

**City of Prospect Heights
Plan/Zoning Board of Appeals
July 25, 2019**

I. MEETING COMMENCEMENT:

The regular meeting of the Plan/Zoning Board of Appeals was called to order at 7:00 pm by Chairman Dash, at City Hall, 8 N. Elmhurst Road, in Prospect Heights, Illinois.

II. ROLL CALL:

Present: Commissioners Kempa, DeGraf, Tammen, Mellen, Saewert & Chairman Dash

Absent: Commissioner Patel by prior notice

Quorum is present.

Present at the meeting: Director of Building & Development Daniel A. Peterson and Recording Secretary: Jenn Myzia

III. APPROVAL OF June 27, 2019 MINUTES

Motion made by Commissioner Tammen, seconded by Commissioner Saewert to approve the meeting minutes.

ROLL CALL VOTE:

AYES: Commissioners Kempa, DeGraf, Tammen, Mellen, Saewert & Chairman Dash

NAYS:

ABSENT: Patel

ABSTAIN:

Motion carried.

IV. OLD BUSINESS - None

V. NEW BUSINESS

1. PZBA – Zoning Public Hearing: Case No. ZBA 19-14 V

Applicants: Wieslaw and Bozena Dziura

Address: 509 Grego Ct., Prospect Heights, IL 60070

Description of Request:

1. Applicant has applied for a variation to Section 5-3-4H1f1 to allow the construction of a six foot wood fence in the required front yard in front of the building line.

Chairman Dash requests a motion to open the public meeting for 19-14 V at 7:02 pm

Motion by Commissioner Mellen

Second by Commissioner DeGraf

VOICE VOTE:

AYES: Commissioners Kempa, DeGraf, Tammen, Mellen, Saewert and Chairman Dash

NAYS:

ABSENT: Patel

ABSTAIN:

Director Peterson states in the previous year staff noticed the six foot fence in the front yard which is not permitted by the zoning code, the maximum height of a fence in a front yard is three feet and it must be open. Staff spoke to the residents and due to the lateness in the year it was agreed that in spring the fence would be removed or an application for a variation request would need to be submitted.

Chairman Dash invites the applicant to the podium to speak.

Mr. Wieslaw Dziura of 509 Grego Ct., Prospect Heights, IL 60070 – states that after purchasing the property they discovered the fence upon the removal of approximately eighteen trees. The fence was not salvageable therefore they rebuilt an already existing fence and planted new lilac bushes. Mr. Dziura expresses regret for building the fence against the code but also mentions after the lilac bushes grow the fence will not be noticeable. He states the fence will create barrier to winds and snow. Mr. Dziura states he has a unique inland lot where the side of the property is the back of his neighbor. He states his neighbors' corner lot meets his front yard and if left open the neighbors grill could be set up in Mr. Dziura's front yard. Mr. Dziura states none of the neighbors are complaining but if they must remove the fence they will.

Ms. Dorothy Bobco of 502 Grego Ct. – Ms. Bobco states that she lives across the street and two doors down and asks for clarification if Mr. Dziura is planning to build another fence.

Mr. Dziura states no.

Ms. Bobco states she has no issue with the fence that is existing.

Chairman Dash clarifies that Ms. Bobco is not the neighbor that is separated by the fence.

Mr. Alan Kossof of 11 E. Leon Lane – states he is happy with the improvements he has seen from his neighbor but that he does have concerns with water pooling due to the regrading done in the yard at 509 Grego Ct. Mr. Kossof states he did call the City in regard to the water concern. He also states he would not be against the fence that has been erected.

Mr. Syed Husain of 1 E. Leon Lane – states he has seen the fence and has no objections.

Chairman Dash asks if there is anyone else who would like to present. Chairman Dash invites Mr. Dziura back to the podium for questions from the commissioners.

Chairman Dash states that according to reports from staff there was not a permit issued to erect the fence.

Mr. Dziura confirms this is true.

Chairman Dash states that according to the hardship letter the fence was replacement of an existing fence but according to the plat of survey supplied with the application the existing fence that was removed was not on the property belonging to Mr. Dziura but on his neighbors' property. Chairman Dash states in regard to the lot being unique there are at least three to four lots on that same block with the same condition of the side yard facing the backyard and the other neighbors have used landscaping to provide a barrier just as he has with the neighbor on the other side of Mr. Dziura's property. Chairman Dash states the board relies on the standards of a variation to be met and that there are a number of conditions for this application that are not met and would not meet the criteria for a variance.

Commissioner Mellen addresses Director Peterson and asks if a plat of survey showing where the new fence has been installed has been provided.

Director Peterson states there was an application for permit submitted after the fact in May 2019 that showed the new fence that was built in the side and rear yards.

Mr. Dziura states that he is a contractor and homeowner and admits to submitting after the fact and that he will pay the fine.

Director Peterson states that the permit application was help due to the variation necessary and at this time has been misplaced and is being searched for to find the plat of survey showing the location of the new fence.

Commissioner Mellen asks Director Peterson if the neighbor on the corner lot was here to apply for the fence, would the fence be allowed on a corner lot.

Director Peterson states no. A fence on the corner lot would have to termite at the front line of the residence, go in about thirty feet and then jog back out to the building line. The City code requires corner side yards which is 15 Leon Lane at that point would need a fence to match up to the front line of the house. Director Peterson states there are heavy shrubs on both the 15 Leon Lane and 509 Grego Court side creating a barrier of natural vegetation. He states that in a search of City records for both 15 Leon Land and 509 Grego Ct there is no fence permit being issued by any owner which indicates the fence pre-dates the City.

Commissioner Mellen confirms that the repair and rebuild of non-confirming existing structures requires a permit and being brought up to current code.

Director Peterson states that is correct.

Mr. Dziura asks if there is any grandfather law or allowance for what has been there.

Director Peterson states that is what Commissioner Mellen was clarifying and that in a replacement of an existing structure according to City Code which was written and adopted in 1976 any new fences would have to meet the new setbacks and new requirements and because there is no record of the fence, that is what indicated the fence pre-dates the City code.

Commissioner Saewert states it is her belief that the front yard fence code is due to safety and being adjacent to a driveway that people on bicycles, walking by or other cars passing by will have limited vision due to a solid fence. A visual barrier with landscaping is not regulated by the City.

Commissioner DeGraf states he is in agreement with Chairman Dash that the fence is not on the property of 509 Grego Ct. that the fence is ill-legal nonconforming and also concurs that it is a safety issue for pulling out of the driveway.

Mr. Dziura states he was unaware the original fence was out of code and would like to know why the City did not have the previous owner make the correction.

Director Peterson states a new fence had been constructed. There was no permit on file. Director Peterson had researched a Google Earth image from 2017 which showed only shrubbery and no fence at that location. In consideration of the images, no permit on file and new construction of a fence in the front yard began discussions with the City and Mr. Dziura regarding the options. Director Peterson states he cannot speak for the previous administration.

Mr. Dziura states the reason it was not seen on the image from Google Earth in 2017 is the shrubbery was so overgrown that it covered the fence. The existing fence was illustrated on the Plat of Survey.

Director Peterson asks Mr. Dziura as a contractor what one of the first things a contractor does when they move in to a town or performs work in that town.

Mr. Dziura states he would go to the Village.

Director Peterson states there was no permit issued for the work.

Mr. Dziura states that he admits that is true.

Commissioner DeGraf states that Mr. Dziura's attorney at the closing should have informed him the fence was not on his property but his neighbors and that the neighbor could press charges for criminal damage to his property and that Mr. Dziura replaced a fence without a permit and it wasn't even his fence. Commissioner DeGraf states he himself is a contractor and the first thing done is to pull a permit.

Chairman Dash states the process is not subjective and that there are very clear criteria in which the board takes into consideration to grant a variance. Chairman Dash further states based on the report presented to the board the application does not meet the standards for a variation. The board then reviews the hardship request which is part of the standards for a variation and there are neighbor in close proximity with the same exact lot configuration that have screened their front yard to their neighbors side yard using landscaping. Chairman Dash states there a City codes for a reason. The board has reviewed the application and the hardship and it is now up to the commissioners to determine if the variance should be approved or denied.

Chairman Dash requests any further questions or comments from the commissioners.

Chairman Dash requests a motion to close the public meeting for 19-14V at 7:28 pm

Motion by Commissioner Tammen

Second by Commissioner Saewert

VOICE VOTE:

AYES: Commissioners Kempa, DeGraf, Tammen, Mellen, Saewert and Chairman Dash

NAYS:

ABSENT: Commissioner Patel

ABSTAIN:

Chairman Dash requests a motion to receive into the public record the staff review of the zoning compliance for the application 19-14V with the zoning standards as presented by staff and to make these standards a part of the official record of this application.

Motion by Commissioner DeGraf

Second by Commissioner Mellen

VOICE VOTE:

AYES: Commissioners Kempa, DeGraf, Tammen, Mellen, Saewert and Chairman Dash

NAYS:

ABSENT: Commissioner Patel

ABSTAIN:

Chairman Dash asks the commissioners for any further discussion and notes that often when these cases are taken into consideration and approving variations can often lead to more applications seeking the same variations.

Commissioner Saewert states that it is difficult to approve a case when the hardship does not support the approval and the board must review each individual case but this case does not present a unique enough hardship to warrant a variation.

Chairman Dash requests a motion to recommend that City Council approve the application 19-14V for a variation to Section 5-3-4H1f1 to allow the construction of a six foot wood fence in the required front yard in front of the building line.

Motion by Commissioner DeGraf

Second by Commissioner Saewert

ROLL CALL:

AYES:

NAYS: Commissioners Kempa, DeGraf, Tammen, Mellen, Saewert and Chairman Dash

ABSENT: Commissioner Patel

ABSTAIN:

This case will appear before City Council on August 26, 2019.

VI. Previous Application Updates

Director Peterson gave updates on the previously heard ZBA cases.

- A. PZBA 19-09, Lutheran Church Charities
- B. PZBA 19-11 & 12 Stery Trucking to reappear before Council
- C. PZBA 18-16 – 1320 N. Rand Rd: EverClean Carwash inspections have begun
- D. PZBA 19-08 SU/LC 307 South Parkway, permit has been issued
- E. PZBA 18-02V 7 E Leon the project has been forfeited
- F. PZBA 19-04 & 19-04 – 25-35 Piper Lane: Conor Commercial: Ground breaking July 18, 2019.

VII. Communications

- No August 22, 2019 PZBA meeting
- 23 families are able to move into Building 13 at 866-876 Cider Lane and hopefully by March 2020 all families will be moved back into all units.
- Thornton's has a five week delay but hopefully to open August 1st or soon thereafter.

VII. Adjournment: 7:37 pm

Motion to Adjourn: Commissioner DeGraf

Second: Commissioner Tammen

Voice Vote: Unanimous