

**MINUTES  
BOARD OF ZONING APPEALS  
DECEMBER 9, 2004**

A regular meeting of the Board of Zoning Appeals was held on December 9, 2004 and called to order by Chairman Ed Cooper. Bob Hiles and James Hrivnak were also present. Also present were David Betz, Director of Development; and Dawn Nauman, Clerk of Council.

**Complete transcripts of this hearing may be purchased by contacting Runfola Reporters.**

**APPROVAL OF MINUTES**

The minutes of September 15, 2004 were approved as printed.

**REQUEST FOR VARIANCE**

**Applicant: Ron Ruppensburg & Jacob Cannon**  
**Location: East side of Olentangy River Road (SR 315) at the Intersection of Retreat Lane**  
**Zoning: PR, Planned Residence District & OR, Olentangy River Environment Overlay District**  
**Request: Approval of a variance to Section 1143.29 (b)(3) of the Powell Zoning Code to allow a property to be split into two residential home sites reducing the required frontage from 250 feet to 175 feet and 182.74 feet and to allow two access points to SR 315 located less than 250 feet apart.**

Chairman Ed Cooper swore in the applicants, Staff and select audience members to speak during this meeting.

Jacob Cannon, applicant, reviewed that he is a small business owner with UPS franchises in Dublin and Marysville. He introduced his wife. He identified the Ruppensburg family who is also present. He said that he and his wife will soon be starting a family and they decided they really want to find a piece of property with water access. He said that they fell in love with this property and have done a lot of the research and analysis to determine the best way to develop the site. He reviewed their contact with the Retreat Architectural Committee (RAC) regarding this property. He said that the original plan for this area was for four lots sharing a single driveway. He reviewed that two lots were already developed, leaving this parcel which was approved with two access points in 1986. He said they would like to use that plan and build their two houses. He said they are trying to meet with the RAC requirements for over 3,000 sq. ft. homes, natural siding, and preserving nature as much as possible. He said that at this point, they are not going over the building plans but requesting the lot split and the driveway variance. He said they would like the driveway variance because there are u-turn problems on this property, which they don't want for safety reasons. He questioned Staff's comments that two driveways are a public safety hazard. He said that he feels that his request will provide safe access without turn-around or line of site issues and it will not impact Retreat Lane. Mr. Cannon said he feels this meets the intent of the OR, Olentangy River Environmental Overlay district, in that it is not overdeveloping this site. He said in most areas, that preservation results in no more than 1 d.u./acre, and in this instance, this is 1 d.u./acre per 2.3 acres. He said this is a good lot, but it is "skewed different" along the S.R. 315 corridor. He said he doesn't think concerns about traffic are relative.

Mr. Ruppensburg said he thinks there would be better access to the site by the two families with two egresses rather than one.

David Betz, Director of Development, gave his Staff Report on this item (Exhibit) He reviewed the site plan, the current plat and lot split proposal. He identified a possibility for having one variance and eliminating the two driveways. He said regarding the two driveway cuts onto S.R. 315, Staff feels they are detrimental to both S.R. 315 and the Retreat. He said that it is good engineering practice to have adjoining traffic directly across from another or at a distance long enough not to create a hazard. He reviewed Staff's responses to the list of conditions required in the Zoning Code for a variance. He read Staff's responses to those items.

Mr. Ruppensburg said regarding the overlay district, it has been stated that special conditions should be met, but he would like to note that there are more stringent conditions placed on this lot than on those that have been built in the area, particularly the 120 foot setback, which he feels respects nature and was not followed through on any of the other two homes.

Mr. Cannon said he would challenge the assumption that property with one lot could have a higher value than with two. He referred to a letter he wrote the board addressing many of the concerns of the RAC (Exhibit 2). He said that these lots have been for sale for 15 years and the current price is far below appraised value, so he questions Staff's comments to the point that these houses have substantial value. He said that if they did, they would have been purchased long ago. He said the market has spoken and the lot doesn't have potential value, otherwise, it would have been purchased.

Chairman Cooper opened this item to public comment.

Gary Smith, 260 Ravenspur, said he has lived in the Retreat for the last 12 years and it is a wonderful neighborhood. He said this is a difficult discussion, as he would love to have new neighbors and welcome new families, however, the Retreat feels strongly that this is a single lot on the river. He said they feel this way because of safety issues that Mr. Betz pointed out as well as aesthetic issues that are very important to the neighborhood and entire region. He said the 1991 overlay is certainly the current law that establishes that from a legal perspective and the property owner should continue to go forward from that perspective. He said it is also his understanding that it is still a single lot and the compromises that were made on the other two portions were prior to the overlay and other circumstances present at this time. He said that the RAC has taken a strong look at this but feels it should be preserved as a single lot.

John Fried, 9011 Olentangy Road, said that his property is just south of those two lots and he has lived there since 1990 and he has seen the flood waters on those lots waist high. He said he bought this property from George Parker and it took at least a month to find out what they could and couldn't do. He said they bought the lot and finalized the contract. He said the floodway is amazing if you understand where it is. He said he thinks it has been 4-feet high 7-8 times in the last 14 years. He gave anecdotal information about the impact of the flood zone on him and his neighbors. Mr. Fried said he heard that Mr. Parker said at the Retreat Homeowners' Association meeting that he agreed that there should only be one house on the lot.

George Parker, Retreat 4 Partnership, said he owns this property. He indicated that he never said what Mr. Fried just implied at the Retreat meeting. He said he has owned this property for many years, and he has been very open to all the buyers about the flooding. He said that these applicants have really done their homework and fully understand the situation. He said that he is not trying to sell them a pig in a poke, but they are so enthralled by the prospect of having their homes there that they wish to build there and he knows and they know that with the right engineering, they can make them flood proof. He said he is very disappointed that the City passed so many changes to his property without written notice. He said he realizes they should have filed their plat that stuck to the original 4-home plan along this stretch. He said that he feels this development is comparable to the Retreat, and he noted that he developed and designed many homes in the Retreat. He said that he is very aware of what the Retreat feels like with low density and setbacks, etc. He said he feels strongly that this will be a very attractive development where these families will spend a lot of money on a couple of very nice homes.

Mr. Cooper asked if Mr. Parker is the owner currently and if the deal is contingent upon the lot split and the variance. Mr. Parker said that is correct. He said he offered the land on several occasions to the City to purchase it for parkland, but they never took advantage of it. He mentioned that these two applicants approached him regarding this property, not the other way around. Mr. Betz said it is correct that the City Council did not see purchasing this property as a priority.

Mr. Cooper had no more comments.

Mr. Hiles took a moment to read the letter submitted by Mr. Cannon.

Mr. Cooper said that there are seven criteria the board has to abide by in order to grant a variance, and the reason for granting such a variance is to prevent a hardship. He said an economic hardship or just wanting to put two lots here doesn't meet the legal definition of a hardship. He said that would prevent him from voting for a lot split. He said that he appreciates the input of the Retreat Homeowners' Association, but it doesn't have anything to do with this meeting here this evening. He said this is not related to the flood zone issue. He said that the reason we are here is because of the required distance, the frontage, and driveway. He said he thinks

the driveway is a moot point because he can't justify a variance for a lot split. He said it is unfortunate the plat wasn't recorded 8 years ago.

Mr. Hiles asked about the notification process for a rezoning. Mr. Betz said the entire zoning code was revised at that time, and it changed a lot of the zoning within the community, and the City isn't required to notify people if it effects the zoning map for more than 10 properties. He said the only requirement is to place an ad in a newspaper of general circulation. He said that the City usually uses the Delaware Gazette.

Mr. Parker noted that there is a 120-foot setback from the bank that according to the overlay district cannot be maintained, and that was discovered through this process. He said that is not being enforced on other properties in the area. He said he thinks changing the zoning took away his property rights. He said that he offered an easement to the Ohio Scenic Rivers to protect the bank in this area. He said he is a "tree hugger and conservationist, and he has developed 11 subdivisions on wooded tracts, and it seems like they should be notified when something like this only effects a couple of properties.

Mr. Cooper said that notification is in the local papers and it would be difficult to track a land owner down in Gahanna, Oregon, or wherever else they might be. He said notices are given at a local level. Mr. Parker said as a developer, he is required to notify adjacent property owners of his plans and he questioned why the City isn't required to do the same.

Mr. Betz clarified that the environmental overlay district runs half of a mile from the township boundary to the west. He identified on a map how many property owners were effected by this change and said at the time, it represented half of the community land area.

Mr. Cannon said that he appreciates the concerns he has heard regarding the economic impact not being the sole reason for defining a hardship. He said that there are often circumstances in communities where certain things are "grandfathered in." He said that this property had a plan that was approved by the City that Mr. Parker failed to make sure was recorded. The second "mishap" was that he failed to receive notification regarding the zoning change to the property. He said those are two wrongs, and while they don't make a right, the Board has the opportunity to table this issue and think about it or make a decision based on the fact that had he been notified, Mr. Parker would have probably recorded these lots or participated in the process that rezoned the properties. He said he understands that the Board is not interested in the economic impact, but he would like the Board to honor the City's previous approval. He said he doesn't think having a lot split on the one remaining area left in the village is going to have a substantial effect on the overlay district's intent. He said the Board should consider whether this is still meeting the intent of the zoning, which is achieving the appropriate traffic flow and addressing density concerns. He asked again what is the hazard associated with having two driveways on this property. He said there is no visibility issue and this is all related to ease of ingress and egress.

Mr. Smith said, with all due respect to Mr. Parker, that it was only 3 years ago that we were talking about the development of the southern most lot in this area, and everyone was becoming very aware of the 1991 overlay at that point. Mr. Parker said he was not aware.

Mr. Hrivnak said there are two parts at issue, the lot split and the driveway. He said he has a hard time finding a unique condition to this lot that would require or a necessitate a split. He said he does not find a hardship. He said the lot is quite usable as one lot and the 1991 rules require that the frontage be 250 feet. He said there is no unique condition that would lead him to find a variance.

**MOTION:** Mr. Cooper moved to approve the variance to Section 1143.29 (b)(3) of the Powell Zoning Code to allow a property to be split into two residential home sites reducing the required frontage from 250 feet to 175 feet and 182.74 feet and to allow two access points to SR 315 located less than 250 feet apart. Mr. Hiles seconded the motion.

**VOTE:** Y 0 N 3

Mr. Betz informed the applicant that they will receive notice of this outcome and have period of time in which to appeal.

**OTHER BOARD BUSINESS**

Dawn Nauman, Clerk to the Board asked the members to check their calendar for the first week of January to determine whether there is time to have a hearing.

**ADJOURNMENT**

The Board adjourned at 7:55 p.m.

**DATE MINUTES APPROVED: April 7, 2005**

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Ed Cooper  
Chairman

Date