

BOARD OF ZONING APPEALS MINUTES

A regular meeting of the Farmington Board of Zoning Appeals was held on Wednesday, December 3, 2014 in Council Chambers, 23600 Liberty Street, Farmington, Michigan. Notice of the meeting was posted in compliance with Public Act 1976.

Vice Chairperson Kmetzo called the meeting to order at 7:00 p.m.

ROLL CALL

PRESENT: Aren, Bennett, Bertin, Crutcher, Kmetzo

ABSENT: Dompierre

A quorum of commissioners were present.

CITY OFFICIALS PRESENT: Building Inspector Koncsol.

a. Approval of Agenda

MOTION by Bennett, supported by Bertin, to approve the Agenda as submitted.
Motion carried, all ayes.

MINUTES OF PREVIOUS MEETINGS

MOTION by Bennett, supported by Crutcher, to approve the minutes of the previous ZBA meeting of September 3, 2014
Motion carried, all ayes.

MOTION by Bennett, supported by Bertin, to receive and file the minutes of the previous Planning Commission Meetings from September 8, 2014, September 22, 2014 and October 13, 2014.
Motion carried, all ayes.

APPEAL OF:

**Ms. Kathy Barr
31732 Marblehead
Farmington, MI 48336**

Vice Chairperson Kmetzo stated the Applicant is requesting a variance to Sec 35-49(B)(4) to allow two (2) fences across the rear lot line. It would be a 6' vinyl fence abutting the existing chain link fence. Neighbors on each side have given their permission to remove the existing chain link and then install the 6' vinyl. City code only allows one (1) fence per lot line unless separated by at least 10'.

The Petitioner was requested to come forward. Kathleen Barr, 31732 Marblehead, Farmington, MI 48336 came to the podium. She stated she was applying for the variance for the following reasons: to supply privacy when she is in or out of her home in the backyard. She indicated the neighbors on the right are 30 feet away from her doorwall that goes to her family room. She stated she had planted bushes and that they died during the harsh winter experienced last year. She said that anyone walking down the street could also see into her family room/backyard. She stated there is no privacy and that she spends most of her time either in the family room or outside when the

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weather is nice. She indicated that one of her neighbors who has a house that looks into her backyard had stated she likes looking out her back window so she can watch her family in the backyard which made the Petitioner uncomfortable. She stated the fence would provide privacy and also safety as she put a pool up this past summer and that the new fence would not allow neighborhood kids entrance into her yard. She indicated the neighbor that opposes it lives behind her and he stated his opposition was due to the fact the new fence would prevent him from blowing his snow from driveway into her backyard. She stated she believes the new fence would be more attractive than the current cyclone fence and would provide a nice backdrop as well as privacy, safety and beautification of her yard.

The floor was opened up for questions from the Commissioners.

Bennett inquired who owned the chain link fence on all three sides and the Petitioner responded that she had had a survey done and that the fence is currently on the property line. Bennett asked who erected it and the Petitioner responded she did not have that information. He then asked which side of the fence the posts are on and the Petitioner indicated she was unsure.

Bertin than asked the Petitioner if the chain link was fashioned to the Petitioner's side of the fence or the neighbor's as that would give the Commission a clue who put it in and the Petitioner responded she did not recall.

Koncsol stated that he was not sure that the current fence ordinance as it reads was like that back in the '50's when the subdivision was put in. He indicated that the Petitioner has done as much as she can but since it is on the property line, she does need the rear neighbor's permission to remove it and it was not met favorably by him. He indicated to the Board that there is a special provision that could be used in lieu of the normal practical difficulty in variances that is less stringent and allows neighbors to work it out. He indicated with the new ordinance the Zoning Board can grant relief where external factors were involved. Koncsol stated that he called the rear neighbor to discuss the possibility of allowing Ms. Barr to put up the 6' vinyl fence and take down the chain link and he held his ground in not agreeing to same.

Kmetzo asked if any reasons were given for the denial and the Petitioner stated that the neighbor had given her two reasons, one, that he wanted to be able to continue to put his snow in her yard, and since she watches his house when he goes out of town, he felt the 6' vinyl would impair her ability to do so.

Kmetzo asked the Petitioner how long she had been in her home and she responded twelve years.

Aren questioned if Petitioner's fence would match the one at 31780 Marblehead and she responded it would be a similar style but different color. Aren then asked if the proximity of that fence had posed a problem and the Petitioner responded that the fence had been pulled back from its initial position.

Vice Chairperson Kmetzo then asked Koncsol for clarification of the variance request and he stated it was to allow Petitioner to put up the 6' vinyl fence and still retain the chain link that is currently there.

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Bennett stated that it was important for both parties to understand that the questions that are posed have nothing to do with the individual property owner. He indicated that one of the reasons the ordinance is there is because of the maintenance issue that arises with two fences against one another. He said he is concerned about how the Petitioner would be able to keep that area clean without going through the neighbor's yard and fence.

The Petitioner responded she was not sure how that would work out as the neighbor has bushes in that area that only get trimmed once a year and she would have to go through the bushes to get to the fence. She stated she keeps her yard up, that she is a single mom, and does all she can to beautify her yard.

Vice Chairperson Kmetzo then asked if anyone in the audience wished to speak.

Norm Pranger, 31760 Lee Lane, Farmington, MI 48336, indicated he is the rear neighbor and stated he has lived in his house for thirty-one years, since November of 1983. He cited another reason for not approving the fence is that the city put in a storm drain on the rear of Ms. Barr's property that is utilized and which alleviates flooding issues in the neighborhood. He responded to the claim Ms. Barr made stating he trims his bushes more than once a year as she had indicated. He then stated she has never asked him not to blow snow in her yard. He also indicated it would produce a claustrophobic effect by putting another 6' fence on the corner.

Bertin then asked Pranger about the fence at 31780 Marblehead and Pranger stated when it was originally put in he could not get out of his car when he was parked in his drive so it was moved a foot. Bertin asked about the length between the end of that fence and the garage and Pranger responded 20 feet and further discussion was held.

The Petitioner stated that her fence is not going into the ground so it would not impede the water flow and drainage.

The following letters were received:

Sue Lover, 31948 Lamar – approval
Sally Mattmueller, 31741 Marblehead – approval
Claudia Tann, 31729 Marblehead – approval

The following people spoke in favor of the variance:

Lima Durst, 31751 Marblehead.
Sue Lover, 31948 Lamar
Sally Mattmueller, 31741 Marblehead

Bennett addressed the Board suggesting that before a motion is presented that he would like to hear their opinions on the variance request. He indicated that both parties presented reasons for wanting and not wanting the fence. He stated he felt the issue could be resolved in other ways and that the privacy issue to him is a nonissue as it could be solved in other ways.

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Bertin agreed with Bennett's statement suggesting that arborvitaes could be used to create privacy. He also voiced concern for the maintenance issue of the dual fence.

The Petitioner indicated she had put in arborvitaes but had to dig out four that had died from the harsh winter. She also expressed concern with planting because of roots from a big tree in her backyard.

Claudia Tann, 31729 Marblehead, addressed the privacy and security issue.

Bertin stated that there are other places throughout the community with houses in coves with similar situations and he was uncomfortable in creating a condition that could produce a potential maintenance problem and further discussion was held. Bertin suggested an alternative to arborvitaes would be to grow vines on the fence.

Crutcher stated if the variance were granted it would be her responsibility to keep the area between the two fences clean and further discussion was held concerning the issue of weeds and debris.

Chairperson Kmetzo asked if Koncsol could share his experience with dual fence variances in the past and if maintenance posed a problem and he responded that the situation was fairly new and that he had not received complaints on it thus far.

Bennett stated in his tenure on the Board that this was the fourth or fifth dual fence variance that he has addressed and reminded fellow members that there are two parties to protect in this case.

MOTION by Bennett, supported by Bertin, to move that the variance request of Kathy Barr, 31732 Marblehead, be denied for the reason that the Petitioner has not exhausted all options at finding a solution to the problem that would not require a variance such as planting shrubbery and the like to provide privacy.

ROLL CALL:

AYES: Aren, Bennett, Bertin

NAYS: Crutcher, Kmetzo

Motion carried, three to two.

PUBLIC COMMENT

Lima Durst spoke about the denial of the variance and her opinion regarding same.

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Norm Pranger stated he had agreed to share the cost of a 6' chain link fence with the Petitioner but she refused the offer.

Kathy Barr spoke about her disappointment with the Board's decision.

Bennett responded to Public Comment indicating that an issue such as the one before the Board tonight is not an easy task but that the Commissioners have a responsibility to everyone in the City and at times it is difficult to know what to do.

ADJOURNMENT

MOTION by Bennett, seconded by Crutcher, to adjourn the meeting.
Motion carried, all ayes.

The meeting adjourned at 7:51 p.m.

John D. Koncsol , Building Inspector