

Board of Zoning Appeals
8:30 a.m., Thursday, June 9, 2022
City Service Center Conference Room · 915 Quarrier Street

Members Attending:

Courtlandt Smith, Chair
Mary Jo Neenan
Mary Anne Crickard
Bill Hairston

Staff Attending:

Lori Brannon

Applicant/Public:

Brady Campbell – VAR-22-3010
Bonnie Stark – VAR-22-3010
Kevin Cantrell - VAR-22-3008

Call to Order: Courtland Smith

I. Items for Review

VAR-22-3010

Application of Bonnie Stark requesting a fence height variance in order to install a 6.5' privacy fence in the front yard on the property located at **5 Shamblin Place**.

Brady Campbell, a resident of Ward 19 and city councilman for Ward 19. Mr. Campbell does not live on Shamblin Place. He attended the meeting at the request of the applicant, Bonnie Stark. Mr. Campbell stated that Shamblin Place is not connected to the city of Charleston via road, in that you can't drive your car to Shamblin Place and stay in the City of Charleston. It is on the back side of Sherwood Forrest and that's how it was annexed. Smith Road, as it passes Shamblin Place, is maintained by the State. The petition refers to the front of the house. It is Mr. Campbell's understanding that the city basically categorizes three sides of Ms. Stark's house as the "front", because Shamblin place goes in front of her house and Smith Road drops down and comes around her house. Three sides on Ms. Stark's house are considered "front". The side of her house that faces Shamblin Place, which is in the city of Charleston, will not have that fence in front of it. The appearance to her street and the neighborhood will not be changed. The rear of Ms. Stark's house is quite elevated and there is a significant buffer that obstructs the view of the fence. Mr. Campbell said he bring this up because, if Ms. Stark's property line were adjusted an inch, the City of Charleston would have no authority over her property at all.

The house next to Ms. Stark is owned by Travis Bailes, a CPD officer. Mr. Campbell spoke with Mr. Bailes last night and he had no objection to Ms. Stark's proposed fence. In fact, he's fine with it because he just looks to the side of her house for the most part.

Courtlandt Smith asked if the fence was going all the way around the property or is it just going between Ms. Stark's house and the other houses in Shamblin or is it going between her house and Smith Road? Lori Brannon pointed out the proposed location for the fence. It doesn't go all the way out to the property lines.

Mr. Campbell went on to state that one of the most difficult and contentious things he has seen as a city councilman is, approximately one-quarter of a mile down the hill is the most disgusting area that's been take over by people who appear to operate outside of the law. Mr. Campbell has approached the Kanawha County Commission for the past several years to try and get them to do something about it. Ms. Stark has suggested that there is a lot of foot traffic on the road due to this location. She feels the fence is also a safety factor for her to have someplace she can go and relax as well. There is a safety and enjoyment factor involved as well.

Courtlandt Smith asked if it was an enclosed fence. It is not an enclosed fence. Bonnie Stark, applicant, addressed the Board. Ms. Stark stated that the fence is parallel and was custom made to fit the area and the drastic change in topography of the lot. As people drive up, they cannot see what Ms. Stark has in her backyard until they get to her front yard and then look across. Ms. Stark indicated that one of the main reasons for her request is pertains to security and safety. She has found people from the road walking through her yard. When the house the Bailes bought went vacant for so long, Ms. Stark had people in her back yard and their children in her backyard. The Bailes had people go under their house and started to live under their house from the same neighborhood. These individuals did damage to the Bailes' house to live under their until they purchased the property. Ms. Stark says the neighborhood is wonderful and she has wonderful neighbors, but there is a safety concern due to people down the road from her that trespass on her property. Ms. Stark further spoke to the uniqueness of her property compared to others in her subdivision. Mr. Campbell pointed out there is existing fence on Ms. Stark's property that has been there for over a year. The height of the fence is 8 feet. Bill Hairston mentioned that the application is for a 6.5' fence. Lori explained that, rather than asking for the full 8', which is twice of what is actually permitted there, the applicant is asking for the 6.5' fence, which is what the ordinance allows. Even in the rear and side yards to do 8', she would need a variance. The 6.5' is a big compromise and keeps her in compliance with the ordinance.

Courtlandt asked if there was anyone else in the audience who wanted to speak in favor or opposition to the variance or if there were any questions. Courtlandt asked the Board if they had additional questions. It was pointed out that Ms. Stark would have to modify her fence from 8' to 6.5'. Brady Campbell indicated that he advised Ms. Stark to ask for the 8' fence and

be done with it, since it was vinyl fence. Lori responded that, in this case, it would have to be readvertised because the advertisement was a fence height variance in order to install a 6.5' foot privacy fence. Lori stated for the record that the city could absolutely support a 6.5' foot fence, because there is an argument for privacy and hardship due to the physical characteristics of the property, but 8' would be above and beyond, because the process is meant to bring you to the minimum standard for a district. If everyone else had 8' fences that would be a different conversation. Lori concluded by stating that the city recommends approval of the variance for a 6.5' fence.

Hearing no further questions, Courtlandt Smith asked for a motion in regard to this variance request.

Motion and Vote: On the motion of Bill Hairston and seconded by Mary Anne Crickard, the Board voted unanimously 4-0 to approve the request for VAR-22-3010.

VAR-22-3008 Request for Reconsideration

Application of Kevin Cantrell requesting a rear setback variance in order to construct an addition to a single-family dwelling on the property located at **3811 Virginia Avenue**.

Motion and Vote: On the motion of Mary Anne Crickard and seconded by Bill Hairston, the Board voted unanimously 4-0 to reconsider VAR-22-3008.

Kevin Cantrell, applicant, addressed the Board concerning the circumstances of the last meeting, being represented at the last meeting by his father-in-law because his daughter had to have heart surgery. Mr. Cantrell wanted the opportunity to approach the Board to see if there were any questions and understand the Board's concern with the initial decision. Mr. Cantrell's primary goal is to appear in person before the Board.

Courtlandt Smith stated that it was a closed case. There was a lot of discussion that took place. Courtlandt went on to say that it was likely that the applicant would have walked away being granted nothing. The other two Board members were not present, but, basically, this was a request to build a large addition on the back in Kanawha City, basically to the alley. The City's position was not to grant it.

Lori Brannon indicated that a rehearing does reopen the entire conversation.

Mr. Cantrell said there are three houses in his neighborhood that have setbacks that are beyond what is provided for by the ordinance. One of the houses is next door that has a 5'

setback, which is what Mr. Cantrell is requesting. The house on the other side of Mr. Cantrell has a 15' setback, which is different than the setback required by the ordinance. Four houses down, there is a 3' setback. The house with the 3' setback and 5' setback was all granted under the current ordinance, one within the past 7 years and one within the past 2 years. Mr. Cantrell asserts he is asking for what is common on his side of the street. Mr. Cantrell referred to a map he provided that shows all of the houses within a one-block radius with setbacks that are different than what is required by the ordinance. Mr. Cantrell indicated that his goal is to match the character of the house next door to him with the 5' setback in order for the houses and property lines to be aligned. Mr. Cantrell's father-in-law, who attended the previous BZA meeting on his behalf, informed him that there was an issue with the board concerning parking a vehicle at the back of the house that would block the alley. Mr. Cantrell said that from the alley to his property line is 5', the actual paved part of the alley. The property line from where he proposes to build is 5'. It's a total of 10' feet from his house to the asphalt. If someone would want to park there it would not be an issue. Mr. Cantrell prepared a letter in support of his request that was signed by his neighbors. Some of the neighbors are tenants. Mr. Cantrell spoke with the homeowners.

Courtlandt Smith explained to Mr. Cantrell that his block is unique and sticks out for having houses that are much larger than what is typical for Kanawha City. It minimizes the area for children to play basketball and there is not a lot of off-street parking in the front for residents to have friends and family visit. Courtlandt Smith went on to say that building up to the property line is not keeping with the design of the neighborhood.

Mary Jo Neenan inquired about the other variances Mr. Cantrell indicated have been granted in his neighborhood. She is concerned if the variances have been granted a precedent has been set. Lori responded that she would have to do research on each property individually to determine if and/or when the variances were granted or if it is a situation established before the current ordinance was in place.

Mr. Cantrell obtained a permit from the city and concreted the front of his parking area, because it is city property. He can get 7 cars in front of his house. If his request is approved, he will have a two-car garage in the back, for a total of 9 parking spaces, with the possibility of an additional three spaces in the front of his garage, making it a total of 12. He also signed a waiver with the city acknowledging that the city owns the property he concreted and the city could take out the concrete if needed.

Mary Anne Crickard also indicated she is concerned that the city is setting a precedent for allowing for these variances when they should not have allowed for them in the past. Lori responded that she would have to look at each case individually to determine if that is the case. Lori said something worth taking into consideration is that the Board makeup has changed through the years. The consideration and conversation could have been completely different

with a previous board. Lori feels confident that the staff has been consistent in applying this part of the ordinance. The other possibility is that they received a variance before the current ordinance was enacted. Also, Lori pointed out that there are occasions when what is presented on paper looks completely different from the finished project.

Mr. Cantrell said he did not think he would have to get a variance. He just assumed because the house next to him had a 5' setback that he would not have any issues getting one as well. He did not anticipate any concern from the Board of Zoning Appeals.

Mary Anne Crickard stated that the Board does not want to cause problems for homeowners, but there is a matter of consistency to be maintained where the character of the neighborhood and remaining compliant with the city ordinance are concerned.

Lori stated that the purpose of the BZA is to maintain the minimum standard for your neighborhood, not exceed it. What Mr. Cantrell is talking about doing is a whole house. The addition itself is a whole house based on the floor plans.

Mary Jo Neenan responded that the area that does need a variance is doubles the whole size of Mr. Cantrell's house.

Lori does not recommend denying the variance Mr. Cantrell was granted at the previous meeting.

Motion and Vote: On the motion of Mary Anne Crickard and seconded by Bill Hairston, the Board voted 3-1 (Courtlandt Smith opposing) to uphold the previous decision.

II. Approval of minutes for the May 26, 2022 hearing.

Motion and Vote: On the motion of Mary Anne Crickard, seconded by Mary Jo Neenan, the Board voted unanimously 4-0 to approve the minutes from the May 26, 2022 hearing.