

Item #17:
Village Planner Hogue



MEMORANDUM

TO: Village President and Village Board
 FROM: James M. Hogue, Village Planner
 DATE: November 4, 2010
 RE: Nonconforming Structures

Staff has recently encountered a situation in Country Club Estates regarding a proposed addition to an existing single family dwelling. The property carries with it the R-2 zoning district classification however, the site plan (and recorded plat) identify setback for the R-1 district (bulk regulations listed below). Furthermore, properties in the area have been developed to this standard as well.

	R1	R2	R3
Maximum building height (feet) ¹	35	35	35
Minimum lot area (square feet) ²	3 acres	2 acres	1 acre
Minimum yards and setbacks ^{3,4} :			
Front and corner side (feet)	100	75	50
Side (feet)	50	40	30
Rear (feet) ⁵	50	40	30
Conservancy area/scenic corridor	See footnote 5		
Maximum gross floor area ⁶	See footnote 7		
Maximum impervious surface coverage ^{7,8}	40%	40%	40%
Minimum spacing between principal and accessory buildings (feet)	20	20	20

The property in question contains 47,650 square feet of land area (1.09 acres) and is used for single family residential purposes. A blanket variation was granted allow lots sizes within the C.C.E. Subdivision to be reduced to 40, 00 square feet. A building permit was issued for the existing residence in March of 1973. A Certificate of Occupancy was approved in June of 1974. With the exception of the setbacks the property conforms to all other bulk requirements for the R-2 District including the addition to the residence as proposed.

Staff is considering this a non-conforming structure. As such, Section 5-10-4 of the zoning code is applicable.

5-10-4: NONCONFORMING STRUCTURES OTHER THAN SIGNS:

(A) Authority To Continue: Any nonconforming structure, other than a sign, that is devoted to a use that is permitted in the zoning district in which it is located may be continued so long as it remains otherwise lawful, subject to the restrictions in subsections (B) through (D) of this section and subsection 5-10-1(C) of this chapter.

(B) Repair, Maintenance, Alterations, And Enlargement: Any nonconforming structure, other than a sign, may be repaired, maintained, altered, or enlarged; provided, however, that no such repair, maintenance, alteration, or enlargement shall either create any new nonconformity or increase the degree of the existing nonconformity of all or any part of such structure.

(C) Moving: No nonconforming structure shall be moved in whole or in part, for any distance whatsoever, to any other location on the same or any other lot unless the entire structure shall thereafter conform to the regulations of the zoning district in which it is located after being so moved.

(D) Damage Or Destruction:

1. Not Within The Control Of The Owner: Any nonconforming structure, other than a sign, that is damaged or destroyed, by any means not within the control of the owner thereof, to any extent, may be repaired, restored, or replaced; provided, however, that no repair, restoration, or replacement shall be made that would create any new nonconformity not existing prior to such damage or destruction nor shall any repair, restoration, or replacement except in conformity with the applicable district regulations be made unless a certificate of zoning compliance is obtained and the repair, restoration, or replacement is actually begun within one year after the date of such damage or destruction and is diligently pursued to completion.
2. Within The Control Of The Owner: In no event shall any damage or destruction to a nonconforming structure by means within the control of the owner be repaired, restored, or replaced except in accordance with subsection (B) of this section; provided, however, that a nonconforming structure as defined in subsection (B) of the definition of "nonconforming structure" that is damaged or destroyed by means within the control of the owner may be repaired, restored, or replaced in the following circumstances:
 - (a) If damaged or destroyed to the extent of fifty percent (50%) or less of the gross floor area of such structure, such repair, restoration, or replacement shall not create any new nonconformity not existing prior to such damage or destruction; or
 - (b) If damaged or destroyed to the extent of more than fifty percent (50%) of the gross floor area of such structure, such nonconforming structure shall only be repaired, restored, or replaced in conformity with all applicable district regulations except for lot area.

This section of the zoning code allows non-conforming structures to continue and to be repaired, maintained, altered and enlarged as identified in "Paragraph B" be highlighted above.

As the proposed addition will be behind the established 50' front yard setback staff is making the interpretation that no new non-conformity is being created with the proposed addition and the degree of non-conformity is actually being slightly lessened as proposed improvements will be behind the established building line.

As there appears to be a large degree of non-conformity within the C.C.E. Subdivision this interpretation may apply to other properties within this development as well as other properties within the Village.

From: paula.kirlin@hkllaw.com
Sent: Thursday, October 22, 2009 11:56 AM
To: James Hogue
Cc: David Lothspeich; Robert G. Block; victor.filippini@hkllaw.com
Subject: 6852 RFD - request for building permit to construct addition in scenic corridor
All,

I received a call yesterday from the attorney representing the property owners of 6852 RFD, who applied for a building permit for construction of an attached garage within the scenic corridor easement on their property. Their attorney stated that his client obtained an updated plat of survey showing that the northernmost/rear portion of the house is only 5' from the 100' building line/border of the scenic corridor easement. He will request from his client a copy of that plat for our review.

The attorney suggested an alternative solution for the project, to-wit, construction of the garage outside of the scenic corridor easement, and connection of the house and garage with some sort of walkway (either elevated or at ground level). Vic and I concluded that this would still constitute construction of a man-made structure within the easement, but could be authorized via relief in the form of an interpretation of the PUD by the PCZBA, instead of a plat amendment. Of course that would still require notice to the other PUD owners, a public hearing, and an opportunity for the neighbors to be heard. But it would be simpler than a plat amendment.

I told the property owner's attorney that I would confer with Village representatives re: the proposed alternative. Our recommendation is that this topic be discussed during closed session at the upcoming 10/27 Village Board meeting.

Please let me know if you have any questions or need additional information.

Thank you,

Paula

Paula Kirlin | Holland & Knight

Associate

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David Lothspeich

From: Robert Scarnechia [rwscarnechia@yahoo.com]
Sent: Wednesday, November 03, 2010 11:57 AM
To: David Lothspeich
Cc: James Hogue
Subject: RE: Indian Creek

Thanks David, if it is helpful, the previous owner for almost 18 years, Paul Paterakis, agreed to come down and have a meeting with you and Mr. Hogue and myself to explain the spirit and original intent of the document showing limitations in the "footprint" of this structure. The intent was to force the house into a tear down so they could put a lake in Eleanor Estates property. I could also have a representative from the developer, Otrebla Estates, whom I bought the lot from next to me, explain the original intent of the document as well. I understand what the said document says and what the intention was at the time, but I do not believe the intent back then is still the intent of the Village at this day and age. Looking forward to your response in the near future.

Sincerely,

Robert W. Scarnechia.

From: David Lothspeich [mailto:lothsd@longgrove.net]
Sent: Wednesday, November 03, 2010 11:44 AM
To: Robert Scarnechia
Cc: James Hogue
Subject: RE: Indian Creek

Bob,

Sorry for the delayed review and response. I have not yet had an opportunity to review with Village Counsel but hope to have an answer back to you by the end of this week.

Thank you for your patience.

Dave

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From: Robert Scarnechia [mailto:rwscarnechia@yahoo.com]
Sent: Tuesday, November 02, 2010 3:16 PM
To: David Lothspeich
Subject: RE: Indian Creek

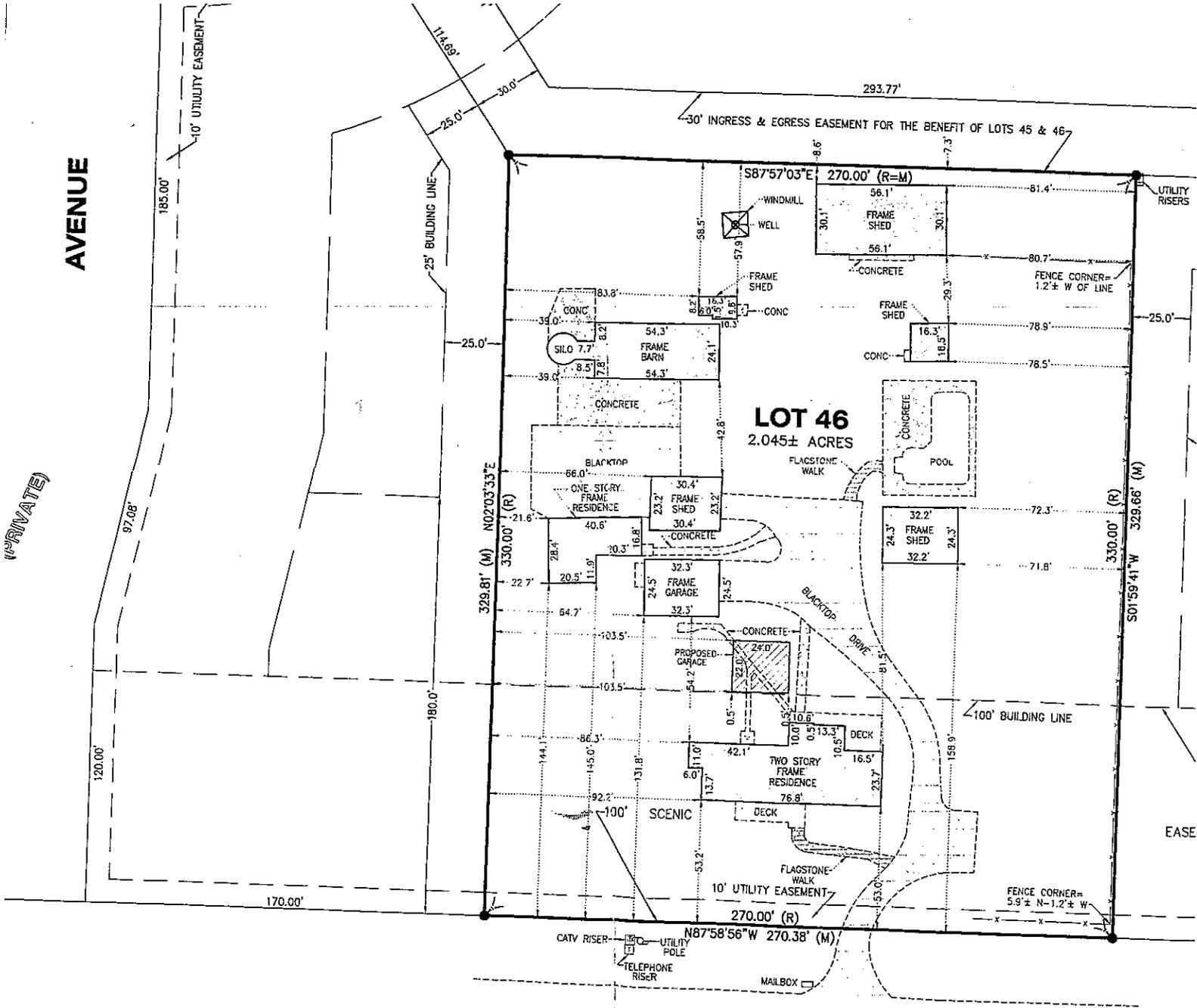
Hello David, just checking in, do you want me to come down to the Village Hall do discuss? Thanks for your time, Robert.

From: Robert Scarnechia [mailto:rwscarnechia@yahoo.com]
Sent: Thursday, October 28, 2010 1:25 PM
To: 'David Lothspeich'
Subject: Indian Creek

11/4/2010

AVENUE

(PRIVATE)



INDIAN CREEK ROAD