

**ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
Tuesday, September 20, 2022**

Members Present:

Ed FreibergChairman
Isaac T. Henry III.....Vice Chairman
Linn Cardner.....Member
J. David Derosier Member
Keith Longlois..... Member
Mark Ferrell.....Alternate Member

Members Absent:

None

Council Members Present:

None

Staff Present:

Kelvin Knauf, Director of Planning & Community Development
Wendy Lloyd, Planning Secretary
Marvin Benoit, Building Official

Chairman Freiberg called the meeting to order at 5:30 p.m.

CITIZEN COMMENTS

Chairman Freiberg asked for any comments. None were made.

REGULAR BUSINESS - MEETING MINUTES

Chairman Freiberg asked for motion to approve the February 15, 2022, regular meeting minutes

Member Derosier motioned to approve
Vice Chair Henry 2nd

Vote: 5 - 0

Motion Carries

PUBLIC HEARING

Conduct a public hearing on a request from Reina Hernandez for a variance to the fence ordinance to allow construction of a fence that is more than four feet in height and opaque in the front yard at 1208 6th Street.

Chairman Freiberg opened the public hearing at 5:33 p.m.

Mr. Knauf stated the property owner at 1208 6th Street, they have constructed a fence that is pretty much the perimeter of the property and the fence that is pretty much in front of the house is more than 4 feet. The ordinance requires that fences in the front yard cannot be more than 4 feet in height and must be at least 50% see through, what we call non-opaque, so that the width between the slats is equal to the slats at least. That's how you get the 50% see through. So, they have constructed this fence. This property is a little bit unique in that it sits much further back on the lot than the neighboring property. The house sits much closer to the street than this one. So, under the fence ordinance, it's kind of unique that this property here at 1200 6th Street if they were to construct a fence, then they could construct an 8 foot opaque fence along this line and it would be perfectly legal. But this property owner at 1208 6th Street, since this is their front yard, they can only construct a 4 foot non-opaque fence in essentially the same place. It's kind of an anomaly. Member Longlois stated the front yard being defined as more or less the corner of the house forward. Mr. Knauf stated the front yard is defined as the façade of the house to the property line. So, all this area plus the fence ordinance says that to have an 8 foot fence on your side yard you have to be at least 2 feet off the front façade, front wall of your house and then you can go 8 feet on back. So as long as this person is at least 2 feet from the corner here they could build an 8 foot opaque fence all the way back but this person once they get here they can do 8 feet opaque all the way back but here they can only do 4 feet non-opaque. Now this fence was constructed without a permit. They did not come and apply for a permit, they just put it up. They have requested a variance and I've got pictures of the fence. Mr. Benoit stated Kelvin, originally there was a permit but it had expired. At the time they put the fence up there was not a valid permit. Mr. Knauf stated this is the fence that they put up. This is showing the front yard here. This is the front of the house. This house can put up a 4 foot non-opaque fence here and then an 8 foot fence from here back but neither property can put up a fence that is more than 4 feet tall and non-opaque in the front yard. That would be in violation at that location.

Dwayne Joubert – 1200 6th Street, Orange, TX: Mr. Joubert stated my question is does this apply only to this location. Mr. Knauf stated that's a city wide regulation that fences in the front yard cannot be more than 4 feet tall and must be at least 50% see through. Mr. Joubert stated because I've seen several houses in Orange the same height. Mr. Knauf stated yes there are a few. When we catch them they are in violation unless they got a variance. Mr. Joubert stated some of them have been there for a while. Mr. Knauf stated yes they could be way back when back in the 50's or so there probably was not that regulation. Today there is that regulation. That was passed from what we can tell in the early 90's. Mr. Joubert stated I live right next door and the other neighbors and everybody on this street thinks it really improves the look of that street. We all like it. I have a petition talking about that we have no problem with it. I didn't know anything about the permit situation. He and I talked before he put the fence up and I was ok with it from the very beginning the way he had it closest to my property. I have no problem with it and won't have any problem with it in the future. Chairman Freiberg stated so you have stated your case. Is there anyone else?

Robert Estrada – 745 International Blvd. Apt. #138, Houston, TX: Mr. Estrada stated I'm a friend of the owner Reina or I'm a friend of her brother rather. The permit did expire. We renewed it and we're willing to fix the fence. We have to fix the fence. But we're told that it has to be 4 foot all the way to the front of the house. But, because the house is so far back, we're hoping that we can only go 4 feet up to the front of his house and not all the way to the front of her house because it's so far back and you wouldn't see it anyways. You would not notice it. Mr. Knauf stated you can go up and point if you'd like. Mr. Estrada stated so we're told we have to go 4 feet all the way to the front of the house which is 140 feet from here to here. We're hoping that we can do the 4 feet up to here which is the front of the neighbor's house. That is what we want to do on both sides. Vice Chair Henry stated where is it now. You want to going from 8 to 4 dropped down from that taper. Mr. Estrada stated we're not sure. Should it be 4 feet all the way? Vice Chair Henry stated is that what it is. Mr. Estrada stated it's 4 feet and it tapers up. We're hoping just to do the 4 feet all the way to the front of the neighbor's house and then can we taper up.

Chairman Freiberg stated so we notified people within 300 feet. Mr. Knauf stated yes. Chairman Freiberg stated there wasn't that many because of the funeral home across the street. Mr. Knauf stated I got no responses.

Vice Chair Henry stated and so everyone you've talked to is ok. Mr. Joubert stated yes and the owner of the funeral home too. He has his name on this list, Sparrow's. Yes we are all ok. Can we go back to my house? I have a question on what he was saying where he wants to stop. Are you talking about on the corner of my house? Mr. Estrada stated on the corner of where your fence starts at yes that is where we would start going to 8 feet. We are hoping they will allow us to go 4 feet all the way up to your fence. Mr. Joubert stated so what I'm wondering on my property I couldn't do that. Mr. Knauf stated you could do 4 feet but non-opaque. You could not put that same fence on your property from the front forward. Mr. Joubert stated see how it slopes down. I think his 4 feet starts about right there maybe. Mr. Knauf stated when I measured it, it was 4 ½ feet was the height. Mr. Joubert stated on the sides it's like 6 feet on both sides. Mr. Knauf stated yes but he would be allowed 8 feet. He can build up to 8 feet. As long as he starts 2 feet behind the front of his house. Mr. Joubert stated you have to take most of this down. Mr. Estrada stated we have to on the side because it's over 4 feet and then there has to be some space in between, just like the front but 4 feet.

Chairman Freiberg stated your request is for a special variance to be allowed as it is. Is that right? Mr. Joubert stated well that's what the neighbors are asking. Chairman Freiberg stated right and you got everybody on board with it. Mr. Estrada we weren't aware that you had this going on but that would be awesome if we could keep it as is. Mr. Joubert stated we really like it like that. Chairman Freiberg stated that hedge row cuts in maybe 40 or 50 feet back and you don't even see the fence really. Isn't there even a gate between your properties? Mr. Joubert stated you're talking on the side here. Yes, my gate is there. Once you cut the hedges here, it sticks out a little. Here's a picture I took that shows it. Member Longlois stated my concern here and Kelvin correct me if I'm wrong but if we grant the variance, that variance remains with

this property and so if they would sell the property, the variance goes with the title. Mr. Knauf stated right it runs with the land. Member Longlois stated right and as it currently sits, I agree that it's very tastefully done but the next owner could replace this fence with something that is not as tastefully done in theory. So, they could run 8 foot slats all the way to the road so that's something to be concerned about. What's going to happen in 5 or 10 or 15 years down the road? Chairman Freiberg stated but our job and you put it down here each of the following findings and one is the spirit of the zoning ordinance is observed and substantial justice is done by granting the variance. So, I think we're doing that. Nobody has said anything negative.

Member Derosier stated my feeling is that as it sits in theory, the front as it is, is moved back so that parallel to the front of his house then I think we have pretty much what was intended by the ordinance. Personally, I'm not in favor of leaving it the way it is. The reason for that is that's not a hardship on the land. That's a hardship on the individual. I'm not allowed to give you a variance because it's a hardship on you as apposed to the way the ordinance was interpreted. Mr. Joubert stated a hardship on me. Member Derosier stated no for the owners of the fence. Mr. Estrada stated a costly mistake so to speak. Member Derosier stated it was a mistake but replacing it is a hardship and we're not allowed to forgive that hardship. I do believe that it's most obvious that if you do the fence you could do one thing and the next door neighbor does the exact same fence and they can't. That is not correct and that we should correct. I have another question separate from that and that relates to the gate which is 4 feet approximately at each side but peaks in the middle. Is that normally accepted as being 4 feet because it's not. Mr. Knauf stated no it can't be more than 4 feet anywhere. Member Derosier stated so my proposal would be that the front be moved back to the appropriate location and that it all be the same height to fit within the ordinance. Mr. Knauf stated I'm not exactly sure what your motion is. Member Longlois stated it's not addressing the opaqueness of the front. Mr. Estrada stated and when he's saying the front of the house, the front yard, we're referring all the way to the front of the house and the reason why I'm here is to stop the 4 foot at the front of his house because we're so far back. So can we just go opaque and 4 feet all the way up to the front of his house. Member Derosier stated as if it were him doing it and what he would be allowed to do. Vice Chair Henry stated because you all are different. His can be he can go up to 8 feet whereas you can only go 4 foot so you're going to have 2 separate fences on the property line if that makes sense. Member Derosier stated no to me it's a question of equality. The owner on one side can do it but the owner on the other side can't. That's not right. I hate to say meet in the middle but your neighbor or the person here should be able to start at the same place you would be able to start and go back at 8 feet from there. Mr. Knauf stated again neither one can put up an 8 foot here but both can put up a 4 foot non-opaque fence in this section here essentially from the front of his house to the front property line. Now, conceivably this area here is vacant but if a house were to be built there and it's in line with this house, then this property owner could put up an 8 foot fence here but this person can only put up a 4 foot fence in essentially the same location. To me there's something not quite equitable about that. I agree that's a fairness issue. Nobody can put up a fence higher than 4 feet and 50% see through in this area regardless of all 3 properties. Nobody can do that legally under the zoning ordinance. Vice Chair Henry stated I like that concept. Do it from the front of the neighbor's house, 1200 6th, right there do your 4 feet and do your separation there and fix the gate.

Member Longlois stated which is what you asked for. Mr. Estrada stated correct. Member Longlois stated so legally the fence at 1208 would be covered by the front façade of 1200 and some legal jargon would have to be written to define that.

Mr. Benoit stated just for longevity's sake it would be much easier for us who are trying to evaluate the fence if we would establish a standard. In every zone there's a build line and it says that people can't build no closer than 25 feet from the front property line. So, if we could start these fences to drop at 25 feet from the property line. Anything from 25 feet forward needs to be 4 feet, then regardless of where the position of the house is, now we have a hard reference point. You start 4 foot 25 feet. That's the build line. That's as close as you can build to your property and then regardless of how far back you build, it's a standard so it's easy. It's not so judgmental every time and not so subjective. Member Longlois stated that would be for council not for us. Mr. Knauf stated that would require changing the ordinance. Member Derosier stated I agree that the official setback for whatever the zone is, that should be the distance not so much where the house sits. When we were all done I was going to make a suggestion that a proposal be sent to the zoning board to do something about it. Chairman Freiberg stated but what he is saying that the house has so many feet that it has to be away from the street. The setback can be before that. Mr. Knauf stated the front yard setback here is probably somewhere in this area here. They just chose to put it much further back on the lot than what they were required to setback.

Mr. Joubert stated it was built back in the 60's and the person that lived there built it. Now where the front fence stops you were saying the gate doesn't meet the requirements to where it peaks up. Mr. Estrada stated it will just have to be 4 foot straight across. Mr. Knauf stated now if you were to invert it down to 3 feet, you could do that. You can't go up.

Chairman Freiberg stated let's see if we can get an agreement here. First thing, across the front we said 4 feet we are in agreement. The gate will be lowered.

Alternate Member Ferrell stated I do have one question. Is the fence across the front 4 foot or 4 foot 6. Mr. Estrada stated I believe it starts at 4. I'm really not sure. Mr. Knauf stated I measured 4 ½ feet and I measured it about in this area here just to see where the shortest one was.

Chairman Freiberg closed the public hearing at 5:57 p.m.

DISCUSSION/ACTION ITEMS

Consider a request from Reina Hernandez for a variance to the fence ordinance to allow construction of a fence that is more than four feet in height and opaque in the front yard at 1208 6th Street.

Member Cardner stated I never say much at these meetings but I wish that it would just stay

and be like it is and not move it. It upgrades the neighborhood wonderfully and moving it is just an expense. I'm just so opposed. I understand all the ramifications. I think that the neighbors say it's fine and they are the ones that have to live there. We don't. We drive by it. If it can't be done, it can't be done but would surely like to take into consideration that they could keep it.

Chairman Freiberg stated I agree with you in principle of that too but I think that what we are coming up with is really about as minimum as we can do. I don't think it's a high dollar fix.

Member Longlois stated I have a question. What is your plan fix for the front if you were to have to fix it? Mr. Estrada stated I'm not the builder but I think they would just have to saw straight across. Member Longlois stated no as far as the opaqueness requirement, the see through requirement of the fence. Mr. Estrada stated on the side. Member Longlois stated across the front. Mr. Estrada stated I thought the opaque on the front was ok. Mr. Knauf stated no, the width between the slats has to be at least the same as the width of the slats in order to get 50% opaque. Member Longlois stated would you come across the front with chain-link or would you come across with some other wood manufacturer similar. Mr. Estrada stated it would be wood. I think they are just going to have to remove everything and start all over.

Mr. Joubert stated so do the neighbors matter. Member Longlois stated absolutely. You've been the biggest help of them all. Mr. Joubert stated well that's why I'm here and had them all sign this petition. We like the fence. We like it the way it is. Member Longlois stated give us a minute to go through this process. I think we're working on something.

Chairman Freiberg stated so the fence is going to have to be at least equal to the width of the boards. Member Longlois stated correct so it will change the conceptual design. I was hoping he was the builder and could tell us what his plan was. Vice Chair Henry stated the sides will be easy to fix. That's just a remove cut, move your gap and that's easy fix. You're going to have some old drill holes but you can plug that with some wood putty. Mr. Joubert stated that's going to be at the cost of the owner, right. Member Longlois stated absolutely. This is my inclination. Require that the fence be set back to the front façade of 1200 and the front be brought into compliance with the ordinance being 50% opaque and 4 feet.

Mr. Knauf stated so right now the fence is here. Are you saying bring that back to the façade and then here it's no more than 4 feet and 50% see through and then from here on back can be 8 feet to match. Member Cardner stated what did you say, something about 8 foot side. Mr. Knauf stated this side here right now is 6 foot opaque but as long as it's within the front façade then they can extend this 6 foot back. Member Cardner stated are both sides 8 feet. Mr. Knauf stated they can build up to 8 feet. It's 6 feet that they actually built. Member Longlois stated would that suit you. Mr. Estrada stated yes. Member Longlois stated does that suit you. Mr. Joubert stated well we like it the way that it is. Does he want to move it? Mr. Estrada stated I think we're ok with moving back. We just did not want to go all the way back. We're going to go with that. Mr. Joubert stated because we neighbors we like it the way that it

is. Mr. Estrada stated I know but unfortunately we made a mistake and I do like the fix going back to the front of your house. It's just going to be just a little bit lower, opaque and it will still look nice. Mr. Joubert stated what about the sides. Mr. Knauf stated that is what I was going to point out. Remember, he could build a 4 foot see through fence from here to here and this person could build a 4 foot see through fence and this person's fence is back. Vice Chair Henry stated I like the concept of when you originally came in from where we're talking about on the side of the house go 4 feet opaque on both sides. Member Longlois stated non-opaque. Vice Chair Henry stated well non-opaque on both sides, fix the front and that way the only thing you have to take off is slats and that's easy fixing on the sides. Mr. Estrada stated so the front stays as is where it's at, we just fix the sides and of course 50% visible on the front and 4 feet. I like that. Vice Chair Henry stated I guess you could pull a slat every other one if you want to do that. Mr. Knauf stated it would be legal. Vice Chair Henry stated right I think you would be closer to 60% see through on that one and just some wood putty in there and simple fix. That way we are sort of meeting in the middle here. I think it would still look good and you would still like it and we take into consideration that every one of the other residents like it. We have to meet in the middle here because we have to do this for everyone in the city. We have to make sure we're doing the right thing. Mr. Estrada stated and I appreciate all your help and input and I promise you that the owner will make it look beautiful and it will still look beautiful. Mr. Joubert stated I just want to understand what you're talking about. Are you talking about taking this part off? Vice Chair Henry stated so from where your line is here where Mr. Kelvin was talking about, this would be 4 feet. You would still have this side of the fence; it would be 4 feet and you will be able to see through here 50% and then have to fix the front. So, you will still have this up but it's got to be 4 feet. Mr. Joubert stated I thought the front had to be 4 feet. Vice Chair Henry stated in theory if we said no we're not going to grant you the variance, he would have to go from the front of his fence line all the way back to his house. He would have to replace all that fence so we're trying to meet in the middle here and just go here. Mr. Estrada stated and we're ok with that sir. Vice Chair Henry stated you're still going to have this fence up but it's going to be 4 feet from here to here and you're going to be able to see through here on this side. That's what the variance requires. In the front, he'll fix the front and do the same thing on the other side. Mr. Joubert stated I thought I was reading and just the front had to be see through. Vice Chair Henry stated right, and that's considered the front as well. Member Derosier stated it's what is in front of your house. Mr. Joubert stated so if I decide to put a fence up. Vice Chair Henry stated if you wanted to do one, you would do the same style fence as him from here to here. Mr. Joubert stated I'm not going to put one up but you're saying it would have to be 4 feet and you call this the front. Vice Chair Henry stated it's considered the front because it's in front of the house. That's my 2 cents. Member Longlois stated I like your idea better than mine. Member Cardner stated I put myself on all of these things as if I lived there and how it is going to affect me like when they wanted to put a taxi cab stand in Roselawn but we didn't do it. I look at things as if I were living there. I understand it from the point of the government and all that but I often look at it from the standpoint of the neighbors. It isn't bothering them. I'll go along with it but I don't want to. Chairman Freiberg stated well it brings some consistency to the neighborhood. Member Cardner stated I know. Member Longlois stated granting a blanket variance someone could come along and do something that is not as tastefully done and as nice as this one. Member Derosier stated it sounds to me like we

are in violent agreement.

Chairman Freiberg asked for motion

Vice Chair Henry motioned to approve Variance to remodel part of existing fence to 4 foot, non-opaque as though his house were in line with 1200 6th Street

Member Longlois 2nd

Vote: 5 – 0

Motion Carries

Member Cardner motioned to adjourn

Vice Chair Henry 2nd

Chairman Freiberg adjourned the meeting at 6:16 p.m.