

CITY OF TWINSBURG
BOARD OF ZONING APPEALS MINUTES
AUGUST 27, 2014

**CITY OF TWINSBURG
BOARD OF BUILDING AND ZONING CODE APPEALS
August 27, 2014**

Present: Messrs: Gary Wilner, Neil Rubin, Brian Davis, Ed Kancler and Thomas Brown

Absent: None

Also Present: Mr. Russ Rodic, Building Commissioner

The Board recited the Pledge of Allegiance.

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BOARD OF BUILDING AND ZONING CODE APPEALS
WORK SESSION
August 27, 2014**

There was no Work Session

A public hearing will be conducted at 6:30 pm on August 27, 2014 for the purpose of hearing an appeal for a variance for required unit size from section 1146.07 and a variance for required rear setback from section 1145.04(g) of the Twinsburg Zoning and Development Regulations.

This appeal is made by Westside Falls, LLC for properties located at the end of Enterprise East Parkway, PP#64-09321.

1. Appeal # 19-2014
Section 1146.07
 - Specifically, a 198 s.f. variance for one bedroom units and a 63 s.f. variance for 2 bedroom units is being requested.
2. Appeal #20-2014
Section 1145.04(g)
 - Specifically, a 100.64 foot variance to the required rear setback is being requested.

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BOARD OF BUILDING AND ZONING CODE APPEALS
MEETING MINUTES
AUGUST 27, 2014**

The Board of Building and Zoning Code Appeals met on Wednesday, August 27, 2014. The Chairman, Mr. Rubin, called the meeting to order at 6:40p.m.

1. Appeal # 19-2014
Variance 1146.07
Westside Falls / Sussex Alzheimer's Care

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2. Appeal #20-2014
Section 1145.04(g)
Westside Falls / Sussex Alzheimer's Care

Mr. Rodic administered the Oath to Ben Ockner, Mike Healy, John Walsh Dr. Larry Soltis and Tom Bartlebaugh as well as the community members wishing to speak.

Mr. Ben Ockner with Berns, Ockner and Greenberger presented the request for variances.

- This project is important to the City, as indicated with the overwhelming support of the zoning change.
- The project is a facility for residents with early Alzheimer's disease.
 - o These residents are able to interact with one another in a controlled environment.

Mr. Ockner noted that the rear setback area abuts an industrial zoning area. Therefore, the Alzheimer's facility will not negatively impact the neighboring property.

John Walsh, GBC Design 565 White Pond Dr. Akron, Ohio explained the diagrams of the project off microphone.

Mr. Ockner discussed the three types of dwelling units; Single, Deluxe and Companion (two bedroom).

Mr. Ockner mentioned that Similar Use and Conditional Use have been approved for the facility.

Mr. Rubin asked if there are two or three variances being requested.

Mr. Ockner replied that over the course of the approval process some variances became unnecessary resulting in only the room size and rear setback variances being required.

Mr. Kancler inquired if the entire northerly boundary abuts an industrial zone.

Mr. Ockner replied "Yes".

Mr. Walsh explained that the site has environmental and grading constraints resulting in the proposed building placement.

Mr. Kancler asked for the fall on the east side of the boundary from the proposed building site (outside the parking boundary) out 30 feet.

Mr. Walsh answered that there is approximately 20 foot of grade change.

- He described the property off microphone.

Mr. Ockner pointed out that Planning Commission and the City Engineer has reviewed the site plan with the setbacks.

- He believes that the setback variance will not impact the adjoining property owners.
 - o There is a parking lot with tractor-trailer parking up to the edge of the property.
- The variance will allow the building to be built around the environmental constraints of the property.

Mr. Chet Mistur, 2650 Mosswood Ln. noted that he lives adjacent to the property being developed, approximately 100 yards from the property line.

- He is happy with the location of the Alzheimer's facility.

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Mike Sekela, resident of Mosswood Ln. stated that the neighbors in that area were only concerned with where the building would sit in relation to their property lines.

- He has no objection with the proposed Alzheimer's facility.

Mr. Rodic administered the Oath to Linda Mistur, 2650 Mosswood Ln.

Mrs. Mistur stated that she is concerned about construction noise.

Mr. Rodic answered that construction machinery cannot begin work before 7:30 a.m. on weekdays, 8:00 a.m. on Saturday and they must stop work at dusk.

Michael Healy pH7 Architects, Columbus, Ohio explained that, weather permitting, they expect construction to take 7 to 9 months to complete.

Mr. Ray Diersing 3500 Cannon Rd. Twinsburg, Ohio stated that the minimum square footage requirements for dwelling units in the city's Building Code is an integral part of the Code and is just as important as the density requirements.

- The City has spent a great deal of time and money defending that in court.
- Allowing a variance for the dwelling unit size requirement should not be made.
 - o It would set a non-desirable precedent which would be difficult to defend.
 - o If the property were to be sold in the future, a new owner may want a different use, such as senior apartments.
- As the dwelling unit size requirements are clearly stated in the Code, a desire to reduce it by variance should not be considered a hardship.

Mr. Kancler commented that the Code has been amended to include the Alzheimer's Memory Care Use.

- The definition of "Dwelling Unit" does not necessarily apply to an "Accommodation" under the new R-7 category.
 - o The difference is that the Section 1105.01(116) of the Code defines Dwelling Unit as having cooking equipment, which would be a danger to these residents.
 - o Having smaller private spaces encourages the residents to interact with other people, which is an important part of their treatment.

Mr. Diersing stated that this type of facility is associated with nursing homes as opposed to apartments.

- He is concerned that an exception to this will lead to other exceptions in the future and, in that case, what is the point of the Code.
 - o He feels that the Code should be kept simple and abided by.

Mr. Rubin noted that there is no research cited in the applicant's memo which proves that the requested dwelling size is better for the patient than a larger one would be.

Mr. Healy stated that the first assisted care facilities specifically for Alzheimer's residents were created about 25 years ago.

- There have been observations made on those facilities determining 10 vital design characteristics for residents with cognitive disorders.
 - o These support creating a residential model, which would allow a private bedroom.
 - o These design characteristics include a smaller community of residents in order to allow familiar shared residential spaces which encourage them out of their bedrooms into the social areas of the household.

Mr. Rubin asked what will happen to a resident who needs a higher level of care in the future.

Mr. Healy explained that the facility will be registered with the state as a residential care facility.

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- At later stages of the disease, residents will be moved into a facility which would be equipped to provide a higher level of care.

Mr. Rubin referred to the fact that this is a profit bearing entity, is that the motivation behind not increasing dwelling size and reducing the number of spaces available?

Mr. Ockner stated that he is not prepared to answer that question.

- Profit is one aspect of a number of factors which should be considered during a variance analysis.

Mr. Healy added that the reduced square footage of the units is not a return-on-investment effort; the average square footage per occupant with all common areas included is over 720 square feet per occupant.

- The size of the unit is designed to encourage the resident to leave the bedroom and interact with others in order to improve quality of life.

Mr. Healy noted that the smallest bedroom size is 302 square feet including a private bathroom.

- The next size is 331 square feet and includes a table and chair for a visitor.
- The largest room is 587 square feet.

Mr. Kancler stated that Planning Commission approved 72 units and City Council approved the Conditional Use at 72 units.

Mr. Healy explained that with required staffing ratios, they designed the facility to accommodate groups of 12 residents.

Mr. Tom Bartlebaugh explained the need for this type of facilities.

- There are no existing free-standing facilities in the state of Ohio for Alzheimer's care and the need for care at the beginning stage of the disease is not met by nursing homes.

Dr. Larry Soltis, Chairman Division of Neurology, Summa Health Systems Akron, Ohio stated that this type of accommodation represents an important step in aiding people in need of supervisory help in the early stages of Alzheimer's.

- They need to be reminded to eat, take medicines, etc. but they are able to perform the tasks themselves.

Dr. Soltis explained that confusion, which is part of the disorder, is increased by complicated surroundings.

- They need opportunities for physical activity and social interaction which results in decreased anxiety and depression as well as a longer preservation of their cognitive skills.
- Smaller spaces allow less opportunity for losing or hiding objects.

Mr. Rubin stated that Mr. Diersing is not opposed to the type of facility; he is concerned with allowing a variance to the Code in order to allow it.

Mr. Ockner advised that the Code allows for variance relief, anticipating that the specific regulations passed by City Council are not necessarily going to cover every situation and is not the preference of City Council to adopt new regulations for every situation which is different.

- When reasonable, variances should be granted.
 - o The setback variance addresses a property which will not have a negative effect on the adjacent industrial property.
 - o The unit size variance addresses a project which has been well received by the voters, Planning Commission, City Council and members of the administration.

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- o Similar Use and Conditional Use have been approved.
- o The unit size has been explained as necessary for the welfare of the residents.

MOTION: TO GRANT VARIANCE #19-2014 WITH THE FOLLOWING FINDINGS:

1. THE SQUARE FOOTAGE REQUIREMENTS IN SECTION 1146.07 APPLY TO APARTMENT DWELLINGS AND DWELLING UNITS.
2. DWELLING UNITS REQUIRE DINING, KITCHEN EQUIPMENT FOR COOKING AS WELL AS OTHER PORTIONS OF THE FACILITY, SECTION 1105.01(116)
3. THE NEW R-7 CATEGORY UNDER ORDINANCE 84-2014 DOES NOT DEFINE AN ALZHEIMER'S CARE FACILITY AS EITHER AN APARTMENT DWELLING OR DWELLING UNIT BUT INSTEAD AS "ACCOMMODATIONS" FOR ALZHEIMER'S MEMORY CARE RESIDENTS.
4. THEREFORE, IT IS CLEAR THAT THE LARGER SQUARE FOOTAGE REQUIRED FOR DWELLING UNITS RELATES TO NEEDING KITCHENS, EQUIPMENT FOR COOKING AND THE LIKE.
5. IT IS INCONCEIVABLE THAT ALZHEIMER MEMORY CARE RESIDENTS SHOULD BE EXPOSED TO GAS OR ELECTRIC OVENS AND MICROWAVE OVENS IN THEIR ACCOMMODATION. THAT IS A SAFETY ISSUE WHICH WOULD IMPAIR THE MEMORY IMPAIRED IN AN ALZHEIMER UNIT.
6. REQUIRING THE EXTRA SQUARE FOOTAGE AND CONTENTS IS CONTRARY TO WHAT CITY COUNCIL HAS INACTED AND THE ENTIRE CONCEPT OF ALZHEIMER'S MEMORY CARE: TO HAVE THE RESIDENTS INTERACT WITH EACH OTHER AND PROGRAMS ESTABLISHED TO ASSIST THE RESIDENTS RATHER THAN BECOMING RECLUSES IN BOXES. THEREFORE, A PRACTICAL DIFFICULTY EXISTS IF THE SQUARE FOOTAGE AND CONTENT REQUIREMENTS OF 1146.07 ARE REQUIRED, THAT BEING THAT THE ENTIRE CONCEPT OF ALZHEIMER'S MEMORY CARE COULD NOT BE EMPLOYED ALL TO THE DETRIMENT OF THE RESIDENTS AND THE MEDICAL TESTIMONY GIVEN TONIGHT CONFIRMS THIS. ACCORDINGLY, UNDER OUR CODE THE REASONS FOR GRANTING A VARIANCE ARE MET IN THEIR ENTIRETY. NEIGHBORHOODS WILL NOT BE AFFECTED, GOVERNMENT SERVICES WILL NOT BE ALTERED. AS A PRACTICAL MATTER, RESULTS CANNOT BE ACHIEVED WITHOUT A VARIANCE. FINALLY, THE SPIRIT AND INTENT OF THE ZONING ORDINANCE WILL BE OBSERVED, JUSTICE WILL BE DONE, PUBLIC HEALTH SAFETY AND WELFARE OF THE COMMUNITY WILL BE PRESERVED AND IT WILL NOT BE A DETRIMENT TO THE COMMUNITY, IT WILL BE A POSITIVE AND THEREFORE THE PUBLIC'S PURPOSE OF THE CODE WILL BE PRESERVED.

MR. KANCLER MOVED, MR. BROWN SECONDED, UPON ROLL CALL THE MOTION PASSED UNANIMOUSLY.

MOTION: TO GRANT VARIANCE #20-2014. THE REAR VARIANCE SOUGHT SEEMS TO BE SUBSTANTIAL IF THE FACILITY ABUTTED A RESIDENTIAL ZONE BUT IT DOES NOT, IT ADJOINS AN INDUSTRIAL ZONE I-2 FOR ITS ENTIRE BOUNDARY. THE USE OF THE PROPERTY IS DAYLIGHT AND THE CLOSEST BUILDINGS IN THE INDUSTRIAL ZONE ARE A SUBSTANTIAL DISTANCE AWAY. THERE MAY BE OTHER REQUIREMENTS OF THE PLANNING COMMISSION AND ARCHITECTURAL REVIEW BOARD YET IN

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IMPLEMENTING A HEALTHCARE DEVELOPMENT AND PLACEMENT OF BUILDINGS FOR SEPARATE USES CAN BE DIFFICULT SO IF THE VARIANCE IS NOT GRANTED THE FACILITY AND FUTURE FACILITIES IN MIND MAY NOT BE FEASIBLE, YET ALL THE STANDARDS AS SET FORTH IN OUR CODE HAVE BEEN MET. THERE IS A PRACTICAL DIFFICULTY THAT YOU CANNOT BUILD THE BUILDING WITHOUT THE REAR SETBACK AND THERE IS ALSO A PRACTICAL DIFFICULTY FOR THE FUTURE DEVELOPMENT OF THE ENTIRE 50 ACRE PARCEL. THE PUBLIC INTEREST IS NOT INTERFERED WITH, THERE IS NO GOVERNMENT MATTER WHICH WILL BE IMPAIRED AND SUBSTANTIAL JUSTICE WILL BE DONE IF THE VARIANCE IS GRANTED.

MR. KANCLER MOVED, MR. WILNER SECONDED, UPON ROLL CALL THE MOTION PASSED UNANIMOUSLY.

Mr. Rodic explained that the Council Representative, Mr. Scaffide can make a recommendation to Council on Sept. 9 for the 30 day waiting period on the variance to be waived.

MOTION: TO APPROVE MINUTES DATED JULY 2, 2014 **AND** JUNE 11, 2014.

MR. DAVIS MOVED, MR. RUBIN SECONDED, UPON ROLL CALL THE MOTION PASSED UNANIMOUSLY.

COMMUNICATIONS-

NONE

EXCUSE ABSENT MEMBERS

Mr. Rubin mentioned that the Board is very happy to have Mr. Brown back in attendance.

ADJOURNMENT-

The meeting adjourned at 7:50p.m.

Neil Rubin, Chairman

Russ Rodic, Building Commissioner