



**CITY OF ATLANTIC BEACH**  
**COMMUNITY DEVELOPMENT BOARD**  
**STAFF REPORT**

**AGENDA ITEM**            **4.B.**

**CASE NO**                **ZVAR-13-00100063**  
*Request for variance from the provisions of Section 24-157(c)(1), to allow the construction of a fence exceeding four (4) feet in height within ten (10) feet of a property line which abuts a right-of-way that is fifty (50) feet or less in width.*  
*Specifically, the applicant seeks to construct a six (6) foot high fence on the property line abutting Seaspray Avenue, which is a fifty (50) foot wide right-of-way.*

**LOCATION**                **298 PINE STREET**

**APPLICANT**            **KAREN & FRANK BERNSTEIN**

**DATE**                    **JULY 16, 2013**

**STAFF**                    **ERIKA HALL, PRINCIPAL PLANNER**

---

**STAFF COMMENTS**

***Background***

On February 19, 2013, Pence Property Maintenance acting on behalf of the property owners Karen and Frank Bernstein, applied for a building permit to construct a fence on the subject property. According to the building permit application, the work to be performed was “putting in a fence on side of house” and the attached site plan (sketched on a copy of a survey dated 12-3-2012), showed the proposed location as the northern property line and the street side yard adjacent to Seaspray Avenue. The application review and tracking form, prepared by Building Department staff at intake, described the project as a “6-ft fence replacement”. The application was then routed to Planning & Zoning, Public Works and Public Utilities for review.

Planning and Zoning staff denied the application on first review, based upon the proposed location of a six (6) foot high fence on the property line of a street side yard adjacent to a right-of-way measuring fifty (50) feet or less in width, which is in conflict with Section 24-157(c)(1) of the land development regulations. Staff cited this provision and gave instructions as to how to revise the plans so the fence would be in compliance. The Planning & Zoning “correction report” was forwarded to the applicant, who then contacted property owner Karen Bernstein. Ms. Bernstein then came to City Hall and met with staff, who explained the fence provisions to her and reiterated that either the fence could be constructed at the proposed location at a height no greater than four (4) feet, or if the fence height were to exceed four (4) feet, it would have to be stepped in ten (10) feet from the northern (Seaspray Avenue) property line. Staff cautioned Ms. Bernstein if the fence was constructed in a manner (height or location) not in compliance with the Municipal Code, there would likely be Code Enforcement action taken. Feeling that Ms. Bernstein had a clear understanding of the regulations, and that the fence would be constructed on the property line at a height not to exceed four (4) feet, staff approved the building permit application that same day, February 19<sup>th</sup>. Public Works approved the application on February 22<sup>nd</sup>, Public Utilities on February 25<sup>th</sup>, and the permit was issued by the Building Department on March 5<sup>th</sup>.

In mid-May, the Code Enforcement department began receiving complaints regarding a new six (6) foot high vinyl fence that had been constructed directly abutting the sidewalk running along the southern side of Seaspray Avenue and the northern property line of the subject property. The property owners were notified that their fence was not in compliance with the land development regulations. However, they disagree, stating that they were issued a valid building permit to construct the fence and now seek this variance to remedy the situation.



Figure 1. 298 Pine Street prior to installation of fence. Google Maps Street View imagery dated March 2011, accessed online June 25, 2013.



Figure 2. 298 Pine Street, view from northeast corner. Staff photo taken on June 25, 2013.



Figure 3. 298 Pine Street, view from northwest corner. Staff photo taken on June 25, 2013.

## ***Analysis***

Section 24-64(b)(1) provides that “[a]pplications for a variance shall be considered on a case-by-case basis, and shall be approved only upon findings of fact that the application is consistent with the definition of a variance and consistent with the provisions of this section.” According to Section 24-17, Definitions, “[a] variance shall mean relief granted from certain terms of this chapter. The relief granted shall be only to the extent as expressly allowed by this chapter and may be either an allowable exemption from certain provision(s) or a relaxation of the strict, literal interpretation of certain provision(s). Any relief granted shall be in accordance with the provisions as set forth in Section 24-64 of this chapter, and such relief may be subject to conditions as set forth by the City of Atlantic Beach.”

Section 24-64(d) provides six distinct grounds for the approval of a variance:

- (1) *Exceptional topographic conditions of or near the property.*** In the applicants’ narrative “large volume of sidewalk use by school children going to and from school, side yard presents a dangerous condition for children” is listed as an exceptional topographic condition. Staff asserts that proximity of property line to side walk does not constitute an exceptional topographic condition, which is instead an issue of highly variable elevations over a lot. The subject property is relatively flat, with very little topographic variability, thus this particular ground for approval of a variance is not applicable.
- (2) *Surrounding conditions or circumstances impacting the property disparately from nearby properties.*** The applicants’ previous assertion regarding the large volume of sidewalk use by school children could possibly be considered as a circumstance impacting this and other properties directly abutting Seaspray Avenue. However, staff believes that knowledge of the school location and investigation of the impact of sidewalk traffic is a matter of due diligence, a burden to be borne by the property buyer, prior to purchase. Staff does not consider this condition to be valid grounds for approval of this variance.
- (3) *Exceptional circumstances preventing the reasonable use of the property as compared to other properties in the area.*** The subject property is currently used as a single-family residence, consistent with other lots platted according to Section No. 3 of the Saltair subdivision, and consistent with the permitted uses provided within Section 24-106, Residential Single-Family (RS-2) districts. Neither presence nor absence of a fence, nor height nor location of a fence impacts the use of this property as a single-family residence or dwelling unit, which is defined in Section 24-17 as “a single unit providing complete independent living facilities for one (1) family as defined herein, including permanent provisions for living, sleeping, eating, cooking and sanitation”. Therefore, this condition is not valid grounds for approval of this variance request.
- (4) *Onerous effect of regulations enacted after platting or after development of the property or after construction of improvements upon the property.*** The current fence regulation as stated above has been in effect since the adoption of Ordinance No. 90-03-184 on November 23, 2003. Prior to that date, the setback requirements for a six (6) foot high fence on a street side yard was more restrictive, being fifteen (15) feet, according to previous land development regulations adopted by Ordinance No. 90-01-172 on November 26, 2001. Therefore, the current regulations were clearly in effect at the time of application for building permit and construction of the fence on the subject property. As noted above, staff reviewed the application for the fence permit, denied the request and provided the applicant with correction options. Further, staff met with the property owner and reviewed the correction options based upon current regulations. Therefore, there was no regulation enacted after the construction of improvements upon the property. In fact, the applicant acted in direct opposition to the direction of staff, having been advised both verbally and in writing, and constructed a fence in conflict with current regulations. Therefore, this condition is not valid grounds for approval of this variance request.
- (5) *Irregular shape of the property warranting special consideration.*** The subject property is not of an irregular shape; rather it has a rectangular shape, consistent with other lots platted according to Section

No. 3 of the Saltair subdivision, as well as much of the City of Atlantic Beach. Therefore, this ground for approval is not applicable.

- (6) ***Substandard size of a lot of record warranting a variance in order to provide for the reasonable use of the property.*** The subject property is not of a substandard size; rather it measures fifty (50) feet in width and one hundred (100) feet in depth, which is consistent with other lots platted according to Section No. 3 of the Saltair subdivision, as well as many platted lots within the City of Atlantic Beach, as this was previously the minimum lot standard for the City. Therefore, this ground for approval is not applicable.

Section 24-64(c) provides specific conditions for denial of a variance, and clearly states: "Variances shall not be granted solely for personal comfort or convenience, for relief from financial circumstances or for relief from situation created by the property owner." The applicants purchased a large-breed dog knowing their space limitations, knowing the proximity of their property to both the right-of-way (street and sidewalk) and the Atlantic Beach Elementary School, knowing the high volume of pedestrians on said right-of-way to and from the school, and having been advised of the permissible fence parameters by staff.

## **REQUIRED ACTION**

The Community Development Board may consider a **motion to approve ZVAR-13-00100063**, request for variance from the provisions of Section 24-157(c)(1), to allow the construction of a fence exceeding four (4) feet in height within ten (10) feet of a property line which abuts a right-of-way that is fifty (50) feet or less in width, upon finding this request is consistent with the definition of a variance, and in accordance with the provisions of Section 24-64, specifically the grounds for approval delineated in Section 24-64(d) and as described above.

The Community Development Board may consider a **motion to deny ZVAR-13-00100063**, request for variance from the provisions of Section 24-157(c)(1), to allow the construction of a fence exceeding four (4) feet in height within ten (10) feet of a property line which abuts a right-of-way that is fifty (50) feet or less in width, upon finding that the request is either inconsistent with the definition of a variance, or it is not in accordance with the grounds of approval delineated in Section 24-64(d), or it is consistent with one or more of the grounds for denial of a variance, as delineated in Section 24-64(c), described below.

*No variance shall be granted if the Community Development Board, in its discretion, determines that the granting of the requested variance shall have a materially adverse impact upon one (1) or more of the following:*

- (1) Light and air to adjacent properties.*
- (2) Congestion of streets.*
- (3) Public safety, including traffic safety, risk of fire, flood, crime or other threats to public safety.*
- (4) Established property values.*
- (5) The aesthetic environment of the community.*
- (6) The natural environment of the community, including environmentally sensitive areas, wildlife habitat, protected trees, or other significant environmental resources.*
- (7) The general health, welfare or beauty of the community.*

*Variances shall not be granted solely for personal comfort or convenience, for relief from financial circumstances or for relief from situation created by the property owner.*

## **ATTACHMENTS**

- ***Exhibit 1: BP-13-00002165, Fence Permit File***
  - *(a) Fence Permit, issued 03.05.13*
  - *(b) Building Permit Application, dated 02.11.13*
  - *(c) Site Plan showing location of proposed fence*
  - *(d) Application and Review Tracking Form – Kaluzniak, approved 02.25.13*
  - *(e) Application Review and Tracking Form – Carper, approved 02.22.13*
  - *(f) Application Review and Tracking Form – Hall, approved 02.19.13*
- ***Exhibit 2: Plan Review Corrections Report – Planning & Zoning, issued 02.19.13***