

**TOWN OF NORTH HARMONY
ZONING BOARD OF APPEALS
WEDNESDAY, 12/14/11, 7:30 PM**

ZBA MEMBERS PRESENT:	JIM LEVESQUE	LOUISE ORTMAN
	HELEN EMICK (Alt.)	PAUL SILZLE
	DAN THOMAS (Alt.)	DICK BARTON
	GREG MICHALAK	ROGER VAILLANCOURT
	Dave Stapleton, Attorney	Brad Lawson, Zoning C.E.O.

Others Present: **Ralph Scott** **Will Ortman**

The hearing was opened at 7:35 PM. Mr. Stapleton swore in all present who expressed intent to speak.

- 1. Ralph Scott property owner of 3664 Watson Road, filing an Application to Reverse or Deny a Permit Decision of the Zoning C.E.O. for Permit #2011-0051 granted to Regis Thompson property owner at 3666 Watson Road (Section 332.16-1-2) to install a retaining wall 2' off the property line.**

Mr. Stapleton said this is an unusual case where the Zoning CEO issued a permit and an appeal has been made by a neighbor against the person who received the permit requesting an interpretation of the Zoning Law and whether or not Mr. Lawson's actions were in fact valid under the zoning law. Mr. Levesque asked whether the original permit was a case that required a ZBA hearing. Mr. Stapleton said no. He referenced ***Section 903 - Interpretation of the Zoning Law which states the ZBA has the power to interpret the meaning of this Zoning whenever called upon by the Municipal Board, Zoning Officer, or an aggrieved party. This shall include the power to reverse any order, requirement, decision, or determination of an administrative official or Board. This interpretive power shall include the determination of district boundary lines.*** He said Mr. Lawson is one of those officers referenced and when he makes a decision if an individual makes an appeal the ZBA has the authority to call a hearing on the matter, examine the facts and create a record of whether or not Mr. Lawson's actions were correct or incorrect.

Mr. Lawson gave background information regarding the application. He said a permit was given to Mr. Thompson on 8/11/11, to erect a retaining wall and change an existing retaining wall. He said the initial wall was constructed to hold back gravel and was located 3-4" from the property line. He stated that no permit for the construction of the original had been filed by Mr. Thompson. He said Mr. Thompson had come to him and he had spoken with him about it on several occasions in great detail. He said whenever someone comes to him about putting in a driveway, etc. there is always a discussion of the types of drainage including pervious and impervious construction materials and the routing of the water from the drain. He said he tells people they need to elevate their edges or curbing so that water will not drain to a neighboring property. He said a decision had been reached to lower the original wall shown in photo #2 and construct the wall as seen currently in photo #3 of Mr. Scott's application. He said his determination to give Mr. Thompson the permit was based on the town's interpretation of ***Fencing in Section 202*** which states the purpose of a fence is to prevent passage or view. He said the curbing does not prevent any type of passage or view. He said the intent by the owner was to hold back the gravel that the drain tile is installed under so it did not wash to the neighbor's property. He said he does not know yet how well the system will work. He said it has only been in since August and he has not yet been there to see how it works. Mr. Lawson read ***Zoning Code Section 618 Fences / Walls A.2. Permits – Fences shall be allowed up to 4' in height by right. Fence above 4' in height shall require a Special Use Permit and consideration***

will be given to visibility from adjacent properties, light, air movement, etc. Mr. Lawson said he felt that the construction that is there met none of the criteria in Sec. A.2. and in his estimation it is a curbing to hold

ZBA

12/14/11 (Pg. 2)

back drain tile and stone. He stated that the curbing and drain were professionally installed and he stands by his decision to issue the permit.

Mr. Scott said that Mr. Thompson had put up the original wall as seen in photo #2 taken in the fall of 2010 at a time when they were not in residence. He said they had spoken to Mr. Thompson about the property line issue in the spring of 2011 and Mr. Thompson had agreed to do something about it. He said all Mr. Thompson had done was take two courses of block off the wall as shown in photo #3 taken in fall 2011 and install another wall 2' from the property line. Mr. Scott stated that even though Mr. Lawson does not consider the construction a wall, he does. He said as far as the drainage on the new construction he does not yet know if it will work or if it will cause runoff onto his property as show with the original wall in photo #2.

Mr. Levesque asked if the puddle that is shown in photo #2 reoccurs with the new design. Mr. Scott said he does not know yet. Mr. Silzle asked if Mr. Scott gets run off from the Ortman property to the east. Mr. Scott said yes, but a drain had been installed to alleviate that problem. Mrs. Emick asked where the drain ends. Mr. Lawson said he does not know, but assumes it ends at the end of the ROW. Mr. Lawson said he had permitted similar designs in many places so it was not unfamiliar to him.

There was further general discussion of the construction design.

Mr. Levesque asked Mr. Scott if he could more specifically define his objection, is it causing hardship, detriment to property, etc. Mr. Scott said Mr. Thompson has been giving him problems for years and this is the first time he has formally complained. He said he feels that Mr. Thompson just went a little too far this time. Mr. Levesque said he and the board want to fairly understand his concerns and the issue at hand as far as what the detriments, hardship, etc. are. Mr. Scott said he cannot say at this time whether or not the construction will cause detriment. He said the law in the books says that construction of fences must be 2' off the line. Mr. Levesque said he had been to the property in question on Sunday and there appeared to be no puddles as far as he could see. Mr. Silzle said he had been to the property on Tuesday and there was no problem at that time. Mrs. Emick asked if his objection was to the first wall that was built. Mr. Scott said yes; there was nothing he could do about the second wall as it is 2' off the property line. Mr. Scott said he feels that the present design will still drain on his property. Mr. Stapleton noted that the initial wall in photo #2 does not extend nearly as far to the lake as the second wall in photo #3 does and there is more gravel installed. Mr. Lawson said probably so they (Thompson's) would have a better gravel walkway. Mr. Stapleton asked if the drain in photo #2 was installed at that time inside the curved wall. Mr. Lawson said yes. Mr. Stapleton asked if the drain had been moved. Mr. Lawson said the drain had been lowered from where it was in photo #2. The drain is currently located between the curbed wall and the higher wall as pictured in photo #3. Mr. Vaillancourt said the Thompson's leach field is located in the gravel area that is the parking lot and does not encroach onto the Scott's property. Mrs. Ortman asked what the purpose of the 2' setback on fences is in the Zoning Code. Mr. Lawson said there is nothing defined but usually it is so that there is space for the fence owner to maintain (paint, etc.) the fence. Mrs. Ortman asked what the definition of wall is. Mr. Stapleton said the dictionary states a wall is: *any of various solid upright structures serving to defend, protect, enclose, partition, support floors and roof, hold back earth, etc. and is longer than its height.* Mr. Lawson interjected that anytime an applicant is granted a permit his office still makes sure that the construction does what it was intended to do. He said if it does not work or affects a neighbor's property in an adverse way, the applicant will have to come back in for review and correct or

alleviate the condition. Mr. Lawson said he was not at the site to determine whether or not a dry well was installed at the end of the pipe which a common practice. Mr. Levesque read into the record the definition of ***Fence in Section 202 of the Zoning Code: fence – any artificially constructed barrier or vegetation barrier, such as a hedge, with the purpose or intent of preventing passage or view, thus providing privacy.***

Mr. Levesque summarized by asking if it is correct to say that Mr. Scott does not know whether the construction will be of benefit or detriment to his property. Mr. Scott said he does not know that yet. Mr.

ZBA

12/14/11 (Pg. 3)

Levesque asked if the construction will prevent passage or obstruct his view. Mr. Scott said no. Mr. Levesque asked if the construction would prevent any maintenance of Mr. Scott's property.

William Ortman was sworn in by Mr. Stapleton. He stated that he mows the grass for both the Scott's and the Thompson's and with the construction of the original wall it was no longer possible for him to get the riding mower in between the wall and the Scott's planter as shown in photo #2 and #3.

Mr. Levesque assured Mr. Scott that despite what the outcome of the hearing is, he still has an opportunity to rectify through the Zoning CEO any situation that does appear. He said if the board has incorrectly judged the functionality of the construction, Mr. Scott needs to make them aware of it so that it can be addressed if necessary through board action. Mr. Levesque asked if anyone wished to speak regarding the application.

There was lengthy discussion between the board and Mr. Stapleton on the format of the motion and the implications of a "yes" or "no" vote.

Mr. Levesque motioned to accept the application of Ralph Scott property owner of 3664 Watson Road to Reverse or Deny a Permit Decision of the Zoning C.E.O. for Permit #2011-0051 granted to Regis Thompson property owner at 3666 Watson Road (Section 332.16-1-2) to install a retaining wall 2' off the property line. Mr. Barton seconded. Mr. Levesque, No; Mrs. Ortman, Yes; Mrs. Emick, Yes; Mr. Silzle, No; Mr. Michalak, No; Mr. Barton, No; Mr. Vaillancourt, No. The motion was denied.

Mrs. Ortman stated for the record that her decision was not based on the interpretation of the functionality of the construction, but was based on the Zoning Ordinance and the definition of a "wall". Mrs. Emick stated for the record that her decision was based not on Mr. Lawson's decision, but on her understanding of the documents presented and based on the fact that the original action had not been discussed with the neighbor or permitted by the CEO and then had to be redone.

On a motion made by Mr. Levesque and seconded by Mrs. Emick, the hearing was adjourned at 8:30 PM.

Nancy M. Thomas
Town Clerk

