

MINUTES OF MEETING

HOOVER BOARD OF ZONING ADJUSTMENT

Date: May 5, 2016
Time: 7:30 P.M.
Place: Hoover Municipal Center
Present: Mr. Guy Locker, Chairman
Mr. Dan Mikos
Mr. Kyle Puchta
Ms. LeAnna Huddleston
Mr. Lawren Pratt

Absent: Mr. Paul Gamble and Mr. Allan Rice

Also Present: Mr. Marty Gilbert – Plans Examiner, Building Inspections
Mr. Robert Macke – Zoning Inspector, Building Inspections
Ms. Vanessa Bradstreet – BZA Secretary

1. **CALL TO ORDER**

The meeting was called to order by Mr. Locker. The secretary had the roll call and a quorum was present. Mr. Locker announced there were 5 (five) board members present and they would all be voting tonight. Mr. Locker explained that by State of AL law, the requests for variances to the Board of Zoning Adjustment are voted on by 5 (five) members and an affirmative vote for a variance to be approved requires a super majority of 4 (four) affirmative votes, so you had to go four for five.

2. **APPROVAL OF MINUTES**

Mr. Locker stated the minutes from the April 14, 2016, regular meeting and the April 25, 2016, work session had been distributed to the Board members for review. Mr. Locker asked for a motion to dispense with the reading and approve the minutes as written. Mr. Mikos made a motion to approve. Mr. Puchta seconded the motion. On voice vote, the minutes were approved unanimously.

3. **BZA-0516-06** – Steel City Signs, Inc. representing Family Care Dental, is requesting a variance to allow two building wall signs at a combined 60 square feet (30) square feet each in lieu of one sign at 60 square feet for property located at 3325 Lorna Road, Suite 5, for a new dentist office (Family Care Dental). The property is zoned C-3 (General Business District) and is owned by Lorna Village, LLC.

APPROVED

Dr. Shaheen Upton, 3325 Lorna Road, Suite 5, Hoover, AL, 35216, stated she is a dentist trying to open a dental office in Lorna Village. She stated her request was to ask for a variance to allow 2 (two) 30' square foot signs. She stated currently they were allowed 1 (one) 60' square foot sign. Dr. Upton explained that earlier the same variance request was granted for Subway in the same shopping center.

Mr. Locker agreed and did recall the Subway sign request and variance that was granted. Mr. Locker stated that businesses were very sensitive to precedent and although this board had been very conservative with any requests with increases in square footage but to give due consideration to the request to take that square footage and allocate it differently, especially in the case of corner businesses which this one was.

Mr. Locker stated he understood from looking at this request that they were requesting to put one 30' square foot sign on each of the two visible corners of the building. Dr. Upton answered that was correct. Dr. Upton added that one of the corners would be visible from Lorna Road and the other corner would be visible from Rocky Ridge and Patton Chapel Road. Mr. Locker asked if the signs would be identical. Dr. Upton answered that was correct.

Mr. Locker asked if there were any other questions or comments from the board. Mr. Pratt asked if there was a shopping center sign that has the name of the business on it. Dr. Upton answered there was a shopping center sign and there was a very small space for signage located on it so if that was something standing in the way of the board approving this request, that was something that they would forego, as they did not have to have signage on the store locator sign.

Mr. Locker asked Dr. Upton what the start-up schedule for the business would be. Dr. Upton answered ideally by the middle of July. Mr. Locker then explained he wanted to make her aware that any variance request approved was under a six month time limit to obtain the permit.

Mr. Locker asked if there were any other questions or comments on this case. There were none. Mr. Locker asked for a motion. Mr. Mikos made a motion to allow two signs at 30 square feet each in lieu of a single sign at the allowed square footage of 60 square feet. Mr. Puchta seconded the motion. After a roll call vote, the motion was approved unanimously.

4. **BZA-0516-07** – Mr. and Mrs. John Piazza are requesting a variance to construct 120 feet of 8 (eight) foot tall fencing, exceeding the 6 ½ (six and a half) feet allowed at their property located at 3305 Brittany Court. The property is zoned R-1 (Single Family District). Ms. Janet F. (Allen) Piazza is the property owner.
DENIED

Mr. Locker asked if Mr. Piazza, or anyone appointed by the Piazza's, was present to represent this request. Mr. Locker then asked the secretary to state in the minutes of this meeting that the BZA by-laws under Section 11 – Hearings and Re-hearings, paragraph B – Conduct of hearings, Sub-paragraph a – Appearances – state that any person may appear in person or by agent or attorney at the hearing speaking on behalf of the owner of the subject property shall be so authorized by the property owner in writing. Mr. Locker stated the operative word would appear to the “may” and does not say that the applicant has to appear. Mr. Locker stated he proposed to move forward with this hearing and render a decision one way or the other and inform Mr. Piazza accordingly. Mr. Locker asked the secretary if she could confirm that Mr. Piazza was notified of the hearing date and time. Ms. Bradstreet answered she could confirm he was mailed a notice which included date and time.

Mr. Locker stated in this case Mr. Piazza was requesting 120' of 8' fencing with a neighbor to the east having existing 8' fencing which according to the building inspections staff was not permitted but this was not completely unusual to have unpermitted fencing in the city. Mr. Locker stated for privacy reasons, Mr. Piazza wanted to extend or to have his own 8 foot fencing along the south and west property lines because of some building elevation and lot elevation issues to resolve some perceived privacy issues with his property and adjoining properties. Mr. Locker explained the Board has been very conservative when it comes to variance requests when it comes to fence height particularly because there is such a precedent that would be such a Pandora's Box. Mr. Locker explained, as one voting member, there are other options for privacy including plants, screens, trees, and things inside the house (curtains) and such. Mr. Locker stated he wasn't sure in his mind that this would be a clear hardship due to the lay of the land that would warrant basically bending of a city ordinance.

Mr. Locker asked if any other board member had any questions or comments relating to this request for a variance. There were none. Mr. Locker asked if anyone in the audience would like to speak in regard to this request. Nobody responded. Mr. Locker stated if there were no further questions or comments, would anybody like to make a motion in regard to this request to construct 120' of 8' high fencing to replace his existing 6 ½ feet fencing. Mr. Mikos made a motion to approve. Ms. Huddleston seconded the motion. After a roll-call vote, the motion was denied unanimously.

5. **BZA-0516-08** – Ms. Karli Pienette is requesting a variance to construct a four foot tall fence in her secondary front yard beyond the minimum front building setback at her property located at 200 Shenandoah Drive which sits on a corner lot. Ms. Pienette is the property owner and the property is zoned R-1 (Single Family Residential).

APPROVED

Dr. Paul Piennette, 200 Shenandoah Drive, was present to represent this case. Dr. Piennette stated his house sat on the corner of Shenandoah and Albermarle. Mr. Locker asked Dr. Piennette to describe his request to the board and the reasoning behind it.

Dr. Piennette stated as best he understood the ordinance, because his property sat on a corner lot, they technically did not have a front yard and a back yard. Dr. Piennette stated because of this, they were ruled to have two front yards and a side yard because it sits on the street. He stated his proposal was to put a 4 (four) foot fence around his back yard/side yard that clearly delineates their yard from the street. Dr. Piennette stated right now they had a front yard and a back yard and in the back yard, about half of it was mostly rock and trees which he had some pictures to show. Dr. Piennette said on the other half, they had laid down sod and created a flat playing surface for his three children. Dr. Piennette stated the problem they were having was right now they sat on the corner lot with a 4 way street intersection that is right next to their house and so when the children were out playing, then wondering into the yard and gradually wondering into the street, it creates a problem of safety for their children. Dr. Piennette said it also creates a difficulty with either himself or his wife when they are watching their children outside because they have to watch them four directions.

Dr. Piennette stated that his proposal was, if he understood the law correctly, he was allowed to put a car or vehicle barricade up to block. Dr. Piennete explained in his mind, a car barricade

was essentially like a concrete barricade to keep cars out of his yard and would be very unsightly to his neighborhood.

Dr. Piennette stated because of this, his proposal was a 4 (four) foot wooden fence that would fence in their back and side yards and then also to add shrubs along the fence to create a visual barrier between the street and his yard that would ideally keep what's in the street in the street and his children in the yard. Dr. Piennette stated he had a map of his property, and then presented to the BZA members the yellow highlighted areas where they would be adding the fence and the red highlighted area would be where they would be adding the shrubs along the street in order to create that essentially flat, grassy playing surface for his children in order to keep them closed in and out of the street.

Dr. Piennette then displayed a picture of what the fence would look like. He stated he felt it was a very aesthetically pleasing wooden fence that would also be covered with shrubs. He also showed a picture of a plot of grassy area that they would be enclosing with the 4 foot fence and the shrubs. He also showed a picture of a fence three houses down from him, at the corner of Albermarle and Chapel Road. These neighbors have essentially the exact same situation. They sat on a corner lot and they fenced in their yard with a fence to keep their children in the back yard.

Dr. Piennette stated also that he thought a precedent had been set by this board at a meeting on June 4, 2015, when Mr. and Mrs. Bryan McCarthy at 298 Shades Crest Road, presented essentially the exact same proposal that they wanted to put the fence in the front yard because they didn't have a back yard suitable for children playing in their back yard and that request was granted by this board. He believed the precedent has been set.

Dr. Piennette stated he also had two letters from his neighbors, one from the neighbor that would be directly adjacent to the fence on the same side of the street and the other letter was from the neighbor that would be directly across the street of Albermarle in support of their proposal. Dr. Piennette stated that concluded his explanation of the request and asked if anyone had any questions.

Mr. Locker thanked Dr. Piennette and stated he gave a good description of his case. Mr. Locker explained he wanted Dr. Piennette to understand that every decision of the Board was rendered on the merits of each individual case, so while often the facts of two cases may be similar, that didn't insure approval of a request.

Mr. Locker stated that he did understand the Piennette's were on a corner lot and he did understand the difficulties of watching three children going four different directions. Mr. Locker stated Dr. Piennette had been correct about the vehicle barricade provision which was one of the difficulties in a governing body trying to make allowances for safety and at the same time uphold the standards of a community, the aesthetics standards, so for years and years, front yard fences and then when it became apparent that side yard on a corner lot really is a secondary front yard, front yard fences in the side yard would not make the cut and there were some allowances made for vehicle barricades which by definition, as Dr. Piennette had identified, could become unsightly, and he believed the height requirement or limitation was 30 inches. Mr. Robert Macke verified that was correct. Mr. Locker stated there could be, perhaps, some consideration

given to that aspect. Mr. Locker stated that, as one voting member, he wasn't sure that 4 (four) feet would be palatable. Mr. Locker asked him if there was any room for give and take on this. Dr. Piennette stated their ultimate goal was just to keep their children in the back yard, so 30" would be 2 ½ feet, even though he would rather have a 4 (four) foot fence just because that was the standard height of fences, but with the addition of the shrubs anyway, he really didn't think the height of the fence mattered as much as being allowed to put an enclosure in.

Mr. Locker stated he would open the floor up for questions or comments from the other board members. Mr. Pratt asked regarding the shrubs, what types, heights and spacing had they thought about. Dr. Piennette stated he had holly bushes that were in front of his house in the front yard, so he would probably lean toward essentially the same bush along the side. Dr. Piennette stated they were about 6 or 7 feet in height. He stated he probably wouldn't want them to be that tall, simply because that would be too tall to trim, but something similar to that was his plan.

Mr. Locker asked Dr. Piennette if he had a fence installer to come out and look at his yard. Dr. Piennette stated they had a representative from O-Jay Fencing Company here at the meeting. Ms. Susan Thompson, O-Jay Fence Company located at 1801 Pinson Street, Birmingham, AL 35217, stepped to the podium. Mr. Locker asked her what she could add to the discussion regarding the type of fence being proposed and the location with respect to the property line and the 11 feet from the back of curb and the property line. Ms. Thompson stated what the Piennette's were looking at was just the standard 4 (four) foot picket fence. Ms. Thompson stated the board members should have a photo included in the submittal. Ms. Thompson stated where they were wanting to put it was essentially, if you were facing the house, it was coming off the back corner, coming out to the street and it was about a 10 or 11 foot setback from the road and then kind of turning parallel to the road and then coming back and connecting. Ms. Thompson stated that being out there on site, she could say they did not have any room besides this area that they have sodded to have a place for their children to play. Ms. Thompson referenced the photo to where probably half their yard was covered and was not suitable for the children. Ms. Thompson stated the style of fence was great, and the height 4(four) feet was standard material size. Ms. Thompson stated if they did have to take that down, it would cost them a little extra to do that because it would be laborious to cut each board to a fit a different height. Ms. Thompson stated they would work with them on what they needed and the placement of the fence. Ms. Thompson stated they would certainly comply with something aesthetically pleasing on the installation side.

Mr. Locker asked Dr. Piennette if they neighborhood had sidewalks on his side of the street. Dr. Piennette answered it did not have sidewalks. Mr. Locker stated there could be a little concern about the possibility of putting shrubbery in for a screen of the fence, if permitted would be a non-conformity with the rest of the neighborhood, while the idea of some shrubbery in there would certainly be some give on the give and take scale. Mr. Locker stated he also would not want to put them in a situation where right-of-way for pedestrian traffic, even though there's not a sidewalk there, but basically that portion of the yard was open for pedestrian traffic, if the shrubs got too bushy and encroached on any pedestrian space, would there be some room for consideration of backing the fence off of the property line just a little bit just to allow for some of the shrubbery. Dr. Piennette asked if the fence was built 10 or 11 feet off of the road and then the shrubs were no wider than 2 or 3 feet, there would still be at least a 5 or 6 foot area. Dr. Piennette stated his concern with that kind of fencing would be they would be essentially losing

area for his children to play. Mr. Locker asked him if what he was proposing was more of a vertically growing shrub that grows tall rather than wide. Dr. Piennette answered that was correct.

Dr. Piennette added that if the board did not approve the shrubs it wasn't something they were completely set on, but he felt that the shrubs would provide more of a visual barricade. Dr. Piennette stated in his neighbor's letters they had described how they've had vehicles drive into their front yard which was on Albermarle Drive. Dr. Piennette stated he felt a distinction could be made jumping a curb, driving through a yard, vs. jumping through a bush or fence destroying property. He felt like this would be a little more security there but the bushes were certainly not something that his proposal couldn't do without.

Mr. Locker asked Mr. Robert Macke for a clarification of the fence regulations. He asked if there was a provision for a height of the 4ft or 6ft height within a certain distance of the building setback line. Mr. Macke answered it was 15 feet back from the front building line and then you could go up to the 6 ½ but you had to be 15 feet back from the front building line.

Mr. Locker stated in summary he was asking for a variance to allow a fence in the secondary front yard as submitted on the survey; it would be close to the property lines on three sides, approach the driveway on the south and west property line which was along Albermarle. Dr. Piennette stated that was correct. Mr. Locker asked Dr. Piennette if he was ok to conceding to the 30" height which was the limitation for a vehicle barricade which would be permitted and he would screen the fence, at least along Albermarle, with some taller than the fence evergreen type shrubs. Mr. Locker asked if this summarized what he was asking for. Dr. Piennette stated that was correct. Mr. Locker added that the fence would be of a picket fence nature similar to others in the neighborhood. Dr. Piennette stated that was correct and he would like to clarify that he was asking for a 4 foot fence, but would be willing to back it down if he needed to. Mr. Locker stated that before a motion was made, they needed to come to a consensus on this topic. Mr. Locker stated that if he asked for a 4 foot fence and the Board denied it, then the next opportunity to come back to BZA would be the next month. Dr. Piennette stated he would like to ask for the 4 ft fence, simply because of the pricing and he didn't have a lot of financial give.

Mr. Mikos asked Dr. Piennette how old his children were. Dr. Piennette stated he had a five year old, a three year old, and an almost two year old. Mr. Mikos stated his feeling was the hardship was having two front yards and from a safety standpoint, the five year old could probably get himself over a 2 ½ foot fence but wouldn't get himself over a 4 foot fence very easily, so he felt from a safety standpoint it would be far better to have the 4 foot fence.

Mr. Pratt added he had a comment or observation. Mr. Pratt stated as he looked at the drawing, there was a 35 foot setback for the building off the property line. Mr. Pratt stated if he understood the code correctly, the fence could not project past the building, so in essence, what this would be would be a 35 foot variance request almost because the building was about 4 feet from the property line. Mr. Pratt added that while the shrubbery along the fence, even though he liked that suggestion, he would be, if the board was looking to approve a variance request for the fence, his suggestion would be that the fence should slide further away from the right-of-way line than a couple of feet for the shrubs. Mr. Pratt added that 5 or 10 feet would be something he could live with, he thought that would be better from a location standpoint with respect to the road and as far as the variance request not being a full 35 foot request.

Mr. Locker asked Ms. Thompson, representative from O-Jay Fence Company, if she could speak just in generalities to what the cost difference, percentage wise, would be between the two. Mr. Locker asked if it would be a 2% add or a 5% or 10% add. Ms. Thompson stated, given whatever the board decided, they would work with the Piennette's, but it would probably be a 10 to 15% increase and that was because each individual board had to be cut and measured and all of the fence materials with any picket style, especially this one that comes standard 48", so cutting those down when talking about 100 to 200 boards, given the footage amount that they had, was very laborious. She explained they would have to have labor on site cutting and measuring the boards exactly and it could be very time consuming.

Mr. Mikos added that the support board at the bottom would have to be moved on all of them. Mr. Locker agreed. Mr. Locker added that corner lots were difficult for the home owners, the city, and the Board of Zoning Adjustment, that's why it generally came down to a little give and take.

Mr. Locker asked Dr. Piennette what he thought about Mr. Pratt's suggestion earlier about the possibility of the Piennette's giving a little bit on the distance so that is was not a full 35 foot variance allowed. Dr. Piennette answered that if in the situation that the fence would be approved without the shrubs or the fence could be approved with the shrubs inside the fence, then it would give more pedestrian room to walk, he would be ok with that.

Mr. Locker asked if there were any additional thoughts, comments or questions from the board. Mr. Pratt asked if Dr. Piennette would be comfortable with the fence being 5 or 10 feet off the property line and willing to work with the board from that perspective instead of building the fence right on the property line or 2 feet off for shrubbery. Dr. Piennette answered he would be agreeable to that.

Mr. Locker stated he felt that would be good and the shrubbery would be to screen the fence and not make it so much an obvious anomaly in the neighborhood, or something out of the norm, so the shrubbery would serve to screen that and increase its' visual impact.

Dr. Piennette added that as far as the variance goes, it would be an abnormality to have the fence but visually he wasn't sure how much of an abnormality it was as there were several other fences in the neighborhood. Mr. Locker stated he had heard of those situations before and often those would be fences that were not permitted.

Mr. Locker asked if there were any final thoughts from the applicant. Dr. Piennette said no.

Mr. Locker asked if anyone in the audience would like to speak on behalf of this variance request. Nobody responded.

Mr. Locker asked if there were any final questions or comments from the board. Mr. Pratt asked to clarify if the letters from the adjacent property owners were from the owners next door, behind him from the south and then from across the street? Dr. Piennette showed Mr. Pratt on a map where these letters were from. Mr. Locker asked the secretary to confirm that all adjacent property owners were notified. Ms. Bradstreet answered they had been notified with no phone calls or response from the notifications.

Mr. Locker summarized again the request. Mr. Locker stated that Dr. Piennette was requesting a variance for a fence in the secondary front yard, or side yard, along Albermarle Drive, along the back property line driveway and would be willing to go 2 feet inside the property line along Albermarle, requested fence would be a picket fence – 4 feet in height, and screened with shrubbery of a taller and more slender evergreen nature would be planted on the outside of this fence. Dr. Piennette stated that was correct.

Mr. Locker asked for a motion regarding this variance request as he just stated. Mr. Mikos made a motion to approve. Mr. Puchta seconded the motion. On a roll call vote, the motion was approved unanimously. Mr. Locker stated Dr. Piennette was free to pursue the permit through the Building Inspections office and wished him luck.

Mr. Locker stated there was an item he would like to address not on the agenda. He explained he had talked to Mr. John Greene, the council liaison to BZA, and told him that due to some upcoming obligations, he would be resigning effective at the end of this meeting. Mr. Locker stated he had greatly enjoyed his time on the board and had enjoyed working with everyone at the city and all the various BZA members.

With no further business the meeting was adjourned.

Vanessa Bradstreet
Zoning Assistant