

CITY OF KIRTLAND  
PLANNING AND ZONING COMMISSION

MINUTES OF THE MEETING  
DECEMBER 9, 2019

The meeting was called to order by Chairman Michael Denk at 7:11 p.m. Present were Commission members Richard Blum, Michael Denk, Rick Loconti and Joseph Vinciguerra. Richard DeMarco was absent.

Also present were Mayor Kevin Potter, Law Director Daniel Richards, City Engineer Philip Kiefer, Zoning Inspector Wayne Baumgart, Council President Richard Lowery and Councilman Joseph Smolic.

MINUTES OF THE NOVEMBER 12, 2019 WORK SESSION

Mr. Blum moved to approve the minutes as presented, with the second by Mr. Vinciguerra. Upon roll call vote, the motion passed 3-0-1 (Ayes – Blum, Vinciguerra and Denk; Nays – None. Abstaining - Loconti).

MINUTES OF THE NOVEMBER 12, 2019 MEETING

Mr. Blum moved to approve the minutes as presented, with the second by Mr. Vinciguerra. Upon roll call vote, the motion passed 3-0-1 (Ayes – Blum, Vinciguerra and Denk; Nays – None. Abstaining - Loconti).

PUBLIC SESSION:

PUBLIC REQUESTS

Aaron Godwin – Application for Conditional Use Permit for Solar Energy Equipment at 10299 Longview Drive

Aaron Godwin was present in this regard. Chairman Denk noted that the application is for the installation of a solar electric system on the south roof of the house, including a variance for the rear roof requirement. Chairman Denk acknowledged receipt and reviewed a memo dated December 2, 2019 from City Engineer Philip Kiefer. Mr. Kiefer noted in his memo that to optimize performance, the solar panel array is proposed for the front roof of the house because it is south facing. It was noted that the house is 230 feet from the road and obscured by trees in the front yard. Mr. Kiefer noted in his memo that there are no engineering concerns. Mr. Denk noted that a structure evaluation is included with the application documents; Mr. Kiefer noted the importance of the Commission receiving this evaluation.

Mr. Godwin stated that the equipment is aluminum and stainless. Mr. Godwin stated that the structure evaluation is required by the County for the building permit. He noted that the panels add only 2.3 lbs. per square foot and will actually improve the structural integrity of the roof; the evaluation requirement adds approximately \$250 to the cost of the project and serves no purpose.

With regard to snow load, Mr. Godwin stated that the panels are more likely to shed snow than a regular roof. Mr. Godwin stated that the ordinances often create a burden for renewable energy that is not comparable to other energy uses. He noted that the City's ordinance treats a wind turbine in much the same way as a solar array, and a ground mounted array is treated the same as a roof mounted array. Mr. Godwin stated that he has never heard of a conditional use permit being required for renewable energy uses. He noted that solar panels are often reviewed by an architectural review board in other cities.

Mr. Denk advised that the City does not have an architectural review board. Mr. Denk inquired if there is any benefit to placing solar panels anywhere other than the south facing roof in this area of the country. Mr. Godwin stated that it would not be good to place them on the north facing roof, and that a percentage is lost when placing the panels on the east and west roofs, approximately 25 to 30 percent. He noted the percentage increases if there are other obstructions. Mr. Godwin stated that he believes the City's ordinance needs to be reviewed, noting that there is some redundancy due to the County Building Department requirements. He stated that the types of renewable energy should be separated.

Mr. Vinciguerra inquired if the finish will be non-reflective. Mr. Godwin stated that the panels are black on black; they are attractive and non-reflective. He noted that his property value will increase once the panels are installed.

Discussion ensued regarding functionality of the panels if they are placed on other than the south facing roof. Mr. Godwin noted that the roof, the type of panel and the seasons also affect the functionality. He stated that placing the panels on the north roof will result in approximately a 60 percent loss; and placing them on the east and west roof will reduce functionality by at least 15 percent, but it will be greater if panels are not on both the east and west.

Mr. Loconti stated that he does not believe the panels will improve the aesthetics of a house that was designed architecturally. Mr. Loconti stated that he is not in favor of giving a variance to a requirement in a new ordinance that had a great deal of consideration when it was written; and he does not believe the applicant has proven it would be a hardship to put it on the north facing roof. Mr. Loconti stated that he does not see a need for this to be a conditional use. Mr. Loconti stated that several communities have the same requirements relating to keeping the panels off the front facing roof.

Mr. Godwin stated that his house is barely visible from the road, and the neighbors will not see the panels. With regard to a hardship, Mr. Godwin said the project would never reach payback if the panels are placed on the back. He stated that if placed on the rear roof, the winter sun will never reach the panels, and in the summer it will be based on the slope of the roof. Mr. Godwin said it would be an incredible hardship to force the placement of the panels on the rear facing roof. He stated that the Federal tax credit is sunsetting at the end of this year from 30 percent to 26 percent.

Mr. Smolic inquired how much percentage of efficiency loss would be considered a hardship. Mr. Godwin stated in his situation he would lose approximately 75 percent efficiency by placing the panels on the rear roof. Mr. Loconti questioned the criteria for granting a variance.

Mr. Vinciguerra noted that the ordinance reads that solar energy equipment shall be located in the rear portion of a property or on a side or rear facing roof, or in the least visibly obstructive location where panels will be functional. He noted that Mr. Godwin is stating that the panels will not be functional on the rear facing roof; therefore he questioned the need for a variance. Mr. Blum stated that he does not believe a variance is needed, noting that the ordinance was written to allow for consideration of the functionality.

Noting that he was on City Council when the ordinance was adopted, Mayor Potter stated that the intent was that the ordinance would be sufficiently open ended for a situation such as this one. The Mayor noted that if that intent is not clear, the ordinance needs to be clarified.

Discussion ensued, and Mr. Denk noted that this is the first application under this new ordinance.

Council President Lowery stated that as chairman of the committee reviewing this ordinance, he was adamantly opposed to stating in the ordinance that solar equipment cannot be placed on the front roof. He noted that there are houses in Kirtland where the back of the house faces a street. Mr. Lowery noted that the language “or in the least visibly obstructive location where panels will be functional” was added to address this type of situation. Mr. Lowery stated that houses are positioned in different ways and at different angles.

Mr. Loconti stated that it is important to protect the architectural integrity of the home. He stated concern about granting a variance and setting a precedent, noting that the applicant has not demonstrated a hardship.

Discussion ensued with regard to the functionality of the panels relative to the placement on the roof. Mr. Loconti stated that “street facing panels” is typical language in many ordinances that restrict the placement of the roof panels.

Mr. Godwin pointed out that there is nothing in the ordinances that would prevent someone from putting their air conditioning unit in front of the house.

Mr. Lowery inquired about repairing the roof underneath the panels in the future. Mr. Godwin stated that the panels are warranted for 25 years, and the panels protect the roof underneath. He stated that problems may occur on the shingles around the edges of the panels, but it is possible to repair that area without removing the panels. Mr. Godwin stated it is customary to only install roof panels on a newer roof.

There were no comments or questions from the public in regard to this request.

Upon further discussion, Mr. Vinciguerra moved to approve the conditional use permit to install the solar panel array at 10299 Longview Drive, with the change to the application to remove the language requesting a variance for the rear roof requirement. Mr. Richards stated that the conditional use permit cannot be granted unless the variance is approved to permit something that is not allowed in the code. Mr. Richards stated that the Commission must determine whether there is a need for a variance, and the Commission must look at the evidence presented before granting a variance on the basis of practical difficulty; it must be determined whether it will be harmful to another property in the area.

Mr. Richards noted that the functionality may be a factor, and there was a necessity for a relief valve in the ordinance. Mr. Richards stated it is the Commission's job to determine whether the practical difficulty has been demonstrated by the evidence provided. Mr. Richards stated that, based on tonight's discussion, there may be need for review and amendment to the code. He stated that the application before the Commission is for a conditional use permit and a variance, and it specifies the variance that is required. Therefore, Mr. Vinciguerra withdrew his motion, noting that he does not understand the need for a variance based on the language in the code.

Mr. Denk stated that the code may need to be amended to clarify the intent. Discussion ensued regarding the conditional use requirement of the code, and whether or not a variance is required in order to grant the conditional use permit. There was discussion regarding variances in general. In response to questions from the Commission, Mr. Richards stated that the Commission will have to make a determination regarding whether a variance is necessary in this particular situation.

Upon further discussion, Mr. Vinciguerra moved to approve the conditional accessory use and grant permission to install a solar panel array on the south roof of the existing house at 10299 Longview Drive, without conditions and without a variance; it was determined that an application for variance is not necessary because it will be placed in the least visibly obstructive location where panels will be functional, in accordance with Section 1468.05(c) 8. B. Mr. Loconti provided the second. Upon roll call vote, the motion passed 4-0 (Ayes – Blum, Loconti, Vinciguerra and Denk; Nays – None).

#### William T. Hill – Proposed Minor Subdivision on Euclid-Chardon Road – Preliminary Review

Chairman Denk acknowledged receipt and reviewed a memo dated December 3, 2019 from City Engineer Philip Kiefer. It was noted that no new parcels will be created, and the residual property will still meet the zoning requirements. Mr. Hill was present in this regard; he noted that his father's vacant property is for sale, and the request is to split the portion of that property behind his lot and attach it to his property. Noting that the property is L-shaped, Mr. Denk inquired about the portion of property behind Mr. Scott's property. Mr. Hill stated that he approached him, but he is not interested in purchasing that rear portion of the property. Mr. Hill noted that the property was subdivided ten years ago for a subdivision.

Upon review, Mr. Blum moved to grant preliminary approval of the proposed minor subdivision at 7393 Euclid-Chardon Road. Mr. Vinciguerra provided the second. Upon roll call vote, the motion passed 4-0 (Ayes – Blum, Loconti, Vinciguerra and Denk; Nays – None).

Mr. Hill stated that the legal descriptions will be prepared soon, and he will submit them for the next meeting.

#### TABLED REQUESTS

#### Tim and Carol Parks – Proposed Subdivision at 8743/8787 Billings Road – Preliminary Plan and Request for Variance Relating to Open Space

The matter remains tabled.

Lynn Zivko – Preliminary Grading Plan for 8588 Billings Road

The matter remains tabled.

PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

None.

WORK SESSION:

Communications and Bills

1. Memo dated December 2, 2019 from City Engineer Philip Kiefer Re: 8125 Charlesderry Road. It was noted that the City owns the property at 8125 Charlesderry, and the Commission's approval of the proposed grading plan is needed; it was further noted that the work will be done at no cost to the City and it will benefit the City. Mr. Kiefer noted that Loncar Construction will do the work, and that some work will be done on property owned by Mr. Loncar. Mr. Kiefer stated that a water line was installed on Charlesderry and Glen Park, and the dirt from that project will be used in the grading. Mr. Blum moved to approve the grading plan for 8125 Charlesderry Road as presented. Mr. Loconti provided the second. Mr. Vinciguerra inquired if there was any concern about a private citizen working on City property, with regard to liability. Mr. Loconti stated there is no concern as long as he is a licensed contractor and pulls a permit to do the work, and the work is inspected. Mayor Potter stated there is a large mound of dirt behind the Service Department that will be used, and Mr. Loncar will pay for the trucking. He noted it is a City improvement project, using a contractor that is a resident. The Mayor noted that it will improve Mr. Loncar's property and the City's property. Upon roll call vote, the motion passed 4-0 (Ayes – Blum, Loconti, Vinciguerra and Denk; Nays – None). Secondly, it was noted that, in his memo, the City Engineer recommends extending the Charlesderry Road right-of-way across the south side. Mr. Kiefer stated he wanted to bring this to the Commission's attention, noting that he will be providing further information regarding the cost involved after he talks to the surveyor. Answering Mr. Loconti, Mr. Kiefer stated that the road is a dead-end and would still be a dead-end after it is extended. There was discussion concerning how far the road should be extended.
2. City Council Meeting Minutes – November 6, 2019 Council Meeting and November 18, 2019 Council Meeting.
3. Zoning Permits Report – November 1, 2019 to November 30, 2019.
4. City Engineer Report – November 1, 2019 to November 30, 2019. There was brief discussion regarding drainage projects.

Old Business

1. Sign Ordinance – Mr. Blum stated that he believes the Commission needs to address the issues that have been identified, including canopy and window signs. Mr. Blum also stated that he likes the idea of providing examples in the code.

New Business

1. Goals for 2020 – Upon discussion, it was agreed that the following should be addressed: signs, artwork/murals, alternative energy, aesthetics and architectural review.
2. Combined Meeting with Council – The Commission members suggested that the following dates be proposed to Council: Wednesday, January 22, 2020, immediately following the Council meeting; or Wednesday, January 29, 2020 at 6:30 p.m.

Adjournment

There was no further business before the Commission, and Mr. Vinciguerra moved to adjourn. Mr. Blum provided the second, and the motion passed upon unanimous vote. The meeting adjourned at 9:35 p.m.

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CHAIRMAN

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SECRETARY