



STAFF REVIEW AND RECOMMENDATION

Variance Case #: V2015-28 **Legistar #:** 20150459
Board of Zoning Appeals Hearing: Monday, June 29, 2015 – 6:00 p.m.
Property Owner: Kelly V. Tymus
287 North Forest Avenue
Marietta, GA 30060
Address: 287 North Forest Avenue
Land Lot: 11600 **District: 16** **Parcel: 0290**
Council Ward: 3 **Existing Zoning: R-4 (Single Family Residential – 4 units/acre)**

Special Exception / Special Use / Variance(s) Requested:

1. Variance to increase the height of a fence in the rear yard of a double frontage yard from 6 ft. to 8 ft. [*§710.04 (D.2)*]

Statement of Fact

As per section 720.03 of the Comprehensive Development Code of Marietta, the Board of Zoning Appeals may alter or modify the application of any such provision in the Development Code because of unnecessary hardship if doing so shall be in accordance with the general purpose and intent of these regulations, or amendments thereto, and only in the event the board determines that by such alteration or modification unnecessary hardship may be avoided and the public health, safety, morals and general welfare is properly secured and protected. In granting any variance the board of zoning appeals shall designate such conditions in connection therewith as will, in its opinion, secure substantially the objectives of these regulations and may designate conditions to be performed or met by the user or property owner, out of regard for the public health, safety, comfort, convenience, and general welfare of the community, including safeguards for, with respect to light, air, areas of occupancy, density of population and conformity to any master plan guiding the future development of the city. The development costs of the applicant as they pertain to the strict compliance with a regulation may not be the primary reason for granting a variance.

Criteria:

1. Exceptional or extraordinary circumstances or conditions *are/are not* applicable to the development of the site that do not apply generally to sites in the same zoning district.
2. Granting the application *is/is not* necessary for the preservation and enjoyment of a substantial property right of the applicant, and to prevent unreasonable property loss or unnecessary hardship.
3. Granting the application *will/will not* be detrimental or injurious to property or improvements in the vicinity of the development site, or to the public health, safety, or general welfare.

PICTURES



287 North Forest Avenue



6' fence along North Marietta Parkway



Landscape strip along North Marietta Parkway

Recommended Action:

Approval. The applicant, Kelly Tymus, is requesting a variance to allow the replacement of the existing 6’ fence with an 8’ fence on the property at 287 North Forest Avenue. The subject property is zoned R-4 (Single Family Residential – 4 units/acre) and contains road frontage along both North Forest Avenue and North Marietta Parkway; however, the only vehicular access is from North Forest Avenue. The applicant wishes to be able to increase the fence height along the rear property line along North Marietta Parkway as a means to minimize the traffic noise within the home and yard.

In residentially zoned districts the ordinance regulating fences was recently changed to allow a six foot (6’) tall fence made of decorative material (wood, brick, stone, or wrought iron) in any side or rear yard fronting a street. Other regulations require that the fence must be set back from the right of way line at least two feet; and also require that the finished side of the fence face the exterior. Because of the high volume of traffic, as well as the noise from the traffic, along North Marietta Parkway, the applicant would like to replace the wooden privacy fence that would meet the requirement for material and setback but not for height.

There have been three (4) cases in which variances have been granted to allow fences up to 8 ft. in height, as described below:

- **V2011-07: 651 St. Anne’s Road** **March 28, 2011**
 - (1) Variance to allow an 8 ft. tall wooden fence along the side yard fronting a public/private street; and
 - (2) Variance to allow a wooden fence to be within 2 feet of the public right-of-way.

-
- **V2011-08: 213 Maxwell Avenue** **April 25, 2011**
 - (1) Variance to allow an 8' tall wooden fence along the yard fronting a public/private street;
 - (2) Variance to allow an 8 ft. tall wooden fence along the side yard fronting a public/private street; and
 - (3) Variance to allow a wooden fence to be within 2 feet of the public right of way
 - **V2012-14: 1285 Cobb Parkway North** **April 30, 2012**
 - (1) Variance to increase the allowable height of a fence from 8' to 10'.
 - **V2012-45: 295 Vance Circle** **November 24, 2012**
 - (1) Variance to increase the maximum height of a fence within a yard fronting a public street from 6' to 8'.

Allowing the proposed fence should not affect any of the surrounding properties, as some of the other properties along North Marietta Parkway have similar fences. Additionally, exceptional circumstances apply to this property, as it is a double-frontage lot with the rear yard area abutting a heavily used roadway.

Because exceptional circumstances apply to this property, as it is a double-frontage lot with the rear yard area abutting a heavily used roadway; then the proposal should not be detrimental to public safety, the surrounding properties, or overall community. ***Staff recommends approval of this variance request.***



Department of Development Services
 205 Lawrence Street
 Marietta, Georgia 30060
 Brian Binzer, AICP, Director

APPLICATION FOR VARIANCE OR APPEAL
 (Owner/Applicant/or Representative must be present at all public hearings)

Application #: V2015-28 Hearing: 6/29/15 Registrar # 20150459
P215-224

This is a variance/appeal application for:

Board of Zoning Appeals

City Council

Owner's Name Kelly V. Tymus
 Address 287 N. Forest Ave Marietta Zip Code: 30060
 Telephone Number: 516-319-1581 Email Address: akeluke@att.net

COMPLETE ONLY IF APPLICANT IS NOT OWNER:

Applicant _____
 Address _____ Zip Code: _____
 Telephone Number _____ Email Address: _____

Address of property for which a variance or appeal is requested:

287 N. Forest Ave Date of Acquisition: 2-2-2015
 Land Lot (s) ¹¹⁶⁰⁰1495 District 16 Parcel ⁰²⁹⁰7 Acreage .301 Zoned R4 Ward 3A FLU MDR

List the variance(s) or appeal requested (please attach any additional information):

Request permission to erect a 8' fence along
North Marietta Parkway + my property line.

- Required Information**
1. Application fee (\$250)
 2. Completed notarized application. **The original application must be submitted with ALL original signature(s) – Copies of the application or signature(s) will NOT be accepted.**
 3. Legal description of property.
 4. Letter describing the reason for the variance request, stating why strict adherence to the code would result in a particular hardship (as distinguished from a mere inconvenience or desire to make more money).
 5. Site plan - 25 copies of site plan drawn to scale. Site plans must illustrate property lines and all relevant existing information and conditions in addition to proposed additions or modifications within the referenced property lines of the tract(s).
 6. Copy of current tax bill showing payment or documentation certified by the City of Marietta Tax Office.
 7. Documentation authorizing applicant to submit application by property owners if applicant is not owner.

Note: The Department of Development Services reserves the right to obtain additional information that reasonably may be required in order that an informed decision may be made.

OVER

Kelly V.Tymus
287 N Forest Ave
Marietta, Ga 30060

Request for variance:

I am respectfully requesting a variance of an 8' fence instead of 6' on the property side bordering North Marietta Highway. This will help minimize traffic noise both in my home and yard. This variance has already been granted to the owners of 295 Vance Circle, who also border North Marietta Highway.

Thank you for your consideration,

Kelly V.Tymus

TO: Marietta Daily Journal
FROM: City of Marietta
RUN DATE: June 9, 2015

PUBLIC NOTICE OF VARIANCES

The City of Marietta hereby gives notice that a public hearing will be held to give consideration to the following variance requests. The Board of Zoning Appeals will consider the following requests on **Monday, June 29, 2015 at 6:00 P.M.**, City Hall. Anyone wishing to attend may do so and be heard relative thereto.

V2015-28 [VARIANCE] KELLY TYMUS is requesting a variance for property located in Land Lot 11600, District 16, Parcel 0290, 2nd Section, Marietta, Cobb County, Georgia and being known as 287 North Forest Avenue. Variance to increase the maximum height of a fence from 6 ft. to 8 ft. in the rear yard along a street frontage. Ward 3A.

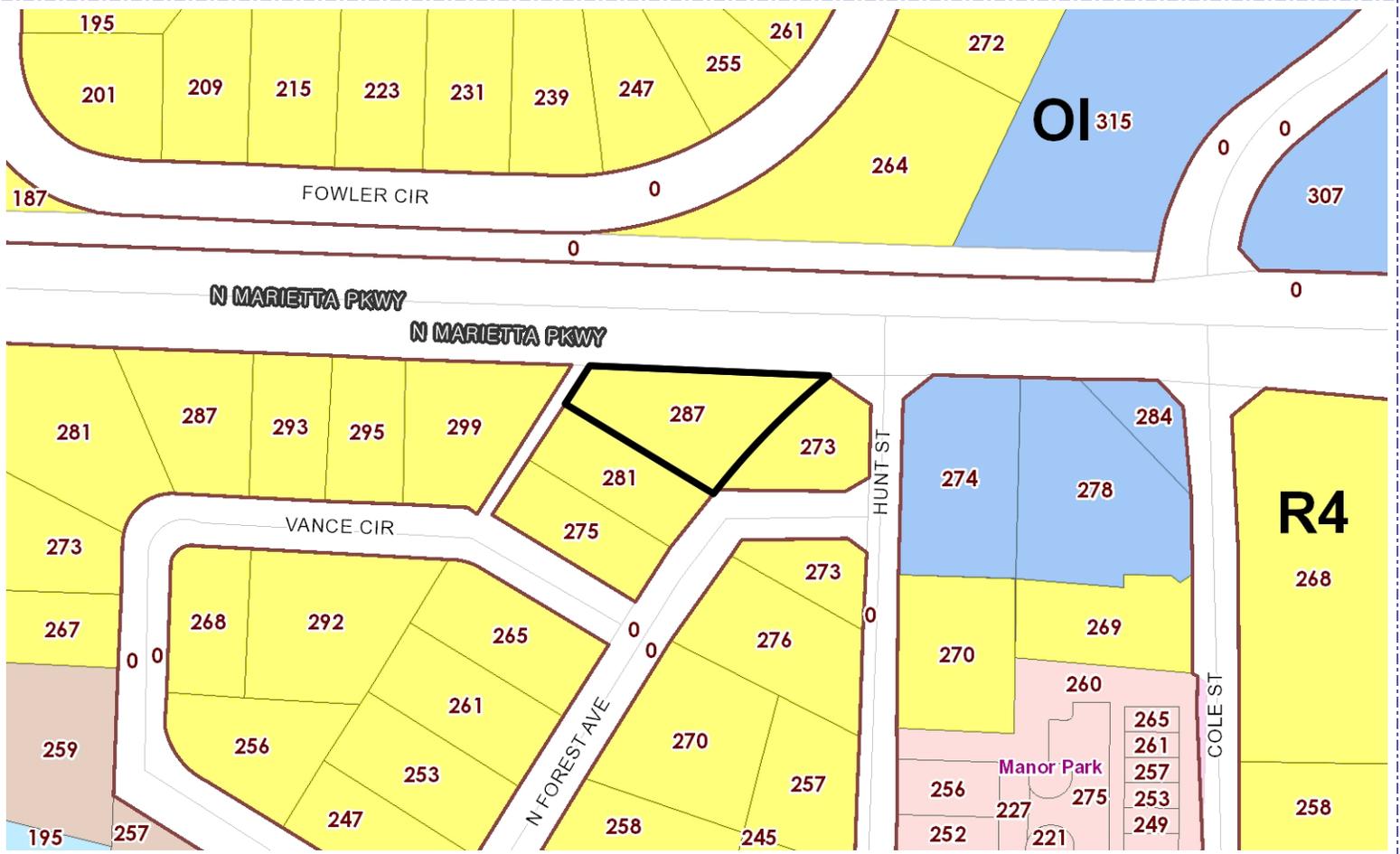
A description and plat of the property sought for the variances are on file in the Planning and Zoning Office, City Hall, and are available for inspection between 8:00 A.M. and 5:00 P.M., Monday through Friday. Anyone wishing to attend may do so and be heard relative thereto.

For additional information please call the Planning and Zoning Office (770) 794-5669.

Accessibility to Meetings: If you believe you may need the City/BLW to provide special accommodations in order to attend/or participate in any of the above meetings, please call Mr. Patrick Henley, ADA Coordinator, at 770-794-5558 (voice) or 770-794-5560 (TDD) no later than 48 hours before the date of the above meeting.

City of Marietta
205 Lawrence Street
Marietta, Georgia 30060

Variance



Address	Parcel Number	Acreage	Ward	Zoning	FLU
287 N FOREST AVE	16116000290	0.301	3A	R4	MDR

Property Owner: Kelly V. Tymus

Applicant:

BZA Hearing Date: 06/29/2015

Acquisition Date:

Case Number: V2015-28

City of Marietta Planning & Zoning

Zoning Symbols

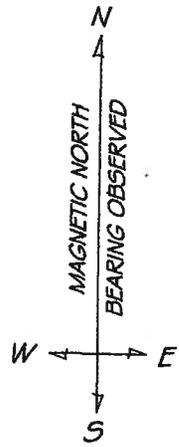
- Railroads
- City Limits
- Cobb County Pockets
- NA
- R1 - Single Family Residential (1 unit/acre)
- R2 - Single Family Residential (2 units/acre)
- R3 - Single Family Residential (3 units/acre)
- R4 - Single Family Residential (4 units/acre)
- RA4 - Single Family Residential - Attached
- RA6 - Single Family Residential - Attached
- RA8 - Single Family Residential - Attached
- MHP - Mobile Home Park
- PRD-SF - Planned Residential Dev. Single Family
- RM8 - Multi Family Residential (8 units/acre)
- RM10 - Multi Family Residential (10 units/acre)
- RM12 - Multi Family Residential (12 units/acre)
- RHR - Residential High Rise
- PRD-MF - Planned Residential Dev Multi Family
- NRC - Neighborhood Retail Commercial
- CRC - Community Retail Commercial
- RRC - Regional Retail Commercial
- PCD - Planned Commercial Development
- LI - Light Industrial
- HI - Heavy Industrial
- PID - Planned Industrial Development
- MXD - Mixed Use Development
- CBD - Central Business District
- OIT - Office Institutional Transitional
- LRO - Low Rise Office
- OI - Office Institutional
- OS - Office Services
- OHR - Office High Rise

NORTH MARIETTA PARKWAY

REQUEST 8



HUNT STREET



NF
LESLIE D. & RUBY S.
MERCIER
DB 10276, PG 200
LOT 6
FOREST HILLS
PB 3, PG 85

NORTH FOREST AVENUE

SURVEY OF
#287 NORTH FOREST AVENUE
LOT 7
FOREST HILLS
LOCATED IN
LAND LOT 1145
16th DISTRICT, 2nd SECTION
CITY OF MARIETTA
COBB COUNTY, GEORGIA
FIELD DATE: 01-22-2015
PLAT DATE: 01-26-2015

Front 25' side 10'
25' 40' 30' 20' 10' 0' 20' 40'