



City of Diamondhead

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STAFF REPORT TO PLANNING COMMISSION

DATE: November 4, 2020

CASE FILE NUMBER: 202000415

APPLICANT: Mary Ellen Jones

PROPERTY OWNER: Mary Ellen Jones

TAX PARCEL NUMBER: 067R-2-36-161.000

PHYSICAL STREET ADDRESS: 790 Laie Court

LEGAL DESCRIPTION: Diamondhead Subdivision Phase 1, Unit 3, Block 2, Lots 59 and 60

ZONING DISTRICT: R-2 Medium Density Single Family

TYPE OF APPLICATION: Variance

NATURE OF REQUEST:

Ms. Mary Ellen Jones has filed an application requesting a variance from the Zoning Ordinance (Article 9.8 J) to replace a 6' wood privacy fence on the front property line along Laie Court and extending beyond the front façade of her house within the 20' front yard setback area.

The property address is 790 Laie Court. The tax parcel number is 067R-2-36-161.000. The legal description is Diamondhead Subdivision Phase #2, Unit 3, Block 2, Lots 59 and 60. The property is located in an R-2 zoning district. The fence is required to be set back 20' from the front property line but not any closer than the façade of the house.

DATE OF PUBLIC HEARING BEFORE PLANNING COMMISSION: November 10, 2020

ACTION BY THE PLANNING COMMISSION: In accordance with the Comprehensive Zoning Ordinance Article 2.6.4, the Planning Commission may recommend to the Mayor and City Council a variance be granted as the variance was applied for or in a modified form or subject to conditions or the application may be denied. A variance may be revocable, may be granted for a limited time period, or may be granted subject to conditions as the Planning Commission or Mayor and City Council may prescribe.

FINDINGS:

The Planning Commission may recommend granting a variance provided affirmative findings of fact are made on each of the following criteria:

- A. That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same district. By way of example, special conditions or

circumstances peculiar to land could include irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions.

- B. That literal interpretation of the provisions of this title would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this title.
- C. That special conditions and circumstances do not result from the actions of the applicant.
- D. That granting the variance requested will not confer on the applicant any special privilege that is denied by this title to other lands, structures, or buildings in the same zoning district.
- E. The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.
- F. The Variance would observe the spirit of the Ordinance and would not change the character of the district.
- G. The Variance would observe the spirit of the Comprehensive Plan.
- H. That the Variance requested will not result in any change in use or density of the subject property.

NOTES: In recommending that any variance be granted, the Planning Commission may prescribe appropriate conditions and safeguards in conformity with the zoning ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of the zoning ordinance and punishable as determined within the zoning ordinance.

Under no circumstances shall the Planning Commission or Mayor and City Council grant a variance to allow a use not permissible under the terms of the zoning ordinance in the district involved, or any use expressly or by implication prohibited by the terms of the zoning ordinance in said district.

VARIANCE PROCEDURE:

This procedure is intended to provide relief from the terms of the Zoning Regulations when, because of special circumstances applicable to the property, the strict application of the Zoning Regulations deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification, and to ensure that any adjustment thereby authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and the district in which such property is situated.

- A. Variance: A modification from the provisions of the zoning ordinance of the City of Diamondhead, as determined by the Mayor and City Council for final disposition, in cases where enforcement of the zoning ordinance would result in unnecessary hardship.
- B. Hardship: For purposes of granting a variance A hardship exists only where the unusual situation or condition is not created by the owner of the property. A hardship as related to zoning is not to be confused with an economic, personal, or medical hardship

RECOMMENDATION TO PLANNING COMMISSION: To **approve** the variance as petitioned;

The staff recommends to approve the variance based on the following findings of fact.

- This house was built in 1990 before the incorporation of the City in 2012. Ms. Jones purchased this property with the fence in 2013 and the garden area was already established in the front yard area. The unique part of this request is that protection is needed to prevent deer from eating her garden plants. Something to consider about this request is there is not any other area which provides adequate sunshine for a garden. The plants grown in the garden also provides food for the owner and neighbors.
- That literal interpretation of the provisions of this title would not deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this title.
- Ms. Jones did not build the fence and the garden area was already established. When she purchased the property the trees in the back yard were already established and she has not planted any trees in the backyard to create more shade.
- That granting the variance requested would confer on the applicant a special privilege that is denied by this title to other lands, structures, or buildings in the same zoning district. However, another property within site of this property has an encroachment into their front yard setback.
- The Variance would observe the spirit of the Ordinance and would not change the character of the district.
- That the Variance requested will not result in any change in use or density of the subject property.