

**Richfield Township Board of Zoning Appeals
March 21, 2022**

The meeting was opened at 6:30 p.m. on March 21, 2022, with the following members in attendance:

Jeffrey Smola, Chair
Geoffrey Graham, Vice Chair
Natalie Grubb, Member
Robert Kapitan, Member

Also in attendance:

Patricia Ryan, Zoning Inspector
Dr. Angela Kyei
Dr. Mark Kyei
Mr. Jeff Krise, Lighthouse Products
Don Faulhaber
Jim Vocaire
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Becky Vocaire
Attorney John Slagter
John Allega
Paul Caruso
Attorney Marvin Evans

OLD BUSINESS:

Continued Case 659-22 was introduced by Ms. Ryan. The case is for Mark and Angela Kyei of 3649 W. Galloway Dr. PPN # 48-02119 in Richfield Township. The applicant is applying for a 49' rear yard setback variance to construct an inground pool in their rear yard. This case was continued until the Summit County Planning Commission decided on the riparian variance.

Mr. Krise with Lighthouse Pools was administered the oath and presented the drawing reflecting the setbacks as requested last month.

Ms. Ryan stated the recommendation from Summit Soil and Water Conservation District to the Summit County Planning Commission was to deny the riparian variance.

Since the Planning Commission will not hear the case again until March 31, 2022 Mr. Krise requested a continuance until the April meeting of the Richfield Board of Appeals.

Mr. Smola made the motion to continue the case 659-22 until April 18, 2022 at 6:30 p.m. Mr. Kapitan seconded. All members present voted to approve. Motion passed 4-0-0.

NEW BUSINESS:

Case 660-22 was introduced by Ms. Ryan. This is an appeal of the Zoning Inspector's decisions on 5 complaints filed by Mr. Don Faulhaber of 5145 Hecker Dr. Ms. Ryan reviewed the complaints.

The Board reviewed the complaint labeled #1 stating the bufferyard not being maintained per Section 420-4-H3 in the RTZR.

Ms. Ryan stated the resolution has no regulations pertaining to fallen trees on property which is what the complaint was referring to.

Ms. Grubb asked if there is anything in past variances that refers to maintenance. Ms. Ryan stated she reviewed minutes for all variances filed for this property and saw none. She also listened to the audio recordings and did not hear anything.

Mr. Faulhaber was administered the oath by Mr. Smola.

The Board reviewed pictures Mr. Faulhaber had submitted on a flash drive. The Board concluded that there were trees that appeared to have been purposely removed and either stacked or left in place when construction took place and there were dead evergreen plantings along the bufferwall that had died.

Ms. Ryan stated she has spoken with Mr. Paul Thurston from Becknell there is a warranty on all plantings so these would be replaced. Ms. Ryan said she based her response on the written complaint and the dead plantings were not mentioned but they will be removed and replaced by Becknell.

The Board discussed the term maintenance. There is no definition in the resolution.

There was discussion on required landscaping in a bufferyard. Ms. Ryan stated the regulations prefers to preserve existing woodlands and that was done in this case.

Mr. Faulhaber claimed the trees were taken down and did not come down naturally although he admitted he did not witness this claim.

The Board again reviewed the pictures to determine which ones were pushed down and stacked.

The Board moved to Complaint labeled #2 stating there are flashing lights from inside the building violating Section 420-4F1 and F6 of the RTZR.

Ms. Ryan stated the RTZR does not regulate lighting inside a building. In the video supplied by Mr. Faulhaber there appears to be a ceiling fan on and the blades are interrupting the light but there is no flashing light.

Mr. Faulhaber claimed the flashing was from the conveyor going back and forth and interrupting the lights. He stated it is an annoyance and a nuisance to him. He further stated the lights that were not flashing were producing a star effect glare.

The Board discussed glare and the outside lights on the wall. Mr. Thurston provided Ms. Ryan with the cutsheet for the wall pack lights and they conform to our code being 90-degree cutoff and although they are mounted higher than 25' they are 265' from the residential properties, well over the distance required. Mr. Faulhaber noted that glare was a separate complaint, but he just added it in on this one.

The Board discussed if lowering the wall lights would help.

Mr. Graham noted they would need more because the light casting area would be smaller. He stated you can't cast light past the property line but you will still see light.

Ms. Ryan stated she had researched this and based on various lighting industry materials, some provided to the Board, there is always going to be a factor of glare from a light source so the code is unenforceable in requiring no glare be allowed. Also determining glare is subjective and not easily defined, one person may be more impacted by a light than another.

The Board moved onto complaint listed as #5 since it was related to the previous discussion stating light height and glare is in violation of Section 420-4-F-4.

Ms. Ryan stated the parking lot lights do not exceed the 25' height so they are in compliance. The parking lot lights adjacent tot the buffer wall are at the permitted 20' height, no violation. The wall lights are at 30' but are 265' from the property line. Ms. Ryan referred to Section 420-4-F3 which states light sources in excess of 20' in height shall not be closer than 100' to a residential property line and have a 90-degree total cutoff in the direction of such property line.

Ms. Ryan contends there is no violation of the RTZR.

Mr. Faulhaber argued this was against the spirit of the code and the lights are only there to light the wall not the parking area.

There was discussion regarding the light height, glare and nuisances.

Mr. Graham spoke to glare issue and how some of the pictures were taken through glass or from a distance and asked how to determine glare?

Mr. Faulhaber said he can see shadows inside his house proving to him there is light shining on his property so he says this is glare.

There was continued debate on the glare statement in the resolution and interpretation of glare.

Ms. Grubb stated Ms. Ryan ignored the glare section. Ms. Ryan stated since all light produce a factor of glare the section is flawed and unenforceable, can't enforce something that can never be attained.

Mr. Graham stated they all agree the lights were installed according to our regulations.

The Board moved to complaint listed as #4 stating glare onto adjacent properties in violation of Section 420-4-F1 and F2.

Mr. Faulhaber said this was regarding the pole lights at the west end of the parking area.

Ms. Grubb asked if they had addressed the fencing from complaint #1. Ms. Ryan stated in her conversation with Mr. Thurston from Becknell that they would look at this issue and either repair, replace or remove the damaged fencing.

The Board moved to complaint listed as #3, loading and unloading is in violation of Section 420-4-A-2b. Ms. Ryan read her response stating the loading and unloading occur at the dock wall and not within the 250' distance from the residential district.

Ms. Grubb said there were numerous variances granted specific to hours of operation, number of employees, truck backup beepers so they can't just go by the code.

Mr. Caruso property owner of vacant land on Black Road was called as a witness by Mr. Faulhaber and administered the oath. Mr. Caruso stated the loading and unloading is a process defined as when cargo leaves a state of rest and ends when the cargo reaches a state of rest. This definition was upheld in an Ohio Supreme Court case from 1944. Mr. Caruso contends the entire trailer is part of the loading and unloading process and does not meet the required distance required between 10 p.m. and 6 a.m.

Discussion ensued.

Mr. Graham made a motion to enter executive session, seconded by Mr. Smola. All members present voted to approve. Motion passed 4-0-0.

The Board re-entered regular session at 8:10 p.m.

Mr. Smola made a motion to continue complaints labeled 2, 3 4 and 5 until April 18, 2022 at 6:30 p.m.to allow the zoning inspector time to review past variances and the history of the property.

Ms. Grubb proposed hearing from the residents in attendance prior to the vote.

Mr. Smola opened the hearing to the public.

Ms. Becky Volcaire was administered the oath and referred to the plantings that were to be every 12' in the buffer yard. She said Becknell proposed evergreens and what she saw in the pictures taken recently they were arborvitae shrubs. She did not think they would screen anything. She also said the glare was a nuisance and they have had to buy shades for one set of windows.

Mr. Smola stated her issues should be brought before the RTZC who write the regulations.

Ms. Volcaire also stated the light shines off the neighbor's windows causing glare.

Mr. Smola they are going to look into how to interpret and measure glare.

Mr. Kapitan seconded the motion on the floor. All members in attendance voted to approve. Motion passed 4-0-0.

Ms. Ryan asked for a clarification on what the Board wanted Becknell to address. Mr. Smola said the construction debris consisting of the trees that were pushed over. It was also noted Becknell has agreed to address the damaged fencing and dead plantings.

Case 661-22 was introduced by Ms. Ryan. This is a variance request to construct a 10' H bufferwall that is 50' from the residential district except in a section that goes around existing gas and cell tower. That section will be 23' from the district line.

Attorney John Slagter came forward to speak and was administered the oath as was John Allega, the owner of the property in question.

Mr. Slagter described the need for the variance stating there is a 157.29' section, or 32% of the wall length, that will not meet the required setback. Mr. Slagter reviewed the documents provided and added 2 exhibits. First exhibit was the site plan showing the site and the second was a set of pictures of the existing tanks, tower and associated equipment.

There were questions regarding the revocation of the gas easement and others and Mr. Allega stated the revocation was to allow the relocation of an existing gas line and easement from crossing the center of the property.

Ms. Ryan referenced the drawing and asked for confirmation that the building shown was not approved or even submitted for approval and is not to be considered as part of the plan. Both Mr. Allega and Attorney Slagter agreed there are no plans for a building or purchaser at this point and the building on the plan was for a previous proposed development that is no longer valid.

Attorney Slagter stated they are not seeking approval for any building or use but only for the 10'H bufferwall location.

Attorney Slagter reviewed the Duncan Factors.

Mr. Smola opened the hearing to the audience.

Ms. Volcaire came forward and stated she had no issue with the variance but did with he height. She has concerns with not knowing the end user and they may see trucks. She questioned why the code states a minimum height.

There was discussion on approving this for a vacant lot without an end user.

Attorney Slagter stated the minimum height is to set the minimum height but does not disallow someone from putting in a taller wall. Language is similar throughout the code.

Mr. Faulhaber came forward and stated the same concerns as Ms. Volcaire.

Mr. Smola read the resolution and added the 2 exhibits added at the hearing by the applicant.


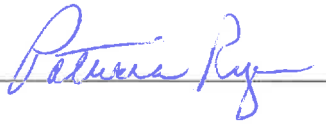
Mr. Smola motioned to approve the variance. Seconded by Mr. Graham.

There was discussion about if the variance was substantial and if it pertained to the percentage of overall length or for the depth of encroachment into the setback.

All members in attendance vote to approve. Motion passed 4-0-0.

A motion was made by Mr. Smola to approve the minutes from February 21, 2022. Ms. Grubb seconded. All members present voted to approve. Motion passed 4-0-0.

Chairman Smola, noting there was no additional business, made a motion to adjourn. Mr. Kapitan seconded. All members voted to approve. Motion passed 4-0-0. The meeting was adjourned at 9:18 p.m.

Chairperson  Secretary  Date 6-20-22