

VILLAGE OF SADDLEBROOKE  
BOARD OF ADJUSTMENT  
REGULAR MEETING AND PUBLIC HEARING  
FEBRUARY 22, 2018 -- 7:00 P.M.

CALL TO ORDER:

Jack Carter, Chairperson called the meeting to order at 7:00 p.m. in the Community Center.

ROLL CALL:

Present: Jack Carter, Chairperson; Marie Stopyra, Vice Chairperson; Tom Thomason; and Jerry Sears.

Absent: Handy Haydon; Jon Cortner (Alternate); Rich Baker (Alternate); and Gary Hackett (Alternate).

ADOPTION OF THE PROPOSED AGENDA:

Jack Carter informed the members of a change to the proposed agenda. He explained that Mike Pettit, who was named to the Board of Adjustment by the Board of Trustees was removed due to a residency requirement, and is being replaced by Jerry Sears.

There being no other changes to the agenda, Jack asked for a motion to amend the agenda with this correction.

Marie Stopyra made the motion to amend the agenda. Jerry Sears seconded the motion.

Members polled: Jack Carter—yes, Marie Stopyra—yes, Tom Thomason—yes, Jerry Sears—yes.

All were in favor of the motion. The motion was agreed to by voice vote.

APPROVAL OF MINUTES OF FEBRUARY 15, 2017:

Jack Carter asked the members if they had reviewed the minutes of the last meeting of the Board held on February 15, 2017.

There being no changes to the minutes of February 15, 2017, Jack asked for a motion to approve the minutes.

Marie Stopyra made the motion. Jack Carter seconded the motion.

Members polled: Jack Carter—yes, Marie Stopyra—yes, Tom Thomason—yes, Jerry Sears—yes.

All were in favor of the motion. The motion was agreed to by voice vote.

APPOINTMENT OF OFFICERS FOR 2018:

The next item on the agenda was the appointment of officers for the positions of Chairperson and Vice Chairperson. These officer positions are only held for one year.

Jack Carter asked for a motion to appoint a Chairperson.

Jerry Sears made the motion to nominate Jack Carter for Chairperson. Marie Stopyra seconded the motion.

Members polled: Marie Stopyra—yes, Tom Thomason—yes, Jerry Sears—yes. All were in favor of the motion. The motion was agreed to by voice vote.

Jack Carter asked for a motion to appoint a Vice Chairperson.

Jerry Sears made the motion to nominate Marie Stopyra for Vice Chairperson. Jack Carter seconded the motion.

Members polled: Jack Carter—yes, Tom Thomason—yes, Jerry Sears—yes. All were in favor of the motion. The motion was agreed to by voice vote.

#### MOTION TO ADJOURN REGULAR MEETING:

Jack Carter asked for a motion to adjourn the regular meeting of the Board of Adjustment.

Jerry Sears made the motion to adjourn. Marie Stopyra seconded the motion.

Members polled: Jack Carter—yes, Marie Stopyra—yes, Tom Thomason—yes, Jerry Sears—yes.

All were in favor of the motion. The motion was agreed to by voice vote.

The regular meeting of the Board of Adjustment was adjourned.

## PUBLIC HEARING

#### CALL TO ORDER:

#### PLEDGE OF ALLEGIANCE:

#### PURPOSE:

Jack Carter explained the format and purpose of the Public Hearing. The Board of Adjustment met to hear Case No. 2018-1, a request by Carl and Elayne Hartter, 652 Meadowview Lane, Saddlebrooke, MO 65630, for a variance concerning Article V, Section 5.02(q) Fences, of the Village of Saddlebrooke Planning and Zoning Ordinance No. 2012-14. The Public Hearing was advertised in two local newspapers and a letter from the Chairperson, Board of Adjustment was mailed notifying the immediate neighbors and property owners of Mr. and Mrs. Hartter of the date of the Public Hearing.

#### ORDER OF HEARING:

Jack Carter summarized the order of the hearing, as follows:

- a. Applicant's side of the case.
- b. Planning and Zoning Commission's or the Zoning Administrator's side of the case.
- c. Interested property owner's present their opinions.
- d. Applicant's rebuttal.

- e. Planning and Zoning Commission's or Zoning Administrator's rebuttal.
- f. Public comments.
- g. Board deliberates in private.
- h. Board discussion and vote.
- i. Public Hearing adjourned.

Jack mentioned that this is our first Hearing and asked Mr. Hartter to start first.

Mr. Hartter explained that his house sits on a steep lot and there is a natural spring in the back. There are two (2) doors on either side of the house, but the house has no direct access to the back yard. He would like to install a wood fence on each side of the house for his dogs to go outside. The fence would also add a little more security for both doors. He said he noticed other homes in Saddlebrooke that have fences in their side yards.

Jack Carter asked if everyone was familiar with where he wanted to put the fences on each side.

Jerry Sears had a question concerning the original Zoning Compliance Permit Application dated January 18, 2018. When Mr. Hartter provided a description of the project, the original form mentioned putting a fence on the east side of the home only. The Application for Variance that came to the Board of Adjustment says "fences" plural, with it on both sides of the house.

Mr. Hartter said on the following form that he filled out he put both sides.

Paul Dountas mentioned the original application came to him saying one (1) side of the house.

Jack Carter noted that Mr. Hartter is now requesting two (2) fences on both the east and west sides of the house.

Jerry Sears inquired how the Zoning Administrator would handle this, because it does vary from what the Board is asked to do.

Paul Dountas mentioned this is new ground for everybody. If the five (5) requirements for the Variance are met and it is granted then we probably would need another submission to the Design Committee with both fences on it. We would probably need a new application and it would only take a day or two, if that is the way it goes.

Mr. Hartter wanted to clarify that when Mark Dreiling (Design Committee) came out he asked him to look at the other side of the house if the fence didn't work on the east side because it is actually behind the garage. He wasn't sure what "behind the house" meant. That was another option that he asked for.

Jerry Sears told him it is generally accepted to mean behind the rear plane of the house.

Jack Carter asked to hear from the Planning and Zoning Commission or the Zoning Administrator's side of the case next.

Susan Crane, Chairman of the Planning and Zoning Commission, said it is pretty cut and dried on our part on what the Zoning Ordinance says and it says it has to be behind the plane of the house. We just have to go by what the zoning regulations say and that is the reason it was initially rejected.

Jack Carter read from the Ordinance, "All fences shall be constructed to the rear of the main building". Jack wanted to know how they interpret the fence on the west side of the house behind the garage?

Susan Crane said that is something you would have to ask Mark about, because she was not at the property and he was. Mark said it did not conform to the guidelines.

Harry Gaines (Design Committee) mentioned the west side was never discussed when he was there, they only discussed the east side. They never went over to the west side.

Marie Stopyra asked what the definition is of the rear of the main building? Strictly behind the house and not to extend out?

Susan Crane explained it can extend beyond the house but it is behind the back plane of the house.

Jack Carter said he understood what the rear plane of the house was, but wanted to know what the intent is. Planning and Zoning is looking at it from the east side and saying that is not the rear plane or the back of the house. It would be behind the retaining wall, but that is not behind the house.

Jack, looking at pictures of the back of the Hartter home, said on the west side of the house there is the garage. What counts as back of the house? He wants to build from the back of the garage. Is that also in violation or not? We need clarity before we approve or deny anything.

There was more discussion among the Members of the Board and Planning and Zoning concerning the fence placement.

Susan Crane said from Mark Dreiling's perspective because he rejected it he is thinking about the main part of the house, not the garage.

Jack Carter asked to hear from the Zoning Administrator.

Paul Dountas (Zoning Administrator) said the main structure in this case is the living space of the house. Technically, that is where the authorized fence under this Ordinance would have to come off from behind that plane.

The garage would not be considered the main structure of the house. So coming back off that would be in violation also. But we did not see that because that was not in the original request. The original request was for the east side of the house and that was very obviously on the side and not to the rear of the house. The Ordinance says rear of the main building and that was what the decision was made on for the Zoning Administrator and the Design Committee. Paul also said he thinks that all those five (5) rules on the Variance Application have to all be satisfied to grant a variance.

Jack Carter proceeded to read the five questions of the “Facts in Support of Granting the Variance,” and the answers Mr. Hartter supplied on each section of the Application.

Question 1. Describe the condition that exists that is unique to the property in question, and is not found in the same zoning district; and how this unique situation was created:

Answer. “Please see above. Fence would need to be placed in a location that would be un-useable.”

Question 2. Granting the requested variance will not adversely affect the rights of adjacent property owners because:

Answer. “Fence(s) would not be visible from the road and would conform to the other zoning requirements. Fence(s) would be along the back sides of the home—well away from property lines.”

Question 3. Strict application of the provisions of the Zoning Ordinance of which the variance is requested will constitute the following unnecessary hardship upon the property owner represented in this application:

Answer. “Unusable back yard due to natural spring, swampy conditions, steep terrain and no access directly from the house.”

Question 4. The requested variance will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare because:

Answer. “The fence(s) would be placed in locations directly where other fences have been placed at other properties in the Village.”

Paul Dountas wanted to address that point. He explained there are other properties that have a fence that are not in compliance with the Ordinance. All but one (1) of those were erected before 2012 when the Planning and Zoning Ordinance was created. Only one (1) was erected after the Ordinance was put in place, but that fence should have had to go through the same process that Mr. Hartter is going through tonight which is asking for a variance. That didn’t happen for various reasons. But we are trying to enforce the Ordinance and go through the correct procedures. Anything

grandfathered that is not in compliance that exists out there should not affect this decision going forward.

Question 5. The granting of the variance desired will not be opposed to the general spirit and intent of the Zoning Ordinance because:

Answer. "Fence(s) would be built in accordance with the other zoning requirements."

Harry Gaines had a question on what the height of the fence would be.

Mr. Hartter replied six (6) feet, but would make the fence whatever height the Board wanted.

Jack Carter mentioned the Property Owner's Association (POA) covenants says a maximum height of five (5) feet at the perimeter. Is this a perimeter fence?

Paul Dountas said he did not know, and since this is not our issue Mr. Hartter would have to talk to the POA about this. Whatever happens here tonight you still have to go through the POA.

Jack Carter asked if there were any interested property owners attending tonight. Mr. Pettit is a neighbor and he is not here. He explained that all property owners on Meadowview Lane were notified by letter of the Public Hearing. Jack stated that one person called the Village office and he sent him the Variance application, but heard nothing back. No property owners attended the Hearing to either support or reject the application.

Jack Carter asked Mr. Hartter and then Planning and Zoning if they had any rebuttal, and they said no.

Jack Carter asked the Board if they had any questions for either Planning and Zoning or Mr. Hartter.

Jerry Sears had a question for Mr. Hartter concerning materials that he wished to make the fence out of. He said it is stated in the request that it is going to be pressure treated wood.

Mr. Hartter replied the material would be pressure treated wood, and it would be stained to match his deck.

Paul Dountas stated because this is the first time around for everybody, and it is not stated in the Ordinance, he would assume that the Board could offer a partial variance if when looking at the whole project you didn't like something. Paul said he thought Planning and Zoning, the Zoning Administrator, and the Board of Trustees would support that option from this Board.

Jack Carter had a question for Planning and Zoning. Showing several pictures of fences at other homes in Saddlebrooke, Jack commented that some of the fences do not follow the rules. A discussion followed regarding when those fences were built.

Paul Dountas explained when a new house is built, the process right now is the Zoning Administrator meets with the builder and owner and all the requirements that are in the Village Ordinance are given to them.

Jack Carter had a question for the Village on what the intent of the Ordinance on fences is, and read Section 5.02(q) of the Planning and Zoning Ordinance on Fences.

“All fences must conform to the design of the structure and the neighborhood. All fences shall be constructed to the rear of the main building. Chain link and barbed wire are prohibited. Design Committee must approve all fences prior to installation.”

Paul Dountas said the intent of the entire Ordinance is to maintain the Village in a uniform way as a high-end neighborhood, and not to have fences of any and every description popping up around the neighborhood. Without rules you are going to have everything. What those rules are and how they are written can be changed or modified, but these came out of the original committee that wrote the Ordinance which was written in 2012.

Jack Carter said he wanted to have as many facts as possible, and asked Mr. Hartter how many feet of fence is planned.

Mr. Hartter said on the east side 71 feet from the retaining wall which is almost six (6) feet high, and 41 feet from the back of the garage to the end of the deck.

Jack Carter asked if there were any other questions?

Harry Gaines asked what the vertical drop is on this yard?

Mr. Hartter replied there is a nine (9) foot retaining wall and six (6) foot back.

Jack Carter asked the Board to move next door to Suite B to have a private discussion on Mr. Hartter's request for a variance.

The members of the Board returned to resume the Public Hearing.

Jack Carter stated they had a healthy discussion and they all agreed to grant the application for a variance with conditions. Fence will be installed where Mr. Hartter showed them on Saturday, within the dark mulch area, behind the retaining wall and on both sides as he requested. Subject to these conditions:

- 1) Fence is to be five (5) feet tall.
- 2) Fence is to be stained to match the decking on the home; and

3) Fence is to be installed in the location shown to the Board of Adjustment members on Saturday, February 17, 2018.

Paul Dountas said Mr. Hartter will have to make a request to us to get fences on both sides just so the paperwork is done.

Harry Gaines said you are acting on something we have never seen.

Paul Dountas said it is a variance not an appeal. You don't have to have the inspection done to get a variance. Paul told Mr. Hartter to fill out the form again and work on getting together with him. He also told him he needed to contact Bill Blamey (POA) again.

**MOTION TO ADJOURN:**

Jack Carter asked if there were any other questions before they adjourned. Hearing none he asked for a motion to adjourn.

Jerry Sears made the motion to adjourn. Marie Stopyra seconded the motion.

Members polled: Jack Carter—yes, Marie Stopyra—yes, Tom Thomason—yes, Jerry Sears—yes.

All were in favor of the motion. The motion was agreed to by voice vote.

The Public Hearing was adjourned at 8:00 p.m.

REF: (1) Supporting documents on file.

(2) Audio of Meeting on file.

Action Required: Mr. Hartter to contact the POA Architectural Committee and resubmit the Zoning Compliance Permit Application to the Zoning Administrator.

Alicia Jones  
Secretary