



WORKSHOP AGENDA
CITY OF BIRCHWOOD VILLAGE
WASHINGTON COUNTY, MINNESOTA
September 7, 2016
7:00 P.M.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

APPROVE AGENDA

CITY BUSINESS – REGULAR AGENDA

- A. Review Ordinance 302.045 (Fence Height) and 302.070 City Fence Ordinance
- Discuss resident fence at 483 Lake Ave

ADJOURN

*Denotes items that have supporting documentation



MEMORANDUM

TO: Birchwood City Council
FROM: Mike Anderson, City Administrator
DATE: September 2, 2016
SUBJECT: 483 Lake Ave Fence

The City of Birchwood is currently encountering an issue with the installation of a new fence. The fence ordinance (attached) states that they should be no higher than 6 feet. This also does not state anything about fence posts and the regulation of height for posts. This is stated in City Code 302.045 and 302.070.

On June 30, 2016 a permit for a fence was issued and picked up at City Hall. Letters to surrounding properties were sent out on 6/24/16 and received on 6/25/16. The morning of 6/30, the construction of the fence began.

On July 7, 2016 I received an email complaint about the height of the fence from a neighbor. It stated that the fence was taller than the allowed 6 feet by City Ordinance. On July 12, Building Official Kramer went to the site and measured the fence. He concluded it was taller than 6 feet (posts and fence).

Since then emails, phone calls, and letters have been exchanged between the City and the residents involved with this issue. In this packet you will find the emails that have been exchanged in the order from beginning to present along with the language from City Code and the application/permit issued.

To this day, no action has been taken to bring the fence into code.

b. Dock and Pier Setbacks: Setback requirements from the ordinary high water levels shall not apply to piers and docks. Locations of piers and docks shall be controlled by applicable state and local regulations.

b. Retaining Wall Setbacks: Front, back, side street and other lot line setback requirements shall not apply to retaining walls except that the ordinary high water level setback requirements shall apply to retaining walls.

5. STRUCTURES IN WETLANDS. No structures are allowed within any wetlands.

“AMENDED BY ORDINANCE 1997-2; August 12, 1997.”

“AMENDED BY ORDINANCE 2003-1; February 12, 2003.”

302.030. HIGH WATER ELEVATIONS. All buildings shall be located such that the lowest floor surface is at a level at least three (3) feet in elevation above the highest known water level of any lake, pond, or wetland adjoining the lot. For three water bodies the high known water levels are:

HIGHEST KNOWN WATER LEVELS (Feet Above Mean Sea Level)

DNR ID #82-167	White Bear Lake	926.7 (NGVD, 1929)
DNR ID #82-134	Lost Lake	927.0 (NGVD, 1929)
DNR ID #82-480W	Hall's Marsh	926.7 (NGVD, 1929)

302.040. STRUCTURE REQUIREMENTS.

1. Each dwelling unit must have a floor area of at least 900 square feet.
2. The maximum square footage of a storage shed is 144 square feet. No person shall place automobiles, vans, or trucks in a storage shed.

302.045 STRUCTURAL HEIGHT RESTRICTIONS

1. STRUCTURAL HEIGHT LIMITATION: The maximum height of a structure as calculated by Method A or Method B (see below) is as follows:

<u>Structure type</u>	<u>Structure Height Limitation</u>
Principal Structure/attached garage	30 feet
Detached garage	18 feet
Detached storage shed	12 feet
Fences	6 feet

control on any property within the City, is a nonconformity. When a development permit is sought for property with non conforming vegetative or erosion conditions, a recovery plan must be submitted by the permit applicant and approved prior to permit issuance. The recovery plan must provide for reasonable screening of shoreland development, protection of soil from erosion, surface water shading and a schedule for implementation.

302.070 CITY FENCE ORDINANCE.

1. Zoning Permit. A Zoning Permit (see Sections 301.080.1.b and 307) shall be obtained from the City before installing or constructing any fence for any purpose. A site drawing showing the location of the fence shall be submitted with the permit application.
2. Notice to Neighbors. Any applicant for a Zoning Permit to construct a fence shall notify all abutting property owners at least five (5) days prior to submitting the application for a Zoning Permit.
3. Location. All fences shall be located entirely upon the property of the fence owner.
4. Height. No fence may exceed six (6) feet in height.
5. Retaining Walls. Solid walls in excess of four (4) feet high shall be prohibited unless they are part of a building.
6. Materials. Fences in excess of four (4) feet in height shall be at least thirty percent (30%) open through the entire surface area of the fence. All fences shall be constructed and maintained in a substantial manner and of material reasonably suited for the purpose for which the fence is proposed to be used. That side of the fence considered to be the face (or most attractive side of the fence) shall face toward abutting properties.

“AMENDED BY ORDINANCE 1997-2; August 12, 1997.”

302.080. STAIRS AND LIFTS TO LAKE OR WATERBODY - STANDARDS. A stairway or lift to enable access from land properties to White Bear Lake or pond or recreational body of water shall be constructed and maintained in compliance with the standards and requirements of Section 302.080 parts 2 and 3.

1. The applicant shall obtain a Zoning Permit before any construction takes place.
2. Standards and requirements for stairways are as follows:
 - a. Stairways may not exceed 44 inches in width.
 - b. Landings may be permitted at a minimum vertical interval of 20 feet.
 - c. Landings may not exceed 32 square feet in area.

City of Birchwood Village
BUILDING PERMIT APPLICATION
ZONING PERMIT

Jack Kramer - Building Official
 1009 Oakgreen Avenue North
 Stillwater, MN 55082
 Office Ph. # 651-351-5051
 Pager # 651-847-9157

Two Sets of Plans Received: SITE DRAWINGS
 Date Issued: 6-30-16
 Permit No: 2016-35

Project Address: 483 Lake Ave, Birchwood
 Permit Applicant: Jim + Debbie Harrod Phone No: 612-804-8157 0-
 Contractor License No: Midwest Fence Expiration Date: 612-384-1729
 Homeowner: _____ Phone No: _____

Permit For: Fence Valuation \$: _____
 Sq. Feet: _____ Length: 100 FT Width: _____ Height: 6 Feet
 Legal of Site Location: 483 Lake Ave
 PID#: 30.030.21.13.0027
 Road Escrow: _____
 Proximity to Wetlands or Lakeshore: 50 feet from OHWL
 Setbacks: Front Yard _____ Rear Yard _____ Side/s Yard 3"
 Septic Inspector Approval: _____ Fee \$: _____

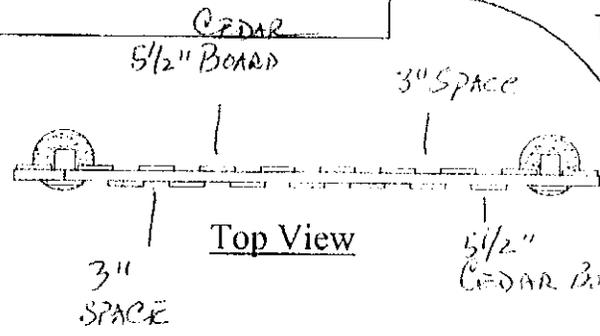
Description of Work (attach a site plan) To install a 6 foot privacy fence

NOTE: PLEASE SEE ATTACHED FENCE ORD. PERMIT APPROVED 6-30-16
 SER. 302.070 CITY FENCE ORDINANCE BY THE CITY OF BIRCHWOOD VILLAGE
 JACK KRAMER - Bldg. Official

Special Approvals	Required	Received	Not Required
Washington County			✓
Rice Creek Watershed			✓
City Council			✓
Building Commissioner			✓

Plan Check Fee	\$ N/A
City Fee	\$ 30.00
State Surcharge Fee	\$ N/A
Building Permit Fee	\$ N/A

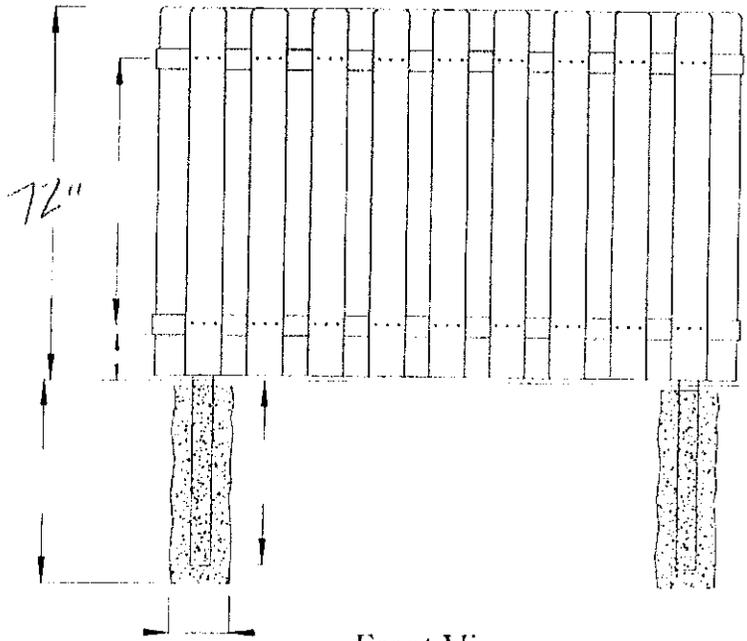
6' Board on Board Fence Detail



TYPICAL
ARROWS
INDICATE
ENTIRE
THICKNESS
OF
FENCE
SECTIONS



Side View



Front View



Project:		Date:	
Site Location:		Submitted by:	
		Drawing #	W-14

Jack Kramer

From: Terry Lancaster <TerryL@midwestfenceco.com>
Sent: Friday, July 15, 2016 6:10 PM
To: inspjack@msn.com
Subject: Fence for [REDACTED] Birchwood Village, MN (Code 302.070, City Fence Ordinance)
Attachments: SCN_BIRCHWOOD VILLAGE.pdf

Jack,

Please see the attached documents in reference to the complaint about the fence installed at 483 Lake Ave being in code violation.

I understand the height violation but I need some written clarification from the city regarding the 30% open space verbage. We have built an alternating board style fence (commonly referred to as a good neighbor fence since both sides appear the same). Per the drawing we have 5-1/2" fence boards with a 3" opening between the boards, alternating on each side, across the entire face of each fence section. Please clarify whether this is acceptable and will meet the code requirements for 30% open space.

I await your reply before I begin reworking the fence for the [REDACTED].

Regards,

Terry Lancaster
General Manager
Midwest Fence & Mfg. Co.
Phone 651.451.2221
terryl@midwestfenceco.com

control on any property within the City, is a nonconformity. When a development permit is sought for property with non conforming vegetative or erosion conditions, a recovery plan must be submitted by the permit applicant and approved prior to permit issuance. The recovery plan must provide for reasonable screening of shoreland development, protection of soil from erosion, surface water shading and a schedule for implementation.

302.070 CITY FENCE ORDINANCE.

1. Zoning Permit. A Zoning Permit (see Sections 301.080.1.b and 307) shall be obtained from the City before installing or constructing any fence for any purpose. A site drawing showing the location of the fence shall be submitted with the permit application.
2. Notice to Neighbors. Any applicant for a Zoning Permit to construct a fence shall notify all abutting property owners at least five (5) days prior to submitting the application for a Zoning Permit.
3. Location. All fences shall be located entirely upon the property of the fence owner.
4. Height. No fence may exceed six (6) feet in height.
5. Retaining Walls. Solid walls in excess of four (4) feet high shall be prohibited unless they are part of a building.
6. Materials. Fences in excess of four (4) feet in height shall be at least thirty percent (30%) open through the entire surface area of the fence. All fences shall be constructed and maintained in a substantial manner and of material reasonably suited for the purpose for which the fence is proposed to be used. That side of the fence considered to be the face (or most attractive side of the fence) shall face toward abutting properties.

"AMENDED BY ORDINANCE 1997-2; August 12, 1997."

302.080. STAIRS AND LIFTS TO LAKE OR WATER BODY - STANDARDS. A stairway or lift to enable access from land properties to White Bear Lake or pond or recreational body of water shall be constructed and maintained in compliance with the standards and requirements of Section 302.080 parts 2 and 3.

1. The applicant shall obtain a Zoning Permit before any construction takes place.
2. Standards and requirements for stairways are as follows:
 - a. Stairways may not exceed 44 inches in width.
 - b. Landings may be permitted at a minimum vertical interval of 20 feet.
 - c. Landings may not exceed 32 square feet in area.

City of Birchwood Village

- a. Clearcutting of trees shall be prohibited, except as necessary for placing public roads and structure.
- b. Ground cover vegetation shall be restored insofar as feasible after any construction project.
- c. The removal of trees, limbs or branches, and other plants that are dead, diseased or pose safety hazards is permitted on any property.
- d. All cutting, pruning and trimming of trees must be based on sound forest management practices for individual tree species.
- e. Alterations on Shore Lots. Selective cutting of trees and underbrush shall be allowed on lots abutting lakes, ponds, or wetlands as long as sufficient cover is left to reasonably screen motor vehicles and structures when viewed from the water and existing shading of water surfaces is preserved. Natural shrubs which are removed must be replaced with other vegetation which is equally effective in retarding runoff, preventing erosion, and screening structures, vehicles, or other facilities. A protective buffer strip of natural vegetation at least 16.5 feet in width shall be maintained around all wetlands.

"AMENDED BY ORDINANCE 1995-2; MAY 9, 1995."

2. Nonconformity. Any use which lacks reasonable screening of development on lots abutting lakes, ponds, or wetlands, or which does not provide for adequate erosion control on any property within the City, is a nonconformity. When a development permit is sought for property with non conforming vegetative or erosion conditions, a recovery plan must be submitted by the permit applicant and approved prior to permit issuance. The recovery plan must provide for reasonable screening of shoreland development, protection of soil from erosion, surface water shading and a schedule for implementation.

302.070 CITY FENCE ORDINANCE.

1. Zoning Permit. A Zoning Permit (see Sections 301.080.1.b and 307) shall be obtained from the City before installing or constructing any fence for any purpose. A site drawing showing the location of the fence shall be submitted with the permit application.
2. Notice to Neighbors. Any applicant for a Zoning Permit to construct a fence shall notify all abutting property owners at least five (5) days prior to submitting the application for a Zoning Permit.
3. Location. All fences shall be located entirely upon the property of the fence owner.
4. Height. No fence may exceed six (6) feet in height.

5. Retaining Walls. Solid walls in excess of four (4) feet high shall be prohibited unless they are part of a building.

6. Materials. Fences in excess of four (4) feet in height shall be at least thirty percent (30%) open through the entire surface area of the fence. All fences shall be constructed and maintained in a substantial manner and of material reasonably suited for the purpose for which the fence is proposed to be used. That side of the fence considered to be the face (or most attractive side of the fence) shall face toward abutting properties.

“AMENDED BY ORDINANCE 1997-2; August 12, 1997.”

302.080. STAIRS AND LIFTS TO LAKE OR WATER BODY - STANDARDS. A stairway or lift to enable access from land properties to White Bear Lake or pond or recreational body of water shall be constructed and maintained in compliance with the standards and requirements of Section 302.080 parts 2 and 3.

1. The applicant shall obtain a Zoning Permit before any construction takes place.
2. Standards and requirements for stairways are as follows:
 - a. Stairways may not exceed 44 inches in width.
 - b. Landings may be permitted at a minimum vertical interval of 20 feet.
 - c. Landings may not exceed 32 square feet in area.
 - d. Handrails are recommended, however they shall not unduly obstruct the view by neighboring properties.
 - e. Canopies or roofs are not permitted on stairways or landings.
 - f. Stairways shall be anchored and supported with pilings or footings.
 - g. The applicant must submit a plan for the stairway to the City of Birchwood Village showing all necessary construction data including location, design, dimensions and construction materials before construction may begin.
 - h. Steps must comply with all setback requirements except the setback from the high water mark.
3. Standards and requirements for lifts are as follows:
 - a. The primary function of a lift shall be for the transportation of persons up and down the slope.

Mike Anderson

From: [REDACTED]
Sent: Monday, June 27, 2016 12:14 PM
To: Mike Anderson
Subject: Re: Letter for Fence permit
Attachments: Amended Order and Judgment - Harrod-1.pdf

Mike,

Here is a copy of the court order. The line has been decided by the court. There is no longer a dispute. We are using the legal description from the court order along the [REDACTED] survey to make sure the fence will be built on our property. (see page 24 of 48 for the legal description).

Thanks for all your help!

[REDACTED]

On Mon, Jun 27, 2016 at 11:51 AM, Mike Anderson <mike.anderson@cityofbirchwood.com> wrote:

[REDACTED]

I just received a call regarding your fence letter. This person stated that the land/lot lines are under review and there is a court hearing on Friday. They have asked to see the plans, which are public knowledge.

The concern is that your fence will be placed on their property. We have an official land survey that came with the plans and the City used that in approving the permit but my concern is that if the property line is under dispute, we may have to tag the permit until this is resolved. If you have further information that could assist please let me know.

Thanks,

Mike Anderson

City Administrator

City of Birchwood Village

651-426-3403

From: [REDACTED]
Sent: Friday, June 24, 2016 12:50 PM
To: Mike Anderson
Subject: RE: Letter for Fence permit

Yes thanks!

On Jun 24, 2016 9:44 AM, "Mike Anderson" <mike.anderson@cityofbirchwood.com> wrote:

Can I confirm that the attached letter is the one you want sent? I will do so, but want to double check.

Thanks,

Mike Anderson

City Administrator

City of Birchwood Village

651-426-3403

From: [REDACTED]
Sent: Thursday, June 23, 2016 5:06 PM
To: BVInfoEmail; Birchwood Village
Cc: [REDACTED]
Subject: Letter for Fence permit

Mike

Here is our letter to inform our neighbors at 479 Lake Ave that we will be constructing a fence. [REDACTED] had said you would mail it? Let me know if there is anything else we need to do. Thanks!

[REDACTED]

----- Forwarded message -----

From: [REDACTED]
Date: Jun 23, 2016 11:39 AM
Subject:
To: [REDACTED]
Cc:

Please Open the attached document.
This document was sent to you using CX2731 MFP

Mike Anderson

From: [REDACTED]
Sent: Monday, June 27, 2016 6:19 PM
To: Mike Anderson
Cc: [REDACTED]
Subject: [REDACTED] Request

Mike,

There is a hearing Friday, July 1, 2016, at the Washington County Courthouse to get an order from the court to set the judicial monuments marking the boundaries. After the order is issued, our surveyor (Cornerstone Land Surveyors) together with the Washington County Examiner of Titles will set the monuments. That probably cannot occur until after the 4th of July weekend.

It is my understanding that there cannot be any construction of any sort until the monuments are set. Today there was a surveyor, whom the [REDACTED] hired, out marking where the monuments are suppose to go when they are set. The marks were made so that the construction of the [REDACTED] fence may begin. I am very concerned about the [REDACTED] current surveyor's accuracy. I hope that he will be more accurate then their previous surveyor who included 10 feet of our property in his survey. Their original surveyor's mistake made it necessary to have a trial to settle the problem. If any problems with the [REDACTED] fence should occur because the monument have not been set, I am concerned that it will take another trial to remedy the situation. I would appreciate it if you could temporarily suspend the construction permit and not allow the [REDACTED] to begin their fence until the monuments are set. Thank you!

[REDACTED]
On Mon, Jun 27, 2016 at 4:05 PM, Mike Anderson <mike.anderson@cityofbirchwood.com> wrote:

[REDACTED]
I am sending you this info because the email I sent [REDACTED] this morning just bounced back.

The fence was granted based on the official land survey that was granted by the court for your property that is being used in this process. The fence will be in the neighbors property that will be going up at the end of the week. The information I have been given is there is no longer a dispute on the property line and the surveyor will be marking the property lines prior to fence construction.

Please [REDACTED] let me know if you have further questions.

Thanks,

Mike Anderson

From: [REDACTED]
Sent: Tuesday, June 28, 2016 12:05 PM
To: Mike Anderson
Cc: [REDACTED]
Subject: fence permit at 483 Lake Avenue
Attachments: Survey Info.pdf

Mike and [REDACTED]

In addition to the concerns expressed in [REDACTED] e-mail last night, now that I have had a chance to see the permit, I wish to point out that the City of Birchwood Village failed to follow its' own ordinance in the granting of the zoning permit.

- The zoning permit was issued 6/24/2016.
- Section 302.070(2) provides that any applicant for a zoning permit shall notify all abutting property owners at least five (5) days prior to submitting the application.
- The abutting property is 479 Lake Avenue. The registered property owner of 479 Lake Avenue is [REDACTED].
- On 6/25/2016 we received an envelope from Birchwood Village addressed to [REDACTED]. Inside it was a letter addressed to [REDACTED] and [REDACTED]. I have no idea who [REDACTED] is and I am not the property owner.
- The fact that the notice was mailed by the City and postmarked 6/24/16 and received by us on 6/25/16 is clear evidence that the city knew that notice was not given 5 days prior to submitting the application.

Based on the above indisputable facts, I submit the following:

- That proper notice has still not been given. I concede this is a picky point, but it does bear mentioning.
- That the City of Birchwood Village unlawfully issued a zoning permit knowing that notice had not been given to the abutting property owner.

It has been suggested that we obtain a restraining order to prevent anything from occurring prior to the setting of the judicial monuments. The problem with that suggestion is that it would require us to spend money on attorney fees and filing fees. We have already spent more money than we wanted to because of the attempt by the [REDACTED] to steal part of our property with the help of one rogue surveyor. That issue has been settled now but procedurally we must wait for the court to authorize the setting of the monuments.

We have no issue with the fact that they want to construct a fence. We actually welcome it. However, we want to be sure it is placed entirely on their property. By this, I mean that the digging of holes for fence posts must be entirely on their side of the boundary line.

In summary, I believe it is in the City's best interest to take whatever steps are necessary to stop the construction of this fence until after the judicial monuments have been set. We should not have to incur legal and filing fees to accomplish this. We are not the ones who made a mistake. Thank you.

[REDACTED]

From: [REDACTED]
Sent: Monday, June 27, 2016 6:19 PM

Mike Anderson

From: [REDACTED]
Sent: Thursday, June 30, 2016 7:32 AM
To: Mike Anderson
Cc: [REDACTED]
Subject: Re: fence permit at 483 Lake Avenue

What happened. Midwest Fence is out digging holes this morning. Potentially on the boundary line or our side. You said you handled it. [REDACTED] claims to have a permit dated today!

The city better hope it is not anywhere on our property!

[REDACTED]

Sent from my iPhone

On Jun 28, 2016, at 2:00 PM, [REDACTED] wrote:

Mike,

Thank you for your prompt and professional response to this matter. We appreciate that.

<image002.png> [REDACTED]
[REDACTED]
[REDACTED]

From: Mike Anderson [<mailto:mike.anderson@cityofbirchwood.com>]
Sent: Tuesday, June 28, 2016 12:16 PM
Cc: [REDACTED]
Subject: RE: fence permit at 483 Lake Avenue

[REDACTED]

I want to inform you that the City has notified the [REDACTED]s about the zoning violation. This process will start over to abide by City Ordinance. This was an error on my behalf as I misinterpreted the reading of the code. For that, I apologize.

Next is the mailing, on our City Resident list that City Hall has on file, we have both [REDACTED] and [REDACTED] listed for your address. I will make those changes so it only shows [REDACTED] at the listed address.

If you have other concerns please let me know.

Thanks,

Mike Anderson
City Administrator

Mike Anderson

From: [REDACTED]
Sent: Thursday, June 30, 2016 8:23 AM
To: Mike Anderson; office@midwestfenceco.com
Cc: [REDACTED]
Subject: Re: fence permit at 483 Lake Avenue

Your crew is there today. Call them off immediately or you will be liable if any part of the fence or footings are on the boundary or our side of it after the judicial monuments are set.

[REDACTED]

Sent from my iPhone

On Jun 28, 2016, at 12:16 PM, Mike Anderson <mike.anderson@cityofbirchwood.com> wrote:

[REDACTED]

I want to inform you that the City has notified the [REDACTED] about the zoning violation. This process will start over to abide by City Ordinance. This was an error on my behalf as I misinterpreted the reading of the code. For that, I apologize.

Next is the mailing, on our City Resident list that City Hall has on file, we have both [REDACTED] and [REDACTED] listed for your address. I will make those changes so it only shows [REDACTED] at the listed address.

If you have other concerns please let me know.

Thanks,

Mike Anderson
City Administrator
City of Birchwood Village
651-426-3403

From: [REDACTED]
Sent: Tuesday, June 28, 2016 12:05 PM
To: Mike Anderson
Cc: [REDACTED]
Subject: fence permit at 483 Lake Avenue

Mike and [REDACTED]

In addition to the concerns expressed in [REDACTED] e-mail last night, now that I have had a chance to see the permit, I wish to point out that the City of Birchwood Village failed to follow its' own ordinance in the granting of the zoning permit.

- The zoning permit was issued 6/24/2016.
- Section 302.070(2) provides that any applicant for a zoning permit shall notify all abutting property owners at least five (5) days prior to submitting the application.
- The abutting property is 479 Lake Avenue. The registered property owner of 479 Lake Avenue is [REDACTED]

Mike Anderson

From: [REDACTED]
Sent: Thursday, July 07, 2016 8:04 PM
To: Mike Anderson
Subject: [REDACTED] fence

Mike.

Our neighbors the [REDACTED] have completed their fence at 483 Lake Avenue. As I understand it the height of the fence is suppose to be 6' which as far as I know is 72 inches. The [REDACTED] fence is 74 1/2 inches and the post are over 80 inches. From my reading of the ordinance these measurements need to be reduced. How does the city take care of these infractions? Please let me know. Thanks

[REDACTED]

Mike Anderson

From: [REDACTED]
Sent: Monday, July 25, 2016 11:54 AM
To: Mike Anderson
Subject: [REDACTED] fence

Mike,
[REDACTED] fence is still not in compliance with the fence ordinance. Has the city inspector checked it out yet? How long do they have to fix the problems?
[REDACTED]

On Mon, Jul 11, 2016 at 8:46 AM, Mike Anderson <mike.anderson@cityofbirchwood.com> wrote:
[REDACTED]

I will have our inspector measure to make sure. If they are indeed over the height of 6ft the City will make them fix it to code.

Thanks for letting me know.

Mike Anderson
City Administrator
City of Birchwood Village
[651-426-3403](tel:651-426-3403)

From: [REDACTED]
Sent: Thursday, July 07, 2016 8:04 PM
To: Mike Anderson
Subject: [REDACTED] fence

Mike.

Our neighbors the [REDACTED] have completed their fence at 483 Lake Avenue. As I understand it the height of the fence is suppose to be 6' which as far as I know is 72 inches. The [REDACTED] fence is 74 1/2 inches and the post are over 80 inches. From my reading of the ordinance these measurements need to be reduced. How does the city take care of these infractions? Please let me know. Thanks

7/26/2016

Mike,

We have done everything in our power to make sure our fence was built 100% on our property and in accordance with all ordinances and procedures because we knew [REDACTED] would complain, challenge, and try to block or delay it. And that is what she has done. We told you this before we applied for a permit. We hired a surveyor to survey the most surveyed lot line in the history of Birchwood and mark the property line where the fence was to be built to assure it was built on our property. We asked you to notify the [REDACTED]s to assure that they could not say they were not notified. We solicited advice from Planning Commission members on how to avoid problems (We were advised to hire Midwest Fence because they are very reputable and have built many fences in Birchwood). We even asked you if the building inspector should meet with Midwest fence to assure it was built in compliance with the code. We were told...no, fences are easy and no big deal. You won't have a problem.

You say it has been common practice in Birchwood to have the fence be no more than 6 feet from the grade elevation. We have found five fences in our neighborhood that were built with 72 inch vertical boards just like ours. None of these fences run the vertical boards to the ground. This has obviously been standard building practice in Birchwood. It seems like we are being held to a tougher standard than the rest of the town because we have a neighbor who has made a hobby of making complaints about everything we do. Is this fair?

Midwest Fence is willing to do what needs to be done to have the fence in compliance with all ordinances. To get the fence under six feet from grade they would have to come out and take off every nail on every vertical board on the fence and cut them down a couple inches and/or replace the boards. You cannot simply cut a couple inches off the top because of the curved shape of the top of the boards. You cannot simply drop the boards down to the ground either. Unless the grade under the fence is perfectly flat, you would end up with a jagged, uneven shape at the top of the fence. That is why fences like this are built with a gap at the bottom. All of this would have to be done from our side of the property. [REDACTED] told the workers they had better not set foot on there property. When it is done no one, including the [REDACTED], would be able to tell that the fence was shortened a couple inches or so, with the naked eye.

We feel a more practical and fair solution would be to issue us a variance for the height of the fence. We also feel that the city should wave the \$400 application fee because this issue came about by no fault of our own and that the city is somewhat responsible because we were told that the building inspector does not need to meet with Midwest Fence to make sure it would be in compliance with the city ordinance.

Please let us know if this is a viable option. We would be happy to discuss this matter in person.

Regards,

[REDACTED]

Mike Anderson

From: [REDACTED]
Sent: Friday, August 12, 2016 11:02 AM
To: Mike Anderson
Subject: Fence

Mike,

I am still wondering what the city plans on doing about the [REDACTED] fence. It has been up for over a month. It does not meet any of the ordinances that the city has for a fence and I would appreciate the city doing something about it. It seems that the inspector has been out and they have been notified that the fence is not in compliance of the city's ordinance.

How much time has the city given them to get their fence into compliance? I would like to do some planting and landscaping along the fence but am hesitant to do so until this matter is taken care of. When the fence was put up they damaged our grass and of course did nothing about it. Please let me know what is happening.

Thank you,

[REDACTED]

Mike Anderson

From: [REDACTED]
Sent: Thursday, September 01, 2016 12:14 PM
To: Mike Anderson
Subject: Fence

Mike,

I left a message this morning regarding [REDACTED] fence. We are wondering what is happening? It has now been almost 2 months since the fence was put up and it is still out of compliance with the city's ordinance. Could you email me and let me know what is happening? I do not want to continue bothering you but am very interested in getting this situation resolved please let me know what the status of this situation is. Thank you
[REDACTED]

Mike Anderson

From: [REDACTED]
Sent: Thursday, September 01, 2016 1:09 PM
To: Mike Anderson
Subject: Re: Meeting Notice

Mike,

We will be out of town on September 7th and thus unable to attend the meeting. I would like it put into the record that my husband and I are just looking for the [REDACTED] to abide by the fence ordinance that is currently part of the city's ordinances. We do not object in any way to the [REDACTED] having a fence we do however object to the post which are an integral part of the fence being 84 inches tall approximately 6 to 8 inches taller than the rest of the fence which looks a little ridiculous. We also would like the fence to be the 72 inches tall as stated in the ordinance. The slates in the [REDACTED] fence are in places 3-4 inches off the ground above rocks which need to be removed to bring the fence into the 72 inch height. The ordinance also states that the fence should be 30% open which the [REDACTED] fence is not. The way the slats are staggered in the fence there is no opening at all for sun to reach our plants on the south side of our house. Further more we object to the short term notice of this meeting and that we have not received any notice by U.S. Mail regarding this meeting. We would appreciate having the date changed to September 12th or 13th when we would be available. Thank you,

Sincerely,

[REDACTED]

On Thu, Sep 1, 2016 at 10:40 AM, Mike Anderson <mike.anderson@cityofbirchwood.com> wrote:

[REDACTED]

This email is to inform you that the City Council will be meeting on Wednesday, September 7 to discuss the fence issue and ordinance relating to the issue at hand. This meeting will begin at 7pm.

If you have any questions please let me know.

Thanks,

Mike Anderson

City Administrator

City of Birchwood Village

Mike Anderson

Subject: FW: Fence @ 479 Lake Ave

Mike Anderson
City Administrator
City of Birchwood Village
651-426-3403

-----Original Message-----

From: JOHN T [<mailto:INSPJACK@msn.com>]
Sent: Friday, July 15, 2016 5:40 PM
To: Mike Anderson
Subject: RE: Fence @ 479 Lake Ave

Hi Mike,

I received a return call from Midwest fence. The company representative will be sending me an email with information on the type of fence that was installed.

It was indicated that the homeowner applied for the fence and nothing was mentioned to the installers on the fence code requirements. They are very willing to work with the city to rectify the problem, however they want the correction in written form. I would like to discuss this with you on Monday so they don't have to reconstruct the fence three times.

- P.S. It was noted that the neighbors were very rude and made some inappropriate comments to the workers. It was also mentioned that the workers were considering a call to the sheriff's office.

See you probably Monday am.

Jack

-----Original Message-----

From: Mike Anderson [<mailto:mike.anderson@cityofbirchwood.com>]
Sent: Friday, July 15, 2016 11:25 AM
To: JOHN T <INSPJACK@msn.com>
Subject: Fence @ 479 Lake Ave

Hey Jack,

Not sure if the contractor got back to you. Can you make sure they have the 30% spacing as well. The complainant called again this morning.

Thanks,

Mike Anderson
City Administrator
City of Birchwood Village
651-426-3403



CITY OF BIRCHWOOD VILLAGE
207 Birchwood Avenue
Birchwood Village, MN 55110
651-426-3403 tel
651-426-7747 fax
info@cityofbirchwood.com

August 23, 2016

[REDACTED]
[REDACTED]
Birchwood, MN 55110

Dear [REDACTED]

This letter is to inform you that there have been a number of complaints by neighbors regarding your fence that was installed in July 2016. The fence does not comply with City Code 302.045: Structure Height Restrictions.

The City Building Official has confirmed that the measurement of the fence is over the allowed 6 feet. You have been aware of the situation and have yet to bring the fence into conformity of the code. Midwest Fence has also been aware of the situation but hasn't been allowed to proceed to bring the fence back to 6 feet from grade level.

This issue must be resolved by September 6, 2016 or the City will be forced to have you remove the fence entirely.

Please contact me at (651) 426-3403 or Mike.Anderson@CityofBirchwood.com if you have any questions.

Mike Anderson
City Administrator