

Building and Zoning Appeals Minutes

Stow City Hall Boards and Commissions, Monday, August 14, 2017, at 6:00 p.m.

Members Present: Jaime Syx, Mike Svasta, Robert Knight, Edward Franks, and Jill Smith

Members Absent: None

Also Present: Elona and Mike Palur, Tony Catalano, and Pam Daerr.

Meeting called to order by Robert Knight at 6:01 p.m.

Approval of Minutes: Motion to approve the minutes of the March 13, 2017, meeting by Jaime Syx, seconded by Mike Svasta with no changes, all yeas, no nays, motion passed 5-0.

Case #17-004

This is a request by Mike & Elona Palur, property owners, property located at 1782 Hibbard Drive, for approval of a variance of 26 feet to install a 6 foot high solid privacy fence in the front yard. The property is located on the southeast corner of Hibbard and Cresswood Drives.

There was an existing 6' privacy fence located at the building line, and the applicant replaced it with another 6' high privacy fence, but located the new fence 14 feet from the Hibbard Drive right-of-way. According to C.O.S. Section 1143.07(e), the fence must be located at the building line or at least 40 feet from the right-of-way.

Ms. Palur said the reason they built the fence, first of all, we were repairing an existing fence that was falling over but we have a beautiful front yard, a beautiful side yard but I can't let my kids out there on Hibbard because it's like a speed zone. Between Fishcreek and 91, I have contacted the police, and you can check with them several times about the speed, and I am not going to let my daughter, who is 9, ride her bike outside because I am afraid she is going to get hit. At the bay window, I can sit in the morning and I almost watched a girl get hit by a car as she was getting on the bus because people, adults more than kids, are on their phones not paying attention. I don't feel comfortable letting my daughter out there. My other daughter is older now, she is going to be a senior but now I have a granddaughter and I don't want her out there, I let her out there every once in a while but I don't dare take my eyes off her because cars go speeding up and down the road. We did tear down the fence and I asked him if he would bring it out and I guess I wasn't even thinking about what the codes were. I just said we need more yard, more for the kids and the dog and I don't have to worry about it and I guess none of us were really thinking about it because we were replacing an existing fence, nothing about bringing it closer to the road. Our neighbor was out there, we have bushes between our house and the neighbor's house and they grow like crazy. Well in order to put the fence in, I had to take the bushes down and then neighbor said I never realized our bushes, we didn't know whose bushes they were, ours or

his but that was constricting his view so he is so happy that he can see now. He was actually there helping us while we were digging out the plants to put the fence in. Like I said, we felt we were replacing an existing fence and it is all about just the spacing and the kids not having to worry because we can't use our whole big front yard and the side yard because of safety issues. Mr. Palur said we thought it was more of a back yard because of the corner lot. We didn't realize about coming out farther and that is why we did what we did. Ms. Palur said I never thought that was two front yards. Mr. Franks said because technically you do have two front yards. Ms. Palur said none of us were thinking about it because we were replacing an existing fence, not thinking about bringing it closer to the road. Mr. Palur said I did check coming off of S.R. 91 there is a clear view coming off the road. Coming down also you can see the light from almost the slight upgrade there. We checked some stuff but I was unaware and I was told since the fence was already there, it was grandfathered in that we can replace it and I didn't think we were going to extend it out. Mr. Knight said was the old fence 6' feet also? Mr. Palur said yes. It was complete plywood, it was up 5' from the house. Ms. Palur said then we found out the shed was not allowable and that was not an issue because it was falling apart. We didn't put it up and that came with the house. Ms. Smith said you didn't move the shed? Because the shed seems to be clear up in the front corner. Was it outside the fence? Mr. Palur said no it was inside the fence. Ms. Smith said so this was where the fence was clear back here. Ms. Palur said the shed was very much in the corner and there is a sidewalk that they built that has always been there. Here is our garage so it extended past the garage so you could take the sidewalk right to the shed. I asked him unknowingly, let's put the fence up farther so that made the shed back, we didn't touch it. The shed is falling apart. We want to get rid of the sidewalk and make grass but we were waiting on this. Mr. Svasta asked when did they put the fence up and Mr. Palur said the middle of June. Mr. Palur installed the fence along with help from relatives. Mr. Svasta said now that you know what the code requires, would you have still tried to build the fence out closer to the road? Mr. Palur said we would have definitely appealed it because we wanted the room. Ms. Smith asked what is the regulation for a lower fence, a fence that is not 6'? It is 4' and how far from the sidewalk would be 20' of the sidewalk or the right of way. You could run a chain link fence as long as you can see through it.

Mr. Knight said so there are really two issues there, one for the location and one for the height. You requested a variance for the location only. Ms. Palur said we can't lower it. We have dogs and kids, I am not going to lower it. Mr. Knight said it is a technical issue here because I believe we need a variance of 26' plus a 6' high solid privacy fence in the front yard. You requested a variance for the location, you are not requesting a variance for the height of the fence. There are two separate variances required. Mr. Palur said I thought it was all in one.

Mr. Knight said I sympathize with your situation, however, if you have been at any meetings before you know my position that we are a zoned community, we have rules and regulations and you didn't follow the rules so my position is that the fence has to come down and I am going to vote against it but there are four other

members here and you need three affirmative votes to maintain fence but you will still need another variance for the height of the fence. Mr. Palur said I also went around the community and checked and there are several fences on corner lots that are just like ours, that are in the front yard technically. Mr. Knight said I have only been on the board for thirteen years so I can't account for every property. Mr. Palur said I just went around and looked. Mr. Knight said there may have been a variance granted for those. That was a different board configuration and I wasn't sitting on it.

Mr. Franks said the height variation, he would be allowed a 6' fence at 40' but if you build a 4' fence, he can bring it up 20' back to the walk? Mr. Catalano said you can take within 40'. So from 20 to 40' it would have to be 4' so beyond 40' it could be 6'. Ms. Palur said the front part is 14' if I can remember, the middle is 16' and the end is 20' so it is not just all 14' up to the sidewalk because the road is at an angle and our yard is at an angle. Ms. Palur said we have a lot of walkers and people say how nice the fence is and now they don't have to worry about it and the traffic and they have all commented on how good it looks. I told them apparently we didn't do it right and then they point across the street to the fence. I said I have no idea what was surrounding a pool and that makes it different than ours? Ms. Smith said my concern is more aesthetics, I turned the corner and there it was. It's like a fort and I have seen civil war battlefields that were not that encased. Ms. Palur said we have to leave it and we aren't going to stain it for a year so it is going to be much more aesthetically pleasing once we are able to stain it. I was thinking, since I have had four kids go through Stow schools, of offering it to Mr. Pierce as a project for perhaps seniors to use different, instead of glass or paper, to do wood to paint a picture so they can paint it to look like this is a beginning of a lake or something like that or to actually blend. Mr. Knight said we are getting off track. The issue is we have a zoning regulation in the community that this violates on two different issues, one that has been presented for a variance request. We can vote on that tonight and if that passes and you are allowed to keep the fence there, we still have to see a variance for the height and that will have to be addressed separately. So you can get your vote to keep it tonight and we can turn around and tell you it has to be 4' in a month.

Mr. Svasta said I am worried on how this fence is going to look like in 5 years from now or ten years from now and typically wood fences do weather and they are hard to maintain and it may be an eyesore. That is my main concern and you are still allowed a 6' high fence it just needs to be moved back to your house. Mr. Palur said we are going to put a bed and tree in there also and it will blend in.

Motion to approve Case #17-004 by Mike Svasta, seconded by Jaime Syx, motion denied 4-1 (yes vote for Jaime Syx)

The variance was rejected and the fence was noncompliance and it must be moved or shortened to be in compliance. Mr. Palur asked if they could appeal this. Mr. Knight said the next move would be a lawsuit against the City. Ms. Botts said you can apply for another variance if you change the height or location. Mr. Catalano

said he and Mr. Kurtz will come out and look at it again. Ms. Smith said my concern is the height at that location. Mr. Palur said throughout the neighborhood I have seen a lot of them. Mr. Franks said that is what we are trying to stop. We have denied several of these in the past few years. Mr. Palur said if I am going to move it should I call him and see if everything is okay? Mr. Knight said you should stake it so they see so the measurements are in compliance. Ms. Smith said if he wants to come back next month for a height of it but the location is staying the same? Mr. Knight said this has been rejected and he can come back in on a new location that is code compliant or a request for a 6' high fence in lieu of the 4' high fence.

Adjournment: With no further business to be discussed, motion to adjourn by Mike Svasta, seconded by Edward Franks, meeting was adjourned at 6:25 p.m.

Robert Knight, Chairman

Mary Botts, Secretary