

**City of Merrill
Zoning Board of Appeals
Tuesday, June 7, 2011 at 6:00 P.M.
City Hall Basement Conference Room, 1004 East First Street**

Members Present: Dick Baumgart (Chairperson), Dean Haas, James Koebe and Ron Burrow (Alternate).

Others Present: Building Inspector Rich Grefe, Engineer Assistant George Schau (arr. 6:16 P.M.), Alderman Ryan Schwartzman, Alderman Dave Sukow (arr. 6:13 P.M.), Darin Pagel, Gary Schwartz, Peter Bear, Victoria Bear, Qemal Alimi, David Nelson (arr. 6:05 P.M.), Sherri Pehlke and City Clerk Bill Heideman. A student was in attendance to videotape the meeting for the Cable Access Channel.

Call to order

Chairperson Baumgart called the meeting to order at 6:00 P.M.

Minutes of March 3rd, 2011 meeting

Motion (Burrow/Koebe) to approve, as presented, the minutes of the March 3rd, 2011 meeting. Carried.

Public Hearing – Request for fence variance from Gateway North, LLC

Information was in the meeting packet.

In November of 2010, Gateway North, LLC applied for and received approval for a fence permit for their business at 3350 East Main Street (Pine Ridge Mobil). After the fence was erected, Mr. Schwartz was informed that the fence was not in compliance and that he would need to apply for and receive a variance to retain the fence. Gateway North, LLC has applied for such a variance, to retain this six-foot fence, which is located on the north side of their property.

Building Inspector Grefe reported on his determination that the fence is not compliant. He based his decision on the fact that Merrill Municipal Code 113-320(8) states that a front lot is defined as “parallel the street upon which the lot has the least dimensions”, and that the narrowest dimension of the lot in question faces the east on Pine Ridge Avenue.

Chairperson Baumgart reviewed the procedures that will be following during the public hearings and declared the first hearing open.

Representing Gateway North, LLC, Gary Schwartz stated that, when he applied for the fence permit, he was told that he could erect a four-foot fence on his front or side and a six-foot fence on his back lot. He stated that he was never told that the side on which the fence was erected was his front yard. Mr. Schwartz then provided some historic information on the property and distributed additional information. He stated that, according to his interpretation of the City zoning code, he could have erected an eight-foot chain link fence had he so desired.

Representing the neighboring property (Pine Ridge Restaurant, Qemal Alimi), Peter Bear stated that the opposition to the fence is not contentious, but that, in his opinion, the fence is harmful to the neighboring business. He also expressed some safety concerns related to the fence.

Former Zoning Administrator Pagel addressed the board. He stated that he was the Zoning Administrator at the time the property was annexed to the City, and that at that time Gateway North, LLC was subject to all City codes. He responded to observations that Mr. Schwartz had made regarding overlapping and abutting properties. He noted that the only frontage for the Pine Ridge Restaurant is on Pine Ridge Avenue.

Alderman Sukow stated that he is a customer of both the Pine Ridge Restaurant and Pine Ridge Mobil. He remarked that both have the right to be in business, but that the ordinance is clear and should be followed to improve visibility.

Building Inspector Grefe stated that the Zoning Board of Appeals should use caution when making this decision, as the granting of a variance could set a precedent.

Motion (Burrow/Haas) to close the public hearing. Carried.

The public hearing was closed at 6:25 P.M.

Motion (Burrow/Haas) to deny the variance. Carried.

Public Hearing – Request for fence variance from Nelson’s Power House

Nelson’s Power House, 123 S. Genesee Street, has submitted a request for a variance to erect a six-foot chain-link fence at their business.

Building Inspector Grefe provided verbal information. He noted that the business is in a residential district, but that it had been “grandfathered” in.

Chairperson Baumgart declared the public hearing open.

Representing Nelson's Power House, David Nelson provided historic information on his business and the building it occupies. He stated that his primary reason for wanting to erect the fence is security. He also stated that the fence would reduce safety concerns that he has, since it would minimize customer access to the workshop area. He suggested that the fence would offer a better view and additional privacy for the neighbors.

Mr. Nelson stated that, if the variance is approved, the fence installation would involve removing some trees, which is something the neighbors want. He stated that he would be willing to install the fence three feet back from the lot line.

Sherri Pehlke, 121 S. Genesee Street, stated that her and her husband had originally opted to have bushes instead of fencing separating the two properties. She would prefer a different material for the portion of the fence that would be between Nelson's Power House and her home.

Building Inspector Grefe raised the issue and provided information relating the traffic vision triangle.

Motion (Burrow/Haas) to close the public hearing. Carried.

The public hearing was closed at 6:53 P.M.

Motion (Burrow/Haas) to grant the variance, contingent upon Nelson's Power House and their neighbors (Gregory and Sherri Pehlke) reaching an agreement on the material to be used for the portion of the fence between the Nelson's Power House complex and the Pehlke house. Carried.

Adjournment

Motion (Koebe/Burrow) to adjourn. Carried. Adjourned at 7:00 P.M.

Minutes prepared and submitted by:

William N. Heideman, WCMC
City Clerk

June 21, 2011

Gary Schwartz
Gateway North LLC
3350 E Main Street
Merrill, WI 54452

Re: Noncompliant fence

Mr. Schwartz,

Recently the City of Merrill, Zoning Board of Appeals, has denied your request to allow a fence constructed, at 3350 E Main Street, to stay as is. The fence will need to be modified to meet current zoning requirements.

Per Zoning Ordinance 113-407, violations of Merrill City Code are to be made complaint within 30 days of the violation. Since the Zoning Board of Appeals denied your variance on June 7, 2011, compliance is required by July 7, 2011.

As of 6-21-2011 the fence has not been modified to meet Code. I have enclosed Ordinance sections for you to review regarding the fence location and height restriction.

Please feel free to contact me with any questions, or if assistance is required to determine the proper point in which to measure the fence height.

Respectfully,

Rich Grefe
Zoning Administrator and Building Inspector
City of Merrill
Cell: 715-218-5713
Office: 715-536-4880

CC: Mayor Bialecki
City Attorney Hayden
Attorney Peter Bear

September 20, 2011

Gary Schwartz
Gateway North LLC
3350 E Main Street
Merrill, WI 54452

Re: Noncompliant fence and height

Mr. Schwartz,

As per our meeting with the City Attorney on September 13, 2011, you have questioned my determination of fence height.

As per Merrill Municipal Code, Section 1-2 Definitions and rules of construction; Generally, as defined means, "When provisions conflict... Words and phrases shall be construed according to the common and approve usage of the language ..." As one measures the height of common things, such as body height, structure height etc. a measurement is obtained at the point where positioned "from the bottom to the top" as defined in Webster New Collegiate Dictionary.

Consistent practice within the City of Merrill, in regards to measuring fences has been from grade at the site of the fence, from the bottom of the fence to the top of the fence. Likewise, with discussion of chain link fence, common understanding is "chain link fence" is constructed of metal.

The fence modification requirements, to your fence, remain the same: four feet in height at grade on the front and side yard, from the bottom to the top, and fifty percent open on the front yard.

If not resolved by October 1, 2011, I have requested further legal action by the Office of the City Attorney to compel compliance with the City of Merrill Zoning Ordinance. This would involve the filing of a long form complaint in the Merrill Municipal Court with a daily fine of \$25.00 per day plus costs from August 8, 2011 through the date of judgment. The City's goal in prosecuting these matters is not to file complaints in the Municipal Court and collect forfeitures, but instead to bring your property into compliance with the City's Ordinance requirements.

Respectfully,

Rich Grefe
Zoning Administrator and Building Inspector
City of Merrill
Cell: 715-218-5713
Office: 715-536-4880

CC: Mayor Bialecki
City Attorney Hayden
Attorney Peter Bear