

MINUTES
September 1, 2020 – 5:30 p.m.
Zoning Board of Adjustment
Online GoToMeeting

Present: Jodi Hansen, Larry Murray, Julie Wolf and Robert McFadden (McFadden logged into online meeting late)

Excused: Jeff Armstrong

Staff: Andrew Fangman, Assistant Community Development Director, Community Development

Chairperson Jodi Hansen opened the meeting at 5:30 p.m. and read the mission statement.

Minutes:

Julie Wolf motioned to approve the minutes submitted for the August 4, 2020 meeting; seconded by Larry Murray. All ayes, motion carried.

Appeal Cases:

Appeal Case #ZBAV-27, filed by Muscatine Downtown Investors LLC, to allow for a multi-family residential building to be constructed, with no front yard setback at 403 West Mississippi Drive.

Jodi Hansen stated that the applicant, Muscatine Downtown Investors LLC, has withdrawn the appeal. Andrew Fangman explained that if they were to revive the project, they would need to refile an appeal.

Appeal Case #ZBAV-30, has been filed by Tim & Leesa McCleary, to allow for the construction of a second dwelling unit at 4500 25th Street South. Multiple dwelling units are not a permitted use in the M-1 Light Industrial Zoning District as per City Code Section 10-14-1.

John Dabeet, 2515 Lucas St, stated that his representative, James Nepple, would explain the appeal on his behalf but both him and Mr. Nepple would be available for questions.

James Nepple, 2704 Mulberry Ave, is an attorney and was asked by Mr. Dabeet to represent him in this matter. Mr. Nepple explained that to access the garage located on the property at 2515 Lucas St, an easement for egress and ingress exists for the shared use of the existing driveway of 2519 Lucas St. However, along the driveway a retaining wall exists between the two properties and 2519 Lucas St has built a fence on top of the retaining wall and the height of the fence is coming into question. As when the fence is measured it from the side of 2519 Lucas St it is over the maximum height allowance of 6 feet by roughly 2 feet and it only meets the 6 feet height requirement if the fence is measured from the side of 2515 Lucas St, which is Mr. Dabeet's property. Mr. Nepple stated that it seems inappropriate to measure the fence from Mr. Dabeet's property when the fence was built by the property owners of 2519 Lucas St and it is built on their property. Mr. Nepple also shared concern about the garage at 2515 Lucas St having to back up onto the driveway on 2519 Lucas St's property and due to the height of the fence a vehicle backing out of the garage cannot see incoming vehicles on the driveway. The final concern pertains to the fence along the rear of the property at 2519 Lucas St because the property owner keeps having to put more dirt along the fence to keep the fence at 6 feet high but the dirt continually washes out onto the property at 2515 Lucas St. Mr. Nepple that the fence should have to be installed at the ground level and meet the 6-foot height requirement from that level instead of allowing additional dirt to be placed along the fence and causing reoccurring maintenance for 2515 Lucas St when the dirt gets washed out.

Mark Graham, 2519 Lucas St, shared that this property is not his permanent address but he is responsible for the installation of the fence and did much of the work himself. Mr. Graham explained that the City has been out several times about the fence and they have trimmed it previously to their specifications. Mr. Graham also stated that the property at 2519 Lucas St actually extends another 12 inches past the fence on the side adjacent to 2515 Lucas St and they constructed the fence this way to save themselves the difficulty of digging post holes. Mr. Graham shared that the garage located at 2515 Lucas St is no longer used for vehicles as Mr. Dabeet has covered up the vehicle door and altered it into a large shed with only a man door as access. As for the fence along the rear of the property, it is not washing out, the rabbits keep

digging out the dirt to get to the property at 2515 Lucas St. Jodi Hansen asked if the fence on top of the retaining wall is under 6 foot and Mr. Graham stated that it all is.

Mr. Nepple rebutted that Mr. Graham does not own a foot on the other side of the fence but Mr. Graham assured that they do because they had it professionally surveyed by Martin & Whitacre before installing the fence to ensure their property lines are 100 percent correct so the fence would be installed solely on 2519 Lucas St's property. Andrew Fangman pointed out that the picture labeled "Fence A (Viewed from West) provided as part of the appeal appears to show a survey stake and Mr. Graham stated that the stake is the picture is from when Martin & Whitacre surveyed the property.

Julie Wolf asked for Andrew Fangman's input and whether the fences are in fact in compliance with City Code or not. Mr. Fangman stated that the City's determination is that the fences are in compliance because the way City Zoning Code is written it is his understanding that the two fences do measure out as 6 feet in height. The City Zoning Code also allows for anyone who disagrees with a determination of the City to be able to appeal the decision to the Zoning Board of Adjustment, which is what Mr. Dabeet is doing.

Mr. Dabeet shared that he has emails from Andrew Fangman about the fence in the rear, stating that it is in violation of City Code and Mr. Fangman sent out the City Inspector to have it corrected, but the way the property owner fixed it is by dumping dirt underneath it, which continually washes out. Mr. Dabeet stated that they should not be able to correct the violation by creating a fake base. Mr. Dabeet also believes that the base of the fence along the retaining wall should be measured from the driveway and not the yard that the top of the retaining wall aligns with. Mr. Dabeet claims that when Martin & Whitacre came to survey, the surveyor told him the measurements are estimates and that the property line is at the retaining wall but since they cannot put the survey stake in the retaining wall because it is cement so they are just putting it next to it.

Mr. Fangman explained that there are numerous properties in Muscatine where a fence is installed on top of the retaining wall and per the way City Zoning Code is currently written the fences are all measured from the base of the retaining wall, no matter the height of the retaining wall. Mr. Fangman stated that he can only enforce City Zoning Code as it is written, which code allows a property owner to change the grade of their property, explaining why Mr. Graham is able to add dirt to the bottom of the fence in the rear to correct the height violation, and code does not protect the view along driveways between two properties as long as the view is not obstructed within 25 feet of the front property line, which in this case it does not.

It was discussed that a retaining wall could be constructed at the bottom of the rear fence to prevent the dirt from washing out or lowering the fence farther into the ground to act as a barrier or putting crushed rock there instead of dirt. There was also conversation among the Board Members that as the fences meet City Zoning Code standards they do not want to go against those standards, but they recommend that a more permanent solution is put in place for the dirt washing out at the rear fence and that the fence along the retaining wall seems like it may actually be a property line dispute which would be handled as a civil matter and would not involve the Zoning Board of Adjustment.

Larry Murray motioned to deny the appeal case; seconded by Julie Wolf. All ayes, motion denied.

Meeting adjourned at 6:19 p.m.

ATTEST:

Jodi Hansen, Chairperson
Zoning Board of Adjustment

Respectfully Submitted,

Andrew Fangman, Secretary
Assistant Community Development Director