

PROCEEDINGS OF THE CITY COMMISSION
CITY OF EAST GRAND RAPIDS

Regular Meeting Held May 6, 2019

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: City Attorney Huff; Special Counsel Wardrop; Interim City Manager LaFave; Finance Director Mushong, Public Safety Director Herald; Parks & Recreation Director Bunn; City Clerk Brower; Captain Buikema, Sgt. Lindner; PSO Lobezoo; Zoning Administrator Mizikar

2019-72. No public comment was received.

2019-73. Commissioner Favale reminded everyone to vote in tomorrow's school millage election and congratulated the high school's e-sports team on their recent tournament win.

Commissioner Duncan reported the recent theater production of *The Addams Family* by the High School Drama Department was a great success.

Commissioner Hamrick warned everyone to avoid the turkeys in the area.

Mayor Seibold thanked the city staff who worked last Saturday for absentee voting prior to the election.

2019-74. Public Safety Director Herald awarded sergeant stripes to Officer Mark Lindner. City Clerk Brower administered the oath of office to Sergeant Lindner.

2019-75. A hearing was held regarding an appeal of the staff determination regarding a resubmitted variance request at 2615 Hall.

Interim City Manager LaFave explained that Mr. and Mrs. Skaggs had submitted a second variance request for the fence around their yard at 2615 Hall. After reviewing the variance application, staff made the determination that there were no changed conditions from the original request other than a slight modification at the corner of the driveway and the sidewalk. Mr. LaFave stated the fence is still 6' tall and is still located 1' from the property line, both of which are not allowed by the fence ordinance. Mr. LaFave reviewed a map of the property showing the location of the current fence, the location requested by the variance application and the 10' setback and clear vision area required by ordinance. He noted the Public Works Department notified Mr. and Mrs. Skaggs that the variance request would not be submitted to the city commission due to the determination that the second request was not substantially different than the first request. Mr. and Mrs. Skaggs are appealing this decision and asking the city commission to place their variance request on a future agenda. Mr. LaFave explained that Section 5.101 of the City Code authorized staff to review variance applications and determine whether to resubmit to the elected officials, a common provision of local government ordinances. Mr. LaFave asked the City Commission to confirm the Public Works Director had the authority to make the decision on this variance and that the authority was used correctly in this circumstance. Mr. LaFave also noted he had sought opinions from two outside planning consultants who concurred that the second request was not significantly different than the first request.

Elizabeth Skaggs, 2615 Hall, stated they erected the fence to ensure the safety of area children and the privacy for their family. She noted the first variance request was denied in October because of the lack of visibility at the corner of the sidewalk and driveway, which is addressed with the second variance request. She felt the Zoning Administrator made a mistake when applying the ordinance and asked the commission to rectify this

error. She dismissed the references to the Michigan Municipal League handbook as not being legal authority and reviewed Section 5.102A which allows the Zoning Board of Appeals to reverse, affirm or modify the decision appealed. She noted this was consistent with Michigan Court of Appeals decision in Hughes vs Alma Township which states the Zoning Board of Appeals is not limited to reviewing the record of the administrative board whose decision it is reviewing and has all the powers given to it. Mrs. Skaggs stated there was no indication at the October meeting that the denial would not be revisited, and they felt there would be continuing dialogue about options to address the issues. She stated the Zoning Administrator has taken away the commissioner's power and responsibility to do their jobs.

She further argued that the ordinance allows for "changed conditions" but doesn't provide adequate definition or measurement for changes. Mrs. Skaggs felt this request meets the changed condition criteria because the fence ordinance changed and is dramatically different because the two variances requested for a shed in October have been dropped and only a modified fence that focuses on clear vision remains. She felt that dropping the shed variance requests alone constituted a change in conditions. She noted the old fence was in place for 40 years, but their family was willing to sacrifice part of their back yard to address the concerns.

Phil Skaggs, 2615 Hall, submitted a petition signed by 28 neighbors supporting the appeal and second variance request, and resubmitted a petition from October supporting the original three requests. Mr. Skaggs stated that residents should be able to be heard by their elected officials. He noted that staff had not set up a meeting to discuss alternatives following the October meeting and he and his wife had to come up with their own plan. He stated that none of this would have happened if there had been a formal process for putting up a fence. Mr. Skaggs concluded by saying that staff should not be making these types of decisions as the residents expect the commissioners to be deciding these issues.

Mayor Seibold opened a public hearing. The following people were present to express their opinions:

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| - Bob Milanowski, 2640 Hall | In favor of granting variance. |
| - Jonathan Paasch, 2639 Hall | Concerned that staff is making decisions; commission needs to decide. Supported granting the fence variance. |

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

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| - Jonathan Paasch, 2639 Hall | In favor of granting variance. |
| - Maureen Murphy, 2605 Hall | Supports appeal and variance request. |
| - Alissa Adams, 1160 Conlon | Supports appeal and variance request. |
| - Elizabeth & Omar Flores, 2544 Hall | Supports appeal and variance request. |
| - Brad Kirk, 1065 Conlon | In favor of granting variance. |

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

2019-075-A. Hamrick-Favale. That the appeal by Philip & Elizabeth Skaggs of 2615 Hall be granted and the administrative denial of a resubmitted fence variance request be overturned.

Special Counsel Wardrop explained that the city ordinances give the discretion for administrative review of resubmitted variances to the Director of Public Works. He stated the commission should decide whether staff abused their power in rejecting this application and whether conditions had changed to allow the second variance application to be heard.

Commissioner Hamrick spoke in favor of overturning the staff's decision because the commission changed the fence ordinance and there was indication to the Skaggs that other solutions should be explored.

Commissioner Duncan felt the commission should have tabled the request in October instead of denying it, which would have allowed the applicants to revise the request. She indicated she was willing to hear the second variance request.

Commissioner Zagel reminded everyone that various options were discussed with the Skaggs during the October hearing. He noted the second application differed from the first application by approximately 5%. He did not feel that 5% was a significant change in conditions and supported the staff determination.

Mayor Seibold also noted that several options were given to Mr. and Mrs. Skaggs at the October hearing, but the applicants requested the variance request be voted on as submitted. She agreed that changing only 5% of the fence was not a significant change.

Commissioner Miller supported the appeal process that asks staff to review and gives the final decision to the commission. He also felt the request should have been tabled in October instead of denied. Mr. Miller agreed that sight distance was the primary concern with the original request in October and felt cutting the corner addressed that concern. He supported granting the appeal and hearing the revised request.

Commissioner Favale noted the denial was based on the old fence ordinance and the new request should be heard. She also stated the clear vision area was not required in the old ordinance and the Skaggs should be allowed a new hearing.

Commissioner Walters disclosed that Elizabeth Skaggs is one of his partners at Varnum and that Mr. and Mrs. Skaggs are clients of Varnum. He stated that he voted on the original request in October and that he did not feel that was inappropriate. He noted that City Attorney Huff, who is also with Varnum, has since stepped aside regarding the Skaggs variance request. Mr. Walters did not feel he as a commissioner was subject to the same standard as he was not giving legal advice but stated that he would not be voting on the second variance request if it is eventually brought to the commission. He felt he could participate in the appeal discussion since he voted in October. Mr. Walters noted that he had tried to address this possibility in October by suggesting the matter be tabled versus voting no on the request but was told it would not be an issue to hear a new request. He stated he would be voting in favor of overturning the staff decision because he knew in October this would need to be discussed again.

Mayor Seibold noted the Skaggs chose to go forward with finishing their fence after being notified it did not meet the ordinance and then requested a variance. The change in the fence ordinance did not cause the issue. She did not feel their second request was different as it still did not meet the clear vision requirements and still placed a 6' tall fence along the sidewalk where it was not allowed. Mayor Seibold was concerned the precedent of overturning staff's decision and stripping them of their authority to make decisions would result in many applicants submitting repeated requests for the same variance to the commission.

Yeas: Duncan, Favale, Hamrick and Miller – 5
Nays: Zagel and Seibold – 2

2019-76. Duncan-Miller. To approve the consent agenda as follows:

- 2019-076-A. Minutes of the regular meeting held April 15, 2019.
- 2019-076-B. Payroll disbursements of \$211,501.52; county and school disbursements of \$-0-, and total remaining disbursements of \$597,275.84.
- 2019-076-C. Approval of scheduled carpet replacement in areas of the library, community center and public safety buildings in the amount of \$5,678.71 and emergency replacement of carpeting due to water damage in the library of \$13,550.00 with Tarkett/Lansing Tile & Mosaic of Lansing.
- 2019-076-D. A contract with Corpro of Medina, Ohio in the amount not to exceed \$15,250 plus a 10% contingency for corrosion equipment and protection of the elevated water tank.
- 2019-076-E. Two-year contracts for FY 2018-19 and FY 2019-20 with Advance Rehabilitation Technology of Bryan, Ohio for sanitary sewer manhole rehabilitation in the amount of \$225 per linear foot and with Havener Tech of Troy, Michigan for storm sewer catch basin rehabilitation in the amount of \$500 per structure.

2019-076-F. A contract with Superior Asphalt for asphalt patching services in the amount of \$21.50 per square yard for removal and \$94 per ton for patching as needed for in-house and contracted repairs.

2019-076-G. A fireworks permit application for Great lakes Fireworks to perform the fireworks display for the July Celebration for the City of East Grand Rapids.

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

2019-77. Walters-Miller. 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 6:59 p.m., subject to the call of the Mayor until May 20, 2019.

Karen K. Brower, City Clerk