



## **VILLAGE OF MONTGOMERY**

### **Zoning Board of Appeals Meeting Agenda August 2, 2018 7:00 P.M. Village Hall Board Room 200 N. River Street, Montgomery, IL 60538**

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- I. Call to Order- Chairman Hammond called the meeting to order at 7:00 pm.
  
- II. Pledge of Allegiance- All present gave the pledge of allegiance
  
- III. Roll Call  
Absent: Tom Betsinger, Ryan Anderson and Nick Plattos.  
Present: Tom Yakaitis, Patrick Kelsey, Mike Hammond, and Mildred McNeal-James.  
Also Present: Village Attorney Laura Julien, Senior Planner Jerad Chipman, Director of Community Development Rich Young, Village Trustees Theresa Sperling and Doug Marecek and members of the audience.
  
- IV. Approval of Minutes from January 4, 2018  
Motion: Motion was made by Commissioner Kelsey to approve the minutes of 1/4/18.  
Commissioner Yakaitis seconded the motion. Motion passed 4-0.  
Ayes: Yakaitis, Kelsey, Hammond, McNeal-James  
Nays: None
  
- V. Public Comment Period  
There were no comments from the public.
  
- VI. Items for Zoning Board of Appeals Action
  - a. ZBA 2018-016 V Public Hearing and Consideration of a Variance to Ordinance 976, an Agreement Annexing the Fairfield Way Subdivision and its Various Applicable Amendments, Located at 1707 Marilyn Drive – Scott Clements.

Commissioner Hammond read through an introduction to the item, providing background as well as a timeline of events leading up to the variance request.

Senior Planner Chipman explained that annexation agreements are all different, but that the Fairfield Way agreement allows for variances. The petitioner was requesting a taller fence than what is currently allowed due to the mauling of his 2 dogs (killing one of them) by the neighbor's

dog. The petitioner installed a fence, consulting only the Village website and not obtaining a permit.

Commissioner Hammond inquired as to how many subdivisions have this in place, which Chipman replied that there are several, especially on the West side of the Village.

Commissioner Hammond clarified, that online, there was nothing listed specifically about the four-foot fence limit on the Village website, which Chipman replied that there was not.

Commissioner McNeal-James inquired as to why the petitioner would have contacted Yorkville Police Department when the incident occurred with the dogs, which could only be speculated since the petitioner was not present.

Commissioner Hammond opened the public hearing, there were no comments from the public.

Commissioner Hammond read through 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 could not yield a reasonable return as the safety and enjoyment of their backyard would be impaired by having a lower fence. The impairment would be a result of neighboring dog encroachment.

While staff sympathizes with the Petitioner for the loss of their dog, there are other means of deterring dogs from encroaching into neighboring properties. The installation of perimeter landscaping have been utilized by other property owners in similar situations.

2) That the plight of the owner is due to unique circumstances; The Petitioner believes that their situation is unique due to the history of dogs breaking through and jumping over the previous fence.

Staff believes that the situation is not entirely unique as many properties in the Village have four (4) foot fences and large dogs.

3) That the variation, if granted, will not alter the essential character of the locality; The Petitioner believes that the essential character of the neighborhood will not be altered as the fence is aesthetically pleasing.

Staff is of the opinion that the fence is aesthetically pleasing, however, believes that the essential character of the locality will be altered as all of the other properties in the subdivision, with fences, are at a height of four (4) feet. The Village has stood behind the implementation of four (4) foot high fences four approximately fifteen (15) years and to move away from that standard prior to expiration of the Annexation Agreement would be disingenuous to the many other residents that have complied with the current standard.

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 requiring the fence to be lowered to four (4) feet would result in a hardship as the fence would no longer be structurally sound. This would result in the entire fence being required to be removed and replaced.

It is staff's opinion that the fence could be constructed to meet the Annexation Agreement restriction.

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 believes that their situation is unique due to the history of dogs breaking through and jumping over the previous fence.

It is staff's opinion that the situation is not unique to this property as other residents have large dogs and have complied with the Annexation Agreement.

6) That the need or purpose of the variation is not based exclusively upon a desire to make more money out of the property; The Petitioner believes that the variation request is not based upon a desire to make money.

Staff does not dispute the Petitioner's view regarding this issue.

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; The Petitioner has indicated that they believe that granting the variance will not cause detriment to other properties in the neighborhood and has indicated that correspondence occurred with the neighbors prior to constructing the fence.

Staff believes that the variation could be detrimental to the residents that have previously inquired into gaining permission for a higher fence, due to their ownership of large dogs, that have since abided by the Annexation Agreement.

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 believes that the variation would not result in physical impairment or diminish the value of surrounding properties.

Staff agrees with the Petitioner on this standard.

Senior Planner Chipman stated that staff recommends denial of the variance based on the number of people already denied a fence over four feet tall in Fairfield Way, and instead, proposed to allow the annexation agreement to expire.

Commissioner McNeal-James pointed out the benefits of having a four foot fence policy when a subdivision is built from a policing standpoint. It can provide crime and theft deterrent since

neighbors and police can see over fences and make for a safer community. Commissioner McNeal-James expressed her sorrow that the petitioner had not attended to answer questions, such as why they had not sought out information on fence requirements. McNeal-James stated that in today's world there are so many outlets for information at hand, and he could have learned that he needed to come to the office or speak with the HOA. With so many options out there, she wonders why the petitioner did not do that.

Commissioner Kelsey stated that he felt the Annexation agreements should be publicly available, and that the Village should not dismiss the item.

Director of Community Development, Rich Young, stated the matter had not been dismissed.

Commissioner Yakaitis expressed his opinion that the Village should be the first call made by a resident. While Commissioner Kelsey felt a written request was more appropriate.

Senior Planner Chipman stated that it was not the intent of the Village to dismiss the item, and that the problem in going online to seek information on annexation agreements is that they are not always simple to understand, especially when they are hundreds of pages long and have multiple amendments.

Commissioner McNeal James restated that she had questions for the petitioner in Fairfield as to why he had not asked any of his neighbors about fence regulations. She agreed that transparency should be the goal, but the petitioner had many options and should not be let off the hook.

Commissioner Hammond questioned the quality of the fence and what contractor had installed it. Senior Planner Chipman replied that the fence was well made, but we do not know the contractor since a permit was not obtained.

Motion: Motion was made by Commissioner Yakaitis to deny ZBA 2018-016 V Public Hearing and Consideration of a Variance to Ordinance 976, an Agreement Annexing the Fairfield Way Subdivision and its Various Applicable Amendments, Located at 1707 Marilyn Drive – Scott Clements. Commissioner McNeal James seconded the motion. Motion passed 4-0.

Ayes: Tom Yakaitis, Patrick Kelsey, Mike Hammond, Mildred McNeal-James

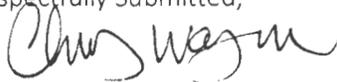
Nays: None

Senior Planner Chipman stated that this item will go before the Board 8/27/18.

VII. Next Meeting: September 6, 2018

VIII. Adjournment- With no other business to discuss, Chairman Hammond adjourned the meeting at 7:26.

Respectfully Submitted,



Chris Wagner, Plan Commission Secretary