

PUBLIC HEARING
BOARD OF ZONING APPEALS
June 25, 2009

The Austintown Township Board of Zoning Appeals held a Public Hearing on Thursday, June 25, 2009, at the Township Building, 82 Ohltown Road, Austintown, Ohio, for consideration of Appeal Cases 2009-11-12-13-14A.

The following Board members were in attendance:

Mr. Robert Satterlee – Chairman
Mr. Joe Koch – Vice Chairman
Dr. Thomas Stellers
Mrs. Dawn Owens
Mr. William Glaros

Chair Satterlee opened the public hearing at 7:00 P.M. All testimony in the following cases given under oath or affirmation. Court Reporter in attendance, complete transcript taken of the hearing.

Motion by Mr. Glaros to **APPROVE** the minutes of the May 21, 2009 meeting. Seconded by Dr. Stellers.

Roll call vote: Dr. Stellers – YES; Mrs. Owens – YES; Mr. Glaros – YES; Mr. Koch – Abstain; Mr. Satterlee – YES.

APPEAL CASE 2009-11-A

Marc & Jenny Carsone, 1301 Woodledge Drive, Mineral Ridge, Ohio, 44440, appeals from the decision of the Austintown Township Zoning Inspector and request a variance from the terms of Article VI-Residence R-1 District, Section 605-Fencing, of the Austintown Township Zoning Ordinance, as amended through May 24, 2007, to allow for the construction of a vinyl fence measuring six (6) feet in height to be placed approximately fourteen (14) feet from the westerly side street property line. The minimum side yard requirement for a fence on a corner lot is twenty (20) feet. Said property is zoned as a Residence R-1 District in Austintown Township, Mahoning County, State of Ohio.

Chairperson Satterlee stated the mailing list of those property owners notified for Case 2009-11-A would be incorporated into the case record.

Zoning Inspector Darren Crivelli read the applicant's letter into the case record, referenced a consent form signed by abutting property owners, two site plans, the case mailing list, and two plat maps prepared by the Zoning Office.

Jenny Carstone, 1301 Woodledge Drive submitted another letter in support of the request from a neighbor (Exhibit "A"). A six foot wooden fence was constructed by the previous owners. The fence was old and it was torn down for the new fence. Hired a contractor to put up a new fence but was advised by zoning they had to set the new fence back twenty feet from the property line.

Mr. Satterlee asked Zoning Inspector Crivelli if something had changed in the past twenty years. Zoning Inspector Crivelli stated the original fence was placed incorrectly and was viewed as a non-conforming use. When the fence was razed the property owner lost the non-conformity and determined the new fence would have to meet the setback requirement. Mr. Crivelli estimated that at the time the original fence was erected there was a setback requirement of twenty feet.

Mrs. Carstone stated her property is a corner lot but where the fence would be placed is not near the intersection and would not be a site obstruction.

Mrs. Owens asked if there were large trees outside the area where the fence would be placed. Mrs. Carstone answered in the affirmative and described the existing landscaping where the fence would be placed.

Dr. Stellers asked why she would want to hide the landscaping as it looked very nice. Mrs. Carstone thanked him for the compliment and stated she has a dog and she also wanted privacy.

Mr. Koch asked if there was access to the area. She stated there were two gates on each side of the fence. They have a deck and grill in the rear yard.

Richard Glass, 237 Sunset Drive, New Castle, PA stated the wooden fence was in deplorable shape and not helping the neighborhood in any way. The vinyl fence will be an improvement.

Mr. Koch stated it would be a shame to hide the landscaping that is very well taken care of. Mrs. Carstone restated her desire for privacy.

No one else in attendance to speak for the request.

No one in attendance to speak against the request.

2009-11-A – Marc & Jenny Carstone

Motion by Mr. Koch to approve the variance request as presented. Seconded by Mrs. Owens.

Roll call vote: Dr. Stellers – NO; Mr. Glaros – YES; Mrs. Owens – YES; Mr. Koch – YES; Mr. Satterlee – YES.

APPEAL CASE 2009-12-A

Atty. David A. D’Apolito, 4800 Market Street, Suite A, Boardman, Ohio, 44512, on behalf of Rebecca Mixon, 4604 New Road, Austintown, Ohio, 44515, appeals from the decision of the Austintown Township Zoning Inspector and request a variance from the terms of Article VI-Residence R-1 District, Section 605-Fencing, of the Austintown Township Zoning Ordinance, as amended through May 24, 2007, to allow for the construction of a wood fence measuring six (6) feet in height to be placed at the westerly Ray Avenue side street property line. The minimum side yard requirement for a fence on a corner lot is twenty (20) feet. Said property is zoned as a Residence R-1 District in Austintown Township, Mahoning County, State of Ohio.

Zoning Inspector Darren Crivelli read the applicant’s letter into the case record, referenced a site plan prepared the Zoning Office, the case mailing list, and a plat map prepared by the Zoning Office.

Chairperson Satterlee stated the mailing list of those property owners notified for Case 2009-12-A would be incorporated into the case record.

Atty. David A. D’Apolito, 4800 Market Street, Suite A, Boardman, Ohio, 44512 stated that based on the Carsons decision just granted, this case should be approved since the facts are very similar. Mr. Satterlee stated that each case is judged on its own merits. Atty. D’Apolito advised the Board of “stare decisis” and explained that if you ruled in one way for a particular case you had to maintain the same ruling in similar cases. He stated his client had a wire fence at this location, tore it down to allow for construction of the new wooden panel fence to be placed in the same location. There were a bunch of trees along the area that have been removed (He referenced the satellite photograph). The purpose of the fence is for his client’s children to have a play area that is safe and secure and for construction an above-ground pool in the near future. In addition, the fence will be placed 138 feet from the corner, thus, if the purpose of the zoning setback is to avoid obstructions, the proposed fence meets that criteria. Atty. D’Apolito submitted into the case record two poster boards of photographs of the property including pictures of his client’s children (Exhibits “A” & “B”). Atty. D’Apolito emphasized the facts are the same as the previous case.

Mr. Satterlee inquired about the previous fence. Atty. D’Apolito advised it was a wire fence and stated his client has three large dogs she wants to fence in.

Mr. Koch stated for the record there is a significant difference between the two cases. The first case was a request for six feet and this case is a request for a variance for the entire required setback of twenty feet. He also referenced this property being at the corner of New Road and Ray Avenue versus Woodledge and that case was for a vinyl

fence versus a wooden fence. Atty. D'Apolitio stated they would like to place the fence 25 feet from the center of the road. Mr. Koch inquired about the existing post-holes. Atty. D'Apolitio advised that is where the new fence would be placed. Mr. Koch estimated that the holes were not at the property line but maybe in about two feet.

Mrs. Owens asked if there would be room to maintain the outside of the fence. Mrs. Mixon advised that there is a buffer zone, including the ditch, that she currently maintains and advised motorists who use Ray Avenue as a cut-thru throw garbage in the ditch. One time someone threw a mattress in the ditch that she had to remove. She assured Mrs. Owens that she would be able to maintain the outside of the fence.

Mr. Satterlee asked the distance from the old fence to the back corner of the house. Atty. D'Apolitio stated the fence would be 138 feet from the corner of the intersection. Mr. Satterlee restated his question. Mrs. Mixon stated the fence line would be 182 feet. Mr. Satterlee restated his question again. Mrs. Mixon stated it would be 25 feet from the center line. Zoning Inspector Crivelli stated that when he and Eric Harris visited the property and measured the setback, it appeared the house has a setback of twenty feet from the side street property line. Mr. Koch estimated from his measurement that the old fence was 27 feet from the center of the right-of-way and if a variance of 20 feet were granted the new fence would be 2 feet closer to the road than the old fence. Atty. D'Apolitio stated his client would accept a variance of 18 feet rather than the requested 20 feet.

Norma Jarrett, 4566 and 4578 New Road testified there were at one time pine trees 30 feet in height near the ditch that no one ever complained about. Becky had the trees removed and cleaned up the area. She supported the variance request.

Val Gallo, 4218 Woodmere Drive stated she met Becky about a month ago. She works part-time with Dave Nelson at the dog warden's office. She has a friend on Rita Avenue and while visiting the friend noticed Becky has three dogs, one being a puppy. The dogs are in a very small kennel and she had concerns about their well-being. She said the Lord leads her down different paths and she has a lot in common with Becky. She lost her husband who was murdered 11 years ago and Becky just lost her husband. She has two children she is raising on her own similar to Becky and she is very much with Becky. She stated it was wrong for anyone to deny the fence as she drove both intersections and does not see any obstruction problems. She also stated the area is full of pedophiles. Across the street is all woods and someone could be lurking in the woods. The three dogs were stuck in a little kennel with the sun beating down on them. She acquired a tarp and gave it to Becky for her and her dad to place over the kennel. It is unfair for the dogs to have to live in this condition. The fence should be allowed because it is a large property for the dogs, kids, and eventually a swimming pool. She is trying to make things better for her children and the dogs. She stated she would normally report something like this to animal charity and talked to Dave Nelson about this and advised him she wanted to help Becky out rather than file a complaint. It is not fair to the dogs to be in this situation. Stated Becky's father was dripping wet recently when he moved the kennel to clean the area up and to give the dogs some shade. This problem would not occur if she

had the fence for the dogs and to keep the pedophiles out. She emphasized there are no site obstructions nor would there any be if the fence were allowed.

Connie VanDivert, 4583 Rita Avenue stated she worries about Becky's children, especially with all the pedophiles in the area. She would be very upset if anything happened to the children. Mr. Satterlee stated that we are getting off-track and we need to stay focused on the fence issue. Mrs. Van Divert stated there is no obstruction. Mr. Koch summarized the dimensions of the lot and advised she can have a fence, it just a matter of where it will be placed and there appears to be a perception that she is not allowed to have a fence. She can have a fence, it just a matter of where it will be placed. He stated site obstructions are only one criterion to be examined. The Township does not want to create an alley or tunnel with 132 feet of fencing running down both property lines. He agreed that site obstructions would not be a problem in this case, but, that is not the only criteria to be examined.

Tom Jarrett, 4566 and 4578 New Road stated he lived there 45 years and the fence will not obstruct vision. The pine trees she took down obstructed vision.

Atty. D'Apolito stated that Mr. Koch made a good point about the tunnel effect. He stated that if you view the photographs the trees created that tunnel effect. His client has made the area nicer for the community. He also stated she would be losing a large part of her yard if the fence had to be placed 20 feet from the property line, which will hinder her ability to put in a pool. Mr. Satterlee stated most lots in Austintown are 80 feet wide and residents have pools and fences.

No one else in attendance to speak for the request.

No one in attendance to speak against the request.

The Board adjourned into executive session.

Dr. Stellers inquired about the type of construction of the fence. Mrs. Mixon stated it was a wooden privacy fence. Austintown Fence is doing the job.

Atty. D'Apolito advised the Board his client wants to put a gate next to the house and without a variance she would not be able to have a gate for ingress/egress. Mr. Satterlee asked how large the gate would be. Mrs. Mixon responded seven feet.

Mr. Koch asked in the spirit of compromise would she entertain a variance of ten feet. Atty. D'Apolito asked if the old fence was 18 feet or 20 feet. There was some discussion regarding the previous fence being setback 18 or 20 feet. Zoning Inspector Crivelli suggested the Board make a decision on how far the fence can come off the west side of the house. Mr. Koch said the Board would use the center of the road.

Atty. D'Apolito requested in the spirit of compromise a variance of 15 feet. Mr. Satterlee stated the Board would consider a variance of 10 feet and vote on it. Zoning

Inspector Crivelli asked the Board if they wished to go on to the next case and let Atty. D’Apolito consult with his client. Mr. Satterlee advised Atty. D’Apolito the Board can move on to the next case. Mrs. Mixon stated she is trying to clean up the lot and the fence will be waterproofed.

Mr. Koch stated twenty feet is asking a lot, but the Board is willing to compromise with her at ten feet. Mr. Satterlee once again advised her to discuss this with legal council and the Board would move onto the next case. After a very brief discussion with his client, Atty. D’Apolito asked for a motion for a variance of twelve feet... “our final answer”.

2009-12-A – Atty. David A. D’Apolito

Motion by Mr. Koch to approve a variance of 12 feet or 37 feet from the center line of the road.

Mr. Satterlee advised that there would only be one vote taken. Mrs. Mixon stated that she understood the meaning of the vote.

Seconded by Mrs. Owens.

Roll call vote: Dr. Stellers – NO; Mrs. Owens – NO; Mr. Glaros – YES; Mr. Koch – YES; Mr. Satterlee – No.

APPEAL CASE 2009-13-A

Ronald L. Rhoades, 252 Carnegie Avenue, Austintown, Ohio, 44515, appeals from the decision of the Austintown Township Zoning Inspector and request a variance from the terms of Article VII-Residence R-2 District, Section 704-Private Garages And Other Outbuildings, of the Austintown Township Zoning Ordinance, as amended through May 24, 2007, to allow for the construction of a private detached garage measuring 24' x 32' x 14' (768 sq. ft.) to be placed within the rear yard 2.7 feet from the northerly side property line and 2 feet from the westerly rear property line. The maximum permitted square footage for a detached garage is 672 square feet. The minimum side and rear yard setback for a detached garage is five (5) feet. Said property is zoned as a Residence R-2 District in Austintown Township, Mahoning County, State of Ohio.

Zoning Inspector Darren Crivelli read the applicant’s letter into the case record, referenced 3 site plans, three pages of construction drawings; five photographs of the existing detached garage, the case mailing list, and two plat maps prepared by the Zoning Office.

Chairperson Satterlee stated the mailing list of those property owners notified for Case 2009-13-A would be incorporated into the case record.

Ronald L. Rhoades, 252 Carnegie Avenue, Austintown, Ohio, 44515 stated the drawings are incorrect. He consulted with Zoning Inspector Crivelli on the setbacks. Zoning Inspector Crivelli advised him to ask for a continuance and submit updated drawings. Mr. Rhoades clarified the rear setback would be six feet and would be in compliance. Mr. Satterlee asked if he was going to use the same foundation. Mr. Rhoades stated he was removing the old foundation. Mr. Rhoades is a truck driver and he backed into the old garage. The garage is unsafe. He would like the new garage to be 10 feet deeper and 8 feet wider than the existing garage. He has a 1930 Model A, a 1946 Ford Coupe, a Z28, and Trans Am. He wants the garage for storage. Mr. Satterlee asked why he can't meet the side yard setback of five feet. Mr. Rhoades stated it would be difficult pulling a car into the garage. The driveway is nine feet wide. Mr. Satterlee asked the distance from the front of the garage to the rear of the house. Mr. Rhodes responded 28.5 feet. He stated he was going to put a storage lift in. Mrs. Owens asked him to explain. He stated it was a bridge lift for storage only, not for doing mechanical work. He explained the ceiling will drop down to seven feet at the back half of the garage. Mr. Koch inquired about the drawing. There was some discussion regarding the overall height of the garage. Mr. Rhoades stated he is constructing an eight foot door because he does not want commercial vehicles in the garage.

Mr. Satterlee asked about the 28 foot area for turning radius. Mr. Rhoades stated there was a concrete slab and maneuvering vehicles was tight.

Mr. Glaros asked if the patio was going to be removed. Mr. Rhodes stated the patio will be removed.

Dr. Stellers inquired about the roofline. Mr. Rhoades stated the roof would remain the same with a loft in the back part of the garage for storage and parts. Mrs. Owens inquired about storage of parts and working on vehicles. Mr. Rhoades stated he has a lot of classic cars. He has stopped working on cars. He now takes his cars to the shop and he has sold his tools. Mrs. Owens asked about the number of vehicles stored. Mr. Rhoades stated the lift will be four posts and a car will be parked on top and underneath. The lift costs \$4,000.00 apiece. He may put a second lift, which would allow for four cars stored on the lifts and one car parked sideways in front of the lifts. The boat in the satellite picture was scraped a number of years ago.

Mr. Koch stated the drawings are not what he is describing. Mr. Rhoades stated the drawings are from One Day Garage. Mr. Koch pointed out some inaccuracies with the drawings.

Mr. Satterlee inquired about the height of the walls for a lift in the garage. Mr. Rhoades stated 14 feet overall height-seven foot in the bottom so he could do something and about 6 ½ feet on the top ceiling wise. Stated the garage would look like a big giant square. Some discussion by the Board members.

Bernadette Provance, 251 Carnegie Avenue spoke in favor of the garage, will help keep things organized by putting the cars away.

Jeffrey Provance, 251 Carnegie Avenue spoke in favor. Mr. Rhoades property and adjoining properties will look better and be worth a little bit more. The garage will be a little higher than his house but will not be an eyesore.

No one else in attendance to speak for the request.

No one in attendance to speak against the request.

Zoning Inspector Crivelli read a letter of objection from Laura J. VanBrocklin-Clark.

Mr. Glaros inquired about the cost of the garage and how long he would live there. Mr. Rhoades stated the garage will cost \$27,000.00, he has lived there 44 years and will remain there and does not care if he ever gets the money invested back.

The Board adjourned into executive session.

2009-13-A – Ronald L. Rhoades

Motion by Dr. Stellers to disapprove the variance for a 24' x 32' x 14' garage but approve a variance of two feet for the northerly side yard setback. Seconded by Mrs. Owens.

Roll call vote: Dr. Stellers – YES; Mrs. Owens – YES; Mr. Glaros – YES; Mr. Koch – YES; Mr. Satterlee – YES.

APPEAL CASE 2009-14-A

Craig Colantone, 550 Wilcox Road, Austintown, Ohio, 44515, appeals from the decision of the Austintown Township Zoning Inspector and request a variance from the terms of Article VIII-Residence R-3 District, Section 803 General Requirements: "Front Yards", of the Austintown Township Zoning Ordinance, as amended through May 24, 2007, to allow the foundation of a duplex to remain as placed 45 feet from the northerly front property line at the property located at 4805 Westchester Drive. Zoning Permit 47127 was issued to the applicant on November 3, 2008 stipulating a front setback of fifty (50) feet. Said property is zoned as a Residence R-3 District in Austintown Township, Mahoning County, State of Ohio.

Zoning Inspector Darren Crivelli read the applicant's letter into the case record, referenced a site plan prepared by the zoning office after inspection, a stop work order issued on June 9, 2009, Zoning Permit 47127 with original site plan, a letter dated June 2, 2009 regarding an address clarification, the case mailing list, two plat maps prepared by the Zoning Office, an additional site plan from the property owner, three photographs of a similar duplex in Austintown, and elevation and floor plan drawings.

Chairperson Satterlee stated the mailing list of those property owners notified for Case 2009-14-A would be incorporated into the case record.

Craig Colantone, 550 Wilcox Road stated he made a mistake in laying out the duplex. He thought it was a 50 foot right-of-way. Mr. Satterlee asked who found the error. Zoning Inspector Crivelli stated he determined the front setback was in error.

Walter Terlecky, 60 Westchester Drive spoke in favor of the request. The property is all used up so there will be no other setback issues. If you turn down the request would he still be allowed a carport there?

Jason Vantell, 725 Boardman-Canfield Road spoke in favor of the request. He is co-owner of the property and a real estate appraiser. He does not see any reductions in value. There are no abutting properties to create an off-set.

Mr. Koch inquired about the turning radius for the detached garage. Mr. Colantone stated he was going to eventually move into the duplex when his daughter leaves. He was going to store his tools and equipment there. Mr. Koch inquired again about the turning radius which is tight and what would it have been had the error in setback not been made. A discussion occurred regarding rear yard setback requirements.

Zoning Inspector Crivelli explained how the stop work order was issued after finding one property pin. He stated that turning radius was not considered in issuing the zoning permit as there are no prescribed regulations for turning radius. Zoning Inspector Crivelli requested Mr. Colantone call his surveyor to prevent a stop work order from being issued. Zoning Inspector Crivelli stated Mr. Colantone lined the front of the duplex up with the detached garage on the abutting easterly property and did not wish to have the property surveyed, and thus, a stop work order was issued.

Cheryl Dodson, 188 Idaho Road stated she owned the property with the detached garage directly east and has no objections to the variance. She questioned if the detached garage would be used as rental storage facilities. Mr. Satterlee stated he would not be allowed to do that. Zoning Inspector Crivelli explained there are limitations for the sizes of garages in R-1 and R-2, but no limitations in Agriculture or R-3 and this property is zoned R-3. Zoning Inspector Crivelli then read a portion of the definition of a private detached garage which does allow for the renting of one space for a vehicle.

Tim Green, 194 Idaho Road inquired about the setback of the five car detached garage. Zoning Inspector Crivelli stated the requirement is five feet and the garage is in conformance. Mr. Green inquired about maintenance behind the garage. Zoning Inspector Crivelli advised it is the property owner's obligation to maintain the entire property. Mr. Colantone stated he will lay riverbed stone behind the garage. Mr. Green inquired about the existing fence. Mr. Colantone said a new fence would be constructed. Mr. Green stated he has a steady stream of trespassers from the apartments and the garage creates a nice privacy wall.

Mr. Terlecky stated he is unfairly criticized for the kids. The apartments were built for adults but the federal government requires they be leased to tenants with kids. You should be careful who you vote for.

Mr. Koch stated he would have granted a variance to the plot layout in the beginning and it appears the property owner needed a variance of more than five feet for turning radius. He suggested that the value of the property would have been enhanced had he come maybe five more feet forward. This item should have been addressed prior to construction. Mr. Koch asked Mr. Colantone if he typically lays out his own sites. Mr. Colantone stated he does not use a surveyor and lays out his own sites.

No one else in attendance to speak for the request.

No one in attendance to speak against the request.

2009-14-A Craig Colantone

Motion by Mr. Koch to approve the variance request as submitted. Seconded by Mr. Glaros.

Roll call vote: Dr. Stellers – YES; Mrs. Owens – YES; Mr. Glaros – YES; Mr. Koch – YES; Mr. Satterlee – YES.

Zoning inspector Crivelli advised Mr. Colantone the stop work order is now removed and he can begin construction immediately.

There being nothing further to come before the Board, the meeting was adjourned at 9:01 P.M.

AUSTINTOWN BOARD OF ZONING APPEALS

DARREN L. CRIVELLI, ZONING INSPECTOR

APPROVED: _____
ROBERT SATTERLEE, Chair

DATED: _____