

SOMERSWORTH ZONING BOARD OF ADJUSTMENTS
MINUTES OF MEETING
December 4, 2019

MEMBERS PRESENT: Matt Keiser Chair, Richard Brooks, Brad Fredette,
Keith Perkins-Alternate, Coty Donohue
MEMBERS ABESENT: Glenn Garvin-Alternate and Donald Routhier
STAFF PRESENT: Shanna B. Saunders, Director of Development Services,
Dana Crossley Planning Secretary

The meeting was called to order at 7:00PM.

Keiser appointed Perkins as a full voting member for the meeting.

1) Approval of the minutes of the meeting of November 6, 2019.

Donohue **MOVED** to accept the minutes of November 6, 2019.

Brooks seconded the motion.

Discussion: Keiser noted that on page two, the acreage should be changed from 1.4 acres to .14 acres.

The motion and second stands.

The **MOTION CARRIED** by a 5-0 vote.

2) OLD BUSINESS

- A) Home Made by Rivka, Rivka Rowe is seeking a variance from Section 8.F.5 of the Zoning Ordinance to allow additional signage for a home occupation on a property located at 95 W. High Street, in the Residential/Single Family (R1) District, Assessor's map 25 Lot 72, ZBA#18-2019 PUBLIC HEARING**

Keiser stated that the applicant has requested for it to remain on the table till the January meeting. The applicant will come before the board in January.

- B) Any old business that may come before the Board.**

- i.** Saunders stated on the board's desk there is a letter to the Planning Board from the ZBA. At the last meeting the board discussed presenting a proposal to the Planning Board to look at the Business Zone on Main Street. She stated this is for the Board's review before it is sent to the Planning Board.

The Board had no comments on the request. The memo will be sent to the Planning Board for review.

- ii.** No other business.

3) NEW BUSINESS

- A) William & Kelly Kiley are seeking a variance from Section 18.B to allow a 6' fence in the front yard area on a property located at 41 Sunningdale Drive, in the Residential/Single Family (R1) District, Assessor's Map 20 Lot 05-29, ZBA#21-2019 PUBLIC HEARING**

Keiser opened the public hearing at 7:03 pm.

Saunders stated the property is a corner lot that fronts on both Sunningdale Drive and Luna Lane. The applicant's house and drive faces Sunningdale Drive. Applicant is requesting to have a 6' fence in the front

yard of Luna Lane. Saunders noted that the Sunningdale Homeowners Association (the Developer) has approved the install of the fence.

Applicant Statement: **William and Kelly Kiley** attended the meeting to represent the application.

W. Kiley stated the fence in questions is already installed and stated he could explain how they came to this point. He stated he first received notice that they did not have the required permit for installing the fence. He stated they then submitted an after-the-fact permit and was informed they did not meet the zoning requirements.

W. Kiley stated the request is for a 6' fence to be 13' along Luna Lane. He stated the fence is for privacy. He stated the backyard of the lot is the shortest area of the yard to the property line. He stated the north side of the property is sloped and that is why they chose to put the fence on the other side. W. Kiley stated the builder had informed them they were able to put the fence all the way to the property line. He stated the gate is on the front side of the fence. He stated they want to keep the 21' green space between the fence and property line and to install landscaping.

W. Kiley stated the fence is white vinyl that will match the neighborhood. He stated the fence will be consistent to the other lots that are not corner lots. He stated the 13' extension would not infringe on the site line. He stated it will leave 21' of space which is in line with the spirit of the ordinance. He stated it will provide privacy. He stated for use of the property's limited backyard space due to the short distance to the back line and inability to use the alternate side of the lot due to the slope. W. Kiley stated the backyard use is undesirable with a shorter fence or one limited to behind the house only, which are the alternate options to this variance. He stated the shorter fence or smaller fenced in area would be undesirable. He stated the 4' fencing would provide no privacy from the roadway and pedestrians. He stated limiting the fence to only behind the house would limit the usable space. He stated the current setup allows for the gate access in the front. W. Kiley stated that granting the variance would do substantial justice because it would allow them to have more of a backyard than the sloped portion of the yard. He stated it would provide added value to the surrounding neighbors and his own home. W. Kiley stated the proposal leaves what they feel is a reasonable space to meet the spirit of the ordinance, by leaving 21' of green space. He stated the remainder of the front yard will remain open. He stated there is reasonable site distance in both directions.

Keiser opened public comment:

Douglas Gray, 40 Sunningdale Drive, he stated he is directly across from the applicant. He stated he feels the variance should be granted. He stated he does not feel it encroaches their view point and it has no impact on the value of his home.

Keiser clarified which portion of the lot was slanted and to what degree. W. Kiley stated the left side of the lot when facing the front of the house. He stated the front of the lots elevation is 220 and then the back is 210. He stated the majority of the left side of the lot slopes to Millennium Park.

Keiser asked for more detail on the desire to have a gate on the front rather than the side. W. Kiley stated the backyard has some slope as well. He stated if they had to move the fence it would not be conducive to have a gate on the slope. He stated that portion of the lot where the gate is, is much flatter.

Brooks asked what the applicant's hardship is that prevents them from installing a lower fence or moving the fence. W. Kiley stated having a 4' fence would not allow for the privacy they want from the future Luna Ln. He stated to move the 6' fence directly behind the house they would lose 13' of usable yard space. He stated they would like to have the 6' fence and additional space.

Brooks asked when they purchased the lot if it was advertised as a corner lot. W. Kiley stated they knew it was a corner lot. K. Kiley stated they did not know corner lots had two frontages. W. Kiley stated prior to purchasing the home they did inquire about fencing. The agent of the development told them they could install the fence farther than where it is. He stated the green space will be beautified and they will add landscaping.

Fredette asked if the applicant could produce or if the builder could testify that the statement was made that the fence could be in that location. W. Kiley stated that it was included in his application. He reviewed the statement provided by the builder. He stated that the fence contractor had not indicated that they needed a permit.

Fredette stated being a corner lot does not make a lot unique. He asked what about this property is unique. W. Kiley stated the shortness of the backyard prompts them to want to go to left or right wider. He stated the backyard is the shortest space on the lot. He stated the left side of the yard is sloped which is how they have deemed the location of the fence to be where it is.

Keiser stated the plan that was presented indicates the house is 21.3' from the back property line. W. Kiley stated yes, which is the shortest distance from the house to the property lines on the property.

Keiser closed the public hearing at 7:25pm.

Board Discussion: Keiser asked if this development had special setbacks. Saunders explained that this is a conservation subdivision which gives it different, and lesser setbacks.

Keiser stated a single family house not within a conservation subdivision would be required to meet a 25' setback. He stated he sees this house as unique because it is 21' from the property line in the 'backyard area' and then the other side portion of the lot is slanted. He stated the useable space on the lot is that front area which makes the lot unique. He stated he does not like to see a fence along the property line. He stated a front setback for an R1 district is 25' and then considers if it would be reasonable to have the fence in that location. He asked how close the property could be in this case. Saunders reviewed the Conservation Subdivision which allows structures to be 15' from the front property line.

Donohue stated he agrees with Keiser's statements. He stated with the slope of the yard and the setbacks as described in the verbal testimony and the packet satisfies the hardship and special criteria. He stated with this request the unique qualities of the property cover the hardship. He stated there is no safety concern with the location either for the corner lot.

Fredette asked if there could be a condition added that would require the applicant to plant trees or shrubs in front of the fence. Saunders stated they can put conditions but must be applicable to specific criteria or zoning. Fredette stated that the setback requirement is in regards to the streetscape. He stated he felt it would break up the large white board of the fence. He stated the applicant has stated in their testimony that they

intend to plant landscaping anyways. He stated he sees uniqueness of the property with the slope, being next to a park and would like the white fence broken up with the landscaping.

Keiser stated he would not be in support of a condition to require landscaping. He stated he felt it was above and beyond the zoning ordinance and is more of a Planning Board requirement.

Brooks stated he does not see the problem or reason for a hardship for this case. He stated a Conservation Subdivision squeezes in as many lots as possible and then the property owners look for privacy. He stated he does not see the hardship or how the spirit of the ordinance would be met.

Donohue stated he understands Fredette's comments to the streetscape. He asked with the common sense purpose of the ordinance in this case is. Saunders stated there are several places in the site plan regulations that require landscaping as a buffer. She stated she does not see a problem with putting a condition that requires landscaping. She stated it would be in line with previous and historic conversation of the fences.

A brief discussion of landscaping as required by the Site Plan Regulations was held.

Fredette inquired if a permit was required for landscaping, for example a hedge. Saunders stated no.

Fredette stated he felt the best and most reasonable path is the addition of some sort of landscaping. He stated the uniqueness needs to be defined and there needs to be a hardship. He stated after hearing the statements made by Brooks he is unsure on this application.

Donohue stated that for him the five criteria have been met. He stated how the applicant describes the spirit of the ordinance in their application is accurate. He stated he does not think surrounding properties would be diminished and that substantial justice would be done if the request was granted. He stated he does not see it to be contrary to the public interest either.

Perkins stated he agrees with the statements made by Donohue. He stated he felt that the fence is setback enough that it would not affect the streetscape. He stated he is in favor of approving the request.

Keiser stated he would approve the request as presented.

Donohue stated at times there may be alternate options the applicant can move forward with but for him he does not think it is part of their decision process. He stated the decision is to weigh the criteria and understands that it does hold some weight in the consideration.

Fredette stated for him it comes down to the hardship. He stated if there are other options that would satisfy the general request and the ordinance it weighs on him. He stated if there are other avenues it diminishes the hardship to him.

Motion: Donohue stated, after review of the application, the file and all the information presented to the Board, I feel that all five criteria have been satisfied because of the reasons discussed and I move that the request of William & Kelly Kiley for a variance from Section 18.B to allow a 6' fence in the front yard **be GRANTED.**

The MOTION is SECONDED by Perkins

The MOTION CARRIES by a 3-2 vote.

B) William Walker, is seeking a variance from Section 18.B to allow a fence over 4' in the front yard area on a property located at 19 Guy Street, in the Residential Duplex (R2) District, Assessor's Map 22 Lot 21,, ZBA#22-2019 **PUBLIC HEARING**

Keiser opened the public hearing at 7:43 pm.

Saunders stated this is another corner lot. She stated the applicant is requesting to have a 6' fence (per the after the fact building permit) in an established front yard area. The front yard area is actually off the side of the house but it is the side that fronts on Bartlett Ave.

Fredette asked for clarification on the lot size. Saunders stated it is 0.27 acres.

Applicant statement: **William Walker** attended the meeting to represent the application.

Walker stated his request is for a 6' fence. He stated he has similar circumstances with his fence as the previous application. He stated the fence has been installed. He stated there had been an existing fence in the same location that was not permitted. He stated he is seeking to get some privacy from the Cemetery that abuts his lot.

Walker stated he feels the fence adds to the property values and the neighbors he's spoken with feel the fence does not diminish their values. He stated he has a very active Cemetery in his backyard. He stated by installing the fence would accommodate his desire for privacy and allow the cemetery visitors privacy. He stated the Cemetery is a key factor in the equation; many of the people buried there have people that visits routinely. He stated many of the other surrounding properties have a barrier between their yard and the Cemetery. He stated substantial justice would be that he would be allowed to use his backyard without people right next to the property line visiting grave markers. Walker stated people visit the Cemetery at all times of the day. He stated he is trying to beautify the property and accommodate privacy as well.

Keiser opened for public comment:

No public comment.

Fredette clarified that when facing the front of house, the property line behind the house abuts the Holy Trinity Church cemetery. Walker stated that is correct. Fredette stated to his knowledge the cemetery closes in the winter. Walker stated he is uncertain, but that there were people there today.

Fredette stated the fence in issue is in the side yard that shares a line with Bartlett Ave. Saunders stated that the property line on Bartlett Ave is considered a front yard. Keiser stated the fence has been installed on the side yard that abuts the Cemetery and once it passes the side of house is in the front yard where it cannot be more than 4' high. Saunders stated the property has two frontages, Guy St. and Bartlett Ave, and from the side of the house to Bartlett is all front yard.

Walker stated he is not looking to close in the entire property. He is only looking to put the fence along the property line that abuts the Cemetery.

Brooks clarified that what has been constructed is all that he is seeking. Walker stated that is correct, he is not looking to install more fencing.

Keiser clarified that the fence is stockade. Walker stated that is correct it is cedar. Keiser asked how long the property line from the house to Bartlett is. Walker stated it is about 60-65'.

Keiser closed the public hearing at 7:52PM.

Board Discussion: Donohue stated for all of the reasons the applicant testified and that the property abuts a cemetery, he feels it creates a unique situation about the property. He stated the proposal is not contrary to the spirit of the ordinance.

Fredette stated it is unique. He stated fences have been along the cemetery property lines for a long time. He stated some of the grave stones are very close to the property line. He stated since the fence is only going along half of the property line he sees reasons to vote in favor.

Brooks stated he sees the uniqueness to this lot with a cemetery bringing in foot traffic and mourning visitors. He stated the fence stops at the road and does not create a wall along the road. Due to the hardship and uniqueness he would be in favor of granting this request.

Keiser clarified that the board was expressing that the cemetery creates a hardship because it does not allow for privacy in the rear yard due to the cemetery visitors. Keiser stated he likes to see the first 20' of the property be 4' because of sight lines.

Fredette stated he agrees with Keiser's statement and would support the requirement of the fence to be 4' tall in the first 20'

Keiser stated if the board would allow it he would re-open the public hearing for the applicant to speak. The board was in consensus to allow it.

Keiser re-opened the public hearing at 7:59PM

Walker stated that the fence does not go all the way to Bartlett Ave. He stated it is approximately 10' off the road. He stated the fence starts at 4' and gradually increases to 6'. He stated the first 16' is either no fence or under 6' fencing.

Keiser asked how far the applicant's property line is from the street. Walker stated he does not know. He stated the fencing he put up lines up with the Cemetery's existing chain-link fence.

Brooks inquired if there was a sidewalk there. Walker stated there is not.

Keiser closed the public hearing at 8:01PM.

Board Discussion: Donohue stated it sounds like 10' includes up to the street. He stated he would be support with Keiser's suggested condition.

Keiser stated in review of the criteria, the fence would not affect property values in the neighborhood. He stated he did not see jeopardy to the public with the fence being there or not. He stated he does think there is a hardship created by the cemetery. He stated justice would be done by allowing the fence and privacy from the cemetery. He stated that requiring the first 20' of property to have a fence no higher than 4', would keep the desired streetscape.

Fredette stated he agrees and also it is within the public interest to be that 20' back for safety.

Donohue clarified the 20' could still have a 4' fence. Keiser stated yes.

Brooks stated he agrees with the discussion and agrees with the pushback.

Approval motion: Donohue stated, after review of the application, the file and all the information presented to the Board, I feel that all five criteria have been satisfied because of the reasons discussed and I move that the request of William Walker for a variance from Section 18.B to allow a fence at 6' in height in the 'front' yard **be GRANTED WITH THE FOLLOWING CONDITIONS:**

1. First 20' from the property line shall not have a fence no more than 4'

The MOTION is SECONDED by Fredette.

The MOTION CARRIES by a 4-1 vote.

- C) Richard Brooks, is seeking an Appeal of Administrative Decision made by the Historic District Commission for a property located at 26 Linden Street, in the Residential/Single Family/A with Historic Overlay (R1AH) District, Assessor's Map 11 Lot 100A, ZBA#20-2019 **PUBLIC HEARING**

Keiser stated the applicant has withdrawn the appeal and there will be no public hearing on that item tonight.

D) Any other new business that may come before the Board.

- a. Brooks inquired if there was a way to make sure the fence companies know of the ordinance and regulations. Saunders stated it is something that has been communicated to the local companies.

Brooks **MOVED** to **ADJOURN** the meeting. Donohue seconded the Motion. The **MOTION CARRIED** 5-0 and the meeting **ADJOURNED** at 8:06 PM.

Respectfully Submitted,

Dana Crossley, Planning Secretary