

Board of Zoning Appeals

October 13, 2016

Members present: Chairman Phil Rooney, Sharon Rooney, and Brett Gies. Present on behalf of the City of Findlay is Todd Richard, Zoning Department Administrator, and Deidre Ramthun, Recording Secretary.

The meeting was called to order at 6:00 p.m. by Chairman Rooney. Mr. Rooney introduced the members to the audience and the general rules were reviewed.

Case #55181-BA-16 (3400 Spring Lake Drive) was introduced. Mr. Richard read his comments as follows: Filed by Jason Jerew, the applicant is seeking a variance from section 1161.03.B1 of the City of Findlay Zoning Ordinance. This section requires fences in required front yards to be no more than 4 feet in height and at least 50% open. The applicant has constructed a fence in the required front yard that is solid and 6 feet in height.

In June of 2016, the applicant received a permit for a 6 foot high fence in the "side and rear yard..." The permit was reviewed and issued by the Hancock Regional Planning Commission (HRPC) in his absence. The applicant presented a survey and hand-drawn site plan indicating where the fence was to be placed on the property. Everything the applicant did was proper.

A routine inspection was performed on the site. The violation was obvious. Not only was the fence encroaching into the setback, but it was actually about 1.5 feet in the city right-of-way. The permit application and plan was reviewed. The plan should not have been accepted. It indicates a 15-foot setback from the curb. Curbs are never referenced for setback purposes because the setback is only related to the property line or right-of-way. Additionally, the survey should have been used to illustrate where the fence was to be placed on the site.

Another issue with the permit approval is the fact a 30-foot setback is required from the north lot line—not 15 feet as was thought by HRPC. This was being treated as a street side yard and not a front yard, as it should have been. It is unknown how the dwelling was placed on the site when it was built in 1967.

So, we have a fence that is solid and too tall in the city right-of-way, within the required setback, approved by a substandard site plan, with zoning requirements that were improperly applied. Again the applicant did what was approved.

Regardless of the outcome, the City will be removing and replacing the fence according to the zoning regulations, or in accordance with the Board's decision (at our cost). The applicant understands the fence cannot be left in the right-of-way, however, he would like to have a zero setback from the north lot line. The request is very similar to a recent request we had in this subdivision, but there is no hardship here to meet the requirement. The City has acknowledged the error and will correct it, but we want to see the fence out of the front yard. The applicant has combined his property with a lot to the rear and has plenty of space to meet the setback as illustrated in the survey that you have. On the other hand, consistency must be considered. The fence is not causing much of a visibility issue, however, we may want to see some tapering so the visibility from the applicant's driveway isn't hindered in any way,

plus if there's ever a sidewalk that goes through there. For safety purpose, we'd like to see at least some form of visibility there. You did require the other applicant to dog ear his corner at the neighbor's driveway.

Mr. Rooney stated that per the survey, how far is it from the north side of his house to the right-of-way of Kensington? After discussion, Mr. Richard stated that it's probably close to 15 feet from the right-of-way. Mr. Rooney clarified that we're going off the assumption that this is two front yards. Mr. Richard replied that it is a fact.

Chairman Rooney swore in Jason Jerew, 3400 Spring Lake Drive, Findlay, Ohio. Mr. Jerew stated that it is a little bit odd because the road in the subdivision is not well traveled so it kind of gives precedence to being an alley and gets very little traffic. You could say there are two front yards to the property, but at the same time, since it's been requested to be combined as one lot with one parcel number that would make it a side yard which would be a side street yard. There are probably more alleys in the City of Findlay that see traffic more than this road actually sees traffic. To Mr. Richard's point though, there is precedence in that particular neighborhood at two different other addresses on the other end of the street – the busier side of the street where Penrose and 77 meet up. The most recent property that was zoned or granted a variance did have the dog ear on it. The one on the opposite side of the street does not have a dog ear nor are either of those yards on the side street regulated to the 42 or 48 height requirement or the 50% wide-open requirement. He does understand that there was a mistake by the City with granting it, possibly the 15 feet; but regardless if it was 15 feet, he feels it's still encroaching on the right-of-way. To what Mr. Richard says, it does need to be moved about 1.5 feet. The builders went off of what was approved. To move it in the 18 inches, or whatever it is, is a suitable remedy to the situation so it's off the right-of-way. If you look at the sidewalks that were started and never finished in the subdivision, you would line them up where the fence actually sits now. You could put them in a straight line and the fence would not interfere with the right-of-way, but if that 18 inches is a concern for the City and they want to spend the extra cash to move that in, obviously, he doesn't have anything to say about that because it is in the right-of-way. It probably should have been 16 feet. It should have sat in another 2 feet from where it's sitting to not be in the right of way. He doesn't see any reason to not allow the fence to be there and if the City wishes to move it at their expense that 2 feet, it's going to have to happen.

There was no communication.

Mrs. Rooney asked if Mr. Richard's recommendation is about 1.5 feet. Mr. Richard replied that yes, the right-of-way is a typical location from the back of the curb which is 16.5 feet, and regardless of what the BZA Commission decides tonight, we are moving it from the right-of-way. The question is are we moving it about 1.5 feet or are we moving it about 31.5 feet out of the right-of-way.

Mr. Rooney asked Mr. Jerew how he felt about moving the fence flush with the side of his house. Mr. Jerew commented that he would prefer not [flush with the house] because the reason they put it together the way they did is to not lose that much of his useable yard space. In taking into consideration the traffic flow and things of that nature, putting a pool in the back yard, and safety issues is the other reason why he wanted to be at 6 feet. With the precedence already in the neighborhood, one being dog eared and one not being dog eared, and both being set in about the same location that he requested, maybe just a little bit off the right-of-way, he doesn't see any reason why he would need to move it at all besides to get it out of the right-of-way. He thinks it would be pretty hard pressed to

find a reason to move it to the 31 because it was consistently done like the other properties in the neighborhood.

Mrs. Rooney asked what the distance is between the house and the fence right now. Mr. Jerew commented roughly 10 feet. There's probably a 10-foot section between where it butts up against the garage facade and goes out to the first post then runs all the way down in a straight line to the back marker.

Mr. Rooney stated that moving it back 30 feet makes absolutely no sense because then it's half way to the back yard. There's no way there is a visibility issue. Do you move it flush to the house or move it 2 feet? Those would be his two choices. Clarification was discussed about dog earring the fence at the corner of the garage. Mr. Rooney stated that if you look at the lot behind it, the one we dog eared, the driveway was pretty close behind that fence. This one is two lots away. Mr. Richard stated that he meant for his own safety when backing out and to make it consistent with what we have done before. Mr. Jerew stated that the other fence was dog eared at the back because it was butted up against someone else's driveway.

A motion was made by Mrs. Rooney to remove the fence from the right-of-way and taper the fence at the applicant's driveway 45 degrees to allow visibility with the standard conditions that he get an amended permit. Mr. Richard stated that he will be coordinating this with Mr. Jerew. Said motion was seconded by Mr. Gies and was unanimously approved by a vote of 3-0.

A motion was made by Mrs. Rooney to approve the August 11, 2016 minutes as written. The motion was seconded by Mr. Rooney. The motion to approve the minutes passed unanimously.

The meeting was adjourned.



Chairman



Secretary