

**Item 23-0780: The applicant proposes to construct a six foot fence in the required front yard. The proposed fence would replace an existing fence at 1820 S. Mohawk Dr. Section 23-44(a)(1)(a) of the Zoning Ordinance limits fence height to three feet in the required front yard**

**Board of Zoning Appeals**  
Mon, Jul 17, 2023, 7:00PM

**Paul McCann (BOZ Chair) 04:02**

So, it appears that the four people in the audience all represent two cases tonight is that fair to say? Otherwise, we'd be asking anyone from the general public to come forward. If they had a concern or an opinion on any of the cases, they'd be entitled to spend whatever time they need to ask us questions, make sure that we know their concerns, and then we'd move on with the cases.

**Paul McCann (BOZ Chair) 04:27**

There being no public representatives here. Let's go forward. And I'll ask Kurt to read the case for 2226 West Cherokee drive and invite the applicants to come up where you see the red or the green light in the corner there. So, Kurt, go ahead.

**Supervisor Kurt Craanen (Inspections) 04:45**

The applicant proposes to construct a six-foot fence in the required front yard. Proposed fence replacing existing fence at 1820 South Mohawk drive. Section 24-44(a)1(a) of the zoning ordinance limits fence height to three feet in the required front yard.

**Paul McCann (BOZ Chair) 05:02**

If you could introduce yourselves, please.

**John K. (Resident) 05:05**

I'm [John K.], And this is my wife, Jan.

**Paul McCann (BOZ Chair) 05:10**

Okay

**John K. (Resident) 05:11**

And You'll have to put up with my voice. **[Note: his voice was very weak and raspy.]**

**Paul McCann (BOZ Chair) 05:14**

Go ahead and pull out as close as you need to. It's all it's all—

**John K. (Resident) 05:19**

My voice is [indecipherable].

**Paul McCann (BOZ Chair) 05:21**

Okay.

**John K. (Resident) 05:24**

So, we live at Cherokee drive. You want me to go into it? Essentially what we would like to do is rebuild our section of the fence because some of the posts have rotted out at the bottom. And last winter, about 20-25 feet of the fence fell over into the neighbor's yard. And my wife and I put on our jackets and what and stood it up. It's standing up now, but it's braced by snow fence post. So, what we'd like to do is to replace it with a fence that would look very similar to what you see there. It would probably be a foot higher to match the fence you see on your left.

**John K. (Resident) 06:31**

And now, the problem is when the fence was put in, which was in September of 2001, the contractor did not get a permit. So, we were not aware of the setback on the height. So that has caught us this time. So that's what we're asking for, a variance to raise—to not have the lower fence in that area. Now, the reason for that is you'll notice we have a planting to the right of the fence and our patio is behind there. Yeah, okay. So anyway. Okay.

**Paul McCann (BOZ Chair) 07:43**

Ma'am, would you like a microphone one in front of you? I can turn that one on if you'd tell me what the number is on there. Okay.

**John K. (Resident) 07:52**

Anyway. So, our patios are—so we'd like our fence to separate us from our neighbor. The fence in turn, the neighbor has a large dog. And I'm afraid, and my wife is afraid, the dog is going to jump over.

**Jan K. (Resident) 08:21**

When the fence went down the dog—neighbor's dog got out. The main reason that we put the patio where it is, is that our lot is pie shaped. Our backyard is very small. And we wanted some area where we could go out and enjoy being outside without being exposed to the whole world. And that is one reason that we put the berm in front of it because our plantings grow fairly tall and we are able to enjoy it, and then rather than seeing the neighbor's backyard, we have the fence so.

**Paul McCann (BOZ Chair) 09:09**

I struggled a little bit trying to figure out who's fence is whose.

**John K. (Resident) 09:12**

Okay the sheet I gave you—

**Paul McCann (BOZ Chair) 09:14**

Yep.

**John K. (Resident) 09:15**

—which I passed out. This as a timeline of the fence which starts in 1966. The neighbors had at Mohawk Drive at that time, built the fence, and then they sold the house. Eventually the house got to the Millers in 1966. And the fence went into disrepair. We have pictures of where they have braced it up including in our yard.

**Paul McCann (BOZ Chair) 10:03**

So, can I just ask, so the principal fence is really around the neighbor's property?

**Jan K. (Resident) 10:07**

Correct.

**Paul McCann (BOZ Chair) 10:08**

So, when you look at it or drive past it, the fence does not appear to be your fence from the street.

**Jan K. (Resident) 10:16**

That would be correct.

**Paul McCann (BOZ Chair) 10:17**

Okay.

**Kelly Sperl (BOZ Member) 10:17**

And then the taller of those two fences on the previous picture is the other piece going at the angle following the street?

**Paul McCann (BOZ Chair) 10:26**

Yeah, and that's a six-foot fence.

**John K. (Resident) 10:28**

My fence goes up to the corner of the house and this is the [...]

**Jan K. (Resident) 10:28**

That's correct.

**Paul McCann (BOZ Chair) 10:36**

So can I clarify that the fence we're talking about is the vertical stripe there. But that fence is, is, is—okay. And why is it not the neighbor's? Why is it not part of?

**Jan K. (Resident) 10:51**

Well, in 2001 there was quite a violent storm in our particular area.

**Paul McCann (BOZ Chair) 10:58**

Okay.

**Jan K. (Resident) 10:58**

And our neighbor's fence went down.

**Paul McCann (BOZ Chair) 11:02**

Okay.

**Jan K. (Resident) 11:02**

And we had agreed with them, that the—the two portions of their fence on either side of their backyard remained.

**Paul McCann (BOZ Chair) 11:17**

Okay.

**Jan K. (Resident) 11:17**

But the one between their lot and our lot went down.

**Paul McCann (BOZ Chair) 11:23**

Yep. And so, they wouldn't have replaced it at that time, so you decided to make it your fence and replace it.

**Jan K. (Resident) 11:30**

Correct.

**Paul McCann (BOZ Chair) 11:30**

Okay.

**John K. (Resident) 11:31**

And we moved it over. And it's on our lot.

**Jan K. (Resident) 11:36**

It's six inches within our lot line.

**Paul McCann (BOZ Chair) 11:40**

But still connected to those other two?

**Paul McCann (BOZ Chair) 11:42**

That's right.

**Jan K. (Resident) 11:43**

Yes.

**John K. (Resident) 11:43**

I told them they could abut but not adjoin the fence.

**Paul McCann (BOZ Chair) 11:50**

Okay, well now it, you know—because visually, it doesn't make sense when you drive by that there's, that your property would have one section and the other two properties would have the other two components. But now that's just confirms what I expected. So, Kurt from the city's perspective, the neighbor's fence is non-conforming. Right? The six-foot fence along Cherokee.

**Supervisor Kurt Craanen (Inspections) 12:15**

I might have alluded—I might have alluded to this in my staff report that the property on Mohawk does have a high fence in this in the setback. But in 1986, they were granted a variance.

**Paul McCann (BOZ Chair) 12:33**

Okay.

**Supervisor Kurt Craanen (Inspections) 12:33**

So that's why this case is a good case for the applicants, I think, because the neighbors already have a variance. And they were replacing the neighbor's fence. So, it's really—they're just shifting over to the lot line the same exact fence, at least the one that's going north south.

**Paul McCann (BOZ Chair) 12:50**

Is the variance for all three sections of this fence?

**Supervisor Kurt Craanen (Inspections) 12:53**

Yeah, I have the...

**Paul McCann (BOZ Chair) 12:54**

You wouldn't need it; you wouldn't need it for most of the back of this because that's—as long as it's not in the setback that could be six foot high.

**Supervisor Kurt Craanen (Inspections) 13:02**

Yes, once it goes 20 feet from the from the front yard.

**Paul McCann (BOZ Chair) 13:05**

But they have a variance for a six-foot fence.

**Supervisor Kurt Craanen (Inspections) 13:09**

And in the in the file here, it's along the southwest portion, then it goes up north—it's actually on the on the diagram here. So, the neighbor had a variance to have this exact fence where they're looking at put up from just on the other side of that line.

**Kelly Sperl (BOZ Member) 13:26**

So, if the neighbors would have put it back up, it wouldn't have been an issue here.

**Paul McCann (BOZ Chair) 13:29**

And if these folks gave them the money, they could put it up and—okay. Understood.

**Jan K. (Resident) 13:34**

Sorry about that.

**Paul McCann (BOZ Chair) 13:36**

Well, if you need to.

**John K. (Resident) 13:39**

We're talking about a foot difference.

**Paul McCann (BOZ Chair) 13:44**

You'd be surprised what a difference a foot can make.

**John K. (Resident) 13:47**

I know.

**Paul McCann (BOZ Chair) 13:48**

Okay. Sure.

**John K. (Resident) 13:53**

So, anyway, the fence is the posts rotten, and now our fence is in disrepair, and we want to replace it.

**Paul McCann (BOZ Chair) 14:08**

So, this is referred to in the code as an area variance, right? So, there's something with the with the shape of your lot or something with the property that would make it so that you would not be able to comply with the code. That's what we have to talk about tonight. We have to find a hardship associated with your lot. Now, obviously, 40 years ago, almost 40 years ago, they found a hardship with the neighbor's lot because of the two front yards and the shape of the property. But let's just talk that through because unless there's a combination of three things, unless we can prove that there's a unique physical limitation of your property, that it doesn't cause any harm to the public, and that it's—what was the...? Well, no reasonable—no other reasonable use is kind of a standard.

**Kelly Sperl (BOZ Member) 15:08**

Two [...], irregular shape, and not seriously affect the adjoining properties, right?

**Paul McCann (BOZ Chair) 15:13**

I mean, so we just need to just talk through your property, because this, this variance goes with your property.

**Jan K. (Resident) 15:20**

Right.

**Paul McCann (BOZ Chair) 15:21**

Now when your fence blows down 30 years from now the neighbor could replace it and build it because they have a variance. But this is your property. And this goes with the life of the property as well. Any variance does so. So, I look at this and, and your home is fitted on that irregular shaped lot quite well, but doesn't give you a lot of options for—

**Jan K. (Resident) 15:47**

That's true.

**Paul McCann (BOZ Chair) 15:48**

—providing any kind of privacy on at least what this—this would be a front yard, right? According to a second front yard.

**Kelly Sperl (BOZ Member) 15:59**

Yeah, there are two front yards on this.

**Paul McCann (BOZ Chair) 16:02**

So, I think—my viewpoint, I mean, it clearly is an irregular shape and a difficult shape to manage. And I don't see that a six-foot fence up to an already existing six-foot fence would create any kind of safety issue or any undue hardship on neighbors or the surrounding properties. So, the hardship that you would propose would be the shape of your property, and that's the only place where you can put a patio and get the privacy that you're interested in.

**John K. (Resident) 16:39**

Right. And also, protection from the neighbor's dog. And the neighbor likes it because it encloses his backyard.

**Paul McCann (BOZ Chair) 16:55**

Yeah.

**Jan K. (Resident) 16:56**

Well, if we were not allowed to build the fence, then he's going to have to build a fence himself, because he has two dogs that roam freely in their backyard.

**Paul McCann (BOZ Chair) 17:10**

Which begs the question: Which favor do you want us to do for you? Okay, are there any other questions of the applicants? Did you have something else, sir, that you want to add?

**John K. (Resident) 17:23**

No, if you're ready.

**Paul McCann (BOZ Chair) 17:25**

Okay. Any other questions? Anyone have?

**John K. (Resident) 17:29**

I could make one more comment. The fence—the section we're talking about is here.

**Paul McCann (BOZ Chair) 17:37**

Right. 20 feet.

**John K. (Resident) 17:39**

This is the back of the neighbor's house. When a car comes up here and turns [indecipherable].

**Paul McCann (BOZ Chair) 17:50**

Yep. Yeah, if it were a three-foot fence, it would provide some issues for your neighbor's family room or whatever it is.

**Paul McCann (BOZ Chair) 18:04**

If there's no other questions of the applicant, I'll entertain a motion on the variance.

**Kelly Sperl (BOZ Member) 18:08**

I'll make a motion to approve this variance per the 23-67 the standards for granting the variance for the area of variance. We have an irregular shape lot. As we talked about earlier, we have two frontages. And I don't see this affecting any adjoining property or general welfare of the area. There are no sidewalks that it would affect us a fence of that height in that area. I think it's far enough away from the driveway, and certainly doesn't affect anything vehicular in that intersection. So, I would grant their—offer the motion to approve this to a six-foot fence in that front yard setback.

**Scott Engstrom (BOZ Member) 18:57**

I'll second.

**Paul McCann (BOZ Chair) 18:58**

Okay, moved and seconded. Is there any further discussion?

**Scott Engstrom (BOZ Member) 19:03**

I'll just echo what Kelly had to say. That's an irregularly shaped lot. I think the record evidence here before us supports granting a variance. I think also the history of the property as well as the adjoining property contributes to this. There was a previous finding that there was a hardship sufficient to grant a variance in the other

property. Obviously, the applicants were good neighbors and decided to take on the onus of fixing it without knowing that it ultimately made it non-compliant. Also noting the history of the contractor not having gotten the permit. So, I think those things weigh in favor of the applicants, you know, making every effort to do this the correct way. I think public policy would favor that. I also think that, you know, the point the last point that the applicant made about the turned of vehicles and traffic and the headlights actually being blocked more by a fence, consistent with this variance, actually helping the neighbors. I think that's persuasive too.

**Kelly Sperl (BOZ Member) 20:11**

I think I stated a six-foot fence. Right?

**Karen Cain (BOZ Member) 20:13**

Yep.

**Paul McCann (BOZ Chair) 20:16**

Any further discussion? And we'll take a vote. Mr. Sperl.

**Kelly Sperl (BOZ Member) 20:20**

Aye.

**Paul McCann (BOZ Chair) 20:20**

Miss Cain.

**Karen Cain (BOZ Member) 20:21**

Aye.

**Paul McCann (BOZ Chair) 20:21**

Mr. Engstrom.

**Scott Engstrom (BOZ Member) 20:22**

Aye.

**Paul McCann (BOZ Chair) 20:23**

I will vote aye as well, four votes. Variance is granted. Good luck with your fence. I think the neighbor should pay half, but we didn't we didn't work that out for you.

**John K. (Resident) 20:38**

That was one option if it got disapproved. I was gonna have the neighbor build the first 20 feet, and then we would go [...] and build the rest. Or build...

**Paul McCann (BOZ Chair) 20:55**

Well, even though it's on TV, you tell them whatever you want to tell about the outcome tonight.

**John K. (Resident) 21:01**

Thank you.

**Paul McCann (BOZ Chair) 21:02**

Thank you.