

foot-high dog-ear wood fence. The Planning Commission denied the building permit application by letter dated November 2, 2016, because the proposed fence does not comply with Section 3.327, Fences, which requires that fences erected on a lot line may not exceed four feet in height.

3. Variance Request is from Development Standards of the Zoning Ordinance. Section 12.2(a)(2) limits variance requests to relief from requirements of the Zoning Ordinances governing development standards, including the height of a building. Section 4.2, Definitions, specifies that “building” includes fences. Petitioners’ variance request is in compliance with Section 12.2(a)(2).

4. Ownership. Petitioners are the owners of 112 Chestnut Road and are therefore in compliance with Section 12.2(a)(3).

5. Not Contrary to the Public Interest. In order to grant a variance, a petitioner must demonstrate that the variance, if granted, would not be contrary to the public interest. *See* Section 12.2(a)(4). The proposed fence would be located along and inside the property lot line of the rear of their property, which adjoins Hickory Road. On the other side of Hickory Road is the rear of the Town’s Commercial Corner, including more than 10 parking spaces. Petitioners testified that a four-foot fence is insufficient to protect their privacy interests. Specifically, petitioners believe, and the Board agrees, that a four-foot fence is insufficient to provide petitioners’ full enjoyment of their property, free of the visual and noise intrusions of the traffic and activities associated with the use of the Commercial Corner. Examples of these intrusions include headlights from vehicles parked behind the Commercial Corner that shine on to petitioners’ property; trespassers who jump over the fence to cut through petitioners’ property in order to access Brown Street; noise from commercial trucks that turn around in the parking area; and cell phone conversations, and conversations between people parked at night at the

Commercial Corner. The Board finds that granting a variance from the maximum height allowed for a fence under Section 3.327 is necessary to protect the privacy interests and residential uses of petitioners' property and is therefore not contrary to the public interest.

6. Practical Difficulty. A variance cannot be granted unless the petitioner demonstrates that complying with the Zoning Ordinances (*i.e.*, the four-foot limitation for fences in this case) would be unnecessarily burdensome. *See* Section 12.2(a)(5). Petitioners testified that a fence lower than six feet would not successfully protect their privacy. The Board agrees and therefore finds that complying with the four-foot height restriction for fences along a lot line would present a practical difficulty to petitioners; the strict application of the Ordinances, without a variance, would prevent petitioners from the reasonable use of their residential property. The Board notes that the petitioners could construct a six-foot fence without obtaining a variance, if they moved the fence so that it stands at least seven feet from the rear lot line. However, the Board agrees with petitioners that this seven-foot setback requirement would constitute a practical difficulty to petitioners because it would prevent them from using a significant portion of their residential property.

7. Extraordinary Characteristics. Petitioners 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. *See* Section 12.2(a)(6). The Board finds that the location of petitioners' property, across from the rear of the Commercial Corner, is an extraordinary characteristic of the lot, and that the condition that forms the basis for granting the variance arises exclusively from this location.

8. Uniqueness. The Board must 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 Section 12.2(a)(7). Petitioners' property is the only property in the Town that looks on to the rear of the Commercial Corner and the associated parking, and is the only property that is therefore subject to the visual and noise intrusions associated with activities in and around that parking area. The Board concludes that petitioners have carried the burden of proof and persuasion that their property is peculiar and that the basis for granting the variance is not in common with other lots in the vicinity.

Decision.

For the reasons set forth in this opinion, the Board grants petitioners' request for a variance.

1/3/17
Date

Marc Hansen
Marc Hansen, Chair
Board of Zoning Appeals

Washington Grove Board of Zoning Appeals
Minutes

The Board of Zoning Appeals met on December 17, 2016, at 11:00 a.m. in the Council Room of McCathran Hall to conduct a public hearing on the variance request filed by Tom and Sylvia Appleby, 112 Chestnut Avenue, to erect a six-foot privacy fence on the rear of their property.

Satoshi Amagai, Christine Dibble and Marc Hansen sat as the Board.

After conducting a public hearing, the Board adopted by unanimous consent the attached Opinion and Order granting the variance.

Respectfully submitted,



Marc Hansen,
Board of Zoning Appeals

Approved:

1/3/17
Date