

**CAUCUS PRIOR TO STRONGSVILLE BOARD OF ZONING &
BUILDING CODE APPEALS**

**Meeting of
July 5, 2023
6:45 PM**

Board of Appeals Members Present: Dustin Hayden, Ken Evans, John Rusnov, Dave Houlé, Richard Baldin

Administration: Assistant Law Director Daniel Kolick

Assistant Building Commissioner: Steve Molnar

Recording Secretary: Mitzi Anderson

The Board members discussed the following:

1) JOLYN REDIC (OWNER), WEATHER SEAL HOME SERVICES, AGENT

Requesting a 214 SF Floor Area variance from Zoning Code Section 1252.15, which permits a 200 SF Floor Area and where a 414 SF Floor Area is proposed in order to construct an Unenclosed Structure 23' X 18' Overhang Porch/Screened in Wall System, property located at 17391 Sun Meadow Trail, PPN 393-35-129, zoned RT-C.

Mr. Hayden - Item number one is Jolyn Redic on Sun Meadow Trail, this is a request for a floor area variance for the construction of an unenclosed structure.

Mr. Houlé – We granted them a variance in 2014 to install the initial deck/patio. This request is for an unenclosed structure and I do not see a problem with it. We also have the HOA approval.

Mr. Rusnov – The Building Department is in the process of revising the code, so that this is no longer necessary and this is in progress along with the 20-day waiting period.

Mr. Hayden – We have approved this type of request before and I don't have an issue with this one.

2) KEN EVANS, TRUSTEE OF HIGH POINT HOA, OBJECTING PARTY

Hearing of the objection by Ken Evans, Trustee of High Point Homeowners Association, pursuant to Codified Ordinance Section 1418.03 to the application for a building permit filed by C K Concrete for a fence to be located at 18573 Nantucket Row, owned by Vincent Quinones

Mr. Hayden - Item number two is Mr. Evans, Trustee for High Point HOA, objecting party with regards to the filing for a building permit for a fence, which goes against their covenant and restrictions at High Point.

Mr. Kolick - Mr. Evans has excused himself from a vote or any participation during caucus or on the dais, he will make his presentation from the floor. The only thing that we can do as a City and the only thing our Building Commissioner can do is determine whether or not this meets the conditions of the building and zoning code. We can't make a private determination on whether or not this meets any covenant or deed restrictions. If it does you will have to deny the objection and having said that it doesn't mean that the homeowner can do what he wants to do because there is still private enforcement that can be done by the homeowner association but not by the City.

Mr. Rusnov – In other words this does not fall within our purview to grant a variance for something like this.

Mr. Kolick – They did not ask for the granting of a variance; however, they objected to the issuance of the permit. This is not a variance request, what you have before you is, did the Building Commissioner act properly in approving the permit and that is the only thing in your purview. What I learned from Steve and the Building Commissioner is that it meets all the requirements of the code but that is your determination. If you find that it does then you have no choice but to deny the objection for the permit.

The Board members had no changes to the minutes of June 21, 2023

The Board members reviewed and recommended for approval the Findings of Fact and Conclusions of Law re: The Decision of Jeff Sobon on June 21, 2023

STRONGSVILLE BOARD OF ZONING & BUILDING CODE APPEALS
MINUTES OF MEETING
July 5, 2023
7:00 PM

The meeting was called to order at 7:00 PM by Mr. Hayden.

Present:

Mr. Rusnov
Mr. Houlé
Mr. Evans
Mr. Hayden
Mr. Baldin

Also Present:

Mr. Kolick, Assistant Law Director
Mr. Molnar, Assistant Building Commissioner
Ms. Anderson, Recording Secretary

Mr. Hayden – I would like to call this July 5, 2023 meeting of the Strongsville Board of Zoning and Building Code Appeals to order. May we have a roll call please?

ROLL CALL:	MR. BALDIN	PRESENT
	MR. RUSNOV	PRESENT
	MR. HOULÉ	PRESENT
	MR. EVANS	PRESENT
	MR. HAYDEN	PRESENT

Mr. Hayden – I hereby certify that this meeting has been posted in accordance with Chapter 208 of the Strongsville Codified Ordinances. Before us we also have minutes to approve from our meeting on June 21, 2023. We discussed this in caucus and there were no other corrections or changes needed and we will file those accordingly.

Mr. Houle – Mr. Chairman, motion to approve the Finding of Fact and Conclusion of Law in regards to the decision of Jeff Sobon on June 21, 2023

Mr. Rusnov – Second

ROLL CALL:

MR. RUSNOV	YES
MR. HOULÉ	YES
MR. HAYDEN	YES
MR. BALDIN	YES
MR. EVANS	YES

MOTION APPROVED

Mr. Hayden - If you are here this evening and you plan on addressing the Board, I would ask that you stand and be sworn in by our Assistant Law Director, as well as our Secretary and Building Department representative.

Mr. Kolick administered the oath to those standing.

1) JOLYN REDIC (OWNER), WEATHER SEAL HOME SERVICES, AGENT

Requesting a 214 SF Floor Area variance from Zoning Code Section 1252.15, which permits a 200 SF Floor Area and where a 414 SF Floor Area is proposed in order to construct an Unenclosed Structure 23' X 18' Overhang Porch/Screened in Wall System, property located at 17391 Sun Meadow Trail, PPN 393-35-129, zoned RT-C.

Mr. Hayden - Item number two on the agenda is Jolyn Redic. If we can have the representative come forward to the microphone and state your name and address for the record.

Mr. Chuck Conway/Weather Seal Home Services, 227 Monroe Avenue, Cuyahoga Falls, Ohio

Mr. Hayden – Thank you, Mr. Conway. If you could take us through your project and the need for the variance.

Mr. Conway – We are installing a screened in roof over top of an existing deck in the back yard. Due to the past years of COVID, this is a safer place for them to congregate and enjoy family and friends in a safe environment.

Mr. Hayden – We all have been out to view the project and we are aware of what the request is.

Mr. Rusnov – Because of COVID people are improving their properties so that they have a safe haven in their back yard, rather than going someplace and being exposed. Also, they are considering changing the code.

Mr. Houlé – We approved a variance for the structure that this will be covering back in 2014. Also, the homeowner association does not have a problem and sees this as a nice improvement.

Mr. Baldin – I think it will look good, they have a nice back yard and what they are asking for is not a problem.

Mr. Hayden – This is a public hearing, is there anyone in the audience that wishes to speak for the granting of the variance. Is there anyone in the audience that wishes to speak against the granting of the variance. Hearing none and seeing none, I will declare the public hearing closed and entertain a motion.

Mr. Rusnov – Mr. Chairman, motion to approve request for a 214 SF Floor Area variance from Zoning Code Section 1252.15, which permits a 200 SF Floor Area and where a 414 SF Floor Area is proposed in order to construct an Unenclosed Structure 23' X 18' Overhang Porch/Screened in Wall System, property located at 17391 Sun Meadow Trail, PPN 393-35-129, zoned RT-C.

Mr. Evans - Second

Mr. Hayden – Thank you, Mr. Rusnov for the motion and Mr. Evans for the second. May we have roll call please?

ROLL CALL:

MR. HOULÉ	YES
MR. EVANS	YES
MR. HAYDEN	YES
MR. BALDIN	YES
MR. RUSNOV	YES

MOTION APPROVED

Mr. Hayden – Mr. Conway, your variance has been granted by this Board. There is a twenty-day waiting period during which City Council has an opportunity to review our decision. If Council chooses not to act you will be notified by the Building Department at the end of the twenty days.

2) KEN EVANS, TRUSTEE OF HIGH POINT HOA, OBJECTING PARTY

Hearing of the objection by Ken Evans, Trustee of High Point Homeowners Association, pursuant to Codified Ordinance Section 1418.03 to the application for a building permit filed by C K Concrete for a fence to be located at 18573 Nantucket Row, owned by Vincent Quinones

Mr. Molnar – This is in regards to 18573 Nantucket Row, the application for a fence does meet our ordinances and zoning; therefore, we did approve this application.

Mr. Hayden - If we can have the representative come forward to the microphone and state your name and address for the record.

Mr. Ken Evans , 18399 Yorktown Oval , Strongsville, Ohio, 44136

Mr. Evans - I am appearing tonight not as a member of the Board but as a Trustee for the High Point Homeowner Association.

Mr. Hayden – Thank you, Mr. Evans. If you could take us through your objection.

I am appearing tonight as an association trustee to register an objection by the Homeowner Association to an application filed by CK Concrete for a fence to be located at 18573 Nantucket Row, owned by Vincent Quinones.

High Point trustees received a notice dated June 13, 2023 indicating the filing of the building permit application. Association trustees filed an objection to the permit on June 17, 2023. Subject property at 18573 Nantucket Row is a property within the High Point Homeowner Association and is covered by the Covenants and Restrictions filed by the developer of High Point, the Parkview Corporation in 1977, and amended several times, including the most recent in 1986, which amended Article VI, Section 2.

High Point association trustees immediately sent a June 16 letter to Mr. Quinones indicating that the application for construction of a fence by CK Concrete at his residence was in violation of the Covenants and Restrictions of High Point. That letter, a copy was provided, was sent by registered mail and regular mail.

When Mr. Quinones purchased subject property, he was informed by both his Real Estate agent and the Title and Escrow agent that the subject property was part of the High Point Homeowners Association and was subject to recorded Covenants and Restrictions. High Point Homeowner Association communicated such to the Title company in response to an inquiry about the dues status of the seller of the property and noted it was the Title company's responsibility to obtain a signature of the new owner accepting the Covenants and Restrictions.

Article VI, the Protective Covenants, of the association clearly prohibit the construction of a fence on any property in the association. We acknowledge that there were seven (7) fences that were allowed by the developer, under the authority of the Covenants and Restrictions, that exist as grandfathered. Since the time control of the Association was given to residents by the developer, there have been no fences constructed in High Point. Let me emphasize again that since the time the residents took control of the association, there have been no fences constructed on any property in High Point. We have had numerous property owners that have made requests for approval and some that have applied for building permits, but none have been constructed, except for one that I will describe in a moment.

From the High Point Covenants and Restrictions:

Section 2. Enforcement.

Enforcement of the covenants and restrictions of this Declaration or any supplemental declaration shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, or both, and against the land to enforce any lien created by the restriction and covenants of this Declaration, and failure by the Association or any Owner to enforce any covenant or restriction contained shall in no event be deemed a waiver of the right to do so thereafter.

High Point's Covenants and Restrictions give no authority to the association trustees to allow or approve construction of any fence or shed in the association properties. Therefore, the trustees cannot approve or allow fences or sheds.

In 1992, a new individual resident in High Point did in fact construct a fence without obtaining a permit from the City and told the association that he did not accept the Covenants and Restrictions and that the association could take him to court. Although it took two years of winding through the courts and initial judgements that an individual could do what he wanted with his property, a decision by the Court of Appeals of Ohio, Eighth District, Cuyahoga County, No. 65725, did find in favor of High Point on July 7, 1994. It was a Civil Appeal from Common Pleas Court Case No. CV-238200 which reversed and determined final judgement for High Point as the Plaintiff in the case. I would like to highlight some of the important points of the Judgement:

Ohio law recognizes that restrictions such as the prohibition against constructing “fences” in the first sentence of the Amended Association Restrictions Article VI, Section 2 are enforceable as a matter of law when the restrictions are reasonable. The first sentence of the Amended Association Restrictions now clearly prohibits construction of inter alia, all “fences” except by the Developer or its authorized agent.

Thus, even if approval for the fence were sought from the Association, the Association could not grant such permission to construct a fence since the Association is not the Developer.

The Amended Association Restrictions unambiguously classify “fences” and other “additions, changes or alterations” into mutually exclusive types of improvements governed by different restrictions.

The judgement of the trial court denying permanent injunctive relief is reversed and final judgement is hereby entered for plaintiff. Defendants are hereby ordered to remove the subject fence from the Premises and otherwise restore the Premises to the condition existing prior to erecting the fence within ten days from the journalization of this opinion.

Although the City of Strongsville and this Board have previously indicated that the City will not enforce private Covenants and Restrictions, our counsel at Buckley King LPA has told us that they believe since the City of Strongsville approved the Covenants and Restrictions and is a third-party beneficiary to the documents, that the City is legally required to uphold and defend the Covenants and Restrictions.

In addition, Ohio Revised Code Section 5312.13 speaks to Compliance with covenants, conditions, and restrictions; action for damages. Enacted September 10, 2010. "Any violation is grounds for the owners association or any owner to commence a civil action for damages, injunctive relief, or both, and an award of court costs and reasonable attorney's fees in both types of action."

I can assure both the applicant, CK Concrete, and the owner, Vincent Quinones, that High Point has already engaged our counsel to bring a Civil Action for damages and will pursue this to the fullest extent of the law. Even if the Board of Building and Zoning Code Appeals denies this objection, we are confident that the Civil Action will follow the 1994 Court decision and will find in favor of High Point and will award damages from both CK Concrete and Vincent Quinones.

Mr. Rusnov – Do we have jurisdiction to approve Mr. Evans request and isn't this a civil matter?

Mr. Kolick - Mr. Chairman, I can respond to that, the paragraph from their counsel is incorrect in these three respects:

- 1) The City approves the covenant and deed restrictions as to form only which is stamped on the document.
- 2) The City of Strongsville is a third party beneficiary but only for common property not for individual properties.
- 3) It is against our ordinances because our ordinances allow fences in residential areas.

Mr. Kolick - This is contrary to what the attorney for the homeowner association had to say. As to your specific question, no, there is Ohio Supreme Court case law that says the City does not have authority to enforce private covenants and deed restrictions. You can only enforce the ordinances and if you hold today that it meets the ordinances of the City and that the Building Commissioner did act properly with the issuing of the permit, then the objection would have to be overruled.

Mr. Hayden – This is a public hearing, is there anyone in the audience that wishes to speak for the objection of issuing the permit. Is there anyone in the audience that wishes to speak against the objection of issuing the permit granting.

Mr. Bryan Kasper, owner of C K Concrete, 15100 Cowley Road, Columbia Station 44028

Mr. Kasper – I am here to represent Vincent, I don't quite understand HOA's to be honest with you and I do a lot of work with HOA's from Seville, Lake Erie, Painsville and Sandusky. To be honest with you I don't understand this one for numerous reasons. I can understand height differences, I have been in some HOA's that won't allow you to do a full 6' but will allow 4'.

Mr. Rusnov – I'm confused, are you in favor of Mr. Evan's objection?

Mr. Kasper – I am not.

Mr. Rusnov – So, you would like the City to move forward.

Mr. Kasper – I would like the City to help me out and give me a permit so that I can put the fence up.

Mr. Rusnov – Didn't he receive a permit already?

Mr. Kolick – Mr. Chairman, they file an application and it is posted for 10 days but the permit is not issued until after the 10-day period is over or if there is an objection filed.

Mr. Rusnov – This is a civil matter in which we have no jurisdiction.

Mr. Kolick – That is correct. We have other homeowner associations that do not permit fences so, this is not the only one which does not permit it. Each homeowner association makes their own determination; so, understand for your purpose that we can only enforce our City ordinance that does not prohibit fences. The homeowner association can still enforce their covenant and restrictions.

Mr. Kasper – Vincent, has fences on two sides of his house already. He would like to continue that for a couple of reasons. One, is for safety reasons and this is where I don't understand fences. I am going to speak for Vincent, if I have a four-year-old and I want

to let my four year old and seven year old out the back door and they are playing in the back yard, how would someone feel if my four-year-old walks away because my seven-year-old is doing something with the dog and my four-year-old walked away because my back yard is not fenced in. Whether it is 3', 4' or 6' that is what fences are for.

Mr. Kolick – The City has not right to set the policy of homeowner associations. The homeowner knows when they purchase the property that it is encumbered by covenant deed restrictions. If they did their homework they should look at those covenant and deed restrictions and if they feel they have a 3-4 year old that needs to be in a fenced in yard, they should review those beforehand and determine this isn't the place for us to build. It is not up to the City to make that private determination but it will be up to the homeowner association. That will be a civil matter and you may be exposed to possible civil liability.

Mr. Evans – Those other fences are in another development.

Mr. Kasper – I spoke with Steve about this and I don't understand, I guess this property is half association on one half and the back of his property is another.

Mr. Molnar – I'm not sure 100% how that works as far as who's property it is.

Mr. Kasper - Is that correct Mr. Evans?

Mr. Evans – Up against Deerfield Lake homeowner association on both sides.

Mr. Kolick – Deerfield Lake probably permits fences and that is probably the difference.

Mr. Kasper – I am trying to get an understanding and I am here to represent Vincent because I am doing the work. I would like to know why we cannot put up the fence when it is approved by the City but not approved by the HOA.

Mr. Kolick – Sometimes that can happen a lot and it does happen with some covenant and deed restrictions and this is not unique to this particular property.

Mr. Kasper – I am just trying to get an understanding.

Mr. Kolick – That is okay and this is why we have public hearings, so that everyone can understand.

Mr. Kasper – It makes sense, I am just trying to help my customer out.

Mr. Kolick – Understandable.

Mr. Hayden - Is there anyone else in the audience that wishes to speak against the objection of issuing the permit. Hearing none and seeing none, I will declare the public hearing closed and entertain a motion.

Mr. Baldin – Before I make a motion, I was confused myself when I went to the property and saw the other fences. Now, I understand the reason why and understand what is going on here.

Mr. Baldin – Mr. Chairman, motion to approve the objection by Ken Evans, Trustee of High Point Homeowners Association, pursuant to Codified Ordinance Section 1418.03 to the application for a building permit filed by C K Concrete for a fence to be located at 18573 Nantucket Row, owned by Vincent Quinones

Mr. Houlé - Second

Mr. Hayden – Thank you, Mr. Baldin for the motion and Mr. Houlé for the second. May we have roll call please?

ROLL CALL:

MR. HAYDEN	NO
MR. BALDIN	NO
MR. RUSNOV	NO
MR. HOULÉ	NO

MOTION DENIED

Mr. Hayden – Mr. Evans, your request has been denied by this Board.

Mr. Kolick– Mr. Chairman, I will draw up the Finding Fact and Conclusions of Law as usual for the item denied tonight on the agenda.

Mr. Kolick – Looking at next month's agenda there are a number of these covered areas and I would like to get some feedback from the Board. What do you feel is best for the City to bring up administratively, what type of changes would you like to see reflected in the ordinance?

Mr. Rusnov – Basically it is an attached structure to the house already and you are going to enclose it or put a roof over it, I have no problem with that. This town has changed since the building code was originally written. I think we let the experts in the Building Department come up with the code that makes sense instead of what we have now. The reason we have seven people coming in, maybe if the building code was up to date they wouldn't be here.

Mr. Kolick – I am not for it or against it I'm just trying to find out where this Board would like to go so that we will have your input in with the administrative section. We will also have our City Planner review it.

Mr. Baldin – We have seen a lot of these over the years and if it is a roof that is one thing, but if it is an enclosed structure it should be brought up and that should go to the Building Department before it even comes to us.

Mr. Kolick – Looking at changing the code to permit a roof over it is one thing but changing the code to permit three walls because it is an attached structure is another. Do you think we ought to permit that?

Mr. Rusnov – Let's place reliance on the experts to the guys that have the codes memorized. The City Planner, this guy is capable of rewriting the code himself because he is dealing with other cities. Some cities are a little more advanced than we are so, let's rely on our experts.

Mr. Kolick – Actually, our codes are far advanced over most cities because I deal with them through Cuyahoga County all the time.

Mr. Baldin – My brother lives in another state and he did this but they had to go to the city for approval. He has a big lot and has plenty of room and he wasn't encroaching.

Mr. Kolick – They would still have to go to the City no matter what, even it was for a roof. The setback can be different if we want it to be, between putting a roof over it or an entire structure. You guys may not be planners but you see enough of these things over the course of the years to give some idea of the impact and you deal with homeowner associations and you know what their impact may be.

Mr. Evans - We had one on Heritage that caught fire and the whole house burned. The deck and roof were done with the City and then they enclosed it in without City approval and they did not get permits. The concern becomes, at what point in the process if someone fails to get a permit is it going to become a full season addition to the house.

Mr. Houlé – So, we keep it as it is and look at each individual one.

Mr. Kolick – We can do that too.

Mr. Houlé – The Building Department will still have to be involved whether we change it or not.

Mr. Kolick – But we delay these projects because the person has to file an application and we have to send out public hearing notices and it is a lot more work.

Mr. Houlé – I think the neighbors should be aware of the process.

Mr. Kolick - That is okay and that is what I am looking for, some input on what the Board thinks. I'm trying to figure out if I am going draw an ordinance up for what is best for the City.

Mr. Hayden – If there is no other business to come before this Board, we are adjourned.

Mr. Hayden, Chairman

Mitzi Anderson, Secretary

Approval Date