

## **MEMORANDUM**

TO: Chapel Hill Board of Adjustment

FROM: Ben Hitchings, Director, Planning and Development Services  
Jake Lowman, Senior Planner

SUBJECT: 415 W Patterson Place: Dimensional Variance  
(PIN 9788-25-1191, Project #18-133)

DATE: April 4, 2019

Attached for your consideration is an application for an after-the-fact variance from dimensional regulations for fences in the Residential – 3 (R-3) zoning districts, in Article 3.8 of the Chapel Hill Land Use Management Ordinance.

## **INTRODUCTION**

The applicant, Jim Kitchen, is requesting an after-the-fact dimensional variance from the minimum interior setback for fences over six feet (6') tall. The subject property is located at 415 W Patterson Place, adjacent to the UNC Cogeneration Plant (Attachment 4). The property is in the Residential-3 (R-3) zoning district and the Cameron-McCauley Historic District and the Orange County Property Identifier Number is 9788-25-1191.

The attached applicant's materials include an application form, narrative, statement of justification, presentation, site plan and elevations, survey and area map (Attachment 4).

## **EXISTING CONDITIONS**

The 0.20 acre subject lot is in the Residential – 3 zoning district and the Cameron-McCauley Historic District. The lot contains a single-family home and slopes downward steeply to the northwest, and the vegetation is principally hardwood trees.

## **BACKGROUND**

December 31, 2018: Application submitted for an After-the-Fact Dimensional Variance by Jim Kitchen.

October 9, 2018: Historic District Commission approved an After-the-Fact Certificate of Appropriateness application for an 8' tall fence.

September 21, 2018: Application submitted for an After-the-Fact Certificate of Appropriateness by Jim Kitchen.

July 6, 2018: Notice of Violation sent to Jim Kitchen regarding installation of a fence without proper permits.

May 16, 2018: Subject property acquired by Jim Kitchen, owner.

### **DESCRIPTION OF VARIANCE REQUEST**

Property line setbacks on the subject lot are regulated by Article 3.8 of the Chapel Hill Land Use Management Ordinance (LUMO). Fences and walls not exceeding six feet (6') in height are not subject to the required minimum setbacks. The applicants are requesting a dimensional variance to exceed the six foot (6') limit by two feet (2') to accommodate an eight foot (8') fence to screen the adjacent UNC Cogeneration Plant. These improvements are shown on the attached site plan (Attachment 4).

### **DISCUSSION**

The applicant has obtained an After-the-Fact Certificate of Appropriateness from the Historic District Commission. If the variance is granted for the proposed construction, the applicants would then be required to obtain an After-the-Fact Residential Zoning-Building Permit from the Town.

### **PROCEDURE**

Section 4.12.2 of the Land Use Management Ordinance addresses variances from dimensional regulations. In order to grant the variances, the Board of Adjustment must make the following findings:

- A. When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the Board of Adjustment shall have the power to vary or modify any of the regulations or provisions of the ordinance so that provisions of the ordinance upon a showing of all of the following:
  - 1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
  - 2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

3. The hardship did not result from actions taken by the applicants or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

If the Board is able to make all the above findings for the requested dimensional variance, based on the evidence presented at the hearing, the Board may approve the variance request for the subject lot. If the Board fails to make one or more of the above findings, the Board must deny the request. The Board may also choose to approve a lesser extent for a requested variance or fewer than total number of requested variances.

### **RECOMMENDATION**

Staff Recommendation: We recommend that the Board of Adjustment review the variance request.

Resolution A would approve the After-the-Fact Dimensional Variance request.

Alternative Resolution A would approve the After-the-Fact Dimensional Variance request, without chair summary.

Resolution B would deny the After-the-Fact Dimensional Variance request.

### **Attachments:**

1. Resolution A, approving the After-the-Fact dimensional variance request.
2. Alternative Resolution A (without chair summary), approving the After-the-Fact dimensional variance request.
3. Resolution B, denying the After-the-Fact dimensional variance request.
4. Applicant's materials including application form, narrative, statement of justification, site plan, survey and area map.
5. Area map of subject lot.