



City of Salisbury

AGENDA

REGULAR MEETING

May 2, 2024

Government Office Building
Route 50 & N. Division Street
Council Chambers, Room 301, Third Floor

6:00 P.M. - Call to Order – Shawn Jester

Board Members: Shawn Jester, Sandeep Gopalan, William Hill, Maurice Ngwaba, and Miya Horsey.

MINUTES – February 1, 2024 and April 4, 2024.

ZONING PUBLIC HEARINGS: Case #202400423 – Erin Failaev/Benelena Re LLC – 2 ft. Fence Height Variance to Erect a 6 ft. Tall Fence in the Front Yard Setback – 200 New York Avenue – R-8 Residential District.

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****PUBLIC INPUT** – Public comments as part of the public hearings for each case are welcome but are subject to a time allotment of two (2) minutes per person.

The Board of Appeals reserves the right to convene in Closed Session as permitted under the Annotated Code of Maryland, General Provisions Article, Section 3-305(b).

Department of Infrastructure & Development
125 N. Division St., #202 Salisbury, MD 21801
410-548-3170 (fax) 410-548-3107
www.salisbury.md



MINUTES

The Salisbury Board of Appeals met in regular session on February 1, 2024, in Room 301, Government Office Building at 6:00 p.m. with attendance as follows:

BOARD MEMBERS:

Shawn Jester, Chair
Edward Torbert
Miya Horsey (via Zoom)

Sandeep Gopalan, Vice Chair (Absent)
William Hill (Absent)
Maurice Ngwaba (Absent)

CITY STAFF:

Henry Eure, Senior Planner
Brian Soper, City Planner
Beverly Tull, Recording Secretary
Laura Ryan, City Solicitor

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Mr. Jester called the meeting to order at 6:00 p.m.

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MINUTES:

Due to lack of a quorum from the December 7, 2023 and the January 4, 2024 meetings, the approval of minutes from the December 7, 2023 and January 4, 2024 meetings were postponed until the next meeting.

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Mr. Eure administered the oath to anyone wishing to speak before the cases heard by the Salisbury Board of Appeals.



City of Salisbury

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Case #202400024 – Becker Morgan, on behalf of TidalHealth Peninsula Regional, Inc. – Special Exception to Construct a Clinic – 805 E. Church Street – R-5A Residential District.

Mr. Mark Cropper and Mr. Kevin Parsons came forward. Mr. Eure presented the Staff Report and all accompanying documentation into the record. Mr. Eure explained that the applicant requested permission to construct a 16,846 sq. ft. residential community clinic at the referenced address, which is located in the R-5A Residential zoning district. A special exception is required for the proposed use. Mr. Eure moved the Staff Report into the record.

Mr. Jester moved the Staff Report into the record.

Mr. Cropper had Mr. Parsons introduce himself and questioned if he agreed with the Staff Report. Mr. Parsons responded in the affirmative. Mr. Cropper questioned the start date of the project. Mr. Parsons responded that construction should begin in the summer. The project is in stage two (2) of the review process and the City has three (3) stages of review.

Mr. Torbert stated that this is appropriate for the property to become a medical clinic like it was in the beginning.

Mr. Jester noted that he grew up close to this area and the proposed rendering does resemble the original Hotel Esther.

Upon a motion by Mr. Torbert, seconded by Ms. Horsey, and duly carried, the Board **APPROVED** the Special Exception to construct a residential medical clinic at 805 E. Church Street, based on the criteria listed in the Staff Report, particularly the criteria listed in Section V(c)

CONDITIONS:

- 1. Subject to further review and approval by the Salisbury Department of Infrastructure and Development, the Salisbury Fire Department, and other agencies as appropriate.

The Board vote was as follows:

Edward Torbert	Aye
Miya Horsey	Aye
Shawn Jester	Aye



City of Salisbury

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ADMINISTRATIVE MATTER:

Case #202300334 – Cristo Vive Church – 12-Month Extension Request for Enlargement of a Legal Nonconforming Structure and a 27.7 ft. Side Yard Setback Variance – 1308 Westchester Street – R-10 Residential District.

Mr. Eure explained the requested 12-month extension. Mr. Jester moved the May 4, 2023 decision letter into the record. Mr. Eure requested that the Board grant the 12-month extension from the date that the original approval would expire, May 4, 2024. If granted, the new expiration on the approval would be May 4, 2025.

Mr. Soper noted for the record that the engineering plans have been submitted but will not be through the final review and ready to apply for a permit by May 4, 2024 when the original approval would expire. Mr. Eure added that the Church had to make some changes to the plan because of the denial of front yard setback request.

Upon a motion by Mr. Torbert, seconded by Ms. Horsey, and duly carried, the Board **APPROVED** a 12-month extension, until May 4, 2025, to exercise the **APPROVED** 27.7 ft. Side Yard Setback Variance and the **APPROVED** Enlargement of a Legal Nonconforming Structure.

The Board vote was as follows:

Edward Torbert	Aye
Miya Horsey	Aye
Shawn Jester	Aye

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DISCUSSION – SALISBURY BOARD OF APPEALS HANDBOOK AMENDMENTS.

Mrs. Ryan discussed that proposed amendments to the Salisbury Board of Appeals Handbook. She specifically pointed out the added language about the Pretrial Rules. These amendments must be voted on by the Board at a future meeting and then sent to the City Council to be adopted. There is no deadline to have the updated Handbook adopted.

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Mr. Soper announced his resignation to the Board and thanked the Board members for the service. He also thanked Staff and Legal for their assistance during his tenure with the City of Salisbury.



Mr. Jester thanked Mr. Soper for his service as both a former Board of Zoning Appeals member and a Staff member for the City.

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ADJOURNMENT

With no further business, the meeting was adjourned at 6:50 p.m.

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This is a summary of the proceedings of this meeting. Detailed information is in the permanent files of each case as presented and filed in the City of Salisbury Department of Infrastructure and Development Department.

Shawn Jester, Chair

Richard Baldwin, Secretary to the Board

Beverly R. Tull, Recording Secretary



City of Salisbury

MINUTES

The Salisbury Board of Appeals met in regular session on April 4, 2024, in Room 301, Government Office Building at 6:00 p.m. with attendance as follows:

BOARD MEMBERS:

Shawn Jester, Chair
Sandeep Gopalan, Vice Chair
Edward Torbert
William Hill
Maurice Ngwaba

CITY STAFF:

Henry Eure, Senior Planner
Beverly Tull, Recording Secretary
Laura Ryan, City Solicitor

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Mr. Jester called the meeting to order at 6:00 p.m.

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MINUTES:

Upon a motion by Mr. Hill, seconded by Mr. Torbert, and duly carried, the Board **APPROVED** the minutes of the December 7, 2023 meeting. Upon a motion by Mr. Hill, seconded by Mr. Ngwaba, and duly carried, the Board **APPROVED** the minutes of the January 4, 2024 meeting. Due to lack of a quorum, the Board postponed the minutes of the February 1, 2024 minutes until the next meeting.

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Mr. Eure administered the oath to anyone wishing to speak before the cases heard by the Salisbury Board of Appeals.



City of Salisbury

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Case #202400342 – William Gray, on behalf of Onal Koksa Can – Special Exception to Operate an Outdoor Storage Yard at 423-425 E. Vine Street – General Commercial District.

Mr. William Gray and Mr. Omar Bayer came forward. Mr. Eure presented the Staff Report and all accompanying documentation into the record. Mr. Eure explained that the applicant requested to utilize the rear of the property for outdoor storage. Board approval of a special exception for an outdoor storage yard is requested.

Mr. Jester moved the Staff Report into the record.

Mr. Gray stated that the property has a fence on three (3) sides and that he would cover the neighbor's fence along the back to be in compliance with the requirements of the Code.

Mr. Torbert questioned how long the temporary storage would be. Mr. Gray responded that the vehicles would be on the lot for roughly 30 days, based on the insurance company. Mr. Torbert questioned if there was access to the fenced in area, specifically for the Fire Department. Mr. Gray responded that the vehicles would be spaced out and the EV vehicles have special regulations that must be met. He added that his son would be living next door.

Mr. Hill questioned what was located to the rear of the property. Mr. Gray responded that Caliber Collision is located directly behind the property.

Mr. Jester questioned Mr. Gray if he was agreeable to the screening condition in the Staff Report. Mr. Gray responded in the affirmative.

Mr. Ngwaba questioned the location of the gate to the property. Mr. Gray demonstrated the location on the map in the Staff Report.

Upon a motion by Mr. Gopalan, seconded by Mr. Ngwaba, and duly carried, the Board **APPROVED** the Special Exception to operate an outdoor storage yard at 423-425 E. Vine Street, based on the criteria listed in the Staff Report, particularly the criteria listed in Section V(c), and subject to the following Condition of Approval:

CONDITION:

1. Provide screening at the rear of the property as required by the Salisbury Zoning Code.



The Board vote was as follows:

Edward Torbert	Aye
Sandeep Gopalan	Aye
Maurice Ngwaba	Aye
William Hill	Aye
Shawn Jester	Aye

* * * * *

DISCUSSION – SALISBURY BOARD OF APPEALS HANDBOOK AMENDMENTS.

Mrs. Ryan discussed that proposed amendments to the Salisbury Board of Appeals Handbook. She specifically pointed out the added language about the Pretrial Rules. These amendments must be voted on by the Board at a future meeting and then sent to the City Council to be adopted. There is no deadline to have the updated Handbook adopted.

Mr. Ngwaba questioned Mrs. Ryan regarding the pretrial changes. Mrs. Ryan explained that there are many procedures in the Code that should more appropriately live in the Board of Appeals Handbook.

Mr. Hill noted that the Board has been operating without these changes and questioned if something had triggered the proposed changes. Mrs. Ryan responded that it had always been the intention to update the Handbook once the Board had some cases under its belt. She added that it's customary for Board's to have pretrial rules, which gives the Board and the public time to review the material.

Mr. Eure discussed the submission requirements, explaining that the application must submit 30 days before the meeting. He added that it is rare to receive information from the public in advance of the meeting.

Mr. Hill stated that he was concerned about creating a solution for a problem that doesn't exist except on rare occasions.

Mr. Gopalan questioned if the Staff requested the time limit. Mr. Eure responded in the negative. Mr. Gopalan stated that the intent of the Board is to encourage public input.

Mrs. Ryan reiterated that the language came from the original Handbook and Code.

Mr. Gopalan questioned why the mandate was being imposed since there is nothing in the Code. Mr. Jester stated that the past Code did say that materials should be submitted 10 days before the meeting, but it wasn't enforced. Mrs. Ryan responded that the changes to the Handbook are for rules to be more specific for the Board. She added that both the Board and the City Council have to adopt the changes to the Handbook.



Mr. Ngwaba stated that the Board is here for the public input and the changes don't bode well. Mrs. Ryan responded that the Board can adopt what they want and make the changes to the proposed amendments to the Handbook.

Mr. Torbert questioned if pretrial rules were normal in other Boards in the City of Salisbury. Mrs. Ryan responded that pretrial rules are normal. He questioned if other jurisdictions have pretrial rules. Mrs. Ryan responded in the affirmative, adding that the Board can change the timeline.

Mr. Eure administered the oath to anyone wishing to speak on this matter.

Mrs. Carolyn Wohlgemuth, 1118 Granbys Run, spoke against the changes to the Handbook as they will limit public comment and participation.

Mr. Bob Taylor, N. Park Drive, voiced his concerns about the changes to the Handbook and requested that the meeting packages be made available earlier than a week before the meeting.

Ms. Holly Worthington stated that she supported the other comments that had been made against the suggested changes to the Handbook.

Mr. Torbert left the meeting.

Mrs. Nancy Roisum, 209 Beaverdam Drive, stated that she opposed the changes to the Handbook.

Mr. Jester closed the public comment portion and noted for the record that all comments that were sent to the Staff had been received by the Board members.

Mr. Hill stated that he was not convinced that the requested changes are needed. The applicants should submit ten (10) days before the hearing and the public should not have to meet those requirements. He added that he had never served on a Board that voted on their own rules. Mrs. Ryan responded that the statute that governs the Board of Appeals states that the Board must adopt the rules and the Code states that the Board and the City Council must adopt the Handbook. Mr. Hill suggested changes to the pretrial rules.

Mr. Gopalan stated that the 10 day rule seems too restrictive and stated that 7 days would be okay. He explained that the applicants come to the Board because they have been denied and are asking the Board for help. He suggested striking the entire pretrial section of the Code because the Board is already functioning without it.

Mr. Ngwaba reiterated that the Board should stay with what currently is in place.

Mr. Hill made a motion to strike the 10 day requirement. There was no second and the motion failed.



Mr. Gopalan made a motion to strike Section C – pretrial rules – from the Handbook. Mr. Ngwaba seconded the motion.

The Board vote was as follows:

Sandeep Gopalan	Aye
Maurice Ngwaba	Aye
William Hill	Aye
Shawn Jester	Nay

Mr. Gopalan made a motion to accept the Handbook with the amendments made and Section C now being Order of Business. Mr. Hill seconded the motion.

The Board vote was as follows:

Sandeep Gopalan	Aye
Maurice Ngwaba	Aye
William Hill	Aye
Shawn Jester	Aye

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ADJOURNMENT

With no further business, the meeting was adjourned at 7:20 p.m.

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This is a summary of the proceedings of this meeting. Detailed information is in the permanent files of each case as presented and filed in the City of Salisbury Department of Infrastructure and Development Department.

Shawn Jester, Chair

John W. Tull, Secretary to the Board

Beverly R. Tull, Recording Secretary



City of Salisbury

STAFF REPORT

MEETING OF MAY 2, 2024

Case No. 202400423
Applicant: Erin Failaev
Property Owner: Benelena Re, LLC
Location: 200 New York Avenue
Tax Map: #104
Grid #15, Parcel #820
Zoning: R-8 Residential
Request: 2 ft. Fence Height Variance

I. SUMMARY OF REQUEST:

The applicants have requested permission to raise an existing 4 ft. tall fence located within the front yard setback to 6 ft. in height. **(Attachment 1)**

II. ACCESS TO THE SITE:

The property has frontage along New York Avenue and Miles Street. A curb cut has been provided for access along Miles Street, but is not used. **(Attachment 2)**

III. DESCRIPTION OF PROPERTY:

This site consists of a rectangular shaped property approximately 5,900 sq. ft. in area, and has been improved with a two-story single family dwelling that was constructed in 1927.

IV. DESCRIPTION OF SURROUNDING AREA/NEIGHBORHOOD:

Surrounding properties in all directions consist of single family homes, and are also located in the R-8 Residential zoning district.

V. EVALUATION:

- (a) **Discussion:** The applicants have erected an approximate 4 ft. 6-inch tall solid style fence within the front yard setback along Miles Street. Lattice is proposed to be located on the top of the fence, extending the overall height to 6 ft. **(Attachments 3 – 7)**

Fences are limited to a maximum height of 4 ft. within the front yard. By definition, corner lots, such as the referenced address, have two (2) front yards and two (2) side yards for setback purposes. The fence is located approximately 5 ft. from the curblineline, along the back of the sidewalk. According to the property owners, the purpose of the increased height is to provide an increased level of privacy on a portion of the lot.

- (b) **Impact:** Staff believes the fence will have minimal impact on neighboring properties, and will not obstruct the vision of motorists traveling in any direction. Similar fence height variance requests have been granted throughout the City in the past.
- (c) **Relationship to Criteria:** Section 17.236.020 of the Salisbury Municipal Code contains the criteria the Board should consider when approving Variances. Staff has noted how this request complies with the Variance criteria as follows:

- [1] **Because of the particular physical surroundings, shape or topographical conditions of the specific structure or land involved, a practical difficulty or unnecessary hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of the regulations were to be carried out.**

The property does not appear to have any unique conditions that create a practical difficulty or hardship.

- [2] **The conditions upon which an application for a variance is based are unique to the property for which the variance is sought and are not applicable, generally, to the property within the same zoning classification.**

Again, there are no unique conditions that this property possesses.

- [3] **The practical difficulty or unnecessary hardship is caused by this Title and has not been created by intentional action of any person presently having an interest in the property.**

Staff believes that the practical difficulty may have been created by the Zoning Code. The Code indicates that corner lots must have two (2) front yards, and that fences in front yards are limited to 4 ft. in height. There is no relief for fence height based on the orientation of the dwelling or along secondary streets.

- [4] **The granting of the variance will not be detrimental to or endanger the public health, security, or general welfare or morals.**

The granting of the requested variance should not be detrimental to the public health, security and general welfare of the neighborhood. Other nearby properties have fences that are 6 ft. tall within the front yard setback.

- [5] **The granting of the variance is not based exclusively upon a desire to increase the value or income potential of the property.**

The variance request is based simply on the applicant's desire to provide protection and a small amount of added privacy in a portion of the property.

- [6] **The variance will not be injurious to the use and enjoyment of other property in the immediate vicinity nor substantially diminish and impair property values in the neighborhood.**

Increasing the fence height to 6 ft. within the front yard will not be detrimental to other properties and will not adversely impact nearby property values.

- [7] **The granting of the variance will not impair an adequate supply of light and air to adjacent property or overcrowd the land or create an undue concentration of population or substantially increase any congestion of the streets or create hazardous traffic conditions or increase the danger of fire or otherwise endanger the public safety.**

The requested fence height increase will not create any hazardous traffic conditions due to its distance from North Division Street, nor otherwise impact public safety.

- [8] **The variance will not adversely affect transportation or unduly burden water, sewer, school, park, or other public facilities.**

The requested variance will have no impact on water, sewer, school, park or other public facilities. Staff does not believe this request will affect transportation facilities.

- [9] **The granting of the variance will not adversely affect the implementation of the Comprehensive Plan for the City of Salisbury approved by the Planning Commission and the City Council or any other plan approved by the Planning Commission or City Council for development of the area in which the variance is requested.**

The fence height variance request will not have an impact on the City's Comprehensive Plan.

- [10] **Within the intent and purpose of this Title, the variance, if granted, is the minimum necessary to afford relief. (To this end, the Board may permit a lesser variance than that applied for.)**

Staff believes that the fence height variance request is the minimum necessary to afford relief from the Code requirements. However, the Board has the discretion to approve the requested variance or grant a lesser variance.

VI. STAFF COMMENTS:

As previously indicated, other residential properties in the neighborhood, as well as throughout the City, have fences located within the front yard setback that are 6 ft. in height. The Board of Appeals has a history of typically granting similar requests. The proposed request is minor in nature as only about 71 ft. of fencing is at the 6 ft. height, and is approximately 54 ft. from the intersection of New York Avenue and Miles Street.

VII. RECOMMENDATION:

Based on criteria for approval as outlined in Section V (c) of the Staff Report, **Approval** of the variance request as submitted is recommended to construct a 6 ft. tall fence within the front yard setback along Miles Street.

Henry Eure

From: Erin Sarah Twilley Failaev <erinfailaev@gmail.com>
Sent: Tuesday, March 19, 2024 12:17 PM
To: Henry Eure
Subject: Information for appeal for fence variance
Attachments: 200 New York Ave Fence update for 6ft Layout.pdf; 200 New York Ave Fence update for 6ft panel.pdf

WARNING: This message was sent from an external source. Please verify the source before clicking any links or opening any attachments. NEVER provide account credentials or sensitive data unless the source has been 100% verified as legitimate.

Good afternoon!

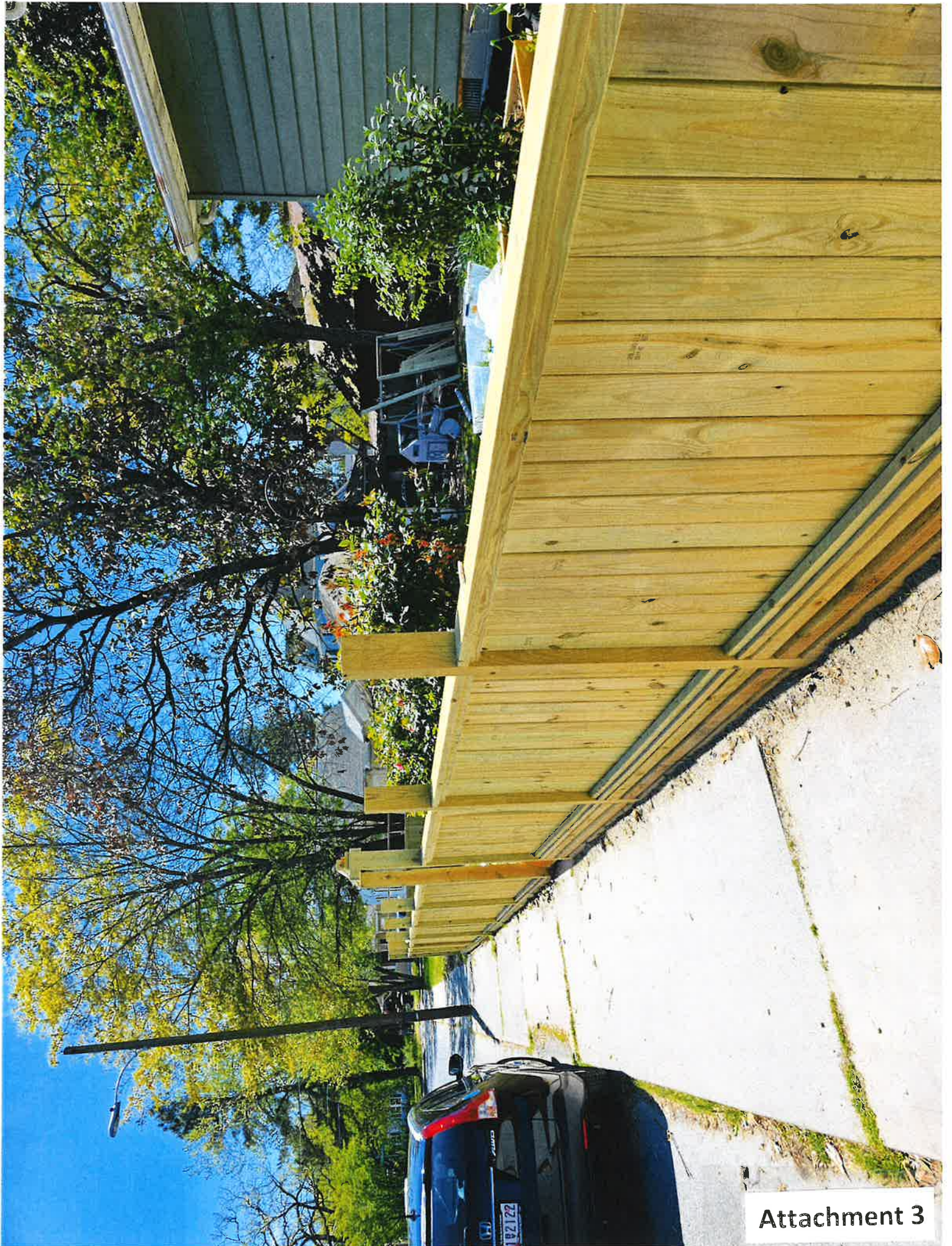
I was given your email to contact about the process for obtaining a variance for fence height for a corner lot. The address is 200 New York Ave. We have an open permit for a 4ft fence but would like to get permission to place a 2ft open picket style decorative top on top of the 4ft paneled section. I have attached a drawing of the proposed fence and a more up close picture of the individual panel. I am requesting the variance in light of the recent shooting in our area and the desire to have additional barrier for anyone potentially cutting through. I would like to keep visibility, however, which is why I would prefer the open picket style on top. If you could please direct me in the proper forms to fill out I would appreciate it!

Thank you for your time and assistance,

Erin Failae.



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Attachment 3

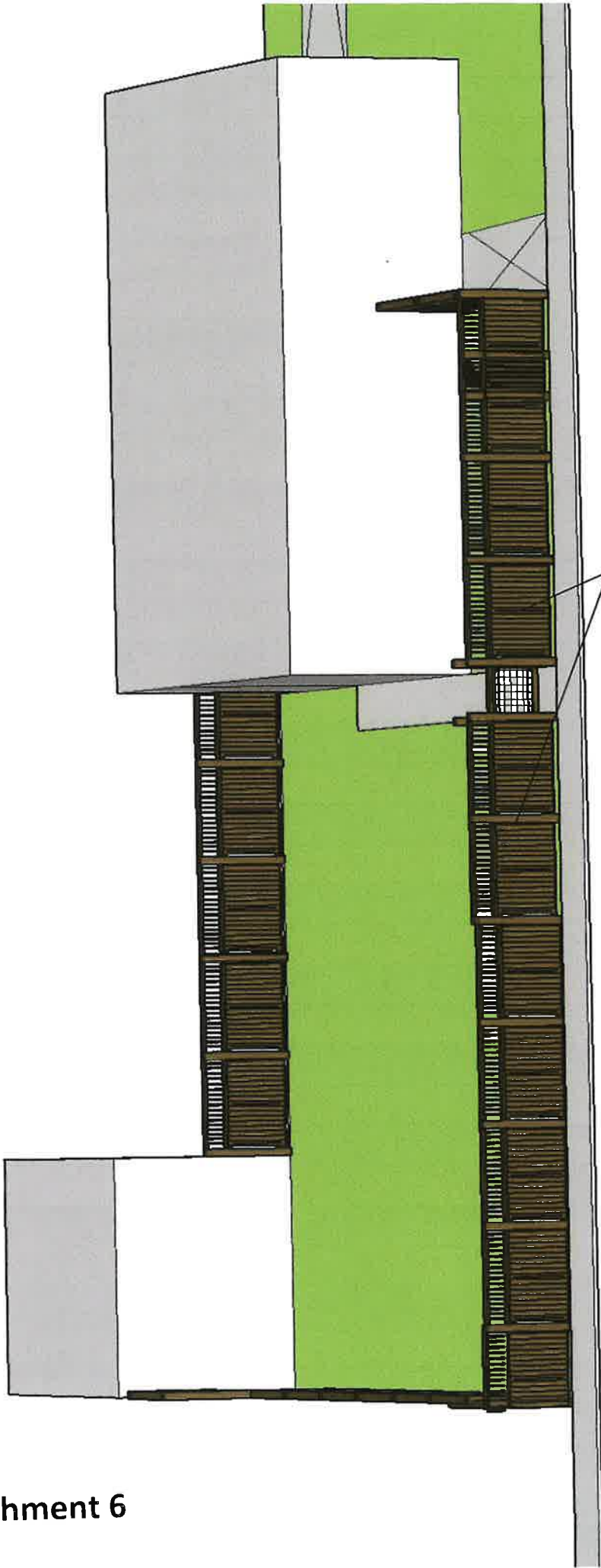


Attachment 4



Attachment 5

Attachment 6



200 New York Ave
2" setback from the sidewalk on the left side of house.
Fence along the left side of house prior to step up 6ft (4ft of deck planking and 2 ft of open lattice)
Fence along left side after step up will match the height of the 6ft fence (so from side walk 6ft) but actual fence height is around 4.5ft
and the open lattice will run at the same level, the planks will be shortened to match the side where it is lower.
Fence along the right side of house will be 6ft total but more open lattice area - aprox 2.5-3ft.

