

BOARD OF ZONING APPEALS MEETING  
JULY 16, 2013  
7:00 P.M.

I CALL MEETING TO ORDER

The meeting was called to order at 7:00 p.m.

II ROLL CALL

Members Present: Ed Knox, Dave Nienaber, Joe Ramirez, Lawrence Hawkins III, Carolyn Ghantous, Robert Weidlich and Jane Huber

Others Present: Randy Champion, Building Inspector

III PLEDGE OF ALLEGIANCE

IV MINUTES OF THE REGULAR MEETING OF JUNE 18, 2013

Chairman Weidlich: The first order of business for this evening is the Minutes of the regular meeting from June 18, 2013; does anyone have any corrections or additions to the Minutes?

Mr. Hawkins: I move to adopt.

(Mr. Knox seconded the motion and with seven "aye" votes from the Board of Zoning Appeals Members, the Minutes of the June 18, 2013 meeting were accepted.)

V CORRESPONDENCE

(No correspondence presented at this meeting.)

VI REPORT ON COUNCIL

(Mr. Hawkins gave a summary report of the June 19th, 2013 City of Springdale Council Meeting.)

VII REPORT ON PLANNING COMMISSION

(Mrs. Ghantous gave a summary report of the July 9th, 2013 Planning Commission Meeting.)

VIII CHAIRMAN'S STATEMENT AND SWEARING IN OF APPLICANTS

IX OLD BUSINESS

- A. Chairman Weidlich: Our first order of Business is one that we tabled from the last meeting; the owner of 455 West Kemper Road requests a variance for a fence to be installed in the front yard of the property. Said variance is from Section 153.482(A)(1) "No fence or wall other than a retaining wall shall project past the front building line of any principally permitted or conditionally permitted structure."

Mr. Richard Fish: I am the owner; I live at 455 West Kemper. I am kind of confused as to why I need a variance. My wife was here last month, I drive a truck and I am never home. I have an existing fence and I am just wanting to improve on it. It is about forty or fifty years old and I don't understand why I need a variance to repair a fence that is already up.

Chairman Weidlich: That depends on what you call repair. Are you are talking about just doing a small portion of it?

Mr. Richard Fish: The whole property was fenced at one time. Right now there is fencing in the back and there is fencing on the side; the front is fenced but it is rusted and there are trees growing through it and it just needs to be repaired. I understand there is an ordinance about putting up a fence in the front yard, but this fence has been existing for over forty years. I just want to make it better and nicer, a cleaner property. I have had people come through my yard. I have had a car stolen out of my yard. I was born in this town and I have lived here over thirty years, I have never had any break-ins or anything and that is another reason I wanted the fence to stay up because there are teenagers cutting through our yard. There are several reasons why I want it up but that is some of them.

Chairman Weidlich: I will read you this section from a memo from Mr. McErlane, our Building Department Official; it defines repair as "painting, reconnecting or reattaching components, replacing a small number of minor like components of a structure or equipment." So, if the major thing like doing most of your fence, which I am assuming you are wanting to do then that would fall under what we call replacement, which is removing and rebuilding or reinstalling all or a significant portion or section to the structure or equipment.

Mr. Richard Fish: We are wanting to replace it with a real nice split-rail fence. Right now it is rusted and weeds are growing through it and it is hideous. All I am requesting is to replace the fence with a new modern split-rail fence.

Mr. Champion: In 1971 the zoning code changed; they wrote into the zoning code that you can't have a fence in your front yard. Because your fence was existing, it is allowed to be there. You can repair it but you can't replace it. If you want to replace it then you would need a variance which is a condition allowing it to be there; it is a variance from the ordinance. You have a non-conforming fence and so anything that you would do to that, you would need a variance.

Mr. Richard Fish: O.K., I understand.

Mr. Champion: You are allowed to maintain what is there, repaint it or replace sections of it with the same material but other than that if you take it down you can't put a fence back.

Mr. Richard Fish: Hopefully I will get the variance to make the property look a lot nicer than what it does now.

(Mr. Champion read the Staff comments from June 12, 2013.)

(Mrs. Dawn Fish indicated that she would like to speak and was sworn in by Chairman Weidlich.)

Mrs. Dawn Fish: I live at 455 West Kemper. The fence that we have there now, part of it is the wiry fence and the end of it is split-rail.

Mr. Richard Fish: It is an old farm fence.

Mrs. Dawn Fish: This is a picture that we got where you can purchase the fence. (Mrs. Fish produced a picture of a type of fence to the Board of Zoning Appeal Members.) We want a three rail fence, and that is what it would look like. So, if

this is the same kind of fence that is already there then we can replace it with this, right?

Chairman Weidlich: If your variance is approved.

Mrs. Dawn Fish: Oh. O.K., I thought if you repaired it you had to use what was there.

Mr. Richard Fish: The same material, I understand.

Mr. Champion: That one section by the driveway, which is wood, you could replace that with wood but the rest of it would be wire fence.

Mrs. Dawn Fish: Oh, I see what you are saying. So, you couldn't just rebuild the wood part?

Mr. Champion: That is correct.

Mrs. Dawn Fish: Oh, o.k., that is what I was asking.

Chairman Weidlich: Is there anyone else in the audience that would like to speak? (No one came forward and the public portion of the hearing was closed.)

Chairman Weidlich: Board Members, does anyone have any questions for the applicant?

Mr. Hawkins: Mr. Fish, you indicated that you get folks in the front and the back but you have a lot of folks cutting through from the back and the church is experiencing the same thing. What do you guys have in terms of fencing back there?

Mr. Richard Fish: The back is going to be fenced, too. There is no ordinance against that and half of it is already fenced. A lot of it is decaying and falling down because it was an old farm fence. We have two acres there; I have an acre and a half behind me and then the church has five acres; there is a lot of acreage. We don't mind the teenagers playing, they are going to do that. They are coming through the yard and now I have had a car stolen. I don't really want them in my yard; or getting hurt. Teenagers will be teenagers. Once we fence the back in then the dogs can run. There is still a little green belt back there and there is a green belt across the street that they play in.

Mr. Hawkins: You, fencing the back sounds like it is likely to take care of a lot of the problems that you are facing. I told your wife last month when she came through that I would love to see a nice new fence there. The problem that we run into is that you guys are right now legally non-conforming. Because this was there before the law changed, now if you tear it down then all of a sudden you are instantly snapped into having to conform with everybody in the City. The problem comes in if we grant a variance, it is something that will run with the land forever and set a precedent. Council, back in 1971 made it clear that they wanted to get rid of fences in the front yard. When we grant a variance there are legal standards that we have to go by and part of it is that there has to be unique situation for that land that other pieces of land aren't going through. In this situation, while I would love to vote to give you guys a variance, I haven't heard of a unique situation for that piece of land. My hope is that what you do in the back yard will alleviate the issue for you. I am part of the folks that caused the Building Department some extra work in going through and checking in terms of what is repair and what is replacement. I would love to say that it is repair.

Mr. Richard Fish: That is what I was hoping, that it wouldn't go to a variance but that I would be grandfathered in because for forty years that whole property was fenced in. I was hoping not to cause more problems for the City but I understand what you are saying.

Mr. Hawkins: That is the concern that we have to deal with as this Board. The reality is, if there is no exceptional situation for that piece of property then the next thing someone else in the City comes through and wants to fence their front yard.

Mrs. Huber: Being here last month, people should know how I feel about fences. However if he removes those trees and all and the fence looks horrible then he would probably be cited by the Building Department to fix the fence. By Webster's definition: "A fence is made to enclose". Your fence is a decorative kind of thing, in a way, even though it is an old farm fence.

Mr. Knox: I have a question for Mr. Champion; we are talking about a fence that goes across the front yard. The fence that Mr. Fish is going to build on the side by the creek bed, how far forward can that extend?

Mr. Champion: To the front plane of his house.

Mr. Richard Fish: There is already a fence on the right side in the bushes.

Mr. Champion: We determine the front yard from the front edge of the house out towards the street. He can put a fence in the back yard and in the side yard up to the front plane of the house.

Mr. Richard Fish: There is already a fence past beyond the front of the house, a wiry fence in the bushes.

Mr. Champion: So that fence, just like we are talking about, is all non-conforming fencing. It doesn't meet their Code since 1971.

Mr. Knox: You are proposing to build a fence along the creek bed in the back and you have an existing fence that you can tie into, which would prevent anyone from coming across your yard; if that were the case, I don't see where you would need that fence in the front.

Mr. Richard Fish: They cut through the side yard and the back yard. If the fence wasn't there they would cut right through my yard. People walk up and down Kemper Road throwing trash and if I didn't have a fence there, they would cut right through the church, it is a short cut to get to the businesses. They tried it before when I first moved in and they were doing it because there was an elderly lady that owned the property before; she didn't have a driveway and she never went outside. The kids were cutting through and I stopped them when I moved in. The front fence is keeping them from going right through my front yard right through the church because it is just a short cut. I guess when you are walking you want to take the shortest path. The fence out front is not protecting anything, it is just keeping people from walking through my front yard.

Mr. Knox: But you are saying that there is a wire fence along the east side of your property?

Mr. Richard Fish: Yes.

Mr. Knox: Are they climbing over that or what are they doing?

Mr. Richard Fish: It is pushed down and yes, basically that is what they are doing. I have replaced parts of it to try to keep it, there was a trail going through. I put patches there to keep them from going through there. The whole property was fenced at one time but it was just in the back that it was decayed and falling down. The other side of the yard is already fenced from the neighbor. When I do my back yard, I am just going to have to do a little section. It is not going to be a major cost for me. The major cost will be a nice fence up front. If I don't get the variance then I am going to leave it like it is and I am not going to tear it down; I'll keep it up rusted and leave the trees there. It is going to cost me a lot of money to clean that

up. That is why I came here to get the variance.

Chairman Weidlich: I mentioned to your wife at our last meeting and I am building on what Mr. Hawkins was saying, that the variance stays with your land forever, no matter if there are thirty owners after you. And if you would get your variance then that would set a big precedent and allow everyone up and down Kemper Road and all over the City to come in and request a fence in the front yard of various materials and heights and such.

Mr. Richard Fish: I was hoping to not have a variance and I thought I was grandfathered in but I guess I am not.

Chairman Weidlich: That is the dilemma this Board is facing.

Mr. Richard Fish: I understand that.

Chairman Weidlich: Does anyone else have any questions for the applicant? (No additional questions were presented by the Board Members.) Can we have a motion please?

Mr. Hawkins: I move to grant a variance for the owner of 455 West Kemper Road, regarding a fence to be installed in the front yard of the property. Said variance is from Section 153.482(A)(1) "No fence or wall, other than a retaining wall shall project past the front building line of any principally permitted or conditionally permitted structure."  
(Mrs. Huber seconded the motion.)

Mr. Ramirez: I don't think we ever determined what kind of fence you are going to put up.

Mr. Richard Fish: I have a picture and it is called a split-rail fence, like a Kentucky fence. My neighbor actually got one, he is three doors down. I have a picture of it.

Mr. Ramirez: Your wife mentioned a picket fence.

Mr. Richard Fish: She didn't know that it is called a split-rail fence. It is not going to be white, it is going to be the natural wood like my neighbors because when you get the white one you have the issue of painting and maintaining it. This will be all natural and will blend in better with the trees.

Chairman Weidlich: Does anyone have any amendments to the motion? (No amendments were presented.)

(Mrs. Huber called the vote: Mrs. Huber and Mrs. Ghantous voted "yes"; Mr. Hawkins, Mr. Knox, Mr. Ramirez, Mr. Nienaber and Mr. Weidlich voted "no"; the request being denied by a 2-5 vote.)

## X NEW BUSINESS

A. Chairman Weidlich: The next order of business is the owner of 12025 Greencastle Drive requests a variance for a pergola to be constructed 9' into the front yard setback of the property. Said variance is from Section 153.580(D) "Non-enclosed shelters: an entrance hood deck or open but roofed porch may project 6' into the required front yard."

Mrs. Sharon Broenner: I live at 12025 Greencastle Drive.

Mr. Ken Broenner: I live at 12025 Greencastle Drive. The reason we want the pergola 9' is because if we go out 6' we are right at the sidewalk in the front of the house. We went just beyond the sidewalk in front of the bushes. It would either have to be 4', which would be useless or go beyond the sidewalk to 9' so that we

can accommodate without replacing sidewalk and everything else; also to keep an opening so that you can get stuff into the front of the house. It is just an open aluminum pergola.

Mrs. Sharon Broenner: Like an arbor.

Chairman Weidlich: We have the pictures that you submitted.

Mrs. Sharon Broenner: We have been wanting to do this for years. We have had two doors that we have put on our house since we've lived there; we moved in there in 1988 and had to take a tree down because it got into the sewer and our first door, all of the panels slid off of it from the heat.

Mr. Ken Broenner: We have an eastern exposure.

Mrs. Sharon Broenner: Then we put a new door on it with some glass and now all of the insulation is running out of the bottom. We can't put a wood door there because they say it will crack because we can't have a storm door. We have always wanted to do something like the pergola and now that we are proposing it, it has gotten bigger than we thought because of the sidewalk. If you put it four foot, then with the sun, it really won't do anything it is a waste of money. Six foot is in the middle of the walk. Nine foot is as far as we can go to get past the walk. I think it will be pretty, but you don't know. The picture looks nice and the bushes will actually cover the front posts. That is where we are; we would rather have it smaller but it won't happen.

(At this time Mr. Campion read the Staff comments.)

Mr. Campion: I also saw some pictures that were emailed to me today from the applicant and it showed around all the windows the caulking was blistering probably because of the heat, it is expanding and contracting and causing that.

Chairman Weidlich: Is there anyone in the audience that would like to speak concerning this application?

Mr. Robert Lenard Jr.: My name is Robert Lenard Jr. and I live at 12015 Greencastle Drive; I live right next door to the Broenners. My being here is because I am obviously concerned about this structure that they are requesting a variance for. Our house faces almost due east when the sun comes up in the morning and it is very hot. However, I have a two story house with an overhang and a front porch, so I don't experience the same problems that they are apparently experiencing; the reason for this pergola. My being here was because I am concerned about the structure that they are requesting a variance for.

Chairman Weidlich: Is there anyone else who would like to speak concerning this application?

(No additional members of the audience came forward to speak and the public portion of the hearing was closed.)

Mr. Ramirez: I was wondering, were you able to see the description of the structure that they were wanting to put up?

Mr. Robert Lenard Jr.: No, I haven't.

Mr. Ramirez: Maybe that would help; you can look at our copy of the picture.

Mrs. Sharon Broenner: Actually Pearl Barnett, down the street from us, and the Houstons and our next door neighbor the Robinsons all asked about it and I sent them the pictures that I sent to you. They said that they did not know what a pergola was; they thought it was going to be a big box sitting out in front.

Mr. Nienaber: You seemed so focused on it being out 9' because of the function of where you need to put the pillars, I am wondering why you can't put it out just to the

inside of your sidewalk, which is probably about 4' and cantilever the last 2' and that would give you a 6' overhang?

Mrs. Sharon Broenner: I am not sure that we couldn't do that, but the guys that came out said that 4' wouldn't be enough because it won't cover enough of the problem and 6' would be into the sidewalk; but that is a possibility; the plan is not in stone yet, obviously.

Mr. Nienaber: I drove past and looked at it and I thought there ought to be a way to put those pillars in and cantilever it out.

Mrs. Sharon Broenner: I think why they did that, in retrospect, is that they were afraid if anybody came in with large furniture or something like that and with all of those bushes and the short little sidewalk, I think that was the issue with the sharp turn and having that one post there.

Mr. Ken Broenner: We could look into that possibility.

Mr. Champion: I was just going to clarify something; from a variance standpoint, even if you put the post 6' away from the house, if the top part of it projected out into that 35' setback, you would still need a variance.

Mr. Hawkins: I want to clarify, if you can work something out with the posts and the hood goes out 6', is that still going to give you the protection you are looking for in terms of that front door?

Mrs. Sharon Broenner: I think the 6' will, I just think it is more of an aesthetic issue. I have been taking pictures of these things for fifteen years and I am just thinking about that post being where it is and his roses are there and I have a wreath there all the time, I just think it might just look stupid. I don't know. It is a shame you can't just try it out like a car.

Mr. Hawkins: How many feet do the bushes take up from where the grass starts, to where the sidewalk is?

Mrs. Sharon Broenner: Maybe 3'. The 9' is actually at the edge of the sidewalk.

Mr. Hawkins: Often times I have seen pergolas with shades that hang down, is that something that you will do?

Mr. Ken Broenner: No.

Mrs. Sharon Broenner: We are just hoping to diffuse some of that light that comes in. I have a spring swimming pool float that I place there and it makes a difference of 10° to 15° in our foyer up until 1:00 p.m. It is on the inside. Our dog won't even lay there. We are up for suggestions. I wish they could just have it cantilevered and not have the posts and then 6' would be great; the sidewalk is the issue.

Mr. Hawkins: If there is a means in which you guys can do it with the post being set maybe in a little bit to manage the sidewalk situation with the hood coming out to the 6', without a variance.

Mrs. Sharon Broenner: Once we make it, we are stuck with it. If it doesn't work then it was a waste of \$3,000 and if we have to move the sidewalk that could add another couple thousand possibly. We were just going to do the 9' because it will work and it will look aesthetically nicer. That is what I really want to do. I don't know if I want to do it if I am going to have that big post right as you come in the door. The stoop is a 3' x 5', so that post is going to be an obstacle as you walk up from the driveway.

Mr. Hawkins: Are you going to keep the big red tree?

Mr. Ken Broenner: Yes. We are not going to change any landscaping.

Mr. Hawkins: That is not going to be impacted by that post?

Mrs. Sharon Broenner: No. The post is on the other side of the red maple.

Mr. Knox: You can't plant a tree in your front yard?

Mrs. Sharon Broenner: Well, we took one down because it was into the sewers.

Mr. Ken Broenner: It was \$6,000 to replace the sewer and \$300 to take the tree down.

Mrs. Sharon Broenner: We were told by a plumber that you do not want a tree in your front yard. That is why we put the little tree there but it didn't help the door.

Mr. Ken Broenner: I would love to have a tree in the front because it would help with the cooling bill.

Mr. Knox: Fir trees are very shallow rooted.

Mr. Ken Broenner: Yes, but they don't give you the shade.

Mr. Knox: Have you considered putting thinner uprights. as far as the supports for this?

Mrs. Sharon Broenner: 4 x 4 is the smallest. The biggest is the big round one but that would be too big.

Mrs. Huber: May I congratulate you on your landscaping, it is beautiful. Is your primary problem on the door caused from the sun?

Mrs. Sharon Broenner: You can barely touch the door.

Mrs. Huber: I can imagine that would be that way until about 3:00 p.m.

Mrs. Sharon Broenner: Really, it is only until about 1:00 p.m. or so and then I can open my mini blinds and take that shade off of the door.

Mrs. Huber: I would hate for you to have to do anything to your landscaping, it is beautiful.

Mrs. Sharon Broenner: No, we don't want to do that either; that tree is our pride and joy.

Mrs. Huber: But, it is mostly damage from the sunlight?

Mrs. Sharon Broenner: Yes.

Chairman Weidlich: I believe you mentioned the posts will be going on the street side of the sidewalk and not out in front of the planting bed like you are showing?

Mr. Ken Broenner: It is just beyond the sidewalk but it is in the back part of the landscaping beds.

Chairman Weidlich: But your plants will be in front of that from the street?

Mr. Ken Broenner: Right. Both posts are going to be behind the shrubs.

Chairman Weidlich: It sounds like you have it planned to go back about as close to the house as you can?

Mr. Ken Broenner: Without removing the whole sidewalk, that is the best that we can do.

Chairman Weidlich: I understand about the moldings on the door. My parents house was east facing and they had the rectangular moldings; it baked it and the moldings popped off of the door.

Mrs. Sharon Broenner: We did get a nice door and we still have that problem.

Chairman Weidlich: Does anybody have any further discussion?  
(No additional questions or discussions were presented.)  
Would anyone like to make a motion?

Mrs. Huber: I move to grant a variance to Section 153.070(A) and 153.580(D), so as to allow a 9' x 8' pergola to be erected in front of the residence at 12025 Greencastle Drive; The Code states that a 35' minimum front yard setback is required, and that an entrance hood, deck or open but roofed porch shall project only 6' into required front yard.

(Mr. Ramirez seconded the motion; Mrs. Huber, Mr. Ramirez, Mrs. Ghantous, Mr. Knox and Mr. Weidlich voted "yes", and Mr. Hawkins and Mr. Nienaber voted "no".)

Chairman Weidlich: You have your variance by a vote of 5-2. You can go to the Building Department and get your permit and then start your project. Thank you.

#### XI DISCUSSION

(No discussion presented at this meeting.)

#### XII ADJOURNMENT

Mr. Hawkins moved to adjourn, Mr. Knox seconded the motion and the Board of Zoning Appeals meeting adjourned at 7:51 p.m.

Respectfully submitted,

\_\_\_\_\_, 2013 \_\_\_\_\_  
Chairman Robert Weidlich

\_\_\_\_\_, 2013 \_\_\_\_\_  
Secretary Jane Huber