

MINUTES
BOARD OF ADJUSTMENT
City of Burlington, NC
February 14, 2017

Members Present

City:

Mr. Mike Gee, Vice-Chairman
Mr. Eric Grant (Alt.)
Mr. Robert Giles II (Alt.)
Mrs. Joyce Lance

Members Absent

City:

Mr. Ed Wilson, Chairman
Mr. Todd Smith

ETJ:

Mr. David McDevitt (Alt. ETJ)

ETJ:

Mrs. Sylvia Greeson (Alt. ETJ)

Also present were Mr. Joey Lea, Zoning Administrator and Mr. Chris Marland, Zoning Enforcement Officer.

Acting Chairman Mr. Mike Gee called the meeting of the Board of Adjustment to order at 8:30 a.m. Acting Chairman Mr. Mike Gee stated, the city representatives to the Board of Adjustment are appointed by the City Council. This is a quasi-judicial hearing. Everyone speaking before the Board should state their name, sign the log on the podium, and swear or affirm that everything they say is true to the best of their knowledge. Appeals of the Board's decisions may be taken to the Alamance County Superior Court. The City will state their position because of their knowledge of the case and the technical codes. The applicant will state their case, and then anyone from the public may speak. After the applicant and the public have presented all evidence the Board will then close the meeting to the public and discuss the case and vote. During this time no more evidence shall be admitted nor any other arguments made unless the Board wishes to ask the Applicant a question pertaining to the evidence already presented. Anyone that tries to make an argument or present any evidence at this time will be out of order. The Chairperson may order any individuals who willfully interrupts, disturbs, or disrupts to leave the meeting. Any person who fails to comply with this order is guilty of a class 2 misdemeanor. An affirmative four-fifths vote is required to grant a variance. A majority vote is required to grant a Special Use Permit or to determine an appeal.

DUE PUBLICATION

Mr. Chris Marland, Zoning Enforcement Officer with the City of Burlington stated, due notice and publication of this meeting of the Board of Adjustment has been made, and all contiguous property owners were mailed a notice advising of this meeting.

SWORN TESTIMONY

Prior to testifying before the Board, each party was sworn in or affirmed that the testimony they were about to give was true to the best of their knowledge.

MEETING MINUTES

Board Member Mr. Eric Grant made a motion to approve the minutes per corrections. Board Member Mr. Robert Giles seconded the motion. The Board voted unanimously to approve the October 11, 2016 Meeting Minutes per corrections.

ITEM NO. 3:

CASE NO. 01-17 VARIANCE (City)

Glenda F. Leath

1904 S. Ashland Dr.

Alamance County Tax Map number 6-44-36

§ Section 32.10.G.1

Fence height in residential area

EVIDENCE PRESENTED: Zoning Enforcement Officer Mr. Chris Marland stated, case 01-17 is Ms. Glenda Leath at 1904 South Ashland Drive, she is requesting a variance for a fence in her front yard. We received a complaint through our CBC system that Mrs. Leath had erected a fence that did not meet the requirements upon inspection we noticed that there was a fence in the front yard that did exceed the 4 foot height limit that we allow. It is a 6 foot tall fence in her front yard. Mrs. Leath is the first house off the corner so this fence is in her front yard but her neighbor's rear yard. The fence is located along her front property line on the side and the house on the corner is in her rear yard. Upon inspection we spoke with Ms. Leath, she explained to us that she put the fence up, or had the fence put up by her brother, in the front yard because the neighbor that had just moved in has 2 very large Rottweiler dogs and the fence that they have surrounding their yard appears just under 4 feet. While we were there we did notice the dogs, the dogs are quite large, and their heads do come above the fence posts. Mrs. Leath stated to us that she is scared for her safety so, at that point we instructed her on other ways on keeping that fence in her front yard and this was the avenue that she chose. What she is seeking is a 2 foot variance for the 4 foot height in the front yard for a fence. Board Member Mrs. Joyce Lance asked, what were the other ways you suggested? Zoning Enforcement Officer Mr. Chris Marland stated, we told her that she could cut the fence down to 4 feet. At that point it would be the same height as the chain link fence that is there for the neighbors. She did not feel that was adequate for her safety. Board Member Mrs. Joyce Lance asked, it still can go all the way to the street at 4 foot? Zoning Enforcement Officer Mr. Chris Marland stated, no it doesn't go all the way to the street. It still goes to her property line. Board Member Mrs. Joyce Lance asked, ok what I'm saying though is the 4 foot fence needs to stop at the corner of the house or can it extend out into the front sideline? Zoning Administrator Mr. Joey Lea stated, you can't go any further than her property line; it cannot go all the way to the street. It has to stop at her property line which is the right-of-way. Board Member Mr. Eric Grant asked, how far down the property line does that fence extend? Zoning Enforcement Officer Mr. Chris Marland stated, the fence extends the length right to where that would stop for the neighboring corner house. Board Member Mr. Eric Grant asked, so it's just across the property line on that backyard there that faces the road. Zoning Enforcement Officer Mr. Chris Marland stated, it starts here and runs approximately to right here on the screen. Board Member Mrs. Joyce Lance asked, how tall is the fence in the backyard? Zoning Enforcement Officer Mr. Chris Marland stated, 6 ft. It's the same height all the way around.

Acting Chairman Mr. Mike Gee asked, I'm assuming that a safety issue is the reason that is in the ordinance of the height of the fence, is that correct? Zoning Enforcement Officer Mr. Chris Marland stated, correct. Zoning Administrator Mr. Joey Lea stated, it's for sight easements and distances. The theory is that you can see over a 4 foot fence as oppose to a 6 foot fence if you are trying to get in and out of your driveway. At the location where it stops there is no visual obstruction in the street. You can see how far back it is where the telephone pole is and that's the idea of the 4 foot versus the 6 foot being in the front yard. Board Member Mrs. Joyce Lance asked, you are testifying that it doesn't obstruct? Zoning Enforcement Officer Mr. Chris Marland stated, I will testify to that. Mrs. Leath's driveway is on this side of her property line, the fence is on this side of her property line, there is no driveway for the corner house off of Ashland Drive. They use Graham-Hopedale Rd., so there is no visual obstruction. As Joey said, it is behind the phone pole and it is on her property, out of the City's right-of-way where. There is no visual obstruction that we have seen there. Board Member Mr. David McDevitt asked, now if the neighbor puts in a 6 foot fence in their backyard, right along the same property line that would be ok then? Zoning Enforcement Officer Mr. Chris Marland stated, if it was in their rear yard then they would be allowed a 6 foot fence. Zoning Administrator Mr. Joey Lea stated, the neighbor on the corner can actually put up more 6 foot fencing than she can. Its zoned R-9 so for the first 30 feet of her property has to be 4 feet. That property being on the corner it still applies adjacent to the street but they can go within 15 feet of their property line. Acting Chairman Mr. Mike Gee asked, just to clarify, you are saying along the street or along the backyard of the neighbor? Zoning Administrator Mr. Joey Lea stated, the side yard adjacent to the street is 15 feet so that runs all the way down so they have to hold the fence 15 feet back off of this line here. Zoning Enforcement Officer Mr. Chris Marland stated, off of this line here on the screen the fence coming this way for 15 feet could only be 4 foot tall. Acting Chairman Mr. Mike Gee asked, and then it can go up to 6 feet? Zoning Enforcement Officer Mr. Chris Marland stated, correct. Where Mrs. Leath would have to have it 30 feet back to be able to go up to 6 feet. Acting Chairman Mr. Mike Gee stated, so at this point she is actually beyond the street where her fence is ending now? Zoning Enforcement Officer Mr. Chris Marland stated, from the right of way, yes that is where she is asking for her 2 foot variance. Mrs. Leath has also asked that I give you these pictures that she has provided.

Mrs. Glenda Leath stated, I affirm everything I say will be the truth. My name is Glenda F. Leath, I reside at 1904 South Ashland Drive. On or about 11-16, I can't give the exact date, neighbors moved into 825 Graham-Hopedale Road. That property connects with my property. Board Member Mrs. Joyce Lance asked, when did you move into your property? Mrs. Glenda Leath stated, 11 or 12 years ago. Board Member Mrs. Joyce Lance asked, the current neighbors moved in when? Mrs. Glenda Leath stated, the beginning of November 2016. When they moved in my brother told me he thought there maybe dogs there and I just thought they were small dogs. It was still fall out and I garden, I have plants there and I do all my work near where that fence is at. When I went out to water my plants one morning there were 2 ferocious dogs that came and started barking and I have never seen dogs that large before, that is the truth. They came to the fence and put their paws on the fence and their heads were over the fence. The barked and followed me and made noises that I have never heard before. I backed away from them because they shocked me. I started to move down from where they were, they followed me all the way down my yard as I was trying to get away but they still behaved in that same manner. Board Member Mrs. Joyce Lance asked, they followed you to your yard where?

Mrs. Glenda Leath stated, all the way through my yard as I was trying to get away from them. That went on for a couple days, every time I go down the steps of my house they can hear me and then they start barking and jumping up the fence, it's frightening. Board Member Mrs. Joyce Lance asked, have you spoken with Animal Control about your concern? Mrs. Glenda Leath stated, they are on their own property and no I haven't spoken with Animal Control. I spoke with the owner of the dogs and he told me that they wouldn't hurt me. Board Member Mrs. Joyce Lance asked, have you considered talking to a private attorney? Mrs. Glenda Leath stated, no. Board Member Mrs. Joyce Lance asked, have you talked to the landlord? Mrs. Glenda Leath stated, I never saw her. Board Member Mrs. Joyce Lance asked, you wrote in here about having some previous encounters with dogs that have knocked you down and bitten you, was that these dogs? Mrs. Glenda Leath stated, no ma'am that was previous. Board Member Mrs. Joyce Lance asked, would it be fair to say that you are afraid of dogs? Mrs. Glenda Leath stated, yes. Board Member Mrs. Joyce Lance asked, have these dogs bitten anybody? Mrs. Glenda Leath stated, I wouldn't know. Board Member Mrs. Joyce Lance asked, you haven't heard in the neighborhood that the dogs have jumped the fence and bitten anyone? Mrs. Glenda Leath stated, no the only thing that I've heard from neighbors is that they are very antagonizing to people when they walk by or whenever I go in the yard. I have small children that come there and I'm afraid that if they are in the yard playing and those dogs jump the fence, I've seen dogs do that. I've seen neighbors who have lived there before have animals that have jumped that fence and I've always been able to talk to them and they more or less kept the dogs away. Board Member Mrs. Joyce Lance asked, because of your fear of dogs you haven't attempted to be friendly with these dogs because they have not acted in a way that you are comfortable with is that correct? Mrs. Glenda Leath stated, no ma'am they let me know from the beginning. Board Member Mrs. Joyce Lance asked, I'm glad you mentioned the small children because the reason that I ask about the sight in having a 6 foot fence there and if the City was satisfied with that from a visual standpoint, I drove out and looked at your house; it was about 2 o'clock in the afternoon and it was prior to the previously scheduled meeting that we canceled because of weather conditions, are they out certain times of the day? Mrs. Glenda Leath stated, when it's nice they are out early in the morning and they stay out until late at night. Board Member Mrs. Joyce Lance stated, when I looked at the fence and what I thought of, and it's because I've been through this experience myself, you mention you have little children there, my concern from the visual standpoint which doesn't sound like it's going to stand up to the City, but my concern would be if a small child goes flying out the front at the same time a car decides to come flying around the corner, you can't see it until you get out a little ways. Mrs. Glenda Leath stated, I don't use my front door. They always come in the back because that's where all my entertainment is, in the back. Board Member Mrs. Joyce Lance asked, you also mentioned regarding your hardship that they are constantly barking and following you, do they still do that with the 6 foot fence? Ms. Glenda Leath stated, I haven't really heard them since February 1st. Board Member Mrs. Joyce Lance asked, what I'm trying to figure out is you said you can't do your backyard activities with a 6 foot fence there? Mrs. Glenda Leath stated, I have an entertainment center out there, that is where I entertain people. Board Member Mrs. Joyce Lance stated, I think that's where animal control needs to be notified if you are having problems with the dogs and they can talk to the owners about why their dogs are barking, and the intimidating behavior and such, that's what they are for. Unfortunately that is not something this Committee looks at.

Mrs. Glenda Leath stated, I don't want to get bitten and I don't want anyone else to get bitten or attacked. Those dogs could jump the chain fence. Board Member Mrs. Joyce Lance asked, Mr. Marland didn't you say that the fence was just under 4 feet? Zoning Enforcement Officer Mr. Chris Marland stated, it's a very old chain linked fence and in spots it's sunken and bent so it's between 3 and 4 feet tall. Board Member Mrs. Joyce Lance asked, Mrs. Leath what we have to do, because we don't have wide latitude here to just willy nilly and do anything that we want to do because I certainly understand your concerns but as far as some of the things that you have put on here it's not within the purview of this Committee to be able to help you. The constantly barking and jumping against the fence, that is an animal control issue. The things that we have to look at is that if you are told you have to bring that fence from 6 feet down to 4 feet, that if we don't say that is ok there is no reasonable use of your property, the other members need to weigh in on this and we will because there is a time we talk about it; that doesn't really meet that particular criteria. Acting Chairman Mr. Mike Gee asked, were you aware of the 4 foot requirement when you had the fence erected? Mrs. Glenda Leath stated, no. Acting Chairman Mr. Mike Gee asked, so you didn't do that intently? Mrs. Glenda Leath stated, no but if I brought the fence back down to 4 feet the dogs can still jump over it. Those dogs look like horses. My concern is I don't want anyone to get bitten or injured and I don't want to have a heart attack because of it. Board Member Mrs. Joyce Lance stated, and I certainly appreciate that and I hope that you don't think we want that either because we don't. Acting Chairman Mr. Mike Gee asked, Mrs. Leath when you built the fence, your intent was just to put a fence up there to limit the visibility and the access ability of those dogs? Mrs. Glenda Leath stated, absolutely. Acting Chairman Mr. Mike Gee asked, would you have a hardship if you had to take that fence down? Mrs. Glenda Leath stated, I would be afraid for the children that come over and I would be afraid to walk out there to do my gardening myself because I know there is a possibility that the dog could jump the fence. Board Member Mr. Eric Grant asked, Mrs. Leath since the fence has been erected has there been a problem with the dogs? Mrs. Glenda Leath stated, the dogs hear me coming down my back steps and they start barking, the only thing is they can't see me and I can't look at them in their eyes. They follow the length of the fence while I'm walking in my yard and they bark continually. Acting Chairman Mr. Mike Gee asked, do you feel safer with the fence as it is? Mrs. Glenda Leath stated, yes sir I do. Board Member Mrs. Joyce Lance asked, when I drove around the neighborhood I didn't see anybody else with a 6 foot fence in their front yard, have you noticed that? Mrs. Glenda Leath stated, I have noticed fences but I have never really paid attention as to why they had their fence the way they did. Board Member Mrs. Joyce Lance stated, what I noticed when I was there the people that had the 6 foot fence brought it in at the front corner to their home and some of them have a gate there and some of them don't. It has to be in harmony with the neighborhood and I drove around several blocks and so forth, I didn't see it that's why I'm asking you if you had seen anybody else that had erected a fence the way you have, and you are telling me no, or you don't know? Mrs. Glenda Leath stated, because I didn't realize in the beginning that would be considered the front yard because that comes down the side and I was thinking that the front goes to the front side that's why I done that. Acting Chairman Mr. Mike Gee asked, you didn't have this prior to new neighbors moving in, you didn't have an issue with the fence that was already there. Mrs. Glenda Leath stated, no because once upon a time there was another fence within that fence and that's where the dogs would stay and if I had a problem with the dogs or any animals I would speak to the neighbor and they would control their dogs but these dogs are not controlled. Board Member Mrs. Joyce Lance asked, did you say you spoke with the owner?

Mrs. Glenda Leath stated, I didn't speak with the owner, I spoke with the tenant. Board Member Mrs. Joyce Lance asked, you didn't speak with the landlord but you did speak to the neighbor and their response was they won't bother you? Mrs. Glenda Leath stated, yes and another statement he said was he didn't believe they were jumping on the fence like that but it has been witnessed by other people, even my postman has come and run and jumped back in his truck because he didn't know what was happening even though they were on the other side of the fence. Board Member Mrs. Joyce Lance asked, they didn't jump the fence when the postman was there but he thought they were going to? Mrs. Glenda Leath stated, yes. Board Member Mr. Eric Grant asked, have you ever known the dogs to get out of the existing 4 foot fence? Ms. Glenda Leath stated, no cause they have not been there that long; but I have noticed other tenants that move there had dogs that actually jumped the fence. Board Member Mr. Eric Grant asked, there are two other homes that face Graham-Hopedale Road and their rear yard property line abuts your side yard, do they have dogs? Mrs. Glenda Leath stated, they have had dogs but they have always walked their dogs. I've never saw them come on my property. Board Member Mr. Eric Grant asked, so you have never had a problem with their dogs? Mrs. Glenda Leath stated, never. Acting Chairman Mr. Mike Gee asked, is there any more questions for Mrs. Leath? Thank you Mrs. Leath we may call you back if we have any further questions. Is there anyone from the public that would like to speak on this matter?

Ms. Polly Gonesleaf stated, my name is Polly Gonesleaf and I swear everything I'm saying is truthful to my ability. I live to the right of that sign on the screen and my backdoor faces that yard. If I'm inside my house just looking out the door and the dogs are there, they are just barking. I have to be at work at 4 o'clock in the morning and some mornings when I go out they are out there barking and some mornings they are not. I have a small granddaughter, she can't even play in the yard if she is at my house, and well, I don't want her in the yard because of those dogs. As you saw in the pictures their heads come over the fence. I saw the landlord and I said to her you know you are responsible if something happens and those dogs bother somebody and hurts somebody. She said no I'm not responsible. The owners are the responsible party of the dogs, I told her I would hate to find out who would actually be responsible if something happened with one of the dogs. She said they won't hurt or bite anyone they are good dogs, they are friendly. Like I said, I would hate to know who would be responsible if they were to do something. If you rode by there and you said you didn't see the dogs but say you are afraid of dogs, then this is not a nice sight. Board Member Mrs. Joyce Lance stated, I'm not suggesting that you don't have a problem just because I didn't see them at 2 o'clock in the afternoon so please don't think that is what I mean. I'm not saying that at all. Board Member Mr. Eric Grant asked, I understand your house is facing South Ashland Drive and your front property line is towards the side property line of that house with the dogs are? Ms. Polly Gonesleaf stated, my house faces Graham-Hopedale Road. I'm on Graham-Hopedale, the side of my house faces South Ashland Drive. Board Member Eric Grant stated, oh ok. Ms. Polly Gonesleaf stated, and if I look out the back door I see the dogs if they are out in the yard. Sometimes they are just out there laying in the sun and I don't know but sometimes they are barking. If I have people come to my house the dogs come to the fence barking. Acting Chairman Mr. Mike Gee stated, ok and thank you. Is there anyone else from the public who would like to testify? Zoning Enforcement Officer Mr. Chris Marland stated, Mr. Chairman I would like to let you know we did receive a letter from the neighbor that lives beside Mrs. Leath all though it is hearsay evidence, would you care to read the letter? Acting Chairman Mr. Mike Gee stated, sure. Zoning Enforcement Officer Mr. Chris Marland stated, the letter is from Ricky Clark he is at 1906 South Ashland Drive.

Board Member Mrs. Joyce Lance asked, so where does he live? Zoning Enforcement Officer Mr. Chris Marland stated, he lives in the property right beside Mrs. Leath.

Board Member Mrs. Joyce Lance read, Dear Sirs, I am Rick Clark and live beside Glenda Leath the lady applying for a variance to erect a 6 foot fence when the ordinance allows only a 4 foot fence. The reason she had to do that was because the person that rented the corner house has got these giant dogs that look like horses and she couldn't get out in her own yard and work around because of the dogs would start barking at her while growling and looked like they could jump over the 4 foot fence and attack her in her own yard. The man has got these dogs when in the city you are not supposed to have but only 2. He has got 2 Rottweilers and a Pitbull; very bad combination. What is she supposed to do? You put up a short fence it does no good at all. That is my thoughts on it. You can't enjoy your own house and yard for these people coming into your neighborhood with these dogs that they do exactly like people now days do their kids; no discipline what so ever. They don't control their dogs or their kids. I'm sure you are lucky you live probably in a rich neighborhood with no dogs every time you go out in your own yard. We can't afford to move in a rich neighborhood. I'm with Glenda on this.

Acting Chairman Mr. Mike Gee stated, seeing that we have no further comment we will close this to discussion among the Board.

DISCUSSION: Acting Chairman Mr. Mike Gee stated, I think personally with the way the lot is sitting, it is unique. It was noted by the City that if the neighbor in question was looking at building the same fence it would be considered largely his rear yard up to 15 feet of the right-of-way on the side yard. Zoning Administrator Mr. Joey Lea stated, I need to clarify that I gave you some wrong information. If they put up a fence along that same line the ordinance requires any accessory structure in the required rear yard which would be the first 25 feet of their property. Then that side setback has to be the same setbacks as the front; so it would be 30 feet as well just like hers. Now if the fence was outside of that 25 feet then it would be a 15 foot setback. If it runs straight down that line on the opposite property it has to observe that same 30 foot at 4 foot height. Every residential property has a required rear yard of 25 feet and a fence is considered an accessory structure; so when you put that fence in that 25 feet it has to adhere to the front setback of the house behind it which is 30 feet. Both fences would have to adhere to the 30 foot setback or the first 30 feet being 4 feet tall. Board Member Mrs. Joyce Lance asked, what height would that be? Zoning Administrator Mr. Joey Lea stated, 4 feet for the first 30 feet. Same thing as this one; they would be the same. Board Member Mr. David McDevitt asked, regardless according to the ordinance the fence has to be 4 feet for the first 30 feet? Zoning Administrator Mr. Joey Lea stated, that's to maintain that same line of sight. But again if it were to be moved 25 feet then it would be 15 feet from the property line. I needed to clarify that because I didn't say it right the first time. Board Member Mrs. Joyce Lance asked, so anyway you cut it, it needs to be 4 feet to meet the ordinance? Zoning Administrator Mr. Joey Lea stated, per the ordinance, that is correct. Board Member Mrs. Joyce Lance stated, according to what I have read about fencing with chain link you can't have the kind that has the rough edges on the top. Board Member Mr. David McDevitt stated, no barbwire. Zoning Administrator Mr. Joey Lea stated, in residential. Acting Chairman Mr. Mike Gee stated, I still think the fence was built in good faith. I don't think Mrs. Leath built the fence with any intention of breaking the ordinance. She was trying to remedy a situation that arose not of her cause. I do think there would be unnecessary hardship by carrying out the strict ordinance of having to change the fence that is already in place. I still say I think the hardship is the result of the conditions that are peculiar to the property.

Again it is an unusual situation in that her side yard extends the way the house sits in comparison to the neighbor. But I do think the hardship didn't result from actions taken by the applicant, the neighboring property owner came in and kind of created the issues for her. Again she did not build the fence with malicious intent. I think if we grant the variance we are consistent with the spirit. Based on testimony from the City there does not appear to be any visual obstruction to the street with the fence as it is. As stated by the City that does seem to be the intent and the spirit of the ordinance. Board Member Mr. Eric Grant stated, I see no real obstruction visually from this photograph; it doesn't appear to affect traffic on the street or visibility. Board Member Mr. David McDevitt stated, I don't see why they can't cut it off at the house and make a gate to make it a safe backyard in their opinion. I do appreciate the safety but like we said before that is not our area, that is animal controls. They should have taken the fence to the house to make a safe back yard to meet the number 2 condition of the property. Board Member Mrs. Joyce Lance stated, I think that this lady has lived in peace for 12 years and I certainly understand that this is an incredible uncomfortable position. If we could willy nilly do anything we could, I wouldn't have a problem granting the variance, I just cannot see that we have to reach for conclusions. I hope for this lady that this is temporary and that these people move, I hope that she calls animal control and gets some help. I hope if she has to see a private attorney she will do that, I don't think she should have to live like this, I think there should be some type of resolution to her concerns. I understand that and completely get it, but I cannot in good faith say that these four requirements are met; I just can't. That to me is the roll of the committee. Acting Chairman Mr. Mike Gee stated, I am going to make a motion to approve the variance then we will just take a vote after that and see where this thing ends up.

DECISION & FINDINGS OF FACT: Acting Chairman Mr. Mike Gee stated, I would like to make a motion to approve a variance a 2 foot variance for a front yard height of a fence located at 1904 South Ashland Drive based on the following relevant factors:

- 1) **Unnecessary hardship in the way of caring out the strict letter of the ordinance it shall not be necessary to demonstrate that in the absence of a variance for reasonable use can be made of the property.**

The fence as testified by the applicant was built in good faith. It is an existing structure. Mrs. Leath was unaware of the 6 foot height requirement for the front yard and testified to this Board that if she would have been aware of that she would have remedy that situation on the front end. I do think that it would be an undue hardship to ask her to cut that down or remove the fence at this point.

- 2) **The hardship results from conditions that are peculiar to the property such as location, size, or topography. Hardships resulting from personal circumstance as well as hardships resulting from conditions that are common to the neighborhood of the general public may not be the best bases for granting a variance.**

I think that the hardship is peculiar to the property and it results from personal circumstances that have been testified by the applicant. Those personal circumstances are just from the desire for safety on her own property. Again she was presented with a neighbor that was not, she has been living in her home for 12 years and, for purposes of personal safety felt a necessary move to put this fence in place.

3) **The hardship did not result from actions taken by the applicant or the property owner.**

I don't think this resulted from actions taken by the owner, it was a result of a new neighbor and I think she has had conversations with the new neighbor and did not feel appropriate resolution to that and that lead to her making the decision to put the fence up.

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.**

Because there is no safety issue with the height of the fence in its proposed location as far as I can see and it's been testified by the City that there are no visual destruction to the street.

Board Member Mr. Eric Grant seconded the motion. The Board voted 3:2 to approve the variance. The motion did not pass.

AYES: Grant, Gee, Giles

NOES: Lance, McDevitt

ITEM NO. 4:

CASE NO. 02-17 SPECIAL USE PERMIT (City)

Asset Recovery Solutions

Justin Murray

963 Kirkpatrick Rd.

Alamance County Tax Map number 3-22-27

§ Section 32.13.U

Motor Vehicle Towing and Storage

EVIDENCE PRESENTED: Zoning Enforcement Officer Mr. Chris Marland stated, 02-17 will be at 936 Kirkpatrick Road for Asset Recovery Solutions. They are seeking a Special Use Permit for a motor vehicle towing and storage lot at this location. This was previously used as an auto repair facility. It does have an existing chain linked fence around the area as you see in the photo. They will abide with the ordinance of the screening and such. When I spoke to the owner they stated it has been used as storage for I believe for the last 4-5 years. The current photo that you see with all the cars, most of them are gone now as the auto repair shop left about a year and a half ago.

Ms. Tammy Fry stated, my name is Tammy Fry and I affirm that everything I'm about to state is true to the best of my knowledge. We had found the property vacant and for lease and we were looking for a new property to move to. Of course we wanted to make sure everything was good. We didn't want to move in and it not being zoned correctly. When speaking to the City we were advised we would need to come before you and ask if it would be ok to do that. Acting Chairman Mr. Mike Gee asked, are you going to be moving the operations of your storage lot now to this new facility? Ms. Tammy Fry stated, yes but it wouldn't happen right now. There are some repairs that we need to make to the fence to meet standards on our end towing wise with our banks that we work for. It needs to be cleaned up and somethings need to be repaired on the outside; it would be within a couple months though.

Acting Chairman Mr. Mike Gee asked, if this Special Use Permit is granted for this location do you think that this use type will it put the public around it in danger? Ms. Tammy Fry stated, no sir. Acting Chairman Mr. Mike Gee asked, Mr. Lea, Mr. Marland, are there any specific conditions that are required for this type of facility? Zoning Enforcement Officer Mr. Chris Marland stated, if you look in the Special Use section of the Ordinance it talks about no more than 50 vehicles and the screening and the style and the size of fencing as allowed. Acting Chairman Mr. Mike Gee asked, as far as minimal size of the lot, is it going to be at least 5,000 sq. ft.? Zoning Enforcement Officer Mr. Chris Marland stated, yes. Acting Chairman Mr. Mike Gee asked, Mr. Marland you have stated already there is a chain linked fence that is going to be at least 6 feet high? Zoning Enforcement Officer Mr. Chris Marland stated, yes sir, it is existing as you see on the photo with the red lines. Acting Chairman Mr. Mike Gee asked, Ms. Fry will there be screening in that fence? Ms. Tammy Fry stated, yes we would put the screening up it will be a black or dark green covering that goes around the fence that will prevent anyone from seeing in, it's a requirement. Acting Chairman Mr. Mike Gee asked, it is a paved lot? Ms. Tammy Fry stated, yes sir. Acting Chairman Mr. Mike Gee asked, the lighting, is it going to be directed inwards, how is the lighting on the property? Ms. Tammy Fry stated, I'm not sure, I did not notice when I went; Chris do you know? Zoning Enforcement Officer Mr. Chris Marland stated, they do have some lighting out there. Some of it on the rear is building mounted and it is facing down. There are no poles that overcast light. Acting Chairman Mr. Mike Gee asked, is there any residentially zoned property within 100 feet of this location? Zoning Enforcement Officer Mr. Chris Marland stated, no sir. It's all B-2 and behind it is the O&I for the hospital. Acting Chairman Mr. Mike Gee asked, Ms. Fry if we grant this Special Use Permit do you think that the use will injure the value of any of the property owners that are around you in this location? Ms. Tammy Fry stated, no sir. Acting Chairman Mr. Mike Gee asked, are there other similar uses in the area, I mean maybe not exactly a storage facility but other types of business? Ms. Tammy Fry stated, no sir. If you are standing and facing the road, the building to the right the same owner owns it and it is vacant. Across the road there is a hotel and I do believe a bar but I'm not sure the name of it. Then on down the road is some doctor's offices. Board Member Mrs. Joyce Lance asked, is the hospital daycare still there? Ms. Tammy Fry stated, no. Acting Chairman Mr. Mike Gee stated, thank you Ms. Fry if we have any more questions we will call you back up. Is there anyone here from the public that would like to speak on this matter? Ms. Rachel Reed stated, hi I'm Rachel Reed and I would like to affirm that everything I say is the truth to the best of my ability. I'm here on behalf of Carolina Saconn who owns the property at 960 Kirkpatrick Road which is on the corner of Saconn Drive and Kirkpatrick Road. She has been battling stage four lymphoma and actually could not be here this morning because she had to have a pet scan. Her only concern was, and I think y'all have answered it but her property has been for sale for quite some time and she just wanted to make sure that the vehicles will be enclosed in a fenced in lot. She believes that any new business there is an asset and hopefully maybe it can sell her property. She may have to come before you to get her own Special Use Permit in the future. Again we are for it and would like to welcome you to the neighborhood. Acting Chairman Mr. Mike Gee stated, thank you Ms. Reed. Board Member Mrs. Joyce Lance asked, Mr. Marland, Mr. Lea, am I allowed to give Ms. Reed a copy of the ordinance? Zoning Enforcement Officer Mr. Chris Marland stated, yes you are allowed to but we have already given her one. Board Member Mrs. Joyce Lance stated, you can share with her what the ordinance is and it will tell her everything that we had to look at regarding the property.

Acting Chairman Mr. Mike Gee asked, is there anyone else from the public? Seeing no further public comment we will close for the Board to discuss.

DISCUSSION & FINDING OF FACTS: Acting Chairman Mr. Mike Gee stated, I think that it meets all four conditions. Board Member Mr. Eric Grant stated, I figured with this particular area right there, and putting up a fence with a black enclosure around it, that would be an improvement if vehicles were going to be stored there. I see no objection that I could think of what so ever because it is already being done.

DECISION: Acting Chairman Mr. Mike Gee stated, I would like to make a motion that the four required conditions for issuing a Special Use Permit in accordance to Section 32.13.B(1)(a) are met due to the following Finding of Fact:

1. **the use will not materially endanger the public health or safety if located where proposed and developed according to the plans as submitted and approved;**
the findings of fact are, testimony given by the applicant Ms. Fry stating her belief that there will not be any endangerment to the public. Actually this is a similar use on this facility.
2. **the use meets all required conditions and specifications;**
the findings of fact are, testimony given by the City and the applicant to the specific requirements regarding the size of the lot, security, screening, surface, lighting and the location.
3. **the use will not substantially injure the value of adjoining property or that the use is a public necessity;**
the findings of fact are, being testimony by the applicant and no testimony to refute the belief that there is no injury of adjoining properties.
4. **The location and character of the use if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and in general conformity with the plan of development of Burlington and its environs;**
the findings of fact are, again this is an area that similar businesses activates are in the area. Public comment confirmed that neighbors to the property believe that this would be an asset and so I do think this is in harmony.

Board Member Mrs. Joyce Lance seconded the motion.

AYES: Grant, Lance, Gee, Giles, McDevitt

NOES:

Vice-Chairman Mr. Mike Gee stated, I would like to make a motion to approve the Special Use Permit for Asset Recovery Solutions to be located at 963 Kirkpatrick Road, Burlington, North Carolina due to the previously stated Findings of Fact and that the applicant shall complete the development in accordance with the plans submitted and approved by this Board and if any of the conditions affixed hereto or any part thereof shall be held invalid or void, then this permit shall be void and of effect.

Board Member Mrs. Joyce Lance seconded the motion. The board voted unanimously to approve the Special Use Permit.

AYES: Grant, Lance, Gee, Giles, McDevitt

NOES:

NEW BUSINESS: None

MEETING ADJOURNED

H.E. Wilson III, Chairman

Kelly Peele, Secretary