



Request for City Council Committee Action from the Department of Community Planning & Economic Development – Planning Division

Date: November 8, 2007

To: Council Member Gary Schiff, Chair, Zoning and Planning Committee
Members of the Committee

Referral to: Zoning and Planning Committee

Subject: Appeal of the Zoning Board of Adjustment action denying a variance to increase the height of a fence located in the required reverse corner yard along Pillsbury Avenue from 3 feet to 6 feet to allow for an existing 6 ft tall cedar privacy fence at 201 West Diamond Lake Road (BZZ-3777) by Andrea Anastasi and Matthew Werder.

Recommendation: The Zoning Board of Adjustment adopted staff recommendation and denied a variance to increase the height of a fence located in the required reverse corner yard along Pillsbury Avenue from 3 feet to 6 feet to allow for an existing 6 ft tall cedar privacy fence at 201 West Diamond Lake Road in the R1A Single Family District.

Previous Directives: N/A

Prepared or Submitted by: Brian Schaffer, City Planner, 612-673-2670

Approved by: Jack Byers, Planning Supervisor, 612-673-2634

Presenters in Committee: Brian Schaffer, City Planner

Financial Impact (Check those that apply)

- No financial impact (If checked, go directly to Background/Supporting Information).
 Action requires an appropriation increase to the _____ Capital Budget or _____ Operating Budget.
 Action provides increased revenue for appropriation increase.
 Action requires use of contingency or reserves.
 Business Plan: _____ Action is within the plan. _____ Action requires a change to plan.
 Other financial impact (Explain):
 Request provided to department's finance contact when provided to the Committee Coordinator.

Community Impact (use any categories that apply)

Ward: 11

Neighborhood Notification: Windom Community Council was notified of the appeal on October 25, 2007.

City Goals: See staff report.

Comprehensive Plan: See staff report.

Zoning Code: See staff report.

Living Wage/Job Linkage: Not applicable.

End of 60/120-day Decision Period: The end of the 60 day decision period is November 16, 2007.

Other: Not applicable.

Background/Supporting Information Attached: Andrea Anastasi and Matthew Werder have filed an appeal of the Zoning Board of Adjustment decision denying a variance to increase the height of a fence located in the required reverse corner yard along Pillsbury Avenue from 3 feet to 6 feet to allow for an existing 6 ft tall cedar privacy fence

The Zoning Board of Adjustment voted 4-2 to deny the variance application on October 11, 2007. The appellant filed an appeal on October 22, 2007. The appellant's statement is included in the attached supporting material.

Supporting Material

- A. Appellant statement of appeal with attachments
- B. October 11, 2007 ZBOA Meeting Minutes
- C. October 11, 2007 ZBOA Staff Report with attachments
- D. Letter provided to ZBOA members on October 11, 2007

Board of Adjustment Hearing Testimony and Actions

Thursday, October 11, 2007
4:30 p.m., Room 317 City Hall

Board Membership: Mr. Matt Ditzler, Mr. John Finlayson, Mr. Paul Gates, Ms. Marissa Lasky, Ms. Alissa Luepke Pier, Mr. Matt Perry, and Mr. Peter Rand

The Board of Adjustment of the City of Minneapolis will meet to consider requests for the following:

1. **201 West Diamond Lake Road (BZZ-3777, Ward 11):**

Andrea Anastasi & Matthew Werder have applied for a variance to increase the height of a fence located in the required reverse corner yard along Pillsbury Avenue from 3 feet to 6 feet to allow for an existing 6 ft tall cedar privacy fence at 201 West Diamond Lake Road in the R1A Single Family District.

Mr. Perry moved and Mr. Ditzler seconded the motion to **adopt** staff recommendation and **deny** a variance to increase the height of a fence located in the required reverse corner yard along Pillsbury Avenue from 3 feet to 6 feet to allow for an existing 6 ft tall cedar privacy fence at 201 West Diamond Lake Road in the R1A Single Family District.

Roll Call Vote:

Yeas: Ditzler, Lasky, Luepke Pier and Perry

Nays: Finlayson and Rand

Recused: None

Absent: None

TESTIMONY

Mr. Gates: Mr. Schaffer, can you go back to your map please? Your site plan...am I correct that the yellow line is not the full extent of the fence that is required to have a variance?

Mr. Schaffer (staff): Yes, the full extent of the existing fence to code, the requirement would have to be this entire portion, here-to here-to here, whatever that 37 feet distance is. This site plan isn't drawn to scale, it's just dimensions, so that might be a little misleading, but that yellow line is what is in question ... at least to that point.

Mr. Gates: The yellow line is essentially the extension of the fence done by the present owner.

Mr. Schaffer (staff): And that portion would require a variance.

Mr. Gates: Yes, but also a portion of the previous fence that the present owner may have inherited, is that correct?

Mr. Schaffer (staff): Yes, that portion would be at this point, which is 16 feet long and extending north from that back property line up towards Diamond Lake Road West. So this portion right here would have been existing according to the applicant and we can see there is existing fence posts even though the applicant has replaced the decking boards in between.

Mr. Gates: But not the portion that would be to the west?

Mr. Schaffer (staff): To the west is not...officially that would have required a variance at some point. There is no evidence that a variance was ever granted for this property to have that fence. At this point staff brought it through for just the existing ... the new fence that was built. Is that clear?

Mr. Gates: No. So if the Board adopted staff recommendation and no variance was granted, and assuming that there were no appeals or anything, what portion of the drawing here would have to come down?

Mr. Schaffer (staff): Chair Gates, Board Members, I would...the way staff noticed this application and wrote this variance was for the new portion of that fence that was constructed. So everything that was newly constructed would have to be removed. Obviously what was existing there prior to these conditions does not have non-conforming rights and would have to probably come into compliance as well with the ordinance, which is having a three foot tall fence at that point as well. As we work with housing inspectors sometimes staff and the City do not have a policy of going back over a long period of time and trying to fight these issues. This one was brought to our attention the way it is now.

Mr. Gates: So if I understand correctly there would be no enforcement proceedings for the pre-existing fence?

Mr. Schaffer (staff): That would be up to housing inspections to go out and enforce the ordinance on that, so I can't guarantee if there would be or would not be.

Mr. Gates: All right. Thank you.

Mr. Perry: I would like to follow up on that line of questioning in regards to the concern about safety at the corner. Are you considering that small section where there was existing fence posts ... but there new pieces of fence, are you considering that part that would have to be removed as well?

Mr. Schaffer (staff): Chair Gates, Board Member Perry, staff would probably agree that even though that existing post was there, I think they would have to reduce that fence back down to a three foot high fence, or four foot if it was open or opaque.

Mr. Perry: And again, would the spirit of it ...to address safety concerns ... there is that driveway at the bottom of this diagram that you have up now, are you suggesting ... it doesn't seem like you're suggesting that piece of fence be removed even though ... if this were a new fence you would have it at a lower height to have that line of sight for safety concerns.

Mr. Schaffer (staff): Chair Gates, Board Member Perry that is correct.

Mr. Perry: Okay, thank you.

Mr. Rand: Illusion has been made this new fence is a six foot fence? How do you measure that? I'm 6'2" and when I went by there I said, well, this isn't a three foot fence, but it's not a six foot fence either ... am I wrong? I didn't get out of my car and stand up by the fence and see if I could look over it, but it looked like a four or five foot fence, but not a six foot fence and I'm just wondering is the difference here ...well, #1, the question about the real height; and then #2, what the owner could do or could have done is to have put in a fence south to north, along Pillsbury and then cutting back towards the house that was a four foot fence that had some transparency ... is that correct?

Mr. Schaffer (staff): Chair Gates, Board Member Rand, to the latter question that is correct. They could have put a four foot fence that met our open opacity and was made of decorative materials which could be wood, rod iron or even vinyl coated chain link. In regards to your first question, the height was what came through as a violation through a housing inspector violation and what the applicant brought forward to staff, staff did not go out and measure that six foot high fence. However, the height of that is measured from the adjacent grade in the front of the fence, so in this situation that height would be measured at this point here – measuring up.

Mr. Rand: Correct, thank you.

Mr. Gates: Further questions? I see none, thank you Mr. Schaffer. Is the applicant here and do you care to speak?

Matt Werder: Mat Werder and this is my wife Andrea Anastasi, 201 West Diamond Lake Road. We have a Power Point presentation that we can pull up.

Mr. Gates: Sure, try to be brief with it.

Mr. Werder: I will. I'll make it as brief as I can, as I begin I just want to touch on four quick little points. About six months ago, my wife and I were talking about putting up more of a privacy and security and some safety around our house, living on a corner lot especially on Diamond Lake Road. It is a very busy and high traffic road and having a new family on the way, we thought that building a fence would be a great option for our family as well as providing safety to the community for putting up a pool in our back yard. We thought that a fence would be the best option for us. In doing so, we got our property line marked out, and had that all surveyed, there was some dispute with our neighbor about where the property line was on the west side of the property and after we got that surveyed, I was in the process of drawing out where the fence would actually be ... in doing so I thought, maybe I need a permit for this ...and I'm not here to shift blame or anything, but there was some miscommunication when I had tried to get information and clarification on the fence ordinance. In the fence ordinance there is no indication or clarification on a reverse corner lot and when I decided to call the housing inspections office to get clarification you get 311. 311 pulled up my map, my lot; I told them where I want to build a fence and what the height was ... oh, go right ahead and build it. So we thought we were in compliance. At no time did my wife and I intend to violate any ordinance. A few months later towards the end of June, our neighbor to the west had some issues. We found out that 12 inches of her driveway was on our property. She was not very happy with that. She complained to the City, they came out and inspected our property on June 28th. A week later we get a warning violation that we are in violation of the fence ordinance. We weren't quite sure where this was coming from. I talked to the housing inspector and she said that she recommended that I talk to a guy by the name of Paul Smith ...Paul Smith said I'll come on out and take a look at it. Vonnie said if Paul Smith approves it I will remove the warning and that will be fine. Paul Smith came out, looked at the fence, talked with my wife, reassured her that I will approve the fence, you know it looks great the craftsmanship ... it is well built, I have no reservation about it and he said don't tear this fence down unless you talk to me. So, I will contact Vonnie and let her know that I approve the fence and you should be okay. So, we were getting lots of miss communication and inaccurate data where we were and our fence remaining where it is. Then towards the beginning of August we received a citation stating that we were still in violation. We contacted housing inspections office Vonnie and she said I talked to Paul Smith but your fence is still too high. I talked to Paul Smith and he retracted that he had told my wife and I that we were okay. So it was just a lot of miscommunication and if we would have been told that, we certainly would have seeked alternative designs. At that time Paul Smith recommended that we file a variance and here we are. In doing so we took a look around our neighborhood and found that we are one of nine other fences and properties that have a very similar if not the exact fence design and lot dimensions of our house. We may be a reverse corner lot ... and these are all corner lots themselves with at least a six foot in height fences in the neighborhood.

Mr. Gates: We have no way of knowing whether those are conforming or not either, so, I wouldn't dwell too long on that point, because it's not really going to make much difference.

Mr. Werder: Okay, so that just leads me to my last and final point in response to staff recommendation of the fence having a negative impact on the character of the locality. Obviously if there are other fences in the neighborhood, one more fence I don't see having that much negative impact on it. Our fence is well built, it's clean, we have a clean yard, some of these other fences are 20 years old or more. We take good care of our property and the fence and it seems reasonable that a fence of that nature does not negatively impact the neighborhood. As I said before, we would have sought alternative designs, but at that time it was not directed to us to seek an alternative design. As regards to the public safety of the fence -- the existing fence has been there for almost 20 years on the south side of the property and there have been no public safety issues. There have been no other complaints about the fence at all. My wife and I were very careful when we were backing out of our driveway as our neighbor to the south, so we feel that the fence remaining doesn't provide a safety risk, and we ask that you approve the variance.

Mr. Gates: Thank, you, do you wish to speak also?

Ms. Anastasi: Just one little comment, our actual neighbor to the south where the existing fence is, she loves the fence, and she was really afraid that we were going to tear it down when we were actually having the public survey, because she loves her privacy and everything, she has all the windows looking towards our house and when you are 6'4" you don't have much privacy with a three foot fence. We have a four foot pool that we put in the summer and it's above the ground. So, when we call 311 and they say up to six feet is perfectly fine and we called three times and that is the information they gave us. We asked them to pull out the map and everything and they did and they said up to six feet is fine, if you would like to do it higher than six feet come and get a permit. That's why we never thought we would be violating anything until we got this very threatening letter in the mail that was really scary to get. I felt like we were criminals doing something so wrong. I really beg you to consider it. We have a new born baby and pets and everything and this has been great for everything. I know the neighbors actually love it. They love that they have privacy too, because it was such an open space that you couldn't even have a barbeque outside, everybody...you know you are in the middle of everything, so...

Mr. Gates: Okay, thanks very much. Are there questions for the applicant?

Mr. Rand: When was the fence built? The new one?

Mr. Werder: The new fence was built over the course of about four weeks during the month of June.

Mr. Rand: Thank you.

Mr. Gates: No further questions, okay, thanks very much. Is there anyone else here to speak in favor of this application? I see no one. Is there anyone here to speak in opposition to the application? I see no one. We'll close the public hearing and hear from the Board.

Mr. Ditzler: I don't have a motion, but I will say that what a cluster you know what by the City -- number one. Not that this is the first time that we have heard that, and especially in dealing with a fence. It seems to me that the applicants did everything that they could to try to figure out what they could about calling the right resources about the fence. I still do have safety concerns about that long tall fence along that sidewalk with the driveway right there, not only for them but for whoever is going to buy the house next door to them next, or who's going to buy their house next. But I can be persuaded if somebody gives the argument.

Ms. Lasky: I want to give people a fenced yard, the problem is it's a front yard and it's six feet tall and there aren't any other neighbors on the contiguous block with a six foot tall fence, nor do I

want to see other neighbors boxing in their front yard. So when we give one family a six foot tall fence, we better plan for the block to be fenced, and I think it ruins the neighborhood. I don't know where the color picture with the home fenced and nothing else in the yard and the block fenced ... it's a box. I would rather see it set back and some shrubbery in front of it to soften it. I was sad to see that, for safety reasons being a minor objection on my part and the fact that its precedent setting and I found no hardship whatsoever that I could give a six foot high fenced boxed area on a flat typography.

Mr. Gates: I don't wish to persuade you one way of the other at all, I'll only point out that with respect to the issue of other properties on the block wanting six foot fences also, this is the only one, or perhaps one of two houses on the block that has a reverse corner lot, so seemingly this would not be setting any kind of precedent for other properties on the block face.

Mr. Rand: I will move to grant the variance due to the hardship of miss instruction and lack of clarity from the City as to what should be done and the fact that I think that this fence was also designed to be a continuation of a fence that was already there. The pattern is similar and it just continues...the property owner to the south takes that same fence and just continues that along the way and further ... I really don't believe it is a six foot fence.

Mr. Finlayson: Second. I would further add that in addition to the fact that it is a reverse corner lot that the fence does in deed have a precedent in terms of the sight line being blocked in the past. They had miss communication from the City they relied upon information that was not actually correct. They were innocent in the matter and could not have known what the City should have known. Additionally, the sight line being blocked actually provides a public service for everyone on the block because it blocks Diamond Lake Road which is a busy street. In terms of precedent no other property on that block is on Diamond Lake Road. So for those reasons I feel the variance should be granted as requested.

Mr. Gates: We have a motion and a second to approve the variance. Further comment?

Mr. Perry: I'm not going to support the motion, not because I don't feel for the applicants, I do. I have a particular problem with the fence, with the way fences are handled in the City and I don't want to belabor that point, but the fact that one does not have to pull a permit and fences can be put up and the contractors are not responsible if there was a contractor involved, irks me beyond belief and I wish that there would be a change in the code to take that into account, because it puts the responsibility on people who have to be really smart or dependent upon the City to become experts in fence height and zoning code, which I think is not really practical; but, on the other hand, we have a requirement to find to meet these four findings ... in spite of the well stated arguments by my colleagues, I still remain unconvinced that there is hardship or uniqueness in this situation and therefore will not be supporting the motion.

Mr. Gates: Any further comment? Again we have a motion and a second to approve the variance request, please call the roll.

Ditzler: No
Finlayson: Yes
Lasky: No
Luepke Pier: No
Perry: No
Rand: Yes

Mr. Gates: That motioned fails.

Mr. Perry: Mr. Chair, I move that we adopt staff recommendation and deny the variance request.

Mr. Gates: Is there a second for that motion?

Mr. Ditzler: Second.

Mr. Gates: Is there further comment? We have a motion and a second to approve the staff recommendation denying the variance, please call the roll.

Ditzler: Yes

Finlayson: No

Lasky: Yes

Luepke Pier: Yes

Perry: Yes

Rand: No

Mr. Gates: That motion is approved the variance is denied, you can speak to staff about your options from this point.

**Department of Community Planning and Economic Development – Planning
Division**

Variance Request
BZZ-3777

Date: September 25, 2007

Applicant: Andrea Anastasi & Matthew Werder

Address of Property: 201 West Diamond Lake Road

Contact Person and Phone: Matthew Werder (612) 823-6092

Planning Staff and Phone: Brian Schaffer, (612) 673-2670

Date Application Deemed Complete: September 17, 2007

Public Hearing: October 11, 2007

Appeal Period Expiration: October 22, 2007

End of 60 Day Decision Period: November 16, 2007

Ward: 11 **Neighborhood Organization:** Windom Community Council

Existing Zoning: R1 Single Family District

Proposed Use: An existing 6 foot tall cedar privacy fence

Proposed Variance: A variance to increase the height of a fence located in the required reverse corner yard along Pillsbury Avenue from 3 feet to 6 feet to allow for an existing 6 ft tall cedar privacy fence at 201 West Diamond Lake Road in the R1A Single Family District.

Zoning code section authorizing the requested variance: 525.520 (5)

Background: The subject site is a reverse corner lot that is approximately 51.6 ft by 132 ft (6,821 square feet). The applicant has an existing 6 foot tall privacy fence located along the south end of the property between the subject site and 5412 Pillsbury Avenue. This existing fence extended north along Pillsbury Avenue for 16 feet.

The subject property fronts West Diamond Lake Road and Pillsbury Avenue. Due to the configuration of the lots along Diamond Lake Road and Pillsbury Avenue the subject site is considered a reverse corner lot by the zoning ordinance and requires a larger setback

along Pillsbury Avenue than a standard corner lot. The subject site is required to have the same front yard setback along Pillsbury Avenue as the adjacent properties to the south. The applicant constructed a new 6 foot tall privacy fence along the east and west property lines that extends from the side and rear of the home to the existing fence. The new fence matches the height and style of the existing fence. However, the zoning ordinance has never permitted a 6 foot tall fence in the front yard. The existing fence was never constructed in compliance with the zoning ordinance.

The portion of the new fence that was constructed on the east property line along Pillsbury Avenue is located in the required front yard. The maximum height for a solid fence in the required front yard is 3 feet. A variance is required to increase the height of a fence from 3 feet to 6 feet.

Findings Required by the Minneapolis Zoning Code:

1. The property cannot be put to a reasonable use under the conditions allowed by the official controls and strict adherence to the regulations of this zoning ordinance would cause undue hardship.

The applicant has requested a variance to increase the height of a fence from 3 feet to 6 feet to allow for a recently constructed fence along Pillsbury Avenue. Strict adherence to the Zoning Ordinance would prohibit a 6 foot tall fence in the required front yard. The subject site is a reverse corner lot and has a required front yard along both Diamond Lake Road and Pillsbury Avenue. The required front yard extends 37 feet into the subject property from Pillsbury Avenue. The subject site is 51 feet wide and would only be allowed to have 6 foot tall privacy fence for a 14 foot wide strip on the west of the property.

The applicant could construct a 3 foot tall privacy fence or a 4 foot tall open and decorative fence. Staff believes the applicant has alternative designs and that there is not undue hardship caused by strict adherence to the zoning ordinance.

2. **The circumstances are unique to the parcel of land for which the variance is sought and have not been created by any persons presently having an interest in the property. Economic considerations alone shall not constitute an undue hardship if reasonable use for the property exists under the terms of the ordinance.**

The conditions upon which the setback variance is requested are unique to the parcel due to the property having two required front yard setbacks. This is a circumstance created by the platting of the property and the location of the neighboring structures and not created by the applicant.

3. **The granting of the variance will be in keeping with the spirit and intent of the ordinance and will not alter the essential character of the locality or be injurious to the use or enjoyment of other property in the vicinity.**

Staff believes that the recently constructed 6 foot tall privacy fence will negatively alter the essential character of the locality. The subject site already has an existing 6 foot tall privacy fence located in the required front yard setback. Staff believes that the additional 48 feet of 6 foot tall fence in the front yard detracts from the character of the surrounding neighborhood and is not in keeping with the spirit and intent of the ordinance.

4. The proposed variance will not substantially increase the congestion of the public streets, or increase the danger of fire, or be detrimental to the public welfare or endanger the public safety.

Granting the variance would likely have no impact on the congestion of area streets or fire safety. Staff is concerned about the site triangle from the driveway of the adjacent property to the south, 5412 Pillsbury Avenue. The height and location of the fence limits view of the sidewalk and oncoming traffic from the adjacent driveway. Staff believes the proposed fence would be detrimental to the public welfare and could endanger public safety.

Recommendation of the Department of Community Planning and Economic Development -Planning Division:

The Department of Community Planning and Economic Development Planning Division recommends that the Board of Adjustment adopt the findings above and **deny** a variance to increase the height of a fence located in the required reverse corner yard along Pillsbury Avenue from 3 feet to 6 feet to allow for an existing 6 ft tall cedar privacy fence at 201 West Diamond Lake Road in the R1A Single Family District.

Attachments

1. Applicant's statement
2. Map of property and surrounding area
3. Site plan for fence
4. Photographs