

The following are minutes of the Bettendorf Board of Adjustment and are a synopsis of the discussion that took place at this meeting and as such may not include the entirety of each statement made. The minutes of each meeting do not become official until approved at the next board meeting.

**MINUTES
BETTENDORF BOARD OF ADJUSTMENT
JULY 11, 2019
5:00 P.M.**

Gallagher called the meeting to order at 5:00 p.m.

Item 1. Roll Call

PRESENT: Falk, Gallagher, Tombergs
ABSENT: Clements, Spranger
STAFF: Fuhrman, Soenksen

Item 2. Review of Board procedures.

Item 3. The Board to review and approve the minutes of the meeting of May 9, 2019.

On motion by Tombergs, seconded by Falk, that the minutes of the meeting of May 9, 2019 be approved as submitted.

ALL AYES

Motion carried.

Gallagher stated that Norm Voelliger, former Board of Adjustment Chairman, passed away on July 4, 2019. He explained that Voelliger served not only on the Board of Adjustment but in many capacities over the years. Falk added that Voelliger was not only a big part of the Board of Adjustment but the entire community.

Item 4. The Board to hold a public hearing on the following items:

- a. **Case 19-048; 999 Middle Road (C-2)** - A request for a variance to increase the allowable size of an electronic programmable sign from 100 square feet to 150 square feet, submitted by Acme Sign Company.

Gallagher asked if there was an affidavit of publication. Soenksen stated that notice of public hearing had been received. Notice and affidavit of publication are Annex #2 to these minutes.

Soenksen reviewed the staff report. Staff report is Annex #3 to these minutes.

Gallagher asked if there was anyone present wishing to speak in favor of the request.

Doug Jarvis, the applicant, stated that he had spoken to Soenksen prior to filing the variance request and that he had seemed willing to speak positively about how the business owners have operated the sign. He added that the owner had planned to attend the public hearing but that he had indicated that he would be willing to make their case. Jarvis explained that the owner has never once asked to utilize the entire sign. He stated that there have been no complaints about the brightness of the sign, adding that it has automatic dimming. He indicated that the owner often displays advertisements for local school sports teams. He explained that at the time the owner requested the original variance, there had been discussions regarding revisiting the possibility of utilizing the entire sign or revising the ordinance to increase the allowable area for electronic signage.

There being no one else present wishing to speak in favor of or in opposition to the request, Gallagher closed the public hearing.

On motion by Falk, seconded by Tombergs, that a variance to increase the allowable size of an electronic programmable sign from 100 square feet to 150 square feet be approved in accordance with the Decision and Order.

ALL AYES

Motion carried.

Decision and Order is Annex #4 to these minutes.

Tombergs commented that navigating through the area is very difficult because there is so much traffic. She suggested that at some point in the future that the traffic flow pattern be reconfigured. Jarvis stated that much of the traffic is generated by the Starbuck's in the adjacent shopping area. He indicated that if a Board member or city staff person has any specific suggestions he would present them to the owner.

- b. Case 19-049; 4805 Kynnelworth Drive (R-2) - A request for a variance to allow a 6-foot high fence in the required front yard, submitted by Travis Phillis.

Gallagher asked if there was an affidavit of publication. Soenksen stated that notice of public hearing had been received. Notice and affidavit of publication are Annex #2 to these minutes.

Soenksen reviewed the staff report. Staff report is Annex #5 to these minutes.

Tombergs questioned whether if it would be appropriate aesthetically for a resident to install a 6-foot high fence next to a 4-foot high fence. Soenksen explained that if the

proposed variance is approved, there would be a 6-foot high fence immediately adjacent to the neighbor's 4-foot high fence along 18th Street. Tombergs asked if there are other areas in the city where a 2-foot drop in fence height occurs. Soenksen stated that he is unaware of any such cases. He added that a portion of the applicant's fence that is located in the front yard setback is only 3 feet tall. Soenksen explained that the current ordinance allows 4-foot high fences in front yard setbacks. He added that if the applicant wishes to install a 6-foot high fence he would be allowed to do so if it were placed at the required rear yard setback of 25 feet.

Gallagher asked if there was anyone present wishing to speak in favor of the request.

Katie Phillis, the applicant, explained that she and her husband would like to have a 6-foot high fence to ensure the safety and privacy of their children. She stated that her home is located on a corner lot and that there is a tremendous amount of pedestrian and vehicular traffic. She commented that if the required setback for a 6-foot high fence is observed, the yard would become unusable.

There being no one else present wishing to speak in favor of or in opposition to the request, Gallagher closed the public hearing.

Tombergs commented that while she understands why the applicant would like to have a 6-foot high fence, she believes that the Board should consider whether it is appropriate to allow staggered heights for fences adjacent to one another. Falk expressed concern about the continuity of fences and establishing a precedent for future cases, especially since so many variance requests are related to fence height. He added that the Board tries to avoid setting precedents that can expand into other areas of the community. Falk commented that when he visited the site, he noticed that the 4-foot high fences along 18th Street extend for a very long distance. He added that from the street he could not see into the back yard because of the existing heavy landscaping. He reiterated that he believes that granting the variance could establish a precedent throughout the city.

Tombergs commented that the request involves both the continuity of the fence line height and the fact that the proposed fence does not meet setback requirements for the height requested. She added that the possibility exists that other homeowners would make similar requests for taller fences which would cause a disruptive appearance to the neighborhood which could affect property values. Gallagher concurred, adding that Kynnelworth Avenue is not a heavily-traveled road. He indicated that in the past the Board has avoided granting similar requests for homes located on secondary roads. He stated that he does not believe it would be appropriate to allow a 6-foot high fence on the Kynnelworth Avenue frontage and that a 4-foot high fence would be consistent with the existing fences along 18th Street. Gallagher stated that while he understands the applicant's concerns, he would not be supportive of the request as the existing vegetation provides additional screening from the street.

On motion by Falk, seconded by Tombergs, that a variance to allow a 6-foot high fence in the required front yard be denied in accordance with the Decision and Order.

Tombergs commented that the decision is a difficult one as the safety of children is always in the forefront of the Board's decisions but that they must also consider the effect on the neighborhood and the possibility that property values could decline.

ROLL CALL ON MOTION

ALL AYES

Motion carried.

Decision and Order is Annex #6 to these minutes.

Gallagher stated that Case 19-050 and Case 19-051 would be heard together.

- c. Case 19-050; 5762 Danielle Drive (PR-3) - A request for a variance to allow a 6-foot fence in the required front yard, submitted by Damian Brunt.
- d. Case 19-051; 5738 Danielle Drive (PR-3) - A request for a variance to allow a 6-foot fence in the required front yard, submitted by June Schindler Revocable Trust.

Gallagher asked if there was an affidavit of publication. Soenksen stated that notice of public hearing had been received. Notice and affidavit of publication are Annex #2 to these minutes.

Soenksen reviewed the staff reports. Staff reports are Annex #7 and Annex #8 to these minutes.

Falk stated that the developer installed 4-foot high fences along Devils Glen Road on the lots further north from Hopewell Avenue south which are code-compliant. He asked if the developer had ever submitted a variance request to allow a 6-foot high fence. Soenksen stated that no variance request was submitted. He added that he had spoken with the developer who had indicated that he intends to continue the 4-foot high fence along Devils Glen Road.

Tombergs commented that these cases are very similar to the previous one as they involve a long 4-foot high fence and a sudden change to 6 feet. Soenksen commented that the city has received complaints about the 4-foot high fence along Devils Glen Road, adding that the developer angled the fence on the lot on the corner in an attempt to provide greater visibility. He explained that the stop bar painted on the street is actually located

behind the fence line which is likely why so many complaints have been received. Falk suggested that the stop bar be repainted closer to Devils Glen Road.

Falk asked if the homes to the north were built by the same developer. Damian Brunt, 5762 Danielle Drive, stated that the same developer is building the homes but that there are two different subdivisions and associations involved. He explained that the developer had indicated to him that he would not be installing a fence in his subdivision. Brunt stated that he and his neighbor received permission from The Fountains homeowner's association to install the proposed fence because of the heavy traffic along Devils Glen Road. He explained that the association had requested that any fence be white vinyl to match a fence that is located south of Thunder Ridge Road. Brunt stated that after receiving permission from The Fountains to install the fence he had applied for a building permit and learned a 6-foot high fence would not be allowed along Devils Glen Road. He indicated that the homeowner's association had requested that any fence installed not be completed in the same manner as the fences to the north which are not very true. He reiterated that the developer told him that he would not be putting fences in The Fountains 8th Addition.

Tombergs commented that there is a gap between what is being developed and where the fence is located. She added that depending on the precedent that exists, the Board will either adhere to current ordinance requirements or expect future variance requests. She stated that she would expect that eventually future homeowners to the north would either have a 4-foot high fence or request a variance for a 6-foot high fence because it is very busy along Devils Glen Road.

Brunt reiterated that The Fountains association had requested that they match the 6-foot high fence at a home on Thunder Ridge Road. Tombergs asked if Brunt is referring to a house that is located on the other side of Thunder Ridge Road. Brunt confirmed this, adding that there is one lot on the south side of Thunder Ridge Road with a 6-foot high fence along Devils Glen Road up to the bike path. Tombergs asked why the city had allowed a 6-foot high fence along the bike path adjacent to Devils Glen Road. Soenksen stated that he is unaware of a 6-foot high fence adjacent to the bike path. Brunt explained that the house involved is a part of the original Fountains development and that the fence is likely quite old. Soenksen commented that he oftentimes walks along that bike path but can't recall a 6-foot high fence located adjacent to it.

Tombergs stated that she does not believe that all of the facts are available regarding the existing fence south of Thunder Ridge Road and that it would be helpful to have them to consider when making a decision. Soenksen reiterated that he is not aware of a 6-foot high fence south of Thunder Ridge Road. Falk and Gallagher concurred.

Tina Schindler, representing June Schindler, stated that there is a 6-foot high fence at a house south of Thunder Ridge Road which is part of The Fountains. She added that because of the size of the lots the back yards are very close to the bike path. She stated

that there are 6-foot high fences on the other side of Devils Glen Road. She reiterated that the existing fencing along Devils Glen Road is in a different development and that she does not believe that it is important to have the same type of fence extending from Thunder Ridge Road to Hopewell Avenue. She stated that they are attempting to coordinate with The Fountains with regard to their fence, adding that while the homes to the north were built by the same developer they are part of a different association.

Soenksen displayed a streetside view of the house on Coronado Court with the 6-foot high fence in question. He stated that it appears as though the fence angles away from the bike path and is set back approximately 12-15 feet from the bike path at the closest point. Soenksen reiterated that he does not believe that the Board ever considered a variance request for the property in question. Tombergs stated that the fence is set back from the bike path further than the current proposals and that there is landscaping between the fence and bike path as required by the ordinance. Soenksen reiterated that the fence angles away from Devils Glen Road. Falk stated that the fence is set back a more appropriate distance from the bike path. Schindler explained that they would not have enough space to do that on their properties.

Tombergs suggested that the cases be deferred until such time as more information is available regarding the existing 6-foot high fence south of Thunder Ridge Road and the 4-foot high fences to the north. Schindler stated again that there are two different associations involved. Falk stated that the fact that there are two associations involved is not relevant to the Board's discussion. He explained that their purview includes community coordination and continuity, not necessarily where subdivision boundaries are located.

Falk explained that when only 3 Board members are present, any decision must be unanimous. He added that based on the discussion, the applicants would likely be better served by requesting a deferral until more members are present and more information is available. He indicated that it does appear as though the requests have the full support of the Board. Tombergs reiterated that she would like to have more information before making a final decision. Soenksen stated that he would research whether or not a permit was issued for the fence on Coronado Court.

Brunt stated that the Board is welcome to visit his property. Falk stated that all Board members have already visited the site.

Schindler asked when the next meeting would be held and whether or not more members would be present. She stated that she is concerned about the fact that in the meantime there is no fence at all in the back yard.

Tombergs asked how old the homes in question are. Schindler stated that her mother moved into her home in February. Gallagher commented that the homes are new.

Gallagher stated that the next Board meeting would be August 8. Falk added that he is unsure whether or not more members would be in attendance. Gallagher commented that he would not be at the August meeting.

Brunt asked if a special meeting could be scheduled. He explained that a fence contractor has already been hired. Tombergs asked if an electronic vote is allowed. Gallagher stated that it is not.

A brief discussion was held regarding whether the cases should be deferred or a vote taken. Falk commented that he has no problem with voting now if the applicants do not wish to defer the requests. Tombergs reiterated that it would be in the best interest of the applicants to defer the cases and that she would not be comfortable voting until more information is available. Falk stated that he would vote to deny the request based on the information currently available.

On motion by Falk, seconded by Tombergs, that variances to allow 6-foot high fences in the required front yard at 5762 and 5738 Danielle Drive be deferred until such time as additional information is available.

ALL AYES

Motion carried.

There being no further business, it was unanimously approved to adjourn the meeting at approximately 5:45 p.m.

These minutes and annexes approved _____

John Soenksen
Community Development Director