

BEAVERCREEK BOARD OF ZONING APPEALS
REGULAR MEETING, February 14, 2018, 6:00 PM

PRESENT: Mr. Hight, Mr. Hung, Mr. Kruse, Mr. Morter

ABSENT: Mr. Raber

Chairman Hung called the meeting to order followed by roll call.

Mr. Hight MOVED to excuse Mr. Raber from the meeting, seconded by Mr. Kruse. Motion PASSED by majority voice vote.

Mr. Kruse MOVED approval of the agenda, seconded by Mr. Hight. Motion PASSED by majority voice vote.

Mr. Morter MOVED approval of the January 10, 2018 minutes, seconded by Mr. Kruse. Motion PASSED by majority voice vote.

PUBLIC HEARING

V-18-1, Nicholas and Heather Harvey, 3180 Shakertown Road

Clerk Gillaugh read the notice of public hearing on an application filed by Nicholas & Heather Harvey, 3180 Shakertown Road, Beavercreek, OH 45434, requesting a variance from Chapter 158.105 (C) of the City of Beavercreek Zoning Code, requesting permission for a 48-inch fence to remain in its current location within the required front yard along Jayell Drive in an R-1A District. The property is located at the northeast corner of the intersection of Shakertown Road and Jayell Drive further described as Book 6, Page 4, Parcel 28 on the Greene County Property Tax Atlas.

Heather Harvey stated they sincerely apologized for not filing for a permit, and they were very poorly guided by the fence company. She explained it is not the fence company's practice to ever file a permit, and they leave it solely up to the homeowner. Mrs. Harvey said they had not built a structure like this before, and if they would have been told this would have been avoided. She stated the company also neglected to tell them the rules of a corner lot, and they didn't realize they had two front yards until the City gave them their Notice of Violation.

Mrs. Harvey explained the fence in its current location is not in a public right-of-way and is not interfering with visibility of any sight lines. She stated the fence currently aligns with the rear neighbors, and according to the fence company a fence that is lower than 48-inches is not even called a fence and is more of a decoration. Mrs. Harvey explained they have a dog and two little girls, and Shakertown Road is a very busy road so they would like to keep the fence at its current height for those reasons. She said if the fence would have been constructed in line with the house, it would compromise the functionality of the home because of where their covered patio, sidewalk and a door are located.

Mrs. Harvey explained the neighbors across the street have a fence that was approved by a variance in 1999. She stated the neighbors have all welcomed them graciously to the neighborhood, and they like the fence and what they have done with the property. Mrs. Harvey said they don't feel like lowering the fence six-inches is going to do anything in terms of bettering the neighborhood nor leaving it at 48-inches will affect the neighborhood. She presented the Board with 18 different signatures from residences in the neighborhood that her neighbors, The Engmans, put together stating they were all in favor of keeping the fence in its current location. Mrs. Harvey explained this process has not been a very fun thing for them to have to go through. She stated when they tried to contact the fence company on the day they received the Notice of Violation, the fence company was not very accommodating and basically said it was their fault.

Ms. Pereira summarized the staff report dated February 6, 2018, which stated if the Board chose to approve the variance it would allow for a 48-inch tall fence to remain within the required front yard. She discussed the location of the property and what Chapter 158.105 (C) of the City of Beavercreek Zoning Code requires. Ms. Pereira explained a 48-inch fence was erected without a zoning permit. She showed an aerial photo of where a fence would be permitted on the lot if it was 48-inches tall or 42-inches tall. Ms. Pereira showed an aerial view of where the applicants installed their 48-inch tall fence, and said it is 12 feet from the edge of the street so it is right on the property line. She explained it does not extend along the rear of their property, and there is an existing approximately 3-foot split rail fence that exists in that location. Ms. Pereira stated it does extend about five feet into the neighboring property, but the Board is not here for that and is something that would have to be dealt with between neighbors. She explained the applicants stated the reason they could not lower the fence was because of a dog and their small children, however, the fence to the rear of the property is barely three feet tall and is not really a justification that can be used on a staff level. She explained they do have an open patio at the rear of the house and it would not make sense to come off the back of the house that way. Ms. Pereira explained the way staff has to look at the variance request is if the Code can be met by building a 42-inch fence rather than a 48-inch fence in the location where they have it, staff is not in a position to recommend approval of a variance because it does not meet the justifications of a variance outlined in the Zoning Code for variances.

In public input, Vernon Hazen, 685 Jayell Drive, stated they live directly across the street. He explained they can see the fence entirely, and they welcome the addition and the improvements that have been made since the family moved in. He said they have no objection to the height of the fence or it being there.

Yakov Diskin, 675 Jayell Drive, stated they find the fence appealing. He felt the whole objective of these rules are to protect the neighbors and the neighborhood from unwanted structures. Mr. Diskin explained he did not get a chance to sign the letter that was submitted to the Board, but he would gladly sign it.

There being no further public input, the public hearing was closed.

Mr. Morter asked if the fence company had offered them any resolution. Mrs. Harvey stated they filed a Better Business Bureau complaint. She explained they did hear from the company until yesterday, and the company is waiting to hear what the outcome is of tonight's meeting. Mrs. Harvey believed at this point to maintain their rating, they are willing to make it right. Mr. Morter thought the company should step up. Mrs. Harvey stated they didn't know they had to file for the permit, but they knew they were foregoing the survey because they talked to the neighbors and they were all ok with the location of where they were putting it. Mr. Morter felt the company dropped the ball, and thought they needed to work with the company because he didn't think there was much the Board could do. Mrs. Harvey said if the fence has to be lowered then basically the whole fence will need to be rebuilt, and at the 42-inch height they didn't feel it was safe for the dog or the children.

Nicholas Harvey stated the location of the fence is not the problem, it is clearly the height. He explained the dog they have is an active dog, but she is not an explorer so they are not concerned with the three-foot fence in the back. Mr. Harvey said for the safety of their family and dog they want the fence to be the 48-inch height the closest to Shakertown Road because it is the busy road. He requested the Board consider that aspect of it.

Mrs. Harvey said when it first happened she asked what the success rate was for this situation. She explained they were basically told they needed to stake a case for hardship and unique circumstance. Mrs. Harvey felt this was hardship and is an unfortunate situation, and because of the layout of their home she believed it was truly unique. She thought if they would have been required to construct the fence straight back from the corner of the house that would be ridiculous and believed the Board members could all agree with that. Mrs. Harvey felt that anyone who lived in the home would want to construct the fence the way they did.

Mr. Hight was pleased to see the support from the neighbors. He said it is not a matter if the case makes sense to them or not, it is whether the diligence was there by the homeowners or the company.

Mr. Kruse referenced the petition the neighbors signed, and asked if the neighbors behind them signed the petition. Mrs. Harvey said yes. Mr. Kruse asked when they received the Notice of Violation. Mrs. Harvey stated it was either December 21st or the 22nd. Mr. Kruse questioned what they did next and when it was done. Mrs. Harvey said she called the City the same day and tried to figure out what to do. She stated she also contacted the fence company, which they hadn't heard anything from until yesterday. Mrs. Harvey explained they didn't want to file the compliant with the Better Business Bureau, but that was the only way they could get the company to contact them back.

Mr. Hung asked what the cost of the fence was. Mrs. Harvey said it was approximately \$4,000. Mr. Hung questioned if they had contacted anyone to see what it would cost to take it down and put a 42-inch fence up. Mrs. Harvey stated no. Mr. Hung asked for the City's perspective if there were any safety issues regarding this fence. Ms. Pereira said

no it does not create any line-of-sight issues. Mr. Hung said the City didn't feel like they could recommend this variance, and wanted to make sure he understood why and said it sounds like it is a technical violation of the law. Ms. Pereira explained one of the main things staff looks at when they are evaluating to recommend approval or not is can the applicant's request meet the requirements of the Code. She stated in this case they can, and technically the property owner cannot create the need for the variance.

Mr. Hight asked about the variance that was approved across the street. Ms. Pereira explained it was done in the 1990's and the variance was actually denied. She stated they did not get the variance from the Board, the homeowners at the time appealed it to City Council. City Council overturned the variance denial, and it was granted. Mr. Hight asked what the height of the fence was. Ms. Pereira said it was six feet high in the required front yard.

Mr. Morter questioned how long their fence had been up. Mrs. Harvey estimated the beginning of September. Ms. Pereira believed the City's Zoning Inspector was driving by and saw there was a new fence installed, and so he stopped and issued them a warning. She said she did speak to the applicant that day to find out what they needed to do and what their options were.

Mr. Harvey said he wanted to understand the spirit of the Code, and asked the Board to think about the layout of their yard with their neighbor's yard. He said the back of their houses face each other, and questioned why it is considered a required front yard when it extends all the way to the back yard. He asked what the purpose was of it being considered a front yard and what it was protecting. He stated their fences line up, but the neighbors is just shorter in height.

Mrs. Harvey said in terms of aesthetics the fences do match up, and a 42-inch fence is a pretty small fence. She believed they would lose so much yard space if they wanted to put up a fence height that was reasonably sized for their protection. Mrs. Harvey explained they would lose so much functionality of their property, and felt it was an unfortunate situation for residents who live on corner lots.

Mr. Morter MOVED to approve V-18-1, seconded by Mr. Kruse. Motion PASSED by a roll call vote of 4-0.

ADJOURNMENT

Mr. Kruse MOVED adjournment at 6:35 p.m., seconded by Mr. Morter. Motion PASSED by majority voice vote.

Melissa Gillaugh
Deputy Clerk