

A meeting of the Zoning Board of Appeals was held on **October 22, 2018 at 5:30 p.m.** in City Hall Council Chambers, 1911 Boundary Street. In attendance were Chairman Josh Gibson, board members Joe Noll, Tim Wood, and Jody Caron, and Lauren Kelly, City of Beaufort Planning Department. Nigel Stroud was absent.

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. Caron, to approve the minutes of the September 24, 2018 meeting as submitted. The motion passed unanimously.

Chairman Gibson reviewed the procedure at ZBOA meetings.

REVIEW OF PROJECTS

604 WAIGHT STREET, identified as District R120, Tax Map 3, Parcel 299

Variance

Applicant: Katie Morton (ZB18-12)

The applicant is requesting a variance in order to construct a 6' high fence along a street frontage.

Ms. Kelly said this property is in the West End neighborhood; it is a double-frontage lot with a single-family dwelling on it. A residential institution facility is next to the property, and the Salvation Army is close, as are an apartment building, single-family dwellings, and a 4-unit building.

The Beaufort Code limits the height of fences within any street setback to 4', and the T3-Neighborhood district has a 15' front setback, Ms. Kelly said; any fence encroaching into it needs to abide by the code's height restrictions, which would apply to the proposed fence on the Meritta Avenue frontage and to the two portions on Waight Street that extend in front of the house.

The applicant is proposing to install a 6' wood/galvanized metal fence on part of the lot, Ms. Kelly said; this type of fence has been approved in the Historic District. Along Meritta Avenue, the applicant proposed a chain-link fence with metal slats. The issue is with the height of the fence, not the materials, she said. The chain-link fence could be planted with jasmine, the applicant has said, instead of using the privacy slats, Ms. Kelly said.

Ms. Kelly said the applicant could provide examples of other places in the city where this type of fence has been used along the street.

Standard public notice was made, Ms. Kelly said, but no public comments have been received.

Based on the information provided, staff feels there are extraordinary and exceptional conditions, including the double-frontage, Ms. Kelly said. She 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 this finding could be met because of the double-frontage lot and because it is unusual to have a residential institution facility, which is adjacent to the applicant's property, in a residential neighborhood in Beaufort.
2. **Conditions don't apply to other properties in the vicinity:** Ms. Kelly said the board needs to use its discretion on this. Double-frontage lots are unusual and are not considered desirable when platting new subdivisions.
3. **Conditions are not the result of the applicant's own actions:** The applicant didn't plat this lot or do anything to create this situation.
4. **Granting the variance would not conflict with the Civic Master Plan or the Comprehensive Plan:** Both plans encourage investment in existing urbanized neighborhoods.
5. **Application of the ordinance is an unreasonable restriction on the utilization of the property:** A 6' fence could be built along the Meritta Avenue side of the lot if it were built outside of the 15' setback, Ms. Kelly said, but if it encroaches, a variance is needed, so the board should consider if applying the ordinance in this case is an unreasonable restriction.
6. **Granting the variance would not be a detriment to adjacent property and the public good:** Staff is concerned about the visual impact of the chain-link fence with the screen along Meritta Avenue, Ms. Kelly said, especially because residents of several dwellings on Meritta Avenue face the rear of the applicant's lot and would look at 120' of a 6' fence with a privacy screen, so staff provided examples of "more pleasing" fencing for use along the streetscape.

Ms. Kelly said staff does not feel all of the findings necessary to approve a variance can be met – especially #6 – but if the Meritta Avenue fence were changed to one that's more aesthetically pleasing, finding #6 could be met, and this variance could be approved.

Ms. Kelly showed a fence with lattice at the top and one with jasmine growing on it that the applicant had sent today.

Chairman Gibson asked if the property with the 6' privacy fence had it approved; Ms.

Kelly said there is not a record of that. Mr. Noll said that fence might be beyond the 15' setback.

Tyler Melnick, an attorney for the applicant, said the height of the fence is the city's issue. There are various types of fencing on this street, so he doesn't feel this fence would be a "discouragement of investment." In reference to finding #6, he said the applicant has proposed the fencing with Carolina jasmine for privacy – as opposed to the screen – and he thinks "that might be the best way to go." Mr. Melnick said it would take away 1500' of Ms. Morton's property "if we had to move back" the fence beyond 15'.

Chairman Gibson asked Mr. Melnick if the metal and wood fence was proposed to be on one side of the lot. Mr. Melnick said yes. Chairman Gibson asked why the fencing is chain-link in some places. Mr. Melnick said he thinks "it's a money consideration." The rear of the house is "more someone's backyard," he said, and KM's "dogs would run there." Chairman Gibson said some Meritta Avenue residents would have to look at that fence. Mr. Melnick said that's why "the live fencing" is the best option.

Mr. Melnick said he's concerned about KM's dogs being able to jump over the rear fence if it's less than 6' high.

Ed Stevens, 606 Waight Street, said he'd looked around the neighborhood for 6' fences on the street side and had only found one, which was at the CODA property, next door to the applicant's property. That 6' fence is there to protect the children on the playground there, he said. Mr. Stevens feels 6' fences "connote keeping something in or keeping something out," and having "a lot of 6' fences" would connote that "it's not a good neighborhood," and people are trying to protect themselves. He feels a 4' fence with jasmine would be effective and pleasing and would fit in with the neighborhood.

Eric Stevens, 607 Waight Street, feels on the Meritta Avenue side of the applicant's property, "a living fence wouldn't be out of keeping in Beaufort," but a 6' metal fence with wooden panels would not be in keeping with what is seen here. He said if the fence is that large, it would look "industrial" and "would really stand out."

Mr. Caron asked Ms. Morton where she proposed to put that type of fence. Ms. Morton said the galvanized metal and wood fence would be "along the side to the right," and the chain-link living fence would be on the front, the CODA side, and in the back.

There was a general discussion about the fence along the frontage. Ms. Morton said the fence wouldn't go up to the street on the front side. There was a general discussion about where the two types of fencing are proposed to go.

Chuck Rushing, 523 Meritta Avenue, described where his property is in relation to the applicant's. He said his issue with the variance request is not the height of the fence

along Meritta Avenue but that a chain-link fence along a residential street would not be appropriate anywhere, he feels. When he bought his house, CODA's fence was there, but a 6' fence in the applicant's backyard would be unacceptable, especially "with the slats" in it.

Landscapers have difficulty making Carolina jasmine fully screen fences, Mr. Rushing said. If the ZBOA approves a chain-link fence with vegetation on it, he said the fence needs to be designed by a structural engineer to ensure that it can hold the weight of it.

Mr. Rushing feels this fence would be "a detriment to our neighborhood . . . as a whole" and would be an "eyesore." A 6' fence on Meritta Avenue is okay with him, if it's "along the lines of what staff recommends," but a chain-link fence is not.

Lauren Carroway, 525 Meritta Avenue, lives next door to Mr. Rushing. Mr. Melnick had said the applicant chose a chain-link fence "because of cost concerns," but that would mean that Ms. Carroway had "a 6' chain-link fence in my front yard." She thinks what the city has proposed is more appropriate than a chain-link fence. The area the house is in has grown and developed, and a chain-link fence along the property would put the neighborhood "so far back." Ms. Carroway said she and her husband are both "vehemently opposed" to the chain-link fence.

Jason Lake, 522 Meritta Avenue, said he agrees with his neighbors and requests denial of the variance request.

Mr. Melnick said the neighbors have said that the height of the fence, which is the ZBOA's concern, is okay with them; a 6' fence "hasn't been opposed by anybody." They have expressed opposition to the materials to be used for the fence, he said, but that is not the board's purview.

Mr. Wood asked Ms. Kelly if the applicant could build a 4' chain-link fence if she wanted to. Ms. Kelly said yes.

Chairman Gibson asked if staff had considered a "welded wire fence" for the living fence, as opposed to chain-link, which is the "standard living fence" in the city. Ms. Kelly said the idea of the planted fence had just come up today. Part of the applicant's concern is privacy, and part of her concern is the height of the fence because she has dogs, but Ms. Kelly said she thought Chairman Gibson's suggestion was a good one.

Mr. Noll said this application doesn't meet findings #5 and #6. "There's grass back there," he said, not a patio or a pool, so the fence would be just "to keep the dogs in."

Mr. Caron said the applicant doesn't need a variance for a 4' fence; this variance request is for an additional 2', and if the applicant follows staff's suggestion to use a fence with an upper lattice, "finding #6 might be able to be made." He wonders if the variance of 2'

creates a “detriment to the adjacent property and the public good.”

Mr. Wood said he prefers a living fence to almost any other kind of fence. He’s seen chain-link fences with “vines [that] grow wild on them,” and they “seem to maintain that very well.” Most of the neighbors object to a 6’ chain-link fence: not to the height but “to the effect of the chain-link,” he said. He’s unsure why they don’t object to a 4’ chain-link fence, which Ms. Morton could put up. Mr. Wood said he doesn’t “really see the applicant coming into compliance with all six criteria” that must be met for the board to approve the variance.

Chairman Gibson said he feels the lot’s two frontages are “odd” and create problems; such problems are why there is a ZBOA. He agrees with Mr. Melnick that people have expressed objections to the fencing materials, not to the height. What’s not an option is a 6’ chain-link fence on the property line, Chairman Gibson said.

Mr. Wood said a 6’ chain-link fence with a 15’ setback “makes it look even more like a compound.” He reiterated that he doesn’t feel all 6 criteria have been met.

Mr. Caron asked if the board could give the applicant the opportunity to come back to it with “another option” for materials. Mr. Wood said he doesn’t know if the applicant wants to do that, but he thinks it would be helpful if the applicant knew what the options are and had a specific plan.

Chairman Gibson said it seems that a 6’ chain-link fence is not an option.

Chairman Gibson asked the applicant what she thinks “is a good compromise.” Ms. Morton said, “The chain-link was a longer-lasting, less maintenance, sturdier option for me,” but she could “put 6’ along the sides . . . up to 15’ back,” and she could put a 4’ chain-link fence along the back of the property.

Chairman Gibson said there are no restrictions on what Ms. Morton grows along the fence. Some hedges will grow very high and offer privacy “without having to go outside of the city ordinances,” he said. Mr. Caron explained Ms. Morton’s options to her.

Mr. Melnick asked if the 6’ fence would be acceptable if the material were changed so it would not be a detriment to the neighboring properties. Chairman Gibson said that’s his feeling: The applicant could “choose between the chain-link or the height.” Ms. Morton clarified that if the fence is 4’ tall, she could use the chain-link.

Mr. Melnick said he and Ms. Morton agreed to table the application for 90 days.

Chairman Gibson made a motion to table the application for 90 days. Mr. Caron seconded. The motion passed unanimously.

2109 BAY STREET, identified as District R120, Tax Map 3, Parcel 565

Variance

Applicants: Thomas and Pamela Wooten (ZB18-13)

The applicants are requesting a variance in order to construct a 6' high fence along a street frontage.

Ms. Kelly said this application is to replace an 80' fence portion with a 6' fence along a street frontage. The property is in The Glebe neighborhood and has a triple-frontage, she said; there is a single-family dwelling on the lot. The applicants currently have a 3' perforated brick fence surrounding their property. The higher fence is the applicants' attempt to provide shade and privacy to their patio, Ms. Kelly said.

All public comment requirements have been met, Ms. Kelly said.

Ms. Kelly 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:** It's even more unusual to have a triple-frontage lot than to have a double-frontage lot, Ms. Kelly said. It is also unusual that Euhaw Street, which has very little parking volume, has a sidewalk with on-street parking immediately adjacent to it, and that there is a parking strip immediately adjacent to the sidewalk that is not separated from the sidewalk by a curb or planting strip.
2. **Conditions don't apply to other properties in the vicinity:** Two other lots in The Glebe have frontage on 3 streets, but these lots are among only 3 or 4 such properties citywide, Ms. Kelly said.
3. **Conditions are not the result of the applicant's own actions:** The applicants didn't plat or develop the lot.
4. **Granting the variance would not conflict with the Civic Master Plan or the Comprehensive Plan:** The Comprehensive Plan and Civic Master Plan encourage investment in existing urbanized areas.
5. **Application of the ordinance is an unreasonable restriction on the utilization of the property:** Staff believes it would be an unreasonable restriction on the use of the property to limit the fence height to 4' on Euhaw Street, which functions as the side lot line and is the location of the sidewalk and parking strip immediately adjacent to the fence, which further limits the applicants' privacy in their side/back yard.
6. **Granting the variance would not be a detriment to adjacent property and the public good:** Staff believes it will not be a detriment to install the fence as the applicant has described, Ms. Kelly said. It would match the existing fence, except for the height, and the fence would not be solid.

Staff feels this application could be approved, Ms. Kelly said.

Mr. Wood clarified where the fence would go and the material to be used.

Pam Wooten said the lot across from her property on Euhaw had a live oak that provided “all our shade,” but it toppled over a few years ago, and another large tree had to be taken out this year. The patio is right on Euhaw because they want to create a courtyard, she said.

Mr. Caron asked if the fence would angle in. Ms. Wooten said it would be straight; the fence would be both for privacy and for more shade.

Ms. Wooten said she had talked to all of her neighbors about this fence.

Mr. Wood said he remembers when this area was remodeled, and he thinks “a terrific job” was done with the fence. He feels the proposed fence would be “beautiful.”

Chairman Gibson made a motion to approve the variance as described by the city. Mr. Wood seconded. 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 6:29 p.m.