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## MEMORANDUM

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**TO:** PLANNING COMMISSION

**FROM:** KEN ONDICH – PLANNING / COMMUNITY DEVELOPMENT DIRECTOR  
KYRA CHAPMAN - PLANNER

**SUBJECT:** REQUEST FOR VARIANCE #V1-2024 FROM THE FENCE REGULATIONS IN THE RL 90 SINGLE FAMILY RESIDENTIAL ZONING DISTRICT TO ALLOW A 6’ TALL FENCE TO BE LOCATED 15’ FROM THE SOUTH PROPERTY LINE ALONG 4<sup>TH</sup> ST NE AND ADDITIONALLY TO ALLOW A 6’ TALL FENCE TO BE LOCATED FORWARD OF THE NEAREST REAR CORNER OF THE HOME AT 509 PERSHING AVE N, AS PROPOSED BY TAYLOR AND DUSTIN FILAN.

**DATE:** FEBRUARY 29, 2024

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### **Background / History**

Taylor and Dustin Filan have applied for a fence variance to install a 6’ privacy fence that does not meet the residential fence requirements as written in Section 708 of the Zoning Ordinance. Specifically, they are seeking to have their 6’ tall fence 15’ from the south property line on the “corner front” side of the yard versus the ordinance requirement that requires a 6’ tall fence to be no less than 30’ from said property line as well as seeking to allow a 6’ tall fence forward of the nearest rear corner of the home. This variance would allow the applicants to more fully utilize their property. Without the variance, the homeowners would not be able to fence in approximately 6,600 sq ft of area in their front and side yards with a 6’ tall fence.

Under the current Zoning Ordinance, 6’ tall fences may only be erected behind the nearest rear corner of the principal building. For corners lots, such as this property, fences may only be erected at the 30’ building setback line on the corner front side yard. The applicants would like to build a 6’ tall fence that would surround their home to prevent their dog from jumping over the fence, and limit animal access to the future vegetable garden. Furthermore, the fence will provide more privacy, especially since pedestrian traffic will likely increase with the sidewalk construction expected along Pershing Ave N in 2025.

### **Legal Description**

The Land is described as follows:

Commencing at a point 360 feet Northwest corner of Block 4, Park Addition to the City of New Prague, according to the map or plat thereof on file and of record in the Office of the Register of

Deeds, Scott County, Minnesota; thence East a distance of 152.5 feet; thence North a distance of 146.7 feet; thence West a distance of 152.5 feet; thence South a distance of 146.7 feet to the point of beginning.

All of the afore described parcel of land lying and being within the Southeast Quarter (SE ¼) of Section 34, Township 113, Range, Scott County, Minnesota.

### **Zoning & Fence Regulations**

The subject property is located in the RL 90 Single Family Residential Zoning District and fences are permitted accessory uses in the district. The following are the residential fence regulations:

1. Fencing in all Districts.
  - A. Fences may be placed along property lines provided no damage of any kind results to abutting property. A clear zone of two feet shall be required for fences located adjacent to any sidewalk or trail edge and a clear zone of five feet shall be required for fences located adjacent to any alley or public roadway edge.
  
2. Residential Fences.
  - A. Fences may be located on any lot line to a height of four (4) feet and a fence up to six (6) feet in height may be erected behind the nearest rear corner of the principal building. The side of the fence considered to be the face (facing as applied to fence posts) shall face abutting property. For corner lots, a six (6) foot fence may only be erected at the 30' building setback line. A fence up to six (6) feet in height may also be erected behind attached garages where the location of the fence is not entirely erected behind the nearest rear corner of the principal building.

The 2025 CIP (Capital Improvement Project) will consist of the installation of a sidewalk along Pershing Ave N. Although staff are uncertain which side of the street the sidewalk will be installed, it will likely be built on the east side of Pershing Ave N due to the relatively flat elevation. According to Zoning Ordinance 708 (1) (A), fences must be built at least 2' away from the sidewalk. To anticipate the potential construction of the sidewalk, the fence must be at least 2' away from the west property line. Also listed in 708 (1) (A) of the Zoning Ordinance, the fence must be at least 5' away from the alley driving surface.

The applicants are proposing to install a 6' tall cedar plank privacy fence around their home. They would like the 6' tall fence to be 30' from the west property line, and 15' from the south property line. They're asking for a variance to allow the fence to be 15' from the south property line and 30' from the west property line. This proposed 6' tall fence would be in violation of the fence regulation that does not allow fences within 30' of a property line along a roadway to be taller than 4' or allow fences taller than 4' to be located forward of the *rear corner of the house*. Without the variance, the homeowners would not be able to fence in the approximately 6,600 sq ft of area in their front and side yard that they are proposing.

### **Neighborhood Conditions**

The subject property as well as all adjacent properties are largely zoned single family residential homes.

North – RL90 - Single Family Residential District

South – RL70 – Single Family Residential District

West – RL 90- Single Family Residential District, RL 70 – Single Family Residential District, RH – High Density Residential District, RM – Medium Density Residential District

East – RL90 - Single Family Residential District, Northside Park

The subject property is unique in that it is a corner lot and is larger than most neighboring properties (0.51 acres large). Most homes in the neighborhood are built at or less than the 30’ front setback. For instance, 513 Pershing Ave N is 23’ and 506 Pershing Ave N is 26’ from their front property line. Since they are closer to their front property line, they have more space to build a 6’ tall fence behind the rear corner of their home. The subject home is 54’ from the south property line, almost twice the required front setback. The home is located in the center of the property, therefore, there is less area behind the rear corner of the house, which would allow a 6’ fence.

If 513 Pershing Ave N wanted to build a 6’ tall fence, it would be built behind the rear corner of their home, which is 57.5’ from their front (west) property line. If 505 4<sup>th</sup> St NE wanted to build a 6’ tall fence, it would have to be 30’ from their front corner (south) property line. To create a cohesive fence line through the neighborhood, staff recommend that the subject property should have a 57.5’ setback on their front (west) property line and 30’ from front corner (south) property line.

### **Applicant’s Statement of Practical Difficulty**

The applicants provided the following statement below on 2/11/2024, regarding their reason for requesting a 6’ privacy fence:

To whom it may concern,

It is our goal upon recently moving to 509 Pershing Ave N to fence in approximately half of the lot, and we are requesting the allowance of a complete 6ft fence due to enhanced security, neighborhood privacy, and family safety.

Our reasons are as follows:

- Along the north side of the house, you can see a storm door leading to our basement. We hope to conceal this for security reasons with the added height of the 6ft fence.
- The proposal of a sidewalk on Pershing Ave N only reinforces our request for added privacy, as we are expecting our first child this summer and hope to have a secure home environment for them to thrive. As my husband as a Police Officer in Shakopee, with added pedestrian traffic inevitably comes an increase in potential crime. We aim to limit this and protect our home as much as possible.
- A 6ft fence along the back end of the home would offer added security to the garage access, as well as the rear home entrance.

- The deck stairway is located on a corner, leading to both north and east sides of the home, not allowing us to cut off either side of the lot for fencing, which requires us to partially fence in both areas in order to enclose the lot.
- We currently have a dog that is unfortunately able to jump over a 4ft fence, which has also led to the need of adding fence height. Our goal is to enjoy the backyard with our family and pets without the concern of their children or dogs have access to the busy intersection at our corner.
- We plan to include a large vegetable garden to the lot and a 6ft fence will help limit animal access to this as well.

Our intention is to allow ample space between the property line and fence for our riding lawnmower to groom the property at ease, as well as ensure snow plows and city utility vehicles plenty of room as well. The location we hope to build around, would not limit any utility access or the construction of a future sidewalk.

This is a very large lot, much larger than most in the neighborhood, and we by no means intend to enclose the entirety of it, or limit the aesthetics of the property.

Our hope is to only expand and continue the beauty of 509 Pershing Ave N along with the neighborhood and community itself. Our intention is to fence the yard with cedar plank fencing that will complement the aesthetics for the home and landscape and only honor the pride in ownership that the Smith Family had before us.

We appreciate your time and consideration.

Taylor and Dustin Filan

### **Criteria for Granting Variance – Section 507**

The Zoning Ordinance defines a variance as follows: A modification or variation of the provisions of this Ordinance where it is determined that by reason of **unique circumstances relating to a specific lot, that strict application of the Ordinance would cause practical difficulties.** Practical difficulties is a legal standard set forth if law that cities must apply when considering applications for variances. **To constitute practical difficulties, all three factors of the test must be satisfied, which are reasonableness, uniqueness and essential character.** The Zoning Ordinance’s criteria addresses these standards.

The Zoning Ordinance identifies criteria for granting variances as noted below. These items must be evaluated by the Planning Commission and City Council when considering variance requests. It is important to note that variances should only be granted in situations of practical difficulties. **A variance may be granted only in the event that all of the circumstances below exist.** Staff has evaluated the established criteria for this specific request. Staff’s comments are highlighted in yellow below:

### **Applicant’s Request for a 6’ Tall Fence that is Setback 15’ from South Property Line and 30’ from West Property Line:**

- A. The variance is in harmony with the general purposes and intent of this Ordinance. (The proposed variance is in harmony with the general purposes and intent of the Ordinance because the RL 90 Single Family Residential Zoning District allows fences to be constructed as a permitted use.)
- B. The variance is consistent with the comprehensive plan. (The proposed variance is consistent with the comprehensive plan because fences are allowed as a permitted use in the RL 90 Single Family Residential Zoning District.)
- C. The applicant proposes to use the property in a reasonable manner not permitted by this Ordinance, the City Code or the City Subdivision Ordinance. (The applicant will not continue to use the property in a reasonable manner not permitted by the ordinance because the fence will be located in front of the rear corner of the home and the height of the fence will be 6' tall within 30' or less of the right of way.)
- D. Unique circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity and result from lot size or shape, topography or other circumstances over which the owner of the property since enactment of this Ordinance has had no control. The unique circumstances do not result from the actions of the applicant. (Unique circumstances apply to the property in that it is a corner lot abutting a road on two sides (front and corner side) with the roadway along the corner side being 4<sup>th</sup> St NE which is a local road. Additionally, the principal structure is setback further than most homes in the neighborhood.)
- E. The variance does not alter the essential character of the neighborhood. (The variance will alter essential character of the neighborhood because it will be the only property in the neighborhood that will have a 6' fence in front of their rear corner of their home, providing privacy along a majority of both frontages).
- F. That the variance requested is the minimum variance which would alleviate the practical difficulties. Economic conditions alone do not constitute practical difficulties. (The variance requested is not the minimum variance which would alleviate the practical difficulties because the 6' tall fence doesn't have to extend much further to encompass the storm door and provide privacy.)
- G. The Board of Adjustment may impose such conditions upon the premises benefited by a variance as may be necessary to comply with the standards established by this Ordinance, or to reduce or minimize the effect of such variance upon other properties in the neighborhood, and to better carry out the intent of the variance. The condition must be directly related to and must bear a rough proportionality to the impact created by the variance. No variance shall permit a lower degree of flood protection than the Regulatory Flood Protection Elevation for the particular area or permit standards lower than those required by federal, state or local law. (No additional conditions are imposed.)

**Staff's Recommendation for a 6' Tall Fence that is Setback 30' from South (Front Corner) Property Line and 57' 6" from West Property Line:**

- A. The variance is in harmony with the general purposes and intent of this Ordinance. (The proposed variance is in harmony with the general purposes and intent of the Ordinance because the RL 90 Single Family Residential Zoning District allows fences to be constructed as a permitted use.)

- B. The variance is consistent with the comprehensive plan. (The proposed variance is consistent with the comprehensive plan because fences are allowed as a permitted use in the RL 90 Single Family Residential Zoning District.)
- C. The applicant proposes to use the property in a reasonable manner not permitted by this Ordinance, the City Code or the City Subdivision Ordinance. (The applicant will continue to use the property in a reasonable manner not permitted by the ordinance in that only the height of the fence forward of the rear edge of the house exceeds the ordinance permitted 4' height.)
- D. Unique circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity and result from lot size or shape, topography or other circumstances over which the owner of the property since enactment of this Ordinance has had no control. The unique circumstances do not result from the actions of the applicant. (Unique circumstances apply to the property in that it is a corner lot abutting a road on two sides (front and corner side) with the roadway along the corner side being 4<sup>th</sup> St NE which is a local road. Additionally, the existing principal structure is setback further than most homes in the neighborhood.)
- E. The variance does not alter the essential character of the neighborhood. (The variance does not alter the essential character of the neighborhood because the proposed 6' tall fence would be located on the corner side lot line and will not be located closer than the permitted 30' setback and portion of the fence that is forward of the nearest rear corner will be in line with where the home to the north would be allowed to have a 6' tall fence.)
- F. That the variance requested is the minimum variance which would alleviate the practical difficulties. Economic conditions alone do not constitute practical difficulties. (The variance requested is the minimum variance which would alleviate the practical difficulties because the variance would provide the applicant privacy and security as well as prevent their dog from jumping the fence while not reducing the usable area of their backyard and while not changing the essential character of the neighborhood.)
- G. The Board of Adjustment may impose such conditions upon the premises benefited by a variance as may be necessary to comply with the standards established by this Ordinance, or to reduce or minimize the effect of such variance upon other properties in the neighborhood, and to better carry out the intent of the variance. The condition must be directly related to and must bear a rough proportionality to the impact created by the variance. No variance shall permit a lower degree of flood protection than the Regulatory Flood Protection Elevation for the particular area or permit standards lower than those required by federal, state or local law. (No additional conditions are imposed.)

### **Staff Recommendation**

Staff recommends **approval** of the variance from the fence regulations in the RL 90 Single Family Residential Zoning District if the 6' tall fence is installed with a 30' setback on the south property line and 57' 6" up to the corner side property line on the west property line at 509 Pershing Ave N, as proposed by Taylor and Dustin Filan, with the following findings:

- A. The proposed variance is in harmony with the general purposes and intent of the Ordinance because the RL 90 Single Family Residential Zoning District allows fences to be constructed as a permitted use.
- B. The proposed variance is consistent with the comprehensive plan because fences are allowed as a permitted use in the RL 90 Single Family Residential Zoning District.
- C. The applicant will continue to use the property in a reasonable manner not permitted by the ordinance in that only the height of the fence forward of the rear edge of the house exceeds the ordinance permitted 4' height.
- D. Unique circumstances apply to the property in that it is a corner lot abutting a road on two sides (front and corner side) with the roadway along the corner side being 4<sup>th</sup> St NE which is a local road. Additionally, the existing principal structure is setback further than most homes in the neighborhood.
- E. The variance does not alter the essential character of the neighborhood because the proposed 6' tall fence would be located on the corner side lot line and will not be located closer than the permitted 30' setback and portion of the fence that is forward of the nearest rear corner will be in line with where the home to the north would be allowed to have a 6' tall fence.
- F. The variance requested is the minimum variance which would alleviate the practical difficulties because the variance would provide the applicant privacy and security as well as prevent their dog from jumping the fence while not reducing the usable area of their backyard and while not changing the essential character of the neighborhood.

**Attachments**

- 1. Site Map Aerial – Dated 2/20/24
- 2. Zoning Map Aerial – Dated 2/20/24
- 3. Aerial Detail – Dated 2/20/24
- 4. Survey Detail Map – 2/23/2024
- 5. Neighborhood Fence Comparison – 2/27/2024
- 6. Staff's Recommendation – 2/23/2024
- 7. Pictures – Dated 2/29/24
- 8. Google Street View – August 2023
- 9. Oblique Aerials - Undated



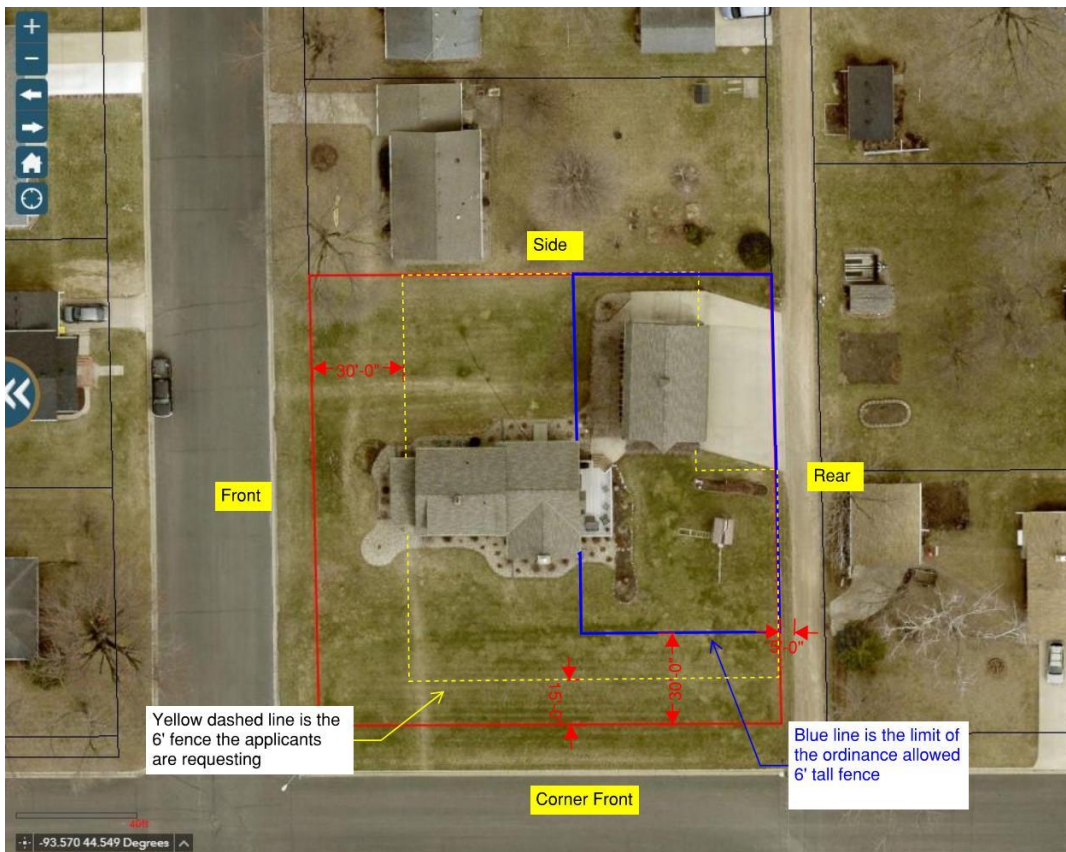




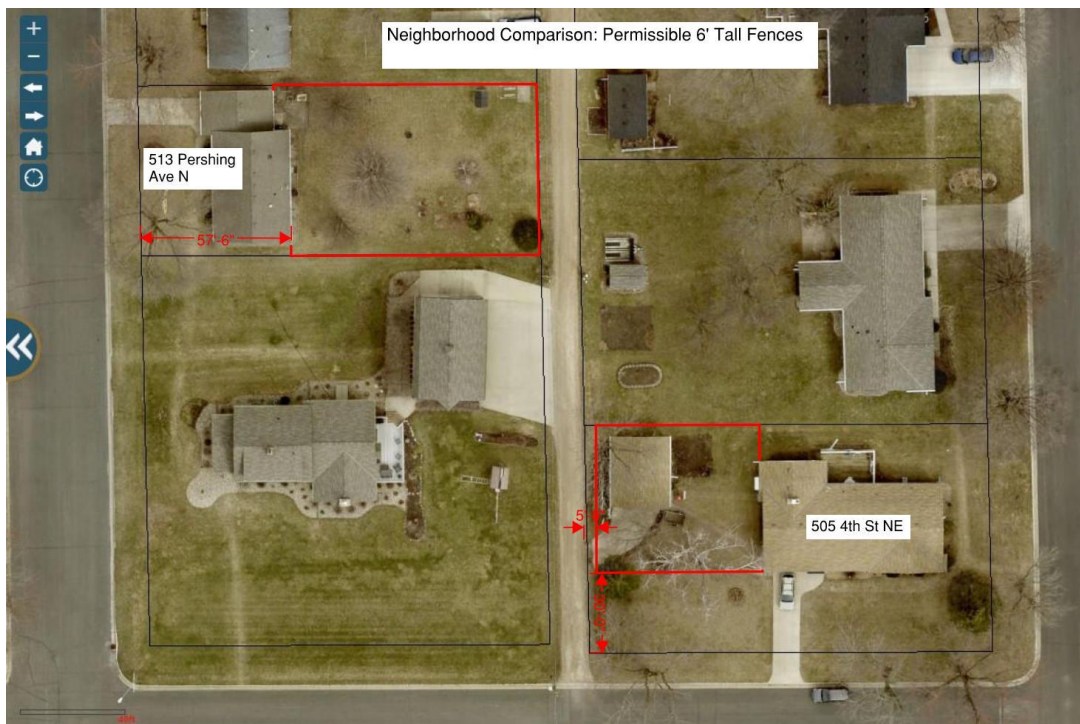


Zoning of the Subject Site and Surrounding Properties





Applicant's Request vs. Ordinance Requirements for 6' Tall Fences



Neighborhood Comparison of 6' Tall Permissible Fences



Staff's Recommendation





Looking East Along Pershing Ave N



Looking North of 4<sup>th</sup> St NE





Looking Northeast of southern property line



Oblique Air Photo Looking North





Oblique Air Photo Looking East