

BOARD OF ZONING APPEALS MINUTES

A regular meeting of the Farmington Board of Zoning Appeals was held on Wednesday, November 5, 2008, in Council Chambers, 23600 Liberty Street, Farmington, Michigan. Notice of the meeting was posted in compliance with Public Act 1976.

Chairperson Buyers called the meeting to order at 7:00 p.m.

Chairperson Buyers explained to the petitioners that in order to approve the appeals presented before the Board at this meeting there would need to be approval from three out of the three Board members present due to the absence of Mr. Christiansen, and Mayor Knol. Chairperson Buyers informed the petitioners that if a ruling of the Zoning Board of Appeals aggrieved a person at this meeting, the option for appeal would be the Oakland County Circuit Court on Telegraph Road in Pontiac.

ROLL CALL

PRESENT: Bennett, Buyers, Majoros.

ABSENT: Christiansen, Knol.

CITY OFFICIALS PRESENT: Building Inspector Koncsol, Recording Secretary Schmidt.

Minutes of Previous Meetings

Motion by Bennett, supported by Majoros, to approve the minutes of the previous meeting of July 2, 2008. Motion carried, all ayes.

Motion by Bennett, supported by Majoros, to receive and file the minutes of the Planning Commission meetings of April 14, 2008, May 12, 2008, June 9, 2008, July 28, 2008, and September 8, 2008. Motion carried, all ayes.

APPEAL OF: Robert Orstadius
32230 W. Nine Mile Rd.
Farmington, MI 48336

Chairperson Buyers stated the petitioner was requesting a variance to Sec. 35-38(b)(2) to allow for the parking and storage of a utility trailer along the east side of the home. It was noted that this side of the property also serves as a front yard since it opens up to Brookdale.

Mr. Orstadius stated he would like to delay his appeal request until the December meeting when there would be a full board. Chairperson Buyers informed Mr. Orstadius that there would not be a need to re-file the request and the proponent could postpone his request for appeal due to acknowledgement of the Board at a later date.

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APPEAL OF: Jeremy Welling
23245 Fleming
Farmington, MI 48335

Chairperson Buyers stated the petitioner was requesting a variance to Sec. 35-49(b)(4) to allow two fences along the rear property line: an old chain link fence and the new 6' wood fence. In addition, a request for variance to Sec. 35-49(f)(1) to allow the finished side of the 6' wood fence to face inward toward the property rather than facing outward toward the neighbor's as required by ordinance.

Chairperson Buyers asked the proponent if he wished to proceed with his request at this meeting. Mr. Welling responded that he wished to proceed with his request for appeal.

Mr. Welling stated he removed several large pine trees in the back of his property that had grown into the cables above the rear chain link fence. He thought the hedges on his neighbor's side of the fence would hide the pool area, but most of the vegetation for the bushes on the other side of the fence was at the top of the bushes, which gave a straight through view to their in-ground swimming pool.

Mr. Welling discussed installing a privacy fence with his neighbor. He stated there is an Oak tree two-thirds of the way down the yard, which would make it difficult to install the privacy fence. He commented there is an Oak tree, a gap, and his woodshed. He noted you could see through the lower part of the bushes with no vegetation or leaves. He said it would be extremely difficult to install the privacy fence with the finished side toward the neighbors. He did not want to remove the chain link fence since he was not sure how to attach the existing chain link bent around the Oak tree. Mr. Welling stated his neighbor was in favor of leaving the chain link fence in tact.

Mr. Welling stated he had seen several other installations similar to his situation. He noted his discussion with Building Inspector Koncsol regarding the ordinance that had been enacted prohibiting having a privacy fence next to a chain link fence because of weeds growing between the two fences. He commented since it is sandy soil and lack of light, there had not been any weeds at this point. He stated the screws have to go on the finished side of the fence and it would be difficult to install the fence with the finished side on his neighbor's property due to the chain link fence and the bushes would be in the way.

Mr. Welling stated his neighbors were happy to have the privacy fence installed, but they did not want the chain link fence removed. He noted if the variance was not approved he could possibly pursue an arrangement where he could remove the chain link fence and attempt to attach the chain link to the posts. He felt his neighbors would not support this arrangement and would like to leave it as it is now.

Chairperson Buyers asked Mr. Koncsol if there was any regulation regarding removal of part of the chain link fence or a continuous privacy fence. Mr. Koncsol replied there is no specific requirement the fence be uniform in type. He stated Mr. Welling could

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remove what is needed for the privacy and continue with the chain link unless he wanted to maintain the uniformity of the look. Mr. Welling stated the concerns of his neighbor and himself regarding how to attach the chain link fence to the privacy fence and also they both have dogs. He noted he did not want the look it would create.

Chairperson Buyers commented it was sort of the look that was there now and it would be connect versus overlap. Mr. Welling responded it could be moved down so it would be behind the first bush after the Oak tree.

Chairperson Buyers noted according to procedure there are two requests for variances and that one might be linked to another. He commented the Board should rule on the first request on whether or not to allow two fences. He stated if the Board does allow the first request then they need to get to the motion of if the Board does allow it to stay, will it turn in or turn out. Mr. Bennett stated if it were turned down there would be no need for the second request. Chairperson Buyers requested the Board discuss the first request for variance to Sec. 35-49(f)(1) to allow for two fences and continue from there.

In response to a question by Mr. Bennett, Mr. Welling responded the chain link fence was pre-existing to either property owner. Mr. Koncsol commented the posts are facing toward the neighbor and the fence was probably the neighbor's fence. Mr. Koncsol noted the problems involving the ownership of fences due to placement on the property. He further noted he did not know who owned the current fence for sure.

Mr. Koncsol noted Mr. Welling had provided a mortgage survey and there is an implication at the top, across the back property line where there are a couple of arrows at the top that says "out" and the cross hatch lines, designate that the chain link fence is on Mr. Welling's neighbor's property. Mr. Koncsol stated if the survey is 100% of the truth, and he felt it was 99% correct, the neighbor would have the right to refuse to have the chain link fence removed.

Chairperson Buyers noted Mr. Welling could discuss the situation with his neighbor in regards to keeping good will no matter what the Board decided.

Chairperson Buyers voiced concerns with the proposal since there is the potential of weeds, and debris that would fall between the two fences and would become an eyesore. He also noted rats seek out areas to nest and breed. He also noted safety issues if a child went to retrieve a ball or Frisbee between the fences and became injured. Chairperson Buyers stated there are problems with the petition as proposed and the Board has to see fit that the ordinance requirements regarding safety and welfare, harmony with other properties, and practical difficulties are addressed. He commented he did not feel the proponent had provided cause for practical difficulties.

Mr. Bennett stated in order to grant a variance there is a list of items to be met according to the ordinance. He commented the Board must see that they come close to meeting the criteria in order to grant a variance. Mr. Bennett noted the ordinance is newer than some of the fences in the City. He stated one of the criteria is restricting the use of the property

and the other is that it is not self-created. He commented he had difficulty with the "self-created" part of the variance. Mr. Koncsol reviewed the criteria that must be met in order to grant a variance.

Mr. Bennett noted he had difficulty with the way the fence was facing. Mr. Welling replied that on the neighbor's side of the fence the ground level is raised along the fence and then it drops off. He stated it would be difficult to install the screws if the finished area faced the neighbor's yard.

Mr. Majoros asked if the fence is flush with the shed. Mr. Welling replied there is an inch between the fence and the shed.

Mr. Majoros noted the fence would hang over the neighbor's yard if the posts remain where they are.

Mr. Bennett verified that the purpose of the wooden fence is for privacy. Mr. Welling commented it would help to rectify the issue of the barking dog owned by his neighbor.

Mr. Bennett asked why the proponent did not install additional shrubbery versus installing the fence.

In response to a question by Chairperson Buyers, Mr. Welling replied his backyard is 25 ft. from one of the picture windows. Chairperson Buyers suggested that the proponent install arborvitae. Mr. Bennett verified there are no restrictions on foliage.

Mr. Welling stated it would take time for shrubbery to grow and a fence would be more of a direct solution.

Chairperson Buyers asked the proponent if he is aware of the requirements of the ordinance. He gave the proponent time to review the ordinance requirements in order to support his petition.

Mr. Bennett stated the Board could move to table action on the petitioner's request in order to get feedback from Mr. Welling's neighbor and the proponent could withdraw his request if an agreement was reached with his neighbor. Mr. Welling replied he would discuss the issue with his neighbor and find out their wishes. He commented the neighbor could attend the next meeting to voice their views.

Mr. Majoros commented he felt the chain link fence is on the neighbor's property. He noted there are two items that demonstrate to him that the Board is potentially ruling on a fence that is not the proponent's fence. Chairperson Buyers commented the survey might not have been a staked survey.

Motion by Bennett, supported by Majoros, to table the request of Jeremy Welling until he requests a hearing within a maximum of two months if the Board has a meeting on the merits of this particular petition. Motion carried, all ayes.

PUBLIC COMMENT

Olaf Unhuryan, 22426 Brookdale, stated he received a letter from the City stating he cannot keep his equipment on the top of his van. He commented he is in construction work and the ladders on his van are too heavy to move back and forth from the van to the garage every night. Mr. Koncsol stated there are 3 or 4 ladders on the van at one time. He sent a warning notice since the ordinance states the "vehicle shall not have outside brackets or holders for ladders, tools, pipes or other similar equipment, and should be kept out of view. Mr. Koncsol commented he has been discussing the issue with Mr. Unhuryan and noted there is no lettering on the van. Discussion followed regarding the visibility of the ladders on the van.

Chairperson Buyers verified the van was too tall to fit in the garage with the equipment on it.

Mr. Bennett inquired how long his jobs last. Mr. Welling replied some times a day, three days or a week.

Mr. Welling stated he could remove the ladders on the weekends and put them back on the van the beginning of the week. Chairperson Buyers commented that would not be in compliance with the ordinance and he would be cited by Mr. Koncsol.

Chairperson Buyers stated the criteria that must be met according to the ordinance.

Mr. Bennett confirmed the proponent stored other equipment elsewhere. Mr. Welling replied he has a trailer with heavy equipment in storage in Madison Heights.

Chairperson Buyers asked if there is a local storage unit he could use instead of on his property. Mr. Welling replied it would be hard to access. He commented he did not use the equipment every day.

Chairperson Buyers stated the purpose of the ordinance is to protect the community. He informed Mr. Unhuryan that this portion of the agenda was for Public Comment and noted it would not be fair if he turned the discussion into an impromptu ruling on a variance request, which is not before the Board at this meeting. He suggested Mr. Unhuryan continue discussions with Mr. Koncsol in regards to enforcement issues and reviewing what the ordinance does say. He stated he shared Mr. Koncsol's belief that Mr. Unhuryan is in violation of the ordinance, but noted Mr. Unhuryan could appeal to the Zoning Board in a more full official nature. Then the Board would have to deal with the facts as they are presented.

Mr. Bennett stated it would be difficult for the Board to grant an appeal since there is a solution by taking the ladders off the van and store them in the garage.

Mr. Bennett commented the proponent needs to work with Mr. Koncsol regarding the issue.

Mr. and Mrs. Unhuryan felt it was safe to leave his ladders on the truck since Farmington is a safe city.

The proponent stated he would talk to Mr. Koncsol.

Mr. Robert Orstadius, 32230 W. Nine Mile Road, stated he was not aware that the Unhuryans were his neighbors until this meeting. He commented he has no problem with his van or his ladders because the equipment is made for the top of the van. He noted there is limited height for his van. Mr. Orstadius stated the proponent keeps his yard up and he has no problem with him keeping the ladders on the van.

ADJOURNMENT

Motion by Majoros, supported by Bennett, to adjourn the meeting. Motion carried, all ayes.

The meeting adjourned at 8:05 p.m.

John D. Koncsol, Building Inspector