

**SOMERSWORTH ZONING BOARD OF ADJUSTMENT**  
**MINUTES OF MEETING**  
**August 1st, 2018**

**MEMBERS PRESENT:** Matt Keiser, Donald Routhier, Coty Donohue, Sean Kinneavy, Richard Brooks

**MEMBERS ABSENT:**

**STAFF PRESENT:** Shanna Saunders, Director of Planning and Community Development and Christien DuBois, Assessing/Code Clerk

The meeting was called to order at 7:00 pm.

**1) APPROVAL OF THE MINUTES OF THE MEETING OF June 6th, 2018.**

Brooks stated he would like to include additional detail in the description of why he voted for a variance in the last meeting minutes and asked to have the minutes amended.

Donohue motioned to approve the minutes as amended, seconded by Kinneavy, the motion carried 5-0.

Keiser stated that the Hispano-Suizo case would be discussed under new business.

**2) OLD BUSINESS**

A) Any old business that may come before the Board

There was none.

**3) NEW BUSINESS**

A) Ryan Null is seeking a variance from Section 18. B of the Zoning Ordinance to install a fence greater than four feet in height in a front yard on property located at 3 Buffumsville Road, in the Residential Single Family-A (R1A) District, Assessor's Map 03, Lot 165, ZBA #07-2018- PUBLIC HEARING.

Saunders stated that the applicant is proposing to replace a 4ft fence with a 6ft fence. Saunders continued that in the fence regulations it discusses corner lots, and nothing should be placed within 20 feet of a street.

Routhier asked if this is a corner lot.

Saunders stated it was and that the two lots as shown in the packets had been merged and the two lots are both owned by the property owner.

Brooks asked if the lot consists of two front yards.

Saunders stated that it does.

Ryan Null, the property owner stated he is looking to install the fence to keep his chocolate lab dog in the yard. He continued that there is a lot of foot traffic and stated he finds a large amount of trash in his yard and is hoping to keep the trash out and to increase his privacy.

Keiser asked Null to go over the application he submitted with the Board.

Null stated that he does not foresee a fence diminishing property values in the area as many properties have fences in the surrounding area. Null stated he doesn't see how a fence would be contrary to public interest as no one has complained about the existing fence. A hardship is created as a 4ft fence would not keep his dog in the yard. Null continued that his fence would have a 45 degree angle and would be kept 20ft from the property line and would not create a sight issue. Substantial justice would be met as he would have peace of mind. The proposal is not contrary to the spirit of the ordinance as the ordinance is to keep very large fence from existing.

Brooks asked if the applicant had considered other options such as leashes and invisible fences.

Null answered that he also is concerned with keeping other dogs out of his yard that might interact with his dog.

Fredette asked about the style of the fence such as a solid 6ft fence.

Null answered that it would be a cedar picket fence.

Routhier asked what kind of dog he has.

Null answered it is a chocolate lab.

Routhier asked if the 4ft high fence was not sufficient.

Null answered that it was not.

Routhier asked if an invisible fence would not accomplish the same goal.

Null answered that it wouldn't keep other dogs out and that to other properties in the area have 6ft high fences.

Null passed around pictures that showed other properties in the area that had 6ft high fences.

Routhier asked why there would be a special circumstance that would allow him to not meet the ordinance.

Null stated his hardship with his dog is a special circumstance.

Routhier stated that argument could be applied to any dog owner in Somersworth and that variances run with the land permanently.

Brooks asked Saunders if 6ft fences that come up to the house as the pictures show are allowed.

Saunders stated that fences can be 6 feet high up to the house. But in front of the house fences can only be 4ft high.

Keiser stated that up to the front face of the house can be 8 feet high.

Keiser asked if this is a corner lot, and his other neighbors are not corner lots.

Null stated that is correct.

Keiser stated the corner that is there is a sharp corner and is less than 90 degrees and has visibility issues. Keiser asked from the house to River Street, how far is the distance.

Null stated 130 feet.

Fredette asked is it possible to redesign the fence so that it extends past the house on one side of the lot instead of both.

Null stated that he could adjust it if that is what would get approved.

Keiser stated that the fence has to be 20 feet from the street line, which is different than 10 feet from the sidewalk which is what was proposed.

Keiser closed the public hearing at 7:19pm.

Brooks stated that a stockade fence gives an uninviting look which is contrary to the spirit of the ordinance and could possibly see it affecting property values. Brooks discussed public safety issues with the fire department. Brooks stated he doesn't see a reason why it has to be so close to the road and there are other options. Substantial justice isn't met because Somersworth has a leash law.

Fredette stated he doesn't disagree with anything Brooks said.

Keiser stated the City allows up to an 8ft fence up to the house. If this property wasn't a corner lot it would be allowed by the City. Keiser stated that this fence would be consistent with other fences that are 6 feet that are even with the house. As such, it would not affect property values. It's not contrary to the public interest as the City has an ordinance that allows for fences. The neighbors are not affected by this fence. The property in his mind is unique as it is a corner lot and it's across the street from a playground, so there is more foot traffic in that area and has less privacy. There is a personal hardship as it is a corner lot and they have a dog that needs to be contained. It will do justice for the property owner as it would give them privacy. It's not contrary to the spirit of the ordinance as the City allows for larger fences. However the fence not flush with the house is contrary to the spirit of the ordinance. Keiser stated he would support a variance that the fence is 20 feet from the road. Keiser stated the Board could consider Public Works looking at the property to see if there are any visibility concerns. Keiser stated that Buffumsville Road is a very busy road and having a safe intersection is important.

Routhier stated that there may be other fences in the area that may be higher than 4 feet but he recalls no one in the area coming in for a variance, and there is no evidence to state they are legal. The hardship being discussed is that the hardship has to run with the land. Personal hardships should not be considered and continued that it isn't clear if the hardship the applicant lists meets the requirement for a hardship. Routhier stated that the zoning ordinance clearly states that front yard fences cannot be higher than 4 feet and that it does not meet the spirit of the ordinance and the park doesn't warrant a hardship and sees a slippery slope to grant variances for fences just because the property owner has a dog.

Brooks stated he agrees with the slippery slope argument that Routhier used. Brooks continued that he agreed that having Public Works looking at the property would be a good idea.

Donohue stated that he agreed with everything Keiser stated. The spirit of the ordinance does not consider the uniqueness of a corner lot. Donohue stated he is wondering what a proposal for having Public Works examine the proposal would look like.

Saunders stated that that Public Works could examine and approve the location of the fence. They also had the ability to conduct tests and described a balloon test.

Donohue stated that if the fence is 20 feet away from the pavement, it goes along with the spirit of the ordinance.

Saunders stated that legally a building that has frontage on two streets has two front yards.

Fredette stated that he thinks more weight should be placed on the fact it's a corner lot rather than the property owner owns a dog.

Keiser stated that the uniqueness of the property is the corner lot. Two thirds of the property would be unable to be fenced if they were to keep the fence flush with the side of the house.

Routhier stated that there are other residences that have fences higher than 4 feet. There is a side on River Street and Buffumsville Road. The park is on River Street, not Buffumsville Road. What is the argument to have a 6ft high fence on Buffumsville Road?

Donohue stated that he would be in favor with keeping in the fence in line with the side of the house on the Buffumsville side and 20 feet away from the River Street side. Donohue also mentioned how far the front of the house is from the Road is also unique and that the house has a front yard and a side yard.

Kinneavy stated that looking at the house on Google Maps you can tell the house is far back.

Brooks asked about whether the variance would apply to both properties should the land be subdivided in the future.

Saunders stated that she questions whether the land can be subdivided.

Brooks stated that it was in the past.

Saunders stated that it might not be able to due to today's regulations. But if it was, it would only be applicable to the one lot applying for the variance today. Saunders also stated that the property, under the legal definition, has two front yards.

Donohue moved to approve the variance for a 6 foot fence with the conditions that the approval is only for the front yard area along River Street (formally Depot Street) and not the front yard area along Buffumsville Road, the fence shall be no greater than six feet in height, the fence shall be at least twenty feet from River Street and prior to the fence being installed the Somersworth Public Works Department shall visit the property to review site distances.

Routhier stated he stated he believes this variance is contrary to the spirit of the ordinance. There is a reason why the City Council adopted this ordinance. Routhier continued that he does not believe it does substantial justice. A fence acts is an important aesthetic aspect to the house and a 6 foot fence makes the area seem uninviting.

Brooks stated he agreed with Routhier.

The motion was seconded by Kinneavy.

Routhier asked if the City restricts the material of the fences.

Saunders stated that because it's not in the historic district the City does not review material.

The motion carried 3-2 with Brooks and Routhier opposing.

B) Any other new business that may come before the Board.

### **Correspondence on Hispano-Suizo**

Saunders stated that in the Board's packet was a notice of a summons stating the City Council had appealed the Boards' decision to the Court. Saunders continued that she did not have a copy of the complaint yet but the Board will be served and there will be a court appearance.

Keiser stated that the City is using the City Attorney to argue their case. The Board would have to ask the City Council to request funds to have an attorney represent the Zoning Board. Keiser asked if the Board wants to ask the City Council for funds. If the Board chooses not to, the Board would rely on the written record.

Brooks stated that the City Council voted unanimously to forward this to Superior Court. Brooks stated he would find it hard to believe the Council would vote to grant the Zoning Board funding for representation.

Keiser stated the Board would be remiss not to ask.

Brooks stated he would be in favor of asking for funding.

Donohue stated it makes sense to ask for money.

Routhier asked what would happen if they choose not to give money.

Keiser stated the Board can present based on the minutes of the meetings with no verbal representation. Keiser stated a Zoning Board member can also present the case.

Routhier stated the Chairman or other members who want to go can present the case. Routhier stated that the City Attorney can also represent the Zoning Board and questioned what their standing is considering the Zoning Board is also part of the City.

Fredette stated Routhier raises legitimate points and wants to see the complaint before the Board moves forward.

Routhier asked if the Board has another meeting before the required date.

Routhier moved to request from the City Council, funds to have legal representation in the case. The motion was seconded by Donohue. The motion carried 5-0.

Routhier moved that the Chairman of the Board is authorized to appear in Court to present the Zoning Board's case, seconded by Donohue, the motion carried 5-0.

Brooks motioned to adjourn Seconded by Donohue, motion carried 5-0.

Motion carried 5-0 and the meeting adjourned.

Respectfully submitted:



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Christien DuBois Assessing/Code Clerk  
Somersworth Zoning Board of Adjustment