

**PERRYSBURG TOWNSHIP BOARD OF ZONING APPEALS**  
**26609 Lime City Road**  
**Perrysburg, OH 43551**

PUBLIC HEARING  
July 21, 2009

The Perrysburg Township Board of Zoning Appeals held a public hearing on July 21, 2009. Russell Sturgill, Chairman, called the meeting to order at 6:00 p.m. A roll call was taken. Mr. Sturgill said they have a majority, and they can conduct business. Grant W. Garn, Zoning Inspector, was also present. The meeting was tape-recorded.

MEMBERS PRESENT: Russell Sturgill, Russell R. Miller, Elsie Hetman, Bill Irwin, Bob Warnimont, James Bennett, and Jeffry D. Justus.

MEMBERS ABSENT: None.

Mr. Sturgill swore in all persons wishing to address the board this evening.

Mr. Sturgill asked if they had prior minutes to approve, and Mr. Garn said no, because this is a continuation of the last hearing, and it's not been typed.

Mr. Sturgill said the first item to come before the board is a scheduled public hearing on application number 2009-6425 at the request of the township law director who has filed a motion requesting a continuance on that particular matter until September 15<sup>th</sup>, 2009, with leave to file briefs prior to September 7<sup>th</sup>, 2009. He asked if Mr. Celley wanted to address the board.

Walter Celley addressed the board regarding this application. He said just briefly, if he could clarify. Technically it's the zoning inspector that sets your agenda. And probably, technically, he could have simply asked him to schedule this for that date, but he felt this would be more appropriate. This is an appeal from a denial of a zoning application. It appears that the applicant has filed a timely appeal. There is nothing in their zoning resolution, and nothing in the Ohio Revised Code that states when a hearing, a public hearing, must be scheduled. Typically they do just go on the next hearing agenda, although he is asking for some additional time to conduct an investigation in this case, and prepare the testimony and exhibits. The ORC simply requires that the BZA shall fix a reasonable time for the public hearing of the appeal, and he is asking for a hearing of approximately 60 days from now. He believes that's a reasonable time, and that they are simply entitled to direct the zoning inspector to place this matter on the agenda for that September 15 meeting. And also he is asking for leave, he would like to file essentially, he guesses, what he would call a trial brief, for lack of a better term. And, of course, the applicant would have the opportunity to do so.

Mr. Sturgill asked him, and you served this on the applicant's attorney, and Mr. Celley said the applicant has a designated representative, and they did fax this to him yesterday to both of his offices. And he did also leave a voice mail for him on his cell phone, but he has not heard from him yet. Mr. Sturgill asked him if he had anything else, and Mr. Celley said no, sir. Mr. Sturgill said okay. Discussion.

Mr. Miller said he did not want to get into the specifics of it, but what is the subject matter of the application, and the necessity, therefore, for the delay. Mr. Celley said the applicant has asked for an occupancy permit for, and he does not want to give them the address here. This is Oakmead Drive and Route 20 where the Tuffy Muffler, the UPS, there is an empty space there. The zoning inspector and he are of the opinion that this is a sexually oriented business, and that it would be being located within 500 feet of a residential area, which is not permitted under their zoning resolution. Whether it is a sexually oriented business they are going to have to determine, but they say it's not. They think that it probably is, but he is sure that he could get ready for August, but he would just like to have the extra month to conduct further investigation of this business. Mr. Sturgill asked do they have any similar businesses in the area. Mr. Celley said they have some similar businesses in Southern Michigan. Mr. Sturgill said whereabouts, and Mr. Celley said one's in Trenton, and the other he forgets, but it's in that suburban, Detroit area. He wants to make sure. Mr. Sturgill said this is a little bit unusual to Mr. Miller, and it very probably will go to court, and that's the reason he had this set for hearing rather than summarily granting it. Mr. Miller said right.

Mr. Sturgill asked if there was any discussion amongst the members. Ms. Hetman said they have zoning laws against that. They don't want anything sexually oriented. Yeah. Mr. Miller said well, then, Mr. Chairman, he would, and Mr. Sturgill asked would he dictate a motion, and Mr. Miller said sure. He said he would move that they approve and grant the request to establish a hearing on Application Z2009-6425 for the September 15, 2009, meeting of this board, and that both parties be granted the right to submit memoranda or briefs in anticipation of that by September 7, 2009. Mr. Irwin was the second on the motion. Mr. Sturgill said he would like to add a little something. The board also finds that this length of a continuance is a reasonable length of time to set the matter up for hearing. Mr. Miller said they can consider his motion so revised. Mr. Sturgill said it will take a second, and Mr. Irwin was the second on the motion. Mr. Sturgill said it's been moved with a second that the request to establish hearing on case number 2009-6425 be granted as requested in the motion. A roll call vote was taken. Yes votes by Mr. Miller, Mr. Irwin, Mr. Bennett, Ms. Hetman, and Mr. Sturgill. Motion carried 5-0-0. Mr. Celley said thank you very much.

**APPLICATION NUMBER 2009-6406, (VARIANCE). CONTINUATION OF THE 6/16/09 PUBLIC HEARING.** Sandra K. Young of 28981 Simmons Road has replaced her four foot high three-rail split rail fence with a six foot high privacy fence. This property is a corner lot that faces both Simmons and Mandell Roads. Article V Section B 3 states that "corner lots – shall provide the minimum front yard

requirements on each street." This lot has two front yards, and Article VII Section J 1 states that "fences or hedges may not exceed four feet in height in the required front yard." The fence in the front yard part of the property is two feet too high.

Mr. Sturgill said this matter was continued to provide the applicant with time to submit additional documentation for consideration of the board. He asked if the applicant would please come up to the podium.

Renissa Dorner addressed the board regarding this application. She is an attorney representing Sandra Young. Mr. Sturgill said you're what, and she said she is Attorney Renissa Dorner. Mr. Russell Miller knows who I am. I believe with the additional information you needed that I have and was in charge of the last time that she was in, I was able to present to you the contract that she had with American Fence and Supply which indicates that they were in charge of getting the permit for her property for the fence to be erected, and as a result, she believed that they had gotten the permit. She had not intentionally avoided getting a permit. And after it was constructed, discovered, I believe Mr. Garn drove by and discovered that fence that is not her back yard, but under the zoning regulations is her front yard because it was a corner lot. She's requested a variance. I believe she has already testified the last time she was here regarding all the reasons why she constructed that fence with her animals that she has received which were saved by the Humane Society who are very skittish of people, and she's had a neighbor who has been very tormenting of her animals, so she is trying to protect them from that. So there are good reasons for it. It's not merely to avoid the zoning regulations in the township. So that is the basis, and she believes Mr. Garn may have said last time that American Fence Supply has like changed their reasoning that she was supposed to get the thing. They actually sent us a check for the zoning appeals knowing that they were responsible for getting the permit, and wanting us to pursue the zoning appeals, and they subsequently have changed their story that it was her responsibility all along, but the contract clearly shows the permit was their responsibility. She paid them to get the permit. So they would request that they approve the variance and allow her fence to stay as is.

Mr. Sturgill asked her if she had completed her presentation, and she said yes. Mr. Sturgill asked if there were any questions of this attorney. Mr. Miller said maybe a quick question. The, he guesses it would be the third pre-printed paragraph, begins American Fence and Supply, LLC, shall advise the customer as to local zoning regulations, but responsibility for complying shall rest with the customer unless otherwise noted in the contract. Then the typed in portion under notes indicates price to include all taxes, permits, and job related clean-up. How is she construing those two provisions. Ms. Dorner said they were definitely, and she believes Mr. Garn has indicated to her client that if they had applied for the permit like they had said they were going to do, and they had agreed to do, and they were contracted to do, if they had applied, he would have denied it. They could have then proceeded with an appeal at that point where she, at least, would have been put on notice that it's been denied.

Because this would be a four foot fence, not a six foot, and there have been other things other than spending the \$4,000.00 that she spent constructing this fence. And as a result, now they are in this situation, so they believe they have contractually agreed to submit the permit. If the permit would have been submitted, it would have been denied, it would never have been constructed, and they would have been able to, you know, modify the contract accordingly, or seek the variance long before it was built. But now they are in the situation where it's built, and now we are fighting, obviously to some degree with the fence company as well. Mr. Miller said and he believed it was her client's testimony at the last hearing that she was not advised relative to the zoning requirements by American Fence and Supply, and he asked if his recollection was correct. Ms. Dorner said that's correct, she was not advised that there was a problem with doing it or anything, and she believed it was a back yard, and believed at least in your back yard you could have a six foot fence. And, you know, but for the quirkiness of being a corner lot and having two front yards, you know, she was not familiar with that. And she knows how to get permits here. I mean she had a pool. She would have gotten a permit except for they said oh, no, we'll take care of it. And I believe Mr. Garn has indicated to her client that American Fence does that. They usually are the ones who pull permits for their jobs. So everything they normally do was consistent with what they told her is that yeah, we will get the permit, we'll take care of everything, you don't have to worry about anything, it will all be taken care of. Mr. Miller said thank you.

Mr. Sturgill asked her if it was her position that this contract says that the applicant or the fence company was required to pull the permit, and Ms. Dorner said oh, yes. Definitely. She paid for them to get the permit. A member said somewhere there is a breakdown of the \$4,800.00, there is a breakdown, and it shows the permit cost. Ms. Dorner said no. In fact, you know, as far as the contract, it's a, and a member said just what they have here. Ms. Dorner said there is a second page also that is an invoice, and the member said yeah. Ms. Dorner said that was all. You know, as far as a consumer contract, it's very questionable for lots of reasons. Mr. Sturgill said well, the way he reads this, it would seem like the customer is required to pull the permit. Ms. Dorner said if you contract that you are going to be paid a price to provide something, and the price does include all taxes, and permits, and job related clean-up, then, you know, the legal argument is you indeed have contracted to do that. And they have taken in that responsibility to do that.

A member said and she says they have rebated the cost of the permit. Ms. Dorner said no, they have not rebated the cost of the permit. They sent a check for the \$150.00 to file the zoning appeal, but before it could be cashed, the same day they received the check, they called and said they stopped payment on it also. So they originally said, you know, go appeal, try and get a variance due to the mistake, and then the same day they received the check they said don't bother cashing it, they have stopped payment on it. So they have come through with a couple of different stories at this point.

Mr. Sturgill asked if there were any further questions, and there were none. He asked if there was any discussion. Mr. Miller said he had a question for Mr. Garn. Is it only, as he is looking at the drawing that is part of the contract, it would be the front 46 foot portion and the side 62 foot portion that would be in violation. Mr. Garn said it would be the 45 feet, and the 62. And then another 45 feet of that 77. A member said okay. Yeah. Mr. Garn said then you would get into the other portion of the yard. Simmons Road is where the home is, and then the 62 feet is Mandell Road. Mr. Miller said Mandell. But it would require 45 feet of the first 77. Mr. Garn said of that 77 would be still in the front yard. Mr. Miller said okay. Mr. Garn said because if you continued down, it does not show how far back the house is from Mandell Road, but it's pretty much in line with the fronts of all the houses down Mandell Road, that side of the house which is towards the front yard of Mandell Road. A member said excuse me. So that gives the 50 foot setback on Mandell by doing the 46. Isn't it a 50 foot setback on front yards. Mr. Garn said setback, yes. He thinks he has to see which zoning is there. He believes it's a 40 foot setback. The member said 40, and Mr. Garn said 40 foot. Right. But it makes up for wherever the right-of-way is. The member said right-of-way is. Okay. A member said in looking at Ms. Young's house, it almost lines up with the people on Mandell. Pretty close. Mr. Garn said pretty close. The member said maybe a couple of feet. Yeah. A member said so what they are talking about is to be in compliance, running the fence from the back of her house straight back to the back property line. That's what they are talking about. Mr. Garn said well, it could be four feet high. The member said and leave it where it is. Mr. Garn said leave it where it is. Sure. The member said yeah. Right. Mr. Garn said the four feet is no problem. The member said okay. Mr. Bennett said but six foot, it would have to come from this corner back. Mr. Garn said right. Yes. The member said okay.

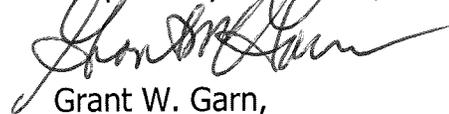
Mr. Sturgill asked if there was any further discussion, and Mr. Miller said no, and thank you. Mr. Sturgill asked if they have a motion. A member asked if they have a precedent for this situation here. Mr. Garn said not that he can recollect of having any precedence out into the front yard like that that he can think of. The member said okay. Mr. Garn said well, they have the unusual at Mandell and Lime City Road where the fence was below grade where the road was higher. The member said oh. Mr. Garn said that was about 3 years ago or four, and there was a propane tank back in there on that. The member said okay. Mr. Garn said so he will say there was one, but that was the height of the fence in relation to the road. The member said yeah, it was below the road. Mr. Garn said it was below grade. The member said okay. Mr. Garn said and he believes there is an interesting rule about that. Ms. Hetman was having some discussion during this time with a member. Mr. Sturgill asked Mr. Miller if he wanted to give them a motion. Mr. Miller said he was torn by this, and Mr. Sturgill said he did not have to vote for it. Mr. Miller said he knew that. Ms. Hetman moved that they accept application 2009-6406. Mr. Sturgill said second, and then he was the second on the motion. He said it's been moved with a second that the application be allowed. A roll call was taken. Yes votes by Ms. Hetman and Mr. Miller. No votes by Mr. Sturgill, Mr. Bennett, and Mr. Irwin. Motion failed 3-2-0. Mr. Sturgill said the motion failed.

Ms. Hetman asked Mr. Sturgill if he was going to say something to the lady. Mr. Sturgill said the motion has failed. She is going to have to remove the fence as it's presently situated, unless they proceed further with another appeal, which he is sure she knows how to do. If they are going to get damages from the fence company, this can only help you. Ms. Dorner said no, she is not the kind of lawyer who would pursue this matter. She went the easiest route first. The easiest route, and it's best for her animals that she is saving. Mr. Miller said as an alternative, she might speak with Mr. Garn to see if there is a way to comply by cutting the fence down to the appropriate level. That could be coordinated with Mr. Garn. She said it's a certain kind of fence, so she does not know. Mr. Miller said he understands it's not the preferred resolution. Mr. Sturgill said either that or move it. Mr. Miller said or move it. Ms. Dorner said there is no yard left. It's a small yard. Mr. Garn said they did have a precedent on one being cut down on a front yard fence on West River Road, the round house. The member said okay.

Mr. Sturgill asked if there was any new business to come before the board, and there was none. He asked if there was any old business. He asked Ms. Hetman if she wanted to discuss her invitation. She said all right. Mr. Sturgill said the floor is all hers. She asked him what he wanted her to say, and Mr. Sturgill said what she has been trying to say. Ms. Hetman asked if they were all going to go to this, to the FedEx grand opening. One member said that he was on vacation. Ms. Hetman said she is on vacation all the time. Mr. Sturgill said she is on vacation all the time. The member said he is actually at Lake James, and he asked what time of day is that. Mr. Sturgill said 11:00 in the morning. The member said he won't be up. Ms. Hetman said good. Mr. Sturgill said okay. Mr. Sturgill said they will probably get a FedEx hat. Ms. Hetman said all right. A member said oh, well, now he knows he will go. Mr. Garn said don't wear all brown. Ms. Hetman said that's funny.

Ms. Hetman moved that they adjourn. Mr. Miller was the second on the motion. Mr. Sturgill said he thought she would never ask. A member said to him he said he was not going to say anything this evening. Mr. Sturgill said there has been a motion to adjourn. A roll call vote was taken. Yes votes by Ms. Hetman, Mr. Miller, Mr. Irwin, Mr. Bennett, and Mr. Sturgill. Motion carried 5-0-0. The meeting was adjourned at 6:00 p.m.

Respectfully submitted,



Grant W. Garn,  
Recording Secretary