

**CITY OF NORTHVILLE**  
Board of Zoning Appeals  
August 3, 2016 – 7:30 PM  
City of Northville – Council Chambers  
215 W. Main Street

**I. CALL TO ORDER:**

As there were no officers present, the Recording Secretary opened the meeting.

**II. ROLL CALL:**

Commissioners: Present: Michelle Aniol  
John Callahan  
Ryan McKindles  
Dominic Silvestri  
Douglas Bingham - alternate

Absent: David Marold – excused  
Patti Mullen – excused  
Jay Wendt – excused

Also present: Sally Elmiger, Planning Consultant  
Brent Strong, Building Inspector  
1 resident

**III. APPROVAL OF THE AGENDA:**

**Motion Aniol, support by McKindles, to move Agenda Item IX: *Election of Officers* to next on the agenda, and to approve the agenda as amended.**

*Voice vote: Ayes: All. Nays: None. Motion unanimously carried. (5-0)*

**IV. ELECTION OF OFFICERS**

It was noted that the bylaws stated that only regular members could vote on election of officers; Alternate Bingham could not vote.

**MOTION McKindles, support by Callahan, to elect Dominic Silvestri as Chair of the Board of Zoning Appeals.**

*Voice vote: Ayes: All. Nays: None. Motion unanimously carried. (4-0)*

**MOTION Silvestri, support by Callahan, to elect Ryan McKindles as Vice Chair of the Board of Zoning Appeals.**

*Voice vote: Ayes: All. Nays: None. Motion unanimously carried. (4-0)*

**MOTION Aniol, support by McKindles, to elect John Callahan as Secretary of the Board of Zoning Appeals.**

*Voice vote: Ayes: All. Nays: None. Motion unanimously carried. (4-0)*

**V. MINUTES OF PREVIOUS MEETING: July 6, 2016**

**MOTION McKindles, support by Callahan, to approve the July 6, 2016 meeting minutes as published.**

*Voice vote: Ayes: All. Nays: None. Motion unanimously carried. (5-0)*

**VI. CASES TO BE HEARD – BY CASE:**

- A. Case is called.
- B. Appellant presents case.
- C. Board questions & comments.
- D. Public comments on the case.
- E. A motion (usually to grant the variance) is made and seconded; discussed then voted upon; the results are announced by the Chair.

**VII. CASE #16-06**

**KATHERINE & SAM MASTANTUONO  
816 CARPENTER**

**The applicant is seeking a variance to construct a new privacy fence ahead of the front building line along Eight Mile Road, on premises zoned R-1B, First Density Residential District, parcel number 48-22-34-453-006. The City’s Building Official has determined that a front-yard variance of 6.67 feet is needed from Section 18.09 of the Zoning Ordinance to allow construction of the privacy fence ahead of the front building line.**

Secretary Callahan read the case. It was noted that although the applicant had requested a dimensional and a use variance, only the dimensional variance was required. Applicant Sam Mastantuono, 816 Carpenter, withdrew his request for a use variance.

The dimensional variance requested was in order to extend a privacy fence 6’8” beyond the side of the house on a corner lot. The applicants had provided a narrative dated June 27, 2016, which stated, in part:

*Due to the unique circumstances peculiar to the property at 816 Carpenter Street being a corner/side lot (on 8 Mile Road) being considered a front lot creates an undue hardship to adhere to the zoning ordinance. A portion of our yard will be lost to “outside” the fence and rendered unused because it is not safe nor practical to use that portion of the yard after fencing. Additionally, by extending the fence line 6’8” it will allow the fence to enclose a bedroom window thereby providing privacy and safety to the occupant.*

*The proposed fence will extend 6’8” from the side of the house and run along 8 Mile Road 94’. Given the location of trees and shrubbery this would be the minimum variance needed and allow the property owner maximum use, privacy and safety.*

A schematic of the property showing the proposed fence line was attached to the application.

A letter of support for the variance request was received from Carolyn Totten, 791 Horton, Northville, MI.

Chair Silvestri invited Mr. Mastantuono to explain why he needed a dimensional variance for a fence on this property.

Mr. Mastantuono said they were seeking a variance to put a fence along the 8 Mile side that would extend about 6'8" from the line of the house. This would enclose their granddaughter's bedroom window, providing safety and privacy, and also provide a noise buffer. The extension would also allow them to more fully use their back yard. The patio was in the back southeast corner of the building. Installing a fence along the line of the house would put the fence right on top of the concrete patio. They were requesting the variance to allow a better use of the property as well as providing safety and privacy for the bedroom window.

Member McKindles asked where the fence could be placed if the variance was not approved.

Mr. Mastantuono said if the variance was not approved the fence could not extend beyond the house. It would be right on top of the patio as well, and exclude providing privacy and security for the bedroom already mentioned.

Member Aniol asked for clarification regarding the drawings in the application. There appeared to be 2 different drawings of the property with different dimensions. Mr. Mastantuono said only the drawing actually attached to the application was the correct drawing.

Building Inspector Strong further explained that the drawing showing the fence 21 feet from the home should be discarded. He noted that the home had not always been on a corner lot.

Chair Silvestri asked why the application was specifically for 6'8".

Mr. Mastantuono said they were asking for the minimum variance needed. Extending the fence further would run into trees. Bringing it closer to the house would run into a concrete walkway along the side of the house.

Member McKindles asked if the large pine tree would be enclosed or outside the fence. Mr. Mastantuono said the pine tree would be outside the fence.

Member McKindles asked if the other corner lots in the area that had similar fences had sought variances.

Mr. Mastantuono said he knew one property was grandfathered in.

Building Inspector Strong said that three years ago the property directly across the street was allowed to remove a nonconforming fence and construct a new one in the same location, and had received a permit for the fence. The Building Inspector at that time had interpreted the ordinance to allow this. Today that homeowner would have been instructed to seek a variance.

Member McKindles said the fence right across the street looked very similar to Mr. Mastantuono's proposed fence, and ran exactly in the same location. He thought the fence being requested this evening was consistent with fences already in the area.

Planning Consultant Elmiger agreed, and noted that Mr. Mastantuono was following the process in the ordinance as written. Any previous fence installations should have also been required to follow the required process, including seeking a variance if necessary.

Katherine Mastantuono, 816 Carpenter, said they were trying to match the existing neighborhood fence in order to provide a unified appearance.

Chair Silvestri said the Board of Zoning Appeals was not bound by precedence. However, the fact that there were similar fences in the area did carry some weight with him personally.

Chair Silvestri asked the applicants to address *practical difficulty*.

Mr. Mastantuono said the practical difficulty was the loss of the yard along 8 Mile Road. If a fence were installed along the house line as required by ordinance, the part of the yard along 8 Mile Road would become virtually useless. He noted that the property line was 9 feet from the house. They were asking for the fence to be placed only 6'8" from the house.

Member Aniol asked if trespassers were an issue on their property. Mr. Mastantuono said they had been at this location since May, and they had not had any trespassers.

Alternate Bingham asked if the proposed fence would help with accidents or safety from the cars along 8 mile Road. Would it help with noise?

Mr. Mastantuono said he did not feel danger from cars was an issue. The fence would definitely help with noise abatement.

Chair Silvestri asked for further information regarding the fact that this property had not always been a corner lot. Building Inspector Strong said there used to be City-owned half parcels that lined 8 Mile Road. They were sold to Wayne County, which took over the right-of-way and widened the road. Therefore there was still a significant amount of space between the location of the proposed fence and where a typical road right-of-way would be.

Member Aniol pointed out that Mr. Mastantuono's property line was coterminous with the road right-of-way line.

Member Aniol said she wasn't comfortable with the fact that the only survey presented to the Board was of the neighbor's property, which had been used to figure out where property lines were located. While she understood that the ordinance did not require a survey for a fence permit, for this variance request the Board did not have a survey sealed by a licensed surveyor to verify things. In an older community like the City of Northville, it was not always apparent where property lines were.

Chair Silvestri said he also would prefer a survey rather than a hand-drawn schematic of the property.

Building Inspector Strong said he had talked with Mr. Mastantuono about getting a survey. However, the City did not normally require surveys for fence installations, and the cost of obtaining a survey could run as high as \$1500.00. Building Inspector Strong said he had worked with Mr. Mastantuono to establish the northern property line. They had found the iron marker in the ground.

Member McKindles was also concerned about the lack of a sealed survey.

Member Aniol asked about the location of the pine tree. Mr. Mastantuono said the tree was about 8 feet from the house, and was just inside their property line.

Member Aniol noted that the schematic did not show the location of any utility easement.

Chair Silvestri opened the public hearing.

Carol Tweadey, 859 Carpenter Street, Northville, supported this variance request. Visually the fence would enhance the area. She agreed that the fence would ensure the bedroom's privacy, and the use of the back yard was important. The proposed fence would be consistent with other fences in the area.

Seeing that no one else came forward to speak, Chair Silvestri closed the public hearing.

Member McKindles reviewed the slope of the property with Mr. Mastantuono. The rear yard sloped toward 8 Mile Road.

**MOTION by Aniol, support by McKindles, to grant the application as requested, based on the findings that:**

- There is a practical difficulty in that this property had not originally been a corner lot. The change was due to circumstances beyond the applicant's control.
- There was a safety issue because this was a very busy road. The fence would provide a buffer to that road.
- The applicants were applying for the minimum variance necessary; they were not asking to go all the way to the property line.
- Substantial justice could be granted in that the applicants had gone through the process required by ordinance; perhaps others who had similar fences had not done this.
- This did not appear to be self-created, again because the property had not originally been a corner lot.

**Subject to the following condition:**

- A survey be provided to show the boundary of the property and all improvements that were currently there as well as the proposed fence location.

Member McKindles said he would support a motion without the condition for a survey. As there was a motion on the floor, he was prepared to bring up a second motion if the first motion failed.

Chair Silvestri said that he understood Member McKindles' resistance to the condition, but without a survey how would the City verify the correct location for the fence? What record would there be that the fence line was placed in proper relationship to the property line?

Building Inspector Strong said that if the variance were granted, the applicants would still have to apply for a building permit, and a site plan would have to be provided. It was up to the property owner to put the fence where they said they would. He inspected fences to make sure they were in the proper areas, to make sure they were not in front yards and the heights were correct, etc.

Member McKindles asked if a civil infraction would be issued if the fence were placed incorrectly. Building Inspector Strong said that was correct.

Member Aniol said that requiring a survey as a condition of approval would provide a solid record of where the fence was to be located.

Member McKindles said that he was not sure the survey was necessary. The BZA could request that Building Inspector Strong inspect the fence including its location, using the survey irons mentioned previously. The irons were what a surveyor would use. This could be a condition of approval.

Building Inspector Strong said he would always check the installation of a fence if it was the subject of a variance.

Member Aniol asked if the applicants had obtained a mortgage survey when they purchased the home. Mr. Mastantuono said they did not receive a mortgage survey. It came out in discussion that often mortgage surveys were no longer part of mortgage paperwork, and mortgage surveys, in any event, did not identify property lines.

Chair Silvestri said his preference would be to have a survey. However, to require a survey seemed cost prohibitive and unreasonable.

Member McKindles confirmed with Planning Consultant Elmiger that if the motion failed, someone on the Board would have the right to make another motion.

Planning Consultant Elmiger said that if the motion passed there would not be another motion. If the motion failed, then a second motion could be offered.

Chair Silvestri confirmed that if the motion failed, the Board could make a subsequent motion.

Chair Silvestri called the motion.

<b>Callahan</b>	<b>no</b>
<b>Aniol</b>	<b>yes</b>
<b>Silvestri</b>	<b>no</b>
<b>McKindles</b>	<b>no</b>
<b>Bingham</b>	<b>no</b>

Therefore **the motion failed 1-4.**

Chair Silvestri asked for another motion.

**MOTION by McKindles, support by Callahan, to grant the application as requested, based on the findings that:**

- There is a practical difficulty in that this property had not originally been a corner lot. The change was due to circumstances beyond the applicant's control.
- There was a safety issue because this was a very busy road. The fence would provide a buffer to that road.
- The applicants were applying for the minimum variance necessary; they were not asking to go all the way to the property line.
- Substantial justice could be granted in that the applicants had gone through the process required by ordinance; perhaps others who had similar fences had not done this.

- This did not appear to be self-created, again because the property had not originally been a corner lot.

**Subject to the following condition:**

- Code Enforcement Services, in the care of Mr. Strong, visit the property to verify that the fence that is constructed is consistent with the representations made here today at this hearing and with the boundary line that has been presented in this package.

Chair Silvestri called the motion:

<b>Callahan</b>	<b>yes</b>
<b>Aniol</b>	<b>no</b>
<b>Silvestri</b>	<b>yes</b>
<b>McKindles</b>	<b>yes</b>
<b>Bingham</b>	<b>yes</b>

Therefore **the motion carried 4-1.**

**VIII. PUBLIC COMMENTS:**

None.

**IX. DISCUSSION:**

Member McKindles asked if the Building Inspector was going to attend BZA meetings in the future. Building Inspector Strong said that he would come if needed. Member McKindles said he supported having the Building Inspector attend meetings to offer clarity to the requests. Chair Silvestri agreed.

Chair Silvestri asked if Board Members’ personal phone numbers were distributed to the public. He thought the City website listed these numbers. Planning Consultant Elmiger said she would check with the City Clerk to find out what City policy was regarding phone numbers. The consensus of the Board was that they did not want their personal phone numbers given out. In any event, the policy should be consistent – either everyone’s phone numbers should be listed or no one’s should be listed.

Alternate Bingham mentioned that he was hearing impaired. It was important that speakers use the podium microphone.

Member Aniol initiated a discussion as to whether the Planning Consultant could give more background than had been traditionally offered regarding the variance requests. The consultant would not have to give an opinion about whether a variance should or should not be granted but more information would be helpful. A listing of ordinance requirements such as what was provided now really did not give any more information than the Board members already had prior to the meeting; they knew the ordinance.

Member Callahan agreed, saying the more information the Board had, the more clarity was given, the easier it was to make a more accurate decision.

Member McKindles agreed. He had requested more information in the past. He didn’t necessarily want to know the consultant’s position regarding whether a variance should be granted, but he would like

more information generally. Right now the recitation of the ordinance was all that was received. Information was especially critical now that there was no member of the Board who had served for many years, and who could provide institutional memory.

Planning Consultant Elmiger said she would discuss this request with City Manager Sullivan. She mentioned that Carlisle/Wortman did do an analysis for other communities, including applying the variance criteria to applications and making a recommendation regarding the application. However, what the Board seemed to be requesting was more information without the opinion.

Chair Silvestri said he would like more background information, but not necessarily an opinion as to whether or not the criteria were met.

Member McKindles summarized the discussion, noting that with the Board's new officers and new members, the Board thought it would be helpful to get more information from the Planning Consultant.

Member Aniol re-affirmed that it would also be helpful to have the Building Inspector present, if this was at all possible. She understood that this might be a budgetary consideration.

Planning Consultant Elmiger said that she would work with the Building Inspector Strong to decide when he should attend meetings.

Discussion followed regarding the benefit of having an opinion from the Consultant. The Board should not necessarily follow the consultant's opinion, but come to their own objective determination regarding cases presented. Planning Consultant Elmiger said she could present an example of what Carlisle/Wortman did for other communities.

## **X. ADJOURNMENT:**

**Motion McKindles, support by Bingham, to adjourn the meeting at 8:26 p.m.**

***Voice vote: Ayes: All. Nays: None. Motion Unanimously Carried.***

Respectfully submitted,

Cheryl McGuire, Recording Secretary

Approved as published 10/5/2016