

**CITY OF KEEGO HARBOR
ZONING BOARD of APPEALS MEETING MINUTES
TUESDAY November 29, 2022**

CALL TO ORDER

Vice Chairman Emerling called the meeting to order at 6:00 pm.

ROLL CALL

Present: Vice Chairman Emerling, Board Member Fletcher, Board Member Svaluto and Board Member Trzos

Absent: Chairman Michael

Motion by Board Member Svaluto, support by Board Member Fletcher to excuse Chairman Michael

Ayes: 4

Nays: 0

Motion carried

Staff Present: City Manager Tammy Neeb and City Planner Jason Smith

APPROVAL OF AGENDA

Motion by Board Member Svaluto, support by Board Member Fletcher to approve the agenda for the November 29, 2022 Zoning Board of Appeals meeting

Ayes: 4

Nays: 0

Motion carried

APPROVAL OF MINUTES

Motion by Board Member Svaluto, support by Vice Chairman Emerling to approve the September 28, 2022 Zoning Board of Appeals meeting minutes

Ayes: 4

Nays: 0

Motion carried

PUBLIC COMMENTS

No one addressed the Board Members

NEW BUSINESS

Oath of Office – City Clerk Tammy Neeb administered the Oath of Office

John Fletcher

Phil Trzos

2023 Meeting Schedule

Motion by Board Member Fletcher, support by Board Member Trzos to approve 2023 Zoning Board of Appeals meeting schedule

Ayes: 4

Nays: 0

Motion carried

2801 Orchard Lake Road – C2 General Commercial District, Section 15.04 – Walls

Public Hearing Open – 6:25pm

Public Hearing Closed – 7:30pm

Planner Smith reviewed his memo stating the applicant is requesting to install a 6-foot-tall white vinyl fence near the south property line along with additional landscaping to provide screening. This request is in lieu of a 6-foot decorative masonry wall. The applicant received site plan review approval by the Planning Commission in June of 2022. Section 15.04(a) requires the installation of a masonry wall to separate commercial uses from residential uses. Due to the adjacent single-family home to the south of the subject property the Planning Commission requires an installation of a masonry wall to receive site plan approval. Planner Smith indicated Section 15.14(e) of the Keego Harbor Zoning Ordinance states: In lieu of a masonry wall, the Zoning Board of Appeals may permit the use of a greenway or other fencing material. This is only if a masonry wall is an established hardship.

Planner Smith stated the Zoning Board of Appeals needs to make the determine based on the five (5) criteria, to above the applicant's request. All five (5) criteria need to be yes to approve the variance, Planner Smith explained this multiple times throughout the meeting. Board Member Fletcher explained the legal ramifications of not following the criteria The ZBA needs to determine if creating a masonry wall creates a hardship on the applicant. Since only four (4) members attended the meeting, for this to pass, three (3) members need to vote yes. Commercial developments in Neighborhood Residential need to put up a masonry wall.

Board Members discussed a letter from the neighbor who lives at 2170 Maddy Lane (Ms. Jones) throughout the public hearing and after most Board Members feel unbelievably bad for the homeowner and her garden.

Applicant Nemo Yaldoo is willing to give the neighbor at 2170 Maddy Lane two (2) feet from his property. Mr. Yaldoo said the neighbor at 2170 Maddy Lane is outside each day in her garden, and he believes all the neighbors on Maddy Lane like seeing her garden. He would like to put up a vinyl fence where the wooden fence currently stands. He believes a vinyl fence is more appealing than a masonry wall.

Theresa Shimansky – Ms. Shimansky indicated Ms. Jones is devastated about the masonry wall. Ms. Shimansky also stated that Ms. Jones has worked so hard on her garden.

Rick Mickley – Mr. Mickley lives on Maddy Lane and has direct vision to the building at 2801 Orchard Lake Road. He indicated for security purposes he is for the masonry wall and stated that Ms. Jones no longer lives at in Keego Harbor, the home is for sale. He is happy the applicant has cleaned up the property and he is proud to be a resident of Keego Harbor. He is concerned a vinyl fence will not hold up over time.

Board Member Fletcher indicated that the neighbor's letter should have no bearing on this decision. The Planning Commission made the masonry wall a stipulation on their resolution approval of the site plan at 2801 OLR. The applicant was at the Planning Commission meeting and heard their decision. The ZBA cannot circumvent the Planning Commission and the City Zoning Ordinances. If the ZBA would like, send the fence ordinance and masonry wall back to the Planning Commission for review. The ZBA must make their decision based on the five (5) criteria.

Board Members discussed the five (5) criteria, but some believe these are subject to interpretation...

#1 – is the requirement of the masonry wall preventing the applicant from using the property? Some board Members discussed the neighbors garden and how this applies to the wall.

#2 – does the installation of the vinyl fence provide justice to the property? Some Board Members believe the vinyl fence protects / enhances the garden. Planner Smith asked why would they allow the vinyl fence now but not for other businesses?

#4 – is the issue self-created? Board Member Fletcher indicated the applicant can put up a masonry fence, this is a self-imposed hardship by the applicant on himself. Some Board Members feel bad the applicant will need to tear down trees as that is expensive.

#5 – what is the spirit of the ordinance? Planner Smith to create separation between commercial and residential. Some Board Members believe the masonry wall is a hardship on the applicant as it is more expensive.

Board Member Fletcher asked if the applicant has contacted any Board Members about this case. Board Member Trzos has done work with the applicant in the past and asked if he should not vote. Vice Chairperson Emerling stopped the discussion as he said it was counterproductive and does not believe the board needs to use the criteria to decide. Planner Smith and Board Member Fletcher again explained that they must follow the same five criteria for all cases that come before the Zoning Board of Appeals.

Rick Mickley – Mr. Mickley really likes what the applicant has done with the building. He wants, as the ordinance states, a permanent wall goes in between a commercial building and residential homes. There is a for sale sign on 2170 Maddy, Ms. Jones does not live there any longer.

Some Board Members discussed the price of a masonry wall if a masonry wall improves the property and whether a masonry wall causes a hardship. Vice Chairperson Emerling asked for a motion.

Resolution by Board Member Svaluto; support by Board Member Trzos to approve the variance to install the 6-foot vinyl fence near the south property line along with additional landscaping to provide screening in leu of a 6-foot decorative masonry wall because to do so would relive the unnecessary burden of a masonry wall and provides justice to the petitioner and creates a screening between the residence and retail business and meets the 5 criteria

Roll Call Vote Ayes: Emerling, Svaluto, Trzos Nays: Fletcher Motion Passed

ADJOURNMENT

Vice Chairperson Emerling adjourned the meeting at 7:35 pm.

David Emerling

David Emerling (Jul 24, 2023 08:57 EDT)

David Emerling
Vice Chairperson, Zoning Board of Appeals

Tammy Neeb

Tammy Neeb (Jul 18, 2023 13:22 EDT)

Tammy Neeb
Clerk, City of Keego Harbor










November 29 2022 ZBA Meeting Minutes

Final Audit Report

2023-07-24

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