

**Minutes of the Zoning Board of Appeals
Of the City of Portland**
Held on Monday, August 14, 2023, at 7:00 P.M.
In Council Chambers at City Hall

Members Present: Parsons, Barnes, Graham, Breedon

Absent: None

Staff: City Manager Gorman (Zoning Administrator), City Clerk Miller

Guests: Paul LeBlanc, PLB Planning Group; Carl Zies; Shelly Laughlin; Ted Goodman

City Clerk Miller called the meeting to order at 7:00 P.M. with the Pledge of Allegiance.

City Clerk Miller called for nominations for Chair.

Motion by Barnes, supported by Graham, to keep the officers. Parsons as Chair, Graham as Vice Chair, and Breedon as Secretary.

There were no other nominations.

City Clerk Miller held a vote for the motion.
All in favor. Approved.

There were no public comments.

Motion by Barnes, supported by Graham, to approve the proposed agenda as presented.
All in favor. Approved.

Motion by Graham, supported by Barnes, to approve the minutes of the February 13, 2023, meeting as presented.
All in favor. Approved.

Chair Parsons read Zoning Ordinance Article 16, Section 3 (a)(5) which outlines how the Zoning Board of Appeals must make its decisions.

Chair Parsons opened the Public Hearing at 7:04 P.M.

City Manager Gorman provided a summary of his decision to deny the Fence Permit Application for construction of a wood pallet fence at 532 Divine Hwy.

Mr. LeBlanc provided responses to the three main components outlined as the basis for the appeal of the decision by City Manager Gorman.

1. *Requirement of a permit* – Sections 18-2 (a)(1), (a)(2), and (c)(1) fences are considered a structure and a permit is required.

2. *Fire resistance of the fence* – All references except one are from other Zoning Ordinances, not the City of Portland's. The term “flammable solid” outlined is not in the Zoning Ordinance. The Fire Chief of the Portland Area Fire Authority raised concerns about this fence structure.
3. *Orientation of the fence* – The fence was constructed without a permit with the unfinished side facing the street. If the fence is constructed on the property line, then are the proposed planter boxes encroaching on the neighboring property? Communication was received from an adjacent property owner with concerns the fence is encroaching on his property.

City Manager Gorman stated the required Public Notice was published in the local newspaper and mailed to the surrounding properties to 532 Divine Hwy. As noted, comments were received from an adjacent property owner with concerns about the property line in addition to aesthetics.

The property owners, Carl Zies and Shelly Laughlin, provided a summary of the process they went through to get to this appeal process:

- They couldn't find the appropriate information in the Zoning Ordinance noting a permit was required.
- They went ahead with construction then were notified of the permit requirement and told to stop construction.
- Construction was stopped and the permit process was started.
- They were notified of the concern about the flammable hazard of the fence and are prepared to remedy that by painting it with fire resistant paint which would also help with aesthetics.
- The City Zoning Ordinance references the Michigan Department of Transportation code regarding fire hazard. This is where the reference to the term “flammable solid” came from.
- They did their due diligence to verify the fence was not constructed on or near the property line including finding where the survey posts are located.

The property owners further noted if they had known a permit was required for construction they would have done so. As soon as they knew they tried to remedy the situation.

Chair Parsons asked if the property dispute had been resolved.

There was discussion between Mr. Goodman and the property owners.

Chair Parsons stated the duty of the Zoning Board of Appeals (ZBA) is to determine whether the decision of the Zoning Administrator was reached in an appropriate manner.

Mr. LeBlanc stated the ZBA is not allowed to take new information that was not available to the Zoning Administrator when the decision was made and that he was not biased or arbitrary.

City Clerk Miller clarified how to find the Zoning Ordinance and explained the codification process that is currently underway.

City Manager Gorman noted he is not aware of any community that does not require a fence permit. He further noted his decision to deny the Fence Permit Application was based on the concern of it being a fire hazard and the construction.

ZBA Minutes – August 14, 2023

Chair Parsons closed the Public Hearing at 7:29 P.M.

Under New Business, there was consideration of the appeal of the determination of the Zoning Administrator for the denial of a fence permit for a fence constructed of wood pallets at 532 Divine Hwy.

Motion by Breeden, supported by Graham, to uphold the decision to deny the fence permit application for the fence constructed of wood pallets at 532 Divine Hwy.
All in Favor. Approved.

Mayor Barnes noted he has been Mayor since 2003, on City Council since 1999, and appointed himself to the ZBA because it is often an unsavory position. He noted this is the first time he is aware of the ZBA has heard an appeal of a decision by the Zoning Administrator. He complemented Mr. Zies and Ms. Laughlin on the way they presented their case. He stated City Manager Gorman has rules he has to adhere to and as stated are indicative of the fence not being permitted and that is why he voted to uphold the decision.

There were no additional board member comments.

Motion by Graham, supported by Breeden, to adjourn the meeting at 7:34 P.M.
All in favor. Approved.

Respectfully submitted,

Rachelle Breeden, Secretary