

**MINUTES OF A SPECIAL MEETING OF THE ZONING BOARD OF APPEALS OF THE
VILLAGE OF NORTH BARRINGTON HELD MONDAY MARCH 14, 2011,
AT 7:30 P.M. AT THE NORTH BARRINGTON VILLAGE HALL,
111 OLD BARRINGTON ROAD,
IN SAID VILLAGE**

1. Call to Order & Roll Call

At 7:40 P.M. Vice Chair Cifonelli called the Special Meeting to order and the Deputy Village Clerk called the roll:

Present in Person: Vice Chair John Cifonelli, W. Gene McAlester, Bryan McGonigal
and Paru Thondavadi
Absent: Chairman Warren Nass, Joe DiPino, Carleen Kreider,
Also Present: Village Attorney J.W. Braithwaite
Kelly Rafferty, Village Building and Zoning Officer
Mark Kolar, Village Trustee
Kris Lennon, Deputy Village Clerk
Nicole Keiter, Deputy Village Clerk
David Wilford, Vice Chair Plan Commission
Janis Menges, Plan Commission
Martin Pais, Plan Commission
Denis Taillon, Plan Commission
Janice Faulkner, 28272 West Savannah, Lake Barrington
John Rackow, 4207 Farmington Lane, Johnsburg
Mr. & Mrs. David Dastur, 513 Larkins Lane
Nick Capaccio, 640 Masland Court

2. Approve Minutes from the September 13, 2010 Meeting

The Minutes of the September 13, 2010 Meeting were made available to the Board.

Vice Chair Cifonelli asked the Zoning Board of Appeals if there were any revisions to the Minutes. There were none.

Motion: Vice Chair Cifonelli moved that the Minutes of the September 13, 2010 Meeting be approved; seconded by Bryan McGonigal.

Discussion: There was no discussion.

Vote on Motion:

The voice vote was unanimous in favor.

Vice Chair Cifonelli declared the Minutes of the September 13, 2010 Meeting approved and put on file.

Legal Notice

Vice Chair Cifonelli requested that a copy of the published notice of the public hearing be incorporated into record. Village Attorney J. W. Braithwaite asked if there were any new audience members from the previously public hearing meeting who had not been sworn in order that they may speak during any portion of the public hearing. It was noted that there was no one in new in the audience.

3. The following variations are requested in the petition submitted by Mr. John Rackow and Mrs. Janice Faulkner (heirs) for the property located at 195 Rainbow Road, North Barrington, IL 60010:

Vice Chair Cifonelli explained the variances to the code requested by Mr. Rackow and Mrs. Faulkner.

ZONING VARIATIONS NEEDED:

John Rackow and Janice Faulkner, petitioners, request a zoning variation to permit lot sizes of 1.94 acres and 1.93 acres, if the property is rezoned to the R-2 District, pursuant to a proposed two lot subdivision for the following legally described property:

The West 327 Feet Of The South 600 Feet Of Lot 2 Of The Southwest Quarter Of Section 19, Township 43 North, Range 10, East Of The Third Principal Meridian, In Lake County, Illinois.

Village Attorney J.W. Braithwaite explained that the Plan Commission officially closed their meeting at the September 13, 2010 joint Plan Commission/ZBA meeting however; the ZBA did not close their public hearing since a recommendation from the Plan Commission had not been provided due to remaining issues with surrounding property owners.

Attorney Braithwaite suggested that it would be appropriate to begin with the Plan Commission in an effort to obtain any updates. Attorney Braithwaite additionally thought that it would benefit both commissions to review the petitioners' request and to briefly allow audience members to address the Board in the event they had questions or concerns.

David Wilford, Vice Chair Plan Commission, asked the petitioners to address the Board.

Mrs. Janice Faulkner, 28272 West Savannah, Lake Barrington, and Mr. Jack Rackow, 4207 Farmington Lane, Johnsburg, (heirs) addressed the Board. Mrs. Faulkner stated that she met with Nick Capaccio, 640 Masland Court, and David Dastur, 513 Larkins Lane, at the Barrington Area Library on October 3, 2010 in order to discuss their intentions. It was noted that all residents who resided within a 250 foot radius of 195 Rainbow Road were invited to attend the meeting. Mrs. Faulkner explained that they reviewed their proposal, provided a plat of survey, and discussed proposed covenants, conditions & restrictions (CC&R's) as drawn up by their attorney. Mrs. Faulkner stated that during the meeting she informed the residents that they would agree to apply all of the CC&R's of the Pennington Ponds Subdivision with exception of those that were not

applicable. Certain covenants did not apply such as vehicular access to Rainbow Road and pond restrictions.

Mrs. Faulkner stated that an unsolicited offer was made to purchase their property by Mr. John Busse in November of 2010 however explained that she and her siblings are not in the position to suffer a loss on the property. She noted that her family has not been able to provide the proper care and attention the property requires and would like to see someone purchase the property and be able to provide the care it requires.

Mr. Wilford asked Mrs. Faulkner why she wants to subdivide the property and if she had consulted with a realtor about the difficulty of selling the property as a full parcel. Mrs. Faulkner stated that she had consulted realtors and understood that there is a greater economic gain if the property is subdivided.

Mr. Rackow added that a tenant is currently living in the house on the property; however, the condition of the house has deteriorated making it difficult to sell. It was noted that the house was built in 1934.

Mr. Wilford asked the petitioners if they had anything else to add. Mrs. Faulkner stated that their intentions to subdivide the property have not changed and would like to pursue the matter.

Janis Menges, Plan Commission Member, asked the petitioners if they would develop the lots themselves. Mrs. Faulkner stated that her family plans to sell the lots and not develop them. Due to a tenant living on Lot 1 where the existing home is, their plan is to sell Lot 2 and wait until the real estate market improves to sell Lot 1.

Mrs. Faulkner added that during the resident meeting at the library, there was concern whether Lot 1 would be able to support a 3,000 sq. ft. one-story home or a 3,800 sq. ft. two-story home, in the event that the current house was demolished. Mrs. Faulkner stated that Village Building and Zoning Officer Kelly Rafferty provided information that supports the construction of a one story 3,000 sq. ft. home and a 3,800 two-story sq. ft. home on Lot 1.

Attorney Braithwaite asked the petitioners to re-explain why they are seeking a zoning variation.

Mrs. Faulkner explained that they are seeking a zoning variation in order to permit (2) lot sizes of 1.94 acres and 1.93 acres. The total acreage is currently 4.5 acres. Zoning would be changed from an R-1 to an R-2 and they would deed the remainder acreage to the Village right of way.

Denis Taillon, Plan Commission Member, asked if the petitioners anticipated a future sale.

Mr. Rackow stated that they've consulted with realtors, who felt that the property currently falls below market price; however, have not had the property appraised. Mrs. Faulkner additionally added that it is not their intention to sell the property as one lot.

Attorney Braithwaite noted that one of the standards for re-zoning is that property cannot yield a reasonable return under the present zoning, which comes across in the petitioner's statements.

A further standard includes the nature of surrounding land uses and whether there would be any significant injuries to neighboring properties from re-zoning, if granted.

There was discussion about the square footage of the surrounding property owners' homes.

Martin Pais, Plan Commission Member, asked Attorney Braithwaite to clarify the Plan Commission's role in regards to the zoning matter. Attorney Braithwaite stated that the Plan Commission's role is to review the preliminary plat and either grant or deny the re-zoning matter. He added that the petitioners' request requires the Plan Commission to consider the proposed CC&R's because they are significant due to the neighbor's concerns. It was noted that CC&R's can be added to a final document such as the variation ordinance which is recorded with the county.

Nick Cappaccio, 640 Masland Court, addressed the Board and stated that the petitioners agreed to meeting all of the CC&R's of the Pennington Ponds Subdivision at the 10/3/10 residents' meeting; however, Mr. Cappaccio explained that the petitioners left out certain covenants within the Pennington Ponds CC&R's. Specifically #3, Restrictions to Use, "That there shall be no access for driveways on Rainbow Road"; and, that according to the Pennington Ponds CC&R's, an owner may not build on the 2nd lot, if a lot is subdivided. Therefore, the petitioners would not be able to build on a 2nd lot. Mr. Cappaccio agreed that the pond restrictions were not an applicable covenant as the property is not located on a pond.

Mr. Cappaccio commented that the appraised value for the reconstruction of his home is \$2 million and has concerns about what goes in his back yard. Mr. Cappaccio stated there has been no official documentation submitted on the value of the property located at 195 Rainbow Road.

Mr. Cappaccio questioned whether the Plan Commission or ZBA had a copy of the Pennington Ponds Subdivision CC&R's in order to compare to the proposed CC&R's. Mr. Cappaccio requested that the Plan Commission and ZBA gather all the facts in order to make an informed decision including an appraisal of the property.

It was noted that the approximate size of Mr. Cappaccio's lot is 2.48 acres.

Attorney Braithwaite explained that if relief is granted, it would be subject to covenants being placed on the land that are substantially compatible to the Pennington Ponds CC&R's. Attorney Braithwaite additionally explained that it is not the role of the Plan Commission to answer his questions, but to hear his concerns.

Ms. Menges inquired about the circulated petitions objecting to the proposed request. It was noted that the petitions were dated October 2010.

Mr. Wilford summarized Mr. Cappaccio's concern noting that Mr. Cappaccio is concerned that if the property is subdivided, less than adequate buildings would be constructed. Mr. Cappaccio concurred and used Kaitlin's Way as an example of a property that was not completed by the developer.

Mr. Wilford thanked Mr. Cappaccio for his comments.

Dave Dastur, 513 Larkins Lane addressed the Board. Mr. Dastur stated that he lives at the property directly north of 195 Rainbow Road and noted that he has “probably” the most unobstructed view.

Mr. Dastur stated that they purchased their house approximately 10 months ago with knowledge that the property located south of them could one day get developed; however, they purchased the property on the premise that it would remain one lot. Mr. Dastur noted that they preferred the lot to stay as one lot either as an R-1 (with a special use permit for the 4 acres) or as an R-2 (as a single lot).

It was noted that Mr. Dastur’s lot size is approximately 2.46 acres.

Attorney Braithwaite asked Mr. Dastur if there was landscaping on his property. Mr. Dastur stated that he does not have landscaping on the south base of the property and prefers the clear view across the back of his property.

Attorney Braithwaite asked Mr. Dastur, if the Plan Commission and ZBA chose to recommend the request to the Village Board, would a requirement of landscaping be helpful. Mr. Dastur noted that the landscaping would need to be approximately 20 feet high as his home is two-story. Mr. Dastur subsequently noted that there is an approximate 3 to 4 foot drop from the driveway to the property line.

Mrs. David Dastur addressed the Board. She stated that she did not want to be able to look into someone else’s windows if a new house is constructed. Mr. Dastur noted that their neighbors had a similar issue in that a house was built close to the property line of their neighbor’s house. He explained that he has concerns that a house would be built close in proximity due to the location of the property’s septic system and existing trees.

Mr. Cappaccio noted that he has a two story house as well, and has a view of the property from his 2nd story window.

Mr. Dastur presented a photograph of the view from his house via his lap top computer.

Mr. Wilford asked Village Building and Zoning Officer Kelly Rafferty to answer questions about the plat of survey, road access and house citing on the lots.

Village Building and Zoning Officer Kelly Rafferty addressed the Board and explained that preliminary engineering plans showing possible driveway locations to the proposed vacant Lot 2 were submitted to Village staff. In particular, the Village Engineer had no objections to the proposed location of the driveway as shown on the plans.

Village Building and Zoning Officer Kelly Rafferty added that in the event the existing home is removed from Lot 1 it can support the construction a one story 3,000 sq. ft. home and a 3,800 two-story sq. ft. home, easily.

Village Building and Zoning Officer Kelly Rafferty noted that the septic system serving the existing farm house was installed within the last decade.

There was further discussion between the Plan Commission and Mr. Cappaccio about the possibility of a shared driveway.

Mrs. Faulkner noted that it was her understanding that the issue surrounding driveway access was discussed at the resident meeting held 10/3/10 and that the proposed covenant applicable to the driveway issue was crossed off of the proposed CC&R's.

Attorney Braithwaite stated that as a matter of law and in interpreting what transpired at the resident meeting held 10/3/10, where the parties may have agreed to follow the Pennington Pond's CC&R's, the proposed covenants would legally apply to "those covenants which would applicable." Attorney Braithwaite noted that from a legal viewpoint, it would be difficult to apply the "no access for driveways on Rainbow Road" from the Pennington Pond's CC&R's to this particular parcel.

Mr. Dastur stated that the circulated objection petitions were initiated October 3, 2010.

There were a few questions by the Plan Commission addressed by Attorney Braithwaite.

Mr. Wilford noted his concern about approving the request in relation to the Village's Comprehensive Plan and setting a precedent.

Mr. Pais noted his concern about the type of homes that could be built with potential developer issues. Mr. Pais stated that he is in favor of adding CC&R's to the final document.

There were questions about the Village Comprehensive Plan addressed by Village Building and Zoning Officer Kelly Rafferty who noted that "The Village Code provides that subdivision of lands shall substantially conform to the official Comprehensive Plan of the Village. The subject property is located within Planning Unit Four of the North Barrington Comprehensive Plan. The stated Goals-Objectives for this area include that the established residential uses and permitted densities of one unit per two or more acres should be preserved".

Ms. Menges noted that there is a potential risk of not knowing what kind of homes would be built including the materials used.

Village Building and Zoning Officer Kelly Rafferty noted that there is a minimum house size requirement within the Village Code.

The Plan Commission voted on the matter. It was noted that the Plan Commission recommend the approval to grant the request rezoning from the R-1 District to the R-2 District and approval of the preliminary plat of subdivision subject to the grant of a variation after recommendation by the Zoning Board of Appeals and subject to covenants being placed on the property that are substantially similar to Pennington Ponds CCR's.

Janis Menges noted that Plan Commission is in need of additional members.

The Plan Commission adjourned during this portion of the meeting.

It was noted by Attorney Braithwaite that the Zoning Board of Appeals did not close their public hearing meeting held on 9/13/10 and it was necessary to ask if there was anyone in the audience who wished to speak.

Zoning Board of Appeals (ZBA) Vice Chair Cifonelli asked if there were any new audience members who needed to be sworn in. It was noted that there were no new audience members.

Vice Chair Cifonelli addressed the audience and asked if there were any audience members who wished to address the Board. It was noted that there were no audience members who wished to speak.

Vice Chair Cifonelli addressed the ZBA and the petitioners and explained that the ZBA typically looks at a petitioner's hardship in relation to the zoning variation request and whether there is a particular hardship involved. Vice Chair Cifonelli explained that the petitioners have proposed that the proposed lot has more value if the lot is subdivided which is the petitioners particular hardship.

Vice Chair Cifonelli noted that the ZBA had a copy of an offer to purchase the property by Mr. John Busse in their packet materials; however, Vice Chair Cifonelli noted that an actual appraisal was not submitted by the petitioners.

Vice Chair Cifonelli noted that the petitioners believe that the property is worth more subdivided and have gone through the expense and preparation to address the ZBA.

Vice Chair Cifonelli asked if there were any comments from the ZBA.

Paru Thondavadi, ZBA Member, addressed the petitioners and asked if they had a purchaser in mind to purchase the property. Ms. Thondavadi also noted that she did not understand why some of the audience members assumed that there would be a substandard developer. Mrs. Faulkner stated that they do not have a purchaser in mind.

Mr. Cappaccio commented that there is no way of knowing who will purchase the land. He noted that Zoning Board of Appeals members change and that's why there are strict ordinances and a Village Code.

Ms. Thondavadi stated that the Village can enforce Village Codes and Homeowner's Associations can enforce CC&R's. Mr. Dastur commented that the proposed lot(s) would not be located in their subdivision.

Attorney Braithwaite stated that there is an importance with the proposed CC&R's; that they would be comparable to the Pennington Pond's CC&R's if the variation is granted by the Village Board.

Attorney Braithwaite noted that it is the responsibility of the Village Building and Zoning Officer to enforce the CC&R's.

Vice Chair Cifonelli asked if it was the responsibility of the ZBA to incorporate the proposed CC&R's into the ZBA's recommendation to the Board. Attorney Braithwaite stated that the ZBA by reference, will refer to the CC&R's and recommend that the CC&R's be "subject to the covenants substantially comparable to the Pennington Pond's CC&R's.

Mr. Dastur asked who would enforce the proposed CC&R's if development begins. It was noted that the Village Building and Zoning Officer would enforce the CCR's and that the neighbors would not have input at the time the developer submits plans.

Attorney Braithwaite noted that the variation ordinance would reference the CC&R's which would be signed by the petitioners and recorded with the county. Subsequently, it would be a matter of record on the title.

Bryan McGonigal, ZBA Member, stated that his main concern is that the parcel would be subdivided into two non-conforming pieces of property which compromises the integrity of the Village. Mr. McGonigal added that another concern is that there are many surrounding neighbors who object to the subdivision as referenced in the objection petitions.

Gene McAlester, ZBA Member, commented that it appears that the proposed CC&R's are compatible with the Pennington Pond CC&R's. He further noted that the neighbors objecting to the variation request seem to object to the petitioners request to conform with the Pennington Pond CC&R's.

Motion: Vice Chair Cifonelli moved to close the Public Hearing Meeting; seconded by Bryan McGonigal.

Discussion: There was no discussion.

Vote on Motion

The voice vote was unanimous in favor.

Vice Chair Cifonelli declared motion approved and the Public Hearing Meeting closed.

Motion: Bryan McGonigal moved to deny the variation requests as submitted by Mr. John Rackow and Mrs. Janice Faulkner (heirs) for the property located at 195 Rainbow Road, North Barrington, IL 60010; seconded by W. Gene McAlester.

Discussion: There was some discussion.

Vote on Motion

By Roll Call:

Ayes:	Vice Chair Cifonelli, Bryan McGonigal
Nays:	W. Gene McAlester, Paru Thondavadi
Absent:	Chairman Warren Nass, Joe DiPino, and Carleen Kreider,
Abstain:	None

Vice Chair Cifonelli declared motion approved and noted that the ZBA has no recommendation.

Attorney Braithwaite explained that it would require four concurring votes for the ZBA to make a recommendation of a variation request to the Village Board.

Vice Chair Cifonelli stated the Village Board Meeting was scheduled for Wednesday, March 23, 2011 at 7:30 p.m.

Mrs. Faulkner stated that she could not attend the March Board Meeting and requested that their matter be postponed until the April Board meeting. Vice Chair Cifonelli stated that their request would be taken into consideration.

4. Adjournment

There being no further business to come before the Board, Vice Chair Cifonelli moved to adjourn the Public Hearing; seconded by Paru Thondavadi.

The voice vote was unanimous in favor.

At 9:10 p.m. Vice Chair Cifonelli declared the meeting adjourned.

These Minutes were approved by the Zoning Board of Appeals at a Special Meeting held February 13, 2012.

Attest: _____
Kris Lennon, Deputy Village Clerk