



Charleston Board of Zoning Appeals

AGENDA

8:30 a.m., Thursday, July 9, 2020

Join via internet at:

<https://us02web.zoom.us/j/84971873876?pwd=Vy85L3JrTDBDaE1VYzZVQ0xRZWVGUT09>

Or call: 312-626-6799 or 929-436-2866 or 346-248-7799

Webinar ID: 849 7187 3876

Password: 914542

I. Items for Review

VAR-20-2982

Application of Sarah Korwan requesting a variance of the fence height restriction in order to bring into compliance a fence installed on the property located at **659 Holly Road**.

CUP-20-0206

Application of Jodi McMillian requesting a conditional use permit in order to establish a massage therapy practice as a home-based business on the property located at **7 Park Avenue**.

II. Approval of minutes for the June 25, 2020 hearing.



**Board of Zoning Appeals
PUBLIC HEARING NOTICE**

Until further notice, BZA hearings will be accessible via Zoom.

Case Description

VAR-20-2982—Application of Sarah Korwan requesting a variance of the fence height restriction in order to bring into compliance a fence installed on the property located at **659 Holly Road**.

The file (including the application, site plan and other supporting documentation) is available for your inspection online at <https://charlestonwv.civicclerk.com/>. If you have questions, email lori.brannon@cityofcharleston.org or call 304-348-8105.

Hearing Details

WHEN: 8:30 a.m.

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Public Participation

Anyone who wishes to comment on the case described above is encouraged to do so in one of the following ways:

1. Send a written statement to lori.brannon@cityofcharleston.org. These statements will become a part of the record and will be shared with members of the Board prior to the hearing.
2. Speak directly to the Board by joining the meeting via Zoom using the details listed above. ***Please provide your name and the phone number or e-mail address you'll be using to join the hearing to lori.brannon@cityofcharleston.org by 5 pm on Tuesday, July 7, 2020.***

As a matter of general policy these proceedings will not be transcribed by the Board. Anyone wishing a legal transcript must provide a court reporter at his/her own expense.

Board of Zoning Appeals
Application for Variance

BZA # _____

Hearing Date: _____

Applicant Information	Property Information
Name: Geoff and Sarah Korwan	Address: 659 Holly Road Charleston WV 25314
Address: 659 Holly Road Charleston WV 25314	Tax Map and Parcel:
Phone: 304-543-5700	Zoning District:
Agent Name, Address and Phone Number: (if other than applicant) NA	Property Owner and Mailing Address: (if other than applicant) Same

INSTRUCTIONS: This application must be typed or legibly printed and filed with the Planning Department in person or by mail to 915 Quarrier Street, Suite 1 Charleston, WV 25301. The following items must accompany this application:

1. a site plan drawn to scale; **See attached map. Red line represents approximation of length and placement of fence.**
2. a list of the owners, with their mailing addresses, of the properties within a 100 foot radius of the property for which the variance is being sought; and
3. \$125.00 filing fee in the form of cash, personal check or money order made payable to the City of Charleston.

You are also encouraged to submit any additional information, including photographs, elevations, testimonials or other documentation which may support your application. You or your representative must be present at the scheduled public hearing in order to present your request and answer questions.

THE PLANNING DEPARTMENT WILL NOT ACCEPT INCOMPLETE APPLICATIONS.

A variance is a method by which a property owner receives permission to vary from the development standards established in the Zoning Ordinance governing such matters as building location, building dimensions, setback requirements, placement and quantity of parking, landscaping, signage, and other features included in site design. **Please describe your variance request.** We are requesting a variance from Sec. 3-080 B of the Zoning regulations, which limits the height of a residential privacy fence to six and one-half feet, to allow our privacy fence to exceed this limit by 1 to 3 feet on a steep grade.

Applicable Section(s) of the Zoning Ordinance Sec. 3-080B

Please describe the proposed work to be done on the property. We built a privacy fence, which is 36 feet in length, between our property and that of Mark Hornbaker's. The fence is not in compliance with the Regulation by 1 to 3 feet due to the topography of the property. Specifically, the fence is built on a steep, downward grade.

IMPORTANT: According to Section 8A of the Code of the State of West Virginia and Section 29-040 of the City of Charleston's Zoning Ordinance, the Board of Zoning Appeals may grant a variance if and only if **ALL** of the following four criteria can be satisfied:

- 1.) The variance, if granted, will not adversely affect the public health, safety and welfare or the rights of adjacent property owners or residents; and,
- 2.) The variance arises from special conditions or attributes which pertain to the property for which a variance is being sought and which were not created by the person or entity seeking the variance; and,
- 3.) The variance, if granted, would eliminate an unnecessary hardship and permit a reasonable use of the land; and,
- 4.) The variance, if granted, will allow the intent of the Zoning Ordinance to be observed and substantial justice done.

1.) If granted, your variance must not adversely affect the public health, safety and welfare or the rights of adjacent property owners or residents. For example, public safety cannot be compromised by limiting access for emergency vehicles, and neighboring property owners must not be hindered in the use their properties in any manner permitted in the Zoning Ordinance. If your variance request is granted, how will others in the area be affected? Neither public health, safety or welfare of the adjacent property owner will be adversely affected. It will partially block the owners view and access to our side yard.

2.) Your request must arise from special conditions or attributes which pertain to the subject property and which you did not create. The size, shape and topography of your lot are examples of the physical conditions which may satisfy this criterion. In comparison with other properties in the vicinity and under the same zoning regulations, what is unusual or different about the subject property? The topography of our lot and the adjacent property creates a special circumstance requiring a taller fence to achieve the privacy we seek. Notably, the property line is on a steep grade and the adjacent property sits above the property line next to the fence for which we are seeking the variance.

3.) **An unnecessary hardship is neither personal nor financial in nature.** In this application, an unnecessary hardship is a problem created by some feature of the land which prevents the owner from making reasonable use of the property as permitted by the Zoning Ordinance. The following three questions help to determine if there is an unnecessary hardship with regard to your property.

Without a variance, are you deprived of all beneficial use of your land? We have a reasonable expectation of privacy as well as the expectation that our property will be free of leaves and debris, which has, from time to time, either intentionally or unintentionally, filled the bedding on our side yard next to the property line.

Is your situation due to unique circumstances that are not shared by other land in the district? It is unique to the extent that the adjacent property sits above our property and the property line is on a steep grade.

Would approval of your variance request alter the essential character of the surrounding neighborhood or community? No. It is a 36 foot wooden paneled fence, typical of other residential privacy fences, and is partially.

obscured from the road above the fence by trees and shrubs.

4.) The general purpose and intent of the Zoning Ordinance of the City of Charleston is to protect and promote the public health, safety, convenience, morals and general welfare. For more specific information in regard to the scope and intent of the Zoning Ordinance, please see Section 1-020 as well as the section from which you are requesting this variance. Will approval of the variance allow the intent of the Zoning Ordinance to be observed?
Yes. The privacy fence affords us the privacy and protection we seek, yet neither violates the general character of the neighborhood nor diminishes property values.

Substantial justice is the idea that a standard of fairness has been satisfied according to the substance of the law. Does your variance request represent the least deviation from the Zoning Ordinance necessary to achieve an outcome that is fair to both you and to your community?

To the extent that the property line is on a steep grade, it was necessary to build the fence in excess of the Regulation to achieve the privacy and protection sought.

I hereby affirm that all of the statements and information contained in or filed with this application are true and correct to the best of my knowledge.

Signature

Date

6/1/2020

Planning Department Use Only	
The following is a list of related cases:	
The following is a list of zoning ordinance violations, building code violations and enforcement actions relating to the subject property:	
Application reviewed by:	
Action: ☐ Approved ☐ Rejected	
If approved, were there any specific conditions or limitations imposed by the BZA?	
Planning Official Signature and Title	
Date	







**Board of Zoning Appeals
PUBLIC HEARING NOTICE**

Until further notice, BZA hearings will be accessible via Zoom.

Case Description

CUP-20-0206—Application of Jodi McMillian requesting a conditional use permit in order to establish a massage therapy practice as a home-based business on the property located at **7 Park Avenue**.

The file (including the application, site plan and other supporting documentation) is available for your inspection online at <https://charlestonwv.civicclerk.com/>. If you have questions, email lori.brannon@cityofcharleston.org or call 304-348-8105.

Hearing Details

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Public Participation

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2. Speak directly to the Board by joining the meeting via Zoom using the details listed above. ***Please provide your name and the phone number or e-mail address you'll be using to join the hearing to lori.brannon@cityofcharleston.org by 5 pm on Tuesday, July 7, 2020.***

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Application for

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nal Use Permit

CU # CVP-20-0206

Hearing Date: July 9th 2020

Applicant Information	Property Information
Name: <u>Jodi McMillian</u>	Address: <u>7 Park Ave Charleston WV 25302</u>
Address: <u>7 Park Avenue Charleston 25302</u>	Tax Map and Parcel: <u>WC 24 366</u>
Phone: <u>304-543-4373</u>	Zoning District: <u>R-4</u> <u>W4</u>
Agent Name, Address and Phone Number: (if other than applicant)	Property Owner and Mailing Address: (if other than applicant)

IMPORTANT: This application must be typed or legibly printed and filed with the Planning Department in person or by mail to 915 Quarrier Street, Suite 1 Charleston, WV 25301. The following items must accompany this application: 1) a site plan drawn to scale; 2) a list of the owners, with their mailing addresses, of the properties within a 250 foot radius of the property for which the variance is being sought; 3) \$125.00 filing fee in the form of a check or money order made payable to the City of Charleston. You are also encouraged to submit any additional information, including photographs, elevations, testimonials or other documentation, which may support your application. You or your representative must be present at the scheduled public hearing in order to present your request and answer questions. THE PLANNING DEPARTMENT WILL NOT ACCEPT ANY INCOMPLETE APPLICATIONS.

Please describe the proposed use. Include information such as the activities to be conducted on the site, hours these activities will be conducted, and any other data pertinent to the proposed use. If the proposed use is a business, please attach a list of the officers and their contact information. As a licensed professional massage therapist, I propose operating my solo massage therapy practice at my home residence in a detached garage out building. My office hours would be 10:00AM - 5:00PM Tuesdays - Fridays. I would be staggering my appointments so there would never be overlapping clients parked. I have a long driveway that can fit three vehicles for client parking. I am a sole proprietor and have no employees, and will have no signage on site.

Applicable Section(s) of the Zoning Ordinance Section 3-050 Land use
Section 3-060

Does the proposed use comply with the conditions set forth in the Zoning Ordinance? Yes, I will have enough parking for customers, will not display signage of any sort, I have no employees, and the appointments will be staggered and never will overlap.

Please describe any proposed work to be done on the property. Licensed professional massage therapy sessions, no more than 3 clients seen a day, Tues - Fridays 10AM - 5:00PM.

If your request for a conditional use permit is granted, how will others in the area be affected? My neighbors will not be affected at all. Massage therapy is a very quiet, clean business. I will never have any clients scheduled after 5pm or on weekends. Neighborhood parking will not be affected as I will stagger appointments and I have a long driveway for customer parking.

Will your request devalue the property of others in the vicinity by altering land use characteristics or diminishing the marketable value of adjacent land and structures or increasing congestion on public streets? No, my proposed business will not devalue property values. I will be keeping my front yard, porch, driveway and garden spaces even cleaner and more tidy due to my proposed home business. There will not be more congestion on public streets. I don't think my neighbors will even really notice any difference.

Is your request consistent with the purposes and intent of the Zoning Ordinance of the City of Charleston? Yes, my request is consistent with the intent of the ordinance as the ordinance is to provide citizens of Charleston WV with successful and vibrant options for work and play. Amid the pandemic, supporting small businesses to work from home is definitely a useful intent.

I hereby affirm that all of the statements and information contained in or filed with this application are true and correct to the best of my knowledge.

Jodi McMillan
Signature

5-29-20
Date

Planning Department Use Only
The following is a list of related cases:
The following is a list of zoning ordinance violations, building code violations and enforcement actions relating to the subject property:
Application reviewed by:
Action: ☐ Approved ☐ Rejected

If approved, were there any specific conditions or limitations imposed by the BZA?

Planning Official Signature and Title

Date



Brannon, Lori

From: E Room <ecmroom@yahoo.com>
Sent: Tuesday, July 7, 2020 10:14 PM
To: Brannon, Lori
Subject: CUP-20-0206- Application of Jodi McMillian

This email originated from an outside source: Do not open attachments or links unless you know the content is safe. Forward suspicious emails as an attachment to: helpdesk@cityofcharleston.org

City of Charleston
c/o Ms. Lori Brannon:

RE: CU1 20 0206

My name is Erin Room and I am the owner and resident of 10 Park Avenue. I received the letter regarding 7 Park Avenue and the proposed massage business that would require rezoning of this residential area. While I support urban development and small-business opportunities for our city, I do not feel that this residential area is fit for business and oppose such. Permanent rezoning is inconsistent with the context of this residential neighborhood as no commercial buildings are in the vicinity. I purchased my property in this residential neighborhood to raise my child in a quiet family- oriented community. If I wanted to live in a business district I would have chosen to purchase a home in such an area.

I have several other concerns regarding the proposal on the application that contribute to my opposition.

Most of the responses on the application don't completely justify, in my opinion, the questions asked. Other impacting factors are not addressed as most answers reference the parking issue. While parking is a major concern, it is not the only one. Having a business in any capacity will have an impact on the community, increase traffic, noise, and limit parking for current residents. These are not desirable in a residential area such as ours with our existing occupancy.

Even though the number of clients and hours of operation are listed on the application, another concern is the possibility, in the future, of increased clientele and expansion of the business. To what extent, if any, is this anticipated? In addition, if the property of 7 Park Avenue is to be sold at any point in time under this variance we, the current residents, are not guaranteed another business moving in would have the same agenda as Ms. McMillian's.

In the application and map, the proposed massage studio will be in a garage. The repurposing of the garage would require extensive construction to renovate and convert into a massage studio business. Has a qualified commercial building inspector looked at this area and confirm its suitability? In the application, there is no mention of site planning and construction, aside from the map illustrating the location of the garage on the property. The map doesn't indicate any public lines- water/sewage/electrical- or the impact on current lines that or possible damage they may incur. Construction in itself can be a lengthy process, disturb other property, and be a noisy nuisance.

There are too many factors left unaddressed for me to support the permanent rezoning of our residential area. While I appreciate Mrs. McMillian's contribution to provide Charleston with such a business, I'm concerned for the impact on my family's home and the future of the neighborhood if such rezoning /variance should occur.

Thank you for your time.

Erin Room

Sent from Yahoo Mail. [Get the app](#)