

Mount Vernon Board of Adjustment
Minutes
May 22, 2012
City Hall Conference Room

Meeting was called to order at 6:04 p.m. Moe Richardson, Lori Boren, Gary Ulch, Pat Charboneau and Liz Sparks. Also in attendance: Zoning Administrator, Perry Gruver and Tim and Diane Legore.

1. Approval of Agenda.
2. Discussion and possible action: Variance for a 6' high fence at 612 3rd Avenue SW, Mount Vernon, Iowa. Zoning Administrator, Perry Gruver, stated that the applicants were requesting a fence on the property line of their property on a corner lot. Gruver stated that per Mount Vernon Code, whenever you have a street you have a street side required setback, which is 15 feet. The applicants proposed fence is 6' tall. Per the Mount Vernon Code, within any required yards setback, fences are limited to 4 feet tall and they must be at least 50% open. The requested fence has two issues as far as the code is concerned: the height of 6' versus 4' and the fully enclosed versus the 50% required open in a required yard setback. If a fence is on a property and it is not in a required yard setback it can be fully closed and up to 6 feet tall. Gruver stated that the fence that is requested is possible in a different location on the property but not within the required setbacks. Gruver went on to say that one of the things he commonly runs into with the code is the "street". In the code, "street" is defined as the right-of-way. A lot of people look at the term "street" and think it is the curb to curb surface that most people drive and park on but the definition of street in the code is the street right of way, which is also the common with the property line.

Richardson said that the board was provided with maps, illustrations and platting of this situation, as well as the curb line, sidewalk and the line that the Zoning Administrator has given as a property line and then there is the line where it would have to be set back if it were 6' rather than 4'. Charboneau asked Mr. Legore how many feet total from the curb it would be for the fence setback if he complied with the 15' requirement, which he replied 40'. Legore also gave a description of the illustrations of the property that he provided.

Richardson said he understood that it would be ok to have a 4' tall fence on the property line and 50% open. Legore said that to get any kind of closed fence they would need the 15' setback. They would like to do 6' high all the way around the property for privacy reasons. There is a lot of traffic in that area with the school and local businesses. Diane Legore said that they have done a

lot of landscaping and yard work over the years but do not use it because there is no privacy. She also said that there are noise issues. With the traffic on Palisades Road and the traffic cutting through Gary's parking lot, the lights cut right into their house. Diane Legore also said that part of the reason that they would like to put a fence up is for their grandchildren. If they put up a 4' fence it gives them safety but no privacy. If they keep the 6' fence option, it would have to be put in another 15', which encroaches into the flower beds and the patio area. They also lose the visual pleasure of two grown trees and plantings that would be outside the fence. Tim Legore explained that the fence would be the same finish on both sides with a decorative cap and it would be stained.

Richardson asked the Legore's if they would be accomplishing their goal by putting up the 6' fence as requested or would they still have same issues with the noise and lights. Diane Legore said that it would cut down on those issues. Liz Sparks asked if they had considered a 4' fence but solid instead of 50% open. The response was that they would still not have the privacy and the shorter fence would not eliminate the issue with the lights.

Sparks asked if there was anything that gives guidance on what the intent is of the fencing regulations. What is the code trying to say or accomplish? Gruver said that there aren't any written regulations but one intent of the code on corner lots for fencing is visibility. Sparks felt that another issue would be to keep fencing away from sidewalks as it impinges upon the use of the sidewalk by bicyclists and walkers. She stated that she was trying to lay the foundation to what they could apply to this request.

Boren clarified with the Legore's that they were aware that there was an easement on the north side of the property and that if it was necessary to access that easement they would be responsible for removing the fence. They are aware of the easement.

After the board was finished with discussion and questions, Richardson asked for input from Gruver regarding the next step in the variance process. Gruver stated that the board had two options. If they decided that he had made an error in his denial of the fence permit and felt that they should override him, that could be done. The other option was to proceed with the variance request and determine if the variance met all of the requirements for such. It was the consensus of the board that there was no error made by Gruver and he was strictly following the letter of the code.

Board members then went through section 1310d (1) a-f (see below) to determine if the request for a variance met the criteria for granting of such. Sparks felt that the argument made by the petitioner regarding the shape of the

property does not justify granting a variance but then went to the section of the code that states “are there other extraordinary and exceptional situations or conditions of the property”. She agreed with this section by saying that this property was adjacent to a commercial property and the commercial property does not currently have the noise, congestion and sound mitigants that are now considered proper that we normally want to put between commercial and residential properties. This gives the board the right to consider granting a variance in this situation. All members were in agreement with this statement.

Sparks said she felt that three of the five requirements for granting a variance had been met and would vote in favor of granting this variance because of this unique situation of the commercial property that does not provide proper buffering and this is a reasonable alternative to allow the homeowners to provide the mitigating buffering.

Charboneau made a motion to grant the variance as requested based on the above referenced items. Boren seconded. Carried all. Variance approved.

Meeting adjourned at 7:26 PM.

Respectfully submitted,
Marsha Dewell
Administrative Assistant

Requirements for the granting of a variance by Board of Adjustment

a) Strict application of the zoning ordinance will produce undue hardship and would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance.

It was the consensus of the board that this item does not apply. Charboneau disagreed, saying that the property right next to the Legore's has a curved frontage that is next to their backyard, thus giving no privacy.

(b) Such hardship is not shared generally by other properties in the same zoning district and in the same vicinity.

All members were in agreement with this item.

(c) The authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance.

All members were in agreement with this item.

(d) The granting of such variance is based upon reason of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit, or caprice.

All members were in agreement with this item.

(e) The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable a general regulation to be adopted as an amendment to this Zoning Ordinance.

Sparks was not in agreement with this item because commercial boundaries can abut up against residential properties but this particular property is a non general situation based upon the requirements that are in place for new construction commercial going in next to residential.

(f) The granting of the variance will not cause substantial detriment to the public good and will not substantially impair the intent and purpose of any Ordinance or Resolution.

All members were in agreement with this item. The public good in this case would be the visibility backing out of parking spaces, good visibility at the next door property and the fence on the lot line does not obstruct the visibility. The fence as proposed does not obstruct visibility on the street side as well. The fence will not crowd the sidewalk in this instance.