

Etna Township Board of Zoning Appeals

Held

August 29

2006

ADJUDICATORY HEARING

The adjudicatory hearing was called to order by Chairman Cox 7:02 p.m. on August 29, 2006 at the Etna Township Hall. The meeting was audio and video taped for township records.

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

The purpose of this adjudicatory hearing is to consider an appeal of the Zoning Inspector's decision by David and Amy White regarding a horse located at 210 Georgian Drive.

Chairman Cox explained the process and those who wanted to testify and present evidence were sworn in. For the record Madison Sweeney of 145 Georgian Drive, Madelyn Corwin of 232 Georgian Drive, Dave White of 210 Georgian Drive and Stan Robinson Etna Township Zoning Inspector were sworn in. Madelyn Corwin stated she will not swear because it is against her religion but she will tell the truth.

Testimony

The appellant, David White of 210 Georgian Drive testified. Mr. White stated the Board of Health had investigated the property. Stan Robinson stated they did not find the horses excrement to be a health hazard at that time. David White stated he feels the township is trying to change his zoning from R-2 to Agriculture and he is not producing or selling any products. He has a miniature horse on the property and feels it is not stated in any of the zoning laws that he can not do this. The horse is for his daughter who has handicaps as the appeal explains. He said there have been complaints about the horse making noise and he has never experienced, as a police officer, a loud horse complaint. Mr. White asked if 11751 Palmer Road is in violation with the cattle within 100 feet of residential. Mr. White stated that the property is three quarter of an acre and is zoned R-2. The property has a shed to store firewood and the horse. It is 13'x8' and he presented a diagram of the property with the sheds and fence on the property. Cheri Rogers explained that the property is not being rezoned to agriculture but under R-2 agriculture is a permitted use. The horse will pasture in the backyard. Jeff Johnson asked if the horse could go to the front of his house, the White's explained where the horse could go in their yard. Mr. White said the horse cannot go to the front of the house. They have had the horse for approximately two months. The horse is six years old, fully grown and stands about 38 inches tall and is 150-180 lbs. The life span is approximately twenty years. The horse is for their daughter who will be 18 years old in May. When she moves out of the house the horse will go, she must reside with them until she is 21 years old.

Cheri Rogers asked Mr. White about the structure the horse has. The food and water are in the structure. Cheri Rogers asked where the horse sleeps, is there a stall in the structure. They stated if horses lay down for a long time they will die. It is closed on three sides and they will enclose the fourth side to protect the horse in the cold weather. David Goll asked if she takes the horse out of the back yard. Mr. White stated Mrs. White's mom has fifty-one acres where they can take her to play with the horse. Amy White stated that they can not ride the horse. Amy White stated she would not be able to walk the horse up and down the street. Cheri Rogers asked why the horse could not be stabled at her parent's house where there is proper acreage. Mrs. White stated it is 30 to 40 minutes away and the horse is meant to be for Robin. She also asked if they had checked on local stables, they replied the horse is for Robin. Mr. White stated it is whether or not they are violating the zoning by having the animal on their property. He stated no animals are permitted which would include dogs, cats, and all animals. He has \$750 plus the feed to buy this animal. The average to stable a horse is \$150 a month. Mr. White inquired whether any other resident has been notified that they are in violation of having an animal within 100 feet of a residence. Mr. Cox stated the Board of Zoning Appeals does not handle that. Mr. White did not have any witnesses.

Stan Robinson asked David and Amy White if they are pasturing a horse at 210 Georgian Drive. David White asked what is meant by pasturing a horse, Stan replied feeding. David White stated if we do not feed the horse it will die. David White replied he is feeding a pet, a horse. Stan Robinson asked if there is any spot on their lot that is not within 100 feet where you can pasture

RECORD OF PROCEEDINGS

Minutes of

Meeting

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or feed the horse. David White said there is not 100 feet anywhere that would be 100 feet away of a residence. Rick Cox asked if the horse grazes on grass in the yard. David White discussed Article 2: Definitions, Agriculture Item #2. The above uses shall not include the feeding or sheltering of animals or poultry in penned enclosures within 100 feet of any residential zoning district. Agriculture does not include the feeding of garbage to animals or the operation or maintenance of a commercial stockyard or feed-yard. Mr. White stated this would include dogs, cats, and he wants to know if he is being discriminated against him because of the horse on his property. Cheri Rogers replied it is not the animal it is the fenced in yard. Mr. White asked if the fenced in yard is a fence or a pen. Cheri Rogers replied the shed is housing the animal. Cheri Rogers explained this hearing is just for him.

Stan Robinson stated David and Amy White live in residential zoning, R-2 that permits agriculture. Under the definition of animals you can pasture animals. There is no place on his property that is more than 100 feet away from residential zoned property and that is why his is in violation. You can not conduct the housing of an animal within 100 feet of residential zoned property. Jeff Johnson asked what is considered an animal. Stan Robinson said the code states animal, dogs are animals and he would probable not pursue a dog. David Goll asked if it would fall within ADA, Americans Disability Act. Stan Robinson felt this would be a question for Mr. and Mrs. White and he does not remember obtaining a legal opinion regarding this. The zoning inspector has only been with the township for 2 months and this is not discriminatory but was notified by the neighbor who complained. Rick Cox stated the complaints are officially in the record and typically are researched. Stan explained that he has to prioritize the violations and he is aware of the violations on Georgian Drive and will look into them.

Madelyn Corwin of 232 Georgian Drive on the South Side of David White and stated in the abstract it states they can not have livestock. Rick Cox explained the township does not deal with deed restrictions; it is a civil issue and not a zoning issue. It was her understanding that you had to have 5 acres to have animals. She does not feel the shed is big enough for the horse. The horse eats grass. The horse does go to the front of the house. The mother is over on route 16 by the police station. Madelyn Corwin submitted pictures into evidence. Copies were made for the file. Madelyn has seen the horse on the front porch. The White's property is 164 x 122 with 1,458 square foot house; more than 2 1/2 car garage does not leave much space for the horse. She does not feel the horse is for Amy, the mother. Jeff Johnson asked if the horse can get into her yard. Madelyn stated it could go through the back. The horse has not been in her yard. David Goll asked if the horse has caused a noise nuisance, Madelyn stated the horse has caused an odor and horse flies.

Madison Sweeny lives at 145 Georgian Drive stated until recently they did not have a problem with horse flies. He lives north of the property. He also has noticed an odor in the air. The horse is in the front yard and no one is accompanying the horse but still inside the fence. He stated his zoning code was different that excluded dogs and cats from animals. Cheri Rogers stated the property is not rezoned to agriculture it is an allowed use. The issue is with the enclosure and pasturing a horse. David White asked if the flies could be coming from the farm on Palmer Road. Madelyn Corwin stated the flies just recently became a problem.

David Goll asked how the manure is disposed. David White stores the manure in a trash can and regularly takes it to Mrs. White's parent's farm once a week or every two weeks when it is full.

The chair swore Vince Colburn in to testify. Vince Colburn of 48 Georgian Drive stated the lot is less than a half acre and when you take a two car black top driveway front to back, 14 hundred square foot house, two and 1/2 car garage, 13 X 8 shed, shed in the front yard, the chain link fence is 10.3 from the house. It is not proper to house a horse in 8 to 10 thousand square feet. He has seen the horse in the front of the house and on the porch. He has been told the horse has been on the street but has not seen it. Cheri Rogers stated 3 miniature horses per acre. Dave White stated the size of the yard is not relevant it is whether the zoning allows the horse. Three per acre you would need 100 x 145, roughly 15,000 square feet. Dave White stated his report has 12 per two acres. Cheri Rogers' information came from the American Miniature Horse Association website. 3500 square feet was the requirement using the report Mr. White provided from Talewins.com.

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Chairman Cox closed the testimony at 8:21 p.m.

Jeff Johnson feels the ADA is a civil matter. Rich Cox asked if the Health Department was only called out for the odor. Stan Robinson stated the Health Department did not feel it was a danger at that time. The board discussed the definition of an animal. David White stated it was for a pet to help teach her responsibility. They discussed pasturing the animal. The board compared dictionary definitions to graze and feed. David White stated the horse is registered with SARS and under ADA they do not have to have a doctor's order. She does not need the horse to walk down the street.

David Goll moved to close the meeting and to deliberate in private. Philip Chew seconded. Roll Call: Philip Chew, yes; David Goll, yes; Rick Cox, yes; Cheri Rogers, yes; and Jeff Johnson, yes. Passed 5-0.

David Goll motioned to adjourn the meeting. Mrs. Rogers seconded. Roll Call: Philip Chew, yes; David Goll, yes; Rick Cox, yes; Cheri Rogers, yes; and Jeff Johnson, yes. Passed 5-0.

Mr. Cox adjourned the meeting at 8:40 p.m.

Laura Brown

Laura Brown, Clerk

Approved as read 9/26/06

Approved as corrected/amended _____

Frederick M. Cox
Frederick Cox, Chairman