

PLANNING AND ZONING BOARD REPORT

PZB Project Number 23-01500011: Consideration of a variance to allow a 6-foot high fence in the required setback for the property located at 1701 12th Avenue North. The subject site is zoned Single Family Residential (SF-R) and has a future land use designation of Single Family Residential (SFR).

Meeting Date: October 4, 2023

Property Owner/Applicant: Carolyn Deli

Address: 1701 12th Avenue North

PCN: 38-43-44-21-03-000-0570

Size: 0.2270-acre lot / ±2,062 square feet of existing structure

General Location: Southwest corner of 12th Avenue North and North A Street

Existing Land Use: Single-Family Residential

Current Future Land Use Designation: Single Family Residential (SFR)

Zoning District: Single Family Residential (SFR)

Location Map



RECOMMENDATION

The proposed variance request is not consistent with LDR Section 23.4-4(d)(1)(D). The applicant has not established by competent and substantial evidence that the strict application of the LDRs would deprive reasonable use of the land. Therefore, Staff is recommending denial of the proposed variance.

PROJECT DESCRIPTION

The applicant, Carolyn Deli, is requesting a variance to allow a 6-foot high fence along the side property line fronting North A Street without the required 30" setback and landscape screen. The subject property is located on the southwest corner of 12th Avenue North and North A Street. The parcel is located within the Single-Family Residential (SF-R) zoning district and has a Future Land Use (FLU) designation of Single-Family Residential (SF-R).

COMMUNITY OUTREACH

Staff has not received letters of support or opposition from adjacent or nearby neighbors.

BACKGROUND

The subject site is a 0.2270-acre residential lot. Below is a timeline summary of the residential property based on Palm Beach Property Appraiser's records and City records:

- 1954, a building permit (3795) was issued for the construction of a new single-family residence.
- 1959, a building permit (6890) was issued for a residential addition.
- 1991, a fence permit (91-00710) was issued for 6-foot high fencing on the southeast side of the property, fronting North A Street.
 - 1991, a building permit (91-00694) was issued for a new pool and deck.
- On December 13, 2022, a code compliance case (22-2210) was initiated. The violations included repairing, removing, or replacing, an existing fence that was in disrepair.
 - On July 13, 2023, the code compliance case was closed. The fence permit was submitted but not approved.
- On June 8, 2023, building permit #23-1937 was submitted to install new fencing.
 - On June 22, 2023, the zoning review was disapproved since the required height, setback, and landscape screen was not satisfied.
- On August 3, 2023, a pre-application meeting took place to discuss the variance procedures.
- On August 22, 2023, a variance application was submitted to the Department of Community Sustainability for the location of the fence.
 - On August 29, 2023, the application was deemed complete.
- September 18, 2023 – A search of the City's database shows that there are no active code cases associated with this property.

Consistency with the Comprehensive Plan and Strategic Plan

The subject site has a Future Land Use (FLU) designation of Single Family Residential (SFR). Per Policy 1.1.1.2, the SFR future land use area is intended primarily to permit the development of single-family structures at a maximum of 7 dwelling units per acre. Single-family structures are designed for occupancy by one family or household. The variance being sought does not change the use of the property as it is a fence height variance. As such, a formal consistency review of the strategic plan and comprehensive plan is not applicable to an improvement of this scale. However, it is important to note that the proposed improvement would visually impact the neighborhood, including the specific intersection of 12th Avenue North and North A Street.

Consistency with the City’s Land Development Regulations

Per Section 23.2-26, variances are authorized for height, area, size of structures, size of yards, parking requirements, and other area requirements and open spaces. The Department of Community Sustainability is tasked in the Code to review variance applications for consistency with the City’s LDRs, for compliance with the findings for granting variances (analyzed in the next section), and to provide a recommendation for whether the application should be approved, approved with conditions, or denied. The applicant’s justification statement is included as **Attachment A**.

Staff Analysis: The proposed 62 linear feet of 6-foot high fencing along North A Street conflicts with the development requirements in the City’s Zoning Code, specifically height limitations for fencing in single-family and two-family uses. The property is located in the Single-Family Residential (SFR) Zoning District. Based on the LDR Section 23.4-4(d)(1)(D):

Required by Code	Proposed
Along side and rear property lines adjacent to roadways (except alleys) a fence shall have a maximum height of six (6) feet and must be set back a minimum of thirty (30) inches from the property line providing a landscape screen maintained at a minimum height of twenty-four (24) inches (see definitions). *	62 linear feet of 6-foot high fencing along a side property line adjacent to a roadway (North A Street) <u>without</u> a minimum of thirty (30) inches from the property line and <u>without</u> providing a landscape screen maintained at a minimum height of twenty-four (24) inches.

** Landscape screen (or "landscape hedge"): A line, row, or group of plant material installed and maintained at a minimum height of twenty-four (24) inches so as to form a continuous buffer acting as a visual screen that may include shrub hedging or decorative landscaping.*

The data and analysis below review the application against the regular findings for approval of all variance requests:

Section 23.2-26(b) Regular findings of approval

The land development regulations require all variance requests to be analyzed for consistency with Section 23.2-26(b). Staff has reviewed the application against this section and the analysis is outlined as follows:

1. Special circumstances or conditions exist which are peculiar to the land or building for which the variance is sought and do not apply generally to nearby lands and buildings, and is not the result of action of the applicant.

Staff Analysis: Homes located on corners are a common condition throughout City blocks. The applicant contends that the location of existing trees would conflict with the location of a fence that is setback 30”. Staff recommended that the applicant apply for an administrative adjustment to determine that the lot had double frontage and to allow fencing along North A Street to have a maximum height of 4 feet (without a 30" setback for a landscape screen). Additional privacy can be achieved with hedging behind the 4-foot high fence or the existing trees. As the circumstances of the corner lot are common and relief was offered through the administrative adjustment process to address concerns related to privacy and existing tree locations, the proposed variance does not meet the intent of this criterion. **Does not meet the criterion.**

2. The strict application of the provision of these LDRs would deprive the applicant of any reasonable use of the land or building for which the variance is sought.

Staff Analysis: The property was constructed in the 1950s as a single-family structure. Strict application of the LDRs that would require fencing along North A Street to have a maximum height of 4 feet (without a 30" setback for a landscape screen) or a maximum height of 6 feet (with the 30” setback for required planting) if an administrative adjustment was applied for and granted. Either of the fence configurations would not deprive the applicant of reasonable use of the land as a single-family structure. **Does not meet the criterion.**

3. The variance proposed is the minimum variance which makes possible the reasonable use of the land or building

Staff Analysis: The variance is not required for reasonable use of the land. A landscape screen on either side of the fence can provide additional privacy which is a concern expressed in the applicant's justification statement. **Does not meet the criterion.**

4. The granting of the variance will be in accordance with the spirit and purpose of this chapter, and will not be unduly injurious to contiguous property or the surrounding neighborhood nor otherwise detrimental to the public welfare.

Staff Analysis: In 2013, the City's new Land Development Code was adopted through Ordinance 2013-34. The new code included fence regulations that require a setback and landscape screen for 6-foot high fences fronting streets in single-family and two-family properties. The 30" setback and landscape screen are required to create a visual buffer between 6-foot high fencing and the sidewalk to create an enhanced community appearance and streetscape. The granting of the variance may have a negative visual impact on the surrounding neighborhood and is contrary to the intent of the fence regulations. **Does not meet the criterion.**

CONCLUSION

Variance requests are required to be reviewed for consistency with the criteria set forth in LDR Section 23.2-26(b), including the requirement that a hardship be established related to the circumstances of the property and that the hardship not be self-created. As the circumstances of the subject lot are typical, and relief was offered through the administrative adjustment process to address concerns related to privacy and existing tree locations with a 4 ft fence and landscape screening, a hardship was not established. Further, the applicant has not established by competent and substantial evidence that the proposed variance is consistent with any of the required review criteria, including that the strict application of the LDRs would deprive the property owner reasonable use of the land. Therefore, staff is recommending that the Planning & Zoning Board NOT APPROVE the proposed variance based on the data and analysis in this report.

BOARD POTENTIAL MOTION:

I MOVE TO APPROVE PZB PROJECT NUMBER 23-01500011 with staff recommended conditions for a **variance** to allow 6-foot high fencing along North A Street without the required setback or landscape screen for the property at 1701 12th Avenue North. The application meets the variance criteria based on the data and analysis in the staff report.

I MOVE TO DISAPPROVE PZB PROJECT NUMBER 23-01500011 for a **variance** to allow 6-foot high fencing along North A Street without the required setback or landscape screen for the property at 1701 12th Avenue North. The project does not meet the variance criteria for the following reasons [Board member please state reasons.]

Consequent Action: *The Planning & Zoning Board's decision will be the final decision for the Variance. The Applicant may appeal the Board's decision directly to circuit court.*

ATTACHMENTS

- A. Application Package (survey & supporting documents)