

TYRONE TOWNSHIP ZONING BOARD OF APPEALS
APPROVED MEETING MINUTES
September 12, 2022

CALL TO ORDER

Chairman Greg Carnes called the Zoning Board of Appeals meeting to order on September 12, 2022, at 7:00 pm at the Tyrone Township Hall.

ROLL CALL

Present: Chairman Greg Carnes, Vice-Chairman Joe Trollman, and Commissioners Tim Scarberry, Richard Erickson, and Don Bunka

Also present: Karie Carter

APPROVAL OF THE MINUTES

July 11, 2022: Motioned by Vice-Chairman Joe Trollman, supported by Commissioner Tim Scarberry. Motion carried.

Karie Carter read aloud the appeal for tonight's meeting.

APPEAL NO. 1: A request by Larry Bistricky for a 46-foot variance from the required 50-foot setback from the water's edge to build a fence located at 11498 Bay of Firth Blvd, Fenton, MI 48430, Parcel ID: 4704-05-203-124. The property is zoned R-1, Single Family Residential. Reference Tyrone Township Ordinance No. 36, Section 21.02.A.2.d, Accessory Buildings and Structures Provisions.

COMMENTS BY APPLICANT

Larry Bistricky's wife, Kasey Bistricky, explained their request. She stated that the fence has been there forever. The house was built in 1976 and the fence has been there since. Over the years the materials were replaced due to wear and tear. It's been in the same spot on their property. It is next to the Lakeview Park HOA access property. It's a keyhole property and all 112 homes in the subdivision are eligible to buy into the keyhole access. Most people hang out by the water and part of the reason they would like the fence to remain where it is for not only for privacy but to keep people from crossing onto their property. They worry about kids wandering onto the property and getting hurt, as they would be liable.

BOARD QUESTIONS AND COMMENTS

Chairman Greg Carnes asked what the length of the entire fence was. She said it starts four feet from the water but doesn't go the entire length of the property. She pointed to where the fence was on the map that was on the tv screen in the board room.

Chairman Carnes stated they'd received some correspondence from neighbors. He advised the board that they are strictly looking at the ordinance. Commissioner Richard Erickson asked how this was an unreasonable burden. Mrs. Bistricky stated that if they had to put the fence back to 50 feet there would be nothing that marks any sort of property line. People won't know where the access property ends and theirs begins. She said it would be different if it were two residential properties next to each other where they obviously know their property line, but there are 112 homes that have access to this property if they choose, as well as any friends they invite. Mrs. Bistricky said that properties north of theirs have fences that run all the way down into the lake. It was pointed out by the board that those properties to the north were in Fenton Township.

Commissioner Don Bunka asked if the original fence was permitted and surveyed. Larry Bistricky said he would have to look that up. Mrs. Bistricky said there has been an issue with the property line. She said they, along with two board members and the board members' attorney, all met one day and walked the line, and everybody agreed on the property line. They are the ones who put the stakes up. Mr. Bistricky said the property was surveyed when the home was bought in 1976. It was surveyed again when there was a lawsuit against the HOA property. In 1982 it was surveyed again, and it was staked out and that's when the lot line was established, and that fence was put in. He continued to talk about how there has been and still is a property line dispute between him and the HOA.

Chairman Carnes told him that the property line will have to be settled separately; the Zoning Board of Appeals can only rule on the five criteria. Mr. Bistricky felt the ordinance should not apply to a property owner next to a park. He continued to make his case on why he should be allowed to keep the fence where it is.

Chairman Carnes brought it back to the table. He said he can see that there may be some sort of unreasonable burden, but he didn't know if there was an extraordinary circumstance. Vice-Chairman Joe Trollman asked the applicants who paid for the original fence that had since rotted and fallen; the applicant stated that his parents had paid for it. He said there was a consent judgment in 1982 that stated the park and the southern boundary owner are supposed to maintain that lot line fence together.

Chairman Carnes said they had received written correspondence regarding this application.

CALL TO PUBLIC

Resident Kevin Girard of 9293 Bennett Lake Road spoke. He said he was with the association

and that the fence is a good thing for privacy, however, the issue is whether the fence is on Mr. Bistricky's property or the park property. There was discussion between Mr. Girard and the Bistricky's about the survey. Jeannette Girard of 9293 Bennett Lake Road spoke. She said it's not the issue of the fence itself, but there are questions as to where the property line is. She said the fence that was put back in was not discussed with the board. The association was not aware of when they took down the fence and put it back up. She said the association, the board members, and everyone who uses the lake lot must follow the ordinance, which is 50 feet. She said they recently had a meeting with association members and the big concern with the 50 feet is that they should have followed the ordinance, and there were concerns about emergency vehicles getting through. Mr. Girard said he felt that that was why the ordinance was there. Mrs. Girard said while she can't speak for all residents of the neighborhood, she thinks everyone knows where the property lines are. She said that sometimes there are fewer people at the association property than at the neighboring property.

Commissioner Bunka said that the real issue is whether the survey is correct. The Girards said that if this fence is on the association's property, they will need to apply for a variance themselves. Commissioner Bunka said he was uncertain as to whether they should even make any statement at all about the property since they don't know where it is. He said he hated to have to make a decision based on a guess. Chairman Carnes said there are several lakes in the township, and they all have properties that belong to an association, and they have fences to isolate the association property. They go all the way to the water, but they also have access for emergency vehicles like gates. A resident in the audience who did not identify himself said that he knew Mr. Bistricky would like a gate at the end.

Commissioner Bunka asked the applicants if there was litigation going on right now about the property line. Mr. Bistricky stated that there was. Commissioner Bunka said maybe they shouldn't be talking about this until there's an answer. Mrs. Bistricky said that nothing has been filed yet. Chairman Carnes said that is not why they're there. It was suggested by an unidentified audience member that the variance could be granted regardless of whose property it is on. Everyone wants the fence.

Resident Kurt Schulze of 11469 Majorica Place spoke. He identified himself as a member of the lake park association. He said he'd been at his current residence for more than 30 years. He said he didn't think anyone was against the fence. He said the question is should a variance be granted when the lawsuit hasn't been settled yet to determine where the property line is. Chairman Carnes agreed with Mr. Schulze because they're already in violation of the ordinance. He said they built a fence against our ordinance. Mr. Schulze continued to say he is not against the fence, and they need a fence there. He said his recommendation would be that the ZBA defers this until the homeowners' association and Mr. Bistricky settle. If he wants to build a fence and it's already on park property, he's going to have adjust it.

A resident from the audience who did not identify himself said the split rail fence has been there forever and now the way it's staked out it's about 4-5 feet away from where the split rail fence was. He said they need a good survey done. He said the fence is needed.

Resident Josh DeShaw of 11482 Bay of Firth Blvd. said he lives next door to Mr. Bistricky. He told the board that if they're going to issue a variance, it doesn't matter whose property it is. He said he sees trespassing all the time, the fence is needed. A fence would also help prevent others from coming onto his property and drowning. He doesn't want to get sued and have to deal with going to court, etc. The new fence is very nice to look at, too.

Chairman Carnes said he somewhat agreed with Mr. DeShaw, and sometimes when they grant a variance, they put stipulations in there to meet the five criteria. The board members try very hard to meet those criteria when they grant a variance. They are going against the laws of the township so there are many times when they grant a variance, the board members will form their motion in such a way that it will have stipulations in them, such as access for emergency vehicles.

Mr. DeShaw said there is plenty of room for emergency vehicle access through his yard. He said that even without the fence there, emergency vehicles wouldn't fit because of a large tree that is there.

Chairman Carnes stated that the board has had time to read all the written comments that were received. He brought it back to the board for an action.

CONSIDERATION OF ACTION BY BOARD MEMBERS

Commissioner Bunka moved to table the application until there are solutions to the lawsuit to determine whether they're granting anything on the property that they think they're talking about. Commissioner Erickson supported the motion. The motion carried by unanimous vote.

Chairman Carnes explained to the applicant that their application was tabled until they've established the lot line, and they will then come back to the board.

Mrs. Bistricky asked if the fence would be allowed to remain for now. Chairman Carnes said he could not rule on that. He said he knows for sure that the fence is a violation of Tyrone Township's ordinances. The board said they saw no reason for the fence to be torn down when a decision hasn't been made yet. The application is tabled until they have established the lot lines and they have a survey.


Commissioner Bunka asked a member of the HOA if a survey had been scheduled. He said they've talked to someone but haven't started the process. Vice-Chairman Trollman said they should have some sort of timeline to have the survey done so this doesn't drag on forever. Chairman Carnes agreed and asked that the survey be done within the next two months so they can be back in front of the board by the end of the year. The applicants agreed.

MISCELLANEOUS BUSINESS

None

ADJOURNMENT

The meeting was adjourned at 7:37 pm by Chairman Greg Carnes.



Gregory Carnes, ZBA Chairman
Tyrone Township Zoning Board of Appeals

cc: File
Tyrone Township Clerk
Tyrone Township Zoning Administrator
Tyrone Township ZBA Commissioners

APPROVED