

The Town of Collierville **Board of Zoning Appeals** met in regular session on Thursday, June 16, 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; Planner, Mr. Matthew Wilkinson; and Administrative Specialist Sr., Mrs. Shari Michael.

Roll Call:

Chairman Counts asked Mrs. Michael to call roll.

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

Quorum Present

Approval of the Minutes:

Chairman Counts asked if there were any corrections or deletions to the minutes from the March 17, 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. Michael to call the roll.

Roll Call:

Kelsey – yes, Luttrell – yes, Oakes- yes, Hamilton – abstain, Counts – yes.

Motion approved

Approval of the Agenda:

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

Mr. Jaime Groce stated there are none.

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

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

Roll Call:

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

Motion approved

Formal Agenda:

BZA16-02 - 297 Holly Cove - Request a Variance to allow a fence to exceed 6 feet in height in the rear yard

Mr. Matthew Wilkinson gave the staff presentation. He explained that the property is R-1 Low Density Residential, but located in Eastbrook PD, which allows for reduced lot sizes. The fence has already been constructed. The portion above 6' is limited to the area of topographic change. One alternative to the using a fence to screen the back yard area is the use of vegetation such as tall evergreens or vines on a lattice frame. This solution would eliminate the uniform fence line. Vegetation would take time to fill out to provide adequate privacy, as well as require more work from the property owner to maintain it. The lot has a sloping rear yard with an overall grade change of two feet with the slope becoming steeper towards the southeast corner of the property. There is also a storm water runoff drain on the property, exacerbating the topographic change. Because of the size and grade of the slope the new fence regulations allowing for minor variations and fence heights in response to topography would be no benefit to the applicant as the maximum is 18". The applicant obtained letters from the surrounding property owners that state their support for the taller fence.

EXHIBITS

1. Applicant's cover letter with Standards for Variances (5/10/16)
2. Site Plan (5/10/16)
3. Neighbors' signatures of support for the proposed fencing (5/10/16)
4. Applicant's photos of fencing (5/10/16)
5. Applicant's photos of other fencing exceeding 6' (5/10/16)
6. 297 Holly Cove Aerial Photo
7. 297 Holly Cove Topography Map
8. Eastbrook PD Grading & Drainage Plan Clip
9. Fencing Construction Quotes

He reviewed the Standards for the Variances. The elevation change of approximately 2 feet between the residence/patio 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 to allow for consistent fence heights. 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 like physical characteristics, such as elevation change. The applicant has not created the alleged hardship as the topography of the property existed when the subdivision was developed and the storm runoff drain was installed before the home was built. 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 in the area as an 8-foot fence will provide privacy to the subject property and the adjacent properties. Condition 2 mandates that the fence has enough ground clearance to allow for the free flow of water runoff between properties, preventing drainage issues on neighboring properties. 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. The requested variance does not interfere with or encroach upon a recorded public or private easement. The cedar fence will sit atop a 10-foot drainage easement as well as a 5-foot utility easement, which is common in the Town. The fence owner is responsible for the repair or replacement of any fencing that must be removed for access to the drainage or utility easement.

He reviewed the conditions and the example motion as stated in the staff report.

Chairman Counts asked if there were any questions of staff.

Commissioner Hamilton asked if the fence had already been constructed.

Mr. Wilkinson stated that it was built without obtaining a fence permit.

Commissioner Hamilton stated so this variance request is really a request to seek approval for a pre-existing construction done without permits and in violation of an existing Ordinance.

Commissioner Hamilton asked if anyone had attempted to contact the HOA.

Mr. Wilkinson stated that would be a question for the applicant.

Hearing no further questions, Chairman Counts called the applicant to the podium.

Mr. Russell O'Dell, resident at 297 Holly Cove, addressed the commissioners.

Commissioner Hamilton asked why there was no permit obtained.

Mr. O'Dell stated that his contractor did not tell him that he needed a permit. Afterwards in discussion with his contractor, the contractor stated he was under the impression if you replaced a wood fence with a wood fence you didn't need a permit.

A discussion ensued regarding a nearby neighbor who is currently replacing their fence a portion at a time. This led to the discussion over the Fence Ordinance and how if more than 50% of the fence is changed out than a permit is needed. It was determined the applicant's fence was originally 6' tall all the way around. Since the southeast corner is now taller than the original fence, a permit was needed.

Chairman Counts asked if he got permission from the HOA.

Mr. O'Dell stated that their subdivision does not have an HOA.

Chairman Counts asked if the applicant was aware of the 6' height limit for fences.

Mr. O'Dell stated he was not.

A discussion ensued about the letters from the surrounding neighbors.

Mr. Wilkinson stated that this was brought to the staff's attention before May; however, due to the schedule of the applicant, the item was scheduled for the June 2016 meeting.

Commissioner Hamilton read a copy of fencing construction quotes that was in his packet, that none of the other commissioners were given. It showed that the contractor did not plan to pull a fence permit.

Mr. Groce stated that this information would be listed as Exhibit "9".

Commissioner Hamilton stated that this is a request due to contractor error. The applicant is being burdened by something that was overlooked by a contractor, even though the contractor doing business in the Town should know.

Commissioner Luttrell stated that due to the error of the contractor, he feels that the homeowner has been put in a burden situation.

Commissioner Kelsey stated that he appreciated that the applicant had approval letter from his neighbors.

Commissioner Oakes stated that it was not discussed by the contractor and the applicant and feels that this is in error of the contractor. Due to the grade of the lot and the storm drain he understands why the height is needed.

Chairman Counts stated that he finds the fence was built prior to what was listed in the staff report. He finds that the applicant's subdivision does have an HOA or at least a part of it does, and he knows that Memphis Fence Company builds a lot of fences in Collierville and they know that they needed a fence permit. He thinks if he had heard this before this started, and asked for a variance in the beginning, he would have granted the variance. It meets all of the tests. Now after the fact, knowing that he would have, could he now deny it, his answer is no. If the man were to sue us and we deny it, when the chancery courts looks at it, they will ask, on what ground did you deny it? It's not your job to punish the man or pass judgement, it's to pass the variance based on whether or not it meets the Standards.

A discussion ensued regarding why it was believed that the contractor did not pull the permit.

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

Motion by Commissioner Hamilton, 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 297 Holly Cove 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. The portion of the fence located within the drainage easement shall have a minimum of 2 inches of ground clearance.***
- 3. 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.***
- 4. 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. Michael to call the roll.

Roll Call:

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

Motion Approved

OTHER BUSINESS

Chairman Counts asked if there was any other business.

Mr. Groce stated that there will be a training session on the 2016 Planning Law Review on June 29, 2016 and a Historic Preservation Lunch and Learn on Thursday, July 14, 2016 at 11:00am at the Morton Museum.

Hearing no further business, Chairman Counts adjourned the meeting at 5:31 pm.

Commissioner Carr Kelsey, Secretary

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