

**SHELBYVILLE BOARD OF ZONING APPEALS
MEETING MINUTES
May 9, 2018**

Kris Schwickrath: Okay, thank you. Good evening, everyone. The.... what is this, May 9th meeting of the Board of Zoning Appeals is now called to order and we'll start with a roll call. Thank you.

Bryant Niehoff: Yes. Mr. Lisher – here, Mr. Clark – here, Ms. Schwickrath – here, Mr. James – here, Mr. Cassidy – here.

Schwickrath: Okay we had minutes from last month to approve so I'll entertain a motion to approve the minutes from April 10, 2018 as written.

Terry James: I move that those be approved as presented.

Doug Cassidy: Second.

Schwickrath: Okay, all in favor, signify by saying, "Aye".

In Unison: Aye.

Schwickrath: Opposed, same sign.

No reply.

Schwickrath: Okay minutes are approved. Moving on in our agenda we have this evening one item under Old Business because it's a continued item so first Bryant, you'll speak to the petition itself. Read the petition. Thank you.

Niehoff: Absolutely. Yes. So this is for BZA 2018-7 Michael Jaussaud development standards variance for a carport. The petitioner's name is Michael Jaussaud who is also the owner and he is representing himself this evening. The address of the property is 2138 Cherokee Drive and subject property zoning classification is R1, single family residential. The action requested this evening is approval of one development standards variance from UDO 5.03 (?) accessory structures.

Schwickrath: Okay, thank you. Mr. Jaussaud, if you would please come forward as you did last month and state your name for the record.

Michael Jaussaud: Michael Jaussaud 2138 Cherokee Drive.

Schwickrath: Thank you. The minutes are important. Just so you know, we have had a lengthy discussion and your property, to me anyway, has come into my mind over the last month just thinking about the practicality of it and so we'll proceed the way we did a month ago and just take questions from the board and just finalize some things that have come up for us as well. Is there anything further that you would like to tell us at this time?

Jaussaud: Adam has come over and reviewed the ground and it looks like and he's also, they probably have the image, don't they? Of....uh uh. You can see on the image of the property, the overhead, it looks like that's close to 50'. That green line is around 50', maybe as much as 60 where I might need to put a hedge row or some kind of obstacle so the view is blocked from the intersection. I don't have an estimate from a lawn company but from what I've gathered, for vegetation that it'll take, I'd like to know how high you want that.

Schwickrath: Sure. I did some research and there is a type of actually mostly native tree that I think would work. It's that arborvitae and there is a type....they're not very expensive and I'm willing to help with this part. I know that's a little unusual, but I am willing to help staff on that.

Jaussaud: Uh huh.

Schwickrath: So this particular tree, the height is about 8'.

Jaussaud: Okay.

Schwickrath: So we discussed briefly and Bryant, I brought it up in an email that I think the 8' height would be would suit your location. There are some there are other trees of course that grow a lot taller, but this particular one....

Jaussaud: Oh yeah.

Schwickrath:but this particular one seemed to work as an attractive screen.

Jaussaud: Okay and what's the name of it?

Schwickrath: So it's arbor and okay I'll just tell you the name and then vitae, v-i-t-a-e.

Jaussaud: D – i....

Schwickrath: V.

Jaussaud: V?

Schwickrath: V-i-t-a-e. I can give you the details of this at the end of the meeting.

Jaussaud: Okay.

Schwickrath: We're gonna have a short discussion. If you could stick around and then we'll just see how this goes actually.

Jaussaud: Okay.

Schwickrath: I'm putting the cart before the horse.

Jaussaud: Alright, I appreciate that.

Schwickrath: But I did do some research and I think we have a solution.

Jaussaud: Okay. Outstanding.

Schwickrath: Anything further before we ask board members if they have questions?

Jaussaud: No, I don't have any other.

Schwickrath: Mr. Cassidy, can I start with you again?

Cassidy: Sure. I don't have any questions right now. I think you answered what we've talked about.

Schwickrath: Sure. Okay, thank you. Mr. James?

James: Mr. Jaussaud, we talked in the pre-meeting about what happens if there's a transfer of the property, new ownership as far as regarding the whether the item stays there or whether the screening stays, what you know if a new owner comes in, will they eliminate the screening. We don't have any guarantee on that. So we discussed the possibility of including that in our agreement here and I'm gonna ask Mr. Niehoff to elaborate on what we discussed so we're clear on agreement regarding that.

Niehoff: Yes, absolutely. So what Mr. James is discussing is a written, the possibility for a written commitment to be recorded along with the decision that we give you here tonight. Essentially, the language that we have thrown around is that on transferring of the property, so when your interest is (?) and the property is transferred into someone else's name, at that point, that carport would need to be removed. And a written commitment is the best way to do that in terms of that document recorded along with the property in the Recorder's office and upon any title search that is essentially acts as a (?) deed restriction. I know that sounds pretty harsh, but that it would any time someone would search your property....(inaudible)....So that's a way of achieving, eventually achieving the intent of the ordinance that no carports are placed forward of the façade. So does that make sense in a way?

Schwickrath: So if the house is sold or it's transferred, let's say you give it to someone,

Jaussaud: Uh huh, I understand that.

Schwickrath: So it.....right that it would be one of those two circumstances if I'm correct?

Niehoff: Yes.

Schwickrath: Those would be the

Jaussaud: Okay.

Schwickrath:would apply.

Jaussaud: Alright. I understand that.

Niehoff: Yeah.

Schwickrath: Okay.

James: So the good thing is you would have it, the carport during the duration of your ownership of the house, so there would be no problem until that ceases to continue. So that's that would be included in our agreement here this evening.

Jaussaud: Okay. If or rather that's the way the agreement can be written, I'll agree to that if I get if I have a carport. I'm not, I've not determined that I truly am going to have a carport right at this moment.

James: Okay and I think the reason why we're discussing that is for to make sure that once again, the city ordinance's philosophy is continues to exist in a manner that we're all happy with and that you would, whoever the new owner is is complying with what the rest of the people in the city also have to you know have to be faced with and you know be willing to do theirs the same way. So that's it. I don't see any problem with it. If this gets approved, you're gonna be okay as far as the time, duration that you have it. You're going to have the carport and then when it ceases to be yours, it'll be somebody else's problem, but they would have to come back and request something similar if they wanna continue with or put up a new carport.

Jaussaud: Okay.

James: Okay that's

Jaussaud: I'll agree to that if I...

James: That's pretty much....yeah I didn't wanna make it too complicated 'cause it's not.

Jaussaud: No.

James: It's fairly simple, what we're doing here so that's all I have.

Jaussaud: I'll agree to that if I follow through and put a carport in.

Schwickrath: Yes.

Niehoff: And in that circumstance, I mean your meeting if you are granted a variance here tonight and you decide not to, you know you weigh the options and you say you know what, it's really not(inaudible)....and again, I'm speaking hypothetically in the circumstance that you are granted the variance that that wouldn't be applicable because there is no carport....(inaudible)....

Jaussaud: Right.

Niehoff:opposition of city standards. So if that's.....but if you do decide that you are going to grant this variance and you do decide to build a carport, then that(inaudible)...

Jaussaud: I understand that.

Niehoff: We can, we've done this in prior situations where we....(inaudible)....

Jaussaud: Sure. Okay. Yeah. I don't have a problem with that.

Schwickrath: Okay, thank you. Mr. Clark?

Chris Clark: One of the other things we spoke of in the pre-meeting was the maintenance of the screening. We would have to have some sort of a guarantee that landscaping is put in place and then if it dies for one reason or another....

Jaussaud: It would have to be kept up.

Clark:it would have to be kept up.

Jaussaud: Sure. That's only logical.

Clark: Okay. Thank you.

Schwickrath: Thank you. Mr. Lisher?

Lisher: Sir, you and your wife, appreciate you coming back again and working with staff on this. My problem is the city (?) their ordinances which changed the past philosophy. They have no carports allowed in the front of properties and that ordinance went through public comment and was passed and approved by the City Council. And I don't see where exposure to weather and environment is a such a difficulty that warrants granting of a variance here, so I'm just letting you know that it's for those reasons that I'll be voting no on any request for a variance.

Jaussaud: I'm not understanding what you're saying.

Schwickrath: Did you hear him?

Jaussaud: No.

Schwickrath: Okay.

Lisher: I was trying to explain to you why I was going to be voting no as to the variance.

Jaussaud: Okay.

Lisher: Because it went through, the ordinance that created no carports in the front went through a public comment period of time. I don't believe there were any comments made in favor of having carports in the front and it was passed by the City Council. So that, combined with your alleged difficulty of exposure to weather environment was something that's existed for some period of time and I don't see that that warrants my vote for a variance in this matter. So I was just trying to give you an explanation as to why I will be voting the way I mentioned.

Jaussaud: How recently was the did the carport issue come in to the

Schwickrath: The City ordinances?

Jaussaud:city's? Yeah.

Schwickrath: Do you know? I don't know.

Niehoff: The latest UDO was adopted in 2012 but then prior to that was it 2003 or 2004?

Adam Rude(?): Terry, you might....

James: It's been within the last 10 years when we had major discussion on that if not shorter. I'd say 2012 sounds reasonable.

Schwickrath: I have a question about if you've had your property surveyed.

Jaussaud: Uh huh.

Schwickrath: You do have.....you've had your property surveyed before? I don't think it'll require or it actually came up in our meeting that it might be a possibility in order to put the trees, again if this is granted tonight, the screening in the proper location. I was just wondering if you had a surveyor at some point survey your land.

Jaussaud: That's all within my property, yes.

Schwickrath: Okay.

Jaussaud: Yeah.

Schwickrath: Alright. Go ahead. You wanna speak to that?

Niehoff: Yeah. Just it would be beneficial. We always recommend in these circumstances, especially where there are a lot of utilities involved and I think there are some overhead power lines, right, running over your property?

Jaussaud: No. There's underground power. There's underground power.

Niehoff: Oh okay, okay. Anyway, I mean it's always a good idea to have your property surveyed to make sure.....

Jaussaud: Right.

Niehoff:that you're not installing these in an easement or that it's prohibited or maybe there is an easement over your property that you just didn't know about. So we always recommend that in these circumstances.

Jaussaud: We or rather we were flagged. The utility.....

Niehoff: Inaudible question.

Jaussaud: Yeah the utility planted flags and they are all toward the road, not close to the house. There's nothing close to the house that's other than a gas line.

Niehoff: Okay.

Jaussaud: There is an underground gas line that goes up and that would have to be probably re-marked if we're going to start digging.

Niehoff: Okay. Yeah that's just I mean that's something we always recommend. It's certainly not a requirement, but you just wanna make sure you're not building in a you know a drainage and utilities easement or you know installing vegetation in a drainage and utility easement where that utility comes back and rips out...(inaudible)....

Jaussaud: No.

Schwickrath: Just remind me; you had a row of shrubs I believe at one time?

Jaussaud: Uh huh.

Schwickrath: And those were taken out by a utility?

Jaussaud: Those were taken out by the utility company.

Schwickrath: Okay so at this point, the only thing I'm not clear about is the exact location of where the line of trees....

Jaussaud: Would go?

Schwickrath:would go, right, in the event that this is approved. So that would be the only thing further perhaps to work with staff on? Right, so the staff would help you, not so much with the location, but guide you with whom to call and to figure out exact place.

Jaussaud: Before we would....yeah before we would commit a company to install them, we would mark 'em on the ground and I can call Adam and

Schwickrath: Right. Yes, okay.

Jaussaud:have him come over and take a look.

Schwickrath: Okay. Alright, that I just wanted to make that clear. Alright, that's fine. Thank you.

Jaussaud: Yeah.

Schwickrath: Any further questions? Yeah?

Cassidy: What's changed your mind? When you were here.....

Jaussaud: About?

Cassidy: About; now you're not sure if you're gonna do a carport. You've already set the footers and just a minute ago you said now you're not sure if you're gonna do a carport or not when last month you already had one picked out and almost scheduled. So what has changed your mind that well maybe I won't do it now?

Jaussaud: The cost of the carport that I'm putting in is around \$3300. Whatever the cost is of the vegetation that we're going to put up is going to influence whether I.....I'm not going to go in for a loan. I'm not going to borrow money to do this. The carport is paid for, but I'm not going to spend \$2000 more or \$2500 more for a hedgerow to go in to cover up.

Schwickrath: Sure. That's reasonable.

Cassidy: Okay.

Schwickrath: The trees themselves are not that pricey, so there may be other ways to do that and you did in fact, if I remember correctly, choose a higher end carport.

Jaussaud: Uh huh.

Schwickrath: It was a....

Jaussaud: Yeah it is the best.

Schwickrath: It's not the flimsy model.

Jaussaud: No, it's the best.

Schwickrath: Yeah, okay.

Jaussaud: I could put a carport in that was essentially \$1300.

Schwickrath: Right. I do remember that from last month, yeah.

Jaussaud: Yeah.

Schwickrath: Okay, but that you, Doug. That's a good question.

Cassidy: Okay, no question. I'm just curious. Thank you.

Schwickrath: Anything further from the board members?

No reply.

Schwickrath: Okay. Mrs. Jausaud, do you wish to say anything? And if you do, come forward please so you are a public member and part of the petition. So please state your name for the record.

Vicky Jausaud: My name is Vicky Jausaud. He was saying that there would be, if the house was sold or transferred name if something happens to him, would that include or would that just kinda if I pass on also?

Schwickrath: No it's if the house changes hands or is sold, correct?

Inaudible reply.

Schwickrath: Right.

Niehoff: If the name changes on the deed.

Schwickrath: On the deed. Right if the name changes on the deed, then.

V. Jausaud: So it's not just you know if he passes and I'm on the deed also, but

Schwickrath: No. Right, no, no that's a different scenario.

V. Jausaud: Okay. That's all.

Schwickrath: Okay, thank you. And there are no members, other than the Jausauds here, so I close public commentary and we can move then, I assume we're ready for a vote. Okay this is BZA 2018-07.

James: What do we need to add to the motion to include what we talked about? Do we need something here?

Schwickrath: Maintenance of trees.

James: And what

Schwickrath: Not surveyors, that's don't worry about that.

James: Wasn't there something else we just said?

Niehoff: Maintenance of trees and that carport would be removed if.....(inaudible)....

Schwickrath: Sure, okay. Thank you.

James: Carport removed upon transfer of property in a written commitment or with a written...(?)

Schwickrath: Is it in the form of a written commitment?

Niehoff: Um....

Schwickrath: That the appearance of the trees, that the appearance of the screening be maintained?

Niehoff: Yeah that the landscaping be properly....

Schwickrath: Or landscaping, right.

Niehoff: Inaudible comment.

Schwickrath: For the time that the carport is.....

Niehoff: Yes.

Schwickrath: I think we just said that earlier.

Niehoff: Inaudible comment.

Schwickrath: (?) or standing.

Niehoff: Inaudible comment.

Schwickrath: Yeah.

James: During lifetime?

Schwickrath: During lifetime, well.....

Niehoff: During the lifetime of the (?).

Schwickrath: Okay, that's fine. That's fine.

James: Okay let's make an attempt to.....I'd like to make a motion at this time to approve the requested development standard variance from UDO 5.03 to allow the placement of a carport in the front yard of the subject property with the conditions presented in the planning staff's report pursuant to the Findings of Fact presented in the planning staff's report. The following

conditions are required: that the carport be removed upon transfer of property in the form of a written commitment and that the landscaping must be properly maintained during the lifetime of the carport.

Schwickrath: Okay there's a motion.

Clark: I'll second.

Schwickrath: Okay please cast your ballot then for again BZA 2018-07. Thank you.

Niehoff: This is for BZA 2018-07. Mr. Cassidy – yes, Mr. James – yes, Mr. Lisher – no, Mr. Clark – yes, Ms. Schwickrath – yes.

Schwickrath: Okay your, the vote has carried so best wishes with the project and actually I told you I'll give you the name of the tree that I recommend, so if you can wait for just a moment, thank you.

Inaudible comment.

Schwickrath: Yeah, sure. Of course. Okay so at this time, do you want Discussion? We can do this on the record. Let's just clarify it on the record. Okay, so go ahead. I'll just let you lead.

Niehoff: Yes, absolutely. So it's come up with the most recent request for a special meeting of the BZA with a petitioner that we've been working with I'd say for going on a couple of months now. They filed in our office for a variance. We worked with them to get the public notice and then they did not meet the time line that the newspaper requires to meet the 10 day notification. It was due to our office being closed one day and well actually it was due to the schedule this week because our office was closed yesterday and that shifted the meeting date, thus the final deadline is now Wednesday. The guy was in on Thursday and then he didn't get the public notice to the newspaper until Friday at 3:00, I believe or he didn't get it all because there was some issue with email notification. Anyway, this will be the second circumstance we've run into and there have been others, even last year (?) in the last year that we've run into with the same situation....(inaudible)....

Schwickrath: Yes.

Niehoff:when the applicant is going to place the public notice and we've run into this issue and then they go to request a special meeting, which we clarified that procedure by looking through the Rules and Procedures and now we will be funneling all of the special meeting requests through the sharing of(inaudible)....So with Kris being the chairman.....(inaudible)... and she ultimately has the decision unless there are two members that choose to (inaudible)....that's written within our Rules and Procedures. It's something that we will look (inaudible)....in the office, but now I think....(inaudible)....same way with the Planning

Commission. Terry is the chairman of the Plan Commission.....(inaudible).....so that clarifies one of the issues. The other goes to the public notice which in our ordinance right now falls on the responsibility of(inaudible)....We would like to look into, we certainly want all of your feedback on getting more in line with what other communities are doing. Other communities, essentially the staff puts together one large public notice for all the petitions on that month's agenda. So if we would've had 3 variances tonight, we would publish that notice (?). This property owner's requested this variance(inaudible)....This property owner's requested this variance and(inaudible)....That responsibility falls on the staff and thus we'll make sure that part of the process is being taken care of. Right now we have little to no control aside from meeting our own timeline to get it to the petitioner so that then they can (?) time in the newspaper and we just wanna(inaudible).....So....

Schwickrath: That seems like it would streamline the entire process.

Niehoff: Yeah. Well and we're already having to, it's not like it's really adding another step for us because we're already sending these public notice to the news I mean to the applicant who's responsible for taking it(inaudible)....

Schwickrath: Right, right.

Niehoff: I've talked with Adam. Adam typically handles that in our office shooting that email out to those petitioners and you know we just talked about whenever that filing deadline is we'll put that reminder on our calendar (?) days later that we need to get that to the newspaper. That way it takes care of the (?) thus eliminating....(inaudible)....

Schwickrath: This kind of situation, yeah.

Niehoff: Or yeah this specific situation where oh shoot, I missed the deadline. Now I can request a special meeting and it puts us all in an awkward situation. So we've reached out to other communities and most of them....(inaudible)....

Schwickrath: It's time then I think to update that practice.

Niehoff: Yeah.

Lisher: But they must've absorbed the cost in that publication within their application fee or something because there is a cost with that.

Schwickrath: Right, but then there's that, right. Okay.

Niehoff: Yes, yes.

Lisher: Number one. Number two, that cost can change as we all know and by change I mean not get cheaper.

Niehoff:(inaudible)....technically prohibits that, but

Lisher: The newspaper can raise the rates as long as it's across the board for all legal notices. But more importantly, I think you ought to consult the city attorney 'cause now you're throwing on liability onto yourselves, the city for failing to do so in a timely manner.

Niehoff: Yeah.

Lisher: That's the biggest issue I see.

Niehoff: Okay, yeah.

Schwickrath: So that's your next step, right?

Niehoff: Yeah.

Schwickrath: Is to go to the city attorney and just and talk to Trent about that.

Lisher: Yeah I would.....that's what I would suggest doing.

Niehoff: No, that's a good point. That's(inaudible)....

Lisher: I'm not the one's that's gonna get sued.

Niehoff: What's that?

Lisher: I'm not gonna be the one who gets sued.

Niehoff: Yeah, no that's fair. Well and it was just a thought and it was something that Adam and I when we talk about.....Number one, when we changed up and brought the amendment for the UDO forward in regard to public notification and took out the legal notice to legal description requirement, we did that because of what the newspaper was charging and it's just unnecessary. The main point is that it's just unnecessary to have a legal description....(inaudible)....

Lisher: Right. Yeah you can change what's in the notice.

Niehoff: Yeah and we're still meeting all the state(inaudible)...

Lisher: I don't know if you've noticed what's happening in Indianapolis is I don't know if you get the Star.

Niehoff: I do not.

Lisher: They got away from using the cheap recorder alternate newspaper that basically was all legal notices and now they're requiring legal notices in the Indianapolis Star again.

Schwickrath: I see.

Lisher: Yeah pick up your star and see if you can see them.

Niehoff: Yeah.

Lisher: You didn't used to. They kind of went away.

Schwickrath: But I think you can pursue this. I think you should.

Niehoff: Yeah.

Schwickrath: And then we can talk further or I mean do you see that working also for the Plan Commission?

James: Inaudible reply.

Schwickrath: Yeah, sure. I think it does.

Niehoff: And I mean if it is something that....(inaudible).....these are the issues and this is how we can overcome that or.....(inaudible)....

Schwickrath: Sure.

Niehoff: But I think it's something.....(inaudible)....

Schwickrath: Yes.

Niehoff:(inaudible).....And honestly we(inaudible).....if they don't make it into the newspaper, I mean.....So I understand and I appreciate that.

Lisher: Well that's the city attorney may wanna consult with the insurance carrier 'cause that increases things.

Niehoff: Sure. Yeah and as far as the cost goes, that is something that Adam and I talked about that yes, there would be either be (?) so we need to figure out our next step besides in talking with the city attorney saying okay.....

Lisher: What fees.

Niehoff:(inaudible)....It's my understanding that they charge....(inaudible)....

Schwickrath: So all details need to be considered there.

Niehoff: Inaudible comment.

Schwickrath: Sure.

Niehoff:(Inaudible).....nothing earthshattering or you know anything along those lines, but you know....(inaudible).....

Schwickrath: Sure. It's time to look at that again with fresh eyes. Sure; okay thank you for bringing that to our attention.

Niehoff: Yeah.

Schwickrath: Anything further?

No reply.

Schwickrath: It hasn't rained yet. It's supposed to so I guess we could

Lisher: I would....my comment to

Schwickrath: Yeah?

Lisher:the chair lady, the one that's gonna make those decisions on a special meeting is it should be for emergency type situations.

Schwickrath: Yes.

Niehoff: Yeah.

Schwickrath: Right. Real extenuating circumstances, yes. I agree. I did not see the request that we had recently fall in that category.

Niehoff: And we apologize for the confusion. I mean this is(inaudible)....

Schwickrath: Corral everyone.

Niehoff: Inaudible comment.

Schwickrath: Yes.

Niehoff: Inaudible comment.

Schwickrath: Okay. Okay, very good.

Niehoff: So on the record, there will be no special meeting....(inaudible)....

Schwickrath: Yes. And I know to hit reply all but I'll do a better job if that comes up in the future. Somewhere that got lost. So I wasn't trying to hide anything. Alright, is there anything further?

No reply.

Schwickrath: As I started to say then let's enjoy the rest of the evening and I guess a motion to adjourn?

No audible reply.

Cassidy: Second.

Schwickrath: Alright that seconded, okay. Thank you everyone.

Meeting adjourned.