THE CHARTER TOWNSHIP OF CHESTERFIELD
ZONING BOARD OF APPEALS

May 27, 2015

On May 27, 2015, a regular meeting of the Chesterfield Township Zoning Board of Appeals was held at the Township Hall located at 47275 Sugarbush, Chesterfield, MI 48047.

1. CALL TO ORDER: Chairman Stepnak called the meeting to order at 7:00 P.M.

2. ROLL CALL: Present: Marvin Stepnak, Chairman
James Klonowski, Vice-Chairman
Thomas Yaschen, Secretary
David Joseph, Township Board Liaison
Carl Leonard, Planning Comm. Liaison
Patrick Militello
Wendy Jones

Gary DeMaster attended the meeting as the representative from the Building Department.

3. PLEDGE OF ALLEGIANCE:

Chairman Stepnak explained the procedures to the audience.

4. ZBA PETITION #2015-03: Bethany Carriveau, 50229 Waterloo, Chesterfield, MI 48047. Requesting a variance to allow a fence to remain in the same location, petitioner is proposing to change out old fence boards keeping original fence posts intact. Located at the above address.

Bethany Carriveau, 50229 Waterloo, Chesterfield, MI addressed the board.

Petitioner stated that she was requesting a variance to have her fence remain in the same location that it has been in for 24 years. They just replaced the old fence boards with new fence boards and she was told that she was going to be denied a permit.

Christopher Carriveau, 50229 Waterloo, Chesterfield, MI addressed the board.

Mr. Carriveau mentioned that they received a letter from the Township stating that their fence was too low on the one side and that the neighbors were being scared with the dogs. He has letters from neighbors who asked for the fence to be raised and he did not know that making modifications was against the rules of the City. They used the same exact posts and they have pictures if the board wants to see them.

Chairman Stepnak stated that he would take the pictures and give them back to the petitioners. He also let them know that he received a copy of the letters that were sent out by Code Enforcement.

Mr. Leonard asked how long the petitioners have lived at the house?

Petitioner replied about 3 ½ years.

Mr. Leonard asked if the fence panels that were up there before were shorter?

Mr. Carriveau answered yes. The panels were at the top 4' and at the lower part 3 ½'. He stated that the pictures of the old fence are with the pictures they handed to the board. He stated that the fence that they have up right now is 5 ½' tall and that has solved the situation with the dogs. He explained that his neighbor would have to walk his dog in the street because his dogs were so aggressive up on the fence.

Mr. Leonard mentioned that he noticed when he drove by the area that it seems to be a common placement of fences along Cromwell and he is assuming all of those have been there for many years.

Mr. Carriveau replied yes.

Mr. Leonard asked the petitioners if they knew if there was a variance granted for the fence in 1991 because he was on the board at that time and he stated the fence had to be 15' off the sidewalk and in 1991 that was still in place.

Mr. Joseph stated that there was no variance because the permit was legally ascertained and the fence was approved. His concern is that this repair, which was not really a repair because of the amount of panels that were replaced. He mentioned that there was a letter that went out to this family in June of 2012 stating that the fence was too low. He explained that Mr. St. Germaine stated in the letter that there was a report of a dog leaving the yard, which he investigated, and he concluded that the fence was too low. So the fence was fine and approved in 1991and after the incident with the dog in 2012 when they received the letter about the low fence, they saved up their money and finally decided to replace the old fence with new panels.

Mr. Leonard stated that in 1991 the rule was still that fences had to be 15' off the sidewalk and they worked to have it changed to 5' so corner lots would have a little more yard and still maintain a safe distance from the sidewalk. So he was curious if all of those fences along there were given variances.

Chairman Stepnak stated that they were going down a road that is not particular to the issue. He remarked that they are looking at this property and at the other homes in the neighborhood but he does not know if they want to start with this person is in violation and this person is not.

Mr. Leonard was not looking at individuals, just at a history of events. He asked if the fence that has the crown to it was the old fence?

Mr. Carriveau replied yes. He mentioned that Nancy in the Building Department told him that he could replace every other board with a new one and that would be allowed because he would be replacing less than 50% of the fence. However, he did not think that would look very good.

Mr. Leonard stated but that would have followed the ordinance for the petitioner to keep the fence in the same location.

Mr. Joseph reiterated that when the petitioners received a letter from the Township in June of 2012 stating that the fence was too low. He asked if anyone gave them any information as to what the fence should be?

Petitioner replied no.

Mr. Joseph commented that the homeowners were instructed to bring the fence boards up.

Mr. Carriveau stated that because of that letter he put in taller boards which he did not know was against the ordinance.

Mr. Joseph asked if the petitioners came into the Township when they received a letter that they neglected to pull a permit?

Petitioner replied yes.

Mr. Joseph asked what the petitioner was told at that point?

Petitioner replied that they would need to apply for a permit but they would be denied. She stated that when she asked why and the person at the desk informed her that they would have to move the fence back.

Mr. Joseph verified that when they were told the permit was denied the petitioner filled out a request for a variance.

Petitioner replied yes.

Mr. Joseph asked if the petitioners talked to their neighbors at the time?

Mr. Carriveau stated that all the neighbors loved the fence. When Mr. Hudson, his neighbor, found out the Township wanted him to move the fence back he was worried because he was now able to walk his dog on the sidewalk instead of in the street on Cromwell because he was afraid of their dogs with the lower fence.

Mr. Joseph stated that when they got the letter did they intend to raise the fence when they were financially able to do so?

Petitioner replied yes.

Ms. Jones had no questions.

Mr. Yaschen commented that with the fence as they are pulling out of the driveway it seems as there would be an obstruction in that corner and they would not be able to see anything on the sidewalk.

Mr. Carriveau stated that was brought to his attention and he thought that maybe if he puts the fence at a 45 degree angle that would help to make sure there is clear visibility for pedestrians.

Mr. Yaschen remarked that he thought that would be very helpful if the petitioner would be willing to do that.

Mr. Carriveau answered100% and it makes sense because he never really looked at that and of course he wants to make it safe for the community.

Mr. Yaschen asked Mr. DeMaster if that makes sense?

Mr. DeMaster replied absolutely.

Mr. Militello had no questions at that time.

Chairman Stepnak stated that it is the ZBA's responsibility to look at the surrounding neighborhood and he thought this was homogeneous with what is happening there. He understands the Building Administrator's viewpoint, the ordinances and the rules are in place for a reason; when fences are older and need to be replaced they should be going more toward the ordinances that are in place at this time. He mentioned that the problem they run into is if that would be enforced the fence would look out of place. He explained that when the petitioner came to the counter for the permit the Building Department was trying to follow the rules to make the community a better place. He mentioned that it was nothing personal against the petitioners but they have the rules to follow and that is where the ZBA comes in because they are an appeals board and they look at every aspect of the variance.

Public Comments:

Thomas Hudson, 49922 Waterloo, Chesterfield, MI addressed the board.

Mr. Hudson made comments and was in favor of the board granting the variance.

Marcia Kurpiewski, 50226 Sussex, Waterloo, Chesterfield, MI addressed the board.

Mrs. Kurpiewski stated that she thought the fence was great and was an improvement and Mr. Carriveau and Mrs. Carriveau did the right thing by replacing the old fence.

David Price, 28095 Cromwell, Chesterfield, MI addressed the board.

Mr. Price stated that in his opinion the board should deny the variance for the petitioners because the fence was dangerous for pedestrians and bicyclists and that the petitioners should be forced to comply with the ordinance. He mentioned that as a child his parents told him not to cross the street unless he could see the driver's eyes. He stated in this case that would be impossible because of the location of the fence.

Kevin Kurpiewski, 50226 Sussex, Waterloo, Chesterfield, MI addressed the board.

Mr. Kurpiewski was in favor of the board granting the variance and related that the petitioners have done a lot to improve their property and were very good neighbors.

Chairman Stepnak explained that the current ordinance on the location of fences is 5' from the sidewalk. He asked Mr. DeMaster if that was correct?

Mr. DeMaster stated that the ordinance states 5' from the property line plus1' off the sidewalk.

Chairman Stepnak stated that since he has been on the board ordinances have changed on fences, garages, etc. He explained that when the petitioner came into the Building Department they were pretty much told the petitioners would be replacing more than 50% of the fence and that was why the Building Administrator told them that if they were doing a complete rebuild of the fence, it would have to be in compliance. He then mentioned the incident with the dog where Code Enforcement mentioned that the petitioners should have a bigger fence it was probably to deal with the dog situation. He mentioned that the petitioners have repaired the fence and now the board is looking at whether they should allow them to break the rules of the community and leave the fence in the current location. He stated that if the ZBA grants the variance this evening, the petitioners would still be obligated to pull a fence permit to go forward. He mentioned on the other hand if the board turns the variance down the only other option for the petitioners is the court system.

Mr. Militello stated that the point that was brought up when the discussion started about moving forward with the way the ordinance is written. He mentioned that in this neighborhood there are properties that have the fence right on the sidewalk and there are other fences that are in compliance with the ordinance within the same subdivision. He asked at what point does the board say it needs to match the ordinance; how far do we go or where do we take it.

Mr. Yaschen read a petition that was in favor of the ZBA granting the variance which was signed by 12 of the petitioner's neighbors on Waterloo, Cromwell and Sussex.

Mr. Yaschen also read a letter from the petitioner's neighbors Randy and Valerie Cichocki at 50195 Waterloo, Chesterfield, MI 48047 that was also in favor of the board granting the variance. Both letters were retained for the ZBA's records.

Mr. Joseph stated that he brought it to the attention to the board at the last meeting that these petitioners are his neighbors. He explained that when he got the notice he went over to the petitioner's home and was invited in to discuss the matter. He mentioned that the hardship was that with the size of their property to comply with the current fence ordinance will reduce the yard to nothing. He stated that the letter of the ordinance is pretty clear and they all know the numbers about what the setbacks should be, but when driving through the neighborhood down the entire street on Cromwell is filled with fence lines and going through the neighborhood there are different setbacks and different heights which must be an ordinance enforcement nightmare for Mr. DeMaster's Department. He stated that in this particular case, he believes that the homeowners just attempted to improve the property in accordance with the letter they received from the Township in 2012. He mentioned that he thought the overall appearance of their neighborhood has improved with the work the petitioners have done on their home. The majority of the petitioner's neighbors are in favor of the fence and these people are good neighbors and they surround themselves with good neighbors. He mentioned that he and Mr. Lovelock both went out to the property and he thought they both came to the same conclusion. He would like the petitioners to have patience with the Building Department; they are good people over there and Mr. DeMaster is in a tough spot trying to enforce the ordinance. He mentioned that one of the remedies Mr. Lovelock proposed was the 45% on the corner because of safety concerns and if that is the direction the petitioners are going in, he would encourage the board to approve the variance. He stated that he has purchased some new saws and things and would be willing to help them do the work for some of the lemonade that the petitioner mentioned for which she had a great recipe. He commented that he appreciated what the petitioners have done to that fence and he is proud to live in that neighborhood.

Mr. Carriveau commented that he just wanted to bring up the fact that just because someone in a car makes eye contact with a pedestrian or bicyclist doesn't necessarily mean that person is safe. He reiterated that if he puts the fence at a 45 degree angle that would help to make sure there is clear visibility for pedestrians and he was happy to do that.

Chairman Stepnak asked the petitioners if they had a problem with pulling a permit with the Building Department.
Mr. Carriveau replied no.

Chairman Stepnak asked Mr. DeMaster if the variance is approved would the petitioner be able to come in tomorrow to obtain a permit.

Mr. DeMaster replied yes.

Motion by Chairman Stepnak to approve ZBA Petition #2015-03 allowing the fence to stay in the current location. He stated that as a board they feel that petitioner upgraded their fence for safety and community enhancement reasons. He added that the petitioner has agreed to provide a clear vision triangle and has agreed to pull a fence permit. As a board, they feel this is homogeneous to this section of the community and having the petitioner move the fence in any way shape or form would be unjust and a severe detriment to them.

Supported by Mr. Yaschen

Ayes: All

Nays: None **Motion Granted**

5. <u>OLD BUSINESS:</u>

Chairman Stepnak asked Mr. Leonard for any update on the National Coney Island from the Planning Commission.

Mr. Leonard stated that the modifications made for the Coney Island were satisfactory for the Planning Commission. The applicants addressed the ingress/egress and there is now one driveway instead of two on 23 Mile Road. They do have the rear access going out to the back over to Vergote. He mentioned that they flip/flopped the building so that Coney Island is on the east side and changed the dimensions of the building. There was to be the Coney Island, a retail store and a fast food place and they have changed it to the Coney Island, and two retail stores. He stated that the only problem they saw was if the retail stores took up parking at the front, most of the Coney Island customers would have to park in the back and walk to the front of the building to get in. He knew that there were variance request changes, however, he does not know what those changes are at this point, but apparently they changed because they had to do another mailing. Overall, the board seemed pleased with the changes and someone mentioned possibly putting a rear or side door entrance to the restaurant, but that was just a comment that was made.

Chairman Stepnak stated that Colleen was supposed to join them that evening and she sent a 56 page email with some information for the ZBA.

6. NEW BUSINESS:

There was no new business.

7. APPROVAL OF MINUTES FROM PRIOR MEETING:

Motion by Mr. Yaschen to approve the minutes from the May 13, 2015 meeting.

Supported by Mr. Joseph

Ayes: All

Nays: None **Motion Granted**

8. COMMENTS FROM THE FLOOR:

Mr. DeMaster made some comments that were inaudible.

Mr. Leonard stated that in his opinion everybody on all the boards does the best they can whether, Planning, Zoning or the Township Board. He explained that from time to time they may make a mistake, but they do appreciate what Gary DeMaster the Building Administrator does. He has a lot of history and things that were not adhered to. The boards and Management just try to do the best they can for the community, neighborhoods and to move the Township forward in a positive direction.

9. ADJOURNMENT:

Motion by Mr. Yaschen to adjourn at 7:53 PM

Supported by Mr. Joseph

Ayes: All

Nays: None **Motion Granted**

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Thomas Yaschen, Secretary *Grace Mastronardi, Recording Secretary*