

**MINUTES
BOARD OF ADJUSTMENT
THURSDAY, AUGUST 2, 2012
HOOD ROOM, MATTHEWS TOWN HALL**

PRESENT: Chairman Eric Welsh, Vice Chairman Stephen Lee, Member Walter Monestere; Alternate Members Jim Jiles, Jeanne Moore and Cecil Sumners; Attorney Robert Blythe; Planner Jim King and Zoning Technician/Deputy Town Clerk Lori Canapinno

ABSENT: Members Derek Morgan and Jim Mortimer

CALL TO ORDER/INVOCATION

Chairman Welsh called the meeting to order at 7:02 pm and gave the invocation.

Chairman Welsh appointed Alternate Members Jiles and Moore to act as voting members.

APPROVAL OF THE MINUTES

Vice Chairman Lee made a motion to approve the minutes of the July 12, 2012 meeting. Mr. Jiles seconded and the motion was unanimously approved.

Chairman Welsh noted that the applicant for the first variance - Board of Adjustment case number 2012-8 - had not yet arrived. Ms. Moore made a motion to hear the cases out of order. Mr. Monestere seconded and the motion was unanimously approved.

VARIANCE REQUEST: Case 2012-9; Renfrow Property, 400 West John Street

SWEARING IN

The following were sworn in: Jim King, David Blackley

Planner Jim King explained the applicant's property consists of three parcels which are collectively known as 400 West John Street (the property). The Mecklenburg County parcel identification numbers are 193-251-23, 193-251-24 and 193-251-40 and the parcels are zoned R-20.

The applicant seeks a variance to the fence height regulations for a residential district. Fences are allowed in residential districts, but the applicant seeks relief from the maximum height allowance in order to install a seven foot tall fence. The ordinance states that fences located in a property's front setback cannot exceed four feet in height and fences located in the side or rear yard cannot exceed six feet in height. The applicant is attempting to create an urban farm but the farm operations are being disturbed by deer. There are unique circumstances since a six foot high fence will not completely keep deer out. Mr. King said that both the applicant and he conducted research and found that the industry standard for deer fencing is seven feet.

APPROVED 8/23/2012

Mr. King referenced the property survey (boundary and topographical survey for David Blackley; dated 7/28/11 as referenced in the staff report) to explain that two parcels flank Charles Street, each with their own front yard setbacks that would allow a maximum fence height of four feet. The remainder of the property has side and rear yard requirements that would allow for a maximum fence height of six feet. The request is for a variance of three feet for that portion of the fence that would exist in the front setback and for a variance of one foot for that portion of the fence that would exist in the side and rear yards of the parcels, which would allow for the construction of a seven foot tall fence.

The property is addressed off John Street and also has frontage on Charles Street. The property is approximately five acres and has a depth of approximately one thousand feet. It is best known as the old Renfrow property, having been owned by the Renfrow family until 2010 when the property was willed to the applicant. The property has historically been used as a homestead and farm and it is the applicant's intention to farm the property for produce to be sold at Renfrow Hardware and earn money to pay the property taxes for these parcels.

The property backs up to the railroad right of way and deer typically use train tracks as a method of travel. Because of that a substantial number of deer come onto the applicant's property. He's been limited to growing produce that are not attractive to deer but would like to expand the farm's productivity to include other crops, thus prompting this variance request.

Ms. Moore asked for clarification on frontage and side yard fence heights. Mr. King explained that the front setback, which is fifty feet in the R-20 district, allows for a four foot fence while the side and rear yards allow for a six foot fence. For the first fifty feet of the property from each side of Charles Street going back toward the railroad line and West John Street, respectively, the maximum fence height allowed is four feet. The rest of the perimeter could have a fence at a maximum of six feet. The applicant wants to install a fence that is seven feet tall all the way around the property. Mr. King explained that his research indicates that deer can jump over a six foot fence but deer generally will not attempt to jump over a seven foot fence.

Mr. King read from the Zoning Ordinance. Section 153.091 regulates fences and walls in residential districts and reads as follows, "Within residential districts, no fence or wall may exceed four feet in height in any required front setback, or six feet in height within any required side or rear yard. Fence height shall be the vertical distance measured on the exterior side of the fence from the ground directly under the fence to the highest point of the fence, exclusive of capitals or ornamental projections which are no closer than five feet intervals. Where the ground is inconsistent, the fence height along any unbroken run, up to sixteen lineal feet, may be averaged, as long as no point along that unbroken run exceeds ten percent of the stated height limit."

Mr. Sumners asked if the fence could be moved further up toward John Street if the variance was granted. Mr. King explained that the Board could choose to impose conditions on any variance it approved, so if there was a concern about future fence locations the Board could include a condition that would limit such future changes.

Mr. Jiles suggested the inclusion of a condition that would allow the fence in conjunction with the farm use with the intention of preventing the continuing use of the taller fence after a use change on the property.

Applicant David Blackley addressed the Board. He explained that it was his intent to keep the property as a green space and marry it somehow to the store instead of developing it and changing the landscape of the residential side of John Street.

Mr. Blackley's daughter lives in the house on John Street. It is their intention to keep that front lot residential and use the other two lots to grow crops to sell at the store. The deer come up and down the railroad line and destroy a lot of crops. There are existing old fences in some places that Mr. Blackley would eventually like to repair. The

Charles Street section is not an ideal place for future residential development anyway since it is surrounded by an insurance office and the Matthews Foundry. Farming is something that Mr. Blackley knows well and fits into his skill set and he believes it is the highest and best use for this property to pay the taxes for a long time.

Mr. Blackley wishes to install standard agricultural fencing which is practically invisible. He said he would prefer not to have to do it due to the cost involved but it is necessary because of the deer.

Chairman Welsh asked for more information regarding the deer, their destruction and any studies regarding the use of seven foot fencing. Mr. Blackley said he has found through his hardware store business that seven feet is the minimum useful fencing height. Anything shorter than that encourages deer to attempt the jump and potentially get caught up in the fence. Mr. Blackley said he has had to cut deceased deer out of the fences on which they were caught. The taller fences discourage the deer and make them change their patterns. He said there is another method in which fences are built at an angle, but that is impractical in this situation, nor would it look appropriate for the area. The fence he proposes to use is standard woven wire for six feet and then a gap topped with a smooth wire for the seventh foot.

Ms. Moore asked for confirmation that deer would not attempt to jump a seven foot tall fence. Mr. Blackley said they would not and the taller fence keeps the tragedies from occurring the way they do with shorter fences.

Mr. Blackley confirmed that the fence material he wished to use is similar to what currently exists on the property. Ms. Moore said she drove by the property and the existing fence is practically invisible.

Ms. Moore asked about the vegetation as viewed from John Street. Mr. Blackley said the John Street side is the residential side and he will be adding some standard landscaping since his daughter will be living in the house on that lot. The front part will continue to look almost the same – an existing tree is scheduled to be removed because it is rotting. The other buildings on the property are used in the business for garden classes and things of that nature.

Mr. Jiles said he recognized Mr. Blackley's business experience with seven foot tall fences but asked if he had any other supporting documents or details regarding their use. Mr. Blackley said all of the deer fencing they sell is seven foot polypropylene netting or deer and orchard fence. It's the industry standard. He said there are publications that reference this but he was not aware he would need to bring any to the meeting.

Chairman Welsh noted Mr. Blackley had testified earlier that he used six foot tall fencing on his own residential property. He asked if there was a possibility of giving the applicant what he needed with a six foot fence rather than a seven foot fence. Mr. Blackley said he had three big dogs at home in addition to the six foot tall fencing and the dogs chase off the deer. In addition, during certain times of the year he places an electrified fence a few feet outside the six foot fence so the deer can't get close enough to jump it. He also uses motion lighting. Even with all that the deer still occasionally get over the six foot fence.

Vice Chairman Lee asked about the post material. Mr. Blackley explained there would be treated brown wood posts at the corners and either wood or metal for the intermediate posts. It will look like a farm fence, not a chain link fence.

Vice Chairman Lee asked about fence regulations in business districts. Mr. King said there are provisions in the business districts that require fences to be set back with landscaping between the fence and the property line. Taller fences are allowed in business districts.

DELIBERATIONS

Ms. Moore said she viewed the property and didn't see anything offensive about the existing fence – it blended in and looked fine. She does not believe it would make much difference to simply add something on top to make the fence taller. She is concerned about the look from West John Street and wants to make sure whatever is there doesn't take away anything from the existing homes and businesses that are there now. She suggested making sure there was shrubbery or trees to camouflage the fence from that street. She was not certain if the existing vegetation would be enough or if additional screening would be needed.

Mr. Jiles noted farming is an allowed use and suggested adding a condition that the taller fence is tied to the use, so that a seven foot fence would not be allowed to remain if the farm use ceased and the property was developed as anything else.

Mr. Jiles said he is familiar with the deer situation and said a number of universities have done studies that show that a seven foot fences are generally used for deer prevention, or six foot fences with a second shorter fence in front of it. He said the applicant's request is a reasonable means of controlling predators and that the existing shorter fence is not offensive-looking.

Vice Chairman Lee said without added vegetation along Charles Street it will look like there is a corridor of fencing. There was some discussion of the current appearance of the property on Charles Street. Ms. Moore said as long as the fence was placed at the property setbacks she would be fine with it. Mr. Blackley confirmed that it was not his intention to plant all the way up to the curb. Chairman Welsh noted that the variance request refers only to the fence height, not any setback issues. Mr. King noted that the ordinance allows a fence to be placed anywhere on the property as long as it met the height regulation. If the variance were granted as requested the fence could be placed right at the edge of the right of way. Ms. Moore said she would not like to the fence that close to the road and would prefer it to be placed where the existing fence is now – set back from the road. Mr. Jiles said he is not concerned with the way the fence looks – the farm use is allowed under the zoning ordinance.

Chairman Welsh noted that if there were concerns about the location and appearance of the fence, the Board could apply conditions to the approval, such as requiring the fence to be placed X feet off the right of way or for plantings between the street and fence. Mr. King noted that as it stands, a four foot fence could be placed just off the right of way, but Mr. Blackley's submitted diagram indicates that the taller fence, if approved, would be installed seven to eight feet back from the right of way. Chairman Welsh clarified that the variance request is to increase the height of the fence from four/six to seven feet but that the applicant is agreeing to tie that to a seven or eight foot setback from the right of way. Mr. Blackley explained that he volunteered that so there would be a mowing strip because the other side of the street already has a planting strip. The fence will be behind the hedge, so the farm crops won't be right up close to the street.

Chairman Welsh asked if Mr. Blackley had any objections to planting some holly to match what exists on the other side of the street. Mr. Blackley said he would not object if that is what the Board desired but that he would prefer to plant something productive. He also said he hoped to avoid having the appearance of traveling through a cavern of holly and thinks that is what would occur if holly was planted on both sides of the street. He was hoping to plant flowering materials that the deer won't eat. Ms. Moore said she doesn't believe the mirror image landscaping on both sides of the street is necessary – it's not obvious that the parcels on either side of the street are connected in any way so the landscaping doesn't need to match. Mr. Blackley added that for security reasons it is helpful to be able to see through the landscaping to see what's going on on the land behind it.

Vice Chairman Lee explained that for a few years there has been a real estate sign on an adjoining property advertising higher end office space. Vice Chairman Lee reviewed what the developer is proposing but did not

speak with him personally, nor is the developer in attendance to offer his own opinion, but Vice Chairman Lee said that he had concerns himself. The Town of Matthews has invested a lot of money to create connectivity in this area to make the town more walkable and provide more pathways to ease traffic congestion. There is an overall Downtown Overlay in place for this property. Vice Chairman Lee is uncomfortable allowing a change that could be a detriment to someone like the office developer. He said he loves the idea of the garden but is uncomfortable granting a variance for a residential property with a fence like that and the appearance it could create, which is that that street is a nothing street or is not important to the Town. He said he understands the value of an urban farm but he is concerned with the overall intent of the Downtown Overlay and what the zoning regulations are trying to do. He said the installation of a fence that will make the area look rural, no doubt about it. He worries about the future of the adjoining development project and other property – the office developer's marketing plan advertises a high-end project that highlights connectivity, walkability, etc. He is uncomfortable with the idea of changing the overall look and feel - and perhaps even the intent – of the Downtown Overlay. He suggested this issue be brought up before the Planning Board so they could address it as a use in the ordinance. If urban farms are going to continue to develop then they need to fit into the fabric of the downtown area. Matthews is no longer a farming community so this is a special case. He questioned the impact on adjoining properties and the downtown in general.

Ms. Moore said Mr. Blackley has the right to place a shorter fence there now, or he could sell the property. No one knows what will happen in the future. Vice Chairman Lee said a seven foot fence is much different than a four foot fence and this kind of farm fence is the lowest grade. Ms. Moore said it isn't that noticeable and that Mr. Blackley has already agreed to a condition that would require vegetation in front of the fence. Vice Chairman Lee said this is a bigger issue in that there is special zoning in place specifically for downtown Matthews. This decision could potentially change the look and feel of that. The Town put a lot of money into making Charles Street a connect-through instead of the dead end it was previously. He said if it was still a dead end he wouldn't have the same concerns. He said he thinks screening would make it more palatable. He understands that having some portion of non-farmable property is not the best return on the farming property, but said this isn't agricultural land but rather a downtown suburb. He feels that at a minimum, screening is necessary. He said if farming is an allowed use in residential zoning, and if farm fencing is a concern, then it needs to be addressed within the zoning regulations.

Ms. Moore said she wasn't so concerned about the rear portion of the property along Charles Street but rather the area along John Street. She doesn't want to see the area viewable from John Street to be farmed.

Vice Chairman Lee said the Town put the road [Charles Street] in for a reason, along with adding sidewalks and parking. This area is not just a cut-through. There is a question about appropriateness.

Chairman Welsh asked for clarification on why Vice Chairman Lee felt the issue needed to be addressed by the Planning Board. Vice Chairman Lee explained that the Planning Board works in conjunction with staff and elected officials to create zoning ordinances, plans, overlays and other regulations. They are the forward-thinking body and the entity that put the vision into place. Making a decision like this, for an area that is a central part of the community, is integral to that vision. The Town punched through that street and the area is being considered for commercial development. This decision potentially impacts them and devalues their land based on the appearance of what else is on that street. If the street looks like a rural or industrial street there may never be any future development activity of any value there. There could be an overall impact to the vision of the Downtown Overlay. There was additional discussion of the role of the Planning Board and regulations for urban farms.

Vice Chairman Lee said the trickle-down effect of this decision is that the look and feel of a corridor or street can affect the value of the properties within it. Developers might pull out if the overall look and feel isn't what they want. Ms. Moore said that is talking about the unknown – no one knows if that office project or anything else will

actually be developed. Vice Chairman Lee asked Ms. Moore if she felt that Matthews has value. Ms. Moore said yes, absolutely, but that part of Matthews' beauty and value is its history, including Renfrow Hardware and its associated land. Chairman Welsh agreed.

Vice Chairman Lee said he agreed with Ms. Moore's previous statement but said he was explaining why he is uncomfortable with this decision. It could impact the viability of further development on the street that has value in Matthews. Chairman Welsh said Vice Chairman Lee raised an important point for consideration. It would have been helpful if someone involved in that commercial venture was able to speak about this issue, but no one was in attendance.

Chairman Welsh asked if there was much of a difference between the allowed four feet of fencing just off the right of way and the requested seven foot fencing that would be pushed back with plantings in front. Vice Chairman Lee said that would help him somewhat. Chairman Welsh suggested adding conditions and requesting specificity from the applicant regarding the conditions. He said Renfrow Hardware is hugely important to Matthews but the issues raised are important and there is probably a middle ground that can be met.

Vice Chairman Lee said he doesn't wish to oppose any person or business - he's trying to look at the situation from the whole perspective. This has the potential to affect the nearby properties' highest and best use, so it would be better if screening was used so the farm use isn't so obvious.

There was additional discussion about the role of urban farms, the Planning Board and its role in the regulation of such farms. Attorney Blythe noted that this Board must address the application before it. The Board of Adjustment may make a recommendation that the Planning Board study the situation if further review is warranted.

Chairman Welsh said he was in favor of granting the variance with certain conditions – that the variance was applicable as long as the farm use continued; that the fence was set back eight feet from the right of way on both sides of Charles Street; that there would be an extension of the existing holly bush plantings on one side of Charles Street and significant plantings of other vegetative material on the opposite side of the street. He said he wasn't sure if the Board felt a need for a condition regarding the John Street side of the property. There was general consensus that Chairman Welsh's specified conditions were acceptable.

Chairman Welsh said more information regarding the plantings was needed. He suggested continuing the hearing to allow the applicant to put together a detailed landscape proposal that includes both existing and proposed plant locations and materials. Mr. Blackley said he was agreeable but asked for more detail regarding what plantings the Board would like to see.

Vice Chairman Lee said the existing hollies do a great job. He mentioned Leyland Cypress and Arborvitae as being cost effective, fast growing and providers of effective screening. He also said he doesn't want to suggest anything that would cause the tunnel effect mentioned by Mr. Blackley earlier. He said greenery to offset the fencing would be good, even if it's just at the posts.

Ms. Moore said she was also concerned with the appearance of the property as viewed from John Street. Mr. Blackley said he could address that as well but there is no code requirement regarding that side. Ms. Moore said she just wants to make sure that someone walking or driving by can't see the farm activity and that the front of the property by John Street retains the same residential character as the surrounding homes. Vice Chairman Lee noted that Mr. Blackley had already stated he was planning to put vegetation in that area. He also said that the area is so far back from John Street that it probably isn't visible from the street anyway. Ms. Moore agreed that it probably would be visible only if one was walking along the street, not driving it. Mr. Jiles said the Charles Street side was really what he was concerned with.

Mr. King noted that the properties around this are nonresidential in nature and as such would be allowed a seven foot tall fence all the way up to the right of way. There is no material requirement either. Screening is required – anywhere from eight to fifteen feet wide with the fence behind it. Ms. Moore asked why there was so much concern over the applicant's request for a seven foot fence when the surrounding properties can have a seven foot fence by right. Vice Chairman Lee said the different uses call for different regulations, and the addition of a seven foot fence on a farm use adds a new element.

Chairman Welsh asked for clarification from the Board regarding the overall concerns with respect to Charles Street, specifically the right side of Charles Street and shown on the plan. He said he personally was not concerned with John Street. By consensus it was agreed that Charles Street was the area of concern, not John Street.

Chairman Welsh suggested continuing the hearing so allow the applicant some time to put together a landscape plan with specificity on fence, post and plant location and types of planting material and with the agreed-upon eight foot setback indicated on the plan.

Mr. Blackley asked for clarification regarding the surrounding properties and their ability to install a seven foot fence when he cannot. Vice Chairman Lee explained that some neighbors may – those zoned business and office - but the parcels are conditionally zoned and may have site-specific fencing requirements. There are other nearby parcels with different zoning designations that each carry their own fencing requirements.

There was some discussion of the fence materials. Mr. Blackley said he would spread the fence posts about ten feet apart. There is about three hundred feet of length along each lot so it wouldn't be feasible to hide each post. Chairman Welsh said the Board is looking for something to break up the appearance of the fence, not necessarily cover up all of it.

Mr. Blackley said he would push the fence back eight feet from the right of way and have the planting strip on the railroad side to have that camouflage aspect. It had been Mr. Blackley's intention to plant flowering annuals such as sunflowers, daylilies or other materials that looked nice but weren't attractive to deer. Chairman Welsh said he was inclined to allow Mr. Blackley to plant what he thought was best. Mr. Blackley said he wants it to look good and wants the Board to feel comfortable with their decision. Mr. Jiles agreed that the choice of plants should be left up to the discretion of the applicant and said he liked Mr. Blackley's suggestions better than bushes.

Vice Chairman Lee asked if the plantings could be staggered to allow for more of a screening aspect. He said he is trying to balance the needs of the applicant with those of the other property owners as well. He said he doesn't think the entire length needs to be screened but that more screening would be better to mask the appearance of the farm use. He would prefer Leland Cypress or hollies with height to mask the fence. He noted that a fence at four feet is easy to dismiss since the average line of sight is taller than that, but a seven foot fence is different. Vegetative screening with more height and growth is preferred in order to break up the visual appearance of the fence and screen farm implements and things of that nature,

Chairman Welsh said he would be happy with plantings and modest screening. There is wisdom in having some screening – he would leave the material type and planting distance to the applicant's discretion, although he would be happy with them at twenty feet apart – with some planting in between with that plant material also being at the applicant's discretion. Mr. Blackley said he could get a landscape plan prepared for the next meeting.

Chairman Welsh made a motion to continue this case until the next meeting in September. Mr. Jiles seconded.

Ms. Ingrish asked if the Board would consider holding a special meeting later in August. By consensus the Board agreed to hold a special meeting on August 23, at which this case will be continued. Chairman Welsh amended his motion to continue the case until Thursday, August 23, 2012. Mr. Jiles seconded and the motion was unanimously approved.

VARIANCE REQUEST: Case 2012-8; 7-11, 1700 Windsor Square Drive

Since the applicant was not present, the Board declined to hear the application. This request may be heard at the next scheduled meeting on August 23.

MISCELLANEOUS

Attorney Blythe explained that a previous case – Premier Plastic Surgery – was coming back to the Board. The original variance request had been denied by the Board. The applicant appealed to Superior Court and the denial was affirmed. The applicant then appealed to the Court of Appeals and that court has remanded the case back to the Board of Adjustment for a clarification of findings based on the evidence that was already before the Board. There will be no new evidence, just a review of old evidence and new arguments for both the applicant and the Town.

There was discussion of the September meeting. The regular meeting date is September 6, but that is in conflict with other events. Ms. Moore made a motion to move the meeting to Thursday, September 13, 2012. Mr. Jiles seconded and the motion was unanimously approved.

ADJOURNMENT

Mr. Jiles made a motion to adjourn. Mr. Monestere seconded the motion and the meeting adjourned at 8:45 pm.

Respectfully submitted,

Lori Canapinno
Zoning Technician/Deputy Town Clerk