

BOARD OF ADJUSTMENT MINUTES

FEBRUARY 27, 2019

The Board of Adjustment of the City of Norman, Cleveland County, Oklahoma, met in Regular Session in Conference Room D of Building A of the Norman Municipal Complex, 201 West Gray, at 4:30 p.m., on Wednesday, February 27, 2019. Notice and agenda of said meeting were posted in the Municipal Building at the above address and at www.normanok.gov/content/board-agendas in excess of 24 hours prior to the beginning of the meeting.

Item No. 1, being:

CALL TO ORDER

Chairman Andrew Seamans called the meeting to order at 4:30 p.m.

* * *

Item No. 2, being:

ROLL CALL

MEMBERS PRESENT

Brad Worster
Curtis McCarty
Mike Thompson
James Howard (arrived at 4:32)
Andrew Seamans

MEMBERS ABSENT

None

A quorum was present.

STAFF PRESENT

Wayne Stenis, Planner II
Roné Tromble, Recording Secretary
Elisabeth Muckala, Asst. City Attorney
Kelvin Winter, Code Compliance Supervisor

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Item No. 3, being:

APPROVAL OF MINUTES OF THE JANUARY 23, 2019 REGULAR MEETING

Brad Worster moved to approve the minutes of the January 23, 2019 Regular Meeting as presented. Curtis McCarty seconded the motion.

There being no further discussion, a vote was taken with the following result:

YEAS	Brad Worster, Curtis McCarty, Mike Thompson, Andrew Seamans
NAYS	None
ABSENT	James Howard

Ms. Tromble announced that the motion to approve the January 23, 2019 Board of Adjustment Regular Meeting Minutes as presented passed by a vote of 4-0.

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Item No. 4, being:

BOA-1819-09 – COLBY AND LAURA COWART REQUEST A VARIANCE TO SECTION 22:421.1 (3)(G) FOR PROPERTY LOCATED AT 427 IOWA STREET.

*THIS ITEM HAS BEEN WITHDRAWN BY THE APPLICANT.
IT APPEARS ON THE AGENDA BECAUSE IT WAS POSTPONED TO THIS MEETING AT THE JANUARY 23, 2019
MEETING, AND TO PROVIDE INFORMATION TO THE BOARD ON THE RESOLUTION.
NO ACTION IS NEEDED.*

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Item No. 5, being:

BOA-1819-10 – CHARLES AND CAREY CHILDS REQUEST A SPECIAL EXCEPTION TO SECTION 22:431.9 (1)(B) TO ALLOW A FENCE IN EXCESS OF 8' IN HEIGHT ON PORTIONS OF THE PROPERTY LOCATED AT 5815 WINDSTONE DRIVE.

ITEMS SUBMITTED FOR THE RECORD:

1. Staff Report
2. Location Map
3. Application with Attachments
4. Protest & Support Map dated February 22, 2019
5. Support Letter
6. Protest Letter with Exhibits

PRESENTATION BY STAFF:

Mr. Stenis reviewed the staff report, a copy of which is filed with the minutes. Staff supports the request for the existing privacy fence as shown in the exhibits because the applicant has described how it promotes the safety and welfare, and it does not appear to adversely impact the public safety or welfare. Also, the slope of the lot does not conform to the geometry of the construction and materials used, thus resulting in a portion of the fence being taller than 8 feet.

PRESENTATION BY THE APPLICANT:

1. Heather Cook, attorney for the applicants – I have eight letters in support; I believe those have been submitted to the committee. Additionally, I have received another letter of support just shortly before this meeting today. I would be happy to either read it out loud into the record, or submit it to the committee. I'll submit to staff. I have a statement and then I will be happy to answer any questions.

I appreciate your time today. I know you are all busy people and you serve the community and I appreciate you taking the time to consider this request. My clients are Charles and Carey Childs. They are professional people. They have lived in Norman a long time – decades now. They're small business owners. Chuck has a successful chiropractic practice in Norman. They've lived in the Windstone neighborhood since January of 2015. They are professional people. They have tried to get along with their neighbors. The neighbors at 5819 Windstone, who have not agreed to this application, have taken a very aggressive position as to how they think everybody should live in the neighborhood. It seems no one can do anything to their satisfaction. We have been to mediation twice, once in June of 2016, and again in May of 2018, and both mediations were with the City of Norman through their early settlement mediation program. The June 2016 mediation was to resolve an issue with an allegedly noisy pool pump. However, Mr. Keener had brought a long laundry list of other grievances with him to the mediation. At the May 2018 mediation, part of the mediation agreement included procuring estimates for 8' and 10' fences. A taller fence was recommended to help any perceived noise issue, but the residents of 5819 Windstone indicated they didn't want to pay for it. My clients foot the bill for the fence themselves.

You can see from our application that it is a top of the line Trex fence. It's made

of the highest quality materials. The homeowners association's architectural board approved the request for the fencing, and you can see from our application that was submitted with our request that the developer for the neighborhood, Joey Wishnuck, signed off on it.

Yet, they still complained. They complained about the A/C unit being too loud. My clients, at their own expense, had multiple service people out to the house several times and tried some sound blanketing material to appease their neighbors. They complained about the pool pump and the heater. Again, my clients had multiple service people out to the house and tried a variety of solutions, again at their own expense. They complained about seeing people in their bathing suits by the pool and men with their shirts off by the pool. A taller fence would help that issue. We're hopeful that the taller fence would help curb the harassment my clients have suffered over the past few years from their neighbors. They have been hanging over the fence taking pictures, sitting on the back of their fence peeking into my clients' yard, hanging out the front window taking pictures of my clients and their family who were trying to mind their own business. We've seen the neighbors hanging selfie sticks over the fence into my clients' yard. That's why we're here today.

My clients have bent over backwards. They have been more than accommodating and, up to this point, haven't taken legal action against their neighbors after all that they have been through over the past few years. I have presented all these letters of support, and it is my understanding that some of those people that have spoken out in support are now receiving hostile contact from those who are opposing our request.

We want to resolve this to be good neighbors, but my clients' privacy and quiet enjoyment is stretched to the limit. Literally, we don't know what else to do. We're asking this committee to grant our request for this fence. It is not an unreasonable request, and it is a feasible solution for attempting to deal with unreasonable neighbors. You've heard the saying "Good fences make good neighbors." I think this is very true in this circumstance. Again, I appreciate your service to the community and your time and your consideration of this matter. Thank you very much. I'd be happy to answer any questions you have.

2. Mr. Seamans – We received a document that states that the panel in question, panel 6, which is the final panel, measured at 8'7". Is that correct?

Ms. Cook – That's my understanding.

Dr. Childs – I measured from the top to the bottom base of the panel. There's about this much room where I moved dirt away. The dirt will go back.

AUDIENCE PARTICIPATION:

1. Jim Sitter, 5819 Windstone – There has been some misleading information brought to you right now, and I would like to clear that up. I have pictures showing the violation. May I approach you? I think you've seen some of these, but I suspect it's not great in copy. I know how it is in trying to copy these things. We do not have any objection to the privacy fence in any way. The taller fence is fine. We knew it was coming. We had someone with the HOA tell us and we thought well, we'll be fine with it. It'll be 8 feet.

Assuming it was going to be 8', we thought it was going to conform with the top of the existing fence, which this red line shows that it would have. The information from the fence company also shows that it could be installed following the grade, which is what I would prefer. The green lines show the actual 6' height scaled on this, so anywhere that they stand on their pool apron here, which is what this yellow line shows, they would have a full 6' cover anywhere on their property, the same as any 6' privacy fence would give them. The dimensions he's getting back here do not agree with the measurements that Joe Schier got when he came out – he measured over 9' in the back, and he said the only place that was 8' was right in this area.

Mr. Seamans – Did he measure in your side, or their side?

Mr. Sitter – He measured from my side. He said he always measures from the far side, or the side outside.

Mr. McCarty – From this point to here, what's the grade change on your property?

Mr. Sitter – This is 29" right in here. I would say about 29".

Mr. McCarty – So from the start of the fence to the back of the fence there's a 29" grade change?

Mr. Sitter – Right, with the majority of it happening right here, of course.

Mr. Howard – Is that the same image I'm looking at here that was part of the protest letter?

Mr. Sitter – I didn't think you all got good copies. That's why I brought this. This is the picture that actually shows where it would be if they would have run it with the fence – how much the supposed 7" is.

Mr. McCarty – Has staff had anyone measure this?

Mr. Sitter – Joe Schier did measure it.

Mr. Stenis – When there was a complaint filed, Joe Schier went out and measured. He said the shortest height he measured was 8'2" and the tallest height it was 9'2" and that was on Mr. Sitter's side, because he was the complaining party so that's what he had access to.

Mr. Sitter – I wanted to bring this up to address the letters of support. With the exception – I don't know what the newest letter – who it came from.

Mr. Seamans – Do we have a copy of that for Mr. Sitter? Do you want to take a moment to read this?

Mr. Sitter – I do not know who Alex Verplank is. 5815 – It says I am a resident of 5815 Windstone Drive. Is this someone that resides there with you all? Well, we'll get into this.

So with the exception of Stacy and Jerry Phillips, the rest of these supporters have got upset with us from something that we did long ago when we posted the covenants on the NextDoor website and indicated that we thought everyone should follow the covenants of our neighborhood. I guess it's interesting, maybe, that – maybe it's Norman – maybe it's Oklahoma – I don't know. I know it's not Edmond, because I have friends in Edmond, but covenants are made and people understand them and they follow them. But these people, when we pointed out covenant violations – even before there was an HOA – got very upset with us and words were said on the website. Well, later the HOA informed us that in order to get covenants enforced we must report the violations and this report must include a picture for them to take it seriously. They also informed us that any such reports would be anonymous. So these same people – I think they may have been reported possibly, but they have taken it on themselves to convince everyone in the neighborhood that we are the only ones turning in violation reports. Well, we know that's not true because we've been turned in. It's anonymous – we don't know who turns in anybody. We've been turned in for some of our violations and we've promptly addressed the violations. So these letters – I mean, they obviously express their hatred for us, but they really don't have any bearing on the fence. But there's one of these letters – or one of these issues in these letters that I really want to bring out. Brett and Tracy Hogan and Angie Fennell have accused my son of taking pictures at the community pool. I wanted to make this straight. My son took one picture of the pool to send to his girlfriend when they were trying to decide if she was going to come to our pool to swim or if they were going to swim at her apartment's pool. Since her apartment's pool was bigger, they decided to swim over there. There was no impropriety. There was no – he wasn't taking pictures of people. I think one of the – Mr. Fennell on the Windstone website – the NextDoor website – inferred or implied that he was taking pictures of little girls and that is absolutely not true.

Mr. Seamans – Can we kind of stay focused on the fence here and then any specifics in the letters that you think are misleading?

Mr. Sitter – We could do that, but Heather brought up how we're such bad neighbors and I would like to address our side of this bad neighbors. Would that be acceptable?

Mr. Seamans – We're here for the Board of Adjustment to look at a fence. I don't see how publicly stating how you're bad neighbors or good neighbors is really relevant.

Mr. Sitter – Well, that's what I wish you would have told Heather, too.

Back to the fence. I've showed you the fence pictures. There was a 6' fence along the property line. They moved in – and the fence has been there since 2014. They moved in in 2015. There was a 6' fence. The first discussion we had with them was in mediation about a taller fence. We were acceptable to that. We thought there was a better way to do it than to actually replace the fence along the property line and we informed them of that. They never discussed it again, and the next thing we knew they

were getting permission to put a new fence up directly next to our existing fence. And we just assumed it would be in compliance with the City's code and it would be 8'. It was not. They never asked for written consent. They never went to you all for – to get their exception. They just put the fence up.

Then I want discuss to the public interest that she brought up. Our metro neighboring cities – City of Moore, their ordinance says no fence shall exceed 7' in height. Oklahoma City's ordinance – the maximum height of the fence should not exceed 6'. So already the City of Norman is more lenient than our neighbors in the metro. And yet they want to push the envelope as they often have always done with various other things we've been dealing with. So the code – our code here in Norman looks like there's some wiggle room, but it really isn't. It talks about the public interest – public interest, we know, is a vague term. You know as well as I do it's subjective. But it means the welfare of the general public and it's in contrast to the selfish interest of a person, group or firm. I would say that our zoning ordinance – or our law makers who are empowered by the citizens of our city, and it was the intent of these ordinances on their face to protect the public interest. So, because it says 8' in there, because it gives the abutting property owner the same weight, basically, as this Board to make the decision, I would beg you all to see that. It should have been in compliance. It should have followed the rules. They shouldn't have taken it on themselves to exceed the height requirements. There was no need to. My documents show that the fence would have given them the same amount of privacy if they would have adhered to the code compliance, but they just don't seem interested in following the rules or abiding by the rules. I still think our ordinance was written and approved by our representatives to protect the public interest and I would really appreciate if you all would uphold this ordinance.

Mr. Worster – I see from your photo and the rest of the information that was provided that your property backs up to a church.

Mr. Sitter – That is a church.

Mr. Worster – I understand that it was built higher than code would allow. There's obviously a grade change in the back yard. Do you feel that the difference that is there now really damages your view or hinders your property?

Mr. Sitter – Yes. Two things. It does block out more view back there, and it's going to put more shade on our Bermuda grass. It's already been difficult to keep grass growing on that side of the fence, in part because they like to let their poison get on our side of the fence and kill our grass, but the other is the extra shade over there is going to cut down on the lushness of the grass in that area. And the main thing is it just doesn't look as good as it would if it conformed to the other fence. And you did point that in the church lot, interestingly enough, if you go back in the church lot, you can see over into their yard anyway. So they have no privacy from anyone but me – from us – which, I guess, was the goal. And I do appreciate that. I think they could have done it – they could have done it a lot cheaper by putting a fence just up by their pool apron, as I indicated in an

email that I sent to them back in May. But they chose to take the more expensive route and to violate the ordinance in doing so.

Mr. Worster – And the fence runs east and west?

Mr. Sitter – It runs east and west. It's on the north side of their property; the south side of my property.

Mr. Worster – I'm trying to figure out the sun.

Mr. Sitter – Lots of shade right there in that area. So a combination of the shade and the poison they want to let get on our property, it's been real tough to keep grass growing over there.

Mr. Worster – So now there's two fences?

Mr. Sitter – Yes.

2. Charles Childs, 5815 Windstone, the applicant – If anybody wants to come to my house and come in the back yard and measure what I had measured for you, it is exact. That picture is crooked; I can see it from here. It drives me nuts. Those measurements are perfect. What I did was from the top of the fence to the base of the fence – there's a panel that's about like that that's at the very bottom. On the west of the gate, from what I wrote to you guys, those panels go all the way to the ground. I measured to the ground. That's the base of that bottom piece. As it goes east from the gate, there's about this much of a difference because we had to dig that out to build the fence. Now the dirt is going to go back. That dirt will be right at the base of that so it will be exactly. I was surprised that there's 7'11". And as far as taking it upon myself to just build whatever we built, I called Lowe's. I said I found this fence. It is awesome and they can get it and I want it 8' tall. That's what I said. The contractor came out, took all the measurements and then sent another guy out that actually built the fence, looked at everything, nobody ever said a word about that last about 8' or so where the ground goes like that. I did not want it to go like this. We've already seen that – it's unattractive – silly. I wanted it as level as possible. Nobody put any consideration in that grade dropping off. These are contractors. These guys do this all the time. I'm a chiropractor. They came out, built the fence just like I asked them – 8'. That's what I ordered – 8'. Now we've got 8'7" when you measure from the bottom. Like I said, you're welcome to come measure it. Or, on their side, maybe because of the grade it would be different – 9' or whatever it is. Again, I didn't order a 9' fence.

Mr. McCarty – So, just to confirm, Dr. Childs, when you measured the fence on your side of the property, at the front it's 7'11" from the ground to the top of the fence, and 8'7" from the bottom ...

Dr. Childs – From the top of the fence to the bottom of that bottom panel.

3. Gerald Phillips, 5901 Windstone – For the matter at hand, the fence is not an eyesore. I have no problem with the fence and the wife has no problem with the fence. We did submit one in writing, but I'm kind of old-fashioned and like to go eyeball to eyeball with people. We don't have a problem with it. With the side issues that have arisen here in this, we have not had any issues with either side of the folks involved in this. We've been here for two and half years and our living there has been smooth and we're happy to live there. The matter at hand, we don't have a problem with the variance – I'm sorry, the exception.

4. Mr. Sitter – Could I add something else? Code came out and measured 8'2 to 9'2".

Mr. Seamans – On your side.

Mr. Sitter – Yes. On my side. What I would like for you to do is make a ruling that it cannot exceed 8' and then let Code come out and work with them to ensure that it complied with. Obviously, we have an issue with the measurements. But if it doesn't exceed 8' anywhere except in the back, that will be one thing, but that is not true. It exceeds 8' in a number of other areas along the way.

Mr. McCarty – May I ask who measured that for the City?

Mr. Stenis – It was Joe.

Mr. McCarty – And he's not here? So that's a cap rail fence and bottom rail. Typically, when they're installed, there is dirt removed to be able to get it level at the bottom and the top. I'm presuming that between the two fences that's going to be next to impossible to do. Was that measured from between the two fences? Or from the grass of the neighbors to the top?

Mr. Sitter – Yeah.

Mr. McCarty – From the grass of the neighbors side, not between the two fences. And the cap and the rail, my guess would be that your 6' fence is probably not 6', either. Because typically the cap and the rail go on the top, which gives you that extra inch or two.

Mr. Sitter – No, the cap and the rail is below the ...

Mr. McCarty – I'm not going to get in a debate. I'm just talking about typical.

Mr. Sitter – The top rail of the fence is the 6' spot in our fence. Not the cap. And Joe came out – he didn't measure to the actual decorative cap. He only measured to the actual top rail height of the fence that day. And the fence that was already there was 6' from the ground, so the discrepancy that you see in those photos shows that that 8'2" to 9'2" continues to get taller as it goes toward the back of the property. That's what my main objection is. I would like it to conform 8' all the way. Or even 8'2" all the way. But to conform with the ground line.

DISCUSSION AND ACTION BY THE BOARD OF ADJUSTMENT:

Mr. McCarty – I'm just confused on how a fence on one side can be 2" or 3" taller than the other side of the fence. Unless it's just back-filled along the fence when it was installed. That's the only difference.

Dr. Childs – Again, our back yard is backfilled. We built the pool. It was all built up to accommodate the pool.

Curtis McCarty moved to approve BOA-1819-10, the Special Exception to allow the fence to be in excess of 8' in height on portions of the property located at 5815 Windstone Drive. Mike Thompson seconded the motion. James Howard suggested a friendly amendment that it be approved as currently constructed. The friendly amendment was accepted by the mover and seconder.

There being no further discussion, a vote was taken with the following result:

YEAS	Brad Worster, Curtis McCarty, Mike Thompson, James Howard, Andrew Seamans
NAYS	None
ABSENT	None

Ms. Tromble announced that the motion, to approve the Special Exception, passed by a vote of 5-0.

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Item No. 6, being:

MISCELLANEOUS COMMENTS OF THE BOARD OF ADJUSTMENT AND STAFF

None

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Item No. 7, being:

ADJOURNMENT

There being no further business and no objection, the meeting adjourned at 5:03 p.m.

PASSED and ADOPTED this 27th day of March, 2019.


Board of Adjustment