

ZONING BOARD OF APPEALS

APPEAL NUMBER 15.01

JANUARY 12, 2015

Meeting came to order at 10:30 A. M. at the Gerrish Township Hall.

Election of Officers: Motion by Stauffer, seconded by Klein to nominate James Thorburn as Chairperson. With no other nominations, Thorburn was elected as Chairperson, **Carried.** Motion by Stauffer, seconded by Kizer to nominate John Klein as Vice Chairperson. With no other nominations, Klein was elected as Vice Chairperson, **Carried.** Motion by Kizer, seconded by Stauffer to nominated Mary Ann Russom as Secretary. With no other nominations, Russom was elected as Secretary, **Carried.** Motion made and seconded to close the nominations. **Carried.**

Board members present: Chairperson Thorburn, Vice Chairperson Klein, Secretary Russom, member Kizer, alternate member Stauffer.

Board member absent: Walter Mikula.

Others present: Alfred and Amy Povinelli, Chuck McPherson, David Kelley, Jason Jansen Gerrish Township Zoning and Building Administrator.

Motion by Stauffer, seconded by Klein: **Carried**

That the minutes of November 17, 2014 be approved as corrected.

Clerical error: change Appeal Number 14.08 to read Appeal Number 14.03

New Business:

10:40 A.M. Chairperson Thorburn declared the Public Hearing opened for Appeal Number 15.01 for applicant Alfred Povinelli; address: 11087 Steele Road, Roscommon, MI; Lot/Parcel Tax ID Number: 72-004-001-012-0185.

Purpose of meeting was to review Application's request for a variance approval for authorization to keep privacy fence allowance of approximately 100-150 ft.

Letters of record in response to Township letter dated December 17, 2014: **NONE**

Amy Povinelli addressed the ZBA with responses to the Variance Standard/Condition Questions for Alfred Povinelli of 11087 Steele Road, Roscommon, MI.

Standard/Condition:

1. That there are practical difficulties that prevent carrying out the strict letter of this Ordinance due to unique circumstances, such as narrowness, shallowness, shape, or topography of the property involved, or to the intended use of the property in relation to such conditions, that do not generally apply to other property or uses in the same district, and shall not be recurrent in nature. These difficulties shall not be deemed economic, but shall be evaluated in terms of the use of a particular parcel of land.

Response: There are unique circumstances with regard to this request for a variance. The circumstance is one of safety. Good fences make good neighbors. We own horses and are often visited by our young grandchildren. No disrespect to our neighbors but they have continued to behave in a manner that has caused us concern for the safety of our animals and grandchildren. There are several dogs in their yard. I was bitten by one of their dogs. It got my pant leg. My concern is if this happened to my little two year old grandchild, he would not be able to fend off the dog. Before the fence, the neighboring children would throw stones and shoot bbs at our animals. Before the fence, we were constantly collecting bags of feces, paper and plastic products thrown beyond their fence and into our yard. We have tried to communicate our concerns with this neighbor. The police have been called to the home. One occasion was due to the children jumping on their trampoline and throwing rocks over their fence towards our animals. Now that the fence is up, these children are causing havoc across the street and we have had only one bag of feces to collect. The fence is safe, sturdy, and aesthetically pleasing. It is the first and last in view of our driveway.

Question: Thorburn: If the fence were moved 10 feet from the neighboring lot line, it would interfere with the existing driveway? Your original application was in July 24, 2014. When was this fence constructed?

Answer: Povinelli, Amy: Yes, the fence would interfere with our driveway. We put the fence up in November, 2013. It is made of treated lumber. The fence is keeping our area cleaner and safer. It doesn't keep the neighbor's dogs from getting out. They go through their gate that is left opened.

Standard/Condition:

2. That the practical difficulty or special condition or circumstances do not result from actions of the applicant.

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Response: True, the circumstances are results of neighbor's actions.

Standard/Condition:

3. That the variance will relate only to property described in the variance application.

Response: Yes

Question: Klein: The fence will not be extended but stay within its present location?

Answer: Povinelli, Amy: It won't be extended.

Standard/Condition:

4. That the variance will be in harmony with the purpose of this Ordinance and the intent of the District, including the protection of public health, safety and welfare in general and vehicular and pedestrian circulation specifically.

Response: Yes

Question: Russom: One of the concerns is if the fence complies with Clear Vision Zone? Does the fence obstruct a road right-of-way line of view and its diagonal line of 20 feet within the driveway to Steele Rd? Janson, perhaps you can help here?

Answers: Jason: The public right-of-way is not obstructed. Kelly: The fence ends on the backside of the road's ditch and not in front of the utility pole. Povinelli, Amy: No problem with seeing or driving onto Steele Road from my driveway.

Standard/Condition:

5. That the variance will not cause a substantial adverse effect upon surrounding property including property values and the development, use and enjoyment of property in the neighborhood or District.

Response: Yes, it will not have any adverse effects upon surrounding property.

Standard/Condition:

6. The strict compliance with the site development requirement in question would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity unnecessarily burdensome.

Response: Yes, it would.

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Standard/Condition

7. That the variance requested is the minimum amount necessary to overcome the inequality inherent in the particular property or mitigate the practical difficulty.

Response: Yes, the variance would be the minimum necessary for seeing to the safety of our animals and grandchildren; add to the value of our property, and keeps us from seeing the blight in the neighbor's yard.

Chuck McPherson addressed the ZBA: Mr. McPherson expressed support in favor of granting the variance. He expressed frustration with the same neighbor and their use of inappropriate language as norm, including the children ages 5 and 6. He noted that the children are unsupervised. The children set off fireworks into the neighboring yards; all the makings of a potential fire. The privacy fence seems to deter these children from throwing fireworks over the privacy fence because they can't see where they land.

Discussion and review:

Klein: Expressed concern if someone buys the neighbor's house and does not like the fence, what then? Is the applicant only secluding one neighbor?

Povinelli, Amy: The buyer would be aware of the fence if the variance is granted.

Russom: Noted that she reviewed the fencing and found the 4 foot 3 railed fencing well done and aesthetically pleasing. Noted was the original application for fencing did not include a privacy fence. If applicant did so, then they would know the correct construction of the fence with maximum percentage of view and air flow.

Thorburn: Questioned if a final inspection of the fence is required?

Janson: No final inspection.

Povinelli, Amy: Explained that the privacy fence posts were put in by Gary (Milner Fencing Co.) and that they depended on Gary's expertise.

11:40 A.M. Chairperson Thorburn declared the Public Hearing closed.

Deliberation:

Kizer expressed granting the variance but questioned if it would set a precedent. He felt that the applicant constructed the fence in good faith and that the 7 Standard/Condition Questions were met. Thorburn explained that any action taken by this board does not set a precedent, and that each case brought before the ZBA is unique. The remaining members supported Kizer's position.

Motion by Kizer, seconded by Stauffer; Carried; 5 yes/ 0 nays:

Kizer moved we approve the Application 15.01 according to Ordinance 16.7B to approve the existing six (6) foot high standard fence panels extending from the road right-of-way west to approximately 150 feet west subject to the requirement that it not be extended without approval of township. This approval is consistent and authorized by the 7 Standards set forth in 16.7 B and as numerated by the applicant and members of the public and including adjoining property owners who supported reasons for the grant of the variance which include moving the fence ten (10) feet off the property line would be unreasonable and prevent practical use by the applicant. The danger to the applicant's property and persons using the property justifies need for such a fence in order to protect the public health, safety and welfare of the applicant's property and persons. Further the acts of the neighboring property owners have contributed to the need for the fence, and finally, the minimum amount of fencing has been used by the applicant. Motion seconded by Stauffer.

Vote recorded:

Kizer---- Yes; Klein----Yes; Thorburn---Yes; Stauffer----Yes; Russom----Yes

Chairman Thorburn: Mr. and Mrs. Povinelli your variance has been approved. You will be receiving a letter of confirmation from the Township.

General business:

Review for next meeting "Rules of Procedure of the Gerrish Township Zoning Board of Appeals As Adopted: June 28, 1990".

Stauffer and Thorburn commented on courses attended.

Motion to adjourn was made and seconded, Motion Carried

Meeting adjourned at 12:05 P.M.

Minutes are subject to review and approval of the Zoning Board of Appeals at its next scheduled meeting.

Approved _____