

Board of Adjustment
Thursday, April 7, 2015
7:00 PM
Hood Room, Matthews Town Hall

AGENDA

- I. CALL TO ORDER
- II. INVOCATION
- III. APPROVAL OF MIINUTES
- IV. VARIANCE REQUEST: BA 2016-2, Pike Nursery Sign at 1016 Devore Ln
- V. ADJOURNMENT

**MINUTES
BOARD OF ADJUSTMENT
THURSDAY, JANUARY 7, 2016
HOOD ROOM, MATTHEWS TOWN HALL**

PRESENT: Chairman Jim Jiles; Members Jerry Meek, Jim Mortimer and Cecil Sumners; Alternate Members Thomas Lawing, Gary Smith and Peter Tuz; Attorney Robert Blythe; Senior Planner Jay Camp and Administrative Assistant/Deputy Town Clerk Betty Lynd

ABSENT: Member Jeanne Moore

CALL TO ORDER/INVOCATION:

Chairman Jim Jiles called the meeting to order at 7:00 p.m.

Thomas Lawing and Gary Smith were appointed voting members for tonight's meeting.

Mr. Mortimer gave the invocation.

APPROVAL OF THE MINUTES:

Mr. Sumners made a motion to approve the minutes of the December 3rd, 2015 meeting. Mr. Lawing seconded the motion and the motion passed unanimously.

SWEARING IN:

All parties to speak were sworn in by Chairman Jiles.

VARIANCE REQUEST: BA2016-1, Fence Height Variance at 3247 Winding Trail

STAFF REPORT:

Mr. Camp stated that the case is a variance request relating to Section 155.601.21.A relating to fence height. The property is a corner lot in the Saddlebrook subdivision. Mr. Camp showed the board an aerial photograph of the property. A portion of the fence is in violation, as it is 3 foot higher than the maximum allowed height.

The fence was not constructed by the current property owner. The variance request came to staff in order to resolve a notice of violation issued by Carlo McKoy. A complaint was made to the town via phone call and upon a site visit, the Code Enforcement office was able to determine the fence was in violation.

Mr. Camp noted that a fence can be as high as desired if placed outside of the required side yard setback. This neighborhood has more side yard available than some of the newer subdivision, thus allowing for planting of vegetation to provide a further barrier to adjacent properties.

Mr. Jiles asked for information concerning where on the property the fence was currently located. Mr. Camp stated that staff does not have a survey of the lot.

Mr. Tuz asked Mr. Camp to repeat the potential solutions. Mr. Camp stated that the fence could be located outside of the required setbacks and built as tall as desired or vegetation could be planted to provide a further barrier.

Mr. Mortimer asked the amount of violation concerning the fence. Mr. Camp stated that in Mr. McKoy's Notice of Violation, the fence is noted as approximately 9 foot in height. Mr. Jiles stated that 7 foot is mentioned in the Notice of Violation as well.

Mr. Sumners asked how far the applicants would have to move the current fence in order to keep it. Mr. Camp stated the best estimate without an approximate survey would be 7-10 foot. Mr. Jiles stated that if they move the fence they would not be in violation any more.

Mr. Lawing asked if an accessory structure near the fence was in violation. Mr. Camp stated that the height of the building was dictated by the portion of code concerning accessory structures and is not in violation.

Hanna Trapp of 3247 Winding Trail, stated that her husband has corrected all other portions of the fence that were previously in violation. The main reason the applicant would like the variance considered is the adjacent property has a second floor deck and they have had significant issues with their neighbor. They are concerned for their two young children's safety. They believe one neighbor has mental health issues and they would prefer to shield their backyard from the adjacent property. Mrs. Trapp stated that police reports were included with the application to demonstrate the activity at the adjacent property. The height of the fence gives them peace of mind for their children. The fence was built long before they bought the property.

Mr. Jiles asked about the gate size to the left of the home and if there was a second access to the backyard. Mr. Lee Trapp stated that there is a gate on the other side of the home. Mr. Jiles stated that he asked about gate size because moving the fence outside of the side yard would eliminate that large gate. Mr. Trapp stated that he has fixed the fence along the entrance of the neighborhood because the initial complaint dealt with that side of the home.

Mr. Mortimer asked if the applicants have considered the solutions put forth by the town. Mr. Trapp stated he wasn't aware he could buy vegetation tall enough to create a barrier quickly.

Mr. Tuz asked for a description of what the neighbors do on the second floor deck. Mrs. Trapp stated that she has only seen them on the deck a handful of times. Mr. Trapp stated that on occasion he has interacted with his neighbor when his neighbor was stating that there was children he wanted to beat with a baseball bat. This made them concerned for their children's safety.

Mr. Jiles asked if there were any specific complaints about the home. Mr. Camp stated that most Notice of Violations are given due to specific complaints. Some are given because Mr. McKoy sees violations while traveling major thoroughfares. Mr. Camp stated that most complaints are given anonymously.

Mr. Trapp stated that the initial complaint was on the fence alongside the entrance to the neighborhood. It has been corrected. Mr. Tuz stated that the portion of fence in question was discovered at the time of the inspection and it does go against the Unified Development Ordinance.

Ms. Wanda Fuller, resident of Winding Trail, stated that she can attest to the issues with the adjacent property owners. She passed out a packet of information that was placed into the record.

Mr. Jiles asked if many of the lots on that circle have fenced backyards. Ms. Fuller stated that maybe 20% of the lots have backyard fences.

Mr. Trapp stated that there are two storage sheds existing in the backyard that would be in the way if the fence was moved. Mr. Jiles asked if the blue storage shed was a permanent structure. Mr. Trapp stated that the structure is not permanent but the leech field for the septic tank does not allow them to place the building further back.

Mr. Jiles swore in Ms. Fuller's son Jacob Fuller. He stated that the neighboring property also has a large German Shepard that does escape the property due to neglect.

DELIBERATION:

Mr. Jiles stated that the board is dealing with a fence that is in violation of the ordinance. It is able to be corrected. Mr. Jiles stated that the issues with the adjacent property owner is a civil issue. Mr. Blythe stated that the issue the board has to deal with is solely the violation of the ordinance on the subject property.

Mr. Meek stated that he has a young child so he sympathizes. The board must determine that the hardship is a result of something peculiar to the property. The hardship in this case is not with the subject property but with the neighbor. If the applicant moved, the new owners would also be allowed to keep the fence if the variance was granted. Mr. Mortimer stated that Mr. Meek's comments were well stated.

Mr. Mortimer stated that the fence is in disrepair due to its age. If the fence cannot be moved due to utilities, then landscaping is a solution. Mr. Jiles stated that the fence could also be reduced in height where it currently stands.

Findings of Fact

1. There would be unnecessary hardship from strict application of the ordinance.

Mr. Jiles stated that there are several options available for privacy without violation of the town code. The options of landscaping and relocation should be pursued.

2. Hardship results from the conditions that are peculiar to the property, without granting the variance.

Mr. Jiles stated that this condition is due to issues with the neighbor instead of conditions on the subject property.

Mr. Tuz stated that this is a corner lot and a corner lot does not have as much privacy as other lots. The portions in view of most neighbors has been fixed.

3. The hardship did not result from actions taken by the applicant or property owner.

Mr. Jiles stated that the fence exceeding in height existed prior to the current owner.

4. The requested variance is consistent with the spirit, purpose, and intent of the title, because public safety is secured and justice is achieved.

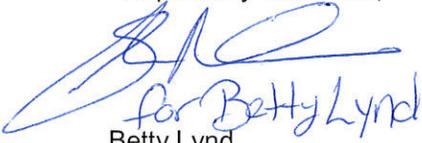
Mr. Jiles stated that the request is not consistent with the ordinance.

Mr. Jiles made a motion that variance request BA2016-1 be denied with the inclusion of the above findings of fact. Mr. Sumners seconded the motion. The motion carried unanimously. Mr. Meeks did not vote as he came in after the meeting was in session.

ADJOURNMENT:

Mr. Smith made a motion to adjourn the meeting at 7:59 p.m. Mr. Lawing seconded the motion and the motion passed unanimously.

Respectfully submitted,

A handwritten signature in blue ink, appearing to be "for Betty Lynd".

Betty Lynd
Administrative Assistant/Deputy Town Clerk