

Poolesville Planning Commission
Meeting of March 11, 2020

Mr. Bupp: On to New Business we have a Variance 002-19 for Romero, 16800 Budd Road, regarding the fence placement. Did everybody receive the email and have a chance to look through that?

All: Yes.

Mr. Bupp: Ok.

Mr. Maisel: Good evening, for the record my name is Josh Maisel (inaudible) here in Montgomery County Maryland and I originally took this property through the subdivision process to make it buildable for Francis Romero. The (inaudible) was kind of a weird (inaudible) that kind of makes me uncomfortable the way all of this went down and I don't want to throw anybody under the bus but I have got to present to you guys with some factual information. So I was not involved at all in the fence application at all. I saw the signs up, I saw the fence go up and I said wow that looks like a great fence but that is all I knew of it professionally. The builder for this project and I don't have a stellar background, I have been doing this for 25 years and there are not many builders that I would say bad things about. This builder is a scumbag on an epic level and I am serious. It is really discouraging (inaudible) our name and our reputation. If my name and reputation goes downhill because I am doing crappy work for people in the town that I live in, it is going to get back to me. So just to give you a little history with this builder, and some of you guys know I went to military school, one of the things you say to somebody when you are going to say something to them disrespectful and you're trying to play that you are not saying it disrespectful is Sir with all due respect I am going to ask

you a question, so the builder Jeff calls me up on the phone one day and says to me how did you get these plans approved and I said Sir I don't understand and he said there is a stream running through the front yard of this property and I said Sir that can't be, Montgomery County has laws in regards to stream buffers and waterways, I said are you sure you're not looking at the vegetative swale out front and he stuck with the stream and stuck with the steam and stuck with the stream and it got to the point that I had talked to this builder and I've done some research on him, he has been building for 25 years, 30 years also. I actually asked the builder on the phone if he knew how to read contour lines because a special swale needed to be constructed out here to divert the clean water away from where Frances wanted his house. Frances wanted his house where he wanted it, the work that I did was all by the rules and regulations, I didn't do anything illegal, I didn't do anything that screwed up the environmental ---, I didn't do anything inappropriate. I represented Francis like I represent all my clients and so I said to him, Sir do you ever read a plan, do you ever read ---- and he said to me, I think we are done here, and that was the end of our conversations. I never worked for him professionally, I never worked for the builder. So I get sucked into this by getting a phone call in the morning and it is the builder and he is telling me that all this stuff is hitting the fan and I said ok (inaudible) Frances, he just needs to provide the information, so while he is out doing whatever he is doing, Frances comes to my office, Francis tells me as the property owner exactly what he wants from me. He sits by me as I prepare this plan, or the first revision of the plan, and I submitted it, what happened was I submitted the plan to the Town and my application and the vendor without talking to Francis Romero the property owner, came in and prepared a plan and submitted it to the Town. So it created confusion, the Town Attorney,

the Town Engineer asked us to come in for a meeting. So then I find out this engineer, not the engineer, the builder is kind of operating on his own and is not representing the interest of my client and I haven't asked him for any help, my client has engaged me, he has professionally signed a contract with me, he wants me to present this information and this builder is still operating in his own world, representing his own view, and not representing his client. So we come in, we talk about all this, everyone shared the comment, I don't want to be disrespectful to people, It is not for me to operate in this profession, but these guys have taken Jon Shaincoe, he is my engineer, they have taken his plan and hand drafted where the fence was going to go on this and submitted it to the Town. As professionals we don't like to take other people's work and put our names on it without asking permission and (inaudible) their work, they are saying that this is not their work that it is my work now. None of that was done, nobody ever reached out to John to ask him permission, so I was talking to Jeff on the phone and I said Jeff where did these plans come from and he says I'm sorry I left those in my office but I can forward it to Seth, I said where did these plans come from? He says I have no idea maybe Jon Shaincoe prepared them and I said no, that is John's plan I know he didn't do that. So the buck passes, the buck passes, we come up here we have this meeting, I start doing my research, I got some emails, Jeff ordered Cass Engineering to prepare this and submit it for him. I can give you the emails, it has got all the employees names and everything. So the problem is, we have the builder out here operating by himself doing his thing, and then we have my client, Francis Romero that doesn't know what is going on and he doesn't understand the application process and I'm really uncomfortable saying this, English is a second language for him and I don't know if it is my hearing or what but we've had difficulties sometimes communicating ourselves

person to person. So I asked Francis to come into my office so I could understand him. I think what this boils down to is inappropriate, unprofessional work operating on his own, and English as a second language and Francis not knowing exactly what he was doing filling out the paperwork and applying for this and I think it just got convoluted with all these different people operating in different manners trying to achieve the same goal. The original application Frances submitted, and I'm sorry I left all this stuff at my office, --- was a zoning application, it was I think a wall check form or something and numbers got written down in the application that were like the setback area and he did the wall check, have you met the setbacks for the zoning, and that is what that area was for and then Francis came back and submitted the actual correct application, so where we have confusion is on the initial application that was incorrectly submitted and there are building restriction line setbacks and that information was entered in that. And all I can gather from that is that's how these fence lines were arbitrarily set up in the field. I put together the following exhibits, I think either Seth or John asked for it or our attorney. But what you are looking at here, I've laid out three fence lines here, I've got one fence line in blue which is as it stood today, I've got one fence line in green, that we are hoping to get approved with this application, and I have one fence line in red and that is where the fence is installed today, which --- the application as submitted from the first application and that is where all the misinformation comes from. So basically what we are asking to do is approving the green outline, Francis didn't know about the public utility easement, he didn't even know that he didn't own this parcel of land up since ---, so I --- him out and they staked out the whole boundary, not taking the PUE into consideration and Francis put up the fence on what he thought was his property line. And unfortunately that is where we are today.

Mr. Rivard: Josh you don't have advanced copies of this do you. I think what I recommended to the board is to remain everything as it is, with the exception of the yellow line, just so you know.

Mr. Maisel: Ok, I asked that my client be here and I don't know why he is not here so all I can do is advocate for him. Do you guys have any questions for me. I enjoy working for him and I love working in our Town, our Town is a great place to work, it sucks that that is his first taste of our town, is this experience with this builder.

Mr. Bupp: Who is the builder?

Mr. Maisel: I don't know the actual builders name, his name is Jeff, it is not going to come to me, but I am not impressed with them, I have been practicing for 25 years, there really aren't too many builders I have bad things to say about, everybody has problems building custom homes, nobody ends up happy at the end of that, but I think Francis should hire that legal team and go after something on this.

Mr. Bupp: From my perspective unfortunately anybody that Francis hires to me is Francis and our (inaudible) look out for the interest of the Town and it's residents as well, so I feel bad for Francis as well, that being his first taste of the Town but he hired the guy that is doing this to him.

Mr. Maisel: Yes Sir he did.

Mr. Bupp: If he'd asked you maybe he wouldn't have hired him right?

Mr. Maisel: Right.

Mr. Rivard: You all received an email yesterday and I showed Josh just now, the yellow line along Fisher Avenue is the only recommended change that was proposed to Staff and to keep it

really with the proposed location that was originally intended when the application was originally submitted. Fisher Avenue is probably the most noticeable location along the fence line, so they are proposing to move on Budd Road, they are proposing to move the fence back about 10 feet, I think that helps with the existing tree line there and then Tom Fox it is also right on the edge of a tree line, so again it is fitting within it's context along Tom Fox as well, they are both set back far enough that we wouldn't have road conflict issues or sidewalk conflict issues in the future. Just based off this, again there are non --- circumstances happen but seeing what we have I don't think it is detrimental in terms of what we have been shown other than along Fisher Avenue, or what has been installed on Fisher Avenue.

Inaudible question:

Mr. Rivard: Well there is an existing tree line in front of the fence line now, just to give you a little greater content location and sort of achieve a little bit of difference between what was anticipated, what is there now, and what they are proposing, so it gives a little more flexibility towards the intent of what was required originally but not meeting it by the circumstances. They are offering or removing the Budd Road by 10 feet and the thing almost on Fisher Avenue as well but Fisher is still prominent, it's the first thing you see, that should be moved back. So the applicant gets most of what they are requesting seems fairly reasonable, its not a situation where its like Fisher Avenue were so prominent, that is why I think we can live with the other two roads. I don't think there is an issue there at all. And there will be --- back anyway, they are actually moving all this.

Mr. Maisel: It has to all be moved, yes most definitely.

Mr. Rivard: So it is not like we are asking them to take down a section, they were moving it anyway.

Mr. Bupp: Josh you had a chance to look at the recommendations?

Mr. Maisel: I'm kind of confused, can I ask for a clarification. Are we saying everything on my plan except for --- then on Fisher we need to go back to the original 50 feet.

Mr. Rivard: That is correct, that is exactly what I have here.

Mr. Maisel: Thank you Sir.

Mr. Rivard: That is why we are going to copy the other with you.

Mr. Bupp: Did you have comments on that Josh?

Mr. Maisel: So Fisher Avenue 50 feet, everything else is as I proposed?

Mr. Rivard: As you proposed, absolutely.

Mr. Maisel: No Sir, and my client is not here.

Ms. Leichter: Ok that makes sense to me being 50 feet back or behind the tree line that is such an obvious spot right now. The other areas along Tom Fox, it is pretty well hidden already by the tree line so I think that makes sense.

Mr. Tims: Yeah I would agree with Seth's recommendations.

Mr. Radigan: Should we make a recommendation to the BZA?

Mr. Bupp: That is what we are doing right recommending to the BZA?

Mr. Rivard: That is correct, that is your role here.

Mr. Radigan: How would that be worded, I mean you don't want to word it like you recommend Seth's recommendation.

Mr. Rivard: Well you should recommend that the fence, what I would do is we recommend that we accept all the proposals except on Fisher Avenue, we move it back to the 50 foot as was originally anticipated.

Mr. Radigan: So moved.

Mr. Bupp: Is there a second?

Mr. Tims: Second.

Mr. Bupp: So we got a first and second, all in favor?

All: Aye.

Mr. Bupp: Motion carries.

Mr. Maisel: Should I revise the plan before the BZA hearing?

Mr. Rivard: I would revise it, just be clear and say here are the locations, you are not objecting to it, so and just bring it that night.

Mr. Maisel: Just bring it that night, ok.