



PLANNING REPORT

Board of Zoning Appeals

Thursday, March 28, 2024

BURNS RESIDENCE 24-031V

<https://dublinohiousa.gov/bza/24-031>

Case Summary

Address	5763 Dalymount Drive, Dublin, OH 43016
Proposal	Variance to Zoning Code Sections 153.080(A)(1), 153.080(B)(1)(a), and the Trinity Park development text to allow a black-aluminum fence to be located along the property line.
Request	Request for review and approval of a Non-Use (Area) Variance under the provisions of Zoning Code Section 153.231(H).
Zoning	PLR, Planned Low Density Residential District – Trinity Park
Planning Recommendation	<u>Disapproval of the 3 Non-Use (Area) Variances.</u>
Next Steps	The Board of Zoning Appeals (BZA) is the final reviewing body for this application. If approved by the BZA, the applicant may proceed to Building Standards for a revised site permit.
Applicant	Thomas McCash, Attorney
Case Manager	Zach Hounshell, Planner II (614) 410-4652 zhounshell@dublin.oh.us

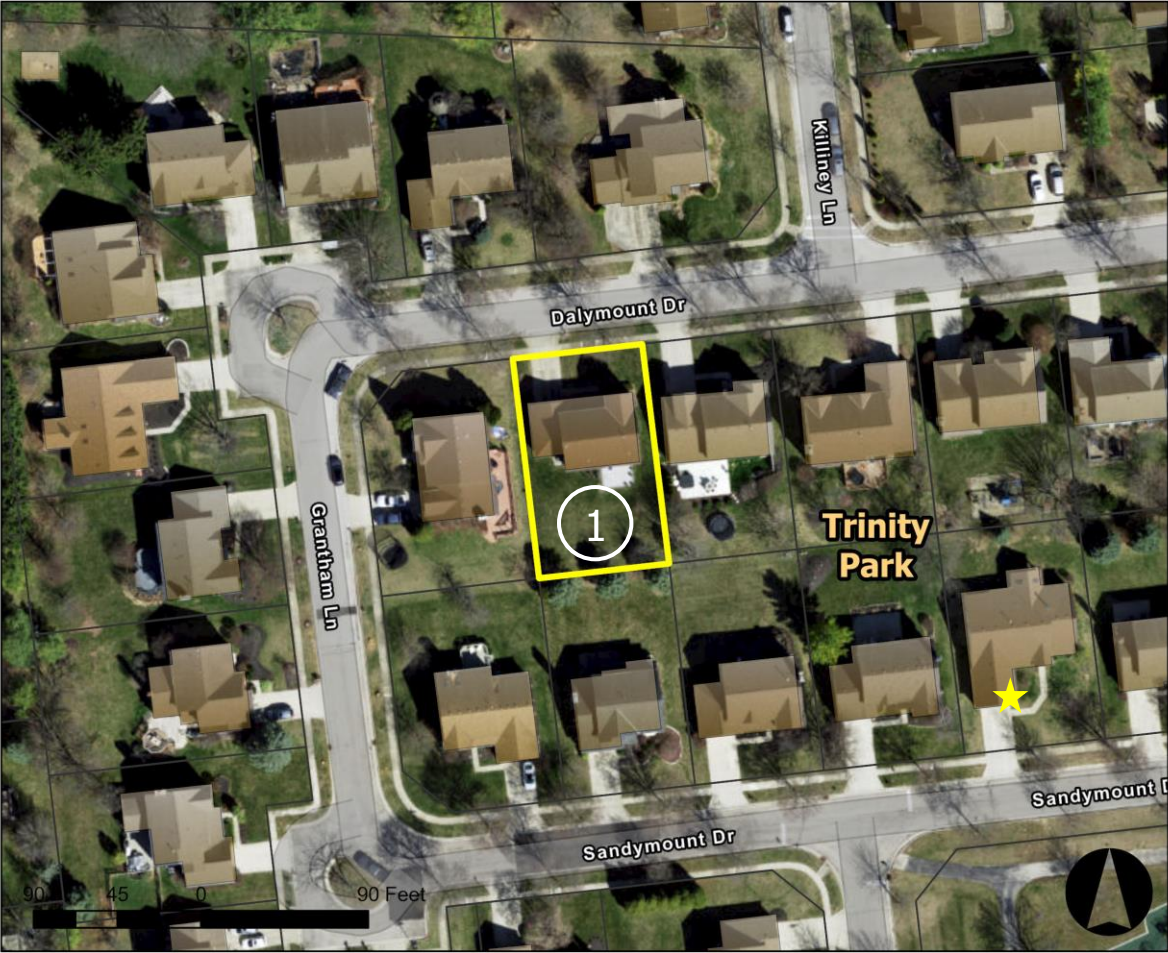
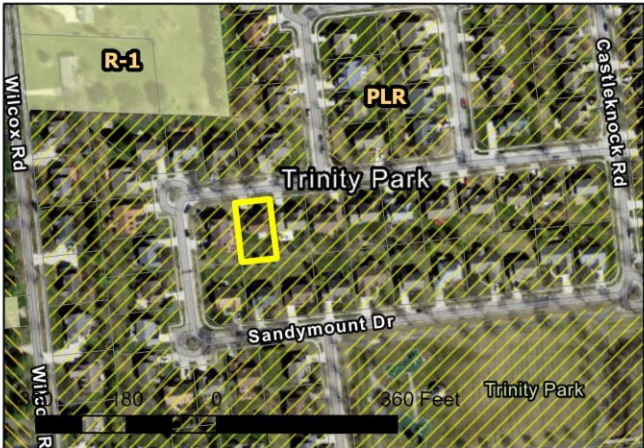
Site Location Map

22-031V | Burns Residence



Site Features

- 1 Flat site with minimal natural features



1. Background

Background

The 0.19-acre site is zoned PLR, Planned Low Density Residential District, Trinity Park, and is located approximately 85 feet southeast of the intersection of Dalymount Drive and Grantham Lane. The site, listed as Lot 68 on the Final Plat, contains a single-family residence with frontage on Dalymount Drive.

Site Features

The site is relatively flat with no natural features located on the it. A 7.5-foot easement is located along the southern property line which includes an 8-inch sanitary sewer line owned and maintained by the City of Dublin. Should any structure or fence encroach within the easement, an easement encroachment agreement would be required to be approved by Dublin. Engineering has not reviewed this requested fence location, but would if the variance requests were approved.



History

On November 1, 2023, Planning Staff reviewed and provided a disapproval notice for a Certificate of Zoning Plan Approval submitted by the applicant's fence contractor, due to nonconformance with the Code provisions. The request was for a new fence that would be located on the side and rear property lines. Between November 1 and January 24, the applicant had the disapproved fence constructed on the site without a permit. On January 24, 2024, Code Enforcement Staff provided a notice of violation for a constructed black aluminum fence following discovery of the constructed illegal fence.

In order to resolve the matter, the property owner was given the opportunity to either submit a Variance application for the proposed fence, or revise/remove the fence to avoid legal action. The applicant has decided to proceed with a Variance request for the fence.

Fence variances are rare and are seldom approved due to the challenges associated with meeting the variance criteria, which are intended for properties where practical difficulties of a site prevent a property owner from conforming to the requirements of the Code. Fence regulations were established in 1998, and were intended for the conservation and protection of property, the assurance of safety and security, the enhancement of privacy, and the improvement of the visual environment. This includes the provision of a neat and orderly appearance consistent with the neighborhood and community character.

Fences that were installed prior to the fence code being implemented in 1998 are considered existing non-conforming fences. These fences are permitted to remain on a site, but once replaced, are required to meet the current zoning requirements.

Development Text Requirements

The Trinity Park neighborhood is a Planned Low Density Development and has a development text that provides zoning requirements for the neighborhood. Planned Districts like Trinity Park include development text requirements to establish a high-quality, consistent character across all properties in the neighborhood. The development text is established by the developer and accepted as part of the rezoning of a development. The development text is separate from deed restrictions or HOA restrictions, which are not administered by the City of Dublin.

The development text states that the minimum side yard setback shall be 6 feet on each side for lots 75 feet in width or less, and the rear yard setback shall be 25 percent of the lot depth. The development text has restrictions on fencing within the neighborhood, stating that fencing materials may be of wood, stone, or masonry construction, and shall not be more than 4 feet in height. These requirements were provided to maintain a consistent character throughout the development where fences are constructed.

The applicant is currently requesting approval of a black aluminum fence, which is not permitted per the development text. Should the Variance for the material not be approved, an amendment to the development text would be required. This process would require review and approval from the Planning and Zoning Commission.

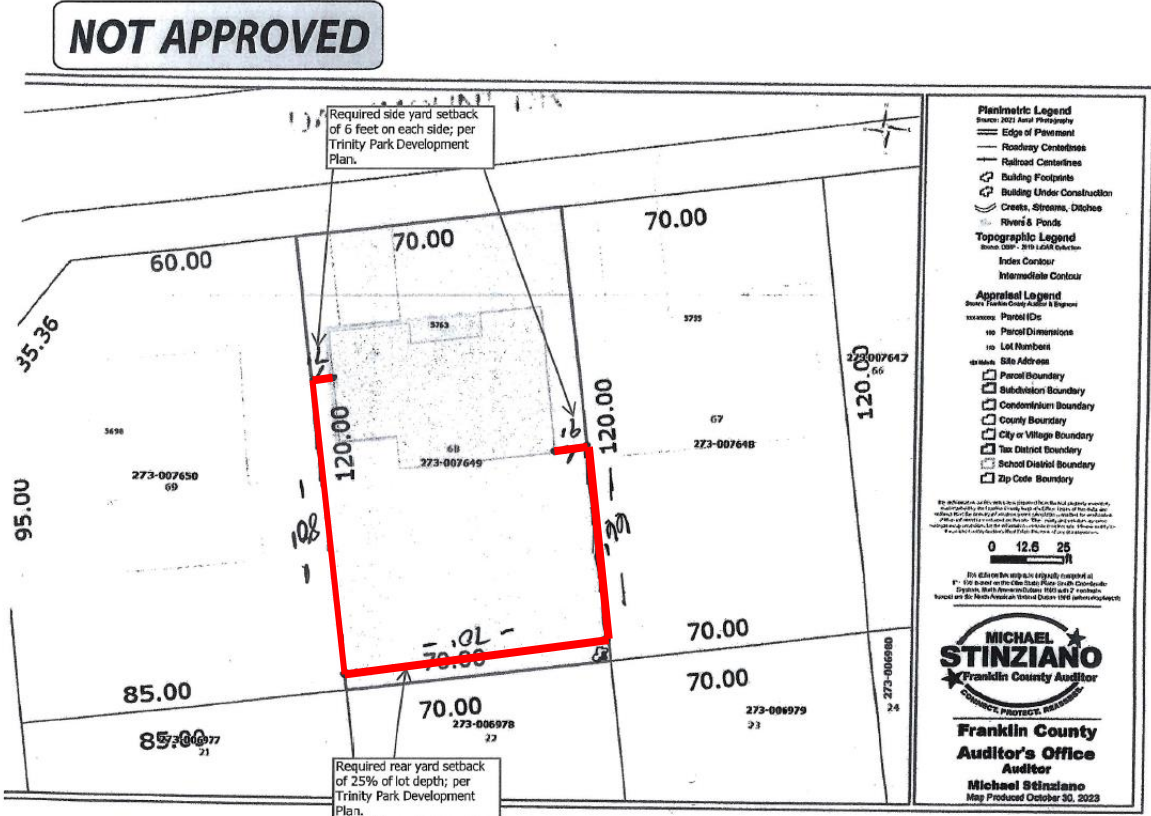
2. Proposal

The applicant is requesting 3 Non-Use (Area) Variances from the following code sections:

Variance #	Code Section	Requirement	Request
#1	153.080(A)(1)	The fence or wall shall not be permitted to encroach upon public rights-of-way or easements or no build zones, conservation/no disturb zones.	To allow a fence to encroach a 10-foot easement along the southern property line.
#2	153.080(B)(1)(a)	The partially open or open fence may be located only within the buildable area of the lot.	To allow a fence to be located along the property line.
#3	Trinity Park Development Text	Fences within Trinity Park may be of wood or stone or masonry construction	To allow a black aluminum fence.

The applicant is requesting approval for the construction of a 4-foot tall black aluminum fence along the property line of the site. The applicant has provided a project narrative identifying the necessity of the variance. In 1996, the property owner purchased the property and installed a permitted split rail and wire fence on the property. In the early 2000s, the property owner removed the fence and did not replace it. The proposed fence would be in a similar location to the previous fence, and is intended to protect her property from adjacent properties and their pets.

3. Site Plan



4. Plan Review

Zoning Code Section 153.231(H)(2) allows the Board of Zoning Appeals to approve requests for non-use (area) variances only in cases where the Board finds there is evidence of a practical difficulty present on the property, and that the findings required in Zoning Code Section 153.231(H) have been satisfied.

Criteria A | Non-Use (Area) Variance Analysis - Section 153.231(H)(2)(a)

All three criteria are required to be met:

Criteria	Review
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.	#1, 2, 3: Criteria Not Met. The configuration of the lot, the lack of natural features, and topography of the site are consistent with adjacent properties in the neighborhood. There are no conditions associated with the site that make the literal enforcement of the requirements impractical for location and material of fencing.
2. That the variance is not necessitated because of any action or inaction of the applicant.	#1, 2, 3: Criteria Not Met. The variance is being requested following the construction of the illegal fence on the site. Therefore, the construction of the illegal fence has constituted the need for the variance.
3. Granting the variance will not cause a substantial adverse effect to the property or improvements in the vicinity or will not materially impair the intent and purposes of the requirement being varied.	#1, 2, 3: Criteria Not Met. The purpose of the fence regulations are to prevent perimeter fences along side and rear property lines that “close off” properties from adjacent properties. It is also intended to create and maintain open corridors of viewsheds unrestricted by buildings or fences. This perimeter fence would impair the intent of the requirements. Regarding the fence material, the development text established by the developer to create a specific aesthetic appearance for residents that decided to construct fences in the neighborhood. The use of black aluminum would conflict with the original and existing character established by the development text, and would open the door to additional variance requests for black aluminum fences in the neighborhood.

Criteria B | Non-Use (Area) Variance Analysis - Section 153.231(H)(2)(b)

At least two of the following criteria are required to be met:

Criteria	Review
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	#1, 2, 3: Criteria Not Met. The approval of the variance would grant a special privilege to the property owner, allowing them to utilize area outside the buildable area, and use a material currently not permitted by the development text. This request has generally been recommended for disapproval in the past with fence variance applications.

Criteria	Review
<p>district under the terms of this chapter.</p>	
<p>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.</p>	<p>#1, 2, 3: Criteria Met. Since the adoption of the Fence Code in 2000, many new residential developments have been approved, which all must adhere to the Fence Code. While there are properties with pre-existing, “grandfathered” fences along the property lines, a vast majority of properties in Dublin either have no fence or a fence that meets Code. Staff does not consider these requests recurrent in nature.</p>
<p>3. The variance would not adversely affect the delivery of governmental services.</p>	<p>#1, 2, 3: Criteria Met. The request would not impact the delivery of governmental services.</p>
<p>4. The practical difficulty could not be eliminated by some other method, even if the solution is less convenient or most costly to achieve.</p>	<p>#1, 2, 3: Criteria Not Met. The applicant could construct a fence that meets the required setbacks and materials on the site. There are no conditions on the site that would prohibit this route.</p>

5. Recommendation

Planning Recommendation: #1 (Easement Encroachment)

Planning Staff recommends **Disapproval** of the Non-Use (Area) Variance to Zoning Code Sections 153.080(A)(1) to allow a fence to encroach a 7.5-foot easement along the southern property line.

Planning Recommendation: #2 (Buildable Area)

Planning Staff recommends **Disapproval** of the Non-Use (Area) Variance to Zoning Code Sections 153.080(B)(1)(a) to allow a fence to be located along the property line

Planning Recommendation: #3 (Fence Material)

Planning Staff recommends **Disapproval** of the Non-Use (Area) Variance to the Trinity Park development text to allow a black aluminum fence.