

**North Little Rock Board of Zoning Adjustment
Minutes Record – February 25, 2021**

Chairman Tom Brown called the meeting of the North Little Rock Board of Zoning Adjustment to order at 1:30 P.M. in the City Council Chambers, 300 Main Street, North Little Rock, AR. Roll call found a quorum to be present; a quorum being three members present.

Members Present

Tom Brown, Chairman
Tim Giattina, Vice-Chair
Mike Abele
Gardner Burton
Steve Sparr

Members Absent

None

Staff Present

Ms. Donna James, City Planner
Ms. Marie-Bernarde Miller, Deputy City Attorney

Others Present

William Mosley, 5600 Southwind Drive, North Little Rock AR 72118
Glen Thomas, 5001 E Broadway, North Little Rock, AR 72117
Halley Hill, 5920 and 5924, White Oak Drive, North Little Rock, AR 72118
Pat Hill, 5920 and 5924 White Oak Drive, North Little Rock, AR 72118
Glenda Ross, 12 Ross Circle, North Little Rock, AR 72114 via telephone

Administrative

None

Old Business

None

Approval of Minutes

Mr. Sparr formed a motion to approve the minutes from the previous meeting of January 28, 2021. Mr. Giattina seconded the motion. All members voted in the affirmative. The motion was approved.

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BOA Case #2021-02, 5920 White Oak Drive, North Little Rock, AR 72118 - A variance request from the area provision of Article 5, Section 5.20 Subsection 5.20 (b) & (c) to allow a retaining wall with an increased height within the front yard and to allow the wall and fence combination to exceed 8-feet in height.

Ms. Halley Hill and Mr. Pat Hill addressed the Board on the merits of the request. Chairman Brown requested staff read the definition of a hardship. Chairman Brown requested the applicant's provide to the Board their hardship.

Mr. Hill stated the properties were located side by side. He stated there was approximately 15-feet of elevation change between the two properties. He stated he was a residential homebuilder and he was teaching his daughter to build houses. He stated he was unaware a permit was required to construct a retaining wall. He stated based on the slope of the lot there was no way to make the site work without a retaining wall. He stated the driveway, sidewalk and landscaping were in place. He stated if the site was developed without a retaining wall to exit the house one would be stepping down seven to eight feet from the front porch.

Chairman Brown questioned the hardship. Mr. Hill stated there was no way to make the site work with a 3 ½ foot tall wall with a drop of the lot being 15-feet from one side to the other. Chairman Brown questioned if he secured a building permit to build the house. Mr. Hill stated he did but did not build the retaining wall. He stated he hired a company to construct the retaining wall and they did not realize a permit was required to build the retaining wall. He stated he had not built homes in the City of North Little Rock for some time, approximately 18-years. He stated the details of the wall came up in the mist of securing final approval of the home construction. He stated he was told he had to hire an engineer, which he did, and the engineer certified the wall construction. He stated the wall builder had videoed the wall construction, footings and stacking which the engineer used in his certification.

Chairman Brown questioned if there was opposition to the request. Mr. Glen Thomas indicated he was in opposition of the request Chairman Brown stated he would be given a chance to speak on the topic.

Staff stated an email in opposition had been received. Chairman Brown summarized the email while staff provided photos to the Board members which had been provided by the opposition. The email outlined previous waivers and variances which had been approved for the construction on the two new homes. The email stated a waiver of sidewalks was granted. The email stated the hill was a walking path for a number of neighbors and the hill was used in training for runners. The email stated through the building of the homes there had been no regard for rules, laws and/or neighbors. The email stated during construction there were a number of cars parked on the street. The email stated the location of the construction was on a hill and in a blind curve. The email stated a concrete

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truck was parked in the street with no lights or cones to warn motorists of the hazard late in the evening.

Mr. Hill responded stating during construction there were times vehicles were parked on the street. He stated the incline was such that parking on the lot was difficult until the driveway was put in place. He stated some of the subcontractors were parking across the street on the vacant property but the property owner requested they no longer use her property for parking. He stated when no driveway existed there was no where to park but the street. He stated once the retaining wall and the driveway were in place then they were no longer parking in the street. He stated there had been an on-going battle with the neighbors. He stated when the dirt work was started a permit to close the street was secured from the City Engineer. He stated the construction was difficult since the construction was on the side of a hill. He stated the construction was now complete and the closure of the street and the parking on the street were no longer necessary.

Chairman Brown called Mr. Mosley forward to address the Board with his concerns. He stated his home was located on Southwind. He stated when he left his home traveling down White Oak the road was a winding road. He stated the hill mentioned was located in a blind curve. He stated his concern was the traffic and the placement of the retaining wall. He stated the wall created a line of sight issue with persons entering White Oak Drive from the side streets. He stated the height of the wall and at some point landscaping would be installed which would only create an additional line of sight concern. He questioned the stability of the wall. He questioned if all codes were followed. He stated his primary concern was persons traveling up White Oak, looking up the hill, and their line of sight being obstructed.

There was a general discussion by the Board members with Mr. Mosley concerning the wall, the line of sight and the height of the wall. Mr. Mosley stated the height of the wall was a great concern.

Mr. Hill responded stating if the Board reviewed the site before the trees were removed the motorist exiting Prospect Trail could not see up the hill. He stated once the trees were removed the line of sight was significantly increased. He stated he had removed a number of trees on the adjacent lot which open up the blind curve and allowed motorists to see through the woods the on-coming traffic. He stated the height of the wall was 6-foot 8-inches at the highest point. He stated at the street the wall was just over 2-feet. He stated the wall was 25-feet from the edge of the street. He stated the mailbox was located at the edge of the right of way.

Mr. Abele questioned if a fence was required. Staff stated their recommendation, if the Board approved the request, was a fence be installed on top of the wall. Staff stated the fence was required in the areas where the wall exceeded three and one-half feet in height.

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There was a general discussion by the Board of the wall and height and what could be done to correct the issue without disassembling the wall. Staff stated a second wall could be added giving the appearance of stepping down and decreasing the overall height of the wall.

Mr. Hill stated this option was provided to him but if a second wall was added then the wall would be constructed within the right of way and on the upper house there would be no front yard left. He stated the cost of a second wall was significant, an additional \$10 to \$15 thousand dollars.

Chairman Brown read to the applicant a portion of the staff report stating the wall was constructed without a permit. Mr. Hill acknowledge this was correct. Chairman Brown then went on to read the statement at the time a permit was requested staff informed the applicant a permit could not be issued for the wall due to the height exceeding the height limit allowed per the Zoning Ordinance. Chairman Brown stated his concern was the lack of a permit. Mr. Hill stated it was not his responsibility to secure the permit since he did not build the wall. Chairman Brown stated it was his responsibility as the homebuilder to ensure all permits were properly secured.

There was a general discussion concerning the fence placement. Mr. Abele stated he felt the fence should be placed from the driveway to the wall of the house. Mr. Hill stated he could fill in the blocks to make a level surface but then there would be drainage issues. Staff questioned if he could step the fence or place the fence on an angle to get to the level blocks. Mr. Hill stated this was a possibility.

Ms. Miller requested a point of clarification. She questioned the placement of the fence, if the fence was next to the wall or on top of the wall. Chairman Brown stated the fence was to be placed on top of the wall.

Chairman Brown question if there was any additional discussion. He called for a motion. Mr. Sparr provided a motion of approval including staff's recommendation of the placement of a fence on the wall. Mr. Abele questioned if he could amend the motion. Ms. Miller stated a friendly amendment was possible. Mr. Abele stated his amendment was for the fence to be placed from the driveway to the wall of the house. Mr. Sparr stated the reason for the fence was for fall protection.

Mr. Giattina questioned the hardship. Chairman Brown requested the applicant state his hardship. Mr. Hill stated the fall of the lots was the hardship. Chairman Brown stated this was not a valid hardship. Mr. Hill stated he was not aware of any other option than placing the wall as constructed to support the driveway and walkways. He stated if the wall was stepped then he would be encroaching into the easement. Staff reread the definition of a hardship. Mr. Hill stated his hardship was the stepping of property the topography of the site.

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Chairman Brown stated a motion was on the floor and requested a second. Mr. Abele provided the second on the motion as amended. A roll call vote provided three ayes and two noes. The ayes were Mr. Abele, Mr. Burton and Mr. Sparr. The noes were Mr. Giattina and Chairman Brown. The motion was approved as amended.

BOA Case #2021-03, located at 5924 White Oak Drive, North Little Rock, AR 72118 - A variance request from the area provision of Article 5, Section 5.20 Subsection 5.20 (b) & (c) to allow a retaining wall with an increased height within the front yard and to allow the wall and fence combination to exceed 8-feet in height.

Ms. Halley Hill and Mr. Pat Hill addressed the Board on the merits of the request. Chairman Brown requested the applicant's provide to the Board their hardship.

Mr. Hill stated the properties were located side by side. He stated this was the lower house which was located near the stop sign. He stated the property dropped over 7 ½-feet from property line to property line. He stated the issue was the same as on the upper house. Chairman Brown questioned the hardship. Mr. Hill stated the hardship was the topography of the site.

Chairman Brown read to the applicant a portion of the staff report stating the wall was constructed without a permit. Chairman Brown then went on to read the statement at the time a permit was requested staff informed the applicant a permit could not be issued for the wall due to the height exceeding the height limit allowed per the Zoning Ordinance. He read staff's statement the applicant was informed of two options, one to build a second wall or the second to request a variance from the Board of Zoning Adjustment.

Mr. Hill stated once again the issue of the wall came to light when the certificate of completion was requested. He stated at that time he was informed the wall was an issue. He stated he went to his wall builder and questioned if he had secured a permit. The subcontractor stated he was not aware a permit was required. At the time the subcontractor requested a permit, after the wall was completed, and was informed a permit could not be issued due to the height of the wall. He stated staff informed him a stamped engineer statement was required to secure the permit. He stated an engineer was secured, the engineer certified the wall, and then they were told they still could not be issued a permit without the variance approval.

Chairman Brown called Mr. Mosley forward to address the Board with his concerns. He stated his home was located on Southwind.

Mr. Mosley stated when he left his home traveling down White Oak the road was a winding road. He stated his concern was the line of sight and the traffic coming down the hill. He questioned if the retaining wall was necessary. He stated line of sight issue, height and the placement of a wall were a concern. He stated the required fencing would decrease

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the line of sight even more. He questioned the stability of the wall. He also questioned if there were any other codes which were not in compliance.

Mr. Hill responded stating the clearing of the trees at the intersection with Prospect Trail had greatly increased the line of sight. He stated previously at the intersection one could not see 10-feet. He stated with the removal of the trees the line of sight was increased up the hill. He stated in addition the removal of the trees from the adjacent property increased the visibility for vehicles traveling down the hill. He stated it was at least 25-feet from the road to the retaining wall. He stated the wall should not cause any sight distance issues. He stated it was ten times worse before the homes were built. He stated the new construction had opened up the woods.

Chairman Brown question if there was any additional discussion. He called for a motion. Mr. Abele provided a motion of approval including staff's recommendation of a 3-foot fence be placed on the wall based on the hardship of topography. Mr. Abele stated the fence was to be placed from the driveway to the wall of the house. Mr. Sparr provided a second to the motion.

Chairman Brown requested a roll call vote which provided three ayes and two noes. The ayes were Mr. Abele, Mr. Burton and Mr. Sparr. The noes were Mr. Giattina and Chairman Brown. The motion was approved.

BOA Case #2021-04, 5009 E Broadway, North Little Rock, AR 72217 - A variance request from the area provision of Section 4.3.2, to allow the placement of an accessory structure on a currently vacant lot.

Mr. Glen Thomas addressed the Board on the merits of his request. Chairman Brown read a portion of the staff report regarding the reason for the variance request. Chairman Brown requested Mr. Thomas provide his hardship.

Mr. Thomas stated his hardship was the need for additional secure storage for medical grade gases. He stated the gases were to be stored according to FDA guidelines. He stated originally he reached out to his surveyor, Mr. Jim Butler, for guidance on securing approval to allow the construction of a new warehouse. He stated Mr. Butler represent his company in going through the application process to the Planning Commission to allow the construction of the new building. Mr. Thomas stated per the Planning Commission approval the new building required construction of a restroom and office space along with paved parking and landscaping. He stated he felt the only way for approval was with the placement of these items. He stated he did not need the office portion or the parking for the new warehouse. He stated he needed a secure space to store the medical grade gases. Mr. Thomas stated currently his employees had to unload their trucks before leaving for the evening. He stated some of the runs were from Jonesboro or Bentonville and the drivers were arriving at the site late and still had to unload the medical gases before they could leave the site. He stated with the new

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construction the trucks could be pulled into the warehouse and unloaded the next day. He stated he needed additional space to secure the cylinder gases and keep them separated from his welding gases and products.

Chairman Brown questioned if the space would be heated or cooled. Mr. Thomas stated the space would not be heated or cooled. He stated he needed a metal building that could be locked up. He stated the building had to have cameras and had to be accessible to the vendors bring product to the site. He stated the gases were the same as any drug bought from a drugstore. He stated the gases were highly regulated.

Chairman Brown stated the hardship was the security of the products. Mr. Thomas stated this was the hardship. He stated the truck could not be left unattended until the medical grade gases were secured. He stated at the currently facility the gases could not be secured unless the trucks were unloaded by the drivers when they returned to the site. He stated drivers had to unload the trucks in the weather and/or late at night. He stated with the new construction the drivers could drive into the new building and lock their trucks and go home for the evening.

Chairman Brown question if there was any additional discussion. He called for a motion. Mr. Giattina provided a motion for approval of the item based on the applicant's stated hardship of safety and security. Mr. Burton provided a second. All members voted in the affirmative. The motion was approved.

BOA #2021-05, 12 Ross Circle, North Little Rock, AR 72114 - A variance request from the area provision of Section 5.11, Subsection 5.11.4 to allow the placement of a fence within the front yard of an existing single-family home with an increased height (6-feet vs. 3 ½-feet).

Ms. Glenda Ross addressed the Board via telephone. She thanked the Board for allowing her participation via phone due to health concerns.

Chairman Brown requested Ms. Ross to provide her hardship.

Ms. Ross stated she was requesting to place a fence within her yard to protect her property. She stated people were walking through her yard both day and night invading her privacy. She stated she had placed a ring doorbell and a ring camera which had not deterred the trespassing. She stated she desired to place the fence to protect herself and her family.

Chairman Brown stated she had stated her hardship of safety and security. Chairman Brown question if there was any additional discussion. He called for a motion. Mr. Giattina provided a motion for approval of the item based on the applicant's stated hardship of safety and security. Mr. Burton provided a second. All members voted in the affirmative. The motion was approved.

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Public Comment and Adjournment

Chairman Brown called for public comment. There being none and there being no further business before the Board and on a motion of Mr. Sparr and by consent of all members present, the meeting was adjourned at 2:25 pm.

Approved on this 25 day of March, 2021


Tom Brown, Chairman