
**MINUTES OF A SPECIAL MEETING
BOARD OF ZONING APPEALS
October 8, 2015, 4:00 P.M.
600 W. Maple Street**

I. ROLL CALL

The meeting was called to order by Chairperson Marci Alling at 6:35 p.m. Ms. Alling read the BZA introduction. Roll call was taken.

Present: M. Alling M. Rice B. McGrain E. Horne J. Leaming

Absent: K. Litwiller K. Whitfield J. Hovey

Staff: S. Stachowiak

A quorum of at least four members was present, allowing voting action to be taken at the meeting.

II APPROVAL OF AGENDA

M. Rice moved, seconded by B. McGrain to approve the agenda as printed. On a voice vote, the motion carried 5-0.

III. HEARINGS/ACTION

A. BZA-4017.15, 1929 Moffitt Street

Ms. Stachowiak stated that this is a request by Carmalita Ayers for a variance to permit the 6 foot high wood privacy fence that has been constructed in the Hughes Road front yard of the property at 1929 Moffitt Street. Section 1292.03(a)(1) of the Zoning Code states that no fence shall exceed a height of three (3) feet within a front yard. A variance of three (3) feet to the height limitation for a front yard fence is therefore, being requested. Staff recommended denial on a finding that the variance would not be consistent with the practical difficulty criteria of Section 1244.06 (c) or the impact criteria of Section 1244.06 (e), as detailed in the staff report for this application.

Ms. Stachowiak stated that the applicant has constructed a 6 foot high wood privacy fence in the Hughes Road front yard of the property at 1929 Moffitt Street. The subject property is a corner lot, which, by Zoning Ordinance definition, has two front yard. The Zoning Ordinance considers any yard that abuts a street right-of-way to be a front yard. Ms. Stachowiak said that the applicant bases a practical difficulty on the subject property being a corner lot and the need to increase safety while her grandson is outside in the yard and to provide privacy for the use of the swimming pool on the property.

Ms. Stachowiak said that there is nothing unique about the subject property that sets it apart from any other corner lot in the City. The lot is perfectly rectangular, there is no uneven topography and there is still an area approximately 20' x 60' that could be enclosed by a 6 foot high privacy fence. Ms. Stachowiak said that since there is nothing unique about the property that warrants relief from the ordinance, approval of the variance would set a negative precedent for future requests to vary the fence ordinance.

Ms. Stachowiak stated that she received a letter of support for the variance from the adjoining neighbor at 5409 Hughes Road and a letter of opposition from the owner of 2020 Moffitt Street.

Mr. Rice asked where the fence would have to be relocated to in order to bring it into compliance with the Zoning Ordinance.

Ms. Stachowiak said that it would have to be located even with the side wall of the house. In lieu of that, it could be reduced to 3 feet high or it could be 4 feet high if most of the pickets were removed so that the fence is at least 75% visually open.

Ms. Alling opened the public hearing.

Carmalita Ayers, 1929 Moffitt Street, stated that she has custody of her grandson who has down syndrome and the fence provides additional security for him when he is playing outside. She said that she has a pool and the fence provides privacy for use of it as well. Ms. Ayers stated that she just paid a contractor a lot of money to have this fence installed and she was completely unaware that it did not comply with city ordinances. She said that relocating the fence to the side wall of the house would impact her new patio and would require removing the pool. Ms. Ayers said that she will comply with the decision of the Board but there are other fences in her neighborhood that also do not comply with the ordinance.

Ms. Horne said that the fence looks awfully close to the neighbor's house to the south.

Ms. Stachowiak said that it is on the property line.

Ms. Ayers said that the neighbor to the south has provided a letter of support for the variance.

Ms. Horne asked about the vehicle parked on the lawn on the east side of the house.

Ms. Ayers said that she intends to create a parking space just east of the existing driveway/garage.

Mr. McGrain suggested that Ms. Ayers consult with the Planning Office before installing any new parking areas. He said that the Board has discussed notifying fence contractors of the City ordinances to try to prevent these types of situations before they occur. In this case, the contractor would have been responsible for ensuring that the fence complied with the ordinance. Mr. McGrain said that the Board's hands are tied because the variance does not comply with the criteria used for evaluating variances. He said that hopefully the contractor that installed the fence is insured to that it can be brought into compliance with the ordinance without it costing the applicant any money.

Seeing no one else wishing to speak, Ms. Alling closed the public hearing.

Mr. Rice said that there is nothing unique about the subject property that would warrant relief from the ordinance. He said that it is a typical corner lot. Mr. Rice stated that most municipalities regulate corner lot fences the same way that Lansing does. He also said that the Board cannot support a variance if it does not comply with all of the applicable criteria set forth in the Zoning Ordinance for evaluating variances and in this case, the requested variance does not comply with most of the criteria.

Mr. McGrain agreed that there is no practical difficulty in this case that would justify approval of a variance. He said that hopefully the contractor that erected the fence is insured and can make things right with Ms. Ayers.

Mr. Rice made a motion, seconded by Mr. McGrain to deny BZA 4017.15, a variance of 3 feet to the height limitation to permit a 6 foot high, wood privacy fence in the Hughes Road front yard of the property at 1929 Moffitt Street, on a finding that the variance is not consistent with the practical

difficulty criteria of Section 1244.06 (c) or the impact criteria of Section 1244.06 (e), as detailed in the staff report for this application.

Vote	Yes	No
Rice	X	
McGrain	X	
Leaming	X	
Alling	X	
Horne	X	

On a roll call vote (5-0), the variance was denied.

B. BZA-4018.15, 2521 Devonshire

Ms. Stachowiak stated that this is a request by Lauren Cooper to permit a 6 foot high wood privacy fence in the Greenlawn Street front yard of the property at 2521 Devonshire Avenue. Section 1292.03(a)(1) of the Zoning Code states that no fence shall exceed a height of three (3) feet within a front yard. A variance of three (3) feet to the height limit for a front yard fence is therefore, being requested. Staff recommended denial on a finding that the variance would not be consistent with the practical difficulty criteria of Section 1244.06 (c) or the impact criteria of Section 1244.06 (e), as detailed in the staff report for this application.

Ms. Stachowiak stated that the subject property is a typical corner lot. It is perfectly rectangular and does not contain any unusual topography or other features that create a practical difficulty for the owner in constructing a fence in compliance with the ordinance. Ms. Stachowiak said that if the privacy fence were to be since there is nothing unique about the subject property to warrant relief from the ordinance, approval of the requested variance would set a negative precedent for future requests to vary the height limitation for a front yard fence. She said that if the 6-foot high fence was located completely out of the front yard (even with the side of the house), the applicant would still have a good size area behind the house that is approximately 40' x 60' in which to enclose with the 6-foot high fence, although this area does include the detached garage. Since this amount of area is consistent with size of most back yards in the neighborhood and in the City of Lansing in general, the practical difficulty borne by the applicant is not sufficiently unique and hence, cannot justify a variance from the ordinance requirement.

Ms. Stachowiak said that she received emails from Tonja Lee of 2509 Devonshire and Kari Sederburg of 2610 Devonshire in support of the variance. Copies of the emails have been provided to the Board members.

Ms. Alling opened the public hearing.

Lauren Cooper, 2521 Devonshire Avenue, spoke in support of her request. She said that she has a young son and is expecting to have more children. Ms. Cooper said that the purpose of the fence is to provide a safe and secure place for her children to play. She said that the property is unique with respect to its topography because it is significantly lower at the south property line along Greenwood than what it is at the north property line. Ms. Cooper said that because of the topography, the 6 foot high fence is necessary for privacy and security. She said that they do have registered sex offenders in the area and there a lot of people that walk in the area from the hospital. Ms. Cooper stated that there are other similar fences in the area to what they are proposing. She stated that that they would like to make a long term commitment to staying in their home but need the privacy and security that the fence would provide.

Patrick Cooper, 2521 Devonshire, spoke in support of the request. He said that the slope of the property will lessen the impact of the fence from both an appearance and a safety standpoint with regard to visibility at the intersection.

Mr. McGrain welcomed the Ms. Cooper to the community and asked her what made her come to the BZA first before erecting the fence.

Ms. Cooper said that she has a master's degree in urban planning and she respects the rules.

Linda Krzeminski, 1130 E. Greenlawn, spoke in opposition to the variance request. She said that she is also representing Jan Wageman at 2600 Devonshire. Ms. Krzeminski said that they live in a beautiful neighborhood and are concerned about the negative impact on visibility that the fence would have at the Greenlawn/Devonshire intersection. She said that she had the same issue years ago when her children were little and she was living in East Lansing. Ms. Krzeminski stated that she was not permitted to have a privacy fence in the front yard either but those were the rules. She said that Jan's concern is the appearance of a 6 foot wood privacy fence along E. Greenlawn and the safety concerns about visibility at the street intersection.

Mary Ellen Cole, 1121 E. Greenlawn, stated that the applicants are lovely people but she is concerned about the impacts of the fence on the neighborhood. She said that even if the variance is denied, they will still have a significant amount of space in the side and back yards in which to enclose with a 6 foot high privacy fence.

Ms. Stachowiak stated the fence, if approved, would have to be setback approximately 10 feet from the edge of the street along Greenwood so that it is out of the road right-of-way.

Seeing no one else wishing to speak, Ms. Alling closed the public hearing.

Mr. McGrain stated that just like the previous variance request, the Board's hands are tied in this case as the request does not comply with the necessary criteria for granting variances. He said that he lives on a corner lot but he will have to vote no. Mr. McGrain said that he is thankful that the applicant checked out the ordinance first before erecting the fence so that they are not in the same position as the previous applicant.

Mr. Rice said that he will also have to vote no because there is nothing unique about the subject property that would warrant approval of a 6 foot high fence in the front yard along Greenwood Avenue. He said that the slope on the property is gradual and is not sufficient to establish a practical difficulty that prevents compliance with the ordinance or rises to the level of being unique to the extent that it warrants relief from the ordinance. He also said that even with the garage, there is still a lot of area in the back yard that could be enclosed by a 6 foot high fence.

Ms. Horne agreed. She said that she will also have to vote no as the request does not comply with the criteria used to be evaluate variances.

Ms. Alling said that the property is not unique enough to warrant approval of a variance.

Ms. Cooper said that the fence is necessary to protect their privacy. Without it, their yard will be on display for the area. She also said that the slope of the land constitutes a practical difficulty and is unique to their property.

Mr. McGrain made a motion, seconded by Mr. Rice to deny BZA 4017.15, a variance of 3 feet to the height limitation to permit a 6 foot high, wood privacy fence in the Greenwood Avenue front yard of the property at 2521 Devonshire Avenue, on a finding that the variance is not consistent with the practical difficulty criteria of Section 1244.06 (c) or the impact criteria of Section 1244.06 (e), as detailed in the staff report for this application.

Vote	Yes	No
Rice	X	
McGrain	X	
Leaming	X	
Alling	X	
Horne	X	

On a roll call vote (5-0), the variance was denied.

IV. OLD BUSINESS

A. BZA-4010.15, 3120 N. Cambridge Road

Ms. Stachowiak said that BZA 4010.15 is a request by Dr. Michael Hourani for a variance to permit the newly constructed 8 foot, 8 inch high fence in his yard at 3120 N. Cambridge Road. She said that this request was tabled at the June 11, 2015 BZA meeting to allow time to research what was permitted in terms of the fence as part of a lawsuit settlement in 1987. Ms. Stachowiak said that the Lansing Board of Water & Light constructed a pump station behind the house at 3120 N. Cambridge Road in 1987. In response, the applicant filed a lawsuit against the City in 1987 to have the pump station removed. She said that the lawsuit was resolved via a settlement agreement between the applicant and the City where, in exchange for the applicant dismissing the lawsuit, the City agreed to allow him to construct an 8 foot high wood privacy fence in his back yard to help block the view of the pump station. The terms of this settlement are still in effect.

Ms. Stachowiak said that the fence that was constructed in 1987 was approaching 30 years old and starting to show signs of age and deterioration. Furthermore, it allegedly sustained some structural damage when the Board of Water & Light did some clear cutting of trees on its property earlier this year. For those reasons, the applicant replaced the original fence with a new fence that, in some areas on the property, exceeds 8 feet in height by approximately 8 inches. The applicant has a right to replace the fence in accordance with the terms of the lawsuit settlement from 1987. Therefore, if the applicant lowers the height of the fence to a maximum of 8 feet at any point on the property, it is the opinion of the City that no variance is necessary. If the applicant desires to allow the fence to exceed 8 feet in height, a variance would still be necessary. Staff's recommendation is to deny any request that would allow the fence at 3120 N. Cambridge Road to exceed 8 feet in height.

Ms. Stachowiak said that a copy of the actual lawsuit documents are on order through the circuit court. She said that she has received affidavits from 2 of the attorneys who worked in the firm that represented Dr. Hourani in his 1987 lawsuit stating that the lawsuit was resolved via a settlement agreement which granted Dr. Hourani the right to construct an 8 foot high fence in his back yard in order to ameliorate the issues caused by the pump station.

Dr. Michael Hourani stated that he will ensure that the fence is in compliance with the terms of the lawsuit settlement.

Ms. Stachowiak said that based on Dr. Hourani's decision, the variance is no longer necessary. She said that she will work with Dr. Hourani to determine what changes need to be made in order to bring it into compliance with the settlement agreement.

Mr. Leaming said that Ms. Stachowiak is correct in that the terms of the lawsuit settlement agreement would still be in effect and would transfer to the new fence.

V. PUBLIC COMMENT

Linda Buckingham, 3110 N. Cambridge Road, stated that she lives adjacent to Dr. Hourani and is concerned that politics is interfering with the variance process. She said that the new fence is higher than the previous fence and is more than what is necessary to block the view of the pump station. Ms. Buckingham stated that Dr. Hourani has recently installed a wall of very tall (approximately 12 feet high) evergreen trees on his property that meet the definition of a "hedge" under the Zoning Ordinance. She said that she is not going to let it drop as it is a very clear violation of the Zoning Ordinance.

VI. APPROVAL OF MINUTES

A. Minutes of Regular meeting held on September 16, 2015

Mr. McGrain made a motion, seconded by Ms. Horne to approve the minutes from the September 16, 2015 meeting as printed. On a voice vote (5-0), the motion carried unanimously.

VII. NEW BUSINESS

Mr. McGrain made a motion, seconded by M. Rice to grant excused absences for Ms. Whitfield, Mr. Hovey and Ms. Litwiller from this meeting. On a voice vote (5-0), the motion carried unanimously.

IV. ADJOURNMENT AT 7:28 P.M.

Respectfully Submitted,

Susan Stachowiak, Zoning Administrator