

**CITY OF MINNEAPOLIS  
CITY COUNCIL  
ZONING AND PLANNING COMMITTEE**

In Re: Appeal of Board of Adjustment's  
denial of fence height variance for property  
located at 2012 Cedar Lake Parkway

**FINDINGS OF FACT  
AND  
RECOMMENDATION**

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The above-entitled matter came before the Standing Committee on Zoning and Planning of the Minneapolis City Council on Thursday, January 7, 2016, in Room 317, City Hall, 350 South Fifth Street, Minneapolis, MN 55415. On November 16, 2015, the Board of Adjustment approved a variance request to construct a fence within forty (40) feet of a steep slope in the Shoreland Overlay (SH) zoning district and denied a variance request to increase the maximum permitted height of a front yard fence to six (6) feet for property located at 2012 Cedar Lake Parkway. Melisa Pollak, the property owner, appealed the variance denial to the City Council pursuant to Minneapolis Code of Ordinances (MCO) § 525.180. Having held a public hearing on the appeal, the Committee now makes the following findings:

**FINDINGS OF FACT**

1. The appellant is seeking a variance to allow for the six (6) foot tall fence located in the front yard of her property. The Zoning Code limits the height of a fence in the front yard to three (3) feet. MCO § 535.420(1).
2. A variance may be granted when all of the following findings are met:
  - (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.
  - (2) The property owner 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.

(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.

3. The subject parcel is located on the west side of Cedar Lake. The parcel has a steep vegetated slope on the western side that drops down toward the lake and Cedar Lake Parkway. The elevation qualifies as a “steep slope” according to the Zoning Code. MCO § 551.460. Although the subject property is addressed off of Cedar Lake Parkway, there is no direct access to the same. Based on the steep vegetated slope, the appellant cannot see the Parkway from the home and cannot reach the home from the Parkway. Rather, the appellant accesses the home through an alley off of Drew Avenue South. Although the Zoning Code recognizes the yard on the lake-side of the house as the front yard, it is the functional equivalent of the back yard. The yard facing the alley functions as the “front yard.” That is where the main entrance to the home is located and where mail delivery occurs. These unique circumstances of the site create a practical difficulty.
4. The appellant’s desire for a taller fence in her functional “back yard” is both reasonable and in keeping with the spirit and intent of the ordinance and comprehensive plan. Although the Code recognizes the lake-side of the house as the front yard, it functions as the back yard. The Code acknowledges that typical activities conducted in the back yard of a home warrant more privacy than the front. The appellant’s six (6) foot tall privacy fence would be in compliance with the regulations of the Zoning Code for a fence in the back yard.
5. Also, the appellant’s fence does not alter the essential character of the locality, nor is it injurious to the use or enjoyment of other property in the vicinity. The location of the home on the top of a steep vegetated slope limits any visual impact of the fence. It is

difficult, if not impossible, to see the fence from Cedar Lake Parkway. In addition, the appellant provided photographic evidence that the views of the Minneapolis skyline and Cedar Lake from the neighboring house at 2016 Cedar Lake Parkway are not obstructed by the fence. The fence provides privacy for the appellant's functional "back yard" and is not detrimental to the health, safety, or welfare of the general public or of those utilizing the property or nearby properties.

6. The fence also meets the additional findings required by the location of the fence in the SH overlay district. The fence will not contribute to soil erosion or watercraft on the lake. The view of the fence from the lake is minimized by the steep vegetated slope.
7. The appellant submitted a petition evidencing support for the fence from several of her neighbors.

Therefore, based on the foregoing Findings of Fact, the Committee makes the following recommendation:

#### **RECOMMENDATION**

1. That the full City Council grant the appeal and approve the fence height variance.
2. That these Findings of Fact and Recommendation be adopted by the City Council and made part of the official record.