

CITY OF GEARHART PLANNING COMMISSION

From: Carole Connell, City Planner

Re: Application for a Variance

CITY STAFF REPORT

July 3, 2019

City File: #19-002V

Application Purpose: An application for approval of a Variance to allow a 7' fence that is already constructed, exceeding the maximum 6-foot fence height.

Public Hearing Date: July 11, 2019

Applicant's Representative: Shawn Helligso Construction
1692 Heritage Way
Gearhart, Oregon 97138

Property Owner: Wendy Boone
1310 Sea Ridge Ln
Gearhart, Oregon 97138

Location: 1310 Sea Ridge Ln; Tax Lot 604 Map 06N10W03CD

Completeness: 6 -12-19
Notice Mailed: 6 -20-19
Notice Published: 6 -20-19
120-day deadline: 10-10-19

Exhibits: Applicant's application, narrative, and photo

Agency Comments: Gearhart Volunteer Fire Dept. no concerns email 6-13-19
Gearhart Building Inspector, no reply
Gearhart Public Works Director email 6-25-19
Gearhart Police Chief, no concerns email 6-13-19

Review Criteria: GZO Section 3.2 Medium Density Residential R-2 Zone
GZO Section 6.010 (1) Fences
GZO Section 6.060 Clear Vision Area
GZO Section 8.030 Criteria for Granting Variances

I. FINDINGS

- A. Background: The applicant was made aware of the illegal fence by the City after it was constructed and was advised to seek a height variance approval by the Planning Commission.
- B. Site information: The subject parcel has a recently constructed a single-family home. The new fence surrounds all sides of the dwelling.
- C. Plan and Zone Standards: The site is designated residential by the Gearhart Comprehensive Plan and is designated Medium Density Residential R-2 by the Gearhart Zoning Ordinance. A single-family residence is a permitted use in the R-2 zone.
- D. Agency Coordination: The proposal was referred to city departments. No concerns were raised.
- E. GZO Section 6.010 (1) Fences: Fences which may be located within yards shall not exceed 6 feet in height. Fences which may be located within “clear vision” areas shall not exceed 2.5 feet in height.

FINDINGS: According to the applicant the fence is setback 15’ from the highway, 15 – 20’ from Sea Ridge Lane and over 50’ from the east property line. However, no property corners have been identified to verify the measurement from the highway.

- F. GZO Section 6.060 Clear Vision Area: A clear vision area shall be maintained on the corners of all property at the intersection of two streets of a street and a railroad.
 - (1) A clear vision area shall consist of a triangular area, two sides of which are lot lines measured 15 feet in residential zone from the corner intersection of the street lines.
 - (2) A clear vision area shall contain no plantings, fence, wall, structures, temporary or permanent obstruction exceeding 2.5 feet in height measured from the top of the curb.

FINDINGS: There is one intersection affected by the request. Measured from the property corners on US Hwy 101 at the Sea Ridge Lane right-of-way line the applicant

said the fence is setback 15' from the triangular clear vision area. This statement is pending verification of property corner pins and measurement.

G. GZO Section 8.030 Criteria for Granting Variances

Variance to a requirement of this ordinance with respect to lot area and dimensions, setbacks, yard area, lot coverage, height of structures, vision clearance, decks and walls, and other quantitative requirements may be granted only if, on the basis of the application investigation and evidence submitted, findings are made based on the four criteria listed below. No variance may be granted which will permit a use not permitted in the applicable zone.

1. The request is necessary to prevent a hardship to the applicant; and

FINDINGS: The new fence serves primarily as a privacy barrier from US Hwy 101. But the fence height is not necessary to prevent a hardship to the applicant.

2. The proposed development that will result from the granting of the variance will not be injurious to the adjacent area in which the property is located; and

FINDINGS: At the time this report was published the adjacent property owners in the area had not responded to the subject variance request. There is no known injurious impact to the adjacent area in which the property is located.

3. The request is necessary to enable reasonable use of the property; and

FINDINGS: The fence height variance is not necessary to enable reasonable residential use of the property.

4. The request is not in conflict with the Comprehensive Plan.

FINDINGS: The Comprehensive Plan does not provide specific policies or guidelines for the impacts of fences.

In evaluating whether a request meets the above criteria, the Planning Commission shall consider the following: The considerations listed below are not standards and are not intended to be an exclusive list of considerations. The considerations are to be used as a guide in Planning Commission evaluation of an application:

5. Relevant factors to be considered in determining whether a hardship exists include:

A. Physical circumstances related to the property involved;

FINDINGS: The property adjoins the noisy highway where thousands of vehicles pass by traveling at high speeds. The fence provides a visual and psychological separation from the highway to the dwelling. A small percentage of parcels in Gearhart directly adjoin the highway, therefore the physical situation is somewhat unique. If the variance is denied the new fence would need to be removed or could be modified.

B. Whether reasonable use can be made of the property without the variance;

FINDINGS: Reasonable use of the property can continue to be made without the fence exceeding the height limit by 12 inches.

6. Relevant factors to be considered in determining whether the proposed development will be injurious to the adjacent area include:

A. The physical impacts such development will have such as:

(1) Views from adjacent property;

FINDINGS: There are no known impacts to adjacent property views. Highway travelers will have a reduced view of the dwelling and property if the 7' fence is retained.

(2) Privacy available to adjacent property;

FINDINGS: The fence height will increase privacy for the subject homeowner.

(3) Ability to provide and maintain public improvements such as streets, utilities and drainage;

FINDINGS: The fence does not infringe on public streets. There are no known utilities or drainage facilities on the subject property lines.

(4) Potential for geologic hazard; and

FINDINGS: The extra 12" height of the fence will have no bearing on geologic hazards. The top foot of the fence is lattice which allows some airflow to withstand high wind impacts.

(5) Noise Generated.

FINDINGS: There will be no noise generated by the additional 12" of fence height.

II. SUMMARY CONCLUSION

The City finds that the fence height exceeds 6 feet by one foot. It cannot be found that the variance is necessary to alleviate a hardship because there will continue to be reasonable use of the property without a variance. It can be found that the fence is already built and does not appear to be injurious to adjacent property owners. The fence will increase privacy for the homeowner on all sides. But not all homeowners have the same advantage of an extra foot of privacy without a variance. The fence provides the advantage of an extra foot of height adjoining the highway. The fence height has no impact on public facility improvements, safety concerns or noise.

A variance approval is not in conflict with the Comprehensive Plan. Approval of a variance encourages other homeowners to build fences that exceed the height limit, an approach that allows for review on a case-by-case basis.

III. RECOMMENDATION

Based on the findings in the City staff report it is recommended that the Planning Commission approve the Variance request, subject to the following considerations:

1. Verify the clear vision triangle and highway setback requirements are met;
2. Consider removing the extra foot of height where it is not providing a buffer from highway impacts.

Motion Options:

1. Based on the findings in the city staff report, I move to approve the fence variance as proposed with a condition of property corner verification; or
2. I move to approve the fence variance subject to modifications and property corner verification; or
3. I move to deny the fence variance based on additional findings; or
4. I move to continue the hearing to August 8, 2019.