

## **BOARD OF ADJUSTMENT**

### **MINUTES**

**August 4, 2022 @ 5:00 p.m.**

The Board of Adjustment held a meeting on Thursday August 4, 2022 at 5:00 p.m.

#### **Members Present**

Chairman Blake Tarpley  
Vice-Chairman Don Jacimore  
Secretary Justin Cothren  
Wayne Cummings  
Wendell Miller

#### **Members Absent**

NONE

**Visitors Present:** Mayor Richard Harris, City Planner Sara Jondahl, Planner I Victoria Marchant, Jim Lynch of City Corporation, Zayne Bryson of City Corporation, City Councilor Mark Tripp, City Clerk Gina Skelton, Blythe Lippincott, Robert Couser, and Fred Teague.

#### **Welcome Visitors**

**The First Order of Business** is a request to review and approve the minutes of the Board of Adjustment June 2, 2022.

Member Cothren made a motion to approve the minutes as written. The motion was seconded by Member Jacimore and passed unanimously.

**The Second Order of Business** is a variance from Article 3.6 to allow a 6' fence in the front yard despite the 3 ½' limit, located at 605 Cricket Cv. Submitted by Blythe Lippincott. (VARI-0722-000242)

Planner I Marchant stated the request was for a variance from the fence height requirement located at 605 Cricket Cove. She stated that the existing conditions were that this property was located within the Glenwood neighborhood and was an existing single family residence. The property was zoned R-1 Single Family Residential and was surrounded by R-1 zoned properties. She stated that surrounding properties included single family homes. Planner I Marchant stated that the application was to allow a 6' fence along the front side yard property line. She stated that the applicant was requesting the fence due to an AirBnB next door. Planner I Marchant said the applicant was requesting the variance as they believed the property next door to them operates in a commercial manor. She stated that staff would consider the property next door residential in use and operation as a rental unit, just as staff would consider a rental house residential in use. Planner I Marchant stated that staff had not found that the applicant had demonstrated that special conditions exist as the property next door was not just grounds for a variance. There were other lands within the city that had AirbnB or short term rentals next door therefore this could be

applicable to other lands. The granting of the variance was not a variance allowing reasonable use of land: Reasonable use of the land would be development of the property where a residential structure had already been built. The granting of this variance was not in harmony with the purpose and intent of the code. It was not the intent of the code to allow 6' fences within the front yard setback. The intent of this standard was for both aesthetic reasons, for vision clearance issues when backing out of driveways, and for fire life safety.

Staff recommended denial of this application as a result of the findings below:

1. The applicant has not demonstrated special conditions exist; and
2. The granting of this variance is not in harmony with the purpose and intent of the code;
3. The granting of the variance is not a variance allowing reasonable use of land.

Blythe Lippincott stated that she moved to Russellville to work at the Nuclear Plant. She stated that two of her children had passed away and she was raising her grandchild by herself. Ms. Lippincott stated that she lived in a cul de sac which she enjoyed as all the neighborhood children played together in the cul de sac. She stated that she was under the impression her neighbor was repairing the house next door to her to live in but that was not the case. She stated that the AirBnB was not managed and they had had a number of parties next door which resulted in trash and beer bottles being left in her yard. Ms. Lippincott stated that over the Fourth of July the AirBnB had probably 25 people over and the visitors parked in the middle of the cul de sac. She stated that in the middle of the night on Fourth of July she kept hearing noise and she went outside to find the AirBnB visitors parked in her driveway. Ms. Lippincott stated that she confronted them about parking in her driveway and she was met with "smart" behavior. Ms. Lippincott acknowledged that the fence may not be the answer but the AirBnB was booked with construction workers going into outage. She stated that most of the individuals that stayed at the AirBnB were transient construction workers and not just tourists. Ms. Lippincott stated that most of the time the AirBnB has more occupants than it is supposed to have and they sit in the front yard. She stated her dogs bark constantly and pace all night. Ms. Lippincott stated that she did not have any security previously and she had to buy a very expensive security camera for the front of her house but it did not capture the piece of her property that she was proposing the fence in. She stated that she had to put locks on her fence and that if they needed to get out for a fire they would not be able to and that was a safety concern. Ms. Lippincott stated that the fence was not something she would have thought about previously. She stated that the fence itself was going to come out from the house and would not be visible to someone coming into the cul de sac because it would be straight on. She stated that she had to move her grandson's room to the back of the house because of the headlights coming and going. Ms. Lippincott stated that she did not want to pay for this fence but did not know what else to do. She said the only reasons she is considering this is for security and safety. Ms. Lippincott stated that if she ever sold the house the fence would come down because she did not want it, but she saw it as the only way to protect her property and her family.

Member Cothren asked Ms. Lippincott if a person was facing the house if it would be on the left or the right. Ms. Lippincott stated the fence would be along the driveway on the left side of her house. She stated that if someone wanted to get into her backyard they could because the security camera would not be able to see it with the way her fence was. Member Cothren asked how far

out from the house the fence would come. Ms. Lippincott said that it would come out approximately 5' past the front of her house to block the neighbors front yard from view.

Member Jacimore asked if this was just a wooden privacy fence between the properties. Ms. Lippincott confirmed that it would be an extension of her existing wooden privacy fence. She stated that the fence would not affect backing out of her driveway and it would not affect anyone else.

Member Cummings confirmed that a privacy fence was not allowed out to the street. Ms. Lippincott said that the fence had to be ten feet back from the street. Planner I Marchant stated that the height limit per the Zoning Code was that a fence had to be 3.5' or lower for the first 25' of the yard back from the house. Member Cummings asked Ms. Lippincott if she currently had a wooden fence from her back property line up to her house. Ms. Lippincott confirmed her wooden fence was setback slightly from the front of her house at that time. Planner I Marchant pulled up the survey for the Commission and illustrated that the applicant's fence currently stopped about 20' back from the front of her house.

Member Cothren asked if the proposed fence would stick out past the front of the house approximately 10' and asked if she wanted that portion to be 6' in height. Ms. Lippincott confirmed that was what she was proposing. She stated that she did not believe that 3.5' would give her the visual separation that she wanted from the neighbors drinking and smoking in the front yard in the middle of the night.

Chairperson Tarpley stated that if they were disturbing the peace Ms. Lippincott could call the police. Ms. Lippincott stated that she had called the police a number of times. She stated that the police suggested she call AirBnB and she did. Ms. Lippincott stated that AirBnB did not call or email her back. She stated that AirBnB contacted the host and they did not do anything.

Member Miller stated that he knew where staff stood and what their recommendations were, but he also understood the applicants point of view. Member Miller asked how they could vote and stay in compliance. City Planner Jondahl stated that variances were not granting things that were not permitted by Code. She stated that by Code you were allowed to have a fence in the front yard, it just was not allowed to be higher than 3.5'. She stated that if the Board of Adjustment determined they wanted to grant a variance to allow her to have a 6' fence within her front yard, they could since the code allowed fences in the front yard, the Board of Adjustment would just be allowing a variance to the height limitation.

Member Miller made a motion to approve the fence at the 6' height in the front yard all the way to 10' from the back of the curb.

Member Jacimore asked how far past the house the fence was being proposed. Chairperson Tarpley stated that it would go up to 10' from the back of the curb. Planner I Marchant stated that the fence had to be at least 10' from the back of the curb, and the applicant's property line began approximately 8' from the back of the curb, which would mean the fence would extend approximately 23' past the front of the house.

Member Miller's motion failed due to a lack of a second.

Member Jacimore asked what the City would require Ms. Lippincott to do with her fence if she followed the code. Planner I Marchant explained that once the fence reached the 25' front yard setback line, the fence would have to drop down to 3.5' in height.

Ms. Lippincott asked if it would make it easier for the Board of Adjustment to approve if she did not go all the way to 10' from the back of the curb. She offered to start the fence 15' back from the back of the curb. She reiterated that the fence would not be visible for someone entering the cul de sac but for her it was everything for security and safety. Ms. Lippincott said she would take any variance she could get to allow the fence far enough out to help with vision on her security system.

Member Miller stated that the reason for his motion was largely due to the house's location within the back of a cul de sac where it would not have any oncoming traffic that it would affect.

Member Jacimore stated that from the other point of view, he thought it could pose a potential safety issue for someone coming around that fence by blocking their vision. Ms. Lippincott stated that it would be setback and it would not cut visibility. She stated that hers was the only driveway that would be near the fence.

Member Cummings asked Ms. Lippincott if she would be comfortable just bringing the fence out 10' from the house. She stated that she thought that would suffice and bring the fence out far enough for her cameras to be able to see.

Member Miller made a motion to approve the application with the condition that the fence must be 15' from the back of the curb. The motion was seconded by Member Cummings and passed by a vote of 4-1.

**The Second Order of Business** is a variance from Article 3.21.1 to waive the sidewalk requirement, located at 803 W Main Place. Submitted by S and P Property Management, LLC. (VARI-0722-000244)

Planner I Marchant stated that this application was a Variance asking for relief from the sidewalk requirement at 803 W Main Place. She stated that the property was located within the West Main District, this was the future home of Ridgewood Brothers BBQ restaurant. The property was zoned C-2 surrounded by C-2 and C-1 zoned properties. Surrounding properties included a variety of uses such as medical office, skate park, pharmacy, and an auto repair shop. Planner I Marchant stated the application was to waive the sidewalk requirement for approximately 185 linear feet of 5' sidewalk that was approved with the applicant's building permit. She stated that although staff could not consider finances, they did want to include estimates for the cost of the sidewalk to be approximately \$5,000-\$6,000 using current bids of \$50-\$60 per square yard. Planner I Marchant said staff had not found the applicant had demonstrated that special conditions exist. The applicant has cited dumpster location, parking location, drainage issues, no adjacent sidewalks, and financial strain as their special conditions. Per the applicant's site plan, the dumpster is located at the rear of the site, and none of the parking was interfering with the sidewalk as the sidewalk would be in the right-of-way and parking

cannot be. Planner I Marchant stated there was a drainage ditch along the right of way but it was not something that would prevent sidewalks from being installed. The only difference in cost to the applicant would be the actual installation of the sidewalks, as the site would still need to be graded and developed per the approved site plan, so that if or when the City would come through and install sidewalks the City would not have to redo the applicants driveways or regrade to be able to install sidewalks. The intent of the zoning code was for new commercial development to install sidewalks even when there were no sidewalks adjacent. When sidewalks were placed in areas that do not have sidewalks adjacent, the City could come in and create connectivity where gaps exist. Lastly, staff cannot consider financial strain as a special condition. Planner I Marchant stated that the applicant was able to make reasonable use of the land as the sidewalk was required within the ROW for the City to maintain in the future and not located within the applicant's property. The applicant had worked with staff to retain sufficient parking for their site, although reducing from the originally approved parking requirements to save a tree still allowing the applicant to maintain their project. This variance, granted or not, would not make any difference in the use of the applicant's property. The granting of this variance was not in harmony with the purpose and intent of the code. The intent of the zoning code was for new commercial development to install sidewalks even when there were no sidewalks adjacent. When sidewalks were placed in areas that did not have sidewalks adjacent, the City could come in and create connectivity where gaps exist to increase walkability within the City.

Chairperson Tarpley asked if there were any plans to put sidewalks in this area. Planner I Marchant stated that the applicant's building permit was approved with the sidewalks. Chairperson Tarpley clarified his question asking if the City had any plans to put sidewalks in this area on either side of this property. Planner I Marchant stated that there were no plans for sidewalks in this area at that time.

Staff recommended denial of this application as a result of the findings below:

1. The applicant has not demonstrated special conditions exist; and
2. The granting of this variance is not in harmony with the purpose and intent of the code;
3. The granting of the variance is not a variance allowing reasonable use of land.

Planner I Marchant stated that staff did want to note that the Mayor was supportive of the approval of the variance from the sidewalk requirements for reasons of economic development.

Robert Couser stated that after discussing with their contractor their dumpster was going to be located at the front of their property at one point to mitigate the wear and tear on their parking lot. However, he did state that the location of the dumpster at the back of the property was correct. Mr. Couser stated that they also thought parking was going to be an issue but it ended up not being an issue.

Member Miller asked where the tree was located that was going to be saved for the parking. City Planner Jondahl stated that it was back by the dumpster. Robert Couser stated that he was hoping the tree had not been damaged in construction as they were planning to put some seating under it. Mr. Couser stated that as Planner I Marchant had stated that if the City did decide to come through and put sidewalks adjacent to the property at a later date it would be helpful to have sidewalks existing on their property. He stated that there were no sidewalks off of main street heading to their property so people would be walking through parking lots or on the street in the existing conditions. Mr. Couser stated that he understood financial burden could not be taken into account but he did want to mention that due to the rise in interest rates the money was very tight and the variance would be an extreme help as a small business.

Member Cummings asked if there was private property between this property and the skate park. Planner I Marchant stated that there was not and the skate park property abutted this property.

Member Cothren made the motion to approve as presented. The motion was seconded by Member Cummings and passed unanimously.

Meeting Adjourned

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