

RESOLUTION NO. 2016-_____

A RESOLUTION DENYING THREE VARIANCES TO INCREASE FENCE HEIGHT AND OPACITY AT 9915 PORTLAND AVENUE SOUTH, BLOOMINGTON, MINNESOTA

WHEREAS, the City of Bloomington City Council is the official governing body of the City of Bloomington; and

WHEREAS, an application was filed on by Patrick Bigelow (“Applicant”), the owner of the premises located at 9915 Portland Avenue South, and legally described as follows:

Lot 1, Block 2, Luknic 2nd Addition

for three variances from the City Code standards to (a) increase the allowed height of a fence in the side yard abutting a street from 4 feet to 7 feet, 4 inches; (b) to increase the allowed height of the posts from 12 inches above the fence to 13 inches above for a total height of 8 feet, 5 inches; and (c) to increase the opacity from 50 percent to 100 percent (Case PL 2016-128); and

WHEREAS, in 2016, the Applicant constructed a fence in the yard area adjoining a street in violation of the zoning code; and

WHEREAS, Sections 21.301.08(c) and (d) of the City Code stipulate that the maximum fence height in a yard abutting a street is four feet and the maximum fence opacity in a yard abutting a street is 50 percent; and

WHEREAS, Sections 21.301.08(c) and (d) of the City Code were adopted on December 1, 2008, and fences existing before that date are legally nonconforming fences; and

WHEREAS, Minnesota Statutes §462.357, subd. 6(2) and City Code §2.98.01 (b)(2) each require affirmative findings that the requested variance is in harmony with the general purposes and intent of the ordinance and consistent with the comprehensive plan, and the applicant for the variance establishes that there are practical difficulties in complying with the zoning ordinance. "Practical difficulties," as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties; and

WHEREAS, on August 25, 2016, in its regular meeting assembled, the City Planning Commission reviewed the background materials provided in the staff report, conducted a public hearing during which the Applicant was provided with an opportunity to put forth the basis for the requested variance; and

WHEREAS, following public testimony, the Planning Commission closed the public hearing, discussed the matter, and then a motion recommended denial of the variances passed on a 4-1 vote. The Planning Commission suggested the City Council consider approval of a six foot high, fully opaque fence; and

WHEREAS, on September 12, 2016, in its regular meeting assembled the City Council, acting in its quasi-judicial capacity, conducted a public hearing on the requested variances. Prior to that hearing, both City staff and the Applicant were provided with an opportunity to submit all materials relevant to the City Council's consideration of the requested variances. Those materials were made part of the record before the City Council. The Applicant, appeared before the City Council and argued for the variance.

WHEREAS, the City Council has considered the City staff report, the findings and recommendation of the Planning Commission, the comments of persons speaking regarding the proposed variances, and the factors in Bloomington City Code Section 2.98.01(b) and finds as follows:

Section 2.98.01 (b) (2):

(A) Requirement: the variance must be in harmony with the general purposes and intent of the ordinance;

- * The City Code acknowledges the health, safety, aesthetic, and economic value of fences, but limits the height to four feet along a street and six feet in a rear yard. These limits were established because fences that exceed these heights decrease emergency access to the property for police, fire, and medical personnel; and can affect traffic safety and visibility. The requested variance for a 7- foot, 4-inch fence is greater than the general public is allowed for both a rear yard and a yard along a street. Therefore, 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) Requirement: the variance must be consistent with the comprehensive plan;

- * The Comprehensive Plan does not specifically discuss fences or include goals or strategies that specifically relate to the request. Therefore, the requested variances are not inconsistent with the Comprehensive Plan.

(C) Requirement: the Applicant must establish that there are practical difficulties in complying with the zoning ordinance. Economic considerations alone do not constitute practical difficulties. To establish practical difficulties as used in connection with the granting of the variance, the applicant must show that:

(i) The property owner proposes to use the property in a reasonable manner not permitted by 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 average daily trip (ADT) count lower than many similar collector streets in the City of Bloomington. Comparable streets in the City with ADTs higher than Portland Avenue, and the same fence regulations apply. A 7-foot, 4-inch high, completely 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. Therefore, the proposed fence is not reasonable for the Applicant's 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 built the fence along Portland Avenue to screen vehicles and other related items parked and stored along the street side of the garage. However, there is sufficient area available for the applicant to place the vehicles and related items in compliance with City Code. Therefore, the plight of the landowner is not due to circumstances unique to the property.

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

- * Other legally nonconforming fences in the locality are no taller than six feet; other properties in the locality have no fence along the street. Finding: A 7-foot, 4-inch fence with post-top lights at 8 feet, 5 inches is not consistent with

other fences along the street in the locality and is not consistent with the character of a residential neighborhood; and

WHEREAS, the City Council has reviewed all materials submitted by the Applicant and City Staff, has considered the oral and written testimony offered by the Applicant and all interested parties, and has made the findings set forth above.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF BLOOMINGTON as follows:

1. The recitals set forth above are hereby incorporated by reference.
2. The Applicant's request for the three variances set forth in Case PL 2016-128 are hereby **DENIED**.
3. City Staff are authorized and directed to take all necessary and appropriate steps to accomplish the intent of this Resolution.

Passed and adopted this 26th day of September, 2016.

Mayor

ATTEST:

Secretary to the Council