

**Zoning Board of Appeals
Meeting Minutes
One Court Plaza
June 28, 2021**

Present: C. Burch, Jr, J. Wright, K. Kucinski, B. Natoli, R. Genung, M. Hepfer

Absent:

Staff: Amy Donnison

I. Call to Order

- II. Chairman C. Burch called the meeting to order at 7:00 PM. Chairman C. Burch stated that the Zoning Board of Appeals is made up of volunteer members. In order to approve a request, 4 yes votes are required. The ZBA has up to 62 days to make a decision. All evidence must be presented during the hearing, don't assume the board knows anything. The ZBA does not write nor can it change the Zoning or Sign Ordinance requirements. The Common Council has the authority to change the Zoning and Sign Ordinance requirements. In the granting or denying of variances and special permits, the ZBA must substantiate the reasons for such granting or denial. A decision by the ZBA may be appealed to the court by filing an Article 78 appeal. There are 1 Area Variance request before the ZBA this evening.

III. Public Hearing: Timothy & Annette Guinn – 104 Canasawacta Street

The public hearing was opened at 7:03 PM. The following exhibits were entered into evidence:

1. Application from Timonthy & Annette Guinn dated 5/10/2021
2. Community Development report dated 6/18/2021
3. Photographs of property
4. Drawing of proposed layout and use
5. Copy of tax map of property – current
6. One phone call received in opposition
7. No letters or calls received in support
8. Public Hearing Notice (mailed by the City to all property owners within 500 feet of the applicant).

- A. Donnison read the Community Development report and noted that there had been one phone call received in opposition, no calls received in support.

Annette Guin stated they purchased the property in 2019. Purchased the above ground pool in 2020 and obtained the required permits for same. The pool meets all setback requirements. In 2021 applied for a fence permit and was granted the same. It was for a white vinyl stockade style fence to go along the side lot line by the pool and nearly to the rear lot line – leaving some space between the fence and the property line. A survey was performed to verify where the property line is. The materials for the deck have already been purchased and delivered at a cost of \$12,000 TO \$14,000.

K. Kucinski stated that he understands the vesting of cost since a permit was issued in error as the codes employee was not aware that there were 2 separate lots and also was aware a fence could be placed on the property line but that the decking should have all still been 10 feet from the property line.

B. Natoli asked if any additional work had been done since the stop work order was issued. A. Guinn stated only of the south side well away from any property line so that they would at least be able to access the pool until this matter was settled.

T. Holmes, 31 Newton Ave., stated he has resided nearby for 26 years and is concerned that this fence would change the character of the neighborhood. There had always been a long strip down the entire hill to Pleasant Street where kids could go sledding and now that access will be gone with the new fence. T. Holmes feels the neighborhood should have been consulted before this fence was permitted to be installed.

B. Natoli asked if a fence permit is required. A. Donnison stated yes and one was obtained and the fence can be installed at the height approved – the only change that will need to be made is for the owners to merge the front and rear lots into one but a fence may be installed on the property line and the owners did have a survey to verify property line location. A. Guinn also noted that there would be at least a 4 foot pathway at the rear of the fence leaving plenty of access across their property for sledding.

T. Holmes wants the Common Council to consider asking neighbors before a fence is installed. B. Natoli suggested he speak with his alderperson.

B. Thornton asked what the minimum and maximum height of a fence is allowed. A. Donnison stated there is no minimum height in the ordinance however the maximum height allowed by right is 8 feet.

Sally Chirlin stated her mother sold the 2 parcels at the top of the hill and no conditions were attached to the sale.

Tammy Thornton stated that most of the hill is still accessible.

John Williams, 108 Canasawacta Street, asked what is the purpose of a 10 foot line setback when anyone standing on the deck can literally see into their yard. J. Williams asked that a 1 foot variance for the one corner of the deck that does meet the line setback not be granted. J. Williams understands vesting and feels it is not a factor in making a decision supporting the proposal. Why were they permitted to continue with additional deck construction until variance approval is determined. A. Donnison noted that the area of continuing deck construction is on the south side of the pool which is way in excess of the lot line setbacks required. Construction on the north side of the pool has stopped.

B. Natoli asked if the code office that issued the permit is certified. A. Donnison stated yes.

A. Guinn stated that she is sorry to have to be in this position and did not expect to be as they tried to follow all the rules and thought all was ok. The fence was not even installed on the property line as is allowed.

R. Genung has concerns about denying the small variance request of 1 foot since the city already granted the permit even if it was in error. J. Wright agreed and stated it appears that the applicants have tried to do everything right. B. Natoli agreed that they followed the rules and were given a green light.

Chairman C. Burch asked if anyone present had any further questions or comments. There were none. The public hearing was closed at 7:50 pm.

IV. Findings & Determinations for Timothy & Annette Guinn – 104 Canasawacta Street

- Pool is just over 12 feet from the north property line
- One corner of the deck would require a 1 foot setback variance
- This parcel is made up of 2 lots
- Owners had a survey completed
- Permit for decking that needs the 1 foot variance was issued in error
- If approved a requirement must be to merge to two lots
- Opposition to the proposal received
- Support for the proposal was not received
- Property shall exceed open space requirements if merged
- Property is in a R-1 zone
- A stop work order was issued after permit was approved
- The character of the neighborhood will not be changed

- Hardship is unique due to a permit being issued and no knowledge at the time there were 2 lots that made up this parcel.
- The request is not substantial
- Proposal will not have an adverse effect on the neighborhood or district
- Hardship not entirely self created as the owners followed the rules and later found out permits were issued to them in error.
- Area is primarily residential with an elementary school nearby

Motion made by K. Kucinski to approve the request as submitted with the condition that the 2 parcels be merged before continuing with the project. Seconded by J. Wright.

Motion Approved: 6 ayes; 0 nay.

Ayes – C. Burch, Jr. J. Wright, K. Kucinski, B. Natoli, R. Genung, M. Hepfer

V. Adjournment:

There being no further discussion, the meeting was adjourned at 8:15pm on a motion made by M. Hepfer. Seconded by B. Natoli. Ayes All. Carried.