



**TOWN OF FORT MILL
BOARD OF ZONING APPEALS MEETING
January 26, 2015
112 Confederate Street
6:00 PM**

AGENDA

CALL TO ORDER

ELECTION OF CHAIR & VICE-CHAIR FOR 2015

APPROVAL OF MINUTES

Regular Meeting: December 15, 2014 *[Pages 2-4]*

PUBLIC HEARING ITEMS

1. **CASE # 2014-419**
Patricia Brohm
400 Unity Street
Tax Map # 020-04-26-001
Zoning District: R-10
Applicant is requesting a variance from the zoning ordinance to allow a 6' privacy fence to extend beyond the principal structure in a front yard (corner lot) *[Pages 5-14]*

ITEMS FOR INFORMATION / DISCUSSION

ADJOURN

**MINUTES
TOWN OF FORT MILL
BOARD OF ZONING APPEALS
December 15, 2014
6:00 PM**

Present: Jim Thomas, Jay McMullen, Becky Campbell, Jody Stegall, Ryan Helms, Terri Murray, Planning Director Joe Cronin, Assistant Planner Chris Pettit

Absent: Rhonda McCall

Guests: Michael Fling Sr., Jackie Fling

Chairman Thomas called the meeting to order at 6:00 pm and welcomed everyone in attendance.

Chairman Thomas welcomed Ms. Murray, who was recently appointed to the board by town council and was attending her first meeting.

APPROVAL OF MINUTES

Mr. Thomas noted a typo on page 3 of the minutes. The word “use” should instead be “house.” Thomas made a motion to approve the minutes of the October 20, 2014, meeting, with the correction of the typo noted above. Mr. Stegall seconded the motion. The motion was approved by a vote of 6-0.

PUBLIC HEARING ITEMS

- A) **Variance request from Michael Fling Jr. (114 Yorktowne Street)**: Assistant Planner Pettit provided a brief overview of the applicant’s request, the purpose of which was to allow an attached carport within the 35’ front yard setback along the frontage of the neighboring cul-de-sac.

Chairman Thomas opened the public hearing.

Mr. Michael Fling Sr., the father of the applicant, spoke on behalf of the applicant, Michael Fling Jr. Mr. Fling stated that the existing house is over 40 years old and does not meet the same setback requirement which is being applied to the proposed carport. Since the existing home was grandfathered from the current setback requirement, the applicant was seeking permission to install the new attached carport using the same or similar setback to that which has been used for the house. Mr. Fling added that the sloping topography of the lot would make it difficult to locate the carport elsewhere on the property.

Mr. Thomas noted that there was an existing garage at the rear of the house and wondered why the applicant needed to install a carport. Mr. Fling stated that the existing garage was currently being used for storage, and may be converted to living space in the future.

Mr. McMullen noted that the slope was only 4-5 feet along the rear of the house, and questioned why the applicant couldn't just install a retaining wall and fill in the slope. This would allow the proposed carport to meet the 35' setback requirement, and eliminate the need for the variance. Mr. Fling stated that the property could be filled and graded, but that it would likely be financially prohibitive to do so. Mr. McMullen stated that he thought that this would be a reasonable option, and that the board should be careful when considering financial issues related to a variance request.

Mr. Stegall asked why the carport couldn't be located elsewhere on the property where a variance would not be required. Mr. Fling stated that the applicant wanted to locate the carport in an area where he could walk directly between the carport and the home without being exposed to the elements. Mr. Fling added that the applicant may wish to add on to the home in the future as well.

Ms. Murray questioned whether moving the location of the carport would affect the value of the property. Ms. Jackie Fling, the mother of the applicant, said that it would affect the property value, and spoke in favor of the request.

Chairman Thomas asked if anyone else wished to comment on the request. There being no further discussion, Chairman Thomas called for a motion.

Mr. Thomas stated his belief that there were other options to locate a carport on the property without the necessity of a variance, and therefore, he did not believe that the request met the four criteria required by state law. Mr. Thomas made a motion to deny the request. Mr. Stegall seconded the motion. The motion to deny was approved by a vote of 6-0.

ITEMS FOR INFORMATION/DISCUSSION

- 1. Case #2014-419 Update:** Assistant Planner Pettit asked for clarification of a motion approved during the October meeting to allow a 6' wooden privacy fence in the front yard at 400 Unity Street. Assistant Planner Pettit stated that the original motion was to allow a variance for the fence; however, the motion contained a provision that if Duke Energy possessed a power line easement at the front of the property, the fence would need to be located outside the easement. Assistant Planner Pettit added that while Duke does claim a 30' easement along the power line, Duke does not object to the location of a 6' fence within the easement. Assistant Planner Pettit stated that if the board's intent was to require the fence to be set back from the easement regardless of whether it was allowed by Duke, then the board would not need to take any further action and the property owner would be instructed to move the fence back approximately ten feet. If, however, the board's intent was to require a setback only if Duke objected to the location of the fence within the easement area, then a subsequent review and public hearing should be held to amend the original motion.

Mr. McMullen stated that it was his intent for the fence to be moved outside the easement area only if Duke objected to its location within its easement. Mr. McMullen made a motion

to reconsider the request during the January meeting. Mr. Stegall seconded the request. The motion was approved by a vote of 6-0.

2. **Unified Development Ordinance Update:** Planning Director Cronin provided an update regarding the ongoing development of a Unified Development Ordinance. Town staff prepared a Request for Proposals (RFP) in order to obtain a consultant group to assist the Town in the creation of a Unified Development Ordinance, an ordinance which combines all land development regulations into one, easy-to-read ordinance. The Town received eight proposals from consultant groups, of which four groups were invited to present their proposals to a staff review team. The review team selected the top consultant group (LSL Planning) via a unanimous decision, and town council approved a contract during its December 8th meeting. A steering committee will be formed to assist with the process and will include the Planning Commission, the Chair of the Board of Zoning Appeals, and the Chair of the Historic Review Board. Various opportunities will also be provided for board members and the public to participate in the process.
3. **Board Member Training Opportunity:** Planning Director Cronin stated that planning staff from the Town of Fort Mill and City of Tega Cay were putting together a continuing education training session for the month of January. Pursuant to state law, board members must complete at least 3 hours of continuing education each year. The training was scheduled to take place on Thursday, January 22, 2015, in the Spratt Building. Additional details will be emailed to board members in the coming weeks.
4. **January Meeting Date:** Planning Director Cronin stated that the next meeting date was scheduled for January 19, 2015, which is also a town holiday (Martin Luther King Day). Staff recommended rescheduling the meeting to Tuesday, January 20th. Chairman Thomas asked whether there was any objection to changing the date. There was no objection, and the meeting date was rescheduled.
5. **Review of Board of Zoning Appeals Training Materials:** Prior to the meeting, planning staff had distributed a copy of a presentation that was made at the SC Planning Association Conference in Myrtle Beach in October. The topic of the presentation was on the role of Boards of Zoning Appeals and the legalities related to the variance process. Board members and town staff discussed various elements of the presentation. Chairman Thomas thanked staff for sending the information to board members, and stated that he found the material to be very informative.

There being no further business, the meeting was adjourned at 6:59 pm.

Respectfully submitted,

Joe Cronin
Planning Director

**Town of Fort Mill
Board of Zoning Appeals
Item for Action**

Item #1 **CASE # 2014-419**
Patricia Brohm
400 Unity Street
Tax Map # 020-04-26-001
Zoning District: R-10

Applicant is requesting a variance from the zoning ordinance to allow a 6' privacy fence to extend beyond the principal structure in a front yard (corner lot)

CASE UPDATE 01/20/15

At the December 15, 2014 Board of Zoning Appeals meeting, Assistant Planner Pettit asked for clarification regarding the approved variance for 400 Unity Street. During the discussion, it was discovered that wording of the approval motion did not match the intent of the approval. The Board, by a vote of 6-0, decided to reconsider the request at the Board's January 2015 meeting.

Prior to any change in the wording of the approval, a public hearing must be held for the application.

CASE UPDATE 12/4/14

At the October 20, 2014 Board of Zoning Appeals meeting, a variance was approved allowing the applicant to maintain an existing fence that extends into the front yard (along E. Hill Street) and exceeds the 4' maximum height requirement. A condition was included in the variance approval that stated the following:

Should Duke maintain a power line easement along the front of the property, the fence may not extend into the easement.

Following the meeting, Town staff worked with local engineering staff at Duke Energy to determine that a 30' easement did exist along E. Hill Street for the overhead power line. The easement, centered on the overhead line, extended 15' to each side of the line.

Currently, the fence along E. Hill Street is located approximately 5' from the overhead power lines. Using the information from Duke Energy and the condition included in the variance approval, Town staff determined that the existing fence along E. Hill Street would need to be moved approximately 10' further away from the power lines to meet the requirements of the approved variance.

Through multiple conversations with the applicant, Town staff explained the requirements of the variance approval and the associated condition that would ultimately require the applicant to remove the fence from the Duke Energy easement. The applicant, however, maintains that the fence is appropriate and that no changes need to be made.

As a first step toward reaching a resolution for this case, Town staff is seeking to clarify the intent of the Board's October 2014 variance approval. Specifically, Town staff would like to address whether the fence would be allowed if approved by Duke Energy.

Background / Discussion

The Town has received a variance request from Ms. Patricia Brohm for two nonconformities related to an existing fence located at 400 Unity Street.

Article I, Section 7(M)(A) of the Town's Zoning Ordinance outlines the following requirement for fences:

- A. *Permit requirements: Any person wishing to erect, alter, or relocate a fence must first obtain a fence permit from the code enforcement officer. Fences not meeting the standards outlined in this section may be permitted by a special use permit. The code enforcement officer may exercise the power to impose reasonable conditions in granting a special use permit under the requirements and guidelines of this ordinance.*

The applicant, unaware of the required permit and/or zoning regulations, replaced a previous \approx 4' chain link fence with the current 6' wooden privacy fence. Town staff sent a notice of Zoning Ordinance violation to Ms. Brohm on August 5, 2014 (attached). Ms. Brohm's written response dated August 7, 2014 (attached) along with follow up discussions noted her desire to bring the fence into conformance with the requirements of the ordinance. Therefore, the purpose of this request is to begin the process of obtaining proper permitting required for the existing 6' privacy fence.

The first request is to allow the fence to extend beyond the principal structure (residence) along the E. Hill Street frontage. Per Article I, Section 7(M)(B)(5):

- 5) *On corner lots, fences may not be permitted beyond the principal structure in side yards facing the adjoining street.*

The second request is to allow the fence to exceed 4' in height in a front yard. Front yard fences, if approved, may not exceed 4' in height per Article I, Section 7(M)(B)(2) as excerpted below:

- 2) *Front yard fences shall not exceed four feet in height and must be approved by the Code Enforcement Officer. Front yard fences cannot be located in any right-of-way.*

The applicant states that the reasons for the variance requests are to uphold a look of quality and to retain the functionality of the enclosed back yard space. The applicant notes that if the fence were placed according to the Zoning Ordinance, the backyard would be cut in half and rendered useless.

Staff will note that while front yard fences may be approved, they can pose a potential visibility problem for traffic along neighboring roadways and should therefore be approved only in certain circumstances. Along E. Hill Street, the existing fence does block visibility for those exiting the

existing driveway of the applicant's residence. Staff has provided pictures (attached) for consideration by the Board on this matter.

Pursuant to Section 6-29-800(A)(2) of the SC Code of Laws, the Board of Zoning Appeals has the power to:

Hear and decide appeals for variance from the requirements of the zoning ordinance when strict application of the provisions of the ordinance would result in unnecessary hardship. A variance may be granted in an individual case of unnecessary hardship if the board makes and explains in writing the following findings:

- (a) there are extraordinary and exceptional conditions pertaining to the particular piece of property;
 - (b) these conditions do not generally apply to other property in the vicinity;
 - (c) because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
 - (d) the authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.
- (i) The board may not grant a variance, the effect of which would be to allow the establishment of a use not otherwise permitted in a zoning district, to extend physically a nonconforming use of land or to change the zoning district boundaries shown on the official zoning map. The fact that property may be utilized more profitably, if a variance is granted, may not be considered grounds for a variance. Other requirements may be prescribed by the zoning ordinance.

A local governing body by ordinance may permit or preclude the granting of a variance for a use of land, a building, or a structure that is prohibited in a given district, and if it does permit a variance, the governing body may require the affirmative vote of two-thirds of the local adjustment board members present and voting. Notwithstanding any other provision of this section, the local governing body may overrule the decision of the local board of adjustment concerning a use variance.

- (ii) In granting a variance, the board may attach to it such conditions regarding the location, character, or other features of the proposed building, structure, or use as the board may consider advisable to protect established property values in the surrounding area or to promote the public health, safety, or general welfare.

Submitted by:

Chris Pettit
Assistant Planner / Zoning Administrator
October 10, 2014



TOWN OF FORT MILL

DATE: 8-5-2014

Patricia A Brohm
400 Unity Street
Fort Mill, SC 29715

RE: NOTICE OF ZONING ORDINANCE VIOLATION: FENCES

Dear Ms Brohm,

The purpose of this letter is to inform you that a fence located at 400 Unity Street is in violation of the following Section(s) of the Zoning Ordinance for the Town of Fort Mill:

- Article I, Section 7-(M)
 - A: Building Permit Required
 - B(1): On corner lots, fences may not be permitted beyond the principal structure in side yards facing the adjoining street

We have attached a copy of the town's fence ordinance for your reference, as well as a photograph of the offending fence.

You are hereby ordered to bring this fence into compliance with the town's Zoning Ordinance within seventy-two (72) hours of receipt of this letter. Compliance may be achieved by removing the offending fence, or by applying for and obtaining a valid fence permit (if the fence is allowed by code).

Failure to correct this violation within the time specified may result in a fine of up to one hundred (\$100.00) dollars per day for each day the violation continues to occur.

If you have any questions about the contents of this letter, or if you wish to appeal the findings of the Zoning Administrator, please contact Joe Cronin by phone at (803) 547-2116 x 257 or by email at jcronin@fortmillsc.gov.

Sincerely,

Wayne Hunter
Code Enforcement Officer

Joseph M. Cronin
Planning Director/Zoning Administrator

Article I, Sec. 7. - General provisions.

M.

Fences:

A)

Permit requirements: Any person wishing to erect, alter, or relocate a fence must first obtain a fence permit from the code enforcement officer. Fences not meeting the standards outlined in this section may be permitted by a special use permit. The code enforcement officer may exercise the power to impose reasonable conditions in granting a special use permit under the requirements and guidelines of this ordinance.

B)

Fencing requirements:

1)

Fences shall be limited to a maximum height of six feet for rear and side yards and cannot extend beyond the principal structure into the front yard. For the property owners' protection, a six-inch setback from property lines shall be required.

2)

Front yard fences shall not exceed four feet in height and must be approved by the Code Enforcement Officer. Front yard fences cannot be located in any right-of-way.

3)

Fences shall be constructed with quality material and workmanship and be maintained in good repair. Materials must be approved by the code enforcement officer. Barbed wire, constantine wire, razor wire, or poultry wire are strictly prohibited.

4)

The finished side of fences shall face adjoining property and shall blend with the landscape.

5)

On corner lots, fences may not be permitted beyond the principal structure in side yards facing the adjoining street.

The sides and rear fence shall conform to the above guidance; however, due to the potential visibility problem, the construction of fences within the front yard will be restricted. The code enforcement officer may use the authority provided in subsection M.A). to issue a special use permit for front yards on a case-by-case basis for corner lots.

(Amd. of 10-8-07)

August 7, 2014

Mr. Joseph M. Cronin

icronin@fortmillsc.gov

RE: NOTICE OF ZONING ORDINANCE VIOLATION: FENCES

Dear Mr. Joe Cronin,

The purpose of this letter is a response to the 400 Unity Street fence compliance within the 72-hour response time about the alleged code violations. I apologize for not realizing I needed a building permit to replace and improve an existing fence.

When replacing my fence I had no intentions of not abiding by the Fort Mill ordinance. The old fence was damaged in a storm and unsightly, therefore I thought I was improving the looks of the neighborhood. I had spoken with both neighbors on either side, they both agreed to the replacement fence. I have had nothing but compliments from all of the neighbors saying this was long overdue. I am hoping we can resolve this by just applying for a building permit, if that is what is needed. If a permit is necessary please let me know where to apply, how much it will cost and if that will bring me into compliance.

As far as the second item, the fence going beyond the main structure of the home; I have enclosed photos of the fence that was there prior and existed for over forty-five years along the same exact fence line. I have also enclosed the neighbors' photos of their existing fence that follows the same criteria.

If you need to discuss it further please call me at 646-369-5361.

Sincerely,

Tricia Brohm

400 Unity Street, Fort Mill, SC 29715

triciaisagrammy@gmail.com



Neighboring fence below.



2014-419

Town of Fort Mill
112 Confederate Street
P.O. Box 159
Fort Mill, South Carolina 29715

ZONING APPEALS BOARD
VARIANCE APPEAL

Date Filed: 9/30/2014
Owner's Name: Patricia Brahm
Address: 400 Unity St, Fort Mill
Telephone: _____
Property Address: Same
Current Use: Residential
Zoning District: R-10

ALL OF THE FOLLOWING QUESTIONS MUST BE ANSWERED

1. Describe the variance request: Variance to allow fence to extend beyond principal structure in side yard facing adjoining street
2. Why did the administrative official deny a permit? Article I, Section 7-(M) B(1): On corner lots, fences may not be permitted beyond the principal structure in side yards facing the adjoining street
3. Is the property, current uses or existing structures, nonconforming? Yes. If yes, how are they nonconforming? Fence extends beyond the principal structure in side yard facing the adjoining street
4. Describe any extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography: Due to being a corner lot the fence needs to be positioned where it is and was in order to maintain a look of quality + functionality
5. How do the extraordinary or exceptional conditions or literal interpretation of the provisions of the Zoning Code create an unnecessary hardship for the property owner? If fence was placed according to zoning the backyard would be cut in half and rendered useless

NOTICES OF APPEAL SHALL BE POSTED ON AFFECTED PROPERTY SO AS TO BE CLEARLY VISIBLE FROM A TRAVELED STREET. THE OWNER OR APPELLANT IS INSTRUCTED TO MAINTAIN POSTING AND TO BE RESPONSIBLE FOR NOTIFYING THE TOWN PROMPTLY IF THE SIGN IS DAMAGED OR REMOVED. FAILURE TO DO SO MAY DELAY BOARD ACTION.

Patricia Brahm APPLICANT 9/30/2014 DATE

**York County Tax Map # 020-04-26-001
Zoning Map**



**York County Tax Map # 020-04-26-001
Aerial Map**



