

## **Building and Zoning Appeals Minutes**

Stow City Hall Boards and Commissions, Monday, March 12, 2018, at 6:00 p.m.

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

Members Absent: Edward Franks

Also Present: Jason and Emily Whitfield, Tony Catalano, and Debbie Cefaratti

Meeting called to order by Robert Knight at 6:02 p.m.

Approval of Minutes: Motion to approve the minutes of the January 8, 2018, meeting by Mike Svasta, seconded by Robert Knight with no changes, all yeas, no nays, motion passed 4-0.

### **Case #18-002**

This is a request by Mr. Jason Whitfield, property owner, property located at 1630 Mohican Road, for approval of two variances: to encroach 6 feet into the front yard and to install a fence 6 feet in height in the front yard. The proposal is for a white vinyl privacy fence 6 feet in height to be located in the front yard 10 feet from the Englewood Drive right of way. The property is located in the northwest corner of Englewood Drive and Mohican Road. The house is located approximately 16 feet from the Englewood Drive right of way establishing the front yard at the building line. Therefore, without a variance, the applicant would be permitted to install a privacy fence 6 feet in height at the building line (16 feet from the right of way).

According to C.O.S. Section 1143.07(e), the maximum height of a fence in this location is 4 feet and it must be an open fence.

Ms. Whitfield said they would like a privacy fence because of where their home is located, our children's playroom is in the back of the house right now and it is almost like we are in a fishbowl so anybody who drives down Englewood can see directly into our home all the time. There is a large window there but it is the only natural light in the room. Likewise, anytime we are in the backyard, I really feel like we are on display and a lot of times, on that particular spot on Englewood, cars park and maybe check their phones or get directions on where they are going next so a lot of times I am very uncomfortable because again, I have two small children and maybe I am a little over careful so I spoke with my husband and we decided we wanted to have a privacy fence installed so we found out what the rules were as far as the fence could be and as we looked at it, we saw there is quite a bit of useable land in our back yard that we will be losing by putting the fence directly where it is allowed and there is a six foot variance that

really wouldn't take anything away from the property that you can still see where you need to go from the end of the road and because the way our property is, it really wouldn't cause any issues for traffic or passerby's or anything like that so we thought we would request a variance to see if we were allowed to do that so we could have the useable area for our back yard. We did an addition, we looked around to see if anybody else had done such a thing and we found a couple of places in Stow, one in our neighborhood already which was the case and we took some pictures if you want to see them where we found fences that were located closer than normally allowed. The first address is on Glenrich Circle and the other is on Englewood Drive. Mr. Whitfield said there is one that is 14' and the other one on Glenrich is 9'. Mr. Knight said you are talking about vinyl right and Mr. Whitfield said wood. Mr. Knight asked if this was considered a privacy fence and Mr. Whitfield said yes, that it was a 6' fence. Mr. Knight said I can tell it is a 6' fence by driving by it. Mr. Knight said I am not going to tip my hand one way or the other but it looks like an encampment. Mr. Svasta said he was sorry he had approved a few of these and he would go back and the owner said he did exactly what he said he was going to do and I thought it would look a little better and it really affects the neighborhood, you are affecting the other properties and that is something we should try to avoid. Mr. Knight said we are in a zoned community and our responsibility is to listen to the appellate and try to evaluate not just your particular case but what it impacts in the neighborhood because you may or may not live there for the next thirty years or whatever and generally speaking, people don't take fences down. I noticed one a block east from Englewood and south from Mohican and they have a standard 4' high fence and that is right against the sidewalk. Mr. Whitfield said we need the privacy because the people who sit on Englewood, you are talking they are sitting there 15/20 minutes to half an hour. Mr. Knight asked if you talked to the law enforcement people and asked what their response was. Mr. Whitfield said yes, they can't do anything because there are no "No Parking" signs. They are parking on the parking side. Ms. Whitfield said I have walked outside and asked what they are doing or can I help you. Mr. Whitfield said I got a phone call that there is a cul de sac by the school and church and I went around that cul de sac and so I stopped to take a call and a lady came out and asked me what I was doing. I was told I made her nervous and the police came and I was still on the phone. The police said you are making her nervous can you please just hurry up your call. I left but he said (police) I can't make you leave. I can't make someone leave. Ms. Whitfield said it is just disconcerting as a mother or woman home alone, that is your home and you are violated and feel like you are not secure. Mr. Knight said I understand and this is completely aside from everything else, maybe put a sign up that says "Video Surveillance". That will deter people. There is a lot of paranoia out there. Mr. Svasta said you are still allowed to put up a privacy fence up at the building line, you need a 6' variance. Mr. Knight said

we are looking at two variances here, the height and location. Mr. Whitfield said we are talking about when you come to the stop sign and being able to look. I have a tree there and it is inside the tree, the tree is not going anywhere. You wouldn't be able to see but per your rules, I could stick up trees as much as I want which would obscure all of the views. I can take trees close to that sidewalk and that would obscure the view either way and so I am not asking to do that, I am asking to put up a fence on the hill that goes like this down to the sidewalk, I want to be above that hill, it is still going to leave me about 11'-12' but it is not going to obscure the view coming from Lillian onto Englewood and turning from Mohican going left or right either way, you are not going to be able to see that fence, it will not obscure that view. Mr. Knight said is the privacy fence such like these wood ones? You can't see through those, you just have a little slot. Ms. Whitfield said no you can't see through it. Mr. Catalano said I don't know exactly the design of the fence they are proposing but a privacy fence does not allow being able to see through it. Mr. Knight said are they permitted to put that fence up at this location without the variance. Mr. Catalano said no, a 6' privacy fence would be no, they encroach in the front yard. Mr. Knight said if there is no restriction to put up a privacy fence up as long as they are at the setback. Mr. Catalano said correct. Mr. Knight said and it could be 6' high at the setback. Mr. Catalano said yes. Mr. Catalano said in this particular case, it would be 4' in the rear corner of their garage for approximately 16' back from the right of way on the side street. Mr. Knight said I am trying to understand that if they were in compliance with the setback, is a privacy fence with no visual see-thru, is that acceptable, right at 6'? Mr. Catalano said yes. Mr. Knight said so it's two issues; one is the height and the second is the location so we would have to grant two variances and that would be the limit of what we would have to grant. There are no restriction on the type of fence, it could be a shadow fence or it could be a privacy fence. Ms. Smith asked at the location they are requesting, could they do a 4' fence? Ms. Smith said per the C.O.S., the maximum height is 4' and must be an open fence. Mr. Catalano said our zoning code does not permit a vision obscuring fence. Mr. Catalano said it is three variances. Mr. Knight said that was the point I was trying to make because you asked for two variances here and in essence that privacy fence, that type of fence, is not allowed by code at that location so even if we granted you the offset and height issue, you would have to put up a picket fence to be in compliance. Mr. Whitfield said that is the point, I want a 6' fence for the privacy. If I put in a 4' fence, it defeats the purpose of the people sitting there. They can still see over the 4' fence. Mr. Knight said if we grant you these two requested variances, you can put a picket fence up. You would have to have another variance to put up a solid privacy fence. Ms. Whitfield said so what would we have to do at this point? Mr. Knight said you would have to submit for an additional variance and the best route would be to resubmit this as a package. Mr. Catalano said I think a vision

obscuring would be on a 6' fence. Mr. Knight said so I want to make sure if we grant this 6' variance that would be covered by this is saying different. Mr. Svasta said 20' from the right of way, 4' high and non-vision repaired so you have a space between them. Ms. Whitfield said we can even put it on the house right now within our allowed to fit that qualification because of how our house is built so I think that is why when we originally did some research in this to find out what variances we need to request, that is why we requested specifically what we did because we didn't really see that as a third variance that would be needed because we are going to rule right off the bat if we put that right off the garage because of how the house was built. Mr. Svasta said then that is the time to make it right though if you are going to break the rule to get a variance to allow you to break that rule. If you are have all three variances, it would permit you to put a 6' high solid fence, 6' into the setback. Mr. Knight said "in front yards" and you have a corner lot, 2 front yards, regardless of how the houses are situated. In front yards, fences may be constructed to a maximum height of 4' except that no vision impairing fence or wall greater than 19' shall be located within 20' of the street right of way. On corner lots, no fence shall be placed within a triangle area formed by the intersection of the projected point of intersection by the street property lines and the line connecting points on the street property lines 25' from the intersection. Mr. Whitfield said when you guys measure from my garage, which is the street right of way line, I measured this from my garage to the sidewalk is 18' to the first edge of the sidewalk, to the second edge is 22-1/2' and if I go to what Rob, because I have talked to Rob for over a year, there as my lot goes down, it might be further away. I go towards the end of my property and I want to do that because you guys had 16' and I want to make sure it is correct. Mr. Knight said you can't measure from the side of your house, you have to measure from the center of the right of way. The center of the right of way is from the back of the walk to the midpoint between the measurement back of walk. The right of way is the property associated with the street, and includes the sidewalk, devil strip, curbs and pavement. That makes up the right of way. To get a proper measurement of where you want to put the fence and thus what the variance is, you need to start from that point, you can't start from the house and work your way out. Mr. Svasta said all that goes away if you put your fence back even with your building line. Then you put a 6' high solid white fence and you would not need your variance. Ms. Whitfield said we would lose 6' in our yard. Ms. Whitfield said so our next option would be to allow this to happen and to allow the variance to even be considered, would be to reapply for the whole thing and apply for the third variance to be a solid fence. Mr. Knight said I think we could table this today and give you the opportunity to come back without an additional application. I think the City would not charge you another application fee if we table this for you to edit the request to take advantage of doing those measurements so that you could make sure that what you are asking for is what, the dimensions for,

are truly what is available out there because the variance is from the building setback into the right of way but we don't know where the right of way is back now. So I am going to go back and look at mine and obviously am going to look at the other properties. Mr. Knight said and they may have been granted variances at some time and they may have put their fences up at a time where we didn't have the zoning code established to limit them.

Ms. Whitfield asked if this is tabled, does that mean it will be on the next meeting or we have to turn in more stuff for the deadline? Ms. Cefaratti said you would have to turn in any changes by the next cutoff date for the April meeting. Ms. Whitfield will be on the April agenda. Mr. Knight said I don't want to give you a variance that is not compliant with what our code, that is what we have to stick to without a little bit better definition as to where you are setback wise, I don't want to approve something that doesn't meet variance requests.

Mr. Catalano said as a suggestion, we table this issue until next month and it will automatically be on the agenda, discuss this issue with Rob Kurtz and myself, and we will come out and help you establish the right of way and we will get this thing wrapped up for you. The issue here is no vision obscuring fences within 20' of the right of way line. Mr. Knight said I parked where you are concerned about and I could see where your corner post was staked and I could see where I was parked which is at the rear of your property, I could see through to the front corner of your garage which means that what you are proposing did not obscure any vision more so than the corner of your garage did. That is not a big issue, I just want to get the numbers right.

Mr. Svasta said I would like to go back to what we said about a certain character of that neighborhood. It is open and is park-like and if you are on Englewood, you can look straight across to the back yards. It is nice and open and it is a nice place to be. With this 6' high fence, white, solid, it is going to obscure that vision, that is going to affect the neighborhood. Ms. Whitfield said the neighbors actually do have fences on both sides of us. Mr. Svasta stated they are chain link fences and you can see through those. Ms. Whitfield said on one side but the other side is a solid privacy fence directly next to the 1644 Mohican property. Mr. Svasta said then you understand the park-like atmosphere that you have that you will lose and the neighbors will lose that. No one had come forward about the fence. Mr. Svasta said if you are going to go through the trouble of coming back here after getting all these questions answered about the non-vision impairing fence. Mr. Svasta said go the planning commission and show them a cut sheet of the type of fence that you are planning to install, the color, all the specs so that we can see something in writing from the planning commission saying yes, they would approve this type of fence; color, height, material because that is

another requirement of the code, to obscure, but it has to be compatible to the neighborhood so if they grant you this variance, I want to feel comfortable that other experts looked at this in conjunction with the character of the neighborhood and if a solid white is okay with them, then I would have to go along with it but as of right now, I would have voted no just for that reason that you are affecting the character of the neighborhood. Mr. Whitfield said let's say there was a vote and you guys are asking me, is one better than another because these were the only options that we had. I looked at Trex, which is a \$30,000 fence and it is not like I am not prepared to make that investment, I went with vinyl. Mr. Svasta said cedar would be nice. Ms. Whitfield said we looked at wood and the reason we decided not to do wood was just because of the maintenance and upkeep involved with the fence. With the vinyl fence it is not the same. Mr. Whitfield said I want the privacy. If I can keep the fence and you tell me it needs to be this color, I am okay with that, I am just trying to go through the process of getting the fence. Mr. Knight said I don't think we have the authority to tell you what type of materials to use. We are here about the zoning code and whether your proposal fits within the code and where it doesn't. We as members of the community, I have talked about the fact that we have a code in the city. The code has been established by elected council persons and it has been enforced by predecessors but we are just residents like you are so I always tend to lean towards if we are going to have a code in the City, enforce the code. Unless there is some overbearing reason and you have pointed out a situation that tells me to think along what you are asking for, but at the same time, if we were to vote tonight, I would vote for it but I want to get the paperwork right. Mr. Knight said we have one other member who was not here tonight and maybe when he comes back, you need 3 affirmative votes of the 5. If Mike is not interested in this particular appeal, that doesn't mean his position will hold up to total 3.

Motion to Table Case #18-002 until next meeting on April 9, 2018 by Mike Svasta, seconded by Jaime Syx, motion passed 4-0.

Adjournment: With no further business to be discussed, motion to adjourn by Jaime Syx, seconded by Mike Svasta, meeting was adjourned at 6:35 p.m.

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Robert Knight, Chairman

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Debbie Cefaratti, Secretary