

Westfield Township Board of Zoning Appeals

Public Hearing - October 15, 2013

Attendance

The meeting was called to order at 8:00 pm by Chairman Mike Schmidt. Members in attendance: Kathleen Lemar, Wayne Moore, Pat Kwas, Kevin Daugherty, Mike Schmidt and Secretary Sherry Clarkson. Member absent: Lee Evans. Guests in attendance: Jack Byrd, Ron Oiler, Jim Likley, Gary Harris, and Pat Edington, and Bill Thorne.

Chairman Schmidt advised an application made by Jack A. Byrd, 6463 Kennard Road – Medina, Ohio was brought before the board tonight. The land is PP#041-15B-17-010, consisting of 2.2527 acres. A variance is requested from Article II, General Regulation Section 205 B.1, 2, #3 of the zoning code to permit the following: Applicant is seeking a variance from the above section 205 B 1, 2 &3, -Fences: 205B Fences #2, Two foot variance at 60 ft. in front of yard #A on drawing, except for an 80ft. Section requesting a 4 ft. Variance #B on drawing and #3 requesting a 0% opacity in all fence consisting of 415 ft.

Mr. Byrd came up to the podium and was sworn in by the zoning secretary. Mr. Byrd advised some of the fence is already up and he would like to continue the fence to the end of his property from 35-40 ft. to the end of the road to protect property. Mr. Evans was down and Mr. Byrd showed him what he would like to do. Mr. Evans saw that the fence would not obstruct any portion of the road and was shown what Mr. Byrd would like to continue to do with the fence. Mr. Byrd advised he has been at the property 37 years and has been through a lot with the neighbors and at this point of time would like to not hear or see what goes on next door. He advised he has that right to privacy. There have been a couple of incidents which took place and the neighbors pit bull has come over and barking and chasing them and he would like to stop this by placing up a fence along with protecting his property from four-wheelers and parties. It was noted the good side of the fence will be shown to the neighbors and they too will have privacy. The 4 ft. variance is near the front of the applicant's house, and would like it increased to 6 ft. 3" because of the lay of the land he can still see the neighbors coming out of their house. The existing fence marked on the map was questioned by Mr. Daugherty as to the height. Mr. Byrd advised it was 6 ft. Ms. Lemar asked if Matt Witmer the zoning inspector would be at the meeting tonight, and Mr. Schmidt advised no. Mr. Daugherty asked the applicant to explain his drawing which was a little confusing. The applicant advised the darkest part of the map is fencing already existing, placed up two months ago, by a contractor, #A is the section he needs a variance on and #B overlaps it. The board asked that the applicant come up to exactly show what he wants. #B is from the end of the house, which is considered the front yard, which is where a 4 ft. variance is needed. #A is where he wants an option to have a fence the whole way. #A will cover the applicant's view of the neighbor's yard. Ms. Lemar asked the applicant how far does the applicant want to go? (Identifying the poles he presently has in the yard). Mr. Schmidt showed pictures which he took and advised he is concerned with not obstructing the view as school buses go up and down the road all of the time along with other traffic. Mr. Schmidt showed pictures identifying where the poles are on the property, whereby identifying if a fence was erected showing what parts of the property would be protected and not

obstructing views of the road. Mr. Daugherty advised (as per code reading it aloud) no structures allowed in the front yard within 70 ft. from the r-o-w. and fences are structures) If he goes further, another variance would be needed on top of the variances already requested. Mr. Daugherty asked if the applicant is now requesting this. It was noted that the applicant needs 100 ft. from the center of the road. If the applicant wants to go to the pole which is another 30ft. a variance is needed. The applicant advised he was not aware, but would like to take the fence further down, so "Yes" he wants to incorporate this into the application. Mr. Schmidt asked if we received anything from contiguous property owners and the zoning secretary advised "no".

The board asked the applicant to advise how high he wanted the fencing and to mark on the map and they can advise what variances he would need. Ms. Lemar asked what about 8 ft. to here (showing on map) then 6 ft. fence from here to this pole and then plant fast growing pine trees from here to here (identifying on the map). Ms. Lemar advised if the applicant is not in agreement then it would go no further if he would not be in agreement to this. Ms. Lemar proceeded to show where the 8 ft. fence would be then taking it down to 6 ft. then plant fast growing trees (arborvitaes, planting 6 ft. apart which are fast growing). Mr. Moore advised he knows what the applicant is going through, as he has had the same problem, especially with the dust and he is in favor of allowing what the applicant is seeking, the fence will not obscure any view up and down the road. The arborvitaes may be a good idea, but it will not stop the dust in the long run. Ms. Lemar advised she feels bad for what the applicant is going through and she sympathizes but variances can't be granted because of situations between neighbors. We have to think long and hard because the next individual comes in and sites the applicant stating "you allowed this for him." etc. The applicant asked will this be legal according to our paperwork. Mr. Schmidt advised "yes". The applicant advised he is not doing this out of a fear factor, he wants his privacy. He advised gates will be installed so he can check his property along with maintain the fence. The applicant advised he feels this is his right to protect his property. The board advised they are trying to work with the applicant to make the best situation possible for all. It was noted since the pictures were taken; the pool was just removed along with the deck. It was noted the neighbors house being elevated, that he can open his sliding door and hear everything going on, which was the case when Mr. Moore visited the property.

The applicant advised he really wants the fence and asked if the board could split the difference between what he is asking for (showing the area on the map). Could we say 60 ft. off the road?

Chairman Schmidt asked for opinion of the board. Ms. Lemar asked for clarification. The applicant advised Pole #1 –pole by road #2 being in back of #1. It was noted fence would be half way to #2. (10 ft. beyond Pole #2). Mr. Likley advised "As an idea, this room is 32 ft. wide the bldg is 45 ft to 50 ft. long." "If you are looking 60 ft. off the edge of the road you are looking at double the room width. Just to give some reference. If you establish what your measurement is then that is the dimension, and you need a 10 ft. variance, 70 ft. is off the edge of the road 100 ft. from the left center line offset, so you are looking at 10 ft. variance of the front yard and a height variance of 2 ft. in the back yard, as they allow 6 ft." Discussion followed amongst members. It was noted from the front of the house to the r-o-w there is a

height restriction. Building setback variance and in the side yard (from front of house back to end of the property) it can be 6 ft. high, and if applicant wants 8 ft., you have a 2 ft. height variance, from 6-8ft. and 2ft. in front yard 4-6ft. and building setback from road r-o-w of a 100 ft. There are 3 sections to this, cited Mr. Likley. Ms. Lemar advised we do not know on the drawing where 100 ft from the center of the road is on his property, it was not identified on the map. It was noted the center line is the mark, this is where the road r-o-w is marked. It was noted by the board that this is the minimum setback. It was noted anything inside this, a variance is needed. The front yard by definition is from the road to the building interjected Bill Thorne, as he was going through the zoning regulations. Kevin Daugherty advised you can't build within 100 ft. of the centerline, page 22, 70 ft. minimum and you can't build within 100 ft. of the road r-o-w. After discussion it was noted a 25 ft. bldg, setback variance would be needed. Mr. Daugherty advised after calculation it would be only 10ft.

After discussion it was decided from the centerline is 100 ft. 70ft. setback 30 ft. r-o-w from centerline, so if he is 90 ft. off of centerline, he would be good. So if the applicant is 60 ft. off the road he would be all right. So a 25 ft. setback variance would be needed for the applicant advised Mr. Moore. The zoning inspector should be able to measure from the center of the road back and advise the applicant where he could place the fence. (60ft. off the centerline). Ms. Lemar advised after a one hour discussion we are at the second pole, with a 75 ft. setback from the center of the road and the applicant can start his fence from the middle of the road 75 ft. back, it would be a 6 ft. fence running all the way from A and from A-1 to A-2. Ms. Lemar advised she was okay with what was discussed. Pat Kwas was in agreement, as well as Daugherty, & Moore, which were writing the information on the drawing.

Mr. Schmidt advised we need to do our application before us, which the board proceeded to complete.

For the above reasons, we move that Practical Difficulty DOES exist and the variance be GRANTED. If granted the following conditions apply:

1. 75 ft. off the Centerline or 25 ft. variance under section 303 D 1 for setback.
2. See attached exhibit "A" Drawing
3. 3. Under 205B 3 Front yard minimum opacity-and Opacity Variance is granted (40%-100%) or a 60% opacity variance is granted.

Mr. Schmidt asked for a motion. Ms. Lemar made a motion as follows: Move that the applicant be granted multiple variances as follows: #1. 75 ft. offset from centerline of the road or 25 ft. variance as referenced in 303D 1. #2. Exhibit A as per attached: 2a- 2 ft variance from the start of the road to #B. #2b- A 4 ft. variance in section B. #2c-A 2ft variance on #C. #3-A 60% opacity variance on the fence. A second to the motion was made by Wayne Moore. A roll call was taken as follows: Kathleen Lemar-aye; Pat Kwas-aye; Wayne Moore-aye; Kevin Daugherty-aye; and Mike Schmidt-aye. All were in favor.

The applicant was provided a completed application.

The board did not have enough time to review the minutes emailed and passed out, therefore at the next meeting these minutes will be acted upon.

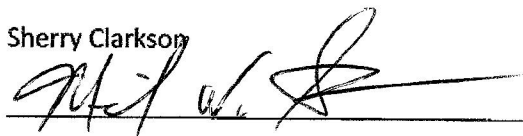
Mr. Thorne advised regarding the Kratzer property, the board has obtained a formal transcript from the court reporter, which can act as the legal minutes of the meeting or if the secretary has a copy these can be used. We need a final decision and a statement of fact and conclusion of fact (aka statement of law). There have been some questions as to what was submitted by Mr. Folk but the board needs to sit down and complete. It was noted that Lee Evans was not in attendance tonight and he needs to be present to move forward. Questions arose with reference as to each board member putting together their facts vs. the board as a whole coming up with the facts. It was reminded that the conclusion of fact is to include the majority of the board decision voting on facts brought forward. How the majority voted in order to reach a decision, advised Bill Thorne. The facts which the board found to be true and decided are relevant, which are supported by the transcript. Questions arose regarding the minutes vs. the transcript. Bill Thorne advised the minutes of the meeting can be a summary of the meeting not "as per verbatim" It was noted that we have a court transcript, so it is not relevant in this case. It was noted that the township does not have to put minutes on the website advised Bill Thorne. Due to the voluminous volume of the minutes, they can receive a disk at minimum cost to the individuals wanting them added Mr. Likley. Ms. Lemar advised that she will not accept the minutes of the zoning secretary as they will be typed subjective, due to the volume, and she will prefer to accept the transcript as the official minutes of the meeting, there should be no need for the zoning secretary to type minutes. It was noted that all members need to review the official transcript purchased by the township and identify spelling errors, etc. The members can vote to decide if this will be the official minutes. The record minutes can be a shortened version of the transcript. It was noted the court transcript will always be carried into the court. It was noted the transcript deadline will be the 15th of the month (Nov). All documents have to be turned in to the court. It was noted board members need to review the transcripts and note changes. Ms. Lemar asked if the board could agree to use the court transcript as our official board minutes. Mr. Daugherty advised no. It was noted if the transcript hadn't been purchased we would have had the minutes to be more conclusive, but we have purchased the transcript advised Likley. It was noted in the event (transcript) that it was noted that Mr. Moore said something, when in fact Mr. Daugherty said something, then this needs to be corrected. It was noted that there will be misspellings, (eg. Tax, text , too, to, two, cited as examples). After discussion Mr. Moore advised he would rather accept the meeting minutes by the zoning secretary. It was noted the transcript will remain in the office as the official document of the hearing.

The board members agreed on a continued meeting of the board to continue paper work on the Kratzer property. The date selected was Wednesday, October 23, 2013 at 8:00 pm to work on the Conclusion of Fact. The meeting will be advertised in the paper as a Closed Session meeting of the BZA, with legal counsel, preparing the Legal Decision of Fact.

With no other business to discuss, a motion was made by Wayne Moore to adjourn the meeting and a second to the motion was made by Kevin Daugherty. The meeting was adjourned at 10:25 pm.

Respectfully Submitted,

Sherry Clarkson

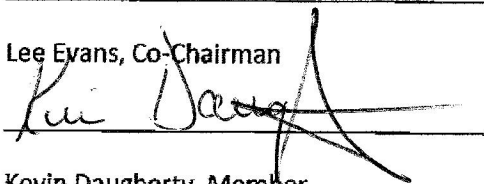


Michael Schmidt, Chairman

11/6/13

Date

Lee Evans, Co-Chairman



Date

11/6/13

Kevin Daugherty, Member



Date

11-6-2013

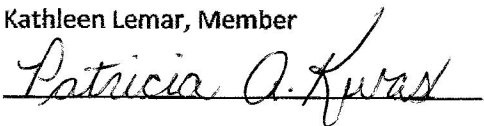
Wayne Moore, Member



Date

11-6-2013

Kathleen Lemar, Member



Date

11/06/2013

Pat Kwas, Alternate

PATRICIA A. KWAS

Date