

**Board of Zoning Appeals Meeting
November 13, 2008
ZA-11-08, ZA-12-08**

Members/Attendance: N/A Hank Grover
 X Jim Burgham
 X Al Franceschelli
 X Jim Pluchinsky
 N/A Maria Rutana
 X Bill Custer
 X Holly Grant

Also in attendance: X Bob Monus, Zoning Inspector
 X Michele Richards, Recording Secretary

Hank Grover called the meeting to order at 7:00 p.m.

1st Order of Business:

Jim Burgham stated that the first order of business is to approve the minutes from the September 18, 2008 meeting. Al Franceschelli made a motion to approve the minutes. Jim Pluchinsky seconded the motion. All board members were in favor. Motion carried.

2nd Order of Business:

Case #ZA-11-08 – A request by Charles Skibbe III, to obtain relief from accessory building regulations for side yard setback, more than one accessory building and distance from main building, for property located at 2199 Clyde Street, known as parcel number #35-004-0-036.00-0, Lot 37. Parcel is located in Poland Township, Poland, Ohio, in a (R-1) Residential-1 District.

Items included in packet submitted:

1. Application for Variance
2. Zoning Permit Denial Form
3. Letter of Intent
4. Warranty Deed
5. County Map
6. Property Description
7. Photos
8. Site Plan

Jim Burgham read the letter of intent submitted by the Appellant. Jim Burgham asked if there was anyone present to speak in regard to this case.

**Charles Skibbe III
2199 Clyde Street**

Skibbe commented that his letter states it all, and that he desperately needs the shed.

Jim Burgham asks if anyone else would like to speak in regard to the request.

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**Gerald Vonnkennen
2209 Clyde Street**

Vonnkennen stated that he is in favor of the shed. He stated that Skibbe bought the shed at the Canfield Fair and it was erected by the Amish. Vonnkennen stated that Skibbe needs room for his children's bikes and toys. Skibbe does not have a garage and has a small backyard. He stated that he is in favor of this request.

Holly Grant asked Vonnkennen how close the shed is to his property line. Vonnkennen stated he had his property surveyed a few years ago. He is not sure how close it is to his property line, maybe approximately six feet (6').

Jim Burgham asks if anyone else would like to speak in favor of this request. No one responds. Jim Burgham asks if anyone would like to speak in opposition to this request. No one responds.

Jim Burgham asked Skibbe if he intends to place a garage on his property. Skibbe stated that he doesn't think so. A garage would take up his whole backyard. He stated probably not.

Motion

Al Franceschelli made a motion in Case ZA-11-08 to grant the variance in this case for Section 7.03, items C, i, and d, and to allow the shed to remain in its current location. Jim Pluchinsky seconded the motion.

Voting:

Yes Jim Pluchinsky
Yes Al Franceschelli
Yes Holly Grant
Yes Bill Custer
Yes Jim Burgham

Motion carried.

3rd Order of Business:

Case #ZA-12-08 – A request by John Masternick who is appealing the decision of the Zoning Inspector with regard to landscape buffering between his property located at 7887 Via Attilio, known as parcel #35-054-0-053.00-0, Lot 78, which has approximately two hundred eleven feet (211') of frontage located in an (AG) Agricultural District and the remaining rear yard approximately three hundred eighteen feet (318') in a (PUD) Planned Unit Development District and the Villas Di Tuscany LLC property, known as parcel #35-054-0-004.02-0, Lot 1, located in a (PUD) Planned Unit Development District. Both parcels are located in Poland Township, Poland, Ohio.

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Items included in packet submitted:

1. Zoning Permit Denial Form
2. Letter of Appeal
3. Zoning Inspector's Response to Complaint
4. Zoning Commission Meeting Minutes (11/7/2002, 11/6/2003, 12/4/2003, 1/22/2004)
5. Trustees' Meeting Minutes (2/10/2004)
6. County GIS Map
7. Property Aerial Views
8. Zoning Inspector's Statement of Facts

Jim Burgham asked Masternick if he would be speaking on behalf of himself. Masternick replied that his attorney, Thomas Nader, would be speaking.

**Attorney Tom Nader
5000 East Market Street, Suite 33
Warren, Ohio 44483**

Nader distributed copies of minutes to the board members; however, the board members already received them in their packets. Nader stated that it is the position of the Masternick's that the PUD that was approved by the Zoning Commission and the Trustees included a landscape buffer. He referred to the November 7, 2002, meeting where the preliminary plan was discussed. There were quite a few individuals that spoke at that meeting. Nader stated that the Zoning Inspector interprets the final PUD one way and the Masternick's interpret it another way. They are asking the Board to delve into the preliminary approval, some requirements that were made at the preliminary approval, and what changes were allowed in the final approval process, which took over a year later. In the preliminary, there was a great deal of discussion about the fifty-foot (50') buffer as well as a zone change between what was then agricultural, which became Villas Di Tuscany condominium development, and Tuscany Estates, which is a single home residential development. Nader refers to page 9 of the November 7, 2002, meeting minutes to a statement made by board member Ray Kashmiry. He then refers to a statement made by board member Jane Walsh in these same meeting minutes, and a motion made by her. Nader stated that the motion approved the preliminary plan with specific requirements in regard to the buffer. It was noted that the buffer is going to be between lots 73, 77, 78 (which is the Masternick's lot) and 79 (which is the lot to the right of the Masternick's) and noted that it will be a fifty-foot (50') buffer with landscaping and mounding. It is not just a twenty-five foot (25') spatial buffer, which is the minimum of the PUD requirements, but a very specific buffer. He stated this was approved by the zoning commission at this meeting.

Nader states that a year later at the November 6, 2003, Zoning Commission meeting there was no hearing actually held for this case. Bob Monus stated that the reason they were not holding the meeting for the final PUD plan was because the Township was waiting for the developer to submit the plan for the fifty-foot (50') buffer. It did not occur at this particular meeting because the developer was not present at the meeting and had not submitted the plans.

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Nader refers to the December 4, 2003, Zoning Commission meeting where the final plan is submitted. At this meeting, the Zoning Commission is comprised of several new members. Nader refers to a statement in these meeting minutes made by board member Connie Coloutes asking why not a fifty-foot (50') buffer and why the buffer was now twenty-five feet (25'). A discussion entails about why the buffer has been reduced from fifty feet (50') to twenty-five feet (25') and about the land being sold to the south. At this meeting the final PUD is submitted, and the buffer is reduced from fifty-feet (50') to twenty-five feet (25'). There is no discussion and there is no change under the requirement that this buffer would not be just a spatial buffer of twenty-five (25') but a visual buffer. There is no discussion at all and the final plan is approved.

Nader shows photos of the property to the board members and states there is not much of a visual buffer. There is no question of a spatial buffer, but given the fact of the lay of the land, it is not a visual buffer, which was a very specific requirement of the Zoning Commission in the preliminary plan, and had not changed, in the final approval.

Nader stated they are asking the Board to reverse the decision of the Zoning Inspector that the buffer is still a requirement.

Jim Burgham asks if anyone would like to speak in favor of this request.

John Masternick
7887 Via Attilio

Masternick thanked Monus for his time on this case. He stated that when Monus wrote the letter denying the request he walked the property and put a lot of time in this case. At the time there was full foliage on the trees and you could not see his house from the Villas and he could not see the Villas from his house. The picture that was shown to the board members was taken earlier in the day today with no foliage. Masternick referred to a villa that has a swimming pool in which he can hear swimming. He can see their TV at night. The streetlight shines in his window. He is requesting that the zoning ordinance that was passed granting the PUD be adhered to by the developer.

Dave Kosec
7428 Indian Trail

Kosec stated he was involved in the planning of this project but is not involved now. He stated he was questioned by the Masternick's about what the arrangement was and he said it was to be a twenty-five foot (25') mounded landscaped area for a buffer. He stated he was not part of the whole PUD process.

Jim Burgham asked Kosec if he was the same person that was referred to in the minutes. Kosec stated yes. He said he was asked to come to this meeting and state for the record what his knowledge of the meeting is. Kosec stated it was a fifty-foot (50') buffer but was reduced to a twenty-five foot (25') buffer after the property was sold to the homeowner.

Jim Burgham asks if anyone else would like to speak in favor of this request. No one responds. Jim Burgham asks if anyone would like to speak in opposition of this request.

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Dominic Marchionda
7886 Via Attilio

Marchionda stated that the summary of all the meetings need to be looked at. He stated that he was not happy with the original layout. They went with sixty (60) units in the same acreage and now have roughly forty-three (43) units. Approximately thirteen (13) units were eliminated to create more green space and a more natural setting. The road has not changed that much. The design was done by a landscaper and certain engineering changes were necessary to avoid wetlands and to adhere to drainage and sanitary issues. The changes that were made were made at the request of the Army Corp of Engineers.

Marchionda referred to the summary of meeting minutes at the November 7, 2002 meeting. He made note of a statement made by Leona Skavina that the open space remain in its natural setting. A statement was made at the same meeting by Ron Fagert that as long as the trees would stay, and they have that buffer, then that would be acceptable to him. Marchionda referred to another statement made by Ron Fagert that his main concern is for a natural buffer. Everyone continues to speak at this meeting of the natural setting.

Marchionda stated that he tried to leave as many trees as he possibly could. He stated that his excavator was frustrated because he was trying to leave that many trees. He stated that he cannot control what happens when there is a slight elevation change and trees start to die. He referred to the meeting minutes of November 7, 2002, of a statement made by Ray Kashmiry, to that effect that this would happen.

Marchionda referred to the November 7, 2002, meeting minutes of a comment made by board member Jane Walsh stating that the existing vegetation would not be cut down within a fifty-foot (50') buffer unless it is dead. He referred to the picture that Masternick presented to the board of his property and stated the brush that was cut down or eliminated was not done by him. It was done by the Masternick's. If it was still alive it was not to be cut. Marchionda stated that it was not his landscaper that cut the brush.

Marchionda referred to the December 4, 2003, meeting minutes to a comment made by Ron Fagert saying that he is purchasing the property from Marchionda and wants to purchase the additional twenty-five feet (25') of property. He then referred to a statement made by Bill Detoro reiterating the same thing. At that point, Marchionda stated they left the meeting with the understanding that the land would remain in its natural setting.

Marchionda stated that when the Zoning Commission has asked him to do something, he has complied. He stated he did tell the homeowners that they did not have to purchase the additional property. The only thing he could not promise them was that the PUD (meaning the association) would control the property, not him. He had no control if someone decided to put in a pool or a bocce court. He had no control at that point how the PUD association would handle it.

Jim Burgham asks if anyone else would like to speak in opposition of this request.

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**Hank Grover
8307 North Lima Road**

Grover stated he is the President of Western Reserve Land Consultants, which are the project engineers and surveyors for this project. Grover stated that one of the primary concerns with the neighbors that surround this project was the buffer zone. The buffer zone on the north side of the property was inadequate to visually buffer so landscaping was put in place. There was a large area on the south and west sides of this development that had a lot of woodlands. There was a lot of concern from the neighbors that a buffer was very important to them. There were a lot of wetlands in that area so they looked into seeing if they could put additional units off of the main roadway behind the ones that were there. Grover stated it was possible to do that but Marchionda wanted to work with the adjoining landowners and the solution was that he would sell them a portion of that property. Grover stated it was his understanding that when this agreement was made the woods that were there were going to remain. Grover stated that the fifty-foot (50') buffer was reduced to a twenty-five foot (25') buffer because there was not any necessity for a wider buffer with all of the natural buffer area, woods, and wetlands behind the condominiums. The buffer dictates where you can build or cut down trees on the PUD. Grover stated that the land that Masternick purchased was land within the PUD, which adjoins now and is part of his lot, and is where two building sites were proposed. Grover stated that if you are going to require a buffer of mounded landscaping different than the natural landscaping that is already there, then are you going to require Masternick to cut down some of his trees along that twenty-five foot (25') buffer within the PUD to create a mounded landscape area through the woods, across his property, in the same respect as Marchionda would do on the PUD property. That is still PUD property that has not gone through any zoning to eliminate it from the PUD. It comes under PUD restrictions. Grover stated that is another problem that would arise if the Board would grant the request to overturn the Zoning Inspector's decision. Grover stated that he feels everyone is satisfied with the decision of the Zoning Inspector and it is correct, proper, rationale and reasonable. Grover stated he requests that the Board not overturn the Zoning Inspector's decision.

Jim Burgham asks if anyone else would like to speak in opposition to this request. No one responds.

Bob Monus stated that he can explain to the Board how he arrived at his decision. Monus says that as Grover stated, he has been involved since the beginning of the project. As far as the four additional properties, the individuals that owned that property did not want the condominiums encroaching on their property. As a compromise, the Commission was looking to work with the developer and the residents requiring a fifty-foot (50') buffer, which at the time exceeded the zoning requirements. A twenty-five foot (25') buffer was required at the time. In the final plan, Marchionda reduced the density of the project, eliminating those units. The individuals who purchased that property were satisfied with the buffer. The final development plan reflected a twenty-five foot (25') buffer. As the meeting minutes reflect, there was a big demand to keep the natural buffering. Monus says that is part of what determined his decision. The four affected property owners currently own part of the PUD district. The PUD district has never changed. If you are looking to put buffering at the PUD district boundary as it was approved in the final plan, they no longer own that property. It is owned by the individual property owners. There are three additional property owners that were affected and are not present tonight voicing their

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concerns. Monus stated that Marchionda did the buffering requirements in the other open areas. Monus stated he felt that Marchionda met his obligation in terms of what the Zoning Commission set forth in what was approved in the final development plan.

Jim Burgham asked Monus if he saying that the natural buffer replaced the twenty-five foot (25') buffer. Monus stated that is correct. The fifty-foot (50') buffer became an issue because where the woods are now was supposed to be condominiums. Through working with the property owners, they agreed they would purchase that property to keep a natural buffering. Marchionda reduced the density of the project. The intent was to keep the natural buffer.

Jim Burgham asked if anyone else would like to speak in opposition to this request. No one responds. Jim Burgham asks if there are any additional comments to be made.

Attorney Tom Nader

Nader stated that is not what took place. Nader stated there was never any plan submitted to the Zoning Commission to build. There was a threat, as reflected in the November 7, 2002, minutes that says if you don't buy it, I will maximize the use of my land and will build. As what was referenced by Kashmiry in those minutes, who stated, "what is this option or alternative?" The alternative was to buy the land from us or we will build in your backyard. There was not anything magnanimous about not building there. As you can see from Western Reserve's plan, it is noted that it is wetlands. The people bought the property. There is nothing magnanimous about it. Nader stated he was the Plaintiff's (Masternick's) attorney and he had to sue the developer to buy the land because they refused to sell it. There was nothing magnanimous coming from the developer.

Nader stated that the Masternick's are asking for the buffer between the development and lot 78, which is the visual buffer that the Commission talked about. Even when they reduced it from fifty-feet (50') to twenty-five feet (25'), it is still a buffer. They weren't talking about a buffer at the original boundary line of lot 78 because you can see in the preliminary plan it is not part of the PUD, it is still agricultural. Holly Grant stated that on the map it does show it being part of the PUD. Holly asked Nader to clarify. Nader stated in the purchase agreement on the additional land, the Masternick's have restricted covenants that they are not allowed to cut, they will maintain, they will leave it in its natural state. This is on the additional PUD lands that they bought and the covenants are signed from the developer they purchased it from, DJD&C. Nader referred to the photographs of the property where you can see through the tree line. There is no visual buffer there. There is land but it is not what the Zoning Commission required. The Zoning Commission never revoked that requirement.

Al Franceschelli stated he was a zone commission board member during this time and he does remember the buffer was going to be only if the developer had decided to build the extra villas. Franceschelli stated that his interpretation is the developer decided not to do it, all bets are off, the Masternick's purchased the land, and now a problem has arose. They are looking to use the board as a scapegoat.

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Nader stated the Masternick's asked for a decision of the Zoning Inspector. The Zoning Inspector made a decision. They are required to keep their options alive by appealing the decision.

Nader went on to say that going from the minutes, they talk about a twenty-five foot (25') buffer. The twenty-five foot (25') buffer they talked about is shown on the preliminary plan. They are already anticipating selling that land to the additional homeowners. Even with that additional buffer, they still talked about the fifty-foot (50') buffer because perhaps they were not going to buy it. It was still on the length of line between the condominiums and the undeveloped wetlands, which is where the twenty-five foot (25') line is. Franceschelli stated at that time no one had purchased anything yet. He stated he believes the buffer was going to be on the existing property line.

Dominic Marchionda

Marchionda stated he takes offense to the fact that he threatened anyone. Stated he wanted to go on record that he did not threaten any of the property owners to purchase the land. He referred to the November 7, 2002, minutes. He says he made a statement that said he wants to make it perfectly clear that they do not have to purchase the property, and what they choose to do with it at that point will fall within the allowable zoning laws. He did not deviate that, he had no intention of deviating from the zoning laws; he had full intention to comply. He also referred to a statement that Franceschelli had commented on about the plans which noted; once the board went from the preliminary plan in 2002 (a then fifty-five (55) unit plan) which did adjoin up to the abutting property owners, Marchionda had done something more for the community than he had to by adding more green space.

Marchionda stated that as far as the comment that he forced the Masternick's to purchase the land; he did not want to sell the land. He stated the reason they ended up in court was because they went from a preliminary plan that they used as Exhibit A, which said approximately one acre of land. They held him to the exact footage and would not let him deviate, which was 8 1/2' on one side. Marchionda then finally said, this being his neighbor, he did not want the confrontation and if they wanted to buy the whole thing it was up to them. He stated he did not want to sell. He stated that his attorney and the magistrate at that meeting will attest to that. He did not want to sell the additional two lots. Marchionda stated he told Monus that whatever his requirement is and whatever Monus feels he needs to do, he will do. He feels he adhered to the requirement presented to him at that time. He stated it is a natural buffer, that is what the people asked for and that is what he gave them. Marchionda stated he did not force or threaten Masternick to purchase the land, it was his decision.

Jim Burgham asked if there was anyone else that would like to add some additional information.

John Masternick

Masternick referred to the map. Masternick stated that when he purchased the lot from Marchionda, someone else owned it. Marchionda sold it to him. He asked Marchionda what was going in the back of the property. Marchionda stated nothing, there might be some villas, but they will be way over there and you will never see them.

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Masternick referred to Hank Grover's comment about cutting down woods and planting trees. He stated he would not, according to the court mediated case. Masternick stated there is room on his back property line to plant trees because there is no natural buffer. He is asking for twenty-five feet (25') beyond that for some mounded trees to be planted.

Masternick referred to the photograph of his property. He stated that he could not see villas #8 and #9 from his property but Marchionda cut trees down on his property and now he can see those villas clearly. He would like some trees planted within the twenty-five foot (25') cleared area. He stated that the meeting minutes were clear in stating there was to be a twenty-five foot (25') mounded and tree buffering where there is no natural barrier. That is all he is asking for.

Dominic Marchionda

Marchionda stated that the twenty-five foot (25') buffer that Masternick referred to is a direct result of purchasing additional land, which he did not have to do. The buffer was to be twenty-five feet (25') from the rear of the existing property line.

Dave Kosec

Kosec stated the only intent was a screened buffer. The screened buffer was the intent of the original zoning commission. They did not want the density showing up. He referred to Mr. DeToro's house that was to be an example. The intent was to screen the density from the higher end houses. It was about a visual screen.

Attorney Tom Nader

Nader stated that the plan that the zoning commission was approving was not the zone change, they were approving the plan. The plan clearly sets forth the difference between the lots and where the plan was. The zoning commission approved the buffer along the line where the plan was, not between what was R-1 and AG that would be changed in the PUD, but what was in the plan; the buffer along the plan.

Jim Burgham asked what plan that is, and if the board has it. Burgham stated from the minutes it appeared there were two different plans and a year between the original and where the plan was revised. Monus stated they initially proposed condominiums right up against the property lines to buffer those neighborhoods, which is where they originally required the fifty-foot (50') buffer. When they came back, according to the minutes where Mr. Kosec says, "if we gave them the twenty-five feet (25') it gives them control back to the property."

Nader stated that with all due respect, this is the preliminary plan and it does not show any condominiums right up to the property line. Burgham asked if this is the original preliminary plan because the minutes reflect revised plans were brought back. Monus stated there were plans presented but where they are specifically (as far as which architect or draftsman has them) he does not know. Monus stated a highlight of those lots was due to the additional density. A year later they reduced the density, the homeowners agreed to buy the natural buffer that was there. That is what they wanted. They wanted to maintain the natural buffer.

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Nader stated that all the property owner can rely upon is the public record. All that the property owner can rely upon is the minutes of the zoning commission and what was approved.

Jim Burgham asked if there were any other questions. No one responds.

The Board then reviewed the Zoning Resolution of 2002.

The Board discussed the case and the following motion was made:

Motion

Holly Grant made a motion in Case ZA-12-08 to affirm the decision of the Zoning Inspector because the meeting minutes reflect that the intent of the Zoning Commission has been met with the amount of wooded area on the property zoned PUD. Bill Custer seconded the motion.

Voting:

Yes	Bill Custer
Yes	Holly Grant
Yes	Al Franceschelli
Yes	Jim Pluchinsky
Abstain	Jim Burgham

Motion carried.

The next meeting will be held on December 11, 2008.

Meeting adjourned at 9:27 p.m.

Submitted by:

Michele Richards/Recording Secretary

cc: Trustees (3)
Board of Zoning Appeals (7)
Zoning Commission (7)
J. Granitto (1)
File (1)