



To: Board of Zoning Appeals

From: Peter Bode, Planner & Zoning Official

Subject: **Agenda – Regular Meeting**
Tuesday, December 5, 2023 at 4:30 p.m.
City Council Chambers, City Hall, 100 Downtown Plaza

- 1) Approval of Agenda **Page 1**
- 2) Approval of Minutes – November 7, 2023 **Page 2**
- 3) Approval of Minutes – November 21, 2023 **Page 3**

New Business

- 4) Public Hearing – 419 Webster St – Variance Request **Page 4**
- 5) Public Hearing – 501 Canyon Dr – Variance Request **Page 20**

Unfinished Business

None

- 6) Adjournment

MINUTES OF THE FAIRMONT BOARD OF ZONING APPEALS

Regular Meeting

November 7, 2023

City Council Chambers, City Hall, 100 Downtown Plaza

Members present: Jon Davis, Mike Jacobson, Mike Klujeske, Susan Krueger, Adam Smith, Council Liaison Wayne Hasek, Council Liaison Jay Maynard

Members absent: *None*

Staff present: Planner & Zoning Official Peter Bode

Chair Klujeske called the meeting to order at 4:30 p.m.

Approval of Agenda: Motion by Krueger and second by Jacobson to approve the agenda as presented. Motion carried.

Approval of Minutes – September 5, 2023: Motion by Krueger and second by Davis to approve the September 5, 2023 meeting minutes as presented. Motion carried.

Public Hearing – 819 Reiman Ct: Chair Klujeske opened the public hearing. Bode introduced a request by John Hughes at 819 Reiman Ct for a variance to allow a 17-foot instead of 25-foot western corner yard requirement. Bode stated that staff's findings support denial of the variance.

There were no public comments. Motion by Krueger and second by Jacobson to close the public hearing. Motion carried.

Members discussed the request.

Motion by Krueger and second by Jacobson to adopt BZA Resolution 2023-4 as presented, denying the variance request. On roll call: Davis yes, Jacobson yes, Klujeske yes, Krueger yes, Smith yes. Motion carried.

Motion by Klujeske and second by Jacobson to suggest to the applicant that they rework their plan with City staff and apply for a new, less impactful variance. Motion carried.

Adjournment: There were no further agenda items. Motion by Smith and second by Davis to adjourn. Motion carried and the meeting adjourned at 5:14 p.m.

*Respectfully submitted,
Peter Bode*

MINUTES OF THE FAIRMONT BOARD OF ZONING APPEALS

Special Meeting

November 21, 2023

City Council Chambers, City Hall, 100 Downtown Plaza

Members present: Jon Davis, Mike Jacobson, Mike Klujeske, Adam Smith, Council Liaison Jay Maynard

Members absent: Susan Krueger, Council Liaison Wayne Hasek

Staff present: Planner & Zoning Official Peter Bode

Chair Klujeske called the meeting to order at 4:31 p.m.

Approval of Agenda: Motion by Davis and second by Smith to approve the agenda as presented. Motion carried.

Public Hearing – 819 Reiman Ct: Chair Klujeske opened the public hearing. Bode introduced a request by John Hughes at 819 Reiman Ct for a variance to allow a 10-foot instead of 25-foot southern rear yard requirement. Bode stated that staff's findings support approval of the variance.

There were no public comments. Motion by Davis and second by Jacobson to close the public hearing. Motion carried.

Members discussed the request.

Motion by Smith and second by Davis to adopt BZA Resolution 2023-5 as presented, approving the variance request. On roll call: Davis yes, Jacobson yes, Klujeske yes, Smith yes. Motion carried.

Adjournment: There were no further agenda items. Motion by Davis and second by Smith to adjourn. Motion carried and the meeting adjourned at 4:52 p.m.

*Respectfully submitted,
Peter Bode*

GENERAL INFORMATION

Applicant: Preston Vaughn Construction Company
Property Owner: Heidi Thomas (on behalf of Robert J. Huemoeller)
Purpose: To allow a 14-foot instead of 30-foot southern front yard requirement
To allow a 6-foot instead of 10-foot eastern side yard requirement
Address: 419 Webster St
Parcel Number: 23.257.0060
Zoning: R-3
Surrounding Uses: Low-density residential
Application Date: November 16, 2023
Review Date: December 5, 2023

BACKGROUND

This R-3 Multiple Family Residential lot is serviced by Webster Street to the south. Surrounded by other single-family homes, the lot measures approximately 7,500 square feet in area and approximately 50 feet in width.

The applicant requests two variances: first to allow a 14-foot instead of 30-foot southern front yard requirement and second to allow a 6-foot instead of 10-foot eastern side yard requirement. These requests would be to accommodate a new front porch attached to the home.

The existing porch is located approximately 13 feet from the property line, which is no further than the request, but because the porch is increasing in overall size a variance would be required for the new porch.

REVIEW OF VARIANCE STANDARDS

The Board of Zoning Appeals may hear requests for variances from the requirements of the zoning ordinance. The Board shall only grant variances where the applicant establishes that each of the following criteria required under Minnesota Statutes, section 462.357, subd. 6 are met for each requested variance.

Variance 1: To allow a 14-foot instead of 30-foot southern front yard requirement

(a) The variance is in harmony with the general purposes and intent of the zoning code;

The purpose of the front yard requirement is to primarily to provide a uniform minimum distance between single-family development and the front sidewalk. Staff find that the request is in harmony with the general purposes and intent of the zoning code because the proposed porch would extend no further towards the front yard than is common in the neighborhood.

(b) The variance is consistent with the Comprehensive Plan;

The Fairmont Comprehensive Plan guides the use of this area to be mixed use neighborhood, which supports single family homes.

Staff find that the request is consistent with the Comprehensive Plan.

(c) The property owner proposes to use the property in a reasonable manner not permitted by the zoning code;

Staff find the property owner proposes to use the property in a reasonable manner because the proposed porch is consistent with other features in the neighborhood.

(d) The plight of the landowner is due to circumstances unique to the property not created by the landowner; and

Staff find that the existing home and deck have been legally placed closer to the property line under former zoning codes and so represent a unique circumstance.

(e) The variance, if granted, will not alter the essential character of the locality.

Staff's find the request will not alter the essential character of the locality because porches in the neighborhood exist at similar distances.

Variance 2: To allow a 6-foot instead of 10-foot eastern side yard requirement

(a) The variance is in harmony with the general purposes and intent of the zoning code;

The purpose of the side yard requirement is to primarily to provide a substantial distance between multiple family residential buildings and property lines in this R-3 Multiple Family district. Staff find that the request is in harmony with the general purposes and intent of the zoning code because the proposed porch would extend no further towards the side yard than the existing home and is common in the neighborhood, which is actually single family and not multiple family.

(b) The variance is consistent with the Comprehensive Plan;

The Fairmont Comprehensive Plan guides the use of this area to be mixed use neighborhood, which supports single family homes.

Staff find that the request is consistent with the Comprehensive Plan.

(c) The property owner proposes to use the property in a reasonable manner not permitted by the zoning code;

Staff find the property owner proposes to use the property in a reasonable manner because the proposed porch is consistent with other features in the neighborhood.

(d) The plight of the landowner is due to circumstances unique to the property not created by the landowner; and

Staff find that the existing home has been legally placed closer to the property line under former zoning codes and so represent a unique circumstance.

(e) The variance, if granted, will not alter the essential character of the locality.

Staff's find the request will not alter the essential character of the locality because porches in the neighborhood exist at similar distances.

RECOMMENDATION

Staff's findings support approval of the requested variance to allow a to allow a 14-foot instead of 30-foot southern front yard requirement and to allow a 6-foot instead of 10-foot eastern side yard requirement. The Board of Zoning Appeals may grant the variance or deny the variance. The Board may recommend to the applicant in addition to denial that the applicant amend their proposal and apply for a new variance, if the Board so desires.

Respectfully submitted,

Peter Bode

Planner & Zoning Official

Attached: Variance Criteria Guidance
BZA Resolution 2023-6
Application for variance

Variance Criteria Guidance – City of Fairmont

The underlined questions below represent the required statutory criteria, pursuant to Minn. Stat. § 462.357, subd. 6, which must be considered and answered affirmatively in order for the Board of Zoning Appeals or the City Council, as applicable, to grant a variance application. For purposes of establishing a record, a majority of the members of the governing body must agree upon the answers given to each question below. The following guidance is intended to assist the governing body in developing its written findings on each of the below underlined statutory criteria:

1) Is the variance in harmony with the purposes and intent of the ordinance?

Some of the more common purposes and intent of zoning ordinances, which may be considered in evaluating this criterion include, but are not limited to, the following:

- a. To promote the public health, safety, morals, comfort and general welfare;
- b. To conserve and protect property and property values;
- c. To secure the most appropriate use of land; or
- d. To facilitate adequate and economical provisions for public improvements.

2) Is the variance consistent with the Comprehensive Plan?

What is the future land use category for the subject property?

Does the request align with this category and other provisions of the Comprehensive plan?

3) Does the proposal put property to use in a reasonable manner?

Would the request put the property to use in a reasonable way but cannot do so under the rules of the ordinance? It does not mean that the land cannot be put to any reasonable use whatsoever without the variance. For example, if the variance application is for a building too close to a lot line or does not meet the required setback, the focus of this factor is whether the request to place a building there is reasonable. For example, is it reasonable to put a building in the proposed location?

4) Are there unique circumstances to the property not created by the landowner?

Are there unique physical characteristics of the property not caused by the landowner? The uniqueness generally relates to the physical characteristics of the particular piece of property, that is, to the land and not personal characteristics or preferences of the landowner (i.e. size of the lot, shape of the lot, layout of the building, topography, trees, wetlands, etc.). For example, when considering the variance for a building to encroach or intrude into a setback, the focus of this factor is whether there is anything physically unique about the particular piece of property, such as sloping topography or other natural features like wetlands or trees?

5) Will the variance, if granted, retain the essential character of the locality?

If granted, will the use of the land or the structure be of appropriate scale, in a suitable location, or otherwise be consistent with the surrounding area? For example, when thinking about the variance for an encroachment into a setback, the focus is how the particular building will look closer to a lot line and if that fits in with the character of the area.

6) Are there other considerations for the variance request besides economics?

State statute specifically notes that economic considerations alone cannot create practical difficulties. Rather, practical difficulties exist only when the statutory factors are met.

If there are affirmative answers to questions 3, 4, and 5, the application then satisfies the practical difficulties test, and if the answer is yes to this question, then in that event, the application may proceed if the other criteria (1 and 2) above are also met.

If there are not affirmative answers to questions 3, 4, and 5, then the practical difficulties test is not satisfied, and if the answer to this question is no, then in that event, the application must be denied for failure to meet the practical difficulties test.

Other Considerations:

Neighborhood opinion. Neighborhood opinion alone is not a valid basis for granting or denying a variance request. While the BZA or City Council, as applicable, may feel their decision should reflect the overall will of the residents, the task in considering a variance request is limited to evaluating how the variance application meets the above statutory factors. Residents can often provide important facts that may help the governing body in addressing the above questions, but unsubstantiated opinions and reactions to a request do not form a legitimate basis for a variance decision.

Conditions. A city may impose a condition when it grants a variance so long as the condition is directly related to and bears a rough proportionality to the impact created by the variance. For instance, if a variance is granted to exceed an otherwise applicable height limit, any conditions attached should presumably relate to mitigating the effect of excess height.

CITY OF FAIRMONT, MINNESOTA
BOARD OF ZONING APPEALS RESOLUTION BZA #2023-6

A RESOLUTION BY THE BOARD OF ZONING APPEALS OF THE CITY OF FAIRMONT,
MINNESOTA, APPROVING A VARIANCE REQUEST AT 419 WEBSTER STREET

- WHEREAS, ROBERT J. HUEMOELLER (the “Applicant”) is the owner of a parcel of land located at 419 WEBSTER STREET (PID No. 23.257.0060) in the City of Fairmont; and
- WHEREAS, the above-referenced property is legally described by Exhibit A, which is attached hereto and incorporated herein by reference (the “Property”); and
- WHEREAS, Fairmont City Code, Chapter 26-154(e)(5)(a) sets the principal structure setback from the front property line at 30 feet; and
- WHEREAS, Fairmont City Code, Chapter 26-154(e)(5)(b) sets the principal structure setback from the side property line at 10 feet; and
- WHEREAS, the Applicant desires to and has requested a variance to the above standards in order to place a structure 14 feet from the front property line and 6 feet from the side property line; and
- WHEREAS, pursuant to Minnesota Statutes, section 462.357, subd. 6, the Zoning Board of Appeals may only grant applications for variances where practical difficulties in complying with the zoning code exist and each of the following criteria are satisfied (see also City Code Section 26-101):
- (a) The variance is in harmony with the general purposes and intent of the zoning code;
 - (b) The variance is consistent with the Comprehensive Plan;
 - (c) The property owner proposes to use the property in a reasonable manner not permitted by the zoning code;

- (d) The plight of the landowner is due to circumstances unique to the property not created by the landowner; and
- (e) The variance, if granted, will not alter the essential character of the locality; and

WHEREAS, the Board of Zoning Appeals held a public hearing, following required public notice thereof, on December 5, 2023, and has reviewed the requested variances and has considered the required statutory variance criteria identified in the staff report and proposed findings with respect to such criteria.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF ZONING APPEALS OF THE CITY OF FAIRMONT, MINNESOTA, that the Fairmont Board of Zoning Appeals has duly considered the required criteria contained in state law and City Code as applicable to the above-requested variance regarding the property legally described in Exhibit A, and hereby adopts the findings of fact contained in the staff report regarding the same, which is attached hereto and incorporated herein by reference as Exhibit B.

BE IT FURTHER RESOLVED that the requested variance to allow a 14-foot instead of 30-foot front yard setback and a 6-foot instead of 10-foot side yard setback is hereby approved based upon the above-referenced adopted findings.

PASSED by the Board of Zoning Appeals of the City of Fairmont this 5th day of December, 2023.

Mike Klujeske, Chair

Adam Smith, Vice Chair

VOTE: ___ DAVIS ___ JACOBSON ___ KLUJESKE
 ___ KRUEGER ___ SMITH

EXHIBIT A

Property Legal Description:

INSERT LEGAL DESCRIPTION

EXHIBIT B

Findings of Fact:

INSERT STAFF REPORT WITH CRITERIA

**CITY OF FAIRMONT
Planning & Zoning
Application Form**

NOTE TO APPLICANT: This is a comprehensive application form. Only those items related to your specific type of development are to be completed. All items applicable must be included prior to acceptance of the application.

Name of Applicant: Preston Vaughn Address: 311 N PRAIRIE Phone#: 5072365210

Street Address of Proposal: 419 WEBSTER ST FAIRMONT

Legal Description of Property: _____

Existing Use of Property: RESIDENTIAL

Proposed Use of Property: SINGLE FAMILY

Type of Application	Fee	Submission Requirements (Attached)
<input type="checkbox"/> Appeal/Code Amendment	\$150.00	7
<input type="checkbox"/> Administrative Appeal	50.00	8
<input type="checkbox"/> Conditional Use Permit	150.00	4, 6(d-g)
<input type="checkbox"/> Home Occupation Permit	30.00	9
<input type="checkbox"/> Minor Plat	90.00	2(a), 5 (a-b)
<input type="checkbox"/> Planned Unit Development	150.00	1, 4, 6(d-g)
<input type="checkbox"/> Preliminary Plat	150.00	5 (b), 6
<input type="checkbox"/> Rezoning	150.00	1
<input checked="" type="checkbox"/> Variance	90.00	2,3

pd JK# 7636

I HEREBY CERTIFY THAT THE INFORMATION AND EXHIBITS HERewith SUBMITTED ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

HEIDI THOMAS

Owner's Name(Printed)

Copy
Owner's Signature
Preston Vaughn
Applicant's Signature

PRESTON VAUGHN CONSTRUCTION CO.

Applicant's Name (Printed)

City Staff Use Only
DATE FILED: _____
DATE FEE PAID: _____
MEETING DATE: _____
NOTICES SENT (DATE): _____
NOTIFICATION OF EXTENSION (LETTER SENT): _____

Re: Application for variance

- We believe the variance is in harmony with intent of ordinance
 - It shall offer a more safe landing area for out-swing storm doors
 - It offers level stable surface for elderly family to enjoy outdoors, off of driveway and accessible to house.
 - The new deck shall not be proud of other existing structures on the block
- We do not believe the new deck compromises any current Comprehensive Plan(s), it is unlikely any land use or zoning for this property, or those adjacent, shall change.
- We offer the variance is reasonable and does not change any use, except for the better.
 - It is low to the ground and does not impede any current views
 - It does not impede any access to side yards, utilities, right of ways or general traffic
- Lot is unique
 - In size, being 200' in depth and irregular in shape, but we believe that to be unrelated to requested variance
 - Houses are collectively close to front lot line on this block, which is unique compared to other areas within the city limits. A variance is required if occupants are afforded the same comforts as other residents (ie. a front porch).
- If granted, variance shall not compromise essential character of local.
 - Structures on block shall maintain a relatively uniformed setback
 - New deck shall be low to the ground, maintain a relative setback and demand no extraordinary attention
- Other considerations for variance
 - New deck safer is safer and landing more compliant to IBC for landing area when door swings onto landing
 - New deck size is more usable, promoting health and morale.
- Due to the deck being **detached**, the deck remaining the same depth as existing deck (8ft), the new width not extending past existing house, and being cost conscientious we request the usually required survey be deemed unnecessary.

Builder,



Preston Vaughn Construction Company

5072365210

11-7-2023

To: City of Fairmont/Zoning

From: Preston Vaughn

311 N Prairie Ave Fairmont MN

Re: Variance 419 Webster Street Fairmont

Legal Description

Lot Five (5) and the West 32.8 feet of the East 48.8 feet of the South 16 feet of Lot Seven (7), and the East 32.8 feet of Lots Eight and Nine (8 and 9), all in Block One-half (1/2), First Extension of Ward's Central Addition to the City of Fairmont, Martin County, Minnesota, according to the map or Plat thereof on file and of record in the Office of the County Recorder in and for said County and State

AND ALSO

The West 81.6 feet of Lot Seven (7), and all of Lot Six (6), Block One Half(1/2) of First Extension of Ward's Central Addition to the City of Fairmont, as per map or plat thereof on file and of record in the Office of the Register of Deeds in and for Martin County, Minnesota,
EXCEPTING THEREFROM: A part of Lot Seven (7), Block One Half(1/2) of First Extension of Ward's Central Addition to the City of Fairmont, described as follows, to-wit:
Beginning at the Northwest corner of Lot Five (5), Block One Half (1/2), of First Extension of Ward's Central Addition to the City of Fairmont, as per map or plat thereof on file and of record in the Office of the Register of Deeds in and for said County and State; thence East 32.8 feet on the North line of said Lot Five; thence North 16 feet to the Southeast corner of Lot Eight (8), Block One Half (1/2) of said First Extension of Ward's Central Addition to the City of Fairmont; thence West 32.8 feet on the South line of said Lot Eight; thence South 16 feet to the point of beginning

To Whom It May Concern,

A proposal is being made, for the consideration and approval by the City of Fairmont, for the upgrade and extension of existing front porch at 419 Webster Street.

See attachment below for legal description/deed.

- The proposal includes the rebuilding of the deteriorating existing front deck, new stoop/deck to be the same height and maintain an existing setback of 13'. (per Article III Zoning District Regulations Sec. 26-153. - R-2 One-and two-family district)
- The new deck shall extend from the front door to 1' less than the Southeast corner of the home having a finished setback of 6' for deck. Existing house has a 5' setback. See provided plan.
- New deck shall not be fixed to existing home and shall be free standing.
- The new deck shall not have a lesser setback than any other front deck on the block and in some cases be greater.
- Lot at 419 Webster is a 50' lot. The setback of new deck extension

shall maintain more than a sum amount of 10% of lot size as a setback. (per sec 26-153 paragraph c)

- New deck shall not extend past existing structure into side lots. (Per Sec26-153 paragraph e.)

Article III Zoning District Regulations Sec. 26-153. - R-2 One-and two-family district

(4) Yard requirements:

a. Front yard, thirty (30) feet minimum. For single-family homes on lots of record where adjacent structures have less than the required setback, the front yard minimum setback shall be the average of adjacent structures. In no case shall the minimum front yard setback be less than twenty (20) feet.

b. Interior side yards shall equal ten (10) percent of lot width, with no more than ten (10) feet required.

c. Corner yard, twenty-five (25) feet minimum. On lots of record corner yard requirements shall not reduce buildable width of the lot to less than twenty-five (25) feet. In no case shall the minimum corner yard setback be less than fifteen (15) feet.

d. A rear yard with a depth of not less than twenty-five (25) percent of the lot depth is required.

e. Porch, open on three (3) sides, roofed or unroofed described as open air/non-screened above thirty-six (36) inches above the finished floor may extend into the required front/corner yards a distance not to exceed eight (8) feet; shall not in any case be closer than fifteen (15) feet from the front/corner property lines and cannot extend into the required interior side yards.

Sec. 26-6. - Nonconforming buildings, structures, and uses.

(8) Alterations may be made to a building containing lawful nonconforming residential units when they will improve the livability thereof, provided they will not increase the number of dwelling units or bulk of the building.

Thank you for your consideration.
Preston Vaughn

From: Preston Vaughn 311 North Prairie Ave Fairmont

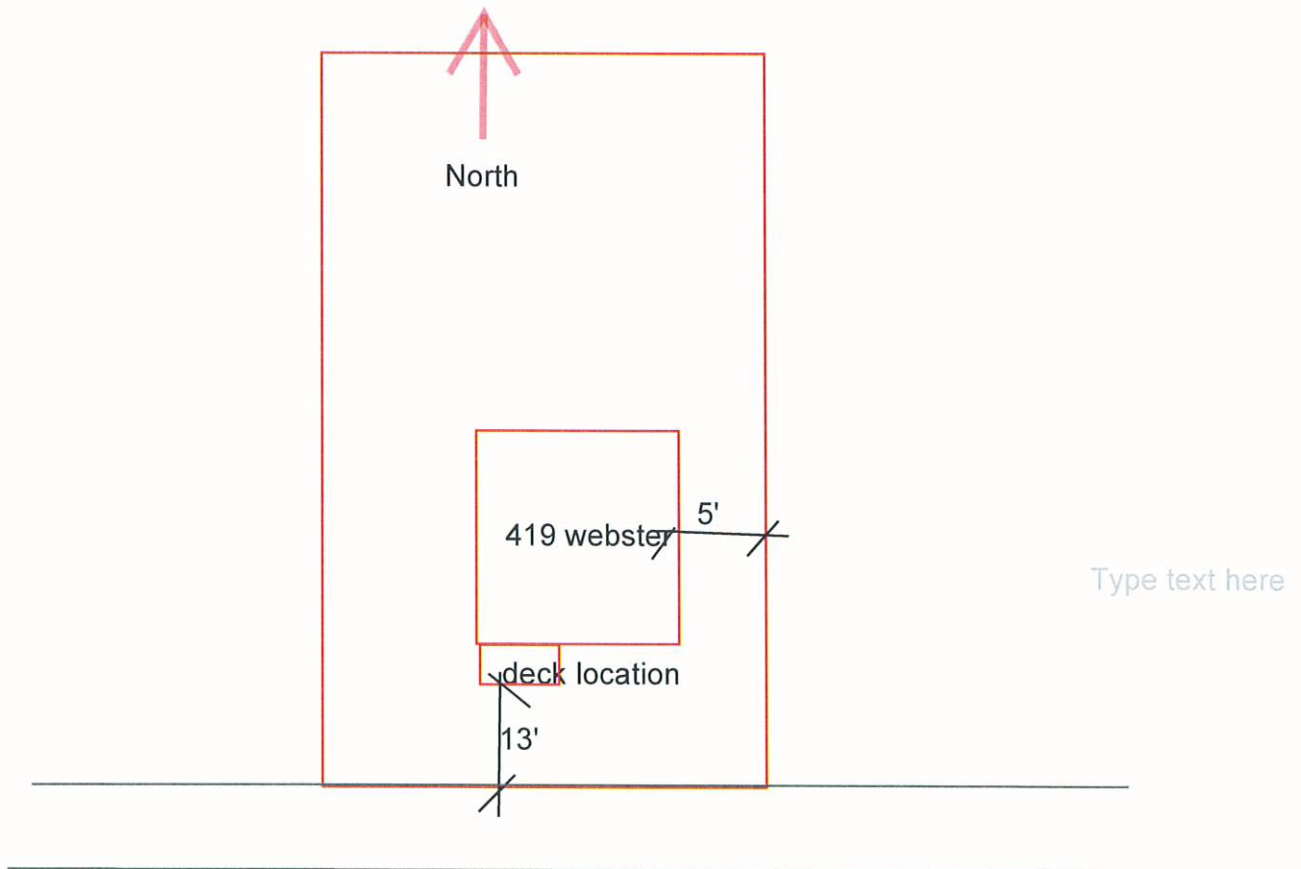
Re: **Setbacks for 419 Webster Street Fairmont/Proposed deck replacement**

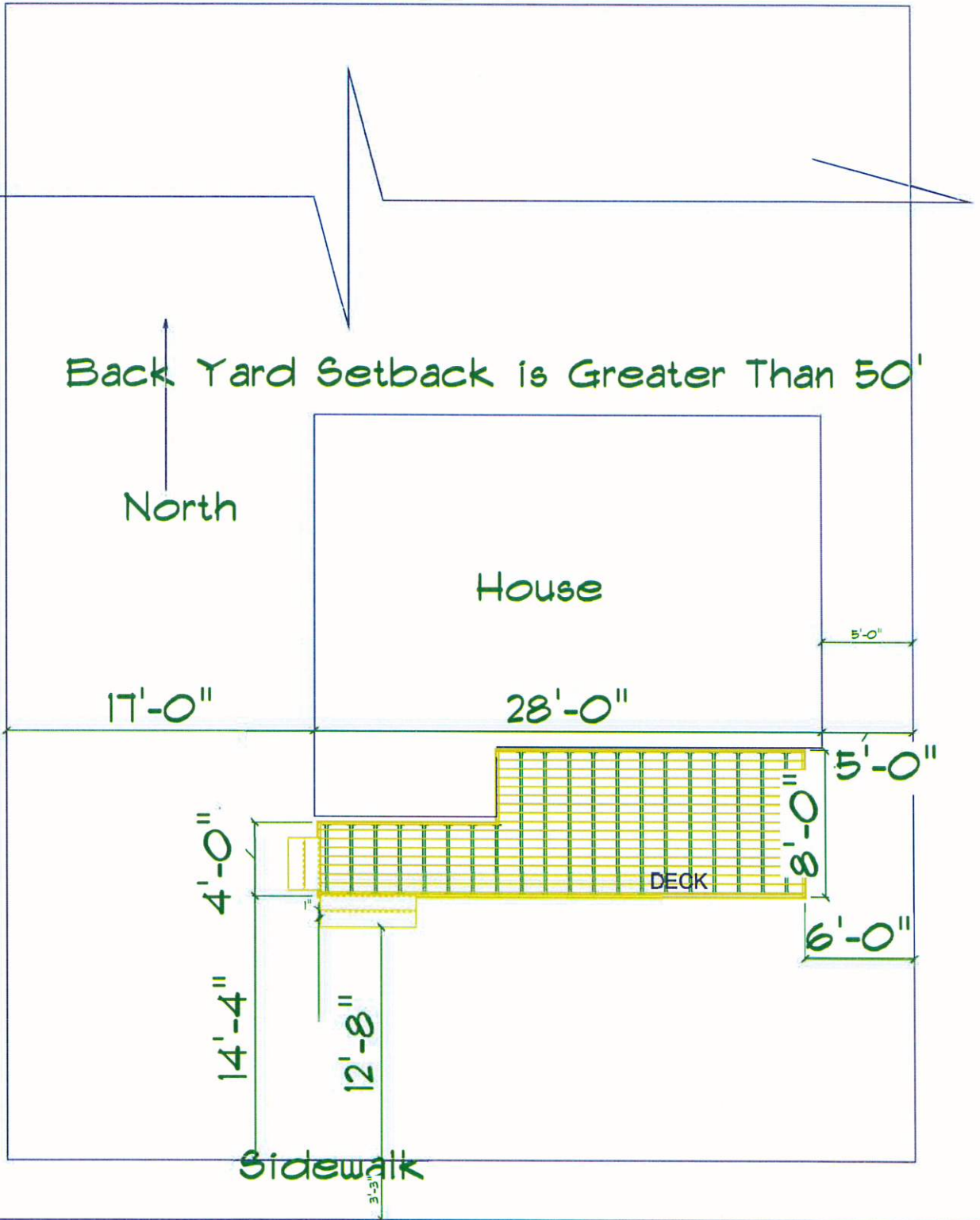
Lines were established based on the assumption the city sidewalks are in the correct position. Attempts to locate survey monuments were not successful.

Measuring from the west most corner lot, SE corner of South Prairie Ave and Webster Street.

250' from west most corner lot to Southeast corner of 419 webster indicates a 5' set back from side lot line to house. The new proposed deck would have a setback of 6' from East lot line.

The existing deck has a setback of 13' from front lot line, new proposed deck would maintain that setback.





419 Webster Street Fairmont, Mn

EXHIBIT A

Lot Five (5) and the West 32.8 feet of the East 48.8 feet of the South 16 feet of Lot Seven (7), and the East 32.8 feet of Lots Eight and Nine (8 and 9), all in Block One-half (1/2), First Extension of Ward's Central Addition to the City of Fairmont, Martin County, Minnesota, according to the map or Plat thereof on file and of record in the Office of the County Recorder in and for said County and State

AND ALSO

The West 81.6 feet of Lot Seven (7), and all of Lot Six (6), Block One Half(1/2) of First Extension of Ward's Central Addition to the City of Fairmont, as per map or plat thereof on file and of record in the Office of the Register of Deeds in and for Martin County, Minnesota,

EXCEPTING THEREFROM: A part of Lot Seven (7), Block One Half(1/2) of First Extension of Ward's Central Addition to the City of Fairmont, described as follows, to-wit:

Beginning at the Northwest corner of Lot Five (5), Block One Half (1/2), of First Extension of Ward's Central Addition to the City of Fairmont, as per map or plat thereof on file and of record in the Office of the Register of Deeds in and for said County and State; thence East 32.8 feet on the North line of said Lot Five; thence North 16 feet to the Southeast corner of Lot Eight (8), Block One Half (1/2) of said First Extension of Ward's Central Addition to the City of Fairmont; thence West 32.8 feet on the South line of said Lot Eight; thence South 16 feet to the point of beginning

GENERAL INFORMATION

Applicant: Travis Kanalas, TNT Fence
Property Owner: Robert & Chastity Ries
Purpose: To allow a 6-foot instead of 3 ½ -foot fence height requirement in the eastern front yard
Address: 501 Canyon Dr
Parcel Number: 23.174.0180
Zoning: R-1
Surrounding Uses: Low-density residential
Application Date: November 16, 2023
Review Date: December 5, 2023

BACKGROUND

This R-3 Multiple Family Residential lot is serviced by both Canyon Drive to the west and Fairlakes Avenue to the east. Surrounded by other single-family homes, the lot measures approximately 12,500 square feet in area and approximately 100 feet in width.

Because the lot has double frontage, a front yard exists in both the west and east of the home. This lot does not have a rear yard for zoning purposes.

The applicant requests a variance to allow a fence in the eastern front yard, to the rear of the home, to be placed 6 feet in height instead of the 3 ½ feet required in a front yard.

REVIEW OF VARIANCE STANDARDS

The Board of Zoning Appeals may hear requests for variances from the requirements of the zoning ordinance. The Board shall only grant variances where the applicant establishes that each of the following criteria required under Minnesota Statutes, section 462.357, subd. 6 are met for each requested variance.

Variance 1: To allow a 6-foot instead of 3 ½ -foot fence height requirement in the eastern front yard

(a) The variance is in harmony with the general purposes and intent of the zoning code;

The purpose of the fence height requirement is to provide uniform screening features in a neighborhood and to provide for clear sightlines around street corners. Staff find the request is in harmony with the general purposes and intent of the zoning code. A fence granted by variance was placed at the same height and distance to property lines as the proposed variance at the property immediately to the south. The fence is not proposed to be placed on the inside corner of a lot, so the a 25-foot vision triangle around the corner is not needed.

(b) The variance is consistent with the Comprehensive Plan;

The Fairmont Comprehensive Plan guides the use of this area to be traditional residential neighborhood, which supports single family homes.

Staff find that the request is consistent with the Comprehensive Plan.

(c) The property owner proposes to use the property in a reasonable manner not permitted by the zoning code;

Staff find the property owner proposes to use the property in a reasonable manner because the proposed fence is consistent with how fences have been treated along this double-frontage corridor. The City's Subdivisions code requires that when the City plats new neighborhoods, double-frontage lots are not allowed because of the problems associated with defining yards and access. The property owner's request to use what would be their rear yard is reasonable.

(d) The plight of the landowner is due to circumstances unique to the property not created by the landowner; and

Staff find that the circumstance of the City platting for double-frontage lots is unique and is not created by the property owner.

(e) The variance, if granted, will not alter the essential character of the locality.

Staff's find the request will not alter the essential character of the locality because fences have been treated similar in the area.

RECOMMENDATION

Staff's findings support approval of the requested variance to allow a to allow a 6-foot instead 3 ½ fence height requirement in the eastern front yard. The Board of Zoning Appeals may grant the variance or deny the variance. The Board may recommend to the applicant in addition to denial that the applicant amend their proposal and apply for a new variance, if the Board so desires.

Respectfully submitted,

Peter Bode

Planner & Zoning Official

Attached: Variance Criteria Guidance
BZA Resolution 2023-7
Application for variance
Satellite photo of corridor

Variance Criteria Guidance – City of Fairmont

The underlined questions below represent the required statutory criteria, pursuant to Minn. Stat. § 462.357, subd. 6, which must be considered and answered affirmatively in order for the Board of Zoning Appeals or the City Council, as applicable, to grant a variance application. For purposes of establishing a record, a majority of the members of the governing body must agree upon the answers given to each question below. The following guidance is intended to assist the governing body in developing its written findings on each of the below underlined statutory criteria:

1) Is the variance in harmony with the purposes and intent of the ordinance?

Some of the more common purposes and intent of zoning ordinances, which may be considered in evaluating this criterion include, but are not limited to, the following:

- a. To promote the public health, safety, morals, comfort and general welfare;
- b. To conserve and protect property and property values;
- c. To secure the most appropriate use of land; or
- d. To facilitate adequate and economical provisions for public improvements.

2) Is the variance consistent with the Comprehensive Plan?

What is the future land use category for the subject property?

Does the request align with this category and other provisions of the Comprehensive plan?

3) Does the proposal put property to use in a reasonable manner?

Would the request put the property to use in a reasonable way but cannot do so under the rules of the ordinance? It does not mean that the land cannot be put to any reasonable use whatsoever without the variance. For example, if the variance application is for a building too close to a lot line or does not meet the required setback, the focus of this factor is whether the request to place a building there is reasonable. For example, is it reasonable to put a building in the proposed location?

4) Are there unique circumstances to the property not created by the landowner?

Are there unique physical characteristics of the property not caused by the landowner? The uniqueness generally relates to the physical characteristics of the particular piece of property, that is, to the land and not personal characteristics or preferences of the landowner (i.e. size of the lot, shape of the lot, layout of the building, topography, trees, wetlands, etc.). For example, when considering the variance for a building to encroach or intrude into a setback, the focus of this factor is whether there is anything physically unique about the particular piece of property, such as sloping topography or other natural features like wetlands or trees?

5) Will the variance, if granted, retain the essential character of the locality?

If granted, will the use of the land or the structure be of appropriate scale, in a suitable location, or otherwise be consistent with the surrounding area? For example, when thinking about the variance for an encroachment into a setback, the focus is how the particular building will look closer to a lot line and if that fits in with the character of the area.

6) Are there other considerations for the variance request besides economics?

State statute specifically notes that economic considerations alone cannot create practical difficulties. Rather, practical difficulties exist only when the statutory factors are met.

If there are affirmative answers to questions 3, 4, and 5, the application then satisfies the practical difficulties test, and if the answer is yes to this question, then in that event, the application may proceed if the other criteria (1 and 2) above are also met.

If there are not affirmative answers to questions 3, 4, and 5, then the practical difficulties test is not satisfied, and if the answer to this question is no, then in that event, the application must be denied for failure to meet the practical difficulties test.

Other Considerations:

Neighborhood opinion. Neighborhood opinion alone is not a valid basis for granting or denying a variance request. While the BZA or City Council, as applicable, may feel their decision should reflect the overall will of the residents, the task in considering a variance request is limited to evaluating how the variance application meets the above statutory factors. Residents can often provide important facts that may help the governing body in addressing the above questions, but unsubstantiated opinions and reactions to a request do not form a legitimate basis for a variance decision.

Conditions. A city may impose a condition when it grants a variance so long as the condition is directly related to and bears a rough proportionality to the impact created by the variance. For instance, if a variance is granted to exceed an otherwise applicable height limit, any conditions attached should presumably relate to mitigating the effect of excess height.

CITY OF FAIRMONT, MINNESOTA
BOARD OF ZONING APPEALS RESOLUTION BZA #2023-7

A RESOLUTION BY THE BOARD OF ZONING APPEALS OF THE CITY OF FAIRMONT,
MINNESOTA, APPROVING A VARIANCE REQUEST AT 501 CANYON DRIVE

- WHEREAS, ROBERT RIES (the “Applicant”) is the owner of a parcel of land located at 501 CANYON DRIVE (PID No. 23.174.0180) in the City of Fairmont; and
- WHEREAS, the above-referenced property is legally described by Exhibit A, which is attached hereto and incorporated herein by reference (the “Property”); and
- WHEREAS, Fairmont City Code, Chapter 26-206(a) sets the fence height maximum requirement in front yards at 3 ½ feet; and
- WHEREAS, the Applicant desires to and has requested a variance to the above standards in order to place a fence 6 feet in height instead of the 3 ½ feet required; and
- WHEREAS, pursuant to Minnesota Statutes, section 462.357, subd. 6, the Zoning Board of Appeals may only grant applications for variances where practical difficulties in complying with the zoning code exist and each of the following criteria are satisfied (see also City Code Section 26-101):
- (a) The variance is in harmony with the general purposes and intent of the zoning code;
 - (b) The variance is consistent with the Comprehensive Plan;
 - (c) The property owner proposes to use the property in a reasonable manner not permitted by the zoning code;
 - (d) The plight of the landowner is due to circumstances unique to the property not created by the landowner; and
 - (e) The variance, if granted, will not alter the essential character of the locality; and

WHEREAS, the Board of Zoning Appeals held a public hearing, following required public notice thereof, on December 5, 2023, and has reviewed the requested variances and has considered the required statutory variance criteria identified in the staff report and proposed findings with respect to such criteria.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF ZONING APPEALS OF THE CITY OF FAIRMONT, MINNESOTA, that the Fairmont Board of Zoning Appeals has duly considered the required criteria contained in state law and City Code as applicable to the above-requested variance regarding the property legally described in Exhibit A, and hereby adopts the findings of fact contained in the staff report regarding the same, which is attached hereto and incorporated herein by reference as Exhibit B.

BE IT FURTHER RESOLVED that the requested variance to allow a 6-foot instead of 3 ½ -foot fence height maximum requirement in the front yard is hereby approved based upon the above-referenced adopted findings.

PASSED by the Board of Zoning Appeals of the City of Fairmont this 5th day of December, 2023.

Mike Klujeske, Chair

Adam Smith, Vice Chair

VOTE: ___ DAVIS ___ JACOBSON ___ KLUJESKE
 ___ KRUEGER ___ SMITH

EXHIBIT A

Property Legal Description:

INSERT LEGAL DESCRIPTION

EXHIBIT B

Findings of Fact:

INSERT STAFF REPORT WITH CRITERIA

CITY OF FAIRMONT
Planning & Zoning
Application Form

NOTE TO APPLICANT: This is a comprehensive application form. Only those items related to your specific type of development are to be completed. All items applicable must be included prior to acceptance of the application.

Name of Applicant: Travis Karalas
TNT fence Address: 211 Dugan St S Phone#: 386-416-8750
welcome, mn
 Street Address of Proposal: 501 Canyon Dr
 Legal Description of Property: Block 3 Lot 5 Martin Park Estates
 Existing Use of Property: Residential - 1
 Proposed Use of Property: Residential - 1 with privacy fence

Type of Application	Fee	Submission Requirements (Attached)
<input type="checkbox"/> Appeal/Code Amendment	\$150.00	7
<input type="checkbox"/> Administrative Appeal	50.00	8
<input type="checkbox"/> Conditional Use Permit	150.00	4, 6(d-g)
<input type="checkbox"/> Home Occupation Permit	30.00	9
<input type="checkbox"/> Minor Plat	90.00	2(a), 5 (a-b)
<input type="checkbox"/> Planned Unit Development	150.00	1, 4, 6(d-g)
<input type="checkbox"/> Preliminary Plat	150.00	5 (b), 6
<input type="checkbox"/> Rezoning	150.00	1
<input checked="" type="checkbox"/> Variance	90.00	2,3

I HEREBY CERTIFY THAT THE INFORMATION AND EXHIBITS HERewith SUBMITTED ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

Robert E RILEY
 Owner's Name(Printed)

[Signature]
 Owner's Signature

Travis Karalas (TNT fence)
 Applicant's Name (Printed)

[Signature]
 Applicant's Signature

POV
CK #
1280

City Staff Use Only

DATE FILED: _____
 DATE FEE PAID: _____
 MEETING DATE: _____
 NOTICES SENT (DATE): _____
 NOTIFICATION OF EXTENSION (LETTER SENT): _____



Phone (507) 238-9461

CITY OF FAIRMONT – 100 Downtown Plaza – Fairmont, MN 56031
www.fairmont.org ♦ citygov@fairmont.org

Fax (507) 238-9469

ZONING PERMIT

SITE PLAN REQUIRED – PERMIT FEE: \$25

DATE: 10/19/23 APPLICANT: Tot fence

ADDRESS: 501 Canyon Dr ZONE: R-1

TYPE OF PERMIT:

Accessory Structure Fence Sign Steps Deck/Landing

ACCESSORY STRUCTURE / STEPS / DECK / LANDING structures larger than 200sqft need a building permit
decks, steps, and landings attached to a home or higher than 30in need a building permit

LENGTH: _____ ft WIDTH: _____ ft TOTAL AREA: _____ sqft

HEIGHT: _____ ft STRUCTURE USE: _____

Structures should be anchored on all four corners.

FENCE fences higher than 6ft need a building permit

HEIGHT: 6 ft MATERIAL: Cedar

SIGN pylon and ground signs higher than 10ft at center need a building permit

TYPE OF SIGN:

ELECTRONIC:

Pylon Ground Building

Yes No

HEIGHT (ground to bottom): _____ ft HEIGHT (ground to highest point): _____ ft

SURFACE AREA: _____ sqft MATERIAL: _____

I understand that I need to call Gopher State One Call at 1-800-252-1166 before digging.

I understand and agree to comply with all city ordinances, state and federal law, and building codes regulating this permit.

Applicant's Signature

Zoning Official's Approval Signature
Date Approved: _____

FAIRLAKES 3' AVENUE EAST

501 Canyon Drive

John Tietema

Block 3, Lot 5

Martin Park Estates, First Addition

3'

10'

3'

North

UTILITY EASEMENT

50'-4"

4'-4"

36'

South

GARAGE

DRAWING NO. 10-L

10'

22'

SIDEWALK

DRIVEWAY

30'

501 CANYON DRIVE WEST

Cover Letter for 501 Canyon Drive Fairmont, MN

1. Is the variance in harmony with the purposes and intent of the ordinance?

Yes it is, The purpose for variance is to allow installation of a 6ft cedar fence instead of the allowed 3.5 feet.

The subdivisions code prohibits the City from establishing double frontage lots because of the complications double frontage causes. Section 24.207(f) "Through lots. Through lots with double frontage will not be allowed".

2. Is the variance consistent with the comprehensive plan?

Yes it is, The future land use would be R-1 single family, it aligns with all provisions in plan.

3. Does proposal put property to use in a reasonable manner?

Yes, so That the property owner can use their backyard as a normal back yard

4. Are there unique circumstances to the property not created by the land owner?

The Subdivisions code prohibits the City from establishing double frontage lots because of the complications double frontage causes. Section 24.207(f) "Through lots. Through lots with double frontage will not be allowed."

5. Will the variance, if granted, retain the essential character of locality?

Yes it will, as the adjacent neighbor to the south already has a 6ft Vinyl Privacy fence in the same layout as we've proposed. She as well went through variance process and was granted permission to install hers.

6. Are there other considerations for the variance requests besides economics ?

The physical need for this variance is so that the homeowner can use their backyard as a normal backyard once approved.

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