

**BOARD OF ADJUSTMENT
CITY OF TOWN AND COUNTRY, MO
APRIL 19, 2016**

The Board of Adjustment of the City of Town and Country met at 6:00 P.M. on Tuesday, April 19, 2016 at the Municipal Center, 1011 Municipal Center Drive, Town and Country, Missouri, 63131.

ROLL CALL

The 6:00 PM roll call indicated Chairman James Crowley, regular members Matt Meyer, Dr. Sam Hawatmeh, David Adam and alternate member Chris Barclay to be present.

Chairman James Crowley presided.

In City Attorney Steve Garrett's absence, Attorney Ed Sluys represented the City.

Also present were City Clerk Ashley McNamara and City Planner Melanie Rippetoe.

APPROVAL OF MINUTES – 02/23/16

Dr. Hawatmeh moved for approval, seconded by Mr. Meyer.

Chairman Crowley called for any amendments or corrections.

Hearing none, the minutes were unanimously approved by voice vote.

SAFETY AND SECURITY

Chairman Crowley reminded everyone that for the security and safety of everyone in attendance, the Board of Adjustment has a zero tolerance policy when it comes to any outbursts, etc.

PROCEDURE REVIEW

Chairman Crowley reviewed the hearing procedure.

PUBLIC HEARING

A court reporter with Midwest Litigation Services was present to record the public hearings.

1. Case No. 16-04

On the request of Bilal Khan, owner, for three variances from Section 405.150.E.2. of the Zoning Regulations regarding fence construction materials, total length and distance from the home. The variances are necessary in order to construct the fence as shown on the plans in the rear yard of the property at 14102 Southmill Court, in the Suburban Estate (SE) Zoning District.

Attorney Sluys entered the following exhibits into the record:

- A. Application for Appeal, received by the City of Town and Country on February 19, 2016.
- B. Narrative for Appeal, 1-page.
- C. Letter from Melanie Rippetoe, City Planner, to Bilal Khan, dated January 20, 2016, 2-pages.
- D. City of Town and Country Memorandum from Melanie Rippetoe, City Planner, dated March 29, 2016, 3-pages.

- E. Typewritten notice of hearing posted at the Municipal Center and on the subject property and mailed to property owners within 300 feet with a list of property owners attached.
- F. Affidavit of Publication of notice of hearing published in The St. Louis Countian on April 1, 2016.
- G. Photos of existing conditions, 3 total
- H. Sheet entitled "Neighbors' Approval" dated February 1, 2016, 1-page
- I. Support letter from NHC Healthcare, dated March 17, 2016, 1-page
- J. SimTek Fence Brochure
- K. Site Survey, sealed and dated November 5, 2015, 1-page

City Planner Melanie Rippetoe was sworn and testified on behalf of the City. Ms. Rippetoe stated that she is familiar with the property and it is located in the Suburban Estate (SE) Zoning District with no existing variances or nonconformities. She explained that a fence permit was submitted but could not be issued without three variances from Section 405.150.E. She described the variances needed to be 270 feet for the fence's length, 92 feet for the distance from the main structure and for materials as the fence was proposed to be made of linear low density polyethylene.

Bilal Khan, owner, and Charles Mertzlufft, Charles Mertzlufft Fence, LLC, were sworn and testified. Mr. Mertzlufft stated the hardship to be that the fence would provide safety for Mr. Khan's children and mitigate noise from Clayton Road traffic. He explained that the property was overgrown with vines and foliage and Mr. Khan wanted to clear it out and landscape the fence. He added that NHC Healthcare was supportive of the project.

Mr. Khan stated that his hardship was that he was unable to utilize the whole value of his property without it being cleaned up and secured.

In response to Chairman Crowley, Mr. Khan clarified the statistic reported in his narrative that states there are 16,000 cars driven on Clayton Road daily was sourced from a City's website but he could not recall which one specifically.

Mr. Meyer inquired about the possibility of the fence being extended further down Clayton Road and also the likelihood of noise being mitigated because of the "L" shape of the fence. Mr. Khan stated that some neighbors were open but not committed to the idea of extending the fence. He also explained that he was confident the "L" shape would mitigate street noise.

Mr. Barclay clarified that the property could be cleaned up regardless of the installation of a fence and asked if the applicant was aware of the noise problem when the home was purchased. Mr. Khan responded that the home was barely seen before purchase due to market pressure.

Discussion was held with the applicant regarding the proposed fence's ability to mitigate sound but neither an engineering study nor a sound expert were present for the record.

Attorney Sluys entered a sample of the fence material that was passed to the Board into the record and labeled it "Appellant's Exhibit 1."

Mr. Mertzlufft confirmed that the fence would withstand a charge from a deer.

Chairman Crowley called for public comments.

Gussie Crawford, 900 Weidman Road, was sworn and spoke in opposition to the request. She stated that the hardships were arguable and the noise existed when the home was purchased. She added that the children's safety could be sufficed with a fence allowed by Code.

Skip Mange, 20 Roclare Lane, was sworn and spoke in opposition to the request. He stated that regulations are in place to ensure open greenspace and prevent walls from being erected. He explained that the safety hardship could be met with an allowable fence. He added that sound walls have not been approved on nearby interstates because the decibel limit is not met and a 6 ft. high fence, that is open on both ends, would not mitigate noise.

Fred Meyland-Smith, 1032 Woodfield Estates, was sworn and testified in opposition to the request. He distributed a Sound Study conducted by MODOT that Attorney Sluys labeled as "Pubic Exhibit A" and entered into the record. Mr. Meyland-Smith stated that the study outlines portions of Highway 40 with eight lanes of traffic that have insufficient noise levels to qualify for sound walls so it is unlikely two lanes would generate justifiable noise levels. He added that sound walls are typically 16-18 ft. tall so a 6 ft. tall fence would not mitigate noise. He also explained that safety can be fully achieved while still adhering to the regulations. He stated that the burden to inspect the home is with the buyer of the property and the surroundings have not changed since the home's purchase. He concluded by stating that in order for a variance to be granted, a unique or peculiar circumstance must exist to qualify as a hardship. However, there are many houses in the area that are subjected to the same conditions and thus the hardship does not meet the specifications of our Zoning Code.

Ben Brown, 14008 Clayton Road, was sworn and spoke in opposition to the request. He stated that he lives directly across the street and was aware of the sound and traffic levels but still elected to purchase his home. He voiced concern that this proposal was for a sound wall, not a fence. He added that property owners are tasked with cleaning up their property and securing it without needing to build a sound wall.

Hearing no further public comment, Chairman Crowley declared Case No. 16-04 fully presented at 6:43 PM.

Chairman Crowley called for unanimous consent in favor of granting the variance as stated. Hearing no objection, the vote was as follows:

| | |
|-------------------|-----|
| Chairman Crowley- | NAY |
| Dr. Hawatmeh- | NAY |
| Mr. Meyer- | NAY |
| Mr. Adam- | NAY |
| Mr. Barclay- | NAY |

A brief recess was held at 6:44 PM. The meeting reconvened at 6:45 PM with all members present.

The decision of the Board of Adjustment to **deny** the requested variance is as contained in the **Decision and Resolution, Case No. 16-04**, filed with and made a part of these minutes.

2. Case No. 16-05

On the request of Dawn Davis and Mark Freyenberger, owners, for a variance from Section 500.160 of the Zoning Regulations, specifically Section R309.7 of the Residential Code regarding front facing garages. The variance is necessary in order to construct a front facing, three-car garage on the property located at 2 Rutherford Lane, in the Suburban Estate (SE) Zoning District.

Attorney Sluys entered the following exhibits into the record:

- A. Application for Appeal, received by the City of Town and Country on March 17, 2016.
- B. Narrative for Appeal, dated March 16, 2016, 1-page.
- C. Signed Letter of Support, dated March 6, 2016, 1-page.
- D. Letter from Melanie Rippetoe, City Planner, to Dawn Davis, dated March 2, 2016, 2-pages.
- E. City of Town and Country Memorandum from Melanie Rippetoe, City Planner, dated April 19, 2016, 2-pages.
- F. Typewritten notice of hearing posted at the Municipal Center and on the subject property and mailed to property owners within 300 feet with a list of property owners attached.
- G. Affidavit of Publication of notice of hearing published in The St. Louis Countian on April 1, 2016.
- H. Photos of existing conditions and neighboring properties, 2-pages.
- I. Site Plan and Elevations, sealed and dated March 10, 2016, 2-pages.

City Planner Melanie Rippetoe, having previously been sworn, testified on behalf of the City. She stated that she is familiar with the property and it is located in the Suburban Estate (SE) Zoning District and had two prior variances granted for minimum setback from street requirements. She explained that an Architectural Review application was submitted and was approved contingent upon a variance being granted. Ms. Rippetoe stated that a variance was required pursuant to Section 500.160, R309.7 of the Residential Code because the addition is proposed to have garage doors facing the street.

Michael Blaes, architect, was sworn and testified on behalf of the applicant. He explained that the existing home's layout is problematic and this proposal will correct the home's flow. He described the applicant's hardship to be the irregular arrangement of the home on the lot as well as with trying to improve stormwater drainage, maintain greenspace and improve the home's curb appeal.

In response to Mr. Adam, Mr. Blaes confirmed that the original driveway will be transformed into a reinforced grid drive so that it can be parked on without damaging the grass and/or yard. He also confirmed that the existing garage door will remain.

Dawn Davis and Mark Freyenberger, owners, were sworn and testified. Ms. Davis explained that the existing garage will be used as a potting shed at present and might eventually be converted into a recreation room. She further explained that several options were contemplated to extend or relocate the garage but all other proposals meant less greenspace and/or the loss of mature trees.

Mr. Freyenberger stated that the proposal also solves layout and flow issues in the existing home without requiring significantly more extensive renovations.

In response to Chairman Crowley, Mr. Blaes confirmed that the home was purchased in January of 2016.

Chairman Crowley called for public comments.

Skip Mange, 20 Roclare, spoke in favor of the request. He stated that he supports the proposal because the applicants aren't tearing down the existing home and are also

preserving the mature trees on the property.

Hearing no further public comment, Chairman Crowley declared Case No. 16-05 fully presented at 6:59 PM.

Chairman Crowley called for unanimous consent in favor of granting the variance as stated. Hearing no objection, the vote was as follows:

| | |
|-------------------|-----|
| Chairman Crowley- | AYE |
| Dr. Hawatmeh- | AYE |
| Mr. Meyer- | AYE |
| Mr. Adam- | NAY |
| Mr. Barclay- | AYE |

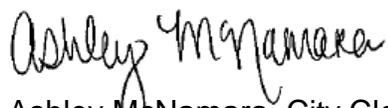
A brief recess was held at 7:00 PM. The meeting reconvened at 7:01 PM with all members present.

The decision of the Board of Adjustment to **grant** the requested variance is as contained in the **Decision and Resolution, Case No. 16-05**, filed with and made a part of these minutes.

ADJOURN

There being no further business, the meeting adjourned at 7:03 PM.

Respectfully submitted,



Ashley McNamara, City Clerk

**BOARD OF ADJUSTMENT
CITY'S EXHIBITS**

Case No.: 16-04
Appellants: Bilal Khan, owner
Location: 14102 Southmill Court
Hearing Date: ~~March 29, 2016~~ April 19, 2016

Section 405.300 of the Municipal Code provides that the Municipal Code, including the Zoning Code, the Comprehensive Plan and land use map shall be part of each hearing before the Board of Adjustment to the extent applicable, without being specifically introduced at the hearing.

CITY EXHIBITS

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DECISION OF THE BOARD OF ADJUSTMENT
CITY OF TOWN AND COUNTRY, MO
CASE NO. 16-04

Appellants: Bilal Khan, owner

Subject Property: 14102 Southmill Court

Zoning District: Suburban Estate (SE)

Proposal: Appellant requests variances from Section 405.150.E.2. of the Zoning Regulations regarding fence length, distance from the home and construction materials to allow for the construction of the proposed fence on the property.

Hearing Date: ~~March 29, 2016~~ April 19, 2016

1. Chairman Crowley called for unanimous consent in favor of granting the following variances from Section 405.150.E.2. of the Town and Country Zoning Regulations to allow for the construction of the proposed fence on the property:

Length: 270 ft.

Distance from home: 92 feet

Construction materials: linear low-density polyethylene

Hearing no objection, the vote was as follows:

| | |
|-----------|-----|
| Crowley- | NAY |
| Hawatmeh- | NAY |
| Meyer- | NAY |
| Adam- | NAY |
| Barclay- | NAY |

**CITY OF TOWN AND COUNTRY RESOLUTION
BOARD OF ADJUSTMENT
CASE NO. 16-04**

WHEREAS, the Board of Adjustment of the City of Town and Country does find and determine that the subject property located at **14102 Southmill Court** is within the city limits of the City of Town and Country, and is in the **Suburban Estate (SE)** Zoning District; and

WHEREAS, Bilal Khan, owner, (the "Appellant"), has submitted a request for fence length, distance from the home and construction material variances to allow for the construction of a fence on the property; and

WHEREAS, Section 405.150.E.2. of the Zoning Regulations requires that a fence be no longer than ten (10) ft. in length; and

WHEREAS, as the proposed fence is 280 ft. in length, a 270 ft. variance is required to construct the fence as shown on the plans; and

WHEREAS, Section 405.150.E.2. of the Zoning Regulations also requires that a fence be within thirty (30) ft. of the main structure; and

WHEREAS, plans show that the fence will be located 122 ft. from the main structure at its furthest point, thus a variance of 92 ft. is required to construct the fence as shown on the plans; and

WHEREAS, Section 405.150.E.2. of the Zoning Regulations also requires that the fence be made of wood or masonry; and

WHEREAS, plans show that the proposed fence will be comprised of linear low-density polyethylene, therefore a variance for construction materials is required to construct the fence as shown on the plans; and

WHEREAS, the Appellant has requested that the Board of Adjustment find that there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of the Zoning Regulations; and

WHEREAS, the Board of Adjustment does find that to grant the requested variances

- **would not** be in harmony with the general purpose and intent of the Zoning Ordinance
- **would** be detrimental to the public welfare
- **would** constitute a change in the district map
- **would** impair an adequate supply of light and air to adjacent property
- **would** increase congestion in public streets
- **would** increase the danger of fire; and

WHEREAS, this Board does further find and determine that practical difficulties and unnecessary hardships **have not** been demonstrated.

**BOARD OF ADJUSTMENT
CASE NO. 16-04**

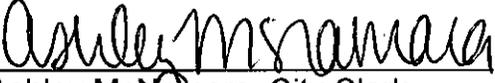
NOW, THEREFORE, BE IT RESOLVED, that the requested variances from the strict application of the Zoning Regulations of the City of Town and Country are hereby **denied**.

The following is the vote taken on the foregoing resolution:

Crowley- AYE
Hawatmeh- AYE
Meyer- AYE
Adam- AYE
Barclay- AYE



James Crowley, Chairman



Ashley McNamara, City Clerk

**BOARD OF ADJUSTMENT
CITY'S EXHIBITS**

Case No.: 16-05
Appellants: Dawn Davis and Mark Freyenberger, owners
Location: 2 Rutherford Lane
Hearing Date: April 19, 2016

Section 405.300 of the Municipal Code provides that the Municipal Code, including the Zoning Code, the Comprehensive Plan and land use map shall be part of each hearing before the Board of Adjustment to the extent applicable, without being specifically introduced at the hearing.

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DECISION OF THE BOARD OF ADJUSTMENT
CITY OF TOWN AND COUNTRY, MO
CASE NO. 16-05

Appellants: Dawn Davis and Mark Freyenberger, owners

Subject Property: 2 Rutherford Lane

Zoning District: Suburban Estate (SE)

Proposal: Appellants request a variance from Section R309.7 of Section 500.160 of the Residential Code, to allow for the construction of a three-car garage addition with front facing garage doors.

Hearing Date: April 19, 2016

1. Chairman Crowley called for unanimous consent in favor of granting a variance from Section R309.7 of Section 500.160 of the Town and Country Residential Code to allow for the construction of a three-car garage addition with front facing garage doors.

Hearing no objection, the vote was as follows:

| | |
|-----------|-----|
| Crowley- | AYE |
| Hawatmeh- | AYE |
| Meyer- | AYE |
| Adam- | NAY |
| Barclay- | AYE |

**CITY OF TOWN AND COUNTRY RESOLUTION
BOARD OF ADJUSTMENT
CASE NO. 16-05**

WHEREAS, the Board of Adjustment of the City of Town and Country does find and determine that the subject property located at **2 Rutherford Lane** is within the city limits of the City of Town and Country, and is in the **Suburban Estate (SE)** Zoning District; and

WHEREAS, **Dawn Davis and Mark Freyenberger, owners**, (the "Appellants"), have submitted a request to construct a three-car garage addition that would front onto Rutherford Lane, thereby requiring a variance to allow for front facing garage doors; and

WHEREAS, Section R309.7 of Section 500.160 of the Residential Code states that where a primary structure fronts on only one street, the doors of any garage shall not face that street unless under certain conditions; and

WHEREAS, plans show that the proposed garage addition will front onto Rutherford Lane and does not meet any of the allowable conditions for front facing garage doors; and

WHEREAS, a variance from Section R309.7 of Section 500.160 of the Residential Code is required to construct the garage addition shown on the plans; and

WHEREAS, the Appellants have requested that the Board of Adjustment find that there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of the Zoning Regulations; and

WHEREAS, the Board of Adjustment does find that to grant the requested variance

- **would** be in harmony with the general purpose and intent of the Zoning Ordinance.
- **would not** be detrimental to the public welfare
- **would not** constitute a change in the district map
- **would not** impair an adequate supply of light and air to adjacent property
- **would not** increase congestion in public streets
- **would not** increase the danger of fire; and

WHEREAS, this Board does further find and determine that practical difficulties and unnecessary hardships **have** been demonstrated.

NOW, THEREFORE, BE IT RESOLVED, that the requested variance from the strict application of the Zoning Regulations of the City of Town and Country is hereby **approved**.

**BOARD OF ADJUSTMENT
CASE NO. 16-05**

The following is the vote taken on the foregoing resolution:

Crowley- AYE
Hawatmeh- AYE
Meyer- AYE
Adam- AYE
Barclay- AYE


James Crowley, Chairman


Ashley McNamara, City Clerk