

Board of Adjustment

610 Concord Rd, residential front yard fence

(Name of Project)

Description of Request - Variance

Application Date: 1/5/20

Project Location: 610 Concord Road
(Indicate street frontage, nearest intersection, and address, if assigned)

Tax Parcel(s): 610 Concord Road

Acreage: 0.6

Existing Planning Area: Village Infill

Existing Planning Area Overlay District: Village Infill Blue Overlay

Master Plan or Conditional Plan: _____

General Statement of Intent: include a full description of all variance requests from use and standards of the Davidson Planning Ordinance

We are requesting exemption from Section 4.3.1.D(1), specifically the 3 foot height restriction for a front yard fence. A 4 foot aluminum fence was erected on our property in late September of 2019, in part due to a miscommunication with the Davidson planning office. The purpose of the fence is to provide a safe area in the front yard and driveway for the supervised play for our two young boys (3.5 years and 21 months)

Existing Site Conditions: (include details significant to the variance request)

The fence currently stands on the property, with a pending city order of removal.

Additional Information:

I called the planning office before the fence was placed largely to see whether we needed a permit or some form of approval for the project. Speaking to David Cole via phone, I was told that this was not necessary, and that there was only a height restriction (my memory is 4 feet, though this conversation was not recorded). The exact language would be sent to my email (this never arrived). We moved forward with the project, with a reputable Lake Norman area fence builder (Lake Norman Fence Company). We were instructed to remove the fence immediately upon its erection, with reference to the language of the ordinance and no clear explanation about why the ordinance is so restrictive (other than vague reference to "obstruction of sight lines," which clearly had no bearing on our fence). We were informed that there had been an anonymous phone call to the planning office.



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Findings of Fact - Variance Request

The Board of Adjustment is a quasi-judicial board, which means it functions similar to a court or judge. The Board has limited discretion in deciding whether to grant a variance and must determine a case based on findings of fact presented as sworn evidence or testimony at the hearing. Calls or conversations with members outside of the hearing are not permitted and may not be considered in the decision. Below are findings of fact questions the Board must determine in the affirmative before it can issue a variance from the ordinance. It is the applicant's responsibility to present evidence supporting the findings of facts. Below, present facts to convince the Board that these criteria are met. When completing the questions keep in mind the following are not cause for a variance 1) other nonconformities or conforming uses of land or structures in the same or other districts; 2) a request for a particular use expressly, or by inference, prohibited in the planning area; 3) the fact the property may be used more profitably with a variance; or 4) the need for the variance is self-created.

1. There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance.

Financial hardship. I've just completed medical training, and my wife and I are elated to have settled in Davidson with our family (after having attending college here, class of '08). We as yet have no significant savings, and emptied our checking account to pay for the fence.

2. The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit.

The language in the relevant section of the planning ordinance seems intended to prevent erection of privacy fences, with specifications based on height and solidity. The slats of our fence are very thin and widely spaced, and it therefore presents no visual obstruction for pedestrians or motorists. This is a very standard fence.

3. In granting the variance, the public safety and welfare have been assured and substantial justice has been done.

I believe the ultimate goal of fostering a sense of community is undermined by the order to remove our fence. Without a secure area for our two young boys to play in the front yard, we will retreat to the back yard where we will not be able to greet passersby.

4. The reasons set forth in the application justify the granting of a variance, and that the variance is a minimum one that will make possible the reasonable use of land or structures.

This is a small variance request, with potential substantial hardship on a new family to the area if the order for removal stands. There are dozens of nonconforming fences in Davidson (I would estimate at least 4 out of 5 of the front yard fences), many of which have been built since the adoption of the relevant section.

5. If the applicant complies with the provisions of this ordinance, he can secure no reasonable return from, nor make any reasonable use of the property.

If forced to remove the fence, we will not replace it. Cost is a consideration, but — more importantly — we will not trust a 3 foot fence to serve its sole purpose in containing the kids and dog on a busy road. Outdoor family time on the property will be relegated to the back yard. We will lose the use of the driveway (for biking, basketball, etc.) and the front yard (which has much better grass cover due to copious shade in the back). In sum, this fence is a feature which we have added to the property for the safety and security of our family, and are now being asked to remove without clear purpose other than to satisfy the letter of a quixotic city ordinance.

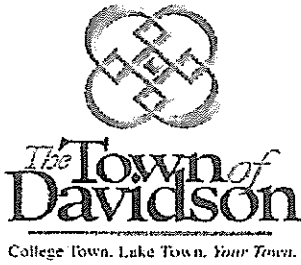


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Hearing Process

Date Completed	
<u>1/9/2020</u>	<input checked="" type="checkbox"/> Application and Fee
<u>1/9/2020</u>	<input checked="" type="checkbox"/> Hearing Date Set (1/27/2020)
<u>1/7/2020</u>	<input checked="" type="checkbox"/> Notification of Public Hearing to Interested Parties
_____	<input type="checkbox"/> Legal Notice of Public Hearing in Newspaper
<u>1/17/2020</u>	<input checked="" type="checkbox"/> Agenda, Staff Report, Case Materials sent to Board Members and Applicants
<u>1/27/2020</u>	<input type="checkbox"/> Board of Adjustment Hearing and Decision which may include conditions of approval
_____	<input type="checkbox"/> Board of Adjustment Written Findings of Fact
_____	<input type="checkbox"/> Appeal from Board Decision Any aggrieved party may file a writ of certiorari within 30 days of the filing of the decision in the office of the Board.



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Decision - Variance

Date

Approval

Written Findings Approved

Written Findings Sent to Board and Applicant

The Board of Adjustment, in granting a variance may prescribe appropriate conditions and safeguards in conformity with the planning ordinance. These conditions will be made a part of the motion at the hearing and included in the written findings of fact. Violation of such conditions and safeguards shall be deemed a violation of the Davidson Planning Ordinance and punishable as prescribed in the ordinance.

Conditions of Approval

Expiration of Approval

Unless otherwise authorized by the Board of Adjustment and included in its decision to grant a variance, an order of the Board of Adjustment in granting a variance shall expire, if a building permit or certificate of occupancy (for a use in which a building permit is not required) has not been obtained within one year from the date of the decision.

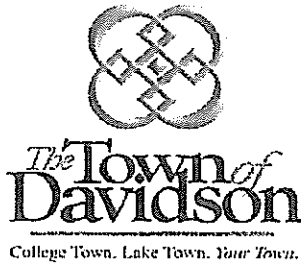
Denial

Written Findings Approved

Written Findings Sent to Board and Applicant

Appeal Filed

Any aggrieved party may appeal of the Board of Appeal's by filing a writ of certiorari with the Superior Court of Mecklenburg County. The appeal must be filed within 30 days of the decision.



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Variance from the Davidson Planning Ordinance

I Brian "Alan" Perry, II hereby petition the Board of

Adjustment for a variance from the literal provisions of the Town of Davidson Planning Ordinance because under the interpretation given me by the Planning Director, I am prohibited from using the parcel of land described in this application in a manner I have proposed.

I request a variance from the following provisions of the Ordinance:
3 foot height restriction for a front yard fence.

so the above-mentioned property can be used in a manner described herein:

We do not view a 3 foot fence as a functional option when it comes to the question of securing the safety of our two adventurous young boys on a busy road. The extra height (which is standard in most communities) makes a world of difference for a parent's peace of mind.

the following practical difficulties, special conditions, or unnecessary hardship would result from the strict application of the ordinance:

The fence is an existing structure, and will need to be removed. We may not have the financial wherewithal at the moment to comply. This issue has also caused mental anguish over the last few months, in a town in which we have otherwise felt incredibly welcomed and at home. I foresee being in my current job until retirement (I am 33), and we will surely be in Davidson for decades thereafter. This is our "forever home."

I hereby dispose and say that the information contained herein and herewith is true and that this application shall not be scheduled for official consideration until all of the required contents are submitted in proper form to the Planning Department.

Signature of Applicant

Signature of Property Owner (if different from applicant)



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Application Requirements - Variance

Date Received

- Application Fee per Town of Davidson Fee Schedule
- Contact Information
- Application Request
- Description of the Request
- Findings of Fact
- Metes and Bounds Description of the Property
- Scaled Site Plan on 11" x 17" media
(including notations of all variance requests)
- Names, Mailing Addresses and Tax Parcel Identification
of all Adjacent Property Owners, including properties across any
streets or easements
- Notice to Neighbors and Media
- Additional Requirements as listed below

As the applicant, I hereby confirm that all the required materials for this application are authentic and have been submitted to the Town of Davidson Planning Department.

Am Day

Applicant's Signature

1/9/20

Date



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Contact Information

Applicant's Information

Name: Brian Alan Perry, II

E-Mail: B.alan.perry@gmail.com

Mailing Address: 610 Concord Road
Davidson, NC 28036

Business Phone: _____ Mobile Phone: 256-266-3262

Property Owner's Information

(If Different from Applicant)

Name: _____

E-Mail: _____

Mailing Address: _____

Business Phone: _____ Mobile Phone: _____

Attorney's Information

(If Parties have Legal Representation)

Name of Firm: _____

Architect's Name: _____

E-Mail: _____

Mailing Address: _____

Business Phone: _____ Mobile Phone: _____

Concord Rd

601 Concord Rd
00315510

Thompson St

609 Concord Rd
00315518

Concord Rd

615 Concord Rd
00315511

Concord Rd

S Thompson St

621 Concord Rd
00315512

Concord Rd

Concord Rd

602 Concord Rd
00702605

Concord Rd



610 Concord Rd

S Thompson St

Concord Rd

626 Concord Rd
00702603

S Thompson St

603 Lorimer Rd
00702606

Lorimer Rd

611 Lorimer Rd
00702607

619 Lorimer Rd
00702608

Lorimer Rd

625 Lorimer Rd
00702609

Lorimer Rd