

**Minutes of the Zoning Board of Appeals
Of the City of Portland**

Held on Monday, February 11, 2013 at 7:00 P.M.
In Council Chambers at City Hall

Members Present: Barnes, Graham, Frederick, Miller, Fedewa

Staff: City Manager Dempsey, City Clerk Miller

Guests: Dick Keusch, property owner of 425 Water St; Sue & Robert White, property owners of 431 Pleasant St.

City Clerk Miller called the meeting to order at 7:00 P.M.

City Clerk Miller opened the floor for nominations for the office of Chairman.

Motion by Barnes, supported by Graham, to elect Frederick as Chairman.

Chairman Frederick opened the floor for nominations for the office of Vice Chairman.

Motion by Miller, supported by Graham, to elect Barnes as Vice Chairman.
All in favor. Approved.

Chairman Frederick opened the floor for nominations for the office of Secretary.

Motion by Barnes, supported Fedewa, to elect Miller as Secretary.
All in favor. Approved.

The Pledge of Allegiance was taken.

City Clerk Miller took the roll call. All members were present.

There were no Public Comments.

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

Motion by Barnes, supported by Graham, to approve the minutes of the August 8, 2011 meeting as amended for typographical corrections.
All in favor. Approved.

Chairman Frederick opened the Public Hearing at 7:04 P.M.

City Manager Dempsey stated that Keusch Super Service is seeking a variance for a fence on the property at 425 Water St. They are seeking relief from the following zoning requirements:

1. Fence setbacks to allow a fence to be placed closer to the front lot line along Water Street and Pleasant Street; and

2. Fence height requirements to allow an 7' 4" fence, including barbed wire, rather than a 4' fence in the required front setback; and
3. The prohibition against using barbed wire to permit the use of barbed wire at the top of the fence.

City Manager Dempsey read a letter from Eric & Kristy Blackmer of 425 Pleasant St. stating their request that the tree line removed for installation of the fence in question be replaced as it provided a sound barrier to work that goes on at 425 Water St., sometimes at all hours of the night.

City Manager Dempsey stated the Public Notice was published in the Review & Observer and letters were sent to residents within a 300' radius of the property as required.

City Manager Dempsey stated no other comments have been received in regard to this issue.

Mr. Keusch explained this property is used to store cars, tires and other goods that need safe keeping. They have had vandalism in the past and feel the need for a fence higher than 4' along the front setback with the barbed wire on the entire fence. Cars that have been impounded for the Police Department are also kept on this property. The trees were taken out along Pleasant St. before the fence was planned.

Mr. Keusch stated his belief that the fence is not any more unsightly than other fences in the industrial area. There is not actual "work" done at this site very often; especially as their new facility is better suited to the work that was done there.

Chairman Frederick went through the questions and answers on the Application for Zoning Variance.

Vice Chairman Barnes clarified that all 5 criteria on the application must be met in order for a variance to be granted.

Vice Chairman Barnes asked if any of the trees removed were in the right-of-way.

Mr. Keusch stated they were not; they were messy elm trees.

City Manager Dempsey stated he has checked with Police Chief Bauer to see if they require barbed wire fencing for a secure lot in keeping impounded vehicles. Chief Bauer indicated this type of fencing is not required but they would require the property owner keeping impounded vehicles to keep them secure and make good on any damaged property from vandalism.

Sue White of 431 Pleasant St. addressed the Board. The property owned by she and her husband is directly across from the fence in question. She stated the trees removed were maple and walnut and were beautiful in the Fall. There is often the sound of work being done after dark, they have never complained. They believe the fence to be unsightly as it follows the lay of the land and is not straight across the top. The old fence was deteriorating and was replaced. She questioned the need that Keusch's have to secure the property. There have previously been issues with water sitting in tires, etc and causing problems with mosquitos during the summer which presented further concern about West Nile Virus. These issues were addressed by the City and Keuschs took care of the problem. There are many cars being stored on the property that have been there for a very long

time. She and her husband would like to see the fence removed and the storage of these materials moved out of town.

Mrs. White further stated that it is untrue there was a gate in the old fence as noted by Mr. Keusch earlier. She and her husband look off their front porch and see this unsightly fence with barbed wire. She presented photos of the view from their home.

Chairman Frederick closed the Public Hearing at 7:26 P.M.

Under New Business, Member Graham commented it would be unfortunate to live across from this property.

City Manager Dempsey clarified the property at 425 Water St. is located in a zoned industrial area and does allow a fence enclosure up to 8' behind the required front setback line but does not allow barbed wire unless approved by the Planning Commission thus creating the variance requests tonight. These uses are per the Zoning Ordinance Section 42.303 (a) 4-5. The only Special Land Use that allows the use of barbed wire is for a junk yard which would require a larger piece of property than is in question here.

City Manager Dempsey stated the City has dealt with the Keuschs on Code issues before. They have always been very responsive in taking care of these issues.

Chairman Frederick asked if this property had always been zoned for industrial use.

City Manager Dempsey stated it has. He further stated that this is not an “island” of industrial use as the entire area has been industrial and is bordered by a residential area. There have occasionally been noise complaints; most residents understand the industrial uses when they move to the area.

Member Fedewa asked if this fence installation had been reviewed.

City Manager Dempsey stated the permit process was not followed on its installation; so it was not reviewed.

Chairman Frederick guided the Board Members through the review of the application only considering the standards in relation to Zoning Ordinance Section 42.303 (a) 4-5.

On Question #1, Vice Chairman Barnes stated the question specifically states that compliance would “unreasonably prevent the applicant from using the property for a permitted purpose”. He stated that the current use of this property is permitted but the way the Zoning Ordinance is written it specifically states the use of barbed wire is not allowed. He further stated that in terms of the use of barbed wire on the fence, it is not unreasonable to not allow its use.

Vice Chairman Barnes also stated that in terms of the setbacks it can be seen that the shape and grade of the property creates a unique circumstance.

On Question #2, Chairman Frederick stated the property has certain narrowness, creating two front yards with the point of the property there is only 1 side yard. He further stated the location of the

fence makes sense due to the unique characteristics of the property but would not lend to the need for barbed wire. The Zoning Ordinance would allow for an 8' fence.

On Question #3, Chairman Frederick clarified this standard stating there must be some right being denied the applicant that others are enjoying.

City Manager Dempsey stated the fence on the Builders Lumber property is along the sidewalk. A new owner of that property could repair the fence and keep its location. A new fence could not be placed in the same location without a variance.

On Question #4, Chairman Frederick stated the uniqueness of the property was not created by the applicant. The building and property were situated in the same manner when they were purchased.

Member Graham stated the use of the property is the choice of the applicant and should be considered.

City Manager Dempsey clarified that this property is zoned for industrial use and as such its current use is permitted. This permitted use also allows for a fence. The shape of the property creates the problem; not the use.

On Question #5, Vice Chairman Barnes stated that this standard asks if there is anything about the fence that will significantly undermine the public safety or security or affect the justice to be administered for either side.

Mr. Keusch stated he understands the unsightliness to the residents facing the fence. He asked if straightening the top of the fence and planting trees would help.

Mrs. Smith stated she would like to see the top of the fence straightened out.

There was discussion of types of vegetation that could be planted in this small area between the sidewalk and fence.

Vice Chairman Barnes stated there is nothing in the Zoning Ordinance that would allow barbed wire unless something was previously approved by the Planning Commission.

Member Fedewa stated he didn't believe any plantings would survive in the area in question.

Motion by Barnes, supported by Graham, that the variance be allowed to permit the barbed wire along the top of the fence.

Vice Chairman Barnes cited Zoning Ordinance Section 42.303 (a) 5 that no barbed wire be allowed unless approved by the Planning Commission.

Chair Frederick stated the uniqueness of the property doesn't warrant the variance for the barbed wire.

The City Clerk held a roll call vote.

Yeas –None

Nays - Frederick, Barnes, Graham, Miller, Fedewa
None in favor. Motion failed.

Motion by Graham, supported by Miller, to allow the variance on the fence height requirement as requested with the condition the fence be a level height across the top.

The City Clerk held a roll call vote.

Yeas - Frederick, Barnes, Graham, Miller, Fedewa
Nays – None
All in favor. Adopted.

Motion by Graham, supported by Miller, to grant the variance request for the fence setbacks along Water St. and Pleasant St. no closer than 1' to the lot line with the condition that plantings of evergreen shrubbery substantial enough to break up the view along Pleasant St. be planted.

The City Clerk held a roll call vote.

Yeas - Frederick, Barnes, Graham, Miller, Fedewa
Nays – None
All in favor. Adopted.

Under Member Comments, Vice Chairman Barnes thanked everyone for their time and efforts in addressing this matter.

Member Fedewa stated his belief that the fence is already in place; can't make someone take it down.

Motion by Miller, supported by Graham, to adjourn the meeting at 8:08 P.M.
All in favor. Adopted

Respectfully submitted,

Yvonne Miller, Secretary