

PROCEEDINGS OF THE CITY COMMISSION  
CITY OF EAST GRAND RAPIDS

**Regular Meeting Held October 15, 2018**

Mayor Seibold called the meeting to order at 6:00 p.m. in the City Commission Chambers at the East Grand Rapids Community Center and led the audience in the Pledge of Allegiance.

Present: Commissioners Duncan, Favale, Hamrick, Miller, Walters, Zagel and Mayor Seibold

Absent: None

Also Present: Assistant City Attorney Tobias; Assistant City Manager LaFave; Public Safety Director Herald; Finance Director Mushong; City Clerk Brower; Communications Specialist Greenleaf

2018-145. Mayor Seibold announced the request to rezone the property at 2755 Hall had been withdrawn by the applicant.

2018-146. Peter Dimitriou, 2621 Inverness (GR) spoke about reducing carbon emissions and the effect of climate change on Arctic ice levels.

Adam Panter, 2820 Lake Drive, questioned whether the rezoning request for 2755 Hall Street had been withdrawn temporarily or permanently. Mayor Seibold noted it had been withdrawn permanently.

Mariel Poortenga, 2755 Hall, stated that everyone else supports her rezoning effort, but that she had decided to pursue another option.

2018-147. Commissioner Zagel congratulated Assistant City Manager LaFave on his appointment to the State Water Asset Management Council representing communities with drinking water, waste water and water asset management experience.

Commissioner Miller thanked Finance Director Mushong and Vredeveld-Haefner for their in-depth presentation to the Finance Committee last week regarding the year-end financial statements.

Commissioner Walters thanked all of those involved in the upcoming election for their hours of training and preparation leading up to November 6.

Mayor Seibold invited the public to participate in the search for a new city manager by taking a survey available on the website.

2018-148. A zoning variance hearing was held regarding the request of Philip & Elizabeth Skaggs of 2615 Hall to allow:

- a. the construction of a 6.0' fence in the street side yard instead of the allowed 3.0' and to be located 1.0' from the property line instead of the required 20.0'
- b. A detached pool accessory structure in the street side yard 1.0' off the property line
- c. The detached pool accessory structure to be located 7'1" from the principle structure instead of the required 10.0.'

Zoning Administrator Mizikar explained the request for a 6.0' privacy fence 1.0' from the sidewalk in the side yard of this corner lot and the request for a small shed within the side yard inside the fence located 7'1" from the home. He noted that the Michigan building code allows an exception to be granted for a 4' fence around a swimming pool. Mr. Mizikar reviewed the ordinance standards for granting variances and the policy adopted by the city commission in 2016 regarding building separation requests of less than 10.'

Mr. Mizikar further noted this application is being reviewed under the existing fence ordinance but commissioners can discuss the provisions of the proposed amendment in relation to this request.

Elizabeth Skaggs and Philip Skaggs of 2615 Hall explained the recent renovations to their home and yard. Mr. Skaggs noted that the fence has been installed in the exact same location as the fence that was installed in the 1980's. He stated his contractor had received verbal permission from the engineering department in April to replace the fence in the exact location of the old fence. The contractor then began construction of the fence until he received notice the fence did not meet requirements. Mr. Skaggs explained they delayed construction of the fence while he applied for a variance request, but when the city delayed the variance hearing to review the fence ordinance, he decided to go ahead and finish the new fence as he felt the temporary fencing was unsafe. Mr. Skaggs also reviewed the variance standards and stated the variance should be granted because it was a small, unique corner lot with a pre-existing pool and the location of the pool prevented him from building a fence 20' from the property line. He felt it would be a substantial injustice to make them build the fence anywhere else as it would render much of their back yard unusable. He reiterated the need for safety for the neighborhood children and the privacy of his family when using the pool. He did not feel the fence impeded sight distance when backing out of the driveway as his family always backs out very slowly.

Mr. Skaggs addressed the accessory building request by stating this was the only place on his property to place the shed and that it wouldn't be visible above the fence.

Elizabeth Skaggs reiterated that the new fence is the same height and in the same location as the old fence.

Mayor Seibold questioned whether the concrete and other surfacing in the back yard had been changed with the renovations. Mrs. Skaggs stated that some of the concrete had been replaced with pavers and landscaping.

Mr. Skaggs stated various options that staff had given him, such as a berm or alternate locations were viable options for him.

Commissioner Walters asked how the fence impacted the ability to see down the sidewalk when backing up. Mrs. Skaggs noted their vehicles often hung over the sidewalk since the driveway is not very long and that they have always backed up very carefully and have never had an issue.

Commissioner Walters asked if the Skaggs would consider moving the fence back from the sidewalk 10' and how that would impact their living space in the back yard. Mr. Skaggs responded that they would have to deconstruct everything that they've already done and make the area outside the fence worthless.

Commissioner Favale questioned who gave the approval to construct the fence. Richard Angel of Harder & Warner Landscape stated that he had spoken with the engineering office and they said it was ok if it was replaced in the same location. He acknowledged that he was given a copy of the fence ordinance at that time and was told the fence had to comply with the ordinance.

The following communications were received at City Hall concerning this variance request:

- Petition signed by 15 property owners on Hall and Conlon            In Favor.

No other public comment was received. Mayor Seibold closed the public hearing.

2018-148-A. Miller-Favale. That the request of Philip & Elizabeth Skaggs of 2615 Hall to allow the construction of a 6.0' fence in the street side yard instead of the allowed 3.0' and to be located 1.0' from the property line instead of the required 20.0' be approved.

City Manager Donovan stated that fence provisions have been reviewed several times during his tenure and that the safety issue of clear sight distance allowing cars and pedestrians to see each other has always been a top priority. He noted the City Commission has always upheld this priority several times by keeping clear vision areas in the ordinances through setbacks along side yards and corner properties.

Commissioner Walters asked if the commission could set a specific distance for the fence other than what the applicant had requested. Assistant City Attorney Tobias verified the city could allow a different setback than what was requested.

Commissioner Duncan questioned if landscaping could be used as a privacy buffer in conjunction or in place of a fence. Zoning Administrator Mizikar stated that landscaping can be used for privacy as long as clear vision for cars and pedestrians is maintained and the plants do not overhang the sidewalk.

Mayor Seibold clarified the options in this case are either a 4' fence along the sidewalk or a 6' fence 20' from the sidewalk or 10' from the sidewalk as proposed in the upcoming amendment as long as the clear vision area is maintained.

Commissioner Walters agreed that the standards for a variance request are met by this request, although not to the extent applied for by the applicant. Mr. Walters noted he would be able to support 6' fence with a 10' setback from the sidewalk and appropriate clear vision triangle. He felt that while not ideal for the applicant, it would allow both privacy and safety. He also stated he would be able to support a 4' fence at 1' from the sidewalk as long as safe sight distance is maintained with fencing materials or angling of the fence.

Commissioner Miller noted there were several examples in the city where fences were built before the current ordinance and now create walls along the sidewalks. He didn't feel it was reasonable to say this fence is not a safety issue that just because an accident had not yet occurred. He stated it was the magnitude of the variance request that troubled him even though the standards appear to be met. Commissioner Miller noted he may be able to support one of the alternatives discussed above, but could not support the original request.

Mayor Seibold noted the commission always looks very carefully at situations where the entire fence or structure was removed, creating a clean slate where the applicant has a better opportunity to meet ordinance requirements without needing a variance. She noted the Skaggs had removed and replaced the fence and much of the concrete around the pool during this project which would have allowed them to plan for the placement of the fence, landscaping and other elements in locations that would comply with the requirements. Mayor Seibold did not feel that backing out slowly did not completely address the safety concerns. She doubted that any staff member would give a verbal approval when there have been issues like this in the past, and even if misinformation was given, it does not excuse a property owner from complying with the ordinance. She felt that since the fence was completely removed, she could not support the variance request as presented but was open to discussing the alternatives presented by others.

Philip Skaggs stated he asked his contractor to visit city hall and he said he was given permission so they proceeded with their plans. He didn't feel it was fair to him to change that permission after the fact because an employee gave the wrong information. He noted there have apparently been similar problems before because the city is implementing a fence permit process with the new fence ordinance. He did not understand what issue the fence ordinance was trying to solve by requiring such extensive setbacks or allowing a 4' fence instead of 6'. Mr. Skaggs stated when he was on the commission they granted variances all the time to rebuild garages and other things in the same spot as before. He felt reconstructing the fence would be costly and not accomplish anything except making his family less safe. He stated there was no reason to not allow the rebuilt fence to remain and asked the commission to vote on his original request.

Commissioner Zagel noted the contractor had received a copy of the fence ordinance before the project began, that the work was halted for several weeks when the noncompliance was discovered and the applicant decided to finish the fence before receiving the variance. He felt the commission had offered several alternatives to give the Skaggs additional space in their back yard, but these were apparently not acceptable to them.

Mayor Seibold suggested the commission vote on the original request and then let Mr. and Mrs. Skaggs decide if there were alternatives they wished to put forward in another application.

Commissioner Favale noted that the clear vision triangle was not contained in the old ordinance and Mr. Skaggs would not have had to consider this when planning his fence. She the applicants had done their due diligence by contacting the city and then proceeding after getting permission. She noted that a 4' fence would not give the family any privacy and she supported the variance request.

Assistant City Manager LaFave noted it would be unusual for staff to give a blanket verbal approval, but was not present when this exchange happened and doesn't know what was said. He stated the front desk staff gives out a copy of the fence ordinance and tells residents and contractors that all requirements have to be met or a

variance application submitted. Assistant City Attorney Tobias confirmed that misinformation does not release a property owner from having to comply with the ordinance.

City Manager Donovan stated the applicants could submit another variance request if it is substantially different from the original request. Staff will make the determination if it is different, and the applicant can appeal any decision to the full city commission.

Elizabeth Skaggs stated that when they stopped work immediately and applied for a variance when received notice the fence was not compliant. When the variance request was delayed, they decided to finish the fence. She stated this whole situation would not have happened if the commission had voted on the request when it was supposed to be heard.

Mayor Seibold addressed this concern by stating that there had been several fence variance requests in recent months and she felt it was important to review the rules to see if the regulations were reasonable. She stated the delay was intended to help those seeking variances, not to unnecessarily delay.

After discussing several alternatives, including various locations and heights that would be acceptable for sight distance, privacy and use of the back yard, the city commission decided to vote on the current request and allow the applicant to submit a substantially different request in the future if they decide to do so.

Yeas: Favale – 1

Nays: Duncan, Favale, Hamrick, Miller, Walters, Zagel and Seibold – 6

2018-148-B. Walters-Duncan. That the request Philip & Elizabeth Skaggs of 2615 Hall to allow a detached pool accessory structure in the street side yard 1.0' off the property line and to be located 7' 1" from the principle structure instead of the required 10.0' be approved.

Elizabeth Skaggs stated the shed would a small storage area for pool supplies or outdoor items and would be built to match the home.

Because the proposed location for the accessory building would be both outside any compliant fence and located within the clear vision area, the commission opted to table this portion of the request.

2018-148-C. Miller-Duncan. That the request of Philip & Elizabeth Skaggs of 2615 Hall to allow a detached pool accessory structure in the street side yard 1.0' off the property line and to be located 7' 1" from the principle structure instead of the required 10.0' be tabled to allow the applicant time to consider the placement of the shed following the denial of the fence location variance.

Yeas: Duncan, Favale, Hamrick, Miller, Walters, Zagel and Seibold – 7

Nays: -0-

2018-149. Peter Haefner of Vredevelde Haefner reviewed the audited financial statements for the fiscal year ended June 30, 2018 and answered questions from the City Commission.

Commissioner Miller noted that the city has been able to get slightly ahead of some of the infrastructure capital needs instead of falling behind. Everyone agreed this was an accomplishment to be proud of. Mayor Seibold reported the Governor's office had also recognized the city for its approach to these improvements.

2018-150. Final Reading of an ordinance to amend Article I of Chapter 83 of Title VII of the City Code pertaining to general fence requirements.

Zoning Administrator Mizikar reviewed the changes included in this amendment, including reducing the setback on corner lots from 20' to 10' and adding a free permit system to assist residents with understanding the ordinance and ensuring compliance with the ordinance requirements.

2018-150-A. Miller-Duncan. That an ordinance to amend Article I of Chapter 83 of Title VII of the City Code pertaining to general fence requirements be adopted as attached in Exhibit "A".

Commissioner Miller reported the Infrastructure Committee had discussed the fence requirements in great detail and recommend the proposed changes which will add more options for many homeowners.

Commissioner Favale liked the addition of the free permit system to make sure people understand the requirements.

Commissioner Walters asked staff to make sure the reference to Section 3.40 in Section 8.61(c) is adjusted to match the new Chapter 32 numbering when it is adopted at the next meeting.

Yeas: Duncan, Favale, Hamrick, Miller, Walters, Zagel and Seibold – 7  
Nays: -0-

2018-151. Introduction of an ordinance to amend Chapter 32 of Title III of the City Code pertaining to trees, shrubs and plants.

Assistant City Manager LaFave outlined the changes proposed to Chapters 32, 41 and 42 that will update definitions and terminology, remove obsolete procedures and add language for house moving, damage repair and sidewalk maintenance responsibilities.

Mayor Seibold asked that Section 4.45 of Chapter 42 be reviewed again to reflect that this section is intended for extreme weather situations and not intended to force homeowners to clear sidewalks each time it snows. Staff will review this language and make a recommendation at the next meeting.

2018-151-A. Walters-Hamrick. That an ordinance to amend Chapter 32 of Title III of the City Code pertaining to trees, shrubs and plants be introduced as set forth in Exhibit “A” attached hereto.

Yeas: Duncan, Favale, Hamrick, Miller, Walters, Zagel and Seibold – 7  
Nays: -0-

2018-152. Introduction of an ordinance to amend Chapter 41 of Title IV of the City Code pertaining to street and sidewalk provisions.

2018-152-A. Favale-Zagel. That an ordinance to amend Chapter 41 of Title IV of the City Code pertaining to street and sidewalk provisions be introduced as attached in Exhibit “C.”

Yeas: Duncan, Favale, Hamrick, Miller, Walters, Zagel and Seibold – 7  
Nays: -0-

2018-153. Introduction of an ordinance to amend Chapter 42 of Title IV of the City Code pertaining to sidewalks.

2018-153-A. Hamrick-Favale. That an ordinance to amend Chapter 42 of Title IV of the City Code pertaining to sidewalks be introduced as attached in Exhibit “D.”

Yeas: Duncan, Favale, Hamrick, Miller, Walters, Zagel and Seibold – 7  
Nays: -0-

2018-154. Policy for the placement of in-street pedestrian crossing signs.

Assistant City Manager LaFave explained the proposal to place portable signs in several school crosswalks during the morning and afternoon school commutes to raise awareness of the requirement to yield to pedestrians in the crosswalks. Mr. LaFave is recommending the portable signs so that people don’t ignore them after a period of time and so they aren’t damaged during other times of the day. Mr. LaFave noted the signs would say “yield” rather than stop because there is no local law requiring cars to stop, only to yield.

2018-154-A. Miller-Zagel. That a policy and guidelines for the use of in-street pedestrian school crossing signs be adopted as attached in Exhibit "E."

Yeas: Duncan, Favale, Hamrick, Miller, Walters, Zagel and Seibold – 7  
Nays: -0-

2018-155. Hamrick-Favale. To approve the consent agenda as follows:

2018-155-A. Minutes of the special meeting held September 24, 2018.

2018-155-B. Minutes of the regular meeting held October 1, 2018.

2018-155-C. Payroll disbursements of \$222,191.58; county and school disbursements of \$50,933.11, and total remaining disbursements of \$210,329.03.

2018-155-D. A resolution approving budget amendments for the quarter ending September 30, 2018 as attached in Exhibit "F."

2018-155-E. A contract in the amount of \$209,183 for property and liability insurance with Travelers Insurance through VanWyk Risk Solutions.

Yeas: Duncan, Favale, Hamrick, Miller, Walters, Zagel and Seibold – 7  
Nays: -0-

2018-155-F. Miller-Zagel. Motion to enter into an executive session to discuss an attorney's opinion in accordance with Section 8(h) of the Open Meetings Act. A roll call vote was taken.

Yeas: Duncan, Favale, Hamrick, Miller, Walters, Zagel and Seibold – 7  
Nays: -0-

The meeting adjourned at 8:29 p.m., subject to the call of the Mayor until November 5, 2018.

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Karen K. Brower, City Clerk

Attachments: A – Ordinance amendment to Article I of Chapter 83 pertaining to general fence requirements  
B – Ordinance amendment to Chapter 32 regarding trees, shrubs and plants  
C – Ordinance amendment to Chapter 41 regarding street and sidewalk provisions  
D – Ordinance amendment to Chapter 42 regarding sidewalks  
E – Policy for placement of in-street pedestrian crossing signs  
F – Resolution approving budget amendments for September 30, 2018

Attachments listed above are available for inspection at the office of the City Clerk.