

Item 23-1486: 1007 N. Badger Ave. The applicant proposes to maintain a four (4) foot fence along the front property line

Board of Zoning Appeals
Mon, Dec 18, 2023 7:00PM

Paul McCann (BOZ Chair) 02:56

First case. Mr. Craanen, if you would read the case for 1007 North Badger Avenue, please. And while he's reading that if the applicant would come forward and sit near this microphone. Go ahead.

Supervisor Kurt Craanen (Inspections) 03:09

The applicant proposes to maintain a four-foot fence along the front property line. Section 23-44(a)(1)(a) of the zoning ordinance limits fence height to three feet in front yard.

Supervisor Kurt Craanen (Inspections) 03:23

Okay, I have a brief description of the situation here. So up in the screen here is the property 1007 North Badger. There is no sidewalk here. So, this is the right away, and this is the fence in question along here. So, the property has—it's a triangle, you can obviously see there's two front yards. So, several months ago, the applicant applied for a street occupancy permit (it's actually a terrace permit) to keep the fence in the terrace. So, part of the fence, like along here, is actually on city property, and it has permission to be there. But then when you get along here, it's on private property, and really it must be no higher than three feet. It's been that way for many years. I'm sure the applicant will tell you this. And then she does run a daycare, and it's required to be four feet tall.

Kelly Sperl (BOZ Member) 04:24

So why—can I ask why the fence is allowed? I mean is there some agreement that it's allowed to be in the terrace area?

Supervisor Kurt Craanen (Inspections) 04:31

Yes, she applied to City Council to have it in—

Kelly Sperl (BOZ Member) 04:36

So, there's a previous variance or agreement of some kind?

Supervisor Kurt Craanen (Inspections) 04:40

It was probably like this for many years, but it was just made legal—

Kelly Sperl (BOZ Member) 04:43

Okay.

Supervisor Kurt Craanen (Inspections) 04:44

—to be in the right of way.

Colleen V. (Resident) 04:45

I bought the house like that so I didn't know.

Kelly Sperl (BOZ Member) 04:52

Got you. I was just curious why it was in the terrace or in the right of way.

Supervisor Kurt Craanen (Inspections) 04:59

Well, a complaint came in last year for a vision obstruction here. And I can show you some photos, but she did—the owner did remove some vegetation and altered the fence here to alleviate that problem. But then we had all these other issues that kind of came up because of that.

Paul McCann (BOZ Chair) 05:19

So, the fence, even a three-foot fence, would have to have 50% clear...?

Supervisor Kurt Craanen (Inspections) 05:23

No, that doesn't exist anymore.

Paul McCann (BOZ Chair) 05:25

It doesn't? Okay, so it can be board on board right up to what's allowed there. Okay. Ma'am go ahead, if you'd introduce yourself, please and then just give us a little background, and you have to try and explain to us what the hardship would be.

Colleen V. (Resident) 05:43

So, I've—I bought the house, I think 15 years ago. It was like this when I bought it. There was actually a huge shed in the back in that corner, that vision corner, that we took down. And the fence was there. It was six foot, and we cut it down to four foot for airflow. And I was required to have 4-foot to be licensed for my daycare, which I've run for 33 years, 15 of it at this house. I've never had an issue with it. But the hardship would be I would lose my business that I've been running for 33 years, because the—the state requires you to have a four-foot fence.

Colleen V. (Resident) 06:29

I also did not know that that was a front yard until Kurt told me because that is my backyard. My front yard is on Badger. So, I had no idea that that was considered a front yard when you bought a corner lot like that or triangle like that.

Colleen V. (Resident) 06:46

And I've never had anybody complain. **[Indecipherable]** worked for the city of Appleton for years in the street department, and we always maintained the lilac trees that are there so the street sweeper could get through, so you could see the Stop Sign from the block previous, So you were always able to see that Stop Sign. And the street sweeper guys would complain if the trees came over too far, and they would just tell him at work, "Trim back the trees." So, they've always been trimmed back. We've always maintained them so you could see all the way down that street and the street sweeper could get through without hitting the truck.

Paul McCann (BOZ Chair) 07:25

So, Kurt, I drove past here, but remind me what the two other streets are just so I...

Supervisor Kurt Craanen (Inspections) 07:30

Commercial.

Paul McCann (BOZ Chair) 07:31

On the left?

Kelly Sperl (BOZ Member) 07:32
Linwood is one of them?

Colleen V. (Resident) 07:33
Linwood

Supervisor Kurt Craanen (Inspections) 07:34
Linwood and Commercial.

Paul McCann (BOZ Chair) 07:35
Okay, thank you.

Supervisor Kurt Craanen (Inspections) 07:37
This is Commercial right here.

Paul McCann (BOZ Chair) 07:38
Yep. So, one of the allowable criteria for a hardship is an odd shaped lot, or a lot that would be difficult to enjoy the privileges of your property because of its shape if you are required to comply with the code. This is clearly an odd shaped lot.

Kelly Sperl (BOZ Member) 08:08
And another one is the two street fronts.

Colleen V. (Resident) 08:11
I hadn't—

Kelly Sperl (BOZ Member) 08:12
Yeah.

Colleen V. (Resident) 08:12
I didn't even know that was a thing.

Paul McCann (BOZ Chair) 08:13
There's a lot of homes like that, and it's not simple to get a variance for that, just that specific issue. But, I mean, if you were to comply—Kurt, if you could go back to that bombardier view of the property, where would a compliant fence be allowed? What...?

Supervisor Kurt Craanen (Inspections) 08:35
A compliant fence would be three feet here.

Paul McCann (BOZ Chair) 08:38
But a four-foot fence. She she's required to have a four-foot fence.

Kelly Sperl (BOZ Member) 08:41
It would have to be 20 feet back, wouldn't it?

Supervisor Kurt Craanen (Inspections) 08:44

Well, 20 feet back would be...

Paul McCann (BOZ Chair) 08:47

20 feet back from all streets, right?

Kelly Sperl (BOZ Member) 08:50

Right.

Supervisor Kurt Craanen (Inspections) 08:51

So, this is—I'm assuming this is 20 feet. This is probably in the setback.

Colleen V. (Resident) 08:57

It would come right up to my bedroom window.

Paul McCann (BOZ Chair) 09:00

And that's the point for the question, right? If you were if you were required to comply with a 4-foot fence that's required for your business, or your customers would not have any place to play.

Colleen V. (Resident) 09:16

I wouldn't have enough square footage for my—

Paul McCann (BOZ Chair) 09:18

To be allowed.

Colleen V. (Resident) 09:19

—for the amount of kids that I have. It would not allow me to keep my business open because I would not have enough square footage. You need so many square feet per child.

Paul McCann (BOZ Chair) 09:32

Sure.

Colleen V. (Resident) 09:34

And the fence only goes to that bottom corner. It doesn't go all the way down. It's just that bottom corner of my house. So, it's just that little triangle in the back. Yep. That bottom—right there.

Scott Engstrom (BOZ Member) 09:49

So, you're saying it doesn't follow that green line all the way across.

Colleen V. (Resident) 09:52

No, there's not a fence that follows that all the way down. It's just to that right there.

Paul McCann (BOZ Chair) 09:56

And then it just returns back to the house?

Colleen V. (Resident) 09:58

Right.

Scott Engstrom (BOZ Member) 10:05

And you said it was a state requirement, correct?

Kelly Sperl (BOZ Member) 10:08

Yeah.

Colleen V. (Resident) 10:09

To have a licensed daycare.

Paul McCann (BOZ Chair) 10:18

So, Kurt, you suggested there was a complaint because of the restricted vision. Has that—has that been remedied in your opinion?

Kelly Sperl (BOZ Member) 10:27

Yeah, he said it was resolved.

Paul McCann (BOZ Chair) 10:29

Well, but it's not compliant, but it's remedied?

Supervisor Kurt Craanen (Inspections) 10:34

Yes, she altered the fence and moved it so it's not in the vision corner.

Colleen V. (Resident) 10:40

The fence used to run all the way to the peak of that triangle, and we cut it back and angled it like that.

Supervisor Kurt Craanen (Inspections) 10:48

This is now what it looks like now.

Paul McCann (BOZ Chair) 10:51

Okay.

Colleen V. (Resident) 10:51

So, we—and that fence that goes up to the sidewalk is not mine. That is the neighbor's. That one is not mine. I have the taller fence, but we angled it in, and then we cut down the Bridle Bush and the other Lilac tree that was in that corner.

Paul McCann (BOZ Chair) 10:51

And that fence is four feet tall, as shown? So, it's—what?—two and a half feet and then 18 inches of lattice on top, or is it?

Kelly Sperl (BOZ Member) 11:12

Or is that before you cut it down?

Colleen V. (Resident) 11:14

No, that's—that wasn't quite four feet. And the state requires it to be four feet, and that back corner ended up being about three and a half feet. So, we added that lattice just to cover us for the daycare.

Paul McCann (BOZ Chair) 11:34

It just looks taller than four feet. So, I I'm—if we allow you a four-foot fence, and this is a five-foot six-inch fence or something, you're gonna still have problems as...

Colleen V. (Resident) 11:43

Yep. No, parts of it were four feet, but it angled down at that end.

Paul McCann (BOZ Chair) 11:51

Okay. Any other questions? If there are no more questions, I'll—for a motion on the variance.

Scott Engstrom (BOZ Member) 12:10

I'll make a motion to approve the variance request.

Kelly Sperl (BOZ Member) 12:13

I'll second it.

Paul McCann (BOZ Chair) 12:16

Any further discussion?

Scott Engstrom (BOZ Member) 12:19

I mean, I'll just note that there is a regulatory requirement here, and that goes to the use. This is not something where the applicant created the hardship. This is something that's been ongoing. Applicant indicated that she's run the same type of business for 33 years, 15 of which have been at this location. And I think that overarching regulatory requirement of having that higher fence actually serves the public interest. And I think that a literal application of this code section would result in practical difficulty for the property owner. So those are the reasons that I have for approving.

Kelly Sperl (BOZ Member) 13:05

Can I add one thing to that, Scott? I think, to Paul's point earlier, I don't know that anybody's out there measuring exactly what that fence height is here, there. Can we add to your motion that we allow the fence as it sits. It sounds like the city's happy with the way it's been altered, and it's in place. So that she doesn't get into a situation where there's an issue that it's not four feet. It'—it might be four and a half or five in a spot.

Paul McCann (BOZ Chair) 13:33

Yeah. I think let's be a little bit more generic than that. If it's configured—because it goes with the life of the property forever, right? So, it can't be as it sits for 100 years or

Kelly Sperl (BOZ Member) 13:46

True.

Paul McCann (BOZ Chair) 13:46

Right.

Kelly Sperl (BOZ Member) 13:47

Gotcha.

Paul McCann (BOZ Chair) 13:47

So, I think I think a four-foot fence.

Scott Engstrom (BOZ Member) 13:49

Yeah. As requested in the application. That's a good point, though, to raise. Yeah, as requested for the four feet height.

Paul McCann (BOZ Chair) 13:59

The only other thing I'd add as far as a as a hardship is this this is a great use for that property, and it's a very irregular shaped property with two front yards and, you know, this sort of rectangular—or I'm sorry, triangular shape space. So, I don't think there's any other way that you could enjoy this property without some sort of exception. Any further discussion? Take a vote. Mr. Engstrom?

Scott Engstrom (BOZ Member) 14:35

Aye.

Paul McCann (BOZ Chair) 14:35

Mr. Sperl?

Kelly Sperl (BOZ Member) 14:36

Aye.

Paul McCann (BOZ Chair) 14:36

Miss Cain?

Karen Cain (BOZ Member) 14:37

Aye.

Paul McCann (BOZ Chair) 14:37

Mr. Babbitts?

Michael Babbitts (BOZ Member) 14:38

Aye.

Paul McCann (BOZ Chair) 14:40

I'll say aye as well. Good luck with your project or your fence. I guess you don't have a project.

Colleen V. (Resident) 14:48

Thank you.

Paul McCann (BOZ Chair) 14:49

You're welcome.

Kelly Sperl (BOZ Member) 14:49

Have a good night.