



BOARD OF ADJUSTMENT COMMUNICATION

DATE September 20, 2023

FROM: Thad Chambers, Town Administrator

AGENDA ITEM: Public hearing to consider a variance to regulations found in Bartonville Zoning Ordinance Section 20.3.C. The variance request is to reduce the required setback for a screening fence along the applicant's property line adjacent to a public road. The property subject to the variance request is located at 568 Seals Road in the Town of Bartonville, Denton County, Texas. The Town of Bartonville file number for this application is VAR-2023-001.

Applicant: Steve and Marilyn Addison

Zoning: Agriculture (A)

Requested Variance: Reduction in required fence setback in Bartonville Zoning Ordinance Section 20.3.C

Summary: The applicant has submitted a variance request (Exhibit 1) to the required setback for a recently constructed screening fence along the applicant's property line adjacent to a recently-constructed public road. The fence is located along the applicant's northern property line, which serves as a side yard. The property abuts a recent extension of Hat Creek Road, which was constructed as part of the Deer Hollow subdivision. In their variance application, the applicant states that the fence was constructed to address persistent trespass and nuisance from the Deer Hollow development and was constructed following approval by previous Town of Bartonville staff. Current Town staff have been unable to locate written correspondence indicating approval of the fence in its current location.

The fence is approximately 500 feet in length and is constructed of corrugated metal sheeting, which is not a traditional fencing material. The fence was evaluated for structural stability by the building official, who verified that it meets the standards of "sturdy, durable, and relatively maintenance-free" as is required in the "new and innovative" materials clause in BZO Section 20.3.B. See Exhibit 2 for a photo of the fence.

The constructed fence is currently in violation of Bartonville Zoning Ordinance (BZO) section 20.3.C, which states that "No privacy or solid residential fence shall be closer than fifteen feet (15') to a public street...". Based on Chart 4.3 of the BZO, Agriculture is considered a residential zoning district, thus the fence setback standard applies in the AG zone. The setback from the public street is interpreted by the Town as the edge of the public right-of-way, not the edge of street pavement. This means that the variance request is actually a reduction of the setback by 14 feet, six inches, and applies to the entire length of fence, not the minor degree indicated in the applicant's submittal narrative. Visual inspection of other examples within the Town shows that there is a nearly uniform application of the standard where fences are at least 15 feet set back from the property line (based on Denton County CAD property lines).

Criteria for Approval: In deciding the variance petition, the Board of Adjustments shall apply the following criteria:

- a) There are special circumstances or conditions arising from the physical surroundings, shape, topography or other feature affecting the land subject to the variance petition, such that the strict application of the provisions of this Zoning Ordinance to the development application would create an unnecessary hardship or inequity upon or for the petitioner, as distinguished from a mere inconvenience, in developing the land or deprive the petitioner of the reasonable and beneficial use of the land;
- b) The circumstances causing the hardship do not similarly affect all or most properties in the vicinity of the petitioner's land;
- c) The variance is necessary for the preservation and enjoyment of a substantial property right of the petitioner;
- d) Granting the variance petition will not be detrimental to the public health, safety or welfare, or injurious to other property within the area;
- e) Granting the variance petition will not have the effect of preventing the orderly use and enjoyment of other land within the area in accordance with the provisions of this Ordinance, or adversely affect the rights of owners or residents of surrounding property;
- f) Granting the variance petition is consistent with any special criteria applicable to varying particular standards;
- g) The hardship or inequity suffered by petitioner is not self-induced;
- h) The request for a variance is not based exclusively upon a desire from the petitioner for increased financial gain from the property, or to reduce an existing financial hardship; and
- i) The degree of variance requested is the minimum amount necessary to meet the needs of petitioner and to satisfy the standards in this section.

If Approved: Approval of the variance request would permit the existing fence to remain in its current location. The fence is located within the applicant's property boundaries; it does not meet the setback requirement in the BZO.

If Denied: Denial of the variance request would mean that the applicant would have to move the fence southward no less than 15 feet distance from their northern property line.

Exhibits:

1. Variance Application VAR-2023-001
2. Photo of fence
3. Notification Letter and Addresses
4. Publication Affidavit