

Variance Request

Forestwood parcel 55

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Narrative explaining what variance is being requested:

As a part of the Foley Blvd reconstruction project, the intersection of 104<sup>th</sup> lane and Foley Blvd has been made into a cul-de-sac with no access to Foley Blvd. The new cul-de-sac has no driveways fully within the cul-de-sac circle (a portion of one driveway is within the cul-de-sac circle).

Forestwood parcel 55 is located south of 104<sup>th</sup> lane and west of Foley Blvd. This parcel had an existing fence prior to the reconstruction project. The fence was built prior to 2008 and was in good condition. A portion of the side yard fence (approx. 60 feet from the east right-of-way heading west along 104<sup>th</sup> lane) was removed to provide a temporary easement for the Foley Blvd reconstruction project. The remaining portion (the 35 ½ foot portion to the west along 104<sup>th</sup> lane as depicted as heavy black line in attached drawing) is still in place and is built along the right-of-way which is 15 ½ feet from the 104<sup>th</sup> lane curb.

In March 2008 the residential fence ordinances were consolidated as noted in Planning Case 08-03 March 4, 2008. During this consolidation process, a three foot setback from the public right-of-way was introduced. The setback was introduced "to allow for snow storage, safety and maintenance of public property."

Prior to the reconstruction project the fence on this parcel was grandfathered in and no issues have been reported regarding "snow storage, safety and maintenance" along the 104<sup>th</sup> Lane side yard. The right-of-way along the 104<sup>th</sup> lane roadway entering the cul-de-sac circle is 15 ½ feet from the curb with evergreen trees extending as close as 6 feet to the curb. Snow that has been plowed onto the side yard has not reached the lowest branches on the evergreen tree. This demonstrates that snow storage has not been an issue well within the current side yard with the existing fence. As this street is now a cul-de-sac, no new safety or maintenance issues are introduced with regard to the right-of-way as this cul-de-sac sees minimal traffic.

In order to maintain an aesthetic fence, the county Foley Blvd reconstruction project will pay for a complete fence replacement. However, by replacing the existing side yard fence, the portion of the fence that is not impacted by the creation of the cul-de-sac will need to be moved in 3

additional feet from the right-of-way due to the change in the ordinance in 2008. This creates a buffer of 18 ½ feet for “snow storage, safety and maintenance”. As noted above, the 15 ½ foot buffer has been more than sufficient for “snow storage, safety and maintenance”.

As owners and residents of this parcel, we are requesting a variance to this setback ordinance because if a portion of the fence had not been removed and the full fence replaced for the reconstruction project, it would remain grandfathered in and there have been no issues regarding “snow storage, safety and maintenance”. By adding the additional setback to the existing right-of-way in the area along this portion of 104<sup>th</sup> lane, we will lose access to currently utilized and maintained property within our fence. The loss of usable land within our fence is not necessary for the purposes that the setback was introduced (“snow storage, safety and maintenance”) as demonstrated by the lack of issues since the fence was first built. There is no public benefit to the additional 3 foot setback along this portion of the parcel. By reducing the usable size of the yard the value of the property is reduced, thus impacting the home value in this, and by extension, neighboring properties. This loss of property to the introduction of the additional setback in 2008 was not considered in the eminent domain agreement with the county. By allowing this variance, the neighborhood would not be detrimentally impacted. Granting the variance would only be a positively impacted as compared to the alternative. As this is a rare condition (county road reconstruction creating a cul-de-sac that causes temporary removal of existing fence and resulting in an additional loss of 3 feet of usable property), this variance would not grant a special privilege not common to other property in the same zoning district.

In addition, to make reasonable use of the property, and because there are no driveways within the cul-de-sac circle, we propose angling the fence to the right of way along the closest part of the cul-de-sac circle to allow for a more aesthetic look as compared to two 90 degree angles that are 3 feet apart along the side yard. To make reasonable use of the property surrounding the cul-de-sac circle, we propose that the fence be allowed up to the right-of-way at the point where it passes closest to the cul-de-sac circle and directly east along the right-of-way from that point. This allows ample space for snow storage and creates an aesthetic fence that will allow for a reasonable use of the fenced in yard space.