

2002-01-1

BEFORE THE BOARD OF ZONING APPEALS  
TOWN OF WASHINGTON GROVE

In the matter of	:		
Paul Andrews and Vickie Andrews 7 Daylily Lane	:	Case No. 02-01	2002-01
	:		
Michael Kane and Gail Kane 5 Daylily Lane	:	Case No. 02-02	2002-02

OPINION AND ORDER

Paul Andrews and Vickie Andrews, owners of a detached, single family dwelling unit located at 7 Daylily Lane, and Michael Kane and Gail Kane, owners of a detached, single family dwelling unit located at 5 Daylily Lane, have requested a variance from the requirements of Section 3.328(a) of the Washington Grove Zoning Ordinance.<sup>1</sup> Because the variance requests from the Andrews and Kanes (Applicants) raise common questions of fact and law, the Board of Zoning Appeals heard the Applicants' variance requests as a consolidated matter.

The Board conducted a public hearing on December 14, 2000.

Based on the evidence admitted into the record at this public hearing, the Board makes the following findings of fact and conclusions of law:

1. Notice of Hearing. The Board finds that a notice of public hearing to consider Applicants' variance request was given in compliance with Section 11.311. A copy of the Notice of Public Hearing is attached.

2. Denial of Building Permit. The Applicants requested a building permit to construct a 6'6" fence on the lot line between Towne Crest Apartments and Applicants' property at 5 Daylily Lane and 7 Daylily Lane. Applicants' building permit request was denied by George

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<sup>1</sup>Section references are to Article VII of the Washington Grove Code of Ordinances.

O'Connor, member of the Washington Grove Planning Commission, by letter dated October 4, 2002. On behalf of the Planning Commission, Mr. O'Connor denied the Applicants a building permit because the fence sought to be constructed by the Applicants was 6'6", six inches above the maximum height permitted under Section 3.328. Applicants seek a variance from the maximum fence height permitted under Section 3.328 in order to construct a 6'6" fence on the property line between Applicants' property and Towne Crest Apartments..

3. Variance Requests Is from Development Standards of the Zoning Ordinance.

Section 2.2 limits a variance request to relief from requirements of the Zoning Ordinance governing development standards, including the height of a building. Under Section 4.2, a building or structure is defined as a "shelter or construct including a house, shed, deck, or **fence** . The terms building and structure are interchangeable in this article." (emphasis added). Applicants variance request, therefore, is in compliance with Section 2.2.

4. Ownership. The Applicants are the owner of 5 Daylily Lane and 7 Daylily Lane, and are, therefore, in compliance with Section 12.2 (a)(3).

5. Not Contrary to the Public Interest. In order to grant a variance, Applicants must demonstrate that the variance, if granted, would not be contrary to the public interest. *See* Section 12.2 (a)(4). Applicants have testified that land on the Towne Crest side of their proposed fence is significantly higher than the land on Applicants' side of the proposed fence. This topographical difference is apparently the result of grading performed by the owners of Towne Crest Apartments. Applicants testified that significant foot traffic occurs on the Towne Crest side of the proposed fence and that a 6' fence is insufficient to protect the privacy interests of Applicants, because individuals on the Towne Crest side may look into Applicants' yard. Therefore, the Board finds that granting a variance from the maximum height allowed for a fence

under Section 3.328 is not contrary to the public interest because it is necessary to protect the privacy interests and residential uses of Applicants' property.

6. Practical Difficulty. A variance cannot be granted unless the applicant demonstrates that complying with the Zoning Ordinance (*i.e.*, the 6' height limitation for fences in this case) would be unnecessarily burdensome. *See* Section 12.2 (a)(5). Applicants have testified that the creation of natural barriers, such as trees and shrubbery, have proven unsuccessful in maintaining their privacy. The Board finds that Applicants' properties are single-family detached dwellings and that Towne Crest Apartments contain to at least 100 rental units. The Board, therefore, finds that compliance with the 6' height limitation for fences would be unnecessarily burdensome to Applicants.

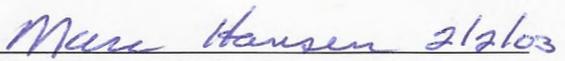
7. Extraordinary Characteristics. Applicants must demonstrate that the condition which forms the basis for granting the variance arises exclusively from the dimension, shape, topography, or other extraordinary characteristics of the lot. *See* Section 12.2 (a)(6). Applicants have testified and the Board finds that the land on the Towne Crest side of the proposed fence is significantly higher than the land on the Applicants' side of the proposed fence. The Board further finds that there is significant activity, including foot traffic, from the Towne Crest Apartment complex near Applicants' property line. The Board concludes, therefore, that the decision which forms the basis for granting the variance arises from extraordinary characteristics regarding the location of Applicants' lot.

8. Uniqueness. The Board must find that the condition which forms the basis for granting the variance is peculiar to the lots in question and is not common to other lots in the vicinity. *See* Section 12.2 (a)(7). Applicants testified and the Board finds that 5 Daylily Lane and 7 Daylily Lane were previously part of a single lot. The Board concludes, therefore, that the

condition that forms the basis for granting a variance is peculiar to the lots in question.

9. In granting a variance, the Board may only permit the least departure from the limitations of the Zoning Ordinance necessary to give relief to the Applicants. *See* Section 12.2(d). The Applicants testified and the Board finds that an additional 6" in height is the minimum necessary to protect the privacy interest of Applicants. The Board concluded that a 6" variance is the minimum necessary to protect the privacy interest of Applicants.

Applicants, having demonstrated by a preponderance of the evidence, that their variance request meet the requirements of the Zoning Ordinance, the Board resolves that the Applicants' variance request is **granted**.

  
Marc Hansen, Chair  
Board of Zoning Appeals

THE BOARD OF ZONING APPEALS  
TOWN OF WASHINGTON GROVE

Minutes

The Board of Zoning Appeals met on December 14, 2002, at 10:00 am. in the Town Hall to conduct a public hearing on the variance requests of Paul and Vickie Andrews, 7 Daylily Lane, and Michael and Gail Kane, 5 Daylily Lane, for a variance from the height restrictions of Section 3.328 of the Washington Grove Zoning Ordinance.

Christine Dibble, Ralph Hurst, and Marc Hansen sat as the Board.

With the consent of the other members, Marc Hansen agreed to act as chair of the Board.

After conducting a public hearing on the variance applications of the Andrews and Kanes, the Board adopted by unanimous consent a resolution granting the variance applications for the reasons set out in the attached Opinion and Order.

Respectfully submitted,

  
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Marc Hansen, Chair  
Board of Zoning Appeals

Approved: 2/2/03