



Planning and Economic Development

Ed Anzek, AICP, Director

From: Ed Anzek, AICP
To: City Council, Mayor
Date: 7/26/2011
Re: Tree Variance Request – Howard Elandt – Mill Race (Private Street)

History

In February 2006, Howard Elandt took title of a parcel of land located at the end of a private street known as Mill Race. Mill Race is located west of and off Washington Road. The parcel in question contains 10.25 acres and is irregularly shaped. The parcel is bounded on the south by a wide Consumer's Energy Transmission Easement. Mr. Elandt has been pursuing the "splitting" into 4 smaller lots ranging in size from 2.00 to 3.131 acres. "Splitting" is a commonly used term for dividing a parcel into no more than 5 parcels total; or stated another way one can split an original parcel and create 4 additional parcels with the remainder of the original being the fifth parcel. All parcels must meet the lot standards of the Zoning District in which they are located.

Background

As Mr. Elandt applied for the sub-dividing staff reviews would recommend denial. As the Tree Conservation Ordinance (TCO) was applied it was determined that the 37% tree preservation requirement for single-family developments could not be met. The City's Tree Conservation Ordinance in Sec 126-327; states"

"In addition to other requirements of this article, there shall be compliance with the following requirements in all one-family residential developments which, as proposed, will result in two or more lots or building sites through land division, subdivision, or condominiums."

The proposed splitting is a Land Division and the tree preservation requirement of 37% applies to the site since it has not been platted prior to the TCO being enacted in 1988.

There are many facts and pertinent issues associated with this site. They are:

- Of the 10.25 acres about 2 acres is a wetland and is located in the southwestern part of the current parcel.
- The site has a steep slope that runs in a northerly line adjacent to the wetland and continues north.
- The entire site is heavily wooded.
- The trees in the wetland area are primarily Ash trees. Note: about 6 years ago (probably shortly after the Tree Survey was conducted on this site) the city discontinued counting/recognizing Ash trees as a tree to be preserved/counted since it was known that the Emerald Ash Bore infestation was 100% fatal to Ash Trees.
- The remainder of the site is the remnants of a tree farm with pines and spruces planted about 10 feet apart intended for harvesting once the tree would grow to 6 to 8 feet. Today the trees stand about 60 feet high with only the tops having any branches. The bottoms are "spikes" coming out of the trees where branches have broken off due to the lower portions dying. It's a natural process with coniferous trees; especially when planted too close prohibiting light and air getting to the lower branches as they grow.
- The land is zoned RE Residential Estate. That Single Family designation requires a lot size being a minimum one acre and a lot width of at least 120 feet. However, the front, side and rear yard setbacks are equal to those of the R-1 and R-2 Districts (40, 15 and 30 feet respectively).
- The City, by history and standard process, requires that any tree located within the "building envelope" be counted as a lost tree and subject to replacement costs. No tree could be considered preserved within the envelope as history showed most were lost, damaged beyond recovery, or removed during construction. Any trees within the front yard setback were also counted as trees to be lost due to water/sewer lines, driveways, and sidewalks. In this situation there are no water and sewer issues as this area is not served and the homes would be built with well and septic tank. In addition, if a proposed lot is significantly larger than the minimum required, the building envelope increases significantly as well. Staff does not have any means to increase setbacks nor can a "developer" self impose larger setbacks as that becomes a civil matter and not enforceable by the city staff. In this situation a 2 acre lot has about 90% being calculated as a building envelope.

- At one time there was discussion about the use of a Tree Conservation easement to protect the required number of trees to be preserved. However, at that time the city was becoming aware that the use of Conservation Easements was not meeting the objective and was being encroached upon. As such Mr. Elandt was advised that this Preservation/Conservation Easements was not a desirable solution.
- The establishment of a public park (and using the land area for meeting the 37% tree preservation) would require the street be converted into a public street. Mr. Elandt does not control the street. The subsequent owners would be part of the entity that owns and maintains the private street. A private park would be similar to the self policing issue of a Conservation easement. Currently there are 11 homes that use the private street. There is one home that accesses Washington Road and the private street easement is partially on their property. Mr. Elandt's splitting into 4 parcels would add 4 users of the private street.

In a meeting this spring Mr. Elandt requested what courses of action were available to him. He had previously been advised that payment for lost trees would be required. Mr. Elandt offered that he believed that the manner that the ordinance was applied worked against the desire to have large lot developments. During that meeting it was suggested that if he believed he was dealing with a hardship there were provisions to seek relief by requesting a Variance from the Tree Conservation standards. Mr. Elandt has elected to pursue a Variance.

The following is from the Tree Conservation Ordinance.

DIVISION 2. VARIANCE

Sec. 126-296. Authority.

The City Council may grant a variance from this article when undue hardship may result from strict compliance. (Code 1976, Sec. 4-12.16.01)

Sec. 126-297. Notice.

- (a) *Adjoining property owners.* The city shall send notice of a request for a variance from this article by regular mail to the owners, according to the city's tax roll, of all property immediately adjoining the property for which the variance is requested, including property directly across public rights-of-way and easements.
- (b) *Timing and content.* The notice shall be sent at least seven days before the meeting at which the City Council will consider the variance request and shall include a statement that interested persons may examine the application for a variance at the planning department. (Code 1976, Sec. 4-12.16.02)

Sec. 126-298. Conditions

In granting any variance from this article, the City Council may prescribe conditions that it deems necessary or desirable for the public interest (Code 1976, Sec. 4-12.16.03)

Sec. 126-299. Findings

No variance from this article shall be granted unless the City Council finds as follows:

- (1) There are special circumstances or conditions affecting the property such that the strict application of this article would deprive the applicant of the reasonable use of his land.
- (2) The variance is necessary for the preservation and enjoyment of a substantial property right of the petitioner.
- (3) The variance will further the objectives and policies of this article, this Code, the zoning Ordinance in Chapter 138, and the Master Land Use Plan. (Code 1976, Sec. 4-12.16.04)

Accompanying this report is the Certificate of Survey and an aerial from 2010.

Summary

In the cases where a variance is requested whether it be a matter before the ZBA or the City Council staff does not offer a recommendation.