

SOMERSWORTH ZONING BOARD OF ADJUSTMENTS
MINUTES OF MEETING
September 2, 2020

MEMBERS PRESENT: Brad Fredette, Coty Donohue, Matt Keiser Chair, Glenn Garvin-Alternate
Ken Vincent-Alternate, Keith Perkins-Alternate, and Richard Brooks

STAFF PRESENT: Carol Ogilvie, Interim-Planner, and Dana Crossley Planning Secretary

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

Keiser stated due to the COVID-19/Coronavirus crisis and in accordance with Governor Sununu's Emergency Order #12 pursuant to Executive Order 2020-04, this Board is authorized to meet electronically. The public has access to watch to this meeting through the Local Government Cable Access Ch. 22 (Comcast), and streamed live through the City's website at www.somersworth.com. Although this is a public meeting, the public is encouraged not to attend and instead to leave comments or concerns at the following phone number # 1-603-841-2936, by emailing ZBA@somersworth.com or by sending written comment to Zoning Board of Adjustment, 1 Government Way, Somersworth NH 03878. Comments must be received no later than 4pm the day of the meeting. The public can access the meeting and listen live by telephone and then adding the webinar I.D.

Roll call attendance was taken. **Keiser, Brooks** and **Perkins** were in attendance in City Council Chambers. **Donohue, Vincent, Fredette** and **Garvin** were in attendance remotely and alone. Also in Council Chambers was Interim Planner Carol Ogilvie and Planning Secretary Dana Crossley.

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

1) Approval of the minutes:

Donohue **MOVED** to accept the minutes of August 5, 2020.

Fredette seconded the motion.

The **MOTION CARRIED** by a 3-0-2 (Perkins and Brooks abstained) roll call vote.

2) OLD BUSINESS

A) Daniel Vincent is seeking a variance from 19.6.C.1.a to expand a non-conforming use (residential two-unit dwelling) by constructing a 916sf addition to a detached, carriage-house apartment on a property located at 21 Linden Street, in the Residential Single Family/A with Historic Overlay (R1AH) District, Assessor's Map 11 Lot 118, ZBA#06-2020 PUBLIC HEARING

Brooks recused himself from this item of the agenda because he is a direct abutter. Vincent recused himself from this item of the agenda because the applicant is a family member.

Keiser appointed Garvin as a full voting member for this item.

The Board consists of Keiser, Garvin, Donohue, Fredette and Perkins.

Keiser stated the applicant has requested that his application be tabled to the October 7 ZBA meeting because he is not ready to present. He noted the applicant has also expressed that he would be submitting a motion for rehearing of the Appeal of Administrative Decision from the last meeting.

There was a brief discussion of the procedure for handling a motion for rehearing.

MOTION: Donohue stated, I move to TABLE the application of Daniel Vincent for a variance from 19.6.C.1.a to expand a non-conforming use (residential two-unit dwelling) by constructing a 916sf addition to a detached, carriage-house apartment to the October 7, 2020 Zoning Board of Adjustment meeting.

The MOTION is SECONDED by Fredette.

The MOTION CARRIES by a 5-0 roll call vote.

Garvin stepped down from the Board and Brooks came back to the Board as a full voting member.

3) NEW BUSINESS

A) Central Fence, is seeking a Variance from Section 18.B to allow a 6' fence in the front yard area on a property located at 41 Salmon Falls Road, in the Agriculture (A) District, Assessor's Map 52 Lot 32, ZBA#07-2020 PUBLIC HEARING

Keiser opened the public hearing at 7:07 PM

Amanda Fleming, home owner, **Christie Cann** and **Michael Galluzzo** of Central Fence were in attendance to represent the application.

Keiser stated the voting members for this application are Keiser, Brooks, Fredette, Donohue and Perkins.

Ogilvie reviewed the staff memo. She stated Section 18.B stipulates that a fence cannot be over 4' in height in the front yard area. She stated the applicant is seeking a 6' fence and the applicant has answered all of the questions for a variance therefore the application is complete and the public hearing can commence.

Keiser read into the record the comment received from the applicant Fleming. The property owners **Amanda and Joshua Fleming** submitted the following statement: This statement is intended for the 9/2 7pm EST Zoning Board Association meeting. As the property owners at 41 Salmon Falls Rd we were informed by Central fence the fence that they mapped out would be appropriate use for our agriculturally zoned property and our confidence lies with Central Fence as they are subject matter expert regarding fencing in our community. The city representatives then said the design that Central Fence created was not to be approved and that they would instead approve a fence that cuts through the yard and has a 4-foot maximum height in front of the house and gardens. We are aligned with Central Fence and the zone variance request as part of the original plan that was intended in order to ensure the aesthetic quality is the best that it can be, does not split the yard, and still protects us from the obscenities, harassment, and littering that is uncontrolled from the passersby on this road while still outlining the property to the best of our ability in order to make it clear to kayakers/pedestrians that our yard is not a public boat launch or a park. The harassment and littering have increased to an uncomfortable point from 2015 - 2020 and we wish to protect ourselves and our property. At a personal standing height of 5 foot 6, a 4-foot fence in front of the house does not protect us from strange pedestrians and drivers that throw things out the window or yell obscenities when we are in the yard.

Fleming stated the biggest issue for them is the height. She stated she is out in the front yard often, gardening and the road traffic that goes by is fairly aggressive, passerby's frequently yell at them.

The applicant reviewed the answers supplied in the application.

Galluzzo stated additionally it is true that the market value of a home goes up with a fence, especially a maintenance free product in vinyl. He stated the City of Somersworth has set the precedent for 6' vinyl privacy fences in front yard areas and this fence would not impact the City. He stated the granting of the

variance would reduce the amount of trash from Salmon Falls going into the Fleming's property. He stated the City has approved 6' vinyl fences in the front yard area of properties and there has been a precedent set by the Board for this to be allowed.

Keiser stated a comment was received and he read the public comment into the record:

Hadley Moores, stated My name is Hadley Moores I own the property at 47 Salmon Falls Rd which abuts the 41 Salmon falls Rd property. The Zoning Board of Adjustment may or may not be aware of the past problems with the owners of the property at 41 Salmon Falls Road trying to start a car repair garage on this property. Certainly Somersworth Code Enforcement is aware of this situation. I do not have a problem with a six foot fence being installed in front of the house or beside of the house at 41 Salmon Falls Rd. I am concerned however if the fence is installed in the front of the storage building to hide all of the many vehicles on this property and lead to the repair of vehicles on this property.

Keiser stated no other public comments were received via mail, email or telephone. He closed the public comment at 7:23 PM.

Donohue stated in review of the property he sees there is a substantial amount of property with road frontage. He asked if the fence will be encircling the property or just along the road. He asked if it will run the entire property line along Salmon Falls Road.

Fleming stated it will be along the road only, starting at the house down to the property line where the river meets the road.

Keiser noted that there is a sketch provided from Central Fence. He clarified they are asking for a 264' of fence that will be 25' from the center line of the road and starts approximately adjacent to the driveway. Fleming stated that is correct.

Keiser asked how far 264' would take the fence down the property.
Fleming stated to the property line where the road meets the river.

Brooks asked if the fence would be then, all the way to the bridge.
Fleming stated they do not own that far down the road. There is segment of road that people commonly pull over to fish and that is between their property and the bridge. She stated there is a wood-line where their property marker is and then about 40' to the dirt pull off.
Brooks asked how far from the edge of the road the fence would be placed.
Fleming stated the fence would be 25' from the center line of the road.
Brooks stated if the travel lane is 12' wide, then the fence would be 13' from the road.
Galluzzo stated that is correct.

Keiser asked if the property has been surveyed to show where the right of way and property lines are.
Galluzzo stated he is unaware of any right of way along Salmon Falls Rd between the Fleming property and the road.
Keiser stated the road encompasses the 50' right of way according to the maps that goes to the property line. He asked if they have an idea where the property line. He stated in review of the map it appears the property line is about 14' from the house.

Fleming stated they have granite markers to show the property boundaries and have no knowledge of a right of way.

Brooks stated in the applicants testimony Galluzzo stated the City of Somersworth has set a precedence for 6' fences in the front yard area. He stated the City has an ordinance that restricts the height of fences in the front yard area and in front of the house. He stated he knows they have granted a couple of variances but does the applicant have more examples or information to expand on the precedence.

Galluzzo stated the variances granted is the precedence allowing 6' high fences in Somersworth. He stated there is one on Hickory Lane that is a corner lot.

Brooks stated to grant a variance there are the 5 criteria that have to be met. He stated he is having a hard time finding that substantial justice and the spirit of the ordinance criteria have been met. He stated it is clearly a request for 6' fence in front of the house and that is contrary to the ordinance.

Galluzzo stated the Board has granted variances have been approved for 6' fences in front yard areas. He stated there have been two applications on Old Rochester Road that made arguments for trash debris, privacy concerns, which are the same arguments that the Flemings have for their property.

Fredette stated he can only speak to applications that he has been involved in reviewing. He stated when reviewing the ordinance he finds it is clear that there shall be no 6' fences in the front yard area. He stated in his experience they have granted variances to allow the 6' fence for through lots, corner lots, but this lot here and the request seems to be exactly what the ordinance does not allow. He asked what is unique from this property that sets it apart from other properties in Somersworth that should allow them to have the 6' fence in the front yard area. He stated everyone on Salmon Falls Rd as subjected to the same traffic noise.

Galluzzo stated the yard is unique because the yard is predominately on the side rather than the back. He stated in order for the Flemings to have usage and privacy they would need to have the fence located on the front of their property, which is one difference between their property and many properties on Salmon Falls Rd.

Brooks stated if the fence was pushed back to the edge of the house and ran parallel to the road a 6' fence could be installed and gain privacy on a vast majority of the property. He inquired what the hardship would be since it would still offer privacy and keep debris from the yard behind the fence as well as preventing noise in the yard.

Fleming explained that she has flower gardens around the house for pollinators that are mainly in the front yard area. She stated the majority of the work for those gardens takes place in front of the house.

Brooks clarified that the gardens are in the front to keep the neighborhood looking nice and add curb appeal and he felt many may feel that a 6' fence close to the road would not enhance curb appeal.

Fleming asked for clarification on the question.

Brooks stated there are gardens in the front and he would assume that is for curb appeal to make it look nice.

Fleming stated the gardens are for the pollinators, the bees.

Brooks stated the bees would be able to access the gardens regardless of the location of the fence.

Fleming stated she would not be able to access it as well though, since that is where she has experienced trash being thrown at her and pedestrian harassment.

Fredette stated one of the reasons for the fence ordinance is to preserve the streetscape, in his opinion a 6' fence deprecates the surrounding properties because it changes the streetscape. He asked how is a 6' fence in this situation not going to negatively impact the streetscape.

Galluzzo noted that as Fredette stated it is in his opinion but in their opinion and many homeowners other than the City of Somersworth, different towns and cities allow 6' fences in front of their home. He stated it is allowed because it adds to the curb appeal, value of the home and provides a sense of privacy and security for homeowners. He stated for the Flemings they are seeking privacy and security for their bees.

Fredette stated he drives Salmon Falls many times a week but has never seen more than a handful of pedestrians along the street. He asked how many volatile pedestrians they experience in a week.

Fleming stated at least 1-2 a week whom approach them. She stated volatile at least monthly. She stated they are trying to protect themselves with this fence.

Garvin stated he wanted further clarification on the location of the fence.

Keiser asked how far the fence will be from the house in the front yard.

Galluzzo stated it would be no more than 10' from the front steps.

Brooks stated Central Fence representative had made the comment that fences add curb appeal. He inquired if they thought it would add curb appeal and appealing to the general public if the entire Salmon Falls Rd was completely fenced in with 6' fences in the front yard area.

Galluzzo stated in his opinion if it was what the homeowners requested and it provided them the security they were seeking. He stated every house is different on Salmon Falls and have different layouts. He stated it is an unfair question because every house is different and does not foresee every house on Salmon Falls having a 6' fence in the front yard area.

Brooks stated they need to ensure there is the due process for each application and does not want it to be ran away with.

Galluzzo stated he understands the Board's position but in the 7 years they have been in business in Somersworth they have abided by the Ordinances and have done, respectfully, everything to adhere to the Ordinances. He stated once their client requests a variance or have issues where they feel unsafe and are looking for privacy or security they bring up that a precedence has been set. He stated their goal is to adhere to the Ordinances. He stated this is a special situation, Fleming has relayed that and feels the Board should find in her favor.

Fredette clarified there will be a 6' fence going across the entire front wall of the house.

Galluzzo stated that is correct.

Fredette inquired if this fence would create a public safety concern for first responders since the entire front of the house would be shielded.

Galluzzo stated he has not experienced a concern like that before, but the house is elevated so first responders would be able to see in the windows. He stated the driveway is still accessible and yard in front of the house is when in the driveway. He stated he does not think it is an issue.

Garvin stated there was a concern of the debris and trash thrown and can envision then if this fence is allowed collecting along the fence line. He inquired if the homeowner would be the one picking up that trash still.

Fleming stated yes they always do clean up the trash. She stated often the trash that ends up in their lawn gets tangled up in their lawn mower.

Fleming added that directly across from their front door is a public turn around space which is where many of the pedestrian traffic come from. She stated they often approach their home or are yelling in the street.

Keiser closed the public hearing at 7:50PM.

Vincent stated he would like to comment to why the fence ordinance was adopted in Somersworth. He stated the reason they do not have 6' fences in the front yard area is because it would create a compound type structure look. He stated residential neighborhoods that are tight and built on small lots in the past you would not be able to see any homes. He stated that is why they only allow certain size fencing in front of a building, it would not be suitable or sightable. He stated a 4' fence vs 6' fence will not likely make a difference on the trash. He stated the pedestrian harassment would be a police issue. He stated a 6' fence would give the lot a compound look and be unsightly. He stated his recommendation is that the application be denied, in part that everyone would come out seeking 6' fences, the others granted were special circumstances. He stated there needs to be a balance and this ordinance was looked at all around with a 4' fence allowance for balance.

Fredette stated his concern of granting the variance is in part due to the location of the right of way. He stated the values of surrounding properties would be diminished to Brooks and Vincent's points because allowing a 6' fence without specific circumstances everyone would be seeking to put one up. He stated he does not see how the proposed fence is not contrary to public interest because the explicit purpose of the ordinance is to not have 6' fences in the front yard. He stated literal enforcement of the ordinance does not produce and unnecessary hardship. He stated he is on the fence about substantial justice because the applicant would like to have their fence. He stated he did not feel the spirit of the ordinance is observed by granting the variance and does not find that the property is unique to grant the variance. He stated he would not vote to support this variance request.

Donohue stated he understands the desire for the 6' fence to achieve security and safety as outlined, he does also feel from description it is a law enforcement issue. He stated he does think it is reasonable to request the variance based on the argument presented but the Board is bound by the 5 criteria that must be met. He stated the special conditions of the property, here the conditions listed some of them are a product of being on a main road such as trash, noise and pedestrians. He stated the volatile or mischievous pedestrians do not fall under the umbrella of special conditions. He stated safety of the property owner is important but does not meet the variance criteria. He stated he does find it reasonable but does not think it meets the variance criteria.

Brooks stated he would echo the statements made by other members. He stated he does not see the hardship. He stated he felt property values would be diminished and feels it does not meet the criteria.

Keiser stated he could see both sides on the affect to surrounding property values. He stated he does think that granting this would be contrary to public interest and would change the character of the neighborhood.

He stated he does not find that there is a hardship of the property to allow for the 6' fence to be in the front yard area. He stated he cannot find that it does not meet substantial justice. He stated he does find that it is contrary to the spirit of the ordinance.

Vincent stated when looking at surrounding communities there are not 6' fences in front of people's homes.

Donohue stated there was reference made to properties on Old Rochester Rd, when reviewing the Google Maps of that corner, the 6' fences referenced are on corner lot. He stated there is no fence in front of those houses, the 6' fence is along what would be considered by the general person the 'side' yard with frontage on Old Rochester. He stated many of the instances that are being referenced are fences that are on the 'side' front yard area. He stated every application is considered case by case and has to be reviewed by the criteria to see if it is met. He stated he does not feel this request meets the criteria.

MOTION: Brooks stated, after review of the application, the file and all the information presented to the Board, I feel that all of the five criteria have **NOT** been satisfied and I move that the request of Central Fence (on behalf of Amanda Fleming) for a variance from Section 18.B to permit the installation of a six (6) foot high fence in the front yard of the property **be DENIED**.

The MOTION is SECONDED by Perkins.

The MOTION CARRIES by a 5-0 roll call vote. (Keiser, Brooks, Fredette, Donohue and Perkins in favor)

B) Willie E. Little, is seeking a Variance from Section 18.B to allow a 6' fence in the front yard area on a property located at 11 Chesley Ave. in the Residential Single Family/A (R1A) District, Assessor's Map 03 Lot 127, ZBA#08-2020 PUBLIC HEARING

Keiser opened the public hearing at 8:06 PM.

Perkins stated he will be recusing himself from this application due to that he is a direct abutter.

Keiser appointed Vincent as a full voting member for the application. The Board consists of Keiser, Vincent, Donohue, Brooks and Fredette.

Willie Little, applicant was in attendance remotely to represent the application.

Ogilvie reviewed the staff memo. She stated the applicant is seeking a 6' fence in the front yard area, this front yard area is along Bourque St. She stated this is a through lot and has frontage on both Chesley and Bourque St. She stated the applicant has answered all of the variance questions and the Board can act on the application.

Little stated the fence will be in his backyard area but his property has frontage on two streets. He stated his property was developed in 1916 and the back portion of his property is too narrow to build on.

Keiser stated by definition any portion of the lot that has frontage on a road is considered frontage.

Little stated he has pets, a pool, neighbors, he likes to have his privacy and his surrounding neighbors have the same fence. He stated he is looking to close off the back portion of the property and put a fence on the side of his property. He stated he has provided a sketch of the fence and pictures of the yard. He stated the fence will be more than 50' from the center line of Bourque St. and will be also setback on his property. He

stated he his pool has been vandalized before and had to file a police report. He stated the fence will close off the property so that his grandchildren do not escape the yard as well.

Keiser stated there were not comments received via mail, email or phone.

Keiser asked how far from the property line on Bourque St will fence be.
Little stated it would be about 50' and in line with his neighbor at 14 Bourque St.

Fredette asked how long the applicant's property is.
Little stated it is about 200'.
Fredette clarified the fence will be about 50' from Bourque St.
Little stated yes.
Fredette asked how far the pool is from Bourque St.
Little stated about 100'.
Fredette asked what style of fence will be installed.
Little stated it will be a 6' vinyl fence.

Garvin asked if the proposed fence will be in line with the fence at 14 Bourque St, (Map 03 Lot 122).
Little stated yes, his fence will meet up with theirs.
Garvin clarified that this fence would be in line with 14 Bourque St.'s house.
Little stated yes the back of that house.

Keiser closed the public hearing.

Vincent stated he feels this request is very different than the application that they just heard. He asked if the back portion of this lot is buildable.

Keiser stated that is correct, it is all one lot currently, but a variance would needed to subdivide it.

Vincent stated he feels a variance should be granted in this situation because the property is a through lot and the fence will be in the back portion of the property (Bourque St side). He stated he is familiar with the property having been there with the Fire Department when it burnt once. He stated by constructing the fence in the proposed location he would consider is the back of the property.

Fredette stated he is in favor of this request and feels the fence is far enough back. He stated if he was to make the motion he would want to include a setback requirement to ensure that the fence is far enough back to protect streetscape. He stated he thinks it serves public interest to have a fence around the pool. He stated this is a totally different situation in comparison to the last application. He stated the lot is very narrow and as long as the fence is far enough back would have no issue with it.

Donohue stated he agrees that this property is very different than the last application. He stated because the proposal is for the 'backyard' that has the road frontage it is still considered a front yard area because it is a through lot. He stated he feels it meets that there are special conditions of a property to allow the variance being that it is a through lot. He state the proposed location would not diminish surrounding property values, would not go against the spirit of the ordinance, does not think it is contrary to public interest and substantial justice is done by allowing him to close the lot. He stated the neighbor on Bourque St (14 Bourque) would be able to put a fence in this same location because it would be in line with the house. He stated he feels all 5 criteria have been met.

Garvin stated he drove by the property and agrees with the statements made. He stated the purpose of the ordinance is to keep the fence from being too close to the road and the proposal is to have it plenty far back.

Brooks stated he feels this is similar to past applications they have previously approved, where through lots make the back yard be a front yard. He stated in those application's they required the fence to be at least 25' to ensure streetscape. He noted in this application the application is asking to have his fence 60'-80' from the property line it is even further from the road. He stated the through lot is unique and the setback of the fence meets the criteria.

Keiser stated he agrees that the request meets the 5 criteria. He stated it will not diminish surrounding property values because it is not different than a property owner putting a fence in line with the back portion of the house. He stated it will not be contrary to public interest and no safety issues. He stated the property is unique and a classic case of why the variance process exists. He stated the through lot creates two frontages and cannot put a 6' fence anywhere in the back yard. He stated it will provide security and meets the spirit of the ordinance. He stated they often require a normal setback for the fence and feels that for this application to require the applicant to place the fence a minimum of 50' would be appropriate.

MOTION: Vincent 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 and I move that the request of Willie E. Little to allow a 6' fence in the front yard area of the Bourque Street side of property **be GRANTED WITH THE FOLLOWING CONDITIONS:**

1. The fence shall be a minimum of 50' from Bourque St.

The MOTION is SECONDED by Brooks.

Discussion: Fredette clarified property line or road center. Keiser stated property line.

The MOTION CARRIES by a 5-0 roll call vote (Keiser, Fredette, Vincent, Donohue and Brooks in favor.

Brooks **MOVED** to **ADJOURN** the meeting. Fredette seconded the Motion. The **MOTION CARRIED** 5-0 by a roll call vote and the meeting **ADJOURNED** at 8:32M.

Respectfully Submitted,

Dana Crossley, Planning Secretary