

**Variance Justification:**

In order to justify approval of any variance, the Board of Zoning Adjustment considers the following criteria. Please answer all of the following items. Use additional sheets if needed. A response of yes, no, or N/A is not acceptable.

**1. Explain how the variance will not adversely affect the public health, safety or welfare.**

The variance is to allow parking and maneuvering in the front yard set back area. There is an existing 8 solid metal fence and all activities occur behind it. The fence is positioned to allow safe ingress and egress onto E. Indian Trail. There are no adverse public health, safety or welfare issues.

**2. Explain how the variance will not alter the essential character of the general vicinity.**

The lot has been a parking area for many years, so parking represents no changes to the area. A new solid 8 foot metal fence was constructed near the front property line under a permit issued in 2018. There is no existing uniform front yard set back on this side of E. Indian Trail.

**3. Explain how the variance will not cause a hazard or a nuisance to the public.**

No nuisance or hazard is caused by the proposed parking or maneuvering behind the fence. The fence is a safe distance from the existing street . A new sidewalk will be placed in front of it. There is a building to the west and a parking lot to the east. There are no uniform yard setbacks on either side

**4. Explain how the variance will not allow an unreasonable circumvention of the requirements of the zoning regulations.**

The variance will not allow for an unreasonable circumvention of the zoning regulations because the request is to accommodate an existing solid fence, the parking behind it will not show, and there are no residential uses on either side of this use or close by on this side of the street with a 10 ft setback.

*Additional consideration:*

**1. Explain how the variance arises from special circumstances, which do not generally apply to land in the general vicinity (please specify/identify).**

The variance arises from special circumstances which do not generally apply to land in the vicinity in that the land area is limited for the proposed use and the fence is existing which limits the options and makes the setback unnecessary.

**2. Explain how the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create unnecessary hardship.**

Strict application would require the applicant to move a new fence or have a ten foot green space behind it serving no purpose. The 10 foot setback is not needed for this specific site and use. The lack of setback has no hazards or adverse impacts on the adjacent properties.

**3. Are the circumstances the result of actions of the applicant taken subsequent to the adoption of the regulation from which relief is sought?**

The applicant, a new owner, obtained a permit in 2018 from Metro Government for constructing the fence. He was securing the lot which had always been used for parking but had some vagrancy issues. There was no intent to disregard any regulation. See attached permit.

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**18ZONE1065**

**Silverhawk 5102 E. Indian Trail**

**Explanation**

**Waiver 1 Waiver of the required VUA/LBA plantings on the front Property line in LDC 10.2.10**

**Waiver 2 Waiver of required Property perimeter LBA plantings on the west and east side property in LDC 10.2.4**

**Waiver 1 Waiver of required VUA/LBA on front Property line in LDC 10.2.10**

**1. Will the waiver adversely affect adjacent property owners?**

The waiver will not adversely affect adjacent property owners and compliance is not practical with existing conditions. There is a solid metal fence in good condition along the front property line. This will provide a visual screen. A new sidewalk will be built directly in front of it. There is a ditch and utility poles which prevent safe placement of the new sidewalk in another location. The adjacent property owner to the west is car repair shop and to the east is a liquor store. There is not uniform or existing VUA bushes on these two sites. The residences across the street will have a buffer from the truck parking from the screening provided by the existing new 8-foot solid metal fence. Bushes behind this fence serve no visual or screening purpose. The site has been used as a car and truck parking lot for many years and prior to this it had a poorly maintain fence further back on the site.

The needed trees to meet the tree canopy requirements will be placed along the rear or west property line so that tree canopy requirements are met.

**2. Will the waiver violate the Comprehensive Plan?**

No, the intent of the requirements for VUA buffers trees and scrubs are to provide visual screening. In this instance, the solid metal fence will do that. The placement of the fence and the required sidewalk does not allow for the plantings in front of the fence. The height of the fence makes landscaping unnecessary for visual screening if placed behind the fence.

**3. Is extent of waiver of the regulation the minimum necessary to afford relief to the applicant?**

Yes, the existing new fence which was constructed with approval of a permit from Metro Government makes the placement of VUA bushes and behind it serve no screening purpose.

**4. Has either (a) the applicant incorporated other design measures that exceed the minimum required by the district and compensate for non-compliance with the requirements to be waived (net beneficial effects) or would (b) the strict application of the provisions of the regulation deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant?**

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Strict application would not deny the use of the existing new fence which is attractive, an effective screen and in good condition.

**Waiver 2 Waiver of required Property perimeter LBA plantings on the East and West property line in LDC 10.2.4**

**1. Will the waiver adversely affect adjacent property owners?**

The waiver will not adversely affect adjacent property owners. The lot to the west is the rear wall of an auto repair business owned by the same entity. There is an 8-foot fence near the property line. The buffering would not provide a visual enhancement to the site, neighboring business, or the streetscape. The property to the west is a liquor store. Again, there is an existing 8-foot fence on the property line. The landscaping would be on the inside of the fence which does not provide any visual enhancement or buffering function. Additionally, on the east side, there is a proposed swale and drainage control features which will provide a green area but for functionally does not need bushes or trees. No adjoining property owners will see any landscaping place inside this fenced in yard. There is landscaping in the rear of lot placed by that landowner and neighboring use. A few trees to meet tree canopy requirements will be planted along the west and south (rear) year to meet the tree canopy requirements.

**2 Will the waiver violate the Comprehensive Plan?**

No, the waiver will not violate the intent of the Comprehensive Plan. The adjoining neighbors have sufficient buffering. Existing and long-term conditions at the site make new buffering unnecessary.

**3. Is extent of waiver of the regulation the minimum necessary to afford relief to the applicant?**

Yes. This is the minimum relief given the available space and the current location of the fence.

**4. Has either (a) the applicant incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect) or would (b) the strict application of the provisions of the regulation deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant?**

Strict application would not deny the use of the existing new fence which is attractive, an effective screen, and in good condition.

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