

## MINUTES OF MEETING

### INDIAN HILL PLANNING COMMISSION

**AUGUST 18, 2009**

The regular meeting of the Indian Hill Planning Commission was held on Tuesday, August 18, 2009 at 7:30 p.m. in the Fire Department's Training room at 6475 Drake Road.

Members Present: Paul F. Madden  
Jane G. Koppenhoefer  
Richard C. Wiggers  
Abbot A. Thayer

Members Absent: David T. Ottenjohn

Officials Present: Michael W. Burns, City Manager  
David M. Couch, Assistant City Manager

Visitors Present: Deb & Tuck Krehbiel, 8225 Brill Road  
Steve Waxler, 8200 Indian Hill Road  
Galen Mills, 7600 Brill Road

Chairman Madden called the meeting to order and asked for anyone planning to speak on behalf of this case, to please stand, raise their right hand, and be sworn in prior to speaking.

**Item Number 1:** Mr. Steven Waxler, residing at 8200 Indian Hill Road, is requesting variance approval to install a wooden board fence that exceeds the four feet (4') maximum height limit and is less than forty percent (40%) open construction.

Mr. Steve Waxler, of 8200 Indian Hill Road, comes before the Commission and states that due to the expansion of the Armstrong Chapel United Methodist Church, he is requesting approval to construct a fence to block noise, light, and provide privacy from church activities. He comments that he has talked with all of his neighbors, and none of them object to the construction of the fence.

**Staff Report:** Mr. Couch states that the property is located in District "B" – three acre minimum and has a total lot area of 4.00 acres. The applicant is requesting a variance to the maximum height requirements and open construction percentage for fences per Section 59.5 of the Indian Hill Zoning Ordinance – **All fences constructed with less than forty percent (40%) open construction and at a height greater than four (4) feet are prohibited unless a variance is approved by the Planning Commission.** Mr. Waxler would like to install a six (6) foot high wooden privacy fence that would extend along the east side of his property 330'. The proposed fence would be an extension of an existing privacy fence owned by his neighbors the Krehbiel's and of the same design and construction. The Krehbiel's fence is located along their east side yard, which is adjacent

to the Armstrong Church's parking lot. Mr. Waxler's proposed fence would provide the same buffer and screening from the parking lot and church activities.

The applicant's request for a variance is based on an exceptional practical difficulty created by the Armstrong Church, which is adjacent to the east side of the Waxler property. The proposed fence will help shield the Waxler's from the Church's traffic flow and noise that can be disruptive to their home. The fence will also serve as a buffer to the sweeping of headlights into their home, reduce litter onto their property, provide a buffer from the church's playground, parking lot, and the Church's dumpster. This will also prevent the Waxler's dogs from barking at Church personnel and activities.

Staff finds that this is an unusual situation where a residential property is adjacent to a place of worship, creating an uncustomary amount of traffic and noise that a typical residence would not have. Staff also finds that with the increase in size and activities of the Armstrong Church, this may also add to the privacy concerns of the Waxler's.

It should also be mentioned that the Waxler's have planted approximately 40 Spruce trees in an attempt to buffer their property from the Church, but have found it to not be sufficient. However, the existing trees would help the visual impact of a privacy fence, due to their location. Armstrong Church is in support of the proposed fence and has agreed to pay for it, should this request be approved. All the adjacent property owners to the Waxler's are in support of the proposed fence.

In summary, Staff finds that the Waxler's property is adjacent to a place of worship, creating an unusual condition not found in a normal residential setting. The location of the Church creates an exceptional practical difficulty for the Waxler's. The proposed fence will provide a needed buffer and screening from the Church parking lot and activities. Staff also finds that the variance request meets the four standards for approval and will not conflict with the general purpose and intent of this ordinance.

Below is Staff's response to each of the four standards:

- 1.) The variance requested arises from physical conditions of the lot which are very unusual, that is, conditions which are rarely found in the same district and the conditions are created by the provisions or requirements of this ordinance and not by an action or actions of the property owner or the applicant, such that the literal interpretation of the ordinance would deprive the property owner or the applicant of rights commonly enjoyed by other properties in the same district;

**Staff finds that having a place of worship as a next door neighbor creates an unusual condition rarely found in the same district and that a literal interpretation of the ordinance would deprive the property owner of rights commonly enjoyed by other properties in the same district. Furthermore, the proposed fence will provide a buffer between the Waxler's property and the Church, which will reduce noise, sweeping of headlights, and litter. The**

**fence would also obstruct the view of the Church parking lot, playground, dumpster, and traffic flow along the property line.**

2.) The particular physical surroundings, shape, or topographical condition of the specific property involved would cause undue hardship or exceptional practical difficulty for the owner, lessee, or occupant, as distinguished from a mere inconvenience, or would conflict with the Village's adopted land use objectives and policies, if the provisions of this ordinance were strictly enforced;

**Staff finds that the physical conditions that exist are pre-determined and are by no actions of the Waxler's. The Waxler's have added approximately 40 Spruce trees along the east side of the property to provide a buffer, but found the trees do not provide adequate screening. The future expansion of the Church and increased activities may also help support the Waxler's request for variance. Approving the proposed fence would not be in conflict with the Village's adopted land use objectives and policies.**

3.) The granting of the variance will not be materially detrimental or injurious to other property or improvements in the neighborhood in which the subject property is located, not impair an adequate supply of light or air to adjacent property, substantially increase the congestion in the Village streets, increase the danger of fire, endanger the public safety or substantially diminish or impair property values within the neighborhood; and

**The proposed fence will not be materially detrimental or injurious to other property or improvements in the neighborhood, but in fact will be an extension of the neighbors existing privacy fence located along the east lot line. Furthermore, the proposed fence will not impair light or air to the adjacent property or increase congestion in Village streets, increase danger of fire, public safety, or substantially diminish property values within the neighborhood.**

4.) The variance desired will not conflict with the general purpose and intent of this ordinance.

**The applicant has provided evidence to support the variance request. Approving the proposed fence will mitigate the exceptional practical difficulty created by the location of the Armstrong Church facilities and the Waxler's residence. Therefore, the variance will not conflict with the general purpose and intent of the ordinance.**

Mr. Couch concludes by stating that Staff recommends the variance request be approved with the condition that the fence does not encroach into the established 100' front yard setback.

Mr. Couch mentions that Staff is going to suggest to Armstrong Church that they either relocate their dumpster or provide some type of screening to hide it.

Mr. Tuck Krehbiel, residing at 8225 Brill Road, and Mr. Galen Mills, representing Armstrong Chapel United Methodist Church, both state that they are in support of the proposed fence.

Chairman Madden reminds the Commission that the Indian Hill Zoning Ordinance has changed with regard to the minimum lot area for "Places of Worship, Schools, & Places of Assembly" since Armstrong Chapel was built. The zoning ordinance now requires a minimum lot area of ten (10) acres, rather than five (5) acres. Therefore, it would not be practical for the Commission to ask the church to give relief of twenty to thirty feet off the property line and provide a landscape buffer or some type of mound that would normally be requested of other special exception locations due to the size of the property. This makes this proposal even more unique than most special exception locations.

Mrs. Koppenhoefer asks who will be maintaining the fence. Mr. Waxler replies that the fence will be on his property, and he will be maintaining it.

Mr. Wiggers inquires about the design of the proposed fence. Mr. Waxler states that the fence will be identical to the Krehbiel's fence.

After brief discussion, Mrs. Koppenhoefer made a motion to approve the variance request with the condition that it remains compliant with the 100' front yard setback. Mr. Wiggers seconded, and the motion was approved by a unanimous voice vote.

Mr. Burns notes that there will not be a September Planning Commission meeting.

There being no further business to come before the Commission, Mr. Thayer made a motion to adjourn. Mr. Wiggers seconded, and the motion was approved by a unanimous voice vote.

Respectfully submitted,

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Paul F. Madden, Chairman

ATTEST:

Michael W. Burns, Secretary