

SOMERSWORTH ZONING BOARD OF ADJUSTMENTS
MINUTES OF MEETING
May 5, 2021

MEMBERS PRESENT: Matt Keiser Chair, Glenn Garvin-Alternate, Brad Fredette and Richard Brooks Kenneth Vincent

EXCUSED MEMBERS: Keith Perkins

STAFF PRESENT: Michelle Mears, Director of Development Services, and Dana Crossley Planning Secretary

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

Keiser stated due to the COVID-19/Coronavirus crisis and in accordance with Governor Sununu's Emergency Order #12 pursuant to Executive Order 2020-04, this Board is authorized to meet electronically. The public has access to watch to this meeting through the Local Government Cable Access Ch. 22 (Comcast), and streamed live through the City's website at www.somersworth.com. Although this is a public meeting, the public is encouraged not to attend and instead to leave comments or concerns at the following phone number # 1-603-692-9519, by emailing ZBA@somersworth.com or by sending written comment to Zoning Board of Adjustment, 1 Government Way, Somersworth NH 03878. Comments must be received no later than 4pm the day of the meeting. The public can access the meeting and listen live by telephone and then adding the webinar I.D.

Roll call attendance was taken. **Keiser** and **Brooks** were in attendance in City Council Chambers. **Fredette, Vincent** and **Garvin** were in attendance remotely and alone. Director Mears was also in attendance remotely. Secretary Crossley was also in attendance in City Council Chambers.

Keiser promoted Garvin to a full voting member for the meeting.

1) Approval of the minutes:

Vincent **MOVED** to accept the April 7, 2021 minutes as presented.

Fredette seconded the motion.

The **MOTION CARRIED** by a 4-0-1 roll call vote. (Brooks abstained)

2) OLD BUSINESS

A) Any old business that may come before the Board.- NO other old business.

3) NEW BUSINESS

A) Matthew Tatro, is seeking a variance from Section 18.B of the Zoning Ordinance to allow a 6' fence in the front yard area on a property located at 1 Cornfield Drive, in the Residential Single Family (R1) District, Assessor's Map 16 Lot 21, ZBA#06-2021 PUBLIC HEARING

Keiser opened the public hearing at 7:05 PM.

Mears stated there was one public comment received. She read that comment into the record:

Dale Smith-Kenyon, 18 Indigo Hill Rd: While I do understand Mr. Tetro's concerns re: privacy, noise, and safety, a 6 foot fence in place of the current vegetation will increase the noise at my location (18 Indigo Hill Rd). Indigo Hill Rd is busy and very noisy, both due to it being a truck route to Malley Farm and its use as a cut through for many smaller vehicles, and as it is Spring, loud motorcycles as well. The hard surface of a 6 foot fence will further increase the sound bouncing back in our direction, making it even worse than it currently is. The present trees and shrubs help soften some of this, as well as being more aesthetically pleasing. I note that the application does not address the material of the desired fence. I have seen that vinyl/plastic fences increase headlight glare, which would also be an additional negative consequence. Thank you for your time.

Mears stated she had no additional comments to add outside of her staff memo.

Matthew Tatro, was in attendance remotely to represent the application.

Tatro stated the reason he wants to install a fence is because he intends to remove the existing vegetation. He stated the vegetation gathers a lot of trash on recycling day. He stated with the new sidewalk installation it increases the grade level and the installation of a 6' fence on his property would appear to be a 4' fence at the street level. He stated his full argument has been provided on the application.

Mears noted that no other public comments had been received via mail or email.

Vincent stated for the record he has been to the site twice. He inquired if the large tree on the property would be staying or removed.

Tatro stated it would depend on if he was granted the 6' fence approval. He stated if he receives approval he is planning to take all of the trees out along with additional trees in the back of his yard. He stated if the 6' fence is granted he would be removing the ones where the trees are to be and would remove the shrubbery as well.

Vincent stated because this is a corner lot the property has 2 frontages and that is why the applicant is seeking a variance.

Tatro stated yes.

Vincent inquired if the house sits about 2' lower than the road and if putting up a 6' would be like a 4' level fence.

Tatro agreed.

Garvin asked how far the fence will be from the sidewalk.

Tatro stated the intent is to place it on the property line, which is still undetermined, but there are two old posts in place which he estimates is on the property line, from the sidewalk about 10'.

Garvin inquired how far his house is from the sidewalk.

Tatro stated between 40'-65'.

Garvin noted the 'rear' side property line is 140' and if the house is 50' that gives him 90' remaining. He stated if the fence ran 50' from the sidewalk equal to the house, that is the line where a variance is not required.

There was a brief discussion of the applicant putting the fence in the location where a 6' fence is allowed.

Tatro stated if he constructed the fence according to the ordinance for this height it would cut off about a 3rd of his property.

Vincent asked if the fence is on the side of the house on a corner lot with two frontages, what would make a difference if the fence was close to the house or not.

Mears stated the two frontages are what triggered the variance.

Keiser stated the regulation states that a fence that is even with the front of the house to the back of the lot and even with the side of the house to the property line is where a 6' fence can be. He stated a 4' fence can be to the boundary in the front yard area.

Fredette stated one of the criteria to identify is that there is something unique about the property and the City of Somersworth considers corner lots to have two front yard areas. He stated driving through that area, there are several streets that make corner lots in the just that area of Indigo Hill Rd. What makes this property unique from other corner lots in Somersworth and this area of Somersworth.

Tatro stated when he purchased the house there was no sidewalk and that was recently installed. He stated his property is lower than the original ground and the sidewalk has increased the height and feels that makes it unique.

Fredette clarified the location of the sidewalk.

Tatro stated the sidewalk in front of his house was recently installed and where there was none previously.

Brooks inquired where the trash would go if the trees were not there.

Tatro stated it would go into the gully where it would be easier to pick up rather than stuck in the shrubbery.

Brooks stated they have had previous applications with concerns of noise, trash and comments and that application was not approved but rather they complied with the ordinance. He stated to comply with the ordinance for this property would still provide a decent fenced in area. He stated there is nothing preventing the installation of a 6' fence but rather limited that it cannot be at the road. He inquired how it is not contrary to the public interest as the spirit of the ordinance is written.

Tatro stated to put the fence along the side of the house would cut off about a 3rd of his property; he noted he intends to remove the shrubbery and tall trees. He stated the ground will be clean grass that would look nice for the neighborhood if it could be seen. He stated the trees along Indigo Hill Rd. would save the City money because they have to trim the shrubbery and trees back multiple times a year. He stated to remove the vegetation some sort of privacy would need to be installed. He stated since the installation of the sidewalk he has had to cut back the shrubbery often every two weeks. He stated Public Works has inquired about cutting back the shrubbery which he has allowed. He stated it would dress up the neighborhood, looking into Cornfield from Indigo Hill Rd. it is the loudest part of the neighborhood.

Fredette inquired what material the fence will be made of.

Tatro stated vinyl but unsure color. He stated in regards to the glare, he does not think the neighbor directly across the street would experience it since the road has a slight curve in that area and glare would go down the road.

Keiser inquired what the 4' measurement along Indigo Hill Rd. is indicative of.

Tatro stated the fence would be 6' in height from the back corner of the property down to the last section of fence which would transition from a 6'-4' to ensure the intersection view remains clear.

Keiser asked if there would be a 4' high fence or just the transition of a 6' long panel.

Tatro stated just the transition piece and would not be going all the way to the corner.

Keiser asked how far from the corner will the fences start. Will it go the full 175' of frontage.

Tatro stated he is unsure the exact measurements but from the back corner to front but approximately 155', remaining about 20' from the corner.

Keiser asked if the fence was on the property line what that ground level is compared to the sidewalk.

Tatro stated with removal of the shrubbery it would be approximately 16"-24" grade decrease at the property line.

Keiser stated the point could be made then that if the 6' fence is installed at the property line it would be equivalent to having a 4' fence if the ground was level from the sidewalk.

Tatro noted that the measurements are rough and it could be anything from 4'-5' at the sidewalk.

Keiser asked at what point in the property does it become 2' lower than the sidewalk.

Tatro stated it would be the very back corner.

Keiser stated looking for something unique in the property to justify the 6' fence trying to understand if the property slopes down enough to have a 6' fence installed but still remain equivalent to a 4' fence when at street and where it could be done. He stated he is unsure he has the answer to that.

Tatro stated the land slopes down and the lowest point would be 5-6' before the fence would start. He stated it would be about 10-15' from the sidewalk on the property line which is the lowest point of the yard.

Keiser clarified there is the street level, it dips down on the public right of way till about the property line, where it is at the lowest and then levels out for his property.

Tatro stated that is correct.

Fredette clarified the applicant was unclear where the property line was and needed to get that surveyed.

Tatro stated that is correct, his house was built in the 90's from a subdivision and Civil Consultants Engineering still has their marker stakes and those line up with the fence posts and he is confident the bushes are right inside the property line.

Brooks stated driving down Cornfield Drive it appeared on the tree line that the trees set on a mound, like the property goes down from the sidewalk but up some for the trees and back down.

Tatro stated no, the trees sit on the flat ground. He noted there is an old mulch bed that would be removed and leveled prior to fence installation.

Keiser asked for final comments from the applicant.

Tatro stated he believes everything has been discussed.

Keiser closed the public hearing at 7:35 PM.

Vincent clarified the applicant would not need a variance if he had a 4' fence in the front yard area.

Mears stated that is correct.

Vincent stated it brings him back to the grade and that it is about 2' lower than what the sidewalk level is. He stated installing a 6' fence would only be a 4-5' high fence at street level. He stated there might be some glare on the new fence but thinks the glare would go away after a few months. He stated he appreciates the abutter's thoughts and concerns but feels the noise concern is unrealistic with the additional 2' of fencing request where a 4' fence would be allowed without public hearing. He stated he has gone by the site and thinks dressing it up would be nice. He stated the berms are there for potential accidents and stop cars from going into the house. He stated he thinks the fence would dress up the property and the unique value is the grade of the lot. The fact that the house grade is lower is why he will be in support of this application.

Brooks stated the berm in discussion would be removed once the trees come out and is just mulch according to the applicant. He stated he would agree that the glare would go down the road rather than to the abutter and when traveling from High Street on Indigo Hill there is a slight curve in the road and could see the glare bouncing from the fence going down the road and has some concern for safety with that. He stated there has been an abutter comment received against the request. He stated there has not been enough to convince him that this property is unique or that there is a hardship to warrant the approval.

Fredette stated the berm was likely installed for safety purposes and this proposal is discussing to remove the berm and is a concern for him. He stated without knowing where the property line is and better determination of the slope. He stated at this time he is not in favor of this request, the Board receives a lot of these requests and feels the uniqueness bar needs to be higher. He stated a 4' fence would stop trash in the same manner as a 6' fence. He stated the property owner can still install a 4' fence.

Garvin stated in the areas where there are sidewalks for walkability that is especially where we do not want the 6' fences that drive away the feeling of neighborhood and community. He stated he hasn't heard enough

to convince him it and he believes what Somersworth wants is to walk around and not have everything fenced out.

Keiser stated in review of the criteria he does not think a 6' fence would diminish surrounding property values. He stated he does not think the fence would be contrary to the public interest unless it would create a safety issue with the reflection, but not sure that reflections off fences cause safety issues. He stated if this property was level, being a corner lot on the business street would not meet the uniqueness characteristic requirement. He stated but if the property does in fact have a grade, such that putting a fence at the property would make it no more than 4' above the top surface of the sidewalk, would be a unique application of the ordinance and meet the variance requirement but that approval would have to make that restricted statement. He stated if the fence was located where it is allowed by ordinance, the applicant would lose a significant portion of the side/back/corner lot and so allowing the fence would do substantial justice. He stated a fence that would be 6' above the height of the sidewalk would not meet the spirit of the ordinance and no hardship. He stated if the property was such that the grade allowed the fence to only be 4' from the top surface of the sidewalk thinks that would meet the intent of the ordinance and spirit and could be approved. He stated unless there is specific restrictions that would restrict the height to no more than 4' in height at the sidewalk he would be in favor, but if not he would not. He noted that the fence ordinance also requires the fence to be 20 feet from the intersection and would also want to see that as a condition. Fredette stated without knowing where the property line is and the other issue is that it does not look like the drop does not run the length of the property. He stated Keiser makes a good stance but still at this point he is not willing to support it. He stated he still feels a 4' fence would do some of the things the applicant is seeking to achieve.

Vincent noted that some of the members had indicated questions on the heights and property lines. He inquired if the Board would be in favor of tabling the application.

Keiser stated they could table the application if there were specific questions that needed answers that would be applicable to the Board making a decision. He explained if the Board was going to turn down the request regardless to the answer of a question, there would not be a sense to do that. He stated his suggestion was to allow an avenue for approval to restrict the fence to being no more than 4' at the top of the sidewalk, therefore if it would be for the applicant to determine the appropriate height and not have to come back to the Board.

Vincent stated from his estimation it does not appear the Board will grant this request. He inquired if it would be best to table the application and allow the applicant to show he could move the dirt around to create a level grade to allow the 4' fence.

Keiser stated he is not sure the applicant performing excavation would be necessary for the Board to make a decision on the application.

Brooks stated if the slope looked more significant to him he could envision this more. He stated it appeared to be more of a berm in his opinion. He stated the fix could be created but not sure that is the right answer. He stated looking at the past history of this Board; it is not common that they have granted requests of this nature. He stated that corner lots are common throughout the City and does not see any unique characteristics of the lot to approve the application.

Fredette stated he would agree with Brooks' statement. He stated he is not seeing the depth of grade to create the unique characteristic of the property to create the end goal that the ordinance has in mind.

Garvin stated there is more to it than the grade to the sidewalk. He stated his understanding of the intent of the ordinance is so that when you walk by you see aesthetically pleasing properties and that the fence does not interrupt that. He stated even being 4' at the sidewalk and if the grade continues down it would still

present the problem the ordinance is trying to prevent. He stated for him if the fence was 2' below and the view became in line with the spirit of the ordinance in being able to view the property, then he would be in favor, but he does not see the uniqueness of this lot.

Vincent stated regardless of the Board's decision, the applicant can make and take a berm, grade the property and bump the berm up 2' and legally install a 4' fence and it would still be 6'. He inquired if the applicant could put a 4' fence with a 6' post.

MOTION: Fredette stated, after review of the application, the file and all the information presented to the Board, I feel that 2 of the criteria, the hardship/uniqueness (3) and spirit of the ordinance (5), of the five criteria have **NOT** been satisfied and I move that the request of Matthew Tatro for a variance from Section 18.B of the Zoning Ordinance to allow a 6' fence in the front yard area **be DENIED.**

The MOTION is SECONDED by Brooks

Discussion: Keiser stated he would be voting the affirmative to deny because the motion as presented does not have any limiting criteria that he would have potentially have supported to some degree.

The MOTION CARRIES by a 4-1 roll call vote (Vincent voted in the negative)

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

Mears updated the Board on the status of starting meetings back in person. The next ZBA meeting is expected to be in person. She noted masks and social distancing would be required.

Keiser stated if anyone has any personal concerns please reach out to himself or the Director and those can be addressed.

Mears noted that the spring Planning and Zoning conference is this month and it will be remote. She stated if anyone would like to attend please to reach out to the Department to sign up.

Brooks **MOVED** to **ADJOURN** the meeting.

Vincent seconded the Motion.

The **MOTION CARRIED** 5-0 by a roll call vote and the meeting **ADJOURNED** at 8:04 PM.

Respectfully Submitted,

Dana Crossley, Planning Secretary