

ADJUDICATORY HEARING

The adjudicatory hearing was called to order by Chairman Holloway on December 29, 2005 at 5:35 p.m. in the Etna Township Hall. The meeting was audio and video taped for township records.

Roll Call: Mr. Johnson, Mrs. Rogers, Mr. Holloway, Mr. Cox, Mr. Goll, and Laura Brown present.

Chairman Holloway explained why the two appeals would be heard in two separate hearings even though they are similar hearings. Chairman Holloway welcomed Dick Knapp, Gary Burkholder, Mike Kerner, and Jim VanDyne. Chairman Holloway explained the process and those who wanted to testify and present evidence were sworn in. He explained that we have two instruments that guide the township over the fences, the zoning resolution is one. The zoning resolution defines a fence as a structure and the structures need to be built within the setback lines. In this township setback lines would mean that no fence is allowed on any property line. In the back yard it needs to be 25 feet off the back yard property line and 5 to 10 feet off the sides. Cumberland Trails is a Planned Unit Development and this may or may not pertain to you. Chairman Holloway has a copy of the PUD and a copy of the Covenants Conditions and Restrictions also known as your deed restrictions. Copies were distributed to the property owners and members in attendance that requested one. This board has no authority to decide on deed covenants restrictions. It shows enforcement by you the property owners along with a declarant which was Columbia Road Ltd.

Concerning the Thompson appeal all those requesting to present evidence were sworn in. Mark Thompson and Steve Ferris were sworn in at this time.

Mark Thompson stated he received notice of the violation in November of 2005. The fence was constructed by former home owners as early as 2001. Neighbors have stated 18 months some stated closer to 2 years. To the best of his knowledge there was no word of any violation in the 18 months to 2 years prior to the purchase of their home. They purchased the home in July of 2003 and there has been no word of any violation in the 28 months that they have owned the home until the letter in November. Why now? He has referenced two properties one at 30 Runkle Drive there is no violation and one at 101 Alder Court. These are both properties in Cumberland Trails and no violations have been sited. He stated in one hours time he documented 17 likely occurrences within Etna Township. The Chew's have also went out and performed a similar exercise and with an exception of one or two properties these 17 pictures and address listings should all be new. These were submitted as Exhibit A into evidence, 16 pictures and one address. He is only aware of three citations from the zoning office so why me. Mark Thompson also submitted his property for points of reference, the deck off the back of the house and the stake (with his wife standing by the stake). If he was to move the west side of his fence to the appropriate set back point. It would almost sit on top of my deck; it would leave 5 feet between the fence line and the stair access to my deck.

Mark Thompson is concerned with the lapse in notification, inconsistency with the enforcement, the expense of altering the structure and the possibly devaluation of my property this violation hardly feels like justice to us.

The pictures of his deck were submitted as Exhibit B into evidence.

Steve Ferris, Etna Township Zoning Inspector stated the reason the fences were picked, was because of a complaint. The complaint was from the Bush family that lives at 103 Arrow Wood Court. Steve Ferris stated that within the Zoning Department 95% of the violations are through citizen complaints. They do not have that much time to go look every time. Steve Holloway stated that a neighbor in Cumberland Trails asked that the fence be taken down on the Bush property, when they had their appeal they turned in your two properties. Steve Ferris asked if the Thompson's understand the violation and if they had any questions? Mark Thompson stated they had no questions. The fence is encroaching on the setback. They have a corner lot the front and side that face the street are the same. Steve Ferris submitted as Exhibit C into evidence a picture of the lot with measurements of 125 Runkle Drive. The fence encroaches approximately 27 ft 4 inches into the 30 ft setback, 6 inches inside of the sidewalk; slats on the fence are approximately 3 ft 6 inches in height. Fence edge is approximately 2 ft 9 inches from sidewalk on the south side edge and north side fence edge is approximately 3 ft 9 inches from the

RECORD OF PROCEEDINGS

Minutes of

Etna Township Board of Zoning Appeals

Meeting

DAYTON LEGAL BLANK CO., FORM NO. 10148

December 29,

2005

~~Held~~ Steve Ferris asked if anyone tell them that their fence encroached when they closed on sidewalk. Steve Ferris asked if anyone tell them that their fence encroached when they closed on their home, the Thompson's replied no. The Myers Surveying Company stated on the survey that the fence was not in conformance with legal description.

Mark Thompson asked Steve Ferris how many violations the township has had in regards to fences in the past four years. Steve Ferris replied "103 Arrow Wood Court was the first, yours is the second and the Chew's is the third." Mark Thompson asked "Is it not part of the zoning office to enforce the outline of 1008?" Steve replied 95% of the violations are generated by citizen contact with the office. Mark Thompson asked in his opinion does it make it ok that all of these properties have been overlooked? Steve Ferris replied he wished he had more time and more people.

Rick Cox stated it is his understanding that the PUD text becomes zoning. The deed restrictions we do not handle we found out by legal opinion. Now if you read the limitation text it states it started out as R-3 and then it goes through the changes with setbacks and be handled by the final development plan. If the limitation text is the only piece that we are concerned with. He asked if they have ever been approached by any other home owners. Mark Thompson replied not in the 2 1/2 years that we have lived there nobody has made a single comment regarding the fence. Steve Holloway asked if they have received any letters from a neighbor. Mark Thompson stated absolutely not. Rick Cox would like to state for the record it is every one of your neighbor's legal right to enforce his fence situation, that not being done is brought up for reference and he has not been approached by any of the home owners.

Steve Ferris stated that the fence does not obstruct any intersection in anyway. Steve Holloway asked if he considered it unsightly at and Steve Ferris replied no. Rick Cox asked Dallas Maynard if he had any conversations with the previous homeowners regarding the fence. Dallas Maynard did not recall any conversation with the homeowners at that address.

Donna Augustine of 115 Trail East was sworn in. She discussed the two properties and their fences.

Steve Holloway stated the PUD, deed restrictions, and the Zoning Resolution. From what Steve Holloway can find on fences are all deed restrictions. He needs to decide what authority the BZA has depending on if they are covered under deed restrictions or under the PUD. The BZA discussed this in more detail regarding homeowner's association and enforcing deed restrictions. Steve Holloway stated the BZA needs to find out if the BZA has the authority to enforce this issue with the fences.

Gary Burkholder was sworn in, 254 Trail East. He wanted to state that he recognizes how difficult this issue is. Gary Burkholder asked if there was a legal opinion regarding enforcing deed restrictions. Do the covenants supersede the township zoning? Gary Burkholder does not feel that deed restrictions supersede township zoning in general. Steve Holloway feels the PUD is a separate zoning.

Mike Kerner feels the most restrictive shall apply.

Steve Holloway moved to close the hearing, to deliberate and make a decision at a later date. Cox seconded. Discussion: The BZA has thirty days to make a decision. The BZA will contact the property owners with the date of the decision. Roll call: 5-0 passed.

Steve Holloway adjourned the meeting at 6:12 p.m.

Approved as read 2/28/06

Laura Brown
Laura Brown, Clerk

Approved as corrected/amended _____

Frederick M. Cox 2/28/06 APPOINTED 1/06

Steve Holloway, Chairman

Steve Holloway's appointment was up December 31, 2005 and Frederick Cox was appointed Chair on January 12, 2006.