

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

September 27, 2023 – 6:00 P.M.

Present: Michael Bakker (Vice Chair); Ken Toy; Michael Mair; Laura Genovich (Township Attorney); Kelly McIntyre (Planning Consultant); Members of the Public.

Absent: Frank Machnik; Michael Corfman

Item 1. Call to Order

The meeting was called to order at 6:00 p.m. by Vice Chair Bakker.

Item 2. Roll Call

Roll was taken.

Item 3. Agenda

Toy moved, supported by Mair, to amend the proposed agenda to consider the Kovacs variance request before the Odenwaller variance request. Motion carried 3-0.

Item 4. Approval of Minutes

The ZBA reviewed the minutes of the June 28, 2023 meeting. A motion to approve the minutes was made by Mair, supported by Toy. Motion carried 3-0.

Item 5. New Business

A. ZBA Case 23-05

Applicant: Blake Kovacs

Address: 1466 N Eagle Lake Drive & DNR Boat Launch

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

Request: Variance to allow the resident to install screening on his property to separate it from an adjacent non-residential land use.

Kelly McIntyre, Planning Consultant, summarized her written report and analysis dated September 20, 2023, which was included in the Board's packet. Ms. McIntyre explained that she reviewed the ordinance and conducted a site visit, and she explained the principles of a dimensional variance and summarized the analysis in her written report.

Applicant Blake Kovacs presented his comments and complimented Ms. McIntyre and Mr. Lovely on their analyses. He expressed frustration over inefficiencies in the Township's process in having to attend two meetings. He summarized the reasons for his variance request.

Bakker asked where this screening would be in relation to MDNR's chain-link fence. The applicant answered it would be inside the chain-link fence.

Toy moved to open the public hearing, supported by Mair. Motion carried 3-0.

Steve Nadrasik, 1540 N. Eagle Lake, who lives two doors from the subject property, spoke in support of the variance.

Bakker moved to close the public hearing, supported by Toy. Motion carried 3-0.

Discussion of the Board:

The Board acknowledged receiving a letter from Paul and Tori Hall concerning the variance request. Mair asked about the setback for a side yard fence. Ms. McIntyre answered there is not a minimum setback for side yard fences.

Mair acknowledged the impact of MDNR's lake access on neighboring properties and others. His opinion is that this is not a self-created hardship and that there should be relief granted. If the applicant is willing to install and maintain screening, which will benefit the entire neighborhood, the Board should allow that.

Bakker noted that he has observed noise, drinking, and other issues at the MDNR lake access, and notes that the flooding has resulted in tree loss that has exposed that area. Perhaps buying a house next to public access is "self-created," but things have changed since then. He believes this is a reasonable solution.

Toy echoed these comments and opined that the standards for a variance were met. The problem isn't self-created. Mair noted that the problem is the use of the neighboring property, which was not caused by the applicant.

Toy made a motion to approve the variance as requested, seconded by Mair.

In discussion on the motion, the Board found that the following standards were met:

- a. The variance will not permit the establishment of any use which is not allowed as a permitted or special exception use within the zoning district in which the property is located.
- b. Compliance with the strict letter of the Chapter would unreasonably prevent the owner or occupant of the property from using such property for a permitted use and that relaxation

of the requirement would provide substantial relief to the owner or occupant and would be consistent with justice afforded to other property owners.

- c. The granting of the variance is not based upon a self-created hardship but, rather, on the unique characteristics of the property.
- d. In granting the variance, conditions may be imposed in order to ensure that the applicant does not receive relief beyond that which is necessary to achieve such justice under the Chapter.

The motion to grant the variance carried 3-0 on a roll call vote. A written decision will follow.

B. ZBA Case 23-04

Applicant: Julie Odenwaller

Address: 749 Treasure Island Drive

Parcel #: 3909-09-376-020

Request: Variance to allow a fence to be located within the 3-foot streetside setback.

Planning Consultant McIntyre summarized her written report and the standards for a variance. Ms. McIntyre summarized her analysis of each standard, which are also set forth in her written report in the Board's packet.

Letters from Cynthia Hettinga and from Linda Weston were acknowledged as being in the record.

Applicant Odenwaller made a presentation and referenced photos in the Board's packet. She explained how her neighbors' actions and the Township's actions have impacted her. She discussed the neighbors' paving of the road and the construction of their barndominium. She explained that this fence protects against encroachment and trespassing and to mark her property line. Ms. Odenwaller provided a detailed history of other zoning violations in the area and what she perceives to be special treatment of other neighbors.

Bakker moved to open the public hearing, supported by Toy. Motion carried 3-0.

Tyler Weston, 737 Treasure Island Drive, spoke against the variance. Mr. Weston acknowledged that the Township made an error in approving his barn, but he stated that he received a permit and built it pursuant to the permit. He stated that Ms. Odenwaller received a permit but *didn't* comply with the permit. His concern is safety, as he believes the tall fence so close to the road makes visibility difficult.

Nicole Weston, 737 Treasure Island Drive, spoke against the variance. Ms. Weston stated that she was the person who filed the complaint the day the fence was installed. Ms. Odenwaller has not filed formal complaints against the Westons. Ms. Weston's concern is for the safety of her children. Ms. Weston backs out of her driveway multiple times per day and the fence is a visual obstruction, and she cannot see whether a car is coming. An Amazon truck almost hit her son because of an opaque fence alongside the road. She feels that a three-foot setback is already generous, given that it should be 20 feet under the ordinance but for the Zoning Board of Appeals' July interpretation. Also, Ms. Weston stated that Ms. Odenwaller runs an Airbnb, and those renters encroach on the Westons' property.

Jodie Milne, 2528 Broadway, spoke in support of the variance as a friend of the applicant. She reported that the Westons built huge structures and "blacktopped everything." There is no reason for traffic to go through there; the seawall blocks people from reaching the lake. Ms. Milne believes it is absurd for the Westons to complain about the fence with what they have done.

Mair moved to close the public hearing, supported by Toy. Motion carried 3-0.

Board Discussion:

The Board reviewed portions of the July meeting minutes with the Township Attorney.

The Board noted that the only issue in the application is the setback, not the height, and the Board is not expressing an opinion on the height of the fence. Both the planning consultant and attorney noted that the height issue was not resolved in July and is not before the Board in this application.

Mair observed that this variance request has nothing to do with other properties. The permit for the fence was clear in stating that a three-foot setback applied. The permit was not followed. The hardship has been created by the owner. The existing tree need not be removed; the fence might need to be interrupted by the tree.

The Board discussed whether the paving of the road was germane and decided it was not.

Bakker noted that the Board cannot take into account whether the structure (fence) has already been built but instead consider whether the Board would grant the variance in the first instance. Bakker stated that he believes this is clearly a self-created hardship.

Toy stated that the location of the tree is not a hardship.

Mair moved to deny the variance because it is a self-created hardship based on the permit that was clearly issued, supported by Toy.

Mair commented that the fence could be set back three feet and be interrupted by tree.

The motion to deny the variance carried 3-0 on a roll call vote. A written decision will follow.

Item 6. Board Comments

Mair noted that the ZBA meets irregularly, and he recommended that the Township Board set 2024 meetings on the same schedule as 2023 (fourth Wednesday of each month).

The Board acknowledged that no applications are scheduled for the October meeting.

Item 7. Public Comments

Nicole Weston, 737 Treasure Island, asked about who she should follow up with concerning enforcement. She was directed to contact Township Superintendent.

Item 8. Adjournment

There being no further business, the meeting was adjourned on a unanimous vote at approximately 7:44 p.m.

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