



CITY OF WAUWATOSA  
7725 WEST NORTH AVENUE  
WAUWATOSA, WI 53213  
Telephone: (414) 479-8917  
Fax: (414) 479-8989  
www.wauwatosa.net

**MINUTES**  
**MEETING OF THE BOARD OF ZONING APPEALS**  
**Thursday, February 26, 2009**

PRESENT: Mr. O'Connell, Mr. Randall, Mr. Pennoyer - 3  
EXCUSED: Ms. Meyer, Ms. Bruderle-Baran, Mr. Subotich, Mr. Pluster  
ALSO PRESENT: T. Szudy, Planner, G. Blando, Property Maintenance Inspector

Mr. O'Connell as Chair called the meeting to order at 7:03 p.m.

**2515 Lefebber Avenue**

**Appeal**

Request by Christopher and Kim Meidl appealing the notice of noncompliance issued on December 2, 2008 related to Section 15.28 (Fences) in the AA Single Family Residence District at 2515 Lefebber Avenue

Ms. Szudy said the applicants installed an iron gate across their driveway and on a portion of their neighbor's property, David and Kelley Ruzicka, 2509 Lefebber Avenue, that is not compliant with the 4- ½ foot maximum fence height. Upon receiving a complaint, the city inspected the gate and took various measurements of the gate height from grade. At the post along the driveway, the height is 4' 10" and rises to a height of 5' 8" at the center of the gate which includes the finial. The property maintenance inspector issued a Notice of Noncompliance on December 2, 2008 to both the applicant and their neighbors for violating the fence height. The Meidl's have an easement with the neighbors that allows the gate to be located on a portion of their property.

If the appeal is denied the applicants have three options: 1) petition for a circuit court review of the Board of Zoning Appeals decision, 2) re-apply to the Board of Zoning Appeals for a variance to the fence code, or 3) modify the installation to comply with the fence code. If the appeal is upheld in that the Board determines that the Notice of Noncompliance was defective, there is no further action to be taken by the applicant.

Atty. Dave Sayas, representing the Meidl's, commented that the fence sits back on the property and is not visible to the street. Mr. Sayas said that the Meidl's talked to the building department three times to insure that they were doing everything to spec. Mrs. Meidl questioned Karl Schreiber regarding the finials on top of the fence and whether these 6" finials were included in the overall fence dimension. Mr. Schreiber advised her that the finials would not be included in the 4 ½ ft maximum fence height. Mr. Sayas said if the Meidl's had ignored the information provided by the city that would be one thing, but the fence was designed around the information provided them.

On October 9, 2008, Mrs. Meidl brought a drawing of the fence into the building department showing fence dimensions of 4' 10" which was signed off by Nancy Welch. Mr. Sayas said they are asking the city to do what is right, the Meidl's did nothing wrong and the fence should be allowed to stay. He has asked why the City is withdrawing their approval and has not received any good answers.

Mr. Pennoyer commented that the document signed off on had a 4' 10" dimension. Mr. Blando reported that the actual fence height is 5' 8".

Mrs. Meidl said that there is a gutter at the corner of their house, with no other place to relocate it. She said the property behind them is at a higher elevation and with a freeze and thaw the water runs into their property and turns to ice. She noted that the shortest height off the grade was 3 ½", the post next to the house is off grade 4".

Mr. Randall asked the Meidl's who wrote the 4' 10" dimension on the sheet signed by Ms. Welch and did they believe it to be the center or side dimension. Ms. Meidl noted that she put the dimension at the center, based upon the gate specifications. Ms. Meidl said she had two verbal conversations with Mr. Schreiber to ensure that it would be OK for the gate top to be higher than 4 ½ ft and he assured her it would be fine. Mr. Schreiber suggested the Meidl's bring in some drawings to have approved. This document was brought in for approval on October 9, 2008, when the Meidl's received a letter from the neighbor's attorney.

Mrs. Meidl said that her gate measurements are accurate. Her understanding is that the finials were not part of the overall dimensions. Mr. Randall asked the Meidl's if during this time they knew how high off grade the gate was going to be installed. Mrs. Meidl said because of the winter ice they had to set it off the driveway, not installed on grade. She said Mr. Schreiber was aware that it would be higher than 4' 10" and he told her the posts would be in compliance.

Mr. Randall asked if the neighbor's fence is included in this appeal. Ms. Szudy advised that the complaint is on the iron fence. Mr. Randall asked if a gate is defined in the fence ordinance. Ms. Szudy said she didn't think there was a definition included, but it is the city's position that this is a fence.

Mr. Blando reported that he went to the Meidl's residence on February 10<sup>th</sup> and met with Kim Meidl. He said he took measurements of the fence and that Mrs. Meidl helped hold the tape. He presented a picture to the committee showing how the gate is attached to the neighbor's house. Mr. Blando said there is only one post and without a survey it appears that part of the gate is on the neighbor's property. Mr. Blando wanted it known that he has never spoke with Mr. or Mrs. Meidl as their paperwork states, until after the gate was installed when he went out and measured.

Mr. Blando explained the fence dimensions. He said the edges are 4' 10" and increased to 5' 8" at the center which is all measured from grade. The finials themselves measure 6".

Mr. Randall noted that the noncompliance order is related to the fence height not the type of fence. Mr. Randall asked Ms. Szudy if a 4 ½ foot fence in this location would need approval and she said no.

Mr. O'Connell asked if anyone in attendance wished to speak for or against the appeal request.

Mr. Dave Ruzicka, 2509 N. Lefeber; said that since a portion of the fence is on their property, they do not want to see the appeal granted. They said if the fence is non-compliant it should be taken down or a variance should be requested.

Mrs. Kelly Ruzicka explained that the fence was installed sometime in June or July, before the specifications sheet was approved by Ms. Welch in October. Mrs. Ruzicka noted that they were trying to be good neighbors when the Miedl's asked them to allow an easement after the fence was constructed and they reluctantly agreed.

Mrs. Ruzicka said the gate was put up right against their property and they found out that an electrical permit was not taken out. She said she contacted the building department several times to have someone

come out and inspect during September and October and no one ever did. The Ruzicka's have a concern that there could be a problem with the resale of their property with this non-compliant gate and they would like it removed.

Mr. Randall reviewed the easement that was signed on July 24, 2008. Mrs. Ruzicka advised the gate was already in place and they reluctantly signed the easement. Mr. Randall asked if the easement affects the wooden fence that was already there. Mrs. Ruzicka said that both fences touch their house. She said the iron fence was to be on the property line so there would be access to their electric meter. Mrs. Ruzicka said they trusted that the Meidl's would follow the city code and get the proper permits. She said since this hasn't happened, they are uncomfortable with having the gate on their property. It was noted that an access code is needed to enter the property and questioned what would happen in the event of a fire. Mr. O'Connell inquired about how the electric was installed and was advised that the electric was determined to be in compliance and a permit was not needed.

Mr. Pennoyer asked Ms. Szudy if it was Ms. Welch's understanding when she signed the specification sheet, that the fence would be measured from grade and would be in compliance other than the arch. Ms. Szudy said that was her understanding.

Mrs. Meidl said that when they originally signed the proposal with their contractor on April 3, everything was going to be on their property line. When the electrician came out he advised that a permanent fence could not be installed in front of the electric meter on the Ruzicka's property. They then went to talk to the neighbors and discussed moving the fence up the driveway more or put it back farther closing it off by the Ruzicka's property. The Ruzicka's said they didn't want a fence running across their property. A three foot clearance needs to be allowed around electric meters for access.

Mrs. Ruzicka said that the Meidl's need to have a fence made to fit their property. This fence was installed the end of June. Mr. O'Connell asked the Meidl's if the fence was put up before the easement was signed. Mrs. Meidl said they drew up the easement and said there was a verbal agreement and that the Ruzicka's would be given the access code to use the gate to get to their property if needed.

Mr. Randall asked since there is a concern by the Ruzicka's that there is not enough access to their property, would the Meidl's entertain the idea of drawing up a different easement, ensuring subsequent owners of 2509 N. Lefebber would have access through that gate. Mrs. Meidl responded yes.

Moved by Mr. Randall to deny the appeal  
requested by Mr. & Mrs. Meidl, 2515 N. Lefebber Ave.,  
and uphold the December 2, 2008 notice of non-compliance  
specific to the fence code, due to the fence height.  
The applicants should remove or modify the fence or  
they can apply for a variance, seconded by Mr. Pennoyer.  
Roll call vote taken – Ayes: 3

Meeting adjourned at 8:53

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Tamara Szudy, Secretary

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