

Brookville Planning Commission
Regular Meeting
September 21, 2017

The Regular Meeting of the Brookville Planning Commission was called to order by Chairperson Henderson at 7:30 p.m. on September 21, 2017 in the City Council Chambers. The Pledge of Allegiance was recited. Members Bailey, Boose, Cantrell, Claggett, and Schreier; Clerk Wheeler, Law Director Stephan, Manager Burkholder and Zoning Officer Snedeker were present. Mayor Seagraves was absent.

Motion by Cantrell, second by Schreier to approve the Agenda as presented. All yeas, motion carried.

Motion by Schreier, second by Bailey to approve the minutes of the August 18, 2017 Regular Planning Commission Meeting. Members Cantrell and Henderson abstained. Motion carried with five yeas and two abstentions.

Motion by Claggett, second by Schreier to open the Public Hearing on Appeal No. 17-02. All yeas, motion carried

Chairperson Henderson informed Appeal No. 17-02 is for John Bright, of 930 Golden Beech Drive, who is appealing the notice of violation of the City of Brookville zoning Enforcement Officer that a fence installed on the property exceeds the maximum height permitted for a fence under Section 1157.06 (b)(1) of the Code of Ordinances of the City of Brookville.

Chairperson Henderson swore in audience members who would like to speak during the Public Hearing.

Member Cantrell stated she will abstain from the vote tonight because Mr. Bright is her neighbor and she is the President of the Homeowner's Association.

Member Schreier stated he will abstain from the vote tonight because he is a neighbor also.

Zoning Officer Snedeker reported Mr. John Bright of 930 Golden Beech Drive applied for a Zoning Permit Application for a six foot privacy fence on February 23, 2017 and was approved on February 24, 2017 by the City's Zoning Officer. He informed an inspection of the fence was completed on June 13, 2017 to find that the privacy fence exceeded the six foot mark. The post measured seven feet eight inches. He informed a violation was sent to 930 Golden Beech per Ordinance 1157.06 (b)(1).

John Bright, of 930 Golden Beech Drive, stated he has been sworn in. He presented pictures of his property to Members of Planning Commission and stated he thought the pictures would help

Members of Planning Commission to have a better understanding of what is being discussed on his property.

Member Claggett asked what is being discussed tonight, the height of the fence or the height of the posts?

Zoning Officer Snedeker explained the height of the fence is the height of the post. IIC informed in Section B1 of 1157.06 it states no post nor fence can reach seven feet at any point.

Mr. Bright showed a picture of a fence with lights and stated that is what started the whole problem with his neighbor, Margo Cantrell to begin with because she is the President of the Homeowner's Association and he had approached her for approval to install because it was so close to her fence line. Mr. Bright informed Ms. Cantrell told him no, so he had a professional surveyor out and that is when it was discovered Ms. Cantrell's fence was actually on his property. He informed after legal proceedings with Ms. Cantrell, he installed his fence. He stated he understands the Ordinance and was given a copy with his permit application. Mr. Bright stated when he filled out his application he informed the Zoning Officer of his intention to develop his land and add soil because there is greater than a two foot drop where the land slopes on his property. He showed Members pictures of what he was talking about. Mr. Bright stated due to the elevation drop in the development, he needed to install a retaining wall to support the additional soil and level it on his side. He stated the City's Ordinances on fences are outdated and does not state soil before fence or fence before soil. He stated he told Zoning Officer Snedeker multiple times of his plans for his fence and to add soil later on.

Member Cantrell asked if she can ask a question as a resident during the Public Hearing.

Law Director Stephan advised if a Member that is abstaining from the vote would like to ask a question, they need to join the audience and be sworn in.

Member Claggett asked if once the soil is added, the fence will then be the right height?

Mr. Bright stated once the soil is added, it will bring his fence into compliance. He stated that was his point all along but the City was insistent on citing him with a fence violation. Mr. Bright stated that Ms. Cantrell called the Mayor out to look at his property while he had his surveyor out and then the Zoning Officer was promptly called and showed up. He stated he would understand a violation if life safety was involved like gas or electric lines, but his situation has nothing to do with life safety. He stated he explained multiple times that the soil would come eventually and he does not need interference from City Officials during his permitting process. He questioned why is he being sited for something that has not been completed and that according to his permit he has 18 months to complete his project from the application date.

Law Director Stephan advised the permit does grant 18 months. He informed the Zoning Officer issued a violation because upon inspection the fence exceeded seven feet.

Mr. Bright stated that it says no where in the Ordinance that soil must come before the fence. He stated he told Zoning Officer Snedeker many times that the soil would be added later on. Mr. Bright stated Zoning Officer Snedeker said the fence has to be in compliance on the neighbor side as well and the soil must come before the fence, but that is not true because neither are stated in the Ordinance anywhere.

Mr. Bright showed additional pictures of his fence to Planning Commission Members.

Robert Huffman stated he resides at 930 Golden Beech Drive and he has been sworn in.

Mr. Bright explained his pictures and described the size and heights of the fence posts and how he would like to level out the soil. He informed his uncle owns an excavating company and is who engineered his project. He stated any reasonable person would like to have a leveled yard.

Member Claggett asked when the dirt is filled in, it will go up to the bottom of the posts?

Mr. Bright stated yes, it will then fix the problem. He stated Zoning Officer Snedeker told him that he wouldn't be in this situation if it weren't for his neighbor. Mr. Bright told Member Cantrell not to laugh because it is a true statement. Mr. Bright stated he feels he is being singled out or discriminated against and he will not put up with that, either it ends here or it doesn't, and that is not meant to be a threat but he needs to protect himself and that he will do. He stated he is not finished with his fence yet.

Member Claggett asked besides the soil, what is left to complete the fence.

Mr. Bright stated the south side facing Ms. Cantrell's is completed but the north side of the fence is not completely finished because he had shoulder surgery recently.

Member Bailey asked what is the required setback off of the property line?

Zoning Officer Snedeker stated there is no setback requirement.

Member Bailey asked the distance of the setback of Mr. Bright's fence from the property line?

Mr. Bright stated about one to two inches.

Chairperson Henderson asked if Mr. Bright intends to cut the caps on the top of the fence?

Mr. Bright informed once proper grading is done and maybe come spring, within his 18 months, he can complete the tops if necessary. He stated it is a minute point in him even being here since as he has told the Zoning Officer multiple times he isn't finished with his fence project.

Chairperson Henderson stated Mr. Bright did agree to install a six foot high fence and his fence is clearly higher than six feet.

Mr. Bright stated the Ordinance does not state soil before fence, so it is a loophole in the City's antiquated Ordinances. He stated there are other properties around that are the same way and have a drop off.

John Gevat, of 924 Golden Beech Drive, stated he has been sworn in. He asked where the run off will go after the dirt is brought into his yard and will it run off into the property at 924 Golden Beech?

Mr. Bright stated no, it will be sloped back to the City drain.

Mr. Gevat stated if he remembers correctly, when Mr. Bright first moved into his home in June, the backyard was actually level until Mr. Bright put in a back patio and then the yard was no longer level.

Mr. Bright stated that is not true.

Mr. Gevat stated he is concerned the water will run into his yard since he lives next door. He stated if Mr. Bright is bringing in dirt and building it up then the water has to run off somewhere.

Mr. Bright asked if they are talking about dirt or the fence? Mr. Bright stated the last time he came here, the meeting turned into an HOA Meeting with people from the HOA complaining.

Mr. Bright stated his backyard has never been level. He informed he actually has flooding in his backyard. He asked how Mr. Gevat he would know unless he was trespassing and walking through his yard?

Mr. Gevat stated he has not been walking through Mr. Bright's yard but when it rains everyone in that area gets flooded.

Discussion amongst Mr. Bright, Mr. Hoffman and their neighbors in the audience.

Mike Oxner stated he resides at 516 Patricia Faye Court and he has been sworn. Mr. Oxner stated there seems to be a lot of conflicting information in this case. He asked if Zoning Officer Snedeker to read the section of the Ordinance in its entirety that Mr. Bright is in violation of?

Zoning Officer Snedeker read Section 1157.07 (b)(1) of the Zoning Code.

Mr. Oxner stated it sounds there is a six foot requirement in height and Mr. Bright hasn't demonstrated a reason for it to be over that. He stated they live in a nice quiet community and Mr. Bright has come in and caused an uproar in the neighborhood.

A commotion arose from Mr. Bright and Mr. Hoffman.

Mr. Oxner stated he has already appealed the variance for his shed and now this, it seems to be one issue after another with him. He stated it doesn't appear that Mr. Bright wants to be a good part of the community or the standards of this community. He stated all the details of his plans should have been detailed in the original permit. He informed in their HOA covenants there are requirements on drainage. He stated he doesn't see any reason that Mr. Bright should be given a variance to override what is required in the Code. He stated he also agrees with the proposed idea of the dark skies Ordinance to prohibit excessive lighting.

Mr. Bright disagreed. He stated this is his second time in front of the City and Mr. Oxner is exaggerating. He stated he is allowed up to seven foot for his fence and you can see the slope of his yard in the 8X10 he has provided. He informed he printed the larger sized pictures so that everyone could see his yard. Mr. Bright stated the Ordinance doesn't state soil or fence first. He plans to level his yard.

Chairperson Henderson stated the Ordinance does state seven foot tall at all points, which would mean both sides of the fence.

Member Boose stated the Ordinance clearly states the required height of the fence and Mr. Bright agreed with his proposal that he would install a six foot fence and even given the extra foot to seven feet, he has exceeded that.

Mr. Hoffman stated it is not finished.

Member Boose stated so when they are all done, the fence will be six feet tall?

Mr. Bright explained that his permit states he has 18 months to complete his project and he is not finished yet. He stated once finished, he will be in compliance.

Margo Cantrell stated she resides at 924 Golden Beech Drive and she has been sworn in. She stated she wanted to correct the record on a few things. She stated Mr. Bright asked her if he could put his fence up against her fence. She informed him that she likes green space around her fence, but told him she would think about it and let him know. She informed four days later, she came home from work and found surveyors out at Mr. Bright's home and looking at her fence. She informed it was then that it was discovered her fence was an inch and a half over his property line. She informed Mr. Bright's lawyer served her and said she needed to remove the fence. Ms. Cantrell informed during all of this she had some issues and offered to buy the easement from Mr. Bright in order to not have to remove her fence. She stated he agreed and gave her an easement. The filing never was finished and then Mr. Bright told her he was revoking the agreement so she hired a fence contractor who came out and gave her an estimate. She informed five days later Mr. Bright showed up at her door and stated she needed to remove her

fence within five days or he would remove it. Ms. Cantrell explained after five days she didn't remove her fence and came home and Mr. Bright had removed the fence and put it in her driveway. She described Mr. Bright couldn't remove the fence posts because the posts were on her property. Ms. Cantrell stated Mr. Bright immediately put up his fence and since he could not remove her fence posts, he chose to put his fence exactly on the property line. She explained for 19 years before Mr. Bright moved in, she and John Gevat mowed the three foot around her fence there because John's Uncle used to live there. She stated that is how Mr. Gevat knows there never used to be flooding in the area because for 19 years they mowed that grass and there was never flooding or a water issue. She explained Mr. Bright and Mr. Hoffman dug 24 inch holes in the yard and placed five gallon buckets in the holes and filled with concrete which is part of the reason the fence is built up so high. She stated she does not have a problem with his fence, she likes the privacy but what she does have a problem with is how the whole process has taken place. Ms. Cantrell stated she does not like the manner of which this whole thing has happened. She stated Mr. Bright could have easily put up his fence and left hers alone and they would not be in this situation. She stated Mr. Bright accused her of calling the Mayor out but she did not call him out, she was having a garage sale and he happened to stop by.

Ms. Cantrell showed pictures of what her fence looked like, Mr. Bright's fence in question and what her driveway looked like with her fence laying in it after Mr. Bright removed it.

Sandra Eppheimer stated she resides at 912 Golden Beech Drive and she has been sworn in. She informed she has lived back there for 18-19 years and there is an issue with water in the field behind her home and when it rains you can see all the water, she calls it a little river. She stated that only started three or four years ago and she doesn't know who is supposed to fix it. There was never water there until the last three to four years and it keeps getting worse and isn't something that has always been flooding.

Mr. Bright stated the field is indeed higher as he tried to explain at the last Board of Zoning Appeals Meeting. He stated the case in point why he needs to raise his land up and put drainage tiles in. He stated his neighbor to the north gets a stream coming from off the field. He stated his excavating company plans to put a 15 inch tile in the back which will take care of his drainage issues. He stated this Meeting is not about drainage issues, like you look at the grade, his property actually slopes down towards the field. He stated this is a mute issue and everyone is here about a fence. He stated the City Ordinance does not state soil before fence and he is not completed. Mr. Bright stated it is not right to get a violation from the City when his fence isn't finished.

Member Claggett stated Mr. Bright had previously stated he was finished with the fence part and if he is completed with the fence then he is in violation and this is not a dirt/fence issue.

Mr. Bright informed he had shoulder surgery at Kettering Hospital recently and hasn't been able to put in the dirt. He stated this is a technicality of breaching a fence height before the land is even done and that isn't right.

Mr. Oxner asked if the fence application states if dirt has to be put in?

Zoning Officer Snedeker stated no.

Mr. Hoffman stated Zoning Officer Snedeker said they could do it.

Zoning Officer Snedeker informed he met with them several times. He measured and told them the fence could not be higher than seven foot.

Mr. Oxner asked if a final inspection is required for the fence permit and has it been scheduled?

Zoning Officer Snedeker informed he visited Mr. Bright several times and he remembers measuring and asking for the slope measurements and he told Mr. Bright and Mr. Hoffman that their fence can not go above seven foot.

Mr. Oxner asked if a final inspection is required for the fence and if so has it been requested?

Zoning Officer Snedeker informed a final inspection is required but one has not been requested yet.

Motion by Claggett, second by Bailey to close the Public Hearing. All yeas, motion carried.

Chairperson Henderson stated the Public Hearing is now closed and Members of Planning Commission will deliberate.

Member Boose stated he struggles with the fact that the height of the fence is stated in the Ordinance and we know that it is being exceeded. He stated he does not understand why the fence was ever installed at a height above seven feet. He asked if the fence will have to be taken down to put in the dirt?

Mr. Bright informed no but to correct the last few sections of the fence, it will create a hardship for him to have to take them out, correct them and put them back in when the soil is in. He asked why penalize him when the fence permitting process is not exhausted. He stated he is being harmed by this and it is not logical or fair. He stated if decision is rendered the violation stands as it is then it will harm him to have to remove all of the posts, correct them and reinstall them plus additional costs. He would like to be allowed to do what he wants to do and finish it within his 18 month term. He stated he is not a trouble maker like Mr. Oxner has suggested. He informed he has put \$80,000 into home improvements of his home and he pays cash for everything and doesn't second mortgage anything.

Chairperson Henderson asked if they should grant an extension of time?

Law Director Stephan informed that is within the discretion of the Planning Commission. He stated the decision tonight is whether the notice of violation is a correct notice.

Chairperson Henderson stated he feels Mr. Bright is in violation but also the project is not finished.

Ms. Cantrell asked how is the dirt being brought going to stop water from being in her yard.

Member Henderson stated they will build a retaining wall and if built properly it could stop the water from draining. He stated his biggest conner is if you look at the fence it is in compliance on one side but not the other side.

Member Cantrell showed pictures of the fence posts.

Law Director Stephan stated the Public Hearing has been closed and Planning Commission in is deliberation.

Chairperson Henderson asked how the other members felt? He stated the post caps are clearly in violation. He asked if they should allow the variance from the neighbor side or say no and he has to level. He stated the fence does look nice and he has spent money on his property. He stated Planning Commission has to be fair in their decision and also fair to everyone in the community.

Member Boose asked Ms. Cantrell if she is ok with the height of the fence?

Member Cantrell stated she is ok with the height of the fence as of right now. She understands they have invested a lot of money in their home and they want privacy. She stated the fence is high and it shouldn't allow light into their backyard.

Chairperson Henderson stated the lighting is a discussion for another time and not a part of this Meeting.

Member Claggett suggested giving an extension.

Member Boose asked how much longer is left in his 18 months?

Zoning Officer Snedeker informed the application was filed in February 24, 2017.

Mr. Bright asked if he could have some extra time because the surveyors have been busy and winter is coming.

Member Claggett asked if anyone has any recommendations on a time frame? He stated it appears Mr. Bright will drag out his entire 18 months.

Law Director Stephan advised the Permit have a general time frame of 18 months for construction of a project to be completed.

Zoning Officer Snedeker read the Zoning Application.

Member Claggett stated the obvious problem of the citation is legitimate.

Member Henderson stated at this time it is legitimate.

Mr. Bright stated there are a few sections of his fence he still needs to finish.

Mr. Oxner asked what is the permit violation?

Zoning Officer Snedeker municipal court action and a fine.

Chairperson Henderson asked of another time frame that could be put on instead of the 18 months.

Law Director Stephan advised the Planning Commission has the ability to establish a time period. He informed the reason the violation was issued was because the current construction of the fence is in violation of the Ordinance. He stated a different time frame can be put on and if property owners do not agree than they can appeal it. He informed conditions could be placed on what they are going to do so that there is a clear pathway of what is to be done for everyone involved.

Member Claggett clarified they could give him until December 31, 2017 and then re-examined by the Zoning Officer.

Mr Bright stated it should be taken into consideration it is getting close to winter and no one knows when the snow will start falling.

Member Boose stated they really don't have a choice but to honor the 18 months as listed on the application.

Member Henderson agreed. He stated it is evident in the pictures Mr. Bright isn't finished.

Member Henderson asked if there was a Motion to accept the fence as installed, with conditions of no point of the fence to be higher than seven feet at completion, dirt is brought in to adequately grade, proper drainage installed so no impedance on other property owners, and Zoning Officer Snedeker and his team sign off on it once completed.

Member Claggett asked if the citation will be pulled back?

Member Henderson stated it would have to be suspended at this time.

Member Boose stated the seven foot should include the caps?

Chairperson Henderson agreed and said no part of the fence should exceed seven feet.

Motion by Claggett, second by Bailey to accept the fence as installed, with the conditions of no point of the fence to be higher than seven feet at completion, dirt is brought in to adequately grade, proper drainage installed so no impedance on other property owners, and Zoning Officer Snedeker and his team will sign off on it once completed. Members Schreier and Cantrell abstained. Motion carried with four yeas and two abstentions.

Zoning Officer Snedeker provided Members with a report of this month's building permits and nuisance violations. He reported 27 nuisance violations have been issued since August 1, 2017 with two complaints filed in the Montgomery County Municipal Court in New Lebanon. He informed these complaints were results of the compliance date expiring with no contact to fix or appeal the violation. He reported 17 Zoning Applications have been completed since the August 1, 2017, which is around the same number this time last year.

Zoning Officer Snedeker reported two new small businesses have been given a Certificate of Occupancy. He informed Jason Young, owner of Recreated Automotive located at 206 Johnsville-Brookville Road is one of the new businesses and specializes in older classic types of maintenance on vehicles. He informed the other new business is Abbey Road Chimney Sweeps, Inc. located at 411 Market Street and specializes in chimney cleaning and repairs.

Zoning Officer Snedeker reported Intern Adrian Nieto is finishing up the storm water drainage layer on the GIS Program. Once completed he will make 3'X3' maps for the people in the field to have readily available, He will also create a PDF format for Service Superintendent Chris Homan to use on his computer, which will help him zoom in closer to a troubled spot. Zoning Officer Snedeker informed next Adrian will be working on locating and compiling data on residential shut off valves. The location of these valves will the Fire Department in case of a house fire along with our Service Department when needing to locate a valve for shut off or repair. He informed this is going to be very time consuming because a lot of the shut offs have not been located for a long time allowing vegetation to grow over the valves.

Manager Burkholder stated he often hears there is no economic development in town but that simply isn't true. He informed there are a lot of small business coming to our community. He informed City Officials attended a ribbon cutting last week for a new business. He stated small businesses are the backbone of America. He is glad zoning Officer Snedeker included in his report the information about the other new small businesses.

Manager Burkholder stated the Tree Policy revision will not be an easy one, but some good conversations have taken place so far. He stated we may need to limit trees to yards with certain

widths. He stated he wants to get this revised policy done right. He informed he is very supportive of the length of this process. He stated the the City is not anti-trees, in fact are supportive of trees if planted properly. He stated the Service Department has probably taken down approximately 30-40 trees in the park alone that were dead from the ash borer disease. He informed the trees taken down on Arlington Road were taken down not the only because complaint were received of cars pulling over to avoid emergency medical vehicles and hitting the branches. He stated the trees probably shouldn't have been planted there to begin with but they have served a good purpose. He informed no trees are being planted on new Market Street yet because it has a narrow tree stip. Manager Burkholder stated the City is pro-beautification and is going through a normal and appropriate process of updating our zoning. He stated he would like to see a more detailed plan for all the trees in the City done in the future, but at the end of the day the goal is to have good legislation.

Member Cantrell stated he noticed a very nice new home built near Western and Johnsvill-Brookville Road and it is a nice home but they planted a row of evergreens and at some point, being in a corner lot those evergreens could present a problem for visibility. She stated they are nice trees now, but what about when they grow and or encroach the sidewalk and block the site line. She suggested considering these type of things when looking into the proposed new Tree Ordinance.

Manager Burkholder informed he has noticed other areas similar. he went in and out of all the business on Arlington Road and he has received some criticism but also some compliments on the trees being removed and it really does open the area up.

Member Cantrell stated Huntington Bank is now much easier to get in and out of.

Member Boose stated he never thought it was a good idea to plant trees between sidewalks and curbs. also when you pull up to a stop sign

Manager Burkholder stated if violations are seen with parked cars, please let the City know. He informed the Police and Fire Chiefs working on painting certain curb areas yellow for no parking.

Member Henderson informed he recently spoke with a landscaping company and asked their recommendation of yard space from curb to sidewalk to plant trees and they suggested eight feet of curb lawn. He stated they said they do a lot of work in Oakwood making repairs and it is so expensive.

Member Schreier stated he overheard people suggest the City of Union and how Main Street is lined with trees. He wasn't sure of their size limitations. He suggested looking at other communities and taking pictures.

Zoning Officer Snedeker stated he can't think of an area in Brookville that has eight feet of space between the sidewalk and curb.

Member Henerson stated that is the problem.

Member Claggett stated roots are roots.

Law Director Stephan informed he is working on several drafts with different options. He stated after the Public Hearing with testimony from several property owners and discussing with Staff, he is looking to allow certain trees, including a permit process and allowing within a curb line of five feet or more. He stated or the other option would be to prohibit all together. He stated the other thing to look at would be addressing residential areas and commercial areas differently.

Manager Burkholder stated a complete review would give guidance on what we want the City to look like. He stated for example, on old Market Street, there are no front lawns and it would take a very specialized tree in that area. He stated in his opinion, the City and the County should be working together to consider the right-of-way at Upper Lewisburg Salem Road.

Law Director Stephan informed Council passed the Mobile Produce Vendor Ordinance with the amendment added to allow Planning Commission to allow certain areas to be designated and Zoning Officer Snedeker could issue permits administratively. He informed in the future, he would like to look at a few areas to pre-approve as designated areas. For example, the Brookside Plaza. He stated that would help prepare for next spring and again try to address some of the concerns brought up at the Public Hearing.

Chairperson Henderson stated the two obvious spots would be the lot by the Service Garage and the Brookside Plaza.

Member Claggett asked an estimate of how many people have set up this past year?

Zoning Officer Snedeker informed about five to six people.

In New Business,

Member Boose asked how to do we begin to address the issue with the six feet within the property and adjust it be six feet within the neighboring property as well as currently written in our Ordinance?

Zoning Officer Snedeker stated he was wondering the same thing because it currently states seven feet at any point.

Chairperson Henderson stated it seems to be left open to interpretation.

Member Boose suggested making some changes so that it is not left up to interpretation and is more specific.

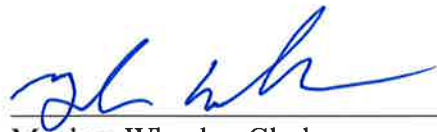
Discussion amongst Members ways to change the current wording of the Ordinance.

Member Cantrell stated our current Ordinance needs some work and she would look to see some other Ordinances from other communities.


Law Director Stephan stated the Ordinance, the permitting process and the length of time given needs to be reviewed. He stated some lessons have been learned with this situation. He suggested a shorter time period to complete a fence and if changing the slope, it needs to be included in original application.

There was no Old Business.

Motion by Cantrell, second by Claggett to adjourn. All yeas, motion carried.



Meghan Wheeler, Clerk



Ryan Henderson, Chairperson

