



**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.)***

