

**MINUTES OF MEETING
ZONING BOARD OF ADJUSTMENT
NOVEMBER 5, 2019 4:00 P.M.**

DOCKET 1279

33 Dunleith Lane

A meeting of the Zoning Board of Adjustment was held at 4:00 p.m. on Tuesday, November 5, 2019 at City Hall.

The following members of the Board were present:

Chairman Liza Forshaw
Ms. Laura Long
Ms. Elizabeth Panke
Mr. David Schlafly
Mr. Dan Welsh

Also present were: Erin Seele, City Attorney; Anne Lamitola, Director of Public Works; Andrea Sukanek, City Planner; Councilman John Fox; Mayor Spewak; and Lori Wrobel, Administrative Assistant.

Chairman Forshaw called the meeting to order at 4:04 P.M.

Approval and Adoption of the Agenda

Mr. Schlafly made a motion to adopt the agenda. Ms. Long seconded the motion. All those present were in favor.

Approval of the Minutes from the January 8, 2018 meeting

Ms. Long made a motion to approve the minutes as submitted. Ms. Panke seconded the motion. All those present were in favor; the minutes were approved.

Docket 1279 Petition is submitted by Kristen Kuda and David Fox for the property at 33 Dunleith. Petitioner is requesting relief from the Building Commissioner denying fence due to location in the required side or rear yard shall not exceed six feet in height and posts not to exceed six feet, six inches which is in violation of Ordinance 1175, Section IV-C. No wire or steel mesh wire fencing or chain link may be used in any manner as a part of the fence in any front, side, or rear yard which is in violation of Ordinance 1175, Section IV-C. (latest edition adopted)

Ms. Sukanek stated the applicant requests a variance for a fence installed without a permit. The 8' fence posts exceed the permitted 6' 6" height. The fence is constructed with large 8' posts and wire mesh, a fence material not permitted by the City.

Chairman Forshaw introduced the following exhibits to be entered into the record:

Exhibit A – Zoning Ordinance 1175, as amended;

Exhibit B – Public Notice of the Hearing;

Exhibit C – Letter of Denial dated August 27, 2019;

Exhibit D – List of Residents sent notice of meeting;

Exhibit E – Letter from the resident requesting the variance dated September 3, 2019;

Exhibit F – Entire file relating to the application

Carol Walsh, homeowner at 33 Dunleith, took the oath and addressed the Board. When the fence was constructed, it was designed as a garden enclosure, to keep wildlife out of the vegetable garden. They have received many compliments from neighbors. The posts are visible, but the mesh is not visible at a distance and was designed to be aesthetically pleasing. The homeowners were unaware of the necessity of a permit for the enclosure. The petitioner provided written endorsements or statements of non-objection from numerous neighbors on Dunleith Drive. There was no evidence of any opposition.

Kristin Kuda, Luna Landscaping, was sworn in and addressed the Board. The enclosure is angled, and the portion of the enclosure closest to the side is roughly 7' from the property line. Chairman Forshaw inquired if consideration was given to the possibility that the enclosure could be an accessory structure and not a fence.

Ms. Sukanek identified the required side yard setback for an accessory structure as 10% of the width not to exceed 20'.

Discussion ensued regarding materials used, alternative materials, and definitions of fence and accessory structures. Board members observed that Ladue residents need a lawful and practical way to keep wildlife out of their gardens, and the zoning code's current prohibition on wire or steel mesh fencing is an obstacle. However, the structure in question, with its high ornamental posts, seems distinguishable from a fence. It bears a resemblance to other types of garden structures such as a trellis, arbor or pergola.

After discussion of the facts presented, it was determined a variance was required as the structure does not meet the City requirements for either an accessory structure or a fence. Mr. Welsh made a motion to overrule the Building Commissioner's conclusion that the structure before the Board is a fence, and to find instead that the structure is a non-fence accessory structure. Ms. Panke seconded the motion. The vote was as follows:

Chairman Liza Forshaw	"approve"
Ms. Laura Long	"approve"
Ms. Elizabeth Panke	"approve"
Mr. David Schlafly	"approve"
Mr. Dan Welsh	"approve"

With five (5) votes in favor and zero (0) against, the motion passed, the ruling of the Building Commissioner was overturned. The structure was determined to be an accessory structure.

Chairman Forshaw advised the petitioner that although the ruling of the Building Commissioner was overturned, a variance for an accessory structure is still necessary, and she recommended that the petitioner work with the Building Commissioner to revise the application. A continuance

was granted so that the petitioner may return with a request for a variance at a future Zoning Board of Adjustment meeting.

Adjournment

At 4:39 p.m. Ms. Panke made a motion to Adjourn the meeting. Mr. Welsh seconded the motion. A unanimous vote in favor was taken.

DOCKET 1279

DATE OF HEARING November 5, 2019

NAME Kristen Kuda and David Fox

DESCRIPTION OF PROPERTY 33 Dunleith Lane

CAUSE FOR APPEAL Petitioner is requesting relief from the Building Commissioner denying fence due to location in the required side or rear yard shall not exceed six feet in height and posts not to exceed six feet, six inches which is in violation of Ordinance 1175, Section IV-C. No wire or steel mesh wire fencing or chain link may be used in any manner as a part of the fence in any front, side, or rear yard which is in violation of Ordinance 1175, Section IV-C.

RULING OF THE BOARD After discussion, on the basis of the evidence presented, the Board finds the improvement in question is not a fence but instead a non-fence accessory structure. The decision of the Building Commissioner is overturned. The Board granted a continuance to permit the case to be revisited after the application is revised and reviewed by the Building Commissioner.



Ms. Liza Forshaw, Chairman