

BOARD OF ADJUSTMENT

MINUTES

October 5, 2023 @ 5:00 p.m.

The Board of Adjustment held a meeting on Thursday October 5, 2023 at 5:00 p.m.

Members Present

Wendell Miller, Chairman
Don Jacimore, Vice Chairman
Justin Cothren, Secretary
Wayne Cummings
Josh Stroud

Members Absent

Visitors Present: City Planner Sara Jondahl, Planner I Victoria Marchant, Planning Assistant Caden Lemley, Laura Whitlock, and Tammi Titsworth.

Welcome Visitors

The First Order of Business is a request to review and approve the minutes of the Board of Adjustment September 7, 2023.

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

The Second Order of Business is an Appeal of a decision of the Enforcement Officer concerning their interpretation of the Russellville Zoning Code, located at 819 W 4th St. Submitted by Laura Whitlock.

City Planner Jondahl stated that the existing conditions are that the vacation of 60 feet of ROW was approved by City Council on December 15, 2022, and the applicant gained 30 additional feet. She stated that the fence permit was applied for on January 19, 2023. She stated that the fence was built by the same contractor as the installer for the Schoolhouse trail fence crossing Ms. Whitlock's property. She stated that on May 8, 2023 staff received a complaint that the applicant had built her fence on the neighbor's property. She stated that code enforcement responded to confirm and advise. She stated that no Code Enforcement Case was created. City Planner Jondahl stated Zoning Code Article 11.4.1 states that any applicant who disagrees with any decision by the Administrative Officials in interpreting any section of this Zoning Code may appeal the order, requirement, decision, or determination by the Administrative Official. She stated that all appeals and applications made to the Board shall be made in writing on forms prescribed by the Board within ten days after a final decision has been rendered by the Administrative Official. City Planner Jondahl stated that on December 15, 2022 the vacation of Right of Way was finalized and Ms. Whitlock gained 30 feet from her existing property line. She stated that no surveys were completed. She stated that on January 19, 2023 the fence contractor

applied for and obtained a fence permit. She stated that on May 8, 2023 the city received a complaint that the fence had been built across the neighbor's property line. She stated that code enforcement went to investigate. She stated that On may 12th and again on May 16th, staff had received emails from Ms. Whitlock regarding the complaint made against the location of the fence. She stated that on May 16th, she responded to her emails, advising her that she had built 13 feet beyond her property line. She stated that on August 11th, staff received another email from Ms. Whitlock asked if any progress had been made on the location of her fence. She stated that on August 14th, she again confirmed that she had built over her property line by 13 feet and advised that this is a civil matter between two property owners. She stated that on September 14th Ms. Whitlock submitted an appeal. City Planner Jondahl stated that Ms. Whitlock disputes the location of the "new" property line from the Vacation of the Right of Way and not from a decision of an enforcement officer. Additionally, her application was made to the Board on September 14th, 31 days after the final email again reiterating that this is a civil matter. She stated that this Board is not empowered to hear a request regarding the placement of the lot line and with the timing of the request the Board does not have subject matter jurisdiction.

Given that the BOA does not have subject matter jurisdiction staff recommends that the BOA dismiss her appeal as a result of the findings that:

1. This is a civil matter; and
2. The dispute is from the new property line as a result of the vacation of ROW and not the decision of the administrative official; and
3. The appeal is untimely.

Member Cummings asked if this was a 60' ROW. City Planner Jondahl stated it was a 60' ROW.

Laura Whitlock stated that when she had last met with the tail planning team she had been shown a map with a line going through her neighbors fence line. She stated that she had asked at that time if that was her new fence line. She stated that they told her that it was. Ms. Whitlock stated that when the ROW was vacated, no one showed her where the new property lines were. Ms. Whitlock stated that when she hired a construction company for her fence she was not involved further in the permitting or construction process. She stated that she did not know that anything was wrong until Code Enforcement talked with her. Ms. Whitlock stated that she would not have let the fence be built there if she had known. She stated that where the Code Enforcement officer told her the fence needed to be was not the correct location but that a surveyor had to come out and show her the property line. Ms. Whitlock stated that she is making an appeal so that she can get help on this issue.

Member Cummings made a motion to dismiss the appeal. The motion was seconded by Member Stroud and passed unanimously.

Meeting Adjourned

Chairperson