

## PORT EDWARDS ZONING BOARD OF APPEALS

Minutes of meeting held on September 4, 2019

Called to order 4:04 p.m.

Attendance: Leo Thomasgard (Chair), Gary Blum, Lee Tremmel and Steve Vechinski (Members)

Absent: Member Steinhorst

Also Present: Ben Martinson – Public Works Foreman & Acting Administrator, Diane Tremmel - Clerk-Treasurer

Citizens: Guy Detlefsen, JoAnn Detlefsen, Thomas Dachel

Purpose: To request a variance of Chapter 17.04(2)(c) of Village Ordinances and resolution regarding fence policy passed by the Village Board on May 13, 2003. The applicant is requesting a variance from the 2' setback from lot lines adjacent to public right of way and a maximum 4' tall fence in the street yard. Applicant is requesting to install a 6' fence in the front yard that will exceed the 2' setback but not extend beyond the roadway right of way.

Chair Thomasgard read the purpose and duties of the Zoning Board of Appeals. He also read the applicant's request for a variance.

Mrs. Detlefsen stated that there was always a fence between the two properties. They have been landscaping and would like to replace the fence that was there. She stated that they have a unique set of circumstances with the neighbor's back yard being along their side yard. She also stated that the proposed fence would be on the lot line and that there would be no issue in terms of their neighbors or sight obstruction as they are located on a dead end street and that the fence would affect no one.

Member Tremmel asked Mrs. Detlefsen if the proposed fence will be right on the lot line, and she stated it would be.

Mr. Detlefsen stated that the legal position is that they are replacing the fence that was there before 1983 and so it is "grandfathered." He also informed the Board that the law states that a fence can go up to the street right-of-way.

Member Tremmel stated that there is no "grandfathering" because the previous fence was on the neighbor's property and therefore this is not a replacement of that fence.

Mr. Dachel stated that he lives across the street from the Detlefsens and there has always been a fence there for as long as he has lived there (since 1983). He looks at it as a replacement of the previous fence (which was removed about two years ago). He stated that other neighbors do not understand what the problem is.

Member Vechinski asked if there was a fence between Mr. Dachel and his neighbor, as it is a similar situation. Mr. Dachel stated that there is not a fence.

Member Tremmel pointed out that there are several houses in the Village in the same situation making this not a unique set of circumstances. He was concerned that if this variance is granted, several residents will be requesting a similar variance.

Chair Thomasgard and Member Blum stated that this does not set a precedent for others. The decision applies to this particular instance and not to what may happen in the future. Member Vechinski pointed out that even if that is what the law states, you know the decision will affect others.

Chair Thomasgard stated that he believes this is an area variance and unnecessary hardship exists when compliance would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions “unnecessarily burdensome.” He also feels there are unique physical limitations on the property and that there is no harm to public interests.

Member Blum agreed with Chair Thomasgard that the legal criteria for a variance are met in this case.

Ben Martinson pointed out that the tricky part of this situation is the two permits. If the neighbor at 1631 4<sup>th</sup> Street (Susan Scott) would have applied for the permit, she would be allowed to put up the 6’ fence.

There was discussion regarding the two permits. In May, the Detlefsen’s applied for a permit. Then in June, the Detlefsens and Susan Scott jointly applied for the permit indicating that the fence would be constructed on the property line. The Members agreed that if Susan Scott applied for the permit, she would be within the height restrictions to put up a 6’ fence as it would be located in her back yard.

Mr. Detlefsen confirmed that the fence will in fact be constructed on the property line.

Motion by Member Blum to grant the variance; seconded by Member Tremmel.

Motion carried. (Blum – aye; Thomasgard – aye; Tremmel – aye; Vechincki – aye)

Meeting adjourned at 4:55 p.m.

Diane M. Tremmel (Secretary)  
Village Clerk-Treasurer