



118 Central Avenue North, New Prague, MN 56071  
phone: 952-758-4401 fax: 952-758-1149

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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 #V3-2025 TO ALLOW A 6' TALL FENCE AT  
1108 OLIVIA STREET SE, AS PROPOSED BY JUSTIN NOVAK  
**DATE:** MAY 19, 2025

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### **Background / History**

Applicant, Justin Novak, applied for a fence height variance to install a 6' tall privacy fence in his backyard. The Zoning Ordinance states that fences may not exceed 4' tall when located less than 30' from the road right of way. This also applies to the backyard of a home as it's less than 30' from the street right way (trail and CSAH 29). The applicant would like to install a fence from the west rear corner of their home to the east rear corner of their garage.

Some neighbor's fences were constructed prior to the existing fence ordinance or received a fence height variance. For instance, 1214 Olivia St SE (V1-2018) was approved for a 6' tall wooden privacy fence in the backyard and 1110 Olivia St SE (V2-2018) was approved for a 6' tall white vinyl fence in the backyard. The applicant is requesting a fence height that is 2' over the ordinance height limit.

### **Legal Description**

Lot 17, Block 4, Tikalsky Acres, according to the plat thereof, Le Sueur County, Minnesota.

### **Zoning**

The subject property is located in the RL90 Single Family Residential Zoning District. The following are the residential fence regulations:

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.

Based on the Zoning Ordinance requirements, the applicant could install a 6' tall fence, starting behind the rear west corner of their house and the rear east corner (behind their garage). However, the fence could not exceed a height of 4' tall within 30' of their southern property line. The reason for this unique circumstance is that the property has two front yards due to Olivia St SE and CSAH 29. (Additionally, the ordinance requires that the fence be setback a minimum of 2' from the trail edge or sidewalk.) If the ordinance was followed, the applicant would only be able to install a 6' fence on a small portion of their property limiting their usable area in their backyard.

### **Neighborhood Conditions and Nearby Land Uses**

North — Residential homes in the RL90 Single Family Residential District and Settlers Park

South — Outside City limits and County State Aid Highway 29

East — Residential homes in the RL90 Single Family Residential District

West — Residential homes in the RL90 Single Family Residential District

Areas to the north, west, and east are residential homes zoned RL90 Single Family Residential District. South of the property is a city trail, the edge of City limits, and CSAH 29.

All homes on Olivia Street SE with backyards facing CSAH 29 must abide by the same fence regulations. In other words, all those homes may not erect a fence taller than 4' tall unless it is 30' away from their rear property line and behind the rear corner of their homes.

There have been some fence height variances granted along Olivia St SE. At 1214 Olivia St SE, V1-2018 was approved to allow a 6' tall wooden privacy fence to encompass the backyard. At 1110 Olivia St SE, V2-2018 was approved, allowing a 6' tall white vinyl fence in the backyard. More recently, 1232 Olivia St SE was approved V8-2024 to allow a 5' tall chain link fence in their side and backyard.

### **Statement of Practical Difficulties**

A letter dated on April 30<sup>th</sup>, 2025 by was submitted by the applicant, Justin Novak. The following letter was provided:

I am requesting approval to install a fence taller than 4 feet in my backyard due to several practical challenges unique to my property. My backyard borders a trail and a road, which compromises my home's privacy as pedestrians and vehicles can easily see into the home's outdoor living space. A taller fence would help create a more private environment. Additionally, the proximity to nearby farm fields results in debris blowing into the yard, and a higher fence would serve as a barrier to reduce this issue. The road and trail also contribute to elevated noise levels, and a taller fence would help buffer the sound, creating a quieter and more enjoyable space. Lastly, I have a house dog that I wish to contain safely within my property, and a higher fence would provide added security and peace of mind in ensuring the dog cannot escape or be disturbed by external distractions. These factors combined make a fence taller than 4 feet a practical solution to address these ongoing challenges.

### **Public Works / Utilities / Engineer Comments**

Public Works Director Matt Rynda, Utilities General Manager Bruce Reimers, and City Engineer Chris Knutson with SEH, Inc. were not solicited for comments on the matter.

### **Building Official Comments**

Comments from the Building Official were not solicited as the variance is related to fences only.

### **Criteria for Granting Variances - 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 in 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 attempted to evaluate the established criteria for this specific request. Staff's comments are highlighted in yellow below:

- A. The variance is in harmony with the general purposes and intent of this Ordinance. (The 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 proposes to use the property in a reasonable manner by having a 6' tall fence in their backyard.)
- 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 through lot abutting a road on two sides (front and rear) with the roadway along the rear yard being a County Road.)
- E. The variance does not alter the essential character of the neighborhood. (The variance does not alter the essential character of the neighborhood because there are adjacent properties that have 6' tall fences that were grandfathered in or similarly received fence height variances such as 1214 Olivia St SE (V1-2018), 1110 Olivia St SE (V2-2018), 1232 Olivia St SE (V8-2024).
- 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 it would contain their dog, buffer noise from the street, and provide privacy from CSAH29 and the trail.)
- 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. (The fence must be a minimum of 2' away from the edge of the trail.)

### **Staff Recommendation**

Staff recommends **approval** of Variance #V3-2025 to allow a variance for a 6' tall fence in the backyard of 1108 Olivia St SE, as proposed by Justin Novak for the following reasons:

- A. The 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 proposes to use the property in a reasonable manner by having a 6' tall fence in their backyard.
- D. Unique circumstances apply to the property in that it is a through lot abutting a road on two sides (front and rear) with the roadway along the rear yard being a County Road.
- E. The variance does not alter the essential character of the neighborhood because there are adjacent properties that have 6' tall fences that were grandfathered in or similarly received fence height variances such as 1214 Olivia St SE (V1-2018), 1110 Olivia St SE (V2-2018), 1232 Olivia St SE (V8-2024).
- F. The variance requested is the minimum variance which would alleviate the practical difficulties because it would contain their dog, buffer noise from the street, and provide privacy from CSAH29 and the trail.
- G. The fence must be a minimum of 2' away from the edge of the trail.

### **Attachments**

1. Site Map Aerial – Dated 5/5/25
2. Site Map Aerial Zoning – Dated 5/5/25
3. Proposed Privacy Fence – Dated 4/30/25
4. Applicant's Proposed Fence Location – Dated 5/5/25
5. Fence Requirements From the Zoning Ordinance
6. Pictures — 5/8/25





Aerial Site Map





Site Map of Zoning Districts



The Applicant's Proposed 6' Tall Privacy Fence





Applicant's Proposed 6' Tall Fence Location







Front of the Property from Olivia St SE



Back of the Property Looking from CSAH 29





Back of the Property Looking from the Trail Along CSAH 29



Back of the Property Looking from the Trail Along CSAH 29