

ROME CITY BOARD OF ZONING APPEALS
Regular Meeting
December 11, 2018

The Rome City Board of Zoning Appeals held their regular meeting on Tuesday, December 11, 2018 at 7:00 p.m. p.m. in the Rome City Town Hall. The meeting was called to order by Chair Fox.

Members Present:

Leigh A. Pranger-Secretary	Kelly Morris
Judy Fox	Mike Friskney
Barb Tatman	

Members Absent:

Christine Coe

Roll call determined a quorum was present.

Member Tatman made a motion to waive the reading of the minutes and approve as submitted. Second by Member Morris. All in favor-aye. Motion Carried. The minutes were posted on the bulletin board for everyone to read.

Interested parties in attendance: Attorney-Bill Eberhard, David and Suzette White and daughter, Josh Lash-Surveyor, Roberta Stone, Terry Williams, Kim Angell, Steve Synder-Attorney for Williams/Angell, Nick Heffner, Ben Castle, Gary Furlow, Carl Grove, Vicki Fiandt, Chuck Woodcock.

OLD BUSINESS

Nothing on the agenda.

NEW BUSINESS

Appeal of Plan Director's decision by David White on the William/Angell fence on the seawall (Location: 448 Spring Beach Road)

Chair Fox informed everyone how the meeting will be conducted, both sides will be given fifteen minutes to present their case. The board will be allotted time for questions outside the allotted fifteen minutes. Mr. White will then have five minutes for rebuttal.

Chair Fox recognized Mr. David White, 452 Spring Beach Road, Rome City, adjoining property owner to Mr. Williams and Mrs. Angel. Mr. White stated, his family first started experiencing problems with their neighbors when they purchased the property (448 Spring Beach Road) in May of 2017. The Williams/Angell were using a 2000 survey performed for two previous owners of the property. They did not have a new survey performed paid for by themselves. The 2000 survey places their landscaping wall within inches of my (white's) property line. The 2000 survey also shows the Williams/Angell are not paying taxes on their seawall. Mr. White then addressed the Williams/Angell's need to apply for a permit through the IDNR (Indiana

Department of Natural Resources) for placement of the wall across the seawall. Mr. White stated the Rome City Unified Development Ordinance (UDO) stated that all work within ten feet of the water's edge must have permit approval from the IDNR. He noted the Williams/Angell informed the Plan Director they contacted the IDNR and the process was waived by an email statement. Mr. White further noted he does not believe the property line to be correct and the Williams/Angell 2000 survey is ten to twelve feet off on the east side of their property. Mr. White stated his willingness to work this issue out with his neighbors, but they took to building the wall over the seawall in the middle of the night, using flashlights to see. He noted the 2000 survey was never recorded in the Noble County courthouse. Mr. White passed out copies of the original 1889 plat for Sylvan Point, which has been recorded in the Noble County courthouse, to the Board of Zoning Appeals. The plat clearly depicts the street and walkways. The darkened area all along the shoreline shows the area to be used a walkway along the lake. He also distributed a 1905 brochure of Rome City showing Sylvan Point and people along the shoreline mooring boats and standing along the water. He stated realistically everyone has used the seawall as a walkway even as far back as 1905. Mr. White stated the Williams/Angell have been trying to stop passage on the seawall in front of their home since they purchased it in 2017. They installed a portable doghouse as the east edge of the seawall which took up the whole width of the seawall to stop people from using the seawall as a walk way. The latest installation on the seawall is the cinder block landscaped wall which is an extension of their retaining wall measuring twenty inches wide by thirty-eight inches tall on top of the seawall to the water's edge. Mr. White asked the board to remove the current wall and restrict any future building without a survey and a permit from the IDNR. Mr. Josh Lash, surveyor for Mr. White, informed the board it is important to require new surveys prior to building to make sure the improvements will be made to the correct property.

Chair Fox informed Mr. White his time was up and requested Williams/Angell present their case to the Board of Zoning Appeals. Mr. Steve Snyder, Attorney from Syracuse, Indiana, addressed the board on behalf of Mr. Williams and Mrs. Angell, and distributed materials which included; a copy of the property from Beacon website, Google Ariel, 1889 Original Plat of Sylvan Point, 2000 survey performed for G. David Laur, Email stream from Angell to IDNR, Jason Wenning and Leigh Pranger with pictures of the proposed wall/fence, Rome City UDO pertaining to Fence and Retaining Walls Standards, West's Annotated Indiana Code Title 14. Natural and Cultural resources, article 26. Lakes and Reservoirs, Chapter 2. Lake Preservation. (IC14-26-2-23), Letter from Scott Zeigler, hand to Plow Surveying. Mr. Snyder informed the board the Williams/Angell have had problems with trespassers and they asked the IDNR and the town for approval prior to installing the wall/flower ledge. Mr. Snyder stated the Williams/Angell have been having problems with people trespassing on their property, so they installed the wall. Mr. Snyder informed the board Mrs. Angell contacted the IDNR regarding the wall as it was within ten feet of the water's edge. Her response from Mr. Wenning, of the IDNR, stated no permit was need as the wall did not meet both the criteria in the Indiana Code 14-26-2-23 which states the construction of a wall within ten feet of the water's edge AND below the water line of the lake. The wall is not below the water line of Sylvan Lake. Mr. Snyder turned to the Rome City UDO 5.63 RW-01 Retaining Wall Standards Section B. retaining Walls, 1. Retaining Walls, b. Connection to adjacent Retaining Wall: a Connection with an adjacent property's retaining wall shall be permitted with the approval of the adjacent property owner. Mr. Snyder this does not

apply to the Williams/Angell as they did not connect the wall to their neighbor's wall. It is their wall which they made the connection. Mr. Snyder then stated, if there is a property dispute then both parties need to have survey's performed and if they cannot agree then the courts can sort it out. Mr. Snyder stated what this board needs to determine is: Did Leigh Pranger, Plan director, properly authorize the retaining wall belonging to the Williams/Angell's? He further notes that it has been proven in court that there is no public right to walk along a seawall, it is in fact belongs to the property owner. He also stated, that Mr. Randy Sexton, Surveyor and owner or Sexton Surveying, submitted a notarized statement that the Williams/Angell's own to the water's edge. This is also the Opinion of Mr. Scott Ziegler, former Noble County Surveyor and owner of Hand to Plow Surveying. Mr. Terry Williams stated they had the 2000 survey re-surveyed prior to purchasing the property to insure the property lines were accurate. Chair Fox informed Mr. Snyder his fifteen minutes were up and asked Mr. White if he had any rebuttal.

Mr. White stated this issue is not just about me and my family it is about all of Sylvan Lake and the Board of Zoning Appeals decision will affect everyone. He noted if the wall is allowed to stay on the seawall it will hinder Emergency Rescue access. He stated, in the past we have had people lose their lives because Emergency rescue could not get to them. If walls are added this will hinder the rescue crew even more. Mr. White brought the board's attention to the IC14-26-2-23 which Mr. Snyder referenced although he did not read the whole code which states; the IDNR has oversight for the public's enjoyment of the lake, over and along or lakeward no excavation, fill or modification or repair can impact the interests of landowners to access the public fresh water lakes. Mr. White stated we do not have sidewalks around the lake for people to use it is safer for adults and especially children to utilize the seawalls for walking.

Chair Fox informed Mr. White his time was up and the public portion of the hearing closed at 7:40 p.m.

Attorney Eberhard informed the board this is not a property line issue; your decision is in regard to the Administrator's decision. 1) Did Leigh Pranger decide correctly, 2) Should Leigh have required a permit or 3) Was Leigh's decision unlawful.

Chair Fox asked where the retaining was placed on the seawall and is this considered a connection? Pranger stated the wall was placed across the seawall from the lake to their retaining wall, blocking access along the seawall. Member Tatman stated as long as she has been around Rome City and Sylvan Lake the seawalls have always been used as walkways for people to get around the lake. Member Friskney stated, he doesn't feel prepared to make a decision with all the information the board received tonight, he would like an opportunity to review everything before making a decision. Attorney Eberhard stated the board can vote to table until a later meeting. Member Morris made a motion to table the Williams/White issue until the February 7, 2019 meeting. Second by Member Friskney. All in favor-aye. Motion Carried.

MISCELLANEOUS BUSINESS

1. Attorney Eberhard asked Pranger to forward a copy of the Floodplain Ordinance and any pertinent UDO sections along with a copy of the IC 14-26-2-23 to his office and the BZA members.
2. Attorney Eberhard informed the board, they need to look at increasing the allowable free-standing sign along the State Road 9 corridor. Due to the speed limits and the necessary

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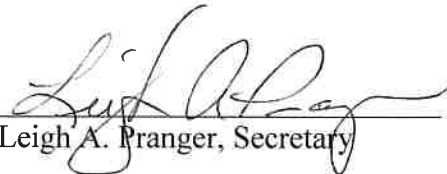
setbacks from a state highway the signs are requiring variances for larger signage. This will be brought to the Plan Commission for review. Jerry Raber of Raber's Groceries, stated for visibility and for traffic to be able to read the signs they should be at least 8'x 8' with a 10' height allowance.

Next meeting: January 10, 2019 at 7:00 p.m. to hear the Hayes/Blum Variance.

There being no further business Member Morris made a motion to adjourn the meeting at 7:50 p.m. Second by Member Tatman. All in favor-aye. Motion Carried.



Judy Fox, Chair

Attest: 

Leigh A. Pranger, Secretary