

**CITY OF LAKE ELMO  
Washington County, Minnesota**

**BOARD OF ADJUSTMENTS AND APPEALS**

**RESOLUTION NO. 2011-027**

**A RESOLUTION STATING FINDINGS OF FACT  
RELATED TO AN APPEAL ON THE DETERMINATION NOT TO APPROVE A FENCE  
PERMIT FOR PROPERTY AT 12418 MARQUESS WAY NORTH**

WHEREAS, the owners of property at 12418 Marquess Way North, Robert and Jodi Konop, made application for a fence permit to construct a solid, 6 foot high fence in the rear yard of their property and;

WHEREAS, the City staff determined that the fence permit could not be approved due to the following circumstances:

- 1) The residential property 12418 Marquess Way North abuts two residential properties along the interior side property lines – Lot 5, Block 1 to the north and Lot 3, Block 1 to the south. The applicant's property also abuts State Highway 5 to the east and has a small segment of property line on the north that is adjacent to property used for non-residential purposes.
- 2) The fence ordinance requires fences on through lots to follow those requirements of interior yards when listed exemptions do not apply.
- 3) When the listed exemptions apply, a solid fence is permitted to be constructed up to 72 inches in height.
- 4) The allowed exemptions are when screening is required by code or when a rear property line abuts a principal arterial, A minor arterial, or B minor arterial road in the City's Transportation Plan.
- 5) The listed exemptions do not apply to the proposed fence not parallel with State Highway 5. Therefore, a fence is allowed to be constructed up to 72 inches in height with any portion of such fence above 42 inches measured from grade and shall be open to light and air over 75% of the surface area in those areas.
- 6) As the proposed fence not parallel to State Highway 5 is proposed to be 72 inches in height and a solid fence, staff informed the applicants on June 20, 2011, that the fence permit could not be approved.

WHEREAS, the applicants submitted an appeal to the Board of Adjustments and Appeals regarding the determination not to issue the fence permit for the proposed fence, and request that the Board find that the permit should be issued; and

WHEREAS, the Board heard the applicants and the City's staff and counsel on July 19, 2011, and considered the facts of this case.

WHEREAS, the City Council made the following findings based on the information presented and discussed during the appeal hearing:

- a) The City Council stated the intent of an ordinance revision (Ord. 08-044) approved on June 7<sup>th</sup>, 2011 was to allow solid fences 72 inches in height to alleviate visual and safety concerns for properties adjacent to high traffic roadways.
- b) Because this was not accomplished through the ordinance revision approved on June 7<sup>th</sup>, the City Council determined the fence proposed by Mr. Konop should be allowed through the intent of the ordinance change and should be permitted.

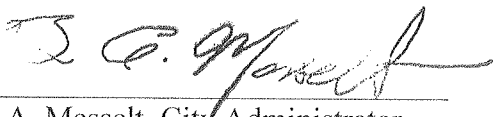
NOW, THEREFORE, BE IT RESOLVED, by the Board of Appeals and Adjustments of the City of Lake Elmo, that the Board reverses the decision of the Zoning Administrator concerning the construction of the proposed fence at 12418 Marquess Way North based on the findings stated in a) and b) above.

ADOPTED BY THE BOARD OF ADJUSTMENTS AND APPEALS of the City of Lake Elmo this 19<sup>th</sup> day of July, 2011.



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Dean A. Johnston, Mayor

Attest:



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Bruce A. Messelt, City Administrator