

Onekama Township Zoning Board of Appeals
Public Hearing
Vanecek Appeal
December 7, 2022
9:00am
DRAFT MINUTES

Meeting called to order at 9:00.

Pledge of Allegiance.

Roll call of Board members: Judy Spohn, vice chair acting as Chair, Dave Wallace (alternate substituting for Jim Trout) and Kevin Kane present. Jim Trout absent.

Vanecek appeal for two variances

Acting Chair: Make comments specific and timely. Won't limit the duration. Also please note that Ordinance 1007 states there is no view shed for back parcels.

Public Comment: Opened at 9:03 on December 7, 2022 and closed at 9:05.

Reopened public comment at 9:06 am for comment by Alex Henderson representing the Vaneceks

Alex Henderson: Can grant a variance for practical difficulty.

The 8 ft fence is more of a rainwater retention wall. There are two nonconforming structures right next to each other. The neighbors garage and the Vanecek garages. There is rainwater coming through the fence, it lead to about \$3200 worth of damage to the wooden frame of the garage. Looking at the factors:

Special conditions that are peculiar to the land and aren't applicable to other parcels. There are two non conforming structures, one of which is pouring rainwater onto the Vanecek's garage.

The height needs to be 8 ft to prevent the rainwater from coming into their garage.

There aren't other people in the district that have to deal with the same situation.

Special conditions aren't as a result of the actions of the applicant. He can't control what happens on the Stokes' property.

4th It won't alter the essential character of the area. It will go largely unnoticed. The renters who wrote claim that this fence blocks their view of the lake. The wall serves a practical purpose in blocking the rainwater.

This is a non use variance, there is no nonconforming use of land, just a nonconforming structure and so the 5th is not applicable.

9603 5c.

It's allowing him to protect his structure. The only people who are opposing this fence are non residents. They only seem to care about the view. It doesn't injure the neighborhood, it does also provide a firewall-can stand about 2 hours of heat. This was mentioned in a prior hearing, neighbor mentioned what would happen if one of the structures caught fire. This wall provides a firewall for up to 2 hours.

Kevin Kane- what was the date the wall was built?

Mr. Vanecek: December 2021

Kevin Kane: when did you first request a permit?

Mr. Vanecek: after the fact as I didn't know that I needed a permit. After I received the letter.

Katie Mehl: I gave him 90 days-after the fact permit with a double fee. We try to get them into compliance. To be compliant he would have needed to reduce the height. Before the permit expired, Mr. Vanecek applied for a variance.

Kevin Kane: We received correspondence.

Katie Mehl: Will send out a letter that there is a violation, asking for contact within 14 days.

That is what they did. Then we look to what needs to be done. We need to get you in compliance, he applied right away. Gave him 90 days to bring property into compliance.

Kevin Kane: there was further correspondence with Matthew Stokes, dated 8/24/2022 that Mr. Vanecek had until 10/28 to bring it into compliance.

Appeal was dated 10/24. Fence needed to be 3 ft.

Dave Wallace: Wall was built after the garage was built. 1/2021 drain commission wrote a letter saying that the drain water was the Stokes issue. Why wasn't any effort made to get them to fix it?

Katie Mehl: Gary is in our building. He visited the property. His authority did not extend to this issue.

Alex Henderson: contacted the Stokes. They indicated that they fixed it. However their solution didn't fix the main issue.

Mr. Vanecek: Alex contacted the Stokes long before this to attempt to get them to fix the issue. Then we got the drain commissioner.

Dave Wallace: Photos provided, if wall was meant as a barrier for water/fire, why is the wall extend so far?

Mr. Vanecek: Each panel is 3ft. Matched the wall with the panels.

Alex Henderson: wanted it to extend beyond to provide fire protection.

Kevin Kane: Wall is 27 feet long. It hangs over or exceeds the width of the building by a couple of feet.

Mr. Vanecek: Started at capped corner iron at property. goes towards the other buried capped corner iron.

Dan Norbeck: there are other means to control run off and provide a firewall. I'm concerned that the Stokes will file another lawsuit and cost taxpayers more money.

Alex Henderson: we have tried to discuss alternatives with the Stokes. Their response was often sarcastic or putting up the beam which wasn't adequate. There is no detriment to having the wall there. If there is an alternative that the township would consider and propose to Stokes/Rays that would be okay.

Dan Norbeck: the alternatives don't involve the Stokes/Rays. You can put a steel wall in the ground.

Mr. Vanecek: the nonconforming building is 4 inches from the property line and when it rains it hits my garage. We didn't want to build a new garage, but the water destroyed my original garage.

Dave Wallace: Picture: Stokes garage is close to lot line.

Mr. Vanecek: had to rebuild garage due to water damage.

Dave Wallace: foot print remained the same, just reconstructed.

How much distance between wall and garage?

Mr. Vanecek: 3-4 inches

Judy Spohn-I can walk between the wall and the Stokes garage.

Mr. Vanecek: garage built in 1921-we asked to build a new garage 5 feet from the property line. There is a power line on our property so we couldn't move it any further. But that request was denied. The garage we built was based on the drawing the Stokes submitted.

Kevin Kane: appreciate Mr. Norbeck's comments. Even if a trough gutter would be a solution, but based on the last hearing, Mr. Stokes is only here 3 times a year, and the gutters would be filled.

Alex Henderson: raised a gutter system to Stokes/Rays they said they would try to adverse possess the property it overhung. Need to consider what is best for the constituents. This wall provides the most protection with minimal disturbance

Mrs. Vanecek; their structure is not stable. It should be inspected. They let another one just fall down.

Mr. Vanecek: the structure was moved from another part of the property, it wasn't built there.

Kevin Kane: I'm done with my questions.

Close public comment at 9:42.

Discussion:

Dave Wallace: the first thing that strikes me is that the township shouldn't make decisions on it's easier to ask for forgiveness then ask for permission. It doesn't sit well with me.

Mr. Vanecek: I had a building permit and I thought I could put up the wall.

Dave Wallace: need to abide by the ordinances.

Mrs. Vanecek: drain commissioner said do what you need to do to protect your building.

Kevin Kane: I had the same thought about asking for forgiveness. It sounds like it's a common practice to do after the fact permits. They followed the procedures that are in place. The timeline was followed. I no longer have concerns about that.

I'm ready to go through the questions.

Dave Wallace: you said the Stokes garage isn't long for this world, if it fell down over the winter, would you take the fence down?

Mr. Vanecek: if wasn't dumping water, yes.

Mrs. Vanecek: We would take it down. if they put a drain in ground afterwards. They shouldn't be able to dump water on our property.

The board went through the Finding of Fact Justification and the Variances-Finding of Fact Justification are made a part of the record as attached.

Reopen 9:58. Dan Norbeck: I'm concerned that the ZBA consider whether it has to be 8 ft tall where it extends beyond the Stokes garage.

Alex Henderson: that's where the slope comes in, it slopes in an awkward way so that it blocks the water.

Dave Wallace: could it have been sloped down?

Alex Henderson: does it injure the Stokes?

Dan Norbeck: they've filed one.

Judy Spohn: I'm not willing to act on a possible threat. If they go running to the courts they may become seen as a nuisance.

Dan Norbeck: I don't think it meets the minimum variance.

Libby Schliefarth: can someone call in?

Judy Spohn: no one requested to call in.

Kevin Kane moves to grant variance, Dave Wallace seconded. All in favor. Passed.

The second variance was for a privacy fence at 6 feet, but maximum is 4 ft.

Public comments. 10:03.

Mrs. Vanecek: When the traffic comes down the keyhole, which they don't own, this protects our privacy.

Dan Norbeck: my understanding is that an 8 ft privacy can be 10 ft back. The purpose of achieving privacy can be achieved without a variance.

Alex Henderson: if it was a 4 ½ foot it wouldn't provide privacy.

Katie Mehl: it must be within the building envelope, which is a 10 foot setback.

Alex Henderson: the way the property is being used, you have a great deal of people congregating. Renters might reasonably think that the property line is where the fence was and open them to adverse provision. The fence is slide into pvc pipes and can be moved. They put

it on the border to show where their property line is. Unreasonable to ask them to give up 10 feet of property.

Dan Norbeck: I don't see your argument. Legally there is no basis to issue a variance.

Alex Henderson: renters won't be aware of the 10 foot set back.

Judy Spohn: there are other issue which aren't legal that impact this.

Close public comments at 10:11.

Discussion:

Kevin Kane: I want to establish the timeline.

Mr. Vanecek. The fence has been there since 5/2020.

Kevin Kane: Is it the same timeline as the other fence issue? It wasn't in compliance, must be 4 ½ feet tall or 10 feet from property line.

Mr. Vanecek: It's 55 feet from the south post to the water's edge. So it is more than 40 feet.

Kevin Kane: the fence has been up 2 ½ years. Any complaints in the 2 ½ years?

Katie Mehl: We are not contracted to actively seek violations, everything is based on a complaint. Without a complaint we don't act, as its not in our contract. We would act on it when a complaint is filed.

Kevin Kane: did you hear any complaints from anyone?

Mr. Vanecek: the fence is on our neighbors property line, Bill Boyer Jr. and he said he had no objection. They own the Wooden Shoe. His property line goes around us ¾ of the way around our property. Stokes is to the north. The person with standing would be the Boyers. They have no objection to it.

Kevin Kane: Oct of this year?

Mr. Vanecek: He said it was okay. He never objected. It was in October.

Dan Norbeck: follow the law.

Alex Henderson: we have arguments for each of the factors.

Judy Spohn states that the options are:

Move the fence.

Deny.

Shorten the fence.

Agree to it.

The board started to go through the Finding of Fact Justification and the Variances-

Public comment reopened at 10:31

Alex Henderson-here is a list of 9 other properties that have a non conforming fences. It doesn't make sense to reduce this fence to 4 ½. The 6 foot fence is what is needed to allow them to use their property. This fence is more reasonable than having a 4 ½ foot and then an 8 foot fence 10 feet from lot line. Height requirement will not prevent dogs from jumping the 4 ½ foot fence. I think that having two fences doesn't make sense.

Kevin Kane: Do you know if any of these received a variance?

Katie: Mehl List should be sent to clerk, then forwarded to us. We would then follow our procedures.

Kevin Kane: Mr. Meister ordinances provide that the set back must be 10 feet for an eight foot fence, or the fence needs to be 4 ½ feet. What is your opinion.

Mr. Meister: I can't rewrite the ordinance. I don't personally recall any variances. Planning commission would need to review and then the Board weighs in. If you have neighbors doing the same thing, you should treat everyone the same.

Dave: residents have the right to bring text amendments to the Planning Commission.

Mr. Meister: I recommend that the Planning Commission review this. This body can recommend a variance.

Public comment closed 10:35

The board went through the Finding of Fact Justification and the Variances-Finding of Fact Justification are made a part of the record as attached.

Motion: Dave Wallace: move to deny the variance. Kevin Kane seconded. All in favor. Passed.

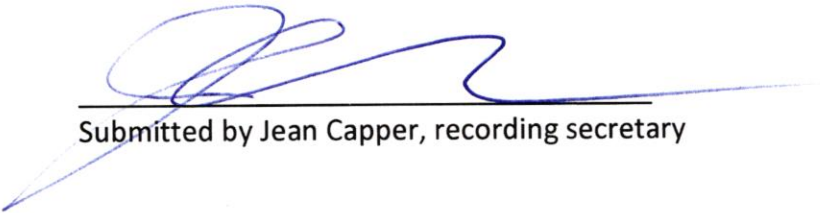
First is approved.

Second is denied.

The letters are submitted as part of the record.

Before Judy Spohn closes hearing: Observation: on the east side of the Boyers property there is a platted road. Stokes renters could use this platted road and then the Vanecek's privacy would not be invaded.

Meeting adjourned at 10:47.



Submitted by Jean Capper, recording secretary