

**CITY OF CHARLEVOIX**  
**ZONING BOARD OF APPEALS MINUTES**  
**Wednesday, August 19, 2020 – 6:00 p.m.**  
City Hall Council Chambers  
210 State Street, Charlevoix, MI

**A) CALL TO ORDER**

The meeting was called to order by Chair Hodgson at 6:00 p.m.

**B) ROLL CALL/PLEDGE OF ALLEGIANCE**

Chair: Richard Hodgson  
Members Present: Shirley Gibson, Timothy Kish, Patricia Miller  
Members Absent: Ann Gorney  
Staff Present: Jonathan Scheel, Zoning Administrator

**C) APPROVAL OF AGENDA**

Accepted with addition of presentation by Dean Martin on training after New Business.

**D) APPROVAL OF MINUTES**

1. Motion to Approve or Amend the Meeting Minutes July 15, 2020  
Board concurred to wait until next meeting.

**E) INQUIRY INTO POTENTIAL CONFLICTS OF INTEREST**

Conflict of interest for Old Business by Member Kish. No other conflicts.

**F) CALL FOR GENERAL PUBLIC COMMENT**

No public comment.

**G) OLD BUSINESS**

1. Case 2020-2 20 Feet Separation Distance of Structures – 116 Palmer Street, Tim Kish

Member Kish recused himself. Continuation of discussion on last month's variance for 116 Palmer for diminished side yard setback for an accessory building. Discussion on ordinance section requiring structures be 20 feet away from neighbor's primary structure.

-Unfair ordinance, Zoning Administrator brought to Planning Commission and Commission will be looking to change this.

-Decision/consensus to table Old Business on basis that the request for a variance could be resolved naturally by a change to the ordinance.

**H) NEW BUSINESS**

1. Case 2020-3 3-foot fence height variance, 50% opacity of fence – Jody Alger Bergmann and Joan Funk

Member Kish returned to the meeting. Two foot variance for height of front yard fence, more than 50% opacity of fence. Background information/presentation by the Zoning Administrator.

Applicant Jodi Alger Bergmann presented.

House on the corner of Grant Street and Park Ave is being rebuilt after geological risk (mass wasting has caused damage to the original structure.) Environmental and engineering consultants assisted with plans to stabilize the property. A retaining wall was constructed and will stop future creep and mass wasting. However, the 40-foot height of the retaining wall is dangerous; a fall from the top could seriously injure or kill. As such, the fence in question will prevent such accidents from occurring.

There are two variances sought: one to increase the height of the fence in the yard facing Grant Street from 3 feet to 5 feet, and the other is to increase the opacity of the fence beyond 50%.

The first variance is sought to increase the height of the fence across the retention wall. This would make it less prone to accidents such as tripping and falling over it, or intentional reckless behavior, such as members of the community climbing it and causing harm to themselves.

Question from Gibson: Did you attempt to create plans or install a fence without needing a variance (for the height issue)?

Answer: No, they knew from the start that it was a safety issue and sought the variance. If denied, they believe it would stay as a dangerous condition.

Question from Kish: Were there any public comments on the request for a variance?

Answer (from ZA): Two responses, one mail, one phone call, both were positive.

Member Miller had multiple questions regarding how a fence opacity could promote safety. Members Hodgson and Kish informed her that the current discussion was regarding the first variance sought regarding the fence height, and that they would later discuss the opacity issue.

Member Gibson asked if the height of five feet is the least possible additional change in height that would resolve the matter, so as to keep the variance as close to the ordinance as possible. Ms. Bergmann and Ms. Funk both commented that it was, and that anything lower was a safety concern.

Zoning Administrator Scheel provided Member Kish a copy of the site plan, who then reviewed it and handed it around the Board. Chair Hodgson asked if they could all get copies and these were distributed.

Member Kish asked if the height of the fence in the yard facing Grant Street "lined up" with the top of the fence in the back yard. Ms. Funk responded that the fences would line up on the top, so the fence in the front yard (not on the wall) connecting with the fence on the wall same height of the fence on the wall. Zoning Administrator Scheel commented that technically the two are the same height regardless of material, as the wall counts towards the fence's height as well. The confusion was the wall is one foot higher than the grade of the front yard. The top of fences are the same but the actual fence in question is taller than the other.

All members of the Zoning Board of Appeals found that there was is an extraordinary circumstance, that the variance would allow for substantial justice, and that it will not have an impact on the surrounding neighborhood and enhance the safety and welfare, and that it was not self-created.

Motion by Gibson, second by Kish to approve the variance for the fence height. Motion carried unanimously.

The second variance is sought because people can look into the rear yard from the sidewalks and streets. The applicant referred to the yard as "the fishbowl" because there was no privacy from the neighbors or the public. Chair Hodgson then transitioned the discussion to the opacity of the fence variance.

Member Miller asked what the extraordinary circumstance was behind wanting a fully opaque fence, and said she doesn't see how the opacity of the fence is a safety issue, rather than a privacy issue. Zoning Administrator Scheel perceived that the description of the yard as a "fishbowl" was pertaining to wanting enhanced privacy in the yard. Member Kish felt that everybody wanted privacy in their yard, but that's not a reason to grant a variance. Member Gibson stated she didn't believe there was a hardship for a privacy fence.

One of the Board Members then mentioned that it could be possible for cars to not spot kids around the corner due to the opacity of the fence. Member Kish then examined the site map and stated that, because the fence does not extend that far into the lot facing the street it was unlikely. He then asked if there was any other property in Charlevoix that had a similar concern of the public walking across the corner of the lawn, in a way that is dangerous. Chair Hodgson mentioned his house was somewhat similar, but his lawn is elevated rather than sunken. Zoning Administrator Scheel stated he did not know of any other similar property in the city.

The members concurred that there was not an extraordinary condition.

Motion by Gibson, second by Miller to deny [\[Project 18-01 based on the find of facts that prove the project does not meet the review standards in 5.178\(b\)\]](#). Motion carried unanimously.

Community Development Fellow Dean Martin then presented to the Zoning Board of Appeals, providing them information on the process to request training and providing them the necessary forms to do so.

**I) ADJOURNMENT**

Chair Hodgson called the meeting to an end at 7:15 p.m.

---

Jonathan Scheel

Zoning Administrator

---

Richard Hodgson

Chair