

The Town of Collierville **Board of Zoning Appeals** met in regular session on Thursday, August 20, 2020 at 5:00 p.m. in the Board Chambers of Town Hall, at 500 Poplar View Parkway.

Staff members present were: Development Director, Mr. Jay Cravens; Town Planner, Mr. Jaime Groce; Assistant Town Planner, Mrs. Nancy Boatwright; and Administrative Specialist, Sr., Mrs. Shari Michael.

Chairman Luttrell asked Mrs. Michael to call the roll.

Roll Call:

Oakes – present, Frazier – present, Luttrell – present, Floyd – absent, O’Hare – absent.

Quorum Present

Approval of the Minutes:

Chairman Luttrell asked if there were any corrections or deletions to the minutes from the July 16, 2020, meeting.

Hearing none, Chairman Luttrell called for a motion to approve the minutes as presented.

Motion by Chairman Luttrell, and seconded, to approve the minutes as presented.

Hearing no further discussion, Chairman Luttrell asked Mrs. Michael to call the roll.

Roll Call:

Oakes – yes, Frazier – yes, Luttrell – yes.

Motion approved.

Approval of the Agenda:

Chairman Luttrell asked if there were any additions or changes to the Agenda.

Mr. Groce stated that the agenda stands as advertised.

Chairman Luttrell asked for a motion to approve the agenda.

Motion by Commissioner Oakes, and seconded, to approve the agenda.

Hearing no further discussion, Chairman Luttrell asked Mrs. Michael to call the roll.

Roll Call:

Frazier - yes, Oakes – yes, Luttrell – yes.

Motion approved.

Formal Agenda:

BZA20-04 – 2269 S. Houston Levee Road – Request approval of a Variance to allow a front yard fence in the R-L Large Lot/Estate Development Residential District to exceed the maximum opacity of 75%.

Mrs. Boatwright gave the staff presentation. She explained that the property is rectangular in shape but the residence is not parallel to the property line. The house sits on the lot approximately at a 20 degree angle to the street. It is angled toward the corner of S. Houston Levee Road and Houston Levee Cove.

The Zoning Ordinance refers to the required yard, which is required to be open from the ground to the sky, and may contain only explicitly listed obstructions. The established yard is between the house and the lot line as determined by the building footprint, and the required front yard, which is the yard that extends across the entire width of the lot, with the depth determined by the zoning district. The R-L required front yard is 60 feet and allows for a six foot fence in the “established” front yard with a maximum 75% opacity. Because the fence is closer than sixty feet from the front lot line, it is within the established and required front yard, and may not exceed 75% opacity. The construction of the fence was commenced without an approved fence permit. She reviewed the definition and exceptions of “opacity” as listed in the Zoning Ordinance. The applicant’s front yard fence is not considered a pool barrier as there is another fence that encloses the backyard pool.

She showed the required front yard of the property, and the established front yard measurements along with photographs of the existing fence and property. The fence extends from the corner of the residence to the side property line at 20 angle.

Only FAR, R-L, and RL-1 districts can have a six foot tall fence in the front yard. Small lots, such as R-1 lots, are not eligible for fences taller than 4 feet in the front yard.

There are a few alternatives to exceeding the 75% opacity. The property owner could alter the fence to increase the transparency, but might not provide the privacy desired. To increase privacy, landscaping on the interior or exterior could be used to supplement a fence with the required 75% opacity. They could relocate the fence to remove it from the front yard, allowing it to maintain the estimated 90% opacity.

The 90% opaque front yard fence may not be injurious to other properties in the neighborhood. Nearby fences have received variances for fences within the front yard; however, they are both on corner lots with houses that do not face S. Houston Levee Road with fences on the side of the house, rather than on the front. Landscaping could be added on the street side to soften the view of the fence from the street.

In order to grant a variance, the board must find that there are exceptional physical conditions with the property that make a strict application of the requirements of the Zoning Ordinance an undue hardship or practical difficulty that would deprive the owner reasonable use of the property. The Zoning Ordinance states that a variance may only be granted if it will not cause “substantial detriment” to the public good and it will not substantially impair “the intent of the Zoning Ordinance”. The board must find that the request meets the “Standards for Variances” based upon the evidence presented.

EXHIBITS

1. Conditions of approval (8/14/20)
2. Applicant’s cover letter and responses to Standards for a Variance (8/7/20)
3. Applicant’s photos of property (7/20/20)
4. Applicant’s photos of other fences/walls (7/28/20)
5. Staff photos (8/12/20)
6. Staff analysis of Standards for a Variance
7. Aerial photo of property (7/24/20)
8. Letters of support (7/20/20 & 7/28/20)
9. Required & Established Front Yard
10. Area Zoning Patterns (2020)

She reviewed the standards for a variance, the example motion contained in the staff report and the conditions of approval as listed in Exhibit 1. The applicant does agree with the conditions.

Chairman Luttrell asked if there were any questions of staff.

Commissioner Oakes asked why a permit was not obtained prior to construction of the fence.

Mrs. Boatwright explained that she does not know why the contractor did not obtain a fence permit, but the property owner may be able to answer that.

Hearing no further questions, Chairman Luttrell called the applicant forward.

The applicants, Mrs. Kristen and Mr. Joe Williams, addressed the commissioners. Mrs. Williams explained that they have 3 active young boys and they need the security that this fence provides for the safety of their boys. They hired a fence builder to build the fence and assumed that he had obtained the proper permit. When the Codes Enforcement Officer notified them that a fence permit was not issued, they contacted staff immediately. They would like to keep the fence the way it is, there are no neighbors who dislike it, and it would be very costly to have it moved or replaced. She explained that the house doesn't sit parallel to the street, so if they make it even with the road, they will lose quite a bit of their backyard.

Mrs. Linda Mannerino, mother of Mrs. Williams, addressed the commissioners. She stated that it is unfortunate that the contractor who built the fence did not get a permit first, and she asks the commissioners to allow the fence to remain as she finds that there will be safety issues for her grandsons, and it will cause financial harm to her daughter and son-in-law if they have to move or remove the fence. It is a very nice fence and she is in favor of request.

Hearing no further questions or discussion, Chairman Luttrell called for a motion.

Motion by Commissioner Oakes, and seconded, to approve the applicant's request of a variance to allow a front yard fence at 2269 S. Houston Levee Road to exceed the maximum opacity of 75% subject to the conditions in Exhibit 1.

CONDITIONS OF APPROVAL:

1. All required permits shall be obtained from the Codes Division.
2. An evergreen hedge shall be provided adjacent to the fence along the street frontage to help reduce the mass of the fence. With the fence permit application, include an exhibit with the location, spacing, installed height, and species of the plantings. The plant selection shall be approved by staff, with shrubs at least 24 inches tall at installation.
3. Any deviation from the location of the approved variance shall require the approval of the Board of Zoning Appeals.

Commissioner Oakes stated that there are many letters from neighbors stating that they like the fence. He finds that the community doesn't have an issue with the fence. They are at 89% opacity in lieu of the 75% opacity requirement. He would be in favor of approving the variance.

Commissioner Frazier asked about how far the fence would have to be moved and due to the configuration of the house on the lot, he would be okay with approving the variance.

Chairman Luttrell stated that he would want to keep it at the 60 foot mark. The hardship now is that you would have to move the fence. He would look at this as it would come before him before the fence was built, and he would not have voted in favor of the variance request.

Hearing no further comments, Chairman Luttrell asked Mrs. Michael to call the roll.

Roll Call:

Oakes - yes, Frazier –yes, Luttrell –no.

Motion approved.

OTHER BUSINESS

Chairman Luttrell asked if there was any other business.

Mr. Groce explained that public meetings are on the rise, but if there are any changes, staff will let the board know. There will be some upcoming training opportunities soon.

Hearing no further business, Chairman Luttrell adjourned the meeting at 5:28 pm.

Secretary David Frazier