

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
MARCH 12, 2009
5:00 P.M.**

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

Item 1. Roll Call

PRESENT: Eikenberry, Howe, *McElhiney, Stelk, Voelliger
ABSENT: None
STAFF: Connors, Fuhrman, Soenksen

Item 2. Review of Board Procedures.

Item 3. The Board to review and approve the minutes of the meeting of February 12, 2009.

On motion by Howe, seconded by Voelliger, that the minutes of the meeting of February 12, 2009 be approved as corrected.

ALL AYES

Motion carried.

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

- a. Case 09-006; 6036 Shawnee Court (R-1) – A request for a variance to reduce the required rear yard setback from 40 feet to 30 feet and to reduce the required front yard setback from 35 feet to 30 feet, submitted by Steven Zelle. (Deferred from meeting of February 12, 2009)

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. Soenksen stated that while it has been the Board's practice in the past to deny variance requests for the subdivision in question. He indicated that the applicant has requested that staff clarify the fact that certain requests for properties located on the west side of the street were granted because of the topography of those lots.

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

Steve Zelle, the applicant, stated that at the time of the subdivision platting, he had not been aware of the impact that the drainage easement would have on his ability to build a house on the lot in question. He indicated that he is having difficulty abiding by his restrictive covenants with regard to minimum square footage because the buildable area is only 45 feet deep.

Howe asked if the Zelle plans to build a spec home. Zelle confirmed this.

Voelliger commented that he is in favor of the request as he believes that the variance will benefit a future home buyer, adding that no one will notice if the house is allowed to be built 5 feet closer to the street.

McElhiney stated that circumstances have not changed since the previous meeting, adding that the Board has made it a practice to deny requests for variances on undeveloped lots. She indicated that the developer should have been aware of the limitations of the restrictive covenants as he wrote them, adding that she feels that any hardship is self-imposed. McElhiney stated that the applicant is under no obligation to construct a ranch home, adding that there are many other styles that would fit on the lot and still meet ordinance requirements.

Howe concurred with McElhiney, especially as the applicant plans to build a spec home. He indicated that Zelle had the knowledge at the time he wrote the restrictive covenants and platted the property of what would be allowed and what would not. Howe stated that he does not believe it would be appropriate to circumvent ordinance requirements merely to maximize profit.

McElhiney reiterated that there are many different styles of home that could be chosen, such as a two-story, that would be much more suitable for the lot in question.

Howe commented that many of the lots in the subdivision are irregularly-shaped, adding that he believes that a bad precedent would be set if the request is granted.

Voelliger stated that the remainder of the lots on the court would not require a variance for a house to be built.

On motion by Voelliger, seconded by Eikenberry, that the request for a variance to reduce the required rear yard setback from 40 feet to 30 feet and to reduce the required front yard setback from 35 feet to 30 feet be approved in accordance with the Decision and Order.

Eikenberry asked what the required setback would be in an R-2 district. Soenksen explained that the required front and rear setbacks would be 25 feet. He indicated that in the subdivision, the lots have staggered setbacks.

Soenksen commented that the ordinance describes the R-2 zoning district as one with smaller homes in the older areas of the city located on small lots. He indicated that a legitimate interpretation could be made that new subdivisions should all be zoned R-1.

McElhiney asked why the applicant had chosen the R-1 zoning district for the subdivision. Zelle explained that he wished to build upper-scale homes that could be customized.

Soenksen stated that recently new subdivisions have been platted using the R-2 zoning district.

ROLL CALL ON MOTION

AYE: Eikenberry, Stelk, Voelliger
NAY: Howe, McElhiney
ABSTAIN: None

Motion carried.

Decision and Order is Annex #4 to these minutes.

*At this time, McElhiney left.

- b. Case 09-012; 743 Grant Street (R-2) – A request for a variance to allow a 6-foot high fence in a front yard, submitted by Sidney Rognoni.

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. He stated that he had received a phone call from a neighbor expressing support for the request after it had been clarified. Soenksen added that he had also received a letter from Patrick Wedmeyer who had been under the impression that the fence was to extend beyond the front of the house which might impair vision. He indicated that as this is not the case, he believes that Wedmeyer would also support the request.

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

On motion by Eikenberry, seconded by Howe, that the request for a variance to allow a 6-foot high fence in a front yard be approved in accordance with the Decision and Order.

Voelliger asked if the proposed fence would impair visibility for motorists entering and exiting from 8th Street. Soenksen stated that there is a significant setback from the proposed fence location to the paved portion of 8th Street and that there would be no visibility issues.

Voelliger asked if the proposed fence would be set back from the alley property line or if it would be further from that edge. Connors explained that it would be placed on the property line which is directly on the alley edge.

Howe asked if the fence would be placed adjacent to the sidewalk on 8th Street and if staff feels that there would be visibility issues for pedestrians. Soenksen suggested that the Board request that the fence be angled in some manner as to prevent a problem. Voelliger stated that he would prefer that the fence be set back from the sidewalk. Connors explained that the property line is approximately 4 feet from the sidewalk; therefore the fence would not be allowed to be placed directly adjacent to it.

ROLL CALL ON MOTION

ALL AYES

Motion carried.

Decision and Order is Annex #6 to these minutes.

- c. Case 09-013; 5733 Appleton Road (R-2) - A request for a variance to reduce the required side yard setback from 10 feet to 5 feet and to

reduce the required combined side yard setback from 15 feet to 10 feet, submitted by Anthony Hofman.

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.

Anthony Hofman, the applicant, stated that he wishes to construct a garage addition in order to avoid being forced to park a vehicle on the street. He indicated that most of the homes in the neighborhood have 3-car garages, adding that there would be no hardship for the adjacent lot as it is undeveloped.

Voelliger stated that there is enough space to build the addition, adding that the subdivision covenants do not allow the construction of freestanding sheds. He asked if there are any covenants prohibiting a lot from having a 10-foot combined side yard setback. Soenksen stated that he is unaware of any such restriction, but explained that the ordinance takes precedence over any restrictions imposed by subdivision covenants.

Howe stated that he is opposed to the request, adding that he believes that the proposed addition would hinder the ability of the adjacent future property owner to utilize that lot as he or she sees fit. He indicated that approval of the request could hinder the sale of the property, adding that the applicant was aware of the limitations of the lot when it was purchased. Howe stated that no hardship has been established, adding that he believes it would be inappropriate to modify the code merely to allow homeowners to maximize the square footage of their property.

Eikenberry asked who owns the adjacent lot. Ryan Windmiller, developer of the subdivision, explained this his father owns the lot and is not opposed to the request. He added that he could build a home of a narrow style that would allow it to fit on the lot.

Howe asked if Windmiller feels that a future home could have a 3-car garage. Windmiller confirmed this, adding that there is such a large variety and sizes of house plans available that one could be chosen for the lot that would allow a sufficient gap between it and the applicant's home.

On motion by Voelliger, seconded by Eikenberry, that the request for a variance to reduce the required side yard setback from 10 feet to 5 feet and to reduce the required combined side yard setback from 15 feet to 10 feet be approved in accordance with the Decision and Order.

ROLL CALL ON MOTION

AYE: Eikenberry, Stelk, Voelliger
NAY: Howe
ABSTAIN: None

Motion carried.

Decision and Order is Annex #8 to these minutes.

- d. Case 09-014; 730 - 800 Tanglefoot Lane (C-6) - A request for a variance to reduce the required front yard setback from 50 feet to 20 feet, submitted by Plantation Development.
- e. Case 09-015; 730 - 800 Tanglefoot Lane (C-6) - A request for a special use permit to allow a drive-up window, submitted by Plantation Development.

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 reports. Staff reports are Annex #9 and Annex #10 to these minutes.

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

Alan Frankel, the applicant, stated that the project is a high-technology development that will utilize the fiber optic network that is located in Utica Ridge Road. He indicated that the configuration and depth of the buildings require that the parking be located in the front yard. He indicated that the drive-up window will merely be a slider without a speaker. He stated that the drive-up window will be used by an accountant to allow customers to drop off paperwork. Frankel explained that there would be no arrows painted on the pavement.

Stelk asked if the drive-up window would be used only during business hours. Frankel confirmed that that would be principally the case, adding that rarely items might be dropped off after hours. He indicated that the house adjacent to the property is the only lot in the area that is not zoned Commercial. He stated that the developers own the home near the interstate, adding that it will be removed.

On motion by Eikenberry, seconded by Voelliger, that the request for a variance to reduce the required front yard setback from 50 feet to 20 feet be approved in accordance with the Decision and Order.

ALL AYES

Motion carried.

Decision and Order is Annex #9 to these minutes.

Howe commented that he believes that the project will be very beneficial for the city.

On motion by Eikenberry, seconded by Voelliger, that the request for a special use permit to allow a drive-up window be approved in accordance with the Decision and Order.

ALL AYES

Motion carried.

Decision and Order is Annex #9 to these minutes.

- f. Case 09-016; 6021 Emery Court (R-1) – A request for a variance to allow an 8-foot high fence in a front yard, submitted by Monte Coy.

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 #8 to these minutes.

Howe asked if there are any safety implications and expressed concern that cyclists might not have sufficient time to stop if the fence is located very close to Emery Court and if the homeowner across the street makes the same request. Soenksen explained that the fence will not wrap around to Emery Court, adding that placing the fence on a berm might address some of those issues because it would force the fence to be placed further from the trail.

Howe stated that it appears as though the fence would be placed nearly to Emery Court and reiterated his concern that motorists might not have time to stop if a cyclist were to travel at a high rate of speed down the street. Connors

stated that staff would ensure that the fence is in compliance with vision triangle standards at the intersection.

Voelliger asked if the fence should be placed at a line even with the house. Connors stated that the proposed fence placement is the reason for the request.

Voelliger asked how far the fence would be located from the trail. Soenksen stated that the application indicates that the fence would be placed 2 feet from the trail. Voelliger commented that as long as the fence does not impair traffic flow, he is not opposed to the request.

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

Chris Coy, 6021 Emery Court, stated that she and her husband are opposed to the recreational trail. She indicated that they will lose at least 7 trees and part of their driveway as a result of the project. She indicated that she would not be opposed to placing a 6-foot high fence on top of a 2-foot high berm. Coy stated that she wishes the fence to extend around the corner and possibly angle downward and to continue into the detention area. She asked if the proposed location and width of the recreational trail is definite. Connors stated that the City Council has approved the project, adding that the applicants must approach them with their concerns and objections.

Voelliger suggested that the recreational trail be reconfigured such that it is only 6 feet wide in that area, as the only reason for a 10-foot wide trail is so that it can be plowed with a pickup truck. Connors stated that a 10-foot width is recommended for a multi-use trail.

Howe stated that he appreciates the applicant's flexibility and asked if the trees that are being removed would be replaced. Coy stated that the city would reimburse her for the expense of the trees. Howe asked if the applicants have considered installing heavy landscaping rather than install a fence as there would be no maintenance issues as there would be with a fence. Coy stated

that trees would take 10 years to grow to a height that would provide adequate privacy. She expressed concern about children entering the retention area if she is not allowed to fence part of it.

Howe expressed concern about the precedent that would be set by approving the request as the recreational trail will extend along Hopewell Avenue. Coy stated that there already is a line of fences along 53rd Avenue. Howe explained that those fences were placed in accordance with ordinance requirements. Eikenberry stated that there are several fences similar in appearance and location on Devils Glen Road.

Eikenberry commented that he would be comfortable allowing the city staff to work with the applicants to ensure that the fence is compliant with sight distance requirements and appropriate location and style.

Howe commented that this applicant has established a hardship, but that he would not be supportive of future requests in other locations for fences that are proposed to be placed so close to sidewalks or recreational trails.

Coy asked if the city would be willing to participate in the cost of the berm as it would be more expensive than a fence. Connors stated that he would express Coy's concern to the city engineer who would make that decision.

Coy asked if she would be allowed to extend the fence into the retention pond. Connors explained that that type of decision is not in the Board's purview.

On motion by Eikenberry, seconded by Voelliger, that the request for a variance to allow a 6-foot high fence on top of a 2-foot berm in the front yard be approved in accordance with the Decision and Order.

ALL AYES

Motion carried.

Decision and Order is Annex #9 to these minutes.

Zelle asked if a fence would ever be allowed to be placed 2 feet from the recreational trail. Howe explained that his comments were merely meant to indicate his personal position on the issue, not how the Board would necessarily vote.

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