

Board of Zoning Appeals

November 08, 2018

Members present: Phil Rooney, Doug Warren, Blaine Wells, and Brett Geise.

The meeting was called to order at 6:00 p.m. by Mr. Rooney. Mr. Rooney introduced the members to the audience and the general rules were reviewed.

Mr. Erik Adkins read his comments as follows:

CASE# 57825-BA-18

Address: 705 Woodworth Dr.

Zone: R-1, Single Family, Low Density

Filed by Rick Duffman, regarding a new fence at 705 Woodworth Drive. The applicant has erected a 6-foot high fence approximately 9-feet from the Greendale Avenue right-of-way. The required street side yard setback is 15 feet (Section 1161.01.2D4).

Prior to Mr. Duffman obtaining a zoning permit for the proposed fence, zoning inspectors went to the site and located the property pins to the northeast and northwest. From the northeast pin, the inspector was able to locate the southeast property line, and spray-painted a mark (which was near the electrical utility box). Upon marking the lines, a business card was left at the front door, but a phone call was never received asking any other questions.

Whenever Mr. Duffman applied for the zoning permit, his site plan clearly showed the fence being 15 feet from the property line, therefore, leading to approval of the site plan. During an inspection, and after construction commenced, it was discovered that the fence was only approximately 9 feet from the right-of-way. A stop work order was then issued and a letter was sent informing Mr. Duffman of the encroachment.

Prior to Mr. Duffman purchasing the dwelling, there was an old, non-complaint, six-foot high wooden privacy fence located directly on the property line; however, there was no permit on file for that structure.

Mr. Duffman approached the podium and was sworn in by Mr. Rooney.

Mr. Duffman explained he is requesting a variance for the distance the fence is located along Greendale Avenue. Mr. Duffman thanked everyone for their time and apologized for any misunderstanding and miscommunication throughout this process. He stated his intention was never to under mind authority or to go beyond the rules and regulations that are set. He stated, "With the information that I was given, and the personnel I had spoken with, I was under the impression my measurements were accurate and coincided with code guidelines".

Mr. Duffman stated that he did notice that the pins were marked on the North side of the property, but not on the South side of the property. He stated that on the first photo he received of his property,

from the Zoning Office, he thought that at the bottom where it was written '15 feet from the property line or cannot exceed 4 feet in height and must be 50% open', meant 15 feet from the curb. He stated that he has spoken to multiple people from the Zoning Office and keeps hearing 15 feet from the curb. He continued to state that his understanding of having to be 15 feet from the curb is where the misunderstanding and confusion comes from. He stated, the pins were marked on the South side the day after he received the Stop Work Order. Mr. Duffman stated he is asking for a variance to keep his fence in the same location where it has been constructed for privacy.

Mr. Warren asked why he did not get a survey to find where the property line is on the South side. Mr. Duffman replied that he did call Perry Surveying and they stated it would cost approximately \$600 so he decided to wait for the city to come out and mark the location of the pins instead.

Mr. Wells asked Erik Adkins if he found the Southeast pin. Erik stated that he measured from the Northeast pin that he did locate and used the measurements to mark the location of the Southeast pin, which was found by using the lot measurements. Mr. Duffman stated that the South pins were not marked on the same day that the North pins were marked. The South pins were not marked until 7-10-18, which was the same day the Stop Work Order was left.

Mr. Geise asked Erik if the fence on the South side is considered a front yard or a side yard. Erik replied that it is a street side yard.

Mr. Wells asked Mr. Duffman about the measurements he submitted with his site plan and his permit application. The drawing has 82' width fence on a 100' lot. Mr. Wells asked Mr. Duffman if the North side of the fence is on the property line. Mr. Duffman replied, yes it is, or it may be 1 or 2 feet from the property line. Mr. Wells stated that if that were the case, he would be within the 15 feet setback that is required, so why is there so many discrepancies with his drawing and permit application.

Erik Adkins stated that since he used pre-fab panels, they are 8 feet long and would come up to either 80 or 88 feet, depending on the amount of panels he used.

Mr. Rooney asked if there is anyone else that would like to speak on the matter.

Mr. Duffman's neighbors, Ron Meyers of 625 Woodworth Dr., Ted Martins of 700 Woodworth Dr., and Nick Bish of 1331 Greendale Ave. were all sworn in and spoke in support of the fence staying where it has been constructed. They all agree that the fence looks very nice and it does not obstruct any views. A fence sat there before this one came up, and it was more of an obstruction, and it looked terrible. This fence sits back farther than the other one did, and it looks very nice. They all request to keep the fence in place where it is.

Mr. Rooney asked Erik if there were any communications. Erik replied, no communications have been received.

Mr. Warren stated, it is very nice to have neighbors supporting the fence, but that should not be the basis of the variance decision.

Mr. Rooney stated, the code is for visibility purposes and the fence has been constructed back farther than the other one was, so the visibility has increased by 6 feet and they have removed the other obstruction of the old huge pine tree, which also increases visibility. The fence is in harmony with the neighborhood and is a better fence than what was there, and looks nice; therefore, Mr. Rooney made a motion to grant the variance.

Mr. Wells, 2nd the motion.

All were in favor of granting the motion. Motion Granted, Variance is approved.


Minutes for August 09, 2018, were approved.

Minutes for September 13, 2018, were approved.

The meeting was adjourned.



Chairman



Secretary