

1123.40A NO BUILD ZONE.

“No Build Zone” means a designated area platted by a developer, either residential or commercial, which generally prohibits the placement of residential or commercial buildings, structures, **specific types of fences**, or storage buildings. Plat notes must be referenced to obtain specific information regarding any subdivision containing a No Build Zone.

1123.53 STRUCTURE.

"Structure" means a combination of materials, other than a building, to form a construction that is safe and stable and includes, among other things, stadiums, platforms, radio towers, sheds, storage bins, ~~fences~~ and display signs.

Memorandum

To: Council Members

From: Rebecca W. Stinchcomb, Mayor



Date: February 26, 2003

Re: Veto of Ordinances

I respectfully Veto Ordinance Numbers 0019-2003, 0020-2003, 0021-2003, 0022-2003, 0023-2003, 0024-2003, and 0025-2003.

First of all, let me state that this has been a very difficult issue for all concerned from the start. Whenever we deal with matters that involve the use of our citizens' homes and property, the discussions become personal and emotional. We have seen this many times as we have considered rezoning issues, for example. But this case has been unique in many ways.

A number of months ago, Councilman Hogan and City Attorney Tom Weber requested that the Administration help them look into a possible amendment to the fence code to specifically allow the erection of fences in the no-build zones. In spite of my personal concerns regarding the implementation of these code changes, I did not feel it was proper or just for me as Mayor to stop the process and/or limit the involvement of the administrative staff. I believe that the Administration has a responsibility to present the legislative body and the citizens of Gahanna with alternative resolutions when an ordinance is questioned, and to allow an issue to be publicly debated on both sides of that issue. With this in mind, the Administrative staff began to research the issue and provide language for debate.

Section 9.02 of the Charter authorizes the Director of Development to supervise the administration of the zoning ordinance. In accordance with this Charter provision, the Department of Development researched this request and drafted a possible compromise ordinance that allowed an open picket fence in the no-build zone. On behalf of the Administration, the Director of Development brought the proposed legislation forward to Planning Commission and City Council for public review and debate. The legislation was presented as an alternative to the existing code. As the authors of the proposed legislation, the Administration had a responsibility to present the rationale and explanation for the language within the proposed legislation in the public hearing before Planning Commission and Council.

Moreover, I believed that this possible code change language should be given the benefit of a full public process. Participation in local government and the legislative process is every citizen's right and that entails full consideration by the Planning Commission and a full hearing and public debate by Council. I wish to give much credit to Tom Weber for his hard work in crafting what I considered at the time to be a possible compromise to help resolve this ongoing issue.

As Mayor and Chief Executive Officer, I listened with an open mind to both sides of the debate presented before the Planning Commission and City Council. The debate on the issues was thorough and complete, and every person that wanted to speak was given multiple opportunities to do so. I wish to congratulate the Council on conducting such a thorough legislative process. However, a major turning point in this process came when Council referred these code changes to the Planning Commission, and that Commission turned them down by unanimous vote. Their expert analysis based on their education, training and experience, particularly in planning and zoning issues, was compelling.

After further discussion with my Administration, I have determined that the fence code should not be changed to allow for fences in the no-build zone.

No-build zones and preservation zones are two vital environmental planning tools that allow for the preservation and protection of land features, topography, and open vistas within a development. Preservation zones are often used when there are large trees, stands of trees or other environmental features existing within the tract of land. No-build zones are often used to protect drainage easements, but also to allow for open space vistas within dense developments, particularly when they follow suburban land use patterns characterized by the irregular configuration of lots. It is clear from the recent public debate that a majority of Gahanna residents with no-build zones purchased with the full knowledge that the no-build zone existed on their property and perhaps on adjacent property.

In 2000, the former Mayor sought successfully to protect the integrity of the no-build zone. City Council voted to amend the definition of a "no-build zone" to clarify that fences are deemed structures and thereby prohibited within the no-build zone by definition. The Administration believes that the integrity of the no-build zone should not be compromised. The City does have the right to impose restrictions that are more stringent than deed restrictions.

While some properties have been able to build fences in the no-build zone, they have been accomplished through the variance process which is allowed by code when a hardship can be shown. The variance process works. Applicants that were able to prove a special circumstance on their property were granted a variance in accordance with Section 1131 of the code. The Board of Zoning Appeals has upheld the Planning Commission's denial of the applications that did not meet the criteria in Section 1131 of the code on more than one occasion. I believe that rather than make a wholesale

change in the code, it is preferable for city boards and commissions to look at individual applications as is already provided in the code.

After full debate, the Planning Commission, which is charged with the initial responsibility to review code changes and whose powers and duties are in the regulation and use of land in the city, voted unanimously that these code changes are not good public policy. Council split in a close 4-3 vote. I feel it falls to me to exercise my right to veto and support the reasoned analysis of the Planning Commission and the Board of Zoning Appeals who have now, multiple times, expressed their views and have voted against the related appeals and then the proposed code changes.

I have serious concerns about making sweeping code changes that affect the entire city when it appears the code change is being implemented to benefit a few. While I generally support a person's rights to enjoy their property, I also believe firmly in a community's rights to develop zoning that protects the public welfare and interests of its citizens and supports the greater good and the desires of the majority of property owners. To change the law with respect to no-build zones this late in the game after so many people bought their property with certain expectations of the protections the city code offered to them is of great concern to me. In the dozen or so years since the no-build zone code became law, we have approved quite a number of new developments that contain no-build zones. I do not think we have adequately examined the affects this citywide code change would have upon developments outside of Rose Run.

As Mayor, I believe it is my responsibility to maintain Gahanna's vision and mission specifically in the pursuit of "high standards" and the assurance of "well planned development which preserves the natural environment". I believe it is in the best interest of the City and its people to protect overall property rights and quality of life issues and to allow individual hardship cases to be dealt with in accordance with the process provided for in the City Code. Therefore, according to Section 3.05 of the Gahanna Charter, I am exercising my veto powers in the aforementioned ordinances passed on February 18, 2003.

RWS/psf