

Minutes of the Township of Aberdeen Zoning Board of Adjustment Public Meeting of
Wednesday, May 14, 2014

Present are Mr. Falco, Mrs. Friedman, Mr. Phillips, Mr. Phelps, Mr. Byock.

Also present are Marc Leckstein, Esq., Leckstein & Leckstein, and Anthony Abbonizio, CME Associates.

Absent are Mr. Bucco, for personal reasons, Mrs. Anderson and Mrs. Gotell.

Continued Business, **V13-104 (revised)/Saad, Applicant and Property Owner: Emad Saad, 59 Wilson Avenue, Block 120, Lot 6, Revised Variance application**, originally heard in May and December, 2013, for applicant to (1) relocate trees possibly in the public right of way a minimum of 5 ft. inside front property line; (2) maintain 54 inch high fence 1.2 ft., 1.5 ft. and 2.9 ft. inside front property line where 35 ft. minimum is required for a fence over 4 ft.; (3) maintain 54 inch high +/- stone pillars 1.2 ft. and 1.5 ft. inside front property line where maximum height for structures in front yard is 4 ft., and where 35 ft. maximum set back is required; (4) maintain 54 inch high +/- gates attached to pillars 1.2 ft. and 1.5 ft. inside front property line, where maximum height for structures in front yard is 4 ft. and where 35 ft. front yard set back is required. Note that applicant testified the existing 6 ft. high privacy fence on right side property line has been changed to a 4 ft. high Jarith fence the first 35 ft. (variance is eliminated if change is made), on property located in the R 100 zone without sewer. Fences, pillars and gates were erected without prior approval. Based on the December meeting, the applicant was to carry their application to the January 22, 2014 public meeting (cancelled) with no further notice, and to secure a new survey showing the exact locations and set backs of the fences and structures. The application is carried without further notice to the May 14, 2014 public meeting so the applicant can confer with the Board engineer onsite).

Mr. Leckstein reminds the applicants they are still under oath as is the Board professional from previous meetings. When we left off, our engineer was going to the site to look at the premises and report back to the Board.

Mr. Abbonizio says two weeks ago he went to the applicant's address, met with him, reviewed the survey, reviewed the existing field obstructions within the driveway and side yard and fencing. He took measurements, reviewed the location proximate to where a sight triangle would possibly fall without doing a certification.

What he found so far is if the applicant took down the first two panels post to post of the driveway fence, make it a Jarith style fence similar to the fence in the front, make sure the Jarith style fence is no higher than 30 inches because it sits on an 18 inch knee high wall, which would be included in the height of the fence, bringing it to the height of the front fence approximately. Doing this would transition from a solid fence to a see thru fence on the driveway side.

It is up to the Board's determination to grant the variances or not, but I don't think there is an issue with the line of site. The trees would have to be removed.

Mrs. Friedman asks about the pillars. Mr. Abbonizio says the pillars are trickier; it does not appear they are in the exact location as the as built indicates. If we were going to review it in relation to any kind of sight triangle, we would have to have the applicant have their surveyor confirm it is right or revise the as built to indicate where they are

located exactly. When he was out there reviewing it, the as built shows the pillars along the side of the curbing of the driveway, where it actually falls in front of the curbing. The as built does not actually reflect what is out there. If the surveyor revises it so it is in the correct location, and also include an edge of pavement where it does not show that now. His surveyor or himself would be able to tell if the pillars are in the way or not.

Mr. Abbonizio does not believe from a practicality stand point they would affect the line of sight, but he cannot testify to that because without doing the actual calculations to an as built in the field, he cannot do that. He used the ASHTO manuals to try to figure it out, but he cannot testify to that, though he doesn't believe they affect the line of sight. He needs to do the calculations to definitely say that.

Mr. Falco says if they took down the trees and put the fence we are talking about, with or without the pillars it would improve the situation; Mr. Abbonizia agrees.

Mr. Phelps says the objector did not mention the pillars were in his line of sight. Mr. Falco says he did mention it, he could not see thru the solid fence until he got to the end of the driveway. Now we are giving him 16 ft. of open area to look down at an angle. This is better.

Mr. Abbonizio says if you laid out a sight triangle distance he would be on the edge of the sight triangle, so there is ample opportunity, especially coming out onto a 25 mile per hour street.

Mrs. Friedman said the only issue is to replace, remove the fence; we left it last time the applicant was ok with removing those two panels. Mr. Falco said they had a 6 ft. fence going from the property line back, where 6 ft. fences can start after the first 35 ft. The applicant changed the 4 ft. fence that was originally approved for the former property owner when he applied for an in ground pool. If he wanted a 4 ft. high fence he wouldn't be here. The current fence is higher than 4 ft. so it does need a variance, both in the front yard and side yard. Mr. Falco said if they wanted to put a 4 ft. high fence they couldn't see thru on the neighbor's driveway side because that is allowed to have a solid fence from the front property line.

Mr. Abbonizio said he measured the fence; the tallest portion of four panels was 68 inches high, slightly more than 5-1/2 ft. That is where the 4 ft. fence should be. From that point he had a 5.45 ft. high fence.

Mr. Phelps said they only need a variance for the remaining fence; Mr. Abbonizio says they still need it for the entire length because it will sit on a wall, making it higher than 4 ft.

Mr. Leckstein confirms they remove two full panels post to post and replace with a 30 inch high Jarith fence, sitting on an 18 inch high knee wall, and they have agreed to relocate the trees, but they still need a variance for the fence. Mr. Saad said they are willing to do this.

Mr. Leckstein said the Board has to decide about the pillars; we cannot give a definitive answer if they are in the line of sight or not without a more accurate survey.

Mr. Phelps says in the best interest of this Board, the neighbors and the applicant, an accurate survey would solve the problem. Mr. Saad said he will ask the company that did the survey to revise it or confirm that everything on the survey is true. Mr. Abbonizio says while they are verifying or revising, and he expects it to be a revision, if they can add the edge of pavement to the survey. Mr. Leckstein says they need to tell the surveyor the Board engineer said the survey is not accurate. Mrs. Saad says they do not want to spend extra money if someone made a mistake. Mr. Abbonizio says it is clearly not accurate. Mrs. Saad says this will help them financially because if they made a mistake why should they pay for it again.

Mr. Abbonizio will put this in writing and send it to the applicant.

Mr. Leckstein says perhaps we should put this off again. Mr. Falco says this is cleaning up paper work; the pillars are not going to move. Mr. Leckstein says it is more than just paper work; if the pillars are in the line of sight they have to come back for a variance for the pillars. Mr. Leckstein prefers they come back with an accurate survey so the Board can approve the entire application and know where everything is located.

Mrs. Friedman's concern is the longer the fences stay up, she was hoping they would be down already because we have someone saying there is a safety issue. Those two panels need to come down sooner rather than later, but something has to go up in its place because of the child and the pool.

Mr. Abbonizio says the Board would be granting a variance for the pillars anyway because they are structures within the front yard and the height is too high. Mr. Leckstein says we would not grant the variance for the pillars if they are in the line of sight. Mr. Falco asks who will determine if they are in the line of sight. Mr. Leckstein says the new survey will show where they are located.

Mr. Byock says changing out the fence should clear up the line of sight issue for the neighbor, especially if the pillars are not in the line of sight of the people pulling out of the driveway. Right now if there is a line of sight issue there could be an accident.

Mr. Leckstein says all the Board can do tonight is grant the variance for the fence, to be memorialized at the next meeting. They cannot erect the new fence until the resolution is memorialized. Then we can retain jurisdiction as to the pillars. Mrs. Rescorl reminds the Board there is concern if the pillars are in the line of sight or right of way and they have to be relocated back, then the fence attached to the pillars in the front and the fence on the driveway side would have to be relocated again. Mrs. Friedman says it is money worth spending if there is a danger issue for the adjoining property owner that could be resolved. We did not cause the problem but she feels it is important enough to bifurcate the two variances for the side fence and for the front fence and pillars, move on the side fence tonight to get started, which she thought we had already done. Mrs. Rescorl says it was suggested they lower the fence to a total of 4 ft. and the variance goes away, that is what we talked about last meeting.

Mrs. Saad says the fence in the front is deeper into the property than the columns (pillars). Mr. Phelps asks if she is saying the columns are closer to the street than the fence is, so she would move the columns back.

Mr. Saad says Mrs. Saad is trying to say if this is just a matter of a survey, and it can remain until they get the survey, if the Board will allow to move on the whole thing. If this comes different from the site, anything we have to review this, or do something about the issue of safety. If it is not in a sight triangle it will be a done deal and not do anything.

Mr. Leckstein says we can condition this on receipt of an accurate survey and review by the Board engineer and his approval, and if there is any line of sight issues with the pillars they have to come back. We would be under the assumption it is not in the line of sight.

Mrs. Friedman wants to bifurcate the two with the applicant's consent, and deal with the variance for the side fence only, and put the front fence and pillars in abeyance until we get a new survey and it is approved. This is in the interest of safety. It is better to have all the information than part of it for the Board to act. The pillars and fence are too high, we are not sure of the location of the pillars.

Mr. Saad says if the pillars are the issue on the survey, the front fence appears to be in the correct location on the new survey. The issue is the pillars, whether inside or not. Mr. Leckstein says until we get the survey, even if we grant the variance for the front fence, they will not go out and take it down and put in a new fence. We can't make them take down the fence until they get back to us with the revised survey to show where the pillars are. Until we get that, granting a variance for the front fence is irrelevant. As stated their surveyor also forgot to draw in the pillars on the revised survey, and had to go back and do it.

Mr. Falco says if it comes to replacing the first two panels they do not need a variance; Mr. Abbonizio sways they will order a 30 inch high Jarith fence but placing it on the wall, although it will be 48 inches, from the outside it appears higher. He suggests they go with a higher fence on the wall to match the rest of the front fence. Mr. Falco says then all they can do is move the trees. We shouldn't vote on anything tonight. Mr. Abbonizio says if the front fence is bifurcated, we can grant a variance for the side so they can order the fence. Whether they do it or not he doesn't know. The Board would be in a better position.....

Mr. Phelps confirms they want to keep the fence at 40 inches on an 18 inch high wall; Mrs. Saad says they want the higher fence. Mr. Abbonizio says it would be a 36 inch high Jarith fence placed on the 18 inch high knee wall, making the fence 54 inches high, requiring a variance. A 30 inch high fence is probably a special order.

Mr. Leckstein says they can order the variance in anticipation of approval, but they cannot install it until they get a fence permit and the resolution is memorialized and published.

Mrs. Friedman recommends we move to bifurcate the variances, grant the variance for the side yard fence tonight in the hopes that good faith is kept, and we memorialize and see the sample of the fence that is going up, plus the new survey, and when we have the survey in hand we will consider the front fence and pillars. We should allow them to put a 36 inch high Jarith fence in style to match the front. Mr. Leckstein says the Board would grant one variance tonight and retain jurisdiction on the remainder of the application.

Mrs. Friedman moves to grant the variance for the side fence for a 36 inch high Jarith fence on the side. We are not ruling on the pillars and front fence pending receipt of a survey, seconded by Mr. Phillips. Mr. Leckstein says a condition of the resolution will be removal of the trees, which they have already agreed to do.

Yes: Mr. Falco, Mrs. Friedman, Mr. Phillips, Mr. Phelps, Mr. Byock

No: None

Abstain: None

Mr. Leckstein suggests they order the fence and come to the next meeting with a sample of the fence, and get the new surveyor. Mr. Abbonizio will get them a letter within the week. The application will be carried to the June 25 meeting pending receipt of the survey. A resolution will be done before then.

Mr. Saad confirms that he can order a 36 inch high Jarith fence to match the front fence for the side driveway post to post to match the existing height of the front fence, which is 54 inches, which Mr. Abbonizio says takes into the account the 18 inch high knee wall. No permit will be issued for this yet.

Mr. Falco asks who has the final word on the sight triangle; Mr. Abbonizio says he can if the Board instructs him too. The applicant can get his surveyor or engineer to do it as part of the survey, or when Mr. Abbonizio gets the revised survey and sees what is out there, the Board can authorize CME to do it. Mrs. Friedman says if it is not done by the applicant by June 25, the variance will be denied. Mrs. Rescorl says everything has to be in a resolution in order for the applicant to go to the building department for permits for everything, especially because a pool is involved. The fences are all connected, everything goes together from the pillars to the fences, they are all connected to one another.

Mr. Leckstein suggests the Board not grant any approvals tonight and recommends holding the entire application in abeyance until the survey comes back and is reviewed, or grant it all tonight subject to submission of a survey showing what is on the site.

Mr. Byock suggests the applicant call the surveyor immediately and see if they can come out and get everything into the Board Secretary for engineering review before the June 11 meeting. Mr. Leckstein says if the applicant calls the surveyor and says the survey is wrong, they will come out right away, regardless if they get a letter from our engineer or not. Mr. Saad says unless they need something in writing. Mr. Leckstein says if they come back and say the survey is accurate the Board will have an issue because our engineer is saying it is not. If the surveyor wants to say it is accurate, he will need to come to the meeting and testify under oath that it is accurate; the Board can deal with it from there. Our expert in the room, the Board engineer, Anthony Abbonizio, is under oath, and he says the survey is not accurate.

Mr. Saad says he will run it by them that the Board's engineer said the survey is not accurate and it must be redone or revised. The Board agrees that is correct.

Mrs. Friedman rescinds her motion; we will carry the application to the May 28 meeting, without notice. If a surveyor cannot get out there it will be adjourned to June 25 meeting.

Mr. Falco moves to carry the application to the May 28 meeting without further notice, seconded by Mr. Byock.

Yes: Mr. Falco, Mrs. Friedman, Mr. Philips, Mr. Phelps, Mr. Byock

New Business, V 14-103/Carnovsky, Applicant and Property Owner: Sharon Canovsky, 104 Deerfield Lane, Block 20, Lot 1, Variance to install 12 ft. X 18 ft. above ground pool in side yard where pools are only permitted in rear yard.

Sharon and Robert Carnovsky are sworn in by Mr. Leckstein, and state they are both owners of the property as well as the applicants.

Mr. Leckstein marks as Exhibit A-1 a sketch of the property done by Frank Sisco, dated November 25, 2011, with the proposed pool drawn in. A series of photographs are marked as Exhibit A-2; depicting the property as it looks today, taken by Mrs. Carnovsky two weekends ago.

Mr. Leckstein swears in the Board's expert.

Mrs. Carnovsky says they do not have room in the backyard to put the pool because of easements, and the majority of their property is a side yard, although they are not a corner lot. They already got approval to put in a fence. Mr. Leckstein confirms they have an oddly shaped lot, with a sanitary sewer easement in the rear, in which they cannot put a pool. Mr. Carnovsky says their side yard is their neighbor's back yard, and they consider their side yard their backyard.

Mr. Leckstein questions the fence is already there because the survey is marked "proposed new fence," but the applicants state the fence is already there. They are not building a new fence but using the existing fence. The applicant will not push the fence closer to the street; it will still be in the side yard. The fence is even with the house, according to Mr. Carnovsky. It does not go over the property line as Mr. Phelps believes it does. He is told that is his easement line, not the property line where the fence goes. Mr. Phelps confirms the neighbor is on Deborah Lane. Mr. Leckstein says the proposed pool is an above ground pool.

Mr. Leckstein says there are no objectors to this application.

Mr. Falco moves to grant the variance, seconded by Mrs. Friedman.

Yes: Mr. Falco, Mrs. Friedman, Mr. Phillips, Mr. Phelps, Mr. Byock

No: None

Abstain: None

Memorialization of Resolution **V 14-100/Conover and Vallas, Applicant and Property Owners: Tom Conover and Susan Vallas, 146 Andover Lane, Block 14, Lot 52, Variance** to erect 6 ft. fence 10 ft. from Lloyd Road (second front yard), where fences are not permitted in front yards in the R75/PC zone, and install 18 ft. round above ground pool 15 ft. from Lloyd Road, where 25 ft. minimum required (two front yards, is summarized into the record by Mr. Leckstein. Mr. Falco moves to memorialize, seconded by Mrs. Friedman.

Yes: Mr. Falco, Mrs. Friedman, Mr. Phillips, Mr. Phelps, Mr. Byock

No: None

Abstain: None

Meeting adjourned.

