

3. Variance Request is from Development Standards of the Zoning Ordinance.

Section 2.2 limits variance requests to relief from requirements of the Zoning Ordinance governing development standards, including the height of fences and setback requirements.

Applicants' variance request, therefore, is in compliance with Section 2.2.

4. Ownership. The applicants are the owners of the lot and improvements located at 406 Grove Avenue and are, therefore, in compliance with Section 12.2(a)(3).

5. Extraordinary Characteristics/Uniqueness. Applicants must demonstrate that the condition that forms the basis for granting the variance arises exclusively from the dimension, shape, topography, or other extraordinary characteristics of the lot. The Board must also find that the condition that forms the basis for granting the variance is peculiar to the lot in question and is not common to other lots in the vicinity. *See* Sections 12.2(a)(6) and (7). Although applicants' garden is impressive, the Board cannot find that it either is peculiar to applicants' lot nor does it arise from a problem related to the dimension, shape, topography, or other characteristic of the lot. In fact, the problem applicants seek to remedy arises from a deer population that impacts, in one degree or another, all of the property in the Town of Washington Grove. Accordingly, the Board concludes that applicants have failed to carry their burden of proof and persuasion that their variance request arises from a problem related to an extraordinary characteristic of their property and is unique to their property.

Applicants have suggested that the deer barrier erected on their property is not a fence because it is largely invisible to the eye. *See* Exhibit 2 (photographs of applicants' property). The Board finds, as did the Planning Commission, that applicants' deer barrier is a fence because it is a barrier intended to prevent incursion or escape. The Board finds that this definition of a fence is consistent with the ordinary and usual meaning of the term fence.

Because the Board did not find that the applicants' variance request arises out of a problem related to an extraordinary characteristic of applicants' lot, nor is it unique to applicants'

lot, the Board has not found it necessary to address the other criteria necessary for granting a variance such as a finding that granting the variance would not be contrary to the public interest and that the applicant has demonstrated that complying with the Zoning Ordinance would be unnecessarily burdensome.

Because the applicants have failed to carry their burden of proof and persuasion with respect to some of the criteria that the Board must find in order to grant a variance under Section 12.2, the Board resolves that applicants' variance request is denied.

Marc P. Hansen
Marc P. Hansen, Chair
Board of Zoning Appeals

5/7/05
Date

I:\GJ\HANSEM\feinglass=opinion and order.doc

P.O. Box 305
Washington Grove, Maryland 20880
May 23, 2005

John G. Compton, Mayor
Members of the Washington Grove Town Council
Washington Grove, Maryland 20880

Dear Mayor Compton and Members of the Town Council:

I am writing on behalf of the Washington Grove Board of Zoning Appeals to request that the Town Council amend the Washington Grove Code of Ordinances as soon as possible to address (a) fencing surrounding swimming pools and (b) the deer problem.

Fencing surrounding swimming pools. Under Article VII, Section 3.328 of the Ordinances, fences that surround swimming pools and that are located on lot lines may not be above four feet tall. The Board believes that taller fences will better protect the health and safety of the public by more effectively deterring trespass into swimming pool areas.

The Board strongly recommends that the Town Council review applicable County law¹ in setting standards for pool construction. The Washington Grove Code of Ordinances could state that Chapter 51 is applicable in the Town, with the condition that the fence height limitation in the Town Ordinances will not apply if Chapter 51 requires a higher fence. Alternatively, Council could amend the Ordinances to require that (a) all permanent above- or below-ground swimming pools be enclosed by fences, and (b) fences enclosing swimming pools be at least five feet high², no matter how close the fence is to lot line(s). So that Article VII, Section 3.328 does not conflict with this amendment, the Board further recommends that the Town Council exempt fences located on lot lines and enclosing swimming pools from the 4-foot-high maximum height restriction described in Section 3.328.

Deer fencing. The Board requests that the Town Council should consider what steps might be taken by the Town to address the deer problem. On April 23, 2005, the Board denied the request

¹ Chapter 51 of the Montgomery County Code, Swimming Pools, is available at [http://www.amlegal.com/mcmd_nxt/gateway.dll/Maryland/Montgomery%20County/Montgomery%20County%20Code/part00004/chapter00095.htm?f=templates\\$fn=altmain-nf.htm\\$q=%5Bbranch%2C100%3A%5Bdomain%3A%5Bband%3A%5Bstem%3A%5Bband%3Afences%20pools%5D%5D%5D%5Bsum%3A%5Bstem%3Afences%20pools%5D%5D%5D\\$x=Server#LPHit1](http://www.amlegal.com/mcmd_nxt/gateway.dll/Maryland/Montgomery%20County/Montgomery%20County%20Code/part00004/chapter00095.htm?f=templates$fn=altmain-nf.htm$q=%5Bbranch%2C100%3A%5Bdomain%3A%5Bband%3A%5Bstem%3A%5Bband%3Afences%20pools%5D%5D%5D%5Bsum%3A%5Bstem%3Afences%20pools%5D%5D%5D$x=Server#LPHit1)

²Chapter 51, section 16 of the Montgomery County, Maryland Code requires fences surrounding swimming pools to be five feet high or higher.

John G. Compton, Mayor
Members of the Washington Grove Town Council
May 23, 2005

of Carolyn Feinglass and Corinne Vincelette to permit deer fencing along lot lines of their property. On May 1, 2005, Ms. Feinglass and Ms. Vincelette wrote you to request that you amend the Ordinances "to permit relief to the citizens of Washington Grove who have gardens that are being decimated by deer." In their letter, they added that members of the Board would "favor action on the part of the Council."

To clarify, the Board has no specific recommendations but does favor that Town Council consider taking measures to address the deer population in the Grove. If the Council elects to permit deer fencing that exceeds the current height limits of the Ordinance, the Board suggest the Council consider:

- whether it should only be allowed after the property owner has exhausted other available deer control remedies;
- what height and construction limitations, if any, should be placed on the fencing;
- whether there are any locations where deer fencing should not be permitted (e.g., on or near lot lines, near the intersection of street lines, adjacent to avenues and to other public land, front yards etc.)
- whether deer fencing that exceeds the current height limits of the Ordinance should be permitted around the community garden located off of Grove Road

Thank you very much for your consideration of these issues.

Very truly yours,

Christine Dibble

Christine Dibble

cc: John McClelland, Chairman, Planning Commission

The Board of Zoning Appeals of Washington Grove
Minutes

The Board of Zoning Appeals met on April 23, 2005, at 9:30 a.m. in the Town Hall to conduct a public hearing on the variance request of Carolyn Feinglass and Corinne Vincelette, 406 Grove Avenue, for a variance from the rear yard and front yard setbacks and fence height requirements of the Washington Grove Zoning Ordinance.

Christine Dibble, Charles Challstrom, and Marc Hansen sat as the Board.

After conducting a public hearing on the variance application of Carolyn Feinglass and Corinne Vincelette, the Board adopted, by unanimous consent, a resolution denying the variance application for the reasons set out in the attached Opinion and Order.

Respectfully submitted,

Marc Hansen, Chair
Board of Zoning Appeals

Approved: Marc Hansen

Date: 5/17/05