

CITY OF GASTONIA
ZONING BOARD OF ADJUSTMENT

February 25, 2021 Minutes

The regular meeting of the Zoning Board of Adjustment was held on Thursday, February 25, 2021 at 9:00 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

Alternate Members present: Octavius Reid and Bill Blackwelder

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: Approval of February 10, 2021 Minutes

Board Member Marino made a motion to approve the minutes of February 10, 2021 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 or affirm in persons that speak before the commission and offer evidence. Ms. Howard administered the oath to speakers.

Item II: 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 stated that the applicant proposes to increase the fence height from eight (8) ft. to nine (9) ft. in the rear yard. The current maximum height for fences in residentially zoned districts is eight (8) ft. Mr. Gates explained staff's analysis and displayed Section 9.4.1. He read Section 9.4.1(B) and (G). Mr. Gates displayed agenda page II-8 and explained the view of the fence was from the applicant and also the neighbor's property, which was not included in the January agenda. He displayed and briefly explained the applicant's photos on agenda pages II-13 through II-16, which was presented in the January meeting. Mr. Gates commented that the applicant and neighbor will present their items and staff will accommodate.

Referring to agenda page II-16, Board Member Jones and Mr. Gates discussed the elevation change between properties. The Gaston County GIS site was displayed and it was determined that the elevation change from the middle of the applicant's yard to the rear fence was approximately four (4) ft. and from the back of the applicant's house to the back of the neighbor's house was approximately eight (8) ft. in elevation change.

Chairman Taylor recognized applicant, Ms. Analee Fry at 834 Hillcrest Avenue of Gastonia, NC. Ms. Fry stated the variance was requested to maintain privacy given the change in elevation from their own yard to the back of the neighbor's yard. She commented that it was impossible to gain the privacy without a slightly higher fence than the allowable eight (8) ft. Natural growth was removed by the neighbor. Along with the loss of the natural growth and the wish for a secured fence prompted hiring a company to install the fence. She stated they were unaware of the eight (8) ft. maximum height; therefore, another reason to request a variance. Ms. Fry stated that the request was for one (1) ft. increase to the maximum height allowed.

Chairman Taylor asked the applicant why the height of the fence was not consistent and straight across from one property line to the other. Ms. Fry stated the privacy they were hoping to maintain was the privacy lost from the removal of the tree which involved one section, and the cost of materials was significant. She continued that there was not a need to go the same height all the way across and did the minimum to maintain the privacy.

Brief discussion ensued between Chairman Taylor and the applicant on the violation related to the finished side of the fence facing the common property line boundary.

Board Member Nebo inquired if the fence will remain the same with the exception of adding a finished side to the back side facing the neighbor's property. Ms. Fry replied that he was correct as long as the variance was granted.

Chairman Taylor recognized Mr. Randy McCaskill and Ms. Angela Rivers McCaskill at 815 Home Trail of Gastonia, NC. Mr. McCaskill was concerned that the height of the fence would decrease his property value. He shared that he expanded his house and doesn't want the value to decrease. Mr. McCaskill commented that no one in the neighborhood has a fence above eight (8) ft., including the fence that separates Walmart from the neighborhood which was six (6) ft. Mr. McCaskill stated the fence creates a financial hardship, because he will need a nine (9) ft. fence to cover their fence. His fence will be vinyl and a nine (9) ft. vinyl fence is not a standard size. He shared a conversation he had with the Zoning Administrator on installing a fence on his property and what was permitted in the ordinance. He finished by noting that the applicant will have to trespass on their property to fix the fence, because the applicant installed the fence close to the property line. Ms. McCaskill began by stating that she requested the rehearing. She apologized to the board for their absence at the January hearing, as she had an untimely and tragic death in her family. Ms. McCaskill noted that the challenges her husband mentioned were foremost. She commented that property owners have a due diligence concerning maintaining one's own property. Ms. McCaskill stated one challenge was the timeliness of the variance, because the variance was not requested prior to the installation of the fence. She shared her understanding of the ordinance that the purpose of a variance was not to fix a problem, but to prevent problems. Ms. McCaskill stated this variance places a hardship on them. She commented that a tree less than ten (10) in. diameter was removed on their side of the property. She added that Mr. McCaskill had a survey done, the tree did not provide privacy as portrayed, and the fence creates a property value issue. Ms. McCaskill shared that due to the aesthetic and correctness of the fence, it will require them to submit a variance request to match the height of the applicant's fence. She noted that her and her husband will have the same hardships as the applicant. She also stated that no one in the neighborhood has a fence to this magnitude and this board will be setting a precedence for the Hill Crest neighborhood to allow a nine (9) ft. fence. Ms. McCaskill referenced the photos on agenda page II-20 and II-21 and briefly explained the photos were taken at ground level and from in their house. She commented that they cannot see into the applicant's back yard from in their house. Regarding aesthetics, Ms. McCaskill noted another issue was the various fence heights and requested the fence be one consistent height across the entire back yard, and not decrease the value of their property. Regarding topography, she commented that the ground was even and level. The fence can run straight across, not requiring it to vary in height, only cost of material and price. She added that the applicant's hardship shouldn't cause a hardship on them. Ms. McCaskill briefly shared her opinion of the fence company's professionalism. Mr. and Ms. McCaskill are requesting the variance not be approved due the hardships that will be placed on them.

Chairman Taylor commented that the board is not to take into consideration other fences in the neighborhood and are to only speak to the actual wording of the ordinance and consider a one-time situation. Assistant City Attorney Charles Graham stated that a variance request has to have something unique about the specific property and gave an example. He noted in this case the situation considers two properties since it involves a neighbor. He stated that in general everyone should begin by complying with the ordinance. Chairman Taylor commented on fences in his neighborhood not facing their neighbor's property, fence companies should know the ordinance, and the importance of the home owner making sure that a fence meets the ordinance.

Board Member Nebo asked for confirmation from the McCaskills that they are against the variance but are okay if the fence is eight (8) ft. Mr. and Ms. McCaskill replied, "Yes". Mr. McCaskill commented on in-stock and special order fencing heights and costs. Ms. McCaskill asked if the board approves the variance were they willing today to guarantee their future nine (9) ft. fence variance. Chairman Taylor inquired of why another fence needs to be installed if the applicant's fence is finished on the side facing the neighbor's property. Mr. McCaskill commented on the Family Dollar fence discussion at a City Council meeting, the applicant's nine (9) ft. fence height was huge and varied in height, and he did not want to look at the fence. He continued that he wants to install a fence, but not a nine (9) ft. fence. Commissioner Taylor asked if the fence was finished on their side and consistent all the way across the back, would they need to install a fence. Ms. McCaskill explained their existing front yard fence as vinyl and their plan to install additional vinyl fencing. She briefly talked about reduced maintenance and the aesthetic look of a vinyl fence in comparison to a wood fence.

Commissioner Nebo asked the applicant if they would be satisfied with an eight (8) ft. fence across in the rear yard. Ms. Fry replied that there would be no need for a variance with the choice of an eight (8) ft. fence. Chairman Taylor briefly talked about a fence varying in height between eight (8) ft. and six (6) ft. from ground level as being appropriate because it meets the ordinance requirement. He stated the board is to speak to the issues of the height of the fence being over eight (8) ft. and the back side of the fence as unfinished. Attorney Graham also noted the varying height as an issue. He shared if the board elects to grant the variance to the nine (9) ft., a condition can be added to have the fence the same height across the entire back. A fence varying in height between six (6) ft. and eight (8) ft. is within code and the board would not need to grant a variance. Chairman Taylor briefly talked about the back side of the fence, facing the neighbor's property, having to be finished and a discussion between the neighbors to receive access on property to finish the fence. He reiterated that he would like to see the fence height consistent from property line to property line if it is granted at the nine (9) ft. height. Chairman Taylor recalled the topography change. He reiterated that the board needs to decide if the fence can be nine (9) ft. in height and to consider whether the fence needs to be consistent across the back. Board Member Marino asked if the applicant was responsible for the maintenance on the back side of fence and Attorney Graham replied that the owner of the fence is responsible for the maintenance.

Brief discussion ensued on the property line pertinent to the fence, not the tree that was removed, and that both parties have not disputed the fence line.

Board Member Jones requested clarification on the McCaskill's hardships if the applicant's wood fence was nine (9) ft. The McCaskill's summarized the hardships of material and labor costs of installing a special order vinyl fence, the aesthetic issue of a nine (9) ft. fence was huge, and a decreased property value. Ms. McCaskill stated they would not have an issue if the fence was eight (8) ft. in height and asked the board to follow what the ordinance requires. She referred to the photos provided in the agenda. Mr. McCaskill confirmed that the fence was on the applicant's property and abutting to the property line. Mr. McCaskill stated he'll grant the applicant permission to fix their fence this one time, but not for future maintenance work.

Chairman Taylor reiterated the main focus of the board is on the height of the fence and whether to add the condition requiring the height be consistent along the back for aesthetics. Hardship to the applicant and their situation is to be considered and not perceived hardships of others. Attorney Graham replied that he was correct and added the question, "Is the applicant facing a hardship that is unique to their property that is not faced by other properties in the same area?"

After brief discussion, Board Member Marino made a motion to close the public hearing and Board Member Craig seconded the motion. The motion to close the public hearing was passed (5-0).

Chairman Taylor commented on determining a hardship, the fence height of nine (9) ft. versus eight (8) ft. that the ordinance allows, the finish side of the fence to be finished, topography difference between houses of approximately eight (8) ft., neighbor wanting to install a fence not being a part of decision process, and the requirements if the fence was eight (8) ft. Chairman Taylor stated he would prefer that the fence be consistent across the back from property line to property line as it would look better, and this can be a condition if the fence is nine (9) ft. Board Member Nebo was concerned about a wooden fence, and commented on the loss of privacy as a hardship by the applicant, but it was not sufficient to grant a variance. He continued that resolving a hardship for one would create a possible variance grant for another. Chairman Taylor explained that if the neighbor decides to install a nine (9) ft. fence, they would need to apply for a variance request; however, the board cannot speak on this matter at this time. He agreed with the hardship and that the topography difference was considered the hardship. Chairman Taylor reminded the board that the hardship would need to be included in the motion. Board Member Marino agreed with a fence height consistent all the way across would be aesthetically pleasing for the property owner and neighbor. Referring to pictures on agenda pages II-20 and II-23, Board Member Marino commented that a consistent eight (8) ft. fence would cover any visibility into the applicant's yard. Discussion ensued on the inability or difficulty in determining the position of where pictures were taken, such as a sitting or standing position, and from ground level or from inside a house or window while standing or kneeling. This referred to photos from both parties. Board Member Marino shared his perception of the photos with ladders, one photo being taken from a higher elevation looking down and one photo as standing and looking straight across. Chairman Taylor shared that he was unable to determine positions. Board Member Nebo shared his viewpoint of the photos as standing near the fence, standing near the ladder, and standing at or in the house. Chairman Taylor reiterated the need to determine whether an eight (8) ft. or nine (9) ft. fence height is sufficient. He reiterated his preference that the fence be a consistent height across the back from property line to property line, the fence finished on both sides, and

commented on what is permitted if the fence is within code requirements. Board Member Jones commented on visiting the site to determine privacy in the applicant's background. He referred to the photos and noted the different perspectives. He commented on one photo provided on agenda page II-8 and the angle taken displaying the top part of the neighbor's back door with the nine (9) ft. fence. Board Member Jones continued that if the fence was eight (8) ft., the view would provide visibility into their house, and he used the example of the neighbor being visibly seen standing at the door with their top off. Board Member Jones shared that this was something that needs to be considered when justifying the height of a privacy fence. With the comments stated during deliberation, Board Member Jones suggested visiting the property to formulate a fair view and to complete the perspective. He continued that he agreed that the fence needs to be finished on the neighbor's side, the same height from one end to the other. As a realtor, Board Member Jones shared that a fence with a consistent height and maintained would not affect the property, but a fence with a varying height would be considered by some people as unaesthetic and displeasing. Board Member Craig agreed with Board Member Jones regarding privacy and who is looking into who's window, and then asked why the owner would need to finish their fence if the neighbor is installing a fence that will cover the owner's fence. Chairman Taylor reiterated their decision is whether or not there is a hardship necessary to have a greater than an eight (8) ft. fence and also a hardship in elevation. Chairman Taylor encouraged the board to look at properties prior to the meeting and shared that he would not like to see this get delayed if possible. Brief discussion ensued on personal preferences not be discussed, that wooden fences are acceptable in the City code, whether the fence can be nine (9) ft., and whether a hardship exists to permit a nine (9) ft. fence. He reiterated that he would support the fence being the same height across the back if the fence is nine (9) ft., and that it is acceptable in the ordinance to have varying heights such as six (6) ft. and eight (8) ft. Board Member Nebo asked in making a decision to relieve a hardship, if that decision causes a different hardship, it cannot be considered at this time, and Chairman Taylor replied that he was correct and it would be considered a perceived hardship. Attorney Graham commented that it would be speculation on whether the board is creating another hardship at this point. A witness testified that in their opinion it creates a hardship for them and the board cannot dismiss that from their mind nor can the board predict the future. The board is not supposed to base their decision on speculation.

After brief discussion, Mr. Gates displayed and read Section 5.14.5 Variance Approval Criteria provided on agenda page II-3. Chairman Taylor referred to Section 5.14.5(B), and commented that he considered the topography change of approximately eight (8) ft. from property to property as a hardship, and that the property value was not a hardship. Referring to the same section, Commissioner Marino agreed with Chairman Taylor and stated the topography was the only condition that met a hardship.

Discussion ensued on the order of business to make a motion.

Board Member Nebo made a motion, "I, James Nebo, make the motion to deny the application for a variance, because I find no unnecessary hardship with the result from the strict application of the Ordinance because privacy is not lost with the eight (8) ft. fence sufficient to grant a variance." The motion was not seconded; therefore, the motion failed.

Board Member Jones made a motion, "I, Shaun Jones, make a motion to approve the application for a variance with fair and reasonable conditions in applying conditions that I believe the finish side be facing all neighbors and it have a gradual slope with the topography, meaning you do not see a one (1) ft. or six (6) in. variance between eight (8) ft. sections of fence. It has to be aesthetically pleasing all the way across the top of the fence. I find unnecessary hardship that would result from the strict application of the Ordinance because the subject property does not allow full privacy with only an eight (8) ft. fence due to the elevation change between neighbors. From what I see in the pictures, a nine (9) ft. fence at the time seems to be sufficient in providing adequate privacy amongst neighbors from front to back. I further find that the hardship results from conditions that are peculiar to the property, because of the topography between the subject property and the adjacent property. It allows for a seven (7) ft. to eight (8) ft. change in the elevation between neighbors according to Gaston County GIS. I further find that the hardship did not result from actions taken by the applicant or the property owner as demonstrated. Since the applicant did not cause the hardship, it would only make sense to construct a privacy fence that is aesthetically pleasing and flows with topography. As I conclude, the owner of the subject property is only asking for one (1) more ft. additional privacy due to the eight (8) ft. elevation difference between rear neighbors." Board Member Craig seconded the motion.

Additional clarification of the motion was discussed. The nine (9) ft. portion of fence is in the rear only and finished on the neighbor's side according to the ordinance, all sides of fence facing neighbors

has to be finished according to the ordinance, the finished side of fence is considered the neighbor's side, the nine (9) ft. fence is to be leveled at top flowing with topography from ground up and from property line to property line, the ordinance specifies a timeline for the applicant to record the decision and execute the decision, and it will be up to the property owner whether or not they want a finished side on their side of the property. The motion passed (4-1 Nebo).

Item III: Other Announcements or Business

Chairman Taylor thanked staff for their work. Staff did not receive any submittals for the March 25th Board of Adjustment meeting; therefore, the meeting will be cancelled. A cancellation notice will be emailed.

Chairman Taylor entertained a motion to adjourn. Board Member Marino made a motion to adjourn and Board Member Craig seconded the motion. The motion was passed (5-0); therefore, the meeting was adjourned at 10:54 a.m.

Chrystal Howard, Secretary

Zoning Board of Adjustment
City of Gastonia, NC

Chairman Lee Taylor Jr.

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