



City of Dublin

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City of Dublin Board of Zoning Appeals

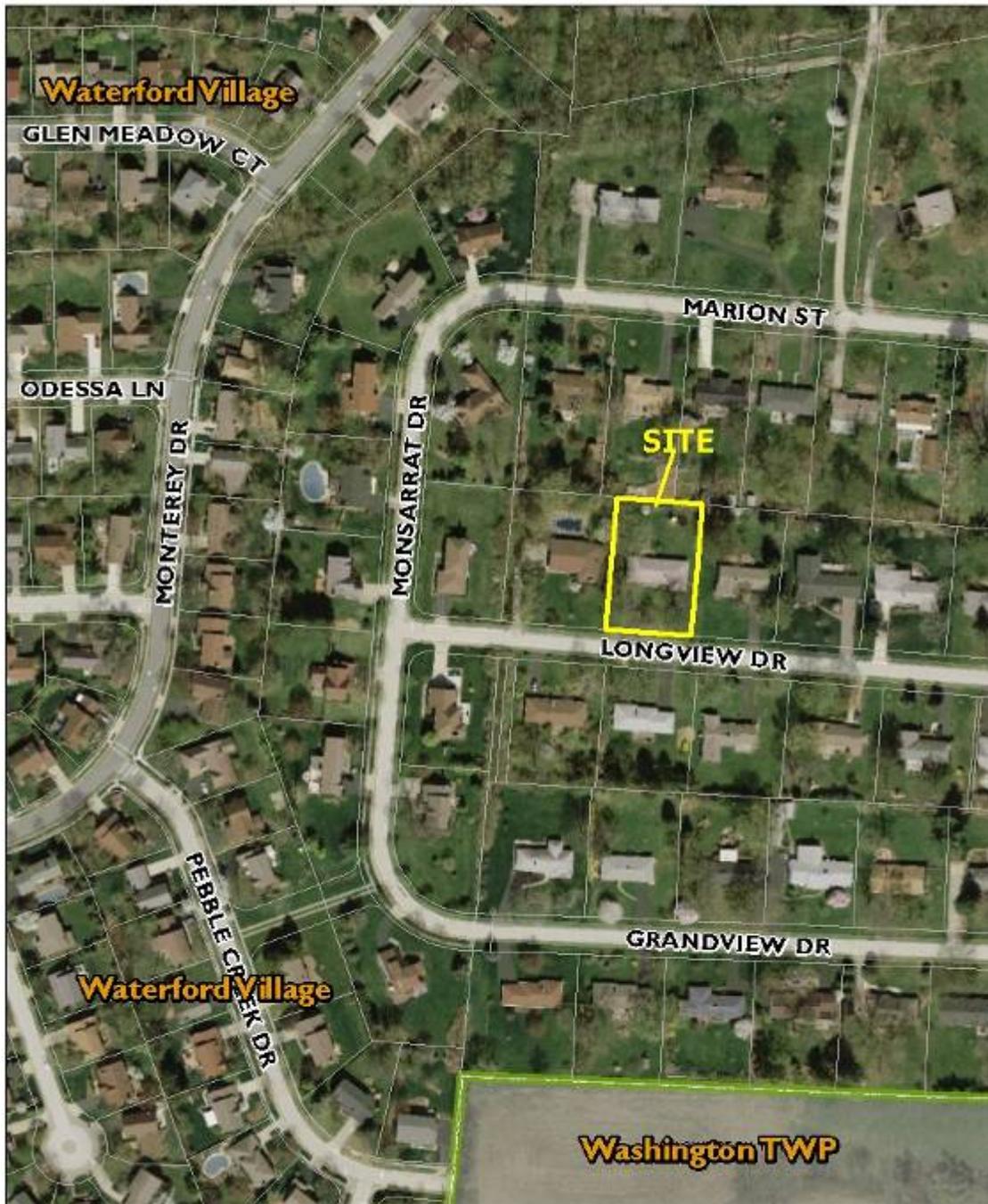
Planning Report

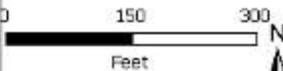
Thursday, April 25, 2013

Mitchell Residence – 178 Longview Drive Setback, Fence Height and Type Variances

Case Summary

Agenda Number	1
Case Number	13-028V
Location	178 Longview Drive The site is 0.43-acres located on the north side of Longview Drive, approximately 265 feet east of the intersection with Monsarrat Drive.
Proposal	A six-foot, partially closed fence to be located around the perimeter of a residential lot zoned R-2, the Limited Suburban Residential District.
Request	Non-Use (Area) Variances Variance 1: To permit a fence to be located within the side and rear yard setbacks Variance 2: To permit a fence at a height of six feet Variance 3: To permit a solid fence type within the required setbacks and not enclosing a deck or patio Requires review and approval by the Board of Zoning Appeals based on the review criteria of Zoning Code Section 153.231.
Applicants	Deborah Mitchell, owner; represented by Todd Schmidt, Restoration Unlimited.
Planning Contact	Tammy Noble-Flading, Senior Planner.
Contact Information	(614) 410-4649; tflading@dublin.oh.us
Planning Recommendation	Disapproval: Variance #1 Variance from Section 153.080(B)(2) to allow a fence to be located within the side and rear yard setback. Disapproval: Variance #2 Variance from Section 153.080(B)(2) to allow a fence to exceed the maximum height permitted by two-feet. Disapproval: Variance #3 Variance from Section 153.080(B)(2) to permit a solid fence within the required setbacks and not enclosing a deck or patio.



 <p>City of Dublin</p>	<p>13-028V Non-Use (Area) Variance Mitchell Residence 178 Longview Dr</p>	 <p>0 150 300 Feet</p> 
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Facts	
Site Description	<ul style="list-style-type: none"> • 0.46-acre site. • The site has 114 feet of frontage on Longview Drive, average lot depth is 177.6 feet. • The site has no easements recorded on the property. • The lot was platted as part of the Longview Addition subdivision along with the lots north of Longview Drive in 1954.
Zoning	R-2, Limited Suburban Residential District.
Surrounding Zoning and Uses	The site is surrounded by single-family homes zoned R-2, Limited Suburban Residential District to the east, south and west. Two adjacent properties to the north are zoned R-4, Suburban Residential District. Lots within this area of Dublin are typically between 1/3 and 1/2 acre in size and contain primarily single-story ranch homes typical of the 1950s and '60s.
Site Features	<ul style="list-style-type: none"> • A single-story house is located in the middle of the property. • A large tree is located near the western property line. • The site has several mature trees in the front and side yards of the property. The rear yard is primarily lawn. • The applicant is in the process of renovating the exterior and interior of the home, including the addition of a patio.
Proposal	The applicant is proposing to install a six foot tall fence, 6 inches off the side and rear property lines, starting at the rear of the home. The proposed fence is a mid-century modern wood with partially open vertical slats.
Details Variances	
Process	Zoning Code Section 153.231(C)(3) allows the Board of Zoning Appeals to approve requests for non-use (area) variances only in cases where the Board finds that there is evidence of a practical difficulty present on the property, limiting conformance to the strict requirements of the Zoning Code. The Board shall make a finding that the required review standards have been appropriately satisfied (refer to the last page of this report for the full wording of the review standards).

Details	Variances
<p>Variance Requests</p> <ol style="list-style-type: none"> 1. <i>Side and Rear Setbacks</i> 2. <i>Fence Height</i> 3. <i>Fence Type</i> 	<p>Since an update in 2000, Section 153.080(B)(1)(a) of the Zoning Code requires fences to be located within the buildable area of a lot. The R-2, Limited Suburban Residential District requires a minimum side yard of 8 feet and a total side yard of 20 feet. The required rear yard is 20% of the lot depth, or, for this lot with an average depth of 178 feet, a 35 foot, 6 inch setback. The applicant is proposing a six inch setback for both the side and rear yards.</p> <p>As many of the lots within this area of Dublin were developed prior to these regulations, a number of the lots in the area have fences on or near the property line. Neighboring lots to this have fences on the property line.</p> <p>Section 153.080(B)(2) requires that solid fences not exceed 4 feet in height. This height limitation was included in the updated fence section of the Code in 2000. As with the permitted fence location, some surrounding lots include fences that exceed 4 feet.</p> <p>Section 153.080(B)(2) limits solid fences to rear yards and only to enclose a deck or patio. Section 153.079(B) defines a solid fence as having more than 50% of its vertical surface area closed to light and air. The proposed cedar fence has a mix of wide and narrow vertical slats with narrow openings that in total exceeds the 50% requirement. (Section 153.080(C) considers a fence partially open if the openings are greater than the boards.)</p>

Analysis	Variance 1: Side and Rear Yard Setback
<p>Variance Request</p>	<p>The variance request, if approved, would permit the proposed fence to be located on the property line with no side or rear yard setbacks, where the Code prohibits a fence within the required setbacks.</p>
<p>ALL THREE OF THE FOLLOWING STANDARDS MUST BE MET</p>	
<p>(1) <i>Special Conditions</i></p>	<p>Standard Not Met.</p> <p>While there are some fences in the area that are placed on the property line, this is not a prevalent condition throughout the zoning district. Any new fence constructed is required to be within the setbacks of the lot. One unique aspect is a large tree near the west property line, which has a fence on the lot line. This may create a circumstance where a lesser setback could be permitted on the west side yard where the larger tree is located to permit its preservation. In this instance, Planning could work with the applicant to ensure a location along the west property line that would allow for adequate maintenance room, but not affect the health of the tree.</p>

Analysis		Variance 1: Side and Rear Yard Setback	
(2) <i>Applicant Action/Inaction</i>		<p>Standard Met. The conditions present on this lot and in the neighborhood have been present for an extended time, therefore, no affirmative action has been taken by the applicant to create the need for the variance.</p>	
(3) <i>No Substantial Adverse Effect</i>		<p>Standard Not Met. City Council has expressed a strong interest in fence locations, particularly with respect to the intent of providing as much open area as possible, especially with respect to constructed fences. This standard also addresses the need to preserve the purpose and intent of the regulation. Continuing to permit fences on all property lines only because neighboring properties have the same condition will not permit the eventual achievement of the purpose and intent of this regulation.</p>	
AT LEAST <u>TWO</u> OF THE FOLLOWING FOUR STANDARDS MUST BE MET			
(1) <i>Special Privileges</i> (2) <i>Recurrent in Nature</i> (3) <i>Delivery of Governmental Services</i> (4) <i>Other Method Available</i>		<p>No Standards Met. The following standards have been reviewed with the finding that none of the Standards have been satisfied.</p> <p>(1) Standard Not Met. Providing the fence in the required location would still provide an adequate area for privacy and enjoyment of the use of the lot's yard areas.</p> <p>(2) Standard Not Met. With City Council's emphasis on fence locations, continued approvals of fences on or near property lines resulting from variances could have the effect of altering Code requirements in certain areas, which, if continued, would lead to a conclusion that a Code amendment would be preferable to a succession of similar variances.</p> <p>(3) Standard Not Met. Another useful purpose of having fences not completely enclose yard areas is to permit adequate safety services, including fire access.</p> <p>(4) Standard Not Met. The fence could be located in the required location and still provide an adequate area for privacy and enjoyment of the use of the lot's yard areas.</p>	

Analysis		Variance 2: Fence Height
<i>Variance Request</i>	The variance request, if approved, would permit a six-foot tall fence where four feet is required, for a variance of two feet.	
<i>ALL THREE OF THE FOLLOWING STANDARDS MUST BE MET</i>		
(1) <i>Special Conditions</i>	Standard Not Met. While there are taller fences in the vicinity, there are no specific conditions present on this lot that would justify a taller fence. Even taller fences on adjacent or nearby lots may eventually be replaced with conforming fences.	
(2) <i>Applicant Action/Inaction</i>	Standard Met. The conditions present on this lot and in the neighborhood have been present for an extended time, therefore, no affirmative action has been taken by the applicant to create the need for the variance.	
(3) <i>No Substantial Adverse Effect</i>	Standard Not Met. City Council has also expressed a strong interest in maintaining fence heights within Code, for many of the same reasons as the setback requirements. This standard also addresses the need to preserve the purpose and intent of the regulation. A fence greater than four feet restricts the open nature of views; a permissible four feet fence permits a sense of enclosure without unduly sacrificing the longer vistas intended by limiting fence heights.	
<i>AT LEAST TWO OF THE FOLLOWING FOUR STANDARDS MUST BE MET</i>		
(1) <i>Special Privileges</i>	One Standard Met. The following standards have been reviewed with the finding that only Standard #3 has been satisfied. (1) Standard Not Met. There are no physical conditions that create practical difficulties on this lot related to the height of a fence. (2) Standard Not Met. With City Council's emphasis on fence requirements, continued approvals of fences resulting from variances could have the effect of altering Code requirements in certain areas, which, if were to be continued would lead to a conclusion that a Code amendment would be preferable to a succession of similar variances. (3) Standard Met. A higher fence would have no general effect on governmental services. (4) Standard Not Met. A four foot fence provides an adequate sense of privacy and does not impede enjoyment of the use of the lot's yard areas.	
(2) <i>Recurrent in Nature</i>		
(3) <i>Delivery of Governmental Services</i>		
(4) <i>Other Method Available</i>		

Analysis		Variance 3: Fence Type
Variance Request	The variance request, if approved, would permit a solid fence exceeding four feet in height on the property line that is not enclosing a deck or patio.	
ALL THREE OF THE FOLLOWING STANDARDS MUST BE MET		
(1) <i>Special Conditions</i>	Standard Not Met. There are no physical conditions that create practical difficulties on this lot related to the type of fence. The fence is not intended as an enclosure for a deck or patio as required by Code.	
(2) <i>Applicant Action/Inaction</i>	Standard Met. The conditions present on this lot and in the neighborhood have been present for an extended time, therefore, no affirmative action has been taken by the applicant to create the need for the variance.	
(3) <i>No Substantial Adverse Effect</i>	Standard Not Met. City Council's interest in preserving views would be substantially affected by approval of a solid fence that is within the setback of the lot. Further, solid fences were intended only to provide direct privacy for a deck or patio, which is not the case in this request.	
AT LEAST <u>TWO</u> OF THE FOLLOWING FOUR STANDARDS MUST BE MET		
(1) <i>Special Privileges</i>	One Standard Met. The following standards have been reviewed with the finding that only Standard #3 has been satisfied. (1) Standard Not Met. There are no physical conditions that create practical difficulties on this lot related to the type of fence. Solid fences are permitted, but only when placed within the required setbacks and only if enclosing a deck or patio, which is not the case in this request. (2) Standard Not Met. With City Council's emphasis on fence requirements, continued approvals of fences resulting from variances could have the effect of altering Code requirements in certain areas, which, if were to be continued would lead to a conclusion that a Code amendment would be preferable to a succession of similar variances. (3) Standard Met. The type of fence would have no general effect on governmental services. (4) Standard Not Met. An open fence type provides a degree of sense of privacy and permits enjoyment of the use of the lot's yard areas.	
(2) <i>Recurrent in Nature</i>		
(3) <i>Delivery of Governmental Services</i>		
(4) <i>Other Method Available</i>		

Recommendations	Disapproval of Variances
Disapproval	<p>Based on Planning's analysis the requested variances do not meet the required non-use (area) variance standards, therefore disapproval of all three variances is recommended.</p> <p>Variance #1: Disapproval Disapproval of a variance from Section 153.080(B)(2) to allow a fence to be located within the side and rear yard setback. Given the presence of a large tree near the west property line, Planning would support a fence with a lesser setback along that lot line, but one that would permit adequate opportunity for maintenance access and preserve the health of the tree.</p> <p>Variance #2: Disapproval Disapproval of a variance from Section 153.080(B)(2) to allow a fence to exceed the maximum height permitted by two feet.</p> <p>Variance #3: Disapproval Disapproval of a variance from Section 153.080(B)(2) to allow a solid fence within the required setbacks of the lot and not enclosing a deck or patio.</p>

NON-USE (AREA) VARIANCES

Section 153.231(H)(1) Variance Procedures

On a particular property, extraordinary circumstances may exist making a strict enforcement of the applicable development requirements of this Code unreasonable and, therefore, the variance procedure is provided to allow the flexibility necessary to adapt to changed or unusual conditions that meet the standards of review for variances. In granting any variance, the Board of Zoning Appeals shall prescribe appropriate conditions and safeguards to maintain the intent and spirit of the zoning district in conformity with the Zoning Code.

Non-Use (Area) Variances. Upon application, the Board of Zoning Appeals shall only approve a request for a non-use variance only in cases where there is evidence of practical difficulty present on the property in the official record of the hearing, and that the findings required in (a) and (b) have been satisfied with respect to the required standards of review (refer to the last page of this Report for the full wording of the review standards):

(a) That all of the following three findings are made:

- (1) *That special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable to other lands or structures in the same zoning district whereby the literal enforcement of the requirements of this Chapter would involve practical difficulties. Special conditions or circumstances may include: exceptional narrowness, shallowness or shape of a specific property on the effective date of this Chapter or amendment; or by reason of exceptional topographic or environmental conditions or other extraordinary situation on the land, building or structure; or by reason of the use or development of the property immediately adjoining the property in question.*
- (2) *That the variance is not necessitated because of any action or inaction of the applicant.*
- (3) *Granting the variance will not cause a substantial adverse effect to property or improvements in the vicinity or will not materially impair the intent and purposes of the requirement being varied or of this Chapter.*

(b) That at least two of the following four findings are made:

- (1) *That a literal interpretation of the provisions of the Zoning Code would not confer on the applicant any special privilege or deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this Chapter.*
- (2) *The variance request is not one where the specific conditions pertaining to the property are so general or recurrent in nature as to make the formulation of a general regulation for those conditions reasonably practicable.*
- (3) *The variance would not adversely affect the delivery of governmental services (e.g., water, sewer, garbage).*
- (4) *The practical difficulty could be eliminated by some other method, even if the solution is less convenient or most costly to achieve.*