



Memo

To: Honorable Mayor Armitage; City Council
From: Bryan Myrkle, Community Development Director
Date: June 17, 2022
Re: Staff report on fence appeal – 319 Warren Ave

Background

The owner of 319 Warren Avenue is seeking a variance for the placement of a privacy fence in a front yard area in front of the setback line for structures. This is explained in the materials submitted by the applicant.

By constructing a privacy fence closer to the sidewalk, the applicant is seeking to enclose a larger area of their yard than the City's ordinance allows. Regulations for corner lots are more restrictive than mid-block parcels, because under Charlotte's code they have two 'front yards' – one facing each street.

Charlotte's ordinance describes the circumstances under which the Zoning Board of Appeals should consider granting a variance. They are as follows:

***Variance.** To authorize, upon an appeal, a nonuse variance from the strict application of the provisions of this chapter where by reason of exceptional narrowness, shallowness, shape or area of a specific piece of property at the time of enactment of this chapter or by reason of exceptional topographic conditions or other extraordinary or exceptional conditions of such property, the strict application of the regulations enacted would result in peculiar or exceptional undue hardship upon the owner of such property, provided such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of this chapter. In granting a variance the Board may attach thereto such conditions regarding the location, character, and other features of the proposed uses as it may deem reasonable in furtherance of the purpose of this chapter. In granting a variance, the board shall state the grounds upon which it justifies the granting of a variance.*

A variance is the granting of permission to act outside our normal rules or standards, and there should be sufficient justification to do so. The applicant needs to demonstrate that the denial of their fence plans should be overturned because of the unique shape of their property, or due to an exceptional topographic characteristic, or some other exceptional circumstance. The other argument they could present is that abiding by the rules would cause them to suffer an exceptional undue hardship that is not of their own creation.

When considering the applicant's fence proposal, I was not able to identify any such justifications. The lot at 319 Warren is a basic rectangle of common size, and there are no unique characteristics that distinguish it from other typical corner lots in the City.

I did explain the regulations to the applicant, and also my belief that a variance is not warranted. However, it is every resident's right to seek a variance and they are coming before you for consideration.

There are two other items that I suggest the ZBA consider when evaluating this request:

- While it can last for several years, the owning of dogs is a temporary condition. However, a variance like this is essentially permanent. It would remain in effect long after the dogs are gone, and possibly long after the current resident no longer lives there.
- It is true that our local rules for corner lots are very restrictive, but they are the same for all residential corner lots in the City. Many residents have been disappointed with the limitations imposed by these rules, and if the ZBA chooses to grant this variance, it is likely to see numerous requests of this kind in the future. Because this is so commonplace, a few years ago I proposed changes in an attempt to accommodate resident preferences, but changing these rules was opposed by the Charlotte Fire Department and rejected by the City Council.

Recommendation

There does not appear to be sufficient justification to grant a variance.

Financial Impacts

This matter has no potential financial impact on the City.

Suggested Motion

Motion for the Zoning Board of Appeals to reject the application for a variance of fence regulations at 319 Warren Avenue.