



STAFF REVIEW AND RECOMMENDATION

Variance Case #: V2012-33

Legistar #: 20120792

Board of Zoning Appeals Hearing: Monday, September 24, 2012 – 6:00 p.m.

Applicant: Same as owner

Property Owner: Patrick Dawson
222 Cole Street
Marietta, GA 30060

Address: 222 Cole Street

Land Lot: 11610 **District:** 16 **Parcel:** 0940

Council Ward: 5 **Existing Zoning:** R-4 (Single Family Residential 4 units/acre)

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

1. Variance to increase fence height along a side yard fronting a public street from 4 ft. to 6 ft. [§ 710.04(A)]

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



222 Cole Street facing front of house and eastward along Cole Street. House sits at the corner of Cole Street and Roosevelt Cir.



Looking at subject property from the corner of Cole Street and Roosevelt Circle. Viewing installed 6ft. fence from rear of house to side rear of subject property.



Recommended Action:

Approval. Patrick Dawson, owner and applicant is requesting a variance at 222 Cole Street that would allow him to install (keep) a 6 ft. wooden fence that runs along Roosevelt Circle. The subject property is zoned R4 (Single Family Residential – 4 units/acre) and contains road frontage along both Cole Street and Roosevelt Circle; the property owner has vehicular access from Cole Street.

In any yard fronting a street in a residentially zoned district, the ordinance only allows fences at a maximum height of 4 ft.; and also requires that the fence must be made of decorative material (wood, brick, stone, or wrought iron). The required setback for a fence is two feet from the right of way line.

During a routine inspection of the neighborhood and surrounding area, a Code Enforcement Officer noticed that the owner of the property had recently installed a 6 ft. tall wooden fence along the side yard of his property that runs along the Roosevelt Circle right-of-way. At that time, he was informed that he would need to reduce the height of his fence or apply for a variance to increase the height of the fence from 4 ft. to 6 ft.

Precedent has been established for granting height variances for fences, as described below:

- **V2012-27: 688 Polk Street** **July 30, 2012**
 - (1) Variance to increase the height of a fence in the side yard along a public right-of-way from 4 ft. to 6 ft.
- **V2012-18: 72 Griggs Street** **May 21, 2012**
 - (1) Variance to increase the height of a fence in the side yard from 4 ft. to 6 ft.
- **V2012-14: 1285 Cobb Parkway North** **April 30, 2012**
 - (1) Variance to increase the allowable height of a fence from 8' to 10'.
- **V2012-13: 235 South Avenue** **April 30, 2012**
 - (1) Variance to increase the height of a wooden fence from 4 ft. to 6 ft. along the north side property line.
 - (2) Variance to reduce the requirement of 2 ft. to 0 ft. within the public right-of-way.
- **V2011-37: 642 Allgood Road** **November 28, 2011**
 - (1) Variance to increase the height of a fence (wrought iron) in front and side yard from 4 ft. to 6 ft.
 - (2) Variance to allow fence to be constructed less than 2 ft. of the public right-of-way.
- **V2011-36: 328 Freyer Drive** **November 28, 2011**
 - (1) Variance to increase the maximum height of a fence within a yard fronting a public street from 4' to 6';
 - (2) Variance to reduce the required setback for a fence from 2' to 0'.

Due to the fact that similar fence variances have been consistently approved in the past; and because the proposal should not be detrimental to public safety, the surrounding properties, or overall community, ***staff recommends approval of this variance request with the stipulations that a row of evergreen trees or shrubs must be planted between the property line and fence.***