

## **Mt. Ephraim Land Use Board Meeting– September 14, 2020**

The regular scheduled meeting of the Mt. Ephraim Land Use Board scheduled for September 14, 2020, in the Borough Hall, at 7:30 PM

The meeting was called to order. The meeting opened with the Pledge of Allegiance to the flag and stated the meeting was advertised and notices posted in accordance with the “Open Public Records Act.”

Roll Call – Mayor Tovinsky, Commissioner Gies, Robert Carter, Michael Popelak, present. Ken Herman, Michael Schiavo, Steve Eggert, Charles Alexander, Anthony Stagliano, Gary Prinski, Carmine Rampolla, Nick Smaritto, absent.

The first application on the agenda is for A 6ft fence along the side of property, Saavedra – 25 E Kings Hwy.

Joe Nardi swears in the applicant, Andrea Saavedra – 25 E Kings Hwy.

Joe Nardi – explains the application is for a 6ft fence to come along the side of the property. He tells the applicant that it is their burden to give testimony as to why they should grant the application.

Andrea Saavedra – no that is no correct, we are just replacing what has been existing for years, our fence was recently destroyed in a storm, part of it is missing and the gate is being held up by a bungee cord. So, we are basically putting everything back where it was originally just better material. The fence will be white vinyl, so it is the same exact thing that has been here for 30 plus years, we are just replacing it.

The meeting gets interrupted by a resident, the attorney explains that he will need to wait until the public portion.

Joe Nardi – Mrs. Saavedra do you have any more testimony?

Andrea Saavedra – yes, I just want to add this is also for safety purposes, I live on Kings Hwy., across from the stores, I also have two small children. The stores that I live by have been robbed multiple times. The police tackled a man in my driveway and another man opened my gate.

Joe Nardi – for clarification, you said you been here for 3 years but the fence you stated has been up for 30 plus years, how do you know this.

Andrea Saavedra – I grew up here, this house was my parents, 3 years ago me and my husband and kids moved in.

Joe Nardi – so your testimony is that what you are doing now is just replacing a fence that has been there the entire time, is this correct?

Andrea Saavedra – yes, that is correct.

Joe Nardi – anything else you want to add?

Andrea Saavedra – nothing new, just want to replace what I have. I just want to make that clear.

Joe Nardi – one more question is their other fences of this height in the neighborhood?

Andrea Saavedra – yes, my neighbor who is on this can tell you that our fences match.

Joe Nardi – chairman, I do not know if any members of the board have comments.

Robert Carter – at this time we will open it up to the board members.

Commissioner Gies – I went over to the property because I was curious about the security issue and why it needed to be that height. I saw that the fence and height were already existing along with the neighbor having the same thing. I questioned the applicant when I was there why she wanted it and she explained all of it to me and filled in the gaps, I now understand why she needs this height for safety.

Mayor Tovinsky – so basically, you are replacing the existing old fence with a new white vinyl fence and make it more secure?

Andrea Saavedra – yes.

Mayor Tovinsky – ok.

Robert Carter – any other members of the board have questions or comments?

Thomas Maxwell – no, if she is replacing what has already been there, I see no problem.

Robert Carter – ok at this time we will open it up to the public.

Tom Cusick – 29 E Kings Hwy.

Joe Nardi – Mr. Cusick are you going to be making statements or are you going to be asking questions?

Tom Cusick – I am opposed to the whole process because it is a detriment to my property.

Joe Nardi – ok, but before you start speaking, I am just trying to see if there is a need to swear you in. If you are going to be making statements, then I would like you to make statements under oath.

Joe Nardi swears in Tom Cusick.

Joe Nardi – questions what his position is on the fence issue.

Tom Cusick – my position is her father erected this fence illegally 30 years ago and he told me that he obtained a permit and a variance for the fence. I did not know that he never obtained the proper paperwork until this was filed, so I understand now that this has been here illegally for 30 years and it causes a sun detriment, it causes ventilation detriment, and its causes wind detriment to my property. It also is adjacent to my driveway so it would restrict my access to my garage and my backyard.

Joe Nardi – I am sorry, it would restrict access to your property?

Tom Cusick – to my garage, yes.

Joe Nardi – how is that?

Tom Cusick – it is because this fence is right next to my driveway.

Joe Nardi – how does this inhibit your ability to access your garage or the rear of your yard.

Tom Cusick – it is about 10ft and that is minimum, I need at least 12ft to safely navigate my driveway.

Joe Nardi – does it extend onto your property?

Tom Cusick – this fence is on the property line; I have a survey here.

Joe Nardi – so the fence is on the property line, but its not on your property?

Tom Cusick – yeah, about the middle of the garage is on my property, but you must understand I only have 1ft or 1.22ft between the property line and my garage.

Tara Weiss – Joe I this his issue is that when had built the garage, the garage was not put 3ft. in on his property and it seems from the email I received from him that his garage is on her property.

Tom Cusick – this property was divided between Ron Sutton and my wife; it was a double property.

Robert Carter – when was the sub-division approved?

Tom Cusick – I guess about 35 years ago; I am just guessing I am not good with the time frame.

Robert Carter – so the fact that your garage is within the setback without the minimum setback mean that the subdivision was possibly incorrect.

Tom Cusick – it says on the survey 1.22ft inside the property line in the back corner the front corner is 1.56ft.

Michael Popelak – there is presently a fence there now?

Tom Cusick – yes.

Mayor Tovinsky – well the same rules and regulations were not put into place 30 years ago when that fence was put in, am I correct.

Tom Cusick – well I think the problem arises that they did not consider this when they divided the property.

Mayor Tovinsky – I am just trying to think, there is already a fence there, and they are just putting a newer fence up and it will improve the look, what is the problem that you are having with her doing this?

Tom Cusick – the detriment would be for me not being able to get sun and wind and a lot of moisture would build up between the garage and the fence.

Mayor Tovinsky – well that fence has been there for 30 years, correct?

Tom Cusick – yes.

Mayor Tovinsky – ok then, I just do not understand this and why it is a problem. If she left the old fence up it would still be the same.

Andrea Saavedra – yes exactly.

Mayor Tovinsky – I am just asking you have the 6ft fence there now and if she does not change it the things will stay the same, correct Mr. Cusick.

Tom Cusick – no I wanted to put chain link 4ft there, and there seems to be some issue with the time frame.

Mayor Tovinsky – I just do not get how you are having a problem with her replacing the same fence, she just wants to make it look better and fix what was damaged.

Tom Cusick – she has an entire back yard with a patio and play area for the children.

Mayor Tovinsky – excuse me Mr. Cusick what does her having a back yard and play area have anything to do with the fence issue.

Tom Cusick – the fence is there illegally by her father 30 years ago.

Mayor Tovinsky – there were no rules or regulations back 30 years ago, so the fence is grandfathered in.

Tom Cusick – there was because I had to get a variance for my fence.

Michael Popelak – how long ago did you get the variance?

Tom Cusick – 1988.

Tara Weiss – Joe, the zoning codes were done back in like 1975, correct?

Joe Nardi – they were done in 1972, but there are more questions, Mr. Cusick I just want to clarify it sounds like your garage is possibly 1 to 1.5ft from the property line.

Tom Cusick – that is correct.

Joe Nardi – so there may have been a mistake when it was subdivided.

Tom Cusick – well you could ask either Ron Sutton or my wife what happened, but I think they overlooked the whole situation. I think it was subdivided so Ron could have that one property and build a new home on it.

Joe Nardi – ok, so people made confessions to things and we understand that, but I guess the point is or the question is the concern about the limited distance between your garage and this fence that has been there for the period, correct.

Tom Cusick – correct.

Joe Nardi – but part of that has to do with the fact that your garage is so close to the line.

Tom Cusick - yes, but I do not see how I can be responsible for it because I was not there when it was divided.

Joe Nardi – no, I am not suggesting you are responsible for anything, my only point is that this fence or both structures have been there for a long time and the distance between both has been very minimal during this entire period.

Tom Cusick – oh yeah, I know what you mean.

Joe Nardi – I am just suggesting that as the Mayor has indicated that we have an application for a fence that has been there for years and the objections that you are raising has a combination of other factors.

Tom Cusick – oh yes and the drainage from the back of the house floods the back of my garage. I have spoken to Steve Beach about this.

Joe Nardi – can I ask one question if you could, so we are clear and I want to give you every opportunity to speak, how does the fence affect the drainage?

Tom Cusick – it affects the drainage because there is no sunlight due to the height of the fence and I have no ventilation because of the height and therefore the water cannot evaporate.

Joe Nardi – anything else Mr. Cusick?

Tom Cusick – my understanding is that there is only allowed a 4ft fence on the side of the house unless you have a variance?

Joe Nardi – correct.

Tom Cusick – now my understanding is that there acting like because its been there for 30 years even though it was installed illegally that, that is going to be the case from now on and I disagree with that because she is applying today to get a variance for that situation, now this whole this is opened now.

Mayor Tovinsky – who said it was put up illegally?

Tom Cusick – I do.

Mayor Tovinsky – well there was no regulations then.

Tom Cusick – I stated in 1988 I needed a variance for my 6ft fence. So, I know there was a rule.

Greg Fusco – I am looking at google earth and the images that I am seeing, which is dated 2017, it appears that the fence line follows the applicant's property line until it gets to the back of Mr. Cusick's garage and then it bends around the garage and then comes back in, is that true?

Tom Cusick – yes there is more than 1ft there, maybe like 2.5ft. I do not have an exact measurement.

Greg Fusco – what I am trying to understand is what is shown on the applicant's survey where the fence is, it is not really constructed in the field that way. I just want verification, because it appears that if the applicant wants and correct me if I am wrong but is, she put the 6ft fence on her property line this would not be the same situation. It appears that the applicant's fence even if it went on the property line, they would still have like 3 or 4 feet by the garage.

Andrea Saavedra – yes, we gave him extra space near the garage as courtesy.

Greg Fusco – so I just wanted the board to be aware of that just for the record.

Robert Carter – thank you for that clarification. Currently do we have any other members from the public.

Tom Cusick – my whole situation has not been addressed; the fence is 6ft in height.

Joe Nardi – well Mr. Cusick it will be addressed, the board can vote on this and the chairman is just asking if any other members of the public have questions.

Robert Carter – hearing no other members of the public we will be closing that portion. Do any members of the board have comments?

Mayor Tovinsky – I just think she is making her house look better, replacing the old fence that was damaged and its going in the same exact place. I feel this should not be an issue.

Robert Carter – I feel the applicant has gone out of her way to address the concerns by giving the extra space to the neighbor along the fence and I believe the applicants testimony about the security in my opinion justifies the need for the variance, with that I ask if any members would like to make a motion.

Joe Nardi – can I just address this, there have been some statements made tonight about the fence being illegal, but it is uncertain as to when the fence was built. We were told it was done without permits, there has been testimony the fence has been there for 30-35 years by both the applicant and the objector, but the application before the board this evening is an application to install a 6ft fence along the side of the house and as you all know we only allow a 4ft fence along the side of the house. So, the only way to extend that is to get approvals from the board and the applicant is here trying to get them now. The issue that you all must address is did the applicant meet her burden that you would be satisfied to grant the variance.

Robert Carter – can we have a motion?

Motion to approve a 6ft fence along side of house (Saavedra), Thomas Maxwell, the motion was seconded by George Gies.

Roll Call – Mayor Tovinsky, Commissioner Gies, Robert Carter, Michael Popelak, all voting yes.

Resolution on 6ft fence Would, George Gies, the motion was seconded by Michael Popelak.

Motion to adjourn.  
All voting in favor.