

21 Marland Road

Appeal of Planning Commission Decision

Nonuse Variance

March 9, 2021

Meggan Herington



Vicinity Map



Fence and Retaining Wall



Fence and Retaining Wall



Jan 8, 2021 at 9:05:01 AM

City Code Section 7.4.102.A

Fences or Walls



Fences or walls 6' or under in height may be placed anywhere on the property except within established preservation areas.

Fences or walls over 6' are considered accessory structures and must meet accessory structure setback and height requirements.

1. If the height of the 2 sides varies, then the larger of the 2 measurements shall be used in determining the height of the fence.
2. If the fence is located within 3' of the face of a retaining wall, the height of the fence is measured from the top of the fence to the finished grade at the bottom of the retaining wall.
3. The finished grade of the fence area shall not be altered to artificially comply with these regulations.
4. An additional 12" of height is permitted for fence posts, poles, and finials when spaced 8' or more from each other.

Staff Findings – Nonuse Variance

7.5.802.B



Property has extraordinary or exceptional physical conditions that do not generally exist in nearby properties in the same zoning district.

- Other homes in the area with side loading garages have driveways that extend almost to the property line.
 - Need for a larger driveway is main reason for fence/wall location.
- Size and location of the existing home and attached garage related to the owner's ability to reasonably access the garage.
- Good idea to have a buffer between the driveway and the neighboring property.
- Moving the fence closer to the curb of the driveway does not allow for vehicle overhang when maneuvering.



Staff Findings – Nonuse Variance

7.5.802.B



The granting of the variance will not have an adverse impact upon surrounding properties.

- Retaining wall is permitted to be in the existing location.
- The fence itself does not cause drainage issues.
- Fence is not largely visible from the ROW.
- Fence is mainly visible to adjacent owner – pushing it back 3 feet from the retaining wall doesn't change what they see.
- The look and character are similar if the fence is adjacent to or 3 feet from the retaining wall.
- Not having a fence as a buffer could cause negative impact to the neighboring owner.
- Buffering the driveway with trees and a fence is positive impact.

Fence and Retaining Wall



Jan 8, 2021 at 9:05:28 AM

Staff Findings – Nonuse Variance

7.5.802.B



The extraordinary or exceptional physical condition of the property will not allow reasonable use of the property in its current zone in the absence of relief.

- Owner should have the ability to safely and easily access the existing garage.
- The owner extending his driveway for ease of maneuverability is reasonable and wanting to screen and fence that area with continuation of the 6-foot cedar fence is reasonable.
- Adding the fence at the current location is a safety measure and some distance from the curb-line of the driveway is reasonable.
- If the fence was cut down to 4 feet it would not serve as a good buffer.

Fence and Retaining Wall



Jan 8, 2021 at 9:15:42 AM

Fence and Retaining Wall



Jan 8, 2021 at 9:15:33 AM

Fence and Retaining Wall



Jan 8, 2021 at 9:24:36 AM

Fence and Retaining Wall



Planning Commission Hearing



Hearing held on January 21st

Appellant stated that the approved site plan is incorrect.

Applicant's site plan shows retaining wall as 40 feet long when it is actually 60 feet long,

Applicant's site plan shows retaining wall as 18 inches at the tallest point – making the fence/wall 7 feet 6 inches tall when it is actually 23 inches at the tallest making the fence/wall closer to 8 feet.

****If Council upholds this appeal, the applicant will amend the site plan to reflect accurate numbers.

Planning Commission Hearing



- Voted 4-3 to uphold the appeal - Thus denying the nonuse variance

- ✓ Commissioner Ricket - uphold the appeal
 - Understands variances can be granted
 - Several options for the fence
 - He was voting to stick with the Code on this one

- ✓ Commissioner Wilson – deny the appeal
 - Nonuse variance approval seemed legitimate

Motions



AR NV 18-00243 – NONUSE VARIANCE

Uphold the appeal, thus upholding the administrative approval of the nonuse variance for a 6-foot fence within 3 feet of the face of a retaining wall, based upon the findings that the appeal meets the appeal criteria set forth in City Code Section 7.5.906.A.4 and the nonuse variance criteria in City Code Section 7.5.802.B.

Deny the appeal, thus denying the administrative approval of the nonuse variance for a 6-foot fence within 3 feet of the face of a retaining wall, based upon the findings that the appeal does meet the appeal criteria set forth in City Code Section 7.5.906.A.4 and does not meet the nonuse variance criteria in City Code Section 7.5.802.B.

Questions?

