



## Legislation Details (With Text)

**File #:** CPC AP 16-00071    **Version:** 3    **Name:**

**Type:** Planning Case    **Status:** Passed

**File created:** 5/24/2016    **In control:** City Council

**On agenda:** 8/23/2016    **Final action:** 8/23/2016

**Title:** An appeal of the City Planning Commission’s decision to grant the appeal of the Notice of Violation & Order to Abate served on the property owner of 2215 North Farragut Avenue or violation of fence height.

(Quasi-Judicial)

**Presenter:**  
Dennis Wolf, Land Use Inspector, Planning and Community Department  
Peter Wysocki, Planning and Community Development Director

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Fence appeal by Leland Pilger, 2. CPC STAFF REPORT - CPC AP 16-00071 -Code Enforcement appeal - DLW, 3. FIGURE 1 - 2215 N. Farragut Ave - Zone Map, 4. FIGURE 2 - Appeal statement, 5. FIGURE 3 - 2215 N. Farragut Ave. - photo history, 6. Notice & Order with signatures, 7. Rebuttal\_ltr\_Leland Pilger, 8. CPC JUNE 16 Meeting Minutes - Code Enforcement appeal, 9. Vicinity Map, 10. 7.5.906 (A)(4), 11. 7.5.906 (B), 12. cc power point 8-23-16, 13. City Council -08232106

Date	Ver.	Action By	Action	Result
8/23/2016	3	City Council	approved	Pass
7/26/2016	3	City Council	postpone to a date certain	
6/16/2016	2	Planning Commission	accepted	Pass
6/16/2016	2	Planning Commission	accepted	Pass

An appeal of the City Planning Commission’s decision to grant the appeal of the Notice of Violation & Order to Abate served on the property owner of 2215 North Farragut Avenue or violation of fence height.

(Quasi-Judicial)

**Presenter:**

Dennis Wolf, Land Use Inspector, Planning and Community Department  
Peter Wysocki, Planning and Community Development Director

**Summary:**

Appellant: Leland Pilger (owner of the property adjoining the property with the fence)  
Owner: Devon Bowen (owner of the property on which the fence is constructed)  
Location: 2215 Farragut Avenue (property with the fence)

An appeal has been filed by Mr. Leland Pilger regarding the City Planning Commission's decision to grant the appeal of the Violation and Order to Abate Fence Height at 2215 Farragut Avenue.

The subject property is located west of North Union Boulevard and north of Constitution Avenue.

**Previous Council Action:**

As an update, the appeal of the June 16, 2016 City Planning Commission Hearing was filed with the City Clerk on June 27, and originally scheduled to be heard on July 12. The appellant requested the one-time automatic bump from the July 12 hearing to the July 26 hearing. Prior to that date, it was determined that the poster on the property was not posted for the appropriate period of time and both parties agreed to a postponement to the August 23 hearing to insure proper notification.

**Background:**

The property in question is 2215 Farragut Avenue with an existing zoning classification of R1-6000. As is much of the surrounding area, the structure is a 2-story single family residence constructed in the early 1950's. This property is in the Belleville Addition and annexed into the city in 1950. The property owner constructed a 6' fence about 18" +/- from the top of a retaining wall which is about 4' tall and tappers off to a common height between the 2 properties near the front property pin. The retaining wall has been identified as the property line between the north side of 2211 and south side of 2215 Farragut. The action and notice taken by the city inspector was a result of a complaint by the property owner of 2211 Farragut.

Applying the zoning regulation language for fence measurement the fence was determined to be ten feet (10') +/- at the highest point between the two houses. A voluntary request for compliance notice was mailed to the property owner on January 28, 2015. On or about February 16, 2015, an onsite meeting was held with the property owner to discuss the height issues noted in the communication sent on January 28, 2015. Height measurements were conducted along the retaining wall from the front property line to the approximate rear of the house along the south property line. The fence height was determined to be ten feet (10') starting at approximately 20' from the back of the sidewalk continuing for a distance of approximately 25' feet. Measurements were taken along the front property line and at the points measured were found to be in compliance.

Mr. Leland Pilger, the original complainant has filed the appeal based on the City Planning Commission's decision on June 16th to uphold the appeal request of the owner of the fence to keep his fence as constructed.

Mr. Pilger's appeal statement is attached outlining his reasons for appeal. The Planning Commission staff report and minutes are attached for a detailed history and summary of the case to date.

In the Planning Commission staff report, the Council will note that City staff initially recommended to the Planning Commission to uphold the Notice and Order to Abate the excessive fence height. Staff's recommendation was based on long-standing interpretation and enforcement on how to measure fence height when erected atop of retaining walls.

**Financial Implications:**

N/A

**Board/Commission Recommendation:**

At their meeting on June 16, 2016, the Planning Commission voted 8-1 (with Commissioner McDonald voting in opposition) to grant the appeal of the Notice of Violation & Order to Abate fence height at 2215 Farragut Avenue.

Commissioners voting in favor of granting the appeal related to the fence height felt that the previous ambiguity of City Code pertaining to fences installed on top of retaining walls was a substantial justification for granting the appeal. Furthermore, the Commissioners felt that the ambiguity was a cause for subjective administrative interpretation and confusion to residents.

**Stakeholder Process:**

No Stakeholder process required. Notice and Order issued as a result of a complaint. Notice and posting was completed for the City Planning Commission Hearing and the City Council Hearing.

**Alternatives:**

1. Deny the appeal, uphold the decision of City Planning Commission;
2. Approve the appeal, reversing the decision of the City Planning Commission; or
3. Refer the matter back to the City Planning Commission.

**Proposed Motion:**

CPC AP 16-00071 - Appeal of the City Planning Commission's decision to grant the appeal of the Notice of Violation & Order to Abate fence height at 2215 Farragut Avenue

Should the Council wish to deny the appeal and uphold the Planning Commission decision, the following motion is recommended:

Based on the appeal review criteria contained in City Code section 7.5.906 (A)(4) not being established, deny the appeal, upholding the City Planning Commission's decision to overturn the City's Zoning Enforcement Officer's Notice of Violation & Order to Abate fence height, which was served on the property owner of 2215 North Farragut Avenue.

Should the Council wish the grant the appeal and uphold the Notice of Violation and Order to Abate, the following motion is recommended:

Based on the appeal review criteria contained in City Code section 7.5.906 (A)(4) being established, grant the appeal, overturning the City Planning Commission's decision not to uphold the City's Zoning Enforcement Officer's Notice of Violation & Order to Abate fence height, which was served on the property owner of 2215 North Farragut Avenue.

N/A