



Scott County Board of Adjustment

May 22, 2013

1st Floor Board Room Administrative Center

Members Present: Hittle, Gallin, Dittmer, Scheibe

Members Absent: None

Staff Present: Timothy Huey, Brian McDonough, Chris Meeks

Others Present: Daniel Rebarcak (applicant), Burnette Marten (adjacent property owner)

1. **Call to order.** Chairman Scheibe called the meeting to order at 4:00 P.M.
2. **Minutes – Hittle made a motion to approve the April 24, 2013 minutes. Gallin seconded the motion. All Ayes (4-0)**
3. **Public Hearing – Special Use Permit** – Daniel Rebarcak of 17860 290th Street, Section 13 of Winfield Township

Director Tim Huey presented staff's review of the case. He explained that the applicant is requesting a special use permit in order to construct an eight (8) foot high privacy fence along the entire length of his eastern property line. The Scott County Zoning Ordinance requires that privacy fences on A-P zoned land must not exceed six (6) feet in height in side and rear yards, and must not exceed three-and-one-half (3½) feet in height in any front yard. The Zoning Ordinance also stipulates that any fence or wall shall not obstruct traffic visibility. Huey explained that requests for exceeding fence height requirements are reviewed as special use permits, and not as variances. Variances are judged on hardship, while special use permits are reviewed based upon the impact on the surrounding neighborhood. Huey states that the ordinance was amended in the past to ensure that requests to exceed fence standards be reviewed as special use permits. He explained that it is difficult to prove hardship in any situation involving fences, and that reviewing such requests in accordance with the potential impact upon the surrounding neighborhood is more reasonable.

Mr. Huey showed aerial and site photographs of the applicant's property, as well as showed the applicant's submitted site plan showing the proposed location of the fence. He explained that the property is an approximately one (1) acre farmstead which has been split off and separately sold from the forty (40) acre tract of farmland on which it resides. Huey explained that the application lists the future construction of an anhydrous ammonia retail distribution facility just to the east of the property as the reason for this request.

Huey explained that a five (5) acre tract of land approximately 600 feet to the east of the applicant's property was recently rezoned to Agriculture Service Floating Zone (A-F) to allow for the establishment of an anhydrous ammonia retail distribution facility. He noted that no construction plans have been submitted and work on the site is not underway at this point. Huey explained that the reason for a three-and-one-half (3½) foot maximum front yard fence height is to ensure proper visibility for cars entering the roadway, especially backing onto the road. Huey stated that the applicant's driveway allows for cars to turnaround, and therefore that concern related to backing cars is largely mitigated.

Huey stated that notifications of this public hearing were mailed to property owners within 500 feet of the applicant's property. Also, a sign with the date and time of the public hearing was posted on the property. Huey explained that the County Engineer and County Health Department were notified of the request. The Health Department had no comments or concerns. The County Engineer did have a minor concern that the fence may create an increase in drifting snow on 290th Street, but also noted that the mature conifer trees along the applicant's western property line should alleviate most of that concern.

Staff paused for Board discussion and public comments before presenting its recommendation.

Chairman Scheibe opened a public hearing, and asked if the applicant or anyone from the public wished to address the Board.

Daniel Rebarcak (applicant): Mr. Rebarcak commented on his reasoning behind the request. He stated that he moved to the country for "country living" and that he and his family did not want to see the anhydrous ammonia retail facility next door. He stated that the facility, when constructed, would be within plain sight of his property at all times. He mentioned that one of his family members has a condition that could be complicated by the stress of seeing the facility. This is why he wishes to construct the fence in excess of the maximum allowable heights. He did not think that traffic visibility would be affected, because he plans to stop the fence at the edge of the road right-of-way. He asked the Board to consider approving this request.

Burnette Marten (neighboring property owner @ 18388 290th Street): Ms. Marten explained that she received a notice in the mail and wanted to observe the meeting. She said that the applicant can do whatever he wants. She asked Mr. Rebarcak if the fence would stop before the road. He said it would terminate at the edge of the road right-of-way. Ms. Marten stated that the fence would be less problematic compared to other properties nearby which have large trees right next to the road right-of-way. She was not opposed.

With no one else from the public was present to speak, Chairman Scheibe asked for staff's recommendation.

Mr. Huey presented staff's recommendation for approval of the special use permit allowing the maximum allowable heights for a privacy fence in the rear, side, and front yards of the

applicant's property to be exceeded. The recommendation for approval is based upon the proposed location of the fence, the minimal impact upon surrounding properties resulting from this action, and the fact that any impact upon future development is unlikely due to Scott County's Land Use Policies and Zoning Ordinance regulations in agriculturally zoned areas. Staff recommends approval with the following two (2) conditions:

- 1) The fence shall be constructed in accordance with Zoning Ordinance regulations, so that the finished or covered side of the fence faces outward and away from the applicant's property.
- 2) No part of the fence shall extend into the County road right-of-way along 290th Street.

Chairman Scheibe asked Mr. Rebarcak if he wished to respond to the recommendation by staff.

Mr. Rebarcak briefly stated that he had no objections to the recommendation or conditions.

Board member Dittmer asked the applicant if he had considered plantings as an alternative to a fence. He conceded that obviously they would take time to mature before serving as an adequate buffer.

Mr. Rebarcak responded that plantings were a consideration, but the time it would take for evergreens to grow to an effective height for buffering ultimately made him decide on a privacy fence.

Chairman Scheibe asked staff for clarification on the different review criteria between variance and special use permit applications. He further asked if there would be a timing issue given that Crop Production Services had not yet begun construction on the anhydrous ammonia site. Scheibe was concerned with the possibility that the fence could be built prematurely, with the anhydrous ammonia site never being developed.

Mr. Huey responded that the staff report contained the criteria for review for special use permit cases. The Board needs to consider the impact upon the surrounding neighborhood in this case. Things to consider would include: character of the neighborhood, property values, adequacy of the County road to handle additional traffic, potential traffic hazards, impact on water table, waste handling and storm water runoff, potential of increasing base flood elevation, and other matters related to public health, safety, and general welfare. Because this is a fence and not an actual use, not all of these criteria would apply necessarily, Huey explained. Huey stated that the request could be denied if the Board determined a negative impact from the proposal. Otherwise they should approve based on this criteria. Huey also noted that while the Planning and Development Office had not yet received a building permit application from Crop Production Services, it was his understanding that they were still intending to develop the site.

Chairman Scheibe stated that without any building permits issued as of yet, there may be no need for the special use permit to be granted.

Mr. Rebarcak stated that he has been in contact with CPS, and that they are planning to develop the site.

Board member Gallin asked staff to clarify the distance from the applicant's property to the proposed anhydrous facility site. Huey stated that it is approximately 600 to 700 feet from the applicant's eastern property line.

Mr. Rebarcak concurred with that distance, and stated that this fence will help negate the close proximity of this facility.

Chairman Scheibe closed the public hearing, and a brief discussion by the Board took place. There was still a concern about the timing of the request, but general agreement that approval would minimally affect the neighborhood. It was agreed that granting this special use permit would not set a bad precedence, because the property is not located in a residential area.

Chairman Scheibe asked Mr. Huey about controlling the condition and maintenance of the fence if the request were approved.

Huey stated the height would be controlled, as well as the placement and construction once a building permit was obtained. He stated that the continual maintenance of the fence conditions could not be regulated.

Dittmer made a motion to approve the special use permit with staff's recommended conditions. Gallin seconded the motion.

Vote: All Ayes (4-0)

With no new business to discuss, the meeting was adjourned at 4:30 p.m.