



Legislation Details (With Text)

File #: 19-591B **Version:** 1
Type: Ordinance **Status:** Passed
File created: 6/6/2019 **In control:** City Council
On agenda: 6/18/2019 **Final action:** 6/18/2019

Title: Concur with PZC and the petitioner and pass an ordinance approving variances to allow a 5' tall open style fence and an 8' tall privacy fence to be installed without a principal structure for the subject properties located at 222, 212, and 204 W. Van Buren Avenue - PZC 19-1-48; or

Concur with staff and pass the ordinance with an amendment that only the variance to permit the fence to be installed without a principal structure be approved for the subject properties located at 222, 212, and 204 W. Van Buren Avenue be approved - PZC 19-1-48

Sponsors:

Indexes:

Code sections:

Attachments: 1. Ordinance, 2. Exhibit A- Legal Description, 3. Exhibit B- Plot Plan, 4. Exhibit C- Standards, 5. Application, 6. Fence Elevations, 7. Disclosure of Beneficiaries, 8. Location Map, 9. 6-5-19 PZC meeting minutes -DRAFT

Date	Ver.	Action By	Action	Result
6/18/2019	1	City Council	passed	Pass

CITY COUNCIL AGENDA ITEM

ACTION REQUESTED:

Concur with PZC and the petitioner and pass an ordinance approving variances to allow a 5' tall open style fence and an 8' tall privacy fence to be installed without a principal structure for the subject properties located at 222, 212, and 204 W. Van Buren Avenue - PZC 19-1-48; or

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DEPARTMENT: Transportation, Engineering and Development

SUBMITTED BY: Gabrielle Mattingly

BOARD/COMMISSION REVIEW:

The Planning and Zoning Commission considered this matter on June 5, 2019 and voted to recommend approval of the variances from 6-2-10:6 in order to install a fence on the vacant subject properties, and 6-2-12:2.1 in order to install a 5' tall open style fence in the front and corner side yard (approved 7,0). Staff supports the request to install a fence on the vacant subject properties; however, staff does not support the variance to allow for a 5' tall fence to be installed in the front and corner side yards.

BACKGROUND:

The subject properties are zoned TU (Transitional Use) and are generally located on the southwest corner of Van Buren Avenue and Webster Street. The subject property at 222 W. Van Buren is improved with a single-family residence, while 212 and 204 W. Van Buren are vacant.

DISCUSSION:

The owner and petitioner, North Webster Place, LLC has submitted a request for variances in order to install a 5' tall open style fence in the front and corner side yard and an 8' tall privacy fence in the rear yard for the properties located at 222, 212, and 204 W. Van Buren Avenue (site plan showing the location of the proposed fencing is included in the attachments).

Variance to Section 6-2-10:6

The petitioner is proposing to construct a 5' tall picket style fence along the front and corner property lines and an 8' tall fence along the rear property line on the two vacant lots adjacent to the existing single-family home constructed at 222 W Van Buren. Since these lots are currently vacant, a variance is required to Section 6-2-10:6 (Accessory Structures: Time of Construction) which provides that a fence cannot be constructed on a lot without a principal structure. Staff is supportive of this variance finding it reasonable since the lots are currently under common ownership. The petitioner's responses to the Standards for Granting a Zoning Variance are attached. Upon review, staff agrees with the petitioner's findings and recommends their adoption by the Planning and Zoning Commission.

Variance to Section 6-2-12:2.1

Per Section 6-2-12:2.1 (Fences: Business Districts) of the Naperville Municipal Code, a 3' tall fence may be constructed at the front and corner side yard. Any proposed height taller than 3' is required to meet the setback requirements of the zoning district. Per code, the proposed 5' tall open style fence is required to be setback 15' from the property line adjacent to Van Buren Avenue and 10' from the property line adjacent to Webster Street. However, since this fence is proposed to be located on the Van Buren Avenue and Webster Street property lines, a variance is required to this Section. Note: Section 6-2-12:2.2 permits fences located in the rear or interior side yard to go up to a height of 15', therefore, the 8' tall fence that is proposed in the rear yard does not require a variance for the proposed height.

The petitioner's responses to the Standards for Granting a Zoning Variance are included in the attachments; staff does not concur with the responses to the standards submitted by the petitioner. Staff's comments with respect to the proposed variance standards, based upon a review of the subject property, applicable Code provisions for fences, the TU zoning district, and the standards for variance requests, are as follows:

Variance Standards #1: The variance is in harmony with the general purpose and intent of this Title and the adopted comprehensive master plan; and

Staff Analysis: Requiring a fence to be placed in compliance with the front and corner side yard setbacks is applied in order to permit a property a certain degree of privacy, while also maintaining open views along street frontages. As an alternative, a fence can be installed at the property lines if its height is lowered. While the subject property is adjacent to downtown commercial uses, this transition is anticipated in both the TU District permitted uses and related regulations. Therefore, the residential improvement on this property should follow the code requirements.

Variance Standards #2: Strict enforcement of this Title would result in practical difficulties or impose exceptional hardships due to special and unusual conditions which are not generally found on other properties in the same zoning district; and

Staff Analysis: The setback requirements in the TU zoning district are less restrictive than that of a typical residential zoning district (which require a 30' setback, on average). Staff finds placing the fence in compliance with the setbacks (front yard setback of 15'; corner side yard setback of 10') would still allow the petitioner to have privacy on the property without significantly reducing the size of the yard. In contrast, the petitioner could also construct a 3' tall fence along the property lines in compliance with the Code. Accordingly, staff does not find that strict enforcement of the fence requirements would result in practical difficulties or impose exceptional hardships on the subject property.

Variance Standard #3: The variance, if granted, will not alter the essential character of the neighborhood and will not be a substantial detriment to adjacent property.

Staff Analysis: The TU zoning district was established to provide a buffer and transition between residential neighborhoods and commercial development. Accordingly, the density permitted in the transitional zoning district is less than that of the commercial areas but greater than that of the surrounding residential areas. The subject property is adjacent to properties that are located in the B4 zoning district (Downtown Core District). Constructing the proposed 5' tall fence at the property lines would be inconsistent with the intended nature of the transitional use district, as well as adjacent improvements located within the downtown.

Planning & Zoning Commission Action

The Planning and Zoning Commission considered this matter at their meeting on June 5, 2019. Three members of the public provided testimony on this case. Two members of the public spoke in opposition to the proposal finding that the 5' fence alters the character of the neighborhood and may cause potential visibility issues for vehicles exiting from the alley located south of the subject properties. Another member of the public spoke in support of the variance requests finding the open style of the 5' fence provides adequate visibility for vehicles at the intersection Van Buren and Webster while addressing any safety concerns for the homeowner. The Planning and Zoning Commission inquired about the code requirements for the proposed height of the 8' fence. PZC supported both variance requests and moved to adopt the findings of fact as presented by the petitioner and approve PZC 19-1-48 (approved 7,0).

Staff concurs with the Planning and Zoning Commission's recommendation to approve the variance to allow a fence to be installed on the vacant lots; however, staff does not recommend the approval of the variance to install a 5' tall open style fence at the front and corner side yards for the reasons stated above. Note: Staff reviewed the location of the fence to determine if the proposed fencing would create any site distance concerns. Based upon the location of the 8' privacy fence, which is setback approximately 10' from the property line, there are no visibility concerns for vehicles exiting the alley at the property to the south. In addition, the proposed 5' tall fence is of open style. The openings in the fence allow for a driver to identify pedestrians on the sidewalk and vehicles in the roadway, which generally does not create a sight concern.

Key Takeaways

- The petitioner is proposing to construct a 5' tall open style fence at the front and corner side yard and an 8' tall privacy fence in the rear yard for the properties located at 222, 212, and 204 W Van Buren Avenue - PZC 19-1-48.

- A variance is required from Section 6-2-10:6 and Section 6-2-12:2.1 in order to install the proposed fencing.
- Staff is in support of the variance from Section 6-2-10:6 finding it is reasonable to allow a fence to be constructed on the properties without a principal structure.
- Staff is not in support of the variance from Section 6-2-12:2.1 finding that the resulting fence would be inconsistent with the intended use of the TU zoning district and the subject property's location proximate to the downtown.
- The Planning and Zoning Commission voted to approve both variance requests at their meeting held on June 5, 2019 (approved 7,0).

FISCAL IMPACT:

N/A