

**VILLAGE OF ESSEX JUNCTION
ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
June 17, 2014**

MEMBERS PRESENT: Tom Weaver (Chairman); Ron Gauthier, Jim Moody, Bruce Murdough, Martin Hughes.
ADMINISTRATION: Robin Pierce, Development Director.
OTHERS PRESENT: Kelly Short, Jeff Godbout, Stephen Colley, Carmen Colley, Martha Cady, Linda Kingston.

PRESENTATION TO RON GAUTHIER

Tom Weaver presented a plaque commemorating Ron Gauthier's service and dedication to the community as a member of the Zoning Board of Adjustment from 2003-2014. Mr. Gauthier is not seeking reappointment to the board.

1. CALL TO ORDER and AUDIENCE FOR VISITORS

Chairman Tom Weaver called the meeting to order at 6 PM. There were no comments from the audience.

2. ADDITIONS/AMENDMENTS TO AGENDA

There were no changes to the agenda.

3. MINUTES

May 20, 2014

MOTION by Jim Moody, SECOND by Martin Hughes, to approve the minutes of May 20, 2014 as written. VOTING: unanimous (5-0); motion carried.

4. 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.

Appeal of the Administrative Officer's decision to issue a zoning permit for a retaining wall/fence on the property line with a drainage plan at 8 West Hillcrest Road in the R-2 District by Kelly Short, appellant

Chairman Weaver explained the Zoning Board does not decide property line disputes (adverse possession) and will only hear testimony on the zoning permit for the wall and fence.

STAFF REPORT

The Zoning Board received a written staff report on the application, dated 6/17/14. Robin Pierce explained a permit was issued for a retaining wall and fence to replace an existing fence on the north, south, and west boundaries of the property at 8 West Hillcrest Road owned by Steve and Carmen Colley. The retaining wall is to stabilize and level off the existing stone wall. A decorative fence will be installed on top of the retaining wall. Staff

informed the property owner that the retaining wall and decorative fence cannot be higher than the existing fence. A property survey of 8 West Hillcrest was done by Lamoureux & Dickinson. The survey shows the existing stone wall. The new retaining wall will be visible to 8 West Hillcrest on the north side, but not to the property owned by Kelly Short at 6 West Hillcrest. The property at 8 West Hillcrest slopes steeply. At the back of the property there will be an approximate four foot high retaining wall with a decorative fence on top, not greater in height than the existing fence. Per local and state law storm runoff from the property cannot be increased with the new wall or remediation by the property owner is necessary.

Tom Weaver asked who hired Lamoureux & Dickinson to do the survey. Robin Pierce said the applicant (Colley). Chairman Weaver asked where in the ordinance the Zoning Board is given authority to grant a stay of enforcement until the appeal process is exhausted. Mr. Pierce said there is no such language in the ordinance.

TESTIMONY

Tom Weaver noted the stone wall can exist without the fence. The wall is to address drainage problems and keep water from flowing onto adjacent property. The definitions of 'fence' and 'structure' in the bylaws were reviewed (Sections 201.C.81 & 86). According to the bylaws a fence less than 6' in height is exempt from the definition of structure. The fence can be installed on the property line.

Kelly Short and Jeff Godbout, 6 West Hillcrest, testified:

- The location of the wall and fence on the property line by the garage will not allow access to the side of the garage for any maintenance or repair work due to the roof overhang and the narrow area between the properties.
- Photos of the area by the garage show the close proximity of the fence and wall to the eave. The space between the two properties is so narrow a wheelbarrow will not fit and a ladder cannot be put up to access the roof.
- There is a hedgerow planted about two feet off the property line which could be impacted by the wall and fence.
- The placement of the wall and fence contradicts the statement of "use of prudent placement of the fence".
- The permit states the wall and fence in totality are not to exceed the existing fence.
- The new fence should go where the existing fence is located.
- A masonry wall is not freestanding, but rather is a permanent structure. The wall is filled with stone and tied into the drainage plan.
- Increased water flow with a solid wall structure and a narrow gap is a concern. Water by the corner of garage dissipates toward the fence area now.

Steve and Carmen Colley, 8 West Hillcrest, testified:

- An official boundary survey of the property at 8 West Hillcrest was done.
- The wall will be back a prudent distance, perhaps one foot from the property line rather than on the property line to avoid any chance of encroachment. The

proposal is to build away from the fence so the driveway at 6 West Hillcrest will actually gain some space.

- The existing wall is much closer to the property line. Presently there is a wall then chain link fence then river rock along the property line.
- The wall is engineered to capture and divert water. There is a toe drain in the wall to a cistern which will allow water to leach into the ground. There will be a curtain drain on the north side of the property by the pool to capture water coming down the hill. Drainage on adjacent properties will not increase and at the least will not be made any worse.
- It seems odd that a retaining wall built to protect adjacent properties from erosion and damage is not allowed in the setback.
- The project started a year ago with a drainage plan to address existing water problems on the site (water was pooling on the lawn). Lamoureux & Dickinson was hired to do a drainage plan. The drainage plan takes into account neighboring properties. Aesthetics and erosion prevention will be improved with the plan.
- The existing wall by the driveway is 60 year old fieldstone that is falling apart. The purpose of the project is to improve the property, make it safer and hold the soil better to help all three surrounding properties. A significant amount of thought and money has been spent on the drainage plan, survey, and master plan for the site.
- The existing 6' high chain link fence is two feet from the property line. The plan is to replace the unattractive chain link fence with a wall and 24" decorative fence (though the shortest fence that was found is 36" high). The wall and fence is also intended to contain the dog on the property.
- The wall will go to the back of the property to address erosion at the steep slope and round the corner and continue for about 30' then the fence will continue. The wall is retaining the soil and is freestanding because connect around the property.

Martha Cady, 69 Pearl Street, testified the condominium complex on Pearl Street known as Highland Village is below West Hillcrest Road and is experiencing significant erosion and drainage problems. Residents would like to know if the retaining wall will improve or add to the existing drainage problems. Robin Pierce assured any increase in runoff must be mitigated by the property owner at 8 West Hillcrest. Ron Gauthier pointed out the grade of the property is not being increased with the wall and fence so the runoff should not increase. Steve Colley stated after two meetings with the Highland Village homeowners association to explain the plans there was agreement with the drainage plan and a temporary easement was granted to allow access on the property for construction of the wall and for insurance requirements. Carmen Colley said according to the engineers the wall will help the drainage at Highland Village because water that was previously pushed down the hill will be controlled and slowed with the drainage system. The property at 10 West Hillcrest will gain the most improvement in drainage. The curtain drain and stone wall is located on 8 West Hillcrest.

Kelly Short commented the information about the wall/fence being located back from the property line was not known when the appeal was filed. Ron Gauthier pointed out per the bylaws a fence is allowed on the property line. Bruce Murdough stated in light of the

information that is now known the neighbors are urged to resolve the issue of the location of the wall. Carmen Colley said the wall may be moved back about a foot, not three feet as was requested by the neighbors, and details are still being clarified so the exact location is not yet confirmed.

There was no further testimony.

MOTION by Ron Gauthier, SECOND by Jim Moody, to close the public portion of the appeal by Kelly Short for the permit issued to 8 West Hillcrest Road. VOTING: unanimous (5-0); motion carried.

DELIBERATION/DECISION

Appeal by Kelly Short of permit issued to 8 West Hillcrest Road

Tom Weaver disclosed staff contacted him to ask if replacing an existing fence with a combination retaining wall and fence on or close to the property line would be a problem. Chairman Weaver said he indicated there would be no problem and based on that staff issued a permit to the property owner. The permit was appealed within the 15 day appeal period on the argument that the retaining wall is a structure as defined and violates the setback.

FINDINGS OF FACT:

1. The Administrative Officer issued a zoning permit (Permit #48) for a retaining wall/fence on the property line with a drainage plan at 8 West Hillcrest Road.
2. The zoning permit was issued May 5, 2014. In accordance with Section 502.A.4(a) of the Land Development Code all permits must be posted in a location visible from the street and remain in place until the development is complete.
3. The appellant appealed the permit within the 15 day appeal period.
4. Section 201.C.81 of the Land Development Code defines 'fence' as a freestanding structure attached to the ground and Section 201.C.86 defines 'structure' as an assembly, building, sign, wall or fence except a fence on a farm or a fence less than six feet in height.
5. There was testimony by Stephen and Carmen Colley that the stone wall/fence combination will be one foot off the property line.
6. Kelly Short, 6 West Hillcrest Road, requested the fence be set back farther to allow access to her garage.
7. Highland Village homeowners association granted a temporary construction easement to Stephen Colley to construct the retaining wall.
8. Residents of Highland Village questioned whether the drainage plan will help or hinder the drainage situation at Highland Village.
9. There was public comment on the application.

CONCLUSIONS:

1. Finding #4 referring to Sections 201.C.81 & 86 of the Land Development Code supports that the fence is not a structure and not subject to setbacks.

2. Conclusion #1 supports that the permit was issued correctly.

MOTION by Ron Gauthier, SECOND by Martin Hughes, based on the Findings and Conclusions to deny the appeal by Kelly Short of the issuance of Permit #48 for 8 West Hillcrest Road (Stephen & Carmen Colley) with the condition the retaining wall/fence combination does not exceed six feet in height. VOTING: unanimous (5-0); motion carried.

5. OTHER BUSINESS

None.

6. ADJOURNMENT

MOTION by Bruce Murdough, SECOND by Jim Moody, to adjourn the meeting. VOTING: unanimous (5-0); motion carried.

The meeting was adjourned at 7:17 PM.

RScty: M.E. Riordan

