A regularly scheduled Zoning Board of Appeals Meeting was held on Thursday, April 13, 2017 at 1:00p.m., City Hall, 419 Fulton Street, Room 400, with Chairperson Richard Russo presiding.

ROLL CALL

The following Zoning Board of Appeals Commissioners were present: Laith Al-Khafaji, Ed Barry, Jerry Jackson, Scott Kelsey, Zachary Oyler, and Richard Russo – 6. Absent: Nathan Wagner – 1.

Staff Present: Leah Allison, Madeline Wolf

MINUTES

Commissioner Oyler moved to approve the minutes for the meeting held on March 9, 2017; seconded, by Commissioner Jackson.

The motion was approved viva voce vote 6 to 0.

REGULAR BUSINESS

CASE NO. ZBA 3030

Public Hearing on the request of Michelle Wilkins to obtain a variance from City of Peoria Unified Development Code Section 5.4.7 Fences and Walls, to increase the height of a front yard fence from 3 feet to 4 feet and 6 feet in a Class R-3 (Single-Family Residential) District for the property identified as Parcel Identification No. 09-30-481-014 with an address of 1912 W Casecreek Drive, Peoria IL. (Council District 5)

Senior Urban Planner, Leah Allison, Community Development Department, read the case into the record and presented the request. Ms. Allison provided the requested variance, petitioner justification and the Development Review Board Recommendation as outlined in the memo.

Staff's recommendation was to DENY the variance due to lack of hardship and inability to meet all of the following criteria:

1) Reasonable Return: The subject property can continue to yield a reasonable return without the requested variance.
2) Unique Circumstances: The property does not have a unique shape, size, or topography that prevents it from complying with requirements of a fence in the front yard. The lot is level and appropriately sized. Based on the application, the requested variance is due to circumstances of convenience.
3) Character: Review of the neighborhood finds no front yard fences on Casecreek Dr or the adjacent properties. A four to six-foot tall privacy fence in the front yard would alter the established character of the neighborhood.

At the request of Commissioner Barry, Ms. Allison reviewed the Unified Development Code's front yard fence openness requirements which did not include fence material, only the 3 feet in height requirement.

At the request of Commissioner Al-khafaji, Ms. Allison reviewed the corner side yard and front yard fence guidelines.

Chairperson Russo opened the Public Hearing at 1:12p.m.

Michelle Wilkins, petitioner, provided a background and intent for the request. Ms. Wilkins has a kennel license and wanted to provide additional fenced in green space. Ms. Wilkins noted there were no objections from neighbors. In response to neighbors' concerns, Ms. Wilkins preferred to provide a setback from the property line on the east and south corner of the property.

In response to Commissioner Barry's inquiry, Ms. Wilkins noted the fence material was undecided; however, landscaping would be installed on the outside of the fence.
Chairperson Russo referred to Exhibit 1, the petition in support of Ms. Wilkins request. Chairperson Russo noted the petition language did not include the 6 feet in height side yard fence request.

Ms. Wilkins said conversations with neighbors included the discussion of the six (6) feet in height side yard fence request and there was no opposition to the request.

Commissioner Kelsey inquired if the petitioner would consider a front yard setback of ten (10) feet.

Ms. Wilkins supported a front yard setback of ten (10) feet.

Commissioner Kelsey inquired the regulations for front yard fences on a corner lot.

Commissioner Oyler inquired city staff's opinion on the height request with a setback of twenty (20) feet.

Ms. Allison noted the setback would not change the Development Review Board recommendation or review, as the height request exceeded the allowable 3 feet in the front yard.

Commissioner Russo questioned granting the variance request with the condition to include a front yard setback.

Ms. Wilkins, in closing, thanked the commission for their time.

Chairperson Russo closed the proceedings at 1:29 p.m.

Commissioner Kelsey asked the commission to consider allowing the four (4) feet in height fence request with the condition of a front yard setback of twenty (20) feet.

Commissioner Oyler said he was favorable to Kelsey's suggestion.

Chairperson Russo read the Findings of Fact. It was determined by a 5 to 1 vote that the first criteria listed in Section 2.6.3.E. Standards for Variations was not met.

**Motion:**
Commissioner Kelsey made a motion to approve the request with the condition to provide a front yard setback of twenty (20) feet with the fence following the radius of the road and the fence materials may be approved by staff; seconded, by Commissioner Oyler.

After discussion, Commissioner Kelsey rescinded his motion.

The commission recessed for legal consultation at 1:38 p.m. The meeting resumed at 1:43 p.m.

Ms. Allison relayed the findings from the legal consultation with Sonni Williams, Deputy Corporation Counsel for the City of Peoria. Ms. Allison noted if the Zoning Board of Appeals chose to grant the variance without the evidence that all three criteria are true in Section 2.6.3.E., the motion would stand and the party at a loss would have the opportunity to appeal the decision through the legal appellate court process.

Chairperson Russo said he preferred not to contradict the ordinance.

Commissioner Al-khafaji made a motion to reconsider the Findings of Fact; seconded, by Commissioner Jackson.

The motion to reconsider the Findings of Fact was approved viva voce vote 5 to 1.
Nays: Barry – 1.

Chairperson Russo read the Findings of Fact. It was determined by a 5 to 1 vote that the first criteria listed in Section 2.6.3.E. Standards for Variations was not met.
Discussion ensued regarding the first standard: The property in question cannot yield a reasonable return if permitted to be used only under the conditions allowed by the regulations in that zoning district.

Commissioner Barry expressed concern for the lack of evidence of not yielding a reasonable return as a single-family dwelling without the variance.

Commissioner Kelsey agreed with Commissioner Barry.

Commissioner Kelsey made a motion to deny the variance; seconded by Commissioner Barry.

   The requested variance was denied by roll call vote 5 to 1.
   Yeas: Al-khafaji – 1.
   Nays: Barry, Kelsey, Jackson, Oyler, Russo – 5.

**CITIZENS’ OPPORTUNITY TO ADDRESS THE COMMISSION**

There was no interest from the public to provide public testimony at 1:51 p.m.

**ADJOURNMENT**

Commissioner Barry moved to adjourn the Zoning Board of Appeals Meeting; seconded by Commissioner Oyler.

   The motion was approved unanimously viva voce vote 6 to 0.

The Zoning Board of Appeals meeting adjourned at approximately 1:51 p.m.

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Leah Allison, Senior Urban Planner

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Madeline Wolf, Development Technician