

# Board of Adjustment

## *Staff Report*

**CASE NUMBER:** BA16-061 (PLN 2016-00691)  
**STAFF PLANNER:** Gordon Sheffield, AICP CNUa, Zoning Administrator  
**LOCATION/ADDRESS:** 2724 N. Winthrop  
**COUNCIL DISTRICT:** Council District 1  
**OWNER/ APPLICANT:** Victor Timpauer

**REQUEST:** *Requesting a variance to allow for a fence to exceed the maximum height in the front yard in the RS-9 zoning district.*

### **SUMMARY OF APPLICANT'S REQUEST**

The applicant is requesting a variance that would allow a fence located within the front yard of his lot to exceed the maximum allowed height of 4.5-ft (3-ft may be completely opaque, and the upper 1.5-ft needs a high degree of transparency). The applicant notes that his lot is a 'key' lot, which is the term used to describe lots of which a side of the lot is coterminous with a rear property line of the abutting lot. Because the rear yard of the abutting lot is permitted to have a 6-ft high fence, the applicant would like to extend that 6-ft high fence allowance into the portion of the side yard of his lot that is between the rear property line of the abutting lot, and the nearby edge of his driveway. The extended area surrounded by the higher 6-ft fence is used for open-air storage, and an RV-sized gate faces forward, towards the street.

### **STAFF RECOMMENDATION**

Staff recommends **denial** of case BA16-061.

Should the Board disagree with the staff recommendation, and decide to approve the variance request, then the following conditions are recommended:

1. *Compliance with the site plan and elevations submitted.*
2. *A 10-ft by 10-ft site-visibility triangle shall be created and maintained in which the maximum height of the fence be reduced to at least 3.5-ft or lower. The site visibility triangle will begin at the intersection of the west and north property line and created 10-ft east of the west property line, and 10-ft south from the north property line. The fence located the remaining distance along the north edge of the driveway west to the front of the residence may be as high as 6-ft.*

### **SITE CONTEXT**

**CASE SITE:** Existing single residence – Zoned RS-9  
**NORTH:** Existing single residence – Zoned RS-9  
**EAST:** (across Winthrop) Existing single residence – Zoned RS-9  
**SOUTH:** Existing single residence – Zoned RS-9  
**WEST:** Existing single residence – Zoned RS-9

### **STAFF ANALYSIS**

The request involves allowing a fence to exceed the maximum allowed height in the front yard. Typically, opaque fences in the front yard are limited to 3.5-ft height. In 2011, the front yard fence height increased to 4.5-ft, provided the top 1.5-ft of the fence was essentially 'transparent', and did not block views of vehicles backing out of driveways.

The applicant states the home on the case site was constructed in the 1980s, and that surrounding homes were built much later, with multiple builders involved. The result of this variety of developers is that the initial subdivision design was changed. The applicant's home was affected by this change because rather than North Winthrop continuing north as a through street, a different design came forward which turned his lot from a mid-block lot, with a subdivision design of side yards adjacent to other side yards, into a key lot, with a subdivision design of a side yard abutting a rear yard. At the time of these changes, the zoning ordinance did not provide a fence setback for corner lots next to key lots to protect a site visibility triangle. So, the allowance for a 6-ft high fence surrounding the rear yard of the adjacent corner lot also 'walls in' the applicant's side yard all the way to the applicant's front property line. The applicant is asking to extend this 'walled in effect' onto his lot.

The Board of Adjustment must find the following items are present to approve a variance:

- a) *There are special conditions that apply to the land or building.*
- b) *The special condition was pre-existing and not created by the property owner.*
- c) *That strict compliance with the Code would deprive the property of privileges enjoyed by other properties in the same zoning district.*
- d) *The variance would not constitute a special privilege unavailable to other properties in the vicinity and zoning district of the subject property.*

***There are special conditions that apply to the land or building and the special condition was pre-existing and not created by the property owner:***

When subdivisions are designed, what is considered 'good' subdivision design generally avoids key lot situations in favor of rear property lines being coterminous with other rear property lines, and side property lines being coterminous with other side property lines. Occasionally, an odd lot or two designed with side property lines being coterminous with rear property lines cannot be avoided. Although somewhat rare, key lot designs occur frequently enough that it is difficult to label them as a 'special circumstance' or a 'special condition'. These key lot situations are not created by the property owner. The size and shape of the case site is consistent with other lots in the area. It is 10,790 square feet, and is larger than most when compared to other lots in this vicinity.

***Strict compliance with the Code would deprive the property of privileges enjoyed by other properties in the same zoning district:***

The front yard fence height requirements apply equally to all properties when located within single residence zoning districts, including other 'key lot' designs. Granting the variance would provide an allowance to this owner that is not otherwise permitted to other owners of similar key lots. It also provides an allowance not provided to other lots that are not in a key lot circumstance (ie: corner lots or mid-block lots). Put another way, it is adding an allowance (of a taller fence in the front yard), and not restoring an allowance lost because of a special circumstance.

***The variance would not constitute a special privilege unavailable to other properties in the vicinity and the zoning district of the subject property:***

Granting this variance would allow this owner the ability to utilize his property in a manner not available to other owners of parcels in single residence districts.

**Conclusion:**

An argument can be made that the key lot creates a special circumstance. However, key lots occur frequently enough that it is difficult to label them unusual or special enough to warrant deviation from standard zoning ordinance limitations. In addition, the applicant is requesting to place a fence in a location not otherwise allowed to have a tall fence, so an argument can also be made that a special privilege is being requested. Therefore, for technical reasons, it is recommended that this request be denied. If the Board determines that special

circumstances are present, and the applicant is simply making the best of an unusual situation, an alternative recommendation is also provided.

### FINDINGS

1. The home was built in the 1980s, and surrounding lots were the subject of several subdivision redesigns that resulted in this lot becoming a key lot.
2. The applicant would like to enclose additional area in their side yard with a 6-ft high fence. This side yard area is bordered on one side by a 6-ft fence that is allowed as part of the rear yard surrounding the abutting corner lot.
3. Although key lots are not common, the design of subdivisions that have key lots occurs frequently enough so as to not be considered a special circumstance.
4. The granting of the variance would constitute a special privilege to this property owner over other properties in the area. The applicant is seeking to add a 6-ft fence in an area not typically authorized for fences that high.

### ORDINANCE REQUIREMENTS

#### **11-30-4: Fences and Freestanding Walls**

*Design Objective: Fences and walls should be an integral design component of the project that identify public areas; direct movement of visitors, define areas intended for private use and allow natural surveillance.*

*Fences, freestanding walls, and similar structures shall comply with the standards of this section.*

A. AG, **RS**, RSL, RM, and DR Districts.

1. **Maximum Height.**

- a. **Front Yards.** No opaque or non-transparent fence or freestanding wall within or along the exterior boundary of the required front yard shall exceed a height of 3.5 feet. Fences or freestanding walls over 3.5 feet high are allowed in front yards, provided the fence or freestanding wall does not exceed a maximum height of 4.5 feet, and the topmost 1.5 feet is visually transparent and not opaque.
- b. **Side and Rear Yards.** No fence or freestanding wall within or along the exterior boundary of the required side or rear yards shall exceed a height of 6 feet.

D. **Corner Lots Abutting a Key Lot.** In the event the rear property line of a corner lot abuts a side property line of an adjoining key lot, a 10-foot deep by 10-foot wide visibility triangle shall be maintained over the corner lot, starting at the intersection of the rear and street side property lines of the corner lot. See diagram above, 11-30-4.D.

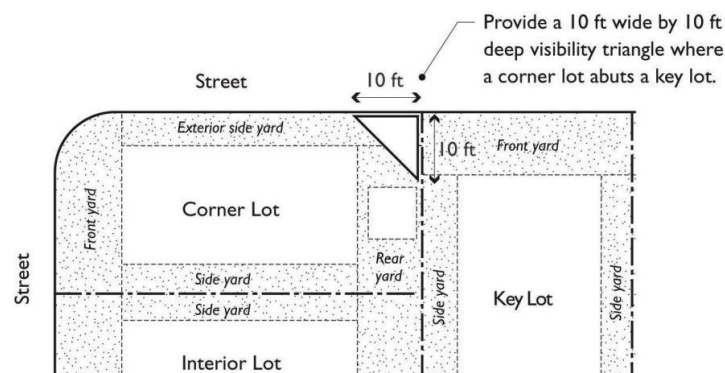


Figure 11-30-4.D