

ZONING VARIANCE REVIEW REPORT

TO: Pasco County Development Review Committee FILE: ZN09-1997
FROM: Lee W. Millard PETITION #1997
Assistant Zoning/Code Commission District #4
Compliance Administrator
SUBJECT: Variance Request Development Review Committee
West Central Pasco County Hearing Date: 7/30/09, NPR
APPLICANT: **LISA TORP-SALVAGNO** TAZ #14

PETITION SUMMARY:

Variance No. 1997 in the name of Lisa Torp-Salvagno has been filed to allow adjustment of the standards established within Article 500, Zoning; Section 530, Supplemental Regulations; Subsection 530.6, Structure on Small Lot of Record; and Subsection 530.16, Fences and Walls of the Pasco County Land Development Code (LDC). The site under consideration is located on the northwest corner of the intersection of Kingsway Drive and Lometa Lane within Embassy Hills Subdivision, Unit 23 (Parcel ID No. 22-25-16-1100-00002-6380), and contains .15 acre, m.o.l.

EXPLANATION OF VARIANCE:

Article 500, Zoning; Section 530, Supplemental Regulations; Subsection 530.6, Structure on Small Lot of Record; and Subsection 530.16, Fences and Walls, of the Pasco County LDC states:

530 **SUPPLEMENTAL REGULATIONS**

530.6 Structure on Small Lot of Record

Notwithstanding the limitations imposed by any other provisions of this section, any lot or parcel which existed prior to December 1, 1975, and located within an original zoning district as established at the time of the adoption of zoning and not meeting the minimum requirements for that district, shall be considered a small lot of record. A small lot of record may also be created as a result of governmental action, including, but not limited to, right-of-way dedication or reservation. Building permits may be issued upon identification of a parcel or lot as a small lot of record to allow the erection, expansion, alteration, or replacement of any use together with accessory buildings as permitted within that zoning classification as follows:

- A. Single-family dwellings and their accessory buildings constructed, or to be constructed, upon small lots of record shall not be required to comply with the minimum setback requirements applicable in the district in which the parcel or lot is located, but shall conform with the required setbacks of the nearest zoning district where minimum lot area, width, depth, and setback regulations can be met. In cases where a small lot of record does not conform to any single-family district, a minimum setback of 15 feet from any front or rear lot line and five feet from any side lot line shall apply. No accessory structure in any residential district shall be permitted less than five feet from a side or rear lot line and 15 feet from any front lot line unless approved by the Development Review Committee.

530.16 Fences and Walls

Fences and walls shall be subject to the following requirements in residential districts:

- A. In any residential district zoned R-1, R-2, R-3, R-4, R-MH, R-1MH, R-2MH, or in any residential planned unit development or residential subdivision, the development of which conforms to R-1, R-2, R-3, R-4, R-MH, R-1MH, or R-2MH development standards, no fence or wall in excess of four feet in height shall be permitted outside minimum setback lines, except as part of a continuous buffer wall for a subdivision or phase thereof along collector and

arterial street right-of-way lines and at subdivision entrances along private street right-of-way lines, and except in the side and rear yards, as defined in this code, in which case no fence or wall in excess of six feet shall be permitted. The finished side of the fence or wall shall face the adjoining lot or any abutting right-of-way. The height of all fences or walls shall be measured on the fence owner's property from the ground perpendicular to the fence or wall to the top elevation of the said fence or wall. Support poles, columns, and decorative lights may exceed the height limitations by not more than one foot. Gates may exceed the height limitations by not more than two feet. Berms, when used in conjunction with fences or walls, shall be included in height determinations.

- C. In any zoning district, no fence or wall shall be installed on any public or private right-of-way used as a street, road, highway, or easement for ingress and egress, except as part of a subdivision entrance in a private street.

REQUESTED ADJUSTMENT:

The applicant is requesting the following:

- An increase in the maximum-allowed height for a wood fence from four feet to six feet in the east front yard area on a small lot of record.
- To allow a 6-foot-high wooden fence to project 3.5 feet to 3.6 feet into the western right-of-way parallel to the centerline of Lometa Lane beginning outside the northeast property corner and extending southwesterly, approximately 45 feet, then westerly to the eastern house front.

If this variance is approved, it will bring the existing fence, installed as described above, into conformance.

The surrounding zoning districts and land uses are as follows:

	<u>Zoning District</u>	<u>Land Use</u>
North:	R-4 High Density Residential	Single-Family Dwellings
East:	R-4 High Density Residential	Lometa Lane; Single-Family Dwellings
South:	R-4 High Density Residential	Kingsway Drive/Lometa Lane Intersection
West:	R-4 High Density Residential	Single-Family Dwelling

FINDINGS OF FACT:

1. Presently, the subject corner lot contains a single-family dwelling and screen-enclosed pool on a small lot of record; is comprised of .15 acre, m.o.l.; and is located in a R-4 High Density Residential Zoning District.
2. The applicant has stated that the strict application of the LDC creates an unreasonable and unfair noneconomic hardship or an inordinate burden that was not created by the variance applicant in that:

The setback was intended for the house structure and, therefore, a fence and a house cannot physically occupy the same space on this undersized, odd shaped lot that has five sides. Two sides are considered frontage and two sides are side yard. There is no possibility of securing a yard within the current regulation.

The privacy fence in question was built using the "Rules for Fences in Residential Areas" pamphlet published by the Pasco County Code Enforcement Division which states "The fence can be six feet in height providing it is placed in the setback of the particular zoning lot" (Section: Double Frontage Lot). Pamphlet did not read "Shall be permitted outside minimum setback lines." Our fence is comparable in position with other corner lot houses in our immediate area that also have privacy fences.

3. Access to the property is from Kingsway Drive, which has 50 feet of right-of-way, and Lometa Lane, which has 50 feet of right-of-way.
4. The subject property is located in Flood Zone "C," and development within this area is not subject to the requirements of the LDC, Article 700, Flood Damage Prevention.
5. The surrounding area is characterized by residential development.
6. The subject area has been designated RES-9 (Residential - 9 du/ga) under the Comprehensive Plan.
7. The applicant's representative first contacted the Zoning/Code Compliance Department to obtain information about fence regulations on the subject lot on March 18, 2009. A Zoning planner returned his call and provided site specific fence regulations; specifically requirements contained in the LDC, Section 530, Supplemental Regulations; Subsections 530.2, Yard Requirements; 530.6, Structure on Small Lot of Record, and 530.16, Fences and Walls. The applicant's representative subsequently visited the Zoning/Code Compliance Department and spoke to a Zoning planner on April 8, 2009. At this time, the applicant's representative spoke to the same Zoning planner who provided site specific fence regulations.
8. On April 8, 2009, the applicant was issued a Pasco County Ordinance Violation Warning Notice for erecting a six-foot-high fence within the front setback. The applicant was given 14 calendar days to correct the ordinance violation. On April 30, 2009, the applicant was issued a second Pasco County Ordinance Violation Warning Notice requiring the applicant to apply for a variance within seven days to avoid further enforcement activity. A citation is pending the outcome of this variance request.
9. Staff has noted that according to the survey submitted by the applicant dated June 10, 2009, signed and sealed by David T. York, PSM, Global Surveying of Brooksville, the subject 6-foot-high, wooden fence encroaches between .3 foot and .4 foot into Lot 2637 adjacent to the northeast under separate ownership and the subject 6-foot-high, wooden fence projects between 3.5 feet and 3.6 feet into the Lometa Lane platted right-of-way.
10. Staff has reviewed the proposed request in accordance with the LDC, Article 300, Subsection 316.1.A, and finds the following:
 - a. The strict application of the land development regulation does not create an unreasonable or unfair noneconomic hardship or an inordinate burden that was created by the variance applicant.

Staff finds the actions of the owner's/applicant's representative did cause the special conditions and circumstances which necessitate the variance. On two occasions the applicant was verbally given site specific information regarding the regulations on erecting a fence on a corner lot and a small lot of record. The "Rules for Fences in Residential Areas" pamphlet states:

6. What if I am on a corner lot?

If your home is on a corner lot, it presents two special considerations:

Double-Frontage Lot:

In the example below, we find a corner lot with two "front" yards. The depth of the front yard will depend on the zoning classification for your particular lot. **Fences will normally be limited to four feet in height within both front yards.** The fence can be six feet providing it is placed in the setbacks of the particular zoning and lot.

Additionally, had the fence been placed within the LDC requirements (6-foot-high at the 15-foot setback) the owner/applicant would still have approximately 17 feet to over 30 feet from the 6-foot-high fence line to the outer edge of the swimming pool enclosure (see site plan visual). This would not limit the owner's/applicant's yard area as stated in the narrative.

Staff find the reasons set forth in the application do not justify the granting of the variance.

- b. The specific application of the land development regulation does not conflict with important Goals, Objectives, or Policies of the Comprehensive Plan or with the intent and purpose of another recently adopted land development regulation that serves a greater public purpose.

N/A

- c. The granting of the variance will not provide a net economic benefit to the taxpayers of Pasco County and is in conflict with important Goals, Objectives, and Policies of the Comprehensive Plan.

N/A

- d. The granting of the variance is not necessary to achieve an innovative site or building design that furthers the Goals, Objectives, and Policies of the Comprehensive Plan.

N/A

- e. The intent and purpose of the land development regulation, related land development regulations, and Comprehensive Plan provisions are not met or exceeded through an improved or alternate technology or design.

N/A

- f. The granting of the variance is not necessary to protect the public health, safety, or welfare.

Staff finds the granting of the variance would be contrary to public safety and welfare, as the fence at its present location encroaches onto Lot 2627 adjacent to the northeast under separate ownership and is located in the Lometa Lane platted right-of-way.

- g. The variance is not necessary to comply with State or Federal law.

N/A

- h. The variance does not satisfy variance criteria set forth in the specific County land development regulation that is the basis for the variance request.

N/A

- 11. Staff finds that the granting of the variance would not be in harmony with the general standards, purpose, and intent of this code and will be injurious to the area involved or otherwise be detrimental to the public welfare.

- 12. The recommendation and report of the staff is based upon study and consideration of the factors outlined in the Pasco County LDC, Section 316.1.A.

STAFF RECOMMENDATION:

Denial

APPLICANT'S ACKNOWLEDGMENT:

The owner/applicant acknowledges that she has read, understood, and accepted the above-listed conditions of approval. **Do not sign until you receive a copy of this petition with Development Review Committee results.**

(Date)

Printed Name

I hereby certify on this _____ day of _____, _____, A.D., before me personally appeared the owner/applicant, to me known to be the person described in and who executed the foregoing document and severally acknowledged the execution thereof to be her free act and deed for the uses and purposes therein expressed.

Witness my hand and seal at _____, _____ County, Florida, the day and year aforesaid.

My commission expires:

Notary Public, State of _____ at Large

DEVELOPMENT REVIEW COMMITTEE ACTION: