

# SWANCREEK TOWNSHIP ZONING BOARD OF APPEALS

October 18, 2007

## Record of Proceedings

Board members present: Earl Rowland, Chairman, Darrin Gramling, Bill Grimsley, & Tom Baker

Employees: Walt Hallett, III, Zoning Inspector  
& Christine Lauch, Administrative Assistant

Visitors: See sign in sheet

Meeting was called to order at 7:07 p.m.

Tom Baker Motioned to accept 5-17-07 Minutes, Darrin Gramling 2<sup>nd</sup> Motion

~ Roll Call: Earl Rowland - yes, Darrin Gramling - yes, Bill Grimsley - yes,  
Tom Baker - yes

Tom Baker Motioned to accept 9-20-07 Minutes, Bill Grimsley 2<sup>nd</sup> Motion

~ Roll Call: Earl Rowland - yes, Darrin Gramling - yes, Bill Grimsley - yes,  
Tom Baker - yes

Bill Grimsley led the Pledge of allegiance

Bill Grimsley stepped down.

### New Business:

Jeffery Bucher Variance Request

Earl Rowland Motioned to accept Agenda, Darrin Gramling 2<sup>nd</sup> Motion

Walt Hallett, III, Zoning Inspector, stated his case:

Zoning Permit application #37-07 for a 18' x 26' addition to Mr. Bucher's dwelling, in the rear of his property was denied by virtue of 100-8.4 which states

- **Setback from a ditch:** *All residential units and permanent accessory buildings (buildings on foundations) shall be located a minimum of 25 feet from the top of the ditch bank.*

Earl Rowland asked Walt Hallett if Mr. Bucher applied for his Zoning Application before he built the addition. Walt Hallett stated that he found Mr. Bucher in violation for not receiving the application prior to construction; however, the applicant is in complete compliance.

Mr. Bucher paid the doubled fee of \$100.00 instead of \$50.00, which is the fee for a Zoning Permit Application. Walt Hallett stated that since Mr. Bucher is in compliance the violation cannot have any barring on the Variance Request.

Walt Hallett stated that he inspected the property on September 6, 2007. Upon inspection he found that the ditch runs on an angle in Mr. Bucher's rear property. Walt Hallett found the constructed addition to not be within the 25' setback requirement, and stated Resolution No. 100-8.4. Walt Hallett referred to Mr. Bucher's "hardship" letter submitted to the Board with Mr. Bucher's measurements.

Walt Hallett said that he checked with Mr. Rod Creager, Fulton County Engineer's Office. He spoke with Mr. Creager via telephone. Mr. Creager submitted three options to Walt Hallett for rectification of the ditch setback issue; moving the ditch which would respect the 25' measurement requirement, inserting a culvert and approving the Variance, or granting the Variance and negating the 11.6 loss on the other side of the ditch to the 25' existing footage making the total 36.6 on the North side and 13.6 on the South side. A letter was sent to Walt Hallett, received by the Swancreek Township September 26, 2007. The letter explains setback distance recommendations for ditch maintenance

purposes and ORC 6137.12 regarding permanent easement for maintenance & cleaning of ditches. (See attached letter)

Earl Rowland stated that there is a very small section of the ditch that is too close to the dwelling and that a culvert would solve the problem.

Fulton County does not currently have a cleaning/maintenance schedule for this ditch.

Walt Hallett stated he thinks the last cleaning was in the 1950's that it was petitioned to the commission by the residents to be cleaned and probably would have to be petitioned again for future cleanings.

Earl Rowland asked Walt Hallett how the Engineer's office interprets the Resolution regarding "top of ditch bank". Walt Hallett said that Mr. Creager told him the top of the ditch bank is where the ditch banks levels off to the property.

Earl Rowland stated that if the Variance is not approved Mr. Bucher could be required to remove a portion of his addition.

Earl Rowland noted this ditch is a perspective drainage ditch and that other residents are also on the ditch. Walt Hallett said that when he talked to Mr. Creager about the maintenance schedule he said that the commissioners need to give permission, however, in this case it is not on a maintenance schedule and will be maintained upon request.

Earl Rowland discussed options of resolving the issue; revisiting the Variance with conditions or upon approval of proposed solution by the Engineer's office. Walt Hallett stated the Board could do that or approve the Variance subject to the approval of the Engineer's office. Walt Hallett said that the Engineer's office would like to have at least 15' to swing and dump material from the ditch to clean it.

Tom Baker asked if it mattered if the cleaning was done on one side or the other of the ditch and noted the other side of the ditch, the North side, has more footage, beside the trees.

Tom Baker asked what would happen in the event of the Board of Zoning Appeals deny Mr. Bucher's Variance Request. Walt Hallett said Mr. Bucher would have the ability to appeal in Common Pleas Court – Resolution 100-21.6 which states

*Any person adversely affected by a decision of the Board of Zoning Appeals may appeal to the Court of common Pleas of Fulton County on the grounds that such decision was unreasonable or unlawful. The Court may affirm, reverse, vacate or modify the decision complained of in the appeal.*

Mr. Bucher was sworn in to testify:

Mr. Bucher submitted notarized letters from his neighbors in support of him. (Enclosed)

Mr. Bucher also submitted a drawing of his property and before and after pictures of his addition.

Mr. Bucher and the Board discussed his drawing measurements.

Earl Rowland stated that either the ditch should be rerouted or a culvert be put in to make Mr. Bucher in compliance with the Engineer's recommendations.

Discussion of the costs of each.

Earl Rowland questioned the difference between Mr. Bucher's 17' measurement from his addition to the ditch and Walt Hallett's 13.6 measurements. Walt Hallett stated the measurement has to be from the shortest distance and the 17' still does not respect the 25' requirement.

Earl Rowland asked Mr. Bucher if the water flows in the ditch. Mr. Bucher stated that this year was the first year it was wet, most of the time it is completely dry. He said he usually weed whacks it to keep it clean and keep the mosquitoes down.

Earl Rowland told Mr. Bucher that if a culvert was put in it would give him more room in his back yard.

Discussion of the placement of Mr. Bucher's trees. Trees would have to be removed in order to reroute the ditch.

Mr. Bucher stated that he has plenty of room on the opposite side of the ditch for it to be cleaned.

Earl Rowland told Mr. Bucher that in order to have a permanent solution to the house being so close to the ditch. The solution will also add value to his home.

Earl Rowland asked Mr. Bucher if there have been any problems with the ditch with regard to any of his neighbors. Mr. Bucher stated that one of his neighbors has several animals; including horses and that the animals defecate in the ditch. With the feces being in the ditch it blocks the flow there, which tends to smell. He said he called the EPA a couple of years ago, however, they told him they have no jurisdiction out there, so he just deals with it.

Earl Rowland stated that he feels the best solution is a culvert.

Walt Hallett stated that as long as the 25' setback is respected Mr. Bucher is in compliance. Earl Rowland said if Mr. Bucher went with the culvert solution it would eliminate the issue completely.

Tom Baker stated that he felt it would increase his property value.

Darrin Gramling stated that he felt it would help with the mosquito issue.

Mr. Bucher stated that in regard to his failure to submit a Zoning Permit Application, he is from Whitehouse and didn't know he needed a permit. When he asked his neighbor, he told him he didn't need one. He didn't need one when he built his garage.

Earl Rowland told Mr. Bucher that zoned areas change and that ignorance to the law is no excuse.

Discussion of the Board's ruling options.

Earl Rowland stated that he felt Mr. Bucher should meet with Fulton County Engineer's office, get their recommendations and approval before the Board of Zoning Appeals sets forth their ruling.

Walt Hallett said the Board could also approve the Variance under the condition that the Engineer's office approves of Mr. Bucher's remedy or the Board can make motion to approve the Variance application based on respecting the 25' setback requirements, which satisfies the requirements of the Township's Resolution.

Darrin Gramling agreed that the Board should get the approval of the Fulton County Engineer's.

Discussion of a time line in which Mr. Bucher has to comply after meeting with the Engineer.

Walt Hallett stated that the Zoning Permit is valid for one year.

Stan Sprow sworn in to testify:

Mr. Sprow stated that Mr. Bucher has a lovely addition and he felt that it was properly built and well constructed. He stated that Mr. Bucher is a very good neighbor and that his construction can only raise his own property value, as well as the neighbors.

Mr. Sprow said that when he inquired about the ditch on his side of the road the County told him that he needed to seek an approved contractor to do the work and that it would have costed him \$18,000.00

Tom Baker asked Mr. Sprow if he was looking to cover the entire length of the ditch.

Mr. Sprow said yes because they told him he could not cover part of it. He didn't feel it would be fair to make Mr. Bucher pay out thousands of dollars. He felt it would be better to let him do it himself for a couple of hundred dollars.

Bill Grimsley sworn in to testify:

Mr. Grimsley stated that the ditch was dipped several years ago when he worked for the Township. He recalls a gas line on Mr. Sprow's side and stated that might be why it would have costs so much. Mr. Sprow said his ditch is also deeper and has water lines there.

Earl Rowland stated that it is imperative that the decision be in agreement with the Engineer's office.

Darrin Gramling said that he prefers, also, to "table" the vote until the Engineer explores options.

Darrin Gramling Motioned to "table" the vote until next month's scheduled Board of Zoning Appeals meeting.

Earl Rowland said Mr. Bucher will have 30 days until the November 15, 2007 meeting.

Tom Baker 2<sup>nd</sup> Motion.

~ Roll Call: Earl Rowland - yes, Darrin Gramling - yes, Tom Baker - yes

Earl Rowland made motion to adjourn, Darrin Gramling, 2<sup>nd</sup>

~ Roll Call: Earl Rowland - yes, Darrin Gramling - yes, Tom Baker - yes

Board of Zoning Appeals Meeting Adjourned 8:15 p.m.

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