

December 18, 2017

The Ellettsville, Indiana, Board of Zoning Appeals met on Thursday, December 18, 2017, at Ellettsville Town Hall. Terry Baker called the meeting to order at 6:08 p.m. and led the Pledge of Allegiance.

Roll Call: Members present were Terry Baker, President; Russ Ryle, Vice President; Todd Lare and Pat Wesolowski. Fred Baugh was absent.

Approval of Minutes

Terry Baker entertained a motion for approval of the minutes for the meeting on October 25, 2017. Pat Wesolowski so moved. Russ Ryle seconded. Motion carried.

New Business

Request for a variance from development standards to allow for an increase in fence height in the front yard, 4798 W. Hidden Meadow Drive; Petitioner: Eileen Vernon; Case No: BZA 2017-04

Kevin Tolloty, Planning Director, explained the Petitioner is requesting a development standards variance to allow a 6' tall fence in a front yard. The 6' fence has already been constructed. Property is zoned Commercial 3 but the use is single family residential. Fences in front yards are to be no taller than 3'. Corner lots are considered to have two front yards, one on each street frontage. A variance would allow the fence that has been built to remain as-is. It appears the fence was built in the drainage easement on the back of the property. Although adjacent property owners have been notified, the Petitioner still needs to provide proof of mailing. Staff does not recommend approval of the variance. There are six criteria that need to be met in order to grant a variance from development standards. The first three criteria are set through Indiana code as follows:

1. Approval will not be injurious to the public health, safety, morals, and general welfare of the community.
2. Use or value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner.
3. Strict application of the terms in the zoning ordinance will not result in practical difficulties in the use of the property.

One of the criteria from Ellettsville Town Code references the Comprehensive Plan. In this case, Ellettsville's Comprehensive Plan does not reference fences. Should the Board find in the affirmative, the remaining two criteria follow:

1. Approval is not based solely on financial hardship or mere convenience.
2. Approval is in conformance with all other Town ordinances.

General public, welfare, public health and safety are concerns as outlined in the staff report. It is staff's opinion that the strict application of the terms of the zoning ordinance will result in practical difficulties was not met. Practical difficulties, however, are not defined in the ordinance and not well defined by the state. The State of Michigan defines a practical difficulty as (1) not being self-created due to unique circumstances; (2) not shared by neighboring properties; (3) a request for lesser relaxation of the ordinance would provide substantial justice to the owner and neighbors; and (4) strict compliance would unreasonably prevent the landowner from using the property or render the conformity burdensome. A corner lot is not a unique circumstance as there are four at every intersection. The rear 40' of the property is in a drainage easement. It is 49' from the rear property line to the back of the house. It is 9' from the rear of the house to the drainage easement. The property across the street from the Petitioner has also installed a 6' tall fence in their front yard. It was completed sometime after late last week.

Pat Wesolowski asked if the fence that is now on the property is 6' tall. Mr. Tolloty answered yes. Mr. Wesolowski asked if there are any other fences in Hidden Meadow not in compliance. Mr. Tolloty replied no, not in the front yard. Mr. Wesolowski asked if there are covenants. Mr. Tolloty answered they have a homeowners' association ("HOA"). Mr. Wesolowski asked what the HOA says about fences. Mr. Tolloty replied the HOA is aware and gave permission for the fence to be built. Steve Emery is in charge of the HOA. The Town does not enforce HOA requirements and vice versa. Mr. Wesolowski asked why they are now aware of this. Mr. Tolloty explained the Planning Department had received a complaint shortly after the fence was erected. Mr. Wesolowski asked if the Petitioner spoke with the Planning Department before installing the fence. Ms. Line answered no. Mr. Wesolowski asked how long the fence has been up. Ms. Vernon answered since October 2017. Mr. Wesolowski asked if she was not aware of the zoning. Ms. Vernon replied absolutely not. She submitted a letter to the HOA who approved it. There are other 6' fences in her area. Mr. Wesolowski asked if the fences are in the front yard. Ms. Vernon answered no, not in the front yard. She disagrees it is the front yard. Mr. Tolloty explained when there is a corner lot on a property it is considered to have two front yards because of the site restriction. Typically, from the front of the house back is considered the side yard but when it is located on a corner anything between the house and either street is considered to be in the front yard.

Russ Ryle asked the requirement for the line of site clearances at an intersection. Mr. Tolloty answered it is a 20' triangle. Mr. Ryle noted line of site requirements are for public safety at an intersection and a 20' triangle is required for visibility so drivers can see each other. Especially, at an intersection such as that by this property because it is a two-way stop. His concern is someone won't have sufficient time to react with someone approaching them on a non-stop street. Mr. Tolloty commented Teresa Drive doesn't come in at a right angle but swings around. Mr. Wesolowski wanted to build a fence in his backyard and before he did so, he went to the Town and asked so he could build it correctly. Mr. Tolloty can understand how a property owner may not be aware of the ordinance but a respectable fence contractor would be. Mr. Wesolowski asked if the Petitioner put the fence up herself or had someone build it. Ms. Vernon answered she had someone build it for her but at the time she spoke with people in her subdivision and complied with the same things they had to. That included surveying the property, submitting a letter to the HOA which included how the fence would be built and its height. Mr. Wesolowski asked if the fence is for privacy. Ms. Vernon answered for privacy, dogs

and great grandchildren. Mr. Wesolowski asked if you can see through the fence. Ms. Vernon replied yes, from an angle. Mr. Wesolowski asked Mr. Tolloty for his recommendation. Mr. Tolloty does not recommend approval because he can't find a reason for the practical difficulty. Mr. Wesolowski asked if the Petitioner is not granted a variance does the fence have to be removed or reduced to 3'. Mr. Tolloty answered either solution. The portion in the drainage easement will have to be addressed.

Eileen Vernon, Petitioner, explained the fence was built with a space to allow for drainage. Mr. Tolloty explained Town code does not allow anything to be built across an easement. Ms. Vernon commented when she purchased the property, the first thing she asked about was having a 6' fence. She borrowed money to build the fence for privacy and a dog. Mr. Ryle's issue isn't the fence as he likes the architectural look but the issue is where it is located, the fact it is built on a drainage easement and may/may not impede safety. Ms. Vernon thinks she should have been told this in the beginning particularly about the drainage. Mr. Ryle explained the drainage easement is on the approved plat of the subdivision so it is an issue between her, the realtor and developer. Mr. Wesolowski asked if she is the first owner of the house. Ms. Vernon replied yes, it's a new house in a new subdivision.

Chris Wheeler, a resident of Hidden Meadow, lives two doors down from the Petitioner and he is not opposed to the fence. However, he recognizes there are ordinances that need to be complied with. He is one member of the community whom doesn't find the fence offensive.

Michael Noll, lives on N. Teresa Lane, finds that the way the fence is now is not offensive. The HOA requires a 6' fence around the entire back yard. If the Petitioner has to have a 3' fence it means she would have no fence at all.

Pat Wesolowski agrees that in a backyard a 6' fence would be acceptable. The problem is the Petitioner has two front yards for which zoning allows 3' and not 6' and the fence was built in a drainage easement is a problem.

Terry Baker entertained a motion to either approve the variance, approve with conditions, denial or a continuance.

Russ Ryle understands a 6' fence is needed for a dog. What breed is the dog? Ms. Vernon answered it is a German Shepherd, Retriever and Doberman mix. Mr. Ryle's experience is that a 6' fence would not stop the breed from jumping over it. Ms. Vernon responded her dog can clear a 3' fence as can her great grandchildren. While Mr. Ryle understands her need for a fence but also understands the Town's need to preserve drainage. Would you rework the fence to respect the drainage area? Ms. Vernon would lose so much property and she has rock for erosion. She reiterated she borrowed money for the fence and she should have been notified because that is why there is an HOA. Mr. Ryle outlined the particulars of the fence and drainage easement. Ms. Vernon disagreed and thinks the HOA should have known the Town's code. Mr. Wesolowski asked how far the fence is to the drainage easement. Mr. Tolloty answered approximately to the middle of the rear yard. Mr. Wesolowski asked the length of the easement. Mr. Tolloty replied 40'. Mr. Ryle asked if it is all on the Petitioner's property. Mr. Tolloty answered it is all on the Petitioner's property and is shown on the plot plan. Mr. Wesolowski asked when the Petitioner purchased the property was she aware of the easement. Ms. Vernon answered no, she

didn't know the drain was there until a neighbor told her. If she had known all of this, she wouldn't have purchased the property. Mr. Wesolowski asked how long she's lived on the property. Ms. Vernon replied it has not been a year. Mr. Wesolowski asked Mr. Tolloty the main reason the fence should not be allowed other than it is against Town code. Mr. Tolloty explained in order to grant a variance he doesn't see any reason for how it meets the criteria of being a practical difficulty. There are pros and cons to corner lots. Mr. Wesolowski thinks they're penalizing a person with a corner lot. Corner lots are more expensive than in-line lots and require more maintenance. Mr. Baker opined it comes down to what the Town code states. On corner lots, side yards and front yards require 3' fences and not based on whether or not a person pays more for the lot. Mr. Wesolowski does, however, have a problem with the drainage easement in the rear yard.

Russ Ryle made a motion to deny the petition. Todd Baker seconded. Roll call vote: Pat Wesolowski – no; Todd Lare – yes; Russ Ryle – yes; and Terry Baker – yes. Motion carried, 3-1.

Adjournment

Terry Baker entertained a motion to adjourn. Pat Wesolowski so moved. Russ Ryle seconded. Motion carried. Meeting adjourned at 6:41 p.m.

Terry Baker, President

Fred Baugh

Todd Lare

Pat Wesolowski

Russ Ryle

Denise Line, Secretary