

Chair Abitheira called the Regular meeting of the Building Code Board of Appeals to order at 3:04 p.m. on February 2, 2022 in the Council Chamber of Troy City Hall.

1. ROLL CALL

Members Present

Gary Abitheira

Teresa Brooks

Matthew Dziurman

Sande Frisen

Members Absent

Mark F. Miller, City Manager

Support Staff Present

Salim Huerta, Building Official

Jackie Ferencz, Planning Department Administrative Assistant

2. APPROVAL OF MINUTES – November 3, 2021

Moved by: Frisen

Support by: Brooks

RESOLVED, To approve the minutes of the November 3, 2021, Regular meeting as submitted.

Yes: All present (4)

Absent: Miller

MOTION CARRIED

3. HEARING OF CASES

* *Note: The Chair opened the floor for public comment for the following cases without verbally stating the Public Hearing was opened and closed.*

A. **VARIANCE REQUEST, CHERYL L. SMITH, 1299 MILVERTON** – This property is a double front corner lot. Per the City of Troy Zoning Ordinance, it is in the R-1E use district. As such per Chapter 83 of the City of Troy Code, it has a 25 feet required front setback along both Milverton (North-South) and Milverton (East-West). The petitioner is requesting a variance to install a 6-feet high, 132 feet long obscuring vinyl fence one (1) foot from the property line along the Milverton (North-South) side, where the City Code limits to 30 inches obscuring high fences due to the fact that there is not a back-to-back relationship to the rear neighboring lot. The variance request is for 36 feet of the total 132 feet of fence, 96 feet of the fence do not require a variance. **CHAPTER 83**

Mr. Huerta read the variance request narrative. Mr. Huerta reported one written communication was received from Water Resources Commissioner (WRC) addressing storm drain, sanitary sewer, water system and soil erosion.

The applicant Cheryl L. Smith was present. Ms. Smith said she wants to replace the deteriorated wood fence that is now removed with a resin fence. The fence would provide safety and security from park traffic and would be a deterrent for noise from barking dogs. Ms. Smith addressed concerns with safety of children who walk into her yard to pet neighboring dogs through an existing chain link fence. Ms. Smith said the new fence would be aesthetically more pleasing.

There was discussion on:

- Information and pictures submitted with request.
- Stub street connection to park; used by City to service park.
- Fence layout, proposed setback, distance of setback from sidewalk.
- Existing neighboring fences in relationship to the park.
- Department of Public Works (DPW) internal review of fence permitting.
- Applicant's property is adjacent to sidewalk used for park entry.
- No record of fence permit on file for original wood fence.

Chair Abitheira opened the floor for public comment.

There was no one present who wished to speak.

Chair Abitheira closed the floor for public comment.

Mr. Huerta advised the applicant that should the Board grant the variance request, the Department of Public Works (DPW) would conduct its review that is a standard procedure for all fence permitting.

Chair Abitheira advised the applicant she has the option to postpone the item until a full Board is present.

Ms. Smith said she would like to go forward with the request today.

Moved by: Dziurman
Support by: Brooks

RESOLVED, To **approve** the variance request for 1299 Milverton as specified by the applicant with no exception at this point, for the following reasons:

1. It does not impact any hardships on the community.
2. It creates difficulties for the homeowner for which this Board would like to resolve.

Yes: All present (4)

Absent: Miller

MOTION CARRIED

- B. **VARIANCE REQUEST, SAPPHIRE BUILDING INC., 1432 WATTLES** – This property is an interior lot and it is in the R1-B use district, as such it has 40 feet required front setback along W. Wattles. The petitioner is requesting a variance to install a 4.5 feet high 253.95 feet non-obscuring metal fence and 6 masonry columns at 5 feet high. All items with a setback of one (1) foot from the property line along W. Wattles and sides of the 40 feet setback, where the City Fence Code limits fences to 30 inches. The total length of the fence requested by the petitioner to be permitted by the Building Department is 970 feet, which only the 253.95 feet of the fence require a variance. *CHAPTER 83*

Mr. Huerta read the variance request narrative. Mr. Huerta reported one written communication was received from Srinivasan Ravindran, 4055 Glencastle, in opposition relating to topography and drainage concerns.

Present were Amie Ackerman representing Sapphire Building Inc. and property owner Danish Mazhar.

Ms. Ackerman said the homeowner of the newly construction house would like a fence with a gate that would enclose the property for security and privacy purposes. She indicated the homeowner would like to utilize as much of the front yard as possible. She said there is plenty of room to enter the property and open the gate to gain access to the home. Ms. Ackerman said the homeowner would like the fence in lieu of landscaping for easier maintenance.

Mr. Mazhar shared with the Board his concern for security and safety of his child who is on the autistic spectrum. He said enclosing the property with a fence would offer protection from his child entering the street or neighboring properties.

There was discussion on:

- Information and pictures submitted with request.
- Proposed setback as relates to sidewalk, distance to house from property line.
- Alternative method to provide security; landscaping with arborvitaes.
- Similar variance request (home on Long Lake) for fence and gate.
- Existing neighboring fences as relates to setback requirements, relationship to road and adjacent homes.
- Safety of pedestrian traffic; as relates to columns and gate opening(s).
- Potential future widening of Wattles; addressed eminent domain, span of property to accommodate vehicle pulling in without obstructing vehicular or pedestrian traffic.

- Configuration of setback as relates to gate opening, columns, clear corner visual.
- Concerns of Board setting a precedent, if granted.
- Communication received in opposition to variance request.

Chair Abitheira opened the floor for public comment.

- James Guisinger (no address provided); impartial to variance request, addressed City fence permits with respect to homeowners' association regulations.

Chair Abitheira closed the floor for public comment.

Mr. Huerta offered to assist Mr. Guisinger during regular business hours with any questions he might have.

The Board encouraged the applicant to look at a home located on Long Lake Road for which the homeowner was before this Board with a similar variance request.

Moved by: Brooks

Support by:

RESOLVED, To **deny** the variance request at 1432 Wattles, for the following reasons:

1. The characteristics of the property would allow a fence to be set back farther.
2. Compliance with a 30-inch fence can be met.

MOTION FAILED (for lack of support)

A lengthy discussion continued among the Board and Mr. Mazhar to determine an agreeable distance to set back the fence.

Mr. Huerta said it appears with information he just researched that the applicant's property would not be compromised with a potential future widening of Wattles.

Chair Abitheira advised the applicant he has the option to postpone the item until a full Board is present.

Mr. Mazhar said he would like to go forward with the request today.

Yes: Frisen

No: Dziurman

RESOLVED, To **approve** the variance request at 1432 Wattles with the caveat that the fence is moved ten (10) feet back from the south lot line, for the following reason:

1. The variance would not be harmful to the essential character of the area in which the property is located.

Yes: Abitheira, Dziurman, Frisen
No: Brooks
Absent: Miller

MOTION CARRIED

4. COMMUNICATIONS – None

5. PUBLIC COMMENT

There was no one present who wished to speak.

6. MISCELLANEOUS BUSINESS

There was discussion on:

- 2022 calendar dates.
- Process to amend Chapter 83.

7. ADJOURNMENT

The Regular meeting of the Building Code Board of Appeals adjourned at 4:26 p.m.

Respectfully submitted,



Gary Abitheira, Chair



Kathy L. Czarnecki, Recording Secretary
(Prepared via website videotape)