



## AGENDA ITEM COVERSHEET

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**PREPARED BY:** Haley Moccia, Planner

**DEPARTMENT:** Planning &  
Development

**MEETING:** Board of Adjustment – July 17<sup>th</sup>, 2023

**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 300 S Lake Park Blvd.

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**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 requires no fence shall exceed four feet in height when located in the front yard setback.

The property is located at 300 S Lake Park Blvd and is in the MX zoning district. The Dry Dock Inn and its pool are located on the property. The property consists of one 15,379 sq ft lot. This property is a corner lot adjacent to Fayetteville Ave. and S Lake Park Blvd. 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. Due to its nonconforming status, either Fayetteville Ave or S Lake Park Blvd could be established as a front setback. The favorable side to establish the front setback would be S Lake Park Blvd since it would impact the least amount of fencing (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 the NC Building Code requires an adequate barrier.

Gator Strong Services, a fence contractor, applied for a fence permit (see attachment 3) on behalf of the property owner in March 2022 to replace the fencing surrounding the pool located on the property. The application and supporting site plan materials proposed a 54" fence. Gator Strong Services was advised by the planning reviewer that the fencing within the front setback could not

exceed 4'. They were told they would need to provide an updated site plan with an adjusted fence height to meet the town ordinance regulations. Danny, from Gator Strong Services, inquired about any fence exceptions or variance process. Jeremy Hardison and Haley Moccia advised Danny there were no exceptions in the ordinance and spoke to him about the variance process. Danny did not indicate a desire to apply for a variance at the time and was told to submit an updated site plan with a conforming fence height for fence permit approval.

No updated site plan was submitted, and the fence permit was left unissued. It was discovered in March 2023, through a code enforcement audit of all the unissued and open permit applications, that a fence was installed surrounding the pool at the Dry Dock Inn without an issued permit. The fence height surrounding the pool measured 56.5". Town staff contacted Danny, the fence contractor, and Deanna Lanni, the property owner listed on the fence application, to inform them the fence was too tall within the front setback, and it would need to be reduced to 48" to meet the Town's 4' fence height requirements. Danny stated the owner contacted the county, who sent the North Carolina Administrative Code addressing fence requirements surrounding pools (15A NCAC 18A .2528 FENCES). Deanna stated she sent the information sent from the county to Danny and was unaware he proceeded without a permit (See attachment 4).

Danny and the owner of the Dry Dock Inn met onsite to determine appropriate avenues to meet the Town ordinance. It was suggested they could alter or replace the section of fencing located within the front setback to meet the fence height requirements.

To resolve the situation the applicant is seeking a Variance to the required 4' fence height limitation for fences located within the 20' front yard setback for 300 Lake Park Blvd. S. 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

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

Attachments

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