

## ROME CITY BOARD OF ZONING APPEALS

### Regular Meeting

June 20, 2019

The Rome City Board of Zoning Appeals held their regular meeting on Thursday, June 20, 2019 at 7:02 p.m. in the Rome City Town Hall. The meeting was called to order by Chair Judy Fox.

Members Present:

Leigh A. Pranger-Secretary

Kelly Morris

Christine Coe

Mike Friskney

Judy Fox

Members Absent:

Barb Tatman

Rollcall determined a quorum was present.

Interested Parties in attendance: Town Attorney Bill Eberhard, David and Nick White, David Kasper, Joe Costello, Bob Blum, Bobby Blum, Brian Hayes, Bonnie Mc Donald, Chandra Wilson, Sarah Ehinger, Tom Nelson, Gary Furlow, Lonnie Tackett, Carl Grove, Dave Abbott, Denny Hogan, Kim Angell, Terry Williams, Chuck Woodcock and Nick Heffner.

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

### OLD BUSINESS

Blum 2019-19 and Hayes 2019-21 Variances on Lions Drive-Deck/Dock. Secretary Pranger presented the board with the survey showing the existing road right-of-way (ROW) for the town and Scott Zeigler's, Surveyor opinion that the original ROW was never vacated when the Routzahn's plat was vacated in 1925 and Replatted in Routsong's Addition therefore the town retains the existing ROW and the old ROW to the north in an along the edge of Sylvan Lake. The survey clearly shows the deck is located within the existing ROW.

President Fox asked for Mr. Blum's information. Mr. Blum informed the board he met with Attorney Eberhard and they went through his documents showing that Mr. Blum owns the property and is paying taxes on the parcel. Secretary Pranger asked to see the survey of the parcel as it does not show on the Noble County Beacon Website. Mr. Blum stated he does not have a survey. Mr. Blum stated the deck is not affecting anything it is located at least 15 feet off the road and 1 foot off the lake. He added that he contacted the IDNR prior to doing the work and they said it would be ok to install a pier and deck. Mr. Blum showed the board pictures taken prior to the construction and the after-construction pictures. The pictures show the construction was built over the top of the "L" shaped pier along the edge of the lake and the deck and stairs are constructed to the south of the pier. Attorney Eberhard stated the variance request is for zero setback from the lake and 4 feet off the road. After much discussion the board asked Secretary Pranger to have Surveyor Zeigler attend the next meeting. The board decided they need to meet on site to discuss everything. Member Morris made a motion to table the variances 2018-19 and 2018-21 to the next meeting. Second by Member Coe. All in favor-aye. Motion Carried. Member Morris made a motion to meet on site on July 11<sup>th</sup> at 6:00 p.m. and to have Surveyor Zeigler attend the on-site visit. Second by Member Coe. All in favor-aye. Motion Carried.

**NEW BUSINESS**

Variance #2019-07

Terrence Williams and Kimberly Angell, 448 Spring Beach Road, Rome City, IN 46784 are requesting a variance for relief from the Rome City Unified Development Code, Article 5.63 Retaining Wall RW-01; B.1 (a) and Fences and Walls 5.20 FW-01 C.2 Proximity to property line of two feet down to three inches to allow a concrete block planter (already constructed on the east property line) to remain and to construct another planter on the west property line. RW-01 B.2. Proximity to lake of 10 feet down to six inches to allow a concrete block planter (already constructed on the east property line) to remain and to construct another planter on the west property line.

Chair Fox called for Angell/Williams to present their case to the board. Kim Angell presented the board with copies of her findings of fact for Variance 2019-07. She wanted the board to confirm that they have ownership of their seawall. She cited a survey and affidavit submitted by Randy Sexton, Noble County Surveyor, previously submitted to the Town Council in past meetings. Attorney Eberhard advised the Rome City Board of Zoning Appeals has no jurisdiction to uphold ownership rights, that would be for a judge to decide. Attorney Eberhard advised the board is here to decide on the Variance petition presented to them. Mrs. Angell moved onto her findings of fact for her petition. 1. Similar objects placed on seawall around the lake; lifts, piers, privacy fence and picket fence (315 Bernice Ave). 2. Neighbor's dogs run loose, and this will help to keep her dogs on her property and the neighbor's dogs on their property. The block wall is maintenance free and matches the existing retaining wall. 3. The wall was installed in good faith after obtaining permission from Mrs. Pranger, Town Manager, see email. The cost of the wall is \$300. 4. This is privately owned property and the wall will keep people from trespassing. It will allow the Angell/Williams to keep their privacy. 5. The retaining block plant/ledge/trespasser obstruction wall is set near the property line and was constructed on top of a preexisting retaining wall which had been built within inches of the Fregeau/White property. The wall is complimentary to the property and allows the Angell/Williams to use almost all of their property. To move the wall will be inadvertently giving the space away to the Fregeau/White's.

Member Coe asked what will stop the neighbors from walking on top of the wall? Mrs. Angell stated most people when seeing a block wall/obstruction will stop and turn around. Mrs. Angell stated the wall and the No trespassing signage is a passive way to stop people from continuing on their walk.

Chair Fox called for interested parties on behalf of Variance #2019-07. Secretary Pranger informed the board all adjoining owners were notified, and Tom Nelson replied with an objection to the wall blocking the seawall, David Kasper returned with no comment and Max Roesler neighbor two doors to the west replied stating safe passage of the seawall should not be obstructed or prohibited for any reason. In addition, the property or the lake may not be accessible in an adequate amount of time by a citizen or emergency personnel with this obstruction on the seawall. It is safer to have children use the seawall then walk the road when visiting neighbor's and family. Chair Fox recognized Gray Furlow, Town Council President, he stated the fence referred to at 315 Bernice Ave does not cross the seawall and is owned by Tim and Carissa Ryan. Dave Kasper, adjoining owner to the east on the backside of the road. Mr. Kasper stated he has been coming to Sylvan Lake for 30 years and he is concerned about safety

issues for access to Emergency personnel should a child need to be rescued. He stated the zoning code 5.63 wall and fence does not allowed a wall within 10 feet of the water for a reason. To clarify the wall is 9 feet across at the top. Joe Costello past President of the Sylvan Lake Association for 44 years and current board member, stated at the Association's June 7<sup>th</sup> meeting the 17 member board unanimously voted to oppose this variance petition. The Association asked the BZA to deny the wall. Tom Nelson stated his family has owned property on Sylvan Lake for 100 years and he opposes the variance request. He stated concern for safety of boaters and anyone falling in the lake. The wall impedes emergency personnel and general citizens from accessing the seawall to perform a rescue. David White stated he was glad to hear Mrs. Angell addressed this as a wall, as the blocks are concreted in place and designed to obstruct passage of the seawall. He noted that we do not own the water and referred to the original plat showing a set aside of land along the lake for public use. Mr. white then referenced the survey the Angell/Williams submitted to the board clearly showed their property pin short of the water's edge showing they do not own the seawall. He then referenced a pamphlet advertising Sylvan Lake showing the area in question on the north side of Sylvan Lake being used as a public pier and dock back in the late 1800's early 1900's. Mr. White then referenced his own survey which clearly shows he and his family do not own to the water's edge nor do they own the seawall. He then referenced a snowmobile accident which took place several years back where emergency personnel had to use lake frontage and seawalls to gain access to the lake for rescue purposes, again showing the seawall is public. Dave Kasper stated the other fence, Mrs. Angell referenced in her findings is a fence installed by Sis Arnold (490 Spring Beach) 50 plus years ago to keep people from falling into her boat house access. Dave White stated the seawall has been used for years for safe passage without having to walk on the roadways which have no sidewalks. Dave Kasper stated the people walking the seawall are not strangers they are the Angell/Williams neighbors going to visit other neighbors and family. Dave White stated the Indiana Department of Natural Resources define a retaining wall as a wall which holds back horizontal forces; this wall clearly does not hold anything back. Chandra Wilson stated their family has owned property for years on Sylvan Lake and they always used the seawall to visit their family and now that their Uncle Max Roesler is older he can not use the road to visit as it is uphill along the road the seawall is level and easier to traverse. She then referenced a court case stating a judge ruled a party was negligent because they did not do their due diligence prior to purchasing property within a certain good neighborhood. She asserted the Angell/Williams did not check into the common practices within the neighbor prior to purchasing their home. Dave Kasper stated the wall hurts his property values and will have a long-term effect on his property values. Dave White cited a court case regarding Lake Michigan the case cited the fact that the King of England held the waters of Lake Michigan to be available for all citizens and the water is protected to the low and high-water line mark for public use. He then cited several instances when the water of Sylvan Lake overflowed the seawalls showing the high-water mark to be above the seawall. Joe Costello wanted the board to know the Sylvan Lake Association represents 300-400 paid members around the lake.

Chair Fox called for Mrs. Kim Angell's rebuttal she asked if Dave White was admitting that he does not own to the water's edge per his survey performed by Josh Lash. Mr. White stated yes, that is correct. Mrs. Angell stated it is a welcoming neighborhood as long as you do want the neighborhood wants you to do. She noted the wall does not follow the slope of the property, if

someone needs to access their property in the event of an emergency all they simply need to do is hop over the wall it is approximately three feet high. On the west property line the transition is less and the height of the wall will be lower. Mr. Terry Williams stated he is a first responder and when responding to an emergency if something is blocking their path they simply move it or go around it. Mrs. Angell stated we are all required to follow the maritime boater's rule to help anyone in need on the lake. She noted this is a visually appealing structure and they will be installing plants. She added they are not ok with the practice of people using their seawall.

Chair Fox asked if the board had any more questions. There being none.

Attorney Eberhard informed the board there a lot of issues beyond the requested variance. He stated information have been submitted (survey and affidavit) to identify the property and it is sufficient to move forward. The question relates to Section 5.63 for the Zoning Code stating a wall can not be built within 10 feet of the lake. The Angell/Williams have applied for a variance to the code and now you must decide if you have heard sufficient reasons or not.

Chair Fox called for Rollcall of the findings of fact on Variance #2019-07. Attorney Eberhard informed the board a yes vote is a vote in favor of the variance and a no vote is a vote against the variance.

1. The Board finds, the proposed variance will be injurious to the public health, safety, morals and general welfare of the community because: it is located within 10 feet of shoreline, violation of 5.63 (B)(2) and flood prevention ordinance and impairs view and access to lake. Rollcall for vote: Mike Friskney-No, Judy Fox-No, Christine Coe-No, Kelly Morris-No.
  2. The Board finds, the use and value of the area adjacent to the property included in the variance will be affected in a substantially adverse manner because: The lake association and neighbors complain the wall impacts and injures their use and access to the lake; especially for reason for the wall is to impede access, view, and impede pedestrians. Allegation it affects value of property. Rollcall for vote: Christine Coe-No, Kelly Morris-No, Mike Friskney-No, Judy Fox-No.
  3. The board finds, the strict application of the terms of the Zoning Ordinance will not constitute an unusual and unnecessary hardship if applied to the property for which the Variance is sought, because; the reason for the wall is alleged trespass, obstruct public use, an insufficient reason to vary from the Town ordinances. Rollcall for vote: Kelly Morris-No, Christine Coe-No, Judy Fox-No, Mike Friskney-No.
  4. The Board finds, the variance granted does correct a hardship caused by an owner, previous or present, of the property, because, the hardship is one of a dispute which is not zoning in nature, the variance is not designed to resolve disputes, merely impede pedestrians. Rollcall for vote: Judy Fox-No, Kelly Morris-No, Mike Friskney-No, Christine Coe-No.
  5. The Board finds the variance is not the minimum necessary for the project because: wall not permitted under Town code and necessity for wall not shown. Rollcall for vote: Mike Friskney-No, Christine Coe-No, Kelly Morris-No, Judy Fox-No.
- Variance #2019-07 Denied on all five findings of fact.

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Attorney Eberhard informed Secretary Pranger to send a letter giving the Angell/Williams 10-14 days to remove the wall. Secretary Pranger stated she will forward a copy of the letter to the board after it has been delivered by the Town Marshal's office.


**MISCELLANEOUS BUSINESS**

Secretary Pranger will report on the Tyler variance and Blaising's building at the July meeting.

Next Meeting: Member Morris made a motion to move the July Meeting to the Thursday July 11, 2019 at 7:00 p.m. due to a scheduling conflict. Second by Member Coe. All in favor-aye. Motion Carried.

There being no further business Member Morris made a motion to adjourn the meeting at 8:31 p.m. Second by Member Friskney. All in favor-aye. Motion Carried.

  
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Judy Fox, President BZA

Attest:   
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Leigh A. Pranger, Secretary