From: **Kraig Salvesen** <kraig.salvesen@gmail.com>
Date: Fri, Jun 19, 2020 at 12:05 PM
Subject: Further grounds for opposition to granting a variance at 7 Ridgeway
To: Vander Lugt, Kristen <KVanderLugt@a2gov.org>

Dear members of the ZBA,

Hello, this is Kraig Salvesen, owner and resident of 3 Ridgeway St, writing once again to express my objection to the zoning appeal currently before the Board filed on behalf of Ms. Margaret McKinley, from whom I purchased my home in 2017.

As you will recall, I wrote at some length prior to the April meeting opposing this appeal. Since then a great deal of information has come to light thanks to the discovery of records pertaining to the 1994 subdivision of the original 3 Ridgeway property, allowing us to put the current request into its proper context, and in my opinion making the case against this appeal even stronger. I urge the Board, first of all, to formally consider this petition at this meeting – regardless of requests for additional time by the appellant, who has now had the better part of four months to prepare with the assistance of both an attorney/real estate agent and an architect – and to reject it for the following reasons:

- **There is a deed restriction on the property establishing a 40-foot front setback**; **Ms. McKinley has been aware of this fact since at least 1994** as shown in her correspondence with the Board at that time (see Lot Division File p 51 and my reproduction below), **yet for reasons unknown chose to submit a petition in violation of this restriction**
    - David Grigg, Esq., Liberty Title's in-house counsel and compliance officer, writes that he "agrees with me that the deed language does constitute a restrictive setback," and that he has updated Liberty's title commitments accordingly. Jon Barrett and Brett Lenart are in receipt of this correspondence, which includes an attachment visually highlighting the relevant wording on an image of the original deed
    - This fact alone is sufficient information to deny reduction in the front setback requirement as Michigan case law shows great deference to deed restrictions, e.g., *Thom v. Palushaj*, *2012*
- **Ms. McKinley herself is the one who created the subdivision**, having been engaged "behind the scenes" for the better part of a year as evidenced in the file, which mentions a prospective purchaser as early as 1993 (p 8), and which states in the formal application for lot division (p 11) that "this application is at the request of a purchaser for this piece of property." McKinley explicitly identifies herself as the prospective purchaser in her letter on pp 51-52 of the file, reproduced at the end of this email.
    - As creator of this situation **she was by no means ignorant of the restrictions at the time of purchase**, which closed on May 18, 1994, **two days after formal approval of the subdivision** by the full Council and two weeks and a day after the meeting of what was then called the Planning Commission, and thus **her petition should be seen in context as an attempt to expand upon an opening she created through bureaucratic arbitrage, not an attempt to loosen strictures she came upon in ignorance and in good faith**, having made a capital investment or otherwise having obtained an equity with expectations subsequently disappointed by previously unknown and unreasonable regulations.

- Rather than being an oversight or an unthinking application of irrelevant regulations, as seems to be argued by the application, **the zoning restrictions were intentionally coupled with the decision to permit the subdivision of 3 Ridgeway from its northerly green space/yard,** as is shown in the Planning Department Staff Report which states unequivocally, on p 46 of the Lot Division file, that **"the owner has been informed that the planning department will not support variances for development on this site."**
    - **This was a carefully balanced solution** in response to overwhelming opposition to a nominally conforming request; **removing the equity that was granted to the neighbors by the provision against variances retroactively distorts the impact of the Board's 1994 decision such that it wholly benefits Ms. McKinley, who is no longer even resident in Ann Arbor, at the expense of the neighborhood in perpetuity,** particularly 3 Ridgeway. It was supposed to be somewhat restricting to potential developers, permitting the modest single-family dwelling that would not overwhelm the lot and the neighbors, i.e., the potential future resident who valued green space and the charm of the existing neighborhood
    - One can presume that discussion, and voting, on the issue might have proceeded entirely differently were there not an understanding that no future variances would be allowed.
- Simple fairness to me, having purchased 3 Ridgeway in 2017: **at the time I was informed unequivocally that the lot was not for sale.** I purchased my house for $770K with zoning on the adjoining lot that made development relatively unlikely, and if developed, ensuring a narrow building envelope preserving critical sightlines from my house as outlined in my earlier letter. **McKinley is now attempting to change the zoning in the interval between the sale of the first piece of property and the second, when she no longer needs to concern herself with my property's value as she has already been paid for it**
    - **How is this not like selling the first customer 60% of a pie, then offering the next customer in line the "other 60%?"** The property is historically a single lot and as such is very much a zero-sum proposition. McKinley knows very well that 3 Ridgeway would have been worth a good deal less to buyers with zoning on the adjoining lot favorable to the construction of a sizable dwelling, and the timing of the staged selling of the two pieces of property coupled with this zoning appeal reflects that knowledge.
    - **She should be required to sell these adjoining and closely interdependent pieces of property subject to consistent zoning restrictions as a matter of preventing significant inequity to me, as I so recently purchased the one piece with the expectation, to her financial benefit, that any dwelling on the neighboring lot would be constrained by the current zoning regulations**
- **Ms. McKinley's letter to the Board dated 5/3/94 acknowledges and accepts the zoning restrictions, and furthermore states that they would "restrict the size of the dwelling to one that would be compatible with the neighborhood."** (p 52) I agree! We all agree!
    - She also acknowledges the deed restriction she is now ignoring, on p 51 – her detailed citation, "40 feet from the extension of the westerly line of lot 13," indicates perusal of the deed itself, which she acknowledges in her final paragraph (p 52 or see below)
    - As the handwriting is difficult to decipher in places, I am reproducing the letter in full below, and humbly request that you read it as it contains Ms. McKinley's direct words to the Board at the time, which **absolutely must be** compared to her statements now to ensure fairness to the neighborhood

Members of the ZBA, in closing, I once again urge you to consider this appeal now and reject it in its entirety. The appellant has maneuvered very sure-footedly for nearly 30 years now in an attempt to monetize this green space while, to recap: **1)** refraining from purchasing 3 Ridgeway until the subdivision was approved while **2)** maneuvering the elderly Mrs. Malcolmson through a situation that set her at odds with her neighbors for the better part of a year, seemingly as a condition for closing the sale, then: **3) declining to sell or develop the northern parcel herself during the 23 years she lived at 3 Ridgeway, during which time she herself could have balanced the competing interests between the two interdependent parcels**, which **surely says something about her view of the detriment to the value of the house posed by development of the adjoining green space** as well as the nuisance of construction, then **4)** selling the house/southern section of her land to me for $770,000, having paid $325,000 for the original, larger 3 Ridgeway, while intentionally retaining the lot, and then **5)** offering the lot for sale first at $385K, now $360K, price points requiring maximalist development, in support of which price point this appeal is now currently before the board, prepared in part by the same Bob White who is acting as her realtor.

The appeal itself has been and continues to be an exhausting and stressful process for the neighborhood, mainly because the many inconsistencies, omissions and misstatements highlighted in my earlier letter, the violation of the deed restriction, and a failure to allude to historical context that is largely responsible for what my neighbors termed a "twelfth-hour postponement" at the April ZBA meeting, **place an immense and undue burden of scrutiny on us, the neighbors, and you, the ZBA – every little detail must be carefully verified** in a case where half the requested variance is prohibited by deed, and where the long-term owner of a house allows a document to be submitted in her name misrepresenting the location and orientation of said house in furtherance of her request.

The 1994 file being ample testament to her persistence and competence, I have little doubt that if there is a "smart move" to be made by Ms. McKinley at this point, in response to our criticisms past and present, postponing or reformulating her petition in some way, she will now bid to make it, perhaps beginning with a request for additional time – we ask that regardless of any such additional maneuvering, this appeal be formally considered at this time and rejected.

I am 40 years old, raising a 3-year old son in my house, and I and the other younger families on the street are a testament to the enduring appeal of this wholly unique neighborhood. At the premium pricing I and others paid for our houses, a great deal "more house" could have been bought elsewhere in Ann Arbor or beyond. We ask you to stand with us in protecting the character of this road, to visit between now and next Wednesday's meeting and walk the loop, the feel of which will be irrevocably changed if yet another large, modern dwelling is built on our street, crowding the century-old house located ~15 feet away, towering over those on the opposite side of the street, and blocking westward exposure for homes on Ridgeway East. Longer-term the phrase "in keeping with the neighborhood" will be further and forever altered in cases of future buyers of the older homes on the street looking to perform extensive remodeling/rebuilding in pursuit of more "modern" standards of interior space.

Please honor the prior commitment of the Planning department to the neighborhood; please evaluate Ms. McKinley's request in light of the entire nearly 30-year arc of which it is a part, recognizing that she can still be paid generously for the lot as green space or as a site for a modest dwelling for someone who values the neighborhood as-is, and please allow us, the neighbors, to retire from our unfamiliar occupations as amateur surveyors, lawyers, historical researchers and photographers by putting a definitive end to this petition at this time.

Thank you for your time and consideration, and once again please read the letter from Ms. Mckinley transcribed below the signature line – much appreciated!

Sincerely,
–Kraig G. Salvesen
3 Ridgeway St, Ann Arbor

•••••

Transcription of 5/3/94 correspondence from Margie McKinley (emphases mine):

Ms. Andrea Brown
Planning Department
City of Ann Arbor

Dear Ms. Brown,

I am writing regarding the letters you have received objecting to the Malcolmson Land Division at 3 Ridgeway. I am the prospective buyer of the property and would like to clarify a few issues raised by the neighbors.

It appears that the main issue is traffic congestion and parking. The street is very narrow and this is an important concern, especially since several of the homes are very close to the road. However, **the Malcolmson house and any house that may someday be built on the adjacent property are required by deed restriction to be set back on the property farther than the 25 foot city requirement (40 feet from the extension of the westerly line of Lot 13).** Mrs. Malcolmson's present driveway is long enough to hold at least four cars in addition to space in a single car garage. I am certain that a house on the proposed lot would be able to provide adequate off-street parking.

Another concern was regarding the intentions of the "prospective purchaser." I offered to attend a meeting of the neighbors to answer any questions they had about my plans, should I purchase 3 Ridgeway. Apparently, some of my statements were misinterpreted leaving the impression that my interest in purchasing the property was based on "short-term goals driven largely by business and tax considerations." My interest in purchasing the property is to have a home for myself and my children when they visit. I lived at 2025 Hill St for 6 years and am currently renting in the same area while I look for a new home. I've been with the University for seven years and am starting a new job at the U in June.

I can certainly understand the neighbors' concerns, but after checking city and deed restrictions, I have concluded that the proposed lot split meets all the requirements. **The setbacks** would allow for ample parking and **would restrict the size of the dwelling to one that would be compatible with the neighborhood**. I hope that the Planning Department will come to the same conclusion and approve the Malcolmson Land Division.

Sincerely,
Margaret B. McKinley
2100 Dorset, Ann Arbor