



City of Burlington Board of Adjustment
Municipal Conference Room | Lower Level
425 S. Lexington Ave. | Burlington, NC 27215
April 11, 2023 – 8:30 AM

City Members:

Robert Giles, II, Chair
Eric Grant
John Glenn
Mark Kennedy
Trish McAllister (Alternate)
Dean Rainey (Alternate)

Extraterritorial Members:

Steven Heineman, Vice Chair

Agenda

ITEM NO. 1:

Call meeting to order.

ITEM NO. 2:

Determination of Quorum.

ITEM NO. 3:

Approval of the March 14, 2023 Meeting Minutes.

ITEM NO. 4 | Case # SUBDIVISION VARIANCE-23-02:

Applicant: Mr. Ryan Moffit

Owner: Mr. Douglas Boteler

Location: 2521 Pineway Dr., Burlington, NC 27215
Alamance County parcel identification number 116121

Details: Approval of the March 14, 2023 Board of Adjustment Findings of Fact, conclusions of Law, and Decision.

ITEM NO. 5:

New Business.

ITEM NO. 6:

Adjourn.



City of Burlington

Board of Adjustment Meeting Minutes

Jamie Lawson, AICP, CZO | Director of Planning

City of Burlington Board of Adjustment
Municipal Conference Room | Lower Level
425 S. Lexington Ave. | Burlington, NC 27215
March 14, 2023 – 8:30 AM

Meeting Video Link: https://youtu.be/m_IIGtK-RDs

Board Members Present:

Steven Heineman, Vice Chair (ETJ Member)
Eric Grant
John Glenn
Mark Kennedy
Dean Rainey (Alternate)

Members Absent:

Robert Giles, II, Chair
Trish McAllister (Alternate)

City Staff:

Jamie Lawson, AICP, CZO, Planning Director
Conrad Olmedo, AICP, CZO, Planning Manager
Bri Smith, Planning Office Manager
Jeff McClintock, Principal Planner
David Huffman, City Attorney
Sherri Hamlett, Assistant City Attorney
Frances Rasberry, Attorney for Board of Adjustment

Agenda

ITEM NO. 1:

Mr. Steven Heineman, Vice Chair, presided and called the meeting to order at 8:30 A.M.

ITEM NO. 2:

Mr. Heineman, Chair, confirmed with staff that there were five members present to establish a quorum.

ITEM NO. 3:

Approval of the December 13, 2022 and January 10, 2023 Meeting Minutes.

Mr. Eric Grant, member, made a motion to approve the Meeting Minutes from the December 13, 2022 meeting.

Mr. Mark Kennedy, member, seconded the motion.

All were in favor.

Mr. Grant made a motion to approve the Meeting Minutes from the January 10, 2023 meeting.

Mr. John Glenn, Member, seconded the motion.

All were in favor.

ITEM NO. 4 | Case # SUBDIVISION VARIANCE-22-04:

Applicant: Mr. Ryan Moffitt

Owner: Mr. Douglas Boteler

Location: 2521 Pineway Dr., Burlington, NC 27215
Alamance County parcel identification number 116121

Details: This is a request to grant two variances from Unified Development Ordinance (UDO) Sections 4.5.F.11.e.i. and 4.5.F.11.e.ii., regarding fence height and fence height measurement, in order to construct a new fence:

1. *UDO Section 4.5.F.11.e.i.* to allow a six (6)-foot high fence where only a four (4)-foot high fence between the front façade line of a building and a lot line abutting a street right-of-way and between the building setback line and a lot line abutting a street right-of-way would be allowed.
2. *UDO Section 4.5.F.11.e.ii.* to allow a fence height to be measured from the finished grade where it is required that fence height be determined along the grade of the adjacent lot or street (UDO Section 8.3.P.1.a.).

Mr. Heineman inquired the commission if there were any conflicts of interest or ex-parte communication amongst the commissioners.

Mr. Heineman stated that he conducted a site visit to check out the work being completed there but did not speak with anyone.

Mr. Glenn stated that he conducted a site visit to check out the work being completed there but did not speak with anyone.

Mr. Francis Raspberry, Attorney for Board of Adjustment, advised the board to focus on the information laid out in the text of the unified development ordinance regarding this item. Mr. Raspberry also gave details on how this proceeding would continue and gave details on the Findings of Fact.

Mr. Heineman stated that if a witness would like to speak, they are asked to stay factual. Mr. Heineman also stated that if a witness was asked to speak they would have to be determined as an expert witness in order to speak.

Mr. Heineman swore in all witnesses that the evidence they provided in the meeting was the truth. Mr. Douglas Boteler, Mr. Ryan Moffitt, Josh McDowell, Jeff Wilkins, Jeremy Chapman, Scott Gindlesperger, Jeff McClintock, Conrad Olmedo, and Jamie Lawson all affirmed.

Mr. Jeff McClintock, Principal Planner, introduced the item and gave details of the variance the applicants, Mr. Ryan Moffitt and Mr. Douglas Boteler (Owner), were requesting.

Mr. McClintock stated that post Pre-Application submittals with City Staff, it was determined there was not a public easement on along the property line on Shadowbrook Dr, as such the applicant has removed a request from their application. Mr. McClintock stated that Variance Request 3 4.5.f.11.d.ii.a regarding placement of the fence in relation to the public easement.

Mr. McClintock detailed the items the board could find in their packets as well as the items submitted after the initial packet was delivered.

Mr. Mark Kennedy inquired staff for a copy of the original packet. Staff provided one.

Mr. Heineman called on applicant, Mr. Ryan Moffitt.

Mr. Moffitt, Vernon Law Firm, passed out copies of the applicants' items as well as additions of photos of the property for evidence.

Mr. Moffitt stated they submitted the application in February after Pre-Application conference and extensive work done by Mr. Boteler's design team and conversations with staff.

Mr. Moffitt gave a brief description of the noticing they gave to neighbors and work that they had done to prepare for this meeting. Mr. Moffitt noted that they only received positive feedback from neighbors.

Mr. Moffitt detailed items and named the exhibits they were submitting into evidence.

Mr. Moffitt stated that the site plan submitted in the packet is an overview of the variance Mr. Boteler is requesting and gave a brief overview of the proposed fencing.

Mr. Moffitt stated that if the UDO regarding this variance was strictly applied, and the different height fences would be allowed and compared it to another homes in the neighborhood.

Mr. Moffitt stated that they were requesting an increase of 2 feet in the areas that only 4 feet was allowed and continuing the fence to 6 feet where it is permitted around the property. Mr. Moffitt stated that there was a list of conditions submitted with this application which intend to offset the adverse effects the variance would have to accommodations that the variance would allow. Mr. Moffitt detailed the list of conditions for the board.

Mr. Moffitt gave details about the setbacks and how the fence would apply to the setbacks.

Mr. Moffitt read NC General Statute 160D-705(d) and detailed how the statute relates to the board and the applicant.

Mr. Moffitt stated everything presented that day is relevant to the unique situation of this property.

Mr. Moffitt stated that the City of Burlington incorporates an additional factor into the variance standard, factor four, that the variance approval is the minimum necessary to make possible the reasonable use of the land building or structure. Mr. Moffitt objected to this factor due to it not being included in the statutory requirements even though he believed that they would satisfy that requirement. Mr. Moffitt stated that he believed that it conflicted with the first requirement of the variance.

Ms. Sherri Hamlett, Assistant City Attorney, responded that the same statute allows for the board to condition the variance and that is what factor four indicates.

Mr. Moffitt stated that the city requiring factor number four would not be an issue but wanted the objection to be on the record.

Mr. Moffitt stated that an undue hardship is imposed on the property due to the particular locations, shape and configuration and challenging topography.

Mr. Moffitt stated some of the dangers associated with the property due to the three road frontages on the property, the driveway position, and privacy concerns.

Mr. Moffitt stated that the UDO was more restrictive on this property due to the road frontages, comparable to the neighboring properties.

Mr. Moffitt also stated aesthetic challenges due to the restrictiveness of the UDO.

Mr. Moffitt gave a history of the property stating that the property has been there since 1955 and detailed how the property has changed over the years. Mr. Moffitt stated the ways that the roads in the areas have changed over the years.

Mr. Moffitt called on Applicant and Owner Mr. Douglas Boteler to give his witness testimony.

Mr. Douglas Boteler, 2521 Pineway Dr & CEO of National on Demand, gave a brief history of his purchase of the property. Mr. Boteler stated they had concerns about safety with the property being surrounded by 3 roads and traffic along those roads.

Mr. Moffitt requested Mr. Boteler to give a description of the design of the fence for the property. Mr. Boteler responded that he had a solid brick fence designed for Shadowbrook and Saddleclub to help with safety and noise and has the wrought iron on Pineway to match homes in the area and to help with line of sight.

Mr. Moffitt inquired Mr. Boteler to give an overview of work being done on the property. Mr. Boteler briefly described the renovations.

Mr. Moffitt inquired of Mr. Boteler if he had done anything to the lot to change the condition it was in when purchased. Mr. Boteler stated no except for removal of trees.

Mr. Moffitt inquired of Mr. Boteler his reasons for believing the concerns on the property needed to be addressed. Mr. Boteler stated he felt it was necessary due to safety concerns.

Mr. Moffitt called on Mr. Jeff Wilkins to give his witness testimony.

Mr. Jeff Wilkins, Architect, stated that his company does both commercial and residential architecture projects. Mr. Wilkins gave an overview of the design of the home and a brief history of the home and the unique placement of the home.

Mr. Moffitt inquired as to when Mr. Wilkins became involved with the project. Mr. Wilkins stated July, shortly after Mr. Boteler purchased the property.

Mr. Moffitt inquired if the exterior fence/wall was a consideration when Mr. Wilkins became involved on the project. Mr. Wilkins responded soon after he became involved it became a consideration.

Mr. Moffitt inquired about the process to designing the wall to fit the property. Mr. Wilkins responded that he tries to follow what previous architects had done on the property in regards his design and that was the intent with this property's wall design.

Mr. Moffitt inquired what in the ordinance makes this property's wall design incompatible with the ordinance versus other properties in the City. Mr. Wilkins responded that it would cause the wall height to be inconsistent around the property. Mr. Wilkins gave details of the topography survey submitted in the applicant's packet and how it applied to the requested variances.

Mr. Moffitt inquired if there were height discrepancies with measuring the height of the fence at certain areas of the yard instead of at the grade of the road. Mr. Wilkins responded yes.

Mr. Kennedy, inquired if Mr. Wilkins was indicating that the road was 2ft lower than the yard. Mr. Wilkins responded yes, in that particular area of the yard, but that in other areas that wasn't a problem.

Mr. Moffitt inquired if the fence would be measured at different points of the yard and be different heights if the ordinance was strictly applied. Mr. Wilkins responded yes.

Mr. Moffitt inquired how much topography change there was at the property. Mr. Wilkins responded that there was a range of 10ft change in the topography and that the intersection near the property is elevated over the property which causes it to be exposed.

Mr. Moffitt inquired about the design to change the driveway, how the design came to fruition, and if there were any challenges. Mr. Wilkins responded that the garage driveway access currently on the property leads out directly into the intersection which poses a safety concern. Mr. Wilkins responded that they designed the proposed driveway to utilize the existing garage and to help have easier access to the garage.

Mr. Moffitt inquired, according to the ordinance, if the applicant built the fence at the building setback, if the applicant would be able to build an 8ft fence and if that would functionally work for the abandonment of the current entrance and allow the applicant to build an alternative. Mr. Wilkins stated that it did not.

Mr. Moffitt inquired if the design of the wall was as close to the side setback line as possible to make the wraparound driveway functional and if they had designed it with the minimum requirements needed. Mr. Wilkins responded yes.

Mr. Moffitt inquired if Mr. Wilkins would explain justification for the proposed design and conditions and the impact those conditions mean for the property and public. Mr. Wilkins responded that his goal was to pay homage to the original architectural designs and to keep the fence to match the area.

Mr. Moffitt inquired about a home down the street and if Mr. Wilkins was familiar with it. Mr. Wilkins stated that he was familiar with it. Mr. Moffitt inquired how he would relate it to what the applicant was proposing. Mr. Wilkins stated aesthetically it was very similar.

Mr. Moffitt inquired if Mr. Wilkins felt that the other home's fence was closer to the street than the one proposed for Mr. Boteler's property. Mr. Wilkins stated yes it was most likely 10ft closer to the road the one proposed.

Mr. Moffitt inquired if the other home had similar topography challenges. Mr. Wilkins stated yes and gave a description of the property's challenges. Mr. Moffitt inquired about the height of the lamp posts and fence. Mr. Wilkins stated the wrought iron was similar and that the brick was higher.

Mr. Moffitt inquired about the impact of the proposed fence from the road and the effect of the setback. Mr. Wilkins responded that the impact keeps the wall from creating a barrier.

Mr. Moffitt inquired if the design was influenced by the ordinance. Mr. Wilkins stated yes.

Mr. Moffitt inquired if Mr. Wilkins was aware of any modifications that Mr. Boteler made to the property that created the challenges outlined in Mr. Wilkins testimony. Mr. Wilkins stated no.

Mr. Raspberry stated that the board was able to ask questions during the witness testimony.

Mr. Moffitt called on his next witness Mr. Jeremy Chapman.

Dr. Jeremy Chapman, Engineer with Ramey Kemp & Associates in Asheville, NC, gave a brief explanation of his experience in his field.

Mr. Moffitt inquired what Dr. Chapman's role was. Dr. Chapman stated that his role was the transportation and safety engineer with the practice. Mr. Moffitt inquired how long Dr. Chapman had worked in the transportation and engineering and safety fields. Dr. Chapman responded 23 years in the Transportation and Engineering and Safety since 2008.

Mr. Moffitt inquired to the board if Dr. Chapman could be established as an expert in the Traffic and Safety field. Mr. Heineman accepted Dr. Chapman as an expert.

Mr. Moffitt inquired what brought Dr. Chapman to become involved in this project. Dr. Chapman responded that he was requested to review the unique traffic safety issues for this property.

Mr. Moffitt inquired if he was the author of the safety report submitted in the applicant's packet. Dr. Chapman stated that he was the primary author and had some staff help.

Mr. Moffitt requested Dr. Chapman to give the purpose of the report. Dr. Chapman stated that the purpose of the report was to look at the traffic characteristics of the property and see if there were immediate hazards and how the traffic would impact the property and to look for comparable properties in the area.

Mr. Moffitt inquired if the study identified traffic safety concerns that are unique to this property as compared to other homes in the area. Dr. Chapman responded that of the homes he was able to review, he found one home with two road frontages that had a similar uniqueness but this home on its own is unique.

Mr. Moffitt requested Dr. Chapman to give an overview of the methods he used to conduct the study. Dr. Chapman responded that through Turning Movement Count and a Full Volume Count for average daily traffic and travel speeds were conducted to create the report.

Mr. Moffitt inquired that based on the other roads, what Dr. Chapman would classify Pineway Drive to be. Dr. Chapman responded that it would be a typical residential rural street.

Mr. Moffitt requested Dr. Chapman to give the difference between a collector road and a residential road. Dr. Chapman explained the difference between them.

Mr. Moffitt inquired about Dr. Chapman's report where he stated that Shadowbrook and Saddle Club operate at minimum as collector roads and why they have that status. Dr. Chapman responded that he used the classification of collector road because they are not functioning as a local road.

Mr. Moffitt inquired about the collector road and what the design for it would be. Dr. Chapman gave a description of the design for an urban setting.

Mr. Moffitt inquired about Dr. Chapman's assessment of Saddle Club Road being built as a lower volume rural road and from his data that it functions as a collector road, if it would be fair to state that the design and condition of Saddle Club presents a heightened risk of traffic safety compared to a collector road designed to typical standards. Dr. Chapman responded yes due to the road being a very commonly used road in the area.

Mr. Moffitt showed an image of the screen and asked Dr. Chapman to describe what he saw. Dr. Chapman responded that it was a typical 10ft lane with no improved shoulder and it drops to a ditch. Mr. Moffitt inquired if the images shown were consistent with what Dr. Chapman had observed. Dr. Chapman responded yes and there is no curb and gutter along Saddle Club Road.

Mr. Moffitt inquired what road Saddle Club Road could be compared to. Dr. Chapman responded from the images that the road would function as a collector road.

Mr. Moffitt inquired about Dr. Chapman's observations of the lot in relation to Pineway Drive and Saddle Club Road, and if the angle that Pineway Drive comes into Saddle Club Road poses an increased risk of run off accident into the subject property. Dr. Chapman responded that there was potential risk for an accident especially with an unfamiliar driver in that area or inclement weather.

Mr. Moffitt inquired about the volume data and requested how the volume is measured. Dr. Chapman responded the two acronyms for volume study and they are AADT (Annual Average Daily Traffic and ADT (Average Daily Traffic) and gave the differences.

Mr. Moffitt inquired about the data that Dr. Chapman's study collected. Dr. Chapman responded they saw 36,000 ADT between Mcpherson and Pineway.

Mr. Moffitt inquired about the volume at Shadowbrook. Dr. Chapman responded that the numbers were almost the same due to proximity.

Mr. Moffitt asked if Dr. Chapman believed that due to this property's exposure that traffic can be expected to be higher than other properties on Pineway Dr. Dr. Chapman affirmed and stated significantly higher.

Dr. Chapman referenced a NC map that showed the traffic amounts. Dr. Chapman stated that while Saddle Club was not coded on the map, it has the same traffic as other higher traffic roads shown on the map such as Edgewood Avenue, and that Saddle Club doesn't operate any differently than those roads.

Mr. Moffitt stated to Dr. Chapman that Edgewood Avenue is a more traveled connector road and that the traffic volume rate is comparable to Saddle Club Drive and asked if Dr. Chapman agreed. Dr. Chapman affirmed.

Mr. Moffitt inquired of Dr. Chapman to describe the data he received upon observing Pineway and Mcpherson and his conclusion of the risks from the speed survey. Dr. Chapman gave a brief description of what he observed and explained the findings from the speed survey and crash data. Mr. Moffitt inquired if Dr. Chapman concluded that the signalized intersection was more prone to accidents than any other stretch of road without an intersection. Dr. Chapman stated that any intersection causes conflict points and are more prone to accidents.

Mr. Moffitt inquired if this property being located near a signalized intersection increased the risk of accidents. Dr. Chapman stated yes.

Mr. Moffitt asked Dr Chapman to give an assessment of the safety of the proposed fence for the property and the public. Dr. Chapman responded that he did not do an analysis of sight triangles but stated that any wall or fence is going to help with safety of a runoff accident. Dr. Chapman also gave an assessment of another property he identified that also had hedging that obscured the visibility as much as a fence would.

Mr. Moffitt inquired if the distance from the road would make a difference for visual obstruction. Dr. Chapman stated yes it would make a difference depending on the distance from the road.

Mr. Moffitt inquired if the wall was any height would it present a visual obstruction at the intersection. Dr. Chapman stated no.

Mr. Moffitt inquired if Dr. Chapman was aware of any modifications that Mr. Boteler made to the property that created the challenges outlined in Dr. Chapman's testimony. Dr. Chapman stated no.

Mr. Moffitt requested Dr. Chapman to give his opinion of the proposed driveway. Dr. Chapman responded that if the lot were vacant and a new home was put there, that the current driveway would be appropriate. Dr. Chapman indicated on the screen and stated that there was a problem with the current driveway from the garage to Shadowbrook and explained that problem of the conflict point.

Mr. Moffitt inquired if Dr. Chapman agreed that it is prudent to relocate the driveway and abandon the current driveway. Dr. Chapman affirmed.

Board entered a 10-minute recess and resumed at 10:28 a.m.

Mr. Moffitt called Mr. Scott Gindlesperger to give his witness testimony.

Mr. Gindlesperger, CEO of Innovative Sound & Security in Burlington, gave a brief description of his experience since 1988 and works in residential and commercial safety.

Mr. Moffitt inquired if Mr. Gindlesperger operated in the security industry. Mr. Gindlesperger affirmed.

Mr. Moffitt inquired how Mr. Gindlesperger became involved in the project. Mr. Gindlesperger responded became involved regarding how to protect the property.

Mr. Moffitt inquired about Mr. Gindlesperger's assessment of the property was a visual walk around with the context of the perimeter wall. Mr. Gindlesperger affirmed.

Mr. Moffitt requested Mr. Gindlesperger to explain the purpose and function the perimeter fence would serve regarding safety. Mr. Gindlesperger responded that the threat of intrusion is critical. Mr. Gindlesperger also detailed what he looked for when planning for safety for this property and the risks of this property.

Mr. Moffitt inquired if based on Mr. Gindlesperger assessment, the property being surrounded by three roads cause it to be more uniquely at risk for crime than another home. Mr. Gindlesperger responded yes. Mr. Moffitt inquired if that was due to easy access to the home. Mr. Gindlesperger responded yes and due to the heavy traffic in the area, passersby may not notice suspicious behavior.

Mr. Moffitt inquired, to prevent intrusion or security breach, if a 4 ft fence would serve any function of security. Mr. Gindlesperger stated not at that height.

Mr. Moffitt inquired, in the security industry, what height fence would provide security for the property. Mr. Gindlesperger responded that it varied, but that a higher fence would be the safest and that there is not a universal standard. Mr. Moffitt inquired if an 8ft fence would be ideal to deter crime. Mr. Gindlesperger affirmed.

Mr. Moffitt stated that Mr. Boteler had proposed to the BOA a 6ft fence and inquired if Mr. Gindlesperger agreed that a 6ft would work better for safety than a 4ft. Mr. Gindlesperger responded yes. Mr. Moffitt inquired if a 6ft fence offered some level of deterrence and if 6ft would have any value in providing security and privacy. Mr. Gindlesperger responded yes.

Mr. Moffitt requested Mr. Gindlesperger to give an explanation as to why it was safer to have a brick wall on the side of Saddle Club and Pineway versus wrought iron. Mr. Gindlesperger responded that his concern was the home across the street and the ease that someone could park there and then come over to the subject property and the wall is necessary for security.

Mr. Moffitt inquired if Mr. Gindlesperger was aware of any modifications that would have created a heightened security risk. Mr. Gindlesperger stated no.

Mr. Kennedy inquired if there was a preferred material between wrought iron and brick for security. Mr. Gindlesperger responded that it was objective, but his preference was brick and that for aesthetic purposes wrought iron was preferred for homes similar to the subject property.

Mr. Kennedy inquired if it was easier to climb a brick wall or wrought iron fence. Mr. Gindlesperger responded that it would be easier to scale a brick wall versus a wrought iron fence.

Mr. Moffitt called Mr. Josh McDowell to give his witness testimony.

Mr. Josh McDowell, President of McDowell and Jordan Construction LLC, gave a description of his experience since 2005. Mr. McDowell stated that he had been involved with the project since day one. Mr. McDowell stated that his role was looking at the property and helping determine the best use for it.

Mr. Moffitt inquired how long Mr. McDowell had been in the construction industry. Mr. McDowell responded 30 years. Mr. Moffitt inquired how much of his experience was in Alamance County. Mr. McDowell responded 28 years.

Mr. Moffitt inquired what percentage of his experience was on residential lots similar to the subject property. Mr. McDowell responded around 70% and that his company specializes in high-end homes.

Mr. Moffitt inquired what should be included in a fence or wall when the property is unique like the subject property. Mr. McDowell responded that looking all around the home that the current 4ft wall gives no privacy and 4ft also doesn't give any security like a 6ft would.

Mr. Moffitt inquired about the frequency of his subcontractors being on this property since the beginning of the project. Mr. McDowell responded every day since they started in September. Mr. Moffitt inquired if Mr. McDowell's observations were from being exposed to the characteristics of this property daily. Mr. McDowell affirmed.

Mr. Moffitt inquired if Mr. McDowell agreed with the witness testimony from Mr. Wilkins about the topographic challenges being a factor in creating an effective or functional product. Mr. McDowell responded yes and gave a description of the challenges due to the road being higher than the property in certain areas.

Mr. Moffitt inquired if the property had been graded for the construction of the house but when measuring for a fence the topography is accentuated. Mr. McDowell affirmed.

Mr. Moffitt inquired about the conditions that Mr. Boteler has offered and read into the record what the purpose and intent of what the wall and fence ordinance from the UDO read referencing 4.11 f 11 a.

Mr. Moffitt then inquired how Mr. McDowell felt the conditions spoke to the ordinance. Mr. McDowell responded that regarding the safety and security portion, he felt the 4ft fence does not provide that.

Mr. Moffitt referenced the ordinance regarding assisting with the transition of public and private space and inquired about the proposed design and how it accommodates the appropriate transition. Mr. McDowell responded that, with the proximity to the street and the conditions submitted to building the wall inside the building setback line is what differentiates the home and what protects the home and community from the intersection.

Mr. Moffitt inquired what impact, from a design standpoint, the fence being close to the road accomplishes. Mr. McDowell stated that it will help the road feel more secure and to help the property owner to feel safer as well.

Mr. Moffitt inquired the 70% of residential work in Alamance County Mr. McDowell testified to and how this design compares to previous projects in similar projects. Mr. McDowell stated that this property is unique with the three road frontages and that he hasn't experienced that previously.

Mr. Moffitt inquired if the character of the design would be consistent or inconsistent with the work Mr. McDowell had done previously. Mr. McDowell responded it would be consistent.

Mr. Moffitt inquired if the design would be consistent with the neighborhood. Mr. McDowell responded yes.

Mr. Moffitt inquired if it is consistent with single family homes in the city. Mr. McDowell responded yes, especially with low-density homes in the city and with the property itself.

Mr. Moffitt inquired if Mr. McDowell was aware of any modifications that Mr. Boteler or his agents made that created the challenges of the property. Mr. McDowell stated no.

Mr. Heineman inquired about the sight triangles and landscaping, if there was an ordinance that preserves sight triangles or restricts what goes outside the fence. Mr. McDowell responded that he was unaware of an ordinance regarding vegetation and stated they would not plant anything with the expectation that it would grow to that height and if they did anything it would be inside the wall.

Mr. Moffitt gave closing remarks stating that the board had heard from five witnesses who gave testimony and evidence which establishes that the property is burdened by unique circumstances and detailed those circumstances and the testimonies. Mr. Moffitt also stated that 6 conditions had been submitted to help keep the requested variances to be in line with the City's ordinances.

Ms. Lawson inquired about the landscaping shown on the rendering and if that was intended to be installed. Mr. Moffitt responded that it was ornamental and referred to Mr. Boteler on the landscaping. Mr. Boteler stated that they were open to suggestions and feedback and that Mr. Wilkins had added it to the rendering. Ms. Lawson stated she would leave that to the board to discuss.

Ms. Hamlett gave a brief closing argument. Ms. Hamlett reminded the board that they are there to deliberate the evidence presented and not on opinions unless the opinions were given by expert witness testimony. Ms. Hamlett stated that the testimony from Innovative Sound and Security had no data to back up the report and that the terms used in the testimony could happen to any property in Burlington and did not believe that crime deterrent was an issue for the property.

Ms. Hamlett reminded the commission that they can condition the approval of the variance, deny the variance, approve the variance with conditions, and pointed out Mr. Moffitt's statements about adding brick with the fence for them to consider.

Mr. Moffitt stated that the brick was an opportunity for the board to advise on what is most in line with the architectural character of the ordinance regarding the wrought iron and brick.

Mr. Kennedy stated that he didn't notice anything in the variance about there being a particular type of fence that has to be built. Mr. Kennedy also inquired for clarification about the ordinance saying that if the fence was moved back 2" that the fence could be 8ft. Mr. McClintock stated that from the front façade line and the side of the property, the fence could only be 4ft.

Mr. Glenn stated that the current placement of the driveway was not good and that the mixture of brick and wrought iron would fit the neighborhood. Mr. Glenn also spoke to the crime in the area and stated that it was no different at the subject property than anywhere else in the city.

Ms. Hamlett requested confirmation that all of the City's exhibits and the applicants' exhibits were accepted as evidence. Mr. Heineman confirmed.

PUBLIC COMMENT:

No one was present for Public Comment.

BOARD DELIBERATION:

Mr. Grant made a motion to close the evidentiary hearing. Mr. Kennedy seconded the motion.

Mr. Heineman closed the evidentiary hearing and opened up the Board Deliberation.

Mr. Kennedy stated that due to the peculiar nature of the property due to the topography and location of the property, the evidence showed that there is no self-created hardship, nor is

there a permit or zoning that caused the hardship. Mr. Kennedy stated that the purpose, safety, and justice of the variance request is consistent with the spirit and intent of the ordinance and was still debating the unnecessary hardship and wondered if the conditions could help stay with the intent of the ordinance and variance at the same time. Mr. Heineman inquired if Mr. Kennedy had any recommendations on the conditions. Mr. Kennedy responded that the softening of the wall with wrought iron could be appealing for that neighborhood, even though he had not driven through the neighborhood. Mr. Heineman responded that the earlier shown home was the only other home in the neighborhood with a similar fence and it would be unusual for that street.

Mr. Glenn stated that with the softening of the wall and that the board needed to make sure whatever they soften the wall with won't affect the sightline. Mr. Heineman inquired if Mr. Glenn meant language used or specific distances or measurements. Mr. Glenn responded to make sure the wall stays within the sightline requirements.

MOTION DISCUSSION:

Mr. Heineman called for a motion to approve the variances on the condition that the adornments outside the proposed wall and fence don't obstruct further sight lines.

Mr. Kennedy clarified that this proposed condition included the six conditions previously submitted in the application.

Mr. Raspberry stated that the six conditions are on the second page of the addendum of the variance application.

There was a brief discussion about the fence and the combination of brick and wrought iron fencing. Applicant requested feedback from the board on what would be the most appealing combination. Mr. Heineman stated that he felt any of the 3 suggested options would be sufficient.

Ms. Hamlett modified condition four for the fence to be constructed of wrought iron or a combination of wrought iron and brick.

Mr. Kennedy inquired what the architect, Mr. Wilkins, thought for the design. Mr. Wilkins stated due to the request of the ordinance, he was in favor of more wrought iron and indicated that the rendering on the screen could provide less safety.

MOTION:

Mr. Glenn made a motion to approve the variances with the conditions attached.

Mr. Kennedy seconded the motion.

VOTE (5-0):

Steven Heineman, Vice-Chair, Mark Kennedy, Dean Rainey, Eric Grant, and John Glenn all voted to approve Mr. Douglas Boteler's variance applications.

Subdivision Variance-23-02 for 2521 Pineway Dr was approved unanimously.

Mr. Raspberry requested the applicant to create a draft of the findings of fact for the City staff to approve and edit.

NEW BUSINESS:

Mr. Conrad Olmedo, Planning Manager, notified the board members of the tentative next meeting on April 11, 2023 at 8:30 a.m.

Mr. Olmedo also notified the commission of a training opportunity through the UNC School of Government that will be sent to them through email if they choose to attend.

ITEM NO. 5:

Mr. Kennedy made a motion to adjourn. Mr. Grant seconded the motion.

All were in favor; passed unanimously.

Meeting adjourned around 11:30 a.m.

Mr. Steven Heineman, Vice-Chair

2521 PINEWAY DRIVE
BURLINGTON, NORTH CAROLINA 27215
ALAMANCE COUNTY TAX ID #116121
APPLICANT: RYAN MOFFITT, ATTORNEY, ON BEHALF OF
PROPERTY OWNER DOUGLAS BOTELER

SUBDIVISION VARIANCE 23-02

The Board of Adjustment (the “Board” or “BOA”) conducted an evidentiary hearing on Tuesday, March 14, 2023 at 8:30 AM. Pending before the BOA was an Application for a Subdivision Variance (hereinafter, “Variance”) filed on January 26, 2023 by Ryan Moffitt, attorney, on behalf of property owner Douglas Boteler (hereinafter, “Property Owner” or “Owner”) for real property located at 2521 Pineway Drive, Burlington, North Carolina (hereinafter “Subject Property” or “Property”). At the evidentiary hearing, the Property Owner was present and represented by Ryan Moffitt of the Vernon Law Firm. The City of Burlington was represented by David R. Huffman, City Attorney, and Sherri L. Hamlett, Assistant City Attorney. The BOA was represented by Francis P. Rasberry Jr. of the Cauley Pridgen Law Firm. Upon receiving testimonial and other evidence, the BOA, by unanimous vote of its members, determined that the Property Owner’s variance request should be granted with conditions. This is the formal Notification of Decision by the BOA, including Findings of Fact and Conclusions of Law in support of its Decision, entered pursuant to Burlington Unified Development Ordinance (hereinafter “UDO”) Section 2.3.K. The BOA makes the following

FINDINGS OF FACT

1. On March 14, 2023, the City of Burlington Board of Adjustment conducted a duly advertised and noticed evidentiary hearing on the Property Owner’s variance application.
2. At the March 14, 2023 hearing, four regular members of the Board of Adjustment were present along with one alternate composing the requisite quorum pursuant to UDO Section 10.4.C.6.b.
3. The granting of a variance requires that the Property Owner meet all five criteria set out in UDO 2.4.CC.5.a.1 through v. The Property Owner has the burden of producing substantial, competent, and material evidence tending to show that all the criteria have been satisfied.
4. Pursuant to UDO 2.4.CC.4.a. and N.C.G.S. § 160D-406(i), a four-fifths (4/5th) vote of the BOA is required to approve the variance.
5. Testimony was proffered during the presentation of the Property Owner’s case by the Property Owner Douglas Boteler, Jeff Wilkins, Dr. Jeremy Chapman, Scott Gindlesperger, and Josh McDowell.

6. The following Exhibits were introduced and admitted into evidence by the Property Owner without objection as follows:
 - A. Architectural Site Plan
 - B. Topographic Survey of Subject Property
 - C. Safety Review, Final Report, prepared by Dr. Jeremy Chapman of Ramey Kemp Associates
 - D. Security/Risk Assessment prepared by Scott GindlespergerE1-20. Slides from Property Owner's PowerPoint presentation
7. Testifying for the City of Burlington was Jeff McClintock, City of Burlington Principal Planner.
8. The following Exhibits were introduced and admitted into evidence by the City of Burlington without objection as follows:
 - Att. 1. SmartGov Application
 - Att. 2. Aerial Map
 - Att. 3. Future Land Use Map
 - Att. 4. Existing Zoning
 - Att. 5. Applicant Supplemental Materials including site plan and renderings
 - Att. 6. Plat Book 5, Page 3
 - Att. 7. UDO Excerpts for fence heights

In addition, a copy of UDO 2.4.CC.5.a.i. through v., the variance factors, was provided to the board members at the hearing.

9. The Property Owner is the owner of the Subject Property located at 2521 Pineway Drive, Burlington, North Carolina 27215.
10. The Subject Property is zoned Low Density Residential ("LDR").
11. The Subject Property is bounded on three sides by public roads. Pineway Drive runs along the front of the Subject Property, on the Western-facing side. Saddle Club Drive runs along the side of the Subject Property, on the Northern-facing side. Shadowbrook Drive runs along the back of the property, on the Eastern-facing side. Saddle Club Drive and Shadowbrook Drive are heavily traveled roads with a traffic signal at the intersection.
12. Pursuant to UDO Section 4.5.F.11.e.i., the fence or wall between the front façade line of a building and a lot line abutting a street right-of-way and between the building setback line and a lot line abutting a street right-of-way is limited to a maximum height of four (4) feet.
13. Pursuant to UDO Section 4.5.F.11.e.ii, fence and wall height are to be measured pursuant to UDO 8.3.P.1.a.

14. Pursuant to UDO Section 8.3.P.1.a, in cases where a fence or wall is located within a required setback or a required yard, fence height shall be determined along the grade of the adjacent lot or street.
15. The Property Owner requested three variances in his initial application, identified as Variance Request 1, Variance Request 2, and Variance Request 3. Prior to the hearing, the Property Owner dismissed his request for Variance Request 3. This request dealt with the construction of the fence or wall inside the power line utility easement along Shadowbrook Drive. Upon meeting with City staff after the filing of the application, it was determined that there is no power line utility easement along Shadowbrook Drive. Therefore, a variance addressing same was no longer needed.
16. Variance Request 1 requested a variance to increase the height of the fence and wall from four feet to six feet along Pineway Drive, a portion of Saddle Club Drive, and a portion of the fence between the Subject Property and the adjacent neighbor on the southern side.
17. Variance Request 2 requested a variance to permit the proposed fence along Pineway to be measured from the finished grade of the property rather than from the grade of the road at Pineway Drive.
18. As part of the variance application, Property Owner included self-imposed conditions as to the construction and build of the fence and wall as follows:
 - a. The perimeter fence and wall will not exceed six (6) feet in height from the appropriate point of measurement, that being the grade of the road along Shadowbrook and Saddle Club and the grade of the Property along Pineway, even in locations where the Ordinance would otherwise permit a fence or wall to reach eight (8) feet in height, namely, portions of the eastern and southern property lines.
 - b. The Property Owner will close off the Property's existing driveway access to Shadowbrook, replace the existing curb cut with new curb and gutter, and will redirect sole driveway access to the Property via Pineway with new a wraparound driveway to the existing garage as depicted on the renderings attached to the application as Exhibits A and B.
 - c. The wall portion of the project will be constructed of a brick design similar to that depicted on the renderings attached to the application as Exhibit B.
 - d. The fence portion of the project will be constructed of wrought iron of a design similar to that depicted in the rendering attached to the application as Exhibit B.

- e. The fence and wall will observe a setback inside of the western Property line of twenty (20) feet, which property line setback equates to a setback from the eastern margin of Pineway of approximately twenty five (25) feet.
 - f. The wall at the northwest corner of the Property will observe significantly enlarged site triangles of 70 feet by 67 feet off Pineway Drive to Saddle Club Drive, and 70 feet by 55 feet, 11 inches, off Saddle Club Drive to Pineway Drive.
19. After the variance application was submitted, the Property Owner submitted a revised site plan that served to increase the setback inside the western Property line to twenty-five feet (25) instead of twenty (20) feet as previously indicated in item 18e above.
20. The grade of the Subject Property along Pineway Drive is uneven and drops off significantly running in a west-to-east direction, as shown on the Topographic Survey of the Subject Property admitted as Applicant's Exhibit B. A strict application of the ordinance would require the fence to be measured at the grade along the street resulting in areas where the fence is significantly shorter when inside of the fence. This uneven topography is a condition that is unique and peculiar to the Subject Property.
21. Dr. Jeremy Chapman performed a traffic study on the property. At the hearing, Dr. Chapman was tendered as an expert in traffic and safety. Dr. Chapman explained in detail the location of the Subject Property being bounded by three roads, two of which are heavily traveled, is unique and a condition that is peculiar to this property. In addition, the lack of curb and gutter and shoulder along the heavily traveled Saddle Club Drive has led to multiple accidents and property damage at or near the Subject Property. The construction of a brick wall along this road would negate the risk of property damage and/or injury to Property Owner and his family.
22. The current driveway access to the garage is from Shadowbrook Drive. This is approximately twenty feet from the busy signaled intersection of Shadowbrook Drive and Saddle Club Drive. The entry to and from this driveway from heavily traveled Shadowbrook Drive is a hardship that was not created by the Property Owner. This driveway was built decades ago, when Shadowbrook Drive was constructed. The Property Owner's proposed self-imposed condition to remove the driveway altogether from access via Shadowbrook Drive will serve to alleviate the safety issues associated with the close proximity to the busy intersection of Shadowbrook and Saddle Club Drives.

23. A six-foot wall along Saddle Club Drive and a six-foot fence along Pineway Drive are necessary to make reasonable use of the property due to its peculiar attributes.
24. The requested six-foot wall along Saddle Club Drive will provide privacy for the Property Owner. The fence will be constructed in a high-quality manner using sound construction methods. The Property Owner's proposal will exceed the required sight triangles along Pineway Drive and Saddle Club Drive.
25. The Property Owner has not taken any actions to create the hardships of which he complains.
26. Based on the application, the evidence submitted, and the above findings of fact, the Board of Adjustment voted 5-0 to grant the variance with conditions as set out below.

CONCLUSIONS OF LAW

1. The granting of a variance requires the Property Owner to satisfy all five criteria set out in UDO 2.4.CC.5.a.1 through v. The Property Owner has the burden of production with respect to the criteria in the ordinance.
2. The Property Owner, Douglas Boteler, has carried his burden of production as required by N.C.G.S. § 160D-705(d) and otherwise required by law.
3. The Property Owner produced material, competent, and substantial evidence to show satisfaction of the five criteria for granting a variance.
4. Based upon the application, the evidence submitted, and the above findings of fact, the Board of Adjustment voted 5-0 on March 14, 2023, to grant the variance with the conditions set out below.

DECISION

1. The Property Owner is hereby GRANTED the variance as follows:
 - a. The perimeter fence and wall height may extend up to six feet.
 - b. The point of measurement along Pineway Drive shall be at the grade of the Property.
 - c. The perimeter fence and wall shall not exceed six (6) feet in height from the appropriate point of measurement, that being the grade of the road along Shadowbrook and Saddle Club, and the grade of the Property along Pineway.

- d. The Property Owner shall close off the Property's existing driveway access to Shadowbrook, replace the existing curb cut with new curb and gutter, and shall redirect sole driveway access to the Property via Pineway with a new wraparound driveway to existing garage as depicted on the renderings attached to the application as Exhibits A and B.
 - e. The wall portion of the project will be constructed of a brick design similar to that depicted on the renderings attached to the application as Exhibit B.
 - f. The fence portion of the project will be constructed of wrought iron, or of a combination of wrought iron and brick, similar to that depicted in the rendering attached to the application as Exhibit B.
 - g. The fence and wall will observe a setback inside of the western Property line of twenty (25) feet, which property line setback equates to a setback from the eastern margin of Pineway Drive of approximately thirty (30) feet.
 - h. The wall at the northwest corner of the Property will observe sight triangles of 70 feet by 67 feet off Pineway Drive to Saddle Club Drive, and 70 feet by 55 feet, 11 inches, off Saddle Club Drive to Pineway Drive.
2. This decision is effective as provided by law and applicable City Ordinance provisions.

Mr. Steven Heineman, Acting Chair

Date

CERTIFICATE OF SERVICE

2521 PINEWAY DRIVE
BURLINGTON, NORTH CAROLINA 27215
PROPERTY ID # 116121

Application for Subdivision Variance

NOW COMES Sherri Hamlett, Assistant City Attorney for the City of Burlington, and hereby certifies that a copy of the foregoing City of Burlington Board of Adjustment Findings of Fact, Conclusions of Law, and Decision for 2521 Pineway Drive, Burlington, North Carolina, was served on the following person(s) by depositing a copy of same in a depository under the exclusive care, custody and control of the United States Postal Service, postage prepaid, addressed to the Property Owner and attorneys of record as follows:

Douglas Boteler
Property Owner
2520 Pineway Drive
Burlington, NC 27215

Ryan Moffitt
Attorney for Property Owner
The Vernon Law Firm
P.O. Drawer 2958
Burlington, NC 272156

Francis Rasberry, Jr.
Attorney for Board of Adjustment
Cauley Pridgen, P.A.
Via email: frasberry@cauleypridgen.com

This ____ day of April, 2023.

Sherri Hamlett, NCSB#44425
Assistant City Attorney
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