

**Zoning Board of Adjustment and Appeals
Minutes of the July 6, 2017 Regular Meeting**

The meeting convened in the Madison Municipal Complex, City Council Chambers, 100 Hughes Road, Madison, Alabama 35758, and called to order at 5:36 p.m. by Board Chair Betty Fletcher.

In Attendance:

Betty Fletcher, Chair	Present
Christopher Lindsey, Vice-Chair	Present
Mary Hudson	Present
John Horch	Present
Ted Whitney	Present
Supernumeraries	
Wesley Alford	Absent
Larry Mason	Absent

City Staff Present

Mary Beth Broeren, Director of Planning and Economic Development; Megan Zingarelli, City Attorney, and Sherri Williams, Assistant Planner and Board Secretary

Registered Public Attendees

David Largess; Carla Largess; Brian Rosa; Ashley Rosa; Bill Allen; Diane Sterling

Mrs. Fletcher read aloud, this Board composed of five persons, with two supernumeraries, is empowered by the Alabama State Legislature, but appointed by the City Council and charged with hearing petitions for relief from a literal and strict application of the Zoning Code. Cases are heard in the order in which they are filed. Motions are made in the positive and each case requires a positive vote of at least four members. (A simple majority will not approve an action). The burden of proof for Variances and Special Exceptions rests with the petitioner. Any party aggrieved by any decision of this Board may within fifteen days, file a written notice of appeal to the Circuit Court.

Approval of Minutes

The first order of business was the approval of the minutes for the April 6, 2017 Annual Organizational and Regular Meeting. Mrs. Fletcher asked Board members

for requested changes and/or corrections, if any. There being none, Mrs. Fletcher called for a motion.

Motion: John Horch moved to approve the minutes of the April 6, 2017 Annual Organizational and Regular Meeting, as written. Ted Whitney seconded the motion and the vote was as follows:

Betty Fletcher	Aye
Mary Hudson	Aye
Christopher Lindsey	Aye
John Horch	Aye
Ted Whitney	Aye

Motion Carried.

Petitions and Formal Requests for Action

1. *Case VAR-2017-002, Brian and Ashley Rosa, 350 Gooch Lane aka 370 Gooch Lane. A request for a Variance to City of Madison Zoning Ordinance Section 5-8 Fences, Walls and Hedges, to allow solid fencing above two and one-half (2.5) feet along the side and front edges of the front yard of a single family residential property, specifically solid wood privacy fencing six (6) feet in height. The property is zoned R1A Low Density Residential District.*

Request: Applicant Brian Rosa introduced himself to the Board and stated he would address each of the items in Staff's report. He stated that after he began construction of the fence at 350 Gooch Lane, he contacted the City to make sure what he was doing was permitted. He stated that Code Enforcement met on site and told him that visibility was not a problem but that the fence was in violation of zoning code. Applicant raised questions about information in Staff's report. He said that there are other properties with fences in front yards in the City. Mrs. Fletcher stated that some of the fences were installed prior to the current ordinance. Mary Beth Broeren explained the different parts of yards, as explained in the report and shown in Figure 5. Fences of a certain height are allowed along the side of the front yard and no fences are allowed along the front edge. Ashley Rosa asked why the 6-foot fence is not allowed. Mrs. Fletcher stated that one reason is aesthetics and that another is where it is located on a street, and safety factors. It is impossible for the city to be aware of every single thing being constructed. Ashley Rosa stated she wants a fence because of the amount of traffic and the safety of her children. A fence that will deter traffic, prevent people from walking in their yard and keep her children safe. Brian Rosa and Board members

discussed the areas of the fence that currently exist. Mr. Rosa stated that Staff's recommendation is that a fence not be allowed in front of his house, even though other front yard fences exist around town. Megan Zingarelli stated the Board can only consider the facts of the case before them, and that other fences cannot be considered. Mr. Rosa asked if other property owners will be required to get a Variance. David Largess stated he owns property behind the subject property, and asked if other fences will have to be removed. Mary Beth Broeren stated that the Board will only consider the facts regarding their request and that Mr. Rosa can contact Code Enforcement about other non-compliant fences. Mr. Rosa provided a list of property owners' signatures, who stated they do not object to the fencing. He stated that they would put an open, split rail type fence along the front. Megan Zingarelli asked the height proposed for the split rail fence. Mr. Rosa stated above 2.5-feet but lower than 6-feet. Mr. Rosa stated that the ordinance makes sense for neighborhoods but not for their property. Mr. Rosa stated that Figure 4 shows the front of the house and the posts that are set for the fence. Mrs. Fletcher asked if the posts are taller than the proposed fence, and Mr. Rosa said they are taller than 6-feet, but that the fence company will trim them when installing the fence. Mr. Rosa stated that he did not understand why he could not install a fence, above 2.5 feet, if it is an open style.

Public Comments: The following registered attendees commented.

1. Dianne Sterling stated that she lives in Kensington subdivision and works for the Planning Department, but she is speaking as a neighbor. If the house were facing Gooch, more of the lot could be fenced. It is an urban area. She stated she was almost hit by an ambulance when she could not see it coming, due to the location of the fence. She stated she understands the desire for wanting the fence, but is concerned about the visibility.
2. Bill Allen owns property near the subject property. He stated he works for Lowe's and that fence posts are 8-feet tall before they are trimmed. The typical height of a split rail fence is 4-feet. Wrought iron fences are taller than 2.5-feet, typically 3-feet. As a property owner in the neighborhood, he stated he does not have a problem with the request.
3. David Largess raised concerns about Board procedure and application fee. Mrs. Fletcher stated that the Board grants more Variances than they deny. She further stated that Board members do not discuss the cases amongst themselves, and that they are fair in their consideration.
4. Carla Largess stated she did not agree with the 2.5-foot requirement and inquired how to change the code. Mary Beth Broeren stated that code revisions go through to the Planning Commission for review and

recommendation. The City Council must adopt changes to the Zoning Ordinance.

Board Comments: Chris Lindsey asked if there were other reasons, other than safety, to prevent a 6-foot fence. Mary Beth Broeren stated the main reason is visibility and she explained the visibility triangle. Mrs. Fletcher stated that she believes a solid wood fence presents more of a problem. Mary Beth Broeren stated she has not spoken with the Fire Department, but in some cases, fences are not allowed if they will prevent emergency access to a house or property. Mr. Rosa stated that the Code Enforcement team said it was not a visibility issue. Staff stated that the Engineering Department did not review the location of the fence. Board members, City staff and Applicants discussed alternative fence styles and heights, child safety and locating an enclosed play area at the rear of the property, as well as visibility and traffic concerns at the intersection of Gooch Lane and Wall-Triana. Chris Lindsey asked when the City adopted the code regarding fences, and Megan Zingarelli stated December of 1997. John Horch stated that Board members were not present when the code was adopted, but that it was in fact adopted, and is what the City enforces. John Horch further stated that fencing along the side of the front yard cannot be above 2.5-feet and that no fencing may be along the front of the lot. Mary Beth Broeren stated that the report was written in response to Applicants' preferred request for a 6-foot privacy fence. Mae Hudson asked Applicants if they want the same type fence along the sides and front. Mr. Rosa said yes. Mary Beth Broeren stated that Board members have the option to continue the meeting and allow the Applicant to provide an alternative plan. Mrs. Fletcher said that she did not remember a time when other options were offered for consideration. Sherri Williams stated that, on page 3 of the report, it states that the Board can modify the request. The report was prepared in response to Applicants' preferred option of a 6-foot privacy fence, but the Board does not have to accept only or deny only. The Board can modify its approval in whatever ways it chooses, height, style, material, or, if it is not comfortable with that approving something that cannot be seen, it can request that the Applicants come back. Mrs. Fletcher asked members if they would consider modifications to the application/request. Board members stated they would. Mary Beth Broeren stated the Board could approve a fence for the front, but not the sides, or a specific height, whatever height it chooses, without Applicants having to come back. She further stated that, if the Board is inclined to grant the Variance, a reason for granting it needs to be clearly stated. Ted Whitney stated that a hardship is not established. Chris Lindsey stated that a hardship must be established. Mrs. Fletcher stated that considering Code Enforcement did not find the existing portion of the fence to be a visibility issue, and considering the Applicants are

willing to look at other options, if members are willing to review different options then the Applicant will not need to come back. John Horch stated that granting the Variance would grant Applicants a special privilege not given to other property owners.

Staff Comments: Staff recommends denial of the requested Variance, for reasons stated in Staff's report. Mrs. Fletcher asked if Planning Staff had received phone calls or emails regarding the request. Sherri Williams stated that two (2) complaints were made prior to the application being submitted, but that no phone calls or other communication was received afterward.

Motion: Ted Whitney moved to approve case number VAR-2017-002, a request for a Variance to City of Madison Zoning Ordinance Section 5-8 Fences, Walls and Hedges, as modified by the Board, to allow a split rail wood fence, not to exceed 2.5-feet in height along the front edge of the front yard, and not to exceed 4-feet in height along the side edge of the front yard. John Horch seconded the motion and the vote was as follows:

Following the motion, there was further discussion by the Board. Mae Hudson stated that the street is extremely busy. Ted Whitney stated that Applicants were aware of the busy street before building the house. Mrs. Fletcher asked if Mr. Whitney and Dr. Horch will consider amending the motion to include split rail and/or wrought iron fencing, and they both said yes. She further stated that because the different types of fences come in standard heights that are above 2.5-feet, and based on the location of the property and recent accidents at the intersection, the heights should not exceed 3-feet along the front edge of the front yard and 4-feet along the side edges of the front yard. Mr. Whitney and Dr. Horch agreed to amend the motion.

Amended Motion: Ted Whitney moved to approve case number VAR-2017-002, a request for a Variance to City of Madison Zoning Ordinance Section 5-8 Fences, Walls and Hedges, as modified by the Board, to allow a split rail wood fence and/or open style wrought iron fencing, not to exceed 3-feet in height along the front edge of the front yard, and not to exceed 4-feet in height along the side edge of the front yard. John Horch seconded the motion and the vote was as follows:

Betty Fletcher	Aye
Mary Hudson	Aye
Christopher Lindsey	Aye
John Horch	Nay
Ted Whitney	Aye

Motion Carried.

Old Business

Mrs. Fletcher asked Board members and Staff if there were items of *old business* to discuss. There being none, Mrs. Fletcher closed the floor to *old business*.

Other Business

Mrs. Fletcher asked Board members and Staff if there were items of *other business* to discuss. There being none, Mrs. Fletcher closed the floor to *other business*.

Adjournment

With no further business before the Board, Mrs. Fletcher adjourned the meeting at 7:15P.M.

Approved:



Betty Fletcher, Chair

Attest:



Sherri Williams, Recording Secretary