

Board of Zoning Adjustment
Staff Report
 May 1, 2023



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| Case No: | 23-VARIANCE-0030 |
| Project Name: | North 21 st Street Fence Variance |
| Location: | 329 and 331 N. 21 st Street |
| Owner: | Donnie Fulkerson |
| Applicant: | Donnie Fulkerson |
| Jurisdiction: | Louisville Metro |
| Council District: | 5-Donna Purvis |
| Case Manager: | Amy Brooks, Planner I |

REQUESTS:

Variance from Land Development Code section 4.4.3.A.1.a.i to allow a fence to exceed 42 inches in height in the front yard.

Variance from Land Development Code section 4.4.3.A.1.a.ii to allow a fence to exceed 8 feet in height within the required side and rear yard.

| Location | Requirement | Request | Variance |
|--------------------|-------------|------------|-------------|
| Front Yard Setback | 42 in. | 92 in. | 50 in. |
| Side Yard Setback | 8 ft. | 10 ft 6in. | 2ft 6inches |
| Rear Yard Setback | 8 ft. | 8ft 6in | 6 inches |

CASE SUMMARY/BACKGROUND

The subject property is zoned Family Residential within the Traditional Neighborhood Form District. Located on the northeastern corner of North 21st Street in Portland, the site is currently developed with several accessory structures. The applicant has constructed a privacy fence with several different materials: wood, chain link and vinyl. The fence exceeds the allowed maximum height in all the required yards.

This case is related to an ongoing enforcement case for the fence exceeding the allowed maximum height.

STAFF FINDINGS

Staff finds that the requested variance is not justified as determined by staff’s analysis in the standard of review.

Based upon the information in the staff report, and the testimony and evidence provided at the public hearing, the Board of Zoning Adjustment must determine if the proposal meets the standards for granting variances established in Land Development Code.

TECHNICAL REVIEW

No outstanding technical review comments.

INTERESTED PARTY COMMENTS:

No comments were received by staff.

RELATED CASES:

ENF-ZON-22-001215; the fence is zoning enforcement for exceeding the maximum height.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE FROM SECTION 4.4.3.A.1.a.i (Front Yard Setback)

- (a) The requested variance will not adversely affect the public health, safety or welfare.

STAFF: Staff is concerned that the requested variance will adversely affect the safety of pedestrians moving along N.21st Street because this portion of the fence appears to be attached to the existing retaining wall rather than the posts being driven into the ground. This raises ongoing stability questions.

- (b) The requested variance will not alter the essential character of the general vicinity.

STAFF: The proposed height will alter the essential character of the general vicinity. While there are other privacy fences in the neighborhood that exceed the allowed maximum height in a front yard setback (see Site Photos for example), none of them exceed the required regulations to this degree.

- (c) The requested variance will not cause a hazard or nuisance to the public.

STAFF: The requested variance site plan does not reference a survey and does not appear to have been drafted by a design professional. As such, the plan does not reflect existing property lines accurately and it appears that the fence could be located on the adjoining property.

- (d) The requested variance will not allow an unreasonable circumvention of the zoning regulations.

STAFF: The requested variance will allow an unreasonable circumvention of the zoning regulations because the fence was/is capable of being modified to be within the height limits or at a lesser height that would require a smaller dimensional variance request.

ADDITIONAL CONSIDERATIONS:

- 1. The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone.

STAFF: The requested variance does not arise from special circumstances which do generally apply to land in the general vicinity or the same zone as the property is similar in size and shape to other properties in the area of Portland.

2. The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant.

STAFF: The strict application of the provisions of the regulation would not create an unnecessary hardship on the applicant as the height of the proposed fence could be reduced to conform with the existing regulations or shifted out of required front yard setback.

3. The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

STAFF: The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as the applicant has already constructed the fence.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE FROM SECTION 4.4.3.A.1.a.ii (Side and Rear Yard Variance)

- (a) The requested variance will not adversely affect the public health, safety or welfare.

STAFF: Staff is concerned that the existing fence in the rear yard will adversely affect the public health, safety or welfare, because the metal on leaning up against the chain-link fence does not appear to be attached. This could impact the safe movement of traffic and pedestrians along the rear alleyway. In addition, the side yard fence is a partial double-decker fence that is not flush with the ground giving staff concern about structural integrity, and there are screws facing outward that could pose potential harm to the adjacent property owner.

- (b) The requested variance will not alter the essential character of the general vicinity.

STAFF: The proposed variance will alter the essential character of the general vicinity. While there are several other privacy fences in the neighborhood that are on the located on rear and side property lines, there appears no fences that exceed eight feet: the prescribed maximum in these yard setbacks.

- (c) The requested variance will not cause a hazard or nuisance to the public.

STAFF: The rear yard and side yard fences will cause a hazard or nuisance to the public as it potentially impacts the safety of both pedestrians and vehicles along the rear alleyway. There is also concern about the stability and safety of the fence in the side yard; there are screws facing outward and a portable air conditioning unit with an electrical cord that is running along the outside perimeter of the fence.

- (d) The requested variance will not allow an unreasonable circumvention of the zoning regulations.

STAFF: The requested variance will allow an unreasonable circumvention of the zoning regulations because the fence was/is capable of being modified to be within the height limits or at a lesser height that would require a smaller dimensional variance request.

ADDITIONAL CONSIDERATIONS:

1. The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone.

STAFF: The requested variance does not arise from special circumstances which do generally apply to land in the general vicinity or the same zone as the property is similar in size and shape to other properties in the area of North 21st Street.

2. The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant.

STAFF: The strict application of the provisions of the regulation would not create an unnecessary hardship on the applicant as the existing fence height could be reduced/modified to conform with the existing regulations.

3. The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

STAFF: The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as the applicant has already constructed the fence.

VARIANCE PLAN REQUIREMENT

In accordance with LDC Section 11.5B.1.C (Requirement to Follow Approved Plan), a variance shall be approved only on the basis of the plan approved by the Board and shall be valid only for the location and area shown on the approved plan. All construction and operations must be conducted in accordance with the approved plan and conditions attached to the variance.

NOTIFICATION

| Date | Purpose of Notice | Recipients |
|------------|---------------------|--|
| 4/14/2023 | Hearing before BOZA | 1 st tier adjoining property owners and current residents |
| 4/17/2023 | | Registered Neighborhood Groups in Council District 9 |
| 04/19/2023 | Hearing before BOZA | Notice posted on property |

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Site Plan
4. Survey
5. Conditions of Approval
6. Site Photos

1. Zoning Map



2. Aerial Photograph



3. Site Plan



4. Conditions of Approval

1) The finished side of fences must face out towards the public right of way and adjoining properties.

5. Site Photos



Front of subject property and fence in front yard setback



Property to the right.



Property to the left.



Across the street .



View of fence in the side yard setback.



Fence in the side yard setback.



Fence in the side yard.



View of fence on rear property line.



Example of neighborhood fence in the front yard setback