

Meeting Minutes of the Board of Zoning Appeals Tuesday, April 14, 2015

The Board of Zoning Appeals met in City Hall Council Chambers on Tuesday, April 14, 2015 at 5:15 P.M. with the following members in attendance: Joshua Lonon, Don Bramblett, Jim Davis, Marshall Irby and David Scott Lewis. Representing the Planning Department were Joshua Henderson and Julie Roland.

Roll Call

Mr. Lonon, Acting Chair, stated that public notice of this meeting was given twenty-four (24) hours in advance as required by the Freedom of Information Act. Any appeals from a decision or action of this body are limited to a request for pre-litigation/mediation or an appeal to the Circuit Court, to be filed within thirty (30) days after the decision of this Board in accordance with Section 603.6 of the City of Spartanburg Zoning Ordinance.

Roll call was taken – Five members were present, constituting a quorum.

Approval of Agenda for the April 14, 2015 Meeting

Mr. Bramblett moved approval the Agenda for the April 14, 2015 meeting, and he was seconded by Mr. Davis. The motion was unanimously approved by a vote of 5 to 0.

Disposition of the minutes from the November 11, 2014 meeting of the Spartanburg Board of Zoning Appeals

Mr. Bramblett moved approval of the November 11, 2014 Meeting minutes, with second by Mr. Lewis. The motion was unanimously approved by a vote of 5 to 0.

New Election for Chair and Vice-Chair

Mr. Lonon said since Aaron Ryba, the Chair had resigned from the Board, they needed to elect a new Chair and Vice Chair; and he asked were there any nominations for Chair.

Mr. Bramblett nominated Mr. Lonon to be the new Chair; and he was seconded by Mr. Davis. There were no other nominations. The motion was approved by a vote of 5 to 0.

Mr. Lonon nominated Mr. Bramblett as Vice-Chair; and he was seconded by Mr. Davis. There were no other nominations. The motion was approved by a vote of 5 to 0.

Old Business – None.

New Business:

VAR 14 2-03 - Request for Variance from Geraldine Dye, Owner. Variance to allow the applicant permission to have a five (5') foot high chain-link fence that has already been installed in the front yard of the property at 332 Wilmont Street. The property is further identified as Parcel 030.13 on Spartanburg County Tax Map Sheet 7-16-15.

Mr. Henderson came forward and was sworn; and he submitted the meeting packets the Board Members had previously received including the reports, slides, minutes from the last meeting the Board Members that were emailed separately, and the presentation into Evidence, as Exhibit A. He said the only item of business was a variance request submitted by Ms. Geraldine Dye for property at 332 Wilmont Street.

Ms. Geraldine Dye of 332 Wilmont Street came forward and was sworn; and she informed the Board Members she was a first time home owner and had a lot to learn regarding being a home owner. She is a disabled single mother and she explained she has a disabled daughter at home. Prior to purchasing her home, she had been renting a house from the Spartanburg Housing Authority, that had pretty much been condemned, which led her to the purchase of her home. When she purchased her home she was under the impression that it was a very nice neighborhood full of home owners who had similar values as herself, such as taking care of the homes, planting flowers, raising children, etc. She explained things had changed in the last two years in the neighborhood; and she further explained she had a neighbor that harassed her and made threats to her. Other people's children came in to their yard and destroyed things. Also there is a lot of wildlife, i.e., turkeys, fox, huge deer, etc. in the very woody area. Another neighbor

had pit bull dogs that run over all the time. Until she had the fence put up they did not get any sleep for many nights, not knowing what might venture into the yard from the woods. Her daughter was run over by a subway train in New York a year or so ago; and was in the process of rehabilitation; which she did a lot of it outside. She needed to get a fence to provide privacy for her daughter and did not have the money to have one installed. She found a fence company that said she could make payments on one. Ms. Dye explained she did not know you could not have a five foot fence in the front yard, or she would never had had it put up. The fence had given them a lot of security against all of the above referenced concerns. She feels that their location in the woods at the end of a cul-de-sac kind of sets them apart from a lot of homes that are in the neighborhood. They have had no complaints for the entire three years the fence has been up. They have only had compliments on it from some of the neighbors that had stopped by. She concluded her presentation by asking the Board to please consider letting them keep the five foot fence.

Mr. Henderson came forward again and informed the Board Members he had a conversation recently with Newman Fence who admitted to putting the fence up approximately three years ago; and had informed him they had no idea the property was in the City. The property owner had put her confidence in the fence company to take care of everything; and no permit was pulled. He referenced Section 403.2C Fences in Yards from the Zoning Ordinance that said front yard fencing is only allowed to be a maximum of 4' in height in the front yard of residentially zoned properties. He also referenced Section 603.4 Variances, which stated only variances can be pursued for rear yard height extensions and not for front yard fences. Mr. Henderson said the property owner originally submitted an application for a different variation of fence asking for a variance on the height of a fence in the rear yard. Upon reviewing the request, Staff noticed the existing 5' front yard chain-link fence. After further discussion with the Property Owner, she amended her original application to only seek a variance for the front fence, in its current condition. After discussing this case with Cathy McCabe, City Attorney, this request should ultimately be treated as an appeal; however, since we had already issued the public notices, and appeals and variance request are reviewed and considered with the same criteria; Staff decided to move forward with the request as the Owner had submitted as a variance. Slides were shown in order to better illustrate the request.

[Editor's Note: the report the Board Members previously received included the Mandatory Written Findings for the Board to consider when reviewing appeals for variance request and Staff's Analysis of Required Findings as follows:

- 1) *There are extraordinary and exceptional conditions pertaining to the particular piece of property –* According to the Property Owner, the extreme and exceptional conditions that apply to this property are that there are several neighborhood and stray dogs that are in the area that are able to get over a 4' fence. She also states that her daughter, who is recovering from an injury, does physical therapy outside and the Owner is afraid for her safety and the safety of their pets.
- 2) *These conditions do not generally apply to other property in the vicinity –* The same conditions would apply to other properties along the street, however, there are no other properties along the street with any type of fencing enclosing any portion of their yard.
- 3) *Because of these conditions, the application of the ordinance to this particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property –* The requirement of only allowing for a 4' fence in the front yard of the property would not prohibit utilization. It would only increase the probability of the safety concerns that the Property Owner has.
- 4) *The authorization of a variance will not be of substantial detriment to adjacent property or to the general public good, and the character of the district will not be harmed by the granting of the variance –* Upon looking down the street, you have a sense of connectivity from property to property with regards to the open front yards. The property in question is entirely closed off, but is located towards the end of the street. Having a fence that is one foot taller than the ordinance allows, would not detract from the neighborhood and will still have the visibility since it is chain-link.
- 5) *The Board does not find it necessary to attach conditions regarding the location, character, or other features of the proposed building, structure, or use to protect established property values in the surrounding area or to promote the public health, safety, or general welfare.*

STAFF'S RECOMMENDATION

While Staff recognizes that the fence, in its current state, does not cause an adverse impact on the character of the house, nor the neighborhood, we have to defer to the ordinance when reviewing and issuing Fence Permits and allowable heights on residential properties and thus recommend denial of the application. However, we believe that there are relevant considerations addressing each of the required findings that could adequately justify approval should the board reach that conclusion. More slides were shown in order to better illustrate the request.

Board Questions:

- Mr. Lonon said he was a little unclear regarding the change in the application. Mr. Henderson explained the applicant had originally submitted an application for an eight foot privacy fence in the back yard; and he further explained again what had proceeded since the application was first submitted. There had also been some decorative bamboo paper-like material that was put over the fence that you could see through for added privacy.
- Ms. Dye said her neighbor across the street had constant parties; and her daughter did her rehabilitation a lot outside; and they needed the bamboo-like panels for extra privacy as was explained by Mr. Henderson.
- Mr. Lonon said they were not concerned about the bamboo like material.
- Mr. Henderson said he will discuss with the fence company about the fence in the entire yard since no permit had been applied for.
- Mr. Bramblett asked Ms. Dye had there been any discussion between her and the fence company regarding the property was inside the city limits. Ms. Dye said she knew she was in the City, but did not know she had to pull a permit or anything. The fence company did not realize that area was in the City Limits and that is why no permit had been pulled or anything.
- Mr. Henderson said he spoke with Teri Newman, Owner of Newman Fence Co.; who admitted they did not know the property was inside the City Limits; and they took full responsibility for not pulling a permit.
- Mr. Bramblett mentioned Ms. Dye said she had a lot of wild dogs in that area; and that she had called Animal Control regarding the dogs; and he asked her how many times she had called them. Ms. Dye explained she had called a few times before regarding the hunting dogs or dogs she did not recognize before she had her fence put up; but she had not called them out on her neighbor's pits.
- Mr. Bramblett said she had a nice neighborhood out there; and he could understand why she needed a fence; but he felt the fence was very stark. He said it would be no problem for the fence company to lower the fence in the front yard. He felt the fence company should also be responsible for changing out the gates.
- Mr. Bramblett asked Ms. Dye if she had asked the fence company how much they would charge to lower the front fence; and he felt it was so big that it would lower the other property values. Ms. Dye explained that most of the other homes were now rental properties.
- Mr. Irby asked Ms. Dye if she had any complaints about her front yard fence from any of the neighbors. Ms. Dye said she had had nothing but compliments from the few people who had walked by her house and had commented on it.
- Mr. Henderson said staff had not received anything prior to the meeting in favor or in opposition of the request.

Mr. Lonon opened the public hearing and asked anyone who wished to speak either in favor of the request or against the request to come forward.

- Ms. Nicole Long of 308 Wilmont Street came forward and said she was a single parent in the neighborhood with a daughter; and she felt the fence provided security. She wished she had a fence in her yard. She was in support of the request.

- Ms. Gye's daughter came forward and explained to the Board Members she was waiting on a subway train in New York in February of last year and had fainted and fell onto the tracks and had been severely injured by the train. Since she was now in rehabilitation, she went out in the yard to do her rehab and the fence provided privacy and security from the neighbors and also from animals. She had seen a lot of wild animals including large dogs across the street. They also have a neighbor across the street that had a lot of parties and trash and debris get thrown all around.

Mr. Lonon asked if there was anyone else to speak in favor or against the application. There was no one else. Mr. Lonon closed the public hearing.

Board Discussion and Deliberation:

- Mr. Lonon informed Ms. Dye that it really pained him to say this; but the Board existed under certain rules and by an Ordinance that was put in place by the City regarding what this Board could do, which stated variances from the regulations could be granted by the Board of Zoning Appeals only in accordance with the Standards that she had previously gone through in her presentation. He said even though he thought her request met all the criteria; unfortunately the Ordinance said they could only grant Variances. He informed her in regards to fence height in front yards, they may only grant a variance to permit fence in rear, side, and corner side yard; and he felt she was probably exposed to nuisances that would justify a variance in the rear, side and corner side yard. He did not feel the ordinance referred to front yard variances. He explained there was an appeal process where the decision of this Board could be appealed, or the ordinance could be amended by the City Council.
- Mr. Henderson informed the Board Members under Section 603.3 of the Ordinance, that while this case started out as a variance, Staff under the direction and discussion of the City Attorney proceeded with this case as an appeal request because of what the Chair had just stated due to the fact that the Board cannot grant a front yard variance. That is why staff had denied the application for a five foot fence; and a request was made under Section 603.4, "Appeals". Mr. Henderson apologized if he had not made that fact clear in his report the Board Members had previously received. He explained the because the criteria the Board needed to use was the same as for a variance; Staff was directed to not re-advertise or re-send property owner letters from the original request.
- Mr. Bramblett asked the petitioner's daughter how her therapy was progressing; and was there any way to put a time limit on how long she will have to do physical therapy. She explained she had already had seven surgeries, and there was no way to put a time limit on her recovery.

Mr. Lonon made a motion the appeal request be granted as submitted for the front side five foot fence and that all five criteria had been met; and he was seconded by Mr. Irby. The motion was approved by a vote of 4 to 1, with Mr. Bramblett opposed.

Mr. Lonon informed the applicant she would receive an approval letter in the mail.

Mr. Henderson said he would contact the fence company in order that they now submit all necessary permits for the previously installed fence.

Approval of Proposed 2015 Board Meeting Schedule

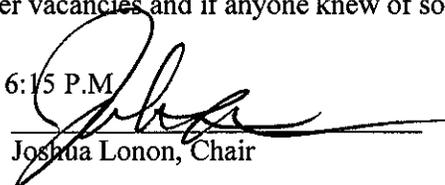
Mr. Bramblett moved to approve the 2015 Meeting Schedule, and was seconded by Mr. Davis. The motion was approved by a vote of 5 to 0.

Staff Announcements

Mrs. Roland explained all Board Members who had not had their 2015 Continued Education training would need to do so before the end of the year.

Mrs. Roland said there were currently two Board Member vacancies and if anyone knew of someone who wished to serve to please let her know.

There being no other business, the meeting adjourned at 6:15 P.M.



Joshua Lonon, Chair

Edited by Julie Roland, Administrative Assistant