

CHARLOTTE ZONING BOARD OF ADJUSTMENT MINUTES

April 28, 2023

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The Zoning Board of Adjustment (hereinafter “Board”) for the Charlotte Zoning Area held a meeting at 9:00 a.m., April 28, 2023. Co-Chair Deborah Dryden called the meeting to order. Reference to “Ordinance” means “Charlotte Zoning Ordinance”.

Present: Deborah Dryden (Co-Chair), Amy Sun, Kevin Shea, Tarik Hameed, Hamilton Cort

Also Present:

Lisa McCarter, Planning Coordinator
Solomon Fortune, Zoning Administrator
Terrie Hagler-Gray, Senior Assistant City Attorney
Jill Sanchez-Myers, Senior Assistant City Attorney
Terry Edwards, Clerk to the Board
Candy Thomas, Veritext Court Reporting

Index of Cases:

Case#2023-023 6531 Sharon Hills Road
Case#2023-021 8630 Gruenewald Lane, 8624 Gruenewald Lane,
2110 Sharon Road, 2118 Sharon Road West
Case#2023-017 1101 Leigh Circle

RECOMMENDATION AGENDA

Case No.: 2023-020

Request: Requesting a 6.8 foot variance from required 45 foot rear yard for compliance of an existing home.

Applicant/Agent: Christopher and Mary Calder (Represented by Shad Spencer of Moore & VanAllen, PLLC)

Address: 6531 Sharon Hills Road

Parcel ID Number: 209-191-19

Applicable Zoning Ordinance Sections:

Section 9.205 Development standards for single family districts:

(1) All uses and structures permitted in the R-3 district shall meet the applicable development standards established in this Section and all other requirements of these regulations:
(e2) Minimum setback from right-of-way along a local street approved prior to 12-20-2010: 30 feet¹
(g)Minimum rear yard is 45 feet for residential uses.

FOOTNOTES TO SECTION 9.205(1):

1. Setbacks shown on a plat recorded at the Register of Deeds shall supersede required zoning setbacks.

Section 12.106 Uses and Structures Prohibited and Allowed in Required Setbacks and

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Yards.

(3) Certain portions of the required rear yard on a lot used for a single family (attached or detached) duplex, triplex, and quadraplex, may be utilized for attached garages, porches, decks, greenhouses, covered patios and utility room extensions of the principal structure in accordance with the following restrictions and as illustrated in [Figure 12.106](#):

(b) No such extension may encroach into the rear yard more than 25% of the depth of the required rear yard;

Section 2.201 Definition:

Yard, rear required. The minimum distance required by this ordinance between the rear of a principal building or structure and the lot line farthest from the street fronting the lot as measured parallel to the rear lot line, projected to the side lines of the lot on which the building or structure is located.

Adopted UDO (Unified Development Ordinance) Sections [Effective Date June 1, 2023]

3.2 ZONING DISTRICT TRANSLATION

The conventional zoning district classifications in effect before the effective date of this Ordinance are translated as shown in Table 3-1: Zoning Districts Translation to the zoning districts of this Ordinance. The new standards set forth in this Ordinance for these zoning districts shall apply to all properties within such zoning districts.

Previous Conventional Zoning District: R-3 UDO Zoning District: N1-A

4.3 DIMENSIONAL AND DESIGN STANDARDS

C. Building Siting: D. N1-A Minimum Rear Setback: 40 feet

37.4 ADMINISTRATIVE ADJUSTMENTS

A. Administrative Adjustments for Quantitative Regulations

1. Purpose and Applicability

Administrative adjustments to quantitative regulations allow for adjustment of quantitative regulations in the zoning regulations (Articles 3 through 22), except where articles specifically state otherwise.

2. Authority

a. The designated administrator for each article has the authority to administratively adjust the quantitative standards in the articles listed in item 1 above.

i. Standards may be adjusted by up to 10% by the designated administrator.

Staff recommends approval of the variance request. The findings of fact are as follows:

1. The applicants are Christopher and Mary Calder (Represented by Shad Spencer of Moore & VanAllen, PLLC).
2. The proposed site is located at 6531 Sharon Hills Road, further identified as tax parcel 209-191-19.
3. The property is zoned R-3 (single family).
4. A single family dwelling constructed in 2014 currently occupies the site.
5. The parcel was subdivided in October 1964 and is identified as Lot 3 in Map Book 12 Page 77 recorded at the Register of Deeds.

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6. On August 21, 2014, Mecklenburg County building permit # B2670360 was issued for a single family home on the property and the required rear yard was noted as 45 feet, compliant with Code Section 9.205(1)(g).
7. The Residential Plot Plan on the permit application showed a garage with unheated attic space above encroaching 10.1 feet into the 45 foot required rear yard.
8. Code Section 12.106(3)(b) permitted the garage with unheated attic space to encroach up to 25% into the 45 foot required rear yard, which is a maximum of 11.25 feet.
9. During the construction of the home, the owner worked with the builder to modify the plans to convert the attic space to heated area.
10. The interior upfit of an attic space above a garage does not trigger City zoning review, so there was no City zoning review conducted for the upfit.
11. The originally permitted garage with unheated attic space were unheated extensions of the principal structure and compliant with the 25% encroachment allowance, but per Code Section 12.106(1), portions of the principal structure is not permitted to encroach into the rear yard.
12. The encroachment was discovered when applicants commissioned a survey for the sale of the home that shows a 6.8 foot encroachment of the heated room over the garage into the required 45 foot rear yard.
13. The applicants are requesting a 6.8 foot variance from required 45 foot rear yard for compliance of the existing home.
14. ***The hardship is not a result from actions taken by the applicant or the property owner.***
15. The applicants state they relied on the builder to modify the plans and convert the attic space to heated area.
16. The applicant states the builder was issued a Mecklenburg County building permit and Certificate of Occupancy for the existing home including the subject encroachment.
17. The applicants state they were not aware the encroachment was not permitted until the survey was commissioned in February 2023 for the sale of the home.
18. ***The hardship does result from conditions that are peculiar to the property (location, size, or topography).***
19. The subject property has an average lot depth of 134 feet which is smaller depth than other lots in the neighborhood along Sharon Hills Road that mostly average 160 feet in depth and greater.
20. Per Code Section 9.205(1)(e1) & Footnote #1 to 9.205, the 40 foot front setback shown on the 1964 subdivision plat supersedes the required 30 foot R-3 setback, which serves to push the home toward the rear of the property and decrease the compliant building area in the rear yard.
21. ***The requested variance is consistent with the spirit, purpose, and intent of the Zoning Ordinance, in that the public safety is secured and substantial justice is achieved.***
22. The requested variance would not be easy to detect and would not change the character of the neighborhood, because the exterior of the home will not change.
23. The encroachment is not easily visible since it is in the rear of the home which backs up to a portion of a vacant parcel that is heavily wooded.
24. On June 1, 2023 the UDO will replace the Zoning Ordinance regulations, and per UDO Articles 3.2 & 4.3, the conventional R-3 zoning will convert to N1-A which has a required rear setback of 40 feet, decreasing the encroachment to 1.8 feet which would be eligible for an administrative adjustment of up to 4 feet, or 10% of the required rear yard depth per UDO Article 37.4.2.a.i.
25. ***Unnecessary hardships would result from the strict application of the Ordinance.***
26. Strict application of the Ordinance would require unheating the space, or shifting the location of the interior wall, which would not change the exterior of the home.
27. The applicant states unheating the space or shifting the location of the interior wall would reduce the function of the home.

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Conclusion of Law:

1. Unnecessary hardships would result from the strict application of the Ordinance.
2. The hardship does result from conditions that are peculiar to the property (location, size, or topography).
3. The hardship is not a result from actions taken by the applicant or the property owner.
4. The requested variance is consistent with the spirit, purpose, and intent of the Zoning Ordinance, in that the public safety is secured and substantial justice is achieved.

Members who heard this case were Deborah Dryden (Co-Chair), Amy Sun, Kevin Shea, Hamilton Cort, and Tarik Hameed. The decision of the Board was expressed in a motion by Board Member Hameed and seconded by Board Member Cort to **grant** the variance. Board members Hamilton Cort, Tarik Hameed, Deborah Dryden, Kevin Shea, and Amy Sun all voted to approve the variance.

Board Member Cort made a motion to adopt staff’s findings of fact and conclusions of law as written. Board Member Hameed seconded. Board members Hamilton Cort, Tarik Hameed, Amy Sun, Kevin Shea, and Deborah Dryden voted in the affirmative to approve the findings of fact and conclusions of law as written.

AGENDA

Case No.: 2023-021

Request: Requesting two variances from the specific standards required for screening:

1. A variance to permit a chain link fence with slats to be used for screening
2. A variance from the maximum fence height in the setback and side yard to permit an 8 foot fence

Applicant/Agent: Piedmont Natural Gas (Represented by John Mullen, Energy Land & Infrastructure)

Address: 2118 Sharon Road West, 8630 Gruenewald Lane, 8624 Gruenewald Lane, 2210 Sharon Road, 2100 Sharon Road

Parcel ID Number: 207-142-33, 207-142-34, 207-041-08, 207-041-05

Applicable Code Sections:

Section 9.205 Development standards for single family districts:

- (1) All residential uses and structures permitted in the R-3 district shall meet the applicable development standards established in this Section and all other requirements of these regulations:
(e1) Minimum setback from the right-of-way along a thoroughfare: 30 feet

Section 12.102 Special lot, setback, yard and building envelope requirements.

- (4) If both the setback and rear yard of a lot abut public streets, then the required rear yard shall be the same as the required setback in the district.

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Section 7.103. Nonconforming structures.

(2) Normal repair and maintenance may be performed to allow the continuation of nonconforming structures.

Section 9.203. Uses permitted under prescribed conditions.

The following uses shall be permitted in the R-3 district if they meet the standards established in this Section and all other requirements of these regulations:

(14) Public utility structures, subject to regulations of Section 12.504.

Section 12.504. Public utility structures.

Public utility structures are permitted within any district as a principal use subject to the following specific conditions:

(3) Control houses, pump and lift stations, cellular transmission facilities and other similar uses shall be screened in accordance with Section 12.303 from the street and any abutting property located in a residential zoning district.

(4) A fence not easily climbable or comparable safety devices must be installed and maintained in order to make the facility inaccessible to the public.

Section 12.303. Screening requirements.

(2) Any screening or buffer areas used to comply with the provisions of this Section or other ordinance provisions for uses other than parking decks must consist of a planted area which is at least 5 feet wide. This area may contain any type screening materials sufficient to separate visually the land uses, provided such materials meet the requirements of this Section. If only a wall or fence is used, then the area devoted to the screen need only be wide enough to accommodate the wall or fence and allow for its maintenance. The composition of the screening material and its placement on the lot will be left up to the discretion of the property owner, so long as the purpose and requirements of this Section are satisfied. The following list contains specific standards to be used in installing screening:

(a) Any fences or walls used for screening shall be constructed in a durable fashion of brick, stone, other masonry materials, wood posts and planks or metal or other materials specifically designed as fencing materials or any combination thereof as may be approved by the Zoning Administrator. Other materials may also be considered through the alternate buffer and screening process as detailed in Section 12.304. No more than 25 percent of the fence surface shall be left open and the finished side of the fence shall face the abutting property. A chain link fence with plastic, metal or wooden slats may not be used to satisfy the requirements of this section when abutting residential uses and districts, and public streets;

(b) The maximum height for a wall or fence, which is located along a side yard in a residential district, is 6 feet;

(c) The maximum height for a wall, fence, or an earth berm, which is located in any required setback in a residential district, is 5 feet...

Section 12.103 Requirements for lots along thoroughfares:

(1) The minimum yards or setbacks prescribed for each zoning district, which abuts a thoroughfare shall be measured from the proposed right-of-way line established for each classification of thoroughfare as follows:

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- Thoroughfare Classification: Major Arterial (Class III) 50 Foot Distance from Thoroughfare Centerline to Proposed Right-of-Way Line

(2) A transitional setback or yard shall also be established for each zoning district which abuts a thoroughfare that has an existing right-of-way which is not as wide as the right-of-way established for that thoroughfare as illustrated in Figure 12.103. The transitional setback or yard area established for lots abutting thoroughfares can be used for any purpose allowed by the particular zoning district, except for those uses which are prohibited in the required setbacks or yards as established by this ordinance...

Code Section 2.201 (General Definitions):

Transitional setback or yard is that area, if any, along a thoroughfare which lies between the existing required setback line or yard line and the future required setback or yard line. The future setback or yard is measured from the proposed right-of-way...

Required Setback is the minimum distance by which a building, structure, or use must be separated from either 1) the street right-of-way or 2) the back of curb (existing or future) based on the street type a parcel abuts and/or the zoning designation. In the case of a through lot, the same minimum separation to the building, structure, or use will be required.

Nonconforming Structure is any structure lawfully existing on the effective date of these regulations, or on the effective date of any amendment thereto, which does not comply with these regulations or any amendment thereto, whichever might be applicable.

Public utility structure. An electricity or gas substation, water or wastewater pumping station, telephone repeater station, water storage tank, reservoir, recycling collection center, cellular and telephone transmission facilities, or similar structure used as an intermediary switching, boosting, distribution, or transfer station for electricity water, wastewater, cable television, or telephone services between the point of generation and the end user, or a wastewater treatment plant, but not including satellite dish antennas, facilities for the handling of solid waste (except for recycling collection centers), or radio, television, or microwave transmission or relay towers.

Yard, rear, established. The distance between the rear of a principal building or structure and the lot line farthest from the street fronting the lot as measured parallel to the rear lot line, projected to the side lines of the lot on which the building or structure is located.

Yard, side, established. The distance between the side lot line and the side building line, extending from the established setback to the established rear yard.

Building lines. Lines that are tangent to the exterior surface of buildings or structures, or the surfaces of cantilevered projections therefrom, parallel to front, side and rear lot lines, and referred to as front, side and rear building lines, respectively.

Staff recommends approval of the variance request. The findings of fact are:

1. The applicant is Piedmont Natural Gas (Represented by John Mullen, Energy Land & Infrastructure).
2. The property is located at 2118 Sharon Road West, 8630 Gruenewald Lane, 8624 Gruenewald Lane, 2210 Sharon Road, 2100 Sharon Road, and further identified as tax parcels 207-142-33, 207-142-34, 207-041-08, 207-041-05.
3. Although the site spans a few parcels, the address subject to the variance requests is 2212 Sharon Road West.
4. The property is zoned R-3 (single family) and is a through lot with frontage on Gruenewald Lane that serves a single family home, and frontage on Sharon Road West where an existing 1981 regulator station is located.

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5. The regulator station is enclosed with a 7 foot tall chain link fence with plastic slats, and meets the zoning ordinance definition of a public utility structure.
6. Per Code Section 9.203(14), public utility structures are permitted in the R-3 zoning district subject to regulations of Section 12.504.
7. Per Code Sections 12.504(3) & (4), and 12.303(2)(a), (b) & (c), screening and a fence ‘not easily climbable’ is required for the public utility structure, but chain link fences with plastic slats are prohibited when facing a right of way or residentially zoned/used properties, and the height of the fence is limited to 5 feet within any required setback, and 6 feet along a side yard in a residential district.
8. The facility is zoned residential and abuts residentially zoned properties to the east and west, so chain link fencing with plastic slats would be prohibited.
9. Per Code Section 12.103(1), the minimum setback along a thoroughfare shall be measured from the ‘proposed right-of-way’ line, which is 50 feet from the centerline of Sharon Road West because it is classified as a Class III Major Arterial.
10. Per Code Section 12.102(4) & 9.205(1)(e1), the required rear yard is the same as a required setback when both the front and rear of the property abut public streets, so there would be a required setback of 30 feet.
11. Per Code Section 12.103(2), the required 30 foot ‘transitional setback’ measured from the 50 foot ‘proposed right-of-way’ can be used for any purpose allowed by the zoning district, except for uses which are prohibited in the required setbacks.
12. The height of the existing 1981 fence in the ‘transitional setback’ is 7 feet and exceeds the maximum allowed fence height of 5 feet when located within any setback, and 6 feet when located along a side yard in a residential district, the material is chain link with plastic slats which is prohibited for screening abutting residential properties, so the fence meets the definition of a nonconforming structure.
13. The Federal Department of Transportation’s Pipeline and Hazardous Materials Safety Administration (PHMSA), and the North Carolina Utilities Commission (NCUC) have mandated an upgrade for the site that will include the installation of a natural gas pipeline launcher to the existing pipeline to allow the insertion of inline inspection (ILI) tools designed to inspect the integrity of the pipeline.
14. The project will include the installation of a new 8 foot chain link fence with plastic slats.
15. Per Code Section 7.103(2) & 2.201, normal repair and maintenance of the nonconforming fence is permitted, but a new fence doesn’t meet the definition of a nonconforming structure and must comply with Zoning Ordinance requirements.
16. The applicant is requesting two variances to allow for the upgrade to the regulator station: 1) A chain link fence with slats to be used for screening, and 2.) A variance from the maximum fence height in the setback and side yard to permit an 8 foot fence (A 3 foot variance from the maximum 5 foot fence height in the setback & a 2 foot variance from the maximum 6 foot fence height in the side yard).
17. ***The hardship was not a result of actions taken by the applicants.***
18. The proposed variance is being requested due to mandatory federal and state required upgrades to the facility.
19. The nonconforming regulator station was developed in 1981 and is enclosed with a chain link fence with plastic slats that exceeds the maximum 5 foot height in the ‘transitional setback’, and the maximum 6 foot height in the side yard.
20. ***The hardship is a result from conditions peculiar to the property.***
21. The applicant states the pipeline associated with the regulator station was constructed in 1968.
22. The regulator station is strategically located over the gas pipeline on the property where the launcher is necessary, so the facility cannot be moved to another location.
23. ***Unnecessary hardships would result from the strict application of the Ordinance.***

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24. Without the variance the applicant would not be able to make the federally mandated upgrades to the facility which requires the height of the fence to exceed 5 feet in the 'transitional setback', to exceed 6 feet in the side yard, and to be chain link fencing with plastic slats.
25. ***The requested variance is consistent with the spirit, purpose, and intent of the Zoning Ordinance, in that the public safety is secured and substantial justice is achieved.***
26. Granting the variance will not adversely affect adjacent or contiguous properties or alter the essential character of the area.
27. The applicant states the regulator station and fence enclosure has been on the property for 42 years.
28. The new fence will not be easy to detect because the applicant proposes to keep the existing mature bushes that provide screening along Sharon Road West, there is natural screening to the south between the facility and the home facing Gruenwald Lane, and only the vegetation on the east side is proposed to be removed to accommodate parking.
29. The adjacent property to the west is in use for Mecklenburg County Parks & Recreation, and the adjacent property to the east is a heavily wooded and serves as a functional rear yard for a home facing Gruenwald Lane.
30. The upgrades to the site would not change the existing fence material and would increase the height of the fence by 1 foot.
31. The variance will uphold public safety.
32. The applicant has provided a letter from the Piedmont Natural Gas Lead Physical Security Specialist that states the use of chain link fencing with privacy slats is necessary because it allows for indiscriminate viewing of the site assets, provides individual protection, and includes security incorporated into its design, such as push bar/crash bar man egress gates.
33. The letter states alternative fence materials (ex: vinyl) are not designed for security related purposes and allow for the exposure of all gate and fence hardware on the unsecured side of the fence allowing for unauthorized access.
34. The letter states security regulations require a fence of not less than 8 feet to deter unauthorized access and vandalism. The applicant states "the requested height variance improves the security of the facility which is beneficial to the overall well being of the public. The general public relies on the facility and pipeline for natural gas service and interruption of flow due to vandalism may create public hardship. Thousands of customers in the Charlotte area could be adversely affected by an unplanned outage of the pipeline due to vandalism. A maximum fence height of 5'-0" tall provides risk to the public since it is easily defeated by vandals.

Conclusion of Law:

1. Unnecessary hardships would result from the strict application of the Ordinance.
2. The hardship results from conditions that are peculiar to the property (location, size, or topography).
3. The hardship does not result from actions taken by the applicant or the property owner.
4. The requested variance is consistent with the spirit, purpose, and intent of the Zoning Ordinance, in that the public safety is secured and substantial justice is achieved.

Members who heard this case were Deborah Dryden (Co-Chair), Amy Sun, Kevin Shea, Hamilton Cort, and Tarik Hameed. The decision of the Board was expressed in a motion by Board Member Shea and seconded by Board Member Cort to **grant** the variance. Board members Hamilton Cort, Tarik Hameed, Deborah Dryden, Kevin Shea, and Amy Sun all voted to approve the variance.

Board Member Cort made a motion to adopt staff's findings of fact and conclusions of law as written. Board Member Sun seconded. Board members Hamilton Cort, Tarik Hameed, Amy Sun, Kevin Shea, and Deborah Dryden voted in the affirmative to approve the findings of fact and conclusions of law as written.

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Case No.: 2023-017

Request: Requesting a variance from the maximum fence height in the required side yard and established rear yard to allow a 10 foot fence height.

Applicant/Agent: Franco and Noel Treglia

Address: 1101 Leigh Circle

Parcel ID Number: 037-025-21

Applicable Code Sections:

Section 2.201 Definitions:

Setback, required. The minimum distance by which a building, structure, or use must be separated from

either 1) the street right-of-way or 2) the back of curb (existing or future) based on the street type a parcel abuts and/or the zoning designation. In the case of a through lot, the same minimum separation to the building, structure, or use will be required.

Yard, rear, established. The distance between the rear of a principal building or structure and the lot line farthest from the street fronting the lot as measured parallel to the rear lot line, projected to the side lines of the lot on which the building or structure is located.

Yard, side, required. The minimum distance required by this ordinance between the side lot line and the side building line, extending from the established setback to the established rear yard. If no setback is required, the side yard shall be defined as extending from the street line to the rear yard.

Section 9.205 Development standards for single family districts:

(1) All uses and structures permitted in the R-3 district shall meet the applicable development standards established in this Section and all other requirements of these regulations:

(e2) Minimum setback from the right of way of local streets approved prior to 12-20-2010: 30 feet

(f) Minimum side yard: 6 feet

Section 9.204. Permitted accessory uses and structures.

The following uses shall be permitted in the R-3, R-4, R-5, R-6 and R-8 districts as accessory uses and structures, subject to the applicable criteria in this Part and in Chapter 12 of these regulations:

(7) Fences and walls, subject to the regulations of Section 12.406.

Section 12.406. Fences and walls in residential districts.

The following restrictions shall apply to all fences and walls located in any residential district, except for fences and walls surrounding public utility structures or radio, television, or microwave transmission or relay towers:

(2) No fence or wall located in the required side yard between the required setback and established rear yard shall be built to a height greater than 6 feet above grade.

(3) No fence or wall located in the established rear yard shall be greater in height than 8 feet above grade height in the rear yard.

(5) The capital of a fence post or column may extend up to 2 feet above the maximum height limit.

Staff finds that the variance request does not meet all the criteria within the Zoning Ordinance for granting a variance. The findings of fact are:

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1. The applicants are Franco and Noel Treglia.
2. The proposed site is located at 1101 Leigh Circle, further identified as tax parcel 037-025-21.
3. The property is zoned R-3 (Single Family) has a single family detached dwelling.
4. Per Code Section 9.204(7) fences are permitted in the R-3 zoning district subject to the regulations of Section 12.406.
5. Per Code Section 12.406(2)&(3), no fence located in the required side yard between the required setback and established rear yard shall be built to a height greater than 6 feet above grade, and no fence located in the established rear yard shall be greater than 8 feet above grade.
6. The applicants constructed a fence that is 10 feet in height.
7. On February 9, 2023, Code Enforcement Staff issued a NOV (Notice of Violation) after the site visit verified a neighbor's complaint that the fence was approximately 10 feet in height not including the fence posts, and therefore exceeds the permitted height of 6 feet in the required side yard and 8 feet in the established rear yard.
8. The applicant is requesting a variance from the maximum fence height in the required side yard and established rear yard to allow a 10 foot fence height (4' variance from maximum 6 foot fence height in the required side yard, and a 2 foot variance from the maximum 8 foot fence height in the established setback).
9. The applicant states they feel that their family was in danger because their neighbor had continuously stalked and harassed them and they have provided a copy of a no contact order filed October 3, 2022. Said neighbor is now deceased.
10. The applicant states they feel the 10 foot fence has provided their family protection from the harassing individual, whom is deceased.
11. ***The hardship results from actions taken by the applicant.***
12. The hardship results from actions taken by the applicant who installed the fence that exceeds the maximum height allowance.
13. ***Unnecessary hardships would not result from the application of the ordinance.***
14. The hardship does not result from application of the ordinance, the applicant states that the hardship is due to a court order for no contact for the neighbor.
15. The height of the fence can be decreased to 6 feet in the side yard, and 8 feet in the established rear yard.
16. A compliant option would be to plant tall evergreen bushes along the property line.
17. ***The hardship does not result to conditions peculiar to the property.***
18. The residential fence height requirements are shared by all other properties in residential zoning districts and granting the variance may set a precedence for allowing increased fence height.
19. The applicant states that the topography of the land slopes so that the neighbor's house is higher and the rear deck looks directly into theirs and the additional greenery solves the problem.
20. There is a 10 foot elevation change between the subject property and the neighboring property, with the neighboring property at the higher location.
21. A 10 foot elevation change between properties is a common condition in the neighborhood.
22. ***The requested variance is not consistent with the spirit, purpose, and intent of the Zoning Ordinance, in that public safety is secured and substantial justice is not achieved.***
23. The variance request is not consistent with the maximum fence height for all residential zoning districts.

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Conclusion of Law:

1. Unnecessary hardships would not result from the strict application of the Ordinance.
2. The hardship does not result from conditions that are peculiar to the property (location, size or topography).
3. The hardship does result from actions taken by the applicant or the property owner.
4. The requested variance is not consistent with the spirit, purpose, and intent of the Zoning Ordinance, in that the public safety is secured and substantial justice is not achieved.

Members who heard this case were Deborah Dryden (Co-Chair), Amy Sun, Kevin Shea, Hamilton Cort, and Tarik Hameed. The decision of the Board was expressed in a motion by Board Member Shea and seconded by Board Member Sun to **deny** the variance. Board members Hamilton Cort, Tarik Hameed, Deborah Dryden, Kevin Shea, and Amy Sun all voted to deny the variance.

Board Member Shea made a motion to adopt staff’s findings of fact and conclusions of law as amended. Board Member Sun seconded. Board members Hamilton Cort, Tarik Hameed, Amy Sun, Kevin Shea, and Deborah Dryden voted in the affirmative to approve the findings of fact and conclusions of law as amended.

MINUTES

Board Member Cort made a motion to approve the minutes from March 28, 2023 Zoning Board of Adjustment Regular Meetings. Board Member Sun seconded. Board Members Tarik Hameed, Hamilton Cort, Deborah Dryden, Kevin Shea, and Amy Sun voted in the affirmative to approve the March 28, 2023 regular meeting minutes.

This ____ day of _____, 2023.

Douglas Wilson, Chair

Terry Edwards, Clerk to the Board