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MINUTES
MEETING OF THE BOARD OF ZONING APPEALS
Thursday, February 25, 2010

PRESENT: Mr. Randall, Mr. Subotich, Mr. O'Connell, Ms. Bruderle-Baran – 4

EXCUSED: Ms. Meyer, Mr. Pennoyer

ALSO PRESENT: T. Szudy, Planner; G. Blando, Property Maintenance Insp.

Mr. O'Connell as Chair called the meeting to order at 7:15 p.m.

7026 Grand Parkway

Notice of Noncompliance

Ms. Szudy reported that based on a complaint, the Property Maintenance Inspector issued a Notice of Noncompliance to the applicant, J. Miles Goodwin, on January 5, 2010 for the installation of a fence constructed of non-approved materials. The applicant installed a bamboo fence to prevent snow removed from the neighbor's driveway from being piled against his house despite his repeated attempts asking the neighbor to curtail this. The applicant intended to install the fence during the winter months and remove it in the springtime every year. The Property Maintenance Inspector determined that the material, bamboo, is not an approved material in the fence code.

Mr. Goodwin said that a noncompliance citation was issued to him. He originally appealed to the Board of Public Works and then it was determined he should appeal to the Board of Zoning Appeals. Mr. Goodwin advised that despite repeated requests his neighbor blows snow up against their home. In approximately 1999 their new furnace intake and exhaust pipes were clogged from the snow and shut down the furnace. He said the furnace company made repairs covered under their warranty.

Mr. Goodwin said this has been an ongoing situation. In the past he put up plywood boards but disposed of them when he received a notice of noncompliance. At one time Police Officer Semega was called out to his residence and he suggested Mr. Goodwin put up some plastic fencing to protect the pipes. Mr. Goodwin said he put up a four foot tall bamboo fence that is well away from the boundary line. He noted that if you look in the city code, bamboo is not included in the prohibited fence materials. Mr. Goodwin requested to be allowed continued use of the barrier from November through March. He said if that is not acceptable and the City required it, he would install it permanently.

Present in opposition: Jenny Jezo, 7034 Grand Parkway

Ms. Jezo objected to the appeal. She said the bamboo material does not meet code and is non-conforming. She said it is aesthetically unappealing and should not be used in this area. Ms. Jezo said it appears the applicant has foundation problems and wants to repair it with a band-aid. She said the entire neighborhood has the same dilemma of snow accumulation as the houses are close together. She said Mr. Goodwin has had 30 years or reasonable use of that property without a fence and this is the third year in a row that she has had to deal with it. She requested that the request be denied and the fence removed permanently.

Mr. Randall noted that this application is a notice of non-compliance not a variance request and it cannot be looked at as a variance request. It is not a cross appeal with a request for a variance. He said if this is denied, the applicant could apply for a variance. The issue for this meeting is whether the material is approved or not.

Mr. Randall reviewed the photographs submitted and asked Mr. Goodwin if the fence in the rear portion of the pictures was his fence. Mr. Goodwin informed the committee that the fence belonged to Ms. Jezo. Mr. Randall said he thought it was the applicant's fence as the finished side of the fence faces toward the Jezo residence.

Ms. Szudy responded to a question that a fence can be installed on the property line with a maximum four ½ foot height. A six foot height fence could be installed with a three foot side set back.

Mr. Randall asked Mr. Blando, the Property Maintenance Inspector, if what Mr. Goodwin has on his property meets the definition of a fence. Mr. Blando said he would construe the structure to look as a fence including the stake portion. Mr. Randall asked about part C in code 15.28.010 which says a snow fence may be used as a barrier and did the applicant check with the chief inspector if this could be used as a snow fence. Mr. Blando said no.

Mr. Blando said initially he thought it was a permanent fence and told Mr. Goodwin he couldn't use bamboo material. Mr. Goodwin advised he would like to have a temporary fence from November through March. Mr. Blando responded that he would discuss this situation with the Chief Inspector as the code states "snow style fences may be used for safety barriers on a temporary basis when approved by the chief inspector" in regards to the HVAC vent. Mr. Blando reported on the conversation with the chief inspector who explained that is not the intent for snow fences. It is for safety for construction areas or excavations. Mr. Blando said there is no regulation that allows temporary fences for this situation and it was decided that bamboo would not be approved as acceptable fence material.

Mr. Blando noted that it could be an interpretation issue if the Board of Zoning found it to be acceptable as the chief inspector said it was never expected that bamboo is acceptable material. Mr. O'Connell wondered why bamboo is not listed under code 15.28.010 item C and Mr. Blando also noted that just because the bamboo is not listed, it doesn't mean it is approved.

Mr. Randall asked if the chief inspector has a complete list of approved fence materials. Mr. Blando didn't know of such a list and added that wood, cedar, plastic, and chain link are standard fence materials. He said it would be very unlikely that you would see something that is a retail product not approved.

Mr. Randall read the fence description from the code and asked Mr. Blando what type of fence Mr. Goodwin has? Mr. Blando said maybe a stockade. Mr. Randall questioned why the city inspector denied bamboo as an acceptable material. He said the fence supplier brochure shows this material being used as a fence. Mr. Blando said that they have never had bamboo material submitted as a fence type. Mr. Blando talked to the manufacturer and from that determined it was a fence.

Mr. Randall read the sentence in the code regarding snow fences. Mr. Randall said he has in the past observed snow fences around a skating rink at a local elementary school and used during street construction. Mr. Blando said if a complaint had been made about these fences, he would have inspected them and then issued a citation. Mr. Blando responded to a question that the department has never approved any type of snow fence on a permanent basis.

The committee discussed the definition of safety. Mr. Blando explained it is used for excavation and in emergency road repairs. Mr. Randall thought safety might mean prevention of clogged HVAC ducts causing carbon monoxide in the home.

Mr. Randall asked Mr. Blando to describe some situations when a property owner might want a snow fence. Mr. Blando responded for preventing snow from blowing across a lot or driveway, to prevent drifting in prevailing winds. Mr. Randall said you see them a lot of time used in open fields on the highway to prevent drifting and the issue before us is a snow drift issue.

Mr. Randall questioned if the chief inspector would rule the use of this material as a safety barrier. Mr. Blando said he might approve it, but to prevent misuse, it would have to have conditions or standards for which to apply this. He said the snow fence is to prevent something from happening. Mr. Randall asked Mr. Blando if the property owner had a hole in their back yard, did he think a bamboo snow fence would be approved. Mr. Blando said he would look for data that would give him an idea if this particular material would be suitable for the intent. Mr. Blando said when he spoke with the technical person for this bamboo product, he was advised that this is really an in-fit product; and needs a structural frame. He said that this material is very strong for a wind load because the wind can blow through it, but the vendor wouldn't commit to snow fence usage.

Ms. Bruderle-Baran said when she looks at the code and the materials the code prohibits, she doesn't see that bamboo would fit in there and saw no reason why it should not be allowed. She thought a temporary basis was acceptable because there are safety issues if the HVAC system gets blocked or water pipes get frozen, although she did not think that this is aesthetically pleasing.

The committee reviewed the photographs to see where the vents are located. Mr. Goodwin noted that for the first 30 years they lived in this home they never had a problem because the previous owners blew the snow straight down the driveway. The current owners blow it up against his house. Mr. Goodwin wanted it known that there are no foundation problems with his home.

While looking at the land survey, Mr. Goodwin noted that having the fence against his home is within the setback requirements which he took into consideration. He said there is nothing in that area to enclose and he didn't think it made sense to build a permanent enclosure unless he was asked to do so.

When asked, Ms. Szudy responded that the city does not have any ordinances for placement of snow on private property.

Mr. Randall asked what if the applicant proposed a screen type structure around the pipe only, how would the city view this bamboo screening? Mr. Blando said the homeowner could put a six foot enclosure around the area with the proper setback. He said he would look at a structure as a fence. Mr. Blando felt a critical decision is if the board is going to act on the bamboo material and if they approve it, Mr. Goodwin would be able to enclose the pipe with a six foot bamboo structure if it's within the buildable area of the lot without a permit.

Mr. Randall thought the first question to determine is if this bamboo structure meets with a fence definition. Is there a structure frame that meets the fence definition? Mr. O'Connell said anything that is a barrier constitutes a fence.

Mr. Randall read from the trellis code and questioned whether this structure could be a trellis as the code doesn't stipulate that a trellis cannot be bamboo. Ms. Szudy said a trellis cannot be a continuous structure of this length.

Ms. Bruderle-Baran asked if this could be called a trellis by having a six foot area in front of the HVAC. Mr. O'Connell said currently it is a fence because it is continuous.

Mr. O'Connell said he doesn't see anything from the city that says bamboo is not acceptable construction material. Ms. Bruderle-Baran thought the only argument she could see is that we don't usually have bamboo material as fences in Wauwatosa.

Moved by Ms. Bruderle-Baran, seconded by Mr. Subotich
that the board approve the use of bamboo in a fence or
trellis application

Mr. Randall asked for an amendment to the motion to include the application presents a structure that meets the definition of a fence and that bamboo is an acceptable material. Mr. Randall said to give the Board authority we should probably find first that the structure is a fence.

Ms. Bruderle-Baran withdrew her motion, with approval of the second.

Mr. Randall said he is not convinced that the structure is a fence and felt we should establish that prior to the material issue. Ms. Szudy responded to a question that the non compliance is because of the material. Ms. Bruderle-Baran thought it had already been determined that the structure is a fence. Mr. Randall said as a de novo hearing the board could find that it is not a fence. Mr. O'Connell said the city construes it as a fence.

Moved by Mr. Randall, seconded by Ms. Bruderle-Baran to find the application moot because the structure is not a fence per section 15.28.010 of the city code because it does not have a frame or structure.

Roll call vote taken – Ayes: 3 Noes: 1 (O'Connell)

The Board determined that the structure in question is not a fence and Mr. Goodwin can retain it.

Meeting adjourned at 8:28 p.m.

Tamara Szudy, Secretary

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