

**BOARD OF ZONING APPEALS
CITY OF FREDERICKSBURG, VIRGINIA
AGENDA
August 19, 2013
4:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

1. Call To Order
2. Determination Of A Quorum
3. Determine Public Notice Requirements Have Been Met
4. Disclosure Of Ex Parte Communication
5. Disclosure Of Conflicts Of Interest
6. Public Hearing Items
 - 6.I. Variance Request - Fence At 814 Cornell Street

Documents: [1 2015-12-22 BZA MEMO 814 CORNELL - TABLE.PDF](#), [2 2015 12 10 DOOLEY LETTER TO BZA RE VARIANCE APPLICATION - ELECTION OF REMEDIES.PDF](#), [3 2015 11 19 WRIT OF CERT AND PETITION FOR CERT.PDF](#), [4 1989 SCOVA WEST V MILLS.PDF](#)

7. Approval Of Minutes
 - 7.I. BZA Minutes - September 21, 2015

Documents: [2015-09-21 BZA MINUTES - CORRECTED DRAFT.PDF](#)

- 7.II. BZA Minutes - November 16, 2015

Documents: [2015-11-16 BZA MINUTES DRAFT.PDF](#)

8. Staff/Board Comments
9. Adjourn



MEMORANDUM

TO: Chairwoman Helen P. Ross and Board of Zoning Appeals members
FROM: Mike Craig, Zoning Administrator
DATE: December 22, 2015 for January 5, 2016 meeting
RE: V2015-01: Variance request from UDO section 72-56 to allow a six foot high fence (including two feet of lattice work at the top) within the front yard along Littlepage Street at 814 Cornell Street.

ISSUE

Should the BZA approve a variance permitting an extra two feet of lattice work to adorn the top of a 4 foot fence in the front yard at 814 Cornell Street?

RECOMMENDATION

Table the variance application in accordance with the letter from Kathleen Dooley dated December 10, 2015 Re: variance application V15-01 814 Cornell Street and attached to this memo.

BACKGROUND – JANUARY 5

The Applicant filed an appeal of the BZA's decision regarding the 814 Cornell Street fence on October 20, 2015. Per the City Attorney's advice, this item needs to be tabled until the appeal is resolved.

At the meeting on November 16, Ms. Paolucci requested additional information about non-conforming fences in the Mill Terrace neighborhood. We have updated the information and will include it in a future staff report once this request moves forward.

ATTACHMENTS

1. Kathleen Dooley letter dated December 10, 2015
2. Writ of Certiorari dated October 28, 2015
3. West v. Mills – Supreme Court of Virginia 1989

KATHLEEN DOOLEY
CITY ATTORNEY

ROB ECKSTROM
ASSISTANT CITY ATTORNEY



601 CAROLINE STREET, SUITE 200B
P.O. BOX 7447
FREDERICKSBURG, VA 22401
540-372-1020

December 10, 2015

Helen P. Ross, Chair
Fredericksburg Board of Zoning Appeals
715 Princess Anne Street
Fredericksburg, Virginia 22401

Re: Variance application V15-01
814 Cornell Street

Dear Ms. Ross:

On behalf of Zoning Administrator Michael Craig, I request that the Board of Zoning Appeals table the variance application for modifications to the fence at 814 Cornell Street, due to the pending appeal of the BZA's September 21, 2015 decision regarding the existing fence. BZA action on the variance application is essentially preempted by the landowner's appeal because the BZA and the Circuit Court would be working at cross purposes with each other – the BZA has been asked to grant a variance to a regulation that the Circuit Court has been asked to decide does not apply. Under these circumstances, the BZA should table further consideration of the variance application until the judicial review of its earlier decision is final.

History of the Petition for Writ of Certiorari:

The BZA upheld the Development Administrator's denial of a permit for the existing fence on September 21, 2015. The landowner filed an appeal of the BZA decision in the Fredericksburg Circuit Court on October 20, 2015. Under Code of Virginia §15.2-2314, the form of the appeal is a petition for a writ of certiorari, which is an order from a higher tribunal (the Circuit Court) to a lower one (the BZA) to produce the record of its decision for judicial review.

The Circuit Court entered the Writ, which orders the production of the record, on October 28, 2015. The Petition and Writ were served on me on November 19, 2015. The BZA made its return of the record on November 30, 2015. The Petition for Writ of Certiorari asks the Circuit Court to:

1. [Issue a writ of certiorari]
2. Determine that the BZA and Development Administrator were incorrect to deny the Petitioners fence permit;
3. Reverse the decision of the BZA;
4. Find that the existing fence is compliant within the meaning of the applicable City's ordinance; and

5. Grant Petitioners their attorney's fees and costs . . . ¹

This appeal is now pending in the Fredericksburg Circuit Court.

History of the variance application:

The landowner's application for a variance was filed on October 16, 2015. The BZA opened its public hearing on the variance on November 16, 2015. However, since only three members of the BZA were present, the BZA agreed to continue the public hearing until January 5, 2016, when more members could be present. The presence of additional members increases the applicant's odds of gaining the required affirmative vote of three of the five BZA members. The variance application does not mention the filing of the appeal, and the applicant did not mention the appeal during the November 16 meeting.²

Virginia Supreme Court precedent – West v. Mills:

The Virginia Supreme Court addressed a similar situation in the 1989 case of *West v. Mills*.³ There, a developer sought approval of a subdivision plat. The local planning commission disapproved the first version. The developer submitted a second, revised plat, which was also disapproved, first by the planning commission and on appeal by the town council. The developer filed a third revised plat, and then appealed the town council's disapproval of the second plat to the circuit court. The planning commission refused to consider the third version of the subdivision plat due to the appeal. The landowner sued, seeking a court order to compel the planning commission to consider the third plat.⁴

The Virginia Supreme Court upheld the planning commission's refusal to consider the third plat on two grounds. First, the developer elected his remedy by appealing the disapproval of the second plat. That remedy was inconsistent with the pursuit of approval of a revised plat for the same property. The planning commission should not be required to consider a plat for the same property that was the subject of an earlier disapproved plat, when that disapproval was on appeal. Second, requiring the commission to act on the third plat, while the court was reviewing the second plat, resulted in simultaneous consideration of inconsistent plats for development for the same property by the commission and the court. Approval of both plats could lead to conflict and confusion.⁵

Applying West v. Mills to the variance application:

The same reasoning applies to the variance application. The landowners elected their remedy when they filed their appeal to Circuit Court. The BZA should not be required to consider a

¹ The Petition for Writ of Certiorari is enclosed.

² In the future, if similar circumstances present themselves, my office will check with the Circuit Court Clerk to see if an appeal has been filed, before the BZA commences to consider a variance application arising out of the same set of facts.

³ *West v. Mills*, 238 Va. 162 (1989), enclosed.

⁴ These facts appear on pages 3 – 4 of the printed decision.

⁵ This conclusion appears on page 5 of the printed decision.

variance for a modification to the same fence that was disapproved, while that disapproval is on appeal. Requiring the BZA to act on the variance application, while the court is reviewing the permit denial, would result in simultaneous consideration of inconsistent applications for fence plans for the same property.

The *West v. Mills* case involved a series of subdivision plats, as opposed to the two different types of applications – an appeal and a variance -- before the BZA. I believe, however, that the same principles apply, and that the result is the same. Either the denial of the permit was correct, in which case the variance application is in order, or the denial of the permit was incorrect, in which case no variance is required or legally authorized. The BZA should refuse to consider the variance application while the appeal is pending.

Conclusion:

On behalf of Zoning Administrator Michael Craig, I request that the BZA adopt a motion tabling further consideration of variance application V15-01 while the appeal of the BZA's September 21, 2015 decision is pending.

Sincerely,



Kathleen Dooley
City Attorney

enc.: Petition for Writ of Certiorari
West v. Mills, 238 Va. 162 (1989)

ec: Members of the BZA
Jeannie P. Dahnk, counsel for the applicants

COMMONWEALTH OF VIRGINIA



SERVE

FREDERICKSBURG CIRCUIT COURT
Civil Division
701 PRINCESS ANNE STREET SUITE 100
FREDERICKSBURG VA 22401
(540) 372-1066

Proof Of Service

Virginia:

In the FREDERICKSBURG CIRCUIT COURT

Case number: 630CL15000676-00
Service number: 001
Service filed: November 18, 2015
Judge:

Served by: FREDERICKSBURG CITY

Style of case: STACEY N STRENTZ-MCLAUGHLIN vs CITY OF FREDERICKSBURG COUNSEL

Service on: KATHLEEN A DOOLEY
ATTORNEY FOR THE CITY
OF FREDERICKSBURG
601 CAROLINE STREET
FREDERICKSBURG VA 22401

Attorney:

Instructions: SEE ATTACHED PETITION, EXHIBITS 1-4, AND WRIT OF CERTIORARI

Hearing date :

Service issued: Wednesday, November 18, 2015

For Sheriff Use Only

NAME.....

.....

PERSONAL SERVICE

Being unable to make personal service, a copy was delivered in the following manner:

Delivered to person found in charge of usual place of business or employment during business hours and giving information to its purport.

.....

Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode of party named above giving information of its purport. List name, age of recipient and relation of recipient to party named above.

.....

Posted on the common door of usual place of abode, address listed above. (Other authorized recipient not found.)

Copy mailed to judgment debtor on date below after serving the guarantee unless a different date is shown below.

.....

Evicted Not Evicted

Served on registered agent

.....

Not Found

NO EFFECTS FOUND

DATE: _____

DEPUTY SHERIFF: _____

For Sheriff: _____

For county/city: _____

GLOVER & DAHNK
ATTORNEYS AT LAW
1103 PRINCESS ANNE STREET
P.O. BOX 207
FREDERICKSBURG, VIRGINIA 22404-0207

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF FREDERICKSBURG

In Re: September 21, 2015 Decision of the Board of Zoning Appeals of the City of Fredericksburg, Virginia (814 Cornell Street – APP 2015-01)

Case No.: CL 15-676

WRIT OF CERTIORARI

TO: The City of Fredericksburg Board of Zoning Appeals

THIS MATTER is before the Court on Stacey N. Strentz-McLaughlin and John J. McLaughlin's Petition for a Writ of Certiorari to review the City of Fredericksburg Board of Zoning Appeals ("BZA") September 21, 2015, decision in BZA appeal 814 Cornell Street APP 2015-01; and

IT APPEARING TO THE COURT that the Petition for Writ of Certiorari is properly filed pursuant to Virginia Code Section 15.2-2314 and that the granting of this Writ of Certiorari is just and proper in all respects; it is therefore

ADJUDGED, ORDERED AND DECREED that the Petition for Writ of Certiorari is GRANTED TO REVIEW THE BZA'S SEPTEMBER 21, 2015, DECISION IN BZA APPEAL, 814 CORNELL STREET – APP 2015-01; and it is further

ORDERED, ADJUDGED AND DECREED that the BZA shall certify and return to this Court and serve upon Petitioner's counsel, on or before 30 days after the entry of this Writ of Certiorari, a full, complete and certified or sworn record of the aforementioned proceeding including, but not limited to, the following material:

- 1) The appeal application and any staff reports prepared in connection therewith;

GLOVER & DAHNK
ATTORNEYS AT LAW
1103 PRINCESS ANNE STREET
P.O. BOX 207
FREDERICKSBURG, VIRGINIA 23404-0207

2) All exhibits and documents filed regarding the appeal application and any response thereto by any person or entities;

3) Any verbatim transcript and/or recording by videotape or otherwise, and all minutes of the proceedings before the BZA;

4) All photographs, resolutions, letters, reports, emails, correspondence, exhibits, memoranda, plats and other papers and things referring to or related to the proceedings before the BZA that were presented to the BZA; and it is further

ORDERED, ADJUDGED AND DECREED that the return shall set forth such other facts as maybe pertinent and material to show the grounds of the decision appealed from and shall be verified.

THIS MATTER IS CONTINUED.

ENTERED this 28 day of October, 2015



JUDGE, CITY OF FREDERICKSBURG CIRCUIT COURT

VIRGINIA
FREDERICKSBURG CITY CIRCUIT COURT
A COPY TESTE: JEFF SMALL, CLERK

BY: Weather Auburn
DEPUTY CLERK

DATE: 11-17-2015

WE ASK FOR THIS:

Stacey N. Strentz-McLaughlin and
John J. McLaughlin, Petitioners



By: Jeannie P. Dahnk, Esq.

VSB No. 25825

William E. Glover, Esq.

VSB No. 25965

Glover & Dahnk

P.O. Box 207

Fredericksburg, VA 22404-0207

Phone: (540) 373-8600

Fax: (540) 373-8629

Counsel for Petitioners

GLOVER & DAHNK
ATTORNEYS AT LAW
1103 PRINCESS ANNE STREET
P.O. BOX 207
FREDERICKSBURG, VIRGINIA 22404-0207

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF FREDERICKSBURG

STACEY N. STRENTZ-McLAUGHLIN
and JOHN J. McLAUGHLIN,

Petitioners

v.

Case No. CL15-676

THE CITY COUNCIL OF THE CITY OF
FREDERICKSBURG, VIRGINIA

SERVE:

Kathleen A. Dooley, Esq.
Attorney for the City of Fredericksburg
601 Caroline Street
Fredericksburg, VA 22401
(City of Fredericksburg, VA)

ORIGINAL FILED ON

OCT 20 2015

Respondent.

IN FREDERICKSBURG CIRCUIT
COURT

ALSO SERVE:

Helen P. Ross, Chair
City of Fredericksburg Board of Zoning Appeals
City Hall
715 Princess Anne Street
Fredericksburg, VA 22401
(City of Fredericksburg, VA)

**In Re: September 21, 2015 Decision of the Board of Zoning Appeals
of the City of Fredericksburg, Virginia
814 Cornell Street – APP 2015-01**

PETITION FOR WRIT OF CERTIORARI

COMES NOW your Petitioners, Stacey N. Strentz-McLaughlin and John J. McLaughlin (hereinafter “McLaughlin”), and make this their Appeal of the Denial of the McLaughlin’s Fence Permit by the City of Fredericksburg Board of Zoning Appeals (hereinafter “BZA”), 814 Cornell Street – APP2015-01, pursuant to Section 15.2-2314 of the Code of Virginia, 1950, as amended and state as follows:

GLOVER & DAENE
ATTORNEYS AT LAW
1109 PRINCESS ANNE STREET
P.O. BOX 307
FREDERICKSBURG, VIRGINIA 22404-0207

1. On September 21, 2015, the BZA held a hearing regarding the appeal of the denial of the fence permit applied for by McLaughlin. Please see Exhibit 1, Denial of Fence Permit Application, attached hereto and made a part hereof.

2. On June 30, 2015, McLaughlin appealed the denial of the fence permit on the basis that the City of Fredericksburg's (hereinafter "City") Notice of Violation failed to cite an applicable ordinance section, that there is no City Code Section that supports the City's decision to deny McLaughlin's fence permit, that there is no basis to apply to fences City codes that only apply to buildings or structures. That the City has, in the past, approved and allowed 6 foot fences that are similar and has specifically done so for adjacent property owners to the McLaughlin's. Please see Exhibit 2, McLaughlin's appeal of the Denial of the Fence Permit, attached hereto and made a part hereof.

3. The determination by the City that the McLaughlin's fence was in violation of the City code is plainly wrong as there is no code that supports the City's interpretation that the McLaughlins lot, which is at the corner of Cornell and Littlepage streets, has "two front yards" and therefore is subject to a fence ordinance that limits the height of the fence to 4 feet. In the City's own preparation of its record of decision in Paragraph B, it identifies the "fence also runs across the rear of the lot..." (emphasis added), and by the City's own definition, the McLaughlins lot does not have any rear. Please see Exhibit 3, City's letter dated September 11, 2015, attached hereto and made a part hereof.

4. At the September 20, 2015 BZA hearing, the BZA upheld the denial of the McLaughlin's fence permit. Please see Exhibit 4, Record of Decision dated October 8, 2015, attached hereto and made a part hereof.¹

5. The BZA and the City Development Director were plainly wrong in denying the McLaughlins' fence permit application as the BZA and the City Development Director incorrectly applied inapplicable City Ordinances to the McLaughlin's fence permit application.

HISTORY

6. The McLaughlins' have owned their home at 814 Cornell Street since December 2004. The McLaughlins have had a fence in this exact same location since January 2005 and the prior owner, the Freid's, also had a fence in this same location.

7. There have been no complaints regarding this current fence or any prior fence at 814 Cornell Street by anyone, including neighbors, city residents or city staff until the Development Administrator, Marne E. Sherman, noted her own violation on May 14, 2015. A copy of Ms. Sherman's Notice of Violation (hereinafter "Notice") dated May 14, 2015 is attached hereto within Exhibit "2".

8. In the Notice, Ms. Sherman states that a fence permit had not been issued for the fence and requests that an application be made. Ms. Sherman further states that "Section 72-56.2.C limits the height of a fence in the front yard of a R-4, residential zoning district to a maximum of four feet (4') in height. As a corner lot, your property has two fronts (along Cornell Street and Littlepage Street). The fence appears to be in violation of this code."

¹ In the City's letter of September 11, 2015, the height of the current fence is identified as exceeding 72" in certain places. The Petitioners have no objection to making all of the fence 72".

9. Thereafter, on May 18, 2015, the McLaughlins filed a fence permit application with the City requesting a height of six feet for their fence.

10. On May 21, 2015, Mrs. McLaughlin sent a letter to the Development Administrator identifying that the McLaughlins were surprised that their fence was not in compliance with City Code, setting forth the history of the pre-existing and current fence and the safety reasons for the fence as it is currently constructed. A copy of Ms. McLaughlin's letter is attached within Exhibit "2".

11. On June 3, 2015, the Development Administrator disapproved the McLaughlins fence permit application.

DISCUSSION

12. The McLaughlins fence is compliant with City Code Section 72-56.2.A which allows the McLaughlins to have the current six foot fence.

13. In the Notice, Ms. Sherman identifies that "as a corner lot, your property has two fronts (along Cornell Street and Littlepage Street). The fence appears to be in violation of this code." (emphasis added). No City Code section is identified to support this statement and given that there are hundreds of corner lots in the City, homeowners would be surprised to learn that their front door does not indicate their front yard, that their side yard is their front yard, or that they do not have a back yard.

14. In addition, City Code Section 72-84: "Definitions" does not contain any definition for a "corner lot". The City Code definition section does contain a definition for "front (or primary) façade" of "the side or elevation of a structure that contains the structure's architectural front, or the portion of the structure facing the street from which the structure derives its street address." (emphasis added)

15. The City Code does not have an identification and/or a definition of "two front yards". The BZA based its upholding of the denial of the fence permit application on City Code Sections 72-82.3, 72-82.4(B)(3), 72-82.3(A)(3), 72-56.1(A)(3) and 72-56.2(B).

16. A review of these Sections does not identify corner lots as having "two front yards" for the purposes of determining location or height of fences. The stated purpose of Section 72-82 is to "clarify the rules of measurement and exemptions that apply to all principal and accessory uses allowed in this chapter" which would address the location of permanent structures such as houses, not fences or height of fences.

17. Adjacent to the Ms. McLaughlin's are several fences on other lots that are similar in height and location to their fence. It appears from an informal survey of the City that there are at least 50 similarly situated fences around the City.

18. It appears that the application and interpretation of the City Code Ordinance that governs the height and location of fences, based on existing fences throughout the City located on corner lots, is that only one "front yard" is identified for the purposes of determining the height and location of fences pursuant to City Code Section 72-56.2. Section 72-82.A.3 has no identification of a corner lot having "two front yards" under Section 72-82.3.A.(3) and/or Section 72-82.3.A(4).

19. The McLaughlins fence is compliant with the applicable City Code ordinances and it was constructed pursuant to City Code Section 72-56.2, where the front yard fence is not within the front setback and the fence does not go beyond the front of the principal structure and therefore can be six feet in height. The portion of the fence adjacent to and parallel with Littlepage Street as a side yard is compliant with 72-56.2.A which allows a fence to be six feet in height in any side or rear yard of a site up to the front of the principal structure on the site.

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1100 PRINCESS ANNE STREET
P.O. BOX 907
FREDERICKSBURG, VIRGINIA 22404-0207

20. Finally, given the numerous examples of fences similarly situated on other corner lots, the City has previously interpreted the applicable codes to allow the type of fence that has been constructed in the McLaughlins yard. But there are also clear health and safety issues as demonstrated by Ms. McLaughlin's letter, within Exhibit "2", of the numerous reports to police regarding the trespassing upon her property and the incidents involving the safety of her family. The City's letter, Exhibit "3" attempts to use five (5) different ordinances, cobbled together, as the basis for its rationale that the McLaughlins fence is limited to 4 feet in height. It is clear from the City's own code that the code sections cited apply to buildings or structures not to ornamental items such as fences and that the City clearly has an ordinance section on fences that does not have any definition or limitation on a corner lot such as the McLaughlins.

21. It is also clear from the conduct of the City in approving and allowing similar 6 foot fences, and specifically for adjacent property owners, that the City's current interpretation of its ordinance is plainly wrong.

PRAYER FOR RELIEF

22. WHEREFORE, your Petitioners respectfully request that this Court:

1) Issue a Writ of Certiorari to the BZA in the form attached to this Petition and that this same be served upon the BZA requiring that a verified return be made within 30 days of the originals or certified copies of all exhibits, transcripts and other papers considered by the BZA in making its decision in 814 Cornell Street – APP2015-01, and that such return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from;

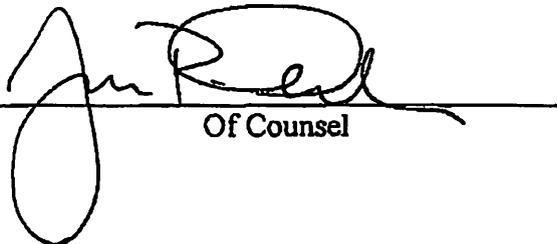
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1103 PRINCESSES ANNE STREET
P.O. BOX 207
FREDERICKSBURG, VIRGINIA 22404-0207

- 2) Determine that the BZA and Development Administrator were incorrect to deny the Petitioners fence permit;
- 3) Reverse the decision of the BZA;
- 4) Find that the existing fence is compliant within the meaning of the applicable City's Ordinance; and
- 5) Grant Petitioners their attorney's fees and costs expended on their behalf in this Petition and for such other and further relief as the Court deems just and equitable.

Respectfully submitted,

STACEY N. STRENTZ-McLAUGHLIN
and JOHN J. McLAUGHLIN

BY



Of Counsel

Jeannie P. Dahnk, Esq.
VSB No. 25825
William E. Glover, Esq.
VSB No. 25965
GLOVER & DAHNK
Post Office Box 207
Fredericksburg, VA 22404-0207
Phone: (540) 373-8600
Fax: (540) 373-8629

Counsel for Petitioners
Stacey N. Strentz-McLaughlin and
John J. McLaughlin

GLOVER & DAHNK
ATTORNEYS AT LAW
1103 PRINCESS ANNE STREET
P.O. BOX 307
FREDERICKSBURG, VIRGINIA 22404-0307

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF FREDERICKSBURG

In Re: September 21, 2015 Decision of the Board of Zoning Appeals of the City of Fredericksburg, Virginia (814 Cornell Street – APP 2015-01)

Case No.:

WRIT OF CERTIORARI

TO: The City of Fredericksburg Board of Zoning Appeals

THIS MATTER is before the Court on Stacey N. Strentz-McLaughlin and John J. McLaughlin's Petition for a Writ of Certiorari to review the City of Fredericksburg Board of Zoning Appeals ("BZA") September 21, 2015, decision in BZA appeal 814 Cornell Street APP 2015-01; and

IT APPEARING TO THE COURT that the Petition for Writ of Certiorari is properly filed pursuant to Virginia Code Section 15.2-2314 and that the granting of this Writ of Certiorari is just and proper in all respects; it is therefore

ADJUDGED, ORDERED AND DECREED that the Petition for Writ of Certiorari is **GRANTED TO REVIEW THE BZA'S SEPTEMBER 21, 2015, DECISION IN BZA APPEAL, 814 CORNELL STREET – APP 2015-01;** and it is further

ORDERED, ADJUDGED AND DECREED that the BZA shall certify and return to this Court and serve upon Petitioner's counsel, on or before 30 days after the entry of this Writ of Certiorari, a full, complete and certified or sworn record of the aforementioned proceeding including, but not limited to, the following material:

- 1) The appeal application and any staff reports prepared in connection therewith;

GLOVER & DAHNK
ATTORNEYS AT LAW
1103 PRINCESS ANNE STREET
P.O. BOX 207
FREDERICKSBURG, VIRGINIA 22404-0807

2) All exhibits and documents filed regarding the appeal application and any response thereto by any person or entities;

3) Any verbatim transcript and/or recording by videotape or otherwise, and all minutes of the proceedings before the BZA;

4) All photographs, resolutions, letters, reports, emails, correspondence, exhibits, memoranda, plats and other papers and things referring to or related to the proceedings before the BZA that were presented to the BZA; and it is further

ORDERED, ADJUDGED AND DECREED that the return shall set forth such other facts as maybe pertinent and material to show the grounds of the decision appealed from and shall be verified.

THIS MATTER IS CONTINUED.

ENTERED this _____ day of _____, 2015

JUDGE, CITY OF FREDERICKSBURG CIRCUIT COURT

WE ASK FOR THIS:

Stacey N. Strentz-McLaughlin and
John J. McLaughlin, Petitioners



By Jeannie P. Dahnk, Esq.

VSB No. 25825

William E. Glover, Esq.

VSB No. 25965

Glover & Dahnk

P.O. Box 207

Fredericksburg, VA 22404-0207

Phone: (540) 373-8600

Fax: (540) 373-8629

Counsel for Petitioners

GLOVER & DAHNK
ATTORNEYS AT LAW
1100 PRINCESS ANNE STREET
P.O. BOX 207
FREDERICKSBURG, VIRGINIA 22404-0207



City of Fredericksburg
 COMMUNITY PLANNING & BUILDING DEPARTMENT
 715 Princess Anne Street / P.O. Box 7447
 Fredericksburg, VA 22404
 Telephone: 540-372-1179 Fax: 540-372-6412

FENCE AND/OR WALL PERMIT

Date of Application: 5/18/15 Project Address: 814 Cornell St, Fred VA 2240
 Zoning District: R-4

Is this property located in the Historic District? Yes _____ No ✓
 Is this property located in any of the Gateway Corridor Overlay Districts? Yes _____ No ✓

Applicant Information

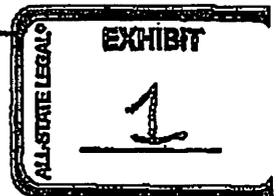
Name of Applicant: Stacey McLaughlin Phone: 540 840 7486
 Address: 814 Cornell St Fred VA Email: smm-1028@yahoo.com

Property Owner Information (If different from applicant)

Name: _____ Phone: _____
 Address: _____

The following information is required to be submitted with the application:

- Plat, tax map or sketch that shows the proposed location of the fence or wall, applicable easements and alleys.
- Height of the fence or wall: Height: 6 feet



By signing below, the property owner acknowledges that should any portion of the fence being erected in accordance with this permit interfere with work or access by public employees and/or their agents in the performance of their duties, the fence or portions of the fence may need to be taken down. Replacement of the fence shall be the sole responsibility of the property owner.

Applicant Signature: Stacey McLaughlin

Property Owner Signature: Stacey McLaughlin

This permit only grants permission under City Code §72-24 for a fence and/or wall on your property, based on information that you have provided. The City is not responsible for determining that you own the property on which the fence and/or wall will be placed, that you have all other permissions required to do so (for example, permission from anyone holding an easement on the property), or that you will not be interfering with utility lines.

For Completion by the Community Planning & Building Department

Approved Disapproved

Comments: REQUEST IS NOT IN COMPLIANCE WITH SECTION 72-56.2.B. OF THE UPO.
THIS DECISION CAN BE APPEALED IN ACCORDANCE WITH SECTION 72-24.7 OF THE UPO.
06/03/15
 Development Administrator: [Signature] Date: 06/03/15

Permit #: 2015-36
 received 06/22/15

GLOVER & DAHNK
ATTORNEYS AT LAW
1103 PRINCESS ANNE STREET
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FREDERICKSBURG, VIRGINIA 22404-0207

JEANNIE P. DAHNK
WILLIAM E. GLOVER

(540) 373-8600
FAX (540) 373-8629

June 30, 2015

VIA HAND DELIVERY

Helen P. Ross, Chair
Board of Zoning Appeals
City of Fredericksburg
c/o Planning Services Division
715 Princess Anne Street
Fredericksburg, VA 22401

RE: John J. & Stacey N. Strentz-McLaughlin – 814 Cornell Street (Fence)

Dear Ms. Ross & Members of the City of Fredericksburg Board of Zoning Appeals:

Please let this letter serve as the appeal by John J. & Stacey N. Strentz-McLaughlin regarding the June 3, 2015 disapproval of the McLaughlin's fence permit for a fence at their home located at 814 Cornell Street in the City of Fredericksburg. I enclose this firm's check no. 20135 in the amount of \$400.00 representing the filing fee for the appeal as quoted by City Staff and seven (7) copies of this letter with exhibits as required by the City.

On June 3, 2015, the Development Administrator disapproved a fence permit for John J. & Stacey N. Strentz-McLaughlin (hereinafter "McLaughlins"), for a fence at their home at 814 Cornell Street. A copy of the disapproved fence permit is attached as Exhibit "1". The McLaughlins permit application sought approval for a portion of their fence to be six feet in height. The McLaughlins appeal the disapproval of their permit application. The McLaughlin's fence permit application was

filed within the time required by the Development Administrator and the appeal of the disapproval of their fence permit application has also been timely filed pursuant to City Ordinance and State Code.

HISTORY

The McLaughlins have owned their home at 814 Cornell Street since December 2004. The McLaughlins have had a fence in this exact same location since January 2005 and the prior owner, the Freid's, also had a fence in this same location.

There have been no complaints regarding this current fence or any prior fence at 814 Cornell Street by anyone, including neighbors, city residents or city staff until the Development Administrator, Marne E. Sherman, noted her own violation on May 14, 2015. A copy of Ms. Sherman's Notice of Violation dated May 14, 2015 addressed to the McLaughlins is attached hereto as Exhibit "2".

In the Notice, Ms. Sherman states that a fence permit had not been issued for the fence and requests that an application be made. Ms. Sherman further states that "Section 72-56.2.C limits the height of a fence in the front yard of a R-4, residential zoning district to a maximum of four feet (4') in height. As a corner lot, your property has two fronts (along Cornell Street and Littlepage Street). The fence appears to be in violation of this code."

Thereafter, on May 18, 2015, the McLaughlins filed a fence permit application with the City requesting a height of six feet for their fence.

On May 21, 2015, Mrs. McLaughlin sent a letter to the Development Administrator identifying that the McLaughlins were surprised that their fence was not in compliance with City Code, setting forth the history of the pre-existing and current fence and the safety reasons for the fence as it is currently constructed. A copy of Ms. McLaughlin's letter is attached as Exhibit "3".

On June 3, 2015, the Development Administrator disapproved the McLaughlins fence permit application.

On June 16, 2015, I met with the Development Administrator to review and discuss the City's position on the McLaughlins fence. It is my understanding that the Development Administrator made a mistake in her letter of May 14, 2015 wherein she cited the incorrect City Ordinance Section 72-56.2.C but instead had intended to identify City Code Section 72-56.2.B. That correction eliminated some of the confusion regarding the disapproval of the fence permit as it appears that City Code Section 72-56.2.C would not be applicable to the McLaughlins and their home at 814 Cornell Street.

DISCUSSION

It appears that the McLaughlins fence is compliant with the applicable City Code Ordinances and Section 72-56.2.A allows the McLaughlins to have the current fence.

In the Development Administrator's Notice of Violation, Exhibit "2", Ms. Sherman identifies that "as a corner lot, your property has two fronts (along Cornell Street and Littlepage Street). The fence appears to be in violation of this code." (emphasis added). No City Code section is identified to support this statement and given that there are hundreds of corner lots in the City, homeowners would be surprised to learn that their front door does not indicate their front yard or that their side yard is their front yard.

In addition, Section 72-84: "Definitions" does not contain any definition for a "corner lot". The City Code definitions section does contain a definition for "front (or primary) façade" of "the side or elevation of a structure that contains the structure's architectural front, or the portion of the structure facing the street from which the structure derives its street address."

Prior to my meeting with Ms. Sherman, I reviewed the City Code for an identification and/or a definition of “two front yards” and did not find one. But when I met with the Development Administrator on June 16, 2015, she identified that the ordinance she was using to identify “two front yards” was Section 72-82: Rules of Measurement, Sections 72-82.3.A(3) and 72-82.A(4)(b).

A review of this Section does not identify corner lots as having “two front yards” for the purposes of determining location or height of fences. The stated purpose of Section 72-82 is to “clarify the rules of measurement and exemptions that apply to all principal and accessory uses allowed in this chapter” which would address the location of permanent structures such as houses, not fences or height of fences.

In the last paragraph of Ms. McLaughlin’s letter, Exhibit “3”, she references several fences of other lots that are similar in height and location to her fence. Since reviewing this matter for the McLaughlins, I have informally identified approximately 50 similarly situated fences around the City. Based upon this, I would venture to suggest that there are hundreds of fences in the City that are the same as the McLaughlins.

It appears that the application and interpretation of the City Code Ordinance that governs the height and location of fences, based on existing fences throughout the City located on corner lots, is that only one “front yard” is identified for the purposes of determining the height and location of fences pursuant to City Code Section 72-56.2. Section 72-82.A.3 has no identification of a corner lot having “two front yards” under Section 72-82.3.A.(3) and/or Section 72-82.3.A(4).

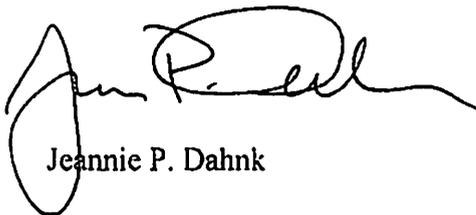
The McLaughlins fence is compliant with the applicable City Code Ordinances and it was constructed pursuant to City Code Section 72-56.2, where the front yard fence is not within the front setback and does not go beyond the front of the principal structure and therefore can be six feet in height. The portion of the fence adjacent to and parallel with Littlepage Street as a side yard is

compliant with 72-56.2.A which allows a fence to be six feet in height in any side or rear yard of a site up to the front of the principal structure on the site.

Finally, given the numerous examples of fences similarly situated on other corner lots, the City has previously interpreted the applicable ordinances to allow the type of fence that has been constructed in the McLaughlins yard. But there are also clear health and safety issues as demonstrated by Ms. McLaughlin's letter, Exhibit "3", of the numerous reports to police regarding the trespassing upon her property and the incidents involving the safety of her family.

We would be happy to meet and discuss the fence at 814 Cornell Street. We ask that the Board of Zoning Appeals grant this appeal and allow the fence at 814 Cornell Street to remain as it currently exists. We thank you for your time and attention to this matter.

Very truly yours,



Jeannie P. Dahnk

JPD/ah
Enclosures

cc: John J. & Stacey N. Strentz-McLaughlin (via email w/attachments)



City of Fredericksburg
COMMUNITY PLANNING & BUILDING DEPARTMENT
 715 Princess Anne Street / P.O. Box 7447
 Fredericksburg, VA 22404
 Telephone: 540-372-1179 Fax: 540-372-6412

FENCE AND/OR WALL PERMIT

Date of Application: 5/18/15 Project Address: 814 Cornell St, Fred VA 22410
 Zoning District: R-4

Is this property located in the Historic District? Yes _____ No ✓
 Is this property located in any of the Gateway Corridor Overlay Districts? Yes _____ No ✓

Applicant Information

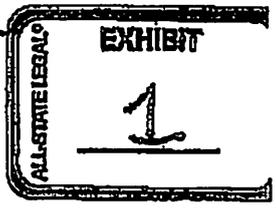
Name of Applicant: Stacey McLaughlin Phone: 540 840 7486
 Address: 814 Cornell St Fred VA Email: smm-1028@yahoo.com

Property Owner Information (if different from applicant)

Name: _____ Phone: _____
 Address: _____

The following information is required to be submitted with the application:

- o Plat, tax map or sketch that shows the proposed location of the fence or wall, applicable easements and alleys.
- o Height of the fence or wall: Height: 6 feet



By signing below, the property owner acknowledges that should any portion of the fence being erected in accordance with this permit interfere with work or access by public employees and/or their agents in the performance of their duties, the fence or portions of the fence may need to be taken down. Replacement of the fence shall be the sole responsibility of the property owner.

Applicant Signature: Stacey McLaughlin

Property Owner Signature: Stacey McLaughlin

This permit only grants permission under City Code §72-24 for a fence and/or wall on your property, based on information that you have provided. The City is not responsible for determining that you own the property on which the fence and/or wall will be placed, that you have all other permissions required to do so (for example, permission from anyone holding an easement on the property), or that you will not be interfering with utility lines.

For Completion by the Community Planning & Building Department

Approved Disapproved

Comments: REQUEST IS NOT IN COMPLIANCE WITH SECTION 72-56.2.B. OF THE UO. THIS DECISION CAN BE APPEALED IN ACCORDANCE WITH SECTION 72-24.7 OF THE UO.

Development Administrator: [Signature] Date: 06/03/15

Permit #: 2015-36
 received 05/22/15

Marne E. Sherman
Development Administrator and
Code Enforcement Officer



City of Fredericksburg
PO Box 7447
Fredericksburg, VA 22404-7447
Telephone: 540-372-1179
Fax: 540-372-6412
mesherman@fredericksburgva.gov

May 14, 2015

John J. and Stacey N. McLaughlin
1 Oakleigh Place
Fredericksburg, VA 22405

Re: Notice of Violation: 812-816 Cornell Street
GPIN #: 7779-84-5870
Fence

Dear Property Owner:

This letter is a Notice of Violation of Section 72-24.1 of the Unified Development Ordinance which requires the issuance of a zoning (fence) permit prior to construction of a fence. To date, a fence permit has not been issued at this site. Further, Section 72-56.2.C limits the height of a fence in the front yard of a R-4, residential zoning district to a maximum of four feet (4') in height. As a corner lot, your property has two fronts (along Cornell Street and Littlepage Street). The fence appears to be in violation of this code. A fence permit application must be submitted by no later than Friday, May 29, 2015 to begin the process to bring the site into compliance. I have included a blank fence permit application that can be mailed to my attention.

The City's commitment to its citizens is to create and maintain a clean, safe environment. Thank you for your assistance in reaching this goal. If you need any further assistance please do not hesitate to call me at (540) 372-1179.

Sincerely,

Marne E. Sherman
Development Administrator and
Code Enforcement Officer





STRENTZ, GREENE & KRUEGER, PLC

Attorneys at Law

702 Princess Anne Street

Fredericksburg, Virginia 22401

Telephone: 540.479.1511 Facsimile: 540.479.1524

Stacey N. Strentz
Brenda L. Greene
Robin N. Krueger

sns@SGandKlaw.com
big@SGandKlaw.com
rnk@SGandKlaw.com

May 21, 2015

Marna E. Sherman
Development Administrator and Code Enforcement Officer
PO Box 7447
Fredericksburg, VA 22404-7447

Re: 814 Cornell Street

Dear Ms. Sherman:

I was surprised to receive your letter. I have had a fence in this exact same location since January of 2005. Prior to that I believe the Brald's had owned the home and I know they had a similar fence as well. We purchased this home in December 2004. We moved to Stafford from April 2013 to May 1, 2015.

This fence was erected in April of this year on the exact same fence line as had previously sat a picket fence. I had a myriad of safety concerns and that is what led me to erect the fence prior to moving back into the home. Let me outline my safety concerns as I have two small children ages 4 and 7 and work part time so my children are left at least two days a week with a babysitter at my home.

1. In 2009 my babysitter was followed home by a man from Kenmore Park and verbally harassed the whole way. My child, at that time was two years old. She panicked and simply continued to walk throughout the neighborhood trying not lead him to our home but finally had to return home. I followed up with LaBarvia Jenkins and a Detective in the Fredericksburg Police Department and it was figured out eventually that this man had assaulted a nurse at Snowden and had psychiatric problems. The Detective ended up contacting the man and the man's family and convincing him that perhaps Fredericksburg was not the best place for him to be since now he was on the Police radar. This same man was witnessed by me at Kenmore park providing Beer to minors. I also reported that to the Fredericksburg Police.
2. Throughout my years then living on Cornell Street until April of 2013, when we moved to ferry farm for two years, we had weekly glass beer bottles and liquor bottles dumped over our fence. Those in turn when



- dumped would be glass shards and on two occasions cut my Jack Russell's foot and on another occasion cut my second dog's foot.
3. There is a dark haired man, known in the neighborhood for having mental health issues, who would routinely stand on the corner of Cornell Street and Lillipage and stare into my yard at my young children.
 4. We have had people who routinely walk the sidewalk from the apartments on the corner of Kenmore Avenue and Cornell Street stop and pee on and inside our fence as at that time it was a picket fence. This caused a stench at the corner of our fence.
 5. There was a drug raid at the apartments on the corner of Kenmore and Cornell with gunshots during the time we lived in the home prior to this.

In short, during our time in Stafford, we lived in Ferry Farm and my children became accustomed to a safe, calm environment as I did. We love living downtown but simply because we live on a corner lot my children's safety should not have to be jeopardized. So when we decided to move back to our home we erected our fence for safety reasons and never thought to get it approved because I already had a four foot picket fence on that very spot. We spent over \$7,000.00 on the fence. It is a beautiful design and was professionally installed by E & S Fencing. I have received numerous compliments on both the style of the fence and the look of it. People have called it "Zen".

Further, I took this design from two particular homes. The Cohens who live on Sunken Road have a corner lot on Grove Avenue and Sunken Road and have this same fence. The Dupuys who live on the corner of Prince Edward and Amelia Avenue have this same fence. And my Mother, Georgia Strentz, who lives on the corner of Grove and Sunken Road has this same style fence. So clearly there is precedent for allowing fences like this and this style in this zoning district.

I eagerly await your approval of my fence.

Sincerely,


Stacey (Strentz) McLaughlin

KATHLEEN DOOLEY
CITY ATTORNEY

ROB ECKSTROM
ASSISTANT CITY ATTORNEY



601 CAROLINE STREET, SUITE 200B
P.O. Box 7447
FREDERICKSBURG, VA 22401
540-372-1030

September 11, 2015
Helen P. Ross, Chair
Fredericksburg Board of Zoning Appeals
City Hall
715 Princess Anne Street
Fredericksburg, VA 22401

Re: 814 Cornell Street
Appeal of fence permit denial

Dear Ms. Ross and members of the Board of Zoning Appeals:

On behalf of Development Administrator Marne Sherman, I ask that the BZA uphold the denial of a permit for a permit for a fence at 814 Cornell Street, a corner lot. The denial of the application is consistent with the UDO's limitation of fence heights on streets to four feet. The purpose of the height limitation is to present a consistent, safe, and attractive streetscape, and homeowners are left with alternatives – including a four foot high fence, a hedge, pulling the taller fence out of the setback, or a variance application – to meet the specific needs of a particular owner or lot.

Brief summary of facts:

The 814 Cornell Street lot is a single family residential corner lot, with the house facing Cornell Street and one side of the house facing Littlepage Street. The rear of the lot is bordered by an alley. The site is zoned R-4, single family residential. For years, there was a wooden picket fence about four feet in height that began at the back of the front façade of the house and extended along Littlepage Street next to the sidewalk. A low brick wall ran along the rear of the lot. Trees and shrubs provided a vegetative backing to the picket fence and brick wall.¹

In April 2015, the homeowner replaced the picket fence with an opaque wood panel fence from the house to Littlepage Street, along Littlepage Street, and also along the alley, behind the low brick wall. The two new corner fence posts on Littlepage Street are 81 inches and 79 inches tall. The wooden slats are 74 inches tall. In other words, the fence exceeds six feet in height along the length of Littlepage Street. The fence line extends approximately 85 feet along Littlepage Street adjacent to the sidewalk. It does not extend into the "sight triangle" at Cornell Street and Littlepage Street.² The owner did not apply for a fence permit or inquire into any approval procedures for the fence.

¹ Please refer to the 2012 Google Maps photograph of the property, included in the meeting packet.

² Please refer to the 2015 photographs of the fence, included in the meeting packet.

In May, Development Administrator Marne Sherman issued a Notice of Violation to the homeowner, citing the fence for not having a permit. In addition, the May 14 notice advised the owner that the City Code limited fence heights along streets to four feet. The NOV required the owner to apply for a fence permit in order to begin the process of bringing the fence into compliance. The owner did so, filing the application on May 22, 2015, and citing concerns about safety in support of the height of the fence. Ms. Sherman denied the application on June 3, and the owner appealed on June 30th.

The UDO limits fence heights within any front yard to four feet:

Stated simply, the UDO permits fences to be located within any required yard; however, they are restricted as to height. The maximum height in a front yard is four feet; six feet in a side yard. On a corner lot, both sides of the lot that touch the street are considered front yards, and the four foot height restriction applies. The chart below summarizes the relevant provisions in the City Code. Taken together, these regulations prohibit the construction of the fence at 814 Cornell Street.

City Code Section	Rule
72-82.3	A corner lot is located at the intersection of two or more streets (other than alleys), regardless of whether or not such streets intersect at right angles.
72-82.4(B)(3)	On a corner lot or double frontage lot, the yards adjacent to the front lot line shall be considered front yards and the remaining yards shall be considered side yards.
72-82.3(A)(3)	The front lot line is the street line that forms the boundary of a lot.
72-56.1(A)(3)	Fences and walls may be located within any required yard.
72-56.2(B)	In any front yard of a site in any R district, a fence or wall shall not exceed four feet in height back to the front of the principal structure on the site.

The BZA applied this same rule in 2014 in the case of a double-frontage lot, when it denied a variance for a fence at 725 Lee Avenue. In that case, the applicant wished to install a six foot high fence along Kenmore Avenue, which formed a lot line 15 feet in length to the rear of the single family structure, which faced Lee Avenue.³ There, the homeowner asserted that the taller fence was needed for privacy, security, and aesthetics. In addition, the street frontage involved a busy roadway – Kenmore Avenue. It would be an anomaly for the BZA to deny a variance in the case of 725 Lee Avenue, and then decide that the prohibition did not even exist in this case.

As additional precedent, the BZA heard a variance application in 2011 involving a corner lot, under the former zoning ordinance, and granted a conditional variance to 1001 Kenmore Avenue, to permit a six foot fence on the lot's frontage on William Street. There, the BZA required the fence to taper from six feet to four feet in height, back-to-front.⁴ In that case, the BZA appeared to be persuaded to grant the variance by the volume of pedestrian traffic on William Street. The pre-UDO zoning regulation likewise limited fences in front yards to four feet in height, back to the front of the principal structure⁵, and provided that corner lots had two front yards.⁶ The 2011 decision shows that in an appropriate case, a variance may be granted to a specific site, to relieve a specific hardship, without throwing out the rule altogether.

It bears noting that the fence constructed exceeds the 6 foot maximum height for other yards. In order to completely resolve the appeal, the BZA should uphold the Development Administrator's application of the four foot maximum height. In any case, the fence permit should be denied because the fence is too tall.

Brief rebuttal of applicant's argument:

The application for the fence permit cites the owner's concern for her safety and that of her children. It also cites incidents of people routinely stopping and peeing inside her former picket fence, and incidents of littering. These concerns are similar to those advanced by the owners of 1001 Kenmore Avenue and 725 Lee Avenue variance applications. The BZA could take these concerns into account if a variance application were before it. These concerns might also be met through the installation of a hedge with a lower fence. However, this appeal contends that there is no law prohibiting a fence exceeding six feet in height at this location. This is an all-or-nothing approach that does not provide a platform for the BZA to consider site-specific concerns or solutions.

However, according to statistics maintained by the Fredericksburg Police Department, incidents of crime in this neighborhood – identified as "District 06" in the report – are extremely low.⁷ The crime rate would not seem to justify this fence as a security measure.

³ V2014-01, decided July 8, 2014.

⁴ V2011-02, decided July 19, 2011.

⁵ City Code §78-70.

⁶ City Code §78-1.

⁷ Please refer to the "Selected Crime Stats for Neighborhoods," in the meeting packet.

Ms. Dahnk's letter of June 30th raises the following legal arguments against the Development Administrator's application of the UDO:

1. Section 72-84, "Definitions" does not define a "corner lot." (page 3 last paragraph)

Response: Section 72-82.3 defines a corner lot as one that is located at the intersection of two or more streets.

2. The stated purpose of 72-82.3 is to "clarify the rules of measurement and exemptions that apply to all principal and accessory uses allowed in this chapter," which would address the location of permanent structures such as houses, not fences or height of fences. (page 4 second paragraph)

Response: This argument seems to be a little legalistic. In any event, the definition of a "corner lot" in section 72-82.3 does in fact apply to rules regulating fences. It applies to all "accessory uses." An "accessory use" is defined in 72-84 as "any land, building or structure the use of which is customarily found in association with, and serves the principal use; is subordinate in purpose, area or extent to the principal use served, and is located on the same lot as the principal use (emphasis added). A fence is a structure, customarily found in association with a house (the principal use of the property), subordinate in purpose, and located on the same lot. So, a fence is an "accessory use," to which 72-82.3 applies.

3. There are hundreds of fences in the City that are the same as the McLaughlins. This appears to support an interpretation of the ordinance that there is only one front yard on a corner lot for purposes of applying the fence regulations.

Response: The Development Administrator acknowledges the existence of other fences in the College Terrace neighborhood that exceed four feet in height along street frontages. For most of these fences, there is no record of a permit having been granted. When permits were granted, they typically required a maximum fence height of four feet or less in the front yards of corner lots. One permit was granted for a six foot transparent fence, but it appears to have been issued in error, since it is an anomaly. In addition, the BZA precedents listed above support the conclusion that the corner lot and double-frontage lot concept of two front yards has been consistently applied over many years.

4. There are clear health and safety issues that support the construction of a six foot fence.

Response: This is an argument that the BZA could consider in the context of a variance application, but not in the context of an appeal of an administrator's decision. In addition, the owner's safety concerns could be met through a permissible alternative, such as planting a hedge behind a lower fence.

Conclusion:

In the appeal of an administrator's decision, the determination of the administrative officer shall be presumed to be correct. The administrator has the burden of explaining her decision, but then the appellant has the burden of proof to rebut the presumption of correctness by a preponderance of the evidence.⁸ Ms. Sherman and I hope that this letter explains the basis for her decision. She will be present to provide her testimony directly to the BZA on September 21, 2015. We respectfully request that the BZA uphold the denial of the fence application. A proposed decision is attached for the Board's use.

Sincerely,

Kathleen Dooley, City Attorney

Ec: Jeannie P. Dahnk, counsel for the landowner
Marne Sherman, Development Administrator

⁸ Code of Virginia §15.2-2309.

CITY OF FREDERICKSBURG BOARD OF ZONING APPEALS

**APPEAL OF FENCE PERMIT DENIAL
814 CORNELL STREET
RECORD OF DECISION**

The City of Fredericksburg Board of Zoning Appeals heard the above-referenced appeal at its meeting on September 21, 2015. After consideration of the record of the appeal, the Board makes the following findings of fact:

FINDINGS OF FACT

- A. The fence that is the subject of this appeal is located at 814 Cornell Street, a single-family residential lot located in the R4 zoning district. The lot is located at the corner of Cornell and Littlepage Streets. The house on the lot faces Cornell Street. One side of the house faces Littlepage Street.
- B. The fence is an opaque wood panel fence, located adjacent to the public sidewalk on Littlepage Street, extending approximately 85 feet along Littlepage when measured from the rear of the lot. The fence also runs across the rear of the lot, behind the low brick wall. The fence slats are 6 feet 2 inches in height. The two corner fence posts on Littlepage Street are 6 feet 9 inches, and 6 feet 7 inches in height.
- C. The fence was constructed in April 2015, without a fence permit.
- D. The Development Administrator issued a Notice of Violation to the owner on May 14, 2015, citing the fence for not having a permit.
- E. The landowner applied for a fence permit on May 22, 2015; the permit was denied on June 3, 2015. The landowner filed this appeal of the denial of the permit on June 30, 2015.

CONCLUSIONS OF LAW

Under Code of Virginia §15.2-2309, the decision of the Development Administrator is presumed to be correct. The appellant has the burden of proof to rebut the presumption of correctness by a preponderance of the evidence. After consideration of the appeal record, the Board concludes that:

1. The lot at 814 Cornell Street is a "corner lot", as defined by City Code 72-82.3.
2. A corner lot has two front yards, as provided in City Code 72-82.4(B)(3).
3. The fence is located within one of two front yards at 814 Cornell Street.
4. A fence may be located within a front yard, under City Code 72-56.1(A)(3).
5. But City Code §72-56.2 limits the height of fences in the front yard to four feet.
6. The fence as constructed is taller than the maximum six foot height permitted in other yards.

CONCLUSION

The Fredericksburg Board of Zoning Appeals denies the appeal and upholds the decision of the Development Administrator to deny the fence permit.

FREDERICKSBURG BOARD OF ZONING APPEALS

Date: October 8, 2015


Helen P. Ross, Chair

238 Va. 162
Supreme Court of Virginia.

William B. WEST, Jr., et al.

v.

Robert L. MILLS, et al.

TOWN OF BLACKSBURG

v.

Robert L. MILLS, et al.

Record Nos. 870626, 880171. | June 9, 1989.

Developers appealed town council's disapproval of developers' second plat before planning commission acted on developers' third plat, and after planning commission refused to consider third plat because council's disapproval of second plat was not yet final, developers filed a petition for writ of mandamus to compel planning commission to consider the third plat. The Circuit Court, Montgomery County, Kenneth I. Devore, J., granted developers' writ and required planning commission to consider the third plat, and subsequently the court ordered the second plat approved on ground denial of such plat was arbitrary and capricious. Town appealed from both rulings and the cases were consolidated for appeal. The Supreme Court, Whiting, J., held that: (1) planning commission's action in denying approval of second plat was authorized by applicable ordinance and was not arbitrary or capricious, and (2) trial court erred in issuing writ of mandamus as appeal of planning commission's denial of second plat was inconsistent with pursuit of third plat through writ of mandamus.

Both cases reversed and final judgment entered.

West Headnotes (6)

[1] Administrative Law and Procedure 🔑 Scope

In reviewing the factual findings of an administrative body as well as in reviewing factual findings of court reviewing a legislative decision, the Supreme Court examines the record to determine whether the evidence sustains the court's findings of fact, and those of the administrative body.

1 Cases that cite this headnote

[2] Zoning and Planning 🔑 Decisions of boards or officers in general

Members of a planning commission are presumed to have acted correctly, for purposes of review of their actions.

Cases that cite this headnote

[3] Zoning and Planning 🔑 Permits, certificates, and approvals

Trial court's finding that citizen pressure was the unstated reason for the planning commission's disapproval of developers' second plat was not supported by evidence in the record, although citizens who attended the public hearings regarding the second plat argued that the commission should decide the issue in conformity with the wishes of adjoining property owners, as only one commission member echoed that sentiment in the subsequent deliberations, and the commission's findings contained nothing to indicate that citizen pressure influenced the commission's decision.

1 Cases that cite this headnote

[4] **Zoning and Planning** 🔑 Architectural and structural designs; area and lot considerations

Zoning and Planning 🔑 Other particular considerations

Planning commission's rejection of developers' second plat, because of problems of access, function, and the use of open space and inadequate attempts to cluster the houses, was authorized by cluster zoning ordinance sections requiring the planning commission to consider whether the proposed open space would be accessible, functional and useable, and requiring the commission to consider the impact of the subdivision on adjacent property and uses.

Cases that cite this headnote

[5] **Zoning and Planning** 🔑 Other particular considerations

Planning commission's disapproval of developers' second cluster development plat was supported by substantial evidence and was not arbitrary or capricious, where planning commission members stated that the second plat was not substantially different from the first plat, which presented a conventional subdivision with small lots rather than clustering or grouping the lots in one part of the parcel, and that the location and nature of the proposed open space was not accessible, functional or useable.

3 Cases that cite this headnote

[6] **Election of Remedies** 🔑 Acts Constituting Election

Election of Remedies 🔑 Remedies barred

Developers elected a remedy in appealing planning commission's disapproval of developers' second plat, and the pursuit of approval of a third plat of the same property through writ of mandamus was inconsistent with the elected remedy. Code 1950, § 15.1-475.

1 Cases that cite this headnote

Attorneys and Law Firms

****918 *164** William G. Broaddus, Daniel K. Slone, Richard B. Kaufman, Town Atty.; and McGuire, Woods, Battle & Boothe, on briefs, for appellants.

William B. Poff, Daniel F. Layman, Jr., Deborah A. Oehlschlaeger; and Woods, Rogers & Hazlegrove, on brief, for appellees.

***162** Present: All the Justices.

Opinion

WHITING, Justice.

In these two cases, **the primary issues are whether:** (1) a trial court properly rejected a planning commission's¹ stated reasons for disapproving a subdivision plat and concluded that the commission based its disapproval on citizen opposition expressed at commission hearings; and (2) **mandamus lies to compel the commission to consider a revised plat during the pendency of an appeal of its rejection of a previously submitted plat of the same property.**

The Town of Blacksburg (the town) adopted a cluster housing ordinance on January 8, 1985.² Its stated purpose was “to offer incentives and encouragement to developers in the form of reducing development cost by compacting development ... in return for the developer's voluntary provision of common or private open spaces or public areas, [and] high quality design.” Blacksburg, Va., Code § 2-88(a) (1981). Its goals, stated in § 2-88(b), were

****919** the preservation of land used for ... recreation, or aesthetic and environmental enrichment; promotion of efficient land ... use and the enhancement of the public health, safety and welfare by encouraging intensive development in a manner planned to harmonize with natural and man-made surroundings and the promotion of quality development in a compact form. Section 2-93 furnished the procedure for “review, approval or disapproval” of such developments. Section 2-94 required that the

***165** planning staff, planning commission and town council, as appropriate, [3] shall review the application ... with consideration given to [a number of factors, including]: (a) whether or not the proposed cluster development is in harmony with the goals, objectives and policies ... of § 1-2 of this chapter; [4] (b) the impact of the proposed cluster development on adjacent property and uses; ... [and] (e) whether or not the required open space is accessible, functional and usable....

Section 6.1-5 provided that “[a]pproval of a cluster subdivision plat shall conform to the general approval procedures set out in this ordinance.” Section 6.1-6(b) stated that “[u]nless otherwise expressly provided, the provisions of the Subdivision Ordinance, Blacksburg Town Code (1981) ... shall nonetheless apply to cluster subdivisions.”

Robert L. Mills, Thomas E. Heavener, and Ernestine Foresman (the developers) own approximately 17 acres of land in the town of Blacksburg. Their land is zoned for single-family dwellings, requiring at least 10,000 square feet for each lot. It adjoins the Blacksburg High School on one side, and developed and undeveloped land zoned for single-family residences on the remaining three sides.

On May 8, 1986, the developers filed a preliminary cluster housing subdivision plat and explanatory schedules (the plat) with William B. West, director of planning for the town, seeking approval of a subdivision of their property, to be known as Deer Run. Although West approved the plat as meeting the general requirements of the town's subdivision and zoning ordinances, the town planning commission disapproved it on August 5, 1986. By letter dated September 3, 1986, the commission advised the developers of its reasons for disapproval and described general modifications which would permit approval of the plat. The pertinent reasons for disapproval were: (1) that the location and nature of the proposed open space was not accessible, functional, or usable ***166** and should be redesigned; and (2) that the plat “simply presented a conventional subdivision with smaller lots [with] no attempt to ‘cluster’ or group the lots in one part of the parcel with the goal of lessening the impact of the higher densities which this plat would render possible.”

On October 24, 1986, the developers submitted a second plat in which the number of lots was reduced, and their size was increased from an average of 5,500 to 6,200 square feet. Also, additional access was provided to the open space, and additional open space was provided around the edges of the property. The developers did not, however, group or cluster the houses as the commission suggested.

A public hearing was held on the second plat on December 2, 1986. After hearing statements in support of the application from one of the developers, their attorney, and one citizen who resided in the area, as well as statements in opposition from four nearby residents and an attorney representing the adjoining homeowners, three members of the commission supported the application, two abstained because of conflicts ****920** of interest, and five voted to disapprove.

At the hearing, four of the five-member majority said that the amended plat did not differ materially from the first plat and failed to address the first two objections the commission had noted. One of those members also noted a detrimental effect on the adjacent residential neighborhood, and the fifth member said that the project did not meet the high standards of the ordinance.

In a subsequent work session on December 16, 1986, two commission members who voted to deny the application made reference to possible adverse social and economic effects upon the neighborhood, should the subdivision plat be approved, and some members discussed the possibility of fixing minimum sale prices to protect the subdivision's quality. Another member opposing approval of the plat said that the feeling of the neighborhood was "the most important thing." Other members repeated their prior statements that the second plat was not substantially different from the first and failed to address the first two of the commission's previously expressed concerns. Several members made suggestions as to how the developers might improve the cluster pattern, as well as provide access to the open area.

At the end of the meeting, West agreed to draft a letter to the developers reflecting the reasons for disapproval and containing *167 suggestions as to how the plat might be amended in order to secure approval. West's draft was approved by the commission members, and West's letter, dated December 29, 1986, was sent to the developers. It advised that the commission continued to find: (1) the location and nature of the proposed open space was not accessible, functional, or usable; and (2) the revised plat presented only a conventional subdivision of lots smaller than that allowed by the non-cluster subdivision ordinance and the developers' attempt to cluster or group the lots so as to lessen the impact of the higher densities was unsatisfactory. The commission also made suggestions as to how the developers could overcome these deficiencies.

The developers appealed the planning commission's ruling to the town council. On January 27, 1987, the council declined to overrule the planning commission. On February 11, 1987, the developers filed a third plat and attachments (the third plat), which adopted one of the commission's clustering suggestions. On February 26, 1987, before the commission could act upon the third plat, the developers appealed the council's disapproval of the second plat to the Circuit Court.

When the planning commission met on March 3, 1987, it refused to consider the third plat because of the finality of the council's disapproval of the second plat. Two days later, the developers filed a petition for a writ of mandamus to compel the planning commission to consider the third plat. On April 21, 1987, after hearing evidence, the trial court granted the writ and required the planning commission to consider the third plat. We granted an appeal of this ruling to West and the commission.

On October 28, 1987, the trial court heard evidence and argument regarding disapproval of the second plat, and concluded that "the members of this Commission evidently were intimidated by these people who spoke in opposition.... I know exactly why these plans were not approved, pressure from people who owned some homes around close or in the neighborhood." Accordingly, the court found that the disapproval was not properly based on the applicable ordinance, was arbitrary and capricious, and ordered that the second plat be approved. We granted an appeal to the town. Both cases are before us in this proceeding which, by agreement, we consolidated for briefing and argument.

Appeal of Disapproval of the Second Plat (Record No. 880171)

*168 [1] Code § 15.1-475 limits the trial court's review to a determination whether the town's disapproval of the second plat was "not properly based on the ordinance applicable thereto, or was arbitrary or capricious." Each party correctly contends that we must accord presumptions of correctness **921 to the respective findings of fact in their favor. *See A.B.C. Board v. Village Grill*, 217 Va. 632, 634, 231 S.E.2d 327, 328 (1977) (factual findings of administrative body); *cf. Fairfax County v. Pyles*, 224 Va. 629, 638, 300 S.E.2d 79, 84 (1983) (factual findings of court reviewing legislative decision). In each review, however, we examine the record to determine whether the evidence sustains the court's findings of fact, *see Pyles*, 224 Va. at 638, 300 S.E.2d at 84, and those of the administrative body, *see State Bd. of Health v. Godfrey*, 223 Va. 423, 435-36, 290 S.E.2d 875, 881-82 (1982); *Village Grill*, 217 Va. 632, 231 S.E.2d 327.

In this case we do not review conflicting findings based on the same evidence. The trial court concluded that the commission based its findings upon citizen pressure. On the other hand, the commission's stated findings were based upon what appeared to be valid grounds for disapproving the second plat.

[2] [3] First, we examine the record to ascertain if the evidence sustains the trial court's determination that the commission's action was "not properly based on the ordinance applicable thereto [and] was arbitrary and capricious" in that citizen pressure dictated the plat's disapproval. We keep in mind that the members of the planning commission are presumed to have acted correctly. *See Village Grill*, 217 Va. at 634, 231 S.E.2d at 328. Although some of the citizens who attended the public hearings argued that the commission should decide the issue in conformity with the wishes of the adjoining property owners, only one commission member echoed that sentiment in the subsequent deliberations. Every other member expressed different views of what the commission should consider in deciding whether to approve the plats. Furthermore, the commission's findings, as expressed in West's letter of December 29, 1986, and agreed to by all its members, contain nothing to indicate that citizen pressure influenced the commission's decision. Thus, we conclude that the evidence is insufficient to support the trial court's finding that citizen pressure was the unstated reason for the commission's disapproval of the second plat.

*169 Alternately, the developer urges that the trial court's decision was correct because, during general discussions, comments were made by some commission members indicating that the subdivision might be occupied by students, and consist of lower-priced housing, adversely affecting the adjoining properties, and another commission member suggested fixing minimum prices on the lots. Apart from the fact that none of those considerations was reflected in the commission's conclusions,⁵ the trial court did not find that the denial was based on these considerations.

[4] Next, the developers argue that the commission improperly considered zoning ordinance criteria in its first two objections to both plats. In our opinion, §§ 2-93, -94, and 6.1-5 of the cluster ordinance, quoted earlier, required the commission to consider whether the proposed open space would be "accessible, functional and usable," as well as the impact of the subdivision on "adjacent property and uses." Clearly, the commission's rejection of the second plat, because of problems of access, function, and use of open space and inadequate attempts to cluster the houses, was authorized by those sections.

[5] Next, we examine the planning commission's findings of fact. In our opinion, the facts recited earlier indicate that there was substantial evidence supporting the planning commission's disapproval of the second plat on appropriate considerations set forth in the ordinance. Therefore, the commission's action was authorized by the ordinance and was not arbitrary or capricious. Accordingly, we will reverse the trial court's decision and enter final judgment sustaining the commission's rejection of the second plat.

Issuance of Writ of Mandamus (Record No. 870626)

[6] The commission and West contend that the trial court erred in issuing the writ **922 of mandamus, compelling them to consider the developers' third plat.

For two reasons, we think the trial court erred in issuing the writ of mandamus. First, the developers have elected their remedy in appealing disapproval of the second plat. We find that remedy inconsistent with the pursuit of approval of yet another plat of the same property, through a writ of mandamus. Although Code § 15.1-475 requires planning commission action within 60 *170 days after submission of any plat, the commission should not be required to consider a plat covering property which was the subject of an earlier disapproved plat, when that disapproval is on appeal, either to the council or the courts.

Second, requiring the planning commission to consider the third plat resulted in simultaneous consideration of inconsistent plats for development of the same property by an administrative body and a court. If, ultimately, both were approved, there could be confusion as to which plat was to be recorded. This is one of the reasons given for applying the doctrine of exhaustion of administrative remedies. "[I]f it were not for the exhaustion doctrine, parties could seek remedies in various forums, which would inevitably lead to judicial and administrative conflict and confusion." 5 J. Stein, G. Mitchell, and B. Mezines, *Administrative Law* § 49.01, pp. 49-7 to -8 (1988). We refused to permit simultaneous litigation in two Virginia courts having concurrent jurisdiction of the same subject matter in *Craig v. Hoge*, 95 Va. 275, 28 S.E. 317 (1897). Despite an objection that refusing to allow the second court acquiring jurisdiction to proceed would delay a resolution of the controversy, we said "[s]uch

delay would have been far preferable to the pernicious results that must ensue from a conflict between co-ordinate courts having concurrent jurisdiction.” *Id.* at 283-84, 28 S.E. at 320. Those same considerations exist in this case.

Thus, we find that the trial court erred in issuing a writ of mandamus, and will reverse this case and enter final judgment dismissing the writ.

Record No. 880171-*Reversed and final judgment.*

Record No. 870626-*Reversed and final judgment.*

All Citations

238 Va. 162, 380 S.E.2d 917

Footnotes

- 1 The members of the planning commission were: Frances Parsons, J.D. Oliver, Robert Litschert, Anne W. Holberton, Theresa Humphreyville, Georgia Anne Snyder-Falkinham, Weldon Kerns, Margie D. Carson, Joseph T. Jones, and Curtis W. Sumner. They and William B. West, Jr., Director of Planning for the town, are appellants in Record No. 870626.
- 2 The ordinance has since been repealed.
- 3 Any subdivision of more than five lots required planning commission approval. Blacksburg, Va., Code § 6-3 (1981).
- 4 Section 1-2 incorporated the legislative purposes of zoning as reflected in Code § 15.1-427, and further indicated an intent to ‘provide for adequate light, air, [and] convenience of access,’ and “to facilitate the creation of a convenient, attractive and harmonious community,” as well as “to protect against overcrowding of land; undue density of population in relation to community facilities existing or available.”
- 5 Indeed, after describing these discussions, one of the developers testified that “there was just considerable discussion, no consensus of opinion.”



Minutes
Board of Zoning Appeals
September 21, 2015
Council Chambers, City Hall
Fredericksburg, Virginia

MEMBERS PRESENT

Helen P. Ross, Chair
Jay Jarrell III, Vice-Chair
Matthew Muggeridge
Beatrice Paolucci
Richard Conway, Alternate

MEMBERS ABSENT

Brian Raska

STAFF

Marne Sherman, Development
Administrator
Mike Craig, Zoning
Administrator
Kathleen Dooley, City
Attorney
Phaun Moore, Secretary

Ms. Ross called the meeting to order at 4:00 p.m.

OPENING REMARKS

Ms. Ross determined that a quorum was present and public notice requirements had been met.

DISCLOSURE OF EX PARTE COMMUNICATIONS

Ms. Ross asked if any Board member had engaged in *ex parte* communications on any item before the Board. No one indicated that they had engaged in any *ex parte* communication.

DISCLOSURE OF CONFLICTS OF INTEREST

Ms. Ross asked if any Board member had any conflicts of interest on any item before the Board. No one indicated that they had any conflicts of interest.

APPROVAL OF AGENDA

There were no additions or changes to the agenda.

Ms. Paolucci made a motion to accept the agenda as presented. Mr. Muggeridge seconded. The motion carried unanimously.

PUBLIC HEARING ITEMS

1. **APP 2015-01:** John J. and Stacey N. Strentz-McLaughlin – 814 Cornell Street (Fence) – Appeal of the Development Administrator’s denial of a fence permit application at 814

Cornell Street (GPIN 7779-84-5870). The action cited non-compliance with the Unified Development Ordinance, Section 72-56.2.B, limiting the fence height to four feet. The fence permit application was submitted to erect a fence, six feet in height, on the lot including the portion of the lot within a front yard along Littlepage Street. The property is zoned R-4, Residential, and is used for residential purposes.

The Development Administrator, Marne Sherman, presented the Board and applicants with handouts (Attachment A – Section 72-82 and Section 72-56 of the City Code. Attachment B – Diagrams of corner lots with fences at 725 Lee Avenue and 1001 Kenmore Avenue).

Ms. Sherman presented her case and reviewed the handouts.

The Board of Zoning Appeals members asked Ms. Sherman questions.

Mr. Jarrell asked what the Board's options were regarding the appeal.

The City's Attorney, Kathleen Dooley informed the Board that their options were to affirm, modify, or reverse the denial of the permit. Ms. Dooley clarified that the case was for an appeal, not a variance.

The applicants' attorney, Jeannie P. Dahnk, presented the appeal for John J. and Stacey N. Strentz-McLaughlin.

The Board of Zoning Appeals members asked Ms. Dahnk questions.

Public comment:

- Georgia Strentz – 922 Grove Avenue spoke in favor.
- Nancy Collins – 1109 Littlepage Street spoke in opposition.
- Jeremy Austin – 1112 Littlepage Street spoke in favor.

Letter:

- Richard and Elsie Hagenlocker – 810 Cornell Street wrote in favor.

The Board discussed the appeal and that the decision was based on City Code.

Mr. Muggeridge made a motion to deny the appeal and uphold the Development Administrator's denial of the fence permit and adopt the Record of Decision. Mr. Jarrell seconded. The motion carried unanimously.

OTHER BUSINESS

1. Amend BZA Bylaws.

Mr. Craig reviewed the amendments that were proposed at the August 17, 2015 meeting.

Ms. Paolucci made a motion to approve the amended Bylaws. Mr. Muggeridge seconded. The motion carried unanimously.

2. BZA discussion re: Quorum.

The Board discussed and clarified the requirements for a quorum.

REVIEW OF MINUTES

There were no changes to the meeting minutes from August 17, 2015.

Mr. Jarrell made a motion to adopt the minutes as written. Ms. Paolucci seconded. The motion carried unanimously.

STAFF / BOARD COMMENTS

Mr. Craig informed the Board there would be a meeting in September that would include a public hearing item.

Mr. Muggeridge and Ms. Paolucci expressed interest in receiving any additional training materials available.

Ms. Paolucci reminded the Board that her term would be expiring December 31, 2015.

Ms. Paolucci made a motion to adjourn. Mr. Conway seconded. The motion carried unanimously.

Meeting adjourned at 5:26 p.m.

Helen P. Ross, Chair

City of Fredericksburg, VA
Monday, September 21, 2015

Article 72-8. Definitions and Interpretations

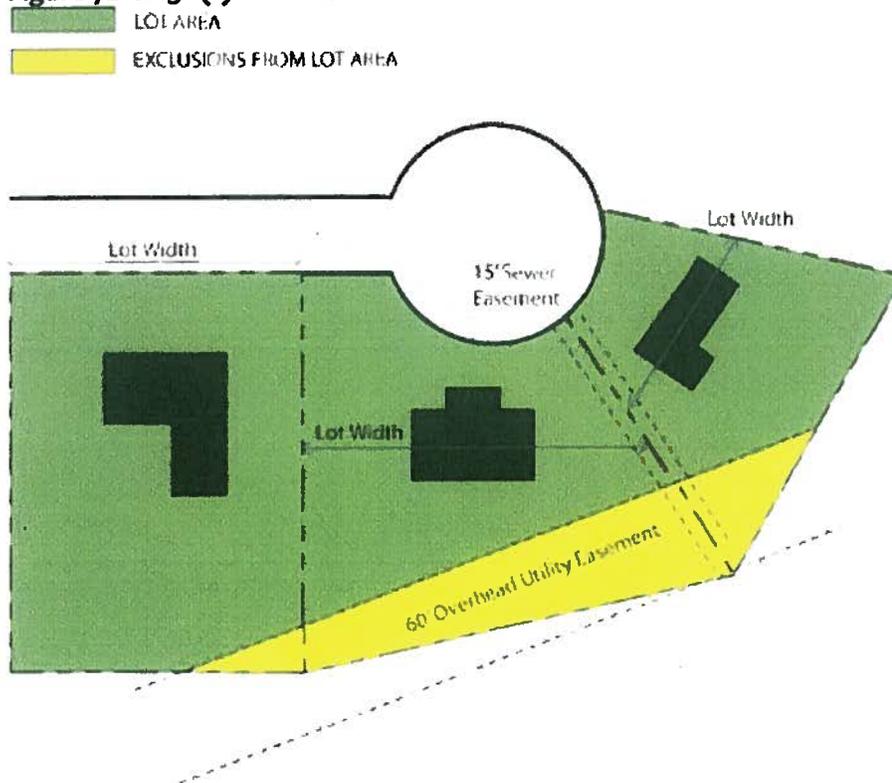
SECTION 72-82. Rules of Measurement

72-82.3. Lots.

A. Definitions/measurement.

- (1) Lot area, minimum. The minimum amount of land area required for a lot shall be measured on a horizontal plan in units of square feet or acres, as specified within the zoning regulations for the district in which the lot is situated. Land encumbered by easements and resource protection and management areas shall be considered according to § 72-51.3.

Figure 72-82.3A(1). Lot Area Measurement



- (2) Lot width, minimum. The distance between side lot lines shall be measured in one of the following manners, whichever is applicable:
- In the case of a rectangular lot, the width shall be measured along the front lot line.
 -

In the case of an irregularly shaped lot or a curvilinear front lot line, the width shall be measured between the lot's narrowest dimensions at that location on the lot where the center of the building is proposed or is located.

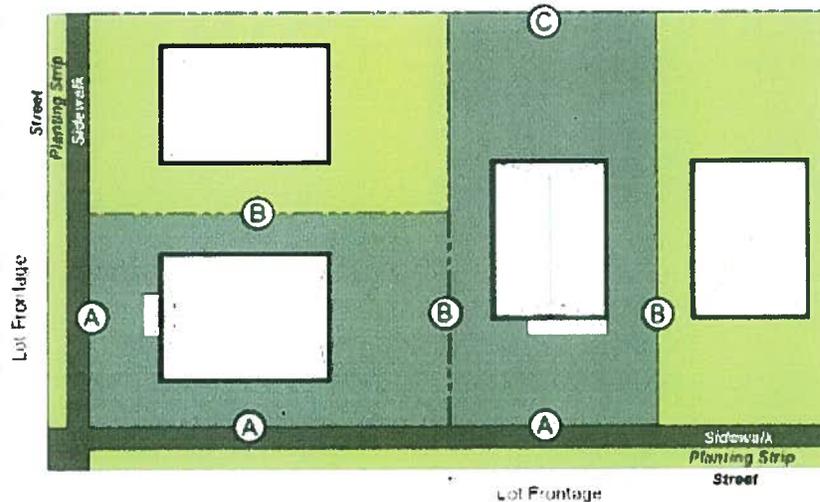
- (c) In the case of a pipestem lot, the width shall be measured between the lot's narrowest dimensions at that location on the lot where the center of the building is proposed or is located.

(3) Lot line.

- (a) Front lot line. A front lot line is the street line that forms the boundary of a lot, or, in a case where a lot either does not abut a street other than by its driveway or is a through lot, that lot line which faces the primary entrance of the principal building.
- (b) Rear lot line. A rear lot line is the property line that is most distant from, and is most nearly parallel with, a front lot line. If a rear lot line is less than 10 feet in length, or if the lot comes to a point at the rear, the rear lot line shall be deemed to be a ten-foot line parallel to the front lot line, lying wholly within the lot, for the purpose of establishing the required minimum rear yard.
- (c) Side lot line. The side lot line is the lot line connecting the front and rear lot lines.
- (d) Curved lot line. Where a lot line is curved, all dimensions related to the lot line shall be based on the chord of the arc.

Figure 72-82.3A(3). Lot Line Measurement

A - Front Lot Line
B - Side Lot Line
C - Rear Lot Line

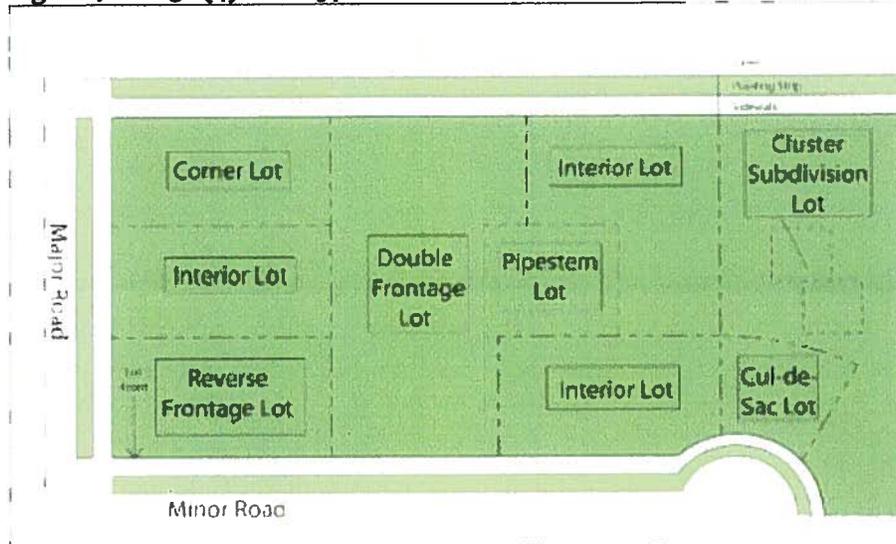


(4) Lot types.

- (a) Cluster subdivision lot. A cluster subdivision lot is a building lot located within a cluster subdivision.
- (b) Corner lot. A corner lot is located at the intersection of two or more streets (other than alleys), regardless of whether or not such streets intersect at right angles.
- (c) Cul-de-sac lot. A cul-de-sac lot is located on the head or turnaround of a cul-de-sac with side lot lines on a tangent to the arc of the right-of-way.

- (d) Double-frontage lot. A double-frontage lot is a lot other than a corner lot with frontage on more than one street other than an alley.
- (e) Interior lot. An interior lot is a lot other than a corner lot with only one frontage on a street other than an alley.
- (f) Pipestem lot. A pipestem lot is a lot which does not abut a public street other than by a driveway affording access to the lot.

Figure 72-82.3A(4). Lot Types



- (g) Reverse-frontage lot. A reverse-frontage lot is a corner lot, intentionally designed so that the front lot line faces a local street rather than facing a parallel major thoroughfare.

B. General lot requirements.

- (1) Pipestem lots.
 - (a) Pipestem residential lots shall have the width of the driveway not less than 12 feet, and the length of the driveway not greater than 200 feet from the street right-of-way line to which the lot has access.
 - (b) Pipestem lots shall constitute no more than 10% of the lots in any one section of a residential subdivision and shall serve only single-family detached dwellings.
 - (c) A pipestem driveway shall serve no more than three lots and shall be constructed in accord with the City design and construction standards.
 - (d) The final plat for each pipestem lot shall note that the purchaser assumes all obligations for the ownership, maintenance and perpetual upkeep of the driveway and that such obligation is a condition that runs with the land.

72-82.4. Required yards.

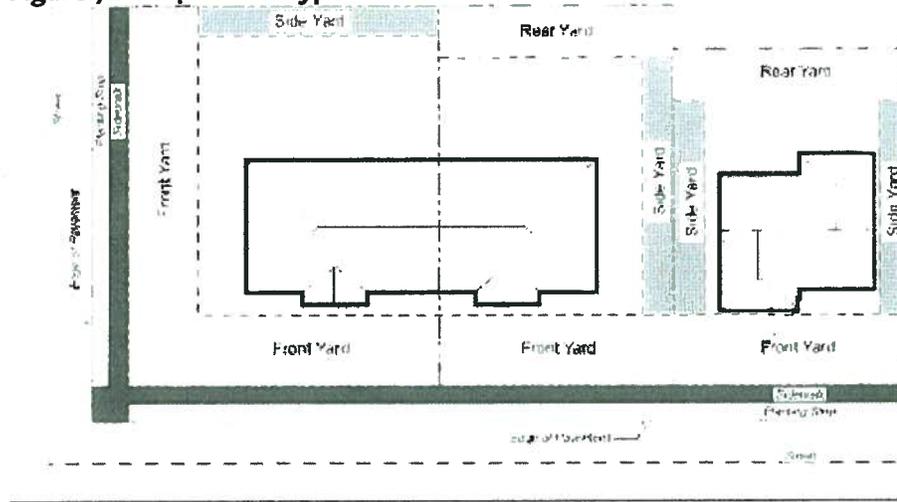
A. Definitions/measurement.

- (1) Setback. The term "setback" refers to the distance by which any portion of a building or structure shall be separated from a lot line.
- (2)

Front yard. The front yard is an area of a lot adjacent to its front lot line, measured by the length of the front lot line, extending from one side lot line to the other side lot line, and the width of the required front setback.

- (3) Rear yard. The rear yard is an area of a lot adjacent to its rear lot line, measured by the length of the rear lot line, extending from one side lot line to the other side lot line, and the width of the required rear setback.
- (4) Side yard. The side yard is an area of a lot adjacent to its side lot line, measured by the length of the side lot line, extending from the edge of the front setback line to the edge of the rear setback line, and the width of the required side setback.

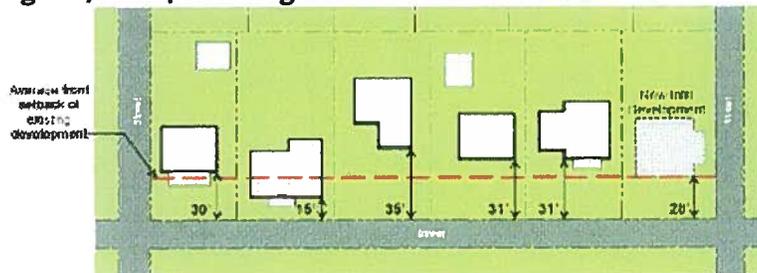
Figure 72-82.4A. Yard Types



B. General setback requirements.

- (1) Separation. When the standards in this chapter call for a separation between two different use types or development features, separation shall be measured from the closest edge of one lot to the closest edge of the other lot.
- (2) Averaging setbacks. Development and redevelopment on lots of record established prior to April 25, 1984, in the R-4, R-8 and C-T Districts may use average front or average side yard setbacks as are found on adjacent lots on the same block face.

Figure 72-82.4B. Average Setback Measurement



- (3) Corner lots. On a corner lot or double frontage lot, the yards adjacent to the front lot line shall be considered front yards and the remaining yards shall be considered side yards.
- (4) Setbacks following government acquisition of land. Where land acquisition for a public purpose reduces the distance between an existing legally established structure and an adjacent lot line to an amount less than the minimum required, the resulting distance shall be deemed the minimum setback for the lot.

Article 72-5. Development Standards

SECTION 72-56. Fences and Walls

72-56.1. Location requirements.

A. General.

- (1) Fences or walls shall be located outside of the public right-of-way, and may not exceed 24 inches in height if located within a required sight triangle.
- (2) Fences and walls are permitted on the property line between two or more parcels of land held in private ownership.
- (3) Fences and walls may be located within any required yard.

B. In easements or around fire protection facilities. Fences located within utility easements or around fire protection facilities shall receive written authorization from the easement holder or the City (as appropriate). The City shall not be responsible for damage to, or the repair or replacement of, fences that must be removed to access such easements or facilities.

C. Blocking natural drainage flow. No fence or wall shall be installed in a manner or in a location so as to block or divert a natural drainage flow on to or off of any other land, unless the fence or wall has specifically been approved as part of an approved stormwater management plan. Nothing in this section shall be construed to prevent the installation of temporary fencing to protect existing trees, or as part of an approved erosion and sediment control plan.

D. Within buffers. Fences and walls shall be installed so as not to disturb or damage existing vegetation or installed plant material, to the maximum extent practicable. The perimeter fencing or wall for a single development shall be of a uniform style that complies with the standards of this section.

72-56.2. Height standards.

All fences and walls shall conform to the standards in Table 72-56.2, Fence and Wall Height. In all cases, heights are measured from established grade on the highest side of the fence or wall (see Figure 72-56.2, Fence and Wall Location).

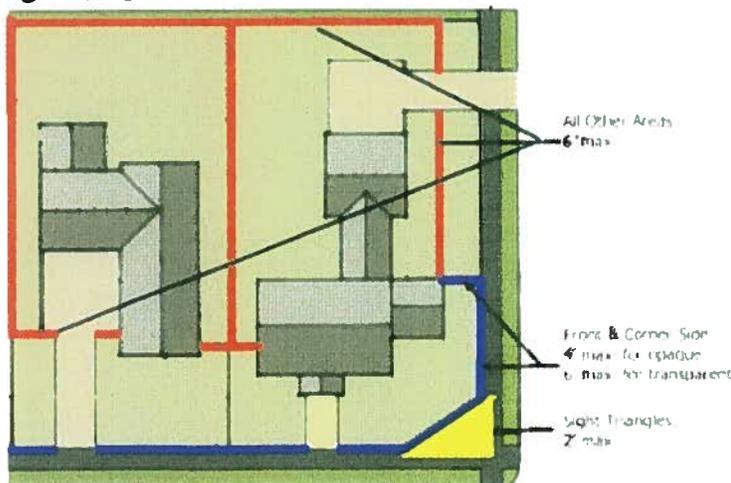
Location on a Lot	Max. Height for Opaque Fence or Wall (feet)	Max. Height for Transparent Fence or Wall [1] (feet)	
		Residential District	Nonresidential District (feet)

Table 72-56.2: Fence and Wall Height

Location on a Lot	Max. Height for Opaque Fence or Wall (feet)	Max. Height for Transparent Fence or Wall [1] (feet)	
		Residential District	Nonresidential District (feet)
Within sight triangle	2	2	2
Within front setback	4	4	6
All other areas	6	6	8

NOTES:

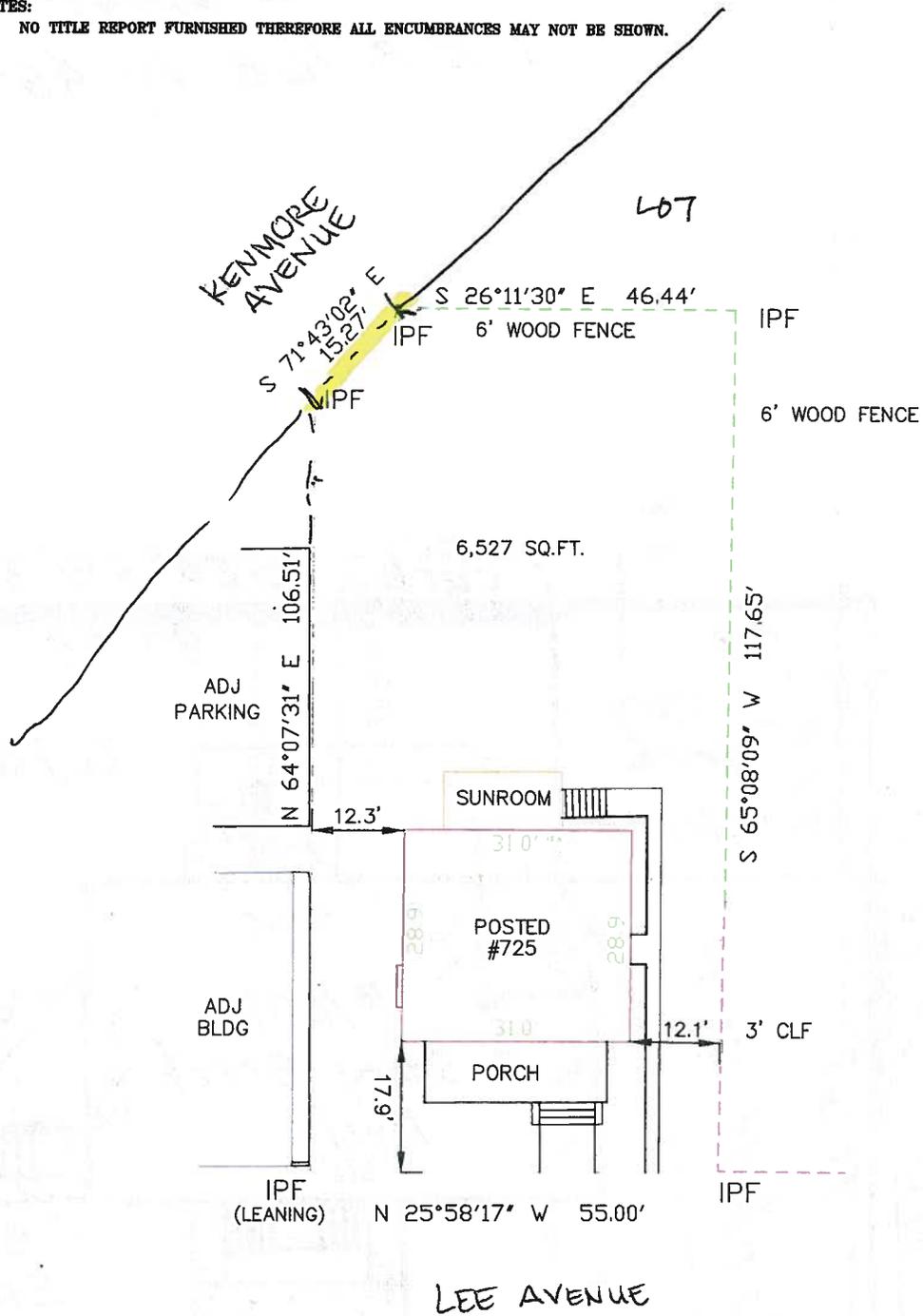
- [1] Transparent fences or walls are constructed so that 50% or more of the fence or wall is visually permeable.
- A. A fence or wall in any residential zoning district shall not exceed six feet in height above the existing grade in any side or rear yard of a site up to the front of the principal structure on the site. This provision shall also apply to fences and walls located on lots used for residential uses in other zoning districts. The Development Administrator may approve fences or walls exceeding six feet in height if the adjacent property is in a nonresidential zoning district or if there are unique topographic or other physical circumstances not created by the property owner. Additional setbacks may be required by the Development Administrator for such taller fences.
- B. In any front yard of a site in any R District, a fence or wall shall not exceed four feet in height back to the front of the principal structure on the site. This provision shall also apply to residential uses in other districts.
- C. For vacant sites in residential districts, fences or walls may not exceed four feet in height.
- D. A fence or wall shall not exceed eight feet in height in any yard of any industrial or commercial use permitted by the provisions of this subsection unless the Development Administrator authorizes such fences or walls to exceed eight feet. The Development Administrator may approve fences or walls to exceed eight feet if there are unique topographic or other physical circumstances not created by the property owner. Additional setbacks may be required by the Development Administrator for such taller fences.
- E. No fence or wall shall be constructed in a manner or in a location that impairs safety or sight-lines for pedestrians and vehicles traveling on public rights of way.

Figure 72-56.2. Fence and Wall Location

NOTES:

1) NO TITLE REPORT FURNISHED THEREFORE ALL ENCUMBRANCES MAY NOT BE SHOWN.

ATTACHMENT B



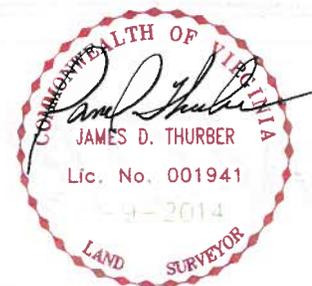
725 LEE AVENUE

CITY OF FREDERICKSBURG, VIRGINIA

SCALE: 1" = 20' DATE: MAY 9, 2014

JAMES D. THURBER, L.S.
THURBER ENGINEERING
& LAND SURVEYING
 10707 WOODLAND DRIVE
 FREDERICKSBURG, VA 22407
 PHONE: 540-207-3348 EMAIL: jim@telsltd.com

CERTIFIED CORRECT

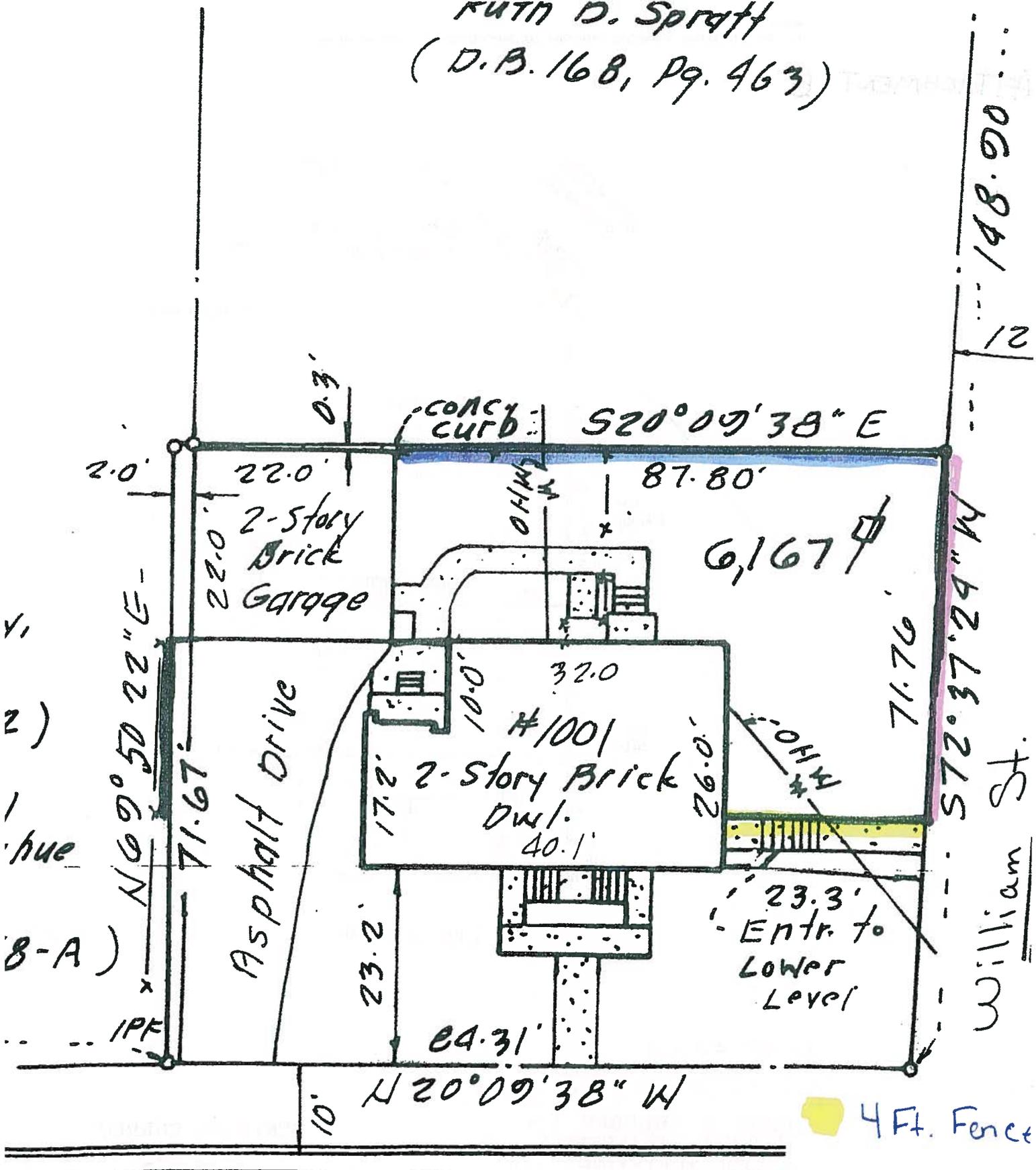


FILE#: FBURG725 CLIENT: LEONE

DATE: 5-9-2014 CHECKED BY: JDT

SCALE: 1" = 20' CREW: JT, AT

RUTH D. Spratt
 (D.B. 168, Pg. 463)



INMORE AVENUE

- 4 Ft. Fence
- 6 Ft. Transition to 4 Ft where it meets other 4 Ft
- 6 Ft. Fence



Minutes
Board of Zoning Appeals
November 16, 2015
Council Chambers, City Hall
Fredericksburg, Virginia

MEMBERS PRESENT

Helen P. Ross, Chair
Jay Jarrell III, Vice-Chair
Beatrice Paolucci

MEMBERS ABSENT

Brian Raska
Matthew Muggeridge
Richard Conway, Alternate

STAFF

Mike Craig, Zoning
Administrator
Rob Eckstrom, Assistant City
Attorney
Phaun Moore, Secretary

Ms. Ross called the meeting to order at 4:01 p.m.

OPENING REMARKS

Ms. Ross determined that a quorum was present and public notice requirements had been met.

DISCLOSURE OF EX PARTE COMMUNICATIONS

Ms. Ross asked if any Board member had engaged in *ex parte* communications on any item before the Board.

Ms. Paolucci said that after the September 21, 2015 meeting, she had run into Nancy Collins at the grocery store. Ms. Paolucci said that she thanked Ms. Collins for attending the meeting, but they did not discuss the case.

DISCLOSURE OF CONFLICTS OF INTEREST

Ms. Ross asked if any Board member had any conflicts of interest on any item before the Board. No one indicated that they had any conflicts of interest.

APPROVAL OF AGENDA

There were no additions or changes to the agenda.

Ms. Paolucci made a motion to accept the agenda as presented. Mr. Jarrell seconded. The motion carried unanimously.

PUBLIC HEARING ITEMS

1. **V15-01:** Mr. and Mrs. Strentz-McLaughlin – (owner) requests a Variance to allow a six foot high fence (including two feet of lattice work at the top) within the front yard along Littlepage Street at 814 Cornell Street (GPIN 7779-84-5870) in the R-4 Residential Zoning District. The Unified Development Ordinance limits fence height to a maximum of four feet in a front yard. 814 Cornell Street is a corner lot with front yards along both Cornell and Littlepage Streets.

Mr. Craig pointed out that there were only three members of the Board present and said that any decision made would require a unanimous vote.

Mr. Jarrell raised a point of order. He said that the BZA had previously stated that when there were only three members present, the Board could offer the applicant the opportunity to postpone to a later date when more members could be present.

The applicants' attorney, Jeannie P. Dahnk, commented that they had not been notified that the Board was not in compliance.

Mr. Jarrell clarified that the Board only needs three members present for a quorum. He explained that as a courtesy to Mr. and Mrs. Strentz-McLaughlin, the Board was offering them the opportunity to postpone, but the Board was not required to offer that option.

Ms. Dahnk had a brief discussion with Mr. and Mrs. Strentz-McLaughlin and said that they would like to postpone the hearing.

It was decided that both the City and the applicant would present their case so that anyone that wished to make public comment would be able to fully understand both sides. The Board would then continue the meeting and public hearing on Tuesday, January 5, 2016.

Mr. Craig presented his case.

Mr. Jarrell questioned the increased number of fences not in compliance.

Ms. Paolucci asked that a breakdown of permitted/not permitted fences be provided at the January 5, 2016 meeting. Mr. Craig agreed.

Ms. Dahnk presented her case.

Ms. Ross asked if there was any public comment.

Richard Hagenlocker – 810 Cornell Street spoke in favor.

Elsie Hagenlocker – 810 Cornell Street spoke in favor.

Leslie Leahy – 1106 Littlepage Street – spoke in favor.

Nancy Collins – 1109 Littlepage Street – spoke in favor.

Georgia Strentz – 922 Grove Avenue – spoke in favor.

Ms. Ross reminded everyone that the public hearing would continue on January 5, 2016.

REVIEW OF MINUTES

The following corrections were made to the meeting minutes from September 21, 2015:

Mr. Jarrell said that the description for the public hearing item was incorrect. It was an appeal, not a variance.

Ms. Ross commented that on page 3, Ms. Paolucci's name was misspelled.

STAFF / BOARD COMMENTS

Ms. Paolucci made a motion to adjourn. Mr. Jarrell seconded. The motion carried unanimously.

Meeting adjourned at 5:01 p.m.

Helen P. Ross, Chair