



Town of Youngville
Board of Adjustment
P. O. Box 190 / 134 US 1A South
Youngville, NC 27596
(919) 925-3401 – Town Hall / (919) 925-3402 – Fax
CustomerService@TownofYoungville.org
www.townofyoungville.org

**BOARD OF ADJUSTMENT
TOWN OF YOUNGVILLE
AGENDA**

**JANUARY 11, 2022
7:00 PM**

**YOUNGVILLE TOWN HALL
134 US 1A SOUTH**

- 1. CALL TO ORDER**
- 2. ROLL CALL**
- 3. APPROVAL OF THE MINUTES – MAY 6, 2021**
ACTION REQUESTED: APPROVE AS SUBMITTED
- 4. OLD BUSINESS - NONE**
- 5. NEW BUSINESS**
 - A. REQUEST FOR VARIANCE (#VAR-211109) – 123 SE RAILROAD STREET – THE VICTORIAN, YOUNGVILLE**
- 6. REPORTS AND OTHER BUSINESS**
- 7. ADJOURN**

This is a public meeting and is subject to North Carolina open meetings and public records law. To preserve the public record and increase transparency, video and audio recordings are performed at all public meetings. Please note these recordings, the clerk's detailed minutes of all meetings, and any documents reviewed during meetings are public domain and may be disclosed to third parties.



Town of Youngsville

Board of Adjustment

P. O. Box 190 / 134 US 1A South

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MINUTES BOARD OF ADJUSTMENT

MAY 6, 2021
7:00PM

YOUNGVILLE COMMUNITY HOUSE

Chairman Fonzie Flowers called the meeting of the Town of Youngsville Board of Adjustment to order at 7:00 pm. Chairman Flowers initiated a roll call. In attendance were Chairman Fonzie Flowers, Members Terry Hedlund, Larry Wiggins, Scott Brame, and Catherine Redd, Town Administrator Phillip Cordeiro, Town Attorney Katie Barber-Jones, Planning / Zoning Administrator Erin Klinger, and Town Clerk Emily Hurd. Member Joseph Johnson was not in attendance.

The first item on the agenda was to approve the minutes from the February 6, 2020 Board of Adjustment Meeting.

MOTION: TO APPROVE THE MINUTES FROM THE FEBRUARY 6, 2020 BOARD OF ADJUSTMENT MEETING

The motion was made by Member Redd and was seconded by Member Brame. The motion passed unanimously, 4-0.

The next item on the Agenda was Old Business. There was no Old Business.

The next item on the Agenda was New Business. The first item under New Business was an appeal of Staff decision for 321 N Nassau Street, Project #SPR-201012.

Chairman Flowers asked Attorney Barber-Jones to give an outline of hearing conduct. Attorney Barber-Jones explained the Board sits as a quasi-judicial unit, meaning they sit as judges similar to a court proceeding. The Board of Adjustment will decide what facts are shown from evidence and testimony given during the hearing, and then use their judgment to decide how the Youngsville Development Ordinance should be applied to the particular set of facts.

This quasi-judicial role is different from when the Board acts in a legislative capacity, which is the Board decides what the law should be and can take constituents' opinions and other knowledge into account when making the decision. Often, when making a legislative decision,

the Board will encourage general public comment. When acting in a quasi-judicial role, the Board of Adjustment is limited to the evidence presented during the hearing or in the packet distributed to the Board and the parties before the hearing, which forms the record. The Board must make its decision based on the competent, relevant, and substantial evidence in the record. The decision will be made by a simple majority vote of the Board.

State law sets specific procedures and rules concerning how the Board must make its decision, to protect the constitutional due process rights of the parties. The hearing is open to the public, and parties with standing have the right to participate fully. Town staff, the applicant, the landowner, and anyone with standing may present evidence, witness testimony, and make legal arguments. Along with the Members of the Board, the parties may also ask questions of any witnesses testifying. If you are speaking as a witness tonight, please focus on the facts and standards, not personal preference, or opinion.

Witnesses must swear or affirm their testimony. At this time, the oath for all individuals who intend to provide witness testimony will be administered.

Town Clerk Hurd swore in those wishing to testify; Erin Klinger, Jim Pendergrass, Walter Cortese, Julie Dove, Dennis Cyrus, Danielle Cyrus, and Janice Pearce.

Klinger gave a preliminary statement to describe the case before the Board. She stated the Board was here to consider an appeal of Staff decision for 321 N Nassau Street. Klinger explained she met with Ryan Tyrell and noted Mr. Tyrell submitted a revocation request that was received by Staff on May 6th.

Chairman Flowers asked if there were any procedural objections. Klinger noted there was a procedural objection based on the revocation of the permit, noting this negated the purpose of the Board of Adjustment Hearing. Attorney Barber-Jones advised the Board that if there was no longer a decision to review, then they must dismiss the appeal without prejudice. She explained this would allow the applicant to be heard should Mr. Tyrell wish to have the permit renewed or reopened.

MOTION: TO DISMISS THE APPEAL OF STAFF DECISION FOR 321 N NASSAU STREET, PROJECT #SPR-201012 WITHOUT PREJUDICE

The motion was made by Member Redd and seconded by Member Brame. Member Wiggins asked for clarification and Klinger explained this stopped all construction. Cordeiro explained the landowner has the right to make improvements to their property within the bounds of the Youngsville Development Ordinance. When asked, Klinger stated the property owner would receive notification regarding the outcome. The motion passed unanimously, 4-0.

Attorney Barber-Jones noted the effect of this decision was the revocation of the permit in question. Attendees proceeded to ask questions regarding the property at 321 N Nassau Street that did not relate to the appeal. Staff answered questions and referred attendees to office hours for further discussion of their concerns.

The next item on the agenda was Reports and Other Business. Klinger stated she had nothing further to add.

The meeting adjourned at 7:25pm upon a motion made by Member Brame, seconded by Member Wiggins, and passed unanimously, 4-0.

DRAFT



Town of Youngsville

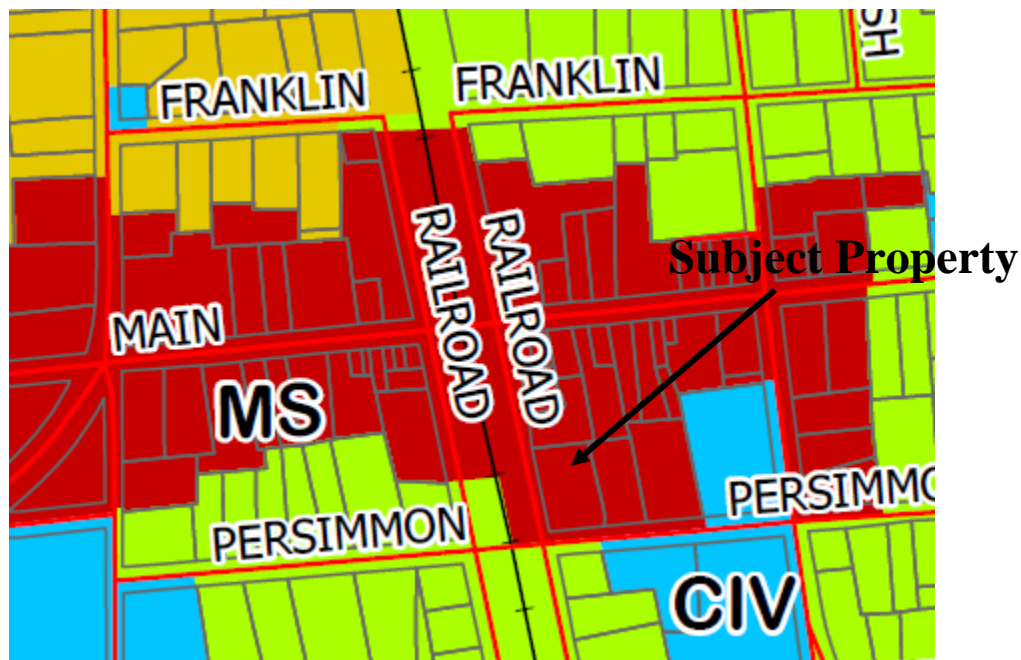
Memorandum

From: Erin Klinger, Planning and Zoning Administrator
To: Board of Adjustment
Date: December 20, 2021
Subject: Consider a Variance, # VAR-211109, 123 SE Railroad Street (PIN 1852-57-0913)
Encl: (1) Variance Application

Request:

The applicant, Brian Whitley, is requesting a variance from Section 2.13-2(B) of the Youngsville Development Ordinance (YDO) to build a ten-foot tall privacy fence along East Persimmon Street. This section currently dictates that, in a residential, mixed-use, or commercial district (SFR, RMST, MS, MU, TNDO, or C-1), a fence or wall in the established front and side yards of a building abutting a street shall be a maximum of five (5) feet in height.

The applicant wishes to build a taller fence than what is currently permitted in order to provide a more substantial divide between properties that are commercially and residentially-zoned. As stated in the variance application, the applicant believes that adhering to the current fence height requirements would not serve his intended purpose.



Pre-application Conference

The applicant conferred with the Planning and Zoning Administrator via teleconference on November 8, 2021, as well as on subsequent dates via email. Comments from Planning Staff are provided below.

Comments from Planning Staff:

1. The lots adjacent to the subject property are zoned Residential Main Street Transition (RMST), while the subject property is zoned Main Street (MS).
2. Planning staff acknowledges that the applicant believes the proposed fence height will alleviate issues with adjacent property owners; however, this cannot be the basis for granting a variance.
3. Planning staff have provided the applicant with alternatives to his request that would comply with the YDO and hence negate the need for a variance.
4. Planning staff recommend denial of the variance as requested as the applicant has not provided sufficient evidence in support of his variance request.

Notification

On December 31, 2021, Town staff mailed a Notice of Evidentiary Hearing to property owners within 100 feet on all sides of the subject property and posted an Evidentiary Hearing Notice sign in accordance with Section 6.1-4 of the YDO.

RESOLUTION A – APPROVING A DIMENSIONAL VARIANCE

RESOLUTION APPROVING AN APPLICATION FOR VARIANCE FROM YOUNGSVILLE DEVELOPMENT ORDINANCE SECTION 2.13-2(B), FENCE HEIGHT REGULATIONS, FOR PROPERTY LOCATED AT 123 SE RAILROAD STREET (PIN 1852-57-0913, PROJECT # VAR-211109)

WHEREAS, having reviewed the applicant's argument and various documents and other evidence submitted at the hearing on this matter, and having heard public comment on the application, the Board of Adjustment finds as facts those facts summarized by the Chair at the conclusion of the Board's hearing of this matter and hereby incorporates them by reference as Board Findings of Fact; and finds that such facts are supported by competent, material, and substantial evidence presented to the Board; and

BE IT RESOLVED by the Board of Adjustment of the Town of Youngsville that, having considered the requested variance from Youngsville Development Ordinance Section 2.13-2(B), for property located at 123 SE Railroad Street and identified as Franklin County Parcel Identification Number 1852-57-0913, requested by Brian Whitley, to exceed the maximum fence height by five (5) feet, the Board makes the following findings:

1. Unnecessary hardship would result from the strict application of the ordinance.
2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography.
3. The hardship did not result from actions taken by the applicant or the property owner.
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.

BE IT FURTHER RESOLVED that the Board hereby approves the application for a variance from Youngsville Development Ordinance Section 2.13-2(B), for property located at 123 SE Railroad Street.

Signed – Board of Adjustment Chair, Mayor Fonzie Flowers

This the ____ day of _____, 2022.

RESOLUTION B – DENYING THE DIMENSIONAL VARIANCE

RESOLUTION DENYING AN APPLICATION FOR VARIANCE FROM YOUNGSVILLE DEVELOPMENT ORDINANCE SECTION 2.13-2(B), FENCE HEIGHT REGULATIONS, FOR PROPERTY LOCATED AT 123 SE RAILROAD STREET (PIN 1852-57-0913, PROJECT # VAR-211109)

WHEREAS, having reviewed the applicant's argument and various documents and other evidence submitted at the hearing on this matter, and having heard public comment on the application, the Board of Adjustment finds as facts those facts summarized by the Chair at the conclusion of the Board's hearing of this matter and hereby incorporates them by reference as Board Findings of Fact; and finds that such facts are supported by competent, material, and substantial evidence presented to the Board; and

BE IT RESOLVED by the Board of Adjustment of the Town of Youngsville that, having considered the requested variance from Youngsville Development Ordinance Section 2.13-2(B), for property located at 123 SE Railroad Street and identified as Franklin County Parcel Identification Number 1852-57-0913, requested by Brian Whitley, to exceed the maximum fence height by five (5) feet, the Board does not make the following findings:

1. Unnecessary hardship would result from the strict application of the ordinance.
2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography.
3. The hardship did not result from actions taken by the applicants or the property owner.
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.

BE IT FURTHER RESOLVED that the Board hereby denies the application for a variance from Youngsville Development Ordinance Section 2.13-2(B), for property located at 123 SE Railroad Street.

Signed – Board of Adjustment Chair, Mayor Fonzie Flowers

This the ____ day of _____, 2022.

VARIANCE WORKSHEET
FINDINGS OF FACT / CONCLUSIONS OF LAW

Pursuant to Youngsville Development Ordinance Section 6.1-4, the Board of Adjustment conducted a quasi-judicial hearing on the variance request by
Brian Whitley, 123 SE Railroad Street

from the following provision(s) of the Youngsville Development Ordinance:
Section 2.13-2(B) stating in a residential, mixed-use, or commercial district (SFR, RMST, MS, MU, TNDO, or C-1), a fence or wall in the established front and side yards of a building abutting a street shall be a maximum of five feet in height.

The Board of Adjustment's decision shall be based on competent, material, and substantial evidence. All persons providing evidence shall be sworn or affirmed by the Chairman or the Clerk to the Board. Prior to hearing evidence, the Board of Adjustment will hear and consider procedural objections, if any, from any person with standing. The concurring vote of four-fifths (4/5) of the members of the Board of Adjustment shall be necessary to grant the variance. The Board of Adjustment shall not grant a variance until it makes each of the following findings:

6.1-6(A) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate, in the absence of a variance, that no reasonable use can be made of the property.

Proven? _____ Yes/True X No/False

Hardship: The applicant believes that adhering to the current fence height requirements would not serve the intended purpose of the fence as a visual and auditory barrier between the subject property and adjacent residential properties.

Evidence: The applicant has not provided sufficient land-use based evidence demonstrating that an unnecessary hardship would result from the strict application of the ordinance. Moreover, the hardship must be more than just an inconvenience to the property owner. If a property owner can comply with the requirements of the zoning ordinance, the fact that they do not wish to do so is not a legitimate basis for granting a variance.

6.1-6(B) The hardship results from conditions that are peculiar to the property such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, shall not be the basis for granting a variance.

Proven? _____ Yes/True X No/False

Conditions: The subject property is the last commercially-zoned (MS) property before residential zoning (RMST) begins.

Evidence: While the subject property is indeed adjacent to residentially-zoned properties, this is not the only location in Town where this occurs. Commercially-zoned properties (MS) abut residentially-zoned properties (SFR-3 and RMST) along the north side of Main Street as well as along Park Avenue (SFR-1/2 vs. C-1/IND) and S. Cross Street (SFR-2 across from IND). A variance is not the appropriate remedy for conditions or hardships that are shared by the neighborhood. Moreover, factors concerning the property itself must be the basis for granting a variance, not the personal circumstances of the property owner.

6.1-6(C) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as self-created hardship.

Proven? ☐ **Yes/True** ☒ **No/False**

Cause: The hardships developed after the applicant purchased the subject property. The applicant states that he operates the business on the subject property lawfully and respectfully; however, the hardship is still present.

Evidence: While restrictive covenants and other legal limitations may be a factor in determining hardship, if a self-imposed legal limitation was created after the effective date of a zoning limitation, the legal limitation may be viewed as a self-created hardship and no variance shall be granted. Furthermore, variances run with the land, and land-use decisions are based on the property and impacts of development, not on the particular owner. Therefore, someone purchasing the lot from the current owner would have the same legal position that the current owner would if the variance were to be granted.

6.1-6(D) 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.

Proven? ☐ **Yes/True** ☐ **No/False**

Cause: The applicant has stated that the proposed variance will benefit not only himself, but the adjacent property owners as well, and says it will also alleviate issues with adjacent property owners.

Evidence: The applicant has not provided sufficient evidence demonstrating that the requested variance is consistent with the intent of the ordinance.

- 6.1-5 Appropriate conditions, which must be reasonably related to the condition or circumstance that results in the need for the variance, may be attached to any variance approval granted by the Board of Adjustment.

Conditions:

1. _____

Approved? ☐ **Yes** ☐ **No**

2. _____

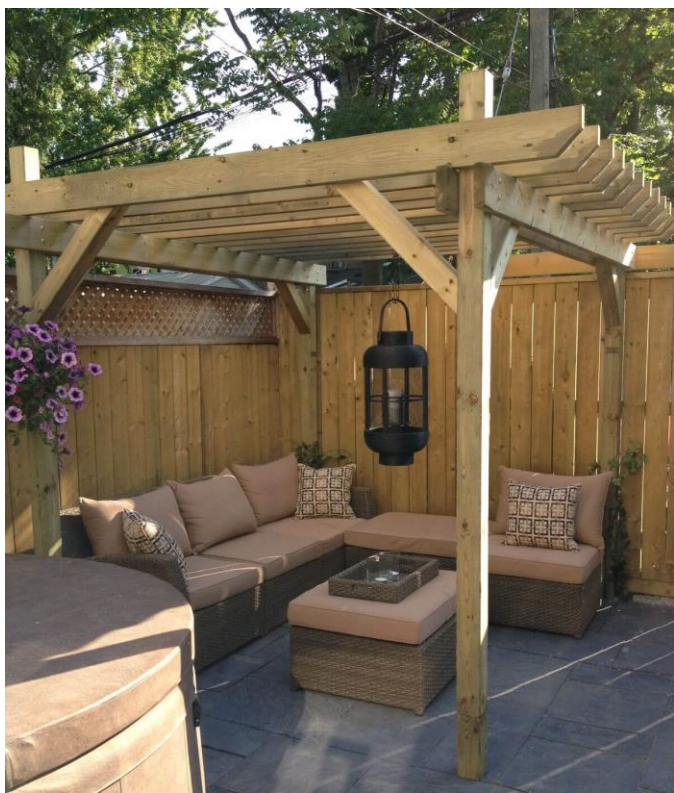
Approved? ☐ **Yes** ☐ **No**

3. _____

Approved? ☐ **Yes** ☐ **No**

The Board of Adjustment may also recommend alternatives to the applicant in lieu of granting a variance. Alternatives could include, but would not be limited to, a zoning ordinance text amendment to increase the maximum height for a fence or construction of a structure, such as a pergola, that complies with existing zoning ordinance requirements for accessory structures. The applicant has been advised that structures similar to the ones on the following page(s) would be permissible under current regulations in the absence of a variance.





Erin Klinger

From: The Victorian Youngsville <info@thevictoriansyoungsville.com>
Sent: Wednesday, December 1, 2021 2:22 PM
To: Erin Klinger
Subject: Re: Fence Information
Attachments: Capture.JPG

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Erin,

Sorry for the delay in responding. Time, as of now, is not an issue for us since the Fall season is over and we don't get back into the swing of things until the Spring time. Thank you for providing me with some ideas that would have a quicker turnaround time, but unfortunately I do not see those options being useful given the layout of our property.

As for the reasons why my request meets the State standards for a variance, I am not sure what else you would like me to provide at this time to illustrate the difficulties we have as the last commercially zoned property, before residential begins, and the difficulties I have described with the neighbor next door. The limitation on the height of the wall will make it not serve its intended purpose.

It has come to my attention that the issues my neighbor has been having may in fact not be related to my business at all- yet I have to deal with the problems since I am the closest commercial property to them. After my conversations with my neighbor, I have been told the "issues" are specifically coming from the bass produced by music. At our venue, we do not allow the use of subwoofers and REQUIRE all DJs and musicians to have bass turned down all the way- we actually have contracts with all DJs/musicians that state this requirement and failure to abide by it will result in the cancellation of the event.

The main incidents that my neighbor addressed to me happened to be on nights the neighboring bar had live music. I have, on multiple occasions, completed sound checks while both the bar, and our venue, have had events going on, and the music from the bar overpowers the music produced by my business. Even though I am not creating the issue, I am having to deal with the retaliation from our neighbor in the form of untasteful signage/flags overhanging my property for all the guests to see, loud speakers blaring directly towards my property while ceremonies are being held, smokers being fired up right on the edge of the street in an effort to "smoke out" my ceremonies, football games being blasted over loudspeakers, etc.

I met with the lady next door, on Saturday 11/20, during one of my weddings around 9pm when she arrived home from work. We met in the street on E. Persimmon, between her house and my business, and I did a sound check with her present. With the sound at the exact level that we always keep it (around 60 dbs and lower) she told me that she could not hear anything inside her home, on her front porch or even in the backyard; where I had the sound level- she said it was perfectly fine! While speaking with her, it was brought to my attention that the last time they had a big problem was on 10/23, the same day the neighboring bar had their largest band ever ([Link for reference](#)). The other time it was an issue, I do not recall the specific day, but it was 6 months ago, there was another band playing next door on a day that we did not even have an event! I know this because I received a 1 star review from someone the morning after, as did the bar (from the same person). We fought with Google for months to take it down, but they refused- that's a whole different story (attached for reference).

I'm hoping these comments will help whoever needs more clarification, better understand our need of a sound barrier wall and why we did not bring these hardships upon ourselves, that we are not fully responsible for the reasons why my

neighbor retaliates, and how this tremendously affects my business (NO ONE wants to get married with a confederate flag waving above thier heads, with plumes of smoke engulfing themselves and their guests, and with heavy metal music blaring in the background). This wall is not something I "want" to do, nor will it directly benefit me (aside from hiding the unwanted visuals) but will in fact, help the community as the town continues to grow.

Best,
Brian Whitley

On Mon, Nov 22, 2021 at 8:10 AM Erin Klinger <eklinger@townofyoungsville.org> wrote:

Good morning Brian,

I apologize for the delay in getting back to you. Last week was pretty hectic.

One of the difficulties that we are facing in processing your variance application is that it must provide reasons why your request meets the State standards for a variance, including undue hardship, the cause of the hardship, and how the hardship is unique to the property. We understand the dilemma that you are facing, and we wanted to make you aware of an option that may serve your needs and desired timeframe for action even better than requesting a variance.

If you were to apply for a permit for a structure, like a pergola, instead of a fence, we could approve it today, provided it's at least five feet off of the property line. Our suggestions is something along the lines of the attached pictures.

I do apologize again for any inconvenience. Please let me know if you have any questions.

Sincerely,

**Erin Klinger, AICP, CZO | Planning and Zoning
Administrator**

Town of Youngsville

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Town Hall: 919.925.3401	134 US 1A South (Physical)
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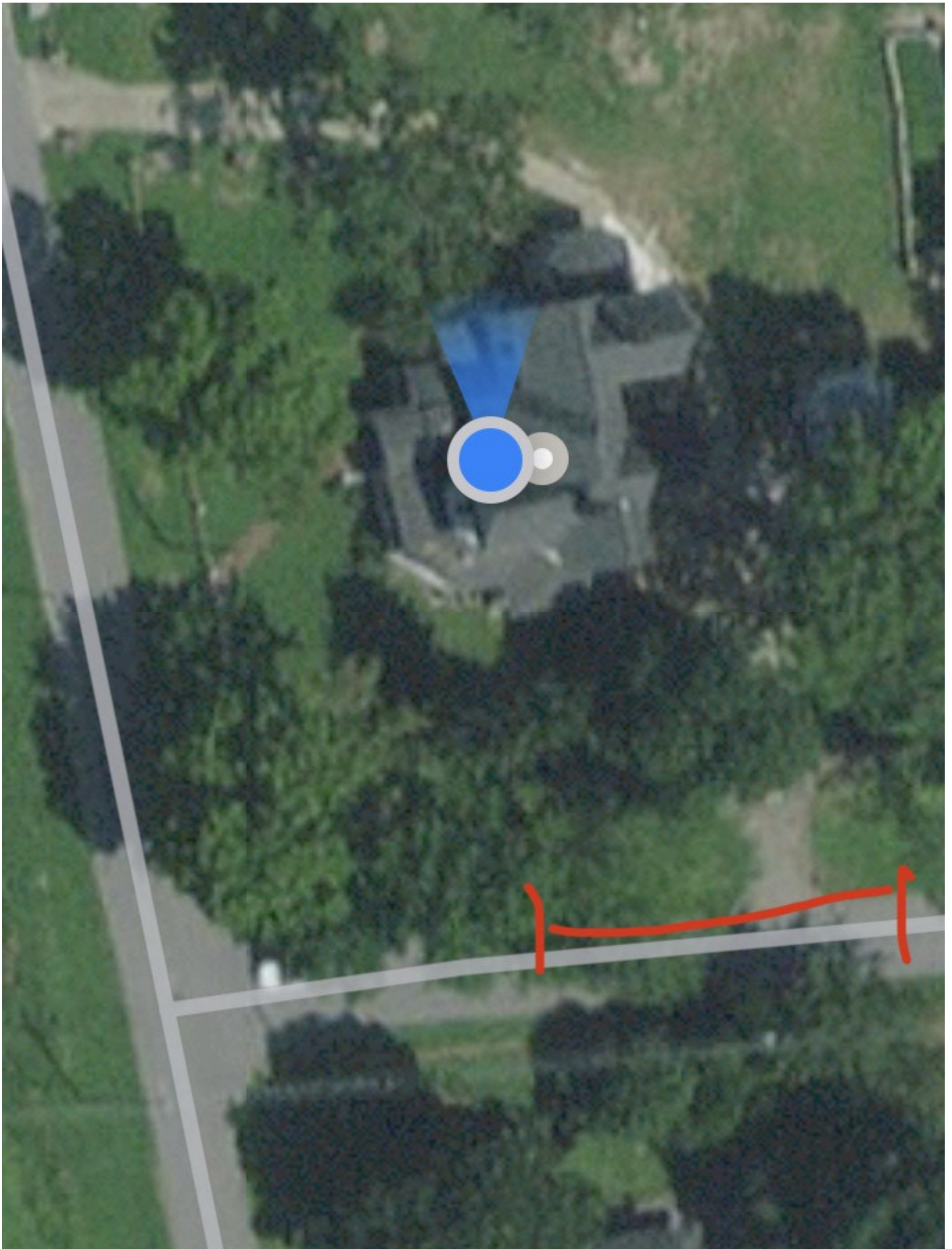
From: The Victorian Youngsville <info@thevictoriansyoungsville.com>
Sent: Monday, November 15, 2021 5:17 PM
To: Erin Klinger <eklinger@townofyoungsville.org>
Subject: Re: Fence Information

Hi Erin,

No worries at all! I have attached a quick pic of where we would like the fence to go along E. Persimmon St. (the red line). The end of the wall is about 75' from the intersection of Railroad and Persimmon so there is no obstruct of view at the corner and the length of the wall is approximately 75-85 ft. There won't be any impact on storm water runoff as it will run parallel with the currently existing borrow ditch and will not re-direct any water flow. I am unsure of the material as we are currently researching what would be best for acoustic diffusion- would material be a determine factor?

Thanks!

Brian Whitley



On Mon, Nov 15, 2021 at 16:37 Erin Klinger <eklinger@townofyoungsville.org> wrote:

Good afternoon Brian,

Hope you are doing well. I apologize for not returning your email sooner. I've discussed your variance request with my co-workers, and we believe that additional information needs to be submitted before application can be made to the Board of Adjustment. There are a few other sections of the Youngsville Development Ordinance which may be pertinent to your application, but we are unable to evaluate them given the provided information regarding the proposed fence. Please include information regarding the items below, which will then allow us to proceed.

1. Where exactly on the property will the fence be located? This information is necessary before staff can evaluate what other potential impacts may need to be evaluated, for example section 2.11-1, sight triangles on corner lots.
2. What will the total area of land disturbance be?
3. Have you considered stormwater impacts?
4. What material will the fence be made of?

I do apologize for any inconvenience.

Sincerely,

**Erin Klinger, AICP, CZO | Planning and Zoning
Administrator**



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[YouTube](#)

From: The Victorian Youngsville <info@thevictorianyongsville.com>

Sent: Friday, November 12, 2021 1:25 PM

To: Erin Klinger <eklinger@townofyoungsville.org>

Subject: Re: Fence Information

Hi Erin,

My apologies for getting back to you so late. We had a meeting with our neighbor and one of the officers so we could hopefully reconcile our differences. Our neighbor is in support of us building a "wall" to help eliminate sound and the officer in attendance said he will make sure we have the support from the police department on this matter as well. I will go ahead and submit payment. Thank you for all the help with this.

Best,

Brian Whitley

On Tue, Nov 9, 2021 at 3:26 PM Erin Klinger <eklinger@townofyoungsville.org> wrote:

Brian,

Thanks for getting this sent over so quickly. I apologize if I didn't mention this on the phone, but there is a fee due with the application of \$350. Fee payment can be made over the phone with a credit card by calling 919-925-3401 (option 2) or on our [website](#). If making a web payment, please select "Planning & Zoning Fee" from the drop-down menu and enter \$350 in the amount due field. Alternatively, you're welcome to pay at Town Hall with check or card.

I'm going to forward your application to the town's attorney and to Nathan for their review, and to our Town Clerk so she can work with the Board of Adjustment (the same members as the Commissioners) to set the date for the meeting. I imagine that will likely occur at the BOC meeting on the 18th. I'll let you know when the meeting will be held as soon as I have that information.

In the meantime, can you forward along any additional information you might have that you think will be helpful to your case? Please also let me know if you have any questions!

Sincerely,

**Erin Klinger, AICP, CZO | Planning and Zoning
Administrator**



Town of Youngville

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[YouTube](#)

From: The Victorian Youngsville <info@thevictorianyongsville.com>
Sent: Tuesday, November 9, 2021 2:45 PM
To: Erin Klinger <eklinger@townofyoungsville.org>
Subject: Re: Fence Information

Hi Erin,

Thanks again for taking the time to speak with me. Attached is the completed application. Please let me know if you see anything missing and I will be sure to correct it.

Best,

Brian Whitley

On Tue, Nov 9, 2021 at 2:14 PM Erin Klinger <eklinger@townofyoungsville.org> wrote:

Brian,

Here's that variance application for you. Please let me know if you have any questions or if there's anything else you need!

Sincerely,

**Erin Klinger, AICP, CZO | Planning and Zoning
Administrator**



Town of Youngsville

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[YouTube](#)

From: The Victorian Youngsville <info@thevictoriansyoungsville.com>

Sent: Tuesday, November 9, 2021 1:17 PM

To: Erin Klinger <eklinger@townofyoungsville.org>

Subject: Re: Fence Information

Hi Erin,

No problem at all. I was actually going to apologize for annoying you with this, I am sure you have more important things to do! I look forward to your call.

Best,

Brian Whitley

On Tue, Nov 9, 2021 at 1:15 PM Erin Klinger <eklinger@townofyoungsville.org> wrote:

Brian,

I promise I'm not ignoring you! I have a doctor's appointment shortly but will give you a call later this afternoon.

Sincerely,

**Erin Klinger, AICP, CZO | *Planning and Zoning
Administrator***



Town of Youngsville

Office: 919.925.3395

P.O. Box 190 (Mailing)

Town Hall: 919.925.3401

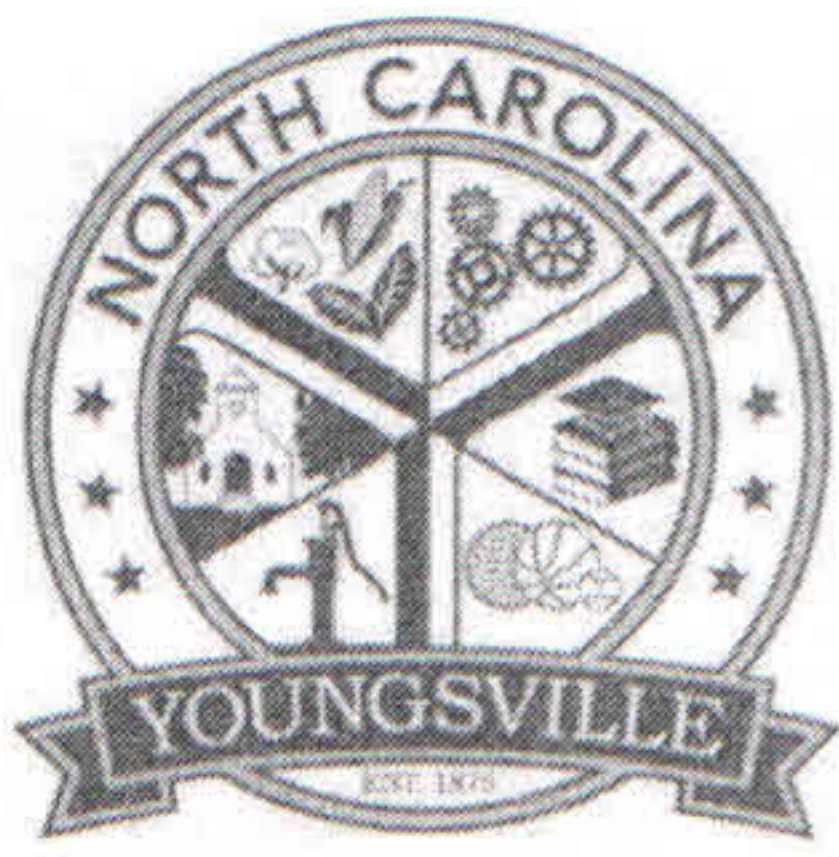
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Youngsville, NC 27596

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TOWN of YOUNGVILLE

Planning and Zoning Department
Youngsville Town Hall
134 US 1A South
Youngsville, NC 27596
t 919-925-3401
f 919-925-3402

VARIANCE APPLICATION

Boards of Adjustment in North Carolina function as a quasi-judicial body. Therefore, ex parte contact between applicants, other interested persons, or their respective representatives and members of the Board is inappropriate and not permitted.

PROCESS INFORMATION and FILING INSTRUCTIONS

1. Each applicant shall hold a pre-application meeting with the Planning and Zoning Administrator to discuss the proposed variance and to become familiar with the applicable requirements and the variance process. Applicants shall submit variance applications to the Planning and Zoning Department
2. The applicant must complete this application in full. **This application will not be processed unless all information requested is provided.** Failure to provide complete, specific detailed information may result in a denial or delay of the Board of Adjustment's decision.
3. This is a quasi-judicial process that requires a public hearing and public notification including mailed notice to adjacent property owners and a sign posted prominently on the property (Section 6.1-4 of the Youngsville Development Ordinance).
4. Per Section 6.1-3 of the Youngsville Development Ordinance (YDO), all applications are to be reviewed for compliance by the Planning and Zoning Administrator, and then forwarded to the Board of Adjustment for consideration at a public hearing which are held quarterly (February, May, August, and November) the first Thursday of the month in the Youngsville Community House, located at 115 E Main St.
5. After conducting a public hearing, the Board of Adjustment may: deny the request, conduct an additional public hearing regarding the request, grant the request, or grant the request with conditions. A concurring vote of four-fifths of the members of the Board of Adjustment shall be necessary to grant a variance. The Board of Adjustment shall not grant a variance unless it makes all the findings found in Section 6.1-6 of the YDO.
6. Please see the adopted fee schedule for the current filing fee.
7. For additional information or assistance, call the Planning Department at 919-925-3401.

For Department Use Only:

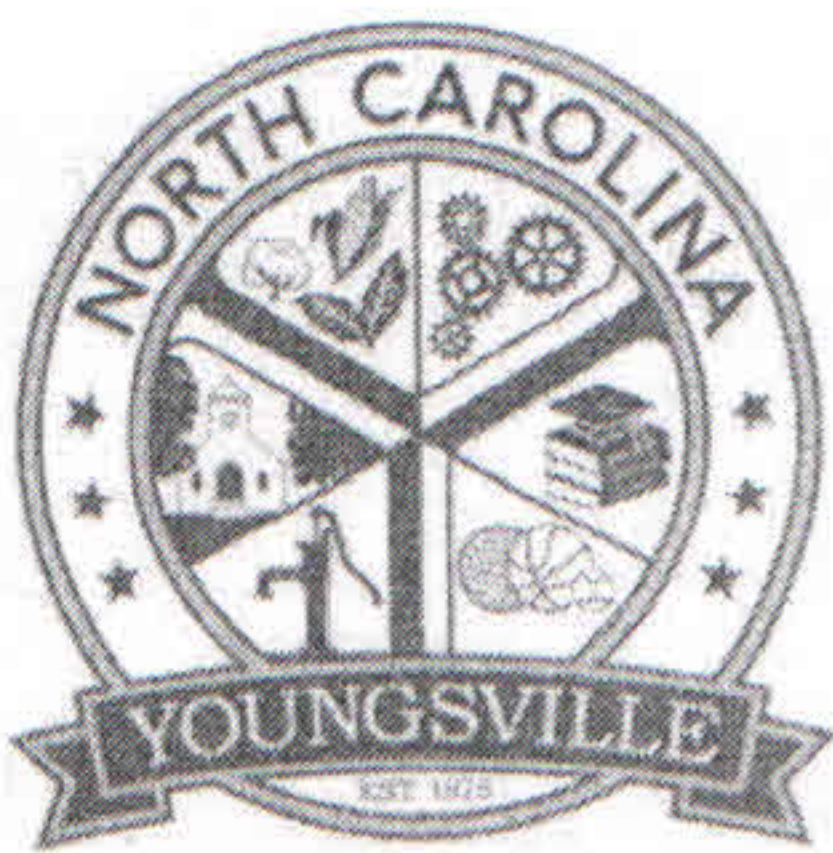
BOA Case #: _____

Submittal Date: _____

Receipt Number: _____

Decision Date: _____

Authorized Signature: _____



TOWN of
YOUNGVILLE

Planning and Zoning Department
Youngsville Town Hall
134 US 1A South
Youngsville, NC 27596
t 919-925-3401
f 919-925-3402

GENERAL INFORMATION

Applicant Name: BRIAN WHITLEY
Mailing Address: 8004 HALIFAX RD. YOUNGVILLE NC 27596
Property Address (if different from mailing): 123 SE RAILROAD ST. YOUNGVILLE
Phone: 919-608-2528 Email: BRIAN.MARSHALL.WHITLEY@GMAIL.COM

Property Owner Name (if different from applicant): _____
Address: _____
Phone: _____ Email: _____

PROPERTY INFORMATION

Property Address/Location: 123 SE RAILROAD ST.
Tax Map ID/PIN: 006186/1852-57-0913 Zoning Classification: MAIN STREET
Lot Dimensions: Length: 198.82' Principal Structure Dimensions: Length: _____
(as applicable) Width: 127.62' + 62' (as applicable) Width: _____
Size (in acres): .759 Height: _____
Accessory Structure Dimensions: Length: _____
(as applicable) Width: _____
Height: _____

VARIANCE INFORMATION

I/we hereby request from the Board of Adjustment the following variance:

PERMISSION TO BUILD A PRIVACY FENCE 10' TALL
ALONG E. PERSIMMON ST. IN ORDER TO PROVIDE A
MORE SUBSTANTIAL DIVIDE BETWEEN COMMERCIAL AND
RESIDENTIAL.



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FACTORS RELEVANT TO THE ISSUANCE OF A VARIANCE

Section 6.1-6 of the YDO requires compliance with the following findings of fact in order for the Board of Adjustment to grant a variance. In the spaces provided, indicate the *facts* that you intend to show to convince the Board it can properly reach each of the four required findings.

1. Explain how the strict application of the ordinance would result in an unnecessary hardship. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

A 7' FENCE WOULD NOT BE TALL ENOUGH TO
SERVE THE INTENDED PURPOSE OF THIS FENCE.

2. Explain how the hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, shall not be the basis for granting a variance.

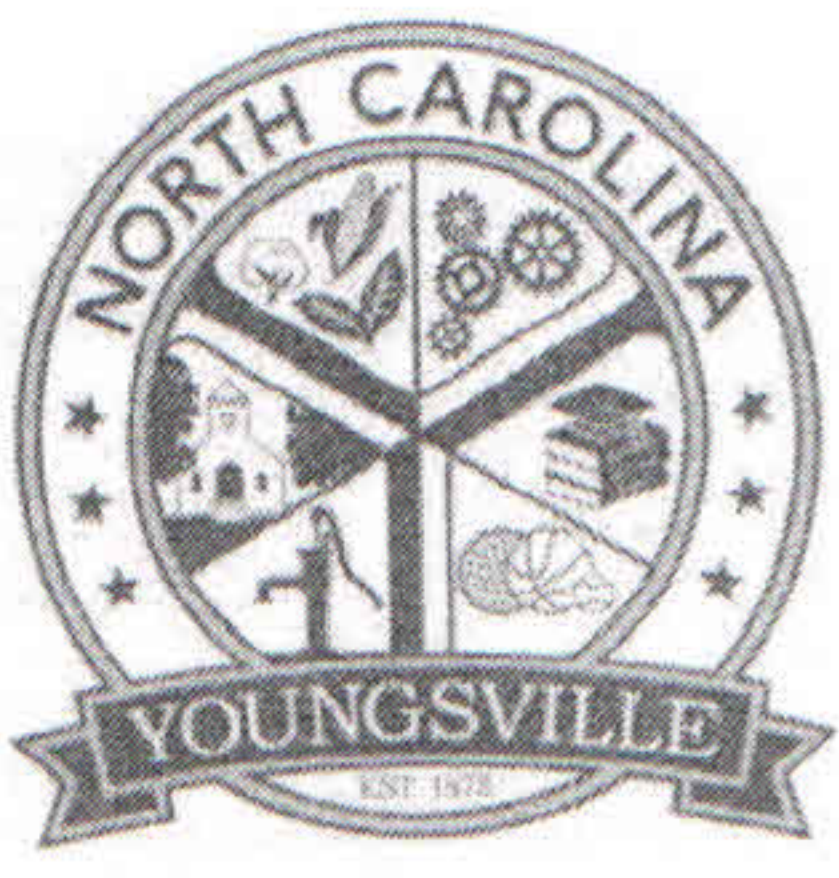
WE ARE THE LAST COMMERCIAL PROPERTY BEFORE
RESIDENTIAL BEGINS.

3. Explain how the hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

THE HARDSHIPS HAVE DEVELOPED AFTER THE
PURCHASE OF OUR PROPERTIES. WE OPERATE OUR
BUSINESS LAWFULLY AND RESPECTFULLY, BUT CONCERNS ARE
STILL ~~PRESENT~~ PRESENT.

4. Explain how 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.

THIS WILL BE BENEFICIAL TO NOT ~~ONLY~~ ONLY
MYSELF, BUT THE ADJACENT BUSINESSES AND
RESIDENCE AS WELL. WILL ALSO ALLEVIATE CURRENT
ISSUES WITH THE ADJACENT RESIDENT.



TOWN of YOUNGVILLE

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SIGNATURES

I, as the landowner, hereby certify that all the information contained herein is true to the best of my knowledge; and by accepting this application (if approved) shall in every respect conform to the terms of this application and to the provisions of the Youngsville Development Ordinance. Any violation of the terms stated immediately revokes this Petition and any other permits issued in reliance upon the same. I further acknowledge that no work will begin, use started, or building occupied until the proper Town of Youngsville Certificate of Zoning Compliance and/or Franklin County Building Permit has been issued, if necessary.

BRIAN WHITLEY
(Applicant Print Name)


(Applicant Signature)

11-09-21
(Date)



TOWN of
YOUNGVILLE

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NOTE: If the person who has requested the Board of Adjustment to take action on a particular piece of property is not the owner of the property and does not have a binding option to purchase the property, then the actual owner(s) of the land must complete this form. If the person who is requesting the Board of Adjustment to take action on a particular piece of property is the owner of the property or has a binding option to purchase the property, please disregard this form. Attach a copy of the option to purchase if the applicant has a binding option to purchase the property.

I/We _____ am/are the owner(s) of the
property located at _____.

I/We hereby authorize _____
to appear by consent before the Youngsville Board of Adjustment in order to ask for a variance to

at this location. I/we understand that the variance, if granted, is permanent and runs with the land unless otherwise specified. I/we authorize the Town of Youngsville to advertise and present this matter in my/our name as the owner of the property.

If there are any questions you may contact _____ at my address,

or by telephone at (____) _____ or email address _____.

Respectfully yours,

Owner

Date

Owner

Date

_____ County, North Carolina

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and, in the capacity, indicated: _____

Date: _____

Notary Public



Town of Youngville

Post Office Box 190, Youngville, North Carolina 27596

Phone: 919.925.3401 | Fax: 919.925.3402

December 28, 2021

RE: Variance Request, 123 SE Railroad Street

1. A Public Hearing Notice was sent to adjoining property owners (see attached list) on December 30, 2021 to inform them of the Public Hearing scheduled for January 11, 2022 at 7:00 p.m. at Youngville Town Hall to hear comments on a variance request submitted by Brian Whitley to increase the allowable fence height for 123 SE Railroad Street (PIN 1852-57-9013) from five (5) feet to ten (10) feet.
2. The Public Hearing Notice Sign was posted on December 30, 2021.

Erin Klinger

Planning and Zoning Administrator

NOTICE OF PUBLIC HEARING

The Town of Youngsville Board of Adjustment will hold a quasi-judicial Public Hearing on January 11, 2021 at 7:00 p.m. at Youngsville Town Hall located at 134 US 1-A South, Youngsville, NC, in consideration of the following application:

X Variance from Section 2.13-2(B) of the Youngsville Development Ordinance to increase the allowable fence height for 123 SE Railroad Street (PIN 1852-57-9013) from five (5) feet to ten (10) feet.

Applicant(s) Brian Whitley, 123 SE Railroad Street

Location The property for which a variance is being requested is located at 123 SE Railroad Street, owned by Youngsville Victorian Incorporated.

Tax Record # 006186 Acres or Lots 0.76 acres

The above-named applicant has made an application to the Board of Adjustment for a variance from the allowable fence height in Youngsville Development Ordinance (YDO) Section 2.13-2(B).

ADJOINERS FOR PINs 1842-88-6420 and 1842-89-9114

PINs 1852-57-2932, 1852-58-1030,
and 1852-48-9056
Youngsville Victorian Incorporated
123 SE Railroad Street
Youngsville, NC 27596

Applicant
Brian Whitley
8004 Halifax Road
Youngsville, NC 27596

PIN 1852-58-0149
North Forest LLC
4441 106 Six Forks Road
Suite 278
Raleigh, NC 27609

PIN 1852-57-0732
Rodney Bowen
201 SE Railroad Street
Youngsville, NC 27596

PIN 1852-57-2700
Donald and Barbara Simpson
503 Carthage St
Sanford, NC 27330

PINs 1852-58-1220 and 1852-58-1179
Winslow Holdings LLC
PO Box 610
Youngsville, NC 27596

PIN 1852-48-9125
Best and Associates Consulting LLC
PO Box 217
Youngsville, NC 27596

TOWN OF YOUNGSVILLE BOARD OF ADJUSTMENT QUASI JUDICIAL HEARING

Conduct of Meeting Checklist

- _____ 1. Call to Order. The Chair shall call the Board of Adjustment meeting to order.
- _____ 2. Roll call. Determine if a quorum is present (3/5 for Special Use & 4/5 for Variance)
- _____ 3. Approval of previous meeting's minutes
- _____ 4. Old Business. Tabled requests and cases from previous meetings to be decided or tabled.
- _____ 5 New Business. Hear new cases and requests, hold hearing, make decisions or continue.
- _____ 6. Outline of hearing conduct: Briefly comment to all present on the quasi-judicial nature of the case before the Board and conduct of the hearing. Town Attorney or Chair to address this.

Chair or Attorney should explain how this is similar to a court case with witnesses giving testimony and other parties having the ability to question or cross examine the witnesses. See the attached guidelines.

- _____ 7. The Chair or his/her designee will swear in all persons wishing to present testimony.

State that all those that are wishing to give evidence during a hearing are to be sworn including planning staff presenting evidence (by the Chair or Clerk). Any party may appear in person or by agent or Attorney at the hearing.

- _____ 8. The Chair or his/her designee, will give a preliminary statement describing the case and identifying the property involved and the issue for the Board.

Staff should briefly identify the location and nature of the Variance or Special Use, the identity of the applicant and any procedural history of the matter necessary to identify the issues for the Board.

- _____ 9. The Chair asks, does any Board Member have any of the following possible disqualifications from hearing or voting on this case? Town Attorney to inquire of all Board Member re: conflict. Attorney or Chair may address this.

Conflict of Interest/Bias. A Board Member shall not participate in a vote when a Member has an impermissible conflict of interest. Impermissible conflicts include, but are not limited to:

- 1. a fixed opinion prior to hearing the matter that is not susceptible to change;
- 2. undisclosed ex parte communications;
- 3. or a financial interest in the outcome of the matter.
- 4. a close familial, business, or other associational relationship with an affected person or entity;

If an objection is raised to a Member's participation and that Member does not recuse himself or herself, the remaining Members shall by majority vote rule on the objection.

The Member may excuse himself because of the potential conflict, or may ask the Chair to make a determination. The Chair shall announce any recusals prior to the hearing affected by such recusals.

_____ 10. The **applicant will present evidence** in support of his/her application. **Evidence** includes testimony, application, maps, etc.

For all witnesses, Members of the Board, and other sworn witnesses can cross examine the witness. Each questioner can ask their questions and when done cannot ask other questions of the witness unless based on new evidence or questions asked since that person had an opportunity to ask.

_____ 11. Other witnesses in support of the application may present evidence. **Evidence** includes testimony, contracts, maps, etc.

_____ 12. **The Planning and Zoning Administrator** or designee presents any Staff Findings or evidence. **Evidence** includes testimony, Staff Findings, maps, etc.

_____ 13. Persons opposed to granting the application will present their evidence against the application. **Evidence** includes testimony, contracts, maps, etc.

_____ 14. The parties are permitted to present rebuttals to opposing testimony (directing testimony to the Chair). All witnesses are under oath and the opposing party may cross-examine.

_____ 15. Before voting to close the hearing, the Chairperson or his/her designee will summarize the evidence that has been presented, giving the parties opportunity to make corrections or objections. Also Staff should designate any conditions that the Board should consider.

Close hearing on a vote (motion_____ second _____, Vote :_____)

_____ 16. Deliberate case (all deliberations are open to the public and additional testimony is not taken during deliberations. However, the Board may discuss proposed conditions with the applicant).

_____ 17. Make the decision. **SEE DECISION WORKSHEET ATTACHED**

A. review, clarify, and list of possible findings of fact and possible conclusions for reference in motion (Also SEE attached Decision Worksheet)

B. Negotiate any terms regarding any finding not found to be true. If any findings found untrue even after negotiation, application is denied. If all found true, then application is approved.

_____ 18. Repeat step 6 onward for any other matters or _____ Adjournment on motion.