

SUMMARY MINUTES OF BOARD OF ADJUSTMENT ACTION HELD DECEMBER 15, 2015

CALL TO ORDER – 7:02 P.M.

PLEDGE OF ALLEGIANCE -

ROLL CALL OF MEMBERS – Those Present: T.O. Owens, Chairman; Dave Marquez, Vice Chairman; Kathy Drulard, Cindi Kreutzer, Ted Terranova

Not Present: Jenny Wolfschlag, Secretary; Christine Duncan

ALSO PRESENT: Reid Betzing, Sr. Ass't. City Attorney; Rob Smetana, Planning Manager, James Cramer, Planner I, Jodi Baros, Recording Secretary

APPROVAL OF MINUTES FOR December 1, 2015 – The minutes for December 1st stand approved as printed.

PUBLIC HEARING –

VAR2015-0023 Laurel Kaufmann 9870 W 53rd Ave

The public hearing was opened.

The property was posted and the fee was paid.

Laurel Kaufmann is asking for a setback variance of approximately 24 feet for a six foot high solid fence. Current City Ordinance does not allow for a fence more than five feet on the west of the house due to the configuration of the house behind her and the way that the driveway is and to enclose five retaining walls on west and south side of the property that are a safety hazard. She is re-grading the slopes and adding two additional retaining walls to the existing three retaining walls. She is on a corner lot and has an excavated walkout basement. As a first time home owner, when she bought the house seventeen years ago she had no idea that she would have to replace and repair the retaining walls. The fence would prevent anyone from falling over the retaining wall and would provide additional security for the walk out basement. She is requesting the setback variance for the fence to be 24 feet west, fifty one feet south and twenty four feet east to entirely surround and enclose the retaining walls.

Mr. Owens asked if there are additional comments from staff.

Mr. Cramer replied that there are no additional comments from staff at this time.

Mr. Terranova asked, if the walkout basement was there when the house was built?

Mr. Cramer replied that no the walkout basement was not there when the house was built.

Mr. Terranova asked if a permit was pulled for the walkout basement to be added?

Mr. Cramer replied that he did not find a permit to construct this walkout basement.

Mr. Marquez asked if there are four foot fence allowances within a certain distance from the property line?

Mr. Cramer replied, yes, it can be 65% open and it can be on the property line.

Mr. Marquez asked about a tractor in the pictures and has the work been started?

Ms. Kaufmann replied that she had contractor's out to look at the erosion of the retain walls and re-grading the slopes on the retaining walls.

Ms. Kreutzer asked is there already a privacy fence there?

Ms. Kaufmann answered that there were retaining walls there and it is turning into a mud pit and eroding at the bottom of the fence.

Ms. Drulard asked if the property has a sump pump?

Ms. Kaufmann replied that she does not have a sump pump.

Ms. Drulard stated that you had mentioned that a car had come over one of the retaining walls? Have you had any issues with people or pets?

Ms. Kaufmann replied not that she was aware of. She stated that she has seen squirrels that have died down there.

Mr. Marquez asked staff if there is some sort of gray area that even if a variance doesn't pass that something should be there.

Mr. Cramer replied that the code states that a railing must be provided for taller retaining walls, and be at least 42 inches in height by the land development code regulations and that the building department may have additional codes.

DISCUSSION OF MOTION:

Mr. Terranova is in favor of this variance and he has five reasons. First, is there is practical difficulty. Second, is that the walkout probably was created legally. Third, this was not created by this homeowner. Fourth is the issue of safety to prevent accidents. Lastly, the neighbors do not have any issue with this variance.

Mr. Owens stated that he cannot support this and he does believe that this is a special circumstance and not a practical difficulty. It has been this way for several years and he don't believe that it needs a six foot fence that close to the street. There has been full use of the land and she can have a different type of fence, like a four foot open rail fence. He just cannot see putting a six foot solid fence on a corner lot and obstructing visibility.

Mr. Marquez stated that he agrees with Mr. Owens and he does not think that hiding the issue is the answer and does not want to obstruct visibility.

Ms. Kreutzer asked to reopen the case and wanted to ask the applicant why she wants the six foot fence instead of full visibility of the walk out basement.

Ms. Kaufmann stated that she is concerned that a four foot fence could still be gone over or under and would not be solid for privacy with the walkout basement.

MOTION:

It was moved by Ms. Drulard that variance request: VAR2015-0023, Laurel Kaufmann, 9870 W. 53rd Ave., requests a variance to construct a six foot solid fence setback six feet from the west side (second

frontage) property line when Section 6.5.8 of the Land Development Code (LDC) requires a 25 foot setback, be granted.

This motion is based on Findings No. 1 through 8 on Page 10 of the Staff Report.

As to Finding No. 1, the special circumstance or condition includes the fact that there is a grade change for this property.

The following votes were cast on the motion:

Those voting Yes: Kreutzer, Terranova

Those voting No: Owens, Drulard, Marquez

Those absent: Duncan, Wolfschlag

Those abstained:

The variance is denied.

OTHER ITEMS –

MEETING ADJOURNED at 7:29 P.M.

Jenny Wolfschlag, Secretary

T.O. Owens, Chairman

Jodi Baros, Recording Secretary