

**Excerpt from the
ZONING BOARD OF ADJUSTMENT MEETING
Community Planning & Economic Development (CPED)**
250 South Fourth Street, Room 300
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The following actions were taken by the Zoning Board of Adjustment on November 19, 2015.

Board Members: Sean Cahill, Anja Drescher, John Finlayson, Eric Johannessen, Dan Ogiba, Matt Perry, Dick Sandberg, Jacob Saufley, Ami Thompson

Board members absent: Dan Ogiba

Committee Clerk: Fatimat Porter 612.673.3153

ITEM SUMMARY

I. 2012 Cedar Lake Parkway, Ward 7
Staff report by [Andrew Liska](#), BZZ-7457

The Department of Community Planning and Economic Development recommends that the Zoning Board of Adjustment adopt staff findings for the application(s) by Melisa Pollak for the property located at 2012 Cedar Lake Parkway:

A. Variance to increase the maximum allowed fence height.

Action: The Board of Adjustment **denied** the variance to increase the maximum permitted height of a fence in the established front yard from 3 feet to 6 feet.

Absent: Ogiba

Aye: Drescher, Johannessen, Sandberg, Saufley, Thompson

Nay: Cahill, Finlayson

Motion passed

B. Variance to allow development on or within 40 feet of the top of a steep slope.

Action: The Board of Adjustment **approved** the variance to develop on a steep slope or bluff or within 40 feet of the top of a steep slope in the SH Shoreland Overlay District, subject to the following conditions:

1. The development is limited to the fence and it must comply with all standards in Chapter 535 Article VI – Fences.
2. All site improvements shall be completed by November 19, 2017, unless extended by the Zoning Administrator, or the permit may be revoked for non-compliance.

Absent: Ogiba

Aye: Drescher, Johannessen, Sandberg, Saufley, Thompson

Nay: Cahill, Finlayson

Motion passed

TRANSCRIPTION

Staff Liska presented the report.

Chair Perry: Thank you Mr. Liska for the presentation. Any members have questions? Yep Mr. Johannessen, Ms. Thompson and Mr. Cahill

Board member Johannessen: Thank you Chairman. I guess I would like to ask, being it's a front yard fence, is there different allocations for fencing if its 50% opaque for height?

Staff Liska: 60% opaque would allow them to increase the fence height to four feet.

Board member Johannessen: Four feet. Thank you.

Chair Perry: Ms. Thompson.

Board Member Thompson: Thank you. So are you anticipating if we approve the variance as you, we deny the height, but keep the Shoreland Overlay that they would have to reduce their fence height, because it's already built? If they do that, were you anticipating that the current like footing and the big pieces of wood that the fence attaches to would remain? I'm thinking about justification in the Shoreland Overlay District about erosion and that it already exists and it's not creating erosion. You know so maybe if they have to switch it out, it might be wise to put a different finding note in there about preventing erosion if they need to dig new holes for the new posts.

Staff Liska: Sure yeah, that would be appropriate.

Board Member Thompson: Ok. Thanks.

Chair Perry: Thank you Ms. Thompson. Any other questions of staff? If you could just remind us, how the City defines what a front yard is?

Staff Liska: Sure. The front yard is....

Chair Perry: What makes this, what makes these front yards, front yards?

Staff Liska: Sure. The lots are arranged off of Cedar Lake Parkway. Although they don't have direct walkway to, they are oriented towards Cedar Lake. As opposed, you can see, the lots on the east side of the block facing the lake, and Drew Avenue has houses facing west. That would define the front yard. As far as the fence height would be concerned in the front yard, we would be taking a look at an established line connecting 2012 to the new structure at 2016. And anything in front of said line would be in the front yard or would be in the side yard.

Chair Perry: So it looks like from your rough, and I know you're just drawing roughly on this, the rough drawing, that some of the fence may be compliant?

Staff Liska: Yes.

Chair Perry: Yep. It's the part outside of the established front yard, I'm sorry; within the established front yard that is the subject of the variance.

Staff Liska: Correct. Approximately 20 feet are inside of the front yard setback.

Chair Perry: Ok. Thanks. Any other questions? Seeing none, is the applicant present? If you would like to give testimony, you can give your name and address for the record please.

Melisa Pollack (2012 Cedar Lake Parkway): Good afternoon, I'm Melisa Pollack, one of the homeowners at 2012 Cedar Lake Parkway. Andrew, do you mind if we use the colored pictures? Thank you very much; thank you for hearing our variance today Mr. Perry, members of the board. I would like to present a slightly different perspective on some of the staff findings. The basic issue about preserving the essential character of the neighborhood is actually really important to us and to other neighbors. And I think that the picture; let's see how do we do this?

Chair Perry: The way that machine works is, what you see, we will see.

Melisa Pollack: Ok, sweet. So actually I think that this picture is a really good illustration in terms of developments in the neighborhood and their effect on the essential character of the neighborhood. The interpretation that the fence is the main disruption to the built environment here is perhaps not the most balanced view. The variance that was previously granted to 2016 to bring the house father further has certainly had an effect on the built environment here. And there was another variance that Mr. Liska didn't mention to increase the allowed ratio of square footage of that house that is also had a big effect here. So I would argue that the fence is a very minor feature in this view that you're looking at. Secondly, the concern that the fence disrupts the views from 2016 Cedar Lake Parkway, looking at this picture, you can pretty clearly see that their view of the skyline and their views of the lake are intact and in fact that view is bounded by the vegetation, not by the fence. He did have another picture that shows, and I don't know if it's here, if you stand right up against the fence, it'll block your view; so there's like one pass of the lawn mower where that might be a factor. But for every place that they would reasonably spend time in the house or on the lot, their view is entirely intact, I would argue. And then, thirdly the issue about, in the third staff finding about that there were concerns about blocking the view between the yards with potential safety implications; it's a privacy fence. And that's true; it does block the view between the yards. And this goes a little bit to the fact that our, what's the front yard, what's the back yard along this. I mean I understand that by ordinance, it's our front yard, at least now I understand that, I didn't understand it when I built the fence. However, the way that all the neighbors along the block use those yards

towards the lake, we use them like back yards. That's where we have a picnic, that's where we have our patios, that's where we sit out in our lawn chairs. And so that aspect of having some privacy in that yard seems appropriate to the way those yards are used. And then the final point I would like to make, I assume you got packs with all the pictures that we submitted, but, sorry for the having to.....So this is the top picture is the view from our yard. And there you'll note the scale of the fence, in proportion to the scale of the tear down and the new construction at 2016 Cedar Lake Parkway. And also the fact that we've got an Arborvitae hedge that's established in front of the privacy fence and will be growing over time. Do you all have any questions that I could answer?

Chair Perry: Is that the extent of your testimony? Which is fine.

Melisa Pollack: That is. I mean, and I would ask you I guess, to please grant the variance. That it is, we've received a lot of, actually the other thing I should get into testimony is; we've received a lot of support from the neighbors. That people feel the fence is, in keeping with the spirit of the neighborhood and is appropriate in scale and style. We've got neighbors here supporting us today.

Chair Perry: Thank you for your testimony Ms. Pollack. Any questions of the applicant? Yes, Mr. Saufley.

Board Member Saufley: Thank you Mr. Chair. Can you speak to the practical difficulties that exist with your property and the fence that you've constructed? You've talked about the reasonableness and the character and fitness of the neighborhood but I haven't heard anything regarding practical difficulty.

Melisa Pollack: Say more what you mean by practical difficulty.

Board Member Saufley: One of our required findings is to establish a practical difficulty with your property that is not of your own creation. Can you elaborate...

Melisa Pollack: Practical difficulty in what? In complying with....in building a three foot fence?

Board Member Saufley: Correct

Melisa Pollack: A three foot fence could physically be constructed but would not provide the usage that we want from a fence along that property boundary. So the practical difficulty is that it wouldn't be satisfactory. And I know that's probably not exactly what you're asking but that's, I think, the best answer I can give you.

Board Member Saufley: It helps us more than what we had before. Thank you.

Chair Perry: Thanks for the question Mr. Saufley. Mr. Finlayson.

Board Member Finlayson: How long has the fence been there?

Melisa Pollack: Built it in August.

Board Member Finlayson: <inaudible>

Melisa Pollack: It has, construction started in the spring sometime.

Board Member Finlayson: Thank you.

Chair Perry: Mr. Johannessen.

Board Member Johannessen: Thank you. In the picture you showed earlier. Your Arborvitae hedge, which was back towards closer to your house line, was fairly...

Melisa Pollack: That's actually right up, I'm sorry, right up against the....

Board Member Johannessen: Yes, the part on the right, I'm assuming, the hedge, the tall Arborvitae on the right side of that photo are...

Melisa Pollack: These right here?

Board Member Johannessen: Is it the intent of the newer ones in front of the fence to reach that height?

Melisa Pollack: Given time.

Board Member Johannessen: Ok thank you.

Chair Perry: Any other questions of Ms. Pollack? I see none. Thanks very much for your testimony. Would anybody else like to speak in favor of this application? Yep. If you want to just, again, give your name and address for the record.

Brenda Langton (2004 Cedar Lake Parkway): We've lived there 28 years. It's a neighborhood that everyone's buying their little houses because they were all cabins. And tearing them down just like in many areas in of the City, and putting up giant homes. It's been really difficult to watch how the process, there was another home right next to it that was purchased and they came and they tore that house down and that owner put it back on the market now. Even though he had bought a, had an architect design the house, because he's so offended by this giant big house that's gone up right next cause there's no room now for his house to go in hardly. It's just taken over. And so that house, now that lot, empty lot, is back up on the market. As you can see it's a lovely view. You know, the character of the neighborhood has been wonderful. But it's been discovered and now

everything is getting torn down. And that's just the reality, that's what's happening. And it's just that in keeping with the enormous house that has now been put up at a very slow pace, we wish it would just get over. This fence is in keeping and its really like Melisa said, that's where we sit and have, that's like our backyard. And it's always been kind of a joke, what is our front yard and back yard? My daughter has never really, you know, it's always, well what are you talking about front yard or back yard? It really, it is nice to have a little bit of privacy. And their view is not impeded by and large. I mean you saw the view and like I said, all the neighbors support the fence. Melisa built it herself; it is a beautiful fence, very tasteful. And that's all I have to say. Any questions?

Chair Perry: Thanks for your testimony. Sir would you like to speak as well?

Timothy Kane (2004 Cedar Lake Parkway): I'm Brenda's husband; I'm just standing here in support and in agreement with what she has said.

Chair Perry: Thanks for coming down and giving testimony. Is there anyone else who'd like to speak in favor of this application? I see no one. Is there anyone here that would like to speak against it? I see no one. Let's close the public hearing; board comment. Mr. Finlayson.

Board Member Finlayson: Well, street numbers a street number. Postal service hands them out. But, I don't know how I can construe that fence being in a front yard it's obviously in the back yard. I'd appreciate if one of my board members can convince me that it's a front yard.

Chair Perry: Thanks Mr. Finlayson. Anybody else; board comment? Mr. Johannessen.

Board Member Johannessen: Thank you Chairman. I guess I look at it from, if the lot elevations were flip flopped, and the applicant's lot was low instead of being high, there would be a problem with the fence being high for them. And the City ordinance clarifies that it's a front yard. I support staff findings.

Chair Perry: Thanks Mr. Johannessen. Other board comment, Ms. Thompson.

Board Member Thompson: Thank you. I also support staff findings. I'm having a hard time finding for number one, practical difficulties. I don't see anything particularly unique to that lot that makes it difficult to comply with the zoning code. Also, they have an option with those plants growing up, to get the privacy that they would like. May take a while for those plants to grow but they can get that through plants, there's another option there. So I support staff findings.

Chair Perry: Yes, that's something that I've always found very interesting about City code. I don't know how you would codify it but you can have plants grow to any height that plants can grow but fences are limited. Mr. Cahill.

Board Member Cahill: thank you Mr. Chair. Mr. Chair I do actually think I agree with Mr. Finlayson that there is some practical difficulty in terms of there is a practical usage issue here, if it was just one piece of property where you had a front yard being used as a back yard, kind of thing that would lend some argument. But I think this is a community that is orientated towards the use of the lake, towards the use of the property and viewing the downtown. And I do think that, while the code does clarify it, define it as a front yard, but practically speaking this is just one of those goofy circumstances of topography and where it's located that make its use different for the entire neighborhood. So I think there would be a practical difficulty.

Chair Perry: Thanks Mr. Cahill. Other board comment, Mr. Sandberg.

Board Member Sandberg: Thanks Mr. Chair. I attend to agree with staff findings here. I think that the applicant can use the backyard. The fence only provides a visual barrier. It does not provide safety or containment of children or exclusion of others from entering the property; which we often grant variances for as a difficulty in using the property without having a fence. I think that that visual barrier can be eventually accomplished with vegetation, and I believe staff made the right call.

Chair Perry: Thanks Mr. Sandberg for those comments. Other board comments? Seeing none, I would entertain a motion from someone on something.

Board Member Sandberg: I move staff findings.

Chair Perry: There's a motion to adopt staff findings. And what staff findings are is to deny the fence height and to grant the development in the steep slope. Is there a second?

Board Member Johannessen: Second.

Chair Perry: Mr. Johannessen has seconded that motion. Is there any further discussion? Seeing none, will the clerk please call the roll?

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