

## **MINUTES OF THE BOARD OF ZONING APPEALS MEETING**

**November 28, 2016**

The regular meeting of the City of Mission Board of Zoning Appeals was called to order by Chairman Jim Brown at 6:30 PM Monday, November 28, 2016. Members also present: Mike Lee, Robin Dukelow and Stuart Braden. Also in attendance: Brian Scott, Finance Director; Danielle Murray, City Planner; and Nora Tripp, Secretary to the Board of Zoning Appeals.

### **ELECTION OF OFFICERS**

**Mr. Braden moved and Mrs. Dukelow seconded** a motion to elect Jim Brown as Chairman of the Board of Zoning Appeals. The vote was taken (3-0-1). Mr. Brown abstained. The **motion carried**.

**Mr. Lee moved and Mrs. Dukelow seconded** a motion to elect Stuart Braden as Vice Chairman of the Board of Zoning Appeals. The vote was taken (3-0-1). Mr. Braden abstained. The **motion carried**. Mr. Braden abstained from the vote.

**Mr. Braden moved and Mrs. Dukelow seconded** a motion to elect Nora Tripp as Secretary to the Board of Zoning Appeals. The vote was taken (4-0-0). The **motion carried**.

### **APPROVAL OF MINUTES OF OCTOBER 26, 2015**

**Mrs. Dukelow moved and Mr. Braden seconded** a motion to approve the minutes of the October 26, 2015 meeting. The vote was taken (4-0-0). The **motion carried**.

**Mr. Brown:** I typically read the rules and regulations of the Board of Zoning Appeals, just so anybody who hasn't been here before understands how we're going to conduct the meeting.

*[Mr. Brown read rules and procedures into the record.]*

### **APPLICATION #16-01 FENCE VARIANCE – PUBLIC HEARING** **5500 Outlook Street**

**Ms. Murray:** This is for 5500 Outlook Street. This is a request for a variance to the height of an exterior side yard fence, and also the type of fence, to enclose a part of the side exterior yard. The applicants are with us this evening and are here to answer your questions.

A little background on the property. The subject property was platted in the early 1920s. The house was also built in that timeframe. The lot is 120 feet by 140 feet and located on a corner. The side of the building's dimension is sited along Outlook Street. The parcel on which the house is built currently matches the original platted lot. Many of the surrounding homes in the subdivision were developed later than this home and were built on half lots rather than full lots. The property is currently zoned Single Family Residential, and we do not have the original plat of the home. The applicant has owned the home since 2006.

Johnson County AIMS imagery is available from 1941 to 2016. I did take a look at that. The farther back in time you go, the imagery is of lower quality. It does look like there may have been an original driveway on the north side of the lot. Also, you're able to see on the imagery as far back as 2000 that there is an existing chain-link fence in the area, which is under discussion tonight. Photos from the Appraiser and from Google Street View are also included in the packet tonight, and they indicate that there was a deck on the north side of the home from 1993 through 2011. There is currently no deck on the north side of the home. We do have building

permit data which indicates the current owner remodeled in 2011 and constructed a roughly 800 square foot addition to the rear of the home. The submitted building plan from 2011 also includes a new deck, which was not constructed. It appears that the existing deck was removed at the time of the project and no deck was built as that project wrapped up.

Over the years, the home has alternated between having and not having an exterior door on the northwest side. Currently, the owners have applied for and been approved for construction of a deck on the north and west side of the home. The deck proposed does meet setbacks. That permit is still pending issuance for payment. A fence permit application was also made about the same time and had to be rejected as submitted because it did not meet our fencing requirements. The proposed privacy fence would have encroached into that side exterior yard. So, the owners of the home wish to replace the existing fence to accommodate the proposed deck project.

Included in your packet is the applicable ordinances that we used when we reviewed the fencing permit request. The highlighted section of the screen, the fencing section is the main point of discussion this evening for the variance. It states that decorative fencing may be built to a height of three feet in the front yard and side yard abutting the street. Otherwise, it directs that a maximum height for fences in yards be up to six feet in height.

Then, I also included for you some descriptions of what a corner lot is, how the front of a corner lot is determined, what a yard is by definition. Included in the staff report is the drawing that I have on the screen tonight. This is the "cheat sheet" that we use to help evaluate fence permit applications in compliance with our code for fencing. We've color-coded the yards, and the green indicates areas where privacy fencing can be constructed. The red areas indicate front yards and side exterior yards where only decorative fencing may be constructed. We consider decorative fencing to be fencing that is not intended to enclose a space, but rather is just for decoration. Our ordinances list one kind of decorative fencing, it says post and rail fencing, but we consider many kinds of things to be decorative. It might be a section of picket fence as an accent or as a decoration, and it is not intended to enclose the space to keep something in or out.

The areas in green would allow privacy fencing up to six feet in height, and the red areas would not. On a corner lot, the front is considered to be the shorter side of the two sides. So, this is actually the applicant's home, with south being up. The side exterior yard is north, which is at the bottom of this drawing, which is a more densely marked red area.

The existing non-conforming chain-link fence on this property would be allowed to remain regardless of the decision about a variance because it has been existing so far back in time that it might as well be a non-conforming situation. So, unless they were to remove it, it doesn't have to be removed, depending on how the request for the variance is determined. But, any new fence installed is required to comply with our current fence code, which is why we had to deny their fencing permit request.

So, like I said, the applicant is requesting approval of a variance to allow for a six-foot-tall privacy fence to enclose a portion of the exterior side yard. Granting the requested variance would allow for a fence to exceed the maximum height of the fence code by three feet, and to

be more decorative in nature, i.e. enclose the space for privacy around the proposed deck project.

Included in your staff report are the findings that need to be made tonight, which are findings a. through e. There also are some pictures from Google Street View, showing the property in 2011 and from 2014. The applicant included their findings of fact with their application for your consideration tonight. They also included some additional photos of the property. We included the drawing from the fence permit application, showing roughly where they would like to have the fence on their property around the deck.

Also included is a document regarding what a variance is, how to apply for one, and how they are determined. And then, the full version of the “cheat sheet” that we use to evaluate fenced permits, so that you might have that for future reference, if you like. That concludes staff’s report.

Chairman Brown: Questions of staff?

Mr. Lee: I have a question. How tall is the existing chain-link fence?

Ms. Murray: They can probably answer that better, but it appears to be maybe a three-foot-tall chain-link.

Mr. Lee: Do they have a permit?

Ms. Murray: It does not have a permit, and it goes so far back in time that I’m not even sure I can tell you when it was installed.

Chairman Brown: Looking at the red area that’s considered the side yard, how long has that been, the interpretation - ?

Ms. Murray: My notes to myself say 2009, but it may be as far back as 2007 because that’s when I started reviewing fences. I think 2009 may have been when we instituted the need to get a fence permit, so I’d say for certain 2009. At that point, the interpretation that was made was to allow fences in the side interior yard, which is the green hatched area. Before, we may not have even allowed them there. The interpretation was to make a distinction between side interior and side exterior at that point, to clarify.

Mr. Braden: When you’re able to do a rear yard, six-foot fence, how close to the property line can you be?

Ms. Murray: You may be exactly on it. There’s no required setback. It tends to create a no-man’s land [*inaudible*] fences that are maintained. So, you can put a fence directly upon a property line.

Chairman Brown: How close to the street side would they be able to be in the rear yard area shown on that diagram?

Ms. Murray: The property line to the curb is – and they may have a better measurement, but when I did a quick measurement on AIMS, you can kind of see there’s a little bit of a distance

between the back of the curb and where the property line is. It's generally about 10 feet in most residential areas in Mission. In their proposal, if you look at the drawing that they included, it's not necessarily to put the fence on the property line. They may put the fence closer to their house than that, but they would be allowed to put it in this section as far as the property line, if they so choose.

Chairman Brown: Up to the back rear corner of the house?

Ms. Murray: Yes. We would determine that this is the back rear corner of the house in this case, rather than this corner.

Mr. Lee: It's really just the area off the deck area there?

Ms. Murray: Right. So, the privacy fence could come here, but then it would have to go in like this. They would like it to come farther forward to this corner because the deck would be in this area. And their drawing, like I said, doesn't necessarily bring it all the way out to here. You can ask them. They may prefer to have it in this area. The drawing was done by the fence company and it's not exactly a [*inaudible*].

Chairman Brown: Do you know what that distance is, the depth of the house at that location? From that corner to that corner?

Ms. Murray: It's about 20 feet. This is about 48 feet, and back of the curb is 55, 57. This is just an AIMS image.

Chairman Brown: If the variance were granted, would the entirety of their request to fence be out of the site distance triangle?

Ms. Murray: Yes. I did measure site distance, which is measured from a point roughly here, back 120 feet, and [*inaudible*] and 20 feet here. So, the site distance corner, any way you measure it, is roughly this much of the corner of the lot. So, yes, it would be well outside the site distance triangle required.

Chairman Brown: Do you have any idea how many similar properties there are?

Ms. Murray: I did a quick review of surrounding properties. There are other houses on corner lots in similar situations, but I did not survey the entire city to see how many there were. This lot is a little bit different than its neighbor's lots because it was built on a full lot. You can kind of see that these are half lots of the same subdivision. But, there are a few houses nearby on similar corner lots. I can't tell you for sure what proportion that would be.

Mr. Lee: There could be another dozen or so?

Ms. Murray: Could be.

Chairman Brown: Any further questions for staff at this time?

Ms. Dukelow: I have a question. Do we have the proposed fence for viewing? The drawing?

Ms. Murray: Yes.

Ms. Dukelow: I was meaning at the corner, the proposed corner was the front, and they had proposed a 50-foot setback.

Ms. Murray: This the property line on this drawing. The proposed fence I think is the red line. This is the property line. This is where it would be allowed.

Ms. Dukelow: So, the proposal is to extend the privacy fence to the front-most northeast corner of the house.

Ms. Murray: On this drawing it's here.

Ms. Dukelow: Correct.

Ms. Murray: You could make a motion to approve the variance and put some limitations on it to be not the full extent of the side exterior yard, or to a point on the house, it would be allowed for. If you wanted to make those conditions. We haven't ever really had conditions on a variance before, but –

Chairman Brown: Just for clarification, the 15 foot there is marked as being from the sidewalk. Is that the clear intent, or is it intended to be from the curb?

Ms. Murray: That's a question for the applicant.

Chairman Brown: Any more questions of staff? [*None.*] At this time, I would like the applicant to come up and present their argument. Please be very clear and address the seven items that you're required to address. Basically, you have to prove that you have some extenuating circumstance that's unique to your circumstance, that's going to make you different than anybody else in the city.

*Jeff Randel, Applicant, 5500 Outlook, appeared before the Board of Zoning Appeals and made the following comments:*

Mr. Randel: Basically, we're just trying to put a privacy fence where our chain-link fence is now. The chain-link is about five feet high. And we want to do it further away from the sidewalk because there is some slope on our yard, so it would give us a little more privacy. As you know, 55<sup>th</sup> Street has become a lot busier over the last 10 years, especially since the remodel on Johnson Drive. So, we're just trying to get more privacy.

The reason I think the variance is in order is because when my wife originally bought the house, there was a deck where we're trying to put our deck now. So, the fence went around it. If we put it where we can right now, the privacy fence would run into the deck, and we're worried about the looks of that. Really, that's the main thing. We feel like you're trying to decide between the privacy for our kids with a privacy fence, or the look of the house, or the deck. Which I feel like is already there. We had it in the original plan when we did the remodel in 2011, but that remodel, I was just doing it on the side, and it took us about two years. By the time we got to that point, we were out of time and money. So, we just left it for later. That's pretty much what we're trying to do.

Mr. Braden: Did you consider extending the fence to the corner of your deck and providing

privacy at your deck railing, provide some kind of privacy there, and have your steps go into the back yard, so you could follow the side yard fence regulations?

Mr. Randel: We're more worried about how all that was going to look, how it was going to tie into the deck right there. We spent a lot of time and money trying to get the house to look the way we want it to, and in our minds, I mean, I knew we had to get a fence permit, but I didn't know about the variance. So, when we decided to stay in the house and remodel it, we kind of had this visual of what the house is going to look like. So, we're trying to see if we can get that visual to come true.

Ms. Dukelow: Before being remodeled, there was a door to the north [*inaudible*] onto the deck. Is there currently a door?

Mr. Randel: Yeah, that was the original house before we did the remodel. During the remodel, we moved the door from here and put a sliding glass door here.

Chairman Brown: Other questions for the applicant? [*None.*] Does the applicant have anything further they would like to address with the board? [*None.*] At this time, I'd like to open the public hearing. I invite anyone attending the meeting and wishing to make comments to approach the board. Please state your name and address if you choose to speak. This is Case No. 16-01, a fence variance at 5500 Outlook. [*None.*] Seeing none, at this time, I'll close the public hearing and open it up for board discussion. Does anybody have any comments they would like to make regarding their position on the fence variance, any findings of fact that support or refute the applicant's request?

Mr. Lee: I would have to say that I don't think they've proved that [*inaudible*] adjacent to this piece of property. There are multiple other lots in the city of Mission with that same scenario. Obviously, if you brought the fence back in closer to the deck, you wouldn't need a variance. You would accomplish pretty much what you're looking for without a variance. I looked at one house at 58<sup>th</sup> and Reeds, which is a very similar situation. They put in a three-foot wooden fence, which I know is not the look you're looking for. But, it accomplishes what you're trying to accomplish, and it's the same thing. The problem I have is if we grant a variance to you for that particular situation, if anybody else comes to us with the same corner lot, we would need to grant the same thing.

Mr. Randel: We also have our air conditioning unit in the front corner, which we're also hoping to cover up. And I think six-foot privacy for the kids is, you know – I mean, if we do a privacy fence per code, I'm not sure if we would put the deck out there because it would feel like most of the deck is in the front yard, at that point. It would be nice to cover up [*inaudible*] with a deck. There was a step-down there, the flashing there, and we could obviously [*inaudible*] something like that. There are a few other things that we were hoping to get done by having the deck be there, in the same spot that it was.

Mr. Lee: And I can certainly see where having the fence would accomplish a lot of the goals you're wanting. But, what I don't see is the fact that it's a unique set of circumstances that apply to just your lot. They would apply to anyone else's.

Mr. Randel: I think we felt like the deck was mainly the –

Mr. Lee: The deck is [*inaudible*]. It's not something that's there. That's one of the things we need to look at in these five items that we're looking for.

Mr. Randel: Yeah, I mean, I know we didn't put it back in a timely fashion. If I would have known that I had to leave it up to put the fence where I wanted to, we might have [*inaudible*] and some of the other stuff. But that's how we thought this was different, is the [*inaudible*] of that side, we were just trying to put the deck back where it was. [*Inaudible*] without our deck feeling like it was in the front yard.

Ms. Dukelow: I have a comment. My opinion is that the homeowner is asking to be able to enclose the back yard with a privacy fence, and that makes a whole lot of sense to me. The way I understand this, if the variance is not granted, they would be restricted to enclosing the fence – The fence would have to return to the farthest northwest corner. So, they would lose the serviceability, if you will, and the recreational use of a good chunk of yard. I mean, that whole side, really. And I know that there are other properties throughout the city where there are instances of where a home is on a corner and they've enclosed their yard. As Danielle alluded to you previously, in many cases, there is, in fact, a driveway. I don't know what kind of alterations this house has undergone through the years, but as it sits, yes, I can appreciate their desire to enclose some of that side yard, and I do see it as a unique feature of this property.

Chairman Brown: Okay, at this time, I will take a motion.

**Mr. Braden moved to approve, and Ms. Dukelow seconded**, the proposed variance for property located at 5500 Outlook Street, allowing for the placement of a privacy fence up to 6 feet in height in the side exterior yard.

**The vote was taken** (1-3-0). The **motion failed and the request for a variance was denied**. **Mr. Braden, Mr. Brown and Mr. Lee voted in opposition to the motion.**

Ms. Murray: The motion failed. Determination has been made that it's been denied.

Chairman Brown: Motion denied. Due to failure to gain support. Does the applicant have any other options moving forward?

Ms. Murray: There is an appeals process for determinations from the Board of Zoning Appeals. I will give them the information about that in the result letter that I will send them tomorrow.

Chairman Brown: Thank you.

### **ADJOURNMENT**

With no other agenda items, **Mr. Braden** moved and **Mrs. Dukelow** seconded a motion to adjourn. The vote was unanimous. The motion carried. The meeting adjourned at 7:00 p.m.

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Jim Brown, Chair

**ATTEST:** \_\_\_\_\_  
Nora Tripp , Secretary