

**Texas Township
Zoning Board of Appeals
Minutes of Regular Meeting**

June 28, 2023 – 6:00 P.M.

Present: Frank Machnik (Chair); Michael Corfman; Ken Toy; Michael Mair; Laura Genovich (Township Attorney); John Lovely (Township Planner and Zoning Administrator); Members of the Public.

Absent: Michael Bakker.

Item 1. Call to Order and Roll Call

The meeting was called to order at 6:03 p.m. by Frank Machnik (Chair).

Item 2. Approval of Minutes

The ZBA reviewed the minutes of the March 22, 2023 meeting. A motion to approve the minutes as amended was made by Mair, supported by Corfman. Motion carried 4-0.

Item 3. Announcements / Correspondence

None.

Item 4. New Business

Mr. Machnik generally addressed the procedure for the meeting and explained that the two applications were for interpretations of the Zoning Ordinance, not variances. Mr. Machnik discussed that the Board must be focused and limit its opinion to the specific facts.

A. ZBA Case 23-02

Applicant: Texas Township

Address: 749 Treasure Island Drive

Parcel #: 3909-09-376-020

Request: Ordinance Interpretation for Screening Fence Setback

Zoning Administrator John Lovely presented his report and explained the Township's reason for seeking an interpretation of the screening fence setback requirements. Mr. Lovely explained that a fence permit was issued to Julie Odenweller of 749 Treasure Island Drive for a six-foot screening fence subject to a three-foot setback. A three-foot setback is permitted for side yards. Neighbors at 733 and 737 Treasure Island subsequently complained, leading to review by the

Zoning Administrator, who determined that the fence was constructed six inches from the property line.

Township staff sought a legal opinion from the Township Attorney, which concluded that the fence had been built on the “street side” of the Property (rather than in the side yard), violating the 20-foot setback requirement. The opinion noted that even if that edge of the property were a “side yard,” the fence violated the three-foot setback requirement. Mr. Lovely explained that staff disagreed with that opinion and thus sought an interpretation, particularly in light of how the Township has viewed other properties.

Julie Odenweller then addressed the ZBA. She stated that the fence fit in with the character of the area. She noted that her neighbors’ “barndominium” was built only 10 feet from the property line (not 20), which impacted the enjoyment of her property.

Tyler Weston of 737 Treasure Island Drive stated that if Treasure Island is not a “road” (for purposes of determining the setback requirement), then 737 Treasure Island becomes landlocked.

Nicole Weston of 737 Treasurer Island Drive stated that the fence creates visibility issues because drivers cannot see around the fence and into the Westons’ driveway, which leads to a dangerous situation for the Westons’ children.

Trish Roberts of 1213 E. Crooked Lake Drive provided additional information about the history of the rights of way and other roads in the subdivision.

Laura Genovich, Township Attorney, explained the reasoning for the legal opinion but stated that the interpretation is ultimately within the Board’s jurisdiction.

With no further public comment, Mr. Machnik closed the public hearing and opened Board discussion.

Mr. Machnik stated that the interpretation request presented two questions:

1. Is the right of way a “street” that extends to the road as originally platted? (If yes, the analysis would end here.)
2. If not, is the right of way a “side yard” between the two properties?

The Board discussed at length whether the right of way should be considered a street for setback purposes, including the history of other rights of way and how the right of way is used.

Following that discussion, a motion was made by Machnik and second by Toy to find that the right of way by 749 and 737 Treasure Island Drive is a street for purposes of the street side setback. The motion passed 4-0 in a roll call vote.

The Board next discussed how to interpret Section 36-5.4(3) of the Zoning Ordinance, which states as follows:

On the street side of every lot abutting a lake, river or stream, every principal building, and every fence 50% or more solid and every berm shall be set back from the street at least 20'. On the riparian side of the lot, no solid fencing shall be permitted nor any fence greater than 4' in height shall be installed beyond the established building line. Any solid fencing or any fencing greater than 4' in height shall only be permitted between the building line on the riparian side and the 20' setback line on the road side, unless attached to a detached accessory building at the setback line that is 20' from the right of way line, or 18' from the edge of pavement (whichever is less), but never less than 3' from the property line. Solid fencing on side property lines may be measured from the building line for either abutting property. In no instance shall a solid fence be in front of the principal building in the riparian yard or the street-side yard.

The Board extensively deliberated on how to read the sentence "Solid fencing on side property lines may be measured from the building line for either abutting property" in the context of the rest of the section. The Zoning Administrator and Township Attorney offered their input. In particular, the Board discussed whether the 20-foot setback requirement would be imposed where the neighboring property's building was closer than 20 feet to the right of way.

Following that discussion, a motion was made by Mair and seconded by Toy to interpret Section 36-5.4(3) of the Zoning Ordinance to mean that the street side setback for a fence may be measured from the abutting properties' building lines but in no event may be located less than three feet from the right of way.

The Board invited Ms. Odenweller to apply for a variance because the fence is located within the three-foot setback.

A. ZBA Case 23-03

Applicant: Texas Township

Address: 1466 N Eagle Lake Drive & DNR Boat Launch

Parcel #: 3909-09-351-010 & 3909-09-301-010

Request: Ordinance Interpretation for Screening Requirements for

Both Parcels

Zoning Administrator John Lovely presented his report and explained the Township's reason for seeking an interpretation of the screening requirements. Mr. Lovely explained that Blake Kovacs approached Township staff in April regarding a noise/nuisance complaint concerning the neighboring DNR property, which led to discussions about screening options. The DNR has apparently told Mr. Kovacs that any screening must go on his property, not the DNR's property. The section of the Zoning Ordinance at issue is Section 36-5.3.1.A, which provides in part that "[e]ach nonresidential use immediately adjacent to a residential district must provide screening that adequately separates any potential nuisances from dwellings."

Mr. Kovacs presented comments to the Board. Among other things, Mr. Kovacs reported that the DNR's boat launch rules are not followed, and the DNR relies on local police for enforcement. Mr. Kovacs has called the police five times in the last two months for noise-related complaints after hours at the boat launch. Members of the public fish, swim, and "hang out" 50 feet from his porch and have a clear line of sight into his home.

Mr. Kovacs further complained that the DNR does not maintain the property, so Mr. Kovacs has lived next to a swamp with dead trees and a chain link fence for the last five years. The DNR has denied responsibility for any screening or zoning issues.

Grady Koone, who lives three houses down from Mr. Kovacs, indicated support for a berm and confirmed that there is a lot of noise and light from the boat launch.

Deborah Duncan, who lives directly east of Mr. Kovacs, also wants relief from the nuisance and confirmed there is noise at night, including barking dogs.

Mr. Machnik closed the public hearing, and the Board deliberated.

Mr. Lovely and the Township Attorney advised the Board that the DNR is subject to zoning. The first question before the Board was whether the screening requirements in Section 36-5.3.1.A. supersede other requirements for fence and landscaping height in the Zoning Ordinance. Section 36-5.3.1.A reads, "Between residential and nonresidential uses: Each nonresidential use immediately adjacent to a residential district must provide screening that adequately separates any potential nuisances from dwellings."

Following discussion, a motion was made by Machnik and seconded by Corfman to interpret Section 36-5.3.1.A as being an exception or exclusion to the residential requirements or restrictions for screening fencing or landscaping between residential and nonresidential uses where the nonresidential use is intended for recreational use. The motion passed 4-0 on a roll call vote.

The Board discussed whether the Township can enforce this section against the DNR and determined that this is a legal question, not an interpretation question.

The Board further discussed where the Zoning Ordinance intended that screening to be located. A motion was made by Machnik and seconded by Mair to interpret Section 36-5.3.1.A as requiring the screening fencing or landscaping to be placed on the nonresidential property. The motion passed 4-0 on a roll call vote. A motion to reconsider that motion was then made by Machnik and seconded by Mair to add the words “being used for a recreational use.” That motion passed unanimously.

The amended motion was then presented to the Board (made by Machnik, seconded by Mair) to interpret Section 36-5.3.1.A as requiring the screening fencing or landscaping to be placed on the nonresidential property where the nonresidential property is being used for a recreational use. The motion passed 4-0 on a roll call vote.

Item 6. Citizen Comments

None.

Item 7. Board Member Comments

Mair congratulated Mr. Lovely on the recent birth of his child.

The Board discussed the ongoing issues with the DNR property.

Item 8. Adjournment

There being no further business, the meeting was adjourned on a unanimous vote at approximately 9:15 p.m.

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