

GENERAL INFORMATION

Applicant: Patrick Bigelow

Location: 9915 Portland Avenue South

Request: Variances to:
1) Increase the fence opacity from 50 percent to 100 percent.
2) Increase the allowed height of a fence in the side yard adjacent to a street from 4 feet to 7 feet 4 inches.
3) Increase the posts from 12 inches above the fence to 13 inches above for a total height of 8 feet 5 inches.

Existing Land Use and Zoning: Single Family Residential; zoned R-1

Surrounding Land Use and Zoning: Single Family Residential; zoned R-1

Comprehensive Plan Designation: Low Density Residential

CHRONOLOGY

Planning Commission: 08/25/2016 – Recommended denial of the requested height and opacity variances as proposed and encourages the City Council to consider approving variances for a six foot high, fully opaque fence.

City Council Agenda: 09/12/16 – Development Business Item

DEADLINE FOR AGENCY ACTION

Application Date: 07/20/2016
60 Days: 09/18/2016
Extension Letter Mailed: NA
120 Days: 11/17/2016
Applicable Deadline: 09/18/2016
Newspaper Notification: Confirmed – (08/11/16 Sun Current – 10 day notice)
Direct Mail Notification: Confirmed – (200 buffer – 10 day notice)

STAFF CONTACT

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PROPOSAL

The applicant's single family dwelling is located at the southeast corner of East 99th Street and Portland Avenue. The dwelling front is setback 35.72 feet from East 99th Street and the detached garage is setback 35 feet from Portland Avenue. Even though the property is addressed from Portland Avenue, the dwelling fronts East 99th Street with a side yard adjoining a public street along Portland Avenue.

The applicant started to construct a privacy fence with a body of 6 feet in height with a one foot lattice extension above the body for the total fence height of 7 feet 4 inches. The posts were designed to extend 10 inches above the lattice, although the applicant proposes solar LED lighting on the top of the posts, which increases the post height to 13 inches above the proposed lattice portion. The Environmental Health Division responded to an inquiry and informed the applicant of the violation. The work on the fence was stopped with the fence body fully constructed with a portion of the lattice added.

The applicant requests two "after-the-fact" variances and one additional variance. Two variances for the 7 foot 4 inch fully opaque fence with lattice as constructed and the third for the increased post height for lighting. The fence parallels Portland Avenue, extending 13 feet 6 inches north of the garage and setback 20 feet from Portland Avenue and 15 feet from the rear property line. The applicant states he researched and visited City Hall to inquire about a fence prior to constructing the fence.

BACKGROUND

The applicant first approached the City in 2011 about the desire to have a fence along Portland Avenue. Staff recalls a lengthy discussion and suggested Code complying alternatives such as a berm and landscaping to achieve the desired privacy.

The applicant states he recently, prior to constructing the fence, stopped at City Hall to inquire about a deck, shed and fence. He stated there was no fence handout available and he asked questions of staff. This resulted in constructing the fence as he understood was a Code complying location and height.

It is important to note since September of 2015, staff initiated policies to minimize issues related to fences being installed in violation of the City Code. This was the result of a direct request by the City Council to insure correct information was available. Staff members have been directed to never speak about a fence at the counter without providing the handout. The handouts are placed in at least three locations near the front counter, one openly available to the public. In addition, staff is on the Gopher State One Call notifications list. Staff prepares a document package and provides the fence handout via e-mail for any Gopher State One Call request. Using this method of outreach in addition to the counter contacts, the applicant was sent the information attached to the staff report. The applicant stated he never received the e-mail.

ANALYSIS

The City Code restricts fences between a building and the street to four feet in height and a maximum of 50 percent opaque, unless along a designated arterial. Portland Avenue north of 98th street is an arterial. However, the arterial designation does not extend south of 98th Street where the applicant’s house is. Therefore, any fences between the structure and the street are limited to four feet in height with a maximum 50 percent opaque.

The applicant believes a taller fence is justified because of:

1. The volume of traffic on Portland Avenue; and
2. The desire to screen the recreational vehicles.

The most recent traffic counts on Portland Avenue record 2,500 trips per day immediately south of 98th street, and 2,200 vehicles per day (VPD) just south of 99th Street. While the recorded volumes are greater than the 300 to 1,000 trips typical for a residential street, they are significantly lower than the 8,000 to 20,000 vehicles carried by arterial roadways, where the code allows for a 6 foot privacy fence in the side yard adjoining a street and for through lots. The Portland Avenue volumes are also unexceptional (if not slightly low) for collector streets in Bloomington. (See Table 1 for a comparison to other collector streets.) It is difficult to find justification for the variance based on traffic volumes.

**TABLE 1: Average Daily Traffic comparison for select non-arterial streets
(Applicant’s location has ADT of 2,200 trips)**

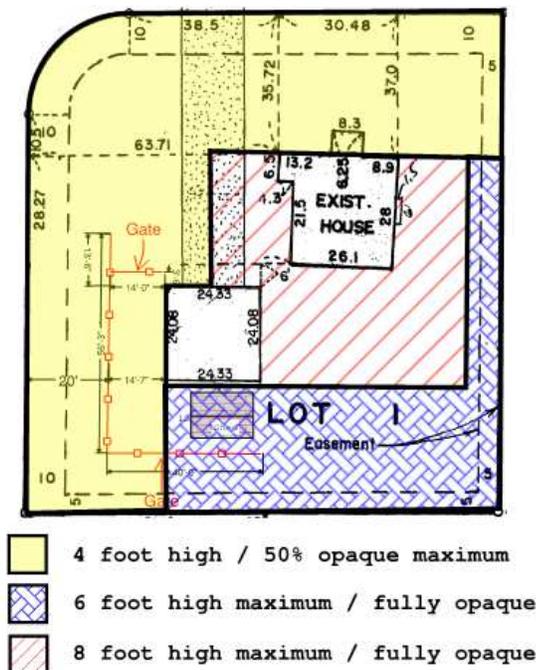
Street/ Location	ADT	Street/ Location	ADT
Xerxes Ave at 84 th Street	1,700	82 nd Street at Nicollet Ave	2,800
W 84 th Street at Portland Ave	1,800	102 nd Street at Nicollet Ave	3,300
Overlook Drive at Penn Ave	2,000	12 th Ave at 84 th Street	4,100
110 th Street at Xerxes Ave	2,300	W 110 th Street at France Ave	4,500
MN Bluffs Drive at Auto Club	2,700	W 86 th Street at Portland Ave	6,200

The City Council previously approved variances for six foot high fences in the side yard adjoining a street. As a result, the Planning Commission recommended Code language to allow for six foot high, fully opaque fence closer to the street in side yards adjoining a street. The City Council determined a review through the variance process is preferable and the Code amendment was not adopted.

The past variance approvals were all for six foot high, fully opaque fences in the side yard adjoining a street. The reasons for the variances in those cases included the smaller than required lot size restricting the area for privacy, significant truck traffic, or required for medical reasons.

The applicant's Code complying lot is over 15,000 square feet where over 5,000 square feet could be legally secured behind a six foot fully opaque fence without a variance. In addition, there is slightly over 2,000 square feet which would allow an 8 foot high fence. (See Figure 1) There is minimal truck traffic on Portland Avenue south of 98th Street. Unlike other variance requests, the applicant did set the fence back 20 feet along Portland Avenue. Portland Avenue has a 20 foot boulevard, therefore the fence is 40 feet from Portland Avenue. A review of a six foot fence comparable to those previously reviewed was not considered as the applicant requests a greater height. Staff reviewed and cannot make the findings required for the application as proposed.

Figure 1: City Code allowed location and type of fence for 9915 Portland Avenue



Staff noted the area between the fence and the garage was designed for an apparent driveway expansion. The applicant stated the intent was to expand the driveway. City Code limits a hard surfaced off-drive parking area to 12 feet in width where 14 feet is provided.

Staff has received correspondence of support from the neighbors at 610 East 99th Street and 9908 Oakland Avenue South. The applicant also provided a petition supporting the variances with 32 signatures from 26 properties. The documents are attached to the agenda materials. No other comments were received.

FINDINGS

Variance Findings – Section 2.98.01 (b)(2)(A-C)

A) That the variance is in harmony with the general purposes and intent of the ordinance;

- The City Code acknowledges the health, safety, aesthetic, and economic value of fences. The requested variance for a 7 foot 4 inch fence is greater than the general public is allowed for rear yards along a property line. A fence of 7 feet 4 inches is not in harmony with the general purpose and intent of the City Code to provide reasonable privacy from the adjoining street.

B) That the variance is consistent with the comprehensive plan;

- The Comprehensive Plan does not specifically discuss fences nor include goals or strategies that specifically relate to the request. The request is not inconsistent with the Comprehensive Plan.

C) When the applicant for the variance establishes that there are practical difficulties in complying with the zoning ordinance.

- The applicant believes the practical difficulty in complying with the zoning ordinance includes the levels of traffic on Portland Avenue where increased traffic and activity minimize privacy. Portland Avenue south of 98th Street has an ADT lower than many similar collector streets in the City of Bloomington.

Practical difficulties as used in connection with the granting of the variance, means that:

(i) The property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance;

- A 7 foot 4 inch high, substantially opaque fence around a portion of the side yard adjoining a street and rear yard to increase the privacy is not required for the reasonable use of a single family property.

(ii) The plight of the landowner is due to circumstances unique to the property not created by the landowner; and

- The applicant's lot is a Code complying 15,228 square foot lot. The applicant could construct a six foot privacy fence to enclose over 5,000 square feet of the rear yard to provide privacy. The applicant primarily desires the fence along the street to screen vehicles parked and stored along the street side of the garage. There is sufficient area available for the applicant to place the possessions for which screening is desired in locations where they could be legally screened with privacy fences. Therefore, the plight of the landowner is due to circumstances created by the landowner.

(iii) The variance if granted will not alter the essential character of the locality.

- While six-foot tall fully opaque fences in yard areas adjoining a street have been approved for specific unique situations, they are limited due to the potential negative impacts on the character of the surrounding neighborhood. A 7 foot 4 inch fence with post top lights at 8 feet five inches is not consistent with the character of a residential neighborhood.

RECOMMENDATION

The Planning Commission and staff recommend denial of three variances to increase the allowed height of a fence in the side yard adjacent to a street from 4 feet to 7 feet 4 inches and the posts from 12 inches above the fence to 13 inches above for a total height of 8 feet 5 inches and to increase the opacity from 50 percent to 100 percent at 9915 Portland Avenue South.

Staff recommends the following motion:

In Case PL2016-128, being unable to make the required findings, I move to continue the item to the September 26, 2016 and to direct staff to prepare a resolution of denial.