

The Town of Collierville **Board of Zoning Appeals** met in regular session on Thursday, March 17, 2016 at 5:00 p.m. in the Board Chambers of Town Hall, at 500 Poplar View Parkway.

Staff members present were: Town Planner, Mr. Jaime Groce; Assistant Town Planner, Mrs. Nancy Boatwright; and Administrative Specialist, Mrs. Sandi Robbins.

Roll Call:

Chairman Counts asked Mrs. Robbins to call roll.

Kelsey – present, Oakes – present, Luttrell – present, Counts – present, Hamilton – absent.

Quorum Present

Approval of the Minutes:

Chairman Counts asked if there were any corrections or deletions to the minutes from the January 21, 2016 meeting.

Hearing none, he called for a motion to approve the minutes as presented.

Motion by Commissioner Oakes, and seconded, to approve the minutes as presented.

Hearing no further discussion, Chairman Counts asked Mrs. Robbins to call the roll.

Roll Call:

Kelsey – yes, Luttrell – yes, Oakes- yes, Counts – yes

Motion approved

Approval of the Agenda:

Chairman Counts asked if there were any additions or changes to the Agenda.

Mrs. Nancy Boatwright stated there are none.

Motion by Commissioner Luttrell, and seconded, to approve the agenda as presented.

Hearing no further discussion, Chairman Counts asked Mrs. Robbins to call the roll.

Roll Call:

Kelsey – yes, Luttrell – yes, Oakes- yes, Counts – yes

Motion approved

Formal Agenda:

BZA16-01 837 Grapevine - Request a Variance to allow a fence to exceed 6 feet in the rear and side yard

Mrs. Nancy Boatwright gave the staff presentation. She stated there were three key questions in the staff report that she would answer in her presentation. The key questions are:

1. Are there alternatives to an 8-foot fence?
2. What is unusual about the property?
3. Will an 8-foot fence be injurious to other property?

EXHIBITS

1. Applicant's cover letter with Standards for Variances (2/26/16)
2. Site plan with existing fence conditions (2/26/16)
3. Applicant's photos of existing fencing (2/26/16)
4. Site plan with proposed fence conditions (3/9/16)
5. Fencestone precast concrete fence
6. 837 Grapevine Drive Aerial Photo

She stated there is an existing 7' 8" fence at the rear and south side of the property. She stated the fence is made entirely of wood with lattice existing on the rear portion. She explained the new fence will be in the same existing location with the new fence being slightly taller. She explained on a projection slide where the pre-cast concrete portion of the fence will be located with part of it being 8' tall and the remaining 6' tall. She stated there is a narrow strip that will not allow space for a proper evergreen planting screen. She showed examples of photos from the rear deck of the applicant's house to prove the need for a higher fence. She explained when the pool area was graded it was graded as flat and with the house left at the existing grade which drops steeply. She stated the condition of the fence is in disrepair. She explained since the fence is already 7'8" tall and has been there for decades, it most likely has had zero negative impacts on the adjoining properties. She showed examples of what the concrete pre-cast fence will look like.

She explained the elevation change between the residence/deck and the rear yard surrounding the pool prevents a 6-foot fence from providing adequate privacy between the subject property and the surrounding lots. The difference in elevation is not typical of the majority of the lots in the R-1 Low Density zoning district; however, there are similar differences in elevation on other lots in the Town, some of which have been granted variances. The variance will not authorize activities or uses other than those permitted by ordinance in the R-1 zoning district as fences are allowed in residential districts. There are factors other than financial gain being considered, such as physical characteristics and elevation changes of the lot. The applicant has not created the alleged hardship as the topography of the property existed when the subdivision was developed and an existing 7' 8" fence has provided privacy for approximately 20 years. The variance makes possible a reasonable use of the property by allowing the fence to be extended the minimum amount that would provide privacy for the applicant. The height of the fence should not be detrimental to the public welfare or injurious to other property, as an 8-foot will provide privacy to the subject property and the adjacent property, however; the lattice extending above the existing 6-foot fence softens the visual impact of the additional height. The proposed pre-cast concrete fence is less opaque than the lattice and will appear to be more massive in scale which might be considered an adverse impact. The additional height for the fence will not impair an adequate supply of light and air to adjacent property, substantially increase the congestion in public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the area; however, regardless of the height of the fence. The requested variance does not interfere with a recorded public or private easement. The pre-cast concrete fence will sit atop a 5-foot utility easement but that is the practice throughout Collierville and the fence owner is responsible for the repair or replacement of any fencing that must be removed for access to the utility easement. There are no drainage easements on the property.

Chairman Counts asked if there were any questions of staff.

Chairman Counts asked if the existing fence is an illegal nonconforming structure.

Mrs. Boatwright stated she couldn't find any record of a variance, so she assumes it is nonconforming.

Commissioner Kelsey asked if they had spoken with the neighbors about this fence or if any neighbors had issues regarding this fence request.

Mrs. Boatwright stated she had not heard any opposition from the neighbors.

Chairman Counts asked if in 1993 the house and pool were built at the same time.

Mrs. Boatwright stated from what she could tell from our records that is true. She stated they were required to have a fence at that time around the pool.

Chairman Counts asked if the house was built on the grade.

Mrs. Boatwright stated the house was built on the grade and the rear yard was graded flat to accommodate the pool.

There was a discussion over the privacy levels at this property and if the other houses on the street were at the same level as this property.

Chairman Counts asked if there were any questions of applicant.

Chairman Counts asked if the idea is to acquire privacy at the level of the house.

Patrick Hines, 247 Moore Lane, stated yes, it's for the owner's privacy but it's also so you aren't seeing anyone else.

Commissioner Oakes stated the fact that the fence is going to change from wood to concrete is not relevant to this particular case because there's nothing to prevent it.

Commissioner Kelsey stated he is in favor since there is not room for shrubbery and, even though it wasn't originally approved, the fence had been at that height for nearly 20 years.

Commissioner Luttrell stated he agreed with Commissioner Kelsey. If you were to take roughly 2 ½ feet of that fence away, he could see how that could make the owner self-conscious and could cause guilt with on looking into the neighbors back yards.

Chairman Counts stated that the non-conforming illegal fence that existed for 20 years should have no impact on the decision because it shouldn't even be there. He tends to agree with the other commissioners on granting the variance because in this case they have a topographical anomaly which is what the law states they need to grant a variance.

Hearing no further questions or discussion, Chairman Counts called for a motion.

Motion by Commissioner Kelsey, and seconded, to approve the applicant's request for a variance (Exhibit 1) to allow a fence of up to eight feet (8') in the rear and side yard at 837 Grapevine Drive subject to the following conditions.

1. *All required permits shall be obtained prior to construction of the fence.*
2. *The fence shall be designed so that drainage will flow freely and not negatively impact any adjacent property owner.*
3. *The 8-foot fence shall transition to the height of the 6-foot fence. The transition shall be provided over a minimum distance of eight feet or 4:1 ratio.*
4. *Fences, walls and hedges installed in or along public easements (utility, drainage, pedestrian and the like) are subject to removal at the owner's expense in the event maintenance or construction work is required within or along the public easement.*
5. *Any deviation from the approved variance shall require the approval of Staff and/or the Board of Zoning Appeals.*

Hearing no further comments, Chairman Counts asked Mrs. Robbins to call the roll.

Roll Call:

Kelsey – yes, Luttrell – yes, Oakes- yes, Counts – yes

Motion Approved

OTHER BUSINESS

Chairman Counts asked if there was any other business.

Mrs. Boatwright stated there was none.

Hearing no further business, Chairman Counts adjourned the meeting at 5:20pm.

Commissioner Carr Kelsey, Secretary