

Brookville Planning Commission
Virtual Regular Meeting
February 18, 2021

The Regular Meeting of the Brookville Planning Commission was called to order by Chairperson Henderson at 7:30 p.m. on February 18, 2021. The meeting was held virtually using Webex. The Pledge of Allegiance was recited. Mayor Letner; Members, Claggett, Cordes, Requarth, Schreier and Sievers; City Manager Keaton, Zoning Officer Snedeker, Law Director Stephan and Clerk Duncan were present.

Chairperson Henderson reminded everyone the meeting is being recorded.

Roll call by Clerk Duncan.

Motion by Schreier, second by Claggett to approve the Agenda as presented. All yeas, motion carried.

Motion by Claggett, second by Cordes to approve the Regular Meeting Minutes of the January 14, 2021 Planning Commission Meeting. All yeas, motion carried.

Chairperson Henderson directed Clerk Duncan to start the Public Hearing.

Clerk Duncan indicated that neither the applicant or the homeowner were present and asked Law Director Stephan if it was proper to proceed.

Law Director Stephan advised we can proceed with the Public Hearing based on the application and the information presented. Law Director directed Clerk Duncan to read the Public Hearing statement, stating Staff comments will follow and then we will open it up to anyone who would like to testify.

Clerk Duncan announced this Public Hearing is to consider Variance Application #20-02 from Power Home Solar/Bryan Law to install 16 ground mounted solar modules, grid ties, 5.12 kW in the rear yard setback at 561 Golden Maple Avenue, Brookville, Ohio, which violates Section 1157.10 (e) Ground mounted solar energy equipment shall not be permitted in the front yard or side yard of a residential property. Ground mounted solar energy equipment may be located in the rear yard of a residential property but shall not be located within the rear yard setback. The ground mounted solar energy equipment shall not exceed thirty-five (35%) of the total area of the rear yard. The ground mounted solar energy equipment located in the rear yard shall be adequately screened by vegetation or a fence and shall be installed in compliance with the applicable building code.

Clerk Duncan stated a Legal Notice was published on the City website advising of the Public Hearing.

Clerk Duncan advised letters were mailed out to all property owners within 250 feet of the applicant address of 561 Golden Maple, advising of the Public Hearing and the variance requested in Variance Application #20-02.

Clerk Duncan reported she received one phone call regarding the letter, with general questions regarding the variance application.

Clerk Duncan reported she received two emails regarding the variance application which will be read during Public Comments.

Clerk Duncan inquired whether any Planning Commission Member needs to abstain from participating in this Public Hearing?

Member Schreier indicated he needs to abstain from participating in the Public Hearing.

Lisa Hopkins asked if she would be allowed to speak on this matter?

Chairperson Henderson replied the meeting will be opened for Public Comment after staff reports and presentation.

Member Claggett asked how specifically the solar panels are violating our Zoning Code?

Zoning Officer Snedeker replied the rear yard has a 40-foot setback from the back of the house to the property line. The solar panels are in that 40-foot setback which means it is basically in the rear yard.

Member Claggett asked if they move the solar panels closer to the house, will they still be in the setback?

Zoning Officer Snedeker replied the setback goes from the back of the house to the property line.

Member Requarth stated he drove by the house yesterday. Our Zoning Code says the solar panels cannot be in the side yard but looking at the application it looks like the solar panels will be visible from the side as it will stick out past the east side of the house.

Zoning Officer Snedeker replied it will be visible from the road but technically it is not considered in the side yard. The side yard stops at the rear yard setback.

Member Sievers inquired how the homeowner intends to make the solar panels not visible?

Zoning Officer Snedeker replied they intend to plant shrubs around it.

Member Requarth inquired how high the solar panels actually are?

Zoning Officer Snedeker replied the application indicates the panels are 8 feet 4 inches high.

Member Requarth commented the shrubs will need to be tall.

Zoning Officer Snedeker stated the vegetation should be planted between the solar panels and the neighbors.

Member Claggett questioned if the rear yard setback goes from the back of the house to the property line, how will anyone ever qualify under Section 1157.10(e) where it states ground mounted solar equipment may be located in the rear yard of a residential property? Member Claggett inquired if the rear yard setback always runs from the back of the house to the property line?

Zoning Officer Snedeker replied the setback is 40 feet. Once you get past 40 feet you have 10-20 feet to work with. Some houses in Brookville do meet that. Many homes in Golden Gate Estates and Hunters Run would not qualify and this is one of them.

Member Claggett stated it sounds like it should be a no vote then.

Chairperson Henderson inquired how much of the back yard square footage the solar panels will occupy?

Zoning Officer Snedeker replied it looks like it takes up approximately 25% of the back yard.

Mayor Letner commented the solar panels are 8 feet high and we only allow 6-foot privacy fences. If the homeowner is planting foliage to conceal it, they will be creating shade, which would interfere with the solar panels depending on the time of day.

Member Claggett observed the plot plan looks like the solar panel takes up about 10% of the back yard.

Mayor Letner inquired whether the panels could be lowered and still accomplish the same thing?

Zoning Officer Snedeker stated the way the angle is on the solar panels you have 2 feet in the front of it and 8 feet 5 inches in the back. He stated he is not an engineer, but it looks like it could only be lowered about 1 foot.

Chairperson Henderson advised the solar panels can be installed flat, but they lose efficiency. The submitted design is at the peak angle for maximum efficiency.

Member Requarth commented he does not see how this will ever look good.

Mayor Letner asked if the 35-degree tilt is the optimum?

Chairperson Henderson replied that is correct. Some solar panels rotate and move with the sun's angle, but he does not know if these particular panels move. Chairperson Henderson stated typically the most efficient is a 35-degree tilt. That is why they want the panels to be in the rear yard in this particular case, to achieve the sun angles throughout the course of the year.

Mayor Letner stated his concern is the 8-foot height with neighbors on either side.

Clerk Duncan administered the Oath of Witnesses to Lisa Hopkins, of 585 Golden Maple Avenue.

Ms. Hopkins stated she has several concerns. The lots are fairly close together in their development and putting up 8–10-foot shrubs would be pretty expensive. She does not see the homeowner doing that. Ms. Hopkins stated she thinks it will depreciate their home values. Ms. Hopkins stated she does not know anyone living in this subdivision, Arlington Woods, Charlie Court or anywhere with nice homes would say this is a great idea. Ms. Hopkins stated she would never have built her home in Golden Gate Estates if she knew these solar panels would go in. She thinks they look terrible and she does not think they are really effective. She has known people in the past that have had solar panels and they don't work. If they are supposed to be that great of an idea, then why isn't everyone doing it? More than anything it is not going to help their home values at all, and it will be an eyesore to everyone that drives by. Ms. Hopkins stated she is the Secretary of the HOA. They had a meeting and all four HOA officers opposed the solar panels, but they were later told they could not oppose it. Ms. Hopkins stated she does not know anyone in this subdivision that would want this and asked Planning Commission if they would want it next to their house. Ms. Hopkins stated she has a \$400,000 home and two lots down she is going to get a backyard full of solar panels. She is not sure why the HOA could not oppose this. Ms. Hopkins thanked Planning Commission for listening to her concerns.

Clerk Duncan indicated she received an email from Howard and Koli Williams, of 561 Golden Maple Avenue, which read "We would like to have the Solar Energy System, so we save money, reduce our carbon footprint and gain energy independence. Also, by having the Solar Energy System we will have back up power in case the power will go out, by having the Generac Battery.

Ms. Hopkins commented that all of the electricity in their development is underground and they have never lost power back there.

Clerk Duncan then read a letter from Donna and Steve Whisler, of 1003 Calmer Ernst Boulevard, which read "We have received your letter regarding the application for the zoning variance at 561 Golden Maple Avenue in Brookville. While public pressure here in our rural county is for homeowners to place solar systems only on roofs, we have decided we have no objection to the request to locate solar modules in the rear yard of the residential property on Golden Maple. Thanks for letting us provide our opinion."

Chairperson Henderson opened the floor for further discussion.

Mayor Letner stated the 8-foot height is not a doable scenario. Mayor Letner commented that the folks in Texas who are living off of solar energy and windmills are currently freezing. They are having blackouts and brownouts because they cannot get power. Mayor Letner stated he does not think the solar panels will protect residents if there is a power outage. We have not come that far yet at this time. Mayor Letner stated his personal opinion is no to the solar panels.

Member Requarth stated if they really want standby power, they would be better off putting in a natural gas-powered generator. That would be a cheaper route to go if the concern is losing power.

Chairperson Henderson advised that what Planning Commission is considering is allowing the solar panels in the setback. Solar panels are allowed in our current ordinance so if this is something Planning Commission is adamantly opposed to, we may want to reconsider how that is written. If the applicant had a deeper yard, the solar panels would go in. Member Henderson stated this system would probably not power their whole house and be self-sustaining, however, this is going to be our future and we should be ready for it. Sustainability, carbon neutrality and zero energy homes and putting energy back on the grid is going to come. It is just a matter of time and when. Planning Commission will need to meet again and decide how we are going to handle it. Chairperson Henderson stated he is not in favor of the solar panels in the yard, they need to be on the roof where they can be a little better hidden. He stated he has spoken with a number of people in the community who agree that putting them in the backyard is not the right answer. Planning Commission needs to start thinking about that.

Ms. Hopkins asked if this is something they can put in their HOA?

Law Director Stephan replied the homeowners can amend the covenants to prohibit solar panels or make it a decision of the Homeowner's Association. Law Director Stephan stated the covenants do have architectural control and review by the Homeowner's Association but he did not see anything explicitly addressing solar panels. Law Director Stephan stated conceivably the Homeowner's Association could object to solar panels based on the architectural control provisions. Law Director Stephan advised if you wanted to make it more explicit in your covenants, you could amend the covenants through a proper legal document signed by the number of owners needed for an amendment and file that with Montgomery County.

Ms. Hopkins stated you are correct; they do not have anything regarding the solar panels but when she had her home built four years ago, they had to approve the structure of her home.

Law Director Stephan stated the homeowners could review and approve this installation based on the architectural control provisions of the covenants.

Member Claggett inquired how to make a motion to reject the Variance Application?

Law Director Stephan replied the Variance Application is to install the solar panels in the rear yard setback so this would be a motion to deny the Variance to permit the solar panels to be constructed in the rear yard setback. If they are moved outside of the rear yard setback and moved into a legal position in the rear yard, then they could go ahead and do this project as Chairperson Henderson noted earlier.

Motion by Claggett, second by Requarth to deny Variance Application #20-02 from Power Home Solar/Bryan Law to install 16 ground mounted solar modules, grid ties, 5.12 kW in the rear yard setback at 561 Golden Maple Avenue, Brookville. All yeas, motion carried.

Member Requarth asked if the homeowner can appeal this decision?

Chairperson Henderson replied the homeowner does not have enough rear yard to without setback to do this project. They could put the solar panels on the roof, but it would not be very efficient and probably would not make sense economically for them.

Law Director Stephan advised the homeowners could appeal this decision. They could appeal through the Board of Zoning Appeals and then potentially to the court system if they wanted to do that.

Chairperson Henderson announced the next order of business is Special Use Permit #21-01 for a Home Occupation at 139 June Place.

Zoning Officer Snedeker reported Thomas and Peggy Delaney of 139 June Place have applied for a Special Use Permit for Home Occupation 1163.03(24) to sell pool chemicals and supplies out of their home. Zoning Officer Snedeker stated he has explained to them the concerns of additional traffic along with hours of operation. They will take orders for products to be picked up and offer water testing for customers. Zoning Officer Snedeker advised Mrs. Delaney is in attendance and can answer any questions.

Member Cordes asked Mrs. Delaney what volume of sales she anticipates having?

Mrs. Delaney replied she is not anticipating a lot of sales. They will start small in her one-car garage. They had planned on opening a brick-and-mortar store, but with everything so up in the air they did not want to give up on it totally. Mrs. Delaney stated she has spoken to some of her neighbors and none of them have stated they are against her operating a business.

Member Claggett inquired whether there are any safety concerns with these chemicals?

Mrs. Delaney replied the only two chemicals that would be of concern would be the Shock and the Acid, and she would keep those separate. Everything will be in cases. There is nothing in bulk and nothing that would be open container. It will all be sealed.

Member Cordes inquired whether Mrs. Delaney has checked with her insurance agent regarding opening this type of business in her residence.

Mrs. Delaney replied her mortgage company has no issues with the business and her insurance agent has given her a quote to insure the business.

Member Schreier asked if the business hours on her proposal are actual hours of operation or has she not defined those yet?

Mrs. Delaney replied she has not set the hours of operation yet. She was waiting on Planning Commission input. Her husband would work the first shift, her sister-in-law in the afternoon and she would work it in the evenings.

Member Schreier asked if there will be any signage allowed for the business?

Zoning Officer Snedeker replied the only signage allowed is in the window.

Chairperson Henderson inquired if all the materials will be stored in the garage?

Mrs. Delaney replied it will all be stored in the garage. Mrs. Delaney stated she can provide safety data sheets for all the products upon request.

Zoning Officer Snedeker advised Mrs. Delaney did provide him with information on all the products and their safety requirements. He will forward this information to Planning Members upon request.

Member Claggett asked if the Fire Chief has reviewed this application for any safety concerns?

Zoning Officer Snedeker replied he has not reviewed this with Fire Chief Fletcher.

Mayor Letner asked what quantity of products Mrs. Delaney plans to keep in stock?

Mrs. Delaney replied she will probably keep a couple of skids, which is about 40 cases per skid, of Shock. She stated she will only keep a couple cases of Acid on hand. Those are the only two chemicals that need to be separated because if they get together it is like a mustard gas. They are all in gallon jugs and will be placed apart. Everything is closed, nothing will be open.

Member Schreier asked Mrs. Delaney if she will you have any spill socks or some kind of spill prevention just in case there is spill, or all these all dry?

Mrs. Delaney replied the Shock is not dry and the Acid is not dry. There are some other wet chemicals in gallons or quarts. The only two that she has any concerns about are the Acid and the Shock but those will be separated and kept apart. Mrs. Delaney stated she does have handling bags for customer purchases. The SDS sheets she has show how to do cleanup if something should spill.

Member Schreier stated that may be something the Fire Chief could give input on regarding storage and capturing a spill before it has a chance to mix or leach out into the driveway.

Mrs. Delaney stated she has really does not have a concern for that. She has worked for a chemical company for ten years and has the Hazmat emergency phone number should she need it.

Member Sievers asked if there are any more retail businesses being operated out of homes in that plat?

Zoning Officer Snedeker replied no.

Member Schreier asked what about in general?

Zoning Officer Snedeker replied there are a couple of home businesses in town who sell firearms.

Member Sievers stated her concern is adding traffic back in that plat. It is not well suited for the residents' traffic that live there, let alone adding more.

Chairperson Henderson asked how they are going to get the material into the garage?

Mrs. Delaney replied it will be delivered by her employer with a box truck.

Chairperson Henderson asked if she would have online sales and if she would be shipping by Amazon, UPS or FedEx.

Mrs. Delaney stated they will not have online sales. If this operation goes well, they will move to a brick-and-mortar establishment here in Brookville. There are no pool dealers in this area so she thought this would be a good location.

Member Schreier asked if the driveway will be accessible for customers to pick up and load products into their trunk.

Mrs. Delaney replied that is correct. Customers will pull into the drive to load product.

Member Schreier stated that may mitigate some of the risk of customers being parked on the street.

Member Claggett asked if there would ever be a semi size truck delivering product?

Mrs. Delaney replied the product will be delivered by box truck.

Member Requarth commented probably the only time there would be a lot of traffic would be late spring.

Mrs. Delaney stated that is correct. They will be busy when pools are open and closed. The rest of the season the business will be light.

Member Schreier inquired if everything on the application complies and meets all the requirements in our Zoning Code 1163.03?

Zoning Officer Snedeker replied the only thing he was concerned about was the traffic and the hours of operation and Planning Commission has covered both of those topics.

Member Claggett inquired whether the Special Use Permit could be revoked if the traffic becomes burdensome?

Zoning Officer Snedeker replied if she gets to that point, we can hopefully get her into a brick-and-mortar storefront. Zoning Officer Snedeker stated if the traffic should become burdensome, the Special Use Permit could be brought back before Planning Commission.

Member Claggett stated his main concern is Fire Chief Fletcher's approval of the business.

Zoning Officer Snedeker replied he will contact Fire Chief Fletcher tomorrow and provide him with a list of the chemicals that will be on site.

Member Schreier inquired if Planning Commission could give a conditional approval based on the Fire Chief's review?

Law Director Stephan stated they could adopt a motion subject to review and approval by the Fire Chief. If the Fire Chief renders an opinion that this is not safe, Mrs. Delaney would not be able to receive her permit.

Motion by Schreier, second by Claggett to approve Special Use Permit 21-01, with s provision that the Application is reviewed and approved by the Fire Chief for safety reasons. Cordes nay, Claggett yea, Requarth yea, Letner yea, Schreier yea, Sievers nay, Henderson yea. Motion carried with five yeas and two nays.

Zoning Officer Snedeker reported DMAX, along with Jobs Ohio, held a drive-thru Job Fair last Friday at Golden Gate Park with over 170 participants.

Zoning Officer Snedeker reported construction on the Freedom First Credit Union is progressing and the building will be under roof soon.

Zoning Officer Snedeker reported Gaging Solutions and Services is working hard to get the old fire station on Albert Road up and running. The electrical upgrade will be completed soon and the machines will be set.

Zoning Officer Snedeker reported he had 16 pool permits last year and expects things to pick up once the weather improves.

Member Schreier asked if there have been any permits issued for the old K's Restaurant location?

Zoning Officer Snedeker stated no permits have been pulled yet. All of the restaurant equipment and furniture was sold by the previous owner.

Member Claggett asked if there is any information on the Old Hickory Restaurant and why they shut down.

Zoning Officer Snedeker replied he has only heard rumors, so he does not have any information to share.

Member Claggett inquired what the remodeling is about at the old Fire Station on Albert Road?

Zoning Officer Snedeker replied the City is leasing the building to Gaging Solutions and Services, who has been contracted by DMAX.

Manager Keaton stated the City entered into a five-year lease with this company out of Michigan, who is contracted with DMAX to maintain their equipment. They will start with three employees and eventually ramp up to 18 employees.

Law Director Stephan had no report.

In Old Business, Member Requarth asked if Planning Commission was going to begin working on the setback regulations and on solar panel regulations?

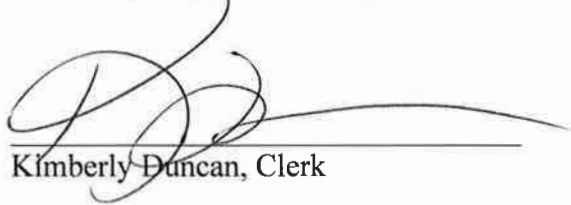
Chairperson Henderson directed Planning Commission Members to review those two items and be prepared to discuss them at the next meeting.

Member Claggett asked if the school has sold the old high school lot?

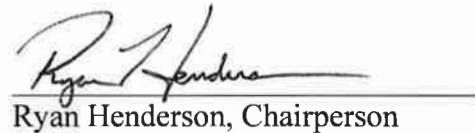
Member Requarth replied the school sold it over a year ago to Alan Thrush.

There was no New Business.

Motion by Claggett, second by Schreier to adjourn. All yeas, motion carried.



Kimberly Duncan, Clerk



Ryan Henderson, Chairperson