



**COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT FOR VARIANCE APP. NO. 2929
SEPTEMBER 16, 2015
PLANNING AND LAND DEVELOPMENT REGULATION BOARD**

OVERVIEW

Case Number: Project No. 2015070239; Application #2929

Applicant: Elliott J. Kanevsky, Owner

Property Owners: Elliott J. Kanevsky and Eileen Cronin-Kennedy

Property Description:

Location:	2 Fielding Lane
Real Estate ID #:	07-11-31-7010-00090-0240
Current FLUM designation:	Residential
Current Zoning designation:	Single Family Residential -2 (SFR-2)
Current Use:	Single-family residence
Size of subject property:	.32 acres or 14,146 SF (Front – 100 ft.; Rear 75.81 ft.; Left Side – 136 ft.; Right Side – 170 ft.)

Requested Action: A variance request from the fifteen foot minimum street setback at 2 Fielding Lane.

Recommendation: Staff recommends that the Planning and Land Development Regulation Board (PLDRB) DENY the variance from the required setback of 15 feet (corner lot) in the SFR-2 zoning district.

Alternative

Recommendation: If the Board finds support for an alternative recommendation, staff recommends that the variance be limited to four feet.

ANALYSIS

BACKGROUND

Current standards

The subject parcel is 14,146 SF. A 3,165 foot house and pool were constructed on-site in 2006. The Future Land Use designation is Residential and the zoning is Single Family Residential -2 (SFR-2). The Future Land Use and Zoning designation allows for single family residential development and along with accessory uses. Properties within SFR-2 are limited to 75% impervious coverage.

The minimum lot size for SFR-2 is 7,500 SF. The lot is irregularly shaped in the rear, but it not non-conforming. The lot is a corner lot. Corner lots are typically platted 15% to 20% larger to allow for adequate site distance. This lot exceeds the minimum lot size requirements for a corner lot in SFR-2 zoning by 39%.

SFR-2: Criteria	SFR-2: Standards
Min. Lot Size	7,500 SF
Min. Lot Width	60 ft.
Max. Impervious Ratio	0.75%
Floor to Area Ratio	NA
Max. Bldg. Height	35 ft.
Min. Front Setback	20 ft.
Min. Rear Setback	6.5 ft.
Min. Interior Side Setback	7.5 ft.
Min. Street Side Setback	15 ft. **
** Subject of variance	

The parcel is located two blocks south of Matanzas High School, adjacent to Fieldstone Lane. The immediate vicinity of the subject property is residential in nature. The lot has 170 feet of frontage along Fieldstone Lane, as it bends from front to back.

Surrounding Land Uses		
<i>North</i>	FLUM	Residential
	Zoning	Single Family Residential-3
	Supporting	Single family home
<i>South</i>	FLUM	Residential
	Zoning	Single Family Residential-3
	Supporting	Single family home
<i>East</i>	FLUM	Residential
	Zoning	Single Family Residential-2
	Supporting	Single family home

<i>West</i>	FLUM	Residential
	Zoning	Single Family Residential-2 & Single Family Residential-3
	Supporting	Single family home

The following table summarizes the historical and applicable development standards of the property since the property owner has taken control of the property.

Approvals			
Permit Number	Status	Company	Job
2015040081	Issued	Atlantic Fence & Fabricating Inc.	240 ft. tan and white PVC fence.
2013120649	Final	Stephen M. Rende Roofing	Re-roof
2014110319	Final	Solar Fit	Solar Pool Heating system
2014120322	Final	A certified screen service	Pool enclosure on existing deck
2014120354	Final	Fence	65 feet of 6 ft. tan & white PVC fence
2015010538	Final	Tree Removal	Tree removal
2015020338	Final	Tree Removal	Tree removal
2015020466	Final	Regrade & Resod	Resod

Proposed Standards

Permit #2015040081 was issued for 240 feet of 6 ft. tan & white fence on April 8, 2015. The approved zoning permit depicts a proposed 240' tan and white fence 15 feet from the lot line on Fielding Lane. The site plan submitted for the permit shows a curved fence line consistent with the required 15 foot side minimum street setback for SFR-2 zoning.

The code case on this property was opened on June 11, 2015 after a courtesy notice was issued on June 10th. The courtesy notice gave the property owner ten days to remedy the violation. On July 22, 2015 the applicant applied for this variance as a means to remedy the issue.

The fence was installed as referenced in the "as- built" survey. You will note that the fence meets the required street yard zoning setback until it reaches the portion of the house covered with a screen enclosure. At this point the fence extends straight (as opposed to curving with the contour of the lot) until

the last 23 feet where the fence curves toward the rear property line (at the maximum encroachment into the setback - 3.7 feet). This conflicts with the permit application submitted for the property. The fence would not pass inspection with its current placement.

The fence is needed, according to the applicant, for many reasons. Some of these reasons are listed below:

- Fieldstone Lane is a very busy street;
- A pet belonging to the applicant was killed by a car;
- Future protection of existing pets;
- Security of home and loved ones;
- Meets the intent of setback provisions by providing visibility and space;
- Privacy;
- Beautification of area.
- Neighbors “love” the fence.(1)
- The lot is non-conforming.(2)
- Contractor “should” have known better.
- Complies other fence requirements.

(1) While a number of neighbors may be pleased with the fence, code enforcement received an anonymous complaint which prompted the June visit.

(2) Staff note: This statement is not technically correct. While the lot is irregularly shaped it does not meet the definition of non –conforming based on at least two factors: 1) The lot meets and greatly exceeds the minimum standards for the zoning district and 2) This lack of impediment is demonstrated in the fact that the lot has been fully developed.

Analysis

Fieldstone Lane curves outward as it intersects with Fielding Lane. The effect of this curve is to create a lot with irregular dimensions. The front of this subject property, a corner lot located at 2 Fielding Lane, is 100 ft. in contrast to 75.81 ft. in the rear, where the lot tapers off. Similarly the east side of the lot is 34 feet longer than the west side of the lot. (170 ft. as compared to 136 ft.). Although the rear portion of the lot narrows to 75.81 feet it still exceeds the 60 ft. minimum lot width for SFR-2 (even if adjusted for the 15% typical corner lot size).The average for the front and the rear portion of the subject lot is 88 feet. Lot widths in the immediate vicinity average 80ft., 95ft., 88ft., 84ft. and 81 feet.

A twenty five percent taper (from 100 ft. to 75 ft.) from the front to the rear is significant. However there are several mitigating factors. 1) The lot is zoned SFR-2 as opposed to SFR-3. This reduces the required side yard setback from 20’ to 15 feet. 2). The curved portion of the lot adjoining the street is 25% longer than the western edge of the lot. 3) The size of the lot, .32 acres or 14,146 SF, is large enough to offer other design solutions for these improvements. However the development footprint to date, (most of which occurred prior to Mr.Kanevsky owning the property), limits the use of the rear yard with or without the fence variance.

This variance request is needed because the work does not comply with the approved permit and the fence has an open code case on it. It is unclear as to whether any actions were taken to prevent this outcome, or whether they were unforeseen, self- imposed, or should have been anticipated. There appears to have been several opportunities to or prevent the conflict or to minimize the amount of variance being requested. Variance requests typically submitted to the City include some sort of error, unforeseen outcome, survey mistake etc. Certainly the placement of the screen enclosure over the deck area appears to have pre-empted some options related to access to the rear yard as it relates to the placement of this fence. The fence can be seen in the photographs below.

SFR-2: Criteria	SFR: Standards:	Existing:	Proposed **
Min. Lot Size	7500 SF	14,146 SF	14,146 SF
Min. Lot Width	60 ft.	75.81 SF	75.81SF
Max. Impervious Ratio	0.75%	Not determined	Not determined
Max. Bldg. Height	35 ft.	2 story	2 story
Min. Front Setback	20 ft.	20 ft.	20 ft.
Min. Rear Setback	6.5 ft.	6.5 ft.	6.5 ft.
Min. Side Street Setback	15 ft.	3.7 ft.	3.7ft.

** Fence is existing. Variance request is to permit existing fence.



Figure 1 and Figure 2: Facing north



Figure 3 and Figure 4: Looking south toward intersection

The following is analysis based on unified land development code Chapter 2 Part II Section 2.05.05 and Section 2.12.03.

ANALYSIS

I. *The Land Development Code states: “When reviewing a development order application, the approval authority shall determine whether sufficient factual data was presented in order to render a decision. The decision to issue a development order shall be based upon the following, including but not limited to:”*

A. *The proposed development must not be in conflict with or contrary to the public interest;*

Staff Finding: Any deviation for the Land Development Code without adequate justification can be considered contrary to the public interest. The applicant has provided a detailed justification.

B. *The proposed development must be consistent with the Comprehensive Plan and the provisions of this LDC;*

Staff Finding:

Chapter 1 – Land Use Element: The proposed concept plan is consistent with the City’s Residential Future Land Use designation.

Chapter 2-Transportation Element: The single family use represents a de minimis impact. The project is not consistent with site distance requirements for intersections.

Chapter 3-Housing Element: The project is an accessory use to residential development.

Chapter 4-Public Recreation and Open Space: Public Recreation and Open space levels of service are consistent with single family uses.

Chapter 5-Infrastructure (Water, Sewer, Drainage, Aquifer Recharge, Waste Disposal) Element: Water, sewer, drainage, and waste disposal are available to serve this use.

Chapter 6-Conservation and Coastal Management Element: Not applicable

Chapter 7-Intergovernmental Coordination Element: Not applicable.

Chapter 8 – Capital Improvements Element: No change to the Capital Improvements Element is necessary to further process the requested application.

C. *The proposed development must not impose a significant financial liability or hardship for the City;*

Staff Findings: An accessory use does not pose a significant financial liability or hardship for the City. No changes to the Capital Improvements Element or Program are necessary to support the request.

D. *The proposed development must not create an unreasonable hazard, or nuisance, or constitute a threat to the general health, welfare, or safety of the City’s inhabitants;*

Staff Finding: Residential development of this site does not in and of itself directly impact the general health, welfare or safety of the City’s residents.

The fence encroachment into the side yard setback does not affect safe site distances at the intersection of Fielding Lane and Fieldstone Lane. No other hazards, nuisances, or threats to the general health, welfare, or safety of the City’s inhabitants are anticipated

E. The proposed development must comply with all other applicable local, state, and federal laws, statutes, ordinances, regulations, or codes;

Staff Finding: If the requested variance is granted, the fence can remain as installed.

If the requested variance is granted, the fence permit will proceed with the inspection process for installation. It will be eligible to comply with applicable local regulations and codes related to this permit.

S 2.12.03 of the Land Development Code states “No application for a variance shall be approved unless the Planning and Land Development Regulation Board finds that the following standards are met, recognizing the applicant bears the burden of proof.”

1.	<i>Special conditions and circumstances exist which are peculiar to the land, use, or building involved and which are not applicable to other lands, uses, or buildings in the same zoning district;</i>
	<p>Staff Finding:</p> <p>Yes, Criteria #1 is met. There are special conditions and circumstances that exist which are peculiar to the land, use or building involved that are not applicable to other land, uses or buildings in the same zoning district. All of the single family residential zoning districts require corner lots to maintain a minimum building setback of fifteen to twenty feet from the lot line adjacent to the street. To compensate for this greater setback requirement, corner lots are typically larger in size and width than interior lots. The front width of this lot is 25% larger than the rear width. As a result, the dimension for the side corner setback applied to this lot seemingly results in a disproportionate loss of yard. It is staff’s position that the size of lot and the fact that it is zoned SFR2 not SFR3 were attempts to compensate for its irregular shape; however, the result of the dimensional difference does create unique issues as demonstrated by this request.</p> <p>If the fence were to be located inside of the setback, it is estimated that there would be less than one foot between the corner of the existing screen room and fence. The narrowing of the lot contributes to limited choices for fence placement today. There were several opportunities to fully design for the lot’s configuration but this has not occurred.</p>
2.	<i>The special conditions and circumstances are not self-imposed and do not result from the actions of the applicant; and</i>
	<p>Staff Finding:</p> <p>No, Criteria #2 is not met. This result can be attributed to at least two factors. 1) The fence, as built, is not consistent with the approved permit.</p> <p>2) The placement of the screen enclosure reduced options that would normally be available to the applicant. The applicant had greater latitude to design a functioning fence that complies with street side setback requirement prior to the placement of the screen enclosure.</p>

3.	<i>Literal interpretation of the provision of this LDC would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this LDC and would work unnecessary and undue hardship on the applicant; and</i>
	<p>Staff Finding:</p> <p>Yes, Criteria #3 is met. Application of the standard reduces or impedes the approved use of the property as it exists today. Although the property is being treated similarly to any other corner lot subject to the 2008 LDC, the permitted screen enclosure limits the ability of a compliant fence to provide access to the rear yard .</p> <p>Application of the standard (after the fact) does reduce the approved use of the property by limiting access to the rear yard.</p>
4.	<i>The variance is the minimum relief necessary that will make possible the reasonable use of the land or building; and,</i>
	<p>Staff Finding:</p> <p>No, Criteria #4 is not met. The variance request is not the minimum relief necessary for a reasonable use of land and the building. The variance request is 11 feet from the required 15 feet minimum street yard setback.</p> <p>The shape of the fence line is not consistent with the configuration of the lot or the approved permit. In staff’s view, the lot was configured to compensate for the dimensional irregularity.</p> <p>The applicant can relocate the fence to meet or reduce the variance need for the required setback. Relocation of the fence, however, may be constrained by the trees at the rear of the lot. There may be other design and project solutions to reduce the degree of variance. This variance request is the option being pursued at this time.</p>
5.	<i>The granting of the variance will be in harmony with the general intent and purpose of this ULDC and that such variance will not be injurious to the area involved or otherwise detrimental to the public health, safety, and welfare or injurious to other property in the area;</i>
	<p>Staff Finding:</p> <p>No, Criteria #5 is not met. It is contrary to the intent and purpose of the code that a variance be granted (after that fact) for an alignment that is not consistent with the site plan submitted with the permit application. In staff’s view, this conflict and result should have been anticipated.</p> <p>Staff’s review is limited to the variance guidelines stated in Subsection 2.12.03. Staff is of the opinion that the granting of the variance request is not in harmony with the general intent and purpose of the LDC. Residential and non-residential property owners must comply daily with code requirements. Granting a variance that is not consistent with an approved permit is not consistent with overall Code implementation.</p> <p>However, as stated previously the current placement of the fence does not obstruct the site distance along Fieldstone Lane. Therefore, the fence itself is not an impediment to the health, safety and welfare of the street. In fact, apart from the placement issue, the fence is attractive and well landscaped.</p>

SUMMARY

To conclude, staff is recommending denial of application 2929 finding it does not meet criteria 2, 4 and 5 of S2.12.03 of the Land Development Code.

PUBLIC PARTICIPATION SUMMARY

At the time of staff report preparation, no public contact had occurred. Notification letters were sent to surrounding property owners in accordance with the *LDC*. The applicant has submitted signatures of support from neighbors.

RECOMMENDATION

Staff recommends that the Planning and Land Development Regulation Board (PLDRB) DENY Application No. 2929 for the 11.3 foot variance from the 15 foot minimum street side setback for a corner lot zoned SFR2.

ALTERNATIVE RECOMMENDATION

Staff recommends, that if the Planning and Land Development Regulation Board approves Application No. 2929, the variance be limited to 4.0 feet. The effect of this recommendation is to reduce the minimum street side yard setback from 15 feet to 11.0 feet for the portion of the fence not complying with the 15 feet minimum required street yard zoning setback.

This recommendation would allow the owner to access his rear yard given the screen enclosure. This recommendation is subject to the following conditions:

1. *A permit revision be submitted within 30 days to comply with the variance.*
2. *If the fence is does not comply with variance criteria within six months -- the variance shall expire.*

DEVELOPMENT ORDER

The Chairman of the Planning and Land Development Regulation Board will be provided with the appropriate development order, based on the PLDRB recommendation, so that it may be executed.