

**Dubuque County Zoning Board of Adjustment  
Minutes of January 3, 2017**

Chairperson Pat Hickson called the meeting to order at 7 p.m.

**A. ROLL CALL:** Members Present: Ron Koppes, Darlene Burds, Connie Nolan, Pat Hickson & Thomas Griep. Staff Present: Anna O’Shea & Angela Steffens

**B. APPROVAL OF MINUTES:** A motion was made by Ms. Burds, **seconded by Ms. Nolan and passed unanimously to approve the Minutes of the December 6, 2016 meeting. Vote: 5-0.**

**C. PUBLIC HEARINGS:**

**1. BA#01-01-17                    ROBERT & MICHELLE ARNOLD                    VARIANCES**

The applicants are requesting a 4’ height variance to the 4’ allowed to build a fence 8’ high in the front street line yard and a 2’ height variance to the 6’ allowed to build a fence along the left side yard, right side yard and rear of the property at 8’ high in an R-1, Rural Residential zoning district. The property, located along Gretchen Court approximately 1.34 miles southeast of the City of Sherrill, is legally described as Lot 16, Lot 17 and Lot 18 of Woodland Park Subdivision Section 20, (T90N R2E) Peru Township, Dubuque County Iowa.

Ms. O’Shea stated the property owners have three lots totaling of 3.94 acres with the home placed in the middle of the lots. The fence was built 2’ away from all property lines and will be made out of three kinds of materials. Western Red Cedar in the back, chain link on the front and sides and black ornamental steel along the front closest to the home. Nine letters were sent, eight letters were delivered and the City of Sherrill was notified.

There were two comments submitted regarding this case.

Tim & Mary Biedermann, 13568 Gretchen Court, Sherrill. They stated they have no problem with the fence and it should not be taken down.

Nathan Laws, 13638 Gretchen Court, Sherrill. He stated that his property is within 200ft of the Arnold’s. He researched the matter regarding the fence through a realtor friend who thought the appearance of an 8’ tall galvanized fence would lower his property value. He would prefer that the code or ordinance pertaining to the height of the fence be upheld.

Speaking to the Board was Michael Pagel (attorney for the Arnold’s), 100 W 12<sup>th</sup> St, Dubuque. Mr. Hickson administered the following Oath asking the participant to raise his right hand. “Do you solemnly swear you will tell the truth, the whole truth and nothing but the truth?” He said yes.

Mr. Pagel stated that the county ordinance for fences has caused unnecessary hardships for the Arnold’s. He said the hardships were privacy, safety and the ability to make reasonable use of their property. He stated the back portion of the fence will be Western Red Cedar and will be visible to surrounding neighbors. The sides of the property will have chain link fence that will be placed in the heavily forested area with minimal chain

link visible in the front yard. A majority of the front yard fence will be black ornamental steel.

The Arnold's have consulted with Heiar Fencing in Dubuque. They stated the 8' fence is the recommendation of Heiar Fencing to keep deer from eating the American Chestnut Trees that the Arnold's plan to plant. The 8' tall fence would give the trees a better chance to survive by keeping the deer away from them.

The Arnold's property is a downhill slope from the neighbors behind them. The 8' tall fence would help obstruct the neighbor's view onto the Arnold's property. Mr. Pagel said the Arnold's have had people trespassing on their property and intimidation tactics from a surrounding neighbor, which involved an army figure placed at the property line. Therefore, they would like the fence for safety. The Arnold's want to put up a fence that looks nice.

Mr. Hickson asked if work on the fence has been started already? Mr. Pagel said preliminary work has begun. As soon as the builder was informed of the height ordinance, the work ceased immediately. Ms. O'Shea said a complaint came into the office, the zoning assistant went and took pictures and put up a Stop Work Order. The application for the variance was then submitted a couple of days later.

Ms. Burds asked if the subdivision was alright with the 8' tall fence? Mr. Pagel stated yes the covenants for the subdivision do not prohibit a fence 8' tall. He also said the developer of the property has no issues with the fence.

Mr. Griep asked what type of fencing would Nathan Laws, the neighbor who submitted a comment against the fence have across from his home? Mr. Pagel said Mr. Law's home is located across the street. Mr. Laws would have a small portion of chain link fence and the majority would be black ornamental steel facing his home.

Mr. Hickson asked if anyone would like to speak in favor or against this case?

Speaking to the Board was Rhonda Oberfoell, 13568 Mueller Parkway, Sherrill. Mr. Hickson administered the following Oath asking the participant to raise her right hand. "Do you solemnly swear you will tell the truth, the whole truth and nothing but the truth?" She said yes.

Ms. Oberfoell stated she is the neighbor to the back of the Arnold's property. She spoke with Ms. Arnold after she purchased the property and was asked not to trespass on their property now that they own it. Ms. Oberfoell said she agreed that she would not go onto the property. She said the Arnold's put up a no trespassing sign and to block having to see the no trespassing sign, they placed the army figure that Mr. Pagel mentioned as a screen not as an intimidation tactic. Ms. Oberfoell said she was the person who made the complaint. She is not against the 8' tall fence, she was more against the fence being chain link and the type of person who in the future would purchase the lots that have the 8' tall chain link fence near their property.

Mr. Pagel said in regards to the chain link fence being visible, the part of the fence that is chain link will be primarily heavily forested. The fence is hard to see now and will be very unlikely to see when the trees and vegetation are fully bloomed. Heiar Fencing

recommended the 8' tall fence to keep the deer out of the property. Mr. Pagel also submitted documents from the University of Vermont and ISU supporting the recommended 8'tall fence to keep deer away from the trees.

Mr. Hickson asked how many trees are going to be planted on the property? Mr. Pagel stated they do not have a specific number but it is going to be quite a few.

Ms. Nolan asked if there are deer frequently on the property now? Mr. Pagel stated yes.

Mr. Pagel said the American Chestnut trees that the Arnold's want to plant are highly attractive to the deer population. The Arnold's plan to plant them and donate the tree and the chestnuts to research. Mr. Hickson stated if someone has fruit trees in their yard deer also like them.

Mr. Griep asked Ms. Oberfoell if she is in favor or against the fence? Ms. Oberfoell stated since the Arnold's brought up the army figure without talking to her first, it makes her want to be against the fence.

Ms. Burds asked Ms. Oberfoell if she thought the fence would hurt her property value? Ms. Oberfoell said yes.

Speaking to the Board was Joseph Oberfoell, 13568 Mueller Parkway, Sherrill. Mr. Hickson administered the following Oath asking the participant to raise his right hand. "Do you solemnly swear you will tell the truth, the whole truth and nothing but the truth?" He said yes.

Mr. Oberfoell stated that he agreed with what his wife had said. He stated the Arnold's want the fence for privacy then why did they chose to build in a subdivision. He is a gardener and has an electric fence to keep the deer out. He said if the fence facing his home would be chain link it would look like a prison. Since the fence is going to be cedar along his property line, he would not be opposed to the fence. He thinks the Arnold's should have followed the rules and knew the rules before the project was started.

Mr. Oberfoell asked if the Arnold's change their fence plan do the Arnold's have to readdress the Board? Ms. O'Shea said it should be part of the motion, that the site plan is followed.

Mr. Pagel said that one reason for granting a variance is the conservation practices of a property. He thinks that is what the Arnold's are doing by planting the trees and protecting them from the deer that eat and destroy them.

Mr. Hickson asked if anyone would like to speak in favor or against this case? No one spoke.

Mr. Hickson asked Ms. O'Shea if anyone from Heiar Fencing contacted the office about the height of the fence before they started to put it up? Ms. O'Shea said no. She has never talked with Heiar Fencing on what is allowed in the county regarding fencing.

A motion was made by Mr. Koppes, **seconded by Ms. Nolan to approve the variance. The motion passed by a vote of 3-2. Mr. Koppes, Ms. Nolan and Mr. Hickson voted in favor to approve the request. Ms. Burds and Mr. Griep voted to deny the request.**

**2. BA#01-02-17 STEVEN & DAWN BIERMANN VARIANCE**

The applicants are requesting a 14’ right side yard variance to the 50’ required to build a 28’ x 28’ garage addition 36’ from the right side yard in an R-1, Rural Residential zoning district. The property, located along Briarwood Drive approximately .25 miles south of the City of Dubuque, is legally described as Lot 1 & 2 Briarwood Sub Section 12, (T88N R1E) Vernon Township, Dubuque County Iowa.

Ms. O’Shea stated that this property is 2.06 acres and is a triangle shaped lot. The new garage addition will be added to the existing garage on the north side of the lot, which is the narrowest point on the lot. Because of where the placement of the home and septic system are on the lot, a variance will be needed for the garage addition. Eleven letters were sent, ten letters were delivered and the City of Dubuque was notified.

There were two comments submitted regarding this case.

Bill & Janet Then, 15476 Briarwood Dr, Peosta. They stated that they have no objection to the variance.

Alfred & Dianna Bahl, 15459 Southwood Ct, Peosta. They stated that they have no objection to the 28’ x 28’ garage addition.

Speaking to the Board was Steve Biermann, 15540 Briarwood Dr, Peosta. Mr. Hickson administered the following Oath asking the participant to raise his right hand. “Do you solemnly swear you will tell the truth, the whole truth and nothing but the truth?” He said yes.

Mr. Biermann stated they would like the extra garage to be able to park cars and an enclosed trailer in to protect them from the elements.

Mr. Hickson asked if there is an attached garage on the home currently? Mr. Biermann said yes a two car attached.

Mr. Biermann said he talked to his closet neighbor Travis Pitz and he told him he had no issues with the garage addition.

Mr. Hickson asked if anyone would like to speak in favor or against this case? No one spoke.

A motion was made by Ms. Burds, **seconded by Ms. Nolan to approve the variance. The motion passed unanimously by a vote of 5-0.**

**D. PUBLIC COMMENTS: None**

**E. OLD BUSINESS:**

**1) Review & Take Comments on Home Industry Zoning Amendment**

Ms. O’Shea stated that the Zoning Board is in the process of putting a template together on the Home Industry guidelines. The Zoning Board is in the process of scheduling work session meetings to set the Home Industry guidelines.

Mr. Hickson stated in other old business the compost facility on Hwy 20 had a very strong odor in the last week. He said they have a “For Lease” sign on the building and was wondering what was happening with the property? Ms. O’Shea said they have agreed to stop taking the meat product in and if there are odor, complaints after May 15, 2017 the county will have the authority to shut down the remaining composting operations. The property has been rezoned to allow a contractors shop, mini storage, allow crushing of rock and composting of yard waste but not meat.

Ms. Nolan stated she saw the Merfeld case had been dismissed. Ms. O’Shea said she would check with the County Attorney to verify that.

**F. NEW BUSINESS: None**

**G. ADJOURNMENT:** A motion was made by Ms. Burds, seconded by Mr. Hickson and passed unanimously to adjourn. Vote: 5-0. The meeting adjourned at 7:54 p.m.