as to how you can justify having a variance. As it sits now, there are no criteria for how one would apply for a special exception for a fence. Mr. Miller added that it could be listed that a fence in excess of 4' could be allowed by special exception but written throughout all the zoning districts rather than just being found in the one section – 32.12. Administrator Lewis spoke stating that the difference between a variance and special exception is that a special exception acknowledges the town is ok with what one is doing but one would need to provide some criteria, so that basically, if the intent in Oxford is for everyone to have a 6' fence, then a special exception would be appropriate. She added that the way she saw it is that it has been treated in Oxford for everyone to be able to have a 4' fence but to make allowances for issues that may come up involving certain circumstances. That is a variance. She added that the initial wording in most zoning ordinances has been taken from government models and altered. In this case, a variance for a fence would make much more sense than saying it is acceptable everywhere which is why it really is not a special exception. All other special exceptions say they are acceptable but you just need to present more details. With a variance, one has to justify it as a variance by way of hardship and if that is the way the Planning Commission would like to go forward, then the language just needs to be changed to say that. She added that the attorney could write it up and send it back of to the commission to review. Mr. Beglin asked if there were specific places on the property where a fence could go. It was agreed by all the members that a fence could go anywhere on one's property but that it had to stay at 4'. Mr. Baker added that Section 32.12. D, that states "all other provisions of the Zoning Ordinance permitting swimming pool fences in excess of four feet are hereby repealed" annoyed him as there were no other provisions. Administrator Lewis stated that it was probably leftover language and that it could be removed. Mr. Mroczek made a motion to amend Section 32.12 by removing paragraph B and D but keeping A and C. The motion was seconded by Mr. Beglin and unanimously carried.

There being no further business, the meeting was adjourned.

Respectfully submitted,

Lisa Willoughby

Assistant Clerk