

**Board of Zoning Adjustment Minutes
Aurora City Hall
City Council Chambers
2 W. Pleasant
Aurora, Missouri
Thursday, April 22, 2021 - 6 P.M.**

1. CALL TO ORDER

6:00 PM

2. ROLL CALL

Chairman Mike Bloss
Vice Chairman Bill Baker
Board Member Shannon Walker
Board Member Cyndy Muench
Board Member Deb Dillman
Alternate Board Member Justin Cox

All present.

3. APPROVAL OF SESSION MINUTES

Approval Of Minutes From April 8, 2021

Vice Chairman Baker made a motion to approve the minutes from the meeting held April 8, 2021. Motion seconded by Deb Dillman. Motion passed with all the following members voting aye.

Ayes: Bloss, Baker, Walker, Muench, Dillman

Nayes: None

4. OLD BUSINESS

Adoption Of Rules Of The Board Of Zoning Adjustment

Chairman Bloss recalled to the Board the set of basic rules for the Board that was presented to them at the previous meeting. He opened up a period for the Board to make comments or discuss any changes to the rules they have been reviewing. Motion to accept the Aurora Board of Zoning Adjustment Rules as they were presented by Ken Reynolds, City Attorney made by Board Member Walker. Motion seconded by Member Dillman. Motion passed to adopt and accept the Aurora Board of Zoning Adjustment Rules with the following members voting aye.

Ayes: Bloss, Baker, Walker, Muench, Dillman

Nayes: None

5. NEW BUSINESS

Fence Review/Appeal - 816 S Terrace Drive

Opening Statement made on the City's side by Director Howlett. Ms. Howlett approached the podium at 6:03 pm. She explained that the fence project and discussion began back in October 2020. Director Howlett tells the Board that Mr. Weber, the applicant for the

meeting, came to her office presenting a request for a fence permit. She explains the situation was unique and the platting was not standard on this lot when compared to other lots in the neighboring area. Ms. Howlett explains that the original plat shows 2 separate lots. One portion of a parcel was intended for Simpsons subdivision and another portion intended for Bisbys subdivision. Director Howlett informs the Board that the main question at play is whether this is a back yard or a front yard. Mr. Weber purchased with intention of the fenced area to be his back yard. She explained to Mr. Weber at the time of the City Code for fencing. Director Howlett and Mr. Weber came to a compromise for the fencing project and the permit was issued. In March of 2021, Mr. Weber came to Ms. Howlett and voiced that the fence was not meeting uses for the property and he purchased it with the understanding he could have a 6 foot fence in the back yard. At this time, Ms. Howlett explains, Mr. Weber requested an appeal as the 6 ft fence was not approved by Ms. Howlett. Because of this appeal, we are here tonight having a meeting.

The applicants approach the podium at 6:06 PM. Present at meeting are Lisa Marto, property owner, and son, Michael Weber, applicant and resident at property in question. Mr. Weber explains that he is wanting a 6 foot fence around his entire rear property. He further explains when the property was being looked at and purchased, the real estate agent was involved and surveyor came to survey the property. Both of these individuals told Mr. Weber that they didn't see any issue with the fencing and it could be done. Mr. Weber did not believe there would ever be an issue with getting this accomplished. Mr. Weber and Ms. Marto both verify that the original plats were never brought up at any point in the purchase and they were not aware of this information. Chairman Bloss inquired how long the property has been recorded as one lot in which Mr. Weber was not certain.

Presentation of Evidence – Lisa Marto and Michael Weber are sworn in at 6:10 pm by Chairman Bloss.

Mr. Weber states he has dogs and kids in the backyard frequently. He expresses for the safety of his family, the fence is needed. He further adds that he has tried the 3 foot fence and it is not good enough. People trespass and can see over and into the 3 foot fence and his dogs have jumped out of the 3 foot fence. For these reasons, Mr. Weber expresses the need for the 6 foot fence. Board Member Cox inquires of Mr. Weber if there is an entrance into the rear of the property like a driveway signifying house frontage. Mr. Weber replied there was not a rear driveway. He adds that he does have a position and possibility to have rear entry into the fenced area.

Presentation of Evidence – Carrie Howlett, Community Development Director is sworn in at 6:15 pm by Chairman Bloss.

Director Howlett presents exhibits A, B, and C to the Board Members. Ms. Howlett expresses she is the witness for the City as well. Exhibit A is a property report card from Lawrence County. She explains to them these report cards are how the City determines ownership, lots, size, and similar items. She reiterates that the Report Card from the County reflects this to be one parcel. The County deed was submitted as supported documentation. Exhibit B presented by Director Howlett is the original platting showing two separate lots. Bisby subdivision side was platted in 1960 as told by Director Howlett. She adds that the Simpson subdivision side was platted years later in 1969. Exhibit C is the City Code on fencing.

Chairman Bloss asked for interested parties to comment. Present at the meeting is neighbor, Jim Herr. He approached the podium to speak about the fence. Mr. Herr is in direct opposition to the fencing. Mr. Herr is sworn in at 6:18 pm by Chairman Bloss. Mr.

Herr explains he lives adjacent to Mr. Weber, at the address of 826 Lakeview Drive. Mr. Herr presented four letters from neighbors expressing opposing views on the fence. All four letters were submitted in as evidence. Mr. Herr expresses that although the fence is a nuisance, that is not the main issue. He states the main problem is that the covenants for his subdivision prohibit this fence. Mr. Herr states that the fence is unsightly in appearance and is not fitting for the neighborhood. He further adds that the City Code must follow subdivision restrictions. Mr. Herr explains he has been in touch with an attorney who sent a Cease and Desist letter to Mr. Weber regarding the fence. Mr. Herr states that Mr. Weber must move the fence 45 feet from the road according to the covenants. Covenants were entered in as evidence. Letter from Mr. Herr's attorney was also entered in as evidence. Mr. Herr has repeatedly stressed the same previously mentioned items. Mr. Herr iterates that no one has a 6 foot fence in a front yard. Chairman Bloss voiced that he disagreed and had witnessed fences in town that are 6 foot in the front yard. Vice Chairman Baker asked for clarification of where the 45 foot mark would start for the fence. Mr. Herr explains that the building lot line is 45 feet from the curb and would be in line with the frontage of other homes. Mr. Herr continued to add that no other fences around the neighborhood look the way Mr. Weber's fence appears. Mr. Herr believes that is is unnatural and has defaced the entire neighborhood. Chairman Bloss voiced disagreement. He informed the room that he had driven by the property prior to the meeting and saw no issue with the fence other than it transitioning from 6 feet to 3 feet and would be more fluent with the neighborhood to be all the same height.

Mr. Herr expressed safety concerns over the fence obstructing the view naturally. Mr. Herr presented a photo of the fence for the Board.

Interested party, Cyndy Muench, lives nearby and voices in favor of the fence. She states that there is extra space between the properties and she, also, has people walking through the property where there is open space and no fence. Ms. Muench voiced the opinion that if she had small children , she would want a taller fence in her back yard. She informs the room that if Mr. Weber brings the fence in to the 45 foot mark as requested by Mr. Herr that Mr. Weber would lose a great deal of his back yard. She voices agreement that when purchasing a home, home buyers are not always made aware of rules outside of the normal regulations.

Mr. Herr again spoke stating that Mr. Weber has enough in the back yard to move the fence and still have an adequate rear yard. Cyndy Muench replied that people have differing opinions to the matter. Chairman Bloss points out that as a neighbor, it appears Mr. Herr is trying to direct Mr. Weber what he can and cannot do with his property. Mr. Herr responded that he was not trying to dictate what can be done but the covenant rules are outlined for them to follow. He again states that the City should be following local covenant restrictions.

Director Howlett requested to interject. She refers to City Code 415.070 and explained to the Board that the City does not repeal subdivision covenants but the City does not enforce them.

City Attorney, Ken Reynolds interjected that municipalities do not enforce restrictive covenants of neighborhoods. He explained that Cities follow their own codes and laws but do not get involved with covenants.

Mr. Herr referred to the covenants again and Mr. Reynolds reiterated that the City does not get involved in covenants. Mr. Herr informs the Board that if they do not enforce them, then the court in Mount Vernon will enforce the covenants. Mr. Herr continued to express

opposition to the fence, and added in that the Christian thing to do is not aggravate your neighbors and try to follow our duties to be good neighbors. He stated that the fall back solution will be the courtroom.

City Manager, Jon Holmes requested to speak about other properties in the neighborhood that may have similar situations with fencing. Mr. Holmes inquired if any other home on Lakeview Drive has taller fencing in the front. Mr. Herr denied any other property with fencing. Chairman Bloss inquired if there is such property. Mr. Herr continued to deny. Mr. Holmes addressed Chairman Bloss in regards to a property at 1002 Terrace Drive that is situated with a similar fencing placement.

Mr. Weber approaches the podium for his response. He expressed that he tried to be neighborly at first but felt he was getting constant opposition from Mr. Herr and another neighbor Mr. McKinley, whom is present at the meeting tonight with Mr. Herr. He reiterated that he tried to compromise with the 3 foot fence but he would like to proceed with the 6 foot fence at this point. Mr. Weber and Ms. Marto expressed that they had received numerous letters from Mr. Herr and were beginning to feel harassment. Mr. Herr interjected that he has only sent one letter and has not harassed the applicants.

Dan McKinley is present at meeting and is sworn in at 6:53 pm. He voiced opposition for the fence. Mr. McKinley is the property owner at Lakeview Drive of one half of lot 22, lot 23 and lot 24, situated in proximity to Mr. Weber. Mr. McKinley stated that he wants to protect his family and property and the fence destroys the view and hurts property value. He informed the Board that he is trying to vote against the request by Lisa Marto and Michael Weber.

Attorney Reynolds addressed the Board to remind them that restrictive covenants have nothing to do with this meeting, this evening, or this case.

Chairman Bloss informed the Board that they need to decide if they will allow a variance on the City Code. Ken Reynolds voiced agreement. He reminded them to ask themselves what the intent of the ordinance is and once they determine that, they need to decide if they are going to deviate from that. Mr. Reynolds informed the Board that they should look at the platting of the subdivisions when determining their response.

Board Member Muench asked to be recused from voting tonight based on locality.

Chairman Bloss made a motion to allow a variance to allow Mr. Weber to build a 6 foot fence around property. Votes were taken individually by all members of the Board. The following votes were recorded: Chairman Bloss voted aye. Vice Chairman Baker voted aye. Board Member Walker voted aye. Board Member Muench recused. Board Member Dillman voted aye. Board Member Cox voted aye, all in favor of variance to allow fencing. Motion passed to allow fencing variance at 7:10pm.

Ayes: Bloss, Baker, Walker, Dillman Cox

Nayes: None

Abstain: Muench

6. ADJOURNMENT

Motion to adjourn made by Member Walker. Motion seconded by Member Dillman. Motion passed with the following members voting aye.

Ayes: Bloss, Baker, Walker, Muench, Dillman, Cox

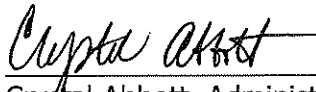
Nayes: None

Meeting adjourned at 7:11 pm.

A handwritten signature in cursive script that reads "Mike Bloss". The signature is written in black ink and is positioned above a horizontal line.

Mike Bloss, Chairman

ATTEST:

A handwritten signature in cursive script that reads "Crystal Abbott". The signature is written in black ink and is positioned above a horizontal line.

Crystal Abbott, Administrative Assistant