

**VILLAGE OF ESSEX JUNCTION  
ZONING BOARD OF ADJUSTMENT  
MINUTES OF MEETING  
July 21, 2009**

**MEMBERS PRESENT:** Tom Weaver (Chairman); Ron Gauthier, Jim Moody, Martin Hughes. (Bruce Murdough was absent.)  
**ADMINISTRATION:** Robin Pierce.

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**1. CALL TO ORDER and AUDIENCE FOR VISITORS**

Chairman Tom Weaver called the meeting to order at 7 p.m. There were no comments from the public.

**2. ADDITIONS/AMENDMENTS TO AGENDA**

There were no changes to the agenda.

**3. MINUTES**

May 19, 2009

**MOTION by Ron Gauthier, SECOND by Jim Moody, to approve the 5/19/09 as written.**

**VOTING: 3 ayes; 1 abstention (Martin Hughes); motion carried.**

**4. REVIEW and SIGN ETHICS POLICY**

The Board members signed the document.

**5. ELECT CHAIRMAN and VICE CHAIRMAN**

Chairman Election

**MOTION by Ron Gauthier, SECOND by Jim Moody, to nominate Tom Weaver as Chairman. VOTING: unanimous; motion carried.**

Tom Weaver is the Chairman of the Board.

Vice Chairman Election

**MOTION by Jim Moody, SECOND by Ron Gauthier, to nominate Ron Gauthier as Vice Chairman. VOTING: unanimous; motion carried.**

Ron Gauthier is the Vice Chairman of the Board.

**6. PUBLIC HEARING**

The function of the Zoning Board as a quasi-judicial board and the hearing procedure were explained. Individuals to give testimony before the Board were sworn in.

Variance application for relief from front setback of 10 feet for a six foot stockade fence at 16 Prospect Street in the R-2 District by Jason McLeod, owner

Jason and Rachel McLeod appeared on behalf of the application.

**STAFF REPORT**

Robin Pierce reported the site is a corner lot with the house facing Prospect Street. The request is for a six foot high privacy fence along the Summit Street boundary of the lot. The required

setback is 15 feet. The applicant would like to locate the fence five feet in on the property on the Summit Street side so a variance of 10 feet is requested.

#### **APPLICANT COMMENTS**

Jason McLeod explained the fence located 15 feet from the property line on Summit Street is for privacy from the road. There were mature trees and shrubs (three lilac bushes, one pine tree, two large burning bushes, one large crabapple, and a blue spruce) along the sidewalk that impeded the sight of the sidewalk and were removed. Mr. McLeod said he did not realize when he removed the trees that there would be a problem installing a fence in the same location. The fence will improve the situation since the fence will be farther away from the one-way street and the sight line will not be impeded. Mr. McLeod showed photos of the site and fence location which is perpendicular to a large tree by the driveway. There is 15 feet from the tree to the property line of the Lavoie property.

Tom Weaver reviewed the variance criteria in Section 1703.C noting all the criteria must be satisfied in order to grant a variance. Regarding the hardship not being created by the applicant, Jason McLeod pointed out that because his house is on a corner lot, greater than a third of the lot is lost which is the rationale for locating the fence closer to the sidewalk. The house and driveway are between the corner and the fence (fence will be on the Summit Street side). Ron Gauthier asked how the right-of-way was determined (Mr. Gauthier thought Summit Street was 40' wide). Robin Pierce stated the measurement was taken from the center line of the road. Summit Street is a 3-rod road. Jason McLeod said he measure five feet from inside his property and then out 10 feet.

Regarding physical characteristics of the lot not allowing use in the district, Tom Weaver pointed out the site is in a residential district and a fence still allows use of the residence.

Regarding unique topographical features of the lot, Rachel McLeod said the lot is sloping lot.

Regarding no possible use of the property without the fence, Jason McLeod said the fence is for privacy and safety for his family.

Jason McLeod said his request does satisfy the minimum variance criterion Initially the fence was to be where the tree line was, but after finding out that would not be possible the fence was located in such a way to allow for a four foot wide grass strip between the sidewalk and fence which will allow a better view of the sidewalk from the driveway. Mr. McLeod said he planned for the worst case scenario and still have use of the back yard and have the fence serve the desired purpose. Robin Pierce asked if a five foot high fence would be acceptable. Rachel McLeod said a five foot high fence is not a workable compromise. A four foot high fence would not provide privacy. Jason McLeod stated there is traffic on the street from 3 p.m. onward. During school cars are lined up on the street by 8 a.m. The trees did not provide adequate safety from the traffic on the street. Summit Street is a busy street, especially during the school year, reiterated Mr. McLeod.

#### **PUBLIC COMMENT**

Tom and Michael Lavoie, residents on Summit Street for 57 years and the sons of Lou Lavoie, commented they had long term neighbors and now have new neighbors with children. The Lavoies spoke positively of seeing the neighborhood 'coming back to life' and felt lucky to have the neighbors that are there now. The Lavoies testified traffic has changed immensely on the street with cars traveling at all hours of the day and night.

Mike Lavoie, Summit Street, confirmed when the trees were there it was a safety issue with backing out of the driveway to see children on the sidewalk. The fence will make it easier to see when backing out of the driveway. Mr. Lavoie stated the fence will not change the character of the neighborhood. There is a fence opposite the McLeod's property and Mary Ann Parizo on Prospect Street also has a fence.

There were no further comments.

**MOTION by Jim Moody, SECOND by Martin Hughes, to close the public portion of the variance application for relief from front setback of 10 feet for a six foot stockade fence at 16 Prospect Street in the R-2 District, by Jason McLeod. VOTING: 4 ayes; motion carried.**

#### DELIBERATION/DECISION

Variance, Fence, 16 Prospect Street, McLeod

#### FINDINGS OF FACT:

1. The project site is located at 16 Prospect Street in the R-2 District with a lot size of approximately 10,500 square feet.
2. The applicants are proposing to construct a 6' high stockade fence five feet from the front property line along Summit Street.
3. Section 707.B.4 of the code requires all non-transparent fences over 29" to meet the front yard setback.
4. The applicants are requesting a variance of 10' from the Summit Street front yard setback requirement of 15' in the R-2 District.
5. There was a line of various shrubbery and trees in the proximity of or closer to the sidewalk than the proposed fence.
6. The applicant feels that a fence less than five feet in height will not provide the privacy that the tree line did.
7. The location of the fence will not impede on the sight line of the intersection of Summit and Prospect Street.
8. The fence is on the southeast corner of the lot and is over 65' back from the Prospect Street intersection.
9. The applicant indicated a five foot high fence would be adequate.
10. The beginning of the fence will be a sufficient distance from the driveway to not obscure pedestrian and vehicular traffic.
11. There was public comment in support of the application.

#### CONCLUSION:

1. Findings #1 - #11 satisfy the variance criteria of Section 1703.C.

**MOTION by Ron Gauthier, SECOND by Jim Moody, based on the Findings and Conclusion, to approve the variance request by Jason and Rachel McLeod for relief from the front setback of 10 feet for a five foot high fence at 16 Prospect Street. VOTING: 4 ayes; motion carried.**

Variance application for relief from side setback of five to six feet for a 9'6" x 43' open framed pergola for shielding of cars at 1 Grant Street in the R-2 District by Nathan Moreau, agent for Fred Brubaker, owner

Fred Brubaker and Nathan Moreau appeared on behalf of the application.

#### STAFF REPORT

Robin Pierce reported a site visit was done. The request is for a long narrow structure which will touch on the property line. A roof could be put on the structure and it would become a carport. There will be brick paving underneath the structure. Staff received a letter of support from a neighbor.

#### APPLICANT COMMENTS

Fred Brubaker stated the challenge is parking two cars in the driveway. The cars must be parked back to back. Snow removal with the gravel driveway is difficult as well. Rocks often are inadvertently shoveled onto the neighbor's lawn. The cedar pergola will shield the cars from the weather. The brick under paving will ease snow removal. Mr. Brubaker said the property was surveyed to determine the boundary line. His neighbor, Kathy Jasmin at 3 Grant Street, is in support of the proposal. Mr. Harry Francis of 45 Maple Street also submitted a letter, dated 7/21/09, stating he had no issues with a variance for an open framed pergola for shielding cars.

The variance criteria were reviewed. The narrowness of the lot applies to the criterion of unique physical characteristics of the lot. It was also noted that there is a steep pitch from the street to the backyard. Tom Weaver asked about the distance between the house and the property line on the south side. Nathan Moreau stated the width of the pergola is 11'6" and the structure will be 2'11" away and 2 1/16" from the back. There was further discussion of distances from the property line that demonstrate the proposed location of the pergola and the need for a variance. Regarding conformance to the bylaw, it was stated that the lot is such that a variance is needed for the structure. Regarding hardship created by the application, Nathan Moreau said putting up a pergola is not a hardship on the residence or the neighbors. The pergola will not impede storm water drainage since there is a steep pitch and the storage box at the back of the pergola will be off the ground.

In regards to the character of the neighborhood, Fred Brubaker said the walkway to the house is red brick so the plan is to match that in the driveway. Tom Weaver asked if other properties on the street have garages. Fred Brubaker said most of the houses have either carports or garages. Fred Brubaker confirmed he is asking for the minimum variance. The lot is so tight and the pergola cannot be moved elsewhere, said Mr. Brubaker, adding the pergola will be a nice update to match other houses in the neighborhood and will be an improvement that will help on winter mornings with snow removal.

Tom Weaver commented in the past the Zoning Board has always felt it was reasonable to have shelter for vehicles.

Ron Gauthier asked how far the structure will be from the front of the house. Fred Brubaker replied eight feet. Mr. Gauthier pointed out the request is actually for a variance from the front and side yard setbacks. Ron Gauthier mentioned moving the structure back slightly to match the edge of the front of the house. The applicant stated the location as proposed is to grant as much backyard space as possible. There is an established vegetable garden in the backyard. The structure is designed to accommodate two cars. To begin the structure at the house would result in a 43' long monstrous monument instead of a pergola. Tom Weaver pointed out the request is not warned for a front yard variance as well as a side yard variance. There was discussion of starting the pergola structure at the front porch which project five feet from the house. Nathan Moreau agreed the structure could be moved back three feet and perhaps the storage box would be removed. The pergola is designed to not block sunlight to the dining room in the back of the house. Ron Gauthier observed from the side the structure will look like a deck above the window.

#### PUBLIC COMMENT

Jim Clark, 2 Grant Street, said he will have a view of the pergola and is concerned with the flow of storm water. Mr. Clark noted the Jasmin property slopes up to the house and water could seep in, however, provided the water flow is to the back of the property there should not be a problem with the pergola.

There were no further comments.

**MOTION by Ron Gauthier, SECOND by Jim Moody, to close the public portion of the variance application for an open framed, 9'6" x 43' pergola for shielding of cars at 1 Grant Street by Nathan Moreau, agent for Fred Brubaker, owner. VOTING: 4 ayes; motion carried.**

#### DELIBERATION/DECISION

Variance, Pergola, 1 Grant Street, Brubaker

#### FINDINGS OF FACT:

1. The site is located at 1 Grant Street in the R-2 District with a lot size of 5,669 square feet.
2. The minimum lot size in the R-2 District is 7,500 square feet and the minimum side yard setback in this District is eight (8) feet.
3. The lot is 55.94 feet wide at the intersection with the Grant Street right-of-way.
4. There is no proposal to roof the pergola.
5. The applicant is requesting a variance of eight feet from the side yard setback requirement of 8' in the R-2 district.
6. Existing lot coverage is 13.2%. Proposed lot coverage is 22.7%. Maximum lot coverage in the District is 25%.
7. The design of the pergola will cover the 11'6" width between the property line and the house.
8. There is approximately 11'6" from the side of the house and the property line common with the Jasmin (3 Grant Street) side property.

9. There is approximately 13 feet between the side stairs to the side property line common with Francis and Datillio.
10. The proposed red brick surface of the driveway will make the lot coverage 22.7%.
11. The face of the proposed pergola will not extend beyond the face of the front porch on the street side.
12. The pergola as designed with storage box at the rear elevated one foot above grade level will not interfere with existing drainage.
13. There was public comment and two letters in support of the application.

**CONCLUSION:**

1. Findings #1-#13 satisfy the variance criteria of Section 1703.C.

**MOTION by Jim Moody, SECOND by Martin Hughes, based on the Findings and Conclusion, to grant the variance request by Fred Brubaker for relief from the side setback for a 9'6" x 43' open framed pergola at 1 Grant Street. VOTING: 4 ayes; motion carried.**

**7. OTHER BUSINESS**

None.

**8. ADJOURNMENT**

**MOTION by Ron Gauthier, SECOND by Martin Hughes, to adjourn the meeting. VOTING: 4 ayes; motion carried.**

The meeting was adjourned at 8:30 p.m.

*RScty: M.E. Riordan*