

six-foot fence along their rear property line along Hickory Road from their driveway to the corner of Hickory Road/Brown Street/Railroad Street and from that corner eastward along their side property line along Brown Street for 85 feet. The Planning Commission denied the building permit application on August 2, 2017, because the proposed fence does not comply with Section 3.327, Fences, which requires that fences erected on a lot line adjacent to an avenue, street, or road may not exceed four feet in height.³

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 a “building” includes fences. Petitioners’ variance request is in compliance with Section 12.2(a)(2).

4. Ownership. Petitioners are the owners of 112 Chestnut Avenue 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).

With respect to the proposed six-foot fence that would be located along the rear property line along Hickory Road, the Board notes that Petitioners had requested, in 2016, a variance for a six-foot fence along their rear property line along Hickory Road north of their driveway. In case 2016-01, the Board made findings of fact and conclusion of law finding that granting a variance to permit a six-foot fence along Petitioner’s Hickory Road rear property line was in the public interest. The Board adopts and incorporates by reference those findings and conclusions.

³ See Exhibit 1.

With respect to the proposed six-foot fence along Brown Street, 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: a) the industrial use of the property occupied by Action Dumpsters, which is locate across Railroad Street from Petitioners' property; b) the stop light at the intersection of Railroad Street with the Humpback Bridge; and c) the nearby intersection of three streets—Hickory Road/Railroad Street/Humpback Bridge-Deer Park. The noise emanating from Action Dumpsters is intrusive. Dumpsters are dragged along the ground and trucks put into reverse emit loud warning signals. Large trucks and Ride-On/School buses must apply their brakes negotiating the stop light at the Humpback Bridge; the application of brakes by these large vehicles also creates significant noise. Moreover, the Humpback Bridge/Railroad Street intersection involves significant grade changes that exacerbates the acceleration and brake noise from trucks and buses. School buses also turn from Railroad Street onto Hickory Road creating additional braking and acceleration noise. During rush hour, traffic often becomes entangled at the stop light leading to frequent honking of horns. Petitioner testified that a six-foot fence along Brown Street would mitigate this noise as well as headlights from turning vehicles from Railroad Street onto Hickory Road. No testimony was offered to contradict Petitioner's testimony regarding the mitigating effects of a six-foot fence and the Board is, therefore, prepared to accept Petitioner's assertion. The Board finds that granting a variance from the maximum height allowed for a fence along Brown Street 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 a 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). Petitioner testified that a fence lower than six feet would not successfully protect Petitioners' 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 along Hickory Road or at least 15 feet from the side lot line along Brown Street. However, the Board agrees with petitioners that this seven-foot/15-foot setback requirement would constitute a practical difficulty to petitioners because it would prevent them, as a practical matter from enjoying 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 creates an extraordinary circumstance because it is: a) across from the rear of the Commercial Corner; b) near a stop light on a busy road that carries large vehicles such as trucks and buses; and c) near a unique intersection of three roads. The combination of these three factors forms the basis for satisfying the requirement of Section 12.2(a)(6).

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). With respect to the proposed six-foot fence along Hickory Road, 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. With respect to the proposed six-foot fence along 85 feet of Brown Street, Petitioners' property is unique because of a combination of factors that when taken together make Petitioners' property unique in the context of a fence variance along a portion of Brown Street. These factors are: a) the industrial use of the property occupied by Action Dumpsters, which is within close proximity to Petitioners' property line along Brown Street; b) the stop light at the intersection of Railroad Street with the Humpback Bridge which generates significant traffic noise (see Section 5, above); and c) the nearby intersection of three streets—Hickory Road/Railroad Street/Humpback Bridge-Deer Park. The Board concludes that Petitioners have carried the burden of proof and persuasion that the basis for granting the requested 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 to erect a six-foot fence on Petitioners' rear lot line along Hickory Road from Petitioners' existing driveway to the intersection with Brown Street and from that corner a six-foot fence for 85 feet eastward on Petitioners' side lot line along Brown Street.

9/27/17
Date

Marc Hansen
Marc Hansen, Chair
Board of Zoning Appeals

Washington Grove Board of Zoning Appeals
Minutes

The Board of Zoning Appeals met on September 23, 2017, at 10:30 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 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:

9/27/17
Date