



**Zoning Board of Appeals Meeting Minutes
Remote Meeting by Zoom**

CALL TO ORDER

Chair William Darbee called the meeting to order with a quorum at 7:00 p.m.

INTRODUCTIONS & ROLL CALL

Present: William Darbee, Jan Rise, Chris Greenleaf, Lonnie Dowd

Absent:

Excused: Larry Elliott

Others: Staff Liaison, Scott McKillop; Lisa Griffiths, Planning & Zoning Administrative Assistant

APPROVAL OF MINUTES

Motion made by J. Rise to approve the minutes from April 13, 2021 as submitted.

Seconded by L. Dowd. Motion carried unanimously.

PUBLIC COMMENT - NON-AGENDA ITEMS

S. McKillop noted there was a Conflict-of-Interest disclosure that was provided by the city manager's office that would need to be completed and returned.

W. Darbee questioned an item on the back of the page regarding organizations having any affiliation.

S. McKillop answered he could not think of any conflict of interest that any board member could possibly have that the ZBA's bylaw would not have addressed.

NEW BUSINESS

1. Z 21-03 1005 S. Arbor – Lyndsay Edmonds

The appellant is requesting a non-use variance from the zoning regulation limiting the height of fences in rear yards of residential lots to a maximum of six feet.

Present: Lyndsay Edmonds

Ms. Edmonds explained the rear fence sits 50 feet back from Arbor Street and she would like it to be raised from six feet to eight feet for a portion of the fence due to the foundation being 24 inches higher because it is within a flood zone, and which also raises the height of the deck that much higher. She would like to raise the fence for privacy from neighbors on the north and south side.

W. Darbee invited public comment. There was none.

Motion to close public comment made by L. Dowd, seconded by C. Greenleaf. Motion carried.

Public comment closed.

DISCUSSION and FINDING OF FACT:

S. McKillop asked Ms. Edmonds to confirm whether the house was in a flood zone.

Ms. Edmonds confirmed it was in a flood zone and was built 24 inches higher on the river making the deck 24 inches higher. She said it makes a six-foot fence two feet shorter for privacy than what it normally would be when standing on a deck.

S. McKillop clarified the property ran to the river and the fence would be installed at grade and would extend six feet in height above grade wherever placed.

Standard A

Strict compliance with restrictions governing area, setback, frontage, height, bulk, density, or other nonuse matters will unreasonably prevent the owner from using the property for a permitted purpose or will render conformity with this chapter unnecessarily burdensome.

W. Darbee said to have a six-foot usable backyard fence, the fence needed to be the extra two feet in height to offset the difference because of the flood zone.

J. Rise asked if W. Darbee thought she should be able to have a taller fence because of the flood zone.

W. Darbee stated that was the essence of his comment with having to have her deck two feet above ground level to stay away from the flood zone.

S. McKillop interjected. He said the flood zone was an elevation. W. Darbee said he understood and noted the deck was at flood zone height which was is two feet above grade level. S. McKillop said he was correct but that a typical deck sat 36 inches above grade level.

W. Darbee said it was his opinion the flood zone affects it.

J. Rise did not agree. She said the deck is as high as it is because the house is as high as it is. She said she wasn't sure if that was a requirement or if they just built it higher to avoid flood damage.

W. Darbee stated he thought you could not build in a flood zone; you would have to build above the flood zone. S. McKillop said he was correct.

W. Darbee said the deck would have to be above the flood zone. They are constructing above ground level to meet the flood zone which effectively gives them two feet in the backyard elevation to work with a fence.

S. McKillop stated the deck sat two feet above grade. It sits in the flood plain and is required to be built 24 inches above grade. He mentioned the lot was a standard city lot that was different because it sits on the Saginaw River, but it was no different than other properties with decks in their backyards.

J. Rise thought they were confusing a little bit of Standard D with A. She noted she had a similar situation. Her fence is low, but her deck is high. It doesn't prevent her from using the deck or enjoying the yard.

L. Dowd agreed with J. Rise.

Standard B

The variance(s) will do substantial justice to the applicant, as well as to other property owners.

W. Darbee stated It would help her have privacy on her own deck as opposed to looking over a four-foot fence. S. McKillop corrected that she would be standing on a deck elevated two feet from ground level with a fence that extended six-foot above ground level from grade.

W. Darbee seemed convinced it would effectively be a four-foot fence when standing on the deck.

Standard C

A lesser variance than that requested will not give substantial relief to the applicant.

W. Darbee did not think a lesser variance would suffice.

Standard D

The need for the variance is due to unique circumstances peculiar to the property (such as odd shape, extreme narrowness, etc.) and not due to general neighborhood conditions to other properties in the same zoning district.

W. Darbee felt the flood zone issue on their side of the street was not the same as the other side of the street so he thought it was somewhat a unique circumstance.

C. Greenleaf disagreed. He said the houses across the street could also be in the flood zone. He said being on the river side does not make them comparative to the other side. He believed the whole Arbor Street area on both sides was considered in the flood zone, so it didn't matter which side of the street you were on.

W. Darbee thought the houses along the west side on Arbor were much higher. S. McKillop stated they were higher but there was no factual evidence before them as to the location of the elevation of the flood plain and no one was at the meeting with that expertise.

S. McKillop noted C. Greenleaf had previously stated properties on the east side were essentially similar because they were all in the flood plain. W. Darbee pointed out that the properties on the west side did not have river frontage. S. McKillop stated the property was not similar to properties on the west side; it was similar to properties on the east side. W. Darbee said he understood that but argued that it was still the same neighborhood and that it was a fact that homes on the west side were on a hill.

C. Greenleaf explained flood zone maps change all the time and that in his experience as a realtor, riverfront homes weren't necessarily in a flood zone while there were homes in Hampton Township behind the bay that were.

J. Rise stated the need was due to unique circumstances peculiar to the property and not to the general neighborhood conditions to other properties. She did not find the circumstances unique to this property.

C. Greenleaf said one house could be in the flood zone but the house next to it may not. The DEQ regulates it and could change it day to day. S. McKillop explained insurance flood maps were essentially set in time – 100-year flood plains and special flood hazard maps put together by the Federal Emergency Management Administration. He said flood plain and elevation information could be found on the DEQ's website. He said the City also had a Flood Plain Manager.

Standard E

The problem and resulting need for the variance has not been self-created.

W. Darbee did not think it was self-created because the fence had not been built yet.

J. Rise thought it was self-created because there is no fence, and she wants one eight feet tall.

C. Greenleaf agreed with J. Rise. He said she wants a fence two feet higher than what is allowed so she is creating the problem.

W. Darbee did not agree.

J. Rise clarified she was allowed to have a six-foot fence but wanted an eight-foot fence, so it was self-created in her opinion.

S. McKillop explained J. Rise's point stating the maximum allowed height of a fence is six feet for residential lots throughout the city. He stated the ZBA had never granted a variance permitting a fence over six feet in height. Doing so would establish a precedent and in this case would have the effect of amending zoning regulations for one particular property. He said they could grant any variance they wish to grant but needed to take into consideration the effect decisions have over the long run.

Motion made by C. Greenleaf:

Based on the foregoing findings of fact, I make a motion to deny the variance as requested by the appellant.

Seconded by J. Rise.

Roll call vote: "Yes" vote is in favor for the motion.

3) Yes; (1) No

Motion carried. Request is denied.

2. Z 21-04 408 N. Linn – James Brewster

The appellant is requesting a non-use variance from the zoning regulations limiting the height of fences within 10 feet of a side-street lot line of a corner residential lot to a maximum of four feet.

Present: James Brewster, owner

Mr. Brewster explained they were requesting a variance from the four-foot height restriction. They would like a six-foot-high vinyl fence on the property line to the north side of the property adjacent to the sidewalk. The yard is very narrow and irregular with no backyard. He said there was only a side yard that was completely visible from the north and west streets and a six-foot fence would offer privacy and security for their foster children and help prevent possible abductions and episodes of privacy breaches they have had in the past made by family members that were restricted from having contact with the children while in their care. He thought the children were too accessible with just a four-foot fence. He felt the style of the fence fit in well with neighborhood and had neighbors that expressed they liked the fence.

W. Darbee invited public comment.

Public Comment:

Micheal Lopez – 406 N. Walnut St.

She thought the Brewster's had done an amazing job with fixing up the outside of their home and knew they had had problems over the years. She said she had no problem with the fence and did not think it affected anyone else.

Fred Lopez – 406 N. Walnut St.

He said he lived right around the corner. There was only a chain link fence before, and he agreed with the safety issue it presented to the children. He thought the privacy fence was a really nice-looking fence and didn't understand why anyone would have an issue with it.

Mr. Brewster stated he had meant no disrespect with installing the fence preemptively. He had hired Bay City Fence Company who had assured him it would be compliant. He just thought it was important for the board to know it was built in good faith.

J. Rise asked if there was a chain link fence on the property. Mr. Brewster answered there was one on the west side of the property that butted up to the privacy fence. It is 12 feet from the sidewalk and is only four feet high.

Motion to close public comment made by J. Rise, seconded by C. Greenleaf. Motion carried.
Public comment closed.

DISCUSSION and FINDING OF FACT:

J. Rise commented she had viewed the property and saw that the fence inhibited the line-of-sight for pedestrians and vehicles at the intersection. She did believe the chain link fence complied with zoning and felt that is what they should stay with.

W. Darbee commented:

Standard A

Strict compliance with restrictions governing area, setback, frontage, height, bulk, density, or other nonuse matters will unreasonably prevent the owner from using the property for a permitted purpose or will render conformity with this chapter unnecessarily burdensome.

He said it did not prevent the property from being used. The difference between four and six feet did not restrict the lot being used in the manner in which it can be. He felt either the four- or six-foot fence would theoretically keep people away from the property. The problems may or may not keep happening, but it did not seem to be a legitimate reason to allow the six-foot fence.

Standard B

The variance(s) will do substantial justice to the applicant, as well as to other property owners.

He said it doesn't seem to affect the neighbors one way or the other. The neighbors at 406 N. Walnut had indicated it was nice and didn't affect them and felt it would do justice to the applicant as well as to other property owners.

Standard C

A lesser variance than that requested will not give substantial relief to the applicant.

He said a four-foot fence would accomplish the same thing without the extra two feet.

J. Rise agreed with W. Darbee's comments.

Standard D

The need for the variance is due to unique circumstances peculiar to the property (such as odd shape, extreme narrowness, etc.) and not due to general neighborhood conditions to other properties in the same zoning district.

He believed the narrowness of the property did not deny the use of a four-foot fence versus a six-foot fence.

Standard E

The problem and resulting need for the variance has not been self-created

He said the problem was self-created because the fence was built without the property authority to do so. He understood it may have been the contractor's fault, but it still fell back on the property owner because it was installed because of the applicant.

L. Dowd agreed.

Motion made by J. Rise:

Based on the foregoing findings of fact, I move that the ZBA deny the variance requested by the appellant.

Seconded by L. Dowd.

Roll call vote: "Yes" vote to deny the request.

(3) Yes; (1) No

Motion carried. Request is denied.

S. McKillop asked Mr. Brewster to follow up with him in the office during the following day.

OLD BUSINESS

None.

OTHER BUSINESS

S. McKillop stated there would be two cases for the June meeting.

ADJOURN

Motion made by C. Greenleaf, seconded by W. Darbee to adjourn the meeting at 7:51 p.m.

Meeting adjourned.

Prepared by Lisa Griffiths, Planning & Zoning Administrative Assistant