

# Westfield Township Board of Zoning Appeals

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Public Hearing

November 6, 2019

Area Variance (fence) for Kalgreen, 7845 Buffham Road Seville, Ohio

Chairman Fleming called the public hearing to order at 6:32 pm.

Roll call: Thur, Moore, Fleming, Stacy and McGlashan. Also in attendance were ZI Sims and Trustee Schmidt.

Fleming clarified that there was a full board present and asked if any board member had any conflicts with the property or property owner. All members replied there weren't any conflicts.

Exhibit "A" is the application

Exhibit "B" is the public notice

Fleming read the procedures that the board members and attendees will follow for the public hearing to flow professionally.

ZI Sims provides background knowledge regarding the area variance application including Article 9 Section 906 B and Article 3. Section 303 (fence is presently a zoning violation) and Section 205 B.1, 2 and 3 (chart in zoning resolution stating four (4) foot maximum height and forty percent (40%) opacity). The definition of yard is also read; yard- an area extending between side lot lines across the front of a lot from the public or private road right-of-way line to the front of the principle building. ZI Sims explains that the applicant did not understand the definition for yard and therefore built her fence to 6 feet with 0% opacity.

Fleming stated he viewed the property and the fence looks like it is a side fence. Sims clarified that the fence continues in front of the dwelling.

Stacy read the definition of the side yard for clarification. Principle dwelling starts the front yard line (as stated in the zoning resolution) and the fence is past the 4 foot maximum height and 40% opacity.

Neighbor contacted ZI Sims and stated the applicant was trespassing on their property but ZI Sims stated that was not a zoning issue but a civil issue. Sims also stated that a survey of their property would have to be done and that the neighbor could bring this documentation to the public hearing as their evidence to the Board of Zoning Appeals (BZA).

Stacy asked if the misunderstanding that the applicant was putting up a side yard fence; Section 205. B. 1, 2 and 3 were reviewed by the board members.

Applicant Kristine Kalgreen of 7845 Buffham Road, Seville Ohio 44273 was sworn in. Kalgreen is requesting a two (2) foot variance and 60% increase in opacity for the portion of the fence which is

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beyond her primary building and in the front yard. Kalgreen explained there was a Sheriff's report made by the neighbor when there was a dispute over planting lavender at the road way. Trees planted in 1990 at the ditch are also partially on the neighbor's property. Neighbor pulled up the lavender and the Lodi Police Chief requested that the planting be stopped but the applicant could press charges for hostile neighbors. Kalgreen also explained they had their horses' blood tested in case of poisoning and posted "No Trespassing" signs. Kalgreen stated she did not press charges on neighbor Donna Weeks but instead put up a privacy fence. The need for the fence was for privacy and protection.

Kalgreen explained she misinterpreted the zoning. The fence is abutting the property line so there is no mowing on the other side. Kalgreen stated that the property was bought in 1978 from her grandmother and the dirt that is down by the road is on the Weeks' property prior to the Weeks moving in.

Tonya Bodnovich of 7860 Buffham Road spoke as a contiguous property owner. Bodnovich supports Kalgreen and considers the fence an improvement to the house. Bodnovich has owned her property since 2008.

Andre Goe of 7867 Buffham Road is the owner of the property west of Kalgreen. Goe has owned the home since 2012 and considers Kalgreen pleasant neighbors and the fence looks nice. The fence is 300 feet back from the road and you can only see approximately 20 feet of the fence from the Goe's property.

Tom Smerdell of 7840 Buffham Road asked if the board is able to grant a variance if the fence is in violation.

ZI Sims explained the variance is the remedy to the violation.

Smerdell asked how can the board rule on a misunderstanding of the zoning code.

Fleming stated that removing the fence or replacing the fence with correct height and opacity is also to be considered.

Alice Hartshorn (daughter of Donna Weeks) of 9403 Shaw Road, Spencer Ohio is speaking on behalf of the Weeks. Hartshorn mentioned that the fence is leaning over the property line and when it was put up it has killed grass on the Weeks' side. Parents drove car on their lawn to inspect the fence. The Weeks also had to pay for a survey to be done.

Fleming asked for pictures of the leaning fence. Hartshorn did not have any.

McGlashan asked if the fence was causing any hardships to her parents. Is the fence infringing on her parents making any money or not being able to see from their drive? Hartshorn said no to all of the questions.

***Moore makes a motion for the board to go into executive session to discuss Hartshorn's testimony.***

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ZI Sims stated she had talked with Assistant Prosecutor Lyons on this issue and tried to provide dates for Weeks to appear in person but she is gone for the winter. Sims explained to the board that it was their decision to accept or deny Hartshorn as the spokes-person for her mother. Sims also stated that the prosecutor would be available to attend another meeting if the board would like to seek the prosecutor's advice.

Fleming stated he also spoke with Assistant Prosecutor Lyons regarding the daughter speaking on behalf of her parents.

***McGlashan seconded the motion before the board at 7:22 PM to go into executive session. Roll call: Moore, McGlashan, Thur, Fleming said aye and Stacy abstained.***

***Stacy makes a motion to return from executive session at 7:29 PM; seconded by Moore. Roll call: Stacy, Moore, Thur, Fleming and McGlashan. All said aye.***

ZI Sims: Weeks provided the Fiscal Officer a copy of a letter stating she would not be able to attend the public hearing and Hartshorn would speak on her behalf.

Stacy asked about any pictures of leaning fence.

Hartshorn stated she did not have time to take pictures but the height and opacity of the fence were in violation of the code and there are rules for a reason.

McGlashan restated there is no present hardship to the Weeks and the fence presently is not noticeable by the Weeks at their driveway.

ZI Sims stated there is no survey of the fence only a receipt of payment.

Hartshorn provided an invoice for \$500.00 to find the pins and dated 6-3-19 and 6-7-19 from Surveyors Rolling and Horsivar Inc. No survey has been provided by Weeks.

ZI Sims explained how the Weeks were provided many opportunities to express their issues with the fence. Weeks also told Sims the fence is on the applicant's property.

McGlashan asked if Kalgreen was provided an explanation of the proper placement of the fence. ZI Sims testified that the website with the zoning code was not working but she had sent the applicant the section of fencing through a text message.

Mike Schmidt of 2920 Ballash Road stated the fence did not require a zoning permit so no plat was needed.

Moore restated that the ZI was notified of the fence violation when a complaint from the neighbor was received by Sims. Moore clarified that Kalgreen was not aware of the language in the zoning code regarding yards.

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**Stacy makes a motion to close the public portion of the public hearing at 7:45 PM; seconded by Thur. Roll call: Stacy, Thur, Moore, Fleming, McGlashan all said aye.**

The board deliberated and requested the audience to remain silent through their discussion.

McGlashan reviewed the sections of the zoning code regarding and stated the Westfield Township Zoning Commission needs to review the language in the section since it is confusing.

Stacy stated that there was some confusion by the applicant and the variance should be granted.

Moore stated that there doesn't seem to be other property owners who have had problems with the fence language.

Thur stated that the fence presently does not inhibit neighboring property owners with not being able to see since it is 200 feet from the road.

Fleming stated that it does not impede or harm property owners with leaving their driveway. The fence also does not do harm but helps to make good neighbors.

Section 205. B. 1, 2 and 3 including:

- B.1 (chart for height and opacity)
- B.2 (Fence height of 4 foot)
- B.3 (Opacity of 40%)

Duncan Factors were reviewed at this time:

1. Will the variance yield a reasonable return and can it provide a beneficial use for other purpose. All board members agreed it could.
2. Is the variance substantial? Thur and Moore stated the variance was substantial and Stacy, Fleming and McGlashan stated that the variance was not substantial based on the location of the fence.
3. Will the essential character of the neighborhood be altered if the variance is granted? All board members stated it will not; the neighbors testified there were no safety issues with the fence. Would the variance alter the adjoining properties and all board members stated the adjoining property would not suffer a substantial detriment as a result of the variance.
4. Will the variance affect government services and all board members agreed it would not.
5. Did the applicant have knowledge of zoning restrictions (not apply in 1978 and there is no fence permit required). The board members agreed that the applicant did not purchase the property with knowledge.
6. Can the applicants' predicament be obviated in another way without a variance? All board members agreed it could be obviated in another way such as the removal of the fence.

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7. Was the spirit and intent of the zoning code altered by granting a variance? All board members agreed that the intent of the zoning code would be altered; would substantial justice be granted if the variance was given? All board members agreed that substantial justice would be done by granting the variance since there was not a negative impact to the neighbors.

**Stacy makes a motion to grant a variance to 7845 Buffham Road, Seville Ohio an additional 2 foot height variance and 0% opacity to allow the 6 foot fence which currently exists per Section 205 B. 1, 2, 3 and 5 and to be inline of the Kalgreen property as showed in exhibit "A" and "B". Roll call: Stacy-aye, Thur- aye, Moore- aye, Fleming- aye, McGlashan- aye. The motion passes and the variance is granted due to Practical Difficulty. No conditions were placed on this decision by the BZA.**

**Thur makes a motion to adjourn the public hearing at 8:14 PM; seconded by Moore. All said aye.**

Regular Business:

ZI Sims discussed with the board members the final plat for Westfield Terrace Subdivision, Ph3 that is scheduled on Wednesday, November 6, 2019 by the Medina County Planning Commission. An email was provided to all of the board members sent on October 9, 2019.

**Stacy makes a motion to accept the October 29, 2019 public hearing meeting minutes as submitted; seconded by Mc Glashan. All said aye.**

**McGlashan makes a motion to adjourn at 8:33 PM; seconded by Moore. All said aye.**

Official Notice of Board Action was provided to the applicant.

Respectfully submitted by, Cheryl Porter, Zoning Secretary

Date approved: January 7, 2019

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Patrick Fleming, Chair of BZA

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Greg McGlashan, Vice-chair of BZA

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Andrew Thur, BZA Member

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Wayne Moore, BZA Member

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Jim Stacy, BZA Member

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BZA Alternate Member