

**PLANNING COMMISSION**  
**September 10, 2018**

The City of Jackson Planning and Zoning Commission met in regular session in the Council Chambers of the Jackson City Hall at 5:15 p.m. on September 10, 2018 with the following Commission members present: Chairman Randy Ringquist, Tim Beck, Dennis Hample, Dave Lappe, Robert Dorschner, Donnie Schoenrock and City Zoning Administrator/Recording Secretary Dave Maschoff. Also attending were City Administrator Matt Skaret, Frank and Crystal Nelson, Joyce Matasovsky, Cheri Gilbert and Dennis Henrichs. (Planning Commission member Beau Johnson was absent.) (A quorum of the Planning Commission was present.)

**CALL THE MEETING TO ORDER**

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Planning Commission Chairman Randy Ringquist asked for a motion to call the September 10, 2018 meeting of the Planning and Zoning Commission to order.

**BECK/LAPPE moved and it was unanimously carried to open the meeting.**

**APPROVE THE AUGUST 13<sup>TH</sup>/AUGUST 20<sup>TH</sup>, 2018 PLANNING AND ZONING COMMISSION MINUTES**

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Chairman Ringquist asked Commission members if there were any comments or changes to the minutes of the August 13<sup>th</sup> meeting which was continued to August 20<sup>th</sup>, 2018.

**DORSCHNER/SCHOENROCK moved and it was unanimously carried to approve the August 13<sup>th</sup>/August 20<sup>th</sup>, 2018 Planning and Zoning Commission meeting minutes.**

**PUBLIC HEARING ON THE VARIANCE APPLICATION OF FRANK AND CRYSTAL NELSON WHO RESIDE AT 512 NORTH SVERDRUP AVENUE IN JACKSON. IN THEIR APPLICATION, THE NELSON'S PROPOSE TO BUILD AN ACCESSORY BUILDING ON THEIR PROPERTY WHICH IS 1,080 SQUARE FEET IN SIZE, WILL BE 24 FEET FROM THE EDGE OF THE NORTH SVERDRUP AVENUE RIGHT-OF-WAY AND WILL BE TWO FEET FROM THE SOUTH PROPERTY LINE.**

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Frank Nelson informed the Planning Commission that they are still determining exactly where their property line is located.

Nelson explained they do have their property dimensions and the square footage of their property. He said they are still trying to locate exactly where their property line is. Nelson said they are seeking someone who can help them determine that.

Ringquist said a land surveyor could determine the lot lines very specifically. Maschoff asked Nelson if they have looked for their property pins.

Frank Nelson said they tried to find their property pins by digging and using a metal detector but were unable to locate them.

Crystal Nelson said when she purchased the house at 512 North Sverdrup; she was told roughly two-thirds of the block was hers.

Ringquist said if the Nelson's go to the County Recorder's Office they can get copies of the deeds and the measurements of the whole lot and block area.

Frank Nelson said they know their property is 99 feet wide by 90 feet.

Maschoff noted the Nelson's will be tearing their old garage down once their new garage is approved for construction.

Ringquist noted the Nelson's are seeking a three-way variance.

Nelson said they will probably be exactly four feet from the south property line if the line is where they think it is. He said if it's determined the location of the property line is over a little bit, the proposed garage may be two feet from the line. Nelson said determining exactly where the property line is located is something that they need to figure out before they get started with their project.

Ringquist asked Maschoff if notices of the public hearing on Nelson's variance application were sent out to adjacent property owners.

Maschoff reported 32 notices were sent to surrounding property owners. He noted he had one property owner on Sherman Street who said he wasn't against Nelson's proposed garage, but inquired about where the property line was located. Maschoff said that was the only comment he received.

Crystal Nelson said her neighbor to the east said she thinks she knows where the property line is, but nobody knows for sure.

Ringquist said knowing the property line on the south side of the lot is the most important.

Joyce Matasovsky said she owns the property to the south, but is also unsure of exactly where the property line is located. She said her main concern is the big Maple tree.

Frank and Crystal Nelson said they want to keep the Maple tree.

Frank Nelson said they don't want to damage that Maple tree. He said if anything, they would hire someone to trim some of the low hanging branches. Nelson said they don't want to get rid of that Maple tree because it provides a lot of shade on their house.

Matasovsky said she was glad to hear that. She said her two main concerns were keeping the Maple tree and Lilac bushes.

Dorschner asked Matasovsky if she would have a problem if the proposed garage would be only two feet from the property line.

Matasovsky said she wouldn't if the garage is going to stay on the north side of the Lilac bushes. She said that's pretty much all they mow and take care of right now.

Frank Nelson said they are still figuring to be eight to 10 feet from the lilac bushes that Matasovsky is referring to.

Dorschner asked the Nelson's what the pitch of the roof of the proposed garage would be.

Crystal Nelson said the pitch of the roof is going to be east/west so water is not going to run against their house.

Frank Nelson added that way the water will run into the driveway and right to the street and keeps water away from the house.

Crystal Nelson said the front of the garage will be located further back from North Sverdrup Street than their house.

Frank Nelson explained the rear of the garage will be even with the east side of their house and the front garage doors will be further back from the street than the front door of their house.

Ringquist asked if there were any further comments or questions regarding Nelson's variance requests. Ringquist asked for a motion.

**BECK/DORSCHNER moved and it was unanimously carried to recommend to the City Council to approve the Variance Application of Frank and Crystal Nelson to build an accessory building on their property at 512 North Sverdrup Avenue which will be 1,080 square feet in size, will be 24 feet from the edge of the North Sverdrup Avenue right-of-way and will be two feet from the south property line contingent upon verification from a surveyor of where the south property line is located and that the garage and overhang will not be any closer than two feet from the property line.**

Frank Nelson said the size of the garage may be reduced a bit due to the six foot distance required from the house due to the fire code. He said the size may also be adjusted further depending if the proposed garage is closer to the property line than anticipated.

Ringquist explained the Planning Commission's recommendation will now be considered by the City Council at their September 18, 2018 meeting.

The Nelson's were thanked for attending the meeting.

#### **DISCUSSION ITEM – CHERI GILBERT TO TALK ABOUT ZONING REGULATIONS**

Randy Ringquist said he would remain silent during the discussion because Gilbert's neighbor is an acquaintance of his so he's not going to make any comments.

Cheri Gilbert said the Planning Commission members have the minutes from their August 13<sup>th</sup> meeting in which she outlined her concerns about her neighbor's fence and accessory building at 315 Logan Avenue.

Gilbert said a couple more things have happened since the August 13<sup>th</sup> meeting. She explained the neighbor's east section of fence abuts right next to her garage that makes it almost impossible to do anything such as tuck-pointing, painting or anything. She said she can't even bend down because you are rubbing against the fence. Gilbert explained the neighbor also installed an eight foot planter and set it right along the lot line so you can barely walk there.

Gilbert said what she would like is to have the section of fence along the garage removed. Gilbert said she asked the neighbor not to do that before they put it in saying it was going to make it impossible for her to maintain her property and if they could leave that section out. Gilbert said the neighbors said "no".

Gilbert said she would like that section of fence removed along with the planter. She said the fence itself is hideous. Gilbert said she didn't know how many of the Planning Commission members have seen it.

Gilbert said she looks at the whole fence. She said the neighbors look at a part of it. Gilbert said if you look at the sections, the neighbors put that big building right against the fence. Gilbert said she sees the whole fence and the neighbors see just a very little of it.

Gilbert said the neighbors started out by facing all the good side of the fence towards themselves. She said someone had to go and tell them that's not what you do and you have to put the good side toward your neighbor's. Gilbert said the neighbors got into a big huff and ripped boards apart and put them in so that's why it looks like a mess. She said there's things that don't match up and are sticking out further than they should be on her end. Gilbert said the posts are old salvage posts that are just ripped up and got bolts in them.

Gilbert said as far as she's concerned the fence itself is just an eyesore and she sees it right out her living room windows.

Gilbert said another issue that she brought up before and she didn't think had been brought up before the Planning Commission was the roof on the neighbor's accessory building. She explained all the roof faces her and comes down to her right off the property line.

Gilbert explained she's never had water on the south side of her basement wall coming in. She said she's never had water in the garage. Gilbert said she suggested there should probably be a gutter along the roof because the building is so close and because of the whole expanse of the roof, all the water runs right off towards her. Gilbert said apparently the building inspector was out and he said you don't need it.

Gilbert said she would like something from the building inspector that states he said the gutter was not needed. Gilbert said she hopes she doesn't have a water problem and hasn't had a problem for 16 years but then she hasn't had something like this going on either.

Gilbert said when she has a problem, which she hopes she don't, she would like to have something from the building inspector that says he said a gutter was not needed. She said this is something that's going to have to be looked at if that's what happens. Gilbert said she's never had water in her basement. She said to her it looks like everything just runs straight off that roof right to her.

Gilbert said that's about all she has to add to what's going on.

Gilbert said if the Planning Commission or whoever votes, she would ask that they vote to have her neighbor take out that section of fence and the planter located along her garage.

Hample asked if her neighbor had a reason for putting the fence that close to her garage.

Skaret noted the City Code allows a fence to go right up to the property line.

Gilbert said there should be an exception when you have a 1936 property where it was allowed to put those kinds of things on the property lines. She said nowadays you don't do that kind of stuff.

Skaret said that's something that can certainly be revisited policy wise. He said the ordinance can be amended but it's not going to help in this situation. Skaret said the Planning Commission doesn't have the authority to order Gilbert's neighbor to move the fence or anything like that because it's in compliance with the current code.

Gilbert said that's horrible. She said people come up to her all the time when she's at the grocery store asking what's going on there. Gilbert said people say her neighbor couldn't have possibly gotten a permit for that.

Dorschner said Gilbert should talk to the Fire Marshall because if her house is on fire, the Fire Department will not be able to fight the fire.

Gilbert said that's a good point.

Maschoff said it's an unfortunate situation that when the property was resurveyed, the property line was found to be right up to Gilbert's house. He noted before the survey, it was thought the property line was about eight feet further south.

Gilbert said the previous owner always thought the property line was five or six feet south of her garage. Gilbert said the previous owner didn't realize the property line was closer to the house.

Gilbert said so now what her neighbors do is basically sit out on that property line all the time contemplating what they're going to do next. She said she swears you could look out there four times a day and they are out there dancing around the property line. She said the neighbors have a backyard and they've got a side yard, get out of here. Gilbert said it's just craziness.

Skaret said regarding the drainage, the City's Building Inspector Harry Jenness, did go and observe the rain running off the roof of the neighbor's building at 315 Logan Avenue during one of the heavy rain days and the water was not going towards Gilbert's garage but was going away from the garage.

Gilbert said she would like to have the Building Inspector put that in writing. She noted she's never had water in her basement in 16 years. Gilbert said when she stands in her living room and looks at that building and watches the water come off it, she doesn't think that's right.

Maschoff said he was confused a little bit. He said he doesn't know if not having a gutter on the neighbor's accessory building has actually been determined. He was under the assumption that the neighbor was just going to do it.

Gilbert said she heard it wasn't necessary.

Hample said he thinks there should be a gutter on the building.

Lappe said he also thought when it was discussed in the past; the understanding was that it would be a good idea to install a gutter, unless something has changed.

Schoenrock said he looked at Gilbert's property line. He said he had to turn sideways to get between the Gilbert's garage and fence. Schoenrock noted you have to use a weed trimmer now because there's no way to get a push mower between the fence and the garage. He said he doesn't know how Gilbert will maintain the grass or the wall.

Gilbert said she can't get in there and bend down to maintain the wall.

Schoenrock pointed out the neighbors have the right to do what they want with their property.

However, Gilbert said you can't all of a sudden cause difficulty for the abutting property and can't be damaging that and make it impossible for them to take care of their own property. Gilbert said she can't maintain her own property.

Schoenrock asked if a variance was needed when the neighbor put up the fence.

Maschoff said a variance was not needed.

Schoenrock said that's something that needs to be looked at in the future so if a fence is going to be installed that it doesn't prevent the neighboring property owner from maintaining their property.

Gilbert noted one day she looked out and noted the neighbors were digging along the lot line. She said she came to City Hall and Maschoff said the neighbors were putting up a shed. Gilbert said Maschoff then went up to 315 Logan and said they're putting up shed and a fence.

Skaret said part of the problem is that the shed that the neighbor built does not require a building permit.

Maschoff said regarding the fence, it's an unfortunate situation that the survey line got so close to Gilbert's house and the way the current Code is written you can put a fence up to the property line. He said he doesn't know why, but Jackson's Code has been that way. Maschoff said this is the first time we've run into a situation with a combination of the survey moving the property line so close and then the current code allowing fences to be installed up to the property line. Maschoff pointed out there are some cities where the code says a fence has to be two or three feet off the property line unless you get written permission from the neighbor that you can install the fence up to the property line which is then recorded. Maschoff said maybe the current City code needs to be adjusted or amended.

Lappe said that won't help in this case.

Maschoff said unfortunately it won't. He said if the current Code would have a required a two or three foot setback, it would have aided in this situation.

Lappe asked Gilbert if the space between the property line and her garage is that close and the neighbor won't allow her to walk on his property, how is she going to maintain her property anyway even if the fence is removed.

Hample asked Gilbert if the neighbor ever said why he built his fence so close to her garage.

Gilbert said she didn't know.



Lappe said the Planning Commission's hands are tied. He said the only other thing he could see is that this would be a civil case.

Gilbert asked doesn't the Planning Commission have authority to tell her neighbor to take down that section of the fence because it's against the code.

Lappe said the fence isn't against the code.

Gilbert said the fence is against the code. She said City Code 153.134 says no damage of any kind to the abutting property.

Skaret said the fence isn't damaging the wall. He said it could in the future, but that's speculation and they can't rule on speculation.

Gilbert said it's obvious this is what's going to happen.

Skaret said you can't speculate. He said he thinks the Planning Commission members understand what Gilbert is saying, but their hands are tied. Skaret said in this case, everything is within code.

Dorschner suggested Gilbert talk to the Fire Marshall.

Gilbert asked who the Fire Marshall is.

Maschoff suggested talking to Jackson Fire Chief Mark Temple.

Lappe told Gilbert it's a bad situation and he feels for her, but the Planning Commission's hands are tied. He said it comes down to being a civil action.

Schoenrock said it's frustrating and understands where Gilbert is coming from. He said if Gilbert has an argument that the fence could cause damage to her property and needs to be removed, that's where a Civil Judge could rule on in a civil case. Schoenrock suggested the best thing for Gilbert to do would be to hire an attorney and have him take a look at the situation and explain it to him. He said other than that, the Planning Commission is powerless.

Gilbert asked why has she gone through all this. Gilbert said she thought the Planning Commission could do something when it's going to damage her property. She said that's what the code says no damage to the abutting property, well it is. Gilbert said there already is damage with tall grass.

Hample asked what's the definition of "damage" to the property. He asked if it's something rubbing up against the property or poking into the property or just cosmetic.

Maschoff said that's a good question. He didn't know.

Lappe said he supposes that depends on each individual on how they look at a situation.

Hample said he thinks the Planning Commission needs to look at a code change for the future.

Because the Planning Commission can't determine what "damage" would be, Schoenrock asked Skaret if City Attorney Brad Anderson could take a look at this with a couple photos of that property and have Anderson give the Planning Commission a determination, from his perspective, of what the definition of "damage" is from the City's standpoint. Schoenrock asked is there something that City Attorney Anderson could at least look at it to say what is "damage". Schoenrock said it's a good question what is "damage".

Skaret said City Attorney Anderson can certainly be asked his opinion on that.

Hample said the other thing to look at is the possible potential issue of water damage.

Lappe asked Gilbert how long the roof has been on her neighbor's shed and if there have been some big rains since then. He asked if there's been water accumulating over by the garage.

Gilbert said it's been stated the water has been running away. She said she hasn't looked. Gilbert said she's never had that situation that close.

Lappe said to determine if that's a possibility a person has to really look when it's raining and see what the water is doing and where it's going.

Gilbert said she's just watching her basement wall. She said if it happens, it happens and she's never seen it before.

Lappe asked Gilbert if she has had any moisture or anything in her basement right now.

Gilbert said she has not.

Hample asked on the neighbor's initial building permit request, was there anything said about a fence.

Maschoff showed Planning Commission members a copy of the building permit which was just for a shed. He noted the original building permit was for a shed that was 288 square feet and then that was reduced to 200 square feet.

Lappe noted the building size was reduced to 200 square feet which then didn't require a building permit. He noted there was nothing on the building permit about a fence.

Beck said the only thing about the fence would be the setback from the street.

Maschoff said before the neighbor installed the fence, he had stopped down at City Hall to inquire about the code information regarding fences. Maschoff said the neighbor said he was going to have his property surveyed to determine where his property line was located. He said the fence met the setback requirements from the street and height requirements. Maschoff said unfortunately through the survey, Gilbert lost eight feet which brought the property line right up to the garage.

Schoenrock said the City doesn't want to prevent people from using their property. However, Schoenrock said he don't understand how we can allow a fence to be put up from the City's perspective that does prevent somebody from doing anything on their property. He noted you can't walk through between the fence and Gilbert's garage wall. Schoenrock noted the fence posts and because the fence is built the way it is, it's impossible to maneuver a push mower between the fence and the garage wall or do any maintenance on the garage wall. Schoenrock said it's frustrating to him that we could allow that to happen but also not to prevent the neighbor from being able to use his property that he purchased. He said we're not going to prevent a person from using their property, but at the same time, we're not going to prevent somebody else from maintaining their's by allowing the neighbor to put up a fence. Schoenrock said that's something in the ordinance that the Planning Commission needs to look at.

Skaret said hypothetically the neighbor could say well I don't want Gilbert or anyone else coming on my property so even at that point she still might not be able to maintain the garage because she wouldn't be allowed to go on the neighbor's property.

Gilbert said she could maintain her garage without the fence there. She said you can't get down and do anything because it's too tight a space with the fence there. She said you can walk through there just barely, but you can't get down and maintain that wall. Gilbert said the wall is waist high. She said she tuck-points her brick all the time. Gilbert said she can't do it now.

Gilbert said if the Planning Commission has no authority to do anything, she doesn't know what she's doing at the meeting. She said the Planning Commission apparently don't have the authority so I don't know why I even started this.

Skaret said City Attorney Brad Anderson can be contacted to check about what constitutes "damage" but as far as anything else, he doesn't know what more can be done at this point. Skaret said it's largely a civil matter from here on out.

Schoenrock said to have City Attorney Anderson look at it and see what he says about what constitutes "damage". He said for sure, this needs to be a topic of conversation for the Planning Commission to talk about a fence being located on the property line.

Hample and Lappe agreed with Schoenrock.

Maschoff noted this situation is unique because normally the Planning Commission hasn't run into this before. He pointed out the neighbor's survey pushed the property line right next to Gilbert's house and the way the City Code currently is you can put the fence up to the property line, so it just created a unique situation.

Gilbert said you find that with a lot of older properties and there should be an exception. She said in one of the City Codes, there is an exception. Gilbert cited City Code 153.143 which says *unusual circumstances in a residential area*. She said she considers her situation an unusual circumstance with the neighbor's fence being located right by her garage within inches.

Lappe asked Gilbert if she received a copy of the property survey.

Gilbert said she did not because she didn't pay for it. Gilbert said she looked at it at the courthouse.

Hample asked Gilbert about the City Code she referred to.

Gilbert said she was referring to City Code 153.143 *Fences in non-residential situations and exceptional and unusual circumstances in residential districts*.

Maschoff looked up City Code 153.143 for the Planning Commission members to look at.

Hample said that's what maybe City Attorney Brad Anderson can look at based on that.

Gilbert read from City Code 153.143 *without proving a hardship and to improve the livability, appearance, and security of properties and their relationships to one another.*

Lappe said the best thing the Planning Commission can do is have City Attorney Anderson look at that and tell the Commission where that falls into.

Schoenrock concurred with Lappe. He said to a certain degree, he agrees it's a civil issue but he also doesn't want to see us as a City just passing the buck either. Schoenrock said we need to take some stance on something like this. He said these are difficult situations.

Lappe said he would feel better about first having the issue reviewed by City Attorney Anderson to see what the Planning Commission can do. He said there needs to be information to back them up before the Planning Commission can order the neighbor to remove the fence.

Gilbert said the portion of the fence along her garage wall and the eight foot planter need to be removed.

Schoenrock said to refer the matter to City Attorney Anderson to get a legal opinion what is "damage" and the circumstances of City Code 153.143 that Gilbert pointed out regarding the section of fence that's along her garage.

Hample said he thinks the Planning Commission all agrees that common sense in this matter should have prevailed on the neighbor's part to not to do this and what's his reasoning for wanting to put the fence that close anyway. He said it's just not right.

Gilbert asked to get some kind of statement from the building inspector about the gutter situation or can somebody check into that.

Lappe said he checked into that. He said he had the understanding through one of the conversations that the building inspector couldn't tell him to do it, but he highly suggested to put gutters on there. Lappe said he had the understanding that the neighbor told the building inspector that he was going to go ahead and put gutters on the shed to make sure the water is taken away from Gilbert's property. Lappe said the neighbor can't be forced to do it but it can be requested.

Gilbert said if her neighbor won't put up gutters, she wants somebody responsible. Gilbert said when she has a problem, she doesn't want the judge to say to her did you ever say anything when the building was being built that this is going to be a problem, and yeah I did. Gilbert said she knows it will be in the Planning Commission minutes, but she would like something from the building inspector if that's truly what he said.

Schoenrock said the matter will be referred to the City Attorney to look at this and give an interpretation of what "damage" would be and also look at the City Ordinance she pointed out.

Beck asked if the City has an ordinance on the type of fence you can or cannot put up.

Maschoff said there are regulations on the height.

Lappe said the type of materials used to build a fence may be another issue the Planning Commission needs to look at.

Hample said a fence should look presentable.

Beck concurred a fence should be something that's presentable. He said the way it's been explained, he could put up a barbed wire fence on the property line.

Maschoff said you could take it a step further that every fence that goes up has to come before the Planning and Zoning Commission.

Gilbert said she thinks it should.

Hample said just to make sure. He noted one other issue that occurred in the past but that was more than just the type of fence.

Schoenrock said the issue will be referred to the City Attorney for a legal opinion.

Hample mentioned also asking about the rain gutters on the roof of the shed.

Lappe said the neighbor can't be forced to put on a rain gutter, but it can be suggested. He said it was his understanding that after the building inspector had looked at the shed; the building inspector highly suggested that it would probably be a good thing to put on a rain gutter. Lappe said from what the building inspector told him, the neighbor agreed he would do that. Lappe said the neighbor may have changed his mind or something has happened and is now not going to do that.

Beck said another issue that may need to be reviewed by the Planning Commission is if your roof line is running towards your neighbor's property you're going to be required to have a gutter, not maybe.

Lappe said it would be best for the City Attorney to take a look at Gilbert's property on Logan Avenue.

Gilbert thanked the Planning Commission for their time.

## **ADJOURNMENT**

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**With no further business, SCHOENROCK/BECK moved and it was unanimously carried to adjourn the meeting.**

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**David A. Maschoff, Zoning Administrator**

