

BOARD OF ADJUSTMENT

MINUTES

April 6, 2023 @ 5:00 p.m.

The Board of Adjustment held a meeting on Thursday April 6, 2023 at 5:00 p.m.

Members Present

Chairman Wendell Miller
Vice-Chairman Don Jacimore
Josh Stroud

Members Absent

Secretary Justin Cothren
Wayne Cummings

Visitors Present: City Planner Sara Jondahl, Planner I Victoria Marchant, Eric Gjerstad, Bob Heigal.

Welcome Visitors

The First Order of Business is a request to review and approve the minutes of the Board of Adjustment March 2, 2023.

The Second Order of Business is a Variance from Article 4.1 to allow an 8' fence despite the 6' height limit. Submitted by Eric Gjerstad. (VARI-0323-000345)

Planner I Marchant stated that this is an application at 304 Barborek Lane, and it is a variance from the fence height requirement as stated. She stated that the existing conditions are that it is located within the Marina Heights District, and this is an existing single family home. She stated that the property is zoned R-1 surrounded by other R-1 zoned properties, and surrounding properties are single family homes. Planner I Marchant stated that the application is to allow an 8' fence despite the 6' limit surrounding the house. She stated that the fence is behind the 25' required front yard and therefore is not subject to the 3.5' restriction. She stated that the applicant is requesting this fence to protect his food forest from deer. Planner I Marchant stated that staff has not found that special conditions exist as all reasons stated by the applicant for the variance such as wildlife and healthier concerns could be applicable to other lands. She stated that the granting of this variance is not in harmony with the purpose and intent of the code as the purpose and intent is to allow 6' fences.

Staff recommends denial of this application as a result of the findings below:

1. The applicant has not demonstrated that special conditions exist; and
2. The granting of this variance is not in harmony with the purpose and intent of the code.

Mr. Gjerstad stated that he is there to apply for a variance for the trellis he wants to put around his garden. He stated that he is a disabled veteran. He stated that he had been using gardening for therapeutic purposes for his mental and physical health. He stated that he had submitted a letter

from his counselor from the VA explaining the benefits that gardening has for him. Mr. Gjerstad stated that this helps him treat some conditions that he states he does not have much control over. He stated that his problem is that he has a lot of deer. He stated that he is surrounded by heavily forested areas right by the state park. Mr. Gjerstad stated that Bob could attest that they have deer probably every single day. He stated that he has seen as many as 12 in the front yard and 22 behind the house. Mr. Gjerstad stated that the deer destroy the garden. He stated that he has tried dogs and different types of plants but this is the most practical and affordable approach he can take. He stated that without it, he is wasting his time trying to garden. Mr. Gjerstad stated that the trellis will be painted to match the house. He stated that it needs to be 7 to 8 feet high to keep most deer out. He stated that there was a study done in Texas stating that deer can jump over an 8 foot fence but it is not likely. Mr. Gjerstad stated that it helps him spend time with his family. He stated that he has PTSD, which is protected by the ADA. Mr. Gjerstad stated that the intent of the ADA is to allow disabled persons to enjoy their lives, and there is federal precedent to allow for such accommodations. Mr. Gjerstad stated that his wife and he have found that there has been 9 variance requests for residential fences in the last 10 years. He stated that 8 of them were approved. He stated that most of them cited the fence not being obtrusive and being safe. Mr. Gjerstad stated that one of them cited PTSD and her disability.

Mr. Bob Heigal stated that he shares the property line adjacent to Mr. Gjerstad's proposed fence. He stated that he is very okay with what they are doing. He stated that his yard gets runover by deer too, but he is not a gardener.

Member Jacimore asked how close to the road the trellis would be. Mr. Gjerstad replied that the closest to the road will be 54'.

Member Jacimore made a motion to approve as presented. The motion was seconded by Member Stroud and passed unanimously.

The Third Order of Business is a Variance from Article 4.3 requesting relief from the privacy fence requirement. Submitted by Barrett & Associates on behalf of Arkansas Tech University for Pope County EMS. (VARI-0323-000337)

Planner I Marchant stated that this is for the new Pope County EMS facility located at 1850 N Arkansas Ave. She stated that it is a variance from the privacy fence requirement. Planner I Marchant stated that the existing conditions are that it is located within the University Place District and is the proposed site of the new Pope County EMS facility. She stated that it is an R-3 zoned property surrounded by R-3 and C-2 zoned properties including uses such as Fire Station 3, a martial arts gym, and Cowell Steel. Planner I Marchant stated that the application is to allow a variance from Article 4.3 requesting relief from the privacy fence requirement when a commercial use abuts a residential zone. She stated that staff has found that the applicant has demonstrated that special conditions do exist due to the nature of the use adjacent to this property. She stated that although the property is zoned residential, the use is for agriculture. Planner I Marchant stated that the intent of the code is to protect residential lands from commercial development and as such, the land currently being an agricultural use in nature is a special condition.

It is staff's recommendation that the Board of Adjustment approve the variance request with the following conditions:

1. The applicant shall construct a privacy fence if the adjacent property is developed in a residential manor.

Based on the findings below:

1. The applicant has demonstrated that special conditions exist; and
2. The applicant has met all other variance requirements.

Member Jacimore made a motion to approve as presented. The motion was seconded by Member Stroud and passed unanimously.

Meeting Adjourned

Chairperson