

**WALKERSVILLE BOARD OF APPEALS  
MINUTES  
December 7, 2021**

Board members present: Jason Bryant, Vaughn Zimmerman, Dave Albertson and alternate Arthur Russell. Also present: Zoning Administrator Susan Hauver and Town Attorney Ian Bartman. Chairman Jason Bryant called the meeting to order 6:45 p.m. The Board met with the Town Attorney for the first 45 minutes for orientation of the newest member and to review the types of cases the Board considers. The case hearing began at 7:30 p.m.

**1. Election of officers**

***Mr. Zimmerman made a motion, seconded by Mr. Albertson to nominate Mr. Jason Bryant Chairman of the Board. Mr. Bryant was unanimously elected.***

***Mr. Bryant made a motion, seconded by Mr. Albertson to nominate Mr. Vaughn Zimmerman Vice Chairman of the Board. Mr. Zimmerman was unanimously elected.***

**2. Meeting Time**

***The Board voted unanimously to change the regular meeting time of the Board from 7:30 p.m. to 7:00 p.m.***

**3. Agenda**

***By common consent, the Board approved the agenda as proposed by staff.***

**4. Minutes**

***The minutes of the October 14, 2021 meeting were unanimously approved.***

**5. W-B-21-03 Carlos Bauchiero & Eric Vesely, 123 & 125 Polaris Drive, 2 foot variance from the 6 foot residential fence height requirement to build an 8 foot fence along the rear property lines of two adjacent lots.**

All persons in the audience who intended to testify at the hearing were sworn in by Chairman Bryant.

Ms. Hauver presented the attached staff report. There were no questions from Board members about the staff report.

Mr. Carlos Bauchiero presented his case. He submitted the attached pictures showing the top of his fence relative to the height of the berm in the open space behind his house. He described the pedestrian activity in the open space, noting that dogs being walked bother his dog and that kids are loitering in the area. He feels he has no privacy. He also noted the library lights shine into his yard. He currently has a 4' fence but he doesn't feel a 6' fence would be tall enough to give him privacy. There is a lot of foot traffic through the common area due to the library, and it is not common to have a library near one's lot. He also has concerns about his young children seeing and hearing the teenagers loitering behind his lot.

Mr. Albertson asked Mr. Bauchiero if he had contacted his homeowners association. Mr. Bauchiero said that they were in 100% agreement and supported his variance request. Mr. Albertson wondered if there were anything the HOA could do to reduce the foot traffic in that area.

Mr. Eric Vesely said that the HOA has not had success with signage in other open space areas, so it is likely that any signs they install in this open space area would be torn down.

Mr. Albertson suggested that landscaping might help with the problem more than a taller fence would. Mr. Bauchiero said a fence would provide better privacy. Trees take time to grow and are expensive. Bushes also don't keep people and dogs out. He also cited issues with the back entrances and trash cans of the townhouses behind his house.

Mr. Bryant asked each of the owners when they purchased their homes, and Mr. Vesely said 2012 and Mr. Bauchiero said 2019.

Mr. Zimmerman said that the problem with approving the request is that other property owners could request taller fences as well, including all the townhouses behind the applicants' homes. He felt a precedent would be set that they would need to follow. It would be hard to distinguish these two lots from others for which there might be a request. Mr. Bauchiero agreed that others should also have the right to do it.

In response to a question, Mr. Vesely said he called the police once a week but the issues do not constitute an emergency or represent a life-threatening situation.

There were no public comments.

Mr. Albertson said he sympathized with the applicants and noted the berm is a peculiar feature. However, an 8 foot fence won't stop what's going on in the open space and an 8 foot fence won't get rid of the problem. He felt the HOA should be involved.

Mr. Bryant said that the issues with regard to loitering and drug and alcohol use are more appropriately addressed by the police than the Appeals Board. He also noted that the applicants bought their homes with the berm and open space in place. Approving the variance would create the difficulty of having to approve similar requests from other property owners.

Board members discussed the requests and debated the uniqueness of the situation, whether proximity to the library was a factor, and whether taller fences was the solution to the issues presented by the applicants.

***Mr. Zimmerman made a motion to deny the request W-B-21-03 for fence height variances for Mr. Bauchiero and Mr. Vesely of 123 and 125 Polaris Drive, respectively, for the following reasons:***

- 1. Even though there is a berm to the rear of these properties, there are no exceptional or extraordinary circumstances because this berm extends for many properties between Colony Village and Sun Meadow. This existing berm serves as a barrier between these two developments and various depths exist on both sides;***
- 2. Throughout the entire length of both developments, there already exist fences on both side of six foot or less. Since all these property owners have installed their fences according to the fence zoning ordinance, the six foot maximum height applies to all the properties for both developments;***
- 3. The authorizing of this variance request would create a major precedent since all properties in both developments could make similar variance requests. This would severely impair the purpose of the fence zoning ordinance;***

***Therefore, this variance request is denied because there are no conditions or situation of these properties that are different from the other property owners***

**on both sides of these two developments. The six foot height maximum requirement was approved by both the Town Planning Commission and the Town Burgess and Commissioners.**

**Before the motion was seconded, there was debate among the Board members about whether a unique situation was created by the proximity of the applicants' properties to the library because of increased foot traffic. Mr. Albertson asked that the motion be amended to acknowledge there is some uniqueness to the properties. Mr. Zimmerman agreed to mention the uniqueness created by the berm but not the library, and amended his point #1 to say that the berm created uniqueness of the situation of the applicants' properties.**

**Mr. Albertson seconded the motion as amended by Mr. Zimmerman.**

**The variance was denied on a vote of 3-0.**

**Mr. Albertson made a motion, seconded by Mr. Zimmerman, that the staff forward a recommendation from the Board to the Burgess and Commissioners to review the issues presented by the applicants as they relate to the County-owned library and HOA common areas, and which represent potential harm to the applicants and create disharmony to the area property owners.**

**Mr. Albertson's motion passed on a unanimous vote.**

Mr. Albertson also suggested that the applicant discuss the issues related to the berm and foot traffic in the common area to the Sun Meadow Homeowners Association, particularly because the activity in the open space has changed since the library was built.

Mr. Vesely made a comment that because Board members appeared to be reading from prepared notes in formulating motions, the decision was made before the hearing. Mr. Zimmerman defended himself, noting that in light of past cases, his past experience as a Board member, and of being sued for \$15 million in a previous case that was not decided properly, that he is very careful to make sure the Board's decisions are in full compliance with the requirements of the law. His mind is not made up until he hears the case and reviews all the material, and he noted that he continued to take notes throughout the hearing. He noted that he was very upset by the accusation. Mr. Bryant also noted that he has notes but is making adjustments throughout the hearing.

There being no other business, the meeting was adjourned.

Respectfully submitted,

Susan J. Hauver