

**CITY OF GASTONIA
ZONING BOARD OF ADJUSTMENT**

May 28, 2020

Minutes

The regular meeting of the Zoning Board of Adjustment was held on Thursday, May 28, 2020 at 9:00 a.m. in the City Council Chambers at City Hall.

Board Members present: Chairman Lee Taylor Jr., William Marino, James Nebo, Michael Dickson, Octavius Reid and Sidney Craig arrived late and replaced Michael Dickson.

Board Members absent:

Staff present: Charles Graham, Assistant City Attorney; Joe Gates, CZO, Zoning Administrator; Chrystal Howard, Secretary; and Kim Wallis, Planner

Roll Call

No contacts were received.

Chairman Taylor called the Board of Adjustment meeting to order.

Item I: Approval of July 25, 2019 Minutes

Board Member Dickson made a motion to approve minutes of July 25, 2019 and Board Member Nebo seconded the motion. The motion was approved unanimously (5-0).

Because of the quasi-judicial format of these hearings it is required by North Carolina law to swear in persons that speak before the commission and offer evidence. Ms. Howard administered the oath to speakers.

Item II: Public Hearing #9476 – Susan Eubanks – 311 W. Tenth Ave. & Parcel # 111404

The applicant has submitted an appeal of the Historic District Commission decision made on February 27, 2020.

Chairman Taylor opened the public hearing and recognized Mr. Joe Gates, CZO, Zoning Administrator for staff presentation.

Mr. Gates began with an introduction of the agenda item.

Board Member Sidney Craig was recognized as present and Board Member Michael Dickson was excused.

Mr. Gates displayed and read the Description of Request and referenced the proposed location on the plan provided in the agenda page II-12. He explained the location of the coop meets the Code of Ordinance requirements. Mr. Gates mentioned definitions that were in the agenda for the Board's review and reference, as well as Section 5.13 Administrative Appeals/Interpretations and 5.13.2 Action by the Board of Adjustment. He briefly explained Section 7.6.2 (C), (E), (H), and (I).

Chairman Taylor clarified that this request was not about the appropriateness of a chicken coop, but whether the decision by the Historic District Commission (HDC) was properly made. He continued that the Board was to determine if the HDC handled it properly, did not handle it properly, or amend the decision if needed. He reiterated the idea of the chicken coop was not an issue and that chickens were allowed in the City of Gastonia.

Attorney Graham commented that the Board uses the same standards of review as the HDC in deciding whether to affirm the HDC's decision and grant the Certificate of Appropriateness (COA), decide the Commission did not make the proper decision and revoke the COA, or grant the COA with some modifications based on what is heard. The statement about the chicken coop is correct as to the use. He continued that the Board is considering the exterior appearance of the accessory structure with regard to the Historic District Design Guidelines and should apply the ordinance as written. The issue of whether or not it is desirable to have chickens in the neighborhood is not an issue to be decided. He briefly explained the adoption of the ordinance by City Council and the process of a permit.

Mr. Gates recognized Ms. Eugene, applicant, and Ms. Wallis, staff, as present and offered options for the Board on how to proceed.

Chairman Taylor recognized Ms. Wallis, Planner, for staff presentation. Ms. Wallis provided a summary presentation presented at the February 27, 2020 HDC meeting. She focused on key elements of the design, landscape screening, and excerpts from the Design Guidelines.

Board Member Nebo requested clarification that the excerpts from the Design Guidelines were specifically for chicken coops. Ms. Wallis replied that the Design Guidelines weren't specific to chicken coops, but were general. As a result, staff's decision was to categorize a chicken coop as an accessory building. Mr. Gates clarified that the building would be used as a chicken coop and the code considers the building an accessory building and follows the guidelines of an accessory structure. He encouraged the Board to replace the words chicken coop with accessory building.

Chairman Taylor asked if the style of the building was supposed to match the style of the home. Ms. Wallis replied that the building does not have to specifically match the house, but it has to feel as part of the neighborhood emulating some of the home or the neighborhood. She shared examples. Ms. Wallis stated that the building site excerpts from the Design Guidelines were for buildings that do not have architectural value or design that do not fit with the house or neighborhood. She continued that this focuses on making screening available. Chairman Taylor thanked staff for including a copy of the Design Guidelines for the Board.

Brief discussion ensued and clarification was made that the coop would be placed in the rear yard behind the rear line of the home and not in the side yard. Mr. Clark Simon, owner of 311 W. Tenth Avenue of Gastonia, NC was recognized and he commented that the plan provided was a rough sketch of the location and the building will be behind the rear line of the home.

Chairman Taylor inquired about a fully enclosed chicken run. Mr. Simon explained the fully enclosed run was the exterior portion of the building where the hens can be seen with the door. Staff was indicating the chicken run area on the screen. Brief comments were made on the amount of chickens. Chairman Taylor reiterated the dimensions of the structure and that the siding and roofing would match the house.

In regards to visibility, Board Member Nebo acknowledged the landscaping along the front, side and rear of the property. He noted the intent of blocking the structure from the street, but it will take a long time before the view will be blocked. He asked if this was incorrect. Chairman Taylor thanked Board Member Nebo for bringing this matter to attention. Chairman Taylor talked about elevations and the inability to provide one hundred percent screening and the words to consider was general screening. He stated the part of the Board's decision will be considering what general screening means. Chairman Taylor stated general screening did not mean one hundred percent. He stated the applicant did a great job with planting. He talked about the height of plants and the time frame for these plants to grow, the power line running through the property restricting height of plants. He briefly mentioned the black ornamental fence and large tree near the coop location on the property.

Mr. Reid Vineis, owner of 311 W. Tenth Avenue of Gastonia, NC was recognized. Mr. Vineis thanked the Board and staff for their service on this item. Mr. Vineis and Mr. Simon clarified that the coop will be placed behind a four-foot to five-foot-tall retaining wall with two-foot planters, so it would not be seen from Tenth Avenue. They commented that fifty-one emerald green arborvitae trees have been planted and eight trees were added along the creek next to Ms. Eubank's property providing additional screening. These trees were Duke Power approved. Three arborvitae were planted to the right of the chicken coop for extra screening. The arborvitae are approximately four-feet to five-feet-tall and spaced three feet apart. These trees are expected to grow approximately one foot per year and in two to three years these trees should create a privacy hedge. Mr. Simon reiterated Mr. Vineis' comment of appreciation. Mr. Simon stated he was on the HDC and recused himself from this item. Mr. Simon asked Mr. Gates to display recent photos taken that showed additional plants installed that were not presented in the appeal application. Mr. Simon provided a brief explanation of each photo displayed, including the plantings installed to provide additional screen from Ms. Eubank's view, photos of the previous homeowner having chickens on the property and Facebook screenshots of individuals who liked the previous owner's chickens. Mr. Simon noted that the house was built in 1937 and not 1947 as presented in the appeal application. Mr. Simon commented on their efforts to keep with the Design Guidelines and appropriateness, their adoration for the Historic District and neighborhood, and complaints being about chickens and not the building.

Ms. Susan Eubanks, 300 W. Eleventh Ave of Gastonia NC was recognized. Ms. Eubanks is the applicant. She thanked the Board and staff for their time and shared her adoration for the neighborhood and the significance of the Historic District. Ms. Eubanks clarified that this appeal was not personal. She commented on the amount of speakers in the February HDC meeting minutes and

that some may not have been aware of the purpose of that meeting. She stated that she was aware that the COA request was regarding the structure. Ms. Eubanks mentioned that it was at the HDC meeting when she first saw photos of the structure. She noted that an appeal to the Board of Adjustment was the only way to get some questions addressed. Ms. Eubanks stated the purpose of her appeal was the visual part and the decision of the HDC. She noted the vote of the HDC. Ms. Eubanks commented that this appeal was not about the fence or chickens. Her concern was about how things appear and what enhances the neighborhood. Ms. Eubanks continued by reading her code requirements of her appeal and briefly summarizing her explanations in her appeal application presented in the agenda on pages II-3 and II-4. While pictures were being displayed, she explained elevations and different perspectives of her property and neighboring properties, plantings installed and the current lack of screening, and vacant areas prior to the installation of the additional plantings. One of her concerns was how long the shrubbery would grow. In regards to hiding the building from different elevation views, Ms. Eubanks commented on the time frame of the shrubbery to become a buffer when close to the building versus the edge of the property. She encouraged the Board to review the Code of Ordinance Section 10-18 as she believed there were inconsistencies especially with backyard chickens. Ms. Eubanks briefly talked about the permits for livestock, read Section 10-18(h), shared her concern about smell and noise, and noted that the HDC made a recommendation for staff to ask City Council to amend the city ordinance so that chickens were not allowed in the Historic District. Ms. Eubanks reiterated her appeal evidence expressing her concern on visibility from the road. She finished her presentation by noting the coop displayed showed one side, the location of the coop was an approximation, and position of the coop was not explained. In closing, Ms. Eubanks stated the decision made was not made without have the necessary information. She encouraged more documentation be included for a COA, so answers can be addressed.

Chairman Taylor recognized Mr. Bill Blackwelder, 1015 Edgewood Circle of Gastonia, NC. Mr. Blackwelder thanked the Board for their time and service. He stated he was present as a concerned citizen and neighbor, and not representing the HDC. He commended the owners on the enhancements made to their property. Mr. Blackwelder stated his main concern was that there was nothing to compare the compatibility of this new building's material, size, scale, color and texture with surrounding buildings. He continued that the building plan only showed two sides and not all four sides, and the site plan did not include a specific location of the coop. Mr. Blackwelder lives diagonally across the street and commented on the inability to conceal the building. He remarked that the owners did a great planting. He reiterated his concern and stated that this situation would set a precedent of adding a new building and style, which would be against the guidelines as it suggests not to do this.

Nell Alala, 1216 S. South Street of Gastonia, NC emailed comments to staff and Mr. Gates read, "I support the appeal against the February 2/27 HDC decision to approve a chicken coop at property on W. 10th Ave. In addition to believing it could impact my property value and that of other homes in the neighborhood, it would be very visible from the street as people walk or drive by. I hope you will take my opinion under consideration. Thank you for your time".

Chairman Taylor shared positive comments about the Historic District and residents caring about the community. He briefly explained the responsibilities of the Board. He commented that the Board was not code enforcement and encouraged appropriate matters be addressed to the Code Enforcement department.

Attorney Graham explained the process for the applicant based on if the Board's decision was to grant a COA, and also provided code enforcement examples. He stated the Board is addressing the COA and the structure itself.

Mr. Gates explained the adoption of a COA, staff's follow-up work to verify the completion of an approved COA, and if needed the enforcement of a violation in regards to the zoning ordinance.

Chairman Taylor inquired about the exact location. Mr. Vineis stated the building will be behind the rear line of the house and next to, approximately a foot away, the three planted arborvitaes. Chairman Taylor stated he felt owners have met the intent of the law by having siding, trim and roof shingles match the house, and the size of the building would remain the same size as presented. Chairman Taylor asked the owners about how the building will be positioned on the property. Mr. Simon replied that the front door of the coop would face the retaining wall driveway and lengthwise toward Edgewood. The ten-foot length would be east to west. With regards to the building being currently visible and meet general screening guidelines appropriately, Chairman Taylor suggested screening on the other two sides of the building (three arborvitaes on the opposite side and four arborvitaes along the rear of the building) matching the same height and the same distance away from the coop

from the existing arborvitaes planted allowing for airflow. He also suggested a fence that would meet the Historic District guidelines as a last resort if the existing tree and its root system was an issue; however, he was concerned about airflow. He read the Historic District guidelines for privacy fences. Chairman Taylor asked the applicants if they would be willing to do this and Mr. Simon replied that seven more trees would not be an issue.

Board Member Marino agreed with Chairman Taylor about adding plantings on two more sides. Board Member Nebo commented on solutions not always satisfying everyone, concerns heard on home value, visibility from the road, and neighbors disagreeing with the request. He continued that regardless of the ordinance and laws, we need to work with neighbors and consider more than what the ordinance states. Board Member Nebo stated he did not see how this request would help the community regardless of what the ordinance states; therefore, he was not in favor of the request. He disagreed with the proposed shrubbery meeting the visibility guidelines. Board Member Craig stated with his experience with a nearby neighbor having chickens and what Chairman Taylor suggested, his thought was to allow the owner to move forward with their request and that this would help out the neighborhood. Board Member Reid agreed with Chairman Taylor and referenced general screening. He acknowledged the time and effort the owners had with screening their property, as well as the investment in their property. Regarding home values, Board member Reid stated that chickens were historical and provide their own investment. He commented on how neighbors did not see the previous owner's twenty-five chickens. Board Member Reid stated the current owners went over and above to provide screening, but adding fencing would provide more screening. Chairman Taylor agreed with Mr. Nebo that everyone will not be happy with the decision. He explained the Board's duty to make a decision. Chairman Taylor's opinion was that the HDC was appropriate in approving the request, but screening was the question regarding generally screened from view.

Mr. Gates read and explained Section 5.13.2 – Action by the Board of Adjustment.

The Board was unanimous on closing the public hearing.

Board Member Marino made a motion to modify the Historic District Commission's decision to add four arborvitaes to the back, three arborvitaes to the other side of the coop equal distance apart all being the same height as the existing three arborvitaes planted, as well as, the building be behind the rear line of the house and within one-foot distance of all sides of the arborvitaes. Board Member Craig seconded motion.

In regards to the motion, Board Member Nebo asked about intent of the motion and timing of the additional screening. Chairman Taylor replied that they have six months to complete the work based on the COA letter. Discussed ensued on the timing of the issuance of a COA and it was determined that the granting of the COA would take place as of today and the six-month timeframe pertained to an enforcement period. After discussion, the motion was approved 4 to 1 (Nebo).

Item III: Other Business or Announcements

No applications were received; therefore, the Board of Adjustment meeting scheduled on Thursday, July 23, 2020 has been cancelled.

There being no further discussion or announcements, Chairman Taylor adjourned the meeting at 11:17 a.m.

Respectfully Submitted:

Chrystal Howard, Secretary

Zoning Board of Adjustment
City of Gastonia, NC

Chairman Lee Taylor Jr.

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