

The following are minutes of the Bettendorf Board of Adjustment and are a synopsis of the discussion that took place at this meeting and as such may not include the entirety of each statement made. The minutes of each meeting do not become official until approved at the next board meeting.

**MINUTES
BETTENDORF BOARD OF ADJUSTMENT
JUNE 23, 2009
5:00 P.M.**

Chairman Stelk called the meeting to order at 5:00 p.m.

Item 1. Roll Call

PRESENT: Howe, Stelk, Voelliger
ABSENT: Eikenberry, McElhiney
STAFF: Connors, Fuhrman, Soenksen

Item 2. Review of Board Procedures.

Item 3. The Board to review and approve the minutes of the meeting of May 14, 2009.

On motion by Voelliger, seconded by Howe, that the minutes of the meeting of May 14, 2009 be approved as submitted.

ALL AYES

Motion carried.

Item 4. The Board to hold a public hearing on the following items:

Stelk announced that Case 09-044 would be postponed until later in the meeting.

- b. Case 09-045; 1227 Broadlawn Avenue (R-1) - A request for a variance to allow a swimming pool in the required front yard, submitted by Nathan Durick. **(Withdrawn)**
- c. Case 09-046; 717 Brown Street (C-1) - A request for a variance to increase the allowable living area to garage ratio from 40% to 44%, submitted by William Frazier.

Stelk asked if there was an affidavit of publication. Soenksen stated that notice of public hearing had been received. Notice and affidavit of publication are Annex #2 to these minutes.

Soenksen reviewed the staff report. Staff report is Annex #3 to these minutes.

There being no one present wishing to speak in favor of or in opposition to the request, Stelk closed the public hearing.

Voelliger commented that he feels that the request is fair. Howe concurred.

On motion by Howe, seconded by Voelliger, that the request for a variance to increase the allowable living area to garage ratio from 40% to 44% be approved in accordance with the Decision and Order.

ALL AYES

Motion carried.

Decision and Order is Annex #4 to these minutes.

- d. Case 09-047; 1414 - 25th Street (R-2) – A request for a variance to increase the allowable fence height from 6 feet to 7 ½ feet, submitted by William Grothusen.

Stelk asked if there was an affidavit of publication. Soenksen stated that notice of public hearing had been received. Notice and affidavit of publication are Annex #2 to these minutes.

Soenksen reviewed the staff report. Staff report is Annex #5 to these minutes.

Stelk asked if there was anyone present wishing to speak in favor of the request.

William Grothusen, the applicant, stated that his neighbor has no objections to the fence installation. He indicated that the fence section would likely be less than 16 feet long.

Howe asked if the applicant had given any consideration to landscaping the area rather than installing a fence. Grothusen stated that he had considered that option, but had chosen a fence because of the maintenance that would be involved with shrubbery. He added that a fence is more desirable as plantings would take a substantial amount of time to grow before they could provide the same amount of privacy as would the fence.

Howe asked what type of fence the applicant plans to install. Grothusen explained that it would be a decorative staggered-board, wooden fence. He indicated that the fence on the other side of the property has a lattice on top.

Howe expressed concern about the negative precedent that might be set if the Board approves the request. He indicated that he believes that the current case is different than the request for an 8-foot high fence at 1322 Highland Park Drive. He stated that there were severe topographical issues involved in that case.

Voelliger commented that he believes a fence is the better option to provide the desired privacy as it will take less space than bushes would. He added that he is supportive of the request. Stelk concurred, reiterating that the maintenance of plantings might become an issue in the future.

There being no one present else wishing to speak in favor of or in opposition to the request, Stelk closed the public hearing.

Howe stated that because of the short length, he believes that the proposed fence is similar to a lawn ornament and therefore is not a precedent-setting request. He requested that the applicant's fence be as short a length as possible.

On motion by Voelliger, seconded by Howe, that the request for a variance to increase the allowable fence height from 6 feet to 7 ½ feet be approved in accordance with the Decision and Order.

ALL AYES

Motion carried.

Decision and Order is Annex #6 to these minutes.

- e. Case 09-048; 3590 East Harbor Drive (R-1) – A request for an appeal of the Zoning Administrator's determination that a generator is not considered a building structure and therefore is not subject to side yard setback requirements, submitted by Stephen Chlebowski.

Stelk asked if there was an affidavit of publication. Soenksen stated that notice of public hearing had been received. Notice and affidavit of publication are Annex #2 to these minutes.

Soenksen reviewed the staff report. Staff report is Annex #7 to these minutes.

Stelk asked if there was anyone present wishing to speak in favor of the request.

Steve Chlebowski, the applicant, stated that he never suggested that the generator itself is a structure, merely that it is attached to a structure and adds an additional 4 feet to it. He indicated that the generator is a part of the existing structure now. He stated that the generator in question emits enough noise that it would violate Bettendorf's noise ordinance when it is running. Chlebowski stated that while he has never experienced a long-term power outage in the approximately 5 years he has lived in the neighborhood, if this would occur, he would be forced to listen to his neighbor's generator and it is possible that the exhaust could go into his house.

Stelk asked if the generator is run by natural gas. Soenksen confirmed this, adding that the accessibility of the gas line and service panel were contributing factors when the location for the generator was chosen.

Chlebowski stated that he does not believe that he would be able to sleep if the generator had to run constantly. He added that his and his other adjacent neighbor's air conditioning condensers are at ground level.

Stelk asked if there are any type of sound dampening technologies available. Connors explained that there might be, but that the issue for the Board's consideration is whether or not any type of utility apparatus installed in a side yard or on the side of a house is considered an encroachment. He indicated that there are nuisance ordinances already in place to deal with the applicant's other issues.

Mel Foster III, 3590 East Harbor Drive, explained that it is his generator that is at issue. He indicated that at additional expense, he endeavored to make the generator itself, the trim, and the supports match the house as closely as possible. He added that during the installation when it became apparent that Chlebowski was unhappy, he instructed the contractor to install the switch panel and the conduit inside so that it would be less obtrusive. He reiterated that the location of the generator was chosen based on accessibility to the gas meter and service panel. Foster explained that the generator was installed aboveground in order to prevent flotsam from damaging it during flooding and thus disabling his sump pumps. He stated that during flooding approximately 2 years ago, his neighbor ran a generator to power the pumps surrounding his home. He indicated that the generator is sufficient to power his entire home during a power outage, including all of the necessary sump pumps. Foster stated that he has made a substantial investment in the generator to be used to provide a backup during flooding. He commented that the applicant's power boat emits exhaust and noise much louder than his generator would.

Chlebowski stated that his most pressing complaint is that of the location of the generator. He indicated that the applicant could have installed it in another location, adding that the applicant had taken no one else into consideration when the site was chosen. He explained that there is an empty lot on the other side of the house. Chlebowski stated that it would not be difficult or expensive merely to run more conduit and a gas line to a different location.

There being no one else present wishing to speak in favor of or in opposition to the request, Stelk closed the public hearing.

Howe stated that he concurs with staff with regard to the fact that the noise emitted by the generator is not in the Board's purview. He commented that there are likely several sound-deadening materials that could be utilized by either property owner. Howe stated that the frequency of use will likely be minimal, adding that he is not supportive of the applicant's appeal. Stelk and Voelliger concurred.

On motion by Howe, seconded by Voelliger, that the request for an appeal of the Zoning Administrator's determination that a generator is not considered a building structure and therefore is not subject to side yard setback requirements be denied in accordance with the Decision and Order.

ALL AYES

Motion carried.

Decision and Order is Annex #8 to these minutes.

- a. Case 09-044; 6517 Ocean Boulevard (R-1) - A request for a variance to reduce the required rear yard setback from 40 feet to 35 feet to allow for a 18-foot by 18-foot deck, submitted by Lovewell Fencing, Inc.

Stelk asked if there was an affidavit of publication. Soenksen stated that notice of public hearing had been received. Notice and affidavit of publication are Annex #2 to these minutes.

Soenksen reviewed the staff report. Staff report is Annex #9 to these minutes.

Howe asked if all of the homes in the subdivision were built at a 30-foot front yard setback and if the developer has already taken advantage of a new ordinance intended to address the difficulties posed by requiring staggered setbacks as is typical in R-1 subdivisions. Soenksen confirmed this. Connors added that the developer had platted the first two subdivisions in the area using the staggered setback. He indicated that subsequent to that platting, the developer approached the city to request some type of relief from those requirements. Soenksen explained that currently developers have the option to use the staggered setback requirement or to use a 30-foot front yard setback and incorporate some sort of offset architectural feature to the home which would give the same aesthetic impression. Howe commented that the developer already maximized the amount of rear yard available for a deck when the subdivision was platted with 30-foot front yard setbacks rather than the more generous staggered ones. Connors concurred.

Stelk asked if there was anyone present wishing to speak in favor of the request.

Mary Meehan, 6517 Ocean Boulevard, stated that she had been under the impression that only a 2 ½ variance was actually required. Soenksen explained that as long as the request is for a smaller encroachment, the case could still be heard. He commented that according to the information he received, the variance required would be 5 feet.

Howe asked how far the deck would extend from the rear of the home. Soenksen stated that it would be 18 feet deep.

Mike Lovewell, the applicant, stated that the deck would extend 11 feet from the house, adding that there is only 8 ½ feet of available rear yard setback. He indicated that he had double-checked the measurements, and the variance request is for a 2 ½-foot encroachment.

Meehan stated that her 94 year old mother who uses a walker visits frequently and she would like her to have enough room to move around. She added that she has 10 grandchildren who are often at her home who need room to play. She stated that the deck is for her family's enjoyment and her convenience.

Howe asked why the applicant had not chosen to extend the deck further into the buildable area of the lot rather than encroach into the setback. Meehan explained that

she does not believe that her next door neighbor, who also has a deck, would like her to place the deck so close to the existing one.

Voelliger commented that he is in favor of the request.

Howe stated that he does not believe that a hardship has been established and that a negative precedent would be set by approving the request. He stated that if the case is approved, other neighbors will likely make similar variance requests. He indicated that the applicant could choose to place the deck to the left in the buildable area of the lot, adding that the 8 ½-foot depth of the deck that would be allowed is sufficient to allow maneuverability. He reiterated that the applicant's situation is a direct result of the developer's attempt to maximize the number of lots in the subdivision by building all of the houses at a 30-foot front yard setback.

Stelk commented that a unanimous vote would be required to approve the variance. Howe suggested that the applicant may wish to defer the request until such time as there are more Board members present.

Meehan stated that the water spigot would interfere with the deck's being placed to the left. Howe stated that there are still other options, adding that the placement of the faucet is not a legitimate hardship.

There being no further business, it was unanimously approved to adjourn the meeting at approximately 6:00 p.m.

These minutes and annexes approved

John Soenksen
City Planner