

MINUTES OF THE REGULAR MEETING OF THE AMBERLEY VILLAGE
BOARD OF ZONING APPEALS HELD AT THE AMBERLEY VILLAGE HALL
MONDAY, JULY 7, 2008

Chairperson Jon Chaiken called to order a regular meeting of the Amberley Village Board of Zoning Appeals held at the Amberley Village Hall on Monday, July 7, 2008 at 7:00 P.M.
The Clerk called the roll:

PRESENT: Jon Chaiken, Chairperson
Larry McGraw
Susan Rissover
Elinor Ziv

ALSO PRESENT: Bernard Boraten, Village Manager
Stephen Cohen, Village Solicitor
Chief Monahan, Police/Fire Chief
Nicole Browder, Clerk
John Eisenmann, Village Engineer

ABSENT: John Muething

Mr. Chaiken asked if there were any additions or corrections to the minutes of the June 2, 2008 meeting that had been distributed. There being no corrections, Mrs. Rissover moved to approve the minutes as submitted. Seconded by Mrs. Ziv and the motion carried unanimously.

Board of Zoning Appeals Case No. 1027

Mr. Chaiken introduced the variance requested by Matthew and Lisa Murtha which proposed a new shed in the rear yard of their property which would require a variance from the zoning regulation that accessory buildings may be built in a required rear yard not nearer to the rear or side lot than the side yard requirement for such lot.

Mr. Chaiken invited Mr. Murtha to present his case. Mr. Murtha reported to the Board that the shed would be placed 10 feet from the side property line and 15 feet from the rear property line. He stated that his property was narrow in the rear and the southeast corner was the only logical place for the shed.

Mr. McGraw confirmed with Mr. Murtha that the doors of the shed would not face the street. Mr. Chaiken interjected that existing shrubbery would conceal the majority of the shed and nearby neighbors are in support of the shed.

Mr. McGraw made a motion to approve the shed as submitted. Seconded by Mrs. Rissover and the motion carried unanimously.

Board of Zoning Appeals Case No. 1028

Mr. Chaiken introduced the case of a variance request made by Jay and Melissa Bernstein for the approval of a six-foot wood privacy fence, for the purpose of enclosing a pool, that the Bernstein's constructed prior to obtaining a building permit and zoning approval from the

Village. The Bernstein's requested a height variance from the regulation that fences are not to exceed four and a half feet in height.

Mr. Chaiken invited Mrs. Bernstein to present her case. Mrs. Bernstein stated that when she moved in there was no fence enclosing the pool. She stated that there were approximately twenty children in the neighborhood under the age of nine which made safety a priority to her regarding access to the pool, as well as to be in compliance with the law. She stated that she thought she was following the law by enclosing the pool and was not aware of the permit requirement.

Mr. Boraten confirmed that to his knowledge as well as search of Village records there was not an approval on file for any existing fencing at this location.

Mr. Chaiken stated that the Board has been consistent with the denial of requests for six foot fences unless the applicants owned property near the corporation line or a business/industrial zone. Mr. Chaiken asked Mrs. Bernstein why she did not stay within the four and half feet limits and utilize shrubbery to create a private area. Mrs. Bernstein stated that she felt it was already a private area; however, the issue was that her child climbs fences, so she wanted a higher fence her child could not climb. Mrs. Bernstein reiterated that she was not aware that a permit was required.

Mrs. Ziv stated that she felt Eads Fencing, the company that installed the fence, should not have constructed the fence without a permit as Eads has performed work in the Village a number of times. It was pointed out that a form signed by property owner, from Eads Fencing, did show the agreement that the owner was responsible for obtaining any permits required. Mrs. Bernstein stated that Eads informed her that the location was private and not to worry about obtaining a permit. Mrs. Ziv felt that Eads should be notified with a letter, as a reminder, that permits are required for fence installations.

Mr. Chaiken stated that he felt the neighbors, the Fixler's, have made a reasonable request to have the fence brought into compliance with the code. He stated that the Board recently denied a request for a similar wood privacy fence to be installed at six feet to keep out deer. The owner installed the same fence at the proper height of four and half feet. Mr. McGraw pointed out that the previous applicant came to the Board prior to installation.

Mrs. Bernstein continued to state that she was not aware of the Village's permit requirement and her main concern was to protect her children and neighborhood children in the area from gaining access to the pool, which was much more important than keeping out deer.

Mr. Chaiken stated that there were alternative solutions to preventing access to a pool, such as an electronic pool cover. Mrs. Bernstein stated that she did check into such an alternative, but was not able to have one installed.

Mrs. Rissover pointed out that maybe the solution would be to make a new ordinance in the code specifically regarding pool fence installations. Mr. Chaiken stated that a zoning request would need to be made to initiate the review process for such a change.

Mr. Scott Samuelson, a resident at 6753 Glen Acres Drive, spoke on behalf of Mrs. Bernstein. He stated that the Bernstein's were unaware of the proper procedure and the focus should be on the reason for the fence, which is safety. He stated that it is true that there are a lot of children in the neighborhood and he felt the fence provided the needed safety. Mr. Samuelson also stated that he thought the fence was aesthetically appealing as well. He felt that the Village should be concerned about the dangers of children drowning in pools. He also stated that there were other six foot fences in that area.

Mr. Chaiken asked if there were any other residents who wished to speak on this case. Dr. and Mrs. Fixler approached the Board and express their dissatisfaction and concern. Mrs. Fixler stated that they have been residents at 6665 Fair Oaks for 44 years. She reported that two other individuals lived at the Bernstein's home over a 40-year period, both having children, and there was never an incident that related to the pool. She stated that her children were also raised next door to this pool and they had no problems with the pool.

Mrs. Fixler stated that the Bernstein's have installed a stockade fence that exceeds six feet. She stated that they have been cited to Mayor's court because this is a violation of the code. She stated the fence was completely unacceptable and very offensive. Mrs. Fixler stated that she has enjoyed the views of the surrounding area for years and now this stockade fence has blocked the views. She stated that she felt the entire fence must be removed immediately.

Mrs. Rissover reminded Dr. and Mrs. Fixler that the Board cannot request the type of material to be changed. The code only regulates the fence height. Mr. Chaiken stated that the applicant has relied on the issue of pool safety for the reasoning of the fence, however, the fence encompasses more than the pool.

Mr. Boraten reported that there has been a fence over four and one-half feet on Fair Oaks for decades; therefore, he believed it existed prior to the code and unsure if a variance was on file due to the age of the fence. He stated that all other fences over the code height have been located in the industrial zones or borders to the community.

Mrs. Rissover pointed out that she felt that three fences in a row presented a very poor appearance and, it is now much easier to climb.

Mr. Boraten informed the Board that in Hamilton County and the State of Ohio there is not a safety concern with the four and one-half foot height regulation.

Mr. Chaiken reminded everyone that the code is in place for all residents and has been applied globally for consistency. He stated that residents cannot makes changes to their property and then ask permission from the Village. He stated that if you tear something down, then the replacement item has to be within the code.

Mr. Boraten confirmed that other residents, in the past, have been required to bring their fences into compliance and have taken on the financial cost to do so. He stated that those residents corrected their fences in order to be in compliance and did not come to the Board asking for variances. Mr. Boraten stated that there are communities that have started regulating fence types, requiring, for example, fences to be seventy percent open.

Mr. Chaiken asked if there was a motion to accept the variance request. Mr. McGraw moved to deny the request as submitted. Seconded by Mr. Chaiken and the motion carried.

There being no other business to discuss, Mrs. Rissover moved to adjourn. Seconded by Mrs. Ziv and the motion carried unanimously.

Nicole Browder, Clerk

Jon Chaiken, Chairperson