

City of Columbus
Public Hearing – 6550 145th Avenue Variance Request (PC-17-118)
July 19, 2017

The July 19, 2017 Public Hearing to receive testimony considering a request for two variances from the required Sec. 7A-800 (C)(6)(b) that except where alternative agreements are approved by the City Council, all owners shall covenant to maintain a driveway (consistent with certain standards) and Sec. 7A-800 (C)(6)(c) that all owners of properties abutting by the driveway enter into a development agreement with the City, including but not limited to minimum provisions of granting a 66-foot wide right of way easement and public drainage, utility and trail easements over the driveway to the public, as determined by the City Council for the construction of a new home was called to order at 8:32 p.m. by Chair Garth Sternberg at the City Hall. Present were Commission members Jim Watson, Pam Wolowski, Jesse Preiner and Jody Krebs; City Administrator Elizabeth Mursko, City Planner Dean Johnson, City Attorney Jacob Steen, and Public Communications Coordinator Jessica Hughes.

Also in attendance was City Council member Denny Peterson, and Deputy Mayor Bill Krebs; Norma Heuer, Dan Mike, Taro Ito of Running Aces, Kent Peterson of Bituminous Roadways, Richard Swanson, Joe Radach of Carlson McCain, Inc., Jon Rausch, Haila Maze, Pat Preiner, Mary Preiner, Mike Nelson, Mark & Jackie Kotchen, Pamela Olson, Ted Flohrs, Jim Hoffman, Mark Thieroff, and Vince Stevens.

Sternberg: So we have a public hearing and discussion for 6550 145th Avenue variance request, pages 1-71 and enclosure. At this time, I'd like to ask the Recording Secretary to read the notice as published.

The notice was read at this time.

Sternberg: Thank you. And at this time, I'd like to ask the applicants to please come forward.

Krebs: Mr. chair, just to make note, um, of the correction of Forest Lake to Columbus on the application please.

Sternberg: Okay, we're going to correct the address from Forest Lake to Columbus.

Mursko: For which one?

Sternberg: On the application for the...

Mursko: For today?

Sternberg: ...the variance.

Mursko: For the variance?

Sternberg: Yeah. Right Jody?

Krebs: Sure.

Sternberg: I think the address is wrong, it's Forest Lake and not Columbus.

Mursko: Okay. Um, Mr. chair, uh, do you want to, they have your letter as the last page of their additions for, for your request for [unintelligible], so I don't know, do you want me to explain or do you want...

Thieroff: Whichever you prefer.

Mursko: Well why don't you go ahead and take the floor now.

Thieroff: You can follow up. Great.

Sternberg: If you could state your name and address for the record too please.

Thieroff: Certainly, my name is Mark Thieroff, I am the attorney for the applicant, I appreciate your time this evening. Um, when we sent, this is uh, an application for a variance that would allow uh, a second lot to be developed on a 20-acre parcel, seeking variances from various portions of the driveway ordinance. Um, when we submitted the application, um, staff inquired as to whether we were able to get or would be willing to pursue a preliminary approval of the proposed driveway route from the Coon Creek Watershed District, in relation to some of the wetland issues out there. Um, so we contacted the Watershed District and were able to schedule a meeting with them, but unfortunately it won't take place until tomorrow. Um, so we're here this evening, happy to answer any questions you have. Understand you're going to have the public hearing anyhow, and there's some other folks who'd like to talk. Um, but we just request that you keep the record open until your next meeting when we can come back, because we may be amending the application, there could be some changes and so forth that we would like to address with you at that time.

Sternberg: Sounds good. So any questions for the applicant?

Thieroff: Thank you.

Sternberg: Thank you. No other questions?

Mursko: I have no questions, you did a great job.

Sternberg: Well if there are no questions I going to open the hearing to the public then. Would the public please come forward.

Mursko: Mr. chair you did have a separate packet of information um, here, this has been before the Council, there's some questions with the applicant's property. And, so there's been quite a...

Sternberg: This one?

Mursko: Yep. Um, well, actually it has the variance, the variance public hearing on the front of it, then 71 pages...

Sternberg: Yeah.

Mursko: ...in it, and uh, includes the letter from Mr. Hoffman and his attorney, um Vince Stevens, so. Just want to make sure you have the paperwork in front of you.

Stevens: Yes, thank you Mr. Chairman.

Sternberg: Thank you.

Stevens: Members of the Commission, my name is Vince Stevens, I represent James Hoffman, a neighbor of the applicant, who opposes the variance request. And as, uh, the City Administrator noted, I did provide a written submission that will fully encapsulate our position, I will just touch on the high points at this public hearing. I will start with the reasoning for this, for the opposition. All neighbors, uh, report that there is already substantial traffic along the one existing driveway. They are reporting, uh, several families are living at the property, and some type of, uh, welding operation is going on there. If the subdivision is allowed, there would be two driveways running right alongside Mr. Hoffman's house. There's quite a history here. In the mid 1980's the owner of, uh, my client Mr. Hoffman's property sought to subdivide and allow a house on the landlocked parcel. The township approved, uh, but on one condition that no more subdividing would occur, or more than one house, without a public road to the property. This was put into a 1986 subdivision agreement and recorded with the County. Uh, Mr. Hoffman relied on it when he purchased his property, and the, uh, current owner is now back asking for a similar type of variance to allow another subdivision which was specifically prohibited before. There is a 1985 easement between the former owners of, uh, the current applicant and Mr. Hoffman's properties for what's called street and utility purposes over 33-feet of uh, Mr. Hoffman's property. This is not an exclusive easement, uh, so Mr. Hoffman is free to use it, uh, after all he still owns this property on which the easement runs, he pays taxes on it. Um, when he purchased the property, his driveway connected to the easement making a loop. He may choose to place his driveway in that same place on the easement, or subdivide his parcel in the future, which would be lawful. The easement, uh, the Commission will recognize, does allow the applicant, the variance applicant, to assign easement right to the City for establishing a public, public roadway. But this much is clear, the City cannot force Mr. Hoffman to expand the easement or give an additional 33-feet, uh, to the City for the required 66-foot-wide road. Uh, it's our position that eminent domain would not be legally possible because it would not, could not be condemned for the public good – in this case, just one property. Thus the easement or roadway would remain at, uh, 33-feet, which is too narrow for a public roadway. And this is important as well, the scope of the easement is intended for one dwelling, as confirmed by the 1986 agreement that was recorded. A City cannot force the expansion of an easement to more than one dwelling. Cities cannot interfere with private land matters, uh, or contracts between

two owners. And by granting a variance, the City would be overreaching its legal authority in our position. A City can limit uses, but cannot expand one property owner's private rights against, uh, Mr. Hoffman. The Commission is likely aware of the 2016 ordinance amendment. Just last year the City Council, uh, adopted ordinance amendments requiring that all lots take primary access from a public street, and every dwelling have access to a public street. In the RR district, which this is, an owner with no frontage may obtain a permit for one dwelling if all conditions are met. Uh, here, I would submit none of the major conditions are met. And these are that the neighbors will not enter into a maintenance agreement, or a development agreement, with the City. The neighbors will not grant a 66-foot easement to the public. They will not grant a drainage utility trail, uh, easements to the public. They will not waive their right to object to future assessments. They will not agree to record the agreement on all their titles. So, the spirit and the reasoning of the, or for the, amendment is nonexistent here. The reason, presumably, was to shift the problems caused by multiple parties using one driveway, to those parties, requiring them to enter into written agreements. In this case, all three owners of the properties to the north of the applicant oppose this variance request. And so, as the Commission is well aware, of variance law – variances are usually granted for things like setbacks, height restrictions, uh, applicants must show what's called practical difficulties warranting a variance. Here, the practical difficulty is that all neighbors are unwilling to sign the required agreements, and the City cannot force them to. And the ordinance absolutely requires these agreements. So, this is not the type of practical difficulty that can be fixed with the variance. I'm personally not aware of any cases or instances where a person has received a variance for this type of practical difficulty. If I may address the application itself, um, it contends that the ordinance deprives the owner of rights enjoyed by other properties. However, the applicant might not have the same ability to subdivide as an owner of 20-acres on a public road, uh, she does have the same rights as any other owner of a landlocked parcel. Uh, and the applicant does not have the inherent right to subdivide 20-acres. The applicant contends that the circumstances are not, not a result of her actions. Uh, but she did purchase the landlocked 20-acres, subject to the 1986 agreement, prohibiting future subdivision. Now the applicant is trying to subdivide. The applicant contends that the difficulty is not created by economic considerations. But I think we, I think nobody would deny that the creation of a second lot will have significant financial value, especially when sold in the future. Conversely this would have a negative effect on Mr. Hoffman's property. The applicant contends that the second home would not impact the area. Uh, Mr. Hoffman and the neighbors who the Commission will hear from soon, would disagree. They contend that it would result in increased traffic and create two driveways very close to Mr. Hoffman's house. Lastly, the applicant contends that the development is consistent with the Comprehensive Plan. But in fact, it flies in the face of the ordinance, ordinances that were adopted just last year. The City went through the trouble of having public hearings in adopting these two ordinances last year. My client, Mr. Hoffman, believes that the applicant should have and could have attempted to address the access issues before investing money into the subdivision. He was not consulted, before noticing survey stakes on his property, and by then he was told, uh, that it was too late, he could not stop it. In conclusion, uh, members, uh, the applicant has a private easement and a development agreement for a driveway to just one house. By granting a variance the City would be saying that the applicant has a private right to expand the use of an easement across Mr. Hoffman's property. And the City would be ignoring Mr. Hoffman's property, private property rights, and ignoring his right to have the City enforce Ordinances that were designed to protect

his rights. Therefore, we would respectfully request that the Commission recommend denial of the variance application. And I, I'm not sure if my client has anything he'd like to add?

Hoffman: Well, yeah, I could say a couple words. I bought my property in 1989 for the privacy, knowing that only one dwelling could be built back there. So, I would just like the ordinances upheld. Otherwise if, if you grant a variance on that, how is a person supposed to know what they actually own? That's all.

Sternberg: Thank, thank you.

Hoffman: Thank you.

Sternberg: Thank you both.

Stevens: Thank you.

Sternberg: Anyone else?

Lafond: Hi.

Sternberg: Hi.

Lafond: My name is Ken Lafond, and I live over at 6563 145th Avenue. My property is directly across from, uh, the applicant's. Um, I strongly oppose trying to build another house back there. It just, I've lived out there for over 20 years, and I just don't think this needs to happen. There's a lot of traffic, and I think we need to just realize it's not necessary. And I just want to, for the record, I'm totally opposed to it. Okay?

Sternberg: Thank you.

Lafond: Thank you.

Flohrs: Uh, Ted Flohrs, I live at 6616 145th Avenue, uh, next to the proposed development. Um, I see that this is different than the last time we were here. Is, is that going to be an upgraded road? Is that what they're trying to get? How can you add another home on a single dwelling, uh single, uh, single driveway that was intentionally, had a variance, to get this to a single-family dwelling, and if we allow this then what's going to stop them from putting two more homes on that 20, then there will be four homes there? And it's just going to continue more and more traffic. The traffic is crazy for a single-family dwelling, which it was. I don't know what the people come and go for, what they do back there, but that ain't none of my business. But there's a lot of traffic that is my business. I just opposed to it, just for the amount of traffic that goes in and out of that single-family home. And if you add that, it's going to be more, and, I don't know how you can upgrade a road. You know, I thought Columbus you had to have an upgraded road, and that looks like a cul-de-sac and an upgraded road from here. I don't know what they, if you

plan on building a road with a cul-de-sac back there? Don't make sense in my book. Why would you build a cul-de-sac for a single home, one more home?

Sternberg: Thank you sir.

Flohrs: I'm just opposed to it.

Sternberg: Ok, thank you, we appreciate it. Anyone else from the public? Anyone else? Okay, I'm going to close the hearing with the right...

Steen: Chairman, we do want to keep the hearing open. Uh...

Mursko: That was the request.

Sternberg: Oh, keep the hearing open, we're not doing a continuance?

Mursko: So you're going to continue the hearing to the next Planning Commission meeting which is...

Krebs: August 2nd.

Mursko: August 2nd.

Sternberg: Okay, so the hearing is open.

Krebs: Will remain.

Sternberg: Remains open. Because normally we close it and do a continued discussion. We're not doing that cause they want...

Mursko: Yep, and so there will be a motion to continue the hearing.

Sternberg: Okay.

Mursko: A motion to continue the hearing to the next...

Sternberg: Are we, can we still discuss this here?

Steen: Yes you may.

Sternberg: The Planning Commission?

Steen: You may, you may have further discussions.

Sternberg: Okay, yeah, I actually have some questions because you know I was reading through this, we normally don't get all these legal letters and, you know, a lot of professional stuff here. But, if I understand it right, and correct me if I'm wrong, there's a property with an easement, right, that was granted to allow one home back there. And that's the only access to the 20-acres that is described as landlocked?

Mursko: Correct.

Steen: There was an easement granted, the limitation on the, the number of lots is in the subdivision agreement. So, in addition to the easement which is a private legal agreement between the property owners, there's a separate subdivision agreement with the City, and that was the agreement in which the property owner, the previous property owner, agreed to not subdivide unless, uh, I believe the language is unless that easement was dedicated to the City for improvement as a roadway.

Sternberg: Okay.

Steen: So, this would require, uh, the City, uh, City Council to terminate that agreement. Uh, or to amend the agreement.

Sternberg: Okay, so, there's a couple issues then, so it's not just the traffic for one residential dwelling on this easement, there's also an agreement on the land that there can only be one home built, one dwelling back there.

Steen: Correct, correct.

Sternberg: And so, if there was another route to access the property, it still could not be subdivided technically because of this prior subdivision agreement, dating back to the, whenever.

Steen: Unless the easement is dedicated to the City for improvement as a roadway.

Sternberg: And who owns the easement?

Steen: I believe Mr. Hoffman owns the title.

Sternberg: Mr. Hoffman? And the easement is also too narrow, right? It's 33-feet...

Steen: 33-feet.

Sternberg: ...it would need to be 66-feet to be...

Hoffman: I don't think it could even be 66-feet.

Sternberg: Right, I read that there is a gas pipeline and you would have to give more property or something like that.

Hoffman: Yeah, voluntarily give more property.

Sternberg: Yeah. So there ya go. And there's no other access to that property, there's no other...

Hoffman: Well they could come in from 141st, that would be a more direct route. But there is no other access, not from 145th.

Thieroff: Mr. chair, to be clear, we're not seeking a 66-foot wide right of way, we're seeking...

Sternberg: A variance from that.

Thieroff: ...well, using driveway rules. This would remain [unintelligible].

Steen: Mr. chair, to clarify, the City ordinance does allow a driveway to access, to, to, to a second lot where there is a driveway access. Uh, so you can do this under the ordinance but there is also a provision regarding maintenance agreement, uh, frontage, that we have to overcome. So, there are some additional steps that need to be taken.

Sternberg: Yeah.

Steen: And that's, so it's just the variance to those provisions.

Sternberg: Okay.

Preiner: But it has to be taken with the neighbors?

Krebs: Or by the City?

Preiner: I'm not following.

Steen: The City would be varying the requirement to the maintenance agreement provision of the ordinance.

Wolowski: Mr. chair?

Sternberg: Which I thought we were against shared driveways? Right, because...

Wolowski: Mr. Chair?

Sternberg: ...of the agreements in the...

Wolowski: Can we do that? If he is not willing to, his private property? Do you know what I'm saying? Can, the City can't trump that, can they?

Steen: The, there is going to remain a private legal matter between the property owners, I suspect. Um, the issue of the original scope, which Mr. Hoffman's attorney raised, uh, will not go away, um, but that's a private matter between those properties. That's, that easement was an, is an agreement between those two property owners. Um, the City is not a party to that. The City is not unilaterally expanding it, uh, they are taking away the Subdivision Agreement and other provisions of the code that allow it. Uh, but the scope issue, uh, if there is a claim there that would be between the property owners.

Wolowski: So to understand that, whatever we do doesn't have any, um, outcome for what they do.

Steen: Well, two property owners can always...

Wolowski: They'll fight it out.

Steen: ...they can always fight, you know, fight out an issue. I mean, they can resolve that privately, uh, where we don't get involved, at this point we wouldn't be party to it. The original scope was contemplated that it could be, uh, turned over to the City. Uh, so we don't have, we don't have, an issue with unilaterally expanding that or changing scope but ultimately, uh, there is a question, a private legal question.

Wolowski: And if we terminate the subdivision that the City currently has, does that put any legal ramifications on the City? With this private fight?

Steen: Well it would either be amended or terminated, um, with, you know, without, until there is action, we can't speak on that.

Wolowski: Thank you.

Mursko: It also leads to a future issue, because the future issue is, ultimately the end goal is to subdivide the property. So, that property would not have road frontage and all those other things, because it's on a driveway easement. So as the gentleman, the last gentleman, testified, this cul-de-sac, I think the Council, the Council during its discussion looked at it also and said well why would we have an easement, why would we create this because it will never be, it will never be approved. So, there was some direction as to whether we would even take an easement and which, kind of leaves the whole subdivision...

Sternberg: Are you talking about if it was given to you, it would turn into a public road?

Mursko: No, just the whole concept, the whole concept of would we need the right of way easement and the cul-de-sac. Ultimately, they have to clean it, at the end of the day they want to subdivide land. So, in order to get road frontage, they created this east west road with a cul-de-sac so that there was frontage for this lot. But again, the Council was, because it was a private easement in between, they, I think they felt, what was the, what was the need for that road. And

that's what Mr. Flohrs was saying, why would you need that cul-de-sac on that road, um, for, if you have this driveway easement. But again, there's, there's other issues, there's going to be other issues come later. Because this won't be the only issue for the subdivision.

Steen: And I, I would steer you back, so there are a lot of issues at play here, but I would steer you back to the findings of the variance, uh, because ultimately that's what you're looking at today. Um, so, whether or not the practical difficulty exists.

Sternberg: Which we will do next meeting, after we get...

Steen: Exactly.

Sternberg: ...continue the hearing.

Steen: Exactly.

Watson: Mr. chair? So, in the improvement of this east-west road, the City, what does the City have to do to be able to gain access to that road for improvement and maintenance?

Mursko: And there wouldn't be any, because we wouldn't have, you know, unless there was, unless a public road easement was given to the City, we wouldn't, we wouldn't, it wouldn't be a public road.

Watson: Even though it would be 66-foot wide, we would not be responsible.

Steen: It will not be 66-feet wide, but it will be a private driveway. The requirements of the provision of the zoning ordinance that allows street frontage on a driveway instead of street frontage on a street, is intended to ensure that there is safe emergency vehicle access, and any driveway needs to maintain that.

Lafond: Can I just say, can I ask, just one question. If any of you have the time, take five minutes and drive to the end of 145th and just look at the situation with your own eyes. Because to me this is so cut and dry. If any of you lived on this road, I know you would have a strong opinion on the situation. If you have the time, just look at it with your eyes, because it's so simple, I mean in my opinion. That's all I want to say.

Sternberg: I think I'll do that.

Watson: Yeah, field trip.

Hoffman: Can I say one more thing? I own that easement, so I mean I could put my driveway back on there any time I want. So, it'll be too much. I just can't see how it could really go forward. I own the land, pay property taxes on it.

Wolowski: I understand.

Preiner: Mr. chair. Yeah, I still don't have this straight, and I apologize.

Sternberg: No, it's...

Preiner: So they want us to make him use his property for their driveway?

Hoffman: Yes.

Preiner: Is that what...?

Wolowski: Thank you.

Steen: That's what an easement is, an easement is the right to use, to encumber somebody else's property for the benefit of your property. So, here there is already a driveway easement, an existing easement in place.

Preiner: Which he owns.

Steen: Right, he owns...

Preiner: He owns the land.

Steen: ...the underlying land beneath it.

Preiner: And there's an agreement for one house to use that driveway, to use his driveway.

Olson: No.

Stevens: Yes, there is a subdivision agreement that says that.

Preiner: Am I right so far?

Steen: The subdivision agreement is with the property, uh, the applicant's property, and the City.

Preiner: K.

Steen: The easement agreement is between the two property owners.

Preiner: So there is an agreement with this Mr. Hoffman that she can use his driveway.

Steen: Correct.

Preiner: For her house?

Steen: Correct.

Sternberg: But no other's.

Wolowski: But no other houses.

Steen: That provision is specifically in the subdivision agreement, that is, was entered into between...

Preiner: You mean when...

Steen: ...the predecessor of the applicant.

Preiner: ...when 100 acres was subdivided into his and hers, the agreement was with the City. He'd have a house and she'd have a house?

Steen: I don't know who the original, uh, I don't know what the original underlying land was...

Preiner: Yeah, but, but, have I got it? Whatever the sizes were.

Steen: Whatever the sizes were, there was this...

Preiner: So some farmer wanted to split his property, sold him a chunk, sold her a chunk, they have to share the driveway?

Steen: I don't know who the land was divided up among, at that time.

Preiner: Yeah, that's not relevant.

Steen: Right.

Preiner: My point is, there's one big chunk of land, one driveway, he gets a house, she gets a house, they share the driveway.

Olson: No.

Preiner: But it's on his property?

Olson: It's two separate driveways, he has a driveway to his home and I have a driveway to my home.

Hoffman: Well my driveway used to tie into that easement, I closed it off for privacy and I can put my driveway back on that easement any time I want.

Thieroff: Well, uh, the easement agreement is silent as to how many houses and lots could be distributed [unintelligible] it is a private agreement between parties [unintelligible]...

Preiner: But if we change a variance, then we're forcing him to hire a lawyer and fight fight correct?

Steen: By granting the variance, uh, so, granting the variance is one piece. But then the City Council will also have to either terminate or amend that subdivision agreement. Uh, and by doing that it will allow, uh, that easement to continue to operate for her property. It'll also serve as the driveway that creates frontage necessary to subdivide her property. Which is allowed under the code.

Preiner: But isn't the driveway on his property?

Steen: The driveway is over the easement, which he owns the underlying fee title to. Correct.

Sternberg: And there is something with, something about, all parties, property owners, having to agree, right?

Steen: That is...

Sternberg: To maintain...

Steen: ...that is the variance request, that is the variance request to that requirement. Um, so, the result would be that the applicant would be responsible for maintenance.

Sternberg: Solely?

Steen: Solely.

Sternberg: And then we have to deal with the two future property owners. I mean, is that binding with all property owners? I mean if this went through, and she subdivides her 20 acres and there's two 10's or whatever, two homes back there, we have two homeowners we don't know, 20 years down the road there's two different homeowners.

Steen: There would be a subsequent plat application to subdivide the property. And at that time there would be a new subdivision agreement that would be entered into with the City and the applicant.

Sternberg: And all parties knew all these items with their property when they bought them? When they purchased them, I mean, you sound like you understood what you were buying. And, so, now we just want to come up with the variance deal. Well. Okay, let us continue because I want to drive down there and check it out. Okay so, it's nine o'clock.

Steen: A motion to continue?

Preiner: Oh, yeah.

Sternberg: Motion to continue?

Krebs: Yes.

Sternberg: We have a motion and I'll second the motion, call for a vote:

Krebs: Aye.

Preiner: Aye.

Sternberg: Aye.

Wolowski: Aye.

Watson: Aye.

Sternberg: So this will be continued to the next Planning Commission meeting which will be...

Wolowski: August 2nd.

Sternberg: August 2nd.

At 9:02 p.m. the Hearing was continued to August 2nd, 2017.

Respectfully Submitted:

Jessica Hughes, Public Communications Coordinator