

## **Building and Zoning Appeals Minutes**

Stow City Hall Boards and Commissions, Monday, April 9, 2018, at 6:00 p.m.

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

Members Absent: Jaime Syx

Also Present: Jason and Emily Whitfield, Jean Jones, Brian Lowdermilk, Justin Gilbert, Tony Catalano, and Mary Botts

Meeting called to order by Robert Knight at 6:00 p.m.

Approval of Minutes: Motion to approve the minutes of the March 12, 2018, with the following changes: Page 2 (last line, "Mr. Svasta said..... change to you wouldn't need a 6' variance, and on top of page 4, second sentence, change the word repaired to non-vision impairing. Motion to pass with these two changes by Mike Svasta, seconded by Jill Smith, motion passed 4-0.

### **Case #18-002 (Tabled from Meeting of 3/12/18)**

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.

Mr. Knight asked Mr. Whitfield to refresh us on this case as Mr. Franks was not at the last meeting. Mr. Whitfield said we are looking to get a variance done on my property. Mr. Whitfield has pictures of some of the fences in his neighborhood that has a fence closer to what is allowed (Mr. Whitfield passed pictures out to the Board). Mr. Whitfield said we sit in a fishbowl. I sit on a corner lot and I have cars that come down Englewood that actually park there and sit by that sidewalk and they are allowed to do that but we are looking for a privacy fence, one for security and safety for my kids and dogs. Ms. Whitfield said my children's playroom sits in the back of the house and people park their cars right there and can look directly into my kid's playroom. In addition, if we are in the backyard, it is like we are in a

fishbowl. The cars that do park by the house happens quite regularly, it is very disconcerting and that is why we are requesting to have the variance because there is about 5-1/2 feet of useable yard that I will be losing if you took the fence right up to the line of the garage so we were hoping to be able to extend that by that 5-1/2 feet so that we can have that useable land for the kids in the backyard. Mr. Whitfield said you wanted a signed letter from the Planning and Zoning Department and I was not able to do that. Rob made that very clear to me that it was not happening and he could not do that. Since then, I have had Tony and Rob go out and actually look at the property and make sure there is not a third variance that was needed and that wasn't needed last time, and also, there is an example in the packet of the fence that we would be getting which would be a white vinyl fence, probably one of the most expensive fences you can get. Ms. Whitfield said we will not be obstructing the view. Mr. Whitfield said you are not going to notice the five feet setback I am asking for.

Mr. Svasta said I was concerned that this type of fence being proposed, so it looks like a solid white fence, that this type of fence would not fit in that neighborhood. There are no other white vinyl fences that would compare to something like this. There are chain link fences, there are some wooden and picket fences and my point was that since your neighborhood and your yard is open, it is like a park and when you put up a 6' white fence around your property, it is going to affect that park-like appearance that you and your neighbors enjoy and I am really concerned, even if you put this on your own property, I can't say no to that but I think it is going to affect your property and that is why I asked you to take the cut sheet over to Mr. Kurtz and have him approve it. Ms. Whitfield said it is not in his duties or right to tell me what I can or can't do in my yard per Rob Kurtz. Mr. Franks said it not up to us. Mr. Svasta said in the code it says the "fences proposed for construction in the front yard shall be designed in such a material that will reflect and be compatible with the architectural design and style of the dwelling". Nobody here can make that call and that is why I suggested the Planning Director. Ms. Whitfield said we tried to ask him to do that and he explained that he wasn't allowed to do that. Mr. Whitfield said that Rob Kurtz reviewed the minutes and can't believe the board was asking for this. Mr. Svasta said well it is in the code. Mr. Svasta said I was hoping you would come back with that letter saying the Planning Commission approved this color and this fence and I would be more understanding.

Mr. Lowdermilk said so the code says fences are to be "in like materials?" Mr. Svasta read the code again and Mr. Lowdermilk asked Mr. Whitfield what his house was, vinyl? Ms. Whitfield said yes. Mr. Lowdermilk said so vinyl fence would be consistent with the vinyl siding. Mr. Svasta asked Mr. Lowdermilk if he had seen it because he had. Mr. Franks said coming to this board our only responsibility is to act on the variance which would be the

height and setback. We really have nothing to say about fence type or color. Mr. Svasta said I totally disagree because I think that will affect the neighborhood. Mr. Frank said but that is not what we are here to do. Mr. Knight said the issue is the height of the fence also. Mr. Catalano said we do not have an Architectural Review Board in the City, never have and probably never will. Planning Commission has never, in the history of the City, reviewed a fence ever. In fact, Rob and I were talking and that sentence should not be in the code. We have a lot of properties with that fence on it. The issue of the style of the fence, to me, and I am sure Rob, is not an issue. It is whether or not you are going to allow it to encroach in the side yard.

Mr. Franks said he wasn't here at the last meeting but the whole variance goes away if you just move that fence another 5-1/2 feet and you could put the 6' high vinyl without anyone batting an eye.

Motion to approve the setback variance of the fence by Robert Knight, seconded by Edward Franks, Motion Denied 3-1.

Motion to approve the 6' height of fence by Robert Knight, seconded by Edward Franks, Motion Denied 3-1.

### **Case #18-004**

This is a request by Mr. Justin Gilbert, property owner, for approval of a variance of 480 square feet to construct an accessory building 32' by 40' feet (1,280 sq. ft.) on his property located at 1976 Maple Road. The property is 0.7 acres in area and is zoned R-3. There is currently no accessory structure on the property. The proposed structure would be located approximately 15 feet from his dwelling and 15 feet from the side property line. The proposed structure complies with the maximum height of 15 feet which per 1133.01(b)(13) is measured at the midpoint between the peak and eave of the roof. According to C.O.S. Schedule 1143.07(b), the maximum size of accessory building on a property less than one (1) acre is 800 square feet.

Mr. Gilbert said we just moved to the area in October, there is no garage onsite, I work in construction and I have tools. I have two young kids and a trailer and I also have 1958 truck so would like to store my trailer and pickup truck and cars inside the building. I am just trying to clean up the property and get everything out of the yard.

Mr. Knight asked if he was running a business out of his home and Mr. Gilbert said no. Mr. Gilbert said I have wood working tools and construction equipment tools.

Mr. Svasta I see you have a small shed in the back. Mr. Gilbert said there is a small chicken coop and that I will be taking down. Mr. Svasta said I was out there and there were no stakes. Will it start at the end of your driveway? Mr. Gilbert said at the old slab, essentially 15' from the house and just behind the driveway so essentially sit back from the existing driveway stops. I believe 15' from the side.

Mrs. Jones stated she lives behind Mr. Gilbert and had just talked and met Mr. Gilbert here tonight. I live at 1975 Echo Road. I am directly behind Mr. Gilbert. I have many problems with that property and did not realize it had been sold. We have a terrible drainage problem from that property and his house sits up here and then it slopes all the way down towards me. It takes up my whole back yard. I had a survey done two years ago because I had problems with the new people that moved in on the other side of me. I had the survey filed with the county and they (the neighbor) since pulled up all the stakes and markers that the surveyor put in. Mrs. Jones said she had chicken houses on both sides of her house and just found out Mr. Gilbert had a chicken coop on his property too. I don't appreciate the chickens running around on my property. Mr. Knight said let's address the issue which is the garage. Mr. Knight said the appellant said he will remove the chicken coop.

Mrs. Jones said her problem is the drainage. They have a pool (Mr. Gilbert) and he hasn't used it yet and doesn't know if it works but the other people before him did and they drain that water when they put the pump on it and put it down towards my property and of course most of it, the way it is now, is running to the Crowe property and mine. Now the water is getting to the point that the latest rain we had, it doesn't have to be a giant rain, and there is enough water coming down through there and it comes through my property on Doug's side. He has been in there with his excavator and he has done his own thing but he has made the problem worse and it was like a river coming down (he is next to Mrs. Jones). Mr. Knight said that is for the City Engineer. The City Engineer is in charge of drainage. Mr. Lowdermilk said the concern is with the new building Mr. Gilbert is addressing the size of it and the run off, that it doesn't create a worse problem with the drainage. Mr. Gilbert said he will put the downspouts out to the front. Mr. Knight said this is not the forum for the storm water issue that she is experiencing on the property from the previous owner. Mr. Gilbert is going to make the proper adjustment to get the water off his property through this frontage which should not affect you negatively but you are still going to have a problem if your neighbor is digging alongside your property.

Mrs. Jones said the other issue is the fence that is hooked to the fence behind her. The wood fence is attached to the chain link fence. She has a wood and chain link fence. Mr. Gilbert said I believe the existing wood fence on my side, connects to her wood fence. Both sides connect to Mrs. Jones.

Mr. Gilbert said that would just be a dead space back there. Mrs. Jones said you can't even get to my property for my yard because the guy before you closed it off. My surveyor had to go on your (Mr. Gilbert's) property to put pins in. Mr. Gilbert said the chain link fence was there before I bought this house. The previous owner connected to my fence. Mr. Knight said he has 3 feet of your (Mrs. Jones') property, your fence was there first and whoever put it there did not put it on the property lines and I believe legally you have to be 1' off the property line with your fence but 3' is more than that. Mrs. Jones said I am not infringing on their property but they are infringing on me. Mr. Knight said unfortunately, we cannot address that, you have to go back to the Zoning Department to have them assist you. I am 99% sure if they ripped the pins out they violated the law.

Mr. Gilbert said he was unaware there was a fencing issue. Mrs. Jones said she was opposed to the garage because she is worried about the drainage. Mr. Knight said but I think the appellant addressed how he is going to handle the drainage off his roof which should cut down minimally but it should cut down on the amount of water falling back to your property. Ms. Smith said it looks like he put a lot of dirt there too off to the right side. Mr. Knight said he was sure he was going to improve her situation somewhat and not make anything worse. Mrs. Jones said I am willing to work with him but I just want to know for a fact that it will get done. Mr. Knight said he has already done some of that with the downspouts going to the frontage of his property and beyond that, unfortunately, he doesn't have any responsibility to your property.

Motion to approve Case #18-004 by Mike Svasta, seconded by Jill Smith, motion passed 4-0.

Adjournment: With no further business to be discussed, motion to adjourn by Edward Franks, seconded by Jill Smith, meeting was adjourned at 6:55 p.m.

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Robert Knight, Chairman

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Mary Botts, Secretary