



AGENDA ITEM COVERSHEET

PREPARED BY: Haley Moccia, Planner

DEPARTMENT: Community Development

MEETING: Board of Adjustment – 9/18/2024

SUBJECT: Variance to Chapter 40. Article VII. Fence Regulations from the required 4' height limitation for fences located within the 20' front yard setback for 201 Fayetteville Ave.

BACKGROUND:

The applicant, Pleasure Island Holdings, LLC, is requesting a variance to allow fencing over 4' within the 20' front yard setback from Sec. 40-204. - Height restrictions that require no fence shall exceed four feet in height when located in the front yard setback.

The property is located at 201 Fayetteville Ave and is in the MX zoning district. The Dry Dock Inn and its pool are located on the property. The Dry Dock Inn consists of two buildings and two pools that span across two parcels of land (300 Lake Park Blvd S & 201 Fayetteville Ave.). Each parcel has its own building and pool. The property associated with this variance is located at 201 Fayetteville and is a 12,499.7 sq ft lot. This property is adjacent to Fayetteville Ave. The building and pool on the lot are considered legal non-conforming structures since they do not meet the minimum setback standards for the zoning district for pools and buildings. Any fencing located within 20' of the front property line can be no taller than 4' or 48" (see attachment 2).

The pool decking the fence is located on is raised above the natural grade of the lot. The town ordinance requires fence height to be measured from the highest point of the fence, not including columns or posts, to the existing natural grade. NC Building Code requires, "the top of the barrier shall be at least 48 inches above grade measured on the side of the barrier that faces away from the swimming pool." Since the elevated pool deck is raised above the natural grade of the lot and could be used as a step to climb a shorter fence, the fence height would need to be measured from the height of the raised pool deck. Therefore, the town would approve a 4' fence measured from the pool deck rather than the natural grade because NC Building Code requires an adequate barrier.

Kyle Sears, with Sears Fence LLC, is the contractor who applied on behalf of the property owner in March 2024 to replace the fencing surrounding the pool located on the property. The

application and supporting site plan materials proposed a 52" tall fence, approximately 4" over the allowed 48" height. Kyle Sears was advised by the town plan reviewer that the fencing within the front setback could not exceed 48". They were told they would need to provide an updated fence section with an adjusted fence height to meet the town ordinance regulations.

On April 9th, 2024, Kyle reached out to the town plan reviewer and asked for a permit update. The plan reviewer reminded Kyle the fence railing cannot go over 48" and the town would need a new fence height. May 10th, 2024, Kyle replied to the town planner and asked if a variance would be possible. The town reviewer told Kyle the owners of the Dry Dock Inn already went through a variance a year prior for a similar issue where the fence was installed without a fence permit and it was installed too tall, so the owners should be aware of this issue. The plan reviewer suggested they try and find other alternatives to avoid a variance. The town reviewer suggested installing a different type of fence that would meet the height requirements. The reviewer also asked if it was possible to anchor the fence posts on the outside of the pool deck, so the bottom horizontal bar sits flush with the pool deck.

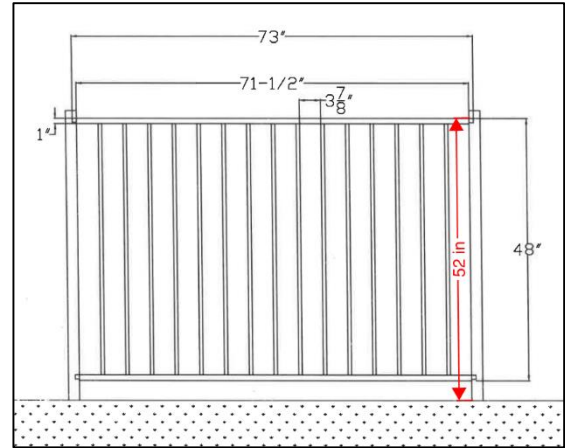


Figure 1. Fence elevations submitted with fence permit application.

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After emailing the contractor, the town reviewer gave Andrea Thomas, New Hanover County Health & Human Services reviewer, a call to check if the suggested fencing would meet NC Building Code and Health Department requirements. She said the suggestions were valid and could meet NC Building Code and Health Department requirements while also adhering to the Town Ordinance. She also mentioned she had heard a new fence was already installed onsite. Upon hearing a new fence had been installed, the town reviewer conducted a site visit and confirmed a new fence was installed without a permit and the fence was over 48". The town reviewer emailed the fence contractor and the owner of the property about the fence height violation. When told what their options were, the owner Deanna Lanni, decided they would pursue a variance (See attachment 3).

To resolve the violation situation, the applicant is seeking a variance to the required 4' fence height limitation for fences located within the 20' front yard setback for 201 Fayetteville Ave. If approved, the fence would not need to be replaced or altered to meet the 4' fence requirement.

REQUIRED FINDINGS:

When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the board of adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:

1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
2. 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, may not be the basis for granting a variance.
3. 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.
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.

CONDITIONS:

In granting any variance, the Board may prescribe reasonable and appropriate conditions and safeguards, in conformity with this ordinance. Violation of any such conditions or safeguards, when made part of the terms under which the variance is granted, shall be deemed a violation of this ordinance and punishable under Article 19 of the Zoning Ordinance:

If the board supports the findings staff recommends, the below condition for the variance would apply:

The variance is granted for the proposed pool fencing only and any new fencing on the property shall conform to the setback height requirements.

ATTACHMENTS:

1. Variance Application
2. Setback Site Plan
3. Email Communications
4. Photos