



LAND USE APPLICATION SUMMARY

Property Location: 2012 Cedar Lake Parkway
Project Name: Fence Variances
Prepared By: Andrew Liska, City Planner, 612.673.2264
Applicant: Melisa Pollak
Project Contact: Melisa Pollak
Request: To increase the maximum permitted fence height in the established front yard within 40 feet of a steep slope in the SH Shoreland Overlay District.

Required Applications:

Variance	To vary the fence height in the established front yard setback along Cedar Lake Parkway.
	To develop on a steep slope or bluff or within 40 feet of the top of a steep slope in the SH Shoreland Overlay District

SITE DATA

Existing Zoning	RI District; SH Shoreland Overlay District
Lot Area	10,059 square feet
Ward(s)	7
Neighborhood(s)	Bryn-Mawr
Designated Future Land Use	Urban Neighborhood
Land Use Features	NA
Small Area Plan(s)	NA

Date Application Deemed Complete	October 7, 2015	Date Extension Letter Sent	N/A
End of 60-Day Decision Period	December 6, 2015	End of 120-Day Decision Period	N/A

BACKGROUND

SITE DESCRIPTION AND PRESENT USE. This parcel is on the west side of Cedar Lake. The parcel has a steep vegetated slope on the western side that drops down towards Cedar Lake. The elevation change in this front portion of the lot qualifies as a ‘steep slope’ according to Chapter 551.460 as the average slope at over a 50 foot horizontal distance is greater than 18 percent. The Minneapolis Park Board owns a strip of land between the subject parcel ranging in depth of approximately 10 feet on the north side of the lot and approximately 20 feet on the south side of the lot.

Although addressed off of Cedar Lake Parkway, there is no direct access to. The property is served by an alley to the rear. A single-family dwelling occupies this site. Even without direct access, the property is clearly oriented towards the east facing Cedar Lake and the Parkway as opposed to facing west which would face the rear of the dwellings located off of Drew Avenue South.

A series of retaining walls exist along the southern property that retains a grade 5 feet higher than the property to the south.

SURROUNDING PROPERTIES AND NEIGHBORHOOD. The property to the south, 2016 Cedar Lake Parkway, is a two-story single-family dwelling what recently went through the variance process (BZZ-6713) to permit construction. In short, the variances reduced the established front yard setback from 53 feet to 49 feet and allowed development with 40 feet of a steep slope in the Shoreland Overlay. The property to the north, 2004 Cedar Lake Parkway is a 1.5 story single-family dwelling.

Much like the subject site, parcels in this area along Cedar Lake Parkway do not have direct access to the public right-of-way and are separated by the Minneapolis Park Board property from the Parkway and Cedar Lake.

PROJECT DESCRIPTION. The City received a complaint regarding a fence located in a front yard. A zoning inspection was conducted that revealed the fence was in violation of Code and a letter of non-compliance was issued. Soon thereafter, the applicant contacted staff to apply for the variances associated with this development.

Any development in this location on this parcel would require a variance as the development is within 40 feet of a steep slope in the Shoreland Overlay District. Code on fences limits the height in the front yard to 3 feet if solid or 4 feet if open and decorative.

The applicant is seeking a variance to allow a fence in this location - within 40 feet of a steep slope in the SH overlay district, and a variance increase the height from 3 feet to 6 feet for a fence located in the front yard along the southern property line. Approximately 20 feet of the fence is located in the established front yard setback.

RELATED APPROVALS.

Planning Case #	Application	Description	Action
BZZ-6713	Variances	Construct a new single-family dwelling	Approved with conditions (2014)

PUBLIC COMMENTS. As of writing this staff report, staff has not received any correspondence from the Bryn Mawr Neighborhood Association. Staff will forward comments, if any are received, at the Board of Adjustment meeting.

ANALYSIS

VARIANCE

The Department of Community Planning and Economic Development has analyzed the application for a variance of Chapter 525, Article IX Variances, specifically Section 525.520(5) “To permit an increase in the maximum height of a fence,” based on the following findings:

1. *Practical difficulties exist in complying with the ordinance because of circumstances unique to the property. The unique circumstances were not created by persons presently having an interest in the property and are not based on economic considerations alone.*

This parcel is unique in that it is addressed off of but doesn't have any direct access to Cedar Lake Parkway. There is also a significant elevation change on the western side of the parcel. Despite these unique aspects, the applicant is able to comply with the ordinance regulating fence height in this location and thus, no practical difficulty exists.

2. *The property owner or authorized applicant proposes to use the property in a reasonable manner that will be in keeping with the spirit and intent of the ordinance and the comprehensive plan.*

The proposed fence height increase is not a reasonable use of the land in this location. The intent of the front yard fence height requirements is to preserve and maintain the built environment. The proposed fence disrupts this and blocks views of the Minneapolis skyline and Cedar Lake. The fence also blocks views into and out of from the property to the south which has safety implications. The fence height ordinance observes that fences in front yards may be desired but limits them to 3 feet if wood or 4 feet if open or decorative, to limit the impact of the fence for both the subject and neighboring properties.

3. *The proposed variance will not alter the essential character of the locality or be injurious to the use or enjoyment of other property in the vicinity. If granted, the proposed variance will not be detrimental to the health, safety, or welfare of the general public or of those utilizing the property or nearby properties.*

The proposed variance will alter the essential character of the area as the fairly uniform built environment is disrupted with the fence in this location. Also, the proposed fence in this location is detrimental to the enjoyment of the property to the south, 2016 Cedar Lake Parkway. The views of the skyline and of Cedar Lake are valued and this proposed fence obstructs them. The limitation of height to fence in front yards is in part associated with being able to see in and out. If this variance is approved, the safety of nearby properties may be compromised.

FINDINGS REQUIRED BY THE MINNEAPOLIS CODE FOR DEVELOPMENT IN THE SHORELAND OVERLAY DISTRICT

1. *The prevention of soil erosion or other possible pollution of public waters, both during and after construction.*

The fence is constructed and no soil erosion is present today. The location of the fence is on a flat portion of the lot and not on the steep slope where erosion would be more likely to occur.

2. *Limiting the visibility of structures and other development from protected waters.*

Despite a densely vegetated slope, the 6 foot fence is visible from Cedar Lake, the protected waters.

3. *The suitability of the protected water to safely accommodate the types, uses and numbers of watercraft that the development may generate.*

There is no watercraft associated with the proposed fence.

The Department of Community Planning and Economic Development has analyzed the application for a variance of Chapter 525, Article IX Variances, specifically Section 525.520(17) "to permit development in the SH Shoreland Overlay District on a steep slope or bluff, or within forty (40) feet of the top of a steep slope or bluff, based on the following findings:

1. *Practical difficulties exist in complying with the ordinance because of circumstances unique to the property. The unique circumstances were not created by persons presently having an interest in the property and are not based on economic considerations alone.*

The steep slope, topography, and proximity to Cedar Lake are unique circumstances associated with this parcel. The project area is located within 40 feet of a steep slope and is located in the SH Shoreland Overlay District. Any development on this parcel would require a variance.

2. *The property owner or authorized applicant proposes to use the property in a reasonable manner that will be in keeping with the spirit and intent of the ordinance and the comprehensive plan.*

The intent of the ordinance is to protect both the water body and properties located below the steep slope from erosion and runoff. Staff finds that constructing a fence in this location that meets all other aspects of the Zoning Code is a reasonable use of the property and is keeping with the spirit and intent of the ordinance.

3. *The proposed variance will not alter the essential character of the locality or be injurious to the use or enjoyment of other property in the vicinity. If granted, the proposed variance will not be detrimental to the health, safety, or welfare of the general public or of those utilizing the property or nearby properties.*

The proposed variance would not alter the essential character of the area nor would it be injurious to the use or enjoyment of other properties in the area. A fence constructed that meets all other aspects of Code would have little to no impact minimal impact when viewed from Cedar Lake and would result in minimal impacts to the neighbor to the south.

FINDINGS REQUIRED BY THE MINNEAPOLIS CODE FOR DEVELOPMENT IN THE SHORELAND OVERLAY DISTRICT

Chapter 551.470 Location of Development prohibits development except as authorized by variance. Development authorized by variance shall be subject to the following:

1. *Development must currently exist on the steep slope or within 40 feet of the top of a steep slope within 500 feet of the proposed development.*

The single-family dwelling currently exists with 500 feet of the proposed fence location.

2. *The foundation and underlying material shall be adequate for the slope condition and soil type.*

The soil, upon which the fence is proposed, is adequate to support this development. This soil is the same to which the dwelling was constructed on and is adequate. The existing retaining wall further supports the fence in this location.

3. *The development shall present no danger of falling rock, mud, uprooted trees or other materials.*

The proposed fence location is not on the steep slope. Retaining walls exist in this area and combined with the soils present there is no danger of falling rock, mud, uprooted trees, or other materials. The fence is constructed and did not result in any of the aforementioned issues.

4. *The view of the developed slope from the protected water shall be consistent with the natural appearance of the slope, with any historic areas, and with the surrounding physical contexts.*

A fence that is constructed to meet all other aspects aside from the location of the development (i.e. constructing a 3 foot tall solid fence or 4 foot open and decorative fence), the view of the slope would have minimal change if any. The fence is visible from Cedar Lake.

In addition, the Zoning Board of Adjustment shall consider, but not limited to the following factors when considering conditional use permit or variance requests within the SH Shoreland Overlay District:

1. *The prevention of soil erosion or other possible pollution of public waters, both during and after construction.*

The fence is constructed and no soil erosion is present today. The location of the fence is on a flat portion of the lot and not on the steep slope where erosion would be more likely to occur.

2. *Limiting the visibility of structures and other development from protected waters.*

Despite a densely vegetated slope, the 6 foot fence is visible from Cedar Lake. If the applicant sought to construct a fence that meets all other aspects of Code (i.e. constructing a 3 foot tall solid fence or 4 foot open and decorative fence), there would be minimal visibility from Cedar Lake.

3. *The suitability of the protected water to safely accommodate the types, uses and numbers of watercraft that the development may generate.*

There is no watercraft associated with the proposed fence.

RECOMMENDATIONS

The Department of Community Planning and Economic Development recommends that the Zoning Board of Adjustment adopt staff findings for the applications by Melisa Pollak for the property located at 2012 Cedar Lake Parkway:

- A. Variance to increase the maximum permitted height of a fence in the established front yard from 3 feet to 6 feet.**

Recommended motion: **Deny** the application.

- B. Variance to develop on a steep slope or bluff or within 40 feet of the top of a steep slope in the SH Shoreland Overlay District.**

Recommended motion: **Approve** the application subject to the following conditions:

1. The development is limited to the fence and it must comply with all standards in Chapter 535 Article VI – Fences.
2. All site improvements shall be completed by November 19, 2017, unless extended by the Zoning Administrator, or the permit may be revoked for non-compliance.

ATTACHMENTS

1. Zoning map
2. Written description and findings submitted by applicant
3. Site plan

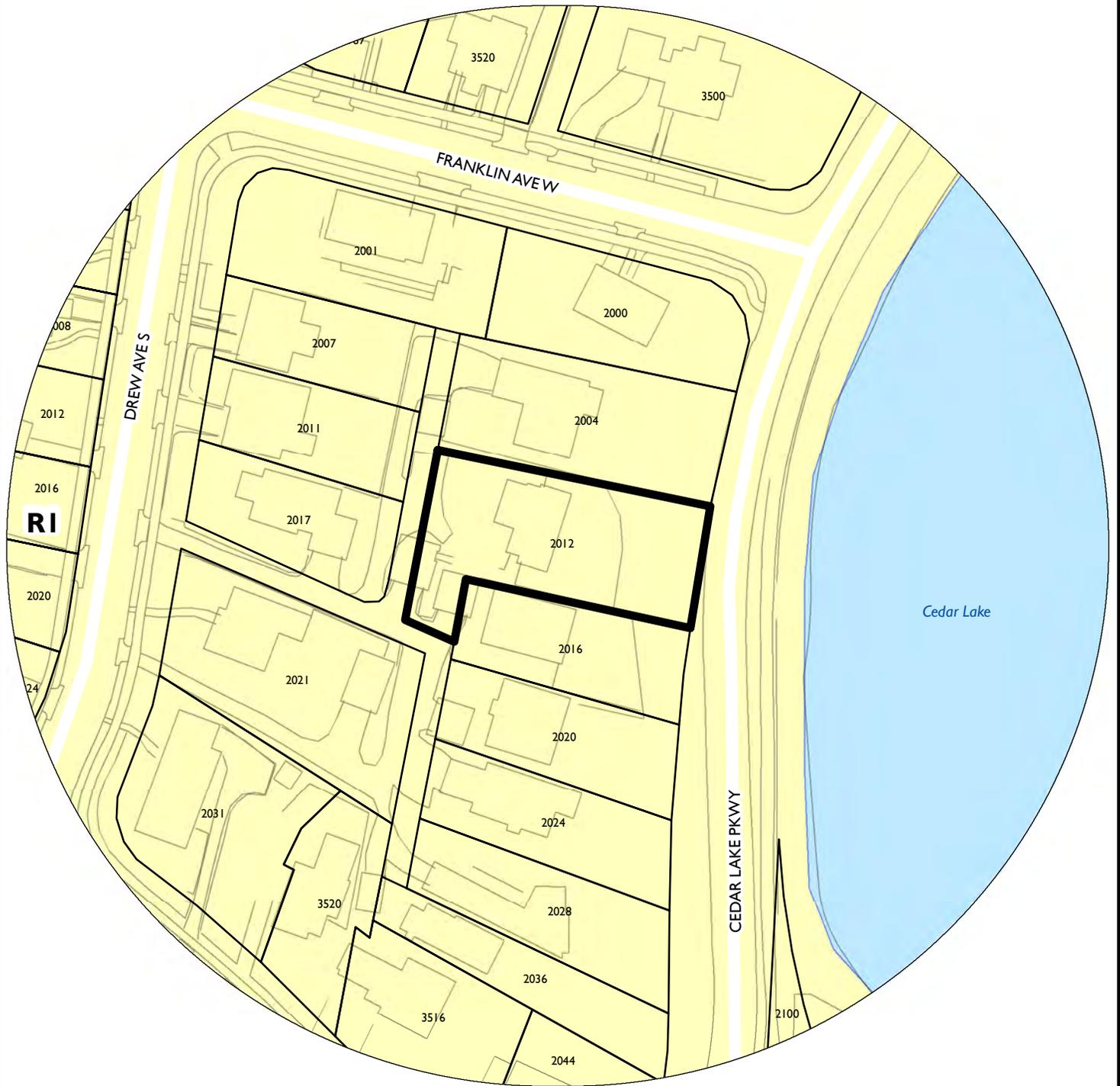
4. Photos
5. Actions from BZZ-6713
6. Petition to allow fence provided by applicant
7. Correspondence

Melisa Pollak

7th

NAME OF APPLICANT

WARD



PROPERTY ADDRESS

2012 Cedar Lake Parkway

FILE NUMBER

BZZ-7457

2012 Cedar Lake Parkway

Variance Request

Existing 6-foot-tall fence in front yard

1. Statement of proposed use and description of the Project

The Project is an existing two-sided fence built of western red cedar with a copper cap. It is 25-feet long and 6-feet high. It is located on our southern property boundary in our lake-side yard. Photos of the fence are attached. The purpose of the fences is to provide us with a minimum level of privacy, given the scale of the new house being constructed at 2016 Cedar Lake Parkway after our former neighbor's house was torn down.

2. Variance information

2.1 Practical difficulties complying with the ordinance

We received a notice of non-compliance from the City (request # 15-1139240), saying our existing fence is too tall because the lake-side yard is officially our front yard. We understand that the city code limits front-yard fences to 3 or 4 feet, however we believe that a variance to allow a 6-foot tall fence in our lake-side (front) yard is appropriate given the scale of the new house being constructed at 2016 Cedar Lake Parkway. The new construction, which apparently reaches the maximum allowable height and sits the minimum distance from our property line, looms over and intrudes on our home and yard. Based on the elevation of sliding glass doors, it also appears the house under construction will have a deck several feet above grade in it's lake-side (front) yard near our fence. As shown in Photo 5, from the future location of that deck, the fence obstructs only their view of our yard. Their view of the lake and the city skyline is framed by large trees, not our fence.

Photos 1 and 2, looking north, show the view of the fence from 2016 Cedar Lake Parkway. Photo 3, looking south from our yard, shows our fence and arborvitae hedge. In both these photos, please note the modest scale of the fence relative to the scale of the new construction. A 3- or 4-foot tall fence would not offer us even minimal privacy. Please take the overall situation into account, grant a variance, and allow our 6-foot-tall fence to remain.

2.2 Fence is in keeping with the spirit and intent of the ordinance

We now understand that city code designates the yard on the lake side of our house, facing the lake, as our "front yard," but ask that you grant a variance, essentially applying back-yard-rules, which allow 6-foot tall fences. There is logic behind this interpretation. While addresses of all the neighbors on our block read "Cedar Lake Parkway", we can't see the parkway from our windows or reach our homes from the parkway - instead we enter through an alley off Drew Ave S. Our yards facing the alley serve front-yard functions, such as mail delivery and the main entrances to our homes. Our yards facing the lake serve back yard functions, such as patios and grills. So while city code may consider the yard facing the parkway and the lake to be our "front" yard, functionally it performs as our back yard, and as such, the height of the fence is appropriate and it makes sense to grant a variance and allow the fence to remain as is.

2012 Cedar Lake Parkway

Variance Request

Existing 6-foot-tall fence in front yard

2.3 Fence preserves essential character of the neighborhood.

Our existing 6-foot fence does not affect the use or enjoyment of other properties in the vicinity: it is barely visible from the parkway (see Photo 6) and it does not substantively affect sightlines from the property at 2016 Cedar Lake Parkway, because that property sits at a lower elevation, and their view of the lake is framed by large oak trees; not by our fence (see Photo 5). Additionally, our arborvitae hedge, which parallels the fence (see Photos 3 and 4), will exceed a height of 6-feet within a few years. The fence has no effect on sightlines from other nearby properties. Other neighbors who live along Cedar Lake Parkway on our block agree that our fence should be allowed to remain (see Petition, which is a work in progress). It is not reasonable to expect that our 6-foot-tall fence is in any way detrimental to the health, safety, or welfare of our neighbors or the general public.

3. Shoreland Overlay District Information

3.1 Prevention of soil erosion

No soil erosion or pollution of public waters was caused by construction of our fence, and none is expected from its ongoing maintenance and enjoyment.

3.2 Limiting visibility from public waters

Our 6-foot tall fence has minimal visibility from the near side of Cedar Lake because our property is so much higher than the lake. From the center and far side of Cedar Lake, the scale of the fence is dwarfed by the new construction at 2016 Cedar Lake Parkway, and by the oak trees in our yard. The fence is not a significant visual feature.

3.3 Watercraft traffic generated by Project

None.

Site Plan
2012 Cedar Lake Parkway



property line
↓

Alley

Parking

2012
Cedar Lake Pkwy

Patio

Oak
Trees

approximate edge of Hill

Hill
down
to
Parkway

Cedar Lake Parkway

Garage
(2012 Cedar Lk)

overhead door

Driveway

Sidewalk

Fence
40'

short Hedge

Tall Hedge

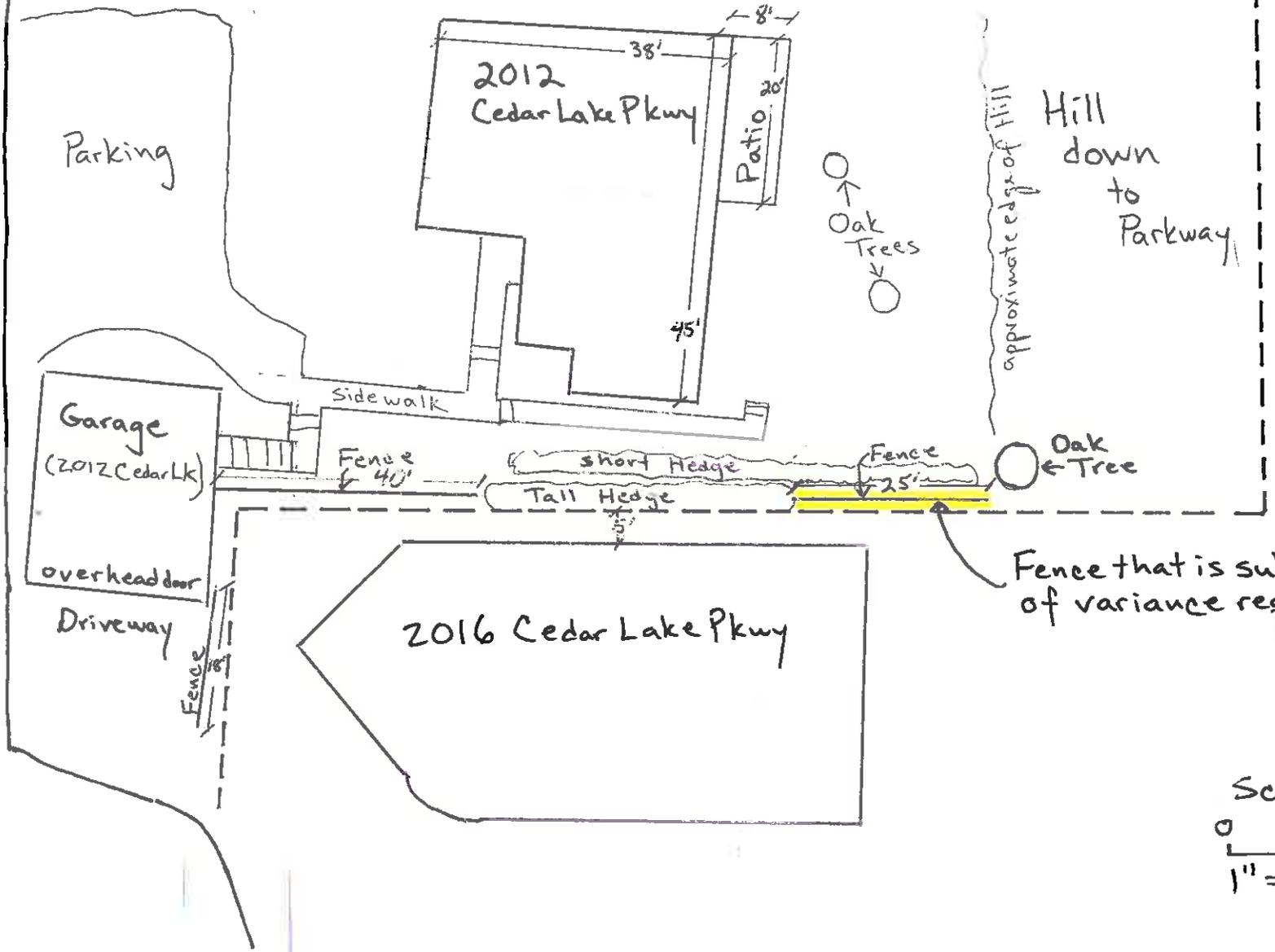
Fence
25'

Oak
Tree

Fence that is subject
of variance request

2016 Cedar Lake Pkwy

Scale
0 20'
1" = 20'



2012 Cedar Lake Parkway

Variance Request

Existing 6-foot-tall fence in front yard



Photo 1 View of fence looking north from yard of 2016 Cedar Lake Pkwy



Photo 2 View of fence looking northwest from yard of 2016 Cedar Lake Pkwy

2012 Cedar Lake Parkway

Variance Request

Existing 6-foot-tall fence in front yard



Photo 3 View of fence looking south from our yard (2012 Cedar Lake Parkway)



Photo 4 Fence closeup

2012 Cedar Lake Parkway

Variance Request

Existing 6-foot-tall fence in front yard



Photo 5 View of Cedar Lake and city skyline looking east from yard of 2016 Cedar Lake Pkwy



Photo 6 View of fence from bike path along Cedar Lake Parkway



11/03/2015 10:25



11/03/2015 10:30



11/03/2015 10:31



MARVIN

11/03/2015 10:31

Action: The Board of Adjustment adopted staff findings and **approved** the application for a variance to reduce the front yard setback along Oakland Avenue from 15 feet to approximately 9 feet to allow for a new emergency generator accessory to an existing board and care home located at 2544 Oakland Avenue (2545 Portland Avenue) in the R6 Multiple-Family District, subject to the following conditions:

1. Approval of the final site and landscaping plans by the Department of Community Planning and Economic Development.
2. Columnar arborvitae or similar evergreen landscaping a minimum of 6 feet in height shall be installed between the proposed screen and Oakland Avenue.
3. The applicant shall provide the tall grasses in the landscaped yard adjacent to the public sidewalk.

Approved on consent

5. 1717 2nd Avenue South (BZZ #6746, Ward 6) ([Shanna Sether](#))

Eric Vagle of Minnesota Teen Challenge has applied for a variance of the specific development standards for a community residential facility which permits on-site services for residents of the facility only, except where part of a regimen of scheduled post-residential treatment. Minnesota Teen Challenge is proposing to allow for on-site outpatient chemical dependency treatment services to clients who have not completed a residential treatment program located at 1717 2nd Avenue South in the OR3 Institutional Office Residence District.

Action: The Board of Adjustment adopted staff findings and **approved** the application for a variance of the specific development standards to allow for a community residential facility providing on-site, outpatient chemical dependency treatment services to clients who have not completed a residential treatment program located at 1717 2nd Avenue South in the OR3 Institutional Office Residence District, subject to the following condition of approval:

1. On-site services shall be allowed for residents of the facility, those participating in a scheduled post-residential treatment program and up to fifteen (15) outpatient clients per day who have not completed a residential treatment program.

Approved on consent

6. 2016 Cedar Lake Parkway (BZZ #6713, Ward 7) ([Joe Giant](#))

Variance A: Dominique Conseil has applied for a variance to reduce the established front yard setback along Cedar Lake Parkway from approximately 53 feet to approximately 49 feet, measured to the structure for the construction of a new single-family home with attached garage for the property located at 2016 Cedar Lake Parkway in the R1 Single-Family District and SH Shoreland Overlay District.

Action: The Board of Adjustment adopted staff findings and **approved** the application for variance at 2016 Cedar Lake Parkway in the R1 Single-Family District and SH Shoreland Overlay District to reduce the established front yard setback from 53 feet to approximately 49 feet, measured to the structure, subject to the following conditions:

1. Approval of the final site, elevation, and floor plans by the Department of Community Planning and Economic Development

2. All site improvements shall be completed by September 11, 2016, unless extended by the Zoning Administrator, or the permit may be revoked for non-compliance.

Aye: Cahill, Ditzler, Finlayson, Johannessen, Sandberg, Saufley, Thompson

Nay: Ogiba

Motion passed

Variance B: Dominique Conseil has applied for a variance to develop within 40 feet of a steep slope in the SH Shoreland Overlay District for the construction of a new single-family home with attached garage for the property located at 2016 Cedar Lake Parkway in the R1 Single-Family District and SH Shoreland Overlay District.

Action: The Board of Adjustment adopted staff findings and **approved** the application for variance to allow for development, including the construction of a single-family dwelling, on or within 40 feet of the top of a steep slope for the property located at 2016 Cedar Lake Parkway in the R1 Single-Family District and SH Shoreland Overlay District, subject to the following conditions:

1. Approval of the final site, elevation, and floor plans by the Department of Community Planning and Economic Development;
2. All site improvements shall be completed by September 11, 2016, unless extended by the Zoning Administrator, or the permit may be revoked for non-compliance;
3. Approval of a soil erosion control plan and landscaping plan as part of the site plan review application so that proper site protection can be verified;
4. As part of an approved landscaping plan, the applicant will replace the three (3) mature deciduous trees that are being removed with three (3) new deciduous trees to be located in the front yard.

Aye: Cahill, Ditzler, Finlayson, Johannessen, Sandberg, Saufley, Thompson

Nay: Ogiba

Motion passed

Variance C: Dominique Conseil has applied for a variance to increase the maximum floor area ratio for a single-family home from 0.50 to 0.56 for the construction of a new single-family home with attached garage for the property located at 2016 Cedar Lake Parkway in the R1 Single-Family District and SH Shoreland Overlay District.

Action: The Board of Adjustment adopted staff findings and **denied** the application for variance at 2016 Cedar Lake Parkway in the R1 Single-Family District and SH Shoreland Overlay District to increase the maximum floor area ratio of a single-family home from 0.50 to 0.57.

Aye: Cahill, Ditzler, Finlayson, Johannessen, Sandberg, Saufley, Thompson

Nay: Ogiba

Motion passed

7. 1812 Emerson Avenue South (BZZ #6749, Ward 7) ([Joe Giant](#))

Clement Pryke has appealed the decision of the Zoning Administrator that the treehouse located at 1812 Emerson Avenue South is in violation of the zoning ordinance and must be removed.

I have no objection to the 6-foot tall fence on the property boundary between 2012 Cedar Lake Parkway (Pollak) and 2016 Cedar Lake Parkway. I understand that the fence is technically out of compliance with zoning rules, but agree that it is appropriate for the situation and should be allowed to remain.

Name	Signature	Date	Address
Madeline McAlister		10/3/15	2024 Cedar Lake Pkwy
Brenda Langston		10/3/15	2004 Cedar Lake Pkwy
Arthur Barron		10/4/15	2036 Cedar Lake Pkwy
Nancy Provan		10/4/15	2021 Drew Ave SE
John Carwody		10/4/15	2028 Cedar Lake Pkwy

From: [Liska, Andrew](#)
To: [Porter, Fatimat Q.](#)
Subject: FW: Variance request from Melisa Pollak (2012 Cedar Lake Pky)
Date: Tuesday, November 10, 2015 10:36:44 AM

-----Original Message-----

From: Win Bowron [<mailto:winbowron@gmail.com>]
Sent: Monday, November 09, 2015 9:20 PM
To: Liska, Andrew
Cc: winbowron@gmail.com
Subject: Variance request from Melisa Pollak (2012 Cedar Lake Pky)

Dear Mr. Liska,

Thank you for allowing my wife & I the opportunity to make our feelings known regarding our neighbor's request for a variance to extend the height and length of her fence at the property referenced above. We will be out of town on the day of the public hearing, and so please consider our written comments below in making your determination.

Ms. Pollak and her husband David have been our neighbors for many years and have never given us any reason to question their motives regarding their plans to manage their property. In fact, they have always maintained their dwelling and its environs in a manner consistent with the overall character of the neighborhood, and they have likewise made a consistent effort to be a part of the community and be kind and helpful to the rest of us on our block.

This year the house on the south side of the Pollak's residence was sold and the new owners chose to tear the existing modest one-story house down and build a mammoth home to replace it, despite the fact that it was just for the couple and their young son. This new structure, which the owners initially characterized as being only slightly larger than the original, is so over-sized and gargantuan in comparison that it barely fits on the lot and literally looms over the Pollak's property, virtually blocking their southern view entirely. If this had happened to us, I think that we would have given serious consideration to leaving the neighborhood. But the Pollak's obviously love their location next to Cedar Lake and chose to stay, despite all of the construction noise and turmoil next door. Under the circumstances, one could hardly blame them for extending the height & width of their existing fence (a very handsome fence it is, too - constructed with thin cedar boards and capped with a copper rain shield). I only wish that the fences that our own next-door neighbors have installed over the years looked half as good! Furthermore, given the extreme height of the new dwelling next to theirs', the Pollak's fence could hardly be considered to be a hindrance to the new neighbors' view of the lake or surrounding area, and so it seems odd to consider that they or anyone else would object to it. Honestly, if anything, the Pollak's fence is more like eye-candy than an eye-sore, and we neighbors should all be grateful that Melisa & David took such pains to make it look so attractive.

Once again, thank you kindly for allowing us to make our feelings known about this project, and I only wish that we could be there in person on the 19th to cheer Melisa on in her efforts.

Very Truly Yours,

Arthur ("Win") & Marion ("Mimi") Bowron
2036 Cedar Lake Parkway
Minneapolis, MN 55416

Sent from my iPad