

VILLAGE OF FONTANA ON GENEVA LAKE
WALWORTH COUNTY, WISCONSIN
(Official Minutes)

ZONING BOARD OF APPEALS HEARING

Wednesday, April 23, 2008

Chairman Michele Teale called the Hearing of the Village of Fontana Zoning Board of Appeals to order at 4:00 pm in the Village Hall, 175 Valley View Drive, Fontana, Wisconsin.

Board of Appeals members present: Roll call vote: Teale, Don Roberts, Andrew Gilchrist, Kim Hirn, Lou Loenneke

Also present: Joseph Bidwill, Village Administrator Kelly Hayden-Staggs, Trustee Diane Lewis, Village Clerk Dennis Martin, Assistant Zoning Administrator Bridget McCarthy, Joseph McHugh, Peter Novak, Zoning Administrator/Building Inspector Ron Nyman, Trustee Micki O'Connell, Treasurer Peg Pollitt, President Ron Pollitt, Attorney David Rasmussen, Lucille Sandy, Village Attorney Dale Thope

Business

Attorney Thorpe explained the quasi-judicial hearing procedure and the legal standards that govern the variance procedure. Thorpe stated that the Board of Appeals hearing was to consider the appeal of the density standard of the Zoning Code, not to approve the building being proposed by the applicants. Thorpe stated that if the variance received approval, the applicants still would have to go through the approval process for the building and site development plans. Thorpe stated that if the appeal is denied, the applicant will have the option to file a subsequent appeal with the Walworth County Circuit Court within 30 days of when the Findings and Fact and Resolution of Board of Zoning Appeals are filed with the Clerk for the Board of Zoning Appeals. Teale read the application filed March 7, 2008 into the record and opened the hearing at 4:02 pm. Martin then administered an oath to Village of Fontana Zoning Administrator/Building Inspector Ron Nyman before he presented evidence to the Board of Appeals. Nyman stated that the applicant filed an application for a zoning permit for a proposed four-unit residential building at 158 Fontana Boulevard (Tax Key No. SOP 00054), the current site of Novak's Deli; however, the permit was denied per the terms of the density standard in the VOF Zoning Code. Nyman stated that the density standards in the Zoning District in which the parcel is located dictate that there must be 5,000 square feet per residential unit, so a four-unit building would require 20,000 square feet of lot size. The parcel at 158 Fontana Boulevard is 18,150 square feet, so only three residential units are allowed according to the Zoning Code. Attorney David Rasmussen, representing the applicant, asked Nyman that if under the current zoning, could the business located on the lower level of the two-story building be partitioned into two units and could the apartment unit located on the second level could be converted into two units. Nyman stated that there are no density standards that would prohibit that scenario; however, the lower level units would have to be business units and not residential units as proposed by the applicant. Nyman stated that a proposal to renovate the current building also would have to go through a complete zoning review in order for a more certain answer. The Village then entered into the record a seven-page document prepared by the Building and Zoning Department and titled "Village Exhibit No. 1." Rasmussen asked Nyman that since the property is located on two lots, would the lots have to be combined if the variance is approved. Nyman stated that he was not sure, but the lots probably would have to be combined at sometime during the approval process for a proposed four-unit residential building. Thorpe stated that the Board of Appeals members were only there to consider the issue of density, and any other related or subsequent issues are not relevant at this time. Martin then administered an oath to Joseph Bidwill before he presented evidence to the

Board of Appeals. Bidwill stated that the current building owner, Peter Novak, asked Bidwill to work with him to do something new with the building site. Bidwill stated that the development of a building containing four condominium units would be the best use out of an investment regarding the subject property. Bidwill stated that the current property value of the land far exceeds what revenue can be obtained from operating a restaurant. Bidwill stated that commercial space throughout the area is about 50 percent vacant and the issue is whether the Fontana Boulevard corridor is a viable commercial district. Bidwill stated that Novak's restaurant is struggling financially and the development of the four-unit condominium building is the best economic use of the land. Bidwill stated that he initially proposed the development of eight units, but it was reduced to four units. Bidwill stated that the density standards of the Zoning Code allow for 3.7 units on the site, but 3 units would be cost prohibitive. Bidwill stated that developing four condominium units would be pushing the matter financially and the project would still be an economic roll of the dice. Bidwill stated that the variance is needed in order for the developers to realize some financial value out of the property, and if approved, the new building will create four taxable units and it will help beautify the area and improve the street. Bidwill stated that the developers can't fight economic reality. Rasmussen asked the Village to enter into the evidence the Zoning Code as written. Rasmussen stated that the term "prosperity" in various sections of the code allows property owners reasonable economic use of their property. Rasmussen stated that the Zoning Code supports property owner's rights to develop something like the building being proposed by Bidwill. Rasmussen stated that the proposed new building would promote compatible uses on the adjoining parcels. Rasmussen stated that the Zoning Code regulations for the property would allow the owner to develop three residential units on the upper floor and two retail units on the lower floor. Rasmussen stated that if approved by the Board of Appeals, it would be very unlikely that the project would reoccur on another parcel – there are not many 18,000 square foot parcels that are potential condominium unit building sites. Rasmussen stated that the proposal would not even require a variance if the applicant had 850 more square feet of land. Rasmussen stated that economic factors are part of the Zoning Code and it is apparent that the subject lot cannot successfully accommodate commercial uses. Rasmussen stated that commercial uses are not more preferable uses than residential, and the applicant is only requesting four units, not eight as initially proposed. Martin then administered an oath to Peter Novak before he presented evidence to the Board of Appeals. Novak stated that there are both residential and business units in the building located to the west of his property, and the buildings located behind his building on the Third Avenue side of the block are all residential. Novak stated that the proposed condominium building would not interfere with other business uses in the neighborhood and the lot is only 850 square feet short of meeting the density standards for four units. Novak stated that the density standards are causing an unnecessary hardship for his property because he can't make it economically with four or five small business uses, and a residential building will not work without at least four units. Novak stated that the situation with his building is unique because there are not many parcels that are only 850 square feet short of meeting the density standard for four residential units. Novak stated that the density standard situation is not self-created, it is created by the Zoning Code. Novak stated that the proposed four units would not be contrary to the public's interest and the neighboring property owners may prefer a residential building as long as the use doesn't interfere with their businesses. In response to a question, Bidwill stated that he spoke to the owner of the building to the west, but she is not in favor of selling the property. Bidwill stated that parking options on the lot are limited so it would be difficult to develop multiple business units on the property. Bidwill stated that the project can not succeed financially if he is not allowed to develop at least four residential units. Martin then administered an oath to Lucille Sandy, the owner of the building located on the lot to the west of the subject property, before she presented evidence to the Board of Appeals. Sandy stated that she would not be willing to sell her property to the developers, and she is not in favor or opposed to the proposal for four residential units. Sandy stated that she is concerned about parking on the lot and the potential loss of green space, and with storm water run-off problems in the area. Sandy stated that she agrees that commercial operations are not very easy to operate in Fontana. After asking if there were any other people who wanted to make a

statement or present evidence to the Board of Appeals, Teale closed the public hearing at 5:01 pm.

Announcement for Board to Consider Going Into Closed Session – Chairman Teale

Teale stated that pursuant to Chapter 19.85 (1) (a) Wis. Stats. she wanted make a a motion to go into closed session.

Teale/Loenneke 2nd made a MOTION to go into closed session to deliberate concerning the evidence presented regarding the application to appear before the Zoning Board of Appeals filed by Joe Bidwill, N1910 Birches Drive, Lake Geneva, WI for Tax Parcel No. SOP 00054, and the Roll Call vote followed:

Hirn – Yes

Loenneke – Yes

Teale – Yes

Roberts – Yes

Gilchrist – Yes

The MOTION carried on a 5-0 vote.

Teale/Roberts 2nd made a MOTION to adjourn the closed session and to reconvene in open session at 5:48 pm, and the MOTION carried without negative vote.

Roberts/Teale 2nd made a MOTION to deny the variance request for the property located at 158 Fontana Boulevard, Tax Parcel No. SOP 00054, for a four-unit residential building in the VCP Zoning District, and to direct Attorney Thorpe to prepare the Findings of Fact and Resolution of Board of Zoning Appeals as drafted in the closed session, and the Roll Call vote followed:

Loenneke – Yes

Teale – Yes

Roberts – Yes

Gilchrist – Yes

Hirn – Yes

The MOTION carried on a 5-0 vote.

Adjournment

Teale/Loenneke 2nd made a MOTION to adjourn the Board Zoning of Appeals hearing at 5:51 pm, and the MOTION carried without negative vote.

Minutes prepared by: Dennis L. Martin, Village Clerk

Note: These minutes are subject to further editing. Once approved by the Board of Appeals, the official minutes will be on file at the Village Hall.

Approved: _____