

Item #3:
Referrals To The PCZBA:
Agricultural Permitted Uses;
B1 Permitted Uses; and
Minimum Front Yard Setback(s) For Residential/Non- PUD Properties.



MEMORANDUM

TO: Village President and Village Board
FROM: James M. Hogue, Village Planner
DATE: April 19, 2010
RE: 2010 Zoning Code Amendments – Agricultural Uses; B-1 Permitted Uses; Minimum Front Yard Setbacks Non-PUD zoned properties.

Staff is requesting the Village Board consider referral of text amendments to the Village Code to the PCZBA for the following;

- A. Agricultural Permitted Uses;
- B. B1 Permitted Uses; and
- C. Minimum Front Yard Setback(s) Requirements For Residential/Non-Planned Unit Development (PUD) Zoned Properties.

Agricultural Permitted Uses; As the Village Board is aware ordinance violations had occurred on property located at 5161 Aptakisic Road for a number of years. The violations could not be resolved and eventually the violations were taken to court for trial. Ultimately the judge decided against the Village in the case.

As part of the ruling against the Village (see March 25th memo from the Village Prosecutor; attached) the judge noted that the Village Ordinances did not adequately define “landscape business” and that processing of much on the property was a “natural process” relating to the growing of crops.

The prosecutor suggests the Village consider ordinance amendments which clearly define what the growing of crops consists of and better definition of what constitutes as landscape business. This amendment would be created to address these “loopholes” as identified through the ordinance violation process.

B1 Permitted Uses; Staff has been approached with a proposal for professional offices and a retail sales component for a property located within the B-1 Historic District. The professional offices are a permitted use the retail sales component (cabinetry and hardware sales) are not specifically identified as a permitted use in the B-1 Historic District. A text amendment has been suggested as the best solution to this issue.

Furthermore, given the number of vacancies in the downtown area and relatively limited number of

permitted uses in the district, consideration be given to all uses on the B-1 District and an amendment be considered to allow additional uses in an effort to reduce vacancies and promote more retail activity within the downtown district.

Minimum Front Yard Setback(s) Requirements For Residential/Non-Planned Unit Development (PUD) Zoned Properties: Staff has also been approached with a request for a building addition in Country Club Estates. Country Club Estates is zoned "straight" R-2. A blanket variation was grant for the entire subdivision which allowed lot area as small as 40,000 square feet and a variation to allow lots adjacent to the golf course to have a front yard set-back of 30 feet. In other areas of the development the 30 setback has been followed as well.

In order to allow for consistency in development staff is suggesting that in instances where development has occurred and a front yard setback has been established at a distance less than that required by the underlying zoning district that a provision be made to allow administrative relief to be granted to the established setback line.

This would not apply to PUD's however as setbacks are established on the final plat of subdivision which is part of the final approval ordinance.

No specific language has yet been drafted with regard to these topics. If the Village Board should so choose refer the amendments to the PCZBA staff will begin the process of creating the exact language for such amendments for consideration by the PCZBA.

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March 25, 2010

Victor P. Filippini
Holland & Knight
131 South Dearborn Street
30th Floor
Chicago IL 60603

**Re: Village of Long Grove v. Aaron Goldin/Glenwood Tree Experts
08 OV 5830**

Dear Vic:

Dave Lothspeich has asked me to contact you regarding a recent trial for ordinance violations which the Village of Long Grove filed against Aaron and Helen Goldin and Glenwood Tree Experts. The Goldins own property at 5161 and 5163 Aptakisic Road. They have leased a substantial portion of the 12 acre parcel to Jim Seckleman, who owns Glenwood Tree Experts and The Mulch Center, located at 21457 Milwaukee Avenue, Deerfield, Illinois. For the past several years there have been complaints about illegal landscaping businesses operating out of the property, including the storage of inoperable vehicles and equipment. The village planner and myself had previously sent letters in 2005 and 2006 to the Goldins advising them of these violations and asking them to cease the illegal business and the storage of vehicles and equipment. Mr. Seckleman responded to those letters, on behalf of the Goldins, and indicated he would correct the violations, which he did.

In 2007, the Village began to receive complaints about the dumping of landscape waste on the property and heavy duty machinery operating on the property. However, every time the Lake County Sheriff's Office was notified, they never found such equipment upon their arrival. When Dave Lothspeich, Bob Block or Jim Hogue visited the property they only found mulch that had been spread around the property. When they contacted Mr. Seckleman he indicated that he was growing pumpkins and using the mulch as fertilizer to improve the soil quality.

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In June of 2008, the Village again received complaints of heavy equipment operating on the property. When Jim Hogue responded to the property he found semi-tractor trailers being loaded with mulch and large piles of mulch on the property. A further investigation showed that Mr. Seckleman was piling the mulch on the property so that it would decompose into organic matter which could be turned into the soil to improve the soil quality. In order to collect this organic matter, the piles of mulch were sifted through a screening device on the property. The organic matter which was filtered through the sieve was turned into the soil. The remaining mulch was hauled off site to The Mulch Center, where it ground further and resold as mulch at The Mulch Center.

Mr. Seckelman was cited for operating a landscape business in an R-1 zoning district, for operating a landscape business in an R-1 zoning district without a special use permit for expanded agricultural use, and operating a landscape business without a business license. The Village engaged in extensive settlement discussions with Mr. Seckleman and his attorneys in hopes of reaching an agreed order which would limit the activity on the property. Mr. Seckleman's attorneys argued that their client was merely "growing crops", which is permitted in an R-1 zoning district. The Village agreed that he could grow crops in an R-1 zoning district, but that the process of storing piles of mulch on the property for months at a time while the organic matter was being created through decomposition of the mulch far exceeded the growing of crops. Specifically, the Village objected to the mulch being screened into organic material while the waste mulch was hauled off the property and resold at The Mulch Center. The Village's position is that the processing of the mulch and subsequent sale through The Mulch Center, although ancillary to the growing of crops, constituted a commercial landscape business in violation of the Village ordinances.

As we were unable to resolve the matter by way of an out of court settlement, the case proceeded to trial before Judge Scully in February and March of 2010. The evidence at trial was as I have outlined above. Mr. Seckleman brought in soil experts who said the soil had been improved by adding the organic material to the soil. What was also evident at trial, through the testimony of the expert witnesses, was that the initial attempts to improve the soil quality by merely spreading mulch over the soil and tilling it into the soil was not very efficient at improving the soil quality. The experts testified that piling the mulch in big piles and letting them "cook" for several months created a rich organic matter that was better for the soil than the raw mulch alone. This probably explains why Mr. Seckelman began piling up the mulch in 2007 and 2008 after having been turning the raw mulch into the soil for several years.

On March 17, 2010, Judge Scully ruled that the piling of the mulch to "cook" to create this organic material was a natural process that improved the soil quality. He couldn't find the process of creating this organic material was not part of "growing crops" as is referenced in Section 5-3-2 of the Village Code. He also found that the Village ordinances did not adequately define "landscaping business", so he could not find that Mr. Seckelman was operating a landscape business without a special use permit for an expanded agricultural

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use or without a business license. Thus, he found Mr. Seckleman not guilty of the ordinance violations.

As the Village has said all along during this litigation, it has no objection to Mr. Seckleman adding fertilizer, either chemical or organic, to improve the soil quality on the property. The Village went so far as to say that he could bring such "finished" material onto the property for soil conditioning so long as it was promptly turned into the soil. What the Village, and surrounding neighbors, were objecting to was the process of creating this organic material by stockpiling mulch on the property so that it could "cook" down into organic material. During the sifting process neighbors complained about the noise and smell from the mulch being churned and sifted. Further, by selling the waste mulch at The Mulch Center, Mr. Seckleman was using the residential property as part of his commercial business, in violation of Village ordinances.

After the trial, I spoke to Dave Lothspeich and Jim Hogue as to how we can prevent this type of activity in the future. We discussed two possible solutions that would require amendments to the Village ordinances. First, Section 5-3-2 should be amended to more clearly define what "growing of crops" consists of. Specifically, the ordinance should list what activities are considered as acceptable ancillary activities to the growing of crops. Second, Section 5-9-10 should more clearly define what is a "landscape architect" and "landscape contacting".

Dave Lothspeich indicated he would be speaking with you about these possible amendments to the Village ordinances. I wanted to give you the background of the matter for you to better understand why these change are necessary. If you would like to discuss this further, please feel free to contact me.

Sincerely,

SMITH & LaLUZERNE, LTD.


Lawrence R. LaLuzerne

LRL:sd

cc: David Lothspeich

October 1, 1962

10/1

Mr. Gilbert Smith, Chairman
Zoning Board of Appeals
Village of Long Grove, Illinois

10/2/62 8:10 PM

Gentlemen:

The undersigned hereby make application for the following variations of the Long Grove Zoning Ordinance in respect to the property described in Exhibit "A" attached hereto:

1. Variation to allow the subdivision of subject property into lots containing 40,000 square feet of land area.
2. Variation to allow the subdivision lots adjacent to the proposed golf course to have a front setback line of 30 feet.

Attached hereto is copy of the final preliminary plat of the proposed subdivision.

Also enclosed is check in the amount of \$100.00 which we understand is the required filing fee.

Sincerely yours,


Owner


Contract Purchaser

October 26, 1962

Mr. Murray R. Conzelman
Bunyard, Behrens, Conzelman & Lewis
301 Washington Street
Waukegan, Illinois

Re: Roy C. Anderson, Zoning Variation
(Long Grove Country Club Estates)

Dear Murray:

For your information we held our Zoning Board of Appeal meeting on this matter last Wednesday, October 24, 1962 at the Kildeer Countryside School. All members of our board were present, and we had our regular stenographer take shorthand notes of the proceedings.

At least 20 neighbors were in attendance, and the matter of the variation was presented verbally by the owner, Roy C. Anderson, and by Robert J. Anderson, the Palatine realtor who plans to develop the subdivision. Bob Coffin also testified as to some of the background in this situation.

The board then unanimously voted in favor of recommending that the requested variations be allowed.

The following findings of fact were made:

- (1) That the requested variations would not alter the essential character of the locality;
- (2) That the property in question could not yield a reasonable return if the variations were not permitted;
- (3) That there was a particular hardship if the variations were not approved;
- (4) That the granting of the variation would not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood.

Mr. Murray R. Conzelman

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October 26, 1962

There was a feeling on the part of the board that this request more properly could have been handled by an amendment to the zoning ordinance, but since it was your opinion as our counsel that the matter be taken via the route of variations by the Zoning Board of Appeals, we proceeded to handle the hearing along those lines.

Please let us know if there is anything further you need from us in order to proceed with the drafting of the necessary zoning ordinance.

Sincerely,

Gilbert A. Smith
Vice President
and Trust Officer

GAS:dg

cc: Mr. Robert Parker Coffin
President, Village of Long Grove

Mr. Roy G. Anderson

Long Grove Planning Commission
Attention: Mr. Milton Wingquist