



MEMORANDUM

To: Mayor Stille and St. Anthony Village City Council
City Manager Yunker

From: Stephen Gritman, City Planner

Date: City Council Meeting – November 9, 2021

NAC Project No. 323.01 – 20.05

Request: Request for Variance to Front Yard Fence Setback for 6 Foot Tall Fence

Property Address: 3501 Maplewood Drive

Property PID: 06-029-23-11-0093

STAFF and PLANNING COMMISSION RECOMMENDATION

The applicant proposes to construct a fence to enclose a proposed swimming pool on the west side of their property at the above address. Fences are allowed to be up to 6 feet in height in side and rear yards (behind the front building setback line), and 4 feet in height in front yards. The applicant is proposing to extend the fence toward the Maplewood Drive property line, into the setback area that requires a height of no more than 4 feet, but build it at the 6 foot height. That encroachment of a 6 foot high fence requires approval of a variance.

The proposed encroachment is approximately 8 feet into the required setback.

Staff has reviewed for height, use, other setbacks, and impervious surface. One of the prior issues, combined with the setback/height request, was impervious surface on the lot, given the new pool, pool deck, and existing rear yard shed. The applicant has reduced the size of the proposed pool, and will be removing the existing shed to meet the impervious surface standards of the code.

The Planning Commission recommended approval on a unanimous vote, suggesting that the encroachment aspect of the proposal was most persuasive, acknowledging that a 6-foot tall fence is allowed in many areas, and a 5-foot tall fence is a requirement for swimming pool protection.

GENERAL INFORMATION

Applicant: Anthony Farah
Owner: Anthony and Alexia Farah
Location: 3501 Maplewood Drive
Existing Land Use: Low-Density Residential
Zoning: R-1 Single Family District
Surrounding Land Use / Zoning: North: Low-Density Residential / Zoned: R-1 Single Family District
East: Low-Density Residential / Zoned: R-1 Single Family District
South: Low-Density Residential / Zoned: R-1 Single Family District
West: Low-Density Residential / Zoned: R-1 Single Family District
Deadline for Agency Action: Application Complete Date: 7/06/2021
60 Days: 9/04/2021
Letter Sent: No
120 Days: 11/03/2021

ANALYSIS

1. Background



The applicant is proposing to construct a fence to enclose a future swimming pool. The fence regulations require that fences closer than the front building line on a single family parcel may be no greater than 4 feet in height. The applicant's preferred design would be to establish a fence of 6 feet in height to increase privacy.

The applicant also notes that two properties to the east of the subject property have fences of 6 feet that encroach into the front yard setback,

similar to the situation he finds himself in. The parcel in question is shown on the zoning map above, is 80 feet in width and approximately 10,560 square feet in area.

The zoning ordinance sets out a series of criteria necessary to qualify for variance consideration. Those criteria are found in §152.245, (C) *Evidence of the Zoning Chapter*, and are included in this report for reference below. The criteria can be summarized as whether there are unique conditions on the property that contribute to creation of a practical difficulty in putting the property to what would otherwise be considered a reasonable use – reasonable

use is often thought of as one that would be common and acceptable in the area. Variances may not be entirely economic in nature, nor be the result of the actions of the applicant.

In this case, the property owner has a rear yard that is approximately 40 feet wide east to west, and 50 feet deep north to south. The applicant is proposing a pool of 36 feet in length, and up to 22 feet in width. This would, with the removal of the shed, leave approximately 300 square feet of potential decking around the pool. There is no specific standard or requirement for pool decking, although the decking (concrete or otherwise) requires a zoning permit from the City. It would be up to the applicant to demonstrate that the proposed pool decking would not exceed the amount of impervious surface allowance for the property.

For variance consideration, there is a two-step test. First is the definition of "reasonable use". There is no specific presumption that a pool of any particular size is an integral component of residential use.

The second test is whether there are unique physical conditions on the property that require consideration of a variance to reach the reasonable use as defined. The parcel itself is a typical residential parcel of common dimensions and use.

For both the reasonable use and unique conditions arguments, in viewing properties along the north side of Maplewood Drive, each of the principal buildings encroach into the setbacks adjoining that road to a point equal to, or much closer than, the applicant's property. The applicant's proposed encroachment with the fence would be equal to the current setback of the front porch, which is approximately 22 feet from the right of way line, an encroachment of, at most, 8 feet into the required 30 foot setback.

Due to the angle of the house on the lot, the fence would equal this encroachment, requiring the 8 foot variance for a 6-foot tall fence. It is noted that a 4-foot tall fence in this location would be allowed without variance. As discussed, this encroachment is essentially the same as other structures on the same frontage for 1-2 blocks in either direction, or in some cases, much less than the setbacks of the homes to the west, which appear to be less than 15 feet from the right of way.

Combined with the angle of the house, the current front porch location, and the homes on adjoining lots, staff believes that the proposed 6 foot tall fence meets the tests for variance with an encroachment of up to 8 feet into the required 30 foot setback from Maplewood Drive. This finding is conditioned on the applicant's ability to prove compliance with the impervious surface standards including existing improvements on the lot, removal of the shed, and both the proposed pool and any pool deck that is to be constructed. The applicant will need to document those square footages as a part of the pool and zoning permits required for construction.

2. Representative Codes Referenced.

Title XV Land Usage, Chapter 150 Zoning Code, Section 150.072, Fence Regulations.

Title XV Land Usage, Chapter 152 Zoning Code, Section §152.245 VARIANCES.

3. Criteria for and Consistency with Criteria for Variance Approval. Title XV Land Usage, Chapter 152 Zoning Code, Section §152.245, (C) *Evidence*, lists the criteria the City Council must consider in determining whether to grant or deny a variance.

Request: Request for an 8-foot variance from the required side yard setback. The applicable criteria include:

1. *The subject matter of the application is within the scope of this section.*
2. *Strict enforcement would cause practical difficulties because:*
 - a. *The property owner proposes to use the property in a reasonable manner not permitted by the zoning code;*
 - b. *The plight of the property owner is due to circumstances unique to the property not created by the property owner;*
 - c. *The variance, if granted, will not alter the essential character of the locality; and*
 - d. *Economic considerations alone are not the basis of the practical difficulties.*
3. *The variance, if granted, would be consistent with the City's comprehensive land use plan.*
4. *The granting of the variance is in harmony with the general purposes and intent of the zoning code.*

SUMMARY AND STAFF/PLANNING COMMISSION RECOMMENDATION

Side Yard Setback Variance. Staff and Planning Commission recommend approval of the requested front yard fence height encroachment variance at 3501 Maplewood Drive based on the following findings:

- A. The applicant is able to construct a swimming pool, pool deck, and privacy fencing within the proposed 8 foot setback encroachment.
- B. A pool of the size, along with any associated construction such as a pool deck, that would encroach into the front yard will require additional verification of compliance with the terms of the City's impervious surface maximum for residential lots of this size.
- C. The applicant has shown unique conditions on the property that interfere with putting the property to a reasonable residential use, with reasonable use being defined in this case as the significant encroachments toward Maplewood Drive that exist on most of the surrounding properties to the east and west.
- D. Circumstances that would lead to variance approval are the result of the actions of prior owners, and those owners in the neighborhood, and not the actions of the applicant.

RECOMMENDED ACTION

Decision 1. Variance to Side Yard Setback

- 1. Motion to approve the request for a variance to the front yard setback for construction of a fence of up to 6 feet in height, based on findings identified in the resolution.**

ALTERNATIVE ACTIONS

2. Motion to recommend denial of the variance as requested. In the event of a recommendation for denial, the City Council should identify findings supporting the action for the record.
3. Request Additional Information and Table Action, subject to the submission of additional information from staff and/or applicant.

ATTACHMENTS

Exhibit A: Application and Supporting Material