

CITY OF GAHANNA
BOARD OF ZONING AND BUILDING APPEALS

- - -

IN RE: BZA-0002-2012
APPEAL/94 Jahn Drive/Strohm

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Transcript of the City of Gahanna, Ohio,
Board of Zoning and Building Appeals hearing held on
Thursday, July 26, 2012, commencing at 6:30 p.m.,
at 200 South Hamilton Road, Gahanna, Ohio.

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Board Members Present:
Benjamin Winkler, Chair
Donald Jensen, Vice Chair
Hakim Ben Adjoua
Cynthia Canter

Donna Jernigan, Senior Deputy Clerk of Council

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THURSDAY EVENING SESSION
July 26, 2012
6:30 p.m.

- - -

MR. WINKLER: The July 26, 2012, meeting of the City of Gahanna Board of Zoning and Building Appeals is hereby called to order. The Chair at this time will conduct the pledge of allegiance.

(Pledge.)

MR. WINKLER: The clerk will call the role.

MS. JERNIGAN: Adjoua.

MR. ADJOUA: Here.

MS. JERNIGAN: Canter.

MS. CANTER: Here.

MS. JERNIGAN: Mecozzi.

Jensen.

MR. JENSEN: Here.

MS. JERNIGAN: Winkler.

MR. WINKLER: Here.

The Board is convened today to hear appeal No. BZA-0002-2012, an appeal from a Planning Commission denial of the application of Charles Strohm of 94 Jahn Drive for variance to Section 1171.03(a) of the Codified Ordinances of the City of Gahanna to allow a

1 fence to exceed six feet in height.

2 Before we proceed with the hearing I have one
3 comment to make, which is in Mr. Strohm's submission to
4 Council he noted his concerns that he felt that he had
5 not been afforded a fair opportunity to speak before
6 the Planning Commission. Regrettably this is not the
7 first complaint of this sort to be received, and I
8 would note further that according to his letter, if
9 it's accurate, that an appointed official for the City
10 of Gahanna for some reason saw fit to inform him that
11 it seemed that he and his neighbor needed a marriage
12 counselor rather than a request for a variance.

13 I can advise the appellate that while the
14 merits of his appeal will depend on City ordinances,
15 the City charter, and the evidence he presents, he can
16 at least be assured of a full, fair, and respectful
17 hearing before this body.

18 The rules of the Board state that the public
19 hearing shall be conducted in the following fashion:
20 The appellant shall be allowed 15 minutes to speak.
21 The appellee shall then be permitted 15 minutes to
22 speak. Staff of the City of Gahanna will be allowed
23 five minutes for comment, and five minutes will be
24 allowed for public comment, if any.

1 At that point five minutes each will be
2 permitted for appellant and appellee for cross-examine
3 and further argument.

4 Following that typically the Board will ask
5 questions and the Board will then proceed to vote on
6 the appeal.

7 Is the appellant ready to proceed?

8 MR. STROHM: Yes.

9 MR. WINKLER: Will you come forward, sir? In
10 the absence of the City attorney, I would request that
11 the court reporter to, if she will be so kind, swear in
12 the appellant.

13 (Oath administered to Appellant.)

14 MR. WINKLER: Appellant may proceed.

15 MS. JERNIGAN: We will have to wait a minute.
16 I lost everything.

17 MR. WINKLER: I see. If you wouldn't mind
18 waiting.

19 (Power failure.)

20 MR. WINKLER: Mr. Strohm. Okay. Before you
21 proceed the rules of the Board state that we address
22 jurisdictional questions before the hearing proceeds.
23 And I wanted to make one comment which is that there
24 have been issues raised in your submission to the Board

1 as to the boundary line between you and your neighbor's
2 property. I wanted to make clear that this Board has
3 no power to declare or define what the boundary is or
4 whether any proposed fence would be on one person's
5 property or another. The sole matter for us is to find
6 whether or not you should be granted a variance to have
7 a fence exceeding six feet in height.

8 MR. STROHM: I understand. Is this on?

9 MR. WINKLER: It is. You may proceed,
10 Mr. Strohm.

11 MR. STROHM: My name is Charles Strohm. I
12 live at 94 Jahn Drive. I am here this evening to
13 request an appeal on my variance request that was
14 denied on June 13th.

15 May I ask did the Board receive my e-mail
16 request and I urged you to visit my property? Did any
17 of you have a chance to visit my property to see what I
18 am talking about?

19 MR. ADJOUA: Drove by.

20 MR. WINKLER: Pardon me?

21 MR. ADJOUA: I drove by.

22 MR. STROHM: Okay. You really need to see
23 the backyard. I don't know what the process is for a
24 Roberts Rule of committee here, but is it possible to

1 request a continuance or a recess so that this can be
2 done?

3 MR. WINKLER: Mr. Strohm, I don't think we
4 can guarantee that any Board member would have time
5 necessarily to inspect the property personally so --

6 MR. STROHM: I just don't see how it can be
7 fair that you can judge based on what I'm presenting
8 tonight without visually seeing the situation. Okay.
9 Vision or seeing is a lot clearer than what I can say
10 tonight.

11 MR. WINKLER: Nevertheless, Mr. Strohm, we
12 have the materials you submitted, and we have your
13 photographs, and you're welcome to explain the
14 situation as best you can. We will hear what you have
15 to say.

16 MR. STROHM: So we can't continue it, is that
17 correct? There's no motion to continue for visiting
18 the property?

19 MR. WINKLER: Well, I think without relying
20 on a formal procedure, I can probably say I don't think
21 that is viable. The Chair will entertain motions to
22 continue the hearing.

23 I am afraid, Mr. Strohm, I think we will have
24 to proceed with it tonight.

1 MR. STROHM: Before I get started I do want
2 to address a few issues of the meeting of June 13th. I
3 believe the Chair did bring up a brief synopsis of it.

4 MR. WINKLER: I would mention, however,
5 Mr. Strohm, you only have 15 minutes to speak and it
6 might be best --

7 MR. STROHM: I am not a speaker, and I have
8 written it out. So I would like to proceed that way.
9 It's my weakness.

10 I am a native of this town, Gahanna. I was
11 born and raised in this community. Obviously, I love
12 this city. There have been four generations of the
13 Strohm family that have graduated from Gahanna.

14 I found it shocking that the committee on the
15 evening of June 13th disrespectfully treated my
16 variance request as a joke. It was very embarrassing
17 to me at best. I would think it should be very
18 embarrassing to the City and the citizens to have a
19 committee member make a comment, and I quote, It sounds
20 like Miss Bates and I -- or you, need a marriage
21 counselor rather than a council to approve a variance.

22 This was highly unprofessional, very
23 intimidating, and disrespectful, to say nothing about
24 going totally against Gahanna's vision, which I quote,

1 Gahanna's vision, to be an innovative model community
2 that values its rich heritage, pursues high standards,
3 and promotes respect among citizens.

4 I hope and I have been told by the committee
5 here that whatever decision is made here this evening
6 it is with an open mind, professionalism, nonbias, and
7 based on the ordinance Code 1031.03 (sic) conditions.
8 There's an attachment that you all have. Okay.

9 It is my opinion most of the committee
10 members had not read the packet of information provided
11 to them. I say this because of the questions that came
12 up about surveys, lot lines, et cetera.

13 I also believe that even the attorney for
14 Miss Bates did not read the packet of information as
15 well. If they had, they would have realized there had
16 been a current survey which did indicate the fence in
17 question is on my property and the line does not swerve
18 like Miss Paley indicated.

19 The stakes have writing on them. If you
20 refer to your packet, pic B 2, number two, they had
21 this writing on them because the lot line is under the
22 existing fence, and the survey company could not put
23 the stakes there. That is why they marked the stakes
24 to indicate where they should be.

1 It is my hope that the committee considers
2 granting this variance based on Code 1031.03, (sic)
3 conditions alone which I will cover. Condition one,
4 special circumstances and conditions. Years ago
5 Miss Bates' carport was erected without a variance or
6 any approval by the City. This was researched by the
7 City.

8 The carport sits right on the property line
9 where she hangs cameras. Miss Paley, Miss Bates'
10 attorney, said it is for protection and the cameras
11 face her door. Maybe possibly they do. But they are
12 moved frequently. Strange.

13 If they are for her security, why would she
14 object to an additional two feet more to my fence? It
15 would give her additional security.

16 Why wouldn't she also have the cameras around
17 all her house? Why wouldn't -- it's strange or, you
18 know, that not just the backyard, the cameras are
19 located merely in place where my yard can be viewed. I
20 believe that she wants to see what I am doing in my
21 backyard. I feel as though my privacy has been
22 invaded.

23 To further prove my point, I check my pool
24 daily. Sometimes I take a dip. I do this several

1 times a day. The cameras are moved daily. I have
2 pictures. I do not take pictures every day, but if you
3 look at the Exhibits C, D, E, F, G, you will see how
4 the cameras are moved.

5 In the purposes -- if the purposes of the
6 cameras are for her security, why would she need to
7 change locations and not direct them to her door? I
8 would think the camera area would be set.

9 Condition two: Preservation and enjoyment.
10 I have a swimming pool in my backyard. My backyard is
11 my place to go to relax, swim, and enjoy my friends and
12 family in peace. I am not able to do that right now.
13 It seems to me that Miss Bates has nothing better to do
14 than harass, spy, and stalk me with her cameras.

15 Not all the objects in the pics have cameras.
16 She moves them around in different places daily. I
17 believe she does not want me to extend my fence because
18 with the added height she would not be able to see what
19 I'm doing.

20 In my backyard, I am not even sure if seeing
21 in my backyard is her main goal. Although I believe
22 she wants to observe my activities, I believe her main
23 priority is harassment.

24 Condition three: By granting this variance

1 it will not materially affect adversely the health or
2 safety of persons in the neighborhood.

3 The fence in question is my backyard between
4 Miss Bates and my property. It is hardly noticeable by
5 the neighbors in the front. Miss Bates installed trees
6 in the front along the lot line which hide the side
7 fence and the neighbor behind me is 100 yards away.

8 An issue was brought up about the fence
9 structure and it not being able to handle the extra
10 weight. I have conversed with my brother, Ronald
11 Strohm, who has been an architect for over 40 years.
12 Before moving to Georgia he contributed a lot to
13 Columbus and Gahanna. Along with Denny Souder and Jack
14 Schmidt, he had a major impact on saving building B at
15 the high school. His expertise and guidance
16 contributed greatly to preserving the history of this
17 building, which is the original high school building of
18 Gahanna. Therefore, his opinion should be respected
19 highly.

20 When I asked my brother about adding the
21 additional two feet to my fence he said with me adding
22 the heavy-gauge metal stakes between the existing fence
23 posts and attaching them to the cross members of the
24 fence the fence would have no problem handling this

1 additional weight. Thank you.

2 MR. WINKLER: Thank you, Mr. Strohm.

3 Is the appellee here tonight?

4 MS. PALEY: Yes.

5 MR. WINKLER: Will she be appearing through
6 counsel?

7 MS. PALEY: Yes. I am Eileen Paley, attorney
8 for Alveta Bates.

9 MR. WINKLER: You may proceed when you are
10 ready.

11 MS. PALEY: Thank you. Although I am
12 prepared to discuss the lot line, I do agree with you
13 in that it really isn't relevant in this matter,
14 although it could be relevant in future proceedings
15 and, obviously, has been relevant in previous
16 proceedings. So I will just talk with regards to your
17 statute, Article 1171.08, which deals with variance
18 procedures.

19 The requirement for variance procedure has
20 several factors that are to be considered: Whether the
21 property in question will yield reasonable return or
22 whether there can be any beneficial use of the property
23 without the variance.

24 Obviously, the property has been used for

1 many, many years without an additional fence, so that
2 doesn't apply.

3 Whether the variance is substantial. It is
4 substantial because two feet actually will hit the roof
5 of her carport and will actually block her in, which
6 creates a health problem also, and a safety issue
7 because it is right on the lot line.

8 Whether the essential character of the
9 neighborhood would be substantially altered or whether
10 adjoining properties would suffer. I don't know that
11 adjoining properties would necessarily suffer.
12 However, by allowing the variance for an eight-foot
13 fence for a squabble such as this one, it does permit
14 other people to have eight-foot fences that are
15 probably not necessary and probably not very
16 attractive, especially the way he is building it.

17 He is not proposing to put an eight-foot
18 fence on the property, a new one. He is proposing to
19 build onto it. And it is my understanding that this
20 fence has fallen down with just the six-foot weight,
21 and the additional weight would probably make it fall
22 more, especially when you have metal bars attached to
23 one side of it with an additional two feet reaching to
24 the top.

1 Whether the property owner's predicament
2 feasibly can be obviated through some method other than
3 the variance.

4 I will show you what he considers to be the
5 cameras and what he has pictured in his exhibit, and
6 this is it. They are lanterns and they have solar
7 lights on the top of them. They are not cameras.

8 She has one camera. It's attached to the
9 carport permanently affixed and heads to her side door.
10 And, by the way, she does have other cameras, one at
11 the front door. So there's a camera at the front door
12 and a camera at the back door, and they are permanently
13 affixed to the ceiling.

14 And all the pictures he has attached are
15 pictures of lanterns that she has hanging that light up
16 because they are solar powered.

17 Whether the spirit and the intent behind the
18 zoning requirement would be observed and substantial
19 justice done by granting the variance. His sole
20 concern is that she not spy on him. There has been,
21 obviously, discord between these two people, but I
22 assure you she is not spying on him.

23 I don't know how you can alleviate that
24 problem because even if he puts two feet on top of that

1 fence, she very well could use a camera over that
2 two feet too, so by allowing him to attach two feet to
3 this fence is not going to solve the problem, but what
4 it is going to do is continually add on to the fights
5 that they are having now because where he clearly is
6 putting the fence on her property. And even though
7 this council doesn't want to address where the property
8 line is, I don't still legally know how you can obtain
9 a variance on property that is not yours.

10 He attached a survey to his application for
11 the appeal. That was actually done in 1994. The fence
12 was erected in 2000, so even if this was an accurate
13 pinned fence survey, which it's not, it doesn't reflect
14 the fence at all. The fence wasn't there when the
15 survey was done.

16 I presented a recent survey to Council prior
17 at the previous hearing, and I have a colored copy of
18 the survey today if you are interested, although I also
19 question the relevance of it. And it clearly shows
20 where the fence line is. Half of the fence is actually
21 on Miss Bates' property and half of the fence is on
22 Mr. Strohm's property. But the part that he wants that
23 is up by the carport, which could be a safety hazard
24 because it's right on the lot line and it's right next

1 to propane tanks is actually on her property.

2 So if the fence was granted, there's already
3 a problem with the fact that it's on her property
4 anyway.

5 However, since they both built the fence
6 together, and, quite frankly, they both paid for it.
7 She wrote him a check a long time ago and they erected
8 that fence so that it would go around and match his
9 other side of the fences so she didn't really care
10 whether it was on his property or her property at that
11 time because they both enjoyed the fence and wanted the
12 fence to be there.

13 So the question of where that fence is
14 doesn't really matter to Miss Bates, or my client.
15 What matters is if you are going to put two more feet
16 on top of it -- and, quite frankly, he has hung sheets
17 up on it and all kinds of other things that, you know,
18 interferes with her enjoyment of her backyard. It's
19 unsightly. It's ugly.

20 I think the -- we can't see what it's going
21 to look like off of his drawings, but I can see where
22 the metal bars are going and where it's going to cause
23 a top-heavy effect.

24 So I don't think his variance follows your

1 code. I don't think there's a real reason for the
2 variance except for what he had previously stated,
3 which was to avoid the cameras that, quite frankly,
4 don't exist. So I would ask or urge strongly that you
5 deny his appeal.

6 I do have pictures and surveys if that would
7 become necessary, but since you have previously stated
8 that you didn't feel it was relevant where the lot line
9 is, I don't feel it's important for me to provide that
10 for you.

11 MR. WINKLER: In addition, counsel, the rules
12 of the court provide that unless the exhibits have been
13 furnished to the other side more than three days before
14 the hearing, we will not consider them.

15 MS. PALEY: Okay. Great. Thank you.

16 MR. WINKLER: At this time we will be
17 permitting five minutes for comments from any staff
18 member from the City of Gahanna. Is there any staff
19 member that wishes to speak on behalf the City of
20 Gahanna government?

21 MS. GARD: Bonnie Gard, G-a-r-d, Planning and
22 Zoning Administrator for the City of Gahanna. We have
23 no further comment at this time.

24 MR. WINKLER: Thank you. The Board rules

1 provide that thereafter five minutes will be allowed
2 for public comments. Are there any members of the
3 public who have any comments on this matter?

4 The Chair finds that there are not.

5 Under the rules, Mr. Strohm, you will have
6 five minutes to provide rebuttal to whatever opposing
7 counsel has had to say.

8 MR. STROHM: Thank you. We are just not
9 getting it. Okay. First of all, there's eight-foot
10 fencing in Gahanna. Okay. I have -- and I have a list
11 of five properties that have them. Okay. One of them
12 is right in Jahn Court, which is right across the
13 street from me. Okay.

14 Another one is on Rocky Fork Boulevard. It's
15 within biking distance because I ride my bike around
16 the neighborhood.

17 The stakes -- pardon me -- are not -- they
18 are attached to the fence but they are driven into the
19 ground between the posts, and then they are
20 supported -- they are screwed onto the fence so it's a
21 double support. Okay. It's not just something I
22 screwed a stake to a fence. Okay. They are driven
23 into the ground basically like an extra post. Okay.

24 The -- it does seem unusual that the cameras

1 are on my side of the property and there's no cameras
2 on the other side. Okay. It's -- if you look at the
3 pictures, okay, I don't know which lanterns have
4 cameras in them. I know there's cameras there. Okay.
5 The City has seen them, has seen the pictures. Okay.
6 Zoning has seen the pictures. The lanterns are moved
7 daily as a form of harassment. Okay.

8 If you look at the pictures and you look at
9 the dates, you will see that the lanterns are not
10 always put in the same position and they are moved
11 daily.

12 The propane tanks is not a hazard. I have
13 been called out on that. The fire marshal and the City
14 came out and looked at them, and I am to code on
15 everything. My entire property is up to code. I built
16 my swimming pool that way. I extended my garage that
17 way. I've got a variance for it, unlike my neighbor
18 who just thinks they can put a carport up, no variance.

19 If you look at -- the survey is the thing.
20 Okay. There was a current survey. It's in the
21 pictures. The police department came out and took the
22 pictures of the stakes in the ground. Okay. If you
23 look at the packet of information, you will see that
24 there is a current survey. Okay. There's no question

1 about where the stakes are. The police -- the sergeant
2 came out and took the pictures when the survey company
3 was there.

4 I have a final comment. Okay. You are my
5 peers. I have no choice but to accept your decision,
6 but please consider my request based on this Code
7 1131.03, and the descriptions or conditions I have just
8 explained to you. I believe that I have met the
9 criteria of the ordinance in order for you to grant the
10 variance.

11 I understand the standard is six feet for
12 privacy fence, but there's a reason why the ordinance
13 1131.03 (sic) was established, to consider situations
14 that warrant an exception.

15 I look up -- I looked up the word privacy in
16 the dictionary. Privacy, the quality or state of being
17 a part from company or observation. Freedom from
18 unauthorized intrusion.

19 I pray you allow the variance so that I may
20 have privacy. Thank you.

21 MR. WINKLER: Thank you, Mr. Strohm.

22 At this time the appellee will have five
23 minutes for rebuttal if she wishes.

24 MS. PALEY: I believe that the properties

1 that Mr. Strohm referenced with eight-foot fences are
2 actually commercial properties. In fact, they back up
3 to Swan Cleaners on Granville Road. And the other one
4 is also commercial.

5 The propane tanks were only brought up
6 because if you put the fence that's right on the
7 property line with the propane tanks on the side of
8 them, yes, they are up to code and they probably aren't
9 a danger as long as the fence is at the level that it
10 is. But if it blocks that side of the carport and
11 something happens to the propane fence (sic), she can't
12 get out of her yard because the fence blocks her in.

13 And the bottom line is this will never
14 fulfill his needs. His need is to block himself from
15 cameras that don't exist. And if he truly believes
16 that Miss Bates is stalking him, then there are other
17 courts and systems that he can entertain, and he has
18 done that before.

19 Mr. Strohm and Miss Bates have been through
20 the judicial system several times with regards to these
21 issues. This is not the place for it.

22 You are affecting all the residents of
23 Gahanna if you grant a variance because of a dispute
24 between two neighbors. If it would resolve the

1 problem, I would be all for it, but it will not resolve
2 the problem because the pictures she does have of the
3 properties and the stakes were not taken from a camera
4 that is hanging on her door. They were taken from a
5 camera that she hung over the fence with her hands.

6 He is referring to pictures she took. Yes,
7 she did, and one of them she took for previous cases
8 and one of them was a criminal case that she took to
9 protect herself, which is legal, but those weren't
10 taken by the camera that's hanging from the carport
11 pointing at her back door. And this fence will
12 eliminate anybody's ability to take pictures outside
13 when they want to. However, if there is a legal
14 stalking issue, I encourage Mr. Strohm to pursue it.
15 Thank you very much.

16 MR. WINKLER: Thank you, counselor.

17 At this time the floor will be open for
18 members of the Board to put questions to the appellant
19 and the appellee. Miss Canter.

20 MS. CANTER: Mr. Strohm, has there been any
21 consideration of any other form of blockage that you
22 are trying to block your neighbor from seeing into your
23 property that we can accomplish by either tree,
24 vegetation, bush, awning? Anything other than this

1 two-foot structure?

2 MR. STROHM: There's not enough -- that's why
3 I urge you to visit the property. Okay. If I was to
4 put tall trees, there's just not enough room with my --
5 the way my pool is put in.

6 MS. CANTER: How much room is there between
7 the pool and the fence?

8 MR. STROHM: There's a wall that goes around
9 my fence. Okay. And there's probably about six foot
10 from the wall to the fence.

11 MS. CANTER: And arbor vitae won't fit in
12 that?

13 MR. STROHM: I wouldn't -- I have -- with the
14 flower bed that I have in there I have about a foot and
15 a half for my lawnmower.

16 MS. CANTER: There's no -- is there no other
17 alternative since you are saying you can't do
18 vegetation? You can't do a tree, and you can't do a
19 bush. What else can you do?

20 MR. STROHM: There's no other alternative.
21 Okay. I am just trying to get some peace here and
22 enjoy my backyard.

23 MS. CANTER: I just feel like you are saying
24 that this two-foot addition is the only alternative to

1 this.

2 MR. STROHM: I am open to suggestions but,
3 you know, I don't see how. I've got my drain -- my
4 pump lines and my jets and everything go up that side
5 also to my pump from the pool.

6 MS. CANTER: You have installed all of that
7 that is prohibiting using that area to put in a natural
8 buffer or a natural visual block so, I mean, that's
9 something that you have constructed and now we can't --
10 you could have had this buffer, you could have had this
11 blockage by not -- you have created this situation too
12 yourself.

13 MR. STROHM: I didn't create the carport,
14 ma'am.

15 MS. CANTER: Excuse me?

16 MR. STROHM: I didn't create the carport.

17 MS. CANTER: I didn't say you did.

18 MR. STROHM: That wasn't even approved by the
19 City.

20 MS. CANTER: We are not talking about the
21 carport. You are asking for a two-foot --

22 MR. STROHM: I'm just saying I don't want to
23 risk digging up lines and everything else. There's
24 like eight or nine lines that run to my system up

1 there, filter, heating and so forth. One of them is
2 the propane line that goes from the tanks to the
3 heater.

4 MS. CANTER: Again, that's all you have put
5 in. You have made a decision to do this.

6 MR. STROHM: That is right. Okay. And
7 that's why I said the only alternative I know of to get
8 some peace and separate myself from this nightmare of
9 my neighbor is to extend my fence where I could have
10 some privacy.

11 MS. CANTER: I was just asking, is there no
12 other alternative and you are saying no. Thank you.

13 MR. WINKLER: Miss Canter, do you have any
14 further questions?

15 MS. CANTER: No thank you.

16 MR. WINKLER: Mr. Jensen?

17 MR. JENSEN: None at this time.

18 MR. WINKLER: Mr. Adjoua.

19 MR. ADJOUA: Mr. Strohm, I am trying to make
20 sure I can conceptualize here -- seems like there is a
21 white lower fence and there's a gap in the fence there.
22 I am looking at picture C if you look at your
23 attachment.

24 MR. STROHM: That fence was -- the white

1 fence is not there anymore. Okay. That was a -- she
2 tore down the fence because she thought it was on her
3 lot line, on her property so the City said I had to
4 secure my pool so I put a white picket fence up until I
5 could resolve the issue with the lot line. Okay.

6 MR. ADJOUA: So you are saying the white
7 picket fence is no longer there?

8 MR. STROHM: No. If you look at Exhibit D,
9 that's the replacement.

10 MR. ADJOUA: So you replaced that?

11 MR. STROHM: I didn't but Miss Bates did to
12 avoid criminal charges in court. I agreed with the
13 prosecutor to settle.

14 MR. ADJOUA: How long is that -- is your
15 proposed eight-foot fence? How long would it be?

16 MR. STROHM: There's -- I don't -- my
17 property has a -- up by the shed is the high part of my
18 property and it slopes down. Okay. So what I was
19 looking at doing was extending the fence about six
20 sections of fence, or two feet on the six sections not
21 all the way to the end of my filter.

22 That -- again, I wish you all could have come
23 out and seen the situation. You would have been able
24 to see what I am talking about.

1 If you look at B 2, that might give you a
2 general idea how the slope is on the property. You can
3 see that the shed -- B 2, number four. That's -- it
4 shows where the white picket fence was. It goes up
5 toward the shed. Does that help?

6 MR. WINKLER: Do you have further questions,
7 Mr. Adjoua?

8 MR. ADJOUA: Miss Paley indicated that you
9 and your neighbor had originally built this fence
10 jointly.

11 MR. STROHM: That is not true. I do have
12 receipts that I purchased this fence. I even have bank
13 statements where the check cleared. It shows that.
14 Okay. I guess when you get elderly you forget things,
15 but Miss Bates asked me when I bought my fence, okay,
16 if I would buy additional sections for her for her back
17 property, which would be the east side of her property
18 in the back to where my shed is. And I did purchase
19 those sections when I bought my fence for this entire
20 line. Okay. And I actually gave my old fence to her
21 daughter. And I helped put that back fence up on her
22 property. So that's totally incorrect. I mean, we are
23 talking -- this is -- we are kind of getting out of
24 line -- out of --

1 MR. ADJOUA: How long ago did you all put
2 this fence up?

3 MR. STROHM: The fence was -- I have lived in
4 my house since '89 and that privacy fence was already
5 up, but it has been replaced by me. My entire fence
6 around the entire property has been replaced by me.

7 MR. ADJOUA: Yeah, when was that done?

8 MR. WINKLER: When was the new fence done?

9 MR. STROHM: Off the top of my head, I will
10 say '98.

11 MR. ADJOUA: When did you put your pool in?

12 MR. STROHM: In 2008.

13 MR. ADJOUA: So before then it was no pool?

14 MR. STROHM: Yes, I had an above-ground pool
15 before then. There's always been a pool at my house.

16 MR. ADJOUA: Does your insurance require a
17 certain height of fence, your home insurance policy?

18 MR. STROHM: No, but the City does.

19 MR. ADJOUA: Is there a gate located for
20 access, and where would that gate be in regards to the
21 fence?

22 MR. STROHM: The gate to the backyard is --
23 if you look at number C, it's right to the right of the
24 propane tanks.

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MR. ADJOUA: I have nothing further at this moment.

MR. WINKLER: Any questions?

Mr. Strohm, can you tell me what is your basis for believing that there are cameras that she has been hanging on that side of the property? I believe counsel demonstrated an object which she said is lanterns that are being hung. Does that resemble what you have seen being hung in the backyard?

MR. STROHM: Well, there is also -- let me see if I can look at the picture. Look at Exhibit E and you look at the blue lanterns and right next to it is a camera. Also G might be a better angle. Right next to the green -- between the green and blue would be correct.

MR. WINKLER: We do have the pictures but they are in black and white.

MR. STROHM: Oh, it's between one and two.

MR. WINKLER: Exhibit G, I see a chain hanging down in the picture and I see objects to the left and right of it.

MR. STROHM: That's right.

MR. WINKLER: Which of those is the camera that you identified?

1 MR. STROHM: In the middle.

2 MR. WINKLER: Oh, I see. And that's -- you
3 say that that camera is moved?

4 MR. STROHM: These objects are moved daily.

5 MR. WINKLER: What I am asking is what is
6 your basis for believing that there are cameras in the
7 lanterns also?

8 MR. STROHM: I have actually physically
9 seen -- the attorney showed a picture of one of the
10 lanterns.

11 MR. WINKLER: She probably --

12 MR. STROHM: But there's also -- she didn't
13 include the part that goes inside the lanterns. She
14 just showed you a lantern.

15 MR. WINKLER: Mr. Strohm, appellee, I
16 believe, is physically present. We have a court
17 reporter. Would you be satisfied if she were to
18 testify under oath on the record that she did not have
19 cameras pointed at your house?

20 MR. STROHM: Sure.

21 MR. WINKLER: In that case, I would like to
22 call the appellee if she is present.

23 MR. STROHM: Well, you know, this is just one
24 visit. Keep in mind the cameras are moved and taken

1 down and moved daily.

2 MR. WINKLER: I understand. The Chair calls
3 the appellee.

4 - - -

5 The oath was administered to the appellee.

6 - - -

7 MR. WINKLER: Would you state your name and
8 address for the record?

9 MS. BATES: I am Alveta Bates. I live at 100
10 Jahn Drive, Gahanna.

11 MR. WINKLER: You are the appellee in this
12 matter?

13 MS. BATES: I am.

14 MR. WINKLER: And the neighbor of appellant
15 Mr. Strohm?

16 MS. BATES: Yes.

17 MR. WINKLER: And you heard what Mr. Strohm
18 said today regarding cameras located on your property?

19 MS. BATES: Yes.

20 MR. WINKLER: And his statement that he
21 believed you moved the cameras around?

22 MS. BATES: Yes.

23 MR. WINKLER: Do you, in fact, have cameras
24 pointed at the property?

1 MS. BATES: No. I have three solar-powered
2 lanterns and I move them every day. I have them on
3 hooks every day because I have -- the rooflines of the
4 houses are low and I have hooks out there and the sun
5 comes in from the west and powers those lanterns so I
6 move them underneath the patio at night. And, of
7 course, at night they light up blue, green, and orange.

8 I do have another lantern that is hanging
9 there, too, as well and it is a glass lantern. That
10 lantern has no camera in it, but it will take a candle.
11 I mean, it's -- in effect if we were to lose power, I
12 could stick a candle in there and I would have some
13 light on that back porch because it's dark there.

14 Other than that, I do have cameras but
15 neither camera has been pointed at -- pointed at
16 Mr. Strohm's house.

17 My attorney, Sean Maxfield, validated that
18 when the criminal charges were placed against me for
19 breaking the pickets on that fence.

20 I don't know what else to say.

21 I -- when Mr. Strohm had an above-ground pool
22 I didn't watch him. I might see kids that would use
23 his pool when I would come home from work before I
24 retired, but, I mean, I never peeked over. I don't

1 peek over now. I am not -- I am truly not interested.

2 I have planted some beautiful Japanese maples
3 over the last couple of years to create a green barrier
4 between our properties. They are now above the fence
5 line. The only reason that that particular area is
6 not -- I don't have a green barrier there is because
7 the former owners put in an asphalt driveway that goes
8 clear down to the back. And I have planted arbor
9 vitae in large pots.

10 MR. WINKLER: Miss Bates, your counsel
11 already put forward your case.

12 MS. BATES: What else? What else do you
13 want? Anything else? Just don't get me started. It's
14 hard to stop.

15 MR. WINKLER: It's your testimony you don't
16 have any cameras inside of lanterns?

17 MS. BATES: No, absolutely not.

18 MR. WINKLER: And you do not have any movable
19 cameras?

20 MS. BATES: No.

21 MR. WINKLER: And you don't have any moveable
22 cameras at all?

23 MS. BATES: No.

24 MR. WINKLER: And you do not have any cameras

1 pointed at Mr. Strohm's house?

2 MS. BATES: I had a camera pointed at
3 Mr. Strohm, and Bonnie Gard was aware of it when we did
4 a survey and a check on my property probably three
5 years ago.

6 MR. WINKLER: Are you referring to a
7 hand-held camera that you just took a picture or are
8 you referring to something that was mounted on a
9 building?

10 MS. BATES: No, it wasn't mounted. I was
11 able to move it. Because there was so much discrepancy
12 in the police calls it was just exasperating. And I
13 knew that as soon as Bonnie and the Mayor's assistant
14 left my house, that he was going to figure out a way to
15 discredit what we were doing. That was the only time.

16 MR. WINKLER: I see. Any other members of
17 the Board have questions for Miss Bates?

18 MR. ADJOUA: Miss Bates, are you presently
19 involved in any litigation with Mr. Strohm?

20 MS. BATES: No.

21 MR. ADJOUA: Is there any anticipated
22 litigation? Do you know of anything with Mr. Strohm?

23 MS. BATES: Unless he -- unless he proposes
24 it.

1 MR. ADJOUA: Not on your -- your part you are
2 saying?

3 MS. BATES: Not on my part, no.

4 MR. ADJOUA: I have nothing further.

5 MR. WINKLER: Thank you.

6 MR. ADJOUA: I have a question of Miss Gard.

7 MR. WINKLER: Miss Gard, do you mind taking
8 the stand?

9 MR. ADJOUA: Miss Gard, on May 18th, 2012,
10 you wrote a letter regarding the zoning issue, and if I
11 can quote here, it says, "It is my opinion that a
12 special circumstance exists in this case and that a
13 variance for the height of the fence may bring relief
14 to both neighbors." Would you expand on your
15 recommendation on May 18th? Was that your same
16 recommendation?

17 MS. GARD: I felt that there was a special
18 circumstance given that the carport on Miss Bates' home
19 is very, very close to the property line. I felt that
20 was a special circumstance of the building on her
21 property, and that Mr. Strohm had little room to put
22 any sort of green planting, shrubbery. Certainly this
23 is not the first time we have discussed this.

24 We have tried to find solutions to eliminate

1 this tension between the two neighbors. We have tried
2 to find the solution for several years. It has not
3 been forthcoming.

4 With the number of police reports and the
5 time spent on this particular involvement between the
6 two neighbors it's been costly to the City. And if
7 there's some way that this can be abated, I believe
8 that there exists special circumstances on probably
9 both of these properties.

10 MR. ADJOUA: Okay. It says greater than six
11 feet in height. Would a lower, inside of seven feet,
12 would that be more appropriate than eight feet; do you
13 think?

14 MS. GARD: That was Mr. Strohm's request for
15 the eight feet. Would it be more appropriate? I don't
16 know that a foot would make much difference.

17 The Planning Commission has on other
18 occasions granted height variances for fences. This is
19 not atypical -- an atypical request. The Planning
20 Commission has in the past felt that special
21 circumstances have existed for things like dogs,
22 unfortunately, and they have granted placement
23 variances and height variances for other situations
24 that seem to have no other solution.

1 MR. ADJOUA: Thank you.

2 MR. JENSEN: You mentioned police. How many
3 times -- I mean, there has been police. How many
4 police --

5 MS. GARD: I can't answer that question, sir.
6 You would have to check with the police department.

7 MR. JENSEN: But more than once?

8 MS. GARD: Yes.

9 MR. WINKLER: Any other questions for
10 Miss Gard? Thank you. You may step down.

11 Any other questions from the members of the
12 Board at all?

13 MR. JENSEN: Mr. Strohm, so is eight feet
14 going to be -- solve the problem? If the police
15 department were here saying there's been these ongoing
16 issues over the years, is eight feet going to solve the
17 problem or is it going to be back in in another year
18 and --

19 MR. STROHM: Eight foot would solve the
20 problem.

21 MR. JENSEN: Why not ten foot?

22 MR. STROHM: Eight foot should be sufficient.
23 The normal person is six foot. Okay.

24 MR. JENSEN: Then if the normal is six foot,

1 why wouldn't six foot be sufficient?

2 MR. STROHM: Because you can get on a step
3 stool and look over. I mean, you can get on a ladder.

4 MR. JENSEN: You can get on a step stool and
5 look over eight foot.

6 MR. STROHM: Eight foot should be sufficient
7 especially in the corner where the propane tanks are
8 and so forth and the problem with the carport and so
9 forth. I believe it would give peace to the
10 neighborhood.

11 MR. JENSEN: If you were granted the appeal,
12 you are not going to be coming back in another year or
13 another six months for something else?

14 MR. STROHM: That's right.

15 MR. WINKLER: Any further questions from
16 members of the Board?

17 MR. JENSEN: No, sir.

18 MR. WINKLER: At this time the Chair will
19 entertain comments from the members of the Board.
20 Miss Canter.

21 MS. CANTER: Mr. Chairman, in my opinion, I
22 don't believe that the conditions have been met for
23 1131.03. I don't believe there are special
24 circumstances applying to the land building for use.

1 It's a home. It's a fence. It's been -- the six-foot
2 fence limitation has been established by the City as an
3 acceptable height, and I think the perception of the
4 neighbor spying is not a special circumstance.

5 The granting of part B that the granting of
6 the variance is necessary for the preservation and
7 enjoyment of substantial property rights, it's still a
8 home. He still has a backyard. He can use those. And
9 I don't find that he is being denied substantial
10 property rights.

11 And C, that the granting of the application
12 will not materially affect adversely the health or
13 safety of the persons working or residing in the
14 neighborhood.

15 The neighbor has stated that she feels the
16 eight-foot fence would adversely affect her, and I
17 believe she has some weight in this matter, so I would
18 not be in support of approving this variance. Thank
19 you.

20 MR. WINKLER: Thank you, Mr. Canter.
21 Mr. Jensen.

22 MR. JENSEN: Well I would probably be leaning
23 in favor of the appeal because in light of the extended
24 circumstances over the years it sounds to me like the

1 settlement of the eight foot is going to solve the
2 problem and you won't be having any more of these
3 issues in the future, and also based upon where
4 Miss Gard made the recommendation as well as both the
5 water works sources and City engineer both saw no major
6 impact. I would be finding on behalf of the appellant.

7 MR. WINKLER: Thank you, Mr. Jensen.

8 Mr. Adjoua.

9 MR. ADJOUA: I concur with Mr. Jensen, and I
10 respectfully disagree with my colleague. I think that
11 there are some special circumstances conditions and to
12 say whenever people can't resolve their differences
13 because you are neighbors I think there are special
14 circumstances and you know that there's been a history
15 of some discomfort between the two neighbors. I think
16 that he does have a right to enjoy his property. I
17 don't worry about cameras or those things. I think
18 when you look at it it materially affects the health
19 and safety of not only their neighborhood but people in
20 this community if the police are going out responding
21 to these sort of issues when we can get rid of this
22 thing. If this is going to resolve it, and as Robert
23 Frost said, "Fences make good neighbors," and I think
24 this is an instance where granting this variance,

1 hopefully, will finally make them good neighbors
2 because they can't see each other and maybe out of
3 sight is out of mind.

4 MR. WINKLER: Thank you. The Chair wishes to
5 express its annoyance with Mr. Adjoua because it was
6 going to use the Robert Frost quote.

7 After hearing the presentation today, I feel
8 I must concur with Miss Gard's recommendation. In the
9 first place, this is what fences are for.

10 And in the second place, this seems to be
11 what variances are for. These are special
12 circumstances, and they seem in this case to be
13 extraordinary circumstances.

14 The Chair has no further comment to make.

15 At this time the Chair will entertain a
16 motion to grant the appeal BZA-0002-2012.

17 MR. ADJOUA: Mr. Chairman, I make a separate
18 motion to grant the variance as requested by
19 Mr. Strohm, 0002-2012.

20 MR. WINKLER: Do I hear a second?

21 MR. JENSEN: Second.

22 MR. WINKLER: The clerk will call the role.

23 MS. JERNIGAN: Adjoua.

24 MR. ADJOUA: Yes.

1 MS. JERNIGAN: Jensen.

2 MR. JENSEN: Yes.

3 MS. JERNIGAN: Canter.

4 MS. CANTER: No.

5 MS. JERNIGAN: Winkler.

6 MR. WINKLER: Yes.

7 MS. JERNIGAN: Motion is carried.

8 MR. WINKLER: The motion is carried. The
9 appeal has been granted. The Chair would note again
10 with caution this Board has no power to grant you the
11 permission to build the fence on property which is not
12 your own. We have merely the power to grant you
13 authority to if you build a fence, to have it be
14 eight feet in height. Anything else does not come from
15 our end.

16 Any further business before the Board
17 tonight?

18 MS. PALEY: Can I ask for clarification? Are
19 you approving the plans that he submitted also so you
20 are allowing it to be attached to the fence then?

21 MR. ADJOUA: I think we may -- that's a good
22 point. I thought about that. Miss Gard, would you
23 speak to that?

24 MS. GARD: I will ask Mr. Strohm to submit a

1 fence permit so that we may review that prior to any
2 installation of the fence.

3 MR. ADJOUA: And I would amend my motion if
4 necessary and make a motion that before any fence is
5 erected that Mr. Strohm submit to the proper zoning
6 officials proposed fence plans to be so approved before
7 such construction is built.

8 MR. WINKLER: Counsel.

9 MS. PALEY: I would like to add that
10 Miss Bates does not oppose him building a separate
11 fence eight foot in height that is not attached that
12 would be on his property line. She has never opposed
13 that. It's the attachment that we are opposing.

14 MR. WINKLER: I think it's two different
15 matters here. His application for variance has been
16 granted on appeal. That means that what he applied for
17 in his application for variance is granted. However,
18 the question of obtaining the fence permit to construct
19 or amend any particular fence is, as I understand, a
20 separate matter for which he would need a fence permit.

21 MS. GARD: That is correct.

22 MR. WINKLER: That is the understanding of
23 the Chair and I think that is the understanding of the
24 Board.

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MR. ADJOUA: That's correct.

MR. WINKLER: Is there any other business before the Board of Zoning Appeals?

MR. ADJOUA: I make a motion that we adjourn.

MR. JENSEN: Second.

MR. WINKLER: I hear a motion that is seconded. This hearing is adjourned.

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The hearing concluded at 7:32 p.m.

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CERTIFICATE

State of Ohio :

SS:

County of Franklin:

I, Robin E. Allen, Notary Public in and for the State of Ohio, duly commissioned and qualified, certify that the foregoing proceedings were taken down by me in stenotypy in the presence of said witnesses and parties, afterwards transcribed upon a computer; that the foregoing is a true and correct transcript of the proceedings taken at the time and place in the foregoing caption specified; and that I am in no way related to or employed by any attorney or party hereto, or financially interested in the action, and I am not, nor is the court reporting firm with which I am affiliated, under a contract as defined in Civil Rule 28(D).

IN WITNESS WHEREOF, I have set my hand and affixed my seal of office at Gahanna, Ohio, on this 6th day of August, 2012.

Robin E. Allen (Not)

Robin E. Allen Notary Public
in and for the State of Ohio

My Commission Expires June 30, 2014