



BUTLER COUNTY BOARD OF ZONING APPEALS
April 21, 2015 Meeting Minutes

AGENDA
BUTLER COUNTY BOARD OF ZONING APPEALS
BUTLER COUNTY ADMINISTRATION CENTER
130 HIGH STREET
HAMILTON, OHIO 45011
April 21, 2015

- I. Opening
 - Roll Call
 - Mr. Gary Salmon
 - Mr. Thomas Bevington
 - Mr. Alan Daniel
 - Mr. Henry W. Philpot
 - Ms. Lee Steenken
 - Ms. Missy Lawwill, Alternate member

- II. Approval of Minutes
 - A. March 19, 2015 Meetings

- III. New Business
 - A. Charles and Christine Carpenter, Appellants
Case for property located at 8762 Thomas Road
Middletown, Ohio 45056

- V. Adjournment



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REGULAR MEETING: Tuesday, April 21, 2015
Butler County Government Services Building
Conference Room 1
315 High Street, 1st Floor
Hamilton, OH 45011

CALL TO ORDER:

Mr. Bevington brought the meeting to order at 7:00 p.m.

ROLL CALL:

Present: Mr. Thomas Bevington, Chair
Alan Daniel
Ms. Missy Lawwill, Alternate member
Mr. Gary Salmon
Ms. Lee Steenken

Absent: Mr. Henry W. Philpot

STAFF MEMBERS: James Fox, Zoning & Floodplain Manager

Approval of Minutes:

A. March 19, 2015 Minutes

Ms. Steenken made a motion to approve the draft Minutes for the March 19, 2015 meeting. Mr. Salmon seconded the motion. Motion carried.

AYES: Steenken, Salmon, Daniel, Lawwill, Bevington

NAYES: None



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NEW BUSINESS:

BZA15-04

Mr. Charles and Mrs. Christine Carpenter
8762 Thomas Road
Middletown, Ohio 45042

Mr. Bevington said this is a five (5) member Board and there are five (5) Board members present. We will be taking testimony tonight from people for a person who has filed an appeal over a decision made by the Zoning Administrator. We will hear from people who are in favor of, in opposition of or neutral testimony.

Mr. Bevington asked Mr. Fox if Mr. Oakley or his representatives are present.

Mr. Fox replied he thought Mr. Oakley would be here but apparently they are not at this time, however, he does not have to be present in order to proceed because Mr. Carpenter is the Appellant who has filed the appeal.

Mr. Fox said we are here for case # BZA15-04 filed by Mr. Charles and Mrs. Christine Carpenter whereas the owner of the property is Mr. Brett Oakley.

Mr. Fox said the appellants are here to appeal to this board by an aggrieved person from a decision of the Zoning Administrator person from a decision of the Zoning Administrator under Section(s) 26.3, 26.31, 26.32, 26.33, 26.331, 26.3311 and 26.3312 of the Zoning Resolution of Butler County.

Mr. Fox explained the process of this hearing: He, being the Zoning Administrator, will speak first and provide detailed history of the case; the Appellants will then provide evidence in support of their appeal; afterwards, people in support of the Zoning Administrator are welcome to speak; then people in support of the Appellants are welcome to speak. Mr. Fox stated they will only be addressing the interpretations of the codes mentioned earlier relevant to Mr. Oakley's fence and nothing else about his property. Mr. Fox asked the Chair to keep the meeting focused on the appeal of the fence approval only and nothing else.

Mr. Fox gave some background history on the case and stated his reasons for approving the fence permit and his interpretation of the Zoning Resolution Sections of the Code, and said his stance is the fence is going up on a required side yard and that is why he issued the Zoning Code for a Building Permit for the eight foot (8') tall fence, as a Building is required for fences



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exceeding six feet (6') in height. Mr. Fox offered to answer any questions from the Zoning Board members.

Ms. Steenken stated she didn't understand the term "required".

Mr. Fox stated there is a required front yard, side yard and a rear yard and it can be on any side yard or rear yard; the property is zoned Agricultural however the regulations do not prohibit any of these fences going in any district at all and that is why he issued the Permit.

Mr. Salmon asked if it is not a partition or (inaudible) fence and over six foot (6') tall is a Permit required.

Mr. Fox replied in an "Agricultural" use - an active farm and they want to put up an eight foot (8') chain linked fence with slats in it, the Zoning Code allows it in his opinion.

Mr. Bevington asked Mr. Fox if he knew why Mr. Oakley put the fence up there, to which Mr. Fox replied he does not know exactly why.

Mr. Daniel asked Mr. Fox how many permits have been issued for eight foot (8') fences for agricultural use.

Mr. Fox said he doesn't know that answer, and it really isn't the issue of whether he issued one the issue is whether the Zoning Code allows it to be issued.

No other questions asked of Mr. Fox.

Attorney Jack Grove, whose office is in Fairfield Ohio and resides in Oxford Township on a farm and said he is here representing the appellants- and asked Mr. Tony Carpenter to be sworn in and explain why he is objecting to this particular fence and explain the zoning of his property.

Mr. Tony Carpenter, 8890 Thomas Road, Middletown, Ohio said his 57 acre property is classified R-1 Zoning.

Mr. Grove asked Mr. Carpenter what zoning category is the adjacent property to his which is owned by Mr. Oakley and Mr. Carpenter replied it is zoned A-1 and the fence he is objecting to is along the property line.

Mr. Carpenter showed pictures of the area, his property, the field that belongs to Mr. Oakley and said when he spoke with Mr. Jim Fox, and said he looked at Section 7.02.01 of the Zoning Resolution and paraphrased some of the Zoning Code section and said an eight foot chain link fence, in his opinion, isn't an agricultural type fence. He added there have been multiple



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discussions and in the Board of Zoning Appeals almost a year ago Mr. Oakley and in the audio recording of the season meeting Mr. Oakley said he plants the corn he considers it as a screen and leaves it up until the end of his season and harvested it a day after his season and has a hard time understanding why there needs to be an eight foot fence there.

Mr. Carpenter said there has been a history of non-compliance and Mr. Oakley applied to have the land rezoned from A-1 to B-PUD earlier this year and it was denied by the Planning Commission. In that plan this fence was included and the Madison Township Trustees stated they did not want any further development; and the city of Middletown, even though it is not in their jurisdiction, rescinded a letter of support for no more expansion on this property. Mr. Carpenter stated he has concerns that if this fence is allowed to go in, then the master plan will be done in piece meal even though the Planning Commission denied it.

Mr. Carpenter showed the letter from the City of Middletown even though it is not in their jurisdiction. It's between a corn field and a pasture and it's not keeping anything in.

Mr. Steenken said she recalls from past meetings Mr. Carpenter had concerns about trespassing and asked Mr. Carpenter if the fence would eliminate trespassing.

Mr. Carpenter replied they planted trees instead of a fence to compromise because they didn't want to be fenced in like a prison.

Ms. Christine Carpenter, 8890 Thomas Road, was sworn in and stated when they moved in 1998 it was a very neighborly. Land of Illusion stated they did not want to disturb or inconvenience people back in 2014 in a meeting earlier this year. Approximately three (3) weeks ago there was construction equipment and flood lights in the evening until the Sheriff's office came after receiving calls from various neighbors and they ran a bulldozer all day long on Easter Sunday and it continues not to be neighborly. Land of Illusion also stated they would not remove any existing vegetation and she showed pictures of where the vegetation has been removed and that is her fear that things are said but not followed through on. She thanked the Board for allowing them to be here, and doesn't like to have to protect their rights and have to keep coming back here to protect their home and she knows they have the right.

Mr. Grove introduced Mr. Rick Koehler, Architect, Architects Plus of Blue Ash, and said Mr. Koehler conducted a site evaluation.

Mr. Koehler distributed information booklets to the Board relative to his presentation. Mr. Koehler gave an interpretation of the findings he gathered from the site evaluation and said he feels Mr. Fox and this Board need to take a look at the entire code and not take just a part of the code. He read the definition of Agriculture and Agricultural Uses and does not feel an eight (8)



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foot high fence is necessary or customarily used in this situation. He spoke of agricultural fences and information he found on the internet and gave his interpretation.

Mr. Fox said our Zoning Code does not include “Agricultural Fences” as a term so he finds this irrelevant.

Mr. Koehler reviewed and summarized his interpretation of a variety of emails between Mr. Fox and Mr. Carpenter.

Mr. Bevington asked if Mr. Koehler was a lawyer as he is doing Mr. Grove’s work. Mr. Koehler said he is not a lawyer but a design architect and has provided his expert advice for over 30 years.

Mr. Koehler asked a few questions of the Board about the fence and relativity to code conformance and then offered to answer any questions.

Mr. Grove spoke about the Ohio Revised Code and types of fences and said he would like to reserve some time for rebuttal as Mr. Oakley and his attorney have arrived.

Note: There was a gap in recording due to technical/audio malfunction at the time Mr. Jay Bennett was introduced during that time.

Attorney Jay Bennett, 5995 Fairfield Road, Oxford, Ohio, said the question is, “Was the permit to erect a fence properly granted?”, and he said yes it was and has to be, based upon the Code and there is no customary term set out in Section 24.093 in the Butler County Zoning Code and stated there are no specifications or standards other than Section B and he read that portion of the Code, so this is not an agricultural fence, and there is no term or definition of an agricultural fence in the Zoning Code. Aesthetics is not part of the Code or part of the standards – the Code only provides a prohibition of barbed wire, electrification. After looking through the Code extensively, this is the only section that refers to fence and whether it is aesthetically pleasing or not is not in the Code. He added the question is whether Mr. Fox rightly issued a permit and the answer is “yes” because his client followed the Code.

Mr. Fox said Mr. Oakley is not planning to speak, however, Mr. Grove has the right to rebut if he wishes.

Mr. Grove spoke and made reference to the Butler County Zoning Code definition of the term fence and customary materials, and what they mean and this fence is a structure; it isn’t for agriculture and it is not customary and it does not follow traditional customary accepted practice and that is the problem. There is one part of the Code we overlooked – spoke of what the purpose is of the Code. The Code provides the answer, and the Board members have to look at



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the purpose of zoning – and among the primary purposes is conserving and protecting property and that means stewardship and we need to be good stewards and we ask for this Board to overrule Mr. Fox and disallow this permit and require Mr. Oakley reapply and have this board fully comprehend.

Mr. Bennett said he understands Mr. Grove’s point about aesthetics, but the Code is about requirements of the permitting process and Mr. Oakley has met the minimum standards and followed the Code and feels Mr. Fox followed the Code.

Mr. Fox asked Mr. Grove if he had anything more to add.

Mr. Salmon asked Mr. Fox if he discussed this with the County Prosecutors’ Office and did they (inaudible).

Mr. Grove said he objects to second hand hearsay.

Mr. Salmon asked if this Board has the ability to rule on this or if it falls under the Agricultural fence Law.

Mr. Grove said does it fall under the Agricultural exemption.

Mr. Salmon asked if they are the right Board that should be ruling on this.

Mr. Fox spoke of allowed activities on A-1 property, and he would fall back and refer to Section 24.093B and tell them yes. Now, if Mr. Oakley had farm animals on the property we cannot regulate any agricultural use.

Mr. Fox asked Mr. Grove if he is representing everyone here tonight or just the Carpenters.

Mr. Grove said he is representing other neighbors that have concerns but are not here tonight.

Mr. Fox stated we’ve heard my testimony, the appellant’s testimony, and the support of his administrative action and now we will hear testimony in support of the appellant.

Mr. David Stoutenborough, 10815 Farmersville – West Carrollton Road, Germantown, Ohio, said he owns property directly south and west of Mr. Oakley’s property on Thomas Road, and east of Route 4 and was notified by letter of this hearing and didn’t know why he got the letter so he called and learned that it was going to cost Mr. Carpenter money to defend and protect his property and he felt this wasn’t right. Mr. Stoutenborough was at the hearing where Mr. Oakley requested the zone change that was denied and feels if you are going to go by the true spirit of



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zoning and see what was there first and then look at the operation of the Oakley project and neighbors hearing the noise.

Mr. Bevington told Mr. Stoutenborough this has nothing to do with the fence.

No additional speakers or questions.

Mr. Fox said the Board now has two (2) options: to make a motion to affirm the decision of the Zoning Administrator or a motion to reverse the decision of the Zoning Administrator and said he has this written down for anyone that would like to read it.

Mr. Bevington asked if there was a motion.

Ms. Steenken spoke to Mr. Bennett, on behalf of Mr. Oakley, and said she would like to know his purpose of the fence.

Mr. Brett Oakley, 1001 Mountain Drive, Carlisle, Ohio, said they've been clearing out the property lines and was requested by the Zoning Board to put up trees to block the lights seen from Carpenters property – they planted 300 feet of trees even though the Boards requested 250 feet of trees. He wanted to come and put a fence as there are kids riding bikes out there and will be planting corn and has been dealing with drainage problems down there and trying to re-right the drainage. The fence is more for protection with kids coming in here and he is just trying to eliminate the problem.

Mr. Grove asked Mr. Oakley if he was aware of any subdivision plans for the Carpenter property to which he replied no, and so it is just invalid hearsay.

Mr. Bennett told Mr. Grove not to try and make him characterize his own statement.

Mr. Oakley said he is just trying to protect his property and he does have the right and if Mr. Carpenter wants to shoot guns on his own property that is Mr. Carpenter's right. He does not want to look over and see people shooting guns, and he is trying to prevent people from coming in and getting out of his property.

Ms. Steenken said because she feels Mr. Fox issued the permit correctly according to the Zoning Code, she would move to affirm the decision of the Zoning Administrator. Mr. Salmon seconded the motion. Motion carried.

AYES: Steenken, Salmon, Missy Lawwill, Bevington

ABSTAIN: Daniel



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NAYES: None

ADJOURNMENT:

Mr. Salmon made a motion to adjourn and it was seconded by Ms. Steenken. Meeting adjourned.

These minutes represent a summary of the proceedings and do not purport to be the entire record. A complete transcription of these proceedings was taken from an audio tape by James M. Fox under supervision of the Secretary and may be obtained upon written request. Any charges associated with preparing such transcript shall be borne by the person requesting such same and must be prepaid.

Hamilton, Ohio

April 21, 2015

Tom Bevington, Chair

James M. Fox, Secretary

Lee Margraf