

**: OFFICIAL PROCEEDINGS :****: OF THE CITY OF PEORIA, ILLINOIS :**

A Zoning Board of Appeals Meeting was held on Thursday, April 14, 2011, at approximately 1:30 p.m., City Hall, 419 Fulton Street, Council Chambers, Room 400, with Chairperson Weaver presiding.

**ROLL CALL**

The following Zoning Board of Appeals Commissioners were present: Chairperson Pro Tem Barry; and Commissioners Blackwell; Ierulli; Kouri; and Wagner – 5. Absent: Commissioners Jackson and Weaver – 2.

Staff Present: Olajide Giwa, Gene Lear, and Polly Stainback

**MINUTES**

Commissioner Ierulli moved to defer vote on the minutes of the meeting held on February 10, 2011, until the next regularly scheduled meeting on May 12, 2011; seconded by Commissioner Wagner.

Approved by viva voce vote 5 – 0.

**ZBA 2934**      **(Continued from the meeting held on March 10, 2011)**  
**Petitioners Joe Menefee & Dave Whitehurst for P & W Builders are requesting a variance from the City of Peoria Zoning Ordinance: Article 18, Retaining Walls, to allow retaining walls to be constructed greater than 3 feet in height for the properties located at Lots 25, 26, 27, 28 and 30 in Autumn Ridge Subdivision.**

Chairperson Pro Tem Barry announced Case No. ZBA 2934.

Gene Lear, Senior Urban Planner, City of Peoria, Planning and Growth Management, read Case No. ZBA 2934 into the record. He pointed out the locations of the subject properties and noted a house had been built on Lots 25 and 30; and Lots 26, 27, and 28 were vacant with no retaining walls. He pointed out the location of the retaining walls on Lots 25 and 30 on the aerial photograph. Also, he reported Staff's recommendation as follow:

**SITE PLAN REVIEW BOARD (SPRB) CONCLUSIONS AND RECOMMENDATIONS:**

After reviewing the Petitioners' application and performing a site inspection, the SPRB recommends **denial** of the variances requested for Lots 25 and 30, which have retaining walls built on them.

1. The Petitioners knew about the slope issue of the lots before they purchased the lots.

2. Retaining walls can be constructed in compliance with the Zoning Ordinance if a house is designed to fit the lot.
3. The hardship created was self-imposed.
4. The Petitioners could have inquired of the City for the requirements of retaining walls if they did not know the requirement of the retaining wall height.

In the case of vacant Lots 26, 27, and 28, the SPRB recommends **denial** of the variance requested for the following reason:

1. Even though the lots have significant slope, retaining walls can be constructed in compliance with the Zoning Ordinance if a house is designed to fit the lot. We feel that certainly this is the case now that the Petitioners are specifically aware of the height requirement for retaining walls.

Mr. Lear explained that the reconsideration was approved for the Board's action on this case today.

In discussion with Commissioner Blackwell, Mr. Lear indicated this is the same request as previously presented; and the Petitioners have the opportunity to separate the lots in terms of their request.

Ms. Stainback swore in those planning to give testimony.

Joe Menefee, Petitioner, representing P & W Builders, commented that some information would be duplicated since there were two Commissioners who were not present at the last meeting. He commented that P & W Builders does not build retaining walls for a living, but they constructed retaining walls using 24" deep, 24" tall, and 4' long blocks. He stated that in everything they do, they try to do it for the long term.

Mr. Menefee referred to the confusion regarding Staff's recommendation and the fact that there was a discrepancy as to why this Ordinance was put in place. He referred to there being no permit process for retaining walls for correct engineering, so there was no opportunity to correctly engineer a wall. He mentioned that he took photographs to the last meeting, which showed various neighborhoods and construction types. He referenced one of Staff's reasons for recommended denial, which was that they could have designed the home to better fit the lot. He explained that even if they dropped a garage into the basement and did a split foyer, there would always be wing walls.

Mr. Menefee indicated they researched different types of blocks, and they believe it is an engineering and design issue; and if properly engineered, there is no reason that it could not be done.

Commissioner Blackwell commented that the safety aspect of the wall is not how well it is built, but how people interact with the wall. Mr. Menefee questioned that if it is a safety issue, why it is complaint driven, rather than the City's job to enforce.

Mr. Lear clarified that not all departments enforce the codes the same way. Code Enforcement does systematic inspections, and they go out every day; in the Planning and Growth Management Department, there is not enough Staff to do systematic inspections. Staff's situation is such that we have to depend on someone to turn in a complaint, and Staff follows up. He also mentioned that it is not just a safety issue, but it is also an aesthetics issue.

Mr. Menefee continued his discussion. He said if the reason for the Code is safety, when there is a wall over three feet, there begins to be a lot of issues with the structure and durability of the wall.

As Mr. Lear displayed Mr. Menefee's photographs, Mr. Menefee commented on the various walls throughout the City which are not in compliance. He said the retaining wall they built fits in with the character of the neighborhood, with there being walls just a couple of blocks from their house. He pointed out that there is a 10-foot high retaining wall on University Street property, which abuts people's back yards and sidewalks. He commented that their retaining walls are on residential property, not 10-foot walls on major thoroughfares next to sidewalks.

Mr. Menefee stated that the reason for the Ordinance had to be engineering; and if a safe wall is done, a variance could be needed. He said that at the Home Show, he talked with contractors, who also were not aware of any Ordinance.

Regarding the retaining wall construction, Mr. Menefee assured that the walls were constructed properly with special blocks. He said they had to change the elevation to construct the house. He spoke about retaining walls and landscaping as storm erosion control. He also referred to the letter of support from Lynne Reynolds, who lives directly behind one of their lots and also Mr. Hodge, whose letter was read at the last meeting. He said the wall is helping their situations as far as their back yards.

Mr. Menefee referred to its being Staff's civic duty to report retaining walls over three feet as they drive through neighborhoods. He mentioned that the City Council should be made aware and that they felt P & W Builders was being singled out. He stated that the walls on private property are not being reported and addressed. He also recommended a permit process be put in place for retaining walls, so there would be someone going out and inspecting them.

Donald L. Hodge, neighbor, stated one of the retaining walls backs up to his lot. He said that due to a slope in the back of his lot, which backs up to an easement, there was a problem with erosion; and the wall solved the problem. He said he would appreciate if Commissioners would consider his property because if the wall had to be taken down, it would affect his property; and he would have a problem with erosion.

Gene Whitehurst, owner and President of P & W Builders, indicated that he was the one who made the mistake. He said he started P & W Builders 57 years ago this fall and has built 3,000 homes, and had never had a problem and always tried to do the right thing. He said that when they took over this subdivision, lots in Peoria were scarce. He said that soon after they purchased the lots, the newspaper addressed it as a crime area.

He said they did not have a model for this house, and because of the economy they did not have the money to build a model, so he used some of his retirement money to build this house. He explained that they had a plan and tried to figure out what to do. The idea came up to use a retaining wall, and he did not think the retaining wall was a problem.

Mr. Whitehurst indicated that when he talked with Mr. Lear, he did not really think that he had a problem. He said Mr. Lear suggested adding the other lots to the variance request to save money. He said that since then, he thought they had withdrawn the other three lots. He said he hoped that Commissioners would approve the variance request so that they could get the home ready and leave the wall the way it is.

Mr. Lear pointed out that he recommended adding the other three vacant lots to the variance request because they had the same lay of the land and same slopes as the other two lots. So, should they decide to build on those lots, they might as well include them at the same time. He indicated that even if the vacant lots had not been included in the Petitioners' request, the other two lots would still require a variance.

Chairperson Pro Tem Barry stated that at the moment they were looking at the five lots. Mr. Lear explained that the Petitioners could withdraw those other three lots from their variance request and by action of the Commission, those lots could be removed from the variance request.

Mr. Whitehurst said Mr. Lear's comments were probably true, but some of the neighbors thought they would do the same on the vacant lots. He said they would not, and do not need to put walls on the other lots.

Greg Neaveill, a nearby homeowner, stated that he noticed on December 8 that these two walls were completed. He expressed concern that they look out of place. He said that when P & W were notified around December 15, there was no construction of that lot above the foundation. He indicated that he asked Pat Landes for a stop work order, and she indicated she could not do that. He pointed out that they continued to build with the assumption that everything would be just fine.

Referring to the February meeting, in which the Petitioners indicated they were unprepared, the Chairperson gave them an opportunity to defer their case. Instead, they continued and when it did not go their way, they asked for reconsideration. He said it could have been built to Code, from what Mr. Lear's office is saying. As far as the erosion, it came when P & W took out a 12-foot wall of dirt.

Mr. Neaveill indicated that his position had not changed and that the walls looked just as ugly and out of place and did not belong in a residential neighborhood. He further stated that Ms. Reynolds said it looked fine, but she is a realtor and does not want to upset someone who builds homes. He pointed out that these walls were not safe. He said a company that had been in business for 50 years should know what they are doing.

Mr. Neaveill referred to Mr. Menefee's statement that when they went to purchase material, they should have been notified there was a code problem. He disagreed and stated that it would be the Petitioners' responsibility.

Mr. Neaveill also pointed out the following main points:

- They presented photographs of other walls without qualifying that many of these may have received a variance before construction. Others could have been constructed prior to the Code going on the books, so they would not be in violation.
- Approval of the variance would be setting a precedent.
- The Peoria SPRB recommended denial. It was not because of the complaint but because it is a serious violation.
- The homeowners disapprove of this construction.
- The vote was 5 to 2 to deny the variance; and there is no reason for a different vote today.

Mr. Lear read two letters of support of the variance, one from Lynne Reynolds and the other from Donald Hodge.

Mr. Neaveill reiterated that the walls could have been built in compliance.

Mr. Gene Whitehurst indicated that the walls could not have been built to Code because they did not have enough room to extend it further. He stated that he was proud of the wall; and he showed the wall to several people, who also thought it was beautiful.

Mr. Neaveill questioned if there had to be 15 feet from the house to this wall. Mr. Lear explained that the setback from the house to the rear property line had to be 25 feet. Mr. Lear further explained that since a wall is considered a structure, the house had to be at least 10 feet away from the wall.

Mr. Neaveill said the back yard has 24 feet, so there was room. Mr. Gene Whitehurst stated it is 24 feet but not enough for a lot either way; the back of that lot is a "V" in the center of the lot, so there would still be a problem up above.

Mr. Lear stated that even if 24 feet, they would be in violation. He explained that the submitted drawing showed 25 feet; and Staff did not sign off on 24 feet.

David Whitehurst, Petitioner, stated that they were not prepared at the first meeting. He said this wall took a long time to build, and Mr. Neaveill could not see it from his house; it does not affect his house in any way. He indicated that they had done their best to make this subdivision the best they could. He mentioned that he had trouble getting Mr. Neaveill to return calls. He said when he talked with Mr. Neaveill and guaranteed him there would no walls on the other three lots. He stated that Mr. Neaveill led him to believe that he might be interested in retracting this, if no trees were removed and there would be no walls on the other lots.

Mr. Whitehurst stated that they violated the Ordinance and pointed out that there are violations all over Peoria. He said the only reason they are there is because Mr. Neaveill complained. He referred to this not coming up very often, and that even the Board said there was only one other variance request for a wall, which was on commercial property. He said that with ravines, there have to be walls. He said they thought they were doing the right thing, and they did it the right way. He said that they are sorry they did not know the three-foot rule at the time.

Mr. Neaveill stated it would have been tiered. He said he returned at least two of Mr. Whitehurst's calls. He stated, "It is a pattern of fact versus fiction."

In discussion with Commissioner Blackwell to clarify that the setback is not an issue, Mr. Menefee indicated that the property line is 25 feet at the nearest point and 24 feet from the house to the first block; each block is 2 feet deep, and there is a setback between the two different tiers, probably 30 to 35 feet total.

Commissioner Pro Tem Barry closed the public testimony of this case.

In discussion with Commissioner Ierulli, Mr. Lear explained that since the Petitioners indicated they did not wish to place walls on the other lots, Commissioners could separate those three lots from the other two lots.

Commissioner Blackwell suggested separating Lots 26, 27, and 28 from Lots 25 and 30.

**MOTION (Lots 26, 27, 28)**

Commissioner Ierulli motioned to approve the variance for Lots 26, 27, and 28.

Commissioner Ierulli stated he was making the motion for the record, since the Petitioners did not formerly request that those lots be withdrawn for the Commissioners' action.

The motion was seconded by Commissioner Wagner.

**DELIBERATION (Lots 26, 27, 28)**

Chairperson Pro Tem Barry administered the Findings of Fact.

It was noted that there was no hardship or practical difficulty, but it was self-created.

Regarding the granting of the variance being detrimental to the public welfare or injurious to other property or improvements in the neighborhood, Commissioner Blackwell acknowledged that there was testimony both ways. He said the variance could alter the character of the neighborhood.

Commissioner Ierulli explained that he made this motion solely to take these lots off the table and address them separately and address the lots with the walls on them.

Commissioner Blackwell stated that they should not allow walls on those three properties because it would be detrimental to the neighborhood.

Chairperson Pro Tem Barry indicated that the International Building Code requires that any change in elevation greater than 30 inches, there has to be a guard of 42". He stated there is a safety issue in terms of children falling off the wall.

The motion was **denied** by roll call vote 0 to 5.

Yeas: None;

Nays: Barry, Blackwell, Ierulli, Kouri, Wagner.

(Therefore, there can be no retaining walls greater than 3 feet in height on Lots 26, 27, and 28.)

**MOTION (To Split Lots 25 and 30):**

Commissioner Blackwell motioned to split Lots 25 and 30 and begin with Lot 30; seconded by Commissioner Kouri.

The motion was **approved** unanimously by viva voce vote.

**MOTION (Lot 30):**

Commissioner Blackwell motioned to **deny** the request for a variance on Lot 30. The motion was seconded by Commissioner Wagner.

**DELIBERATION (Lot 30):**

Chairperson Pro Tem Barry administered the Findings of Fact

Commissioner Blackwell stated there was no hardship. Commissioner Ierulli stated he thought there was a hardship due to the topography issue.

Commissioner Blackwell stated the variance would be detrimental to the public welfare and would alter the character of the neighborhood.

Commissioner Wagner stated the variance could impair natural drainage or create drainage problems on adjacent properties; and it would endanger the public safety.

Commissioner Blackwell indicated that in looking at these properties, it appeared they could have done this within the Code by stair-stepping the walls.

The motion to **deny** the requested variance **passed** by roll call vote 4 to 1.

Yeas: Barry, Blackwell, Ierulli, Wagner;

Nays: Kouri.

(Therefore, there can be no retaining wall on Lot 30 greater than 3 feet in height; and the existing retaining wall which is greater than 3 feet must come into compliance or be removed.)

**FIRST MOTION (Lot 25):**

Commissioner Blackwell motioned to **deny** the Petitioners' request. There was no second.

The motion **failed** due to the lack of a second.

**SECOND MOTION (Lot 25):**

Commissioner Wagner motioned for approval of the variance on Lot 30; seconded by Commissioner Kouri.

**DELIBERATION (Lot 25):**

Chairperson Pro Tem Barry administered the Findings of Fact.

Commissioner Blackwell stated that a hardship did not exist. He said that he thought the wall could have been constructed with stair-stepping of the walls and would be within Code.

Commissioner Ierulli commented on the grade of the lot and that there was a substantial grade difference.

During discussion regarding if the hardship was self-created, Commissioners pointed out the following: Commissioner Wagner said that asking for the variance is probably self-created, but it is the depth of the lot, layout, and topography; Commissioner Blackwell: The topography is not self-created; Commissioner Wagner pointed out that the request for the variance is based on what they built; and Commissioner Ierulli stated the hardship is not self-created; the issue is the topography and the ground.

Commissioner Ierulli referred to one neighbor's testimony that this wall protected his property from erosion problems.

Commissioner Blackwell said he thought that public safety was an issue due to the wall height. He stated that the wall was a lot higher than it looked in the photograph. He said Commissioners would not be doing our job if this is allowed.

The motion to **approve** the requested variance **passed** by roll call vote 3 to 2.

Yeas: Ierulli, Kouri, Wagner;

Nays: Barry, Blackwell.



(Therefore, the heights of the existing retaining walls on Lot 25 are approved for their existing heights.)

Chairperson Pro Tem Barry recessed the meeting at approximately 3:00 p.m. He called the meeting back to order at approximately 3:05 p.m.

**ZBA 2935**     **Petitioners Allen & Pam Durr are requesting two variances from the City of Peoria Zoning Ordinance: Article 7.6.e, to allow a building addition to encroach 15 feet (later amended to 9 feet) into the required 25-foot front yard on Southgate Road and 3 feet into the required 25-foot front yard on High Point Road. The property is located at 136 E. High Point Road.**

Chairperson Pro Tem Barry announced Case No. ZBA 2935 and asked Mr. Giwa to read it into the record.

Olajide Giwa, Senior Urban Planner, Planning and Growth Management Department, read the case into the record and reported the following:

**SPRB CONCLUSIONS AND RECOMMENDATIONS:**

After reviewing the Petitioners' application and performing a site inspection, SPRB does not support the variance request for the following reasons:

1. The stated hardship of two front yards is not unique.
2. The property can yield a reasonable economic return if the variance is not granted.
3. The current owner would be creating the practical difficulty.
4. The granting of the variation will alter the essential character of the neighborhood.

In discussion with Commissioner Blackwell, Mr. Giwa concurred that there was a previous variance on this property in the past.

Ms. Stainback swore in those who were not present earlier.

Allen Durr, Petitioner, distributed a handout, which included the following: A site plan of the proposed site, which showed that there was no other place to put an addition; a rendering of the house; an aerial photograph, marked to show nonconforming homes on High Point and Southgate Roads; two letters of support from Thomas and Emily Jean Johnson and Cathie Crawford; and a petition signed by 23 neighbors, stating their support. Chairperson Pro Tem Barry marked the information as Petitioner's Exhibit 1.

Referencing the former variance, Mr. Durr explained there was approval for an addition on the west side of the home for a garage with a master bedroom above it. He stated his wife and he were asking for an 11-foot variance to encroach on the east front yard property line and a 3-foot variance to encroach on the north front yard to add a new efficient sunroom and a new bedroom for their children.

In discussion with Commissioner Blackwell, regarding the specific hardship, Mr. Durr stated that the addition could not be built anywhere else on the property: They could not building on the north side because it was not be in harmony with the neighborhood; and not on the west side because that is where they added a garage and master bedroom; and on the south side, there was no room; and it would decrease the back yard where the children play; and the east side could not be used because they could not see the children playing on the east side of the house.

Responding to Commissioner Blackwell regarding the lot size, Mr. Durr stated the subject property consists of a lot and a half, with dimensions of 132' x 66' in the front and 128' x 66' in the back.

The following neighbors spoke regarding their admiration of the Durrs and extended their support of the requested variances: Listed in the order in which they spoke: David Muchow, John Pusey, Paul Oakford, Andrew Weeks, and Jeff Johnson.

In discussion with Commissioner Blackwell, Mr. Durr stated that the existing sunroom wall would remain in its current location; and they would be going east toward Southgate, roughly 10 feet from the property line. Mr. Durr reiterated that the variances would be for 3 feet in the front yard and 11 feet on the east side.

Mr. Giwa concurred that the encroachment would be 11 feet.

Responding to Commissioner Blackwell, Mr. Durr explained that the current sunroom is 9 feet x 22 feet; and he was asking for 6 more feet.

Commenting on the handout of an aerial which showed other nonconforming uses, Mr. Giwa commented that it was known the types of nonconformities being referred to; so, Staff's position remained the same. He pointed out that the house to the south was encroaching already, so instead of 25 feet, they have 17 feet. He explained that in a situation such as this, to determine the required setback, Staff averages the setback of the adjoining properties, so in this case, the setback would be 22 feet, not 25 feet; so the encroachment would be a little less; but nevertheless, it is still encroaching.

**DELIBERATION:**

Chairperson Pro Tem Barry administered the Findings of Fact.

Commissioner Blackwell stated no hardship was presented.

Commissioners agreed that granting of the variances would not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood; would not alter the character of the neighborhood; would not impair an adequate supply of light and air to adjacent property or increase the danger of fire, or impair natural drainage or create drainage problems on adjacent properties; and would not endanger the public safety or diminish or impair the property values of the neighborhood.

**Motion:**

Commissioner Ierulli motioned for approval of the requested variances. The motion was seconded by Commissioner Wagner.

Commissioner Blackwell stated he would be voting against the requested variances because the lot has an addition already, and another addition would be "too much house for too small of a lot." Commissioner Wagner stated that he agreed to a certain extent, but there are several houses that are too much house for those lots.

Commissioner Ierulli indicated that in looking at the GIS map, he considered the lot lines do not incorporate in the right-of-way; so, this is not like the lot line goes right up to the right-of-way or the sidewalk. He pointed out that consideration should be given to the fact there is a substantial setback from the roadway.

The motion passed by roll call vote 4 to 1.

Yeas: Barry, Ierulli, Kouri, and Wagner;

Nays: Blackwell.

**CITIZENS' OPPORTUNITY TO ADDRESS THE ZONING BOARD OF APPEALS**

There were no citizens to address the Zoning Board of Appeals.

**ADJOURNMENT**

Commissioner Wagner moved to adjourn the Zoning Board of Appeals Meeting; seconded by Commissioner Blackwell.

The motion was approved unanimously by viva voce vote 5 to 0.

The Zoning Board of Appeals Meeting adjourned at approximately 3:35 p.m.

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Gene Lear, Senior Urban Planner  
Planning and Growth Management Department

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Olajide Giwa, Senior Urban Planner  
Planning and Growth Management Department

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