

BOARD OF ZONING APPEALS
PUBLIC, HEARING MINUTES

The regular meeting of the Board of Zoning Appeals was held on
Monday, November 18, 2024, at 7:00 p.m.
in Council Chambers, City Hall, Alexandria, Virginia

The proceedings of the meeting were recorded; records of each case are on the web at www.alexandriava.gov/dockets and on file in the Department of Planning and Zoning.

Members Present: Tim Foley, Chair
 Dawn Bauman, Vice Chair
 Raj Patel, Secretary
 Ryan Belmore
 Kimberlee Eveland
 Paul Liu

Members Absent:

Staff Present: Mary Christesen, Department of Planning & Zoning
 Marlo Ford, Department of Planning & Zoning
 Sean Killion, Department of Planning & Zoning
 Shekyta Taylor, Department of Planning & Zoning

1. CALL TO ORDER

Mr. Foley called the November 18, 2024, Board of Zoning Appeals to order at 7:00 p.m.

2. ANNOUNCEMENTS

None.

UNFINISHED BUSINESS AND ITEMS PREVIOUSLY DEFERRED

3. BZA #2024-00005

1700 Dewitt Avenue

Public Hearing and consideration of a request for a Special Exception for an after-the-fact fence on a corner lot; zoned: R-2-5/Residential

Applicant: John C. Anderson

BOARD OF ZONING APPEALS ACTION, OCTOBER NOVEMBER 18 2024: On a motion to approve by Mr. Liu, seconded by Ms. Eveland, the Board of Zoning Appeals denied the requested special exception. On a vote of 3 to 3, the special exception was denied.

Reason to deny: The Board agreed with staff analysis that the request did not meet all the criteria for a special exception.

Speakers:

John Anderson & Sarah Paulsen, owners, presented the case and answered questions.

Rita Pratte, tenant of 1700 Dewitt Avenue, spoke in support.

Aidan Cornwell, tenant of 1700 Dewitt Avenue, spoke in support.

Renee Peregory, neighbor at 1702 Dewitt Avenue, spoke in support.

Discussion:

Ms. Eveland asked the applicant if they had looked over the character of the neighborhood as a majority of the fences, they submitted along with their submittal included four-foot open fence. Mr. Foley asked staff if they were able to locate any fence the current location. Mr. Killion confirmed they would be able to locate a four open fence in that location. Ms. Christesen added the definition of an open fence requires that at least 50% of the fence source remain open.

Ms. Pratte, a tenant of the property, spoke that she was in favor of the fence. She believed it was in line with the development of the area and the current location provides privacy and far better suits the neighborhood than the required location determined by the setback.

Mr. Cornwell, a tenant of the property, spoke in favor of the fence as the it would provide privacy for his basement unit. He also stated the fence reflects other fences of the neighborhood and expressed neighborhood support for the fence as it creates a space for people to bring their pets.

Ms. Peregory, a neighbor at 1702 Dewitt Avenue, spoke in favor of the proposed fence. She

prefers the fence to the original bushes which were intrusive to the sidewalk. She felt the fence was in character with the neighborhood and was going to cost the applicant more money to move it into compliance. Mr. Patel had asked the neighbor if she had a fence on her property, to which she replied that she has a chain link open fence.

Ms. Bauman asked the applicant a couple of questions regarding the area that would be reduced due to the fence meeting the setback versus its current location. The applicant stated that a third of the yard would be lost if it had to meet the setback. Ms. Bauman asked if there was a need for a six-foot fence. The applicant brought up the need for privacy and safety for them and the tenants. They also brought up that contractors never stated anything regarding a permit requirement or the need for a setback on a corner lot.

Mr. Patel asked staff if this wasn't a corner lot would they be allowed to have a six-foot fence up the property line. Staff explained that if this was an interior lot they could not have a 6.00 foot fence in the front yard, but could have it in the side and rear yards.

Mr. Belmore asked the applicant if they had reached out to the City of Alexandria regarding if they would have to meet additional requirements for the fence. The applicant stated that they did look on the City's website but didn't see any additional requirements beyond that a permit wasn't required.

Ms. Bauman asked staff about the other fences shown in the submittal by the applicant. Mr. Killion stated that the City of Alexandria doesn't require fence permits and relies on a compliant driven system for enforcement. Ms. Bauman asked about specific addresses and if they are in direct violation. Ms. Christesen added that prior to 1992 there wasn't any fence regulations so some of these could be replacements of existing noncomplying fences.

Ms. Bauman asked about if federal laws regarding fair housing and veterans would be in effect that would change the location of the fence. Staff was not aware of any such laws.

The Board asked questions about zoning enforcement related to this fence. Staff informed the Board that this was an anonymous complaint submitted through City of Alexandria 311 and the Zoning Inspector found the fence not in compliance with corner lot fence regulations.

Mr. Liu asked the applicant regarding the email submitted in opposition which stated the applicant showed the neighbors a different plat with a different design than what was submitted to the Board of Zoning Appeals. The applicant responded that it was created by the contractor prior to them getting a survey plat done for the special exception application. Ms. Christesen confirmed it was different from the submitted plat, but that it would be still not comply with the corner lot fence regulations.

Mr. Foley reminded the Board that Zoning Ordinance doesn't ensure privacy, nor is privacy included in the special exception standards.

Mr. Patel spoke in support of the request and stated that this wouldn't create harm or impact adjacent properties. Additionally, Mr. Patel brought up how he lives in the area and agrees it will fit in with the development of the community.

Mr. Foley asked staff the reasoning behind the need for a front yard fence to be only four feet in height and 50% open. Ms. Christesen responded that the intent of the regulation was to preserve the character of open front yards in the neighborhood.

Ms. Bauman asked staff to explain whether the current fence would meet all the standards of the special exception. Mr. Killion explained how the request did not meet each of the standards as explained in the staff report. Ms. Bauman asked about which properties would be affected this proposed fence. Ms. Christesen responded that the required setback is determined by the positioning of primary fronts of neighboring properties.

Mr. Foley stated that the approval of this fence will set a precedent of approving a six-foot fence and we would see a lot more cases coming to the Board requesting to build six-foot fences.

Mr. Patel asked if staff can choose which complaints to enforce. Mr. Killion followed by Ms. Christesen replied that staff responds to all complaints. Mr. Belmore asked staff if zoning inspectors proactively enforces noncomplying fences. Mr. Killion stated that zoning enforcement is complaint based.

Ms. Bauman asked staff will enforce other noncomplying fences included in the applicant's submittal. Ms. Christesen responded that staff will not enforce unless we receive a compliant.

Mr. Liu wanted staff to further explain the special exception standard related to light and air. Staff explained the walling effect of a six-foot solid fence and the need to have a four-foot open fence in the secondary front yard when located on the property line.

Ms. Bauman brought attention to the special exception standards and explained that she felt the request met the first four standards. However, the fence location and height are not the only location on the lot to create a reasonable fenced area.

Mr. Foley agreed with Ms. Bauman but brought attention the deeper meaning behind light and air. For the Board to think beyond the sunlight that is taken away from the fence.

Mr. Liu stated there are alternative fence configurations the applicant can explore that will not require a special exception

Mr. Liu asked the applicant if they had gotten a financial estimate from any contractors to relocate the fence. The applicant said they haven't discussed price and were waiting for the outcome of this meeting.

Ms. Bauman reminded the Board that financial hardship isn't one of the criteria to be considered for the approval of a special exception.

Ms. Christesen reminded the Chair that the applicant could request a deferral to see if they give them an opportunity to make changes to the current request.

Mr. Foley asked why the item was previously deferred. Ms. Christesen stated the applicant

was given the option to have their case heard in front of a full board. Mr. Foley asked the applicant if he wanted to defer the current request. The applicant indicated they wanted to the Board to go forward with a vote.

NEW BUSINESS

4. BZA #2024-00006

3350 Commonwealth Avenue

Public Hearing and consideration of a request for a Special Exception for an after the fact fence on a corner lot; zoned: RB/Residential

Applicant: Ami M. Angell

BOARD OF ZONING APPEALS ACTION, NOVEMBER 18, 2024: On a motion by Ms. Eveland, seconded by Ms. Bauman, the Board of Zoning Appeals voted to approve the requested special exception for the 6.00 and 7.00 foot portions of the fence with the conditions that the 4.00 foot portion of the fence in the public right of way be removed and the 4.00 foot less than 50% open portion of the fence on the subject property be brought into compliance. The motion carried on a vote of 6 to 0.

Reason: The Board agreed with staff analysis that the request met the criteria for a special exception.

Speakers:

Ami Angell, property owner, made the presentation.

Jonathan Kalnicki, spoke in support of fence and showed photo of person sitting and leaning up against fence.

Discussion:

Mr. Foley asked about the portion of fence in the right-of-way and to confirm that the Board will not be taking action on that portion of fence. Staff confirmed and explained the applicant is waiting for the outcome of this meeting before they hire a contractor to correct the fence.

Mr. Belmore asked if the applicant had obtained a permit for the fence. Staff informed the Board that permits are requirement of the Building Code which is under the purview of Code Administration, but that fences do not require a building permit.

Mr. Liu inquired about the rationale for the 50% open requirement for fences in front yards. Staff explained that requirement to maintain open fences was to preserve the character of open front yards in neighborhoods. Staff also explained that their have been few updates to the fence regulations, but no changes to the openness were proposed.

Mr. Belmore asked if there were any other relief available for a solid fence is a primary front yard. Staff responded that a variance could be request, but it is unlikely that it could meet the standards for a variance.

Ms. Ami Angell spoke to the whole reasoning for the fence was due to the trash and people sitting on property and sometimes intoxicated layout out on lawn area. The topography was

a concern as there is a working dog that could clear the height of the fence I and lastly, the height gave a barrier from the lights at the adjacent commercial complex.

Chairman Fowley asked applicant if she would be opposed to modifying the 4.00 foot portion of the fence to bring it into compliance with the requirement to be 50% open. The applicant agreed.

5. MINUTES

Consideration of the Minutes from the October 7, 2024, Board of Zoning Appeals Public Hearing.

BOARD OF ZONING APPEALS ACTION, November 18, 2024: By unanimous consent, the Board of Zoning Appeals approved the minutes of the October 7, 2024 hearing, as submitted.

6. ADDITIONAL BUSINESS

Ms. Christesen informed the Board that no new applications has been received for the December meeting, so it will be cancelled. Also, staff will poll the Board for a potential workshop date in early 2025.

7. ADJOURNMENT

The Board of Zoning Appeals meeting was adjourned at 9:00 p.m.