

**City of Berlin, NH
Zoning Board of Adjustment
Meeting Minutes
October 22, 2018**

Members Present: Dana Hoyt, Nathan Morin, Gregg Marrer, Henry Boucher

Members Excused: Greg Estrella

Others Present: Russell and Patricia Faucher of 1683 Riverside Drive, Andrew Kopp of 1689 Riverside Drive, Carl Henry of 1679 Riverside Drive, Michel Salek, Building Inspector/Zoning Officer; Amanda Cassidy, Code Enforcement Administrative Clerk/recorder of minutes;

The meeting was called to order at 6:30 pm

Approval of March 2018 Minutes: Mr. Boucher made a motion to approve the minutes as presented, seconded by Mr. Morin. All in favor, the motion passed.

Before calling any cases for the evening, Chair Hoyt informed the applicant that there was not a full Board in attendance, and, if the applicant so chose, he could request that the matter be heard when a full Board was present. The applicant chose to continue with the hearing. Chair Hoyt then read the rules of the Zoning Board.

The Building Inspector and/or Zoning Officer is required to follow the strict letter of the Ordinance while the Board of Adjustment is required to follow the intent and spirit of the Ordinance.

The function of the Board is to hear both sides, use judgment with regard to the Ordinance, and render a decision in writing, within a reasonable time.

The main purpose of the public hearing is to allow property owners and anyone concerned with the case to testify to how the proposed variance (or special exception) will affect them and their property. The reason for these hearings is not to gauge the sentiment of the public or to hear personal reasons why individuals are for or against the appeal. While the evidence may be in the form of an opinion rather than an established fact; it should support the grounds which the board must consider when making a determination.

During the hearing, all persons wishing to speak will raise their hands, be recognized, give their names, address and interest in the case, then be sworn.

If you wish, it is your right to be represented by counsel.

Please address all your questions and statements to the Board and not to any individual in this room.

In order to give everyone a chance, no one will be allowed to speak a second time until all persons have been given a chance to speak for the first time...and the petitioner will be given the last word.

If you feel any member of this board is prejudiced for or against your case, please let me know and if the facts warrant it, they will abstain from participating or voting in your case.

I want you to know that although the board is to be impartial, it must abide by the intent and spirit of the ordinance and cannot rewrite the ordinance to please any particular individual.

Case 03-18: Russell Faucher, Map 136-Lot 10, Special Exception

Mr. Marrer read the request into the record.

Request: A Special Exception request to allow Mr. Faucher of 1683 Riverside Drive to keep his 8' fence height, rather than the 6' maximum height as required by the City's zoning ordinances. The request comes under Article II, Section 17-24 and Article VIII, Section 17-183 relating to the maximum fence height.

Discussion: Russell Faucher of 1683 Riverside Drive, Berlin, NH was sworn in by Chair Hoyt.

Mr. Faucher presented his case to the Board stating that he was unaware that a building permit was required for his fence. He stated that his new fence went into the exact same area – including holes – that his previous fence was in. He was just replacing his 25 year old fence that was rotting and coming down. Mr. Faucher stated that during his fence building he was taking sections of the old fence down and replacing them with the new sections of fence. It was not until after the fact that he found out he needed to apply for a fence permit and a special exception, because the new height exceeded the old height by two feet, due to the lattice work on the top of the new fence. Mr. Faucher stated that all the neighbors find his new fence and the lattice work to be beautiful, and, that it represents Berlin. His property lies on Berlin's main drag, and, is keeping with the spirit of what the City has done in that area – adding the new trees and making that area more attractive. Mr. Faucher stated that he added the lattice work to the top of the fence, because he needed more privacy. He has a hot tub in his back yard, and, due to the sloping and grading of the properties, you could see into the neighboring yard with the six foot height of the fence.

Mr. Boucher asked if the fence goes all around the property.

Mr. Faucher stated that the fence does tie into a chain link fence on his property as well.

Mr. Boucher asked if he was planning on driving his vehicles in the back of the property.

Mr. Faucher stated that was not his intention; the fence is for privacy and for the dogs. When he and his wife first bought the house they had trees in the back of the property. At first, they kept the trees and put the chain link fence up to where the trees started. After a

while, they decided to cut the trees down, and, it was at that point – around 25 years ago – that the first fence was built. The fence was a pre-fabricated fence, and, served its purpose – until it didn't.

Chair Hoyt asked if the old fence was the same height as the new fence.

Mr. Faucher stated that the old fence was shorter, that the lattice work added to the new fence's height by approximately 2 feet. If the lattice work was not added to the top, the new fence would be the same height as the old fence.

Chair Hoyt asked if there were any other questions.

Chair Hoyt opened the floor for anyone in favor of or in opposition of the setback exception.

Andrew Kopp of 1689 Riverside Drive, Berlin, NH 03570 stood up to address the Board.

Chair Hoyt swore in Mr. Kopp.

Mr. Kopp stated that his property abuts Mr. Faucher's directly, and, that he is in support of the new fence. Mr. Kopp stated that the old fence was suffering from rot, wind damage, and, parts of the fence were falling down. Mr. Kopp said that he liked the lattice work on the top of the new fence, and, that the posts for the new fence are in the same spot as the old fence, and, that the boards were the same height as the old fence.

Chair Hoyt thanked Mr. Kopp for coming in.

Carl Henry of 1679 Riverside Drive, Berlin, NH 03570 stood up to address the Board.

Chair Hoyt swore in Mr. Henry.

Mr. Henry stated that he has been living in his house just about as long as the Faucher's have been living in their house, and, that he does not have a problem with the fence.

Public Hearing Closed at 6:43 pm

Chair Hoyt let the applicant know that a decision would be made that evening and a letter of decision would be sent to him. He was also welcome to wait in the room and be present to hear the Board's deliberations and decision. He was informed that if anyone chose to appeal the decision, the appeal must be filed within thirty days.

Board Deliberations: Case 03-18: Russell Faucher, Map 136-Lot 10, Special Exception

Chair Hoyt asked if the board was ready to deliberate.

The Board reviewed the special exception criteria:

Article II; Sec. 17-24 Uses by Special Exception

1. The Board of Adjustment shall have the power to approve uses permitted by special exception, when specified by this Ordinance and subject to appropriate conditions and safeguards as stated below. All special exceptions shall be made in harmony

with the general purpose and intent of this Ordinance, and shall be in accordance with the general or specific rules contained in this Ordinance. A special exception will be allowed if the following conditions are met:

- a. the specific site is an appropriate location for such use;
 - b. property values in the district will not be reduced by such a use;
 - c. no nuisance or unreasonable hazard shall result;
 - d. no adverse traffic impact will result from such a use;
 - e. adequate and appropriate facilities will be provided for the proper operation and maintenance of the proposed use, including water, sewer, and parking;
 - f. no material adverse impact on the view, light and air of any abutter will result; and
 - g. such a use would not be detrimental to the public health, safety, and general concern.
2. In approving a Special exception, the Board of Adjustment may impose such additional conditions as it finds reasonably necessary to safeguard the neighborhood or otherwise serve the purposes of this Ordinance. Such conditions may include the following:
- a. increased lot area exceeding the minimum lot area required in a particular zone;
 - b. increased front, side or rear yards set backs;
 - c. height limitations;
 - d. parking requirements specific to use and location;
 - e. appropriate screening, buffers or planting strips, fences or walls;
 - f. modification of the exterior appearance of the structure;
 - g. limitation upon the size of any buildings, number of occupants, method and time of operation, or extent of facilities;
 - h. relocation of the driveway or change in driveway configuration; and
 - i. other conditions attached to specific uses permitted by special exception under the provisions of this Ordinance.

The Board agreed that:

- a. The specific site is appropriate for an eight foot fence;
- b. The property values would not be reduced by the granting of the special exception;
- c. No nuisance or unreasonable hazard would result by the granting of the special exception;
- d. No adverse traffic impact would result from the use, as, the storage shed is in the applicant's back yard;
- e. The fence will create an appropriate screening, buffer;
- f. There is no material adverse impact on the view, light and air of any abutter; and
- g. There would be no detriment to public health, safety and general concern.
- h. Not applicable

- i. Not applicable
2. Though the Board may impose additional conditions upon approving a Special exception, there was no need in this case to do so.

Chair Hoyt asked if there were any concerns; there were none.

Mr. Morin made a motion to grant the special exception, seconded by Mr. Estrella. All in favor, the motion carried. Special Exception granted by the Board at 6:51 p.m.

Annual Board Elections:

Chair Hoyt asked where things were left off at the last meeting regarding Board Elections.

Ms. Cassidy stated that the Board elections were cut short, due to Mr. Tremaine stepping down, but, that before Mr. Marrer could be elected to be a regular member, Mr. Tremaine's term needed to end. Mr. Tremaine sent a letter stating his desire to step down from the Board at the end of his term, which was in April, 2018. As Mr. Tremaine is no longer a member of the Board, Mr. Marrer could be elected as a regular member. Someone would need to make a motion to nominate Mr. Marrer as a regular member of the Board, so that he could be nominated for the position of Clerk.

Mr. Morin moved to nominate Mr. Marrer as a regular member of the board, seconded by Mr. Estrella; all in favor.

Mr. Estrella made a motion to nominate Mr. Marrer as Clerk, seconded by Mr. Morin; all in favor.

Board elections end: 6:57 p.m.

Chair Hoyt asked if there were any alternate members of the Zoning Board at this time.

Ms. Cassidy stated that there were no alternate members at the moment.

Chair Hoyt asked if an ad could be run in the paper looking for alternate members, and, that he knows it had been done in the past.

Mr. Morin stated that maybe something could be posted on social media looking for members as well.

Member Comments: None.

Other: None.

There being no further business to come before the Board, **Mr. Morin made a motion to adjourn, seconded by Mr. Marrer. All members voted in the affirmative, the meeting adjourned at 7:04 pm.**