



TOWN OF WARRENTON

Department of Community Development

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STAFF REPORT

July 6, 2021

Property Owner(s) / Applicant: James and Deborah Daugherty
Application # BZA #2021-377
Location: 9 Boundary Lane
PIN: 6984-54-7099-000
Acreage: 0.9065
Zoning Residential R-6
Comprehensive Plan Designation: Medium Density Residential
Land Use: Single Family Detached Residential
Request: The Applicant is seeking approval of a Variance pursuant to Zoning Ordinance Article 2-19.1, to allow the construction of a fence greater than four feet in height within a front setback
Recommendation: Staff recommends the Board of Zoning Appeals (BZA) approve BZA #2021-0377 per the pattern motion for approval dated July 6, 2021

REQUEST

This applicant is requesting a variance from Article 2-19.1 of the Zoning Ordinance to construct a fence greater than four feet in height within the front setback of the subject property. The Zoning Ordinance permits the following with regards to fence height:

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.

The proposed location for the fence is five feet from the front property line along Boundary Lane. 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 15 feet from the required 20-foot front setback for a six-foot fence or in other words a two-foot height variance for a fence located in the front setback.

The six-foot fence is being requested to provide an additional play area for visits by their grandchildren and their grandchildren's large dogs. The proposed fence would be black aluminum with bars separated by a few inches and run over 238 feet along Boundary Lane. The applicant states the ordinance is too restrictive in that it unreasonably restricts utilization of the property by preventing the use of the front setback where there is less slope.

BACKGROUND

The single family detached house was constructed in 1985 according to Fauquier County Real Estate records and acquired by the Daugherty's in 1991. The property was then incorporated into the Town of Warrenton in 1992. The property is zoned residential (R-6) and is 0.9065 acres or approximately 39,487 square feet in size. The house is well within all required setbacks and under the 6,000 square feet minimum lot size for the R-6 District. There is an existing fence located on along the front property line that appears to in conformance with the current Zoning Ordinance.

The property fronts on Boundary Lane, which is a public road maintained by the Town. Boundary Lane does not meet typical street standards for right of way width and road design (ex: there is no curb/gutter). Adjacent to the property are single family detached dwellings to the north, south, and west, which are also zoned R-6. The subdivision Villas at the Ridges, which contains townhouse condominiums, is located to the east and is zoned Residential Multi-Family (RMF). Other fences along Boundary Lane appear to meet Zoning Ordinance requirements.

ANALYSIS

A variance is defined by State Code and the Zoning Ordinance 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 the location, character, and other features of the proposed structure or use as it may deem necessary in the public interest and may require a guarantee or bond to ensure that the conditions imposed are being, and will continue to be, complied with. 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 Ordinance; however, the structure permitted by the variance may not be expanded unless the expansion is within an area of the site or part of the structure for which no variance is required under the Ordinance. Where the expansion is proposed within an area of the site or part of the structure for which a variance is required, the approval of an additional variance shall be required.

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 unreasonably restrict the utilization of the property or that the granting of 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 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. No variance shall be authorized by the BZA unless it is determined that the request meets all five of the following criteria:

1. *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 purchased in good faith by the owners in 1991 and was incorporated into the Town in 1992. Both the 1991 and 2006 Zoning Ordinances limit fences to four feet within the front setback. A variance would have been needed for a six-foot-tall fence within the front setback starting in 1992 with the property's incorporation into the Town. The hardship would not be considered as created by the applicant.

2. *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 new fence would be placed five feet from the property line (15 to 16 feet from the existing road pavement). Line of site is to be maintained and not impacted with proposed the aluminum fence design. A six-foot solid privacy fence could create challenges in the future and should be conditioned against if the variance is to be approved.

3. *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 Zoning Ordinance requires that fences be limited to four feet in height on all properties within the Town. The primary reason for the restriction is to maintain line of site. Some fence designs may alleviate this concern; but the Zoning Ordinance does not require specific fence designs unless they are within the Historic District.

Topography, while not present on all properties, does impact other properties within the Town. However, topography is considered a site-specific challenge and is a generally a reason why a variance may be granted. The topography of the property in question contains slopes ranging from 13% to 37% within the front setback. The applicant has stated that the area within front setback is more usable than other areas on the property because of its slope. Meeting the setback requirement for a six-foot fence would result in having about 12% of the property in front of the fence.

4. *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; and*

The permitted use on the property is a single family detached dwelling. Fences are permitted within all zoning districts in the Town and the installation of a six-foot fence would not change the use of the as a single-family detached dwelling.

5. *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 fence setback requirement, nor are there any waivers available for fences.

STAFF RECOMMENDATION

The purpose of a fence is to provide a barrier, surrounding an area of the property, to either contain items within the property limits, prevent trespass onto the property, or to screen areas of land. In this case, the property owner wishes to contain his grandchildren's pets within the property in order to provide them a safer environment to play. Due to the topography of the ground (near the front yard fence), containment of the pets may be less effective with a four (4) foot tall fence. Also due to the topography, a six-foot tall fence that meets the front setback requirement under the Zoning Ordinance would provide a smaller area to utilize.

In addition, the criteria by which a variance must be approved was relaxed in 2015. This relaxation removed the need for an applicant to prove a hardship, as a hardship was considered vague and difficult to demonstrate. Under the current Virginia State Code, a variance is to be approved if it meets all five of the criteria listed in the section above.

Staff has reviewed the five criteria for a variance and considered the unique topography of the property in question. Staff therefore recommends granting the variance to allow a maximum six (6) foot fence within the front yard setback because of the unique topography on the property and the appearance that all five of the required criteria are met.

ATTACHMENTS

- A. Proposed Conditions of Approval / Proposed Motion for Denial
- B. Maps
- C. Variance Application Materials