

## **Meeting Minutes of the Board of Zoning Appeals Tuesday, October 10, 2017**

The Board of Zoning Appeals met in City Hall Council Chambers on Tuesday, October 10, 2017 at 5:15 P.M. with the following members in attendance: Joshua Lonon, Don Bramblett, Anne Poliakoff, Reed Teague and Jim Badger. Ryan Gaylord was absent. Representing the Planning Department was Natalia Rosario, Planner III.

### ***Roll Call***

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Mr. Lonon, the Chair, called the meeting to order and stated that public notice of this meeting was given twenty-four (24) hours in advance, 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 of the current six member Board were present, constituting a quorum.

### ***Approval of Agenda for the October 10, 2017 Meeting***

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Mrs. Poliakoff moved approval of the Agenda for the October 10, 2017 meeting, and she was seconded by Mr. Bramblett. The motion was unanimously approved by a vote of 5 to 0.

### ***Disposition of the minutes from the July 11, 2017 meeting of the Spartanburg Board of Zoning Appeals***

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Mr. Bramblett moved approval of the July 11, 2017 Meeting minutes, with second by Mrs. Poliakoff. The motion was approved by a vote of 5-0.

### ***Old Business***

None.

**VAR 17 2-05 - Request for Variance from William and Rebecca Bagwell, Property Owners. The Applicants are asking for permission to have an eight (8') foot high wooden privacy fence that will be twenty-one (21') feet long on one side of house in order to better market the property, which is two (2) feet higher than what is permitted by the Zoning Ordinance, for the property at 203 Beechwood. The property is further identified as Parcel 083.00 on Spartanburg County Tax Map Sheet 7-13-02.**

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Mr. Lonon informed the Board Members he lived a few houses down from the Bagwell's; and he had spoken to them a few times previously regarding the problems they had with the neighboring property owner in his role as President of the Neighborhood Association; and he also informed the Board Members he had mentioned this to the City Attorney, Cathy McCabe; as to whether or not he needed to recuse himself from voting on this matter. He said the City Attorney did not feel he needed to recuse himself. Mr. Lonon then asked the Board Members if any of them had any objections with him voting on this matter; and no one had any objections regarding the issue.

Ms. Rosario, Planner III came forward and was sworn; and she showed a location map and some slides and introduced the case to the Board Members: She informed the Board Members the Bagwell's were trying to sell their home; and felt the requested eight foot high side fence would help to better market the property.

Mr. William Bagwell of 203 Beechwood Drive came forward and was sworn; and he informed the Board Members they were hoping to market their property for sale in the near future and he wanted to buy a one-story house. He showed a slide of the property next door in order to show why he was asking for the eight-foot high privacy fence in order to better market the property. He said an appraiser had come to evaluate the house, who had informed him he should try and limit the view from that side of the house regarding the side view of the neighbor's property. He informed the Board Members the Building Official, Buddy Bush had also been out to look at the property. Mr. Bagwell explained to the Board Members that the realtor had also informed him that if he could hide the side view of the neighbor's property he would get a better price for the house. Other slides were shown in order to better illustrate the request. Mr. Bagwell explained he planned to install a very nice fence if the request was approved.

Mr. Bagwell also presented four pictures to the Board Members which were entered into the record as Exhibit A, as well.

**Board Questions:**

- Mr. Bramblett asked how far from his property line would the proposed fence be; and what was the length of the proposed eight foot portion of the fence.
- Mr. Bagwell said it would be about ten inches from the property line; and the length would be about twenty-one feet.
- Mr. Bramblett asked about trees or that sort of thing regarding blocking views.
- Mr. Bagwell explained he use to have fir trees planted but had to take them down previously.

Ms. Rosario came forward again and showed more slides in order to better illustrate the request; and she went over the Mandatory Written Findings for the Board to consider when reviewing a 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* – The property at 203 Beechwood Drive itself does not exhibit any extraordinary and exceptional conditions, but it is visually impacted by construction of a garage on the adjacent property.
- 2) *These conditions do not generally apply to other property in the vicinity* – The other properties are not as impacted as Mr. and Mrs. Bagwell's by the construction of the garage as it is nearest to their property line and well obscured by distance and foliage from other neighboring property owners.
- 3) *The application of the ordinance to this particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property* – Application of the Ordinance to this piece of property would not effectively prohibit or unreasonably restrict the utilization of the property as a residence. That being said, the additional fence height would add additional screening to the property, thus lessening the impact of the garage on the property next door.
- 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* – In Staff's opinion the granting of the variance will not be of substantial detriment to the adjacent property, or any other properties in the vicinity.
- 5) *Orientation and spacing of improvements or structures* – The fence is shown to be along Mr. and Mrs. Bagwell's property line, along with a detailed drawing of how it is to be constructed. Staff has already been contacted by the fence contractor who would be installing the fence and they are aware that they will need to pull a fence permit for this work. The location and design of the fence are appropriate for the lot and district.

**STAFF'S RECOMMENDATION**

Staff recommends that the Board approve the variance for an additional two feet in fence height on the grounds that no other properties shall be impacted by the height of the fence, and it will allow the property additional buffering from the structure next door.

Ms. Rosario informed the Board Members that the Assistant City Manager, Chris Story could not be at tonight's meeting; but that he had informed her he had spoken with the owner of 205 Beechwood Drive, who did not have any problems with the request. Ms. Rosario entered the meeting packet the Board Member's had previously received, as well as the slides, presentation, etc., in to evidence as Exhibit B.

Mr. Lonon said for the record there was initially an email sent from Mr. Greg Karpick who lived in the neighborhood opposing the request; and then after speaking with Mr. Bagwell had sent another email stating he no longer opposed the fence request.

**Board Questions:**

- Mr. Bramblett asked if there were any covenants regarding the Neighborhood Association.

- Mr. Lonon, the Chair said as President of the Neighborhood Association, there were covenants, but he did not know right off the top of his head if they addressed fences; but he was of the opinion that the covenants were so old, and there were so many things in the neighborhood already that were in violation, that he would be surprised if they could be enforced.

Mr. Bagwell said initially they did have covenants from 1957; and he had two attorneys who had previously said the same thing Mr. Lonon had just said regarding fences.

Mr. Lonon opened the public hearing, and asked anyone who wished to speak in favor of the application to come forward.

- Mr. Harry Lancaster of 213 Overland Drive came forward and said his property adjoined the Bagwell's property and the property at 205. He said he could also see the neighbor's property in the winter time; and he was in favor of the request being approved.

Mr. Lonon asked anyone else who wished to speak in favor of the request to come forward. No one else came forward. Mr. Lonon asked anyone who wished to speak in opposition of the request to come forward. No one came forward. Mr. Lonon closed the public hearing.

Board Deliberation:

- Mr. Bramblett explained he would rather see trees planted, but regarding the time it would take for such trees to grow in height he would concur with the petitioner's request.
- Mr. Badger asked how much room would be between the two fences.
- Mr. Bramblett explained as Mr. Bagwell had pointed out his fence would be at least ten inches back from the property line.
- Mr. Lonon said he would like to explain again for the Board Members and everyone else present that the Board of Zoning Appeals had very limited powers under the Statutes and City Ordinance to grant variances, and if the Board could not adopt the five findings the remedy was supposed to be for the City to change their code. He said he was inclined to vote for the variance, but he felt this strained the edges of what variances were for, which was for extraordinary and exceptional conditions on property that truly restricted the utilization of property. He said they had not typically given variances to folks just because they may need something that would enhance the value or the marketability of their property; and he further said in his opinion that would be exactly what they were doing here. He was also concerned, as always regarding precedent setting.
- Mrs. Poliakoff agreed with Mr. Lonon regarding there was a little bit of grey area regarding whether that constituted exceptional and extraordinary conditions, but in her opinion she felt Ms. Rosario had covered that finding satisfactorily; and she also wanted to go by the code and was also concerned as always regarding precedent setting.

Mr. Teague made a motion to adopt the findings and approve the variance as presented; and he was seconded by Mrs. Poliakoff. The motion was unanimously approved by a vote of 5 to 0.

Staff Announcements

Ms. Rosario said as of last night, the Mayor and City Council had approved Leana Melnichuk as the newest BZA Board Member who was present in the audience tonight; and welcomed her to the Board.

Ms. Rosario said all the BZA Board Members were up to date with their training; and Ms. Melnichuck would have a year in which to receive her required New Board Member Training.

There being no further business the meeting adjourned at 5:40 P.M.

  
Joshua Lonon, Chair

Edited by Julie Roland, Administrative Assistant