



**APPROVED MINUTES OF THE REGULAR MEETING OF
THE ZONING BOARD OF APPEALS OF THE CITY OF ANN ARBOR
October 22, 2008**

The Regular Session of the Zoning Board of Appeals was held on Wednesday, October 22, 2008 at 6:00 p.m. in City Council Chambers, 100 N. Fifth Avenue, Ann Arbor, Michigan.

The meeting was called to order at 6:09 p.m. by Acting Chairperson Kathryn Loomis

ROLL CALL

Members Present: (7) C. Carver, D. Gregorka, J. Carlberg, C. Briere,
W. Carman, K. Loomis and D. Tope (arr. @ 6:12 p.m.)

Members Absent: (2) C. Kuhnke and R. Suarez

Staff Present: (2) M. Kowalski and B. Acquaviva

Introduction – Acting Chair Kathryn Loomis welcomed the ZBA's newest member, Jean Carlberg. Jean fulfills the vacant seat of Planning Commission representative and replaces former member Ron Ea?? She stated that the Board welcomes her valuable experience.

A – APPROVAL OF AGENDA

A-1 Moved by C. Carver, Seconded by D. Gregorka, **“to Approve the Agenda as Presented.”**

On a Voice Vote – MOTION TO APPROVE – PASSED (Agenda Approved as Presented).

B - APPROVAL OF MINUTES

B-1 Approval of Draft Minutes of the August 27, 2008 Regular Session.

Corrections: Header of minutes says **“June”** – Change to **“August.”**

Moved by C. Carver, Seconded by C. Briere, **“to approve the minutes of the August 27th, 2008 Regular Session be Approved as Amended.**

**On a Voice Vote – MOTION TO APPROVE – PASSED
(Minutes of the August 27th, 2008 Regular Session were Approved as Amended).**

B-2 Approval of Draft Minutes of the September 24, 2008 Regular Session.

Moved by C. Carver, Seconded by D. Gregorka, **“to approve the minutes of the September 24th, 2008 Regular Session be Approved as Presented.”**

**On a Voice Vote – MOTION TO APPROVE – PASSED
(Minutes of the September 24th, 2008 Regular Session were Approved as Presented).**

51 **C - APPEALS & ACTION**

52
53 **C-1 323 Virginia Avenue – ZBA08-006**

54
55 Paul and Kristen Nickodemus are requesting one variance from **Chapter**
56 **104 (Fences), Section 8:434**, in order to permit a maximum 5 foot 2 inch,
57 100% opaque fence in the front open space; a maximum 4 feet, 50%
58 opacity is permitted.
59

60 **Description and Discussion**

61
62 The subject parcel is located on the corner of Virginia and Charlton Avenue, and as a result, is
63 subject to two front setbacks. The parcel is zoned R1D (Single-Family Dwelling District), which
64 requires a 25 foot front setback. The house was built in 2005, and the fence was constructed
65 in (unknown) - The builder of the fence did not obtain the required fence permit (Zoning
66 Compliance) for the construction of the fence.
67

68 The following requirements are excerpts from Chapter 104, Section 8:434(1):

69 (1) Fences located in residential districts:

- 70
71 (a) In the required front open space shall not exceed 4 feet in height and 50% opacity
72 (b) Shall not exceed 6 feet in height and 80% opacity in any part which is 25 feet behind
73 the front setback line.
74 (c) Shall not have a height of greater than 8 feet at locations other than those described
75 in subsections (a) and (b).
76

77 The petitioner has constructed a maximum 5 foot 2 inch high 100% opaque privacy fence
78 within the required front open space of Charlton Avenue, the top 1 foot 3 inches of the fence is
79 50% opaque. The fence extends 19 feet from the southern side of the house to the front
80 property line along Charlton. The existing house is 20 feet from the front property line along
81 Charlton. The fence continues 50 feet east parallel to the Charlton sidewalk to 4 feet from the
82 driveway and then extends north 24 feet to the side of the detached garage. The fence
83 includes a gate near the corner of the existing garage. The current fence standards were
84 established in 1963.
85

86 The subject parcel is located on a corner resulting in 2 front yard setbacks. The parcel has a
87 very narrow lot, and as a result there is little area available for a backyard. Placing the fence at
88 the required front setback line would provide a rear yard of approximately 560 square feet, but
89 would not require a variance. A four foot high 50% opaque fence could be built in the same
90 area as the subject fence without the need for a variance. The fence was constructed to
91 provide a secured rear yard for the residents of the house.
92

93 The fence is 52 feet from the sidewalk corner of Charlton and Virginia and approximately 4 feet
94 from the driveway of 323 Virginia. Due to the distance from the intersection of Charlton and
95 Virginia, the fence will not impact the sight lines for that intersection, and will maintain the
96 visual clearance for pedestrian and vehicular traffic. The fence is 4 feet from the driveway on
97 Charlton; this may present some difficulty for vehicles using the driveway to view pedestrian
98 sidewalk traffic from the west. Due to the distance between the curb and sidewalk, it does not
99 appear to present a problem for vehicular traffic along Charlton. Staff has received 10 letters of
100 support from neighborhood residents.

101 **Questions to Staff by the Board**

102
103 C. Carver (to M. Kowalski) – How did this come to the attention of the city? (M. Kowalski –
104 There was a complaint filed, and when that occurs, we have to investigate.

105
106 **Petitioner Presentation**

107
108 Mr. Paul Nickodemus, home owner, was present to speak on behalf of the appeal. He thanked
109 the Board for hearing this and thanked M. Kowalski for walking them through the appeal, as
110 they don't normally do things in this manner and apologized. He stated that the builder had
111 done other fences in the neighborhood, had done a good job and were nice folks. This was
112 presented to him (and is his way of pleading ignorance in the situation) that the builder stated
113 that he would get a permit, if there was a complaint, then he would go back and get a variance.
114 He also stated that this was his own ignorance, as he didn't know how the whole situation
115 worked.

116
117 He continued to say that had he known that this fence had been built without a permit, he
118 would never have allowed it to be built at all. They have had other contractors work on other
119 projects in the house, and this has never been an issue previously. The builder did a great job,
120 it was a good investment for us, we were happy with it and then we received the notice from
121 the city that we were in violation of the Zoning Code.

122
123 He had written a letter in response to the city's enforcement action, and confirmed with the
124 Board that they had received that communication (the Acting Chair confirmed that they had
125 received it and read it). (He continued to outline his points in the letter).

126
127 "We assumed that all the responsibility for lack of attention to following the possible procedure
128 was the builder's responsibility. We've invested \$7000.00 in the fence, we don't think that the
129 fence is a safety hazard and adds to the property and the corner. The most important reason
130 for wanting a fence there was to allow their kids to access the yard via the back door into the
131 yard to play. It's not a super busy neighborhood, but there is not a stop sign on the east-west
132 crossway on Charleton Street. There is a stop sign going north-south on Virginia, but this has
133 always been a concern."

134
135 He concluded by saying that they have had tremendous support from the neighbors and asked
136 that the Board consider approving this.

137
138 **Questions of the Petitioner by the Board**

139
140 C. Carver (To Petitioner) – The Code allows you a 4', 50 percent opaque fence. Why isn't that
141 sufficient for your purposes? (P. Nickodemus – We didn't know that was the code). That isn't
142 my question. Why isn't a 4 foot, 50 percent opaque fence sufficient for your purposes? (We
143 haven't really thought if it would be sufficient or not. We could think about that if this is
144 something you'd like us to consider). Ok. (The current fence is 3'7" with 100 percent opacity.
145 I don't know if we could have the same quality of fence under the 4' limit. He stated he has
146 seen some chain link fence that was 100 percent opacity, but they wanted to do something
147 nicer for their house).

148
149 **(STAFF NOTE:** As was reported by M. Kowalski in his staff report, Petitioner actually has a
150 **5 foot 2 inch high 100% opaque privacy fence within the required front open space of**
151 **Charlton Avenue, the top 1 foot 3 inches of the fence is 50% opaque as it is made of**
152 **lattice work. This contradicts the petitioner's statement above that the fence is 3'7" in**
153 **height.)**

154 D. Gregorka – Who is your builder that failed to pull the permit? (Petitioner – D & D
155 Carpentry). Thank you.

156

157 **(STAFF NOTES:** *Building Dept. Contractor records show the following for D & D Carpentry:*
158 *Registered Building Contractor on 10/17/2007 – Contractor registration expired 05/31/2008.*
159 *Hartley Jr., Douglas Charles (Licensee), 9168 N. Platt Road, Milan, MI. It should be noted that*
160 *D & D Carpentry has only pulled one permit in the city of Ann Arbor in the last 3 years (Permit*
161 *Number **PB072704** for 319 S. Revena Blvd. to reroof a 24 x 24 detached garage.)*

162

163 *(It should also be noted that this particular permit was taken out on and finalized out (by the city*
164 *Inspector) on the same date as the registration took place. This is usually an indicator that the*
165 *contractor in question was found to be doing non-permitted work by an inspector who drove by*
166 *and checked it and the contractor was required to come in, register and obtain a valid permit.*
167 *Inspectors who find contractors doing non-permitted work usually try to work with the*
168 *contractor to allow them to make the situation valid before issuing tickets).*

169

170 *Building Department records also show that the general contractor who built the home from the*
171 *ground up at 323 Virginia beginning in 2004 had 20 permits taken out, including demolition of*
172 *the former home on that site from November of 2004 through September 30, 2005, when they*
173 *were issued a temporary certificate of occupancy – issued to BIG HOUSE MANAGEMENT,*
174 *LLC., 1027 South Forest. D & D Carpentry was NOT the general contractor who built the*
175 *home.)*

176

177 The petitioner stated that he feels bad for the contractor, as they were nice folks and did a
178 good job, but it is what it is.

179

180 **Public Comment –**

181

182 1. **Deirdre Casey, 305 Virginia Avenue, A2, MI** – She stated that she thinks that this
183 is a great fence, it adds to the corner and that she sympathizes with the
184 Nickodemus family, as she, too, has two small children. They have a fenced back
185 yard and she can send her kids out there while she makes dinner and does the
186 dishes and doesn't have to worry about them. She added that she understands their
187 need for privacy because they live on a corner lot. She stated that she hasn't
188 researched the reasoning for the code for opacity and height, and although she's
189 sure that there are reasons for it, someone living on a corner doesn't have a back
190 yard and this is a way for them to create that space.

191

192 **Discussion by the Board**

193

194 W. Carman – Agreed that this is a beautiful fence, and that she is sympathetic to the cost, but
195 the rules are the rules. The rules are that you need to obtain a permit and the person who is
196 building the fence needs to abide by the city rules. Even if the homeowner didn't know, the
197 builder knew or he wouldn't have stated "I'll get a permit." The contractor didn't do that and he
198 caused this awkward situation. There is nothing unique about corner lots, we have lots of
199 them in Ann Arbor, and unless we change our Code, the Code states that you have two front
200 setbacks, and the rules are that you can have a fence, 4 feet high, 50 percent opaque and that
201 would meet their needs. It would keep the children in the yard and keep them safe. It would
202 not create a 'wall' down the sidewalk, which is aesthetically unappealing to a lot of people and
203 which I think does, despite what the city said, does present a hazard when backing out of your
204 driveway.

205 I am particularly sensitive to this because I have a friend whose daughter was babysitting, and
 206 when they brought the daughter home, they pulled into the drive, let the daughter out, then
 207 they backed out and ran over an 18 month old child riding a big wheel. Because the 18 month
 208 old wasn't tall enough to be seen and they couldn't see past the fence, they backed over her
 209 and killed her. I don't want to see that happen again, and I think that a 50 percent opacity
 210 fence saves us from that kind of thing, and I can't support this. I would like to figure out a way
 211 that they could build something out of this that would be just as attractive but not violate the
 212 ordinance.

213
 214 C. Carver – I won't support this. If they had come to the ZBA prior to the fence being built and
 215 had asked for this variance, I wouldn't have been able to vote for it. Everyone likes privacy
 216 and safety, and if that were the rule, everyone would have a stockade fence in their yard – but
 217 that's not the rule. If we grant this variance, who do we deny? I'm sorry that they've invested
 218 in this fence, but they should go back and make the contractor responsible. Approving this
 219 would send a bad message – 'build a fence then hope that the ZBA will approve a variance
 220 after the fact.' I did ask the petitioner if a 4 foot, 50 percent opaque fence was sufficient, and I
 221 didn't get a sufficient answer.

222
 223 D. Gregorka – I'm disappointed that the builder isn't here, because this is primarily the builder's
 224 problem - the builder should have gotten a permit, paid the fees, he should have to explain the
 225 situation and tell the homeowner what it's going to take to fix this situation. I feel that if the
 226 petitioner had known that a 4 foot, 50 percent opacity fence was the option, they would have
 227 been able to find a design that could have worked for them. This should all be the
 228 responsibility of the builder, and the petitioner should not be paying a nickel to solve this
 229 problem. I'm also sympathetic about Wendy's point that the driveway safety is a key issue. If
 230 you really want to talk about safety, talk about the fence positioned against the driveway and
 231 the sidewalk. I won't support this either.

232
 233 K. Loomis – We hate to see this sort of situation, as we feel for the homeowner who has been
 234 somewhat misled by the builder, but it is a situation where we would be encouraging wrongful
 235 behavior. If the fence hadn't been built, and just looking at this situation on its own, I wouldn't
 236 have voted in favor of it.

237
 238 **MOTION**

239
 240 Moved by W. Carman, Seconded by D. Tope, "In the matter of ZBA08-006, 323 Virginia
 241 Avenue, that based on the following findings of fact and in accordance with the
 242 established standards for approval, the Zoning Board of Appeals hereby grants a
 243 variance of 1'2" and an additional 50 percent opacity from Chapter 104, Section 8:434
 244 (Fences), to allow a 5'2" high, 100 percent opaque fence to be placed within the front
 245 setback. Given that this fence is in the interests of public health, safety and welfare of
 246 the inhabitants of the community.

247
 248 **On a Voice Vote – MOTION FAILED – UNANIMOUS (Variance Denied)**

249
 250
 251 **C-2 2500-2600 Green Road – ZBA08-007**

252
 253 Green Road Investments are requesting four variances from **Chapter 47**
 254 **(Streets), Section 4:20:**

- 255
 256 1. A variance of 15 feet in order to permit a driveway turning radius of 30 feet
 257 (15 feet is required by Code).

- 258 2. A variance of 10 feet in order to permit a driveway turning radius of 25 feet
 259 (15 feet is required by Code).
 260 3. A variance of 23 feet 2 inches in order to permit a curb cut width of 83 feet
 261 2 inches (60 feet is required by Code).
 262 4. A variance of 4 feet 7 inches in order to permit a driveway width of 34 feet
 263 7 inches (30 feet is required by Code).
 264

265 **Description and Discussion**
 266

267 The subject site is located on Green Road, just north of Plymouth Road. The site is currently
 268 zoned RE (Research District) and contains two large office buildings (2500 and 2600 Green
 269 Road). The 2500 Green Road building is 40,000 square feet and the 2600 Green Road
 270 building contains 107,200 square feet. There are no building additions or other site
 271 improvements proposed at this time. The driveway modifications proposed do not require site
 272 plan approval.
 273

274 The variances are being requested in order to modify an existing curb cut to allow
 275 ingress/egress of large trucks and busses. The curb cut is the sole method of ingress and
 276 egress for the 16 acre site. As noted in the application the existing curb cut does not allow for
 277 large vehicles to enter the site without extending their turning movement into adjacent lanes
 278 and/or running over existing curbing and damaging landscaping. The existing drive approach is
 279 also at a very steep grade that results in many vehicles scraping the concrete, creating
 280 potential damage to the vehicles and the cement surface. Engineering staff have examined the
 281 variance application and have no objection to the proposed variance.
 282

283 The proposed project requiring the variances is the modification of existing curb cuts in order
 284 to allow more efficient use of the driveway by large trucks and buses. While the use of the
 285 driveway by large vehicles is dependent on the tenant, the significant slope of the drive affects
 286 all vehicles entering and exiting the site. This condition is due to the topography of the parcel
 287 and would be improved by the requested variances which would allow for the leveling of the
 288 drive approach. The existing curb cut and turning radius results in the large vehicles swinging
 289 out into traffic resulting in traffic hazards and may provide a risk to public safety. This may
 290 result in more than a mere inconvenience due to the potential impact to traffic patterns on
 291 Green Road. The driveway as proposed meets the intent of Chapter 47. Staff does not feel
 292 that the requested variances would negatively affect any surrounding property.
 293

294 **Questions to Staff by the Board** - None.
 295

296 W. Carman – Do we know why the requests for the turning radiuses are different?
 297 (M. Kowalski – We can ask the petitioner, but I would assume it's because there is greater
 298 traffic coming from the south – the Plymouth Road intersection, and most trucks or busses
 299 would be turning left out of the site when exiting, so they wouldn't need as much room).
 300

301 C. Carver – I would assume that the appropriate city department has looked at this and
 302 blessed it? (M. Kowalski – Yes. This is how it was originally referred to us. They pulled an
 303 application for a curb cut that exceeded code, so it was forwarded to me. Engineering doesn't
 304 state an approval or disapproval of this, but they have no objections and understand what it's
 305 for.
 306

307 D. Tope – I was asking that same question. Another reason to expand the radius on the south
 308 side that is different from the north side is that when they decelerate, there is no deceleration
 309 lane. They have traffic behind them, they're pulling into a two-way drive and if there are cars
 310 waiting to come out onto Green Road, it's easier to pull in if they have a wider radius.

311 D. Gregorka – Regarding curb radius (we’ve had this question before), we’ve talked about the
312 code being amended – where does that stand? (M. Kowalski – We did agree to look at these
313 issues yearly to see if we need to amend the code to prevent this from happening. We’ll
314 review this in January. This will be a situation that I’ll flag).

315
316 W. Carman – This has been happening for years. (M. Kowalski – Yes, but it doesn’t just
317 involve our department. The Engineering department has their standards that are based on
318 their engineering standards, and not on Chapter 47. It’s not all under Chapter 55, but in the
319 last year we’ve had at least two radii requests).

320
321 D. Tope – What we decide to do is determined by us, and if we don’t want to see this keep
322 repeating itself, we need to take action on it regardless of other standards. She suggested that
323 the chair schedule a working session and have dialogue to change this.

324
325 **Petitioner Presentation**

326
327 Mr. Pete Ferio with Contracting Services, contractor for the owner and Jeff Rizzo with Fenn
328 and Associates, civil engineers and surveyors for the petitioner, Green Road Investments.

329
330 Mr. Rizzo stated that the staff report accurately outline the current situation and request. The
331 current drive approach does not allow for large trucks and/or busses to access the property.
332 Our client wishes to have trucks and buses to access the property. The radius that we’re
333 requesting for the south side is 30 feet; if you look on the north side, there is a large light pole.
334 This is another reason we kept that radius smaller than the south side. If we went larger, we
335 would have to relocate the light pole or would have been very close to it. I went to the
336 approach and there are areas that vehicles have bottomed out and concrete is missing. We
337 hope for approval by the ZBA. He offered to answer any questions that the Board may have.

338
339 **Questions of the Petitioner by the Board**

340
341 W. Carman – The drive is steep – the post office nearby has the same steep drive, and even
342 cars bottom out, but why the current change? (Petitioner – Pfizer used to occupy that building.
343 The current owner is in negotiation with the University of Michigan hospital to allow them to
344 utilize this as a research and development center, and they shuttle most of their employees in
345 on busses. They’ve noticed that the front bumper of the busses hits the drive on the way in,
346 and the back bumper hits on the way out. They haven’t signed a lease yet, but this was one of
347 the outlying issues with leasing the property, and we wanted to solve that. They want to solicit
348 U of M to lease the rest of the building instead of having it stay vacant

349
350 The owner wants to be sure that if this contract is signed, that the busses will be able to enter
351 the complex.

352
353 W. Carman - When this was built, there was nothing along Green Road, it wasn’t owned by
354 Pfizer, and it didn’t have busses going in and out of the property. I’m not certain that this is still
355 a good site for large busses. (Petitioner stated that this would be the shorter, smaller busses
356 entering the site). My concern is that with continued growth in that area, which we should
357 expect - will be the amount of space that the pedestrians have to cross that isn’t ‘safe space.’
358 I’m not certain what kind of current traffic this will generate, but it is certainly more than what
359 was anticipated when it was held by the owner prior to Pfizer. (Petitioner explained that it
360 would be less than five feet additional open space at the sidewalk.

361
362 Based on the past traffic that has gone in and out of there in the past twenty years, I don’t see
363 that as being an issue, but I don’t have a feel for what you’re proposing to do there.

364 You stated it would be used for R and D? (Petitioner – Stated they were not in negotiations
 365 with the owner, so they couldn't speak to exact usage by U of M). Pfizer came to us in the
 366 past with a similar proposal, and they proposed an 'island' of sorts in between the drives. Do
 367 you have enough room to do that? (No. It would be too tight. With the improvements, one
 368 would be able to turn in while the other pulls out, so a landing area would not be viable. These
 369 improvements would also put us into A.D.A. compliance).

370

371 The other document in this application states that the neighbor 'gives permission' for this to be
 372 closer than what code requires? (M. Kowalski – Clarified that according to the code, that
 373 radius cannot encroach upon a neighboring property unless that neighboring owner gives their
 374 permission, which would not require a variance).

375

376 J. Carlberg – You mentioned the northern radius, you mentioned the light near there. You're
 377 redesigning this site, and you only want to do that once. Having watched a lot of busses 'lurch'
 378 over curbs, which is very unsafe, is the north drive radius what you want it to be or are you
 379 settling for something? (Petitioner – The northern radius is fine, and we've turned out truck
 380 templates that show that, but if the light pole wasn't there, we probably would have been more
 381 conservative with a larger approach).

382

383 **Public Comment** – None.

384

385 **Discussion by the Board**

386

387 C. Carver – Three of the four requests are in the city right of way, and if the city doesn't object
 388 to it, I'm not going to object to it.

389

390 J. Carlberg – I think this is also good to support, because the conditions on this site have
 391 changed. It was originally expected to be "Office" usage. The service vehicles have also
 392 increased in size over time – the FedEx trucks are larger, and I think for the sake of safety, it's
 393 in the community interest to make this change.

394

395 W. Carman – Since this motion stated you were going to make it 'less steep,' is that true?
 396 (Petitioner – Yes. There will be improvements made on the site to pull away the pavement and
 397 lessen the slope. Right now it's at about 13 percent, and that exceeds the normal maximum
 398 allowed).

399

400 **MOTION**

401

402 Moved by D. Gregorka, Seconded by C. Carver, **"In the matter of ZBA08-007, 2500-2600**
 403 **Green Road, based on the following findings of fact and in accordance with the**
 404 **established standards for approval, Chapter 47 (Streets), Section 4:20, the Zoning Board**
 405 **of Appeals hereby grants the following variances:**

406

- 407 1. **A variance of 15 feet from the required 15 foot maximum turning radius for a**
 408 **driveway onto Green Road in order to permit a turning radius of 30 feet;**
- 409 2. **A variance of 10 feet from the required 15 foot maximum turning radius for a**
 410 **driveway onto Green Road in order to permit a turning radius of 25 feet;**
- 411 3. **A variance of 23 feet 2 inches from the required 60 foot maximum curb cut width for**
 412 **a curb cut 83 feet 2 inches wide; and**

413

414

415

- 416 4. A variance of 4 feet 7 inches from the required 30 foot maximum driveway width for
417 a driveway 34 feet 7 inches wide, per the attached plans.
418

419 The Zoning Board of Appeals finds that this exception is in harmony with the general
420 purpose and intent of this Chapter, given that it provides for a safer ingress and egress
421 to the site, allows for removal of a steep entranceway and has also been found to be
422 acceptable by the city engineering department.”
423

424 **On a Voice Vote – MOTION PASSED – UNANIMOUS (Variances Granted)**
425

426 **D. OLD BUSINESS**
427

428 **D-1 1123 South Forest Avenue – ZBA08-005**
429

430 Request by the Owner and Petitioner to postpone Appeal Number ZBA08-005 to
431 the November 19, 2008 Regular Session of the ZBA.
432

433 Moved by W. Carman, Seconded by D. Gregorka, “to postpone Appeal Number ZBA08-005,
434 1123 South Forest Avenue until the November 2008 Regular Session to allow the
435 petitioner additional time to consult with neighbors regarding their proposal.”
436

437 **On a Voice Vote – MOTION TO POSTPONE - PASSED – UNANIMOUS**
438 **(Postponed to the November 2008 Regular Session).**
439

440
441 **E. NEW BUSINESS - None.**
442

443 **F. REPORTS & COMMUNICATIONS - Included under each appeal.**
444

445 **G. AUDIENCE PARTICIPATION – GENERAL**
446

447 Mr. Paul Nickodemus, 323 Virginia Avenue, A2, MI – “Just for the record, a few thoughts.
448 We’re fine with your judgment on not awarding the appeal for the fence, but if you were to walk
449 around your own neighborhood, definitely if you walk around ours, you might be surprised at
450 the number of fences not within code. I didn’t take pictures or bring them here as I didn’t want
451 to get anyone else in trouble, but the reality of the situation is that there are a lot of fences out
452 of code. This doesn’t make ours right, I just wanted to state this for the record.”
453

454 “As to the builder’s presence, I was advised by someone that you all know, and I’m not going
455 to mention any names, NOT to bring the builder to this – they told me that oftentimes, the
456 builder doesn’t give you as much support as you’re looking for as you’re obviously in a
457 disagreement with them. The reality of the situation is that it’s not really fair to bring the
458 builder.”
459

460 “As far as the visual impairment that Mrs. Carman brought up about the fence and having the
461 block wall along the sidewalk, I know there are no rules, or I don’t think there are any rules
462 against a hedgerow. I see many hedgerows that are much more visually impairing than our
463 fence and I thought some of the arguments were weak. I think your judgment was inaccurate
464 in this case. To kind of ‘thumb your nose’ at the investment we have in this and a dozen
465 neighbors that supported our fence, it’s disappointing and disheartening.”
466

467 W. Carman (To Petitioner) – Sir, you should know that the Zoning Enabling Act that governs
468 this body prevents us from considering monetary issues in these situations. It’s not that it’s

469 'not important' to us or that we don't sympathize with your problem, but it's actually something
 470 we're not supposed to be considering. (Fair enough). There was no 'penalty' involved in the
 471 decisions we're making – we're not penalizing you because you didn't get a permit – we look at
 472 this in the aspect of what we would have done had you come to us with this proposal before
 473 the fence had been built, and try to establish whether we would support it or not. This is the
 474 kind of thing that we have continuously turned down – you are not the first. It is true that there
 475 are fences that get put up and no one complains about, and for much of this, it is complaint
 476 driven.

477

478 C. Carver – As to the neighbor support, if we grant one for you, it starts a chain reaction and
 479 sets precedence for future cases. "If we grant yours, how can we deny theirs?"

480

481 Petitioner stated that he was still surprised that the Board had nothing to say on his side of the
 482 argument.

483

484 ADJOURNMENT

485

486 Moved by D. Gregorka, Seconded by C. Carver, "**that the meeting be adjourned.**"

487

488 **On a Voice Vote – MOTION TO ADJOURN - PASSED - UNANIMOUS**

489

490 Acting Chairperson Kathryn Loomis adjourned the meeting at 7:10 p.m.

491

492 *(Submitted by: Brenda Acquaviva, Administrative Support Specialist V –*
 493 *Zoning Board of Appeals)*

494

495

496

497

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Kathryn Loomis, Acting Chairperson



Dated 1/28/2009 ZBA Minutes