

**September 3, 2008  
Hamilton Board of Zoning Appeals  
Hamilton Town Office**

The hearing was called to order at 7:00 PM by Dr. Thomas Gatewood, Chairman of the BZA. The Pledge of Allegiance was followed by Roll Call.

Present: Dr. Thomas Gatewood, Ms. Vicki Gallant, Ms. Winifred Reed, Ms. Kelly Gaitten, Ms. Patricia Maher-Wade (7:10).

Also Present: Mr. David Beniamino, Ms. Maureen Gilmore, Mayor Ray Whitbey, Mr. Robert McCann.

**Minutes**

Ms. Reed made a motion to adopt the amended January 24, 2008 BZA minutes into record. Ms. Gaitten made a second on the motion and the vote passed 4-0-1, (Aye: Gatewood, Gallant, Reed, Gaitten. Nay: none. Absent: Mayer-Wade).

**The Public Hearing was opened at 7:08 PM.**

Dr. Gatewood asked the BZA members if there was any conflict of interest, there was none.

Mr. Beniamino read the public notice and affidavit of publication: Variance Request Application, BZA 08-0001, for a fence that does not comply with the Zoning regulations of the district. The property is a 1.51 acre corner lot located at 353 W. Colonial Highway, at the intersection of South Hughes Street and is zoned C-2. The property is identified as Loudoun County Tax Map number /37/A/1////69/ and Parcel Identification number (PIN) 418-37-8802-000.

Dr. Gatewood asked if all members of the BZA had completed a personal inspection of the property and all members responded that yes, they had become familiar with the property.

Dr. Gatewood stated that the request was dated June 23, 2008 and was filed by Ms. Jaqueline Heard.

In the absence of Ms. Heard, pictures of the fence, the application for variance and comments by the applicant were entered into public record. Ms. Gallant highlighted the reasons provided by Ms. Heard for the fence installation:

1. Protection of the property and home
2. Encourage slow, safe driving
3. Clean design to improve the look of Hughes Street

Prior to the Staff Report presentation, Dr. Gatewood swore in Mr. Beniamino, Town Zoning Administrator. Mr. Beniamino raised his right hand while asked "are the statements you are about to make true and factual to the best of your knowledge?" Mr. Beniamino responded "Yes". Dr Gatewood summarized the violations and the sequence of events that have taken place:

May 2008 the fence was cited as a violation and advised that a permit was required to construct a fence. Ms. Heard then submitted a Permit to the Town office which was denied based on current Ordinance Violations. Ms. Heard was advised she could submit Variance Request Application and did so on June 23, 2008.

Mr. Beniamino followed with a Staff Report to the BZA providing background, subject property, the applicant's request, Zoning Ordinance provisions, Variance Standards, Staff Analysis and a Conclusion. Mr. Beniamino recommended that the BZA deny the application for a variance as presented and stated that the standards for the BZA to grant a variance have not been met by the applicant, as laid out in Article XI, Section 5 of the Hamilton Zoning Ordinance. Mr. Beniamino reviewed the Variance Standards for the BZA.

No witnesses were present in favor or opposition of the appeal.

**Public Comment (7:30 PM)**

Ms. Linda Newton, 12 S. Hughes St, spoke in favor of the variance request. Ms. Newton is a neighbor and does not find the fence offensive and understands the applicants desire for safety and privacy. Ms. Barbara Hall, 3 S. Hughes St, spoke in favor of the variance request for the reasons of privacy. Ms. Hall has property that backs to this property and stated that Ms. Heard has cleaned up the property and improved the overall beauty of the lot. Mr. Robert McCann, 41 W. Colonial Hgwy, spoke in opposition of the Variance Request citing that the proper homework was not done prior to the fence being built. The Town process is to request approval and then complete work to assure that all current Zoning Ordinances are followed. Mr. McCann noted that there appears to be a trend of reverse processes on the rise and asked the BZA to uphold the rules and regulations. Mr. McCann also suggested restricting the contractor from future business in Hamilton. Ms. Jodi Haag, 331 W. Colonial Hgwy, spoke in favor of the variance request acknowledging the safety concerns, noting that all enhancements made to the property are very attractive.

Ms. Gilmore reviewed 3 decisions made by the Supreme Court of the State of Virginia in cases of BZA Variance Request cases. Ms. Gilmore reminded the BZA that there are specific rules for the BZA to follow, as outlined in the State Code, which should be reviewed and respected. The BZA is not a body to enforce Ordinances, but rather to grant or deny variance requests based on the established guidelines.

Ms. Reed stated that when citizens of the community do not follow the ordinances, it places the BZA in a very difficult position. Ms. Reed suggested placing a reminder on the water bills urging residents to contact the Town Office for guidelines prior to building garages, sheds and fences in an attempt to heighten awareness. Ms. Gallant agreed that the burden should be put on the responsible party and not the BZA for ordinance compliance. In this case, there was a conforming fence on the property at the time of purchase by Ms. Heard, and when the fence was replaced it became non-conforming. Ms. Gallant reminded the BZA members that they are bound by law to uphold the Zoning Ordinance standards and language. Mr. Beniamino noted a similar case which came before the Town where the current processes were followed and resolution was reached through cooperation from both sides. Dr. Gatewood explained that since Mr. Beniamino was hired, monthly reports of Ordinance violations are submitted as well as tightened processes.

Ms. Reed made a motion to deny the Variance Request Application 08-0001 at 353 W. Colonial Highway. Ms. Gallant made second on the motion and the voice vote passed 4-0-1-0, (Aye: Gatewood, Gallant, Reed, Gaitten. Nay: none. Abstain: Maher -Wade. Absent: none).

Dr. Gatewood will assure procedure is followed in notification to the Town Council and the applicant on the decision to deny the Application for Variance Request.

**Old Business** - none

**New Business**

Dr. Gatewood will refer to the Town Council the recommendation that the contractor be given a warning for the project at 353 W. Colonial Hgwy and also that future contractors be required to have Business Professional Operator License (BPOL) before working in Hamilton. Mayor Whitbey advised that he will take under advisement placing a message on the next water bill reminding residents to work with the Town prior to new building and to hire BPOL contractors.

Ms. Gaitten made a motion to adjourn at 8:25 PM.

  
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Dr. Thomas Gatewood, Chairman

  
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Ms. Mary Tussing, Recorder