



Board of Adjustment and Appeals - Regular Session

1.

Meeting Date: 10/01/2015

Subject: PC-53V; John and Kathy Bandstetter, Petitioners; Fence Setback Variance; 10441 Goldenrod Street

From: Cheryl Bennett, Housing and Zoning Coordinator

INTRODUCTION

The applicant is requesting a three-foot setback variance from City Code Section 11-1204.3(2) to locate a fence at the right-of-way line of 104th Lane NW where a three-foot setback is required.

ACTIONS

Conduct a Public Hearing
Decision by Board of Adjustment and Appeals
Appeal available to the City Council

60-DAY RULE

The application was received by at City offices on August 31, 2015. To comply with the requirements of Minnesota Statute §15.99, the City must take action by October 30, 2015.

DISCUSSION

Background

The subject property is located at 10441 Goldenrod Street. It is zoned Low Density Residential 2, a single-family residential zoning district. The property was platted as part of Forestwood Addition in 1979. The single-family residence was constructed in 1980. The lot and structure met City Code requirements at the time of development.

The boundary lines of the subject property include the rights-of-way for Foley Boulevard on the east, 104th Lane NW on the north and Goldenrod Street, a cul-de-sac, to the west. Foley Boulevard, between Highway 10 and Egret Boulevard, was reconstructed in 2014/2015 resulting in a taking of permanent easements for additional right-of-way along both Foley Boulevard and 104th Lane NW. To the rear of the lot, along Foley Boulevard, Anoka County Highway Department took an additional 4.76 feet of right-of-way. Adjacent to 104th Lane NW, which was terminated in a cul-de-sac adjacent to the applicant's rear yard, two feet of additional right-of-way was taken along the rear 60 feet of the applicant's lot. (The right-of-way taking is shown in blue on the aerial photograph attached to this report.) The taking was completed through condemnation action in which the property owner was awarded compensation for the taking and costs for replacement of the fence.

During the Foley Boulevard reconstruction project, a previously existing wood privacy fence was removed from the applicant's lot in the areas where additional rights-of-way were acquired. When the original fence was constructed, City Code permitted the fence to be placed at the property line, at a zero setback to the street right-of-way. In March of 2008, the City Council adopted new regulations regarding the construction and location of fences that resulted in a three-foot setback for fences along a public right-of-way. The purpose of the ordinance was to consolidate fencing regulations found throughout Title 11, Land Use Development Regulations of City Code, and to provide specific regulations regarding construction, maintenance, height and setbacks of fences. The proposed setback from public street rights-of-way, current City Code Section 11-1204.3(2), was to provide for "snow storage, safety and maintenance of public property" according to the staff report at the time. In addition to the boulevard—defined as the portion of the public street right-of-way not improved as roadway—the City maintains a 10-foot drainage and utility easement on the private property immediately adjacent to the right-of-way. The new setback requirement was intended, in part, to provide access to portions of this easement area without having to remove fence components.

The applicant is requesting a three-foot setback variance from City Code Section 11-1204.3(2) to reconstruct a privacy fence with a zero setback from the public street right-of-way for 104th Lane NW for a distance of 60.5 feet as measured from the east (rear) property line of Lot 1, Block 4, Forestwood Addition (according to the original recorded plat of Forestwood). If granted, this will allow a length of fence of approximately 56 feet to be constructed at a zero setback from that length of the right-of-way for 104th Lane NW where the additional two feet of right-of-way width was acquired. A temporary, semi-opaque fence has been erected at the approximate location of the required setbacks except for an angled section which encroaches into the required setback area near the location where it connects with the existing fence. (Parcel 55 referenced in the applicant's submission material is the parcel number for the right-of-way acquired by Anoka County during the construction project. It is parcel in Anoka County Highway Right-of-Way Plat No. 87, created for the Foley Boulevard reconstruction project.)

The applicant is also requesting that the area subject to the variance be extended further west along the north property line of the lot to include a portion of the original fence that was not disturbed during construction, measuring approximately 50 feet in length, so that a complete replacement of the screening fence can be undertaken for aesthetic reasons. This section of fence was made nonconforming in 2008 with the adoption of the three-foot setback requirement for fences from public rights-of-way. City Code provides that this nonconforming fence may be continued and Minnesota State Statute 394.36 Subd. 4, allows the property owner to continue the nonconformity, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion. No variance is required to reconstruct this portion of the fence. The nonconformity does not extend to the fencing dislocated by the taking of additional right-of-way.

The applicant has also indicated a request to locate a portion of the fence within the public street right-of-way on 104th Lane NW that includes an angled section of fence in order to avoid two 90 degree turns in the fence. (Refer to the applicant's proposal drawing and the last paragraph of the applicant's narrative, attached to this report.) This approval cannot be obtained through the variance process, rather the applicant would need to seek an encroachment agreement from the City in a separate action.

Considerations

In order for a variance to be granted, the Board must make the following findings of City Code Section 11-304.9(2), Standards for Approval for granting variances. A variance may be granted only after the following findings are made:

1. The variance is in harmony with the general purposes and intent of the ordinance from which the

variance is requested.

The purposes and intent for setback requirements are to provide appropriate distances and opportunities for snow storage, safety and maintenance of public property. The applicant proposes to place the fence such that, at the closest point, it is located two feet from the curb of the bulb of the cul-de-sac on 104th Lane NW. This distance is inadequate for plowing and snow storage purposes and would increase time and resources necessary to push snow elsewhere while attempting to avoid damage to the fence. Two feet is not an adequate distance to safely accommodate a pedestrian or other user having to leave the pavement surface to avoid harm or injury. Reducing the setback would be contrary to the stated purposes and intent of the ordinance from which the variance is requested.

2. The variance is consistent with the Comprehensive Plan.

The Comprehensive Plan seeks to preserve the integrity of existing single-family neighborhoods. This goal can be furthered by ensuring adherence to land use regulations whenever possible. Requiring the fence be located at the required setback would not diminish the integrity of the property or the neighborhood.

3. The applicant demonstrates there are practical difficulties in complying with the ordinance from which the variance is sought. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems. Economic considerations alone do not constitute practical difficulties. In determining this standard, all the following must be met:

a. Unless the variance is granted, the property cannot be used in a reasonable manner. If a property can be used reasonably without the granting of a variance, it can be used in a reasonable manner.

There are no practical difficulties presented in locating a fence at the required setback. The property can be used reasonably without the granting of this variance and, therefore, used in a reasonable manner.

b. The variance requested must be the minimum to make reasonable use of the property.

The petitioner has not demonstrated that the variance requested is the minimum necessary to make reasonable use of the property.

c. The plight of the applicant or landowner is due to circumstances unique to the property not created by the applicant or landowner.

The need to relocate the fence resulted from the taking of additional right-of-way for two streets adjacent to this property. These circumstances were not created by the applicant or landowner, however, they are not unique to this property. Anoka County is in the process of upgrading Foley Boulevard from Highway 10 to Northdale Boulevard. During this project, nearly one-third (eleven of 39) of the residential streets intersecting with Foley Boulevard have been or will be cut off from accessing Foley Boulevard and terminated in a cul-de-sac.

d. The variance, if granted, will not alter the essential character of the locality.

If granted, the variance would place a 6-foot high wood privacy fence two feet off the curb of 104th Lane NW. Fences are generally located fourteen or more feet from the curb line of a public street.

The application for variance requires the applicant submit a written narrative explaining how the variance request meets the following criteria: explain the undue hardship that exists based upon circumstances

unique to the property, explain how the request allows the minimum improvement that would make possible the reasonable use of the property, explain how the request would not be detrimental to the neighborhood or the public welfare and explain how the variance would not grant a special privilege not common to other property in the same zoning district. The applicant's narrative is attached.

A proposed statement of reasons for denying the variance request is attached for your consideration.

RECOMMENDATION

In Case 15-53V, staff recommends the Board adopt the proposed Statement of Reasons for Denial Pursuant to Minn. Stat. §15.99, Subd.2., and deny the three-foot setback variance from City Code Section 11-1204.3(2) to locate a fence at a zero setback from a public street right-of-way where a three-foot setback is required based on the request failing to meet the findings required of City Code Section 11-304.9(2).

Attachments

City Code Section 11-1204

Aerial Photo 15-53V

Applicant's Proposal 15-53V

Applicant's Narrative 15-53V

Statement of Reasons for Denial 15-53V
