



**Village of South Russell
5205 Chillicothe Road
South Russell, Ohio 44022
440-338-6700**

**BOARD OF ZONING APPEALS
MEETING MINUTES**

October 20, 2021 7:00 p.m.

Members Present: David Maistros, Chairman, Laura LaChapelle, Andy Hitchcock, Chris Bell

Member Absent: Mike Mulloy

Other Officials: Todd Hicks, Solicitor; Mayor Bill Koons, Dave Hocevar, CBO,
Ruth Griswold, Board Secretary

Visitors: Corinne Greiner and Stephen Rice, 33 Forest Drive; Janet Smith, 36 Forest Drive; Martin O'Toole, 100 Foxhall Drive; John Buda, 106 Leaview Lane; Robert Bourne, 13 Forest Drive; Nancy Bohue, 33 Forest Drive, Jeffrey Rice, 33 Forest Drive

David Maistros called the meeting to order at 7:04p.m. Board Secretary Ruth Griswold conducted roll call.

Mr. Maistros motioned to approve the minutes of the BZA meeting on September 15, 2021. Ms. LaChapelle seconded. On roll call vote, Mr. Maistros-Yes; Ms. LaChapelle-Yes; Mr. Bell-Yes; Mr. Hitchcock-Abstain.

Mr. Hicks swore in both applicants and visitors who may speak.

AGENDA ITEM 1: CASE #BZA 21-06: Mr. Stephen Rice and Ms. Corinne Greiner, owners of 33 Forest Drive, are seeking an area variance from Chapter 4.01(b)(4) of the Zoning Code which prohibits fencing, other than split rail, along the front lot lines.

Mr. Maistros went over all the documents that had been presented to the board pertaining to the applicants' submittal. Mr. Maistros asked Mr. Hocevar to briefly describe the events leading to the board hearing tonight.

Mr. Hocevar said he was made aware of this fence after receiving a complaint. He said his field inspection confirmed that the fencing was in violation of South Russell Village Zoning ordinance, because the only fencing permitted in the front yard is a split rail with a maximum height of 4'. After discussing options with the homeowner, they decided to appear before the board to try and obtain a variance.

Mr. Maistros asked if the variance request would be for the placement of the fencing, or the height of the fencing, with 6' posts, or both. Mr. Hocevar said they would need a variance on both.

Mr. Maistros asked the applicants to begin their presentation.

Ms. Greiner began by saying they would like to be permitted to keep their fence, and that they are grateful to everyone at the meeting for the opportunity to be heard. She said they were genuinely confused when they misread the ordinance. She said they found the ordinance to be vague, and nothing was written regarding exterior vs interior fencing, which led them to believe the ordinance did not apply to interior fencing. She said they were not the only ones who didn't understand the ordinance, and that neighbors around the corner from them also had a vegetable garden fence, which they removed when they received the violation notice. She said in some ways, their concerns are larger, in that they do not want others to be affected by the vague ordinance, which she can see happening. She went on to say that whatever the outcome is tonight, the ordinance should be rewritten to be clearer. She said they moved to South Russell from Cleveland Heights, and their fence ordinance was very specific, and they also permitted fencing to be as high as 7' for vegetable gardens. She said the neighbors around the corner who removed their non-compliant garden fence had also moved from Cleveland Heights. Ms. Greiner said it is very difficult to grow a vegetable garden without a fence due to the deer population.

Mr. Rice said they wish to be in compliance and to be good neighbors. He said upon reading the ordinance, he thought the front lot line referred to the area with the split rail fence, and that they would not be in violation if they installed a fence behind the split rail fence. He reiterated that protection from deer is vital to the success of any vegetable garden.

Ms. Greiner said in looking around the Village, they saw various fences that seem to be in violation and that the application of the rules seems to be erratic. She said clarity on the Village website and in the ordinances would be very helpful.

Mr. Maistros asked the applicants how long the garden fence had been up. Mr. Rice said they finished the installation in July.

Mr. Maistros asked Mr. Hocevar to confirm that the issue is because the fence is located in the front yard, and would there be an issue if this fence were around a garden in the back yard. Mr. Hocevar said a back yard fence of this size and type would not be an issue. Mr. Maistros asked if the existence of the split rail fence in the front yard impacts the code at all. Mr. Hocevar said no, it does not.

Mr. Rice said their property does not have any space for a garden in the back yard, and that they had to remove some trees in order to provide some sunlight for the garden.

Mr. Maistros opened the discussion up to board members for their questions.

Ms. LaChapelle asked if the fence had to be 6' in order to keep the deer out. Ms. Greiner said the general recommendation is 7-8', as deer have been known to jump very high. Ms. LaChapelle asked if there was anything other than a fence that could be used to protect their vegetable garden. Ms. Greiner said that is a very good question, and some people put down blood meal or other deterrents, but when it rains, it must be re-applied. She said she would not want to do that since she doesn't want the residue to wash down into people's wells.

Mr. Hitchcock asked Mr. Hocevar to confirm that a neighbor complaint was what initiated his inspection. Mr. Hocevar said yes, a call came into the office. Mr. Hitchcock asked if there has been any other contact from neighbors, either for or against the garden fence. Mr. Hocevar and Ms. Griswold said they had received no other calls pertaining to the fence. Mr. Hitchcock asked the applicants if they had been approached by their neighbors. Ms. Greiner and Mr. Rice both said they have received numerous positive comments from their neighbors.

Mr. Bell asked the applicants if the fence was seasonal or permanent. Ms. Greiner said it is permanent, and the contractor set the posts in concrete. She said they were very pleased that the fence is 90% transparent, since the part of the code they thought they were following requires only 25%.

Mr. Maistros asked board members if they had any further questions for the applicants They did not. Mr. Maistros then asked if anyone else present would like to speak.

Mr. Robert Bourne said he has lived at 13 Forest Drive, which is just east of the applicants' home, for over twenty years. He said he supports their efforts to obtain a variance, and that he has no issues whatsoever with the garden fence.

Ms. Janet Smith of 36 Forest Drive said she is very concerned about setting a precedent for changes to the fencing code. She said she does not want to see a lot of trees coming down and fences going up. She said she can understand the removal of trees only if they are a potential danger to houses, or if they are diseased. She said as potential buyers the applicants should have thought of future garden placement.

Ms. Greiner said the only trees that they have or will have removed were either diseased or dying due to lack of care.

Mr. Maistros asked Ms. Smith if she wanted to say anything further on her concern regarding establishing a precedent. Ms. Smith said if the applicants would have gone through the proper permitting procedures, they would have known exactly what kind of fencing was allowed in South Russell.

Ms. Greiner said they studied the ordinance and did not see anything pertaining to an interior vegetable garden. Ms. Smith said they should have called the Village for assistance. She went on to say that her main concern is precedent being set and opening up the door for others.

Mr. Maistros said he can appreciate her concern but pointed out that part of their charge as a board is to consider certain criteria, with such criteria always being very specific to the property. He said real property is in and of itself unique, and each lot can be looked at as different from the others. He said the board takes great caution in reviewing each request to make sure that whatever recommendation or approval is granted, it is based upon the property as it sits and could not be applied as a cookie-cutter to any other properties. He said they consider each variance's potential for negative impact on the neighbors and the make-up of the neighborhood, and that each property may have a different impact due to trees, screening, and things of that nature. He said the Village is very cautious to ensure that any board decisions do not give carte blanche to the next.

Ms. Smith said someone may look at the applicant's fence and just assume that it is permitted, not knowing they may have obtained a variance. Ms. Greiner said she agrees with Ms. Smith, and it goes back to what she was saying earlier that it does concern her that the ordinances are so vague, which could cause trouble for the Village down the line. She said the neighbors who had to take down their fence had the same misinterpretation of the ordinance.

Mr. Maistros said the neighbors chose to take down their fence, and that they could have gone through the process of applying for a variance instead of doing so. That being said, per Ms. Smith's concern about precedent, just because someone down the street has a certain type of fence, it doesn't mean anyone else is entitled to the same. He said the board often encounters variance requests for work that is already completed, but that also does not impact their decision, and the applicant could still be denied.

Mr. Bourne asked if the fence would be permitted in the side yard. Mr. Hocevar said this fence would be permitted in the side yard, but that the only fence allowed in the front setback is a split rail fence with a maximum height of 4'. Mr. Bourne said part of their fence is in the side yard. Mr. Maistros said yes, but there is part of the fence in the front yard, which is why they need a variance.

Mr. Bell confirmed with the applicants that the garden fence is 13' from the split rail fence.

Mr. Maistros asked the applicants if they could have installed the fence behind the front setback of their house. Ms. Greiner said it was not a viable option because they would have had to remove many healthy trees to make room for it. Mr. Rice said the area where they installed the fence also receives the largest amount of sunlight.

Mr. Maistros asked if anyone had any further comments. There were none. He asked the board members if they felt there was a distinction between the height variance and the location variance, and should they be decided separately. Ms. LaChapelle said historically, the variances are split up, and she felt that would be a good idea. Mr. Maistros noted that if the fence were not in the front yard, they would not need a variance.

Mr. Maistros said in consideration of all the documents submitted, and in consideration of the comments that were made here tonight by both the applicants and the residents, he would make a motion in BZA Case # 21-06, for 33 Forest Drive, to grant an area variance for the placement of fencing, other than split rail, in the front yard setback. Mr. Hitchcock seconded. Mr. Maistros asked for any discussion on the motion There was none. On roll call vote, the motion carried.

Mr. Hocevar asked if the board would consider adding a condition to have the applicants obtain the zoning permit and to have the contractor who installed the fence become registered with the Village. Mr. Maistros said he feels the contractor registration is a separate issue. After discussion, the board agreed that securing the permit is the responsibility of the homeowner, and the contractor registration is a separate issue to be handled by the building department.

Mr. Maistros made a motion in BZA Case # 21-06, for 33 Forest Drive, to grant a 3' height variance to a fence that is located in the front yard, to allow for a 6' high fence that otherwise meets the opacity requirements of the Village Code, on the condition that the homeowners complete the application, pull the appropriate permit and pay the required permit fee. Ms. LaChapelle seconded. Mr. Maistros asked for any discussion on the motion There was none. On roll call vote, the motion carried.

Mr. Rice and Ms. Greiner thanked the board for their consideration and decision.

There being no further business, Mr. Maistros motioned to adjourn the meeting at 7:37pm. Mr. Bell seconded.



Laura LaChapelle, Acting Chairperson

12-15-21

Date



Ruth Griswold, Board Secretary

12-15-2021

Date