

BOARD OF ZONING APPEALS

STAFF REPORT

TUESDAY, MAY 20, 2024

CASE NO: BZA 24-0002
PROJECT NAME: HELENWOOD FENCE VARIANCE
PROJECT ADDRESS: 5900 HELENWOOD DRIVE, RIVERSIDE, OH 45431
PARCEL ID: I39 01301 0019
APPLICANT/PROPERTY INFO: TAMMY McVICAR, 5900 HELENWOOD DRIVE, RIVERSIDE, OH 45431
OWNER/PROPERTY INFO: SAME AS APPLICANT
ZONING DISTRICT: R-2 MEDIUM DENSITY SINGLE-FAMILY 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 four (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 southeast corner of Helenwood Drive and Yorktown Court on a 0.31 acre parcel. The site is outside the Source Water Protection Area. There is an existing 1,816 sf single-family dwelling on the site. The applicant is proposing to construct a 6-foot solid board privacy fence which would encroach into the front yard and right-of-way off of Yorktown Court. The proposed fence required the applicant to request a variance for the height and a waiver for the fence type. 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. Should these requests be approved by the Board of Zoning Appeals the applicant will then need to seek approval from the Public Service Department for the portion of the fence proposed to encroach into the right-of-way.

INTERESTED PARTY COMMENTS:

Staff has not received any calls from interested parties or adjacent neighbors.

STAFF REVIEW/FINDINGS:

Staff finds that the requested variance to allow an increase in the *maximum fence height* is **not** adequately justified and **does not** meet the standards for approval. Staff recommends **denial** of the requested variance, because:

- The essential character of the neighborhood will not be altered. However, there are no other fences like in in the immediate area.
- The applicant could move (or remove) the concrete pad and construct the fence to align with the facade of the house.
- The spirit and intent of the zoning code would not be 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(s) before the Board of Zoning Appeals is:

- **Does the proposal meet the standards for granting the variance request 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,
- whether the 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;

Adjacent properties will not be adversely affected by the fence height. The fence is out of any required clearance zones. It should be noted that other corner lots in the immediate area do not have fences which come out so close to the street.

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. This proposed fence location has had a preliminary review from the Public Service Department which oversees the City streets.

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

The property was purchased after the applicable zoning regulations were adopted and in effect which restricted the fence height in the front yard.

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

Yes, the applicant could move (or remove) the concrete pad and construct the fence to align with the facade of the house.

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

No, the spirit and intent of the zoning code would not be observed should the variance be granted. There are other alternatives available to the applicant which would bring the proposed fence in compliance with the zoning ordinance (see staff response to standard #6).

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.

The Place Goal, Objective #6 call for the proposal to ensure new development and redevelopment are complementary to the preferred neighborhood and future land use character of the area. When new structures are built the Land Use Plan – ONE Riverside – encourages balancing property owner's rights against the future vision of Riverside through the consistent application of the City's 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 nor deprive the applicant 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/child 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.

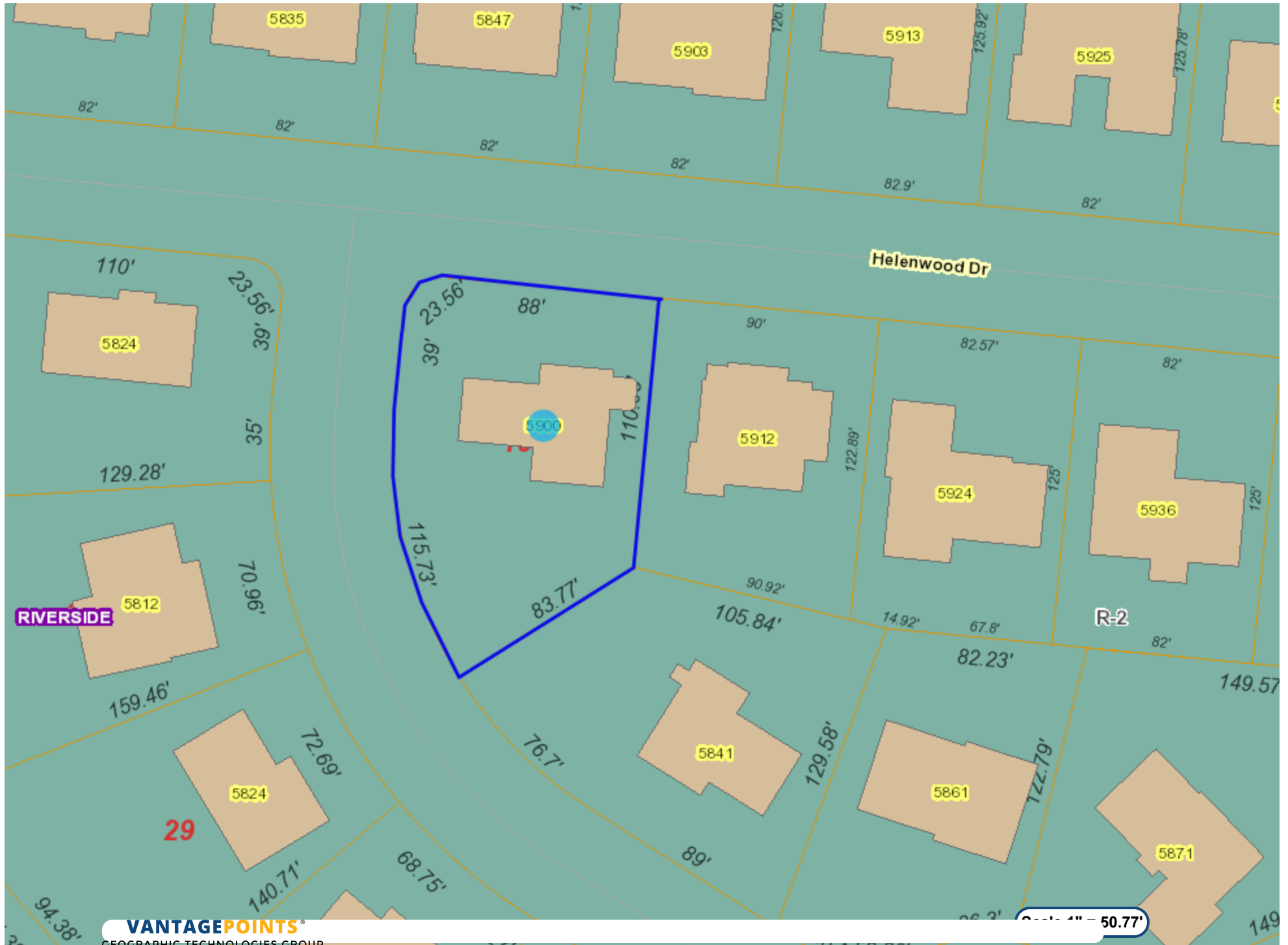
No, there are other corner lots in this neighborhood which have compliant fences or no fences at all.

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



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Scale 1" = 50.77'



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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.

Privacy

2. Whether the variance is substantial.

No, I'm not enclosing the whole 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.

No

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

No

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

No I didnt know At the time

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

I could do other options but it would not enclose the basketball court area

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

No obstructed view appears to be there with the neighbors coming or going into the court.²

Waiver Justification:

In order to justify approval of any waiver staff and/or the Planning Commission 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 waiver will have an adverse effect on adjacent property owners.

No -
We would be bringing the Fence
in 12" from Property line.

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

This lot is A corner lot that curves Around
So the design Guidelines should be waived.

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;

Due to this lot structure being curved
with a basketball court on it, it would be
difficult to comply.

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;

Unique shape of the lot

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).

We will be removing the trees
that are located in the
right of way. It will look a lot nicer
with the 6" fence rather than the
trees that overhang into the street
at times.



Front of Subject Site



Adjacent Property to the West



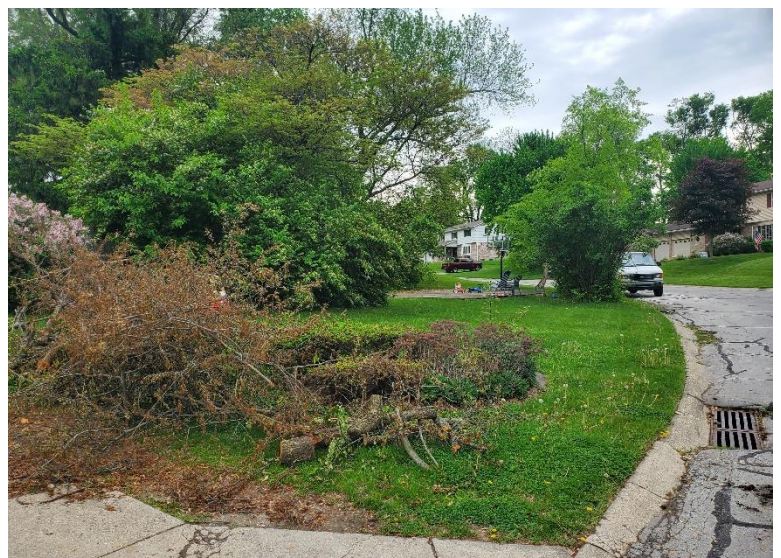
Adjacent Property Across Helenwood Dr



Adjacent Properties to the South



Variance Area: View from Yorktown Ct.



Variance Area: View from Helenwood Dr.



Waiver: Proposed Location of Solid Board Privacy Fence (View 1)



Waiver: Proposed Location of Solid Board Privacy Fence (View 2)