

## **Beachwalk BOD Hearing Minutes – August 26, 2020**

Board members present: Bill Bryan, Megan Garrett, Tracy Mitchell, Victoria Chapman

Additional participants: Joe Truelove and Lee Brennan

Cindy Snead from Network Realty was in attendance.

Meeting was conducted over WebEx (Garrett) and in person in the Clubhouse, and began at 5:34 PM.

Purpose: The purpose of the meeting was to address an appeal of an Architectural Control Committee (ACC) denial of fence, requested by Joe Truelove.

Bill began with an opening statement explaining the structure of the ACC.

Bill stated the following facts: Joe Truelove submitted a proposal for fence to the ACC (see attachment). The ACC denied the proposal.

Discussion ensued as to whether the application received was in accordance with established procedures. After initial submittal Lee asked for additional information (drawing or photo of fencing). This was submitted right way by Joe. The ACC processed this on or about the 16<sup>th</sup> of July. Joe notes that the denial from the ACC did not include the notification for the right to appeal. It was determined that this was not germane to today's discussion and no vote was held on this matter.

Joe presented his appeal to the BOD. He noted that fencing prohibitions in the Architectural Guidelines pertain to a front fence and not a rear one. His proposed fence does not go against the covenants, restrictions, or guidelines. Joe takes issue that one of the reasons given by the ACC for denial is that his fence does not fit within Community Standard. He argues that Community Standards are not well established or documented and believes they should have been documented at the time of publishing the most recent version of the governing documents. Joe noted that he has not received answers to his questions posed to the ACC in response to the denial (see attachment). Joe acknowledges that there is flexibility in the Covenants and Restrictions (C&R) to update Community Standards but reiterates that baseline community standards should be documented.

Lee presented his rebuttal to the appeal to the BOD. Lee acknowledges that the Guidelines do not really apply to Joe's fence proposal (back yard). Lee addressed Joe's question about why the guideline about front fences was waived for a neighbor's property. He indicated that the ACC originally denied a tall rear yard fence (backing to the pond) and through back and forth with the homeowner, agreed to a compromise to place the front yard fence based on another lot that has a front yard fence (had been there for a long time). Lee noted that the Community Standard has evolved over time. Lee indicates that he believes no one put anything about back yard fences in the Guidelines because no one would want to do this, as those living around the pond do so to look at unobstructed view.

Bill interjected that the NCDEQ (authority that issues and enforces our stormwater permit) has a best maintenance practices manual that says that fencing around a retention pond may have adverse effects on maintenance and aesthetics. Joe says the aesthetics apply to the pond and not his private property.

Lee reiterated that in the ACC's interpretation of the Community Standards, a fence is not allowed backed to the pond because none exist.

Joe further asked about the ACC's reasoning for denial regarding issues with Landscaping. Joe wants to know what issues there are with the existing fences. Bill explained that the contract negotiated with the Landscaping contractor is based on existing fences at the time of contract negotiation and that trimming around fences increases maintenance time. Joe points out another recently erected fence that was permitted after the Landscaping contract but notes that his is now being denied.

Joe also brought up the recent addition of decks in front of houses. He indicates that using Lee's principles, it would have been a Community Standard that there be no decks in these locations yet they were permitted.

Joe reiterates his point that there needs to be better consistency in deciding what is a Community Standard and enforcement of this.

Open discussion included: Thoughts that 18" fencing would not obstruct views. Lee points out that if 18" is allowed, people will then ask for fences up to 4' (as permitted in the Guidelines). Joe wants the fence to help prevent the Landscapers from cutting the stormwater management vegetation. Megan notes that Article 13.2 (b) states the ACC shall use the design guidelines as the community-wide standard and also reiterates what Joe said, that the Architectural Guidelines are not in opposition to Joe's request. Article 13.3 (c) allows for the Guidelines to include specific unique locations, however, the current Guidelines do not include these and do not currently prohibit fences in any particular area except for certain prohibitions in front yards. The Architectural Guidelines are not currently dated or registered with the County and the copy available to homeowners via the website is not dated, although the current list is believed to be those as approved at the March 2016 BOD meeting. Tracy indicated that she felt that due to size, location, and nature/purpose, Joe's proposal wasn't for a fence, but a temporary landscaping barrier with purpose.

Bill called for a vote to uphold Joe's appeal (approval of fence as proposed). The BOD voted to 3 in favor, 1 absent, and 1 opposed. The vote passes that Joe's appeal is upheld and his fence approved.

Meeting was adjourned at 6:29 PM.

---

Submitted by: Megan Garrett, Secretary  
Beachwalk HOA Board of Directors

---

Approved by: Bill Bryan, President  
Beachwalk HOA Board of Directors

Attachments: Joe's original request for fence (labeled Attachment 4) – 2 pages  
Email chain of ACC denial and Joe's questions about the denial – 3 pages

# Attachment 4

## **BEACHWALK REQUEST FOR ARCHITECTURAL MODIFICATION**

Homeowner's Name: \_\_\_\_\_ JOE TRUELOVE \_\_\_\_\_

Homeowner's Address: \_\_\_\_\_ 512 SHELL DR

Beachwalk Lot # and St. Address: \_\_\_\_\_ 74 Home Phone: \_\_\_\_\_ 910 232 2616

Email: \_\_\_\_\_ JOEATKURE@GMAIL.COM

Cell Phone: \_\_\_\_\_

***The Home Owners Association (HOA) Board has 30 days to review your request. Please wait for written approval before starting any project.***

### **Type of Modification:**

\_\_\_\_\_ New Construction \_\_\_\_\_ Addition   X   Fence \_\_\_\_\_ Exterior painting \_\_\_\_\_  
Roof \_\_\_\_\_ Outbuilding \_\_\_\_\_ Porch/deck/patio \_\_\_\_\_ Landscape \_\_\_\_\_ Shower \_\_\_\_\_  
\_\_\_\_\_ Other

### **Attachments:**

Please attach a detailed description and drawing(s) of improvements/modification(s), including the following information, if applicable:

- |  |   |
|--|---|
| 1. Location: BACK YARD   | 6. Plans/drawings/photo/brochure  |
| 2. Size: H 18in L 60ft   | 7. Roof design  |
| 3. Color: WHITE  | 8. Exterior finish  |
| 4. Material: VINYL PLASTIC   | 9. Dimensions   |
| 5. Copy of property map showing easements and location of proposed modification(s) | 10. Types of plants, quantities, addition or removal of plants, existing or new plant bed, edge treatment |

### **Description of Modification:**

GARDEN FENCE TO DEMARK THE LINE BETWEEN THE POND EROSION CONTROL PLANTS AND MY YARD TO PREVENT LANDSCAPINGS FROM DESTROYING EROSION CONTROL PLANTS AND TO ENHANCE ASTHETICS OF THE PROPERTY

---

Estimated start date: AFTER APPROVAL Estimated completion date: 2 DAYS  
HENCE

***The HOA Board reserves the right to request more information to clarify the request. Requests to approve multiple changes should be submitted separately.***

### **Applicant Certifies the Following by Initialing Each Item or Noting "N/A":**

- A. Proposed modification shall not be for the purpose of conducting a business. \_\_\_\_\_ JAT
- B. Exterior construction shall be completed within 6 months of start of construction. \_\_\_\_\_ JAT
- C. No large trees/natural foliage shall be removed from lot without prior approval. \_\_\_\_\_ JAT
- D. Upon completion of construction, the total impervious surface on lot shall not exceed 4,000 sq. ft. (If impervious surface already exceeds 4,000 sq. ft., no additional impervious surface shall be allowed; see Property Use Restrictions in Declarations, p. 31.) \_\_\_\_\_ JAT

## Attachment 4

E. Effective sedimentation/erosion control measures shall be continuously maintained during construction to ensure no soil leaves the site or enters the stormwater system. \_\_\_ N/A

F. No construction shall take place on Sundays or holidays. \_\_\_ N/A

G. Applicant has read and understands all building requirements contained in Beachwalk's Declaration of Covenants, Property Use Restrictions, Design Guidelines and any amendments thereto, and agrees to abide by them. \_\_\_ N/A

H. Applicant and builder shall maintain all proper/necessary insurance coverage during construction. \_\_\_ N/A

I. Applicant shall be responsible for compliance with all town/county building codes, permit requirements, ordinances, and regulations. \_\_\_ N/A

J. Applicant shall be responsible for restoring any drainage areas affected by either construction or approved modifications. \_\_\_ N/A

K. Applicant/builder shall not begin construction without a building permit approved by the Town Building Inspector, if one is required. \_\_\_ N/A

### **If Homeowner Is Not Performing the Work:**

Builder Name: \_\_\_\_\_ Phone # \_\_\_\_\_

Builder Address: \_\_\_\_\_

Builder License Number: \_\_\_\_\_

### **Deposit:**

For new construction, the Board will require a \$1,000 deposit or bond from homeowner upon start of construction. If deposit/bond is required, the HOA Board President will sign here:

\_\_\_\_\_ Date: \_\_\_\_\_

### **Disclaimer:**

The Board of Directors shall not be liable to any contractor, subcontractor or materialman, or to any person sustaining personal injury or property damage, for any claim arising in conjunction with this addition/alteration/improvement/modification.

***If the request is denied by the ACC, the Lot Owner may appeal directly to the BOD.***

### **Signature Approvals:**

Applicant: JOE TRUELOVE Date: 21 JUNE 2020

President of HOA Board: \_\_\_\_\_ Date: \_\_\_\_\_

Board Member: \_\_\_\_\_ Date: \_\_\_\_\_

Mail all information to: Cindy Snead, Network Realty, 1029 North Lake Park Boulevard,  
Carolina Beach, NC 28428



Joe Truelove AtKure &lt;joeatkure@gmail.com&gt;

---

**512 Shell Drive - Truelove - Garden Fence**2 messages

---

**Lee Brennan** <lbrennan1486@gmail.com>

Fri, Jul 17, 2020 at 4:49 PM

To: Joe Truelove &lt;joeatkure@gmail.com&gt;

Cc: Bill Bryan &lt;billbryan1946@gmail.com&gt;, Gene Lisewski &lt;genelis@charter.net&gt;, Cindy Snead &lt;cindy@networkwilmington.com&gt;, Megan Garrett &lt;pennypollywog@gmail.com&gt;, Don Morrow &lt;mordn52@bellsouth.net&gt;

Joe,

After review and discussion the ACC has concluded that your 'Request for Modification' to add a

Garden Fence is denied.

There are three major reasons for this decision.

1. The State of North Carolina in our Pond Permit calls for keeping the perimeter free and clear of  
structures that could impede proper maintenance and access to the ponds to perform any  
necessary dredging.
2. The ACC does not want to change the current 'community standard' of no fencing around either pond.
3. Landscaping Companies may have an issue with cutting lawns due to fencing.

**Architectural Control Committee,**

Lee

Lee Brennan, Chairman

210 N 5<sup>th</sup> Avenue

704 400-2875

[lbrennan1486@gmail.com](mailto:lbrennan1486@gmail.com)

---

**Joe Truelove AtKure** <joeatkure@gmail.com>  
To: Lee Brennan <lbrennan1486@gmail.com>

Fri, Jul 31, 2020 at 3:30 PM

Lee,  
My comments below are in blue font; yours in black.  
Joe

1. The State of North Carolina in our Pond Permit calls for keeping the perimeter free and clear of structures that could impede proper maintenance and access to the ponds to perform any necessary dredging.

The fence selected will not be an impediment to pond maintenance. It will not be permanently anchored and can be easily removed for access to the pond. Other than the recent dredging no maintenance has been conducted along my property line that the fence would have been impeded.

2. The ACC does not want to change the current 'community standard' of no fencing around either pond.

The Declaration states: "Fences and Walls. No fence or wall shall be erected or permitted on any lot closer to the front line than the front corner of the dwelling erected upon said lot, and no chain link or wire fence shall be allowed." Yet a fence has been installed in violation of this restriction. If they were approved by the ACC/Board then the ACC/Board has acted in violation of the restriction and has changed the "community standard". In effect the ACC/Board has unilaterally changed the Declaration in violation of NC law. (General Statute 47F-2-117: "The executive board may not act unilaterally on behalf of the association to amend the declaration. . .")

There is no prohibition in our documents for a fence in the backyard; the yard being on the pond notwithstanding.

Additionally, there is a deck built in a front yard that seemingly is a change to the "community standard".

3. Landscaping Companies may have an issue with cutting lawns due to fencing.

If this is a reason for denying approval, then the recently installed fences (and all other approved fences) should not have been approved/installed. Besides, only one side of the fence I would install would be the "issue" since the other side would border and face the pond's vegetation buffer.

For the reasons stated above, I believe the ACC/Board should reverse its decision denying the installation of a fence in my back yard. If the ACC/Board does not reverse its decision, I would like to know:

Where in the stormwater permit does it "call for keeping" the "perimeter free and clear of structures that could impede proper maintenance and access to the ponds."?

Why is an easily removed fence would be an impediment to pond maintenance. The fence is 18" high; easily stepped over or easily removed if equipment needs access. No equipment has ever needed access to my yard.

Why is the "community standard" for a front yard fence, which is prohibited by the Declaration, was changed, but the "community standard" for a backyard fence, which is not prohibited, cannot be changed?

When did landscaping companies start having "issues" with "cutting lawns due to fences". The fence is to be installed along the vegetative erosion buffer where there should be no cutting?

What issues does the landscaping companies have with existing fences?

[Quoted text hidden]

--

Joe Truelove