



**TOWN OF WARRENTON**  
Community Development Department

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**STAFF REPORT**

**September 5, 2023**

**Property Owner:** Fauquier Habitat for Humanity, Inc.  
**Applicant:** Melanie Burch, CEO, Fauquier Habitat for Humanity  
**Application #** BZA #2023-3  
**Location:** 57 N Fourth Street  
**PIN:** 6984-43-9745-000  
**Acreage:** 0.2133 Acres (9,291 square feet)  
**Zoning** Residential R-6  
**Comprehensive Plan Designation:** Medium Density Residential  
**Land Use:** Residential - Single Family Detached  
**Request:** The Applicant is seeking approval of a Variance from Zoning Ordinance Article 2-19, to allow the construction of a fence greater than four feet in height within a front setback.  
**Recommendation:** Staff finds that the applicant has not provided sufficient evidence to demonstrate that a clear hardship is present due to a physical condition of the property. However, should the Board find that there is a hardship present, staff strongly recommends that the Board defer action on this matter until such time as the applicant has provided a line of sight plat certified by a Land Surveyor, demonstrating that the desired location and height of a fence along Haiti Street and Horner Street will not restrict necessary line of sight at the intersection so as to meet VDOT intersection sight distance requirements.

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**REQUEST**

The applicant is requesting a variance from Article 2-19 of the Zoning Ordinance to construct a fence greater than four feet in height within the front setback of the subject property. Section 2-19 of the Zoning Ordinance permits the following with regards to fence height:

*2-19.1 Fences and walls may be erected up to a height of six (6) feet in all zoning districts, except for fences or walls that extend within the required front setback, unless otherwise restricted by the ARB within the Historic District. Within the area bounded by the front setback and the side lot lines, fences and walls shall not exceed four (4) feet in height, unless otherwise restricted by the provisions of this Ordinance. Excluded are walls or fences encompassing swimming pools or other uses which are required by law.*

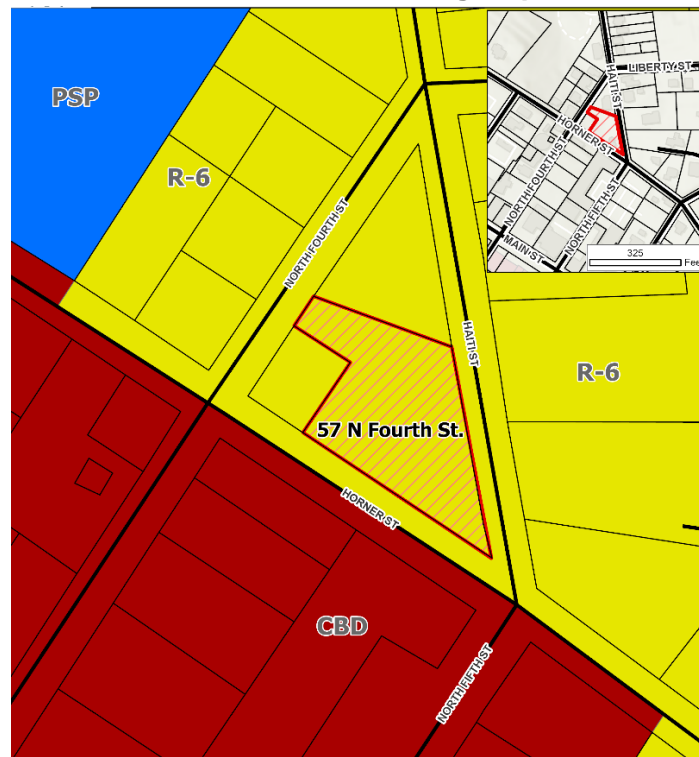
*2-19.2 Fences along the secondary front yard of a corner lot shall meet the side yard setback requirements within the front setback if they exceed four (4) feet in height.*

The proposed location for the proposed six-foot high fence is along the property frontages along Haiti and Horner Street. The fencing extends along the property lines to enclose the backyard of the property.

As fences up to six feet in height are permitted in all zoning districts except within a front setback, approval of the application would grant a variance of up to 8 feet from the required 8-foot setback for a six-foot fence, which is equivalent to a two-foot height variance for a fence located in the front setback.

The applicant states that the six-foot high fence is needed to increase the safety and security of the homeowner, as well as to provide a visual barrier to increase privacy for the backyard to allow the children to maximize usage. The applicant states that they plan to employ a line-of-sight surveyor to address the staff concern about vehicular traffic being able to see around the fencing safely. To date, staff has not received a line-of-sight survey.

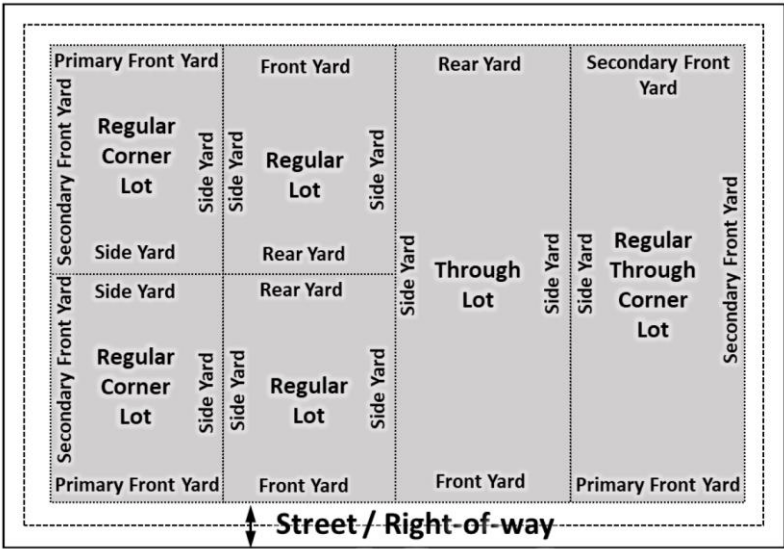
### Location and Zoning Map



**BACKGROUND**

Haiti Street, North Fourth Street, and Horner Street consist of a 30-foot-wide right-of-way dedicated for public street purposes. As the subject property has street frontage on Haiti Street, North Fourth Street, and Horner Street, the lot is a Regular Through Corner Lot per Ordinance Section 2-13 *Methods of Measuring Lots, Yards and Related Terms*.

**Figure - Section 2-13.2 Regular lots, determination of front yard**



On regular through corner lots, all sides along streets are considered front yards, where the primary front yard is the shortest boundary fronting on a street and the secondary front yard is the longest boundary fronting on a street as stated in Ordinance Section 2-13.2.2 *Regular lots, determination of front yard* and further stated in Section 2-13.9. Therefore, the primary front yard for the subject property is along North Fourth Street, with secondary front yards along Horner Street and Haiti Street.

Section 2-19.2 of the Ordinance permits a setback reduction for corner lots, specifically for fences. Section 2-19.2 states:

*Fences along the secondary front yard of a corner lot shall meet the side yard setback requirements within the front setback if they exceed four (4) feet in height.*

Within the R-6 district, the minimum required side yard setback is 8 feet, as found in Section 3-4.3.4 *Lot and Yard Regulations*. Given the setback reduction permitted for fences in Section 2-19.2, the subject property is permitted to have a fence up to four feet in height to within 4 feet of the Haiti and Horner Street rights-of-way; any fence greater than four feet high must be set back at least 8 feet from the property line.

**ANALYSIS**

Staff has reviewed the requested variance against the Virginia State Code and the Town of Warrenton Zoning Ordinance to determine if the request meets the criteria required to grant the variance. Below are the variance criteria along with staff’s analysis on how the application either

meets or does not meet each criterion. The BZA must determine if the application has provided sufficient proof that the request meets the standards for a variance as defined by the Virginia State Code. Virginia State Code and the Zoning Ordinance define a variance as:

*Variance – In the application of a zoning ordinance, a reasonable deviation from those provisions regulating the shape, size, or area of a lot or parcel of land or the size, height, area, bulk, or location of a building or structure when the strict application of the Ordinance would unreasonably restrict the utilization of the property, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the purpose of the Ordinance. It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.*

In granting a variance, the BZA may impose such conditions regarding a proposed structure's location, character, and other features or use as it may deem necessary in the public interest. The BZA may require a guarantee or bond to ensure compliance with the imposed conditions. The property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and local ordinances. Per the Virginia State Code,

*Notwithstanding any other provision of law, general or special, a variance shall be granted if the evidence shows that the strict application of the terms of the Ordinance would:*

1. *Unreasonably restrict utilization of the property, or*

The subject property is developed with a single-family detached residence, a by-right permitted use within the R-6 Zoning district. Since the subject property is considered a Through Corner Lot, with frontage on three public streets, the Ordinance allows a setback reduction specifically for fences located within the secondary front yard, which in this case is along Haiti and Horner Streets.

The property is currently improved with a newly constructed single-family home, and paved driveway.

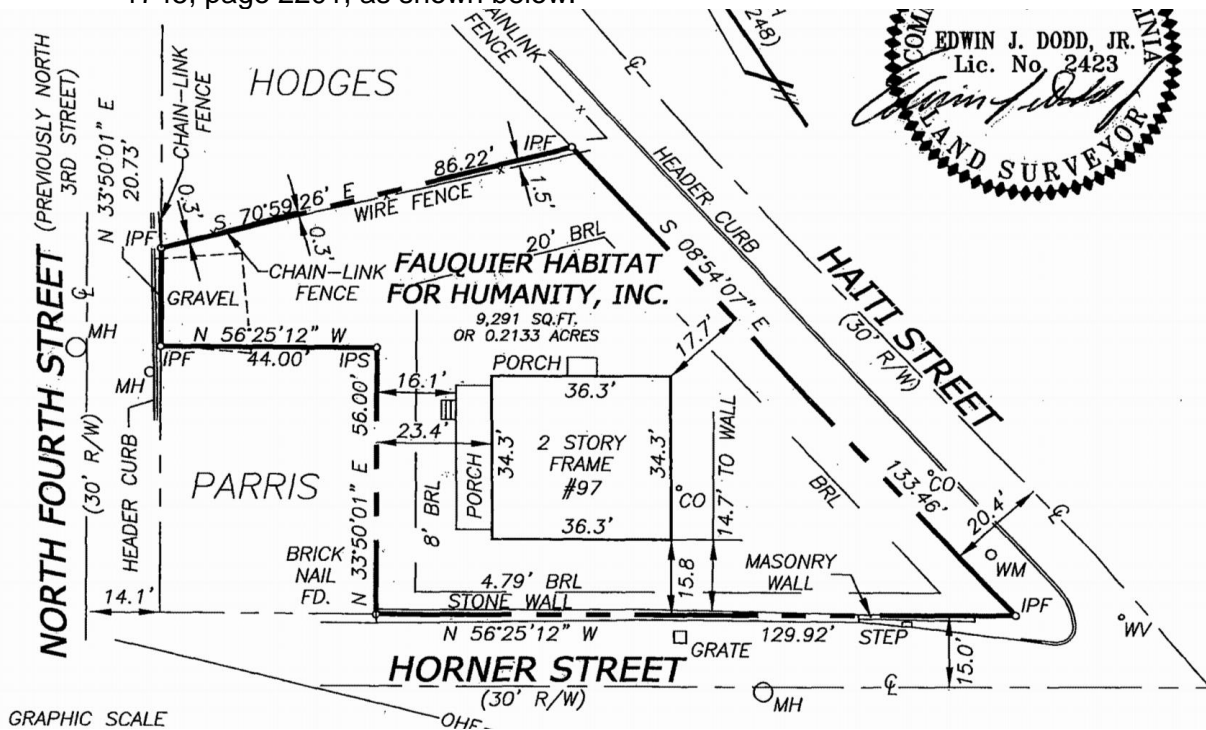
Staff does not find that the applicant has proven by a preponderance of the evidence that the four-foot height limitation for fences within the front yard setback area unreasonably restricts the utilization of the property as a single-family residence. The applicant expressed safety concerns for the residents of the home, but the applicant has the option to adjust the location of the fence to be outside of the 8-foot setback area should a six-foot tall fence be desired.

OR

2. *that granting the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the Ordinance, or*

A *hardship*, is “something that causes or entails suffering or privation” (Merriam-Webster, 2023). Within the context of a Variance, an applicant must demonstrate that a variance would relieve a hardship or lessen an inequitable condition due to a physical condition of the property that equates to privation.

The subject property has been in existence as a separate lot of record since at least September 2, 1867, as referenced in Deed Book 60, Page 353. The shape of the property is irregular, however the shape of the property does not prohibit the construction of a single-family home, as demonstrated with Building and Zoning Permit number BLDG-22-1069, where final occupancy was issued on April 7, 2023, subject to a final house location survey recorded on March 22, 2023, in Deed Book 1745, page 2201, as shown below.



The 9,291 square foot lot meets the minimum lot size of 6,000 square feet as required in Section 3-4.3.4 of the Zoning Ordinance, and the newly constructed home meets the minimum required front and side yard setbacks. Both Horner Street and Haiti Street are heavily utilized during peak travel hours, and the intersection of Haiti Street is at an acute angle, less than the standard right-angle (90 degree) intersection layout. The applicant's request to install a six-foot high fence within the secondary front yard setbacks along Horner Street and Haiti Street may restrict line of sight at the four-way intersection, especially for vehicles exiting Haiti Street onto Horner Street, and negatively impact roadway safety.

Staff does not find that the applicant has provided sufficient evidence to demonstrate a clear hardship due to a physical condition of the property; however, should the Board find that there is a hardship present, staff strongly recommends that the Board defer action on this matter until such time as the applicant has provided a line of sight plat certified by a Land Surveyor, demonstrating that the desired location and height of a fence along Haiti Street and Horner Street will not restrict necessary line of sight at the intersection so as to meet VDOT intersection sight distance requirements.

OR

3. *alleviate a hardship by granting a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability."*

The applicant's justification does not include a request for the variance to provide a reasonable modification to the Ordinance requirements for a person with a disability.

In addition to the three points above, no variance shall be authorized by the BZA unless it is determined that the request meets all five of the following criteria as listed in Zoning Ordinance Section 11-3.11.1 2. - *Standards for Variances*:

- a) *The property interest for which the variance is being requested was acquired in good faith, and any hardship was not created by the Applicant for the variance.*

The property was acquired in good faith by the applicant on October 31, 2019, as recorded in Deed Book 1612, Page 287. This standard is met by the applicant.

- b) *The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area.*

The applicant has not provided sufficient evidence to demonstrate that the location and height of the fence within the secondary front yard setback areas for Haiti Street and Horner Street will not negatively impact the safety of drivers and pedestrians at the roadway intersection. This standard has not been met by the applicant.

- c) *The condition or situation of the property is not of so general or recurring of a nature as to be adopted as an amendment to the Ordinance.*

The condition of the property, as an irregular-shaped lot with three roadway frontages, is not generally occurring within the surrounding area. This standard is met by the applicant.

- d) *The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property.*

Approval of a variance to reduce the setback for a six-foot tall fence within the 8-foot-wide secondary front yard setback will not change the existing residential use of the property, and will not change the zoning classification of the property. This standard is met by the applicant.

- e) *The relief or remedy sought by the variance application is not available through a special use permit process that is authorized in the Ordinance or the process for modification to the Zoning Ordinance at the time of the filing of the variance application.*

A Special Use Permit cannot provide relief from the limitation on fence height within the front yard setback. This standard is met by the applicant.

## **STAFF RECOMMENDATION**

**To grant a variance, the Board of Zoning Appeals must find that the application meets:**

- **One of the first three criteria (1 - 3)** listed above regarding unreasonable utilization, alleviating a hardship, or accommodating a person with a disability; **and**
- **All five of the remaining criteria (a – e)** noted above regarding good faith acquisition, no substantial detriment, not generally recurring, does not allow an unpermitted use, and is not available by other means.

Staff finds that the applicant has not provided sufficient evidence to demonstrate that a clear hardship due to a physical condition of the property is present. However, should the Board find that there is a hardship present, staff strongly recommends that the Board defer action on this matter until such time as the applicant has provided a line of sight plat certified by a Land Surveyor demonstrating that the desired location and height of a fence along Haiti Street and Horner Street will not restrict necessary line of sight at the intersection so as to meet VDOT intersection sight distance requirements.

## **ATTACHMENTS**

- A. Proposed Conditions of Approval / Proposed Motion for Denial
- B. Variance Application Materials
- C. Deed of Ownership – October 31, 2019
- D. House Location Survey – March 22, 2023