

**CITY OF WHITEHALL
BOARD OF ZONING AND BUILDING APPEALS
MONDAY, JULY 10, 2023**

The City of Whitehall Board of Zoning and Building Appeals meeting of July 10, 2023, was called to order by Vice-Chairman, Michael Arends, at 6:30 p.m.

Vice-Chairman Arends asked for a roll call. Megan Meyer, Assistant City Administrator, was also in attendance.

Weatherby – Absent
Arends – Present
Spicer – Present
Soma – Present

Vice-Chairman Arends asked for a motion to excuse Mr. Weatherby. Mr. Soma motioned. Ms. Spicer seconded the motion. Arends – Yes, Spicer – Yes, Soma – Yes. Voting was unanimous to **EXCUSE** the absent member.

Vice-Chairman Arends asked for a motion to approve the minutes from June 2023. Ms. Spicer motioned. Mr. Soma seconded the motion. Arends – Yes, Spicer – Yes, Soma – Yes. Voting was unanimous to **APPROVE** the minutes from June 12, 2023.

Vice-Chairman Arends introduced **Case BA-23-07**, Fence Height Variance, 1125.06(b), Tonia Rodriguez, 540 Elaine Road, parcel 090-004222. Ms. Rodriguez was sworn in and presented her case. Ms. Rodriguez stated she is seeking a 6-foot wood privacy fence to protect her two large dogs who are taunted by children. Ms. Rodriguez stated the fence would also protect the children from her dogs. Ms. Rodriguez stated that passersby in the alleyway is also worrisome. Vice-Chairman Arends asked Ms. Meyer the city's opinion regarding this case. Ms. Meyer asked Ms. Rodriguez to further describe the existing fence conditions. Ms. Rodriguez stated there is an existing fence on three sides of the back yard with one side existing chain link. Ms. Rodriguez stated that portion of the fence is in the side yard. Mr. Soma expressed his concern that the fence be constructed to code. Ms. Meyer clarified with Ms. Rodriguez and the BZBA board that the 6-foot privacy fence variance requested is in the side yard. Ms. Meyer asked Ms. Rodriguez how far the fence would extend along the contiguous property. Ms. Rodriguez stated the fence would run where the chain link currently exists. Ms. Rodriguez stated no fencing exists in the front of her home or the contiguous neighbor's property. Ms. Rodriguez stated the existing chain link belongs to the neighbor. Ms. Rodriguez stated the previous owner placed a gate to access the yard and requested to replace that with the privacy fence to include a gate. Ms. Meyer asked if that portion is 4 feet or 6 feet. Ms. Rodriguez stated that portion is currently 6 feet. Ms. Meyer stated that from the city's perspective this is where we can get into technicalities with the requirement of 4 feet and the reasoning necessitating a 6-foot

privacy fence. Ms. Rodriguez said her dog is very tall and could clear a 4-foot fence. Ms. Rodriguez stated the other side of the property already has a 6-foot privacy fence.

Ms. Meyer stated this fence variance request is not in line with current zoning code. Vice-Chairman Arends stated that without objection from the city, he requested a motion for approval. Ms. Meyer stated the city's recommendation is not to proceed with allowing fence variances at the 6-foot height in side yards unless the hardship is great enough to necessitate the variance. Vice-Chairperson Arends accepted a motion to approve Case BA-23-07 from Mr. Soma. Ms. Spicer seconded the motion. Arends – Yes, Spicer – Yes, Soma – Yes. **BA-23-07** was **APPROVED**.

Vice-Chairman Arends introduced **Case BA-23-08**, Fence Height Variance, 1125.06(b), Tracie L. Ford, 4135 Elbern Avenue, parcel 090-002739. Ms. Ford was sworn in and presented her case. Ms. Ford stated she is seeking a 4-foot wood privacy fence surrounding her front porch. Ms. Ford stated the fence is not supported with posts into the ground – but secured into flowerpots. Ms. Ford stated she likes to sit on the porch with her dog and grandchildren. Ms. Ford stated she was unaware of the 50 percent opacity requirement. Ms. Ford stated she provided photos showing the fence height was decreased from 5 feet to 4 feet. Ms. Ford stated the fence is nonobstructing – but not the required 50 percent. Ms. Meyer stated the fence has been constructed in a DIY fashion but is concerned, not only regarding the opacity requirement but city code requires the posts be anchored 3 feet into the ground for safety reasons. Ms. Ford reiterated the posts are secured into flowerpots. Ms. Meyer stated that from a building perspective, it is not guaranteed to be safe for the applicant, her dog, or her grandchildren. From the city's perspective, Ms. Meyer recommended variance denial. Ms. Ford stated she understood. Ms. Meyer also stated the opacity is not in compliance. Mr. Soma reviewed Mr. Day's letter to Ms. Ford stating the fence does not meet code. Ms. Ford stated she is concerned her grandchildren may get their heads stuck in the fence or her dog may escape through the fence. Ms. Meyer and Mr. Soma advised Ms. Ford to seek Mr. Day's advice regarding the required alteration of the privacy fence.

Vice-Chairperson Arends accepted a motion to approve from Mr. Soma. Ms. Spicer seconded the motion. Arends – No, Spicer – No, Soma – No. **BA-23-08** was **DENIED**.

Vice-Chairman Arends introduced **Cases BA-23-09(a)** and **BA-23-09(b)**, Fence Height Variances, 1125.06(b), Colin P. Finan, 652 Greenwood Road, parcel 090-001554. Mr. Finan was sworn in and presented his case. Mr. Finan stated he is replacing 4-foot chain link fencing. Mr. Finan is requesting 6-foot wood privacy fencing on the north and south side yards. Mr. Finan stated this fence would then match all the neighbors on his street. Mr. Finan states the neighborhood has an issue with deer. Mr. Finan stated the neighbor to the rear of his property has a chain link fence. Arrow

Fence advised Mr. Finan that he could not place a privacy fence abutting the chain link fence. Mr. Finan hoped by placing the 6-foot privacy fence along the side yards that will prevent the deer entering his yard. Mr. Finan stated the fence length on the north side is 29 feet and 13 feet on the south. Mr. Soma stated he observed the property and in his opinion, the requested fence would not cause any interference. Mr. Finan stated several variances were previous granted on his street. Ms. Meyer asked the reasoning why Mr. Finan believes he cannot place a privacy fence at the rear portion of the property. Mr. Finan stated Arrow Fence advised him the fence at the rear of the property would require a 3-foot gap between the neighboring chain link fence. Mr. Finan stated the chain link fence at the rear of the property is 4 feet high. Mr. Soma asked if the rear of the property has a utility easement. If so, that may be the reason requiring the 3-foot gap between the fences. Ms. Meyer stated as the current zoning code reads, 6-foot privacy fences in the side yard are not permitted. While previous variances may have been granted or fences may have been built prior to the current zoning code, Ms. Meyer clarified for the applicant and the BZBA board that the city's perspective is that this variance request would not be permitted based on the city's zoning code. Ms. Meyer stated this is a judgement call by the BZBA board, but the city's perspective is that this does not meet the special circumstance requirement to grant the variance. Mr. Soma stated he observed the neighboring 6-foot privacy fence and, therefore, does not have a problem with the variance request. Ms. Spicer asked for clarification if all of the current chain link fence will replaced with wood privacy fence. Mr. Finan stated that the chain link will be replaced and pushed a little forward so that it will join with the neighboring fence to the north and the same to the south which will also prevent destruction of the concrete.

Vice-Chairperson Arends accepted a motion to approve Case BA-23-09(a) and BA-23-09(b). Mr. Soma motioned. Ms. Spicer seconded the motion. Arends – Yes, Spicer – Yes, Soma – Yes. **Cases BA-23-09(a) and BA-23-09(b) were APPROVED.**

Vice-Chairperson Arends asked for a motion to adjourn. Ms. Spicer motioned. Mr. Soma seconded the motion. Arends – Yes, Spicer – Yes, Soma – Yes. The meeting **ADJOURNED** at 6:55 p.m.

APPROVED: _____, 2023

Respectfully submitted,

Lori Morton, Clerk