

SWANCREEK TOWNSHIP BOARD OF ZONING APPEALS

September 17, 2009

Record of Proceedings

Board members present: Darrin Gramling, Gregg Winseman, David Smith & Walt Lange, Alternate

Elected Officials: James Leu

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

Visitors: See sign in sheet

- Meeting was called to order at 7:00 p.m. by Chairman, Darrin Gramling
- Pledge of allegiance
- Roll Call was taken by Christine Lauch, Administrative Assistant

- **New Business:**

- Variance Permit Requested by Debra Green

- Walt Hallett, III, Zoning Inspector: Stated his case

After being found in violation for not submitting a zoning permit for a construction of a fence, Mrs. Green submitted a zoning permit, #53-09, which was denied by virtue of Swancreek Township Zoning Resolution Articles: 100-5.1, 100-5.5 (#1a, #2a & b), 100-8.4, 100-18.1, and 100-23.

The stockade fence constructed offended the height restriction of 3' for front yard placement.

The house, although legal, is nonconforming due to placement. It sets on an angle on the parcel.

Darrin Gramling asked Mr. Hallett if the road right-of-way was also offended. Mr. Hallett stated he didn't feel it encroaches the right-of-way and noted trees located in that vicinity also.

David Smith stated that Mrs. Green's dwelling sets back further than her neighbor's dwelling who's land adjoins the fence. Mr. Hallett confirmed and submitted pictures to the board. Again, the trees located near the right-of-way were noted.

Mrs. Debra Green and Attorney Mark Powers were sworn in to testify:

Mr. Powers, as Mrs. Green's representative, stated that the fence does not promote any pedestrian or traffic obstruction, he also pointed out the trees. Mrs. Green does not feel that the 6' fence has negative effect on neighbors. Mr. Powers stated this is a residential in nature area, therefore, there is not nuisance of the height of the fence; if it were lower than the 6' it would not provide the privacy Mr. Green desires. Mr. Power's submitted pictures for the board's review of the fence and Mrs. Green's house, which is built on an angle. Mr. Power's also stated that this fence does not promote any harmful physical nor economical aspect to the neighboring properties.

Darrin Gramling asked Mrs. Green about her violation of not submitting a zoning permit application prior to construction, which would have avoided the issue in the first place, because the permit would have been denied and Mrs. Green would have been aware of the height restriction. Mrs. Green said she did not know she needed a permit until James McConkey came to her residence inquiring as to whether she had submitted one and then shortly after she received a certified letter of violation from Mr. Hallett.

David Smith asked Mrs. Green if the constructed fence follows the property line. Mrs. Green said it is approximately 1' off of the property line onto her property.

David Smith also inquired about the "jog" in the fence. Mrs. Green said the "jog" back by her house is due to oak tree roots, she was unable to place post there because of the roots.

Darrin Gramling asked for public input on behalf of Mrs. Green - None.

Mr. Gramling then asked for public opposition.

Cindy Schmaus of 5740 Co. Rd. E, Delta, Ohio was sworn in to testify:

Mrs. Schmaus stated that the fence obstructs her view. Before the fence was constructed she could see all the way down the road. Mrs. Schmaus stated that her daughter went to pull out of her driveway and almost got hit by a car, therefore, she feels it is a safety issue. Mrs. Schmaus stated that Mrs. Green did, in fact, know she needed a zoning permit to construct the fence that she personally asked her if she obtained one. She also asked her how far out she was going to build the fence. There was an altercation between the two and Mrs. Green told her to get off of her property.

Darrin Gramling asked Mrs. Schmaus what she felt would be a resolution to the issue and what would be acceptable to her. Mrs. Schmaus stated that she wants this fence to meet code or be removed. Darrin Gramling asked Mrs. Schmaus if Mrs. Green were to rectify the portion of the fence contingent to 3' up to her home, which is approximately 5 sections of the front section of the fence would be acceptable to her. Again, Mr. Smith pointed out the trees located near the right-of-way and showed Mrs. Schmaus that the trees are higher than the fence and that the fence would not obstruct the view any more than the existing trees.

Darrin Gramling asked for rebuttal of Mrs. Green or Mr. Powers. Mr. Power's stated he already addressed the points of interest.

Walt Lange stated in order to be in compliance; Mrs. Green would have to take the fence down to 3' all the way back to the furthest corner of her dwelling. However, he seemed to remember sometime ago the zoning resolution stating the closest dwelling from right-of-way set back establishing the building line. The board discussed the angle of which Mrs. Green's home was built and established the location of the furthest point of Mrs. Green's dwelling.

The board discussed with Mrs. Green, Mr. Powers and Mrs. Schmaus in detail a possible agreement to rectify the issue, so the board could possibly conditionally grant Mrs. Green's Variance Request. Mrs. Schmaus agreed that if Mrs. Green takes the fence down to 3' from the Schmaus's furthest dwelling point and not go any further past her home, it would be acceptable.

The board decided to review Mrs. Green's Variance request as submitted by the Standards of Article 100-21.5:

Standards Set Described in Article 100-21.5 list.

#1. Location, size and character as it relates to the development of the surrounding neighborhood and regulations of applicable zoning district.

Roll Call: Darrin Gramling stated: Does not relate, Gregg Winseman - does not relate, David Smith - does not relate. All Agreed.

#2. Impact on vehicular and pedestrian traffic.

Roll Call: Darrin Gramling stated: Yes, it has an impact on vehicular & pedestrian traffic based on testimony. Gregg Winseman - yes, David Smith - yes. All agreed has impact. All agreed

#3. Any possible nuisance emanating from the proposed use.

Roll Call: Darrin Gramling stated: No nuisance emanating and is N/A, Gregg Winseman - no, N/A, David Smith - no, N/A. All agreed

#4. Location, height nature of buildings and other structures as they relate to appropriate development and use of adjacent lands and buildings and how the proposed use affects values of other lands.

Roll Call: Darrin Gramling stated: Is N/A, Gregg Winseman - N/A, David Smith - N/A. All agreed

#5. Whether the proposed use will be harmonious with the physical and economic aspects of the adjacent property.

Roll Call: Darrin Gramling stated: It is not harmonious, Gregg Winseman - not harmonious, David Smith - not harmonious - All Agreed.

#6. The necessity of the proposed use for public convenience at this location.

Roll Call: Darrin Gramling stated: Is N/A, Gregg Winseman - N/A, David Smith - N/A. All agreed

#7. Will the proposed use protect the public health, safety and welfare.

Roll Call: Darrin Gramling stated: Will not protect public safety, Gregg Winseman - will not protect public safety, David Smith - will not protect public safety. All agreed.

#8. The effect the proposed use will have on the value of other property in the area in which it is to be located.

Roll Call: Darrin Gramling stated: Will not affect value, Gregg Winseman - will not affect value, David Smith - will not affect value. All agreed.

Based on the testimony and discussion of this Variance request application the board ruled for the following motion of conditions:

Gregg Winseman made motion to conditionally grant the Variance request to allow the existing 6' height to remain to the furthest front point of Mrs. Schmaus's (neighbor of Mrs. Green) dwelling. The fence shall be modified to meet the 3' maximum height further than that point, to be in compliance with the Zoning Resolution. The modifications shall be completed by December 1, 2010. A 2nd was heard from David Smith.

~ Roll call: Darrin Gramling - yes, Gregg Winseman - yes, David Smith - yes, Walt Lange abstained from vote due to quorum.

Old Business:

- Gregg Winseman Motioned to approve the minutes of 7-16-09, 2nd by David Smith
- ~ Roll call: Darrin Gramling - yes, Gregg Winseman - yes, David Smith - yes,
- Walt Lange abstained from vote due to quorum.
- Darrin Gramling Motioned to adjourn the meeting, Gregg Winseman, 2nd motion
- ~ Roll call: Darrin Gramling - yes, Gregg Winseman - yes, David Smith - yes,

- Meeting adjourned at 8:00 p.m.

Darrin Gramling, Chairman

Gregg Winseman

David Smith