



**Zoning Board of Appeals**

**June 2, 2016**

**I. CALL TO ORDER:**

Chairman Hammond called the meeting to order at 7:00 p.m.

**II. PLEDGE OF ALLEGIANCE:**

All present gave the pledge of allegiance.

**III. ROLL CALL:**

Tom Betsinger	Present	John Francis	Absent
Tom Yakaitis	Present	Mildred McNeal-James	Present
Patrick Kelsey	Present	Butch Distajo	Absent
Mike Hammond	Present		

Also present: Senior Planner Jerad Chipman; Village Attorney Laura Julien; Director of Community Development Rich Young; Executive Director of the Montgomery Economic Development Corporation Charlene Coulombe-Fiore and members of the audience.

**IV. APPROVAL OF MINUTES:**

**MOTION:** Motion was made by Vice Chairman Kelsey to approve the minutes of the March 3, 2016 Zoning Board Meeting. Commissioner Yakaitis seconded.

*The roll call vote was 5-0 as follows:*

**Ayes:** Kelsey, Hammond, McNeal-James, Betsiner and Yakaitis

**Nays:** None.

**V. NEW BUSINESS:**

**ZBA 2016-015 V Public Hearing and Consideration of a Fence Height Variance Located at 309 2<sup>nd</sup> Avenue.**

Senior Planner Jerad Chipman stated the Petitioner is requesting a variance to the Zoning Ordinance to allow a six (6) foot tall privacy fence in the front yard. The Zoning Ordinance specifies that the maximum height of a residential front yard fence is a three (3) foot closed fence or a four (4) foot open fence. The parcel is four and a half (4.5) acres in size and the dwelling is setback over one hundred (100) feet from Second Avenue.

The Petitioner, Terry Gaca feels his parcel has an uncommon setback.

Senior Planner Chipman read the findings of fact:

1) That the property in question cannot yield a reasonable return if permitted to be used only under the conditions allowed by the regulations governing the district in which it is located; ***It is the Petitioner's opinion that the property would yield a lower return as placing the fence over one hundred (100) feet away from the property line would be impair the property owner's ability to define property boundaries, provide privacy and protect from trespassing.***

Staff understands that the house is setback further on the parcel in question than on most residential parcels in the Village, however, staff believes that there is adequate space for the property to yield a reasonable return as the rear of the property extends over five hundred (500) feet past the front façade of the house.

2) That the plight of the owner is due to unique circumstances; ***The Petitioner believes that their situation is unique as the house is setback over one hundred (100) feet from Second Avenue.***

Staff believes that this is an unusual scenario, however, not a unique situation since the essential character of the neighborhood includes large front yards. Several neighboring houses are setback more than one hundred (100) feet from Second Avenue.

3) That the variation, if granted, will not alter the essential character of the locality; ***The Petitioner believes that the variance will not alter the essential character of the locality as the fence will proved a buffer similar to the natural, landscape barriers found on the side and rear yards of the property.***

Staff believes that a six (6) foot privacy fence would alter the essential character of the neighborhood as there are very few front yard fences on Second Avenue and none of them are six (6) feet in height.

4) That the particular physical surroundings, shape, or topographical conditions of the specific property involved will bring a particular hardship upon the owner as distinguished from a mere inconvenience if the strict letter of the regulations were to be carried out; ***The Petitioner believes that the physical surroundings create a hardship as a property owner is unable to enjoy the comfort and safety that a privacy fence would offer.***

It is staff's opinion that there are no physical characteristics of the site that render a hardship for the Petitioner. The property contains several acres behind the house that could be fenced off for the purpose of providing comfort and enjoyment.

5) That the conditions upon which the application for variation is based would not be applicable generally to other property within the same zoned classification. ***The Petitioner has indicated that they believe that the conditions of hardship are unique to their property as the Petitioner's house is located over one hundred (100) feet from the front yard.***

It is staff's opinion that the conditions upon which the application is based would be applicable to other properties within the same zoning classification. Other properties in the R-3 Traditional Neighborhood Residence District contain large front yard setbacks, and staff is unaware of another property in the Village that contains a six (6) foot tall privacy fence in its front yard.

6) That the need or purpose of the variation is not based exclusively upon a desire to make more money out of the property;

Staff believes that the desire to construct a fence closer to Second Avenue is not based exclusively upon a desire to make more money out of the property.

7) That the granting of the variation will not be detrimental to the public welfare or unduly injurious to other property or improvements in the neighborhood in which the property is located;

**Staff believes that the variation should not cause detriment or injury.**

8) That the proposed variation will not impair an adequate supply of light and air to adjacent property, or substantially increase the danger of fire, or otherwise endanger the public safety or substantially diminish or impair property values within the neighborhood." *The Petitioner has indicated that they believe that the variance will not impair light, air and property values.*

**Staff believes that the variation will not impair the neighboring properties environment or values, however, the fence would affect the essential character of the neighborhood.**

Mr. Gaca voiced that the parcel is unique and feels the fence will not change the character of the neighborhood since the lot is located on a dead end street with very little traffic.

Chairman Hammond opened the public hearing.

Resident for 37 years, Craig McCloud residing directly across 309 2<sup>nd</sup> Avenue believes open natural spaces should be respected and preserved and respectfully requests the fence variance be denied.

There were no further comments and the public hearing was closed.

Discussion ensued among the Commission and the Commissioners agreed with staff's findings.

**MOTION:** Motion was made by Commissioner Yakaitis to recommend denial of the fence height variance located at 309 2nd Avenue. Commissioner McNeal-James seconded.  
*The roll call vote was 5-0 as follows:*

**Ayes:** Yakaitis, Kelsey, Hammond, McNeal-James and Betsinger

**Nays:** None

**VI. OTHER BUSINESS:**

There was no other business brought before the Zoning Board of Appeals.

**VII. ADJOURNMENT:**

Having no further business to discuss, the Zoning Board of Appeals was adjourned at 7:23 p.m. by Chair Hammond

Respectfully submitted,



Toula Coffey  
Zoning Board of Appeals  
Administrative Assistant