

BOARD OF ZONING APPEALS**STAFF REPORT****TUESDAY, SEPTEMBER 26, 2023**

CASE NO: BZA 23-0012
PROJECT NAME: LEAFBACK FENCE VARIANCE
PROJECT ADDRESS: 4161 LEAFBACK PLACE, RIVERSIDE, OH 45424
PARCEL ID: I39 00318 0021
APPLICANT/PROPERTY INFO: JASON ROSENBAUM, 4161 LEAFBACK PLACE, RIVERSIDE, OH 45424
OWNER/PROPERTY INFO: SAME AS APPLICANT
ZONING DISTRICT: R-3 MEDIUM DENSITY RESIDENTIAL DISTRICT
CURRENT USE: SINGLE-FAMILY RESIDENTIAL

REQUEST:

1) A variance from UDO Sec. 1115.01(E)(3)(a) to allow front yard fence to exceed the maximum height of 4 feet.

LOCATION	REQUIREMENT	REQUEST	VARIANCE %
FRONT YARD	4 FEET MAX.	2 FOOT INCREASE	50% INCREASE

2) A waiver from UDO Sec. 1115.01(E)(3)(b) to permit a solid board privacy fence in the front yard.

CASE SUMMARY/BACKGROUND:

The subject site is located in the southern corner of Leafback Place and Cutleaf Court on a 0.24 acre parcel. The site is outside the Source Water Protection Area. There is an existing 1,515 sf single-family dwelling on the site. The applicant removed and replaced a 6-foot solid board privacy fence which encroached into the front yard off of Cutleaf Court. The new fence must come into compliance with the current code or obtain an approved variance and waiver.

The revised development procedures permit a waiver to be heard with a variance application. This allows the Board of Zoning Appeals to act on both requests.

INTERESTED PARTY COMMENTS:

Staff has several calls and emails from adjacent property owners who have requested additional information about the case.

STAFF REVIEW/FINDINGS:

Staff finds that the requested variance to allow an increase in the *maximum fence height* is adequately justified and meets the standards for approval. Staff recommends **approval** of the requested variance, because:

- The essential character of the neighborhood will not be altered. The proposed fence will not impact any lines of sight.
- The variance is not substantial.
- The spirit and intent of the zoning code is observed.

Staff finds that the requested waiver is not adequately justified and **does not** meet the standards for approval. Staff recommends **denial**, because:

- The strict application of the regulations will not deprive the applicant of the reasonable use of the land.
- There are alternative fence designs which are compliant with the zoning regulations and could meet the applicant's needs.

The question before the Board of Zoning Appeals is:

- **Does the proposal meet the standards for granting the request variances established in UDO §1105.15(E)?**
- **Does the proposal meet the standards for granting a waiver request established in Section 1105.13(E)?**

In order to answer these questions, the Board of Zoning Appeals should consider:

- information in the staff report (standards for approval, attachments, etc.) for requested variance and waiver,
- testimony and/or evidence provided at the public hearing which directly relates to the variance and waiver request,
- the conditions upon which an application for the variance(s) is based are particular to the subject property with respect to the physical size, shape or other characteristics of the premises, differentiating it from other lots in the same district,
- variance(s) would result in an improvement of the property that is more appropriate and more beneficial to the community than would be the case without granting of the variance(s), and
- whether the waiver aligns with the goals and objectives of the Comprehensive Land Use Plan & zoning code.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE PER UDO §1105.15(E):

The following factors shall be considered by the BZA in determining whether practical difficulty exists sufficient to warrant a variance to increase the maximum fence height; 1115.01(E)(3)(a):

1. Whether the property in question will yield reasonable return or whether there can be any beneficial use of the property without the variance;

Yes, the property owner could still have beneficial use of the property without the variance.

2. Whether the variance is substantial;

No, this is not a substantial variance.

3. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;

No, the essential character of the neighborhood will not be altered nor will adjacent properties be adversely affected. The fence is out of any required clearance zones.

4. Whether the variance would adversely affect the delivery of governmental services (i.e., water, sewer, garbage);

No, the delivery of governmental services will not be impacted.

5. Whether the property owner purchased the property with knowledge of the zoning restriction;

The property was purchased after the applicable zoning regulations were in effect.

6. Whether the property owners' predicament feasibly can be obviated through some method other than a variance;

Yes, the applicant can move the fence approximately 10 feet back to align with the façade of the house.

7. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.

The fence height permitted in the front yard is lower to protect the public safety and preserve an unobstructed view. This is the spirit and intent of the zoning code. Vision of cars coming into and out of the neighboring driveway is not restricted in this case.

STANDARDS FOR APPROVAL AND STAFF ANALYSIS PER UDO §1115.13 (E):

THE FOLLOWING CRITERIA SHALL BE CONSIDERED IN REVIEWING A WAIVER REQUEST; 1115.01(E)(3)(B).

1. Whether the waiver will have an adverse effect on adjacent property owners.

The requested waiver would not have an adverse effect on adjacent property. The fence is located out of any lines of sight for neighbors pulling out of their driveways or the required clearance zone at the intersection.

2. Whether the proposed development is in conformance with the principles of the City's Comprehensive Land Use Plan.

No, one of the objectives of the ONE Riverside Plan is to ensure new development or structures are complementary to the preferred neighborhood and future land use character of the area. When new structures are built the Land Use Plan encourages balancing property owner's rights against the future vision of Riverside through the City design regulations.

3. Whether the applicant can show that the regulation will cause a practical difficulty or strict application of the provisions of the regulations would deprive the applicant of the reasonable use of the land.

No, the strict application of the regulation will not cause practical difficulty or deprive the application reasonable use of the land. The code requires fences in the front yard to have at least 50% transparency. There are fence types which will allow for the security and pet safety the applicant desires while still keeping within the zoning code regulations.

4. Whether the proposed development design, site arrangement, and/or anticipated benefits of the proposed development justify any deviation from the design standards found herein.

No, there are other corner lots in this neighborhood which have compliant fences or no fences at all.

5. Whether the applicant has incorporated other design measures that exceed the minimums of the requirement and compensate for non-compliance with the requirements to be waived (net beneficial effect).

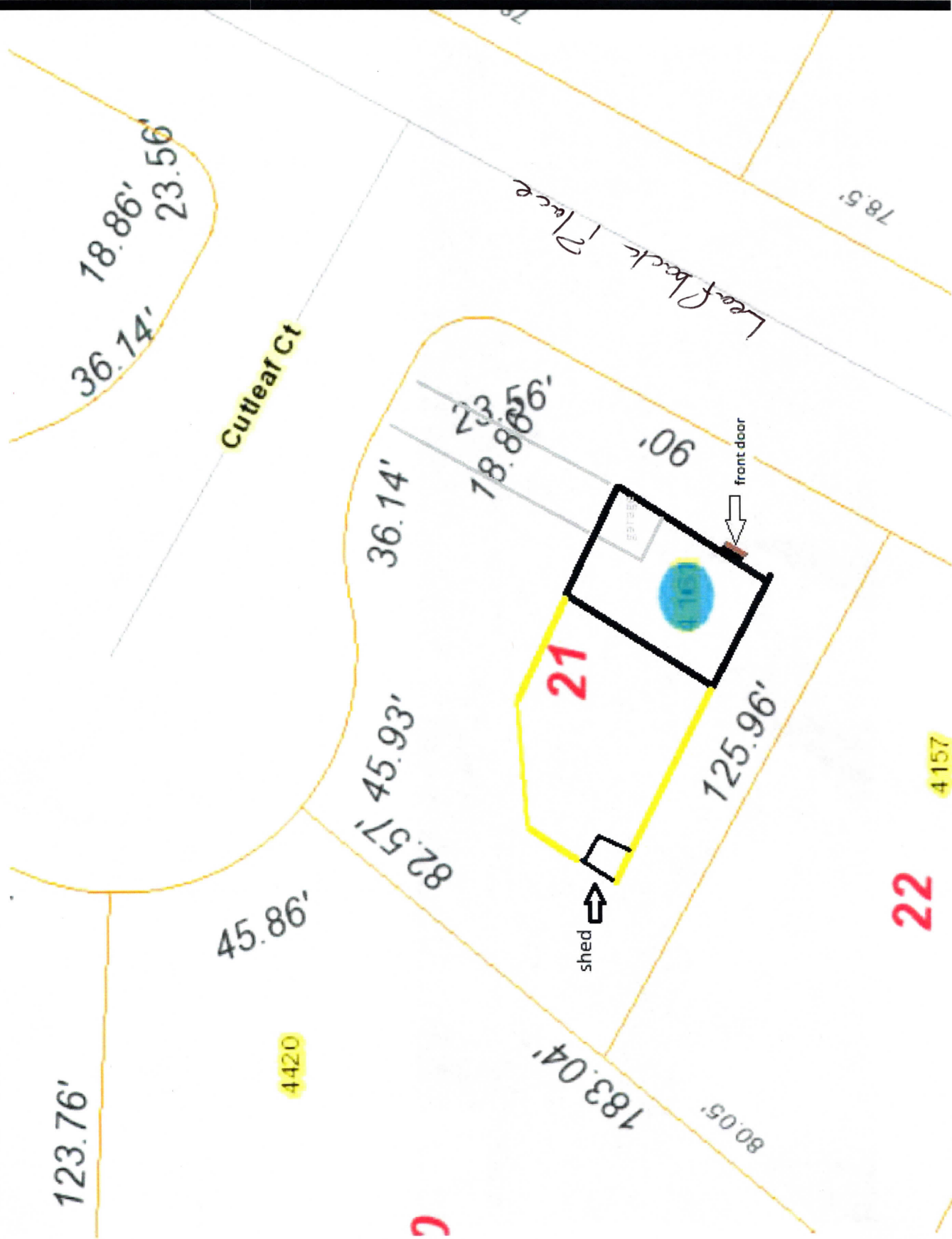
No, the applicant has not offered an alternative.

ATTACHMENTS:

- Zoning Map
- Aerial Map
- Site Plan
- Justification Statement Page
- Supplemental Information







Variance Justification:

In order to justify approval of any variance staff and/or the Board of Zoning Appeals considers the following criteria. Please answer **all** of the following questions. Use additional sheets if needed. **A response of yes, no, or N/A is not acceptable.**

1. Whether the property in question will yield reasonable return or whether there can be any beneficial use of the property without the variance.

The added fence to a property adds value to it in terms that it provides security from potential theft, and crimes of this nature. It also provides a small amount of privacy. Lastly, if anyone has a pet, it provides the ability to roam the back yard without escape and or someone stealing the animal. Not having a fence, in my opinion, would devalue the property due to the lack of those items I have listed as a positive.

2. Whether the variance is substantial.

The variance is substantial in terms of providing security, privacy, and the ability to keep my pets within the confines of the yard.

3. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance.

When I purchased this residence in 2018, the fence that was in place had been there for a very long time. It was very frail looking and had several areas where there was damage either from insects or animals. Replacing this fence would not alter any adjoining properties and in fact neighbors have praised me for replacing the fence because of its degraded appearance. I actually hired the company that put in the fence from my neighbor that has the exact same corner lot across the street from me at 4169 Leafback Place.

4. Whether the variance would adversely affect the delivery of governmental services (i.e. water, sewer, garbage).

No the variance would not adversely affect any delivery of governmental services. The reasoning behind this is due to the old fence did not adversely affect any delivery of governmental services before and the new fence, the was put in the exact same place as the old fence, has not impacted any services.

5. Whether the property owner purchased the property with knowledge of the zoning restriction.

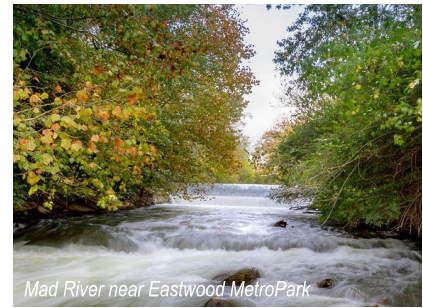
The property owner had no clue about the zoning restriction. I was a little puzzled that I needed a permit to replace the existing fence. I can totally understand that a permit is/would be needed for a new fence that had never been there before.

6. Whether the property owners' predicament feasibly can be obviated through some method other than a variance.

No it cannot be obviated due to the fence has been replaced. The work was completed the 23rd of September.

7. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.

Yes, by granting this variance I would be grateful since the fence replacement project is complete. I have attached photos of what the fenced looked like before (obtained from google maps) and how it looks now. It is the same height and length as the old fence.



Place

One of the base functions of a city is to plan for and regulate land use to ensure balance, productivity, safety, beauty, and quality of life. In Riverside, the community has significant control over the arrangement, form, and interrelationship between the built environment and natural areas. The Places chapter describes the current conditions and trends in Riverside related to development patterns, land use, community character, and open space. The chapter presents recommendations across three broad categories: development, redevelopment, and conservation.

OBJECTIVES

- » Continually improve the efficiency and efficacy of the development review process
- » Increase property values through ongoing investments in infrastructure and the public realm
- » Increase scrutiny of proposed development based on consistency, community vision, and demonstrable fiscal return
- » Expand trail connections
- » Expand access to city park system to ensure 10-minute walking access for all residents
- » Ensure new development complements the preferred neighborhood and future land use character
- » Reevaluate local, regional, and national influences that affect Riverside's vitality
- » Address persistent areas of blight

FUTURE LAND USE

Future land use describes the community's intent for "how" (development character) and "where" (potential location) Riverside will grow and invest. Growth, in this sense, has several definitions. The community can and will grow in a manner that is fiscally and aesthetically additive. It will grow inward, reinvesting in existing neighborhoods, underutilized properties, and along commercial corridors. And last, it will "grow" its relationship to the Mad River, Eastwood Lake, and other natural assets right at the community's doorstep. Progress

in these areas will ensure Riverside is a strong, competitive, and beautiful community for years to come. The development principles presented below help articulate the values of the community as they are related to physical growth, community reinvestment, and evolution. The principles for growth support the future land use framework, conceptual focus area development diagrams, and overall recommendations included in the broader Comprehensive Plan.

As Riverside grows and the community continues to evolve, it is our intent that...



New growth and development help create distinct town centers to unite the community

(One Riverside!). The City of Riverside's history and unique boundaries have created a situation where no clear town center or primary activity node exists. Residents desire to create central spaces within the community that bring the people of Riverside together for physical, social, and economic activities.



Locations for new development are determined

through a logical process and are made accessible to all users and modes of travel by integrating contemporary design standards and zoning codes. The quality of new development is essential to the residents of Riverside. Modern zoning codes and design guidelines will help reinforce the character of Riverside in any new development's style, texture, and location. These regulations will help streamline the process, sending a clear message on how to deliver the types of places residents wish to see in Riverside.



Redevelopment will reinforce the character of Riverside while providing

an opportunity for the community to re-invest, refresh, and revitalize. The City of Riverside will direct growth to key focus areas, while carefully managing reinvestment opportunities to ensure they reinforce the character of existing neighborhoods. Individual land owner rights will be carefully balanced against this vision of how Riverside can revitalize commercial corridors and residential neighborhoods.



New development and redevelopment will pay for themselves in the long term.



Front of Subject Site



Adjacent Property to the West



Adjacent Property Across Leafback



Adjacent Property to the North



Variance Area: View from Cutleaf Ct.



Variance Area: View from Leafback Pl.



Waiver – Solid Board Privacy Fence in Front Yard



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