



CITY OF COLLEGE PARK ADVISORY PLANNING COMMISSION
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ADVISORY PLANNING COMMISSION
MINUTES OF MEETING
October 2, 2008 – 7:30 P.M.

PRESENT: Advisory Planning Commission – Robert Day, Lawrence Bleau, James McFadden, Heidi Jones-Huffman, John Krouse and Chuck Smolka; Planning Staff – Terry Schum, Elisa Vitale, and Tershia Williams; Attorney – Deanna Adams

- I. **Call to Order:** Robert Day called the meeting to order at 7:35 p.m.
- II. **Approval of Minutes:** Lawrence Bleau moved to accept the minutes of September 4, 2008. John Krouse seconded. The motion carried 6-0-0.
- III. **Amendments to Agenda:** There were no Amendments to the Agenda.
- IV. **Public Remarks on Non-Agenda Items:** There were no Public Remarks on Non-Agenda Items.

V. **Public Hearing – Fence Ordinance**

CEO-2008-03: Variance to construct a six foot (6') fence
Applicant: Anabel Ramos
Location: 9325 Rhode Island Avenue

Robert Day explained the hearing procedures and placed witnesses under oath. Elisa Vitale summarized the staff report. The applicant is requesting a waiver of the requirements of City Code §87-23 B and §87-23 F to permit the construction of a six foot (6') fence at the lot line in the side yard where the side lot line is a continuation of the front yard line of the adjacent lot. The property is a corner property located at Fox Street and Indian Lane at the southeast corner of the intersection of Rhode Island Avenue and Indian Lane. The applicant would like to place a six foot (6') fence along the lot line at Indian Lane, which is a continuation of the front lot line of the adjoining property. The applicant also wants to construct a six foot (6') fence rather than a four foot (4') fence. The subject property is irregular in shape and has an area of 7,313 square feet. The front property line is Rhode Island Avenue and the side property line is Indian Lane. The property is improved with a 1 ½ story single-family home and a detached garage. The front yard is already fenced with a low picket fence and the rear and side yards are also fenced with a combination of six foot (6') stockade and board-on-board fencing. In 2005, the applicant was before the APC to request a variance for side yard and setback requirements to install a new driveway to enclose for a patio and a concrete curb to close the driveway on Indian Lane. The applicant wanted to install a new driveway coming off of Rhode Island Avenue. As part of the work to close the driveway entrance, the applicants begin construction of the fence. The photos show that some of the posts are already in place. The applicant did not receive a stop work order, but a code enforcement officer was in the field and stopped and spoke with the property owner about the fence and the need for the curb at the Indian Lane driveway. The

applicant then applied for and received a County building permit. When she applied for the City permit, she was notified that the fence did not meet the city ordinance requirements. Staff spoke with the City Engineer, Steve Halpern, and he stated that he thinks that Indian Lane is offset, but he would need to see pins or stakes to see exactly where the property line is. Staff is recommending approval of the waiver to allow the applicant to construct a 6-foot fence on the condition that the applicant remove the existing fence from the right-of-way and construct a 6-foot board-on-board, not stockade, fence 1-foot inside the Indian Lane lot line. The applicant must also install a curb along Indian Lane to prevent access to the driveway. Elisa also read comments from the North College Park Citizens Association Variance Committee stating that they are opposed to the variance request for setback less than twenty-five feet (25') for rear and side yards – oppose (2 oppose, 1 not opposed, 2 no response) Variance for construction of a fence with a height of fence greater than 4 feet – majority oppose (3 oppose, 2 no response).

Elisa Vitale submitted the staff report and Exhibits 1-7 into the record. Commissioners accepted unanimously

At 7:45 p.m. Robert Day moved to go into executive session to meet with counsel to discuss legal matters. Lawrence Bleau seconded. Motion carried unanimously. The meeting resumed at 7:55 p.m.

Timothy Tyndall, 6009 Lafayette Avenue, Riverdale, MD, speaking on behalf of the applicant, submitted a petition signed by adjoining property owners supporting the variance request, which was entered into the record as Exhibit 8. He stated that the applicant was served a notice by the City that she was not allowed to have two driveways so she was trying to come into compliance with the city ordinance by closing off one of the driveways. He stated that there was an existing fence at the property. Mr. Tyndall stated that the applicant wanted to replace the stockade fence with board-on-board fence to match the existing fence along the property line on Indian Lane. He stated that the applicant was unaware that she needed a permit. He stated that the applicant wants to provide a safe play area for her children. He also stated that the applicant's vehicle has been stolen twice in the past from Indian Lane.

John Krouse asked which fences were on the property two months ago?

Timothy Tyndall stated that the fence on Indian Lane (stockade) and at the front of the house (board-on-board) were there.

John Krouse asked if there were any picket fences on the property two months ago?

Timothy Tyndall stated that the only picket fence on the property is at the very front of the property, which is just a four foot (4') picket fence.

John Krouse asked if the picket fence pictured in Exhibit 5b, the existing fence, was there a couple of months ago?

Timothy Tyndall stated yes.

John Krouse asked staff if they are recommending a picket fence in the area where the posts are installed?

Elisa Vitale stated that no fence is recommended for that area. The area could remain open, or if there was existing fence there, they could replace it in-kind at four feet (4') without any need for a variance.

Lawrence Bleau asked how recent is the picket fence in the front of the property?

Timothy Tyndall stated he has known Ms. Ramos, the applicant, for 6 or 7 years, and the fence has been there every since he has known her.

James McFadden asked if the section of the fence that run from the front corner of the house to Indian Lane new, or was there a six foot (6') fence there before?

Timothy Tyndall stated that there was a six foot (6') stockade fence there. The applicant was going to put board-on-board there so it would match the rest of the fence.

Lawrence Bleau asked what would be the hardship if the variance were not granted?

Timothy Tyndall stated that the applicant has small children that play in the yard and she is concerned for their safety because vehicles speed along Indian Lane. She is also concerned with security and privacy. He stated that aesthetically, the board-on-board fence would match the existing fence.

James McFadden asked why was the original fence on Rhode Island Avenue removed?

Timothy Tyndall stated that the applicant received a notice from the City stating that she was not allowed to have two functioning driveways. The applicant removed the fence and replaced it with the same material as the other fence.

Commissioners reviewed the criteria that need to be met before the variance can be granted and determined that:

- 1) The property has an extraordinary situation or condition. The property is irregular in shape and the house, which pre-dates zoning, is sited close to the property line. Indian Lane is a busy thoroughfare. Based upon the above, the APC concludes that the property has an extraordinary condition that supports the request.
- 2) The proposed fence will replace an existing fence with similar dimensions, placement and materials. The APC therefore concludes that the denial of the appeal would result in a peculiar and practical difficulty to the property owner.

- 3) The APC concludes that the construction of a 6-foot board-on-board fence will not impair the intent, purpose or integrity of any applicable County General Plan or Master Plan. An objective of the Master Plan is to encourage the design of housing and living areas that create safe spaces. The construction of the fence will help to ensure a safe play area for the applicant's children. Other corner properties located at the Fox Street, Indian Lane and Rhode Island Avenue intersection have 6-foot fences in the side yard where the side yard is a continuation of the front lot line of the adjacent property.
- 4) The appeal is consistent with the design guidelines adopted for the historic district, if applicable. The property is not located in the historic district.
- 5) The appeal will not adversely affect the public health, safety, welfare or comfort. Granting the appeal will not adversely affect the public health, safety, welfare or comfort. The fence will not block access to the property.
- 6) The fence, for which an appeal is requested, incorporates openness and visibility as much as is practicable, provided however, that it shall not be constructed of chain link. The fence is a 6-foot board-on-board fence, which incorporates openness and visibility to a greater degree than the existing stockade fence that will be replaced.
- 7) The proposed construction, including setbacks, is characteristic of and consistent with the surrounding neighborhood. The proposed fence, a 6-foot board-on-board fence, is not inconsistent in height and material with other fences in the neighborhood.

John Krouse moved to approve the variance to permit the replacement of an existing 6-foot fence at the lot line running from the northeast corner of the house (point A) to the property line at Indian Lane (point B) to the rear property line (point C) because the request meets the seven criteria for granting the variance for the reasons stated above. Heidi Jones-Huffman seconded. Motion carried 5-1-0, with Lawrence Bleau voting Nay.

Lawrence Bleau moved to deny the variance for the portion of the fence from the property line at Indian Lane (point B) down the property line on Indian Lane (point D) to the northwest corner of the house (point E) because it does not meet the criteria for hardship, openness and public safety. John Krouse seconded. Motion failed 2-4-0, with Robert Day, James McFadden, Heidi Jones-Huffman and Chuck Smolka voting Nay.

Robert Day moved to approve the variance for a six foot (6') board-on-board fence for the portion of the fence running from the property line at Indian Lane (point B) down the property line on Indian Lane (point D) to the northwest corner of the house (point E) because the request meets the criteria for granting the variance for the reasons stated above.. The applicants must also replace the concrete curb to prevent access to the Indian Lane driveway. James McFadden seconded. Motion carried 4-2-0, with Lawrence Bleau and John Krouse voting Nay.

- VI. Update on Development Activity:** There was no Update on Development Activity.
- VII. Other Business:** There was no other business.
- VIII. Adjourn:** There being no further business, the meeting was adjourned at 8:45 p.m.

Minutes prepared by Tershia Williams