

SWANCREEK TOWNSHIP BOARD OF ZONING APPEALS

1-15-15

Record of Proceedings - MINUTES

Meeting was called to order at 6:30 p.m. by Darrin Gramling, Chairman

Mr. Gramling led in the Pledge of Allegiance.

Roll Call was taken by Administrative Assistant, Chris Lauch.

Board members present: Darrin Gramling, Chairman, Gregg Winseman, Vice Chairman, Dennis Lazenby, David Smith, Steve Fuzinski-absent

Elected Officials: Trustee Rick Kazmierczak

Employees: Walt Hallett, III, Zoning Inspector & Chris Lauch, Administrative Assistant

Fulton County Prosecutor, Scott Haselman

Public Forum Visitors: See Sign In Sheet

Darrin Gramling introduced Mr. Scott Haselman, Fulton County Prosecutor Swancreek Township Legal Counsel

New Business:

Conditional Use Request from Dale & Sue Matting, 3245 Co. Rd.1, Swanton, OH

Walt Hallett, III, Zoning Inspector, 5565 Co. Rd. D, Delta, Ohio, was sworn in to testify and stated his case:

Walt Hallett received an application for a conditional use, application #01-14, for a "group family home for 5 or under adults (no special needs)" signed by Attorney Jerome Parker, on behalf of Mr. and Mrs. Mattin. This parcel is located in a sub-division between Co. Rd. C and Co. Rd. D.

Mr. Hallett referred the Board to Article 100-5.7 of the zoning resolution regulations; principally permitted uses can be conditionally permitted, which foregoes to the Board of Zoning Appeals under the procedures of this article and what is required to be submitted. He referred the Board to Article 100-8.3 Conditionally Permitted Uses. Mr. Hallett stated that most of the requirements were submitted, except for the Fulton County Health Department approval.

Darrin Gramling asked the Board if they had any questions for Mr. Hallett. Dennis Lazenby referred to zoning resolution Article 100-8.3 Conditionally Permitted Uses #10 (a) Group Homes; a group home may not be located within ½ mile of another group home, he noted there was another one close by. Mr. Hallett said he is aware of one other group home was .8 miles away.

Attorney, Jerome Parker, One Seagate, Toledo, Ohio, was sworn in to testify:

Mr. Parker stated they have submitted everything technically required for this application for the conditional use permit. He said the zoning resolution indicated that a conditional use can be applied for and is permissible in the zoning district. The only requirement he sees that is needed is a group home license, which was issued & submitted. The parcel is a five acre lot, not near other home and adjacent properties are also five acre lots. There will be no physical changes existing there. He questioned if a group home is permissible, if not on this parcel in this district, where?

Mr. Parker stated that the township ordinance allows group homes under certain conditions that are met. He feels all requirements have been met. He spoke with Mr. Jeff Crisenbery, Fulton County Health Department, who inspected the septic and leach field. Mr. Crisenbery would require the leach field be increased by 200 linear feet for a five bedroom home.

The leach field has not been increased but would be done if permit is issued.

David Smith noted there may be concerns if there are any residents living in the group home that would have any legal issues, such as sexual predators or felons. Mr. Parker stated that it would not be a problem.

Darrin Gramling asked for any public support for the conditional use, heard none.

Darrin Gramling asked for any public opposition for the Variance Request.

John Samberg, 3131 Co. Rd. 1, Swanton, Ohio sworn into testify:

Mr. Samberg submitted a letter with his concerns, the sub-division regulations and the township's home occupation regulations (copy on Township file). Mr. Samberg owns property in the sub-division, lives elsewhere.

Mr. Samberg shared his concerns to the board. He spoke of the reduction of property values, violation of character as it relates to the surrounding neighborhood area. He pointed out that the group home would be in violation of the sub-division regulations, as well as the home occupation zoning regulations. He does not want a boarding home in his neighborhood, feels this would impact traffic with additional cars, there are nuisances currently by harassing occupants there, he feels safety is an issue due to the type of people that could stay there, and that there is a threat to the health of the association, due to septic tank systems, that were installed in 2002. The home was four bedrooms, now it is five.

Darrin Gramling asked if he called the Sheriff's Department due to the harassment.

Mr. Samberg said that several people have spoken to the Mattin's about rude behavior from their guests, but that he has not called the Sheriff.

David Smith asked if the pond was shared by the home owners association. Yes, there are six properties; all the properties share the pond. There is an easement around the pond.

Dennis Lazenby asked if the association was formed after or before he purchased his home. He purchased rules and regulations for protection. Due to the easement the association allows fishing from his property. The Board discussed construction of docks and official meetings of the association. Mr. Samberg said the association is attached to the deed of the property and has deed restrictions.

Mr. Samberg stated they have been running their home as a boarding home as he has seen Craigs List adds but failed to bring them with him.

Darrin Gramling asked for further opposition. Joe Nonnenmacher wanted to speak on behalf of the Mattin's.

Joe Nonnenmacher, R669 Co. Rd. 3B, Liberty Center, Ohio Sworn in to testify:

Mr. Nonnenmacher stated that the Mattin's and the people they have rented to are kind people. He referred to the Auditor's real estate since 2011 appraisals being up 8% to 72%, he feels there is no loss in real estate values. He serves on a Board of zoning appeals board and did some research. There are 537 group homes and he could not find any proof of any depreciated value due to them.

Darrin Gramling asked for further opposition.

Bill Wintersmith, 3071 Co. Rd. 1, Swanton, Ohio, Sworn in to testify:

Mr. Wintersmith lives on the far side of the pond. He has had problems with large groups of people all over the area around the pond, there are issues with controlling who and the number of people in their yards, because they are able to walk 2' off of his dock. There is a 44' easement. Mr. Wintersmith spoke of drunk people on the pavilion.

Dennis Lazenby asked if he called the Sheriff's Department. Mr. Wintersmith stated he hadn't, he took care of it himself. Dennis Lazenby asked if any minutes are taken at the association meetings or any officers of the association. They met the Sunday prior to the meeting, no notes were taken and there were five home owners present at the meeting. As far as the association meeting, this is the first meeting they have had since he can remember, no notes taken.

Len Augustyniak, 1118 Co. Rd. C, Swanton, Ohio, Sworn in to testify:

Mr. Augustyniak spoke of his concern of noise from kids all summer from the south side of the pond. It is a nuisance because of the yelling and fighting.

Pete Thomas, 3201 Co. Rd. 1, Swanton, Ohio, Sworn in to testify:

Mr. Thomas stated there are many people emanating from the Mattin's property. He lives next to the Mattin's. He has concerns of safety. He has not called the Sheriff's Department. He has had the Mattin's guest fishing on the back of his property and he yelled at them to get off of his property.

Mr. Thomas said the lots are five acres, but they are very narrow lots. The association agreement states single family dwellings only.

Tim Spiess, 3161 Co. Rd. 1, Swanton, Ohio, Sworn in to testify:

Mr. Spiess lives next to the Mattin's. He voiced concerns regarding purchasing his home as an investment. He helped on appropriate amendments to the association rules to protect the rights, liability and safety of the residents. He said there are six homes and five are against this group home.

He has safety issues and spoke of an incident when Federal Agents were present behind the Mattin's house. He spoke of several vehicles being at the Mattin's. He spoke of issues of people from the Mattin's property coming on to his property and several coincidences, such as after confronting issues, his dog was found dead and his pool was ruined. He has called the Sheriff's Department twice; one time was because Mr. Mattin was inside his garage. He feels the Mattin's are trying to supplement their income.

Darrin Gramling asked for further opposition, hearing none.

Attorney Parker stated that the testimony is not germane and has no relevance to the zoning regulations and the case.

Sue Mattin addressed some of the testimony. She said she has never met John Samberg. She stated that she and her husband were not invited to the association meeting. She spoke of displaced people that they have allowed to stay in their home, sometimes for only days at a time. The only large groups of people they have ever had was about twelve years ago when they use to hold church functions. She feels that they have tried to fix any problems that have been brought to their attention. In 2009 her Granddaughter had broken into their home while they were in Florida, she called the police on her and she was escorted out.

Mrs. Mattin stated that she spoke with Mr. Hallett regarding pursuing the conditional use and he told her that it was ok to continue to let people stay with them until the hearing. Mrs. Mattin said they have needed help with their yard, etc. and that is one of the reasons why they have allowed people to live with them, she was unaware that renting a room out was wrong.

She also said they had been using their home as a boarding house, when they found out they could not do this they pulled their craigs list ad, finding out here was a better way by getting a group home license, and requesting to have high function persons then perform back ground checks they could reject any persons they wish.

Darrin Gramling questioned the Ohio Department of Mental Health License not being for renting, nor special needs. Mrs. Mattin said they suggested high functioning residents.

Vicky Wintersmith, 3071 Co. Rd. 1, Swanton, Ohio, Sworn into Testify:

Mrs. Wintersmith is curious as to how the Mattin's are going to run a group home if they need help themselves and with their yard.

The board reviewed the standards and voted as follows:

Standards Set Described in Article 100-21.5

1. Location, size and character as it relates to the development of the surrounding neighborhood and regulations of applicable zoning district.
VOTE: Does Not Comply
ROLL: Full Board Agreed
2. Impact on vehicular and pedestrian traffic.
VOTE: On public right-of-way - ROLL: Full Board Agreed
Board discussed pedestrian traffic
3. Any possible nuisance emanating from the proposed use.
VOTE: Yes, possible nuisance
ROLL: Full Board Agreed
4. Location, height, nature of buildings and other structures as they relate to appropriate development and use of adjacent lands and buildings and how the proposed use affects values of other lands.
VOTE: No construction, no effect
ROLL: Full Board Agreed
5. Whether the proposed use will be harmonious with the physical and economic aspects of the adjacent property.
VOTE: Gregg Winseman – Not harmonious, Dennis Lazenby no effect on economic of physical aspects.
ROLL: Darrin Gramling – Not harmonious, Gregg Winseman – Not harmonious, David Smith – Not harmonious, Dennis Lazenby – Opposed.
6. The necessity of the proposed use for public convenience at this location.
VOTE: N/A
ROLL: Full Board Agreed
7. Will the proposed use protect the public health, safety, and welfare?
VOTE: Unknown
ROLL: Full Board Agreed
8. The effect the proposed use will have on the value of other property in the area in which it is to be located.
VOTE: No Effect
ROLL: Darrin Gramling – No effect, Gregg Winseman – opposed, David Smith – opposed, Dennis Lazenby – No effect unless new construction
 - 7:57 p.m. Darrin Gramling motioned to dismiss to deliberate with legal counsel, Scott Haselman, Fulton County Prosecutor, 2nd by Dennis Lazenby.

~ **Roll Call:** Darrin Gramling - Yes, Gregg Winseman - Yes, David Smith – Yes, Dennis Lazenby – Yes

 - 8:17 p.m. Darrin Gramling motioned to go back into regular session, 2nd by Dennis Lazenby.

~ **Roll Call:** Darrin Gramling - Yes, Gregg Winseman - Yes, David Smith – Yes, Dennis Lazenby – Yes

 - Dennis Lazenby motioned to deny the permit as wrote, 2nd by David Smith

~ **Roll Call:** Darrin Gramling - Yes, Gregg Winseman - Yes, David Smith – Yes, Dennis Lazenby – Yes

Based on the above consideration, the Board finds as follows:

After all the testimony considered and the factors as previously discussed, before the Board dismissed to deliberate, it was previously ran as boarding house and do not feel at this time that it meets the definition of a group home.

Conditional Use Request Denied

Conditional Use Request from Nick Wohlfarth, 2593 Co. Rd.1, Swanton, OH

Walt Hallett restated his name and address for the record and testified that he and Mr. Wohlfarth had discussed an existing pond he wanted to maintain, upon discussion, he found that the area he is requesting is outside the size he can approve. He said Mr. Wohlfarth is requesting to dig, enlarge, or maintain an existing pond outside of the 3/4 acre required size; 1.7 acres in size. Walt Hallett read and reviewed the zoning resolution pond regulations, Article 100-8.4. He also submitted the original areal map required pursuant to 100-8.4 #10 that Mr. Wohlfarth submitted to him.

All other requirements of the regulations are in compliance according to the map. Mr. Wohlfarth has 19.86 acres. Walt Hallett instructed the Board that they would have to ask Mr. Wohlfarth as to spoil and leaving the dirt on site.

Darrin Gramling asked the Board if they had further questions for Mr. Hallett. David Smith asked if the areal map blue print was the proposed or current. Walt said to clarify that with Mr. Wohlfarth.

Nick Wohlfarth, 2593 Co. Rd. 1, Swanton, Ohio Sworn in to testify:

Mr. Wohlfarth said the pond does not sustain life. It is currently under a 1/2 acre and because of the sand, it keeps caving in more.

He would like to maintain wildlife. He will be getting fish to keep mosquitoes down.

He spoke with Rod Creager, his only concerns were that he go no closer than 50' to the lot line and no closer than 50' from the leach field. The pond is at 80' of the lot line and 100' from the leach field. His proposal is 30' from a ditch, as well.

The pond will be 4' high. He is going to replant all oak trees. There will be no obstruction of view

There will be no drainage or run off issues, he will be running a drainage tile into his creek.

He is going to slope off, as required, at 4' high.

He talked to the Ohio Department of National Wild Life and is following their recommendations.

Mike VanWagoner, 2697 Co. Rd. 1, Swanton, Ohio Sworn in to testify:

Mr. VanWagoner lives next door to the Wohlfarth's. He stated they have done a great job keeping the wild life; the pond would be a great addition. He supports Mr. Wohlfarth.

Michael Lazette, 7201 Fulton Lucas Rd., Swanton, Ohio Sworn in to testify:

Mr. Lazette stated he lives adjacent to the Wohlfarth's property and that they have done everything to enhance the property. He has no problem with the pond enlargement.

Paul Wohlfarth, Ottawa Lake, MI Sworn in to testify:

He is Nick's father. He stated that his son has fished his whole life and he supports the pond.

Darrin Gramling asked for opposition, hearing none.

The board reviewed the standards and voted as follows:

Standards Set Described in Article100-21.5

1. Location, size and character as it relates to the development of the surrounding neighborhood and regulations of applicable zoning district.

VOTE: N/A

ROLL: Full Board Agreed

2. Impact on vehicular and pedestrian traffic.
VOTE: No Effect
ROLL: Full Board Agreed
3. Any possible nuisance emanating from the proposed use.
VOTE: None
ROLL: Full Board Agreed
4. Location, height, nature of buildings and other structures as they relate to appropriate development and use of adjacent lands and buildings and how the proposed use affects values of other lands.
VOTE: N/A
ROLL: Full Board Agreed
5. Whether the proposed use will be harmonious with the physical and economic aspects of the adjacent property.
VOTE: Harmonious
ROLL: Full Board Agreed
6. The necessity of the proposed use for public convenience at this location.
VOTE: N/A
ROLL: Full Board Agreed
7. Will the proposed use protect the public health, safety, and welfare?
VOTE: N/A
ROLL: Full Board Agreed
8. The effect the proposed use will have on the value of other property in the area in which it is to be located.
VOTE: No Effect
ROLL: Full Board Agreed

Based on the above consideration, the Board finds as follows:

- Darrin Gramling motioned to approve the application for Conditional Use, 2nd by
 - Gregg Winseman
- ~ **Roll Call:** Darrin Gramling - Yes, Gregg Winseman - Yes, Dennis Lazenby - Yes, David Smith – Yes.

New Business:

- 2015 Meeting Schedule: The Board agreed to leave the schedule the same as last year; The third Thursday of each month, when there is new business, at 6:30 p.m.
- Darrin Gramling motioned to keep Chairman as is, 2nd by David Smith
- ~ **Roll Call:** Darrin Gramling - Yes, Gregg Winseman - Yes, Dennis Lazenby - Yes, David Smith – Yes.
- Darrin Gramling motioned to keep Vice Chairman as is, 2nd by Dennis Lazenby
- ~ **Roll Call:** Darrin Gramling - Yes, Gregg Winseman - Yes, Dennis Lazenby - Yes, David Smith – Yes.
- Dennis Lazenby motioned not to read the minutes out loud at each meeting, 2nd by Darrin Gramling
- ~ **Roll Call:** Darrin Gramling - Yes, Gregg Winseman - Yes, Dennis Lazenby - Yes, David Smith – Yes.
- The Board receives the draft minutes prior to the approval meetings.
- Meeting Minutes Approval Meeting for this meeting will be set when Chris Lauch returns from vacation.

- Dennis Lazenby motioned to adjourn the meeting, 2nd by David Smith - So Moved.

Meeting adjourned at 8:53 p.m.

Darrin Gramling, Chairman

Gregg Winseman, Vice Chairman

David Smith, Board Member

Dennis Lazenby, Board Member

Steve Fuzinski, Board Member

Sue Whitaker, Alternate Board Member