



**BOARD OF ADJUSTMENT**

**Minutes of Meeting**

**April 26, 2012**

**1. CALL MEETING TO ORDER**

The meeting was called to order by Chair ABBOTT at 7:00 p.m. in the City Council Chambers of the Municipal Building, 7500 West 29<sup>th</sup> Avenue, Wheat Ridge, Colorado.

**2. ROLL CALL**

Board Members Present:

- Tom Abbott
- Sally Banghart
- Janet Bell
- Bob Blair
- Paul Griffith
- Paul Hovland
- Betty Jo Page
- Russ Hedden

Staff Members Present:

- Meredith Reckert, Sr. Planner
- Lauren Mikulak, Planner I
- Ann Lazzeri, Recording secretary

**3. PUBLIC FORUM** (This is the time for anyone to speak on any subject not appearing on the agenda.)

No one wished to speak at this time.

**4. PUBLIC HEARING**

- A. Case No. WA-12-07:** An application filed by Ezara Sauter for approval of a 2-foot variance from the 4-foot maximum fence height standard within a front yard resulting in a 6-foot fence on property zoned Residential-Two and located at 4755 Simms Street.

The case was presented by Lauren Mikulak. She entered all pertinent documents into the record and advised the Board there was jurisdiction to hear the case. She entered a letter received after the staff report was prepared that contained additional comments from the property owners at 4664-74 Simms Street. The letter indicated support of the variance as long as the subject fence is not extended further along Simms. The applicant has constructed a 6-foot privacy fence within the front yard and along the front property line

at 4755 Simms Street. The purpose of the variance request is to allow the 6-foot fence to remain in its current configuration within the front yard.

Having found that the application is not in compliance with the majority of the review criteria, staff recommended denial.

**Ezarus Sauter**

**Elaine Baca**

**4755 Simms**

The applicants were sworn in by Chair ABBOTT. Ms. Sauter stated that she took pictures of other 6-foot fences in front yards a couple feet from the street in the neighborhood. These were not corner lots, but in the middle of the block. She considers her fence to be along their back yard. They have dogs and would like to keep the fence. Their dogs could easily jump over a four-foot fence.

Ms. Baca stated that she called the Zoning Department and was told they didn't need a permit to construct a six-foot fence. She explained the orientation of the house. The city employee then e-mailed a PDF file with a diagram of fence height standards. She explained that they constructed the fence based on their understanding of this information. She stated that if they had been told the fence was not allowed, they would not have built it. She asked to know where the complaint originated.

Ms. Reckert explained that an anonymous complaint was made to a council person and then Code Enforcement and Planning were notified.

Ms. Sauter stated that she was told her front yard was out the front door.

Board Member BELL asked if the fence would be allowed if a portion of the fence were placed at an angle closer to the house. Ms. Reckert replied that it would still be considered a front yard. Lauren Mikulak commented that the previous fence was in line with the wall of the house and the six-foot fence was allowable. However, the applicant said the yard space was too small.

Ms. Baca stated that safety concern is another reason they want a six-foot fence citing a vehicle theft, vehicle break-ins and house burglaries in the area.

In response to a comment from Board Member ABBOTT, Ms. Mikulak stated that the only way the fenced portion could be considered a side yard is if the driveway were a public street which it is not.

Meredith Reckert stated about a year and a half ago a task force looked at certain situations that wouldn't require a building permit including residential fences. This has resulted in some fence height violations in certain cases as no city review is required to verify code compliance. Board Member BANGHART commented that while this is a good idea, the city should make planning rules clearly understandable to the citizens.

Ms. Sauter stated that they are looking at having children in the near future and the lower fence would be a security issue for them.

Chair ABBOTT asked to hear from members of the public.

**Linda Lauff**

**32<sup>nd</sup> Avenue, Wheat Ridge**

Ms. Lauff was sworn in by Chair ABBOTT. She stated that she is a Wheat Ridge resident with similar issues and is supportive of the applicants. Moving the fence back would present the same view as it is now.

**Upon a motion by Board Member BELL and second by Board Member BLAIR, the following resolution was stated:**

**WHEREAS, application Case No. WA-12-07 was denied permission by an administrative officer; and**

**WHEREAS, Board of Adjustment Case No. WA-12-07 is an appeal to this Board from the decision of an administrative officer; and**

**WHEREAS, the property has been posted the fifteen days required by law and in recognition that there was one protest registered via an anonymous complaint, and a letter submitted to the City in support of the fence as it stands now as long as it is not enlarged any further; and**

**WHEREAS, the relief applied for may be granted without detriment to the public welfare and without substantially impairing the intent and purpose of the regulations governing the City of Wheat Ridge.**

**NOW, THEREFORE, BE IT RESOLVED that Board of Adjustment Case No. WA-12-07 be, and hereby, is APPROVED.**

**TYPE OF VARIANCE: Two-foot variance from the four-foot maximum height standard for a fence within a residential front yard resulting in a six-foot fence in the front yard on property zoned Residential-Two (R-2) located at 4755 Simms St.**

**FOR THE FOLLOWING REASONS:**

- 1. The subject property will continue to yield a reasonable return in this case and will function as a two-family dwelling if the variance is approved.**
- 2. Granting the variance will not alter the character of the neighborhood as a six-foot privacy fence within a residential front yard will not create a visual impact since it does not extend the full length of the front yard.**
- 3. There are no physical conditions or other irregular conditions present on the property or in the neighborhood that would preclude a fence from being constructed in a manner that complies with the fence height regulations.**

**However, due to the confusion upon the initial inquiry to the city and by the lack of understanding on the part of the applicant, this situation has been created. Only a portion of the “front yard” is involved with the construction of the present six-foot fence.**

- 4. The noncompliant fence was constructed by the property owner and, therefore, this lack of understanding and confusion with communications with city staff has resulted in the need for a variance.**
- 5. An anonymous complaint was received and a letter of support was received.**

**WITH THE FOLLOWING CONDITION:**

- 1. Given the fact that the front door of this property looks out into a yard that is adjacent to a private cul-de-sac, and because it would appear that the side of the house is the one that is facing the front yard as defined by the regulations and by the lot, it seems that based on this confusion the compromise is to place a condition that the six-foot fence cannot be extended beyond its present location.**

Board Member HEDDON stated that, upon walking and driving the neighborhood, he believed the fence would alter the character of the neighborhood. There was nothing approaching the type of obstruction represented by the applicant’s fence.

Board Member BELL stated she did not believe the fence would alter the character of the neighborhood because she also drove the neighborhood and felt that because of the age of the neighborhood, the number of six-foot fences and other intrusions onto setbacks is fairly common. Many fences, while they may have been in side yards and back yards, did exist and they created a similar kind of experience that are far larger and extended further than this particular case.

Board Member HEDDON commented that he was talking about the impact on people who live on Simms Street between the frontage road and the dead-end where there is no obstruction with the exception of the subject fence.

Board Member BELL responded that the neighborhood extends well beyond Simms Street which is one street out of the entire neighborhood.

Board Member HEDDON agreed with Board Member BELL’s definition of a neighborhood, however, he again expressed concern about Simms Street.

Board Member BELL commented that she might feel differently if the fence extended the full length of the property. There was also confusion about what is allowed and, therefore, after this case is decided, she suggested that steps be taken by staff to avoid such confusion in the future. Board Member HEDDON agreed that changes need to be made.

Board Member GRIFFITH commented that the applicant performed due diligence by contacting the City and the City thought they gave a good answer. The applicant tried to do what was right and, due to confusion, the situation exists. Based upon the information the applicant received, he believed the fence should stand. He was in favor of placing a condition that the fence may not be extended.

Board Member ABBOTT commented that the citizen did the best she could to understand the code as it was explained to her. Even to people who live on the street, the front yard seems to be the side of the house and only 40% of that yard is affected. A four-foot fence could have been built with no need for a variance. He further commented that the Board's decisions should be based on the effect on the entire neighborhood.

Board Member BELL commented that an anonymous complaint was received, however, a letter of support was received as long as the fence is not extended. No other complaints were received from the neighborhood.

Board member GRIFFITH stated that a previous six-foot fence existed. Although it was further back on the property it was still visible. He also pointed out that a newer fence will initially stand out more but will not be as noticeable as it eventually weathers.

Board Member BANGHART drove the neighborhood and did not find the fence to be obtrusive. This is not a typical neighborhood, and although the address is on Simms Street, the front of the house faces the driveway that almost looks like a street. Therefore, the fence appears to be in the side yard.

**Board member GRIFFITH offered a friendly amendment to add a reason for approval that a six-foot fence previously existed and, although placed further back on the property, it was still visible. Further, a new fence stands out more but will eventually weather and will not be as noticeable.**

**The amendment was accepted by Board Members BELL and BLAIR.**

Meredith Reckert commented that, although one anonymous complaint was received initially during the posting period, no letters of opposition were received.

Board Member PAGE commented that 80% of residents in this neighborhood are tenants. Ms. Mikulak stated that property owners were notified of this application by certified letter.

Board Member HOVLAND commented that he sees the hardship as the orientation of the building on the lot. Since there were no official protests registered and as long as there is a condition prohibiting extension of the fence, he stated he would support the motion.

Board Member ABBOTT reminded the Board that approval of the application would not set a precedent, however, a variance does go with the land.

Board Member HEDDON stated that he appreciated staff's input and the Board's discussion. Because no one came forward to object to this application and because approval of the request would not set a precedent for other cases, he stated that he would vote for approval.

**A vote was taken on the amended motion and carried 8-0.**

**5. CLOSE PUBLIC HEARING**

Chair ABBOTT closed the public hearing at 8:27 p.m.

**6. OLD BUSINESS**

There was no old business to come before the Board.

**7. NEW BUSINESS**

**A. Approval of minutes – March 22, 2012**

**It was moved by Board Member HOVLAND and seconded by Board Member GRIFFITH to approve the minutes of March 22, 2012 as written. Motion carried 8-0.**

**B. Discussion about possible procedural changes**

Board Member BELL suggested that when a phone inquiry is made, staff could check the address against the subdivision layout or drive by to ascertain the orientation of the building to the street, etc. Meredith Reckert stated that staff has been discussing a no-fee planning permit that would provide an extra layer of review to verify code compliance.

Board Member ABBOTT commended staff for making a correct appraisal in recommending denial and apprising the Board of the logic involved. The Board was able to come to a conclusion that staff would not be able to do because of the way the ordinance is written.

**8. ADJOURNMENT**

**It was moved by Board Member BLAIR and seconded by Board Member GRIFFITH to adjourn the meeting at 8:40 p.m. Motion carried 8-0.**

  
Thomas Abbott, Chair

  
Ann Lazzeri, Secretary