

MINUTES
MT. EPHRAIM LAND USE BOARD MEETING

Borough Hall Court Office
121 S Black Horse Pike, Mt. Ephraim, NJ 08031
Monday, September 11, 2023, 7:30pm

1. **CALL TO ORDER.** Robert Carter called the meeting to order and stated the meeting was advertised and notices posted in accordance with the “Open Public Records Act.”
2. **PLEDGE OF ALLEGIANCE.** All persons present, stood for the pledge of allegiance.
3. **ROLL CALL** – Mayor Tovinsky, Kim Beebe, Michael Schiavo, Thomas Maxwell, Robert Carter, Anthony Stagliano, Michael Marrone, Douglas Morgan, Rocco Vespe, present. Commissioner Gies, Steve Eggert, Jason Kerns, John Saban, absent.
4. **Calendar of Old Business**

- **Resolution – Steel – 202 Fifth Avenue, Mt. Ephraim**

Anthony Stagliano made a motion to approve the resolution, Rocco Vespe seconded the motion.

Roll Call – Mayor Tovinsky, Kim Beebe, Michael Schiavo, Thomas Maxwell, Robert Carter, Anthony Stagliano, Michael Marrone, Douglas Morgan, Rocco Vespe, all voting yes.

5. **CALENDAR OF NEW BUSINESS**

Application for variance for fence – Valdivia – 42 White Avenue

Joe Nardi – swears in the applicant. Celin Valdivia and Angie Valdivia – 42 White Avenue, Mt. Ephraim. Ok, so you have a couple of variances that you are seeking, you have a 6ft fence that already exists, its wood and you just want to replace it.

Angie Valdivia – yes that is correct.

Joe Nardi – according to your application you are asking for a variance for the side yard requirements, because the requirements for any fence that exceeds the front or the rear of the house, it must be 4ft, so I understand now that it is already 6ft and you want to maintain that 6ft but the requirements are 4ft, so a variance is required and you understand that.

Angie Valdivia – that is correct.

Joe Nardi – the other issue is on the other side, because you have a corner lot, technically on the zoning ordinances its referred to you as having two front yards, there is a primary front yard and then a secondary front yard, so on the side the one on James Street you would need a 10ft setback and I know you want to leave it where it exist as of now, so those are the things that you are asking the board to allow you to have the variances which would now be required. The one thing that I want to explain as well is that when you replace it, you don't get what's referred to as grandfathered in, it's still your burden to convince the board why the variance from the existing zoning ordinance should be granted, so that would be the 4ft portion and the 6ft portion, and instead of doing the 10ft setback you want to be in the property line or a couple inches in when the interior lot you have to at least be 6 inches in and so when people come in and they are asking for a variance at a minimum. There are two things that I want to be clear about in your application and I want the board to be clear about this, the fact that you bought this from someone and that is where the fence existed and there may be an issue with an encroachment on one side, this really would have not affected the application being heard tonight. If the board grants your application, the board has no authority to allow you to be on other people's property. If you know there is an encroachment now you cannot continue it and this board cannot say that that is ok.

Angie Valdivia - I have a question, so I am not encroaching onto anyone's property, I am guessing it's the Borough's property.

Joe Nardi – yes, it's the right of way, but that is the same as if it were someone else's property. The Land Use Board is responsible for interpreting the zoning ordinance and granting variances where appropriate, it does not have the authority to grant you or anybody the right to encroach on someone else's property or on the Borough's property.

Angie Valdivia – ok.

Joe Nardi – this will not affect your application that much, I just don't want you to spend a lot of time talking about it, when as a matter of law it couldn't be granted anyway.

Angie Valdivia – got it.

Joe Nardi – I am just going over your application for your reasons for this application, I know you stated something about decreasing curb appeal and in your words, it would be an eyesore.

Angie Valdivia – no, the current fence that is there now.

Joe Nardi – oh ok, I thought you meant where the location was going to be. Ok we can now continue with your testimony.

Angie Valdivia – I feel like you have touched on everything.

Joe Nardi – I just wanted to make sure that you would understand.

Angie Valdivia – I do understand, so the reason why we don't want to lower the fence is because we have dogs, they can jump rather high, pushing back the fence would severely limit the usability of our back yard, the carport and the driveway, and our sunroom, all which the entrances are on James Street. So, if we pushed the fence back, we would not be able to close the door that currently exists from our driveway when we pull in our car during the wintertime. In terms of the curb appeal of our property right now the fence is pretty much falling apart, its been there for a long time I am assuming since the house was built or maybe close to when the house was built, so we are trying to replace it so that the property will look appealing, this fence is a very big fixture on the corner of James Street so if you allow us to replace it to that white vinyl fence, I think it would not only benefit us but the township as well. The fence is also currently 6 inches in from the sidewalk which I believe is the minimum requirement.

Joe Nardi – oh it is, that is good. So just for clarification you stated the doors can't be open, that is if you are required to put the fence 10ft in on the property line.

Angie Valdivia – yes, that is correct. We tried to measure it potentially to 2 feet, but the doors open inward, so if we were to park in the driveway, we wouldn't be able to close the doors.

Celin Valdivia – also if the fence were moved in more, the door from the sunroom would be right where the fence would be.

Douglas Morgan – so you just want to replace what exists but with a nicer fence.

Angie Valdivia – yes exactly.

Rocco Vespe – will it just be a solid white vinyl fence.

Angie Valdivia – yes, a solid white vinyl fence, it will have the exact same doors, the one to the carport, to the sunroom and the door to the driveway and we are trying to replace the perimeter of the home with the exact same white fence.

Anthony Stagliano – Joe, I need to ask what the discussion on the encroachment is.

Joe Nardi – well essentially, it's going into the right of way, or at least it appears that way according to the survey.

Robert Carter – do we have any other questions from the board.

Joe Nardi – by the way you don't have to ask permission to put a fence up, regarding the type of fence, I am sure everyone appreciates that you are trying to improve your property. The only issue that they can approve or deny is whether you can keep it 6 inches from property line or if you need to move it 10ft from property line.

Robert Carter – any other questions.

Thomas Maxwell, the only question that I have is that you say that you have two dogs.

Angie Valdivia – three dogs.

Thomas Maxwell – normally we like to see a fence back off a sidewalk, because people walking by the dogs will start barking at them, and probably scaring the heck out of them. You are saying the door won't open if you go in any further.

Celin Valdivia – well if it's requested to be 10ft in from property line.

Thomas Maxwell – we normally request 2ft in, so you are buffering the sidewalk, so then your dogs won't scare anyone.

Celin Valdivia – currently the dogs are not out there often, we take them out to go to the bathroom, run around for a little bit and then they come in, we have not had any issues with them scaring anyone. Someone is usually out there when they are, but 1 to 2 feet in I don't see a problem.

Thomas Maxwell – you can do the 1 to 2 foot in for the buffer and then maybe some landscape out there so then it won't just look like a white wall.

Angie Valdivia – I meant I think that would be fine I am just not sure; my only issue may be the car.

Thomas Maxwell – maybe you will need to swing the doors out.

Rocco Vespe – if the doors swing out then they would be on the sidewalk.

Thomas Maxwell – that's then how the board would feel about having it that way or keeping it the way, it is.

Angie Valdivia – it is a very prominent driveway, so if they do swing out it will cause an obstruction in the sidewalk.

Rocco Vespe – you have kind of a marked-up plan, the fence company plan to give you a plan of the new fence.

Angie Valdivia – yes, I believe he sent everything over with the permit.

Joe Nardi – I think what everyone is trying to figure out is will there be three openings.

Angie Valdivia – yes.

Joe Nardi – will it be one panel, or will it be two panels that meet in the middle.

Angie Valdivia – two panels that meet in the middle.

Joe Nardi – so you will have 6 doors.

Angie Valdivia – 5 doors, two for the driveway, two for the carport and then one for the sunroom.

Joe Nardi – so you will have 5 doors, presumably that open inward.

Angie Valdivia – yes.

Joe Nardi – how wide are those doors.

Angie Valdivia – I believe he stated that each panel would be 59 inches.

Joe Nardi – ok so there is a couple ways to go about this, we could grant a variance if that is what the board is inclined to do and there would need to be a motion to address all the issues that have been raised and could be raised and lets assume for the sake of the discussion that this could be adopted, you could ask for the resolution to be amended to reflect something else, so if you were to do a foot from the property line and it doesn't work because the fence company says it won't fit you could come back to the board and I would suggest that you do it at the next meeting so at the time an approving resolution was passed it could be revised at that time, that would only be one if you get what you are asking for gets a modification or two you need that and then the board would really need to consider that. Another way to approach this is we can adjourn at this point get that information in and then come back in, but I think that you are better off with the first one, because everyone could accommodate you at that point. The other point is members of the board, the question is on the 4 foot fence, because there is going to be a motion but two variances would be whether or not the variance on the right side of the house would be granted so there would be relief from the 10ft

side yard requirement and then it would be a question of what does it have to be, because that has only been discussed and not decided, 6 inches a foot, etc., subject to the ability of coming back if that doesn't work with the fence company, so that is one issue to deal with, the second issue is the 4 foot fence on the other side.

Anthony Stagliano made a motion to approve the fence and have it 6 inches from the property line, on the James Street side, Michael Marrone seconded the motion.

Roll Call: Mayor Tovinsky, Kim Beebe, Michael Schiavo, Thomas Maxwell, Robert Carter, Anthony Stagliano, Michael Marrone, Douglas Morgan, Rocco Vespe, all voting yes.

Joe Nardi – Anthony just for clarification was your motion to approve the 6ft fence as well for the interior line as well.

Anthony Stagliano – yes.

Joe Nardi – does anyone have an objection to this.

All members state no, for voice vote.

Joe Nardi – so on the right side you will have the 6-inch setback instead of the 10ft setback and the 4 foot fence in the interior.

6. **Professionals Comments – N/A**
7. **Board Comments – N/A**
8. **Public Comment**
9. **MOTION TO ADJOURN THE MEETING, ALL VOTING IN FAVOR.**