

ZONING BOARD OF APPEALS MEETING

September 23, 2015

CALL TO ORDER: The meeting was called to order by Chairperson Bob Neis at 6:00 pm.

PLEDGE OF ALLEGIANCE:

ROLL CALL:

MEMBERS PRESENT: Eric Anderson, Kim Arter, Craig Williamson, Bob Neis and Roland Falkowski

MEMBERS ABSENT: Gary Charles

ALSO PRESENT: Veronica West Recording Secretary, David Sheehy Zoning Administrator, Petitioner Mr. Daniel Vaclavik and his wife Michelle Vaclavik, as well as several area residents.

NEW BUSINESS: NONE

APPROVAL OF MINUTES:

- Minutes of February 17, 2015 – Mrs. Arter moved to approve the minutes as presented. Mr. Williamson supported the motion. The motion carried by voice vote.

PUBLIC HEARING:

PURPOSE: Act on Zoning Variance Request No. 15-02 on the petition of Daniel Vaclavik, 279 N Peterson Rd, Muskegon, MI 49445, for a variance from the strict zoning ordinance to allow an eight (8) foot high fence, contrary to Section 3.20.I Fences, of the Laketon Township Zoning Ordinance.

Parcel# 61-09-016-100-0027-00 & 61-09-016-100-0026-00 also known as 279 N Peterson Rd.

Mr. Anderson moved to open the public hearing and Mrs. Arter supported the motion. The motion carried by voice vote at 6:03 pm.

Mr. Neis gave a brief summary of the procedures to be followed for the public hearing regarding this variance request, noting that time would be allotted for speakers in favor of as well as in opposition to the request. He also noted that after all public comment is gathered, the public portion of the meeting would be closed and discussion between the ZBA members only would take place, unless a ZBA member had a specific question for someone in attendance.

- The variance notice publication was read aloud by Mrs. Arter and was entered as Exhibit A.
- Exhibit B – Proof of Publication: Chronicle notice of ZBA Hearing published on Sunday August 23, 2015
- Exhibit C – List of surrounding property owners within 300 feet notified of the variance request. Including a map provided by Muskegon County GIS
- Exhibit D – Copy of Notification letter sent to all property owners within 300 feet, which was mailed on Tuesday September 8, 2015.
- Exhibit E – Notice of ZBA Hearing posted on the door of the Laketon Township Hall on September 9, 2015

Written correspondence was received at Laketon Township and the letter was read aloud by Mrs. Arter and placed on file as and exhibit.

- Exhibit F – Letter of support from Albert and Patricia Kochka of 317 N Peterson Rd

Mr. Neis yielded the floor to Mr. Sheehy who gave a synopsis of his discussions with Mr. Vaclavik after discovery of the fence by the Laketon Township Ordinance Enforcement Officer Joe Stapel. It was noted that the fence was

installed without a zoning compliance permit and at a height of eight (8) feet. Mr. Sheehy explained to Mr. Vaclavik the ordinance requirements regarding fences and informed him that he would have to bring the fence into compliance with the requirements, including getting the proper permit or he had the option of applying for a variance. Mr. Sheehy also noted he provided Mr. Vaclavik with copies of the ordinance sections on fences and variances. Mr. Vaclavik chose to apply for the variance.

Mr. Neis asked each ZBA member if they had been able to visit the site – all responded in the affirmative.

Mr. Neis yielded the floor to Mr. Vaclavik for his comments. Mr. Vaclavik stated he had no knowledge of the requirement to get a permit to install a fence until Joe Stapel stopped by his home when he was out in the yard working. He added that if he had known that the fence couldn't be more than six (6) feet he wouldn't have put up the fence. When asked by Mr. Neis about the purpose of the fence, Mr. Vaclavik stated that the neighboring property is at a higher elevation than his and in order to obtain privacy an eight foot fence height is necessary. He also added that he has received letters from the township regarding the storage of his trailers, RV and boats and he is trying to screen these items from public view in the back yard. He added that the road elevation is also approximately two (2) or three (3) feet higher than his home, which is the reason for the eight (8) foot fence height from his house to the north property line. He stated that if the fence were only six (6) feet high, the public traveling the roadway would see right into his back yard.

Those wishing to speak in favor of the motion:

- Mrs. Patricia Kochka of 317 N Peterson Rd stated she and her husband are very much in favor of the variance being granted and the eight (8) foot fence being permitted to remain. She added an explanation of the slope that puts their home and yard much higher than that of the Vaclavik's home and yard. She noted that they have a six (6) foot high fence that screens some of the neighbor's yard, but they can see over their six (6) foot high fence when they are on their deck due to the elevation.
- Mr. Albert Kochka of 317 N Peterson Rd added that the Vaclavik's have installed a very aesthetically pleasing fence that enhances the entire area.

There were no comments in opposition to the motion.

Mr. Anderson asked Mrs. Kochka if their support of the fence is for the purpose of gaining more privacy, or blocking the view of the neighbor's yard. Mrs. Kochka responded that being a retired couple in a different life stage than a family with children at home, they prefer to spend time doing more landscaping and do not wish to look a yard that contains RV's and boats etc.

Mr. Falkowski asked Mrs. Kochka if they are able to see the Vaclavik's yard over their own six (6) foot fence. Mrs. Kochka stated that they can see over it when on their deck, but not when down on the patio at ground level. She also noted that the Vaclavik's fence is at the bottom of the slope and their fence is at about the mid-point of the slope and they don't see much difference in the height of the fences due to the slope.

Eric Anderson asked Mr. Vaclavik to explain the purpose of the fence being eight (8) feet tall from the house over to the side lot line fence. Mr. Vaclavik explained that the road elevation is higher than his yard and the traffic could see over a six (6) foot high fence.

Mrs. Arter moved to close the public portion of the meeting. Mr. Anderson supported the motion and the motion carried by voice vote. The public portion of the meeting concluded and was closed at 6:32 pm.

Zoning Board of Appeals members began deliberations.

Mr. Anderson stated he wants the applicant to understand that the ZBA can't arbitrarily grant a variance based on whether they like something or not, but explained that there are specific regulations within the ordinance the ZBA must follow and specific criteria must be met. He went on the note that while he understands there is some change in

elevation between Mr. Vaclavik's property and the neighboring property, he does not see it as extraordinary or extreme or even unusual in Laketon Township.

Mr. Falkowski agreed with Mr. Anderson and stated that he does not see a hardship problem in this situation and noted that outdoor, back yard storage of boats, RV's etc is permissible by ordinance. He added that the ordinance regulations on when a variance can be granted must be followed.

Mr. Williamson and Mrs. Arter both expressed that changes in topography and elevation exist all over the township to varying degrees and this is not a unique situation. Mrs. Arter also went on to note that the neighboring property doesn't appear to gain any additional screening because the eight (8) foot fence is at the bottom of the slope and thus nearly equal in height, from their perspective, to their own standard six (6) foot high fence.

Mr. Neis commented that the fence height is unsightly on the north/south portion but that the east/west portion is in the woods and not readily seen from the road. He added that the situation seems to be more about screening an unsightly yard than obtaining privacy.

Mr. Anderson commented that there are other ways to accomplish privacy and screening, with things like evergreen trees for example.

There was discussion of the Zoning Ordinance requirements in Section 19.04 especially paragraph A.1.b regarding topography and comments from the members stating they do not find the topography of this property to be "exceptional" or find any other "extraordinary situation on the land, building or structure" that do not generally exist on other properties with in the same zoning district. Mr. Falkowski mentioned that it is important to remember that the granting of a variance in one case does not set precedence for other cases or situations; it applies to the property requesting the variance only.

Findings of Fact:

- The fence was installed without a zoning compliance permit.
- The fence was installed at a height of eight (8) feet when the maximum allowable height of a fence in a residential district is six (6) feet for side and rear yards.
- The home and land located at 279 N Peterson Rd sit at an elevation lower than the elevation of Peterson Rd.
- The home and land located at 279 N Peterson Rd sit at the bottom of a slope, approximately four (4) feet below the elevation of the home immediately adjacent to the north.
- There is an existing six (6) foot tall fence parallel to a portion of the north property line that belongs to the neighboring property; said fence is situated about half-way up the slope.

Mr. Anderson moved to deny the request for a variance from the requirements of Zoning Ordinance Section 3.20.I, as submitted, based on the criteria listed in Zoning Ordinance Section 19.04.A 1 – 7 as the request does not meet any of these requirements.

Mrs. Arter supported the motion.

Voting in favor of the motion: Mr. Craig Williamson, Mr. Roland Falkowski, Mrs. Arter, Mr. Neis and Mr. Anderson

Voting in opposition of the motion: None.

The motion passed by roll call vote and the request, as submitted, was denied.

OTHER BUSINESS: NONE

CORRESPONDENCE:

- Planning and Zoning News – Issues from March – August 2015 were distributed for informational purposes only – Zoning Administrator David Sheehy pointed to an interesting article on marijuana and also invited the ZBA members to attend the November 10, 2015 Planning Commission Meeting where the Muskegon County Drug Team will be doing a presentation on marijuana and current laws regarding marijuana.

ADJOURNMENT:

Mrs. Arter moved to adjourn the meeting. Mr. Williamson supported the motion. The motion passed by voice vote. The meeting adjourned at 6:55 pm

Submitted by: Veronica West, Recording Secretary