

## City of Rockford, Illinois

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# Minutes of the Building Board of Appeals

**Thursday, April 4, 2013@ 3:00 P.M.**

Members Present: Joel Sjostrom, Chairman  
Kerry Harlacher  
Joseph Zimmer  
Jeffrey Bockhop  
Brian Blakemore

Members Absent: Bill Waldorf

Staff: Seth Sommer, Building Code Official  
Jennifer Cacciapaglia, City Attorney

Others: Appellant: Michael Fitzgerald  
Appellant's Attorney: Mark Byrd

The Board of Appeals meeting was called to order at 3:00 PM on April 4<sup>th</sup>, 2013. It was determined a quorum was present. Introductions were made of all attendees.

Joel Sjostrom reviewed the three bases for building code appeals. Jennifer pointed out that the appellant filled out the appeal form and marked 3 reasons for an appeal and stated that code only allows one basis for appeal. Mark then determined that the basis for the appeal before the board is a proposal for an equivalent form of construction. Mark talked about the letter that was being appealed, that the fence was dangerous and unsafe and ordered to be demolished. Mark went on to explain his understanding of the letter. Mark stated Michael was not involved in a hearing, provided with any notes, provided a chance to cross examine, no opportunity to talk to witnesses, regarding the determination of the fence. Mark stated their position: 1. That the section cited, 110, Demolition, was for a building and also allows the owner to hold for future repair or demolish the fence. 2. That the fence does not constitute a dangerous and unsafe situation. Mark wants to ascertain why ruling made and how it was made, cost of repairs. Further Mark stated that the IPMC does not have language for 50% replacement/repair cost language and owner wants to repair the fence. Mark said that he believes the fence itself met with a prior ordinance prior to amendments and be grandfathered in and should be allowed to remain as such.

Joel asked for clarification of the zoning amendment in regards to fence. Mark stated that his understanding that the fence and setbacks met the zoning ordinance at one time. Fence could be fixed but recent amendment does not allow this fence to be repaired but since it was non-conforming, existing and allowed, it should be able to be repaired. The amendment had to do

with setbacks and materials. Brian asked about height related to setbacks. Seth stated that typically the higher the fence, the farther the setback. Mark does not believe that it is that dangerous and that it can be reasonably repaired. Jeff asked Mark if the fence originally conformed and Mark said he believed it did.

Seth said to let the city present its case. Jennifer said that the zoning issues would need to be discussed by the zoning board of appeals and that this case is only to determine the damage level and deemed dangerous and unsafe. Jennifer said the position of the city is that it does not need to be pretty and that it is unsafe and dangerous and could be injurious to the public. Mark asked if we are talking about the entire perimeter fence or just along Kishwaukee. Jennifer said it will be discussed in the presentation.

Seth stated As Code Official I ruled the fence structure as dangerous and unsafe and will present photographic evidence to show proof. Seth described the photos and how the fence was hanging near the right of way and shows the dilapidation and damage of the fence. As Code Official I ruled that the damage is beyond 50% of the structure's replacement value based upon other fence permits and similar properties. The current zoning ordinance states: When a nonconforming structure/development is partially damaged to an extent that represents 50% or more of the structure's replacement value, as determined by the Building Official, the structure may be rebuilt in compliance with the original building permits provided that such rebuilding does not result in a building that is more out of compliance than the building being replaced and provided that restoration is initiated within six months of the date of damage or destruction and that it is diligently pursued to completion within 2 years of the date of destruction or damage. The Zoning Officer may grant a one year, written extension to these time limits to allow for pending insurance settlements or other legal considerations. The fence was subject to be brought into conformance as part of a special use permit back in 2002. It was not brought into conformance and therefore it is illegal. The Special Use Permit (SUP) from 2002 was revoked in 2004 due to not following the conditions of the SUP. Grandfather rights do not apply to this situation. Due to such reasons, the fence must be demolished and if a new fence is to be built it must be to today's standards.

Jeff asked how long owner owned the property and Michael stated since 2001. Mark asked if he can cross examine code official. Jennifer said no that it was up to the board to question now. Mark asked how the fence got built, and Seth stated there is no record of a building permit for it. Mark said that the best we can say is that the fence was built without a permit and Seth said based on the records, that appears to be the case.

Mark asked if there was any complaint about someone getting hurt from the fence. Jennifer said that is not relevant and that the code official has the duty to determine the safety of the fence. She said that the board was there to determine if Seth's ruling was correct.

Mark stated that the fence was only dangerous to those allowed on the property and potentially along Kishwaukee. Seth said that it is dangerous and unsafe to the public.

Jennifer deferred to the rules of procedure for the meeting to continue. Jeff asked the owner if he brought the property with the fence already installed. Michael, the owner said yes. Jeff asked if the fence was in good condition when it was bought and Michael replied yes. The owner went on to say that he would love to repair it but he can't. There was some discussion as to the zoning aspects and past discussions between zoning staff and the owner.

Brian asked the owner if he has insurance and suggested that maybe some of the permits could be covered by insurance. Michael responded that he doesn't want to involve insurance because they jack up the rates three times more than it is currently. Jeff asked why the fence wasn't repaired in 2002 & 2004. The owner said it was fine then. Jeff said Seth said that the fence was supposed to be replaced in 2002 as part of the Special Use Permit.

There was some discussion on what the fence is protecting.

Brian says there is 15-20% of the fence missing so to repair would require purchase more material. Mark agreed. Brian then asked material from the front of the property along Kishwaukee could be used along the perimeter of the property and then a new fence could be added along Kishwaukee that conformed with the current zoning ordinance. Seth answered that fence in 2002 was not legal at that time and that it was to be enhanced or replaced which meant it was not allowed to be the current material and it is not permitted now. Seth said we are not here for the fence material but for the ruling that the fence is considered dangerous and unsafe. Mark asked if it is the chain-link fence and the metal panel fence in question or just the metal panel. Seth said just the entire metal panel fence.

Joe asked if the fence is required to be site obscuring and Seth said that not now since there is no approved use for the site.

Joe suggested removing panels and leaving chain link. Jeff asked if we are just talking about the metal panel fence on Kishwaukee or the entire property. Seth said the entire property of all metal fence. Michael noted that there is some chain-link on the property. Michael said that the fence used to be set back 40 feet from Kishwaukee but IDOT bought some frontage and widened Kishwaukee so that is why the metal panel fence is along the right of way. Jeff asked if the fence would require a permit for repair and Seth said yes. Mark then said it would be denied if it were to be repaired with the metal panel and Seth said yes.

Joel asked if a fence is required and Seth says no since the property is not being used for anything. Jeff said that he can either remove the fence or put a whole new fence up and Seth said yes but it needs to be demolished now. Joe asked if the frame is damaged also and Seth said yes it is damaged, missing and rotting all around.

Joel asked to have a closed session with just the board and Mark asked Seth if he had physically examined the fence and Seth said no but you can clearly tell the condition of it.

Closed session took place between all of the board members.

Seth, Michael, Jennifer, and Mark returned.

Joel said they had never heard a case like this before. Jeff asked Mark about the appeal that they can provide an equivalent form of construction; Mark clarified that they could repair it. Joel asked if repair with like materials. Mark said yes and may have to use new wood and new panel material. Mark said the owner wants to repair the fence as inexpensively as possible. Seth says the entire fence must be removed and Mark says that is too extreme. Mark says that no one has been injured by this fence and Seth responded that luckily not to our knowledge there have been no reports of injuries. Jeff reiterated that the appellant could replace the fence and Seth said as long as it is fully compliant. Jeff asked if the whole fence needs to be removed and Seth said he is unsure what if anything can be salvaged due to materials and height and setback restrictions.

Seth says that Mark stated that the fence is not dangerous to the public but Seth replied that even the pieces along the perimeter can be blown great distances and become a danger, that

you just don't know for sure what can happen. Seth went on to say that it is non-conforming and substantially damaged and that it needs to be removed.

Mark asked if Seth had an actual dollar value for replacement purposes. Seth said no that it is based on experience with construction and other fence permits.

Mark asked if we have ever dealt with a fence like this and Seth said no, because we don't permit this type of fence material.

Kerry made a motion to deny the appeal based on that the requirements of this code are not adequately satisfied by other means. The motion seconded by Brian Blakemore, to deny the appeal.

Joel Sjostrom, Kerry Harlacher, Joseph Zimmer, Jeffrey Bockhop and Brian Blakemore voted aye. Joel says motion carries. Meeting was then adjourned by all members.