

The **Board of Zoning Appeals** of the City of North Royalton met on **April 24, 2013** to hold a Public Hearing in the Council Chambers at 13834 Ridge Road. The meeting was called to order by Dan Kasaris at 7:30 p.m.

Present: Chairman Dan Kasaris, Robert Jankovsky, Victor Bull, Dale Gauman, Prosecutor Donna Vozar, Building Commissioner Dan Kulchytsky, Secretary Lynn Brinkman.

Mr. Kasaris: May I have a motion to excuse Mr. Rohloff from attending tonight's meeting?

Moved by Mr. Bull, seconded by Mr. Jankovsky to **excuse Mr. Rohloff**.

Mr. Kasaris: Please call the roll.

Mr. Jankovsky: Yes.

Mr. Bull: Yes.

Mr. Gauman: Yes.

Mr. Kasaris: Yes.

Ayes – four. Nays – none.

Motion carried (4-0). Mr. Rohloff is excused.

Mr. Kasaris: Can we have a motion to approve the March 27, 2013 Minutes as submitted.

Moved by Mr. Jankovsky, seconded by Mr. Bull to **approve the Minutes from March 27, 2013**.

Mr. Kasaris: Will the clerk please call the roll.

Mr. Bull: Yes.

Mr. Gauman: Yes.

Mr. Kasaris: Yes.

Mr. Jankovsky: Yes.

Ayes – all. Nays – none.

Motion carried (4-0). Minutes are approved.

Public Hearing / Open Meeting

New Business:

(BZA13-05) Malcolm D. Brooker, Jr. requests a variance to **Chapter 660 “Safety, Sanitation and Health”, Section 660.12 “Fences”, paragraph (a)**, of the City of North Royalton Codified Code, for relief from the **fencing** requirement relative to **maintaining a fence charged with electrical current** which currently exists on about one acre of land on his property located at **9083 York Road**, zoned R1-A, also known as **PPN: 482-02-004**.

Public Hearing Notices were sent to property owners within 500 feet of the property in question and posted for the required period of time. The Chairman will recognize anyone wishing to be heard. Please come to the microphone and state your name and address.

Mr. Kasaris: Before we move forward may I first have a motion with regard to this variance request, namely BZA13-05.

Moved by Mr. Jankovsky, seconded by Mr. Bull to **grant relief from Section 660.12 (a) of the Codified Code so as to allow the applicant to maintain his existing fence which is charged with electrical current**.

Mr. Kasaris: Is the applicant here? Could you please approach the microphone and state your name, spelling your last name for the record.

Mr. Brooker: My name is Malcolm Brooker Jr.

Mr. Kasaris: Would you please raise your right hand. Do you solemnly swear that the testimony that you are about to offer here tonight is the truth, the whole truth and nothing but the truth, so help you God?

Mr. Brooker: Yes.

Mr. Kasaris: Please state your cause.

Mr. Brooker: This property has been in my family for over 160 years. There are 34 acres there. We grow daylily plants. My stepmother is pretty active in hybridizing daylilies. There is an estimated value of \$100,000 worth of flowers. As you know we have a problem with deer in this City so I put that fence up about 3-4 years ago to keep them out. I did think about planting trees to sort of aesthetically hide the fence but then I was a little concerned about deer coming out onto York Road. Every year there seems to be an accident in front of that property so I did not want to create a situation that could be dangerous to motorists by planting pine trees there.

Mr. Kasaris: What type of fencing was there before you put the electrical fence up?

Mr. Brooker: A mesh type of fence. This is just like any other farm type of fence. You can touch it and there is a little zap to it but it is not like there is a lot of voltage going through it.

Mr. Kasaris: How many volts run through it?

Mr. Brooker: I am not sure.

Mr. Kasaris: Does it come from the house?

Mr. Brooker: Yes.

Mr. Kasaris: Is it on a timer or is it always on?

Mr. Brooker: We do take it off at times.

Mr. Kasaris: What kind of time is it on and then off?

Mr. Brooker: Right now it is not usually on because the deer do not usually do any damage to the plants at this time. It is usually during the summer months, when the buds start blooming, that the deer like to eat them. That is when we turn the fence on to keep them out.

Mr. Kasaris: Does this fence encompass your entire property?

Mr. Brooker: No. It is around a parcel of about one acre. The rest is woods.

Mr. Kasaris: The picture that you provided shows some type of fence behind it. What is that behind it?

Mr. Brooker: Those are the metal poles that have the mesh. That was there before but it did not work very well. That is why the electric fence was installed.

Mr. Kasaris: So that is a fence that you previously had.

Mr. Brooker: Correct. I use it as a backup. Those two fences do a pretty good job of keeping the deer out.

Mr. Kasaris: Have you ever had any children or anybody run into the fence while it was on?

Mr. Brooker: No. There is not good access there to the public. There are no sidewalks in that area. There are woods on both sides. Again, the frontage of this parcel is over 600 feet. It is not like people are walking around in that area.

Mr. Jankovsky: I do not expect that you are an expert on this, and neither am I, but if a small person were to come in contact with that fence what would happen?

Mr. Brooker: They would get zapped. There is no question about it. Would it burn a hand or anything like that – no. It is almost like a static shock type of thing.

Mr. Jankovsky: This ordinance was apparently in effect since 1992. When you installed that electric fence did you have any question as to whether that type of fencing would be allowed?

Mr. Brooker: I had not thought about it, quite honestly, until I received the notification from the Building Department. I had contacted a company which specializes in this and had it done.

Mr. Jankovsky: One last question. In your application and in a previous statement you made you spoke of the value of these daylilies. Are these being raised for commercial sale?

Mr. Brooker: It is more of a hobby. They are sold. They are dug out and then taken to either Strongsville or Medina and then shipped from there. We have had one or two sales in the last ten years where the public have come over and dug out plants. I have had some people steal and dig out plants on their own. We do have visitors when they are in bloom – other hybridizers. This is more of a hobby – an expensive hobby.

Mr. Gauman: Do you have any signage to warn anyone about the electric fence?

Mr. Brooker: There is a small warning that this is an electric fence. There is no large sign though to warn that it is an electric fence.

Mr. Jankovsky: Mr. Chairman, I have a question for the Building Commissioner. What is your opinion as far as the danger of this fence?

Mr. Kulchytsky: I do not have sufficient knowledge as to the voltage nor am I a medical practitioner to be able to answer whether it would be able to harm someone. I am assuming that it is a non-lethal system.

Mr. Brooker: Absolutely. It is more of a deterrent. I have touched it a number of times. It is not pleasant but it did not cause any problems.

Ms. Vozar: Mr. Chairman, if I could perhaps address that question. City Council determined, back in 1992, that it was a danger to the public. They passed an ordinance based on the safety, health and welfare of the public and determined that no person shall erect or maintain any fence charged with electrical current. They did not put in any provisions with regard to the amount of electricity. The Code simply states that ***“no person shall erect or maintain any fence charged with electrical current”***.

Mr. Kasaris: Any other questions? (Addressing the applicant) Do you have any additional testimony?

Mr. Brooker: I do not. Thank you.

Mr. Kasaris: Anyone else? Could you raise your right hand please. Do you solemnly swear that the testimony that you are about to offer tonight is the truth, the whole truth and nothing but the truth, so help you God? Please state your name and address.

Mr. Lysobey: My name is Patrick Lysobey. I reside at 9503 Vista Drive. I did not really come to talk on this particular item. The Adventure Princesses go down to a camp down in Green, Ohio. There is a big horse farm down there and they have an electrically charged fence which is a part of the coral for the horses. Little girls and kids are at this camp all summer and all year round. It is called Camp Wynoa. It is a YWCA Camp. I do not think that a “Y” camp would have a dangerous, electrically charged fence on their property. I do not know that much about it but I did see that there last year.

Mr. Kasaris: Anybody else have any questions? I will then speak for myself first. I am very familiar with the deer problems in our City having had three motor vehicles struck by deer in the last year. I think that we are all familiar with the deer issues that we have here. I guess that comment is another issue for another body to address. The item that this Board has before us has to be considered under an “unnecessary hardship” standard. We have to consider the following factors that we have before us.

1. ***Where the literal application of the provisions of this Zoning Code would result in no economically viable use of the property for any purpose for which the property is zoned...***
I do not believe that has been met.
2. ***Where other exceptional circumstances or conditions (such as topographical or geological conditions, or type of adjoining development) are unique to the property involved and do not apply to other properties within the same zone...***
I do not believe that has been met.
3. ***Where granting of a variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the neighborhood in which the property is located...***
I do not believe that has been met.
4. ***Where the granting of a variance will not be contrary to the general purpose, intent and objectives of this Zoning Code and the Master Plan of the City of North Royalton...***
Technically that does not apply because this is not a zoning code issue that we are dealing with.
5. ***The variance sought is the minimum which will afford relief to the applicant.***
I think that the relief that you are trying to get is to prevent the deer from eating the daylilies. I think that there would be other ways to do that. The Mayor has told us that there are other ways to achieve that, such as buying deer resistant products. I also think that this is a safety issue. Back in 1992 and again in 2002 our City Council passed this ordinance prohibiting electrical fences, having recognized the safety problems inherent with this type of fence.

I therefore feel that you have not met the standard of an “unnecessary hardship” so I will be voting against this variance request. Anybody else?

Mr. Bull: I concur with the Chairman.

Mr. Kasaris: Thank you Mr. Bull. Anyone else?

Mr. Jankovsky: Mr. Chairman, I personally do not have a problem with this fence having heard the testimony provided by the applicant and this other gentleman. My main concern, however, is that the law was in effect since 1992 and the applicant did not follow the proper procedures and never attempted to find out what the Code was with regard to this type of fencing. I have to agree with your responses to the criteria that we have to look at. So despite the fact that I do not have a major problem with this fence I would have to agree with you and probably vote to deny this variance request even though philosophically I do not have a problem with it and I do not see it as a safety hazard at this point.

Mr. Kasaris: For the Board I will incorporate the statements that I personally made with regard to the application, as well as the statements expressed by Mr. Bull and Mr. Jankovsky, to satisfy the renderings of a findings of fact and conclusion of law. Anyone else? Will the clerk then please call the roll.

Mr. Gauman: No.

Mr. Kasaris: No.

Mr. Jankovsky: No.

Mr. Bull: No.

Ayes – none. Nays – four.

Variance denied.

(BZA13-06) Walter and Stella Krusinski request a variance to Chapter 1270 “Residential Districts”, Section 1270.24 “Camping and Recreational Equipment”, paragraph (b)(3), of the City of North Royalton Zoning Code, to allow relief from the requirement relating to the storage of recreational equipment in the front yard of a property so as to allow the owners of this property located at 9308 Vista Drive, also known as PPN: 489-24-012, to temporarily store their existing motorhome in the front yard, for a period not to exceed five years.

Public Hearing Notices were sent to property owners within 500 feet of the property in question and posted for the required period of time.

The Chairman recognized anyone wishing to be heard.

Mr. Kasaris: May I have a motion with respect to this variance request.

Moved by Mr. Jankovsky, seconded by Mr. Bull to **grant relief from Section 1270.24 (b)(3) so as to allow the applicants to remain storing their motorhome in their front driveway and to be based upon the condition that this variance would not exceed a period of five years.**

Mr. Kasaris: Is there anyone in the audience who desires to speak on this item tonight? Could you both raise your right hand please. Do you both solemnly swear that the testimony that you are about to give here tonight is the truth, the whole truth and nothing but the truth.

Mrs. Krusinski: Yes. My name is Stella Krusinski.

Mr. Krusinski: Yes. My name is Walter Krusinski and I live at 9308 Vista Drive.

Mr. Kasaris: I understand from having spoken to the Building Commissioner beforehand that you may wish to table this item. Is this correct?

Mr. and Mrs. Krusinski: Yes. We are planning on meeting with the Building Commissioner.

Mr. Kasaris: You would meet with the Building Commissioner and then come back before the Board next month?

Mr. and Mrs. Krusinski: Yes.

Mr. Kasaris: I also see your councilman in the audience. Have you met with Gary (Councilman Gary Petrusky)?

Mr. Krusinski: Yes. We spoke with Gary. We have a good relationship with the residents on our street. We have lived there for 46 years. Our motorhome has been there for 40 years. As far as we know nobody has ever complained. We cannot park the motorhome at the side of the house because of the trees. It would be a hardship for us because of the way that we travel. We never know what the weather will be like when we get ready to go. We usually leave in September for two months and again three to four months during the winter season. We do not usually come back until May. We have never had a neighbor complain about our motorhome. They have come over to give us compliments on the motorhome because it is well maintained. If my neighbors would have complained I would have moved it.

Mr. Kasaris: We will wait and see if you can get something worked out with the Building Commissioner. You should also feel free to call Gary – he could also help you out with the process.

Mr. Krusinski: We appreciate all of you for listening to us, as well as Gary and Dan. We hope that we can work things out and resolve this. This is our second home.

Mr. Kasaris: Can I have a motion to table BZA13-06?

Moved by Mr. Bull, seconded by Mr. Gauman to **table BZA13-06 until the next scheduled meeting, based upon the consent of the applicant.**

Mr. Kasaris: Clerk, please call the roll.

Mr. Kasaris: Yes.
Mr. Jankovsky: Yes.
Mr. Bull: Yes.
Mr. Gauman: Yes.

Ayes – four. Nays – none.

Item tabled.

Mr. Kasaris: May I have a motion to adjourn the meeting?

Moved by Mr. Bull, seconded by Mr. Jankovsky to **adjourn the B.Z.A. meeting of April 24, 2013.**

Mr. Kasaris: Clerk, please call the roll.

Mr. Jankovsky: Yes.
Mr. Bull: Yes.
Mr. Gauman: Yes.
Mr. Kasaris: Yes.

Ayes – four. Nays – none.

Motion carried.

The Board of Zoning Appeals Meeting adjourned at 7:55 p.m.

Approved: _____ /s/ Dan Kasaris
Chairperson

Date: _____ June 26, 2013

Attest: _____ /s/ Lynn M. Brinkman
B.Z.A. Secretary