



**City of
Wheat Ridge**
BOARD OF ADJUSTMENT
Minutes of Meeting
September 22, 2016

1. CALL MEETING TO ORDER

The meeting was called to order by Chair Kuntz at 7:01 p.m. in the City Council Chambers of the Municipal Building, 7500 West 29th Avenue, Wheat Ridge, Colorado.

2. ROLL CALL

Board Members Present: Thomas Abbott
Dan Bradford
Janet Bell
Paul Hovland
David Kuntz
Betty Jo Page

Alternates Present: Larry Richmond
Michael Griffeth

Board Members Absent: Sally Banghart
Lily Griego

Staff Members Present: Meredith Reckert, Senior Planner
Zack Wallace, Planning Technician
Tammy Odean, Recording Secretary

3. PLEDGE OF ALLEGIANCE

4. PUBLIC FORUM

No one wished to speak at this time.

5. PUBLIC HEARING

A. Case No. WA-16-14: An application filed by David Lombardi for approval of a 3-foot variance from the 6-foot fence height maximum, resulting in a 9-foot fence on property zoned Residential-Three (R-3) located at 6840 West 36th Place. The case was presented by Zack Wallace. He entered the contents of the case file and packet materials, the zoning ordinance and the digital presentation into the record. He stated

all appropriate notification and posting requirements have been met and advised the board there was jurisdiction to hear the case. He reviewed the digital presentation.

Mr. Wallace stated this case was originally an administrative review by the Community Development Director; however, objections were received during the public noticing process, giving the Board of Adjustment jurisdiction to hear and decide upon the case during a public hearing. Staff also received a letter and a call in support of the fence height variance. A major factor in this variance request is an existing 3-foot tall retaining wall and grade change on the property line between the subject property and the neighboring property to the east.

Board Member PAGE asked who the retaining wall belongs to and Board Member GRIFFETH asked who the chain link fence belongs to.

Mr. Wallace explained they both belong to the multi-family property.

Board Member ABBOTT asked if there is also a retaining wall on the west side of the applicant's property.

Mr. Wallace stated there is not and there is very little grade change to the west.

Board Member ABBOTT asked if the 9-foot fence will be free standing or attached to the retaining wall and chain link fence.

Mr. Wallace stated the freestanding fence will sit on the property line and must be engineered.

Board Member KUNTZ asked how things will be handled if the retaining wall need repair and maintenance.

Ms. Reckert explained that the discussion will be a private matter between property owners and the City will not be involved.

Board Member GRIFFETH asked if the doors looking into the subject property from the apartments are the front or back doors of the multi-family units.

Mr. Wallace said he believed they are the back doors, and this could be verified by the property owner, who was present at the meeting.

Board Member HOVLAND asked if both structures meet the setback codes.

Mr. Wallace said the single family structure meets the 5-foot setback, but the multi-family structure does not meet the required 15-foot setback.

Board Member Griffeth asked if the two letters in opposition were from the same person.

Mr. Wallace stated they are and have been included in the Agenda Packet.

Board Member RICHMOND wanted to know why the fence is not proposed to go the length of the house to block the view from the multi-family units into the windows on the side of the single family house. Board Member KUNTZ asked where the fence has to start tapering to a lower height when moving to the front of the house.

Mr. Wallace said the applicant could respond to Member RICHMOND's question and Ms. Reckert stated the fence can start to taper from the front corner of the house in the direction of the front property line.

David Lombardi, Applicant
6840 W 36th Place, Wheat Ridge, 80033

Mr. Lombardi was sworn in by Chair KUNTZ. He answered a few of the questions presented by the Board. The first being the maintenance of the retaining wall and the access to it. He stated he will have the engineers design a fence so the retaining wall is in full view and have the fence floating. He also explained he has three large windows on the back of his house and that is why he positioned the fence toward the back of the property. The smaller windows on the side of the house get the blinds closed more frequently so no one can look in. He is very concerned for his lack of privacy by the tenants looking into his windows, back yard and garage. He has three young boys and is sometimes concerned for their safety. Mr. Lombardi also explained there is trash left out by the back doors including cigarette butts and trash bags that blow into his yard. Snow is also thrown into his property from the retaining wall area. Mr. Lombardi tried to have conversations with the multi-family property owner regarding the installation of a fence, but she didn't want to do any maintenance to a fence although the cost and maintenance would be done by him memorialized by a written agreement. Mr. Lombardi tried to sell house, and the brokers' remarks indicated that the home is great, but the view from the back yard is undesirable.

Chair KUNTZ asked if the nice side of the fence will face the applicant's property or the multi-family property.

Mr. Lombardi stated he could face the nice side either way, as long as he can build a fence.

Board Member PAGE asked what rooms are behind the windows on Mr. Lombardi's house.

Mr. Lombardi explained the back of the house windows are the kitchen, dining room and a child's bedroom and the side of the house windows are another child's bedroom, bathroom and another bedroom.

Board Member GRIFFETH commented on the letters sent by the multi-family building owner, Ms. Portacarrero. Ms. Partacarrero states a fence will block sunlight and not let ice melt during the winter time for the back of the apartments. Also, she states the fence will make her property look bad. Board Member GRIFFETH wanted to know how Mr. Lombardi felt about the comments.

Mr. Lombardi said he will build a fence that looks good because he will be looking at it himself. He also stated there is a walkway on the other side of the building that does not get much sun and it is dealt with.

Board Member HOVLAND wanted to know why Mr. Lombardi doesn't feel it's necessary to continue the fence down the side of the house, but only in the backyard.

Mr. Lombardi stated he thought the fence had to end at the back of the house, but if he can go to the front corner of the house he would.

Board Member HOVLAND asked if that would make a difference in the variance request.

Ms. Reckert said it would not make a difference because the variance is for the height of the fence, not the distance and that it could be a condition of approval in the motion so it is clear where the fence can exceed 6' in height.

Chair Kuntz asked if a car could still drive into the backyard where the garage is, if the fence a fence is installed.

Mr. Lombardi explained that a small car would still fit.

Board Member GRIFFETH asked if the applicant had the same privacy issues when they purchased the house in 2010.

Mr. Lombardi stated the house was a perfect starter home and they did not have children at the time so there were not privacy issues like there are now.

**Victoria Portocarrero, Owner of the multi-family building to the east.
4008 W 99th Place West**

Ms. Portocarrero stated that these two properties have coexisted for 60 years and there have not been issues. She thought it might be better to plant trees and bushes for privacy instead of a fence. She explained that she is a responsible landlord and if neighbors ever call with complaints she handles them right away. Ms. Portocarrero does criminal background checks on all of her tenants and does not allow undesirable tenant to live in her units. She also feels a fence will block sunlight from melting snow and ice and would not be aesthetically pleasing.

Chair KUNTZ asked if she would think of putting up some type of amenity like a screen wall that both tenants and neighbors could enjoy.

Ms. Portocarrero asked how she would attach it and who would maintain it.

Board Member ABBOTT wondered how wide the sidewalk is by the back doors of the units.

Ms. Portocarrero replied 2-3 feet wide.

Board Member GRIFFETH agreed with Ms. Portocarrero about the lack of sunlight not melting ice and snow. He does not think a 9 foot fence in this back yard is going to set precedence in the City of Wheat Ridge.

Board Member BELL stated that it is hard to come up with conclusions to preexisting issues that were created before the City of Wheat Ridge was incorporated in 1969.

Board Member HOVLAND stated this case presents unique circumstances. If there was a 15-foot setback and no grade change this case would be a different variance. He does hope if this variance is passes, then the fence will be done in good taste.

Chair KUNTZ thought it would be a good idea to add a condition to the motion of having the nice side of the fence face the multi-family building.

Board Member GRIFFETH added this fence may not be made out of wood and could look good on both sides. Also, there could be a percentage of the fence open which could help with the melting of snow and ice.

Ms. Reckert reminded the Board that to have the fence 80% open would leave it ineffectual and the material would have to be wrought iron; also, the applicant would have to agree to the nice side of the fence facing in a certain direction as a condition of approval.

Discussion continued regarding maintenance and construction of the fence.

Chair KUNTZ commented that the back doors of the multi-family units are an amenity for those renters to sit on their back patio and enjoy the sun.

Board Member PAGE feels there is too much cement for a tree or bush to grow so this is not a good solution.

Board Member BRADFORD added his concern for the blocking of the natural light and the creation of a corridor effect if a 9 foot fence is installed which would be detrimental to the apartment building.

Board Member PAGE asked how high a vertical structure has to be to be considered a fence.

Ms. Reckert replied that a fence is any divisional barrier between two properties.

Board Member HOVLAND asked if this height variance is approved if the applicant could put a fence up, or if a new owner could build a wall.

Ms. Reckert stated the choice of material is the decision of the property owner, but she does not think a wall would be built due to the cost of materials. Any owner after

the current owner could not take down a fence and build a wall. The new owner would have to get a new variance.

Upon a motion by Board Member HOVLAND and second by Board Member PAGE, the following motion was stated:

WHEREAS, application Case No. WA-16-14 was not eligible for review by an administrative officer; and

WHEREAS, the property has been posted the fifteen days required by law and in recognition that there were protests registered against it; 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 and City of Wheat Ridge

NOW, THEREFORE BE IT RESOLVED that Board of Adjustment application Case No. WA-16- 14 be, and hereby is APPROVED.

TYPE OF VARIANCE: Request for Approval of a 3-foot variance (50%) from the maximum fence height of 6-feet.

FOR THE FOLLOWING REASONS:

- 1. The property would not alter the essential character of the locality.**
- 2. The particular topographical condition of the property as well as the setback of the adjoining apartment complex results in a particular and unique hardship.**
- 3. The alleged hardship has not been created by any person presently having an interest in the property by any person.**
- 4. The applicant is proposing a substantial investment that would not be possible without a variance.**
- 5. The request would not be detrimental to public welfare.**

WITH THE FOLLOWING CONDITIONS:

- 1. The variance applies only to a fence along the eastern property line.**
- 2. A building permit shall be obtained for all portions of the fence over 6 feet in height.**
- 3. The finished side of the fence shall face the adjacent property.**
- 4. A 6 inch vertical gap be left between the bottom of the fence and the cement slab.**

Motion was DENIED by a vote of 3-5 with HOVLAND, BELL and GRIFFETH voting for and RICHMOND, ABBOTT, KUNTZ and BRADFORD voting against.

6. CLOSE PUBLIC HEARING

Chair KUNTZ closed the public hearing.

7. OLD BUSINESS

7. NEW BUSINESS

A. Approval of Minutes – August 25, 2016

It was moved by Board Member HOVLAND and seconded by Board Member PAGE to approve the minutes as written. The motion passed 5-0-3 with Members ABBOTT, BRADFORD, AND HOVLAND abstaining.

8. ADJOURNMENT

Chair KUNTZ adjourned the meeting at 8:30 p.m.



David Kuntz, Chair



Tammy Odean, Recording Secretary