



Department of Planning and Economic Development Staff Report to the Zoning Board of Appeals

November 6, 2024

PVAI2024-0010

2331 Rusk Road – Dimensional Variance for Height of Front/Side Street Yard Fence

REQUEST	<p>The applicant is requesting:</p> <p>A variance from Sec. 138-10.107 Fences, including 138-10.103 Corner Lots and 138-5.204 Corner Clearance by reference, which if permitted would allow for a proposed fence in the front yard (side street) setback. The plans submitted are for a 6 ft. high wood privacy fence located along a portion of the south property line and extending into the Hayfield Rd. frontage, and connecting to an aluminum wrought iron fence with a maximum height of 6 ft. located along the eastern property line along the Hayfield Rd. frontage. Sec. 138-10.107 states that in a residential district, fences not to exceed three feet in height shall be permitted within a required front yard setback or a side street yard setback; provided however that corner clearances provided in Sec. 138-5.204 have been met.</p>
APPLICANT	Matthew and Jacilyn Rolain, 2331 Rusk Rd., Rochester Hills, MI 48306
LOCATION	2331 Rusk Rd., located north of Tienken and east of Brewster Rd
FILE NO.	PVAI2024-0010
PARCEL NO.	15-05-455-006
ZONING	R-1 One Family Residential
STAFF	Chris McLeod, Planning Manager

Requested Variance

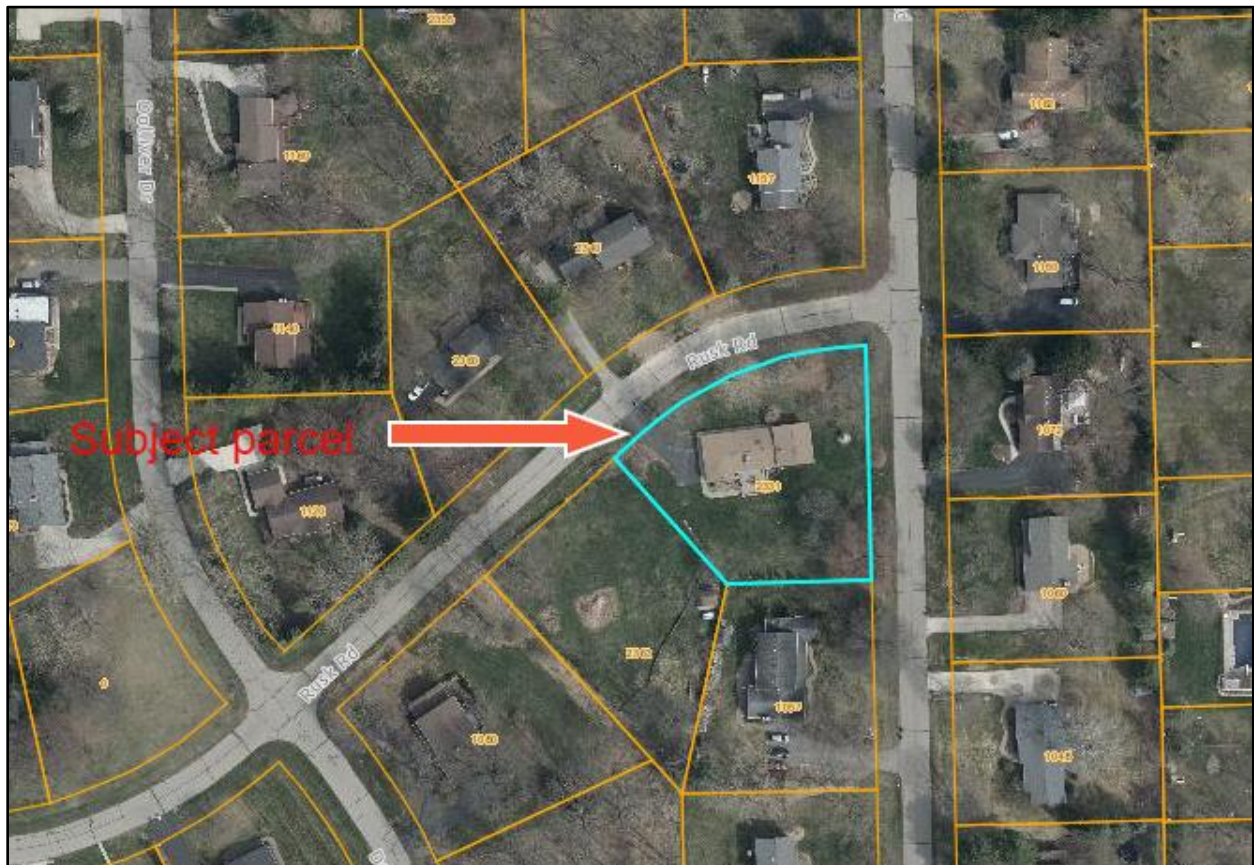
The applicant is requesting a variance from Sec. 138-10.107 Fences, including 138-10.103 Corner Lots and 138-5.204 Corner Clearance by reference, which if permitted would allow for a proposed fence in the front yard (side street) setback. The plans submitted are for a 6 ft. high wood privacy fence located along a portion of the south property line and extending into the Hayfield Rd. frontage, and connecting to an aluminum wrought iron fence with a maximum height of 6 ft. located along the eastern property line along the Hayfield Rd. frontage. Sec. 138-10.107 states that in a residential district, fences not to exceed three feet in height shall be permitted within a required front yard setback or a side street yard setback; provided however that corner clearances provided in Sec. 138-5.204 have been met.

Since the initial publication of the application, the applicants have indicated to the Planning Department that they wish to install four (4) foot tall fence(s) rather than the initially requested six (6) foot tall fence(s). Since the item was already noticed to the public, the title of the item in the agenda is consistent with the notice that was originally sent out. Given the fact that the lower fence height now being requested is less intensive and would require “less” of a variance, the Planning Department allowed the process to continue without having to be renoticed.

The subject site is located north of Tienken Road, east of Brewster. Below is a table for the zoning and existing and future land use designations for the site and surrounding parcels.

	Zoning	Existing Land Use	Future Land Use
Subject Site	R-1 One Family Residential	Residential Home	Residential 2
North (across Rusk Road)	R-1 One Family Residential	Single Family Home	Residential 2
South	R-1 One Family Residential	Single Family Home	Residential 2
East (across Hayfield Road)	R-1 One Family Residential	Single Family Home	Residential 2
West	R-1 One Family Residential	Single Family Home	Residential 2

Site Photograph



Application

As noted, the applicant has made a request to the Zoning Board of Appeals for a dimensional variance for the height of a fence located within the front/side street yard. Section 138-107(C) indicates that the height of residential fences shall not exceed a height of three (3) feet when located in the front yard setback or the side street yard setback.

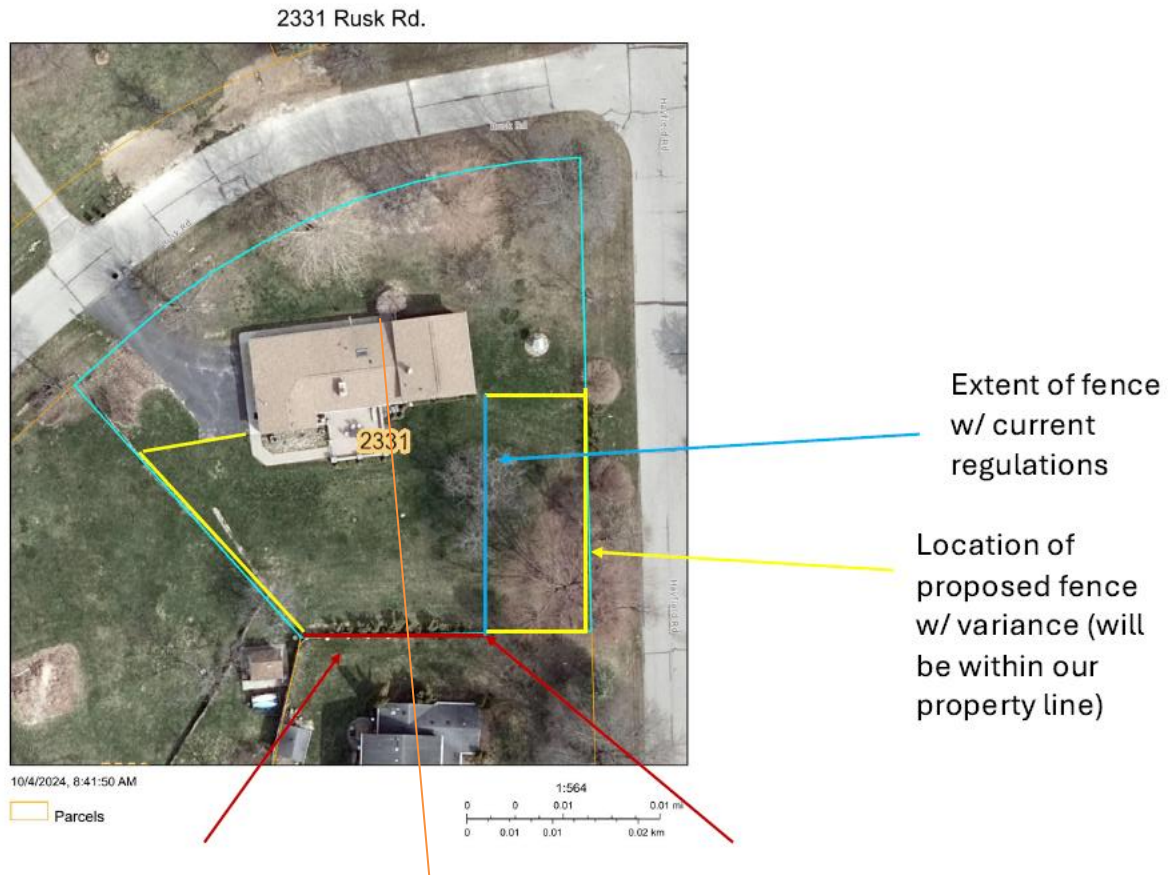
The applicant's originally requested variance, if granted, would allow for a six (6) foot tall shadowbox style wooden privacy fence along the southern property line, adjacent to the neighboring property, extending to the front property line. In addition, the applicant's request also includes extending the fence along the front property

line along Hayfield Road to a point equal to the rear of the house and then to the corner of the house itself (this portion would be a six (6) foot tall aluminum wrought fence). The additional land area that would be included within the proposed fenced in area would be approximately 3,600 square feet (approximately 40'x90'). The property line adjacent to Hayfield Road does include a number of existing trees and shrubs. The applicant should clarify as to whether the trees and shrubs are intended to remain or will they be removed/reduced if the fence is installed in the proposed location.

However, as noted above, the applicant has now indicated that fence(s), both the privacy as well as the aluminum wrought iron, of four (4) feet in height would be acceptable. The original request constituted a 200% increase in the height of the fence allowed for the proposed fence location. A fence that is four (4) feet in height represents a requested increase of approximately 133%.

The fence, as proposed, would not impact any clear vision area for drivers relative to driveways on the applicant's side of the street, nor would it extend into the clear vision area of the intersection of Rusk Road and Hayfield Road. The clear vision area is the 25' triangular area created by the intersection of two (2) roadways. The proposed fence location would extend beyond the front plane of the neighboring house to the south by approximately forty (40) feet. The house to the south faces an easterly direction, fronting on Hayfield Road. The driveway for the house to the south is located on the southern portion of the property, which should limit the amount of impact to the clear vision when exiting the neighboring property to the south. The remaining houses to the south along Hayfield Road also all front to Hayfield Road. The remainder of the planned fence, located, to the west of the house, complies with ordinance requirements.

The City has established specific setback requirements for fences, particularly on corner lots, that are tailored to the setback relationships between adjoining lots. In this particular case, the Ordinance requires that the fence be set back the distance of a typical front yard for the district since the house(s) to the south, which front Hayfield Road, would be required to have a front yard of forty (40) feet. The house to the south does appear to have a compliant forty (40) foot front yard setback. The City has developed and implemented these setbacks in order to ensure that a fence location on a corner lot does not impact the normally anticipated open front yard of an abutting home that cannot have a six (6) foot tall fence and therefore provides a degree of uniformity.

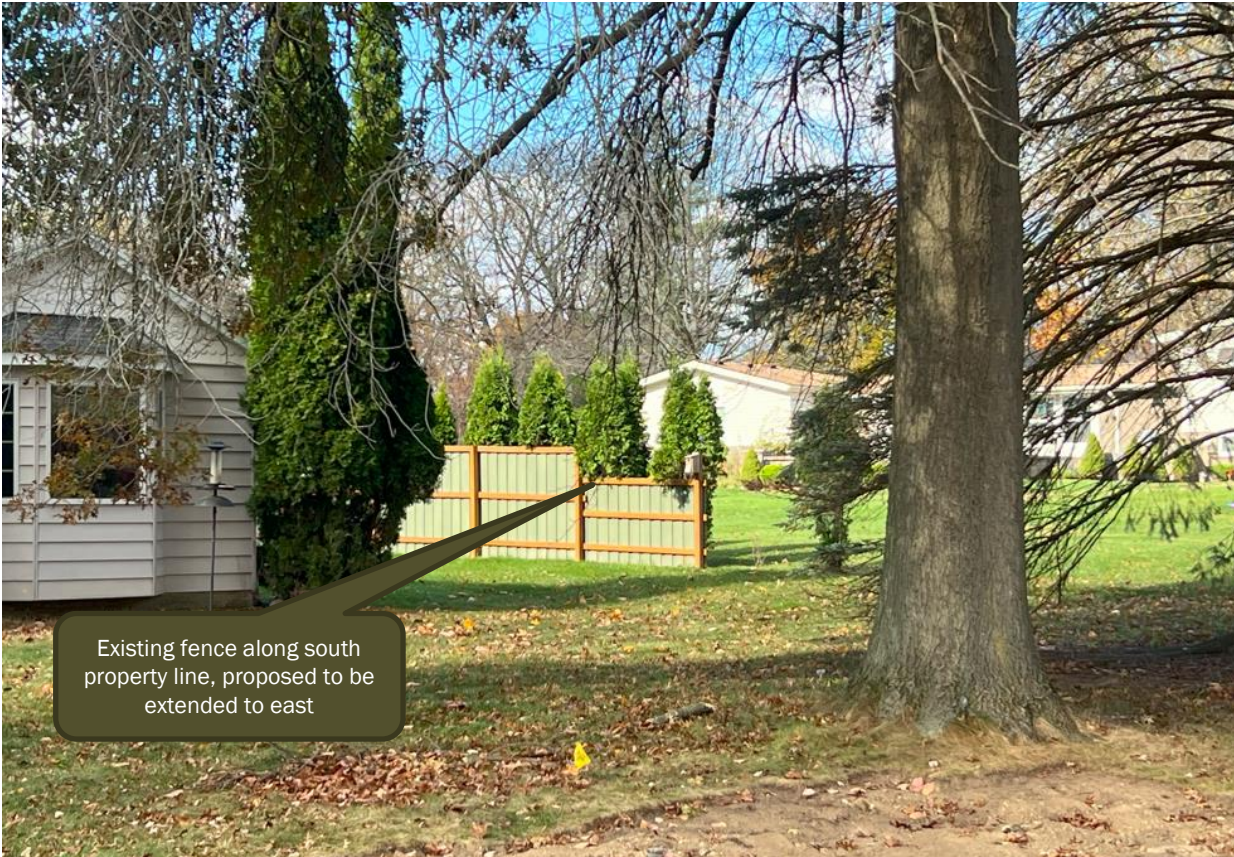




Frontage of site, looking south along Hayfield



East side of site (Hayfield Road) looking westward onto subject site.



South of subject site, looking northwest. Fence shown is existing fence that would be extended to the east along the properties' mutual property line to the Hayfield Road right-of-way.

The Zoning Ordinance provisions that regulate fences read as follows:

SECTION 138-10.107 – Fences

Residential Fences. Fences in a residential district shall be subject to the following:

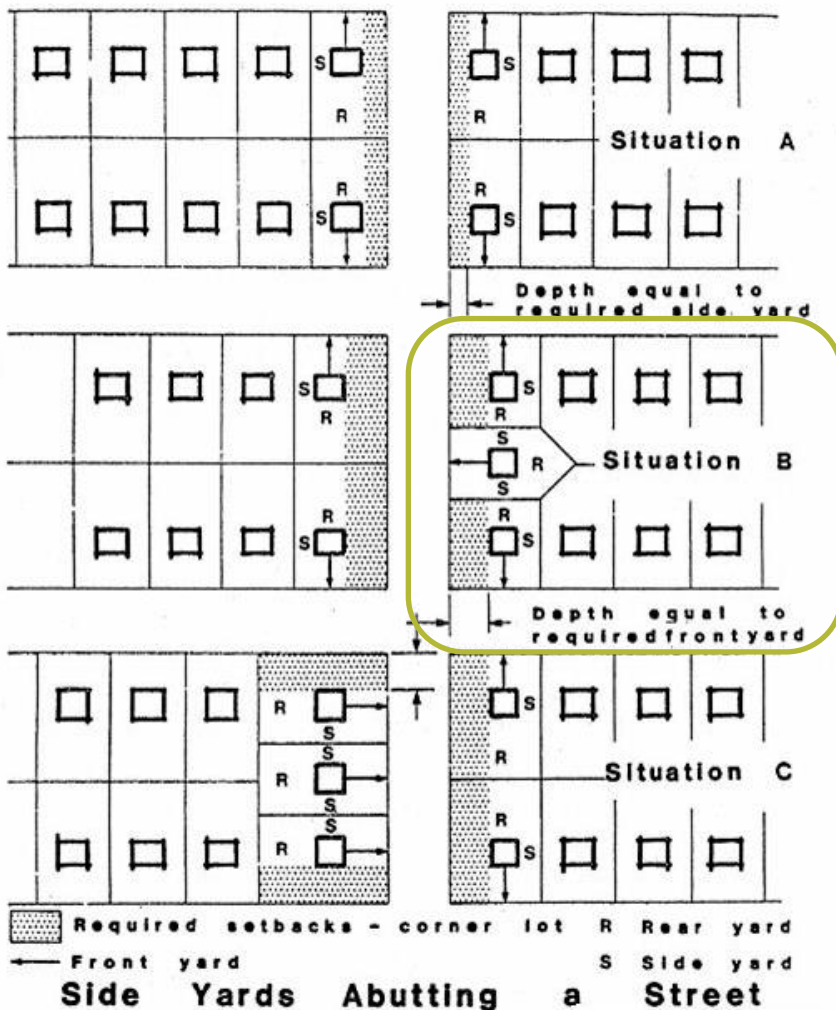
1. Residential fences may be located along a property line if the other provisions of this section are met.
2. Fences that are located along the side and rear lot lines shall be a maximum of six feet in height and may not extend closer to the front lot line than the front of the dwelling of the minimum front setback, whichever is less, unless otherwise provided for in this ordinance. In no instance shall an obscuring fence over three feet high be placed between the front of a residence and minimum front setback line, unless otherwise provided for in this ordinance. Fences on corner lots shall meet the standards for corner lots as provided in [Section 138-10.103](#).
3. Fences not to exceed three feet in height shall be permitted within a required front yard setback or a side street yard setback; provided, however, that corner clearance as provided in [Section 138-5.204](#) has been met.
4. Materials used shall be wood, metal, bricks, masonry or other solid natural or synthetic material that is all-weather resistant and designed for permanent and stationary fencing or screening. Fabric-type materials are not permitted. Wire fences, barbed or razor wire, spikes, nails or any other sharp pointed instruments of any kind are prohibited...

SECTION 138-10.103 - Corner Lots

Buildings or structures accessory to a residential dwelling unit located on a corner lot shall comply with the greater of the following setbacks:

- A. **Side street setback.** The accessory structure shall be set back a minimum of ten feet from a right-of-way or utility easement.
- B. **Front setback from side street required.** Where a residential dwelling unit is located on a lot within 300 feet of the corner lot, is located on the same side of the street or across the street from the corner lot, and has a front yard relationship to a street upon which the corner lot has frontage, the accessory structure located on the corner lot may not be located closer to the street than the front yard setback required for the adjacent lot or lot across the street having the front yard relationship with said street.

SITUATION B - There are adjacent and nearby houses that have a front yard relationship to streets 1, 2, and 3, so a front yard setback is required for accessory buildings from streets 1, 2, and 3.



Analysis

In the case of a dimensional variance, the Zoning Ordinance requires the ZBA to make a finding that a practical difficulty exists that precludes the property owner from meeting the requirements of the Ordinance. *Section 138-2.407.B.* provides criteria for determining if a practical difficulty exists. Please refer to the ZBA application for the applicant's full responses to the following criteria.

1. *Compliance with the strict letter of the restrictions governing area, setback, frontage, bulk, height, lot coverage, density or other dimensional or construction standards will unreasonably prevent the owner from using the property for a permitted purpose or will render conformity with such restrictions unnecessarily burdensome.* The applicant has indicated that strict compliance of the ordinance will not allow the applicants to incorporate a large portion of their property within a fenced in area and would take away a large portion of the functionality of the property.
2. *A granting of the variance will do substantial justice to the applicant as well as to other property owners in the district, and a lesser variance will not give substantial relief to the applicant as well as be more consistent with justice to other property owners in the zoning district.* The applicant has indicated that the variance would allow the family to incorporate the entirety of their yard and maximize the functionality of the space for their daughter and dog. Finally, the applicant has indicated that the extension of the fence would help limit the impacts of deer from eating plants within the yard. The applicant does indicate a variance that would allow for an extension of fence could also allow the neighboring property to extend their fence. It is noted however, that a variance on the subject property may not necessarily give any additional rights to a fence location on an abutting property.
3. *The plight of the applicant is due to the unique circumstances of the property.* The applicant has indicated that the subject property is unique in that it has a significant portion of the yardspace that extends past the front of the neighboring house thereby decreasing the usable recreation area of the subject lot. It is noted however, that the City has a number of corner type lots that have a similarly configured rear yard.
4. *The problem is not self-created.* The applicant has indicated that their own house and the neighbor's house were both built prior to purchase.
5. *The spirit of this ordinance will be observed, public safety and welfare secured, and substantial justice done.* The applicant has indicated that the fence location has been discussed with their neighbor and their neighbor is supportive of the plan. The applicant has not provided any correspondence from the neighbor indicating such. The applicant has further indicated that the fence will be located 15-20 feet from the street and will not extend north, beyond the rear plane of the home and therefore will not cause any clear vision issues.

Sample Motions – Variance Request

If the Zoning Board of Appeals finds the variance request meets the standards of review for granting a variance, the following motion can be considered. If the applicant and the Zoning Board of Appeals wish to amend the original request to a maximum height of four (4) feet, the motion can still be utilized, simply amend the noted height of the fence.

Motion to Approve

MOTION by _____, seconded by _____, in the matter of File No. PVAI2024-0010, that the request for a variance of three (3) feet (*amend as necessary*) in total height for the privacy fence as located on the submitted drawings, from *Section 138-10.107 Fences* which requires a fence constructed in the front or side street yard setback not to exceed a total height of three (3) feet, in the R-1 One Family Residential zoning district, Parcel Identification Number 15-05-455-006, be **APPROVED**, because a practical difficulty does exist on the property as demonstrated in the record of proceedings and based on the following findings. With this variance, the property shall be considered by the City to be in conformity with the Zoning Ordinance for all future uses with

respect to the setbacks for which this variance is granted.

1. Compliance with the strict letter of the Zoning Ordinance would prohibit the reasonable use of the property and will be unnecessarily burdensome.
2. Granting the variance will preserve a substantial property right for the applicant and thus substantial justice shall be done.
3. A lesser variance will not provide substantial relief, and would not be more consistent with justice to other property owners in the area.
4. There are unique circumstances of the property that necessitate granting the variance as described in the above criterion, since the proposed fence is not a privacy fence, will not impair clear vision areas on the lot, and the lot has excessive frontages of 192 feet and 180 feet along Rusk and Hayfield Roads respectively.
5. The granting of this variance would not be materially detrimental to the public welfare or existing or future neighboring uses.
6. Approval of the requested variance will not impair the supply of light and air to adjacent properties, increase congestion, increase the danger of fire, or impair established property values in the surrounding area.

Motion to Deny

MOTION by _____, seconded by _____, in the matter of File No. PVAI2024-0010, that the request for a variance from Section 138-10.107 Fences which requires fences located in a front or side street yard be no more than three (3) feet in height in the R-1 One Family Residential zoning district, Parcel Identification Number 15-05-455-006, be **DENIED** because a practical difficulty does not exist on the property as demonstrated in the record of proceedings and based on the following findings:

1. Compliance with the strict letter of the restrictions of the Zoning Ordinance will not prevent the owner from having a privacy fence on the lot that would buffer the lot from Hayfield Road, that is a local roadway, on the subject property in a manner that complies with the requirements of the Zoning Ordinance and therefore no practical difficulty has been demonstrated for this property.
2. Granting the variance will not do substantial justice to nearby property owners as it would confer special benefits to the applicant that are not enjoyed by other property owners in the vicinity.
3. The granting of a variance would allow for a fence that is 200% (or 133% for a 4 ft. high fence) of the permissible height for the location which it is proposed.
4. There are no unique circumstances of the property that have been identified by the applicant that necessitate granting the variance. There are many properties throughout the City that are corner lots require front yards or side street yards along both road frontages, some of which are within the same subdivision, in close proximity.
5. The granting of the variance would be materially detrimental to the public welfare by establishing a precedent that could be cited to support similarly unwarranted variances in the future. The granting of this variance could encourage further incursions upon the Zoning Ordinance which would result in further variances being considered by the Zoning Board of Appeals and could be construed as removing the responsibility of meeting the requirements of the Zoning Ordinance from applicants.