

**CITY OF HIGHLAND HEIGHTS
PUBLIC HEARING OF THE PLANNING AND ZONING COMMISSION
HELD: JULY 14, 2008**

PRESENT: Commissioners Kerr, Knezevic, Mastrangelo, Pilla, Urban;
Recording Clerk Olson; Assistant Building Commissioner Austin

ABSENT: None

**SUBJECT: EDWARD BENCIN, P.P. 821-26-001 (462 MINER ROAD) &
P.P. 821-26-014 (BLOCK A ON LYNDEN DRIVE)
PZ08012 VARIANCES TO LOT SIZE AND AREA REGULATIONS**

Public Hearing was called to order at 8:02 p.m. Notices of this Public Hearing were mailed in accordance with Section 1113.04.

Variations are requested as follow:

1. Variance of 15,500 square feet from Section 1123.08: "AREA, YARD AND HEIGHT REGULATIONS", which requires a minimum lot area of 33,000 square feet, to allow a lot area of 17,500 square feet.
2. Variance of 25 feet from Section 1123.08: "AREA, YARD AND HEIGHT REGULATIONS", which requires a minimum building line width of 125 feet, to allow a building line width of 100 feet.
3. Variance of 10 feet from Section 1123.08: "AREA, YARD AND HEIGHT REGULATIONS", which requires a minimum side yard setback of 20 feet, to allow a side yard setback of 10 feet.
4. Variance of 15 feet from Section 1123.08: "AREA, YARD AND HEIGHT REGULATIONS", which requires a minimum rear depth of 70 feet, to allow a rear depth of 55 feet.
5. Variance of 25 feet from Section 1123.08(h): "AREA, YARD AND HEIGHT REGULATIONS", which requires a minimum lot depth of 200 feet, to allow a lot depth of 175 feet.

(BACKGROUND): This Public Hearing is a continuation of the Hearing held on June 9, 2008 which was tabled until June 23, 2008, and then rescheduled to July 14, 2008 per the request of the applicant, to allow time for Law Director Paluf to respond to the Commission's request for his opinion as to whether the parcels at issue would require variances from the Code based upon the fact that the proposed lot splits would result in six dwelling units of 100 feet frontage by 175 feet deep in area, much less than the minimum 33,000 square feet mandated in the Code and with frontage less than 125 feet. Mr. Paluf was asked to give his opinion if the parcels at issue

should be governed by the code that was in effect at the time the Highland Woods Subdivision was built or whether they should be governed by the current code.)

Edward Bencin, homeowner, 5964 Whiteford Drive, Highland Heights, Ohio 44143, appeared before the Commission to obtain variances to lot size and area regulations for the proposed reconfiguration of Permanent Parcels 821-26-001 (462 Miner Road) and 821-26-014 (Block A on Lynden Drive).

Chairman Mastrangelo advised the applicant of his right to be represented by an attorney. The applicant waived that right.

Mr. Bencin stated that he and Michael Gottlieb, 3504 Courtland Road, Beachwood, Ohio 44122, are the property owners of parcel 821-26-001 at 462 Miner Road that measures 300 feet wide by 260 feet deep and parcel 821-26-014 of the Highland Woods Subdivision No. 1, Block A, that measures 300 feet wide by 90 feet deep and which is located between 455 and 467 Lynden Drive and backs up to the property at 462 Miner Road. He said he is proposing to consolidate the two parcels and then subdivide it into six lots, each measuring 100 feet wide by 175 feet deep, that will mirror the existing lot sizes of the surrounding homes. Three lots will front Lynden Drive and three lots will front Miner Road.

Mr. Bencin stated there is one existing home and accessory building at 462 Miner Road that was formerly owned by the Williams family. The house is located on what would be the center parcel of the three newly reconfigured lots on Miner Road. He said the remaining land is vacant. He stated he will raze the accessory building. He said he is seriously considering razing the existing house due to the high cost of renovating the structure and for the fact that the house does not match up to the beautiful surrounding homes.

Assistant Building Commissioner Austin had provided the Commission with two plats, one of Highland Woods Subdivision No. 1 and the other of Highland Woods Subdivision No. 1A. Parcel 821-26-014 (Lynden Drive, Block A) is part of the Highland Woods Subdivision No. 1. Parcel 821-26-001 (462 Miner Road), which is the former Williams property, is surrounded by, but not part of, the Highland Woods Subdivisions No. 1 and No. 1A. It was noted that some of the lots on Miner Road in Highland Woods Subdivision No. 1A have varying lot widths from between 95 feet to 115 feet.

Public Hearing opened to the Public.

Jacob Schott, homeowner, 467 Lynden Drive, directly south and abutting the vacant parcel, objected to the variances. In response to his inquiry if Law Director Paluf had rendered an opinion, Mr. Knezevic replied Law Director Paluf has responded that the Commission should consider matching the parcels at issue to the contiguous parcels as they are part of the originally planned Highland Woods Subdivision which was platted with lots measuring 100 feet wide by 175 feet deep. Mr. Knezevic stated the parcels at issue are encumbered by the recorded Highland Woods Subdivision plats and the Commission must consider the parcels in view of those dimensions. In response to Mr. Schott's inquiry as to the situation regarding other homes that have recently been built on Miner Road, Mr. Knezevic replied there are two types of homes,

those built within the Highland Woods Subdivision that are governed by the subdivision plat and those built outside the parameters of the Highland Woods Subdivision. Mr. Schott stated Code mandates that a City may authorize a variance that is not contrary to the public interest, and said the safety of the neighborhood will be negatively impacted if more homes are built on Miner Road as a result of having more cars backing out onto the highly trafficked Miner Road. Mr. Schott stated that no hardship exists to warrant a deviation from the current Code. In response to his inquiry as to why the variances are being requested, Chairman Mastrangelo replied as a matter of practice to maintain a record on each parcel to substantiate use of the Code. Mr. Schott stated the parcels at issue should be governed by the current Code because they have changed owners. Mr. Knezevic disagreed and stated the deed restrictions and subdivision plats run with the land and do not disappear when the land changes owners. Mr. Schott said the residents would be more accepting if only four rather than six homes were built on the parcels. He added there has been some confusion with the City in the past over who owns the parcel on Lynden Drive and who should cut the grass and that the surrounding homeowners have been maintaining the parcel.

Laura Kramer Kuns, homeowner, 471 Miner Road, directly across the street from the vacant parcel, opposed the variances. She said that both parcels 821-26-001 and 821-26-014 are platted as one lot each and not as six lots as the applicant is requesting, and that if the two parcels are consolidated and then divided the existing encumbrances become void and current Code prevails rather than the code in effect at the time the Highland Woods subdivision was built. She said parcel 821-26-014 on Lynden Drive is not buildable because it is only 90 feet deep. She urged the Commission to afford the residents the same consideration as the owners of the parcels, to share Law Director Paluf's opinion with the residents and to allow them an opportunity to discuss this matter with him. She said the property owners should have performed their due diligence in determining the potential use of the land and should not have assumed they could split the parcels into six lots as newly created lots do not fit under grandfathering clauses. She said she would be agreeable to having the parcels divided into four lots that meet current zoning requirements. Ms. Kuns presented the Commission with her letter dated July 14, 2008 citing additional objections that granting the variances sets a detrimental precedence in the City and will likely decrease property values of the surrounding properties. In response to Ms. Kuns inquiry if the Hearing could be postponed until Law Director Paluf could attend, Chairman Mastrangelo replied possibly, depending upon how the Hearing progresses.

Gary Budzar, homeowner, 458 Lynden Drive, directly across the street from the vacant parcel, opposed the variances. In response to his inquiry if the residents could see Law Director Paluf's opinion on this matter, Mr. Knezevic replied they cannot due to attorney-client privilege. Chairman Mastrangelo advised Mr. Budzar to contact Law Director Paluf directly.

Linda Maskulka, homeowner, 472 Miner Road, directly south and abutting the vacant parcel, opposed the variances. She objected to splitting parcel 821-26-001 into three lots because it would result in a house and driveway too close to her lot. She favored allowing only two buildable lots on Miner Road rather than three and stated the configuration would be pleasing with the surrounding area.

Mr. Bencin responded that he has lived in the City a long time and would not do anything detrimental to the area and commended Ms. Kuns on her attractive home and property. He said

that two lots on Miner Road with a width of 150 feet each would not be aesthetically appealing because they would not conform with the surrounding lots.

Public Hearing closed at 8:40 p.m.

Susan M. Olson, Recording Clerk

Robert J. Mastrangelo, Chairman