



CITY OF COLLEGE PARK ADVISORY PLANNING COMMISSION
7401 BALTIMORE AVENUE, COLLEGE PARK, MARYLAND
ADVISORY PLANNING COMMISSION
Draft Minutes of Meeting
January 5, 2023

<u>Members</u>	<u>Present</u>	<u>Absent</u>
Stephanie Stullich, Chair	<u> x </u>	<u> </u>
Santosh Chelliah, Vice-Chair	<u> x </u>	<u> </u>
Daejauna Donahue	<u> x </u>	<u> </u>
Vernae Martin	<u> x </u>	<u> </u>
Kiersten Johnson	<u> x </u>	<u> </u>
Malaika Nji-Kerber	<u> x </u>	<u> </u>
Michael Meadow	<u> x </u>	<u> </u>

Also Present: Planning Staff – Terry Schum, Miriam Bader; Attorney – Suellen Ferguson

- I. **Call to Order and Amendments to Agenda:** Stephanie Stullich called the meeting to order at 7:30 p.m.

- II. **Approval of the Agenda:** The agenda was approved 7-0-0.

- III. **Approval of Minutes:** Michael Meadow moved to approve the December 1, 2022, minutes after the following changes. Santosh Chelliah seconded. Motion carried 7-0-0
 - Stephanie Stullich moved to change paragraph 3 on page 2 to read “*Mr. Klapac was referring to a time when Mr. Jones made repairs after a house fire.*”
 - Correct the spelling of Malaika Nji-Kerber name on page 1.

- IV. **Public Remarks on Non-Agenda Items:** There were no Public Remarks on Non-Agenda Items.

- V. **CEO-2022-03** **Variance to allow the installation of a 6-foot-high stockade fence along the side yard of a street**
Applicant: **Barney Rudolph Schmidtke**
Location: **5009 Apache Street**

Stephanie Stullich explained the hearing procedures and placed witnesses under oath. Miriam Bader presented a PowerPoint presentation and summarized the staff report. The applicant is requesting a variance to erect a 6-foot-high stockade fence (with a gate across the driveway) along the side yard of a street. The property is a corner lot located on the south side of Apache Street and west side of 50th Place. The property is improved with a 2-story single-family home, a shed and 24-foot by 24-foot garage located in the rear yard.

The City Code, Chapter 87, Section 23, paragraph C prohibits fences in the front yard that exceed three feet in height. The request is for a 3-foot-high variance from the City Fence Ordinance to permit a 6-foot fence and fence material variance to install a stockade fence in a front yard that does not incorporate openness.

The City Fence Ordinance was amended in 2017 to allow fences in the front yard up to 3 feet in height. The applicant contends that a 3-foot-high fence is not tall enough to adequately protect his property and that he regularly experiences trespassing.

Staff recommends that the 3-foot variance be approved with the condition that a board-on-board fence be used instead of a stockade fence to incorporate some openness.

Miriam Bader submitted the staff report, Exhibits 1-6, and the PowerPoint presentation into the record.

Santosh Chelliah asked if the adjoining property owner's fences received variances or were approved without the openness requirement?

Miriam Bader stated that those are older fences, so they were probably approved before the fence ordinance went into effect and there was no record that a variance was received.

Stephanie Stullich asked if staff's opinion is that a house that sits on a corner lot would be recommend for approval for a 6-foot fence on the side yard?

Miriam Bader stated that it would be looked at case by case because the City's fence ordinance does consider it a front yard fence. They would need to meet the fence criteria.

Terry Schum stated that one of the key reasons a recommendation for a taller fence for this particular house at this location is that it is in very close proximity to the Branchville Industrial area and so commercial and industrial traffic frequently use Apache Road, and 50th Street and 51st street and Branchville Road to get to those properties. That creates a little more traffic for this location.

Michael Meadow asked if the fence be located behind the power pole and not using the power pole in any way?

Miriam Bader stated yes, because the power pole is in the right of way and the fence need to be located on their property, not the right of way.

Barney Schmdtke, applicant, stated thhe proposed design and layout are to have the fence extend from the front yard just like the other side of the house. He stated that they tried to come up with a layout and design that match other homes in the neighborhood that would inhibit the 4-way stop of the intersection that the property sits on but also provide visual obstruction of his property. He stated that a 3-foot-high fence does not provide the visual protection necessary to prevent thefts. A 6-foot fence would help deter trespassing and help keep his dog secure. They would prefer stockade but would be amenable to the fence with the lattice.

Malaika Nji-Kerber asked if this is more about maintaining your privacy or have you experience a lot of people walking onto your property and walking off with things?

Barney Schidtko stated that they have had tools and a ladder removed, but nothing too expensive. Before they moved in, someone tried to kick in the garage door and gain access.

The visual privacy aspect is comforting but the actual obstruction to access to the property and physically able to remove items is the reason he would like to install a fence.

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David Ogden, 5011 Apache Street, asked how wide is the right-of-way? How far away from the street would the fence be located?

Miriam Bader stated that the right-of-way is not shown on the plans.

Adelia Martinez, Contractor, stated that the fence would be located two feet away from the street.

David Ogden asked what color will the fence be?

Adelia Martinez stated that it will be a wood natural color.

Terry Schum stated that it is difficult to tell the actual dimensions from the photo and they don't have the size of the right-of-way. The utility pole is within the right-a-way and the fence can only be installed on the private property line. Whatever that dimension is would be adequate according to the code for any fence.

Stephanie Stullich stated that it should be clear where the right-of-way boundary is before the fence is installed.

Miriam Bader stated that she will have the city engineer go to the property and mark where the right-of-way is.

Commissioners reviewed the criteria that need to be met before the variance can be granted and made the following conclusions of law based on the staff recommendation:

- 1) That a specific parcel of land has exceptional narrowness, shallowness or shape, exceptional topographic conditions or other extraordinary situation or condition.

The extraordinary situation is that the garage is accessed through 50th Place which has much commercial and industrial traffic increasing the need for fence protection.

- 2) That denial of the variance would result in a peculiar and unusual practical difficulty to, or exceptional or undue hardship to the property owner.

Denial of the variance will result in an undue hardship to the owner by preventing him from adequately protecting his property from commercial and industrial traffic, trespassing and theft.

- 3) Granting this variance will not adversely impact the intent, purpose, and integrity of the City's Fence Ordinance.

Granting this variance will not adversely impact the intent, purpose, and integrity of the City's Fence Ordinance because the proposed fence is not located in front of the house but rather along the side yard of 50th Place and similar fences are located along nearby side streets.

- 4) The variance is consistent with the design guidelines adopted for the historic district, if applicable.

The property is not in a locally designated Historic District.

- 5) The fence for which an appeal is requested incorporates openness and visibility as much as is practicable, provided however, that it shall not be constructed of chain link unless this material is consistent with the surrounding neighborhood.

The proposed stockade fence will have one foot of lattice-style fencing at the top which incorporates openness. Stockade fences are common in this area and a reasonable material at this location to provide protection.

Kiersten Johnson moved to recommend approval of variance CEO-2022-03 for reasons stated in the Staff Report and support the applicant's variance request to allow for a 6-foot stockade fence and ensuring that the setback is two feet from the property line. Michael Meadow seconded the motion. Motion carried 5-1-1, with Stephanie Stullich voting Nay and Daejauna Donahue abstaining.

VI. **BUSA-2022-00943**

1. **Waiver of Chapter 125, Section 6-H Basic equipment and facilities**
2. **Waiver of Chapter M1305.1 – Appliance access, International Residential Code**

Applicant: Gregory M. Teal

Location: 5002 Cheyenne Place

CEO Parada stated that during a standard annual inspection of the subject property on November 7, 2022, he observed multiple violations of Chapter 125 of the City Code and the International Residential Code. A correction order for these violations was conveyed to the responsible party by copy of the inspection report on November 14, 2022. The officer allowed 30-days to correct the violations. The applicant submitted a request for appeal via email on November 23, 2022, within the prescribed period to appeal the Notice of Violation.

The following conditions are necessary to obtain an annual residential occupancy permit.

- Provide 30-inch clearance in front of mechanical equipment.
- Remove obstruction in front of rear kitchen egress door.

Michael Meadow asked how much clearance in front of an egress window is required?

CEO Parada stated that the clearance was not addressed in the residential code, it just says that it should be unobstructed. The square footage is 7.5 opening width.

Suellen Ferguson asked what is the purpose for a window to be that large?

CEO Prada stated that in case of an emergency if a firefighter needs to get in to rescue someone or if the person inside of the bedroom need to get out.

Michael Meadow asked if the bedroom is on grade or the second floor?

CEO Prada stated that the bedroom is on the first floor.

Michael Meadow asked if there is a sprinkler system?

CEO Prada stated that there is no sprinkler system in the house.

Malaika Nji-Kerber asked if the windows can be opened?

CEO Parada stated yes, the windows do open.

Malaika Nji-Kerber asked if the desk shown in Attachment 1 photo can be moved or is bolted to the floor?

CEO Parada stated that it is not permanent. He asked Mr. Teal to remove the desk, but he has not done it.

Michael Meadow asked if the house is inspected annually?

CEO Prada stated yes, the house is inspected annually.

Suellen Ferguson asked what is the purpose of having an unobstructed egress?

CEO Parada stated that firefighters carry equipment, and they need the opening of the window and the space to move a body or something out of the window.

Suellen Ferguson asked if the room where the appliances are located a sleeping room?

CEO Prada stated no, it is the rear exit.

Gregory Teal, applicant, stated that 5002 Cheyenne Place has been under valid inspected and in compliance for a residential occupancy permit for the last 20 years. The configuration of the utility rooms and rear exterior doors of the surrounding homes are the same. All other discrepancies outside of discussion noted in the annual inspection report dated November 14, 2022 have been corrected. In the bedroom egress windows are not blocked and the desk does have space in between the window.

He spoke with the Code enforcement supervisor in person and over the phone to provide the clearances that are required, and they were unable to provide what the clearances were so he has no idea where the desk should be moved. Individuals can pass freely through the front and rear doors in an emergency.

For the rear door obstruction, individuals can pass through this door. No appliances were installed or modified for this inspection and the configuration met code when they were installed. The hot water heater and HVAC system have both been serviced in the past with no space issues.

Mr. Teal entered the following photographs into the record as part of his presentation:

- Exhibit 2A - the front door to the structure unobstructed.
- Exhibit 2B – the rear exit of the property from the kitchen
- Exhibit 2C – rear door opening from the outside looking into the home.
- Exhibit 2D – Mr. Teal standing in front of the kitchen entrance door showing that it is adequate enough space to walk through without issues.
- Exhibit 2E – Equipment space (washer and dryer, hot water heater and furnace)
- Exhibit 2F – Standpipe that services the washer.
- Exhibit 2G – Bedroom window to the door of the room.
- Exhibit 2H – Bedroom window that shows that the windows open and the desk is not against the window.
- Exhibit 2I - Other houses in the neighborhood with the same layout
- Exhibit 2K – Neighbor house showing gas appliance and rear.

Gregory Teal stated that if these are proven to be a violation, it would be a major problem to the property that existed for decades in this configuration. It would impact the current tenants and the facilities available to the tenants that was provided at the start of their lease.

Stephanie Stullich asked under Chapter 125, Section 6H it states every dwelling or unit shall have two separate unobstructed means of egress leading to safe and open space at ground level. Is having a rear and front door exit meet that requirement without the need for windows to provide egress?

Suellen Ferguson stated that some of the information addressed is in reference to fire code violations. This is a single-family home, so it would be considered as a dwelling unit all in one house. Under this requirement, there must be an unobstructed means of egress to safe and open space at ground level, so that would be a front and back door.

Suellen Ferguson asked if all the properties surrounding the applicant's property are rentals that he would inspect annually?

CEO Parada stated that not all of them are rentals but the ones that are were issued violations and the owners have brought them into compliance.

Stephanie Stullich asked the attorney if she could provide the language of the fire code.

Suellen Ferguson stated that the fire code is Chapter 115, which incorporates by reference the County's Fire Code, plus chapter 24 of the National Fire Protection Association. (NFPA) life safety code. She suggests that the commission direct their questions to the Fire Marshall, Robert Ryan, who is present at the meeting and may be able to answer the questions.

Robert Ryan, Director of Public Services and Assistant State Fire Marshall, stated that in the City Code, chapter 115 the fire safety laws of the city, which were adopted from the

County fire laws which also adopt the National Fire Protection Association life safety Code.

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The Code does require secondary means of egress from every room used for sleeping. The area of 5.7 square feet is a requirement that primarily is for means of escape so that residents can get out and fire service can get in to make rescue if needed.

Stephanie Stullich asked if there have been any fires at residential properties?

Robert Ryan stated, yes there have been, some fatal.

Stephanie Stullich asked if obstruction of an egress window is something that is in practice and commonly looked for in code inspections.

Robert Ryan stated that they are training all their code enforcement officers on life safety code.

Michael Meadow asked if the code allows for any exceptions if the dwelling unit has a sprinkler system?

Robert Ryan stated it does, the secondary means of escape is not required in the bedroom if a full sprinkler system is in the home. Mr. Ryan submitted into the record the worksheet for the secondary means of escape window size. It was entered into the record as Exhibit 3.

Malaika Nji-Kerber asked if the door that exits where the washer and dryer are located is considered an obstructed exit?

Robert Ryan stated that he would consider it obstructed if it could not open to the full width of the door frame.

Malaika Nji-Kerber asked if are there many homes that do not meet these requirements because of the orientation of the room?

Robert Ryan stated yes, the City has experienced in their inspections of rental properties many rooms that are being used as bedrooms that do not meet the minimum dimension. We require those property owners to enlarge those windows and if they are basement windows to construct the window well on the exterior to allow the use of the window for escape.

Stephanie Stullich requested to go into a closed session to confer with Council. Commissioners voted unanimously. The hearing was resumed, to ask more questions.

Stephanie Stullich asked where is the gas shut-off valve for the furnace and water heater?

Gregory Teal stated that as shown in Exhibit 2E the gas valve is in front of the water heater and the gas valve for the furnace is to the right of the PVC pipe.

Santosh Chelliah moved to deny the request to waive the requirement to remove obstructions in front of all egress windows. Michael Meadows seconded. Motion carried unanimous 7-0-0.

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Santosh Challah moved to deny the request to waive the requirement for the removal of obstruction for the rear kitchen egress door. Maliaka Nji-Kerber seconded the motion. Motion carried 7-0-0.

It was unanimously agreed to reopen the record for additional testimony from Robert Ryan in reference to the shut-off valves.

Stephanie Stullich asked Mr. Ryan to provide his opinion if the waiver will endanger the health, safety and welfare of the occupant or the community.

Robert Ryan stated that the minimum requirements are established by committees that analyze these situations extensively. I would support the code requirement and I could see situations, where a resident who is not a technician might try to get between the washer, dryer and furnace to shut off the power or gas to the furnace, which could be endangered.

Stephanie Stullich closed the record of the hearing.

Kiersten Johnson moved to deny the waiver requirement to provide a 30-inch clearance on both sides of the furnace and hot water heater. Santosh Chelliah seconded. Motion carried 4-1-2 with Michael Meadow voting Nay and Maliaka Nji-Kerber and Daejauna Donahue abstaining.

VII. Update on Development Activity

Terry Schum indicated that there was no development activity to discuss and Commissioners can refer to the Bi-monthly report included in the packets for updated information on developments.

VIII. Election of Chair and Vice Chair

Elections of Chair and Vice Chair was deferred to the next meeting.

IX. Other Business:

Terry Schum informed commissioners that she will be retiring on April 1, 2023, after 36 years with the city.

X. Adjourn:

There being no other business, Michael Meadows moved to adjourn the meeting, seconded by Santosh Chelliah.

Minutes prepared by Theresheia Williams.