

The Tuesday September 8, 2009 meeting of the Delhi Township Board of Zoning Appeals was called to order by Chairman Robert Ashe at 7:00 p.m. at the Administration Building with the Pledge of Allegiance to the Flag.

Members present:

Robert J. Ashe
Joseph Scherer, Jr.
Charles Brigham III
Robert Hendon
Jerome H. Kerns

Also present:

Thomas R. Stahlheber, Director of Development Services
David C. Lane, Law Director

Mr. Stahlheber certified that the requirements of Section 121.22 of the Ohio Revised Code and the rules adopted pursuant thereto had been completely complied with as they concerned the meeting.

The hearing in Case VA2009-3 (537 Morrvue) was convened.

Mr. Stahlheber (sworn) advised that on May 29, 2009 the Department of Development Services received a zoning application filed by Amber and Joe Post for the construction of a six foot high solid fence enclosing the rear yard at 537 Morrvue Drive. He commented that the certificate of occupancy for the fence was denied on July 23, 2009 and the applicants notified of the denial by certified mail on July 23, 2009. He noted that in the letter were stated the reason for the denial which included: the premises know as 537 Morrvue Drive is located in Delhi Township, Hamilton County Ohio, and in the "C" Residence district as shown on the maps of the Township Zoning Resolution; the subject property is a corner lot having the following yard designations, front - east & south, rear – west, and side - north; the submitted and approved zoning certificate application drawings indicated a proposed six foot high solid fence enclosing the west rear yard on its west and south sides; during an inspection the subject fence was observed constructed, such extending into the south front yard, and a four foot high solid fence was observed constructed in the north side yard; the Township Zoning Resolution prohibits fences greater than four feet high and less than seventy-five percent open in any yard other than a rear yard. The denial was also based on the following sections of the Zoning Resolution: 51.1, 81, 82, 61, 62, 62.13, 171, 171.9, 191, 192, 194, 251, 281, 282, and 291. Pursuant to Article XVIII of the Zoning Resolution the applicant had the right to file an appeal of the denial within twenty days of the action with an appeal being filed in the form of an application received July 29, 2009. Pursuant to the requirements of the Ohio Revised Code the hearing was advertised in a newspaper of general circulation at least ten days before the hearing and those parties of interest were notified by first class mail at least ten days before the hearing.

Exhibit "A" - application
Exhibit "B" - site plan (as approved)
Exhibit "C" - scaled site plan (indicating yard designations)

Mr. Ashe advised that there were two issues, the four foot solid fence in the side yard and the six foot solid fence encroaching into the front yard.

To Mr. Kern's question as to if there was a solid wood fence along the west property line of the subject property extending from the fence in the south front yard north Mr. Stahlheber responded in the affirmative.

To Mr. Scherer's question as to when the application drawing was submitted was there any discussion regarding the subject property having two front yards and that solid fences are prohibited in them Mr. Stahlheber responded in the affirmative. Mr. Stahlheber advised that the submitted site plan showed the fence situated behind the south building line of the house.

Amber Post (sworn), 537 Morrvue Drive, advised that the privacy fence was put up for security reasons and to keep their dog in the yard. She commented that she did not realize that the site plan submitted had to be followed in siting the fence. She noted that the new privacy fence replaced a pre-existing chain link fence in the same location.

To Mr. Hendon's question as to if the pre-existing fence jogged back to the house the way the new fence does Mrs. Post responded in the affirmative, noting that it is in the exact same location.

To Mr. Kern's question as to if the pre-existing fence was chain link Mrs. Post responded in the affirmative.

To Mr. Kern's question as to if the pre-existing fence meet all requirements Mr. Stahlheber responded in the affirmative, noting that that fence was four foot high and seventy-five percent open.

To Mr. Ashe's question as to who installed the fence Mrs. Post responded Rick Baker, a friend of the family who does home improvement work.

Mr. Ashe advised that when a site plan is submitted and approved one needs to go by the plan in constructing improvements and not change it without further approval.

Mrs. Post advised she was not aware that she changed anything.

To Mr. Brigham's question as to if Rick Baker operates as a home improvement company Mrs. Post responded he does home improvements work part-time.

To Mr. Brigham's question as to what would be involved in moving the fence back so to be in compliance Mrs. Post advised it would cost \$2000.

To Mr. Brigham's question as to where the back door of the house is Mrs. Post responded on the west side of the house.

To Mr. Kern's question as to if procedurally corner lot fence applicants are advised of the regulations affecting such Mr. Stahlheber responded that only if there is a problem indicated on the submitted site plan will he contact an applicant.

Mr. Kern advised that the Board is very reluctant to grant variances in cases like this one due to the dangerous precedence they could set.

To Mr. Brigham's question as to where the encroachments were Mr. Stahlheber advised in the north side yard there is a four foot high solid gate and in the south front yard is the six foot high solid fence.

Mrs. Post advised that the fence extending into the south front yard was situated five feet from the sidewalk and fifteen feet from the street.

Mr. Scherer advised that the Board cannot grant variances based upon financial hardships. He commented that he did not feel that the Board would have granted a variance had one been requested prior to construction of the fence. He noted that had the fence been constructed along the south building line as required it would have kept the neighbors out of and the dog in the yard.

To Mrs. Post's question as to if the Board would consider allowing the solid fence in its present location provided it was modified so as not to exceed a height of four feet Mr. Ashe responded in the negative commented that such fence still would not be code compliant.

To Mr. Ashe's question as to if there was any opposition Mr. Stahlheber responded in the negative. Mr. Stahlheber advised of receiving a voice mail requesting that the fence be painted or treated, noting that such is not regulated.

To Mr. Brigham's question as to if contractors normally make application for improvements Mr. Stahlheber responded in the negative, noting that for minor improvements contractors more often than not leave it to property owners to acquire any necessary permits.

To Mr. Scherer's question as to if screening the fence by planting bushes would be permitted Mr. Stahlheber responded in the affirmative stating that the location and height of bushes on private property is not regulated.

To Mr. Scherer's question as to if planting bushes to screen the fence was something the applicant would consider Mr. Post responded in the affirmative.

Mr. Stahlheber advised the Board that they generally do not condition variances.

Mr. Scherer advised that if the Board would consider applicants' intent to screen the subject fence they could continue the hearing in progress to facilitate the applicants submitting more specific plans as to the type and height of the bushes.

To Mr. Ashe's question as to if the Board could approve a variance concerning the solid fence (gate) in the side yard and deny a variance concerning the solid fence in the front yard Mr. Lane responded in the affirmative.

Mr. Ashe commented that he is concerned about the fence extending into the front yard, commenting that if it was moved back to where it should be it would be less of a visual distraction.

To Mrs. Post's question as to what would have happened if they had constructed the fence without a permit Mr. Ashe advised that he was certain that a complaint concerning it would have been received at which time a zoning inspector would have inspected the property, observed the violation and ordered it removed, subject to an appeal right.

Mr. Lane commented that in reviewing the applicants appeal letter three of the four stated hardships are all external factors to the property. He commented that financial hardship, security, trespassing and the existence of a dog are all difficult if not impossible factors for the Board to consider. He noted that the existing mature tree would be a factor the Board could consider inasmuch as it is a unique feature at the property inasmuch as it has been there a long time.

Mr. Hendon commented that there is room for the fence to be in alignment with the house.

Mr. Ashe concurred with Mr. Hendon's comment.

To Mr. Scherer's question as to if anyone was consulted to determine as to if relocating the fence so to be code compliant would have a detrimental effect on the health of the tree Mrs. Post responded in the negative. Mr. Post commented that the tree roots would make relocating the fence difficult.

Mr. Kearns advised that the issue is not where the fence is but the type of fence. He noted that the applicants are not prohibited from putting a six foot solid fence in their rear yard.

Mr. Brigham advised he would be happy to continue the hearing in progress to facilitate a site inspection by the Board so to determine if the tree prohibits relocation of the fence so be code compliant. He commented that security is a valid issue, but not a zoning issue. He noted that one cannot address a security issue by violating a zoning regulation.

Resolution 2009-5

Mr. Hendon moved and Mr. Brigham seconded to grant the variance as requested concerning the four foot high solid fence (gate) in the north side yard in case VA2009-3. Messrs. Scherer, Kearns, Hendon, Brigham and Ashe voted Aye. Motion carried.

Mr. Hendon moved and Mr. Brigham seconded to deny the requested variance concerning the six foot high solid fence extending into the south front yard in case VA2009-3 . Messrs. Scherer, Kearns, Hendon, Brigham and Ashe voted Aye. Motion carried.

Finding of Fact:

1. The case number was VA2009-3.
2. The date of the action by the inspector was July 23, 2009 where a Certificate of Occupancy was denied for the construction of a six foot high solid fence enclosing the west rear yard and extending into the south front yard.
3. The Appellant's names were Amber and Joe Post.
4. The date the appeal was filed was July 29, 2009.
5. The address of the subject premises was 537 Morrvue Drive, Delhi Township, Hamilton County, Ohio.
6. The Zone District of the subject premises was "C" Residence.
7. Sections of the Zoning Resolution on which the denial was based included: 51.1, 81, 82, 61, 62, 62.13, 171, 171.9, 191, 192, 194, 251, 281, 282 and 291.
8. Sections of the Zoning Resolution authorizing the Board to grant or deny the appeal are: 183, 184, 184.2, 184.6, 185 and 186.
9. The Appellant did not cite any sections of the Zoning Resolution as authorizing the Board to grant the appeal.
10. There was no opposition present at the meeting.

RE: 4-foot high solid fence (gate) in the north side yard:

11. There was no error on the part of the Zoning Inspector.
12. The Board finds that practical difficulties exist as a result of an area zoning requirement with respect to the following non-exclusive factors:
 - a) The property owner purchased the property with knowledge of the zoning restriction.
 - b) The property owner's predicament can feasibly be obviated through some other method other than a variance.
 - c) The variance is not substantial.
 - d) Special site conditions exist at the subject property, including a fence constructed on the adjacent property north which lines up with the 4 foot high fence (gate) in the north side yard of the subject property which substantially minimizes the impact of the subject fence as constructed.
 - e) The essential character of the neighbor would not be substantially altered nor would adjoining properties suffer a substantial detriment as a result of the variance.
 - f) The property in question will yield a reasonable return and there can be a beneficial use of the property without the variance.
 - g) The variance will not adversely affect the delivery of government services.
 - h) The spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.
13. The granting of the appeal would not be contrary to the public interest, the generally welfare and the adjoining landowners, for the reason that the fence as constructed: lines up with the fence constructed on the adjacent property north; is esthetically pleasing; and, provides continuity with the fence on the adjacent property.

14. The Board wishes to review any alterations regarding the variance.

RE: 6-foot high solid fence extending into the south front yard:

11. There was no error on the part of the Zoning Inspector

12. The Board finds that practical difficulties do not exist as a result of an area zoning requirement with respect to the following non-exclusive factors:

- a) The property owner purchased the property with knowledge of the zoning restrictions.
- b) The property owner’s predicament can feasibly be obviated through some other method other than a variance.
- c) The variance is very substantial.
- d) Special site conditions exist at the subject property, including the property being a corner lot thereby having two front yards which limits the location of solid fences.
- e) The essential character of the neighborhood would be substantially altered and adjoining properties would suffer a substantial detriment as a result of the variance requested.
- f) The property in question will yield a reasonable return and there can be a beneficial use of the property without the variance.
- g) The spirit and intent behind the zoning requirement would be observed and substantial justice done by denying the variance.

13. The granting of the appeal would be contrary to the public interest, the generally welfare and the adjoining landowners, for the reason that the fence as constructed: substantially encroaches into the south front yard; is out of character in the neighborhood.

New Business:

- Mr. Stahlheber advised that the Boards’ next meeting is scheduled for October 13, 2009 and that presently there is one case pending.
- The Board received revised rosters.
- Mr. Stahlheber advised that the Trustees recently approved various amendments to the text of the Zoning Resolution, that the revised Resolution can be accessed via the Township website and that hard copies can be provided upon request.

There being no further business on motion of Mr. Scherer and seconded by Mr. Hendon the meeting was adjourned at 8:20 pm. Messrs. Ashe, Hendon, Scherer, Kearns and Brigham voted aye.

Board of Zoning Appeals:

Thomas R. Stahlheber, Secretary

