

CITY OF GASTONIA
ZONING BOARD OF ADJUSTMENT

January 28, 2021 Minutes

The regular meeting of the Zoning Board of Adjustment was held on Thursday, January 28, 2021 at 9:07 a.m. live-streamed with video and audio conferencing using Zoom.

Board Members present: Chairman Lee Taylor Jr., William Marino, Shaun Jones, Sidney Craig, and James Nebo

Board Members absent: None

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

Chairman Taylor called the Board of Adjustment meeting to order.

Roll Call

All board members were present and no one received any calls or contacts.

Chairman Taylor declared a quorum.

Item I: Oath of Office

Ms. Chrystal Howard administered the Oath of Office to newly appointed Mr. William “Bill” Blackwelder.

Item II: Approval of May 28, 2020 Minutes

Board Member Marino made a motion to approve the minutes of October 22, 2020 and Board Member Nebo seconded the motion. The motion was unanimously approved (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 III: Public Hearing #PLVAR202000299 – Matthew Fry – 834 Hillcrest Ave.

The applicant has submitted a variance request to increase height of privacy fence in rear yard.

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 and description of request. Mr. Gates commented that a notice of violation started the case. After discussion and civil citation, the applicant submitted their variance request. Mr. Gates referenced and read Section 9.4.1(b) and (c). He commented that the applicant was requesting a 1 ft. increase to the maximum allowable fence height of 8 ft. for fences located in the rear yard. Mr. Gates referenced agenda pages III-4 through III-6 of before and after pictures submitted by the applicant. He also referenced agenda page III-8 and displayed the applicant’s aerial view of the property. Mr. Gates explained the contour lines and commented on a 5 ft. rise difference between the applicant and the neighbor’s property with the applicant’s property settled lower in elevation.

Chairman Taylor recognized applicant, Mrs. Analee Fry at 834 Hillcrest Avenue of Gastonia, NC. Mrs. Fry explained that the fence was installed due to a neighbor cutting a tree down that provided privacy from higher elevations. Unsure of what property the tree had resided on, Mrs. Fry shared that a survey was completed and it was determined that the tree was on their property. After losing privacy from the tree, the applicant chose to install a privacy fence. Mrs. Fry stated they were unaware that the fence was too tall, and that the fence height was on purpose to maintain their privacy. After learning that the fence was too tall, Mrs. Fry stated that they applied for a variance request. Mrs. Fry noted that the goal was to maintain the privacy that was taken from the removal of the tree while being comfortable at their home.

Board Member Nebo asked the applicants how they found out that their fence was too tall. Mrs. Fry replied that a written notice of violation was received and discussion with staff occurred after receiving the letter to rectify the issue. Board Member Nebo asked if the fence was similar to other fences in their area. Applicant, Mr. Fry at 834 Hillcrest Avenue of Gastonia, NC was recognized and he replied that the exception was the 9 ft. Board Member Nebo asked about the two height variances in the fence. Mr. Fry explained that the 9 ft. fence is where the tree was cut down that impeded the view between yards, with no blockage from natural landscape. The 6 ft. fence impedes the view from

everyone else along with other trees in the area. Using a two-story home as an example, Board Member Nebo wasn't sure a 9 ft. fence was sufficient. Mrs. Fry commented that the majority of homes in their area are one-story homes including their own. Their property was essentially surrounded and obscured by trees and natural growth. The 9 ft. fence was erected by a fence company who provided the applicants with the fence height. Ms. Fry commented that the 9 ft. fence provides the privacy they want from the loss of the tree. She reiterated that the tree was on their property and was taken from them. Board Member Nebo inquired about replacement of trees and shrubbery as a remedy. Mrs. Fry commented that the issue has created a negative relationship with the neighbor, and they want a privacy fence to serve the purpose of privacy and security of their pets in their yard. She explained purchasing a large tree was quite pricy and placing another tree in the same location may not be feasible due to existing root systems.

Brief discussion ensued on whether the applicant was pursuing compensation from the neighbor and it was determined they were not. Assistant City Attorney Graham explained the purview and authority of the board and reminded the board they are to consider whether this case is a proper situation to grant a variance to allow the 9 ft. section of the fence. Chairman Taylor commented that the board is dealing with the fence and the situation from after installation and height of the fence. He noted that the board members had excellent background questions, but not something the board can take into consideration concerning the tree itself.

Board member Craig made a call for a vote. Chairman Taylor referred and briefly summarized to the board Section 5.14.5 – Variance Approval Criteria on agenda page III-11. Mr. Gates added that the applicant provided statements to these questions in their application on agenda page III-3. Mr. Gates informed the board of another part of the notice of violation regarding the finish side of the fence and referred to Section 9.4.1(G) on agenda page III-10. Mr. Gates shared that the applicant and staff thought it best to delay any work on the fence until decision could be made by the Board of Adjustment in regards to the height. Both staff and property owner are in agreement that the direction of the “finished side” of the fence, noted in the notice of violation and civil citations is in violation and needs to be addressed.

Chairman Taylor reminded the board that the height of the fence being considered is the height of the fence from ground to the top of fence as 9 ft. He added that if a berm was built and a fence on top, it would be considered acceptable. Chairman Taylor referred to the applicant's photos and commented on the fence being on a rise or small hill and the height of the fence is being considered. Mr. Gates referred to Section 9.4.1 and read that no fence or wall located in the side or rear yard shall be greater in height than 8 ft. above grade height in the rear yard. Photos provided by applicant with measurements were acknowledged. Chairman Taylor commented on the variance approval criteria to be considered in an approval, height needing to be addressed, and that the backside “common side” of the fence will need to be finished.

Clarification was made that Board Member Craig made a call for a vote to stop discussion, but he was not making a motion. Board Member Jones made a motion to approve and Board Member Craig seconded the motion. The motion was unanimously approved (5-0). After brief discussion, Assistant Attorney Graham clarified that the motion to approve was understood as the motion to approve as presented based upon the topography of the lots as discussed and was considered sufficient because the motion to approve automatically closed the public hearing. The motion to approve as presented with the understanding of a 1 ft. increase over the maximum height. Chairman Taylor stated that the fence has to be finished on the backside as part of city requirement. Mr. Fry clarified to the board that they are aware the fence has to be finished on the backside and their variance request was for the increase in height. Chairman Taylor made a comment that the fence would be nice if it was uniform in height and reiterated that the fence needs to be finished on the backside. Assistant City Attorney Graham clarified how a motion should be made and that his understanding for this case was that the motion was approved as presented, seconded and voted upon. Therefore, the decision is complete, the application has been approved as presented and considered sufficient. He commented that going forward it is better to be specific on what is being approved and grounds for approval when making a motion and gave an example. Assistant City Attorney Graham credited Chairman Taylor on making sure specifics are said, but for this case there is enough in the record to support the motion. Regarding future meetings, Assistant City Attorney Graham commented that the board can vote to close a public hearing and then discuss before entertaining a motion to approve or deny. If a motion is made, it automatically closes the public hearing. Once a vote is made to close a public hearing, the board can discuss the criteria, build a consensus on the hardships, then make a motion to approve or deny and state the reasons. This process makes it very clear to everyone. An opportunity was made to revisit the motion if needed to clarify from Assistant City Attorney Graham's understanding of the motion. Chairman Taylor thanked Assistant City Attorney Graham for his comments. Unanimous consent

was acknowledged and an opportunity to ask questions was given. Chairman Taylor stated that there was a unanimous consent that the motion was passed as presented.

Due to technical difficulties with Zoom, the live-streaming and recording of the meeting ended unexpectedly at 10:01 a.m. and all connections could not be re-established. Therefore, the meeting ended at 10:01 a.m.

Respectfully Submitted:

Chrystal Howard, Secretary

Zoning Board of Adjustment
City of Gastonia, NC

Chairman Lee Taylor Jr.

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