



Post Office Box 299  
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**April 17, 2023**

Mayor Ken Kolowski,  
Peru City Clerk, and  
Aldermen of the City of Peru

RE: Petition of Greg and Dawn Coble  
2328 10<sup>th</sup> Street, Peru, IL (PIN# 17-17-108-001)

Gentlemen:

Pursuant to legal notice published in the News Tribune in the manner provided by law, the Planning/Zoning Commission of the City of Peru convened for a public hearing on Wednesday, April 12, 2023, at 5:10 p.m. in the City Municipal Building, 1901 Fourth Street, Peru, IL, to consider the Petition of Greg and Dawn Coble (“Petitioners”) concerning property generally located 2328 10<sup>th</sup> Street in the City of Peru, Illinois, legally described as follows:

THE WEST HALF OF LOT 5 AND ALL OF LOT 6 IN BLOCK 5 IN TILDEN’S  
ADDITION TO PERU.

PIN #: 17-17-108-001 (“Property”)

Petitioners desire to construct a fence and request the following relief, to wit:

- (1) That the City enter into a License Agreement with Petitioners to allow the fence to encroach 7’ upon the City’s Cross Street right-of-way to the west and/or a variance to reduce the side yard setback abutting a street from not less than 25’, as provided in Sections 6.03(b)(5)d. and 10.04 (h)(2)a. of the Zoning Ordinance, to not less than 0’;
- (2) That the City enter into a License Agreement with Petitioners to allow the fence to encroach 7’ upon the City’s right-of-way to the south of the Property or otherwise pass an ordinance vacating the alley in Block 5 of Tilden’s Addition; and
- (3) For such other and further relief as may be reasonable and appropriate.

The Property is zoned R-3 Single and Two-Family District.

Planning/Zoning Commission Members Miller, Lucas, Kalsto, Grabowski, Brady, Moreno and Jones were present at the hearing. No Members were absent.

Petitioner Greg Coble appeared and was duly sworn. Mr. Coble testified that he lives on a corner lot and desires to close in his backyard. He noted that a property one block southeast of him had done the

same thing. He requests to build the fence on part of the alley to the south as well, stating that there is no reason for anybody to go in the alley and there is already a fence in the middle of the block that encroaches on the alley. Mr. Coble stated that he would like to get a dog.

Chairman Miller requested comment from the City's Director of Engineering and Zoning, Eric Carls. Engineer Carls stated that his office had reviewed the Petition. The only known utility in the alleyway is an aerial telephone line. Engineer Carls stated he had no objection to the encroachment or vacation of the alley.

Engineer Carls noted that the City has received several requests lately to encroach upon, and enclose, City right-of-way with private fences. As was done with those requests, Carls said it was his recommendation to deny the requested encroachment upon the Cross Street right of way to the west of the Property. However, he had no objection to reducing the west side yard setback to 0'.

Corporation Counsel Scott Schweickert stated that he had corresponded with Mark Bubb, the neighbor directly south of the Property. Attorney Schweickert read Mr. Bubb's initial correspondence into the record:

*I would like to submit my opposition to the variance based on the following reasons. I request that you oppose it also.*

*The 7 foot into the right of way, or the vacate of right away, I oppose that because of the loss of access to the utility lines without driving through my yard, and possibly ripping up my landscaping. Greg Kobel is a construction contractor, and he was well aware of the property boundaries and setback ordinances when he purchased the property. If he wants to put up a fence I feel he should do it on HIS property, including the required setbacks.*

*The West setback being reduced to a 0 foot setback would cause line of sight problems for traffic at the intersections of 10th and Cross streets, and 9th and Cross streets, possibly leading to more car, or pedestrian accidents. Are 0 feet setbacks actually a thing ? Setbacks are included in ordinances for a reason. I also think that the bushes that were planted on the west side of his property are already in violation of the setback ordinance. I request that you oppose the variance based on these potential problems. I will also be attending the hearing on this variance request to voice my opposition to it.*

*My name is Mark Bubb. I live at the property that abuts the Kobel property to the South. The right of way is situated between our 2 corner lot properties. My address is 1303 cross Street, Peru, Illinois.*

*Sincerely,  
Mark Bubb*

Attorney Schweickert stated that he and an alderman had follow-up communications with Mr. Bubb and Mr. Bubb had the opportunity to review the drawing included with the Petition, which cleared up some confusion. Attorney Schweickert then read Mr. Bubb's subsequent correspondence into the record:

*My whole opposition to Greg's fence was the idea, in my mind, that he was going to construct his fence, in the middle of the right of way, between our properties for the*

*complete distance from east to west of the properties. And that he was going to place a fence, with 0 setback, right next to Cross Street on the West side of his property. This was based on the wording in the setback variance, and right of way variance/vacate proposition, but not on the proposal map. An alderman from my ward came over to discuss this issue with me. He pointed out that on a the proposition map of Greg's property, that there was a dotted line that represented the planned location of the fence. I had previously missed that detail. So my opposition to the variances and fence location was based on a misunderstanding that I had. At this point, if the fence is placed exactly as laid out on the map, and the wording in the proposal is changed to reflect what the proposed location is on the map, I have no objection to the fence, or variance alterations, and vacate of the alley. This is based on each of us getting half of the right of way, if it is vacated, and that the fence is constructed exactly as laid on in the proposal map. I am still planning to attend the hearing on this matter.*

*The text in the next paragraph below is a text message that I sent to Greg Coble. It reflects the current situation.*

*Greg,*

*I am writing to you concerning your variance request and fence construction project. Initially I was opposed to it based on the wording of the setbacks, and the vacate right of way proposal. I did not thoroughly look at the drawn map of the proposed location of the fence. I have been in contact with many city representatives on this issue. One of the aldermen that I contacted came over and discussed the issue with me and pointed out the dotted line representing the proposed fence location on a diagram map of your property. If the dotted line is where you plan to install the fence I have no problem with it. The words in the proposal do not match the diagram though , so before I agree to withdraw my opposition to the variance alterations, I would like the word description to exactly match the dotted lines on your proposed fence map. Now, with the exact location of the fence explained to me, I feel that you did take into consideration my property, and I want to thank-you for that. I will withdraw my objection based on the fence being placed as it is exactly by the dotted lines on your diagram. I did not want a fence in the center of the right of way all the way to Cross street. The fact that the fence is north of your gravel driveway up to your shed makes it a good plan for me. Running the fence 7 feet from the shed, into the right of way, to your property line, is ok with me also. The West fence being inside your privacy bushes works for me. Please do not misunderstand me. I am not saying that you need my blessing, all I am saying is that if the fence is constructed exactly as laid out in your map, I will NOT oppose it. The alderman is also in favor of vacating the right of way, with half to you, and half to me. That is fair, and I will agree to that.*

*I regret the misunderstanding, I wish that you would have talked to me before your variance request to explain the location of the fence. We probably won't ever be great friends, but I would like to have relationship as a friendly neighbors.*

*Mark Bubb*

Chairman Miller stated that we have precedent with encroachment on the right of way, as Engineer Carls noted, and that it was Chairman Miller's opinion that the City should maintain some consistency in that regard.

In response to questioning from Member Kalsto, Mr. Coble stated that the reason why he wanted to encroach upon the alley to the south was because there is nobody to take care of it. Engineer Carls reiterated that his office did not have any issues with the alley encroachment. In this particular case, it is his recommendation to simply vacate the alley for the entire block. Attorney Schweickert noted that the alley at issue formerly continued at the same location to the block directly west of this block, but that alley was vacated decades ago.

In response to Mr. Coble, Engineer Carls confirmed that the problem was with the encroachment upon the Cross Street right of way on the west side of the Property. Mr. Coble testified that someone just put up a fence encroaching on the right of way a block away from him last year. Mr. Coble testified further that he has a row of tree bushes planted 10' off the curb in the City's right of way, where he was told he could plant them. Carls responded that he does not know who gave him that direction, but it didn't come from his office. Mr. Coble asked why people across the street can have theirs that close, but he can't? There's are grandfathered in, but his aren't? Carls responded that if Mr. Coble provided the addresses, he would look into those encroachments in the City right of way. Mr. Coble asked Carls why he can't just go on his phone and look at the GIS one block away from him. Coble added that the notice sign in his yard was in the yard of that property last year, claiming the City okayed theirs but not his. Carls replied that he wasn't arguing with him, rather he was just telling him what has been done historically, most recently north of Baker Lake. Coble disagreed again citing the neighbor which is located at Green and 9<sup>th</sup>. Engineer Carls noted that he isn't a voting member; it is just the recommendation from his office.

Member Brady asked what would happen if Petitioners pulled the fence in to the edge of the garage. Mr. Coble responded that he would lose about eight feet of his property, and there would be unattended space between his tree bushes and the fence. Engineer Carls noted that is City property. Mr. Coble responded that he takes care of it. Mr. Coble repeated his contention that the other property owner put up a fence 10' away from the curb, and asked why he can't put up his 12' away.

In response to questioning from Member Grabowski, Mr. Coble said that the neighbor he had been referencing must have come before the Planning/Zoning Commission because he had the city sign in his front yard last year. Members of the Commission agreed that they didn't recall anyone at that location coming before them. Engineer Carls reiterated that he had no problems looking into it. Mr. Coble said the City is going to have to look into it, that they shouldn't be allowed to get away with if he can't put his fence up. Carls replied that he didn't say Petitioners couldn't put the fence up. Carls said it was the recommendation of his office that Petitioners could put the fence up on the Property line with a 0' setback, which is a significant variance from what is required by the Zoning Ordinance. Mr. Coble argued that they didn't set up the lots correctly in these old neighborhoods and that's why they're letting people that live on corners move the fence out to 10'. Carls reiterated that he doesn't know where that is coming from because these requests come through his office, and he is unaware of any permits.

Mr. Coble asked if the City didn't approve the other fence a block away, the owner just put it up? Engineer Carls replied that could be a possibility. Coble then asked why nothing was done about it. Carls said that he just notified him about it, and that he agreed to look into it. Coble responded, "It

takes this to notify?" Carls replied that he doesn't spend his day driving around the City measuring fences.

Chairman Miller interjected that they didn't want to spend the night arguing and asked to proceed with making a recommendation one way or another. Chairman Miller asked Engineer Carls if any of the recommendations should be contingent upon his investigation of the other encroachments alleged by Mr. Coble. Engineer Carls repeated that his office is just making a recommendation of what it has been doing with similar petitions recently. That recommendation and that of the Planning/Zoning Commission, and the decisions of the City Council have been to not allow the enclosure of City right of way as property for the homeowners. Engineer Carls noted the Planning/Zoning Commission can make its recommendation to the City Council, and the Petitioner is free to appeal to the City Council based on that recommendation.

Chairman Miller agreed noting the Planning/Zoning Commission merely makes a recommendation and is not the ultimate decision. The next City Council meeting is 12 days away, which would give Engineer Carls the opportunity to look at these other alleged encroachments and determine whether they received permits or some sort of verbal approval. Engineer Carls commented that he is curious to know who gave Mr. Coble verbal direction to plant trees 10' away from the curb. Mr. Coble responded that he would not mention any names. Carls replied that doesn't help us. Coble said he can't believe that the City didn't know that the fence had been there a year 10' off the setback. Chairman Miller noted there is a lot of properties in the City of Peru. Coble replied there was no fence there before, they just put that up last year and he is surprised that he is the first one to mention it.

Member Moreno stated that Members of Planning/Zoning Commission were looking at the property Mr. Coble had been referencing amongst themselves during the hearing and can't recall the property coming before them. Member Kalso agreed, saying neither the address nor owner's name sounded familiar.

Attorney Schweickert stated that there had been only a few times when the City allowed right of way encroachments in the past several years, most recently during COVID for outdoor patio seating. These were allowed pursuant to right of way encroachment license agreements, which charge an annual fee and have insurance requirements. If the encroachment were allowed, it would be subject to similar terms.

Attorney Schweickert also noted that if the alley were vacated, half of it would go to the owners on the north side and half to the owners on the south side pursuant to state statute. The City would reserve easements for any existing utilities. This would not have any impact on the existing communications easement. AT&T or whomever owns that easement would still have the right to go upon and even remove obstructions within the easement. Mr. Coble said the pole is in the neighbor's yard, not his, and they would come in with ladders. Engineer Carls noted that one of the properties Mr. Coble is complaining of has a fence constructed within the alley several houses east of the Property. If the alley were vacated, that would resolve that issue.

In response to questioning from Member Brady and Member Kalsto, Mr. Coble indicated that his attached garage is approximately 19' from the Cross Street curb. A discussion was amongst the Planning/Zoning Commission and it was determined that the attached garage is very close, if not on, the west property line. In response to Mr. Coble, Engineer Carls stated this likely means that Petitioners' house was built prior to the adoption of the Zoning Ordinance and is nonconforming. Mr. Coble argued that is why encroachment should be allowed in these older parts of town. Engineer Carls

responded that the Zoning Ordinance also provides that you cannot expand on an existing nonconforming use. For instance, if Mr. Coble were to lose his house to a fire, he would not be able to rebuild it right on top of the current foundation.

There were no objectors or public comments.

Chairman Miller moved, and Member Moreno seconded, to recommend that the City Council deny Petitioners' request to allow the fence to encroach 7' upon the City's Cross Street right-of-way to the west. The motion passed unanimously: 7 aye, 0 nay, and 0 Members absent.

The Planning/Zoning Commission found the remaining relief will not alter the essential character of the locality; will not be detrimental or injurious to other properties in the area; will not impair an adequate supply of light or air to adjacent properties, or increase the danger of fire, or endanger the public safety, or diminish or impair property values and will not increase street congestion.

Member Kalsto moved, and Member Grabowski seconded, to favorably recommend that the City Council approve Petitioners' request to vacate the alley in Block 5 of Tilden's Addition. The motion passed unanimously: 7 aye, 0 nay, and 0 Members absent.

A discussion was held concerning a motion to reduce the west yard setback to 0', which would allow the fence to be constructed essentially in line with the west wall of the existing house. Member Brady moved, and Member Moreno seconded, to favorably recommend that the City Council approve Petitioners' request for a variance to reduce the side yard setback abutting a street from not less than 25', as provided in Sections 6.03(b)(5)d. and 10.04 (h)(2)a. of the Zoning Ordinance, to not less than 0'. The motion passed unanimously: 7 aye, 0 nay, and 0 Members absent.

Respectfully submitted,

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CARY MILLER, Chairman of the  
Planning/Zoning Commission