

**BOARD OF ZONING APPEALS  
MINUTES**

The Board of Zoning Appeals held its regularly scheduled meeting on Wednesday, December 14, 2016, at 4:00p.m. in Council Chambers, Rouss City Hall, 15 North Cameron Street, Winchester, Virginia.

**POINTS OF ORDER:**

**PRESENT:** Chairman Pifer, Ms. Marchant, Mr. Whitacre,  
Ms. Anderson  
**ABSENT:** Vice Chairman Crawford, Mr. Lewis, Mr. Pahl  
**STAFF:** Aaron Grisdale, Erick Moore and Carolyn Barrett  
**VISITORS:** Marjorie Justice, Willie Wade

Chairman Pifer designated Cheryl Anderson as a voting member for today's meeting.

**CONSENT AGENDA:**

Approval of minutes of October 12, 2016

Chairman Pifer called for corrections or additions to the minutes. Mr. Whitacre made a motion to approve the minutes as submitted. Ms. Anderson seconded the motion. Chairman Pifer called for a vote. Voice vote was taken and the motion passed 4-0.

**READING OF CORRESPONDENCE:**

None.

**PUBLIC HEARINGS:**

**BZA-16-679 Request of Marjorie D. Justice, subject property owner, for an appeal of a zoning determination regarding 515 South Street (Map Number 194-01-D-7), zoned Limited High Density Residential (HR-1) District. The applicant is appealing a zoning determination that an approximately 7-foot-tall solid fence installed on the property does not conform to the fencing provisions in the Zoning Ordinance for front and corner side yards.**

Mr. Grisdale presented the staff report for the appeal. The property is a corner lot as well as a double-frontage lot. He explained the zoning requirements for this type of lot and staff's attempts to resolve the issue.

Ms. Marchant asked about the height of the fence. Mr. Grisdale explained it could be up to five feet tall if it was in a non-required front or corner side yard.

Ms. Anderson asked where the original fence had been and was it six feet high. Mr. Grisdale confirmed that. Ms. Anderson noted that when the fence was taken down, the applicant probably assumed putting up a new fence with the same height was okay. Mr. Grisdale said he would let the applicant answer that.

Ms. Marchant asked if the wrought iron fence would be in compliance if it were continued in the side yard. Mr. Grisdale said it would be in conformance with the Zoning Ordinance.

Chairman Pifer asked if panels of the fence and not the actual four by four's underground along South Street were removed and replaced with new six-foot panels, would it still be a conforming fence. Mr. Grisdale said no, in terms of if it was a comprehensive replacement. There is provision in the Zoning Ordinance that talks about maintenance and repair of non-conforming structures and there is a percentage cap of the amount of work allowed.

Ms. Anderson asked if Ms. Justice had replaced old panels in sections over time, would it still be in compliance. She would have just been repairing the old fence. Mr. Grisdale said that is a hypothetical situation. There is a situation where that could have worked over time if one is just maintaining a fence.

Mr. Whitacre asked if the only part in violation was along East Street and everything else is in compliance. Mr. Grisdale agreed.

Ms. Marchant asked why an appeal was filed instead of a variance. Mr. Grisdale said he would let the applicant answer that.

### **Chairman Pifer opened the public hearing**

Ms. Justice explained why she needed the fence the way it was constructed. She bought the property because of the original six-foot fence. She has four cats and wanted to keep them in the yard to protect them but one kept climbing over. The old fence had been damaged over time and was falling over. Children in the neighborhood would run their bicycles and toys into the fence. There is crime and trash in the neighborhood and she feels safer with the new fence.

Ms. Marchant asked why an appeal was filed instead of a variance. Ms. Justice said she just started at the top of the list. She didn't know the difference between an appeal and a variance. She started at the \$270.00 mark. A variance was next at \$500.00 and after that was going to court and she'd have to hire an attorney so that's why she started at the top of the list.

Mr. Grisdale said that at the on-site meeting on October 17, 2016, she had requested a list of the options available to her. First, she could appeal the determination within a 30-day window after notice was provided otherwise it becomes a thing decided and no

longer subject to appeal. Secondly, she could apply for a variance. Third, she could opt to ask the Council to amend the Zoning Ordinance to alter the fence allocations.

Ms. Justice said East Street is a cul-de-sac dead-end street and many people speed as they cut through the neighborhood. It's not a through street and she did not understand why the City said her property had three street frontages. No one in the neighborhood has complained about the fence. She gave a brief history of when the houses and townhouses had been built in the neighborhood.

Chairman Pifer stated that his uncle owns BP properties, which owns a portion of the townhouses on East Street, but did not think it would alter his opinion for this hearing.

Mr. Wade, 210 East Street, spoke about the old fence and the way it had been constructed. It was inadequate to keep neighborhood problems out. Ms. Justice lives alone so the fence is a deterrent and does not have a back gate. He questioned how a property can have two front yards and said there is no such thing. The company that put the fence up should have obtained a permit and followed the Zoning Ordinance requirements. If it wasn't done, there should be consumer protection available. He mentioned two other fences similar in height and design that had been installed on Woodstock Lane after hers. The neighbors are happy about the fence and feel it improves the neighborhood. The old fence was not adequate and was falling over.

#### **Chairman Pifer closed the public hearing**

Ms. Marchant asked if any other comments had been received. Mr. Grisdale said there were no additional comments in addition to what was already in the packet. He went on to clarify that permits are not required for fences under the current building code except for swimming pool enclosures. There is no regulatory review unless it is in a Corridor Enhancement overlay or Historic District. Staff has identified this lot as a unique situation in the Zoning Ordinance and has had conversations with City Council and the Planning Commission. Staff and the Planning Commission are looking into a long term solution to see if ordinance revisions are necessary for this type of lot. There are other areas of concern that have been identified in that block. Staff is not attacking the beauty or intent of the fence. It is just dealing with whether the ordinance was correctly applied in this situation.

Mr. Whitacre said there is a violation no matter how good the fence looks.

Ms. Anderson said she put herself in Ms. Justice's position. She moves into the neighborhood and has a rickety old fence. She takes it down and puts up a new one and she does not need a permit, she just does what she needs to do and assumes that is all. Then someone comes by and says "By the way, you can't put that fence up." Ms. Anderson said she drove through the neighborhood and thinks the fence looks better than before. It is the start of what needs to be done with people cleaning up their properties and making things look nicer. Ms. Justice's place looks very nice. In this day and age, a six foot fence is not going to keep people safe. An extra foot may keep

someone a little safer. The fencing ordinance needs to be changed to allow taller fences in these types of yards.

Mr. Whitacre agreed the fence does look better. As far as the appeals process goes, are they there to determine if Ms. Justice is in the right or if the ordinance was interpreted correctly. Mr. Grisdale said the Board of Zoning Appeals is a creature of statutes so it has only the authority delegated to it by the Code of Virginia and the Zoning Ordinance. To judge the validity of an ordinance and whether or not it is correct overall is a legislative act and the purview of City Council. The Board's purview in this situation is if the code section that staff cited within the notice of violation was correctly applied to this property with the facts at hand. Does the provision of a maximum four-foot tall fence in a corner side yard, is that the correct Zoning Ordinance that applies to this situation. Overturning the Zoning Administrator's decision would be saying that the seven foot tall fence conforms with the zoning provision that a four foot tall fence is the maximum size fence. Mr. Whitacre said that answered his question but he disagreed with the way the ordinance is written and Ms. Justice should be allowed to have it but staff is following the legislation and he does agree with the way it has been applied.

Ms. Anderson asked if Ms. Justice had put up one section of seven foot fence then taken down a six foot section and replaced it with a seven foot section and so on, was that essentially a replacement. Mr. Grisdale said no, the seven foot fence was even more out of compliance than what was there previously. Because it was a six foot tall fence where a four foot tall fence was allowed and a seven foot tall fence was put where a four foot fence was allowed, the situation was made worse.

Ms. Marchant said it would have been better if it had come before them as a variance instead of an appeal. She did not see how they could not uphold and affirm what staff had cited.

*Ms. Marchant made a motion to uphold and affirm the October 4, 2016 decision that the 7-foot tall fence in the corner side yard is in violation of the Zoning Ordinance. This is because:*

- a. The property is a Multi-Corner Lot by definition and therefore has two front yards, one corner side yard, and a side yard.*
- b. The fence installed is located within the required corner side yard (along East Street) and second front yard (Woodstock Lane).*
- c. The Zoning Ordinance limits the height and opacity of fences in corner side yards to a maximum 4-foot tall and opacity requirement of a minimum of 25% open. The fence is approximately 7-feet tall and does not meet the height or opacity requirements.*
- d. The height and opacity of the portion of the fence located in the second front yard (Woodstock Lane) is in conformance with the fence provisions for double frontage lots, since the fence meets the required setback in Section 18-9-2.8.*

*Mr. Whitacre seconded the motion. Roll call vote was taken and the motion passed 3-1. Ms. Anderson voted in the negative.*

**NEW BUSINESS:**

Meeting calendar for 2017

*Ms. Marchant made a motion to approve the 2017 calendar. Ms. Anderson seconded the motion. Voice vote was taken and the motion passed 4-0.*

**OLD BUSINESS:**

None.

**ADJOURN:**

With no further business before the Board, the meeting was adjourned at 4:37pm.