



Stanly County Board of Adjustment
January 12, 2021 - Meeting Minutes

Call to Order Chair Cindy Fish called the meeting to order on January 12, 2021 at 6:30 p.m. in the Stanly County Commons meeting room at 1000 N. First Street, Albemarle, North Carolina. Bob Remsburg served as Clerk of the meeting.

Stanly County Board of Adjustment Members attending Cindy Fish, Michael Efird, Tim Fesperman, Billy Franklin Lee, David Dulin, Richard Cosgrove

Absent: Devron Furr & Shannon Maynard

Mr. Remsburg stated that there were enough members present for a quorum to be held and members Devron Furr and Shannon Maynard were asked to be excused.

Stanly County Planning Staff Attending Bob Remsburg, Planning Director; Bailey Emrich, Planner I , Tim Swaringen, Zoning Code Enforcement Officer

Others Present: Vladimir Repinetsky, Lyubov Mayba, Stephen Beckers, Kesha Calvert, David Ferris

Chair Fish announced the purpose of this meeting was to consider case AR 21-01 a request by Vladimir Repinetsky and Lyubov Mayba for an appeal of a decision regarding the placement of a fence at their property at 36516 NC Hwy. 49, New London. The hearing on this matter is quasi-judicial hearing and it will be conducted in accordance with special due process safeguards.

Chair Fish outlined the statutory requirements that restrict the board to base its decisions only on testimony given under oath. Any person who swears falsely is guilty of a class 1 misdemeanor.

Chair Fish asked those testifying to come forward to be sworn in. Vladimir Repinetsky, Lyubov Repinetsky, Stephen Beckers, Kesha Calvert, David Ferris and Bob Remsburg were sworn in to be able to testify before the board.

Chair Fish asked if any of the board members had any possible conflicts and needed to withdraw from the case. No board members indicated a conflict.

Chair Fish opened the hearing and indicated that the order of business would be that first, we will hear from the Planning Department staff, then we will hear from the applicant and their witnesses and lastly we will hear from the opponents to the request.

Chair Fish asked the Clerk to present the case, AR 21-01.

Bob Remsburg shared the following:

Thank you Madam Chairman and the Board. We did have Mr. Repinetsky and his wife to make an appeal of a determination by code enforcement officer, Mr. Tim Swaringen. This is regarding the location of a fence on Mr. Repinetsky and his wife's property. There is an opaque fence located along the northern property line on Mr. Repinetsky's property located at 36516 Highway 49 New London. A portion of Mr. Repinetsky's property is located in the highway business district and according to Mr. Swaringen the fence is opaque and extends into the right-of-way into NC Highway 49. At the time we wrote the memo to the board, I was not aware that it was 6 feet and you may have seen it in the subsequent pictures submitted to you, that Mr. Repinetsky did make the adjustment and it is now a little over four feet at one portion of the fence that is currently painted green.

I have provided to you in the memo which I will submit as evidence to the board if you all will accept the documents that you received in the mail and Mr. Repinetsky also received this information in the mail for his case. The document included the definition of fences as from the ordinance as well as the requirements that fences shall not exceed a height of four feet in the front yard and eight feet of all other areas in the commercial district. The front yard for this section shall be defined as the section of the lot between the street right-of-way or easement extending back to the front yard setback in the specified underlying zoning district which in this case is the highway business district which requires a 40 foot front yard setback. Ultimately, this is the summary of the situation. The section that is zoned highway business as I said the fence height has been reduced by Mr. Repinetsky from 6 feet to 4.43 feet from just behind the brick mailbox. It increases slightly after the forty feet to almost 6 feet. The right of way for highway 49 is currently 100 feet. Again, I will show you some pictures.

Mr. Remsburg showed the board the pictures that had been taken in as evidence.

Mr. Remsburg asked the Board if they had any questions

No questions were presented at that time

Code Enforcement Officer Tim Swaringen shared the following:

We first got a report of this case and the violation back in April of 2020. At that time like Mr. Remsburg's photos showed, the fence was six feet in height and well into the right of way and that is when we cited the owners. The owners did drop the fence down to almost four feet in height but it is a little over four feet still. When I drove by and saw they had done that and, negligent on my part, I actually did not get out and measure the height of the fence. The fence panels are four feet tall but the panels in green are approximately four or five inches above grade in that area. Also, this is one of the better pictures that we have. That portion of the fence from the pine tree forward is the portion that needs to be removed completely. If you are looking at the taller section of the fence, the first and second red panel, right before the red and yellow panel meet is the forty foot mark from the right of way. So the fence needs to be brought back to four feet in height on average with the grade back to that point to be in compliance with section 413 of the zoning ordinance.

Chair Fish asked if the board had any questions for Mr. Swaringen

Richard Cosgrove asked "Mr. Swaringen you are saying that the fourteen feet back to the pine tree has to be removed?"

Mr. Swaringen stated "Yes, I actually think it is a little closer to twenty feet from the mailbox back to the pinetree. Back to that yellow and third red panel, where they combine is the forty feet."

Mr. Cosgrove asked "So the fence can stay as long as it is four feet or less. So what do you think about when you put the tape measure on it and it is four feet three inches? I understand that if the ground goes down you try to keep a level fence, do you contend that it has to be four feet from the ground up?"

Mr. Swaringen stated "Yes, that is the interpretation that we have had for at least twelve years. It has to be maximum of four feet above the average grade. There are some portions of the fence that the four foot panel takes an average of 4.3 feet and the shortest height was about 49 almost 50 inches. I found that the highest point was four feet six inches".

Brenda Farmer asked "Are you talking about moving the fence back from the road as well?"

Mr. Swaringen stated "Yes, in one of the photos you can see the trunks of the leland cypress behind the fence and there is one photo in the file that you have a copy of where the cone in this image is marking the right of way and looking the other way once you get to that fourth tree trunk that is where it is approximately twenty feet from the right of way."

Brenda Farmer asked "How far do you think this is from their home? From outside of the road right of way to where they are going to have to move the fence?"

Mr. Swaringen stated "I would guess nearly 400 or 500 feet."

Brenda Farmer asked "what is this building that we are looking at ?"

Mr. Swaringen stated "The pond is on their property, the house next door is the one you see up near the street. That house was built prior to county zoning so it is grandfathered in or is a legal nonconformity."

Brenda Farmer asked "So this fence is not going across the front of the road? The road frontage?"

Mr. Swaringen stated "No, the front of the property is not fenced and their residence is behind several hundred feet."

Chair Fish asked if there were any other questions.

No more questions were presented at that time.

Chair Fish invited the applicant and/or attorney to come forward

Mr. Repinetsky shared the following:

The basis of my appeal is that the fence is now four feet and I had an inspector come out and look at my driveway and he said that the fence was okay. The reason I put the fence up in the first place was because the neighbors have business that are dog grooming and an ice cream shop and his dogs are always loose and they attacked my son who has health problems and also attacked me. They don't have proper fences for their dogs, they have chicken wire up for a fence so the dogs always get lose. We have the fence to protect us and my mailbox is very close by and it is in this spot because it is the only place I am comfortable enough to get my mail from.

We cannot come to the mailbox until we are safe. We have children and if you look at the property next door it is not safe. The sheriffs office recommended I put the fence here for safety. I had my fence at six feet tall and then I talked to Tim and he said move it down to four feet. I made it four feet and the second time he came and complained again and made me cut it down again. I cannot always do this every two or three months because he wants it like this. I want safety, number one for my wife, kids and me. My neighbor has this building in front of his house that is closer than sixty feet from the highway, which is an ice cream shop. They should have to move 100 feet away from the road. They have to move this ice cream shop further away because by law it is supposed to be thirty feet from my property and it is not. He hooked up electricity without a permit for his ice cream shop and also without a license. He connected to the water line and septic also without a permit, I do not know how they are allowed to do these two businesses without proper permits. The fence was made for safety and nothing is wrong with the view, it does not harm anyone.

Chair Fish asked if there were any questions for Mr. Repinetsky

Richard Cosgrove stated "I think it is interesting, all of those extra things you mentioned but that is not the case we are here to listen to. The case we are here to listen to only involves the fence. If you think there is a problem with all of the things you mentioned you need to bring that up with someone else. We are just here to listen to the part about the fence."

Mr. Repinetsky shared pictures of the fence and the neighbors property.

Mr. Repinestsky stated "This fence is here to protect us from those dogs that come and attack the kids. I have a special needs boy and my wife went and got the mail and the dog attacked her. My son could not eat for one week because he was so scared of the dog. We have to care about the children first."

Chair Fish stated "We understand that, but the reason for this hearing today is to discuss the appeal of Mr. Swaringen's decision that the fence is not in compliance with the regulations as far as the height and the setbacks. If there are other issues with the dogs and the safety then that is for another party such as the sheriff's department."

Mr. Repinetsky stated "When we complain I do what he asked. I met with Tim in his office and he said change the fence to four feet. Then I changed it and now he wants me to completely remove it. I do what is asked of me".

Richard Cosgrove stated “Let’s assume that the fence is four feet even though it is higher than four feet. Then you have the problem about the setback which is also an issue here tonight”.

Mr. Repinetsky stated “ I have it setback 30 feet off of the road.”

Richard Cosgrove stated “ You have two issues. One is your fence is too tall and the other one is your fence is too close to the road” Mr. Swaringen has been out there and has stated that the fence falls into the right-of-way”.

Mr. Repinetsky stated “No, that is not true, I have measured it many times”.

Richard Cosgrove stated “I live on Highway 49 as well, and we are not allowed to build anything on the right-of-way. Your fence did not use to be there, it is a relatively new fence. It appears to be encroaching on the right-of-way.”

David Dulin stated “I know you said that you have some issues with dogs, and did you call animal control or the sheriff’s office to come out?”

Mr. Repinetsky stated “We called a couple of times but they recommended that I build a fence”.

David Dulin asked “The sheriffs office are the ones who told you to build a fence?”

Mr. Repinestky stated “Yes, they said to build it to make sure I do not have to see the neighbors. They said they were sick and tired of coming out here every time something is wrong.”

David Dulin asked “When the sheriff’s office advised you to build a fence did they give you the dimensions to build the fence? What dimensions did they give you?”

Mr. Repinetsky stated “They said build a tall fence and make sure they don’t see you and you don’t see them so they don’t bother you. He attacked me one time and I called the sheriffs and he went to prison and we are suing him now. I have a case with him and it is still open.”

David Dulin stated “I don’t think the sheriff’s office told you wrong by saying to build a fence, you do need one. We are here today to have that fence corrected and in the correct setback. Did Mr. Swaringen show you where you were not in compliance?”

Mr. Repinetsky stated “Yes, and I went out and measured where he marked and it is wrong. I went out there and measured a second time with my wife and it was wrong.”

David Dulin stated “So you are saying his measurements are wrong, is that correct?”

Mr. Repinetsky stated "Yes, the inspector never called me to come. He just marked and measured without me. He is supposed to call me and measure together when he comes to my property."

Brenda Farmer asked "The road right-of-way is 50 feet from the road, correct? Does he understand that?"

Mr. Swaringen stated "I think so, yes. He should."

Brenda Farmer stated "Well, if it is 16 feet from the side of the road back, is what he said he had and he only needs 15 feet from what he is saying then the road is not that long. It would need to be more than 15 feet. Mr. Swaringen is saying that the fifty feet from the center of the road is the setback and you are saying you only need 15 feet."

Mr. Swaringen stated "If you look at your monitors, from the yellow line to the property line is 50 feet. That is where the fence needs to stop. Then, forty feet from that point back, where the red line is and where the red and yellow panels meet."

Brenda Farmer asked "Okay, so he needs to take out three panels right there and then put up shorter ones. Does he have to move anything out from the road or is it okay where the fence stops by the mailbox?"

Mr. Swaringen stated "That portion from the mailbox and count back to the foruthe tree back to the black panel, that needs to be completely removed because it is all in the right-of-way".

Chair Fish asked if there were any further questions

No more questions were presented at that time

Chair Fish asked if there was anyone else who wanted to be heard in support of the appeal

Lyubov Mayba stated "We come here today to tell you that we are coming from the big city Charlotte to the smallest town because of my son, not because of us. We had a bad life and now we ask you to protect us from the neighbors and their business. They do a dog business and I am scared to walk my boy. I ask you to allow us to keep the fence, thank you."

Chair Fish asked if there were any questions

No questions were presented at that time

Chair Fish asked if there was anyone else that is in support of the appeal of the decision

No one came forward

Chair Fish asked if there was anyone there to speak in opposition of appeal.

Stephen Beckers & Kesha Calvert stated "Just a clarification for the public record there has been zero dog incidents, zero police, zero dog bites. We have dogs in the back more than 200 feet from the house but that is not why we are here today. There was an ongoing dispute with my daughter and a gentlemen who pushed her into the street and I was arrested but that case was dismissed. The dog kennels are behind the

house maybe 50 to 100 feet behind the dwelling and we are okay with the fence, we prefer a fence there. The only concern that we have is the pictures we presented to you guys and when our customers come out of our legal business that we went through zoning for every approval to make sure we were in compliance with, even as early as yesterday. We are concerned for the safety of our customers, the pictures presented are from a car view and where you would have to enter the driveway. This just shows you the view we have and how we have to look between the fence and the mailbox that are both encroaching on the right of way. We just wanted you guys to see our customers' view of pulling into the highway and several of his customers also have this issue. They pull into our property looking for his business and there are a lot of accidents across the street at Pineview. We would be concerned if there was anything that happened as a result of that fence.

Brenda Farmer asked "If they cut the green part on the fence in half, would that give you the sight distance that you need to see out?"

Ms. Calvert stated "Yes, because what is happening is if you look on the other side where the trees are on our side of the fence, that was all brush and we went in and cleaned all of that out so we could make sure that people could see."

Mr. Beckers stated "I have to say we don't have a problem with the fence, there has never been a dog issue, dog bite, no legal proceeding as he is claiming. This is a matter of public record and you can look that up. So just for the sake of clarity of the situation, it is insulting that someone would come in and bring tears to get their way. We just want you to look at the facts and do whatever you have to do to enforce your code. We have worked very hard and closely to make sure we are compliant in every way and we just ask that the same standard be held to everyone else".

Billy Franklin Lee asked "What is your business?"

Mr. Beckers stated "We have a dog grooming shop inside of our home which consumes less than ten percent of our home. All the way at the end of our property we have a confectionary shop."

Brenda Farmer stated "Does Mr. Repinetsky have a business there too?"

Mr. Beckers stated "He has a business there as well. It seems like there would be some litigation taken as to if it is actually a business or not and we are not trying to get into that. We actually invite more businesses into the area. It slows traffic down and increases our business as well. So we would hope that other people will open up other legal businesses there in the area."

Chair Fish asked if there were any questions
No questions were presented at that time

Chair Fish asked if there was anyone else there to speak in opposition

David Ferris stated "My name is David Ferris and I am actually the property owner on the other side of Steve and Kesha. There is a picture here that shows the back of the house. So I have lived here since

1997. The fence is brand new and you guys know that. I have a shared driveway that my name is on and Steve and Kesha as far as ownership and it is a line right up the driveway. It is a right of way for him and it is an additional right of way for my property. When I come out of that the fence encroaches on the property that you used to be able to see from. I have measured this new fence from the two yellow lines, straight back and Mr. Swaringen has done a fine job of this. What I found is that the first five trees back are where the fifty foot line sits. What I see are people pulling onto my shared drive and they sometimes try to back out. I have been here for a long time and there is a lot of accidents in this area. We don't need an additional blockage of view. This has to be cut back , the mailbox is problem enough.”

“These dog grooming people are many times older people and they do not need an additional obstacle getting out of the driveway. I do want to say something after watching this proceedings here by some of the ones that want to keep the fence up. I want to say something about the dogs, I was never aware of anything that a dog attacked or was ever around these people. Vladimir had a dog that actually bit the owner of the store and the dog was taken away and put down. So I do not understand why it is being switched. That is just my input but I would like to see that fence moved back and put where it is supposed to be for the safety of the people around, thank you.”

Chair Fish asked if anyone had any questions.

Mr. Swaringen came forward to make last remarks

Mr. Swaringen stated “The other issues that the applicant brought up about different businesses in the neighborhood which are legal businesses and have obtained rural home occupation permits. The business uses are accessory to the residence.”

David Dulin asked “I am assuming you measured it off with him, did he at any time say this is not right?”

Mr. Swaringen stated “We had a discussion about the measurements but is basically what he has said and presented tonight with the same argument. Mr. Remsburg and myself both went out and took measurements recently to make sure we are accurate. It is your decision to uphold or revoke”.

Richard Cosgrove asked “Did you actually stand in the middle of highway 49 and measure this right of way?”

Mr. Swaringen stated “Very quickly. We do have a safety vest and are very observant of the traffic. Usually early in the day it is easier to get in and out .”

Richard Cosggrove stated “With that being said, when you measured 50 feet from the center of highway 49 from the center of those two yellow stripes , you measured back to near that cone did you make marks on the ground?”

Mr. Swaringen showed the pictures on the ground that were marked with yellow spray paint showing the right of way.

Richard Csogrove asked “ What does DOT think of that fence being on their right of way? We don't even need to consider voting on whether or not to leave the fence there from the highway to the mark, the fence has to go. It is a state law. When you go from the mark that you made at 50 feet, how many feet further does the fence need to be cut down?”

Mr. Swaringen stated “DOT definitely has a say as far as the right of way is concerned and 40 feet.”

Richard Cosgrove asked “Did you make a mark there at 40 feet?”

Mr. Swaringen stated “Yes we did”.

Richard Cosgrove stated “It seems pretty cut and dry to me.”

Tim Swaringen displayed the pictures of all of the marking on the ground showing the fifty foot right of way along with the forty foot setback.

Richard Cosgrove asked “If you take your tape measure at the top of the fence and go down what if he put gravel underneath the fence and created a raised bed, would the four feet be okay then?”

Mr. Swaringen stated “Well, it depends. If the average height on his side of the fence was four feet but then I go onto the other side of the fence and it is twelve inches lower, then maybe not.”

Richard Cosgrove asked “Where is the fence according to the property line. Is it 18 inches in?”

Mr. Swaringen stated “It is about a foot on Mr. Repinetskys property. Around 12-16 inches. I found an older marker on the ground that was out by the mailbox but when the marker was out there it was a 60 foot right of way but now the right of way has widened. The old marker was never moved so now it is a 100 foot right of way in this particular section.”

Chair Fish asked if there were any further questions or comments from the board
No questions were presented at that time

Chair Fish declared the hearing closed.

Chair Fish asked for a motion to approve or deny the appeal of the zoning enforcement officer

Motion: Richard Cosgrove made a motion to deny the appeal based on the fact that the green part of the fence is on the state right of way and has to be removed. Then, from the marked spot on the ground back must have a 40 setback and a maximum of four feet tall.

Second: David Dulin

Action: 5-0 - appeal denied

Chair Fish stated “ Those affected have 30 days to appeal this to Stanly County Superior Court.”

There being no further business, Chair Fish asked for a motion to adjourn.

Motion: Michael Efird

Second: David Dulin

Action: 5-0 - meeting adjourned

Adjournment: 7:31 pm

Chair, Cindy Fish

Clerk, Bob Remsburg