



CITY OF SOUTHPORT
ZONING BOARD OF ADJUSTMENT REGULAR MEETING
113 W. MOORE STREET July 22, 2025
4:30 PM
Minutes

Members Present:

Jason Robbins
Tuck Masker
John Allen
Rodney Ross
Chris Eckert
Steve Doshier-Alternate

Members Absent:

Pete Haislip
Harley Lemons

Staff Present:

Maureen Meehan, Planning Services Director
Wendell Biddle, City Planner
Tori Deviney, Deputy City Clerk
ChyAnn Ketchum, Public Information Officer

Ray DiGuisspe, Board of Adjustment Attorney
Brady Herman, Board of Aldermen Attorney

A. Call to Order

Chair Jason Robbins called the meeting to order at 4:33pm.

B. Pledge of Allegiance

Chair Robbins led everyone in the pledge of Allegiance.

C. Swearing In of Members

1. Jason Robbins

Deputy Clerk Tori Deviney swore Jason Robbins in.

D. Approval of Agenda

Chair Robbins asked for a motion to approve the agenda which was given by Mr. Allen and seconded by Mr. Masker. Motion passed with a unanimous vote.

E. Explanation of Quasi-Judicial Process

Chair Robbins provided a detailed overview of the quasi-judicial process, emphasizing that the Board functions in a manner similar to a court: decisions must be based on competent, material, and substantial evidence, and not on opinion or hearsay. He also explained procedures for establishing standing, the role of expert testimony, and potential conflicts of interest. He then brought alternate member, Steve Doshier, in as an active voting member.

F. Explanation of Proceedings

G. New Business

1. Appeal of a Code Enforcement Determination AP-25-02

Chair Robbins disclosed that he had previously served as the listing broker for the property at issue, 416 East Bay Street, when it sold in 2018. He clarified that he had no financial relationship with the current owners and felt that this did not affect his ability to serve impartially.

Board member Mr. Allen disclosed his prior service as a member of the Board of Aldermen from 2019–2023, during which some of the related events occurred (the establishment of enforcing rights-of-way encroachment issues), but noted he did not believe it impaired his judgment.

No objections were raised to either disclosure.

Director Maureen Meehan was sworn in and presented staff's case. She explained that the appeal concerned an administrative decision issued April 3, 2025, citing hardened structures, specifically a fence and landscaping rocks, located within the City's rights-of-way adjacent to 416 East Bay Street. Director Meehan provided a corrected property size of approximately 7,800 square feet and noted that when the applicants purchased the property in 2018, no fencing or hardscaping existed in the rights-of-way. Between 2019 and 2021, the home was demolished, the lot cleared, and fencing and landscaping was installed without a permit. In 2023, a building permit for the new home was issued, but the violation remained unresolved. After unsuccessful attempts to work with the property owners informally, a formal notice of violation was issued in January 2024.

Director Meehan outlined the timeline of the City's ordinance changes on rights-of-way encroachments, noting that in December 2024, amendments allowed certain vegetative and parking encroachments but continued to prohibit hardened structures. She emphasized that the applicants' property was already subject to an open violation case and therefore was not eligible for the grace period provided to other property owners. She further explained that while approximately 85 properties were identified with encroachments, staff had worked extensively with owners to achieve compliance, resulting in only 22 open cases remaining. Most others had either removed the encroachments or received rights-of-way permits where appropriate. Staff therefore recommended that the Board affirm the decision and order removal of the fence and landscaping from the rights-of-way.

Board members questioned staff about how many encroachments had been resolved, whether the City had ever removed encroachments at the owner's expense, and the consistency of enforcement across properties. Director Meehan clarified that while provisions exist for the City to remove violations directly, that step had not yet been taken. Instead, staff had prioritized cooperative compliance.

City Attorney for the Board of Aldermen, Brady Herman, was then recognized and confirmed that all staff reports, exhibits, and the applicant's appeal letter were part of the official record. He reminded the Board that in reviewing appeals of staff decisions, they "step into the shoes" of the administrator to determine whether an error was made. Mr. Herman noted that the underlying facts were not in dispute: the fence encroached into the

rights-of-way and violated both the UDO and City ordinances before and after the December 2024 amendments. He distributed a legal memorandum to the Board, outlining relevant legal standards, and called Code Enforcement Officer Derek Mabe as a witness.

Code Enforcement Officer Derek Mabe was sworn in.

Mr. Herman called Code Enforcement Officer Derek Mabe as a witness. Mr. Herman handed him the staff agenda packet, noting he would reference specific exhibits and page numbers.

Officer Mabe explained that his duties include locating and documenting code enforcement violations. He stated that this particular matter was first brought to his attention by the City in November 2023, after which he conducted a site visit on October 13, 2023. During that inspection, he took photographs of 416 East Bay Street showing the fence encroachment. These photographs, included in the staff report, were confirmed by Officer Mabe as accurate representations of the property at that time.

Officer Mabe testified that he issued an initial courtesy notice/notice of violation on January 11, 2024, citing the Unified Development Ordinance (UDO) Section 3.17(D) regarding landscaping and structures in the public rights-of-way. He confirmed that this ordinance prohibited fences, walls, rocks, vegetation, or other materials from being placed in the City's rights-of-way. He noted that the violation could have also been cited under Section 16-8 of the Code of Ordinances, which contains analogous language, but the violation letter focused on the UDO. He explained that while there is no statutory requirement for a specific compliance period, he typically provides 10–15 days for correction.

Because the property owners did not respond, a notice of hearing was issued on March 7, 2024 (Exhibit F). He described these hearings as informal opportunities to provide due process and attempt to resolve issues cooperatively before escalating enforcement. When scheduling conflicts arose, a second notice of hearing was issued on April 23, 2024, setting a date of May 3.

At that hearing, the property owners did not appear, but their attorney did attend. Following the proceeding, Officer Mabe issued a Findings of Fact order on June 25, 2024 (Exhibit H), concluding that the property remained in violation of UDO Section 3.17(D) and granting an additional 10 days to correct the violation.

Officer Mabe testified that he later spoke directly with property owner Denise Russell by phone. She explained the fence was left in place to protect materials during ongoing home construction. They reached an agreement to extend the compliance deadline to August 15, 2024. Officer Mabe confirmed this understanding was reflected in an email from Ms. Russell (Exhibit I), in which she acknowledged the agreement and thanked him for the extension, stating the fence would be addressed following issuance of a certificate of occupancy.

Officer Mabe further explained that on August 16, 2024, he turned the case over to the City for abatement consideration, after which he had no further contact with the Russells. In December 2024, the Board of Aldermen adopted amendments to the Code of Ordinances (Sections 16-8 and 16-10), which continued to prohibit hardened structures in the rights-of-way but introduced a six-month grace period for new violations. Officer Mabe clarified that properties with open cases prior to the amendment, such as 416 East Bay Street, were excluded from the grace period and required to proceed under normal

enforcement.

He confirmed that in early 2025, he and Director Meehan issued the final notice of violation that is the subject of the present appeal. Officer Mabe also noted that another property nearby, 410 East Bay Street, was in violation for a similar rights-of-way encroachment and was also excluded from the grace period. That case remains under enforcement and scheduled for a hearing.

Mr. Herman concluded his questioning of Officer Mabe, thanked him for his testimony, and then turned the floor over to the appellants' attorney, Mr. Andy McVey, for cross-examination.

Attorney Andy McVey, representing the property owners, thanked Chair Robbins and began questioning Officer Derek Mabe. McVey noted that much of the discussion had not touched on parking, which he argued was relevant to the case. He asked Mr. Mabe about parking conditions near the property.

Mr. Mabe confirmed that the subject property sits at the corner of Kingsley Drive and East Bay Street, adjacent to Kingsley Park, a small public park with swings and a boardwalk to the Intracoastal Waterway. He agreed there are two handicapped parking spaces nearby and some gravel parking on the opposite side of the street, but was uncertain about other details, such as whether bollards had been removed or whether additional parking designs had been proposed.

Mr. McVey pressed further, asking if Mr. Mabe was aware that Ms. Therrien, the previous Interim City Manager, had discussed parking adequacy at Kingsley Park or submitted drawings for parking directly in front of the Russell property. Officer Mabe replied that he was not aware of those discussions.

Mr. McVey then shifted to the matter of a public records request his office had submitted on behalf of the Russells, seeking documents about parking at Kingsley Park, courtesy letters sent to other property owners regarding rights-of-way encroachments, and enforcement records for several listed addresses. He asked whether Officer Mabe's office had produced responsive documents. Officer Mabe stated he had not personally handled the records request and believed that responsibility fell under Director Meehan's department. He reiterated that he had not been directly contacted to produce documents.

Mr. McVey noted for the record that if courtesy letters had been issued to other property owners, but none were produced in response to the request, he would question Director Meehan about that omission when he called her to testify. He concluded his questions without further comment.

City Attorney Herman followed with a brief redirect. He asked Officer Mabe to clarify whether the pending enforcement matter at 410 East Bay Street was before the Board of Adjustment or still at the staff level. Officer Mabe explained it was an informal code enforcement hearing conducted by staff, not a quasi-judicial hearing, and that it had been rescheduled to allow the property owners more time.

With that clarification, Officer Mabe's testimony concluded.

Mr. Herman next recalled Director Meehan for additional testimony. He asked her to explain her duties as Planning Services Director and Unified Development Ordinance (UDO) Administrator. Director Meehan testified that she oversees code enforcement to

ensure violations are processed in accordance with law and policy, and she makes determinations under the Unified Development Ordinance (UDO).

Director Meehan confirmed her involvement in the current case, noting that while earlier complaints about the property may have predated her employment, she and her then-supervisor, **Travis Henley**, first became directly aware of the fence encroachment in late 2022.

Reviewing the as-built survey dated September 10, 2024 (Exhibit A), Director Meehan testified that the survey was submitted in order for the Russells to obtain a certificate of occupancy for their new construction home. The survey clearly depicted the fence extending into the East Bay Street rights-of-way, which she described as a substantial encroachment that effectively doubled the usable yard space of the property. She contrasted aerial imagery from 2019 (showing the lot without a fence) and 2021 (showing the fence installed) to illustrate how the encroachment had developed.

Director Meehan confirmed that the Russells' deed and recorded plats also showed the correct property boundaries, meaning the owners were on notice of the lot lines when they installed the fence.

Mr. Herman then turned to the timeline of City ordinance amendments. Director Meehan explained that beginning in early 2024, the Board of Aldermen debated revisions to the rights-of-way encroachment rules. Staff, aware that changes might affect the Russells' case, allowed enforcement efforts on the Russells to pause until the amendments were finalized. In December 2024, the Board adopted amendments to Sections 16-8 and 16-10 of the Code of Ordinances. Those amendments allowed certain parking surfaces and existing vegetation to remain in the rights-of-way but continued to prohibit hardened structures such as fences or stone landscaping. Importantly, the amendments also provided a six-month grace period for property owners to bring new violations into compliance; however, any cases already under active enforcement at the time of adoption, such as 416 East Bay Street, were excluded from the grace period.

To confirm, Meehan read directly from the Board of Aldermen's December 12, 2024 minutes, where a motion was adopted making this distinction explicit.

Director Meehan further testified that staff issued courtesy letters in January 2025 to approximately 85 property owners with potential rights-of-way encroachments, offering them the grace period and explaining the ordinance changes. Many owners complied, leaving about 22 open cases as of June 2025. She explained that while the amended ordinance shortened the removal timeline to 72 hours, staff typically extended compliance deadlines to encourage cooperation.

Director Meehan reviewed the final notice of violation sent jointly by her and Officer Mabe on April 3, 2025 (Exhibit L). The notice cited both the fence and the landscaping rocks as prohibited hardened structures within the City rights-of-way. Owners were given 15 days to remove the encroachments. She confirmed that no civil penalties had been issued, nor had the City exercised its authority to remove the encroachments at the owners' expense, preferring instead to resolve matters through cooperation and due process.

Mr. McVey began his questioning of Director Meehan by asking about her tenure with the City. She testified that she had been employed for almost three years and resided in Southport. Mr. McVey suggested that the City had "famously not enforced" rights-of-way violations for many years. Director Meehan responded that she could not speak to

enforcement prior to her employment and had no personal knowledge of past encroachments.

Mr. McVey confirmed with Director Meehan that approximately 80 properties were identified as out of compliance when the ordinance changes were first considered. He then revisited his earlier point regarding the public records request submitted by his office, which sought documents relating to courtesy letters and enforcement actions. Director Meehan acknowledged that courtesy letters had been sent and explained that all such letters, along with spreadsheets of affected properties, were shared with the City Clerk. McVey noted for the record that his office had not received those documents.

During this exchange, Deputy Clerk Deviney briefly interjected out of order to clarify that she had, in fact, provided the requested courtesy letters and supporting documents in a shared file.

Turning to the ordinance itself, Mr. McVey emphasized that the Russells were cited under a provision that pre-dated the December 2024 amendment. Director Meehan agreed, clarifying that the violation existed under the older ordinance and continued under the amended version. Mr. McVey argued that this meant the December 2024 amendment was unnecessary, since the City already had authority to enforce the encroachment. Director Meehan disagreed, explaining that the amendment was significant because it carved out exceptions for vegetation and parking surfaces that had previously been prohibited.

Mr. McVey then reviewed Exhibit K, the Board of Aldermen minutes from December 12, 2024, where the ordinance amendment was adopted. He read portions of Mayor Alt's statement into the record, in which the Mayor opposed the ordinance as unnecessary and potentially divisive. Director Meehan confirmed the accuracy of the minutes. Mr. McVey then noted that the amendment, as adopted, included a six-month grace period for new violations but excluded existing enforcement cases, such as the Russells'. He confirmed with Director Meehan that she presented the ordinance to the Board at that meeting. Mr. McVey asked whether she was aware that Alderman Carroll, who seconded the motion to adopt the ordinance, was a licensed real estate broker who had previously reached out to the Russells about selling their Bay Street property. Director Meehan said she was not aware. He also asked whether Alderman Mosteller, who made the motion, had led efforts to increase parking near Kingsley Park. Director Meehan responded that she knew there were discussions about parking but could not confirm who had led them.

Mr. McVey asked whether the Board of Aldermen was aware of pending compliance cases, including the Russells', when they adopted the ordinance. Director Meehan testified that she believed the Board was generally aware of open cases but could not speak to individual members' knowledge.

When asked whether any members of the Board of Aldermen had approached her department regarding the "necessity" of the ordinance, Director Meehan stated no, explaining that the matter was brought to her by the City Manager as an update to make the ordinance more usable.

Mr. McVey concluded his questioning without further comment.

Mr. Herman asked Director Meehan to clarify that the rights-of-way encroachment amendment was not adopted at a single meeting, but rather followed multiple public discussions and workshops. Director Meehan confirmed this, noting that staff made several presentations and the Board of Aldermen debated the issue extensively before

final adoption in December 2024. Mr. Herman asked whether the Russells had ever provided comments during the public hearings or comment periods. Director Meehan testified that, to her knowledge, the Russells had not spoken or submitted comments, though they were afforded the same opportunity as other citizens.

Mr. McVey resumed questioning. He confirmed that Director Meehan produced certain documents in response to the public records request and that the remainder would have been handled by the City Clerk or Deputy City Clerk. He then asked about her familiarity with the subject property. Director Meehan stated that she had physically visited the site and was aware of sketches proposing parking in the right-of-way in front of the Russells' home.

When Mr. McVey pressed on the parking issue, Mr. Herman objected, arguing that testimony regarding parking was outside the scope of the appeal. Chair Robbins acknowledged the objection and noted it for the record but allowed Mr. McVey to continue. Mr. McVey argued that parking was central to the case, asserting that the City's actions were aimed at devaluing his clients' property.

Director Meehan acknowledged that she had seen conceptual sketches for parking near the site but explained she received them only for informational purposes. She testified that she was not directly involved in the discussions, which were handled at the time by her then-director Travis Henley. When asked if she was aware of these sketches before or after the December 2024 ordinance amendment, she stated that her awareness came prior to adoption.

Mr. McVey questioned how the matter progressed from Board discussions to an ordinance amendment. Director Meehan explained that after months of workshops and agenda discussions, the Board of Aldermen formally requested that staff draft amendment language for consideration.

On redirect, Mr. Herman asked about the status of UDO updates. Director Meehan confirmed that revisions were underway but placed on hold to ensure consistency with the recently adopted ordinance amendments. Mr. Herman emphasized that regardless of pending updates, the April 3, 2025 notice of violation remained valid under both the amended City Code (Section 16-8) and the existing UDO (Section 3.17).

Having concluded testimony, Chair **Robbins** thanked the witnesses and recessed the meeting for a brief break until 6:00 p.m.

Mr. McVey requested that the Board take one of three possible actions:

1. **Grant a variance** from what he referred to as the "Russell Ordinance," asserting that the December 2024 amendment was adopted under circumstances aimed directly at the Russells' property.
2. **Decline to enforce the ordinance** until the Board of Aldermen could revisit its adoption and enforcement. He argued that the ordinance was enacted and is being enforced imprudently.
3. **Make a finding of fact** that the City's enforcement has been arbitrary and capricious.

Mr. McVey asserted that the ordinance changes in December 2024 coincided with only two open compliance cases, one of which was the Russells', and that this demonstrated

selective enforcement. He noted that his office had submitted a public records request in April 2025, and that many courtesy letters to other property owners were issued only after that request, in June 2025.

Mr. McVey introduced into evidence Applicants' Exhibit 1, the affidavit of Denise B. Russell, which he tendered to the Board. He walked through several paragraphs of the affidavit, noting that the Russells' property at 416 East Bay Street sits adjacent to Kingsley Park, a small neighborhood park with minimal amenities. He explained that the Russells had previously lived across the street, purchased the Bay Street lot in 2018, and made improvements at their own expense, including raising the bulkhead on both their property and the City's adjoining bulkhead.

He emphasized that the fence in question had been in place since 2018, or at least 2019, according to both the Russells' testimony and the City's own aerial images. He argued that the fence and accompanying landscaping rocks were comparable to those at nearby 410 East Bay Street, which he described as nearly identical yet not cited at the time of the ordinance's adoption.

Mr. McVey suggested that the City's enforcement was motivated by interest in converting the rights-of-way in front of his clients' home into a parking lot for Kingsley Park. He recounted that the Russells were asked in 2019 by then Building Inspector, Wayne Strickland, about donating the lot to expand the park, which they declined. He argued that subsequent actions by the City, removing bollards from an existing gravel lot, reporting a lack of parking at Kingsley Park, and proposing parking sketches for the rights-of-way, demonstrated a retaliatory course of conduct intended to devalue his clients' property.

Mr. McVey cited statements made by Alderman Mosteller in 2024 about adding parking near the park, noting that she was liaison to the Parks and Recreation Advisory Board. He pointed to Exhibit B, a City-provided drawing that depicted new parking spaces within the rights-of-way at the Russells' frontage, and he argued this corroborated his clients' concerns.

He further asserted that the Russells' property was initially included in a proposed historic district expansion, but was later excluded from the adopted map. He suggested this exclusion was deliberate, intended to avoid conflicts with the City's parking plans. McVey quoted the City's own draft design standards for historic districts, which discouraged new parking lots fronting historic streets, and argued that the removal of the Russells' property from the map was another example of selective treatment.

Mr. McVey also raised safety and environmental concerns, stating that turning the rights-of-way into parking would force vehicles to back out onto East Bay Street and would compromise stormwater management. He referenced his clients' affidavit testimony that the site lies within an Area of Environmental Concern under state law, though Chair Robbins cautioned him to provide documentation or limit testimony to evidence in the record.

In conclusion, Mr. McVey described the Russells as good citizens who have acted in good faith but feel they have been unfairly targeted. He characterized the City's actions as arbitrary and capricious, and he reiterated the applicants' requests:

- Grant a variance and find them in compliance,
- Declare the City's enforcement improper and decline to uphold the violation, or
- Return the matter to the Board of Aldermen to reconsider the ordinance.

Mr. McVey closed by apologizing if his cross-examination earlier in the evening had seemed overly animated, stressing that his passion reflected the seriousness with which his clients view the issue. He asked the Board to act decisively, noting that many residents in attendance were watching closely for the outcome.

Mr. Herman began his closing remarks by addressing the affidavit submitted by the Ms. Russell. He noted several inconsistencies and described portions of the testimony as “sloppy,” clarifying that he did not mean this as a personal criticism of Mr. McVey, but rather as a reflection of the client’s recollections. He pointed out that the deed for the property was conveyed to the Russells on December 10, 2018 (City’s Exhibit B, p. 14). Given this timeline, he argued, it was implausible that the fence was built in 2018 as claimed, since City GIS aerial maps clearly showed no fence or landscaping rocks on the site at that time. Mr. Herman maintained that the fence was constructed later and that it encroached into the City’s rights-of-way, which he described as the “sole issue in this case.”

Mr. Herman further challenged statements in Ms. Russell’s affidavit, particularly her claim that she and her husband were unaware in June 2024 of the City’s plans to convert the rights-of-way into parking. He pointed out that earlier correspondence from February and May 2024, including communications from former Building Inspector Strickland, referenced parking discussions. He argued this created an internal inconsistency within the affidavit.

Turning to McVey’s three requests, Mr. Herman responded as follows:

1. **Variance Request** – Mr. Herman stated that while the Board of Adjustment has authority to grant variances, it can only do so when properly applied for and noticed under statutory procedures. No such variance application was before the Board that evening, and he argued no undue hardship had been demonstrated.
2. **Declining Enforcement** – Mr. Herman emphasized that the Board did not have authority to suspend or decline enforcement of the ordinance. He explained that the Board steps into the shoes of the Zoning Administrator and Code Enforcement Officer, and those officials lack discretion to selectively enforce. To excuse the Russells, he warned, would amount to impermissible non-enforcement.
3. **Arbitrary and Capricious Enforcement** – Mr. Herman acknowledged the Russells’ argument of selective enforcement but stated that such constitutional claims must be heard in **Superior Court**, not by the Board of Adjustment. He cited case law, including *Grace Baptist Church v. City of Oxford* (1987), explaining that selective enforcement requires proof of intentional and discriminatory treatment “with an evil eye and an unequal hand,” not merely lax enforcement. He also noted that after the ordinance was amended, **88 property owners** were sent courtesy letters, with **22 receiving formal notices of violation** in the same manner as the Russells.

Mr. Herman reiterated that a municipality cannot be stopped from enforcing its ordinance merely because it previously failed to act or even appeared to condone a violation, citing *City of Raleigh v. Fisher*. He further explained that there is no statute of limitations on enforcement actions relating to encroachments in public rights-of-way (N.C.G.S. § 1-45). He concluded by requesting that the Board affirm staff’s decision and set a clear timeframe for remediation, such as 15 days or another reasonable period. He also asked the Board to consider enforcement options if compliance did not occur, including civil

penalties or City-led abatement with costs charged back to the property owner.

Mr. McVey responded briefly, asking that if the Board were inclined to rule against the Russells, it suspend the effect of its order to allow his clients an opportunity to pursue a variance application.

Chair Robbins then asked if there were any additional witnesses or parties with standing wishing to speak. Hearing none, he opened the floor for Board questions.

Mr. Masker inquired about the approved site plan, noting that the northwest elevation of the Russells' home appeared to sit only about 2 feet 5 inches from the rights-of-way. Director Meehan explained that because the lot was nonconforming in size, reduced setbacks were permitted by ordinance, either through averaging setbacks along the block or under nonconforming lot provisions.

Mr. Ross asked whether a final landscaping plan existed. Mr. McVey replied that his clients were prepared to provide one once this matter was resolved, but that staff had instructed them to hold off. Director Meehan clarified that for a single-family home, no formal landscape plan is required except for tree mitigation for building permit approvals. She noted that no trees were removed on this property and that while discussions had occurred regarding buffering in the right-of-way, staff could not authorize new vegetation there.

Mr. Masker questioned as to whether the site plan or permit contained any note about the fence. Director Meehan responded that the staff attachments included an email from former Development Director Henley, which recognized the fence's presence and stated it would need to be addressed.

With no additional questions, Chair Robbins closed the public hearing and announced that the Board would proceed into deliberation.

Chair Robbins reminded members that their options were limited to affirming, modifying, or reversing the Code Enforcement Officer's decision, and that while findings of fact were necessary, the Board was not required to apply the four-pronged test used in variance cases.

Attorney DiGuseppe outlined the framework for decision-making. He explained that while the appellant's attorney had suggested several possible outcomes, including granting a variance, delaying action, or finding no violation, the Board's authority was narrower. Since no variance application was before the Board, no record could be developed or decided on that matter. Similarly, the Board could not decline enforcement or remand the matter to the Board of Aldermen, as jurisdiction properly rested with the Board of Adjustment. The essential question, he stated, was whether the violation existed. If the Board affirmed the violation, arguments regarding arbitrary or capricious enforcement would be more appropriately addressed in Superior Court.

Motion and Findings

Mr. Allen made a motion that this board upholds the Code Enforcement Officer's decision based on the fact that there is an admitted clear violation of city code and hardened structure is in the rights-of-way and the ordinance prohibited this before the property was purchased, before the current owners and before the fence was erected. Mr. Ross seconded the motion.

At this point, Mr. Eckert asked for clarification regarding how the enforcement would proceed.

After discussion, the Board agreed to allow the property owners **14 days** to remove the fence and landscaping rocks from the rights-of-way. The Board further authorized City staff to pursue enforcement remedies in accordance with the ordinance should compliance not occur within that period.

Deputy Clerk Deviney restated the motion as follows:

"The motion on the floor is that the Board uphold the Code Enforcement Officer's decision based on the fact that there is an admitted and clear violation of the City Code, with hardened structures located in the public rights-of-way. The ordinance prohibiting such encroachments was in place prior to the purchase of the property by the current owners and prior to the erection of the fence. The motion further states that this enforcement is not arbitrary or capricious, as the City identified approximately 80 rights-of-way violations, noticed all those violation, and 60 or some have since come into compliance. The appellants are to be given fourteen (14) days to remove the fence and rocks, and if compliance is not achieved within that period, staff is authorized to proceed with enforcement and penalties in accordance with the UDO."

Mr. Allen also stated for the record that enforcement was not arbitrary or capricious, as the City had issued notices to all known rights-of-way violators, the majority of whom had since complied.

Following the vote, Mr. McVey requested that the Board suspend the effect of its order to allow time for his clients to pursue a variance application. Chair Robbins asked if there was a motion in that regard. Hearing none, he stated that the Board would proceed without granting the request.

H. Other Business

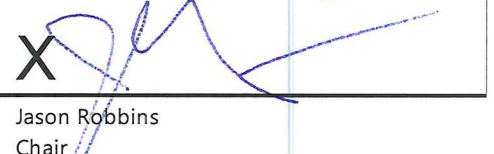
There was no other business.

I. Adjourn

Chair Robbins adjourned the meeting at 6:55 pm.


Tori Deviney
Deputy City Clerk




Jason Robbins
Chair