

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  
OCTOBER 8, 2020  
5:00 P.M.**

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

Item 1. Roll Call

PRESENT: Clements, Gallagher, \*Tansey, Tombergs  
ABSENT: Spranger  
STAFF: Fuhrman, Hunt

Item 2. Review of Board procedures.

Item 3. The Board to review and approve the minutes of the meeting of August 13, 2020.

On motion by Clements, seconded by Tombergs, that the minutes of the meeting of August 13, 2020 be approved as submitted.

ALL AYES

Motion carried.

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

Gallagher stated that Case 20-057 would be heard first as Tansey will abstain from discussion and voting regarding Case 20-056.

- b. **Case 20-057; 3050 Middle Drive (C-2)** - Special use permit to allow a car wash in a C-2 zoning district classification, submitted by Maggie Motto.

Gallagher stated that he would abstain from discussion and voting regarding Case 20-057 but would continue to conduct the meeting.

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

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

Tombergs asked if her understanding that Middle Drive would be used as an access to future development is correct. Hunt confirmed this, adding that if the city can acquire the right-of-way Middle Drive could be reconstructed as a public road which would hopefully spur development in that area.

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

Maggie Motto, engineer representing the developer, explained that the existing car wash will be demolished. She added that the site plan that was submitted is a template from other buildings that the developer owns in the Chicago area. She indicated that the proposed building will be smaller and that the details regarding size and whether there would be access to Middle Drive would be worked out during the site plan review process. Motto stated that the utilities will be buried.

Tansey asked if the conditions recommended in the staff report would be acceptable to the developer. Motto confirmed this.

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

David D. Swanson, 3100 Middle Haven Drive, expressed concern about the noise, lighting, and hours of operation of the proposed car wash. He added that the existing car wash is very noisy. Swanson asked that any lighting be directed away from his property. He requested that a 10-foot high privacy fence be installed at the west end of the property to shield the homes to the east from the car wash activities and that no access be allowed from Middle Drive. He asked for clarification of what the hours of operation will be.

Tombergs asked if there would be access from Middle Drive. Motto stated that no decision has yet been made about access to Middle Drive, adding that the issue would be resolved during site plan review.

Hunt explained that the site development plan has not yet been submitted, adding that the only decision for the Board is that of the proposed use. He indicated that the reason the conditions were listed in the staff report is that the Board has the authority to impose them.

Tombergs asked if staff believes that Middle Drive will eventually be improved and will serve as an access to future commercial uses. Hunt confirmed this, adding that the surrounding properties are zoned for commercial use. He stated that the right-of-way dedication will be a condition of approval.

Clements asked what improvements would be necessary should the developer choose to have access from Middle Drive and when the city would expect them to occur. Hunt

explained that the street would have to be reconstructed to city standards but that no commercial development can occur until such time as the right-of-way is granted to the city.

Tombergs asked if Swanson had been aware that the properties surrounding his are zoned commercial. Swanson confirmed this.

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

On motion by Tansey, seconded by Tombergs, that a special use permit to allow a car wash in a C-2 zoning district classification be approved in accordance with the Decision and Order.

#### ROLL CALL ON MOTION

|          |                            |
|----------|----------------------------|
| AYE:     | Clements, Tansey, Tombergs |
| NAY:     | None                       |
| ABSTAIN: | Gallagher                  |

Motion carried.

Decision and Order is Annex #4 to these minutes.

\*Tansey left at this time.

- a. Case 20-056; 4600 Amber Court (R-2) - Variance to allow an 8-foot high fence, submitted by Melissa Bigelow.

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

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

Gallagher asked if the fence in the front yard would be limited to 4 feet in height. Hunt confirmed this, adding that no trellises or other means would be allowed to increase the height of any fence in the front yard.

Tombergs asked what would happen to the existing 6-foot high fence. Hunt explained that it would be removed and replaced with a new 8-foot high fence on the northern lot line.

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

Aaron Miers, attorney representing the applicant, explained that the applicant would like to amend her application to request that the proposed 8-foot high fence be placed only on the northern property line as she feels that the north lot line causes a hardship. Hunt displayed additional photos Miers had submitted. Miers stated that no change in the use of either property would occur if the variance is granted. He indicated that the applicant's neighbor has a raised patio and that the proposed 8-foot high fence would provide more privacy. He added that the taller fence would not impair the supply of light or air to any property, increase congestion in city streets, increase the danger of fire or public safety, or reduce property values in the surrounding area. Miers explained that he believes that in this particular case, denial of the variance would impair the health, safety, comfort, morals, and welfare of the inhabitants.

He stated that he is prepared to provide audio and video recordings of an explicit nature and with profane content as it relates to the disputes between the neighbors if it appears as though the Board is going to deny the request. He added that it is not appropriate at this time and in a public forum.

Gallagher commented that it is not necessary to present those recordings.

Chris Nowack, 2901 Crow Creek Road, asked for confirmation that any fencing in the front yard would be limited to 4 feet in height and the existing fence would be removed and replaced with a new fence. Hunt confirmed this, adding that any new fence would have to be inspected by city staff and built in accordance with city code. Hunt stated that the applicant would not be allowed to increase the height of the fence by adding materials to the top of the existing fence but could attach new fence panels to the existing posts.

Nowack asked if the applicant would be allowed to replace only the fence on the north side of the property and leave the existing unmatching fence on the south. Hunt confirmed this. Nowack stated that she has no opposition to the 8-foot high fence on the north property line.

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

Troy Kinyon, 4504 Amber Court, stated that the adjacent property involved in the most similar previous case listed in the staff report is zoned C-2, not R-2 as is the applicant's. Hunt stated that the use of the property in that C-2 district was residential rather than commercial. Kinyon asked if the property involved in the previous case was surrounded by other commercial properties. Hunt stated that he could not definitively say whether or not those properties were zoned commercial in 1998.

Kinyon stated that he does not believe that providing privacy for a deck in a rear yard or the fact that the adjacent lot is on a corner is a legitimate hardship. He added that it is likely that most residents of Bettendorf have decks on the rear of their homes and that there are many corner lots in the city. He commented that 18<sup>th</sup> Street is far busier than Crow Creek Road and that none of the homes along 18<sup>th</sup> Street have 8-foot high fences. He stated that there are other methods that the applicant could use to provide privacy for her clients rather than installing an 8-foot high fence which he does not believe is appropriate for a residential neighborhood. Kinyon commented that it appears as though a portion of the existing fence in the front yard is approximately 7 feet tall and asked if that is allowed. Hunt stated that a 7-foot high fence is not allowed. Kinyon stated that he does not believe that the applicant has established a hardship and that it would set a negative precedent if the variance request is granted.

James Driscoll, 4576 Amber Court, expressed opposition to the request as he does not believe that variances such as this should be granted for well-established neighborhoods. He commented that allowing an 8-foot high fence would set an adverse precedent for the other property owners on the street.

Tombergs asked staff to review the explanation of the potential hardship. Hunt explained that the neighbor's lot has two front yards which forces outdoor activity to the practical side yard which is close to the applicant's. He added that the previously-referenced case from 1998 was similar in that there was a dispute between neighbors. He indicated that one of the properties was zoned C-2 with the other being zoned R-2 but that they were both used for residential purposes.

Tombergs commented that the amended request is for an 8-foot high fence on the north side and it seems as though the affected neighbor is supportive as long as it is new. She questioned whether the trellis which appears to be attached is allowed at that height. Hunt stated that he would send Code Enforcement staff to determine whether the trellis is attached and how tall it is. He explained that when homeowners add other materials to fences to increase the height, they are instructed to remove those materials. He added that citations are issued if the homeowner does not comply.

Gallagher stated that while the Board has approved variance requests for fence height before, the properties involved were located along streets with high traffic counts. He expressed concern about if the hardship that has been identified is severe enough that granting the variance would not put the Board in the position of being forced to grant variances for 8-foot high fences where only 6 feet is allowed. He stated that if the variance is granted, the Board would have to then differentiate this case from future applicants who do not get along and wish to build a spite fence. Gallagher added that he would prefer that the Board not participate in the construction of a spite fence and asked if staff could identify unique characteristics of this case such that a precedent would not be set. He stated that if the city decides that 8-foot high fences are appropriate throughout the city,

the ordinance should be revised to reflect that. Hunt stated that he believes that the fact that the neighbor's home is located on a corner lot on a relatively busy street is a unique enough circumstance. He added that he understands that the decision regarding whether the proposed hardship is legitimate is the Board's to make.

Tombergs commented that the hardship is that there are two front yards which drives outdoor activity to the back yard and asked if an 8-foot high fence would have been allowed absent the dispute between the neighbors. Hunt explained that it would not have been presented to the Board. Tombergs commented that a precedent could be set for any lot in Bettendorf with two front yards. Gallagher stated that there are houses all over the city on corner lots with two front yards, reiterating that the ordinance should be changed if the City Council wants to allow 8-foot high fences rather than the Board's legislating that change.

Gallagher explained that because only 3 Board members are present, any decision would have to be unanimous. He added that the applicant could request a deferral until such time as more members are present.

Nowack commented that Miers had stated that he would play audio and video recordings of disputes with her neighbors if the applicant didn't get what she wanted. She added that she feels that doing so constitutes a threat to her. She stated that she would like to just get along with her neighbor and live in peace. Gallagher stated that the tape has no relevance to the case nor does the fact that the neighbors don't get along. He added that allowing an 8-foot high fence in order to solve their personal problems is not what the Board should be doing. He reiterated that he does not believe that a legitimate hardship that can be used throughout the city has been established.

Tombergs reiterated that the stated hardship is that the neighboring lot has two front yards, not that the neighbors don't get along.

Miers stated that the Board should not overlook the fact that both neighbors involved are in favor of the request and that in his opinion a precedent has already been set. He stated that his reference to playing the audio and video recordings was not meant to be a threat but that he would hold them back out of courtesy and respect for the participants in the process. Miers stated that the Board cannot forget that granting the request would not in his opinion impair the public health, comfort, safety, morals, or welfare of the inhabitants.

Clements asked if the fact that the neighbor has a deck is at all relevant as it was in the case referenced in the staff report for 1515 Belair Drive. Hunt explained that his analysis is based on the fact that the neighbor has two front yards.

Forrest Mook, 4502 Thornwood Drive, commented that while he would not be affected by this particular request, he would not want any precedent to be set that would allow 8-foot

high fences in his neighborhood. He added that he does not believe that having two front yards is a legitimate hardship. He stated that he is not opposed to 6-foot high fences in front yards when they are located along a busy street. He indicated that he has no interest in hearing any audio recordings of any neighborhood disputes. Mook commented that ownership could change in the future and suggested that if the variance request is approved it should be revoked if one of the houses is ever sold.

On motion by Tombergs, seconded by Clements, that a variance to allow an 8-foot high fence be approved in accordance with the Decision and Order.

ROLL CALL ON MOTION

AYE: Clements, Tombergs  
NAY: Gallagher  
ABSTAIN: None

Motion failed.

Decision and Order is Annex #6 to these minutes.

There being no further business, it was unanimously approved to adjourn the meeting at approximately 6:00 p.m.

These minutes and annexes approved

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Mark D. Hunt  
Community Development Director