

A meeting of the Zoning Board of Appeals was held on **August 27, 2018 at 5:30 p.m.** in City Hall Council Chambers, 1911 Boundary Street. In attendance were Chairman Josh Gibson, board members Joe Noll, Nigel Stroud, Tim Wood, and Jody Caron, and Libby Anderson, planning director.

In accordance with the South Carolina Code of Laws, 1976, Section 30-4-80(d) as amended, all local media were duly notified of the time, date, place, and agenda of this meeting.

CALL TO ORDER

Chairman Gibson called the meeting to order at 5:30 p.m. and led the Pledge of Allegiance. He read the notice of compliance with the requirements of the Freedom of Information Act.

MINUTES

Chairman Gibson made a motion, second by Mr. Stroud, to approve the minutes of the May 30, 2018 meeting as submitted. The motion passed unanimously.

Chairman Gibson reviewed the procedure at ZBOA meetings.

REVIEW OF PROJECTS

2210 BAY STREET, identified as District R120, Tax Map 3, Parcel 590

Variance

Applicant: Dick Stewart (ZB18-07)

The applicant is requesting side yard setback variances in order to build a new house.

Ms. Anderson said the property is on the Beaufort River in The Glebe neighborhood. The property is zoned T3-Suburban. The applicant desires to remove the single-family dwelling on the house and build a new one. The side yard setbacks in this district are 10', she said; the current building's side yard setbacks are non-conforming.

The applicant is requesting side yard setback variances on each side of the lot, Ms. Anderson said, to permit the new dwelling to be located 5' from the side property lines. The applicant submitted a tree survey of the property, she said, which is in the members' packets. It shows 25" and 26" live oaks between the existing building and the water; these landmark trees are a consideration for the planned structure because they are in the buildable area of the lot.

Standard public notice was made, Ms. Anderson said, and representatives of The Glebe neighborhood association were notified by email. There was one public comment received before the meeting, and it is in the board members' packets, she said.

Ms. Anderson reviewed staff questions for the applicant, which are listed in the staff report.

Ms. Anderson enumerated staff's opinions on the findings the board needs to make to approve this variance application:

1. **Exceptional and extraordinary conditions are attached to the property:** Staff feels the shape of the lot is "very unusual." The property is on the water and non-conforming on the east and west side for existing setbacks. There are also at least 2 landmark trees in good condition on the property, Ms. Anderson said.
2. **Conditions don't apply to other properties in the vicinity:** Staff feels this finding could be made.
3. **Conditions are not the result of the applicant's own actions:** Staff feels this finding could be made because the applicant did not plat the lot, plant the trees, or construct the existing dwelling.
4. **Granting the variance would not conflict with the Civic Master Plan or the Comprehensive Plan:** Ms. Anderson said this is not in conflict with the Comprehensive Plan or the Civic Master Plan, which encourage compatible infill development.
5. **Application of the ordinance is an unreasonable restriction on the utilization of the property:** Ms. Anderson told the board members that they "need to give this some thought."
6. **Granting the variance would not be a detriment to adjacent property and the public good:** Staff said this finding could be made with more information about the design of the house.

Mr. Wood said his questions are the same as those staff suggested should be asked of the applicant; Ms. Anderson said he is present and can answer those questions. There is not yet a footprint of the new building, Ms. Anderson told Mr. Wood.

Dick Stewart, the applicant, said when he and his wife bought the property, they considered refurbishing the house, but after consulting with architects about the trees, setbacks, and other matters, they have determined that "it's best to take it down and replace it."

Concerning the question of site design, Mr. Stewart said, an architect told him that he could "draw it all sorts of different ways with a 10' setback," but having a 10' setback in "the narrow portion really affects the circulation of vehicles," and pushes the house forward; they are asking for a 5' setback "particularly on that side" to handle vehicles and have a house in nearly the same footprint as the current house. They don't want to take down trees or block the view across Mr. Stewart's lot to the river for the neighbors to the west side of the house. Mr. Stewart said he has retained architects, and he feels it will be a "more traditional Beaufort" house design than the one that is there. There will

be handicapped access and “wider passageways” inside the house, he said.

The new house could be built on the lot as it is, but they would lose the 2 landmark trees, and it would affect their neighbors’ view, Mr. Stewart said.

Mr. Stroud asked if Mr. Stewart would “object to a 5’ setback . . . on the narrow part of the lot,” while retaining the 10’ setback on the right side. Mr. Stewart said he is okay with that, but he explained why he would need a 5’ setback at one point. Mr. Stroud said it could be 5’ on the east side and 10’ on the west side. Mr. Stewart said he’d provided the board with “a drawing that showed just what” Mr. Stroud had suggested.

Mr. Noll asked if this is one lot. Mr. Stewart pointed out a fence they could see on the drawing and said it “doesn’t actually exist . . . it comes right up against the wall of” the house “and connects to it.” He said he doesn’t know how that happened.

Chairman Gibson asked Ms. Anderson if the setback is different for attached and detached garages. Ms. Anderson said an accessory structure would have a 5’ setback. Chairman Gibson asked Mr. Stewart what he planned for the garage. Mr. Stewart replied that they want an attached garage.

Mr. Wood said one of the reasons to have a variance is to save the 2 live oaks, so he asked if Mr. Stewart would object to the ZBOA making that a stipulation of the variance. Mr. Stewart said that’s fine; he wants to keep the trees.

Chairman Gibson said beyond what Mr. Stewart does, the board should come up with a way to ensure that the variances don’t cause “further problems further down the road.” Mr. Stroud suggested asking Ms. Anderson if the variance could be only for Mr. Stewart. Ms. Anderson said this variance request is specific to the application, which is for a dwelling to be built. Mr. Stroud said if the new house burns down, and someone else buys the property and wants to build there, the 5’ setback “is forever.” There was a general discussion about this. Mr. Caron said if the house Mr. Stewart builds is gone, “it’s a clean slate,” and the setbacks would go back to 10’.

Ms. Anderson said they’re basing this variance on a certain set of conditions with this application, including the size and location of the trees.

Mr. Stewart said they only need the variance for the setback to be 5’ in some parts of the side yards but not in other parts. He told Mr. Stroud he would be glad to provide surveyed amounts.

Deena Culp, 2208 Bay Street, said her house is on the side of Mr. Stewart’s property where the setback is currently 2.8’. The brick wall will be torn down, which she feels is “positive.” Ms. Culp said she “would like to gain 10’,” because the new house is “going to cut off the air flow” because it would “extend further back toward the street.” She

said their view would be of the new house. Ms. Culp said her lot is the smallest of those in the area. It's a triangle shape and "really tiny," she said, so "every foot counts," and it would be more open with a 10' setback.

Ms. Culp said her house is about 15' from the property line. Mr. Stroud asked if whether the proposed structure were 1 or 2 stories would affect her at all, and Ms. Culp said it wouldn't affect her. She needs "more openness," she said, adding that she has a detached garage, which is 10' from the property line.

Chairman Gibson asked Mr. Stewart how the board knows if there's a problem that requires a variance if there is no plan before them. Mr. Stewart said when he built his house in downtown Beaufort, he needed 5 or 6 variances to get the house to work on a small lot. He knew that he needed the variances because there were specific reasons things couldn't be done, he said.

Chairman Gibson said this "a pretty big piece of property," and with "a pretty smart architect," Mr. Stewart "could design [his] way around this problem." Rather than having "a specific problem" that a variance could resolve, Mr. Stewart seems to have requested a variance because "it would be easier if [he] did it this way," Chairman Gibson said, which is not "a reason for a variance." Mr. Stewart said they are "doubling the space back from the existing house." They "could leave the garage where it is and build everything else within the setbacks," but that would "leave us pushing forward in front of" his neighbors' property "more than we'd like to." Chairman Gibson asked Mr. Stewart, if he knows that, why the board doesn't have the plans "to look at that can validate that." Mr. Stewart said he wouldn't want "to spend \$15,000 to \$20,000 to have the plans drawn" to get a variance; he could just build on the current building's footprint and explain to the neighbors that "we tried."

Chairman Gibson said most applicants to the ZBOA come with "a specific problem" that a variance would solve, rather than it being a matter of "I would like to not have to deal with this." He feels that "the work hasn't been done to try and mitigate" the issues, and he thinks Mr. Stewart could "completely build a compliant house on this lot that wouldn't cause any problems." Mr. Stewart said he had not anticipated "having a surprise objection from someone that we talk to regularly" when he is "doubling the distance" of the current setback. Chairman Gibson said he's "not reacting to what Ms. Culp had said. He asked Mr. Stewart, "If you know that you have a problem, why don't we have the paperwork in front of us that shows us that there's a problem?" Mr. Stewart said the problems they have are "trying to accommodate" the neighbors and "maintaining their view" and "saving the trees," which 10' setbacks won't allow them to do. Chairman Gibson asked Mr. Stewart how he knows that if he hasn't worked with an architect yet. Mr. Stewart said they have seen "8 or 10 different versions." He feels "doubling the setback is always a good thing for the neighbors."

Mr. Stroud said the board believes what Mr. Stewart is saying, but it would help them to

see the schematics that Mr. Stewart had mentioned in order to see what doesn't work. Mr. Caron agreed. Mr. Stewart said he could "try to find them . . . and I could send them to you," but he prefers the board would make "a decision today, because I'm probably not going to come back" to the ZBOA to let the board see those ideas if there were a motion to table the application for 30 days.

Chairman Gibson said architects could give Mr. Stewart a sketch of what could be done for less than \$10,000 – \$15,000. When Chairman Gibson built his house, he said he came to the ZBOA with "a planned layout" – not a full set of plans – so he could show why he needed variances and that they would not have a negative effect on anyone.

Mr. Stewart said he is before the ZBOA for variances, so he can "accommodate [his] neighbors" and their "view across our property." He plans to build on this lot and to stay there the rest of their lives. They were surprised by the need for 10' setbacks. He said he could "tear this down and build a detached garage there at 5'," but he's trying to "set in place a situation so that the architect will know the trees are sacrosanct, protect the view if you can, and you've got this space to work with." Mr. Stewart said he felt he was "being a good neighbor."

Chairman Gibson said the board is not implying that Mr. Stewart is not a good neighbor. The ZBOA has 6 conditions it must meet to grant a variance, he said, and one of the conditions is that the situation is "not a result of your own actions," but if Mr. Stewart tears the existing structure down to build a new house, that *would* be his own action. Chairman Gibson's feeling is that the new house could be compliant, since they are "starting from scratch." There won't be a house on the lot when the current one is torn down, so he feels there needs to be a better reason for the ZBOA to grant a variance than that "it would be easier for" Mr. Stewart than if he didn't have one.

Mr. Stewart said he "never suggested this was about ease." He could build the house in a different spot on the lot and have a detached garage, but then his neighbors' view would be blocked. He could probably save the live oaks, he said, but he would have some difficulty getting to them to maintain them. Mr. Stewart said it would be easiest for him to build the new house "there and tell the neighbors 'I tried.'"

Chairman Gibson said the ZBOA's goal is to "find a way to say 'Yes'." Mr. Stewart said he could bring an architect's drawing to the board, but he fears that it would be re-designed if he did. If he brought a plan back, he has no way to know the board would accept it, he said.

Mr. Stroud said he would prefer to see the sketches Mr. Stewart had mentioned than an architect's drawing, and then Mr. Stewart would not need to spend any more money. Mr. Stewart said that wasn't the purpose of the sketches.

Chairman Gibson asked Mr. Stewart how he knows he needs a variance. Mr. Stewart

said he doesn't know that – he was trying to help out his neighbors – and he would withdraw his application for the variance.

Mr. Wood clarified that once the house is demolished, it has to revert back to current regulations. Ms. Anderson said that's correct.

Mr. Caron asked Mr. Stewart, if the ZBOA tabled this application and asked him to provide the sketches, if Mr. Stewart would do so. Mr. Stewart said he didn't have a response at this time.

Ms. Anderson showed the areas for which the variance request is being made. The footprint of the new house is not shown, she said, but it's been made "clear where the variances might be needed."

Mr. Stroud said the ZBOA could use the drawing Ms. Anderson referred to with Mr. Stewart's promised surveyor numbers, or they could table the project.

Mr. Stroud said Mr. Stewart is here because he is trying to help out a neighbor, to save trees, and to preserve the view. Chairman Gibson said, "The missing piece of the puzzle is 'Why?'" Nothing has been presented to indicate a "specific hardship." It is "decent" to try to preserve the neighbors' view, and the lot is oddly shaped, he said, but there is a chance to make a non-complaint lot compliant when the current house is torn down, yet the request is such that the lot will remain non-compliant. It would be easier for the board to say "yes" to the variance if they could see why it is needed, Chairman Gibson said.

Mr. Caron said the ZBOA has tabled applications in the past when they needed to be able to see additional materials (e.g., about the placement of a fence), "and this is a house." Currently, the third finding the board needs to make to grant a variance can't be made, he said. He'd "prefer to see . . . a concept of this," rather than making a decision based on "two red lines" on the drawing of the lot to indicate where the setback variance is desired.

Mr. Noll said, "Any footprint that we get, we'll be able to slide it and get that 10' setback." He feels Mr. Stewart "won't be able to convince us because he can fix it" and "make it work" without requiring a 5' setback. Mr. Wood agreed and said if they vote on this application with the information the board has, it doesn't meet the 6 criteria that must be met to give a variance. He feels he can't vote "yes" at this time with what the board has been given. Mr. Wood agrees with Mr. Noll that it would not be a hardship to build a house on this lot with 10' setbacks. He said he understands what Mr. Stewart is saying, and he hopes that the live oaks survive, but he doesn't "see a hardship."

Mr. Stroud said if this were tabled, the applicant would have the opportunity to move forward with his concept.

Chairman Gibson made a motion to table the project for up to 90 days pending more information from the applicant. Mr. Caron seconded the motion.

Mr. Wood said Mr. Stewart is correct in saying that he is being asked “to jump through a hoop with no guarantee” that the variance would be granted if he returns with plans. Mr. Stroud said if it gives the applicant “more flexibility,” he thinks it should be tabled. **The motion passed 3-2, Mr. Noll and Mr. Wood opposed.**

35 PETIGRU DRIVE, identified as District R120, Tax Map 29A, Parcel 124

Appeal

Applicant: Sea Island Tree Care (ZB18-09)

The applicant is appealing the decision of the administrator to apply tree replacement planting and mitigation requirements for removal of a 44” live oak without a permit.

Ms. Anderson said the live oak was in the common area of the Battery Point neighborhood. The applicant applied for permission to remove 5 trees in that area on June 20. **Brian Franklin**, the city’s landscape architect, inspected the trees, and one tree that was marked but was not on the application was a 44” live oak, so he contacted Sea Island Tree Care to see if they were going to apply to remove the tree. **Cindy Becker**, Sea Island Tree Care, sent Mr. Franklin an application to trim a limb of the live oak, Ms. Anderson said. Mr. Franklin approved trimming the limb and removal of the other trees.

On July 3, Mr. Franklin went to the site and saw the 44” live oak had been removed and the stump ground down, Ms. Anderson said. He informed Ms. Becker that the permit was for trimming the oak, not removing it, and that there would be a fine for having removed it. Mr. Franklin contacted **Wade Deaton**, the owner of Sea Island Tree Care, who said that a representative of the homeowners association had told him when they were taking out the other trees that the homeowners association had permission from the city to remove the 44” live oak, too. After reviewing a year’s worth of permits, Mr. Franklin was unable to find any paperwork to this effect, Ms. Anderson said.

The 44” live oak is a landmark tree under the current ordinance, Ms. Anderson said. There are very specific requirements for mitigation if a tree of that nature is removed without a permit: mitigation of 100% of the caliper inches and the fee in lieu is doubled.

Ms. Anderson reviewed when mitigation is required. City staff told Mr. Deaton about the fee and the mitigation that would be required, and now the applicant is appealing staff’s decision.

Public notification was made in the newspaper, Ms. Anderson said. The ZBOA can uphold, vacate, or modify the staff’s decision, she said.

Chairman Gibson asked if the \$8,800 fee comes from doubling the cost per caliper inch of the tree. Ms. Anderson said that’s correct. Chairman Gibson asked if the mitigation

and the fee would both have been imposed if the applicant hadn't appealed. Ms. Anderson said yes.

Mr. Wood clarified that there's both a fine and a required replanting. Ms. Anderson said if you remove without a permit, you need to replant 100% *and* pay the fee, which she said is "supposed to be doubled."

Mr. Wood asked where the fee would go. Ms. Anderson said there's a specific fund set up by the city's finance director to ensure "it provides for the care and maintenance of trees," particularly new plantings. It is commonly called "the Tree Fund," but that's not its official name, she said.

Mr. Caron said staff had recommended that either the 44" of trees be replaced *or* the fee paid. Ms. Anderson said staff is open to negotiation about this.

Chairman Gibson said, for the record, he has worked with Sea Island Tree Care in the past and has hired them, but he feels he can be objective about this application. Mr. Stroud said the same applies to him.

Scott Lee is an attorney who said he is working pro bono for Mr. Deaton. Mr. Deaton "would never intentionally violate the ordinance," Mr. Lee said, and he has a great reputation in town."

At Battery Point, Mr. Lee said Mr. Deaton met with **Katie Lashland**, whom they believe is the president of the homeowner's association at Battery Point. She has not returned any phone calls to clarify that she told Mr. Deaton that she had the permit from the city to take the live oak down, Mr. Lee said. There was some confusion, he said, and Mr. Deaton should have double-checked what Ms. Lashland was telling him, but she had "apparent authority" to tell him to do the work.

Mr. Lee said they'd tried to get Ms. Lashland to verify what she said but could not. The bill for the job wasn't even \$4,000, and Sea Island Tree Care hasn't been paid for it. The fine is substantial, he said, and the purpose of the ordinance, he feels, is for deterrence or punishment. Their position is that levying the fine won't accomplish those things, Mr. Lee said. Mr. Deaton was acting in good faith and relying on Ms. Lashland, who said she had gotten a permit. This is "never going to happen again," he said, adding that he thinks the statutory penalty is excessive in this case.

Mr. Caron asked what it would cost generally to replace 44" of trees. Mr. Deaton said it would be about \$120 per 2.5-caliper inch tree. Mr. Stroud he'd gotten a 2.5-caliper inch live oak for \$50.

Mr. Stroud asked what the applicant suggested the ZBOA should do and what the permit would have cost to take down a 44" tree. Mr. Deaton said \$25. Mr. Lee said he

thinks the tree is more like 24" at its trunk, not 44", but there are other limbs that come off the trunk.

Casey Waldorf said that they should have called the city instead of relying on Ms. Lashland's word. He said Sea Island Tree Care's bill didn't go up when the tree, rather than a limb, was taken out.

Mr. Deaton said, "The whole reason this job took place" was as a result of a property manager and Ms. Lashland meeting with **Liza Hill** for "an evaluation [of] the trees in this area they wanted to fix up," with some renovations. "This tree was pointed out as blocking the road," he said, and the others had "various degrees of decay." Mr. Deaton said he asked Ms. Lashland whether the live oak in question was to be trimmed, and she immediately replied "It's coming down, and we've already got permission from the city. We're good to go."

Chairman Gibson asked if the company has an alternate resolution to what the city has proposed. Mr. Waldorf said he and Mr. Deaton haven't discussed that, but there are a lot of low-hanging branches in the city that they could trim. Mr. Deaton said "a few hundred dollars" seems like a more reasonable penalty than what's in the ordinance.

Mr. Wood asked whose name is on the original permit application. Mr. Waldorf said he went to the site. He had been gone for 8 months, so he didn't know that permits were needed to trim trees in the City of Beaufort. Sea Island Tree Care is the other name on the permits, Mr. Deaton said.

Mr. Wood said when you commit to a permit, the person whose name is on it is the one responsible. Mr. Deaton said they were going to apply for permission to take the live oak out if Ms. Lashland hadn't said they already had a permit.

Mr. Stroud said Mr. Lee had said Ms. Lashland told them that the homeowners association had "permission from the city for removal." Mr. Wood said whoever takes the responsibility of getting the permit takes responsibility for the punishment.

Mr. Stroud said he thinks the fact the homeowner's association is not present at this meeting indicates that they are "guilty." He thinks Sea Island Tree Care acted in good faith, and the homeowners' association representative lied that she had a permit for the live oak's removal.

Mr. Wood asked who was to pay for the work. Mr. Deaton said the homeowner's association, but Sea Island Tree Care has not been paid.

Mr. Caron said this is a loss of a healthy landmark tree, so he thinks there should be some replanting.

Chairman Gibson said he went to the site, and “it’s not like there’s no canopy” without that live oak, though he thinks it would be great to replant something there. Mr. Caron said any replanting has to be maintained for 2 years. Ms. Anderson said that’s one of several reasons that it might be easier to do a fine rather than requiring replanting.

Mr. Caron said he likes the idea of a contribution to the Tree Fund. There was a discussion about the amount it should be. Mr. Wood asked if the board could penalize the homeowner’s association, and Ms. Anderson said she doesn’t see how they could. Mr. Lee said if Sea Island Tree Care has to sue to get their fee, they would include the amount of the mitigation fee. Ms. Anderson said, “\$500 would make a nice Arbor Day.”

Mr. Caron made a motion that in lieu of the city’s recommended penalty, a \$500 mitigation fee be paid to the city’s Tree Fund. Chairman Gibson seconded. The motion passed unanimously.

2835 WEST ROYAL OAKS DRIVE, identified as District R120, Tax Map 6, Parcel 573
Variance

Applicant: Warren M. Cooler, III (ZB18-10)

The applicant is requesting a fence design variance in order to retain the design of a fence that was constructed without a permit.

Ms. Anderson said the applicant constructed a new house on this lot and installed a privacy fence, which was not part of the house permit, and the owner didn’t have a separate permit. The city has design standards for fences, she said. On a privacy fence, the support structures are required to be located on the side “facing the property owner . . . the person who’s building the fence,” with the “smooth side” facing out to the neighborhood or street.

The majority of the fence was constructed according to the code, Ms. Anderson said, but “a portion of it wasn’t,” and in those places, the support structures of this fence are on the outside, facing a neighbor’s property. This application is for a variance “to allow the fence to remain in, with a portion of it not built to code,” she said. On “the neighboring property where the fence has been reversed,” the lot is large, and the house is “built closer to the street,” resulting in “a large backyard” there that appears to be “heavily vegetated,” which “may buffer that fence.” This is possibly “a mitigating circumstance,” Ms. Anderson said.

Mr. Caron asked if there is verbiage on the house permit about needing a separate permit for anything else. Ms. Anderson said no; applicants have to describe the work to be done, and plans are submitted. The building inspector brought this to staff’s attention, she said.

Ms. Anderson told Mr. Stroud that on *any* fence – not just privacy fences – the supports need to face in, and the smooth side needs to face out. She showed photos of where the fence is not compliant (the 90' side) and where it is compliant (the 50' side).

Warren Cooler, the applicant, said he put the fence up to contain his dogs, and he installed it with the help of friends. He asked **Martie Kay McTeer** about “the rules,” he said, and he knew “the back side” needed to face in.

When Mr. Cooler started building his house, he said, his neighbor to the rear of his property was upset about the design of it and that the house was new in an “established” neighborhood that has predominantly older houses.

Mr. Cooler said he had “some issues” with his other neighbor, **Mike Burke**, “about the land being cleared, and one of the guys dropped a tree over on his buffer,” which is between the two properties. Mr. Cooler was not present for this, and when he next saw Mr. Burke, “he was very mad, so I tried to make things right with him on that.”

To make things right with the neighbor behind his property, Mr. Cooler said, he offered to tear down her existing privacy fence and to build a new fence at his cost; he also offered to pay for cedar trees to be planted there. The neighbor agreed to that, Mr. Cooler said, and he had her fence torn down and rebuilt her fence with an “extension,” which she was happy with.

Mr. Cooler said he intended to put the fence supports on his side, but when there was a hurricane, “a huge hole” was formed from overturned trees; the hole was half on his property and half on Mr. Burke’s. Mr. Cooler had dirt delivered to fill the hole and had it dumped in “where the fence post was going to go.” His workers “came across a little bit of Mr. Burke’s property” with the blade of the Bobcat when smoothing the dirt out, which “didn’t make Mr. Burke very happy.” He was “very aggressive,” Mr. Cooler said, and then Mr. Cooler was stung by hornets; he and Mr. Burke “ended up having some words [and] calling the law.” Mr. Burke told Mr. Cooler “to stay off his property,” Mr. Cooler said, so when he “put the 30’ section up on that end, I put the boards up facing towards me, so I would not have to get on his property.”

The building inspector came and told Mr. Cooler to stop working on the fence because he didn’t have a permit, he said, so about 30’ to 40’ of it is unfinished, and the supports are on the wrong side (facing out towards Mr. Burke’s property). Mr. Cooler said he “tried to make it right,” so he “filed paperwork,” but he was denied because “the fence [was] turned the wrong way.” In his opinion, he replaced the back fence “exactly the way it was,” Mr. Cooler said, and the 30’ of the fence on the side of the lot is backwards because of the confrontation with his neighbor. Mr. Burke has a 10’ – 12’ vegetation buffer, Mr. Cooler said, so “you can’t really see the fence,” except in some “holes where trees fell over,” but in those places, “bushes are growing back now.”

Chairman Gibson said currently, about 30% of the 100' fence is finished, but the supports are on the wrong side. At the back, the fence is finished, with the supports on the wrong side, and the opposite side is finished with supports on the correct side.

Mr. Stroud asked what direction the finished side of the 50' portion faces. Chairman Gibson said, "It faces the neighbor's house."

Mr. Cooler said the smooth side of the 100' portion faces him because he "tore down a preexisting fence that had the good side facing me and replaced it, so the neighbor could extend her fence to sort of look the same down the other 100' of the property."

Mr. Stroud asked if the 90' finished side of the fence faces Mr. Cooler's property. Mr. Cooler said it does. Chairman Gibson asked whose property that fence is on. Mr. Cooler said he thinks it's on his.

Mr. Caron asked if the fence is nailed or screwed together. Mr. Cooler said the boards are nailed, and the 2x4s are screwed. Mr. Caron said if that's the case, he should be able to "flip them at minimal expense." Chairman Gibson said the board can't consider expense in its decisions.

Mr. Cooler said he had tried to get a permit to put up the fence after the fact, but it was denied. He wouldn't be able to get one until he receives the variance, Chairman Gibson said, or he'd have to tear the fence down and start over.

Mr. Burke said he is Mr. Cooler's neighbor to the right. In 1990, he put a fence up that was set about 15' from the property line. He had live oaks, magnolias, and mature wax myrtles "all the way across," and Mr. Cooler's property "could not be seen." Mr. Cooler's contractor "encroached onto" Mr. Burke's property and "took out about 70% of that buffer," clearing most of the magnolias, and all of the live oaks and wax myrtles, Mr. Burke said. He was "very upset" about the tree loss, and he and Mr. Cooler had "a discussion" about it at the time.

Mr. Burke said he told Mr. Cooler that he could come onto his property to do work if he asked for permission first. The next time Mr. Cooler went on Mr. Burke's property to build the fence, the police were called because Mr. Cooler "screamed and yelled" at Mr. Burke and "intimidated me," he said. When he received notice of Mr. Cooler's variance application, he thought that if his tree buffer hadn't been "destroyed," he wouldn't have to see the supports on Mr. Cooler's fence.

Mr. Stroud asked Mr. Burke if he would let if Mr. Cooler come onto his property so he could reverse the fence. Mr. Burke said no, because he was "assaulted" during their "second encounter." He told Mr. Wood he doesn't know if Mr. Cooler's fence is on Mr. Cooler's property or his own.

Mr. Wood said, "A 2.5" magnolia tree costs almost \$900," and he thinks this application should be tabled, and the contractor should be called in about this matter.

Chairman Gibson said it is not the ZBOA's problem if Mr. Cooler or his contractor cut down Mr. Burke's trees. Mr. Wood said Mr. Burke doesn't know if the fence is on Mr. Cooler's property or on the property line. Mr. Stroud said a surveyor needs to go out there to determine where the property line is.

Mr. Caron said if Mr. Burke won't let Mr. Cooler on his property, it would be difficult to fix the fence. Mr. Burke said Mr. Cooler built the fence in a non-conforming manner to avoid him. Mr. Caron asked if they could reach an agreement so that Mr. Cooler has access to the fence to fix it. Chairman Gibson suggested someone other than Mr. Cooler could go on Mr. Burke's property to do the work. Mr. Burke said he never told Mr. Cooler he'd deny him permission to come on his property; he told Mr. Cooler to come to him and ask.

Chairman Gibson said the ZBOA can't deal with what happened in the past, but if Mr. Cooler would replace his 20-year-old magnolia trees, wax myrtles, and a mimosa tree, Mr. Burke would allow Mr. Cooler to "build a fence any way he wants to build it."

Mr. Caron said he thinks the back part of the fence is "fine," if the neighbor Mr. Cooler built it for is happy with it.

Mr. Wood said if a homeowner's neighbor doesn't want a fence, the homeowners usually move the fence onto their own property, and they give their neighbors "enough space to work on the other side of the fence." It needs to be surveyed and the line drawn, he said, so if Mr. Burke doesn't want Mr. Cooler on his property, the fence needs to go behind Mr. Cooler's property line, so the fence can be worked on properly. Usually, when a homeowner wants a fence, it should be on that person's property, not on the property line, he said. "The simplest solution," since no one knows "if the fence is in the right spot" now, Mr. Wood said, is "to skin the other side of the fence with boards," rather than taking all of the framing down. He thinks the board has "to condemn the fence and have (Mr. Cooler) start over again."

Mr. Stroud said the 2 sides of the property with the non-conforming fence need to be conforming. Chairman Gibson said both sides of the fence could be skinned, rather tearing it down. Mr. Stroud said this needs to be done on the side that faces the neighbor to the rear of Mr. Cooler's property, too, in case that neighbor moves or passes away.

Mr. Wood said if the board denies the variance, the applicant has to go back and do the fence correctly, and Mr. Cooler should make sure that he knows where the property line is.

Mr. Wood made a motion, second by Mr. Noll, to deny the variance request. The motion passed unanimously.

There being no further business to come before the board, **Chairman Gibson made a motion to adjourn**, and the meeting ended at 7:40 p.m.