

MINUTES OF THE REGULAR MEETING OF THE AMBERLEY VILLAGE  
BOARD OF ZONING APPEALS AND PLANNING COMMISSION  
HELD AT THE AMBERLEY VILLAGE HALL  
MONDAY, MARCH 5, 2012

Chairperson Richard Bardach called to order a regular meeting of the Amberley Village Board of Zoning Appeals held at the Amberley Village Hall on Monday, March 5, at 7:00 P.M.

The Clerk called the roll:

PRESENT: Richard Bardach, Chairperson  
Rick Lauer  
Larry McGraw  
Susan Rissover  
Scott Wolf

ALSO PRESENT: Scot Lahrmer, Village Manager  
Nicole Browder, Clerk  
Kevin Frank, Esq., Solicitor  
Steve Rasfeld, Public Works Supervisor  
John Eisenmann, CDS Associates, Village Engineer

ABSENT:

Board of Zoning Appeals Case No. 1054

Mr. Steve Rasfeld, Public Works Supervisor, informed the Board that the property owner of 3250 Longmeadow Lane is seeking approval from the Board of Zoning Appeals for a variance to allow a ceiling height of 7' 10" to remain in an existing room that is proposed to be modified while creating an adjacent hallway. The home, located at 3250 Longmeadow, was built in 1958 and contains 2,418 square feet.

Section 154.27 (C) states 'Habitable rooms shall have a clear height of not less than eight feet...' The applicant is seeking a variance of two inches to allow an existing ceiling of 7' 10" to remain.

This proposed modification provides a hallway for access to the remodeled handicap accessible bathroom. In discussion with staff, the architect was advised that the bedrooms had to meet the 150 square foot minimum and the ceiling height minimum of eight feet. By proposing to modify the existing bedroom in this way, the current code was applied to this room. The proposed room did meet the minimum 150 square foot regulation on the submitted plan and a zoning approval was issued dated January 6, 2012. When the architect realized the existing ceiling height is actually 7' 10", two inches less than the required 8' 0" minimum, he contacted the Village to pursue the variance for the ceiling height.

Staff recommends approval of this variance of two inches to the ceiling height minimum measurement. Denial of the variance may cause an undue hardship by requiring the applicant to raise the existing ceiling/roof of this small (150 square foot) area in the existing structure. Additionally, the existing ceiling heights in the balance of the structure will remain at the 7' 10" height. Since this is an interior issue, the approval of this variance for the interior ceiling height should create no visible difference to the exterior of the house which may negatively impact the neighboring houses.

Mr. Wolf asked if there were any fire hazard issues. Mr. Rasfeld confirmed there was not.

Mr. David Clark with McGill Smith Punshon, Inc. was present on behalf of the applicant and reiterated the request to the board. He commented that the ceiling height issue was discovered during review of the village code. The hallway was added to bring the home into compliance.

Mr. Tim Mara, an attorney representing adjacent property owners, including June Jacobs, Irene Frieman, Cynthia and Monica Barr, gave a presentation to the board objecting to the approval of the variance requested.

Mr. Mara expressed the importance of the 8 foot ceiling height requirement and the history of zoning and building code compliance. He stated that the applicant was not clear in their submittal as to the number of people living in each room. He commented that he felt that approval of the requested variance would set a poor precedent.

Mr. Wolf commented that if this request was from a single resident, the board would likely approve the request.

Mr. Lauer moved to approve the variance request as submitted. Seconded by Mrs. Rissover.

There was discussion regarding the use of the home, which is likely to be a group home. The Solicitor explained that, in his opinion, the Village could not deny the anticipated use under the Village's definition of "single family" based on state and federal law. It was clarified that the Board was presented with a variance request for a ceiling height and does not have authority to deny the use of the home as a group home.

A vote was taken and the motion carried unanimously.

#### Board of Zoning Appeals Case No. 1055

The applicant, Congregation Sha'arei Torah, wishes to construct and operate a synagogue at 2400 Section Road, east of Elbrook Avenue, on the property known as Abrams Acres. Mr. Lahrmer presented a staff report to the Board. The current zoning of the parcel is Residence 'A' and the required minimum area of a lot to site a conditional use in this district is 3 acres. The subject property exceeds 6.4 acres.

The applicant submitted the original request to the Village with a letter dated January 13, 2012 accompanied by a conceptual site plan for the request to be heard by the Board at the regular meeting scheduled for February 6. The applicant requested via phone, and confirmed by letter from their legal counsel dated January 23, to be moved from the February 6 meeting to the regularly scheduled March 5, 2012 meeting agenda. Village staff, the Village Engineer and the Village Solicitor met with the applicant to review the submission on January 25 in an effort to ascertain additional details of the proposed use and improvements since the original submission was somewhat vague. Following these discussions, the applicant submitted additional information, maps and an elevation of the proposed structure dated February 23.

Conditional use requests can be granted by the ZBA per Section 154.661 of the Code. Conditional use is defined as a use of land which may be permitted provided that the ZBA determines that it is in the interest of the public health, safety and general welfare in accordance with the provision of our code. Amberley's code goes on to state that a conditional use permit shall not be granted if the proposed use will interfere with quiet enjoyment of proximate residential uses because of the generation of noise, traffic that is incompatible with the neighborhood in which the conditional use is propose or light from the conditional use that will spill onto nearby residential uses.

Staff has reviewed the original application and had the opportunity to briefly review the February 23 submission. Following are items which have been identified for the board's consideration:

The applicant proposes to utilize the existing utility taps but has not provided documentation from the utilities as to capacity. These utilities are not located on the plans.

The phone, electric and CATV services should be underground. These utilities are not located on the plans. The applicant states single-phase electric is available on the site and three-phase power is available to the east at Fair Oaks Drive and to the west at Royal Oak Court and that these options will be investigated as the design process continues.

A fire/sprinkler line should be provided to the building. The applicant suggests this structure can be built without a fire suppression system and that the two existing hydrants proximate to the property could be utilized. Per the applicant, one of these hydrants is located east of the property on the next street over on Fair Oaks Drive; the other is at the southwest corner of the lot at Section Road. These hydrants are not located on the plans. Additional information will be required to evaluate the proposed structure and infrastructure regarding fire protection.

Storm water detention and water quality provisions are required. The applicant indicates that green practices will be utilized including the on-site water retention pond system to address storm water run-off. These facilities are not shown nor quantified on the plans.

A landscape mound/buffer should be provided where the structures abut neighboring homes. The plans submitted shows additional landscape and berms to be located to the east and north of the proposed parking area only but are not quantified.

The property is impacted by the Federal floodway. No structures or fills within the flood zone may be constructed without special permits.

Site lighting should be closely evaluated so that it does not impact the surrounding residential properties. The applicant states two to three 12' pole lights and 3' bollards along with "indoor lighting spilling to the exterior" would be utilized to light the proposed project. Additional details will be required to evaluate the impact.

An application for signage should be considered in accordance with Village standards.

Hours of operation: Due to the character of the surrounding properties, the hours of operation should be limited. The applicant has provided some information regarding the intended hours of operation.

The application indicates that no outdoor games, festivals, bazaars, fete or similar activities are planned. However, the February submittal states that 'on Saturday children will be outside in a play area we hope to equip with a typical residential play set.' This structure was not shown on the site plan and may impact the neighboring properties.

Bonds: A storm water bond is required. A property maintenance bond may be considered.

Existing home: The existing home is to be converted to office, kitchen and class room use. There is no residential use anticipated.

Site Access: Issues regarding the single site access require additional information to better enable the Board to evaluate the site conditions and impact on the existing neighborhood. This information should address the existing drive and bridge that are shared with 2390 Section Road.

There is one single-lane access to this property to accommodate both vehicular and pedestrian traffic via a single lane bridge spanning the Section Road Creek shared with the property next door at 2390 Section Road. The driveway is a single lane driveway that utilizes a pair of culvert pipes in the middle of the property to cross over the Willowbrook Creek that feeds the existing pond on the property. The applicant has provided a description of the concrete bridge but additional information regarding the structural capacities and condition of this infrastructure is required to evaluate the ability to support the weight of fire fighting apparatus, construction traffic and to successfully accommodate the two-way traffic for the proposed use and the existing house at 2390.

The applicant has submitted plans showing a possible alternate access for pedestrians entering from the east via Brookwood Lane (a private drive) and crossing private property to gain access to the proposed facility. Access agreements and a path through

these properties should be addressed along with an evaluation for safe sight distance for proposed mid block crosswalk crossing Section Road across from the driveway at 2400 Section Road.

Building Materials: The applicant has submitted a description of the proposed materials. They include; horizontal clapboard siding made in part from cement, entry and key architectural features will utilize stone and the roofing will consist of dimensional asphalt shingles. A rendering of the southern elevation has been submitted.

The applicant states that the intent is to design this new building to utilize the latest practices in sustainable “green” architecture and provided a list of these aspects of green design they wish to explore as to how they might be able to incorporate into the project. Additional information will be required once these decisions have been made.

Based upon the information provided, the following variances have been identified and are required in order to utilize this property as a Conditional Use in Residence ‘A’ Zone:

**Section 154.28(A)-Required Minimum Lot Area, Lot Width, Yards, Distances From Lot Lines and Dwellings-** It does not meet the minimum width of 300 feet. (Approximately 220’ in front and 294’ at rear) Variance needed

**Section 154.28(A) )-Required Minimum Lot Area, Lot Width, Yards, Distances From Lot Lines and Dwellings-** Setbacks of existing structures- The existing home and barn will be within the required minimum 50 feet side yard setback. Variance needed

**Section 154.25(C) (4)-Conditional Uses-Off Street Parking-** Per the applicant, parking will be based on the capacity of the structure. They have requested a reduction in the required parking from 62 to 27 spaces.

Additional variances could possibly be required as more detailed plans are developed and reviewed.

Staff recommends this additional information be submitted to the board for further consideration.

Mr. Wolf stated a concern of how to manage any future requests for expansion of the proposed building. Mr. Frank clarified that should the board approve a conditional use permit, any additional use or construction on the site would require board approval.

Mr. Kevin Frank then conducted a swearing-in of those individuals interested in speaking on this matter, including Mr. Fran Barrett, attorney for Congregation Sha’arei.

Mr. Fran Barrett began his report by stating that the congregation concurs with the village’s staff reports and are open to meeting the additional requirements necessary.

Mr. Barrett gave a presentation to the board which detailed the conditional use permit submission. He expressed that this particular use is going to have minimal impact on its surroundings.

He stated that the congregation is open to constructing 40 parking spaces as the staff report indicates, however, the congregation is satisfied with only installing 31 spaces in order to create less site disturbance.

The congregation will comply with all fire safety requirements brought forth in the staff reports. If approved, the applicant will seek to have the bridge inspected for its integrity as it relates to emergency vehicle use.

Mr. Barrett confirmed that the congregation does intend to create a walking path access off of Brookwood through Mr. Ben Schneider's property.

Mr. Barrett then displayed a series of board renderings that illustrated the location of the property, its surroundings, landscape plans, street map view, tax map view showing adjacent property owners, building renderings, and a map of the congregants' residence locations, which were in close proximity to the proposed synagogue site.

Mr. Michael Maltinsky, resident at 7530 Elbrook, as the architect of this project, explained existing conditions on the site, location of walking paths, building plans and a plan to widen the one lane driveway ~~bridge~~ to two lanes—between Section Road and the single lane bridge and north of the single lane bridge and the front of the existing house.

Mr. Maltinsky explained what he felt was minimal impact on the surrounding properties. He stated that the proposed landscaping along with keeping the existing house ~~bar~~ and outbuilding will maintain existing views. There will be landscape bordering the property with evergreens and a berm that will also be landscaped with shrubbery. Existing shrub lines will be maintained.

The purpose of the lighting will be solely for security. The lighting will be low and directed downward to light the building ~~and~~ entrances for navigating the property safely at night. The path along the drive will include lighting "markers" to show the path of the drive. Small lighting posts in the parking lot will be used and will have downward lit design.

Mr. Maltinsky also showed rendering boards of the elevations. He maintained that this design would create a residential-like look to the structure. The existing house layout was shown. The second floor would not be utilized at all. The kitchen on the first floor would be minimally used.

Mr. Barrett confirmed that his understanding of the requested conditional use permit is that the board would only approve the conditions and uses set forth in the permit. Anything additional in the future would require board approval.

Mr. Lauer then inquired about the location of the crosswalk and how placement was selected. Mr. Barrett stated that the location of the crosswalk had not been selected by an engineer and is open to village input.

Mrs. Rissover pointed out the existing congregation nearby had installed pedestrian walking paths, which may need to be considered when placing a new crosswalk in the area.

Mr. Barrett agreed with the board that it would be best to have the county engineer review and select the location of a crosswalk.

Mrs. Rissover commented that she did not see the building's mechanicals, such as dumpsters, on the site plan. She expressed her concern that such mechanicals not be facing any residences. She also inquired about the condition of the existing home and barn. Mr. Maltinsky confirmed that the house has been functioning as a home and the barn is in "barn" shape and will only be used to store lawn mowing equipment. She then asked if the new building would have a basement. Mr. Maltinsky confirmed that it would not. He also informed the board that Ritz High School is the current meeting location of the congregation.

Mr. Norman Frankel explained the hours of operation and traffic aspects of this proposal. He stated that it will be a low-intensity use of the property. It is accommodating to residents and has minimal impact on its surroundings.

Mr. Frankel stated that he lives at 6670 W. Beechlands. He explained the hours of operation would be Monday-Friday from 6:30 a.m. to 7:10 a.m., Sundays from 8:30 a.m.-9:05 a.m., on high holy days usage would be on Friday nights for 1 hour starting at sundown, Saturday nights for 1 hour starting at sundown, and there will be a Sunday service from 9 a.m. to 10:50 a.m. Most congregants would walk to the synagogue as many residents are in close proximity. Departing time would be 11:30 – 11:45 a.m.

Currently there are 80 adults and approximately 18 children ranging in age that attend on Saturday mornings.

Mr. Ira Zimmerman, resident at 6695 W. Farmacres, commented that during the week there are approximately 20-25 adults attending, including a minimum of 10 cars in the parking lot.

Mr. Barrett invited additional questions from the board. Mr. Lauer thanked the applicant and staff for their presentations. A question was then asked about whether the congregation planned to expand. Mr. Zimmerman confirmed that it would only be of a modest degree and the congregation feels that the new synagogue will bring new residents to Amberley.

Mr. Lauer asked Mr. Barrett if he agreed that the board has the right to deny the variance requests. Mr. Barrett agreed if the Board made the findings required by the Village Code. There was discussion regarding practical difficulty. Mr. Lauer then asked

Mr. Barrett if he reviewed the deed for the property restrictions and whether or not he felt the applicant could go forward based on the deed. Mr. Barrett confirmed that he reviewed the deed and felt it would not present a conflict for the applicant.

Mr. Lauer asked Mr. Barrett if there was any impact from the settlement agreement with the prior owner. Mr. Barrett stated that he did not feel it would impact the use of the property.

Mr. Lauer asked if there would be a written easement for the walking path being brought through Mr. Schneider's property. Mr. Barrett agreed that there will be a written agreement.

Mr. Bardach invited any Brookwood residents in attendance to speak.

Mr. Matt Murtha, 2471 Brookwood, expressed his concern for this private drive to be utilized for the proposed purposes. He stated that the residents on the drive jointly pay for its upkeep. He was unaware that there was a shared access being proposed until this evening's meeting. He stated it is a very dark drive at night with minimal lighting. There will soon be a potential for 6 teenage drivers on the street. He then reserved his right to speak again when it is appropriate.

Mr. Andy Schott, an attorney representing Mrs. Whitman, stated on her behalf that she has no objection to the synagogue. However, is concerned about the change of the character it will bring to the area. She would like to see extensive landscaping, minimal lighting, and that the parking lot not be lighted when not in use. She also does not want the parking area to be within her view.

Mr. McGraw pointed out that he thought the landscape plan that Mr. Maltinsky shared would address the screening issues of concern by Mrs. Whitman.

Mr. Steve Guyer, resident at 2390 Section, commented that he bought his property in 2010 and prior to that lived in Ridgewood. He stated that he took his time to locate a property of rural character. He had reviewed the easement for the drive upon purchase of the property and stated that the easement only allows for private shared residences and this is not a residence.

Mr. Guyer noted several citations from the village's history book, stating that the history of the village has been to maintain its rural character and not to impose or impact existing property owners with development.

Mr. Guyer does not agree that this use will be of minimal impact for his property. He is extremely concerned about the number of cars coming and going and feels that the activity generated from the proposed use will create noise beyond that of a residential use. He commented that he bought his property specifically in a residential area so that he would not be impacted by public buildings or any other type of building. He commented that everyone in Amberley bought their home to reside in a residential area

and he does not feel that any resident in Amberley desires a parking lot and a 4,000 square foot building as a neighbor.

Mr. Guyer pointed out in a copy of a letter from Norman Frankel to the congregation that the synagogue does intend to expand and become a landmark. Mr. Guyer stated that the board is in place to protect the rights of the people and he believes that this development will greatly impact his “quiet enjoyment” and will bring traffic issues as well.

Mr. Guyer urged the board not to “spot zone” this property. He commented that there will be 10-15 cars minimum, additional traffic and light that will greatly affect his enjoyment and change the character of his property.

Mr. Lauer asked Mr. Guyer how he believed the deed restricted the access to the properties. Mr. Guyer stated that he believes the deed provides for access to only one additional residence.

Mrs. Barbara Mock, 6945 Fair Oaks, commented that she and her husband, Larry, have been residents for 10 years. She notices the lighting from the most recent synagogue that was developed on Section and Farmacres. She feels the development has changed the feel of the village. She commented that after the temple was built she could hear noises that she previously could not hear.

Mr. Mock, 6945 Fair Oaks, commended Mr. Guyer for representing his family and their dream. He commented that Mr. Guyer is passionate because this development would take away his family’s dream. Mr. Mock stated that Amberley residents are going to decide by voting on a levy as to whether or not we should maintain Amberley as it is or let it slip away. Mr. Mock commented that he is all in favor of the congregation’s dream, except that it negatively impacts the dream of another.

Mr. Ethan Katz, 7425 Elbrook, and board member of the congregation, shared his views. He stated that he moved to Amberley because it was a strong Jewish community. He felt that the character of the Village would be accepting of the Jewish lifestyle. He stated it was essential to propose a new synagogue due to the large number of Amberley residents who attend the synagogue. He commented that the congregation does not intend to impact the area negatively and is committed to being a good neighbor. He commented that this proposed synagogue is also a dream of many residents.

Mr. Michael Gerson, resident at 6700 E. Beechlands, stated that this congregation has nowhere else to go. He stated that he has fought in the past for Amberley’s sustainability and will continue to do so. He commented that he felt this would make Amberley strong and urged the board to approve the new synagogue.

Mr. Matt Murtha, 2471 Brookwood, stated that he is also an architect and much of the proposed elements of this project and others work well in the “design vacuum” and changes are easy to accommodate. However, previous structures approved have

brought re-current issues for adjacent property owners. All of his neighbors bought to be in private residences. He does believe that light-spill will be an issue and change in character. He urged the board that the rules are in place for a reason.

Ms. Martha Doerflein, resident at 3261 E. Galbraith, stated that she lives next to Adath, which has a huge lot paved and a congregation of over 600. She felt that it is not a bother to have the synagogue next door to her and they are good neighbors as will be the newly proposed synagogue and its congregants.

Mrs. Rissover asked about the history of the congregation and how long it has been in existence. Mr. Frankel confirmed that it has been one year this week. The congregation was formed after splitting off from another congregation located in Golf Manor for many years. Mr. Mayer confirmed that he lives at 6804 Fair Acres and has been a resident for over 40 years.

Mr. Wolf asked Mr. Frank if a congregation is considered to be a business under the zoning code. Mr. Frank commented that from a zoning perspective they are different. The Village Code defines religious institutions as a use permissible in a residential district through the conditional use process. While some of the uses delineated in the Code could be construed as businesses, under the zoning code they are treated differently.

Mr. Wolf asked if religious institutions are considered differently under federal law. Mr. Wolf commented that federal law (RLUIPA) protects religious institutions. Mr. Frank responded by explaining that under RLUIPA the Village may not discriminate against religious institutions through zoning, and that the Village may not impose a substantial hardship on the exercise of religion through zoning. Further, the primary objective of RLUIPA is to make sure religious institutions are treated as fairly as other property owners.

Mr. Lauer commented that he feels the board needs to have the additional questions answered prior to going forward with a decision. Mr. Lauer moved to table the application pending additional information be submitted by the applicant as outlined in the staff, police department, and engineer's reports. Seconded by Mr. McGraw and the motion carried. Mrs. Rissover voted no on tabling the request.

Mr. Barrett stated he would work with the staff and put responses in writing for the board.

Mr. Frank then announced that the next item to be heard would be the consideration of allowing domesticated chickens in the village by the Planning Commission, which is comprised of the same members as the Board of Zoning Appeals.

Vice Mayor Wolf has requested council consider an ordinance to permit domesticated chickens in the Village. This requires the Village code to be modified and the ZBA/Planning Commission should review the language and make recommendations to council.

Pursuant to the definition of “farm animals” in Section 154.02, chickens are currently deemed farm animals. Therefore, chickens as provided in Section 154.28(B) (1), can only be kept on lots of ten acres or more provided the structures housing the farm animals must be setback at least 300’ from the property lines.

This ordinance proposes, under certain conditions, to deem domesticated chickens not to be “farm animals” as currently defined in the Village Code of Ordinances. By permit, domesticated chickens could be kept on residential properties so long as the restrictions, conditions and permitting are satisfied. The proposed ordinance limits the number of chickens that may be kept at any one time to six, prohibits the keeping of roosters, prohibits slaughtering on residential property, prohibits raising the chickens for commercial purposes and prohibits the selling of the chickens or eggs for profit. The ordinance regulates the habitat, calls for screening of the structure housing the chickens, mandates that chickens be within a containment area by day and secured at night. Sanitary conditions must be maintained or the Village could revoke the permit to keep chickens.

Section (D) (2) of the attached draft ordinance offers the Board options regarding the setbacks of the coop or habitat structures ranging from the existing 30’ setback for “enclosures housing family pets” to typical setbacks for accessory structures in a given zone (20’ in Residence “A”, 12’ in Residence “B”) to a flat 15’ setback regardless of the residential zone.

Staff recommends approval of this ordinance as long as stipulations are outlined for setbacks, screening and sanitary conditions to permit domesticated chickens in the Village.

Mrs. Natalie Wolf, Vice-Mayor, commented that the Montgomery report outlines the many pros associated with chicken-keeping and debunks the several myths as well.

Resident Mrs. Amy Rubenstein commented that she has chickens and it has been a positive family experience. She has 3 daughters that enjoy having the chickens. It has brought about new relationships amongst neighbors and a local preschool. She encourages chicken-keeping as it encourages outdoor activity and brings children together.

Mr. McGraw moved to approve the chicken ordinance with 20’ setback for Residence A and a 12’ setback for Residence B. Seconded by Mr. Wolf and the motion carried unanimously.

Next, Mr. Lahrmer introduced the revised draft language for the North Site Zoning District. He stated that if the board is agreeable to the revisions and there are no additions, the next step would be for the board to hold a public hearing at its April 2 meeting. Then, after hearing public input, it would next proceed to the May council meeting. Mr. Lauer moved to proceed with a public hearing on April 2. Seconded by Mr. Wolf and the motion carried unanimously.

Mr. Bardach stated that there being no further business, the meeting was adjourned.

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Nicole Browder, Clerk

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Richard Bardach, Chairperson