

CHARTER TOWNSHIP OF FLUSHING
6524 N. SEYMOUR ROAD
FLUSHING MICHIGAN 48433
ZONING BOARD OF APPEALS
DATE: SEPTEMBER 1, 1998 **TIME: 7:30 P.M.**

MEETING CALLED TO ORDER at 7:40 p.m. by Chairman Henneke. He asked the recording secretary to call the roll.

MEMBERS PRESENT

Edward Henneke, Chairman
James Sarka
Richard Vaughn

ALSO PRESENT:

Jerald W. Fitch, Building Inspector
Ida M. Reed, Recording Secretary

MEMBERS ABSENT: Lynn C. McLean and Harvey Workman

APPROVAL OF AGENDA: Agenda was approved with the addition of 2, 3 and 4.

1. Daniel Williams appeal for a variance.
2. Approval of minutes of 3/398 and 8/11/98.
3. ABC's of the ZBA Seminar.
4. Information in regards to ZBA checks.

NEW BUSINESS:

DANIEL WILLIAMS is appealing for a variance of the Zoning Ordinance in accordance with Sections 18 through 23 of Act 184 of the Public Acts of 1943. Mr. Williams erected 120' long and 6' high privacy fence at 5525 Deland Road, without asking or receiving a fence permit. The fence is built 51' from the center of the road. This is not allowable under our Fence Ordinance. The property is located in Flushing Township and is zoned RSA. All the members have viewed the location of the request.

MR. WILLIAMS presented a drawing showing the location of the house, fence, and accessory buildings. He submitted an affidavit for a variance. He has over 2 acres of land on the corner of Deland and Coldwater Roads.

HENNEKE reviewed the affidavit, and asked Mr. Williams to explain his answers in the affidavit.

- a. Will the strict enforcement of the provisions of the township zoning ordinance unreasonably prevent the owner from using the property for a permitted purpose, or would render conformity unnecessarily burdensome? Answer: Yes
- Q. How will enforcement of the provisions prevent you from using the property for its permitted purpose?
- A. MR. WILLIAMS stated that originally there was an old privacy fence that was only 40' long and 6' high. He just put the new fence where the old fence was, except the new fence is longer. His plan for the back yard would be ruined if he had to move that fence. If he had to move the fence where it belongs it would go right through his creek and the little rock pond. The pond was there before he bought the house. There is also a lot of traffic noise that the fence blocks out, and it gives them more privacy.

HENNEKE stated that basically you could still use the property for its intended purpose.

b. Is the need for a variance due to unique circumstances of the property? Answer: Yes
9/1/98 appeals

Q. What are the unique circumstances that you have?

A. The house is located close to the corner, and there is a septic system he was trying to avoid. He has more property on the south side of his home, but because of the location of accessory buildings his usable back yard is behind the house, and is limited in size.

c. Were the conditions and circumstances unique to the property created by the owner, or his predecessor in title, within the time following the effective date of the provisions alleged to adversely affect such property? Answer: No

Q. What circumstances were created by the owner?

A. There was a partial fence there already.

HENNEKE stated that you need a permit whether you build a new fence or change the old one. He doesn't like the way Section (c.) is worded, and felt it should say; "Did you create the problems you are trying to get around?" He would like to have the clerk change the wording in Section (c.) to make it more understandable.

d. Will the requested variance confer special privileges that are denied other properties similarly situated and in the same zoning district? Answer: No

e. Will the requested variance be contrary to the spirit and intent of this zoning district and public safety? Answer: No

Our issue today will be to address those statements that were signed by Mr. Williams.

VAUGHN asked Mr. Williams if he intends to extend the fence any further?

MR. WILLIAMS stated his plan, right now, is to just corner the fence off where it ends. A lot depends on what his neighbors to the west do with their lot. He also plans on planting trees across the back.

CHAIRMAN HENNEKE reviewed Sections (5-1), (6-1), (6-2), (6-5), (6-6), (6-8) and (6-9) of the Fence Ordinance. Whenever a fence is erected or altered a permit is required. No fence shall be erected or maintained within limits of a public road-right-of-way. No fence other than an ornamental fence shall be located in the front yard. Fences on lots of record in all residential districts shall not exceed 6' in height. Shall not extend towards the front of the lot nearer than the front of the house, or the required minimum front yard, whichever is greater.

Pages (II-7), (II-8), (II-9) and (II-10) of the Zoning Ordinance were reviewed. These diagrams show that when a lot is located on a corner, both sides are considered front yards. Both Deland Road and Coldwater Road are considered front yards on this particular lot.

VAUGHN stated that in looking at the fence he doesn't see a problem. A corner lot is at a disadvantage, because either way he can't put a fence up on the corner of his house.

HENNEKE'S doesn't see a unique problem that requires the fence to be put there. He knows it doesn't block the view. If we look at the other terms of the ordinance it does not appear to fit those 5 criteria. He doesn't think it will unreasonably prevent him from using the property. He doesn't think he created the unique situation, but he doesn't think the circumstances are unique there with the room he has. He

does think it would grant a special privilege, because of the fact that it is not within the spirit of the ordinance to have a 6' fence out that far from the house.

9/1/98 appeals

Henneke doesn't like telling him to tear his fence down, but He doesn't think we can stay within the ordinance by allowing it.

MR. WILLIAMS stated that he has been driving around the township and he sees many fences that according to the ordinance are in violation.

SARKA stated that he does not care for certain parts of the ordinance. The fence is not blocking the right of way, and we would be cutting off 70' feet from his house to the center of the road. If there were houses on the other side he could see a reason for not allowing it, but if Mr. Williams can't answer yes to all the questions, then we have no choice. With it being a corner lot the choices are very limited.

HENNEKE stated we all can have a lot of empathy, but we can't grant a variance with the way the ordinance reads. He suggested that he either construct a decorative fence, and plant shrubs in front, or move the fence back in line with the house. They reviewed the definition of an ornamental fence. This would be a fence that is 4' high and one you could see through, such as a chain link, picket or a split rail fence.

HENNEKE MOVED, seconded by Sarka to deny the request, on the basis that the strict enforcement of the township ordinance would not unreasonably prevent him from using the property for its permitted purpose, and he does not believe there are any unique circumstances to the property that requires the fence to be placed in that location. Yes: Henneke, Vaughn and Sarka. No: 0. MOTION CARRIED.

It was suggested that Mr. Williams meet with the board and then meet with the Planning Commission and see if they would consider amending the ordinance to allow him to have a 6' fence close to the road.

APPROVAL OF MINUTES:

The minutes of March 3, 1998 were approved with corrections.

Minutes of August 11, 1998 were approved as printed.

ABC's of ZBA: The township board gave approval for any of the ZBA members to attend this seminar if they so desired. Non of the three that were present at this meeting will be able to attend this seminar.

INFORMATION IN REGARD TO ZBA PERDIEM PAY: The clerk talked with the members about the checks they receive for attending the meeting. They can either receive their pay every quarter or leave it the way it is. It was decided to leave it the way it is, but cash your checks soon after you receive them. When they are put away and forgotten it makes extra work for the bookkeeper and the treasurer.

NEXT REGULAR MEETING will be held on Tuesday, December 1, 1998 at 7:30 p.m.

ADJOURNMENT: As there was no further business the meeting was adjourned at 8:50 p.m.

Edward Henneke, Chairperson

Ida M. Reed, Recording Secretary

Harvey Workman,
Vice-Chairman/Secretary