

THORNAPPLE TOWNSHIP ZONING BOARD OF APPEALS

Tuesday, May 6, 2019

1. The meeting was called to order by Chairman Tim VerHey at 7:00 p.m. at the Township Hall. Chairman VerHey welcomed those attending.
2. Present: Tim VerHey, Curt Campbell, Linda Gasper, and Martin Wenger (at 7:04 p.m.). Absent: Craig Stolsonburg (excused). Also present: Catherine Getty, Stephanie Skidmore, Jason Brouwer, Josh Strait, Todd Shank, Dan Ward, and Bryan Denman.
3. **MOTION** by Gasper, support by Campbell to approve the Agenda as printed. **MOTION CARRIED** with 3 yes voice votes.
4. **MOTION** by Campbell, support by Gasper to approve the September 24, 2018 Minutes as printed. **MOTION CARRIED** with 3 yes voice votes.
5. Public Comments – No comments.
6. New Business
 - a. None.
7. Public Hearing
 - a. Variance #109 – 11033 Prairie Ridge Drive, 08-14-155-001-00
 - i. Fence height in the front yard setback – Sections 21.12(b).
 - ii. Getty provided an overview of the Variance request and indicated that the applicant 's property is located on 11033 Prairie Ridge Drive. The house is on a corner lot with frontage along Cherry Valley Drive and Prairie Ridge Drive. In addition, it backs up to the intersection of Cherry Valley Road and Adams Road. The applicant is requesting a two (2) foot fence height variance from Section 21.12(b) which limits fence height within the front yard setback to four (4) feet high. The front yard setback (40') applies to both road frontages (Prairie Ridge Drive and Cherry Valley Road). The applicant is requesting to keep the existing height of the fence in place at six (6) feet. Getty stated that there is an existing berm on the back-property line, however, this berm does not hinder the light from the vehicles at the Adams/Cherry Valley intersection from coming into the applicant's house. Getty stated that the applicant did not get a permit for the fence, however, this is a common mistake among Township residents. VerHey stated that since it's a corner lot, it must meet the setback of both roads. Gasper inquired whether the location of the fence was appropriate. Getty stated that it is situated in the right location, however, the ordinance limits it to four (4) feet in height. Wenger asked if this was not a corner lot and the fence was on the back-yard property line, would the fence be the right height. Getty stated that it would be the right height, however, there are Home Owner Association (HOA) by-laws in place that dictate fence placement/height. The Township does not enforce HOA by-laws. Wenger is uncertain why Cherry Valley Road is seen as a front yard with this lot.
 - iii. Applicant's comments: Todd Shank expressed his concerns regarding his property being next to Cherry Valley Road and detailed the safety, noise and light pollution issues that he has been experiencing. He stated that he didn't

realize he needed a permit to build the fence, however, feels that it helps to keep the noise down; provides a safety barrier for his family and pets; and blocks the light from the intersection.

- iv. VerHey opened the Public Hearing at 7:15 p.m. Getty indicated that she did not receive any negative comments from adjacent property owners, however, received communication from the HOA Board that the fence is out of compliance with their by-laws that stipulate that a fence can only be five (5) feet in height. The following neighbors voiced their support for the fence at its current height:
 1. Bryan Dennon, 11073 Prairie Ridge Drive, stated that he lives next to the Shank's and feels that the noise, traffic and light are an issue. He feels that the build up of the berm and fence are of benefit and help with the light pollution.
 2. VerHey asked if any additional communication was received besides the HOA e-mail regarding the fence. Dan Ward, 11220 Prairie Ridge Drive, stated that he is a member of the HOA board and stated that the height of the fence is the only issue that the board has with the fence. On an individual basis, Mr. Ward does not have any personal issues with the current height of the fence.
 3. Josh Strait, 11245 Prairie Ridge Drive, stated that he lives at the end of the cul-de-sac and understands the safety issue of the Cherry Valley Road/Adams Road intersection. He stated that in the winter that the intersection can be slick and that it could be dangerous throughout that stretch due to the open farm lands. He stated that he feels that changes will be coming to the HOA by-laws.
 4. Campbell asked whether the height standards in the HOA by-laws are changing in the future. Ward stated that the by-laws are not changing at this point.
 5. Jason Brouwer, 11232 Prairie Ridge, stated that he likes the fence and doesn't see an issue with it.
 6. Campbell asked the neighborhood group that was in attendance whether they were in support of the variance. All of the Prairie Ridge residents in attendance were in support of the variance.
- v. VerHey closed the Public Hearing at 7:21 p.m.
- vi. Deliberation: Campbell provided a suggestion of building up the berm two additional feet, planting trees and reducing the fence height by two feet to alleviate this situation. Due to the cost involved with building up the berm, the applicant was not able to commit to this solution. Wenger expressed concern that the location of the fence is considered a front yard. Wenger stated that based upon how the house is built, it is a side yard in his opinion. Gasper asked Getty if the ZBA could refer this ordinance to the Planning Commission for review if it was determined that this ordinance was not appropriate and not take action on this variance request. Getty stated that the ZBA could refer this ordinance to the Planning Commission for review and not take action on this

variance request, however, it might take some time to review, revise and adopt changes to this ordinance. Gasper stated that she feels that this ordinance needs to be referred to the Planning Commission but the ZBA needed to go through the Non-Use (Dimensional) Variance Checklist to see if this variance meets the criteria to be approved. Getty will refer Ordinance Section 21.12 (b) to the Ordinance Committee.

vii. **MOTION** by Gasper, support by Wenger to approve Variance #109 based upon the following rationale:

1. Strict compliance with a requirement for area, setback, width, building height, and other bulk or density regulation will have the effect of unreasonably preventing the property owner from using the property for a purpose permitted by the ordinance or would be unnecessarily burdensome. Is this a true statement? YES.
2. Substantial justice would be achieved for the applicant as well as other property owners in the district if the variance is approved. Is this a true statement? YES.
3. The requested variance is the least relief in order to afford substantial justice for the property owners involved. Is this a true statement? YES.
4. The practical difficulty is due to uniquely identified characteristics of the property and not related to general conditions in the area of the property. Is this a true statement? YES.
5. The practical difficulty is not self-created. Is this true statement? YES.
6. Findings of Fact:
 - a. Due to the high traffic from the intersection of Adams Road and Cherry Valley Road, there is unusually high road noise, light pollution from passing cars and safety factors from accidents adjacent to this property.
 - b. Due to its location as a corner lot and is adjacent to the intersection of Adams Road and Cherry Valley Road, this difficulty is substantial on the property owner and the fencing solution also provides benefits to other neighbors within the vicinity.
 - c. Under the circumstances for this corner lot, this is the most cost-effective solution.
 - d. The practical difficulty is based upon the fact that this lot is adjacent to the Cherry Valley Road/Adams Road intersection and that it's a corner lot.
 - e. The original condominium developer created this issue when developing this subdivision. The subdivision's by-laws do not allow for lot access off of Cherry Valley Road and the only access is off of Prairie Ridge Drive.
7. **ROLL CALL VOTE:** Campbell, yes; Gasper, yes; Stolsonburg, absent; VerHey, yes; Wenger, yes. **MOTION CARRIED.**

8. ZBA Member Comments:

- a. None.
- 9. Adjournment: **MOTION** by Gasper, support by Wenger to adjourn the meeting at 7:45 p.m.
MOTION CARRIED with 4 yes votes.

Respectfully submitted by:

Curt Campbell

Secretary

Stephanie L. Skidmore

Recording Secretary

Approved: 6/24/2019