



City of Powell, Ohio

Powell Board of Zoning Appeals

Ed Cooper, Chairman

Robert Hiles

Joseph Jester

MEETING MINUTES AUGUST 22, 2007

A meeting of the Powell Board of Zoning Appeals was called to order by Chairman Ed Cooper on August 22, 2007 at 6:30 p.m. Board Members present included Robert Hiles and Joseph Jester. Also present were David Betz, Director of Development; Eric Fischer, Development Planner; Mason Janczak, Staff Engineer; Susie Ross, City Clerk; and interested parties.

Complete transcripts of this hearing may be purchased by contacting Runfola Reporters.

APPROVAL OF MINUTES

MOTION: Chairman Cooper moved to approve the minutes of July 25, 2007. Mr. Hiles seconded the motion. By unanimous consent, the minutes were approved as submitted.

The Chairman issued an oath to those attending who intended to testify at the meeting.

APPLICATION FOR APPEAL

Applicant:	W. Martin McCutcheon
Location:	1060 Cheliway Ct. Woods of Powell North subdivision
Zoning:	PR, Planned Residence District
Request:	Appeal of the Zoning Administrator's and City Engineer's denial of a Zoning Certificate for a fence proposed to be located in a Drainage Easement.

Martin McCutcheon, 1060 Cheliway Court, said he is appealing the denial because he is most concerned with the welfare and safety of his daughter. He said he wants to fence the property because there is a retention pond behind it. He said Staff wants him to move 9' off of the back corner of the house which takes about 22-25% away. He said it is a hardship for him because he is paying taxes on and maintaining this property. Mr. McCutcheon said they have an irrigation system in the lawn and they would like to fence it. He said if they move it that far off of the line that is less yard for his daughter to play in. He said Staff is allowing one foot over the 10 foot easement now because that is enough area for an excavator to work within. He said Staff is concerned about access to the 48" pipe in the easement.

Mr. McCutcheon said he is willing to pay any extra costs and damages if they were to damage the pipe during the fence installation. He said if the utilities would need access to the 48" pipe he is willing to absorb the extra cost to tear down the fence to get to it. He said trees are allowed in that area but a root ball will do much more damage to the underground pipe than a two foot footer and a fence post. He said he included information regarding the weight of root balls and mature rates in his appeal. Mr. McCutcheon said there are already permanent structures on this easement such as power lines, cable lines and a power box. He said if the concern is to get to the pipe immediately his fence should not be a concern compared to any power or cable lines.

Mr. McCutcheon said his daughter's protection and safety are his main concerns. He said he received three quotes for the fencing and he went with the highest priced product. He said he received approval from the management company. He said the process has not been easy and he asked that the Board be fair.

Mr. Jester said he visited the site yesterday and he noted that the utilities are in the easement as it is their right to do so as it is their easement. Mr. McCutcheon said the electric lines should be of more concern

than his fence. Mr. Jester asked if the fence will sit on top of the utilities. Mr. McCutcheon indicated the placement of the fence on the site plan. He said the fence will be on the property line and the piping is more inside by 1-2'. He said the utility lines are inside, offset to the centerline of the pipe. Mr. Jester said he wondered why this was not questioned. Mr. McCutcheon said the fencing will be where the trees are and he is not allowed to build the fence any closer to his house because of the subdivision rules. Mr. Jester said the utility companies could tear up the fence if they need to access the utilities. Mr. McCutcheon said he is willing to take that chance and pay the additional cost.

Mr. Betz said the applicant submitted a zoning permit application and the Development Department initially denied the certificate because the fence was proposed to be located within the drainage easement. He said the first reason for denial was the proposed fence is located over and runs parallel to the 48" concrete storm pipe. He noted the location of the area on the engineering drawings for the subdivision. He indicated the area of the retention basin and the easement. He said the depth of the pipe is approximately 2.5-3.5' below ground level. Mr. Betz said the second reason is the minimum of 5' clearance from the edge of the pipe in this particular instance, to the structure, is required by the City Engineer to allow unrestricted access to the storm pipe for maintenance purposes. He said one benefit of where this pipe is located is they do not have to stay 10' over because of the width of the drainage easement. He said the City also does not want to be burdened with the cost of damage to the fence. Mr. Betz said the applicant said he will take responsibility for any damage. He said the City Engineer did approve that the fence could be 1' inside the easement, allowing a 5' distance between the fence and the storm pipe.

Chairman Cooper noted the comment regarding trees versus fence within the easement. Mr. Betz said they do a lot of trees within a drainage easement but there are provisions for overlock drainage. He said they do not have provisions for areas where there are pipe. Mr. Hiles asked if that was the case in this instance. Mr. Betz said this is near the pipe itself. Chairman Cooper asked if this is a shared easement. Mr. Betz said that is correct. He indicated the area where the utilities are located. Mr. Hiles asked if when the City says they do not want the burden of the cost and the homeowner says he will be responsible, does that alleviate the City from responsibility. He said if the applicant puts his fence within the easement there should be no cost to the City. He asked what kind of costs there could be. Mr. Betz said the issue is approving a permit to allow a fence within the easement could put it legally back on the City. He said a review authority such as this Board could approve it with a requirement that the fence be removed and reinstalled at the sole expense of the owner but it would have to be something that is recordable so it is passed on to future homeowners. Chairman Cooper said that would have to be a deed restriction which applied to any future owners of this property and they would have to agree to this situation before they purchased the home. Mr. Betz said it would be a part of the purchase of the property. Chairman Cooper said it would be just as when this property was purchased there was a ten foot easement there.

Mr. McCutcheon asked if it would be easier if he put something in writing that stated he would agree to be financially responsibly. Mr. Hiles said if the decision were to be in the applicant's favor there would be something recorded this evening that would say that would be carried over to future owners. Mr. Jester asked if the applicant is already ok to go one foot within the easement. Mr. Betz said Staff has approved that. Mr. Jester asked if the Board would have to vote on that tonight. Mr. Betz said Staff has the authority to approve that. Mr. Jester asked if it is 9' they are discussing. Mr. Betz said that is correct. Mr. McCutcheon said he had a lot of difficulty getting information from Staff regarding allowing things in the easement but he does have information where it has been allowed in Powell to build a fence on an easement. Mr. Betz said there have been several in Powell that Staff has allowed by permit in easements in similar situations, but the fence crosses the pipe perpendicular. He said it was added to the code in 1998 to allow the City Engineer and Zoning Administrator to have the authority to make those decisions on a case-by-case basis. Mr. Jester asked if there are any concerns from those issued in the past. Mr. Betz said they have never had any other issues come up since because they have been able to identify how they may access the easement and not cause a problem. Chairman Cooper said code also says that any actions taken prior to this application have bearing on this situation.

Chairman Cooper asked if the applicant was aware of the easement when he purchased the property. Mr. McCutcheon said at first they were not aware of it. He said they went into contract on this house in January 2006 and they did not have a child at that time. He said all of this has happened since that time and he became aware later that there was an easement but he did not know that until 3-4 days before they closed on the home.

MOTION: Chairman Cooper moved to approve the appeal. Mr. Hiles seconded the motion.

Mr. Jester asked if the cost responsibility should be included in this motion. Chairman Cooper said they are simply looking at whether the appeal should be approved or denied. Mr. Jester said that ignores the question of financial responsibility. Chairman Cooper said that would depend upon whether this appeal is approved or denied. Mr. Hiles asked Staff to clarify the issue. Mr. Betz said the Board made a motion to approve the appeal. He said if they approve the appeal the applicant can build his fence as he has submitted. He said the applicant testified that he would be willing to pay for the removal of the fence.

VOTE: Y 1 N 2 (Cooper, Jester)

Mr. McCutcheon said the City makes it really difficult to even think of working in the City. He said he is not finished with this case, just to prove a point. He said their statement was that if he does not buy the home someone else will come in and pay the taxes. He said that is a great attitude to have. Chairman Cooper asked if that was told to him before he bought the property. Mr. McCutcheon said Mr. Fischer told him that and he provided information to the Board where Staff approved a fence at 26 Watson Way. He said they approved a fence in the same process. Chairman Cooper said the vote has been made and if the applicant wishes to carry this any further there is a process for that. Mr. McCutcheon said he understands that but he wishes the City would cooperate with their taxpayers a little bit more. He said it was his burden to search for the information and the City would not provide it when he asked for it.


OTHER BOARD BUSINESS

Mr. Fischer said there may be pending actions regarding Target.

ADJOURNMENT

The meeting was adjourned at 6:56 p.m.

DATE MINUTES APPROVED: November 19, 2007



Ed Cooper
Chairman

12/5/2007
Date



Susie Ross
City Clerk

12/5/2007
Date