

VILLAGE OF ELM GROVE
BOARD OF APPEALS
Tuesday, September 24, 2019 * 5:00 p.m.

Present: Barry Book Chairman, John Finerty, John Allen, Doug Jacobson, and Lorenz.
Giampietro and Puchner excused.
Village Clerk Mary Stredni, Zoning/Planning Administrator Tom Harrigan, and Assistant Village Attorney Chris Koehnke.

1. Roll Call

Chairman Book brought the meeting to order at 5:00 p.m. Mary Stredni took the roll.

2. Minutes

Finerty and Lorenz moved and seconded to approve the August 7, 2019 minutes. Motion carried.

3. Consideration, hearing, and action on request for appeal for Ordinance Interpretation and Administrative Decision – 1760 Wedgewood Drive E

Mary S. Stredni swore in Marlin Chu, Andy Marini, Carol Delind, Thomas Harrigan, and David De Angelis. Ms. Chu testified that on 7-24-19 she had her driveway excavated; 7-25-19 Richard Paul Jr., Public Works Director, advised her that a permit was needed and that the driveway opening must be at least three feet from the lot line. 7-26-19 Completed the application. First heard about a three foot setback for the entire length of the driveway from neighbor, Ms. Delind. After stating several times that the three foot setback only applied to the opening of the driveway, Richard Paul Jr. retracted the statement and said that the entire length of the driveway must be three feet away from the lot line. The current driveway was approved by the inspector without the three foot setback.

Opined that the ordinance is not clear and states only that the opening of the driveway must be three feet from the lot line. Wants to replace the driveway on its existing footprint.

Jacobson verified that the provided drawing is of the original driveway.

Finerty verified that Ms. Chu is replacing the existing driveway in the same footprint. Asked how old the existing driveway is. Ms. Chu not sure.

Harrigan testified that a portion of the driveway may be encroaching partially into the neighbor's property.

Allen stated that after driving by the property believes that only a small portion of the driveway is actually less than three feet off the lot line.

De Angelis testified that it is unfortunate that the Public Works Director gave incorrect information in the beginning. Driveway application review is done by the Public Works Director and then the Plan Department. The purpose of including the three foot language in the Ordinance is because property owners were objecting to a large flare at the end of driveways. A driveway must be three feet off the lot line so it does not encroach on a neighbor's lot. The Ordinance implies that the three feet applies to the entire driveway.

Lorenz asked Ms. Chu what the hardship would be if she could not use the existing footprint of the driveway. Ms. Chu stated that it would be difficult to landscape any portion not used as the driveway and she wants to improve the look of the outside of her property.

Carol Delind – 1740 Wedgewood Drive E – testified that she called Richard Paul, Jr., Public Works Director, when the driveway was excavated. She believes that the driveway at one point is over her lot line by seven inches since it was put in and this seemed like a good time to correct that. Provided photos showing the portion of the driveway near the garage. Had a survey done for her lot which showed the driveway over her lot line. Testified that she does not agree with Ms. Chu's statement in her letter that

states 'she does not intend to clear any of the wild plants on her side of the yard'. Stated that she did not say that. Also testified that she does not agree with July 25, 2019 email from Ms. Chu to Thomas Harrigan "My neighbor has told me that she believes the entire driveway needs to be 3 feet from all lot lines" Delind testified she did not say that.

Lorenz clarified that Delind has a Certified Survey Map. She stated that she does, but does not know where it is. She does believe there is a stake in the back. Jacobson asked Delind if her original thought was that this was a good time to correct the driveway portion which goes over the lot line and that was her objective. Delind stated yes.

As there was no more testimony, Chairman Book closed this portion of the hearing.

4. Consideration, hearing, and action on request for variance – 1300 Victoria Circle S
Mary S. Stredni swore in Christian Walters, Thomas Harrigan, and David De Angelis.

Walters testified that he is requesting a variance for a street yard setback requirement of 50 feet for a shed. Wishes to place a shed eight feet from the street yard setback. He obtained written permission from five adjoining neighbors. His property slopes down to the north significantly and there is an existing retaining wall in the back yard, which prevents placing a shed to the rear of the property. There is very little flat area in the back yard in which to place the shed and placing in the back yard would create a problem with accessibility. Will plant more evergreen landscaping around the shed to shield from the street.

De Angelis testified that there is an issue as there is a retaining wall running through the back yard.

As there was no more testimony, Chairman Book closed this portion of the hearing.

5. Consideration, hearing, and action on appeal of Building Board decision for a fence at 1045 Circle Drive
Mary S. Stredni swore in Sherri Radke, Thomas Harrigan, David De Angelis, John Domaszek, Brad and Amy Fryjoff, Mike Trotta, Debrah Vander Heiden, Julie Hosley, Andreas Klotz, Markos Ramirez, Tom Blanchard, Matthew Wilhelm, and Danny Wilhelm.

On August 6, 2019 the Elm Grove Building Board approved a 6 foot, solid fence on the property of 1045 Circle Drive, from the back lot line to 20 feet from the front lot line on the west portion of the property, between 1045 Circle Drive and 1125 Circle Drive. Ms. Radke, owner of 1125 Circle Drive is appealing that decision.

Ms. Radke testified that she had no advance notice of a fence going up. It obstructs her view of the pond, because it goes along her entire lot line she is very much affected by the fence. Believes it sets a precedent for this type of fence. There are a lot of arborvitae along the property line which provide privacy. Believes that the fence creates a safety issue on Circle Drive and will negatively impact property values. Not opposed to a fence that abides by the zoning and design guidelines, which would be a four foot – 50% open fence, limited to the length of the rear of the home.

John Domaszek, Chair of Building Board, spoke. Opined that as a procedure, Ms. Radke has no appeal right of the Building Board decision. She is not an aggrieved party; her letter was provided to the Building Board and taken into consideration. The Building Board approved the fence as a privacy fence; a lot of thought was put into the decision. Six feet is standard and the type has been approved before in the Village. Reviewed facts as to why in his opinion this was a different situation for a fence of this type.

Chairman Book inquired as to was there an admission of the property owner to not build the fence when the decision was under appeal. Domaszek stated that he did not see any chance the Building Board decision would be overturned. Fryjoff's felt once the fence was approved they were anxious to have it built.

Allen asked Domaszek if the Building Board would have approved this fence if not for the special situation. Domaszek opined he did not know, but fences like this have been approved in the past.

Lorenz verified that Evan Radke, Ms. Radke's son, has not been convicted. Public record shows that he has been charged, but not convicted.

Jacobson asked Village Attorney Koehnke if the applicant has the right to appeal the Building Board decision. Attorney Koehnke stated that yes she does have the right to appeal. Domaszek stated that in his opinion there is no standing for an appeal.

Allen verified that there is a trial date set for October 28, 2018 for Evan Radke and it was clarified that he is living temporarily at 1125 Circle Drive.

Domaszek stated that there has been activity in the past by Evan Radke according to the Elm Grove Police Department. All of the perceived activities were taken into consideration by the Building Board.

Ms. Radke stated that in regard to photos taken by neighbor of her son, he was cutting branches that she had asked him to cut.

De Angelis pointed out that fences of this type have been approved in the past, but they typically end at the house and he was not familiar with any that go so far to the front lot line. Chairman Book asked if the Building Board went through a rigorous process. De Angelis stated that yes it did.

Attorney Koehnke asked Domaszek what the basis was to approve the fence to go 20 feet from the front property line rather than ending at the rear of the house. Domaszek stated that the Building Board came to the conclusion that for privacy the fence should go to 20 feet from the front property line. Attorney Koehnke asked if the fence was constructed properly. Domaszek stated he was not sure.

Brad Fryjoff, owner of 1045 Circle Drive testified that he did not want to build a fence, but opined that he and his children could not use their yard because he believes Mr. Radke is watching his children. They have a right to use their yard without feeling as they are being watched or afraid of a neighbor.

Jacobson asked if Fryjoff understood that the fence could not go up because of the appeal. Fryjoff stated that he believed he could put the fence up right away. Harrigan testified that the permit was issued, but Fryjoff was informed that he risked having to take the fence down depending on the decision by the Board of Appeals.

Mike Trotta – 1040 Circle Dr. stated that he had no objection to the fence.

Debrah Vander Heiden – 975 Brinsmere Dr. referred to the letter provided by James Vander Heiden; does not believe that the fence was erected as approved by the Building Board. Would prefer no fence; opined that the arborvitae provided enough screening. Would prefer that the fence be four feet high and 50% open.

Amy Fryjoff – 1045 Circle Drive Stated that her children are typically outside all of the time and testified that she felt that as parents they had to teach their children to come into the house if Mr. Radke is outside. Need the fence to go as far as it does because her children play basketball in the front area and she feels there needs to be a screen. Testified that her belief is they are being watched by Mr. Radke.

Julie Hosley – 950 Brinsmere Dr. stated that she shares a lot line with Radke's. Her concern is that she feels spied upon by Mr. Radke. Regardless of what happens in court, she has also felt uncomfortable with him living there.

Andreas Klotz – 1100 Circle Drive Has spoken with Mrs. Radke in regard to how some of the neighbors feel. It is very much an emotional issue.

Matthew Wilhelm – 14100 Oakdale Drive Testified that he is also concerned with privacy and with Mr. Radke’s behavior in the past.

Markos Ramirez – 955 Brinsmere Can see the fence from property, but is in favor of it. Opined Mr. Radke’s behavior has been a problem for a while.

Tom Blanchard – 905 Kurtis Dr. Drives by the fence every day and does not feel that it impedes traffic in any way. Stated belief that Building Board did due process.

Danny Wilhelm – 14100 Oakdale Drive Stated that the fence blends in with the neighborhood and does not impede traffic.

Sherri Radke testified that it was difficult to be before the Board of Review. Her neighbors have been ignoring her. If anyone had asked she would have said she tried to find another place for her son to live. Opined that he is not dangerous and that the neighbors have already convicted him even though he has not yet gone to trial and the fence is already up. Stated that once the trial is over, Evan Radke will no longer be living there.

Chairman Book closed the testimony.

6. Convene into closed session

By roll call vote at 6:47 p.m. the Board convened into closed session pursuant to Wis. Stats. §19.85(1)(a) to deliberate the above referenced quasi-judicial hearings.

7. Reconvene into open session

The Board reconvened into open session at 7:07 p.m. Chairman Book stated that:

1760 Wedgewood Drive E – appeal regarding the administrative decision the request is granted. The driveway can be replaced in the current footprint and the driveway will not go over the lot line.

1300 Victoria Circle S – the Board voted 3-2 in favor of the variance for the shed.

1045 Circle Drive fence – the Board concluded that there was not sufficient evidence to overrule the Building Board decision therefore the appeal is denied. As far as technical compliance for the fence that is up to the Building Inspector.

8. Adjourn

At 7:10 p.m. Lorenz and Jacobson moved and seconded to adjourn. Motion carried.

Respectfully submitted,

Mary S. Stredni
Village Clerk