

***RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF COLLEGE PARK
ADOPTING THE RECOMMENDATION OF THE ADVISORY PLANNING
COMMISSION FOR APPLICATION NUMBER CEO-2023-02, 4910 HOLLYWOOD
ROAD, COLLEGE PARK, MARYLAND, RECOMMENDING PPROVINGVARIANCES
FROM CITY CODE §87-23.C, TO PERMIT THE INSTALLATION OF A 4.5 - 5-FOOT-
HIGH BOARD SLATTED WOODEN FENCE ALONG THE SIDE YARD.***

WHEREAS, the City of College Park (“City”) has, pursuant to §25-303 of the Land Use Article, Annotated Code of Maryland, adopted §87-23, “Fences”, of the Code of the City of College Park (“City Code”), which establishes certain restrictions on the construction and reconstruction of fences on residential properties, including a height and materials restriction on front yard fences; and

WHEREAS, pursuant to §15-19 of the City Code, the Advisory Planning Commission (“APC”) is authorized to hear appeals from the provisions of Chapter 87, Building Construction, of the City Code; and

WHEREAS, the City is authorized by §87-23 J to grant a variance where by reason of an extraordinary situation or condition, the strict application of the Fence Ordinance would result in peculiar and unusual practical difficulty to, or an exceptional or undue hardship upon, the owner of the property; and a variance can be granted without substantial impairment of the intent, purpose and integrity of the Fence Ordinance; and where, if applicable, the variance is consistent with the Design Guidelines adopted for the locally designated Historic District, and the fence for which a variance is requested incorporates openness as much as is practicable, provided that the fence shall not be constructed of chain link unless the material is consistent with the surrounding neighborhood; and

WHEREAS, on March 3, 2023, Sylvester Mondal (“Applicant”), submitted an appeal from City Code §87-23, for three-foot fence height and material variances, in order to install a 5-6 foot-high, slatted wooden fence along a street side yard of the property located at 4910 Hollywood Road, College Park, Maryland (“Property”); and

WHEREAS, on April 13, 2023, the APC conducted a hearing on the merits of the variance, at which time the APC heard testimony and accepted evidence, including the staff report, exhibits, and the staff presentation with respect to whether the subject application meets the standards for granting an appeal set forth in §87-23 of the City Code; and

WHEREAS, based upon the evidence and testimony presented, the APC voted 5-0-0 to recommend that the variances be approved; and

WHEREAS, the Mayor and Council are authorized by §87-19 of the City Code to accept, deny or modify the recommendation of the APC, or to return the variance application to the Commission to take further testimony or reconsider its recommendation with respect to the variance request, and have reviewed the recommendation of the APC as to the application for a variance, and in particular have reviewed the APC's findings of fact and conclusions of law; and

WHEREAS, no exceptions have been filed.

NOW THEREFORE, the Mayor and Council are in agreement with and hereby adopt the findings of fact and conclusions of law of the APC with regard to CEO-2023-02, recommending approval of variances from City Code 87-23C, to permit the fence to remain in place with the following three conditions:

1. The height of the fence shall not exceed 4.5 to 5-feet and will be based on the variability of the topography of the yard.
2. The posts shall be reduced to the height of the slats and
3. Lattice may be attached to the slats in an overlapping manner, on the east side of 49th Place, but may not increase height limit recommended herein.

Section 1 Findings of Fact

- 1.1 The property is a corner lot located on the north side of Hollywood Road and the east side of 49th Place. The house faces Hollywood Road.
- 1.2 The rectangular property is 9,375 square feet (75-feet by 125-feet).
- 1.3 The property is improved with a 1.5-story single-family home built in 1946.
- 1.4 The surrounding neighborhood is single-family residential.
- 1.5 The City Fence Ordinance was first enacted in 2005 and was amended in 2017, to allow fences in the front yard up to 3 feet in height. All yards which border a street are considered front yards.
- 1.6 The County implemented a new Zoning Ordinance in April 2022. The new Ordinance allows fences up to 6-feet in all yards, except the front yard, defined by the orientation of the house.
- 1.7 About 4-years ago, there was a chain-link fence on the property. A tree fell on this fence, so it was removed. The Applicant recently replaced the fence with a wooden fence, not knowing that they needed a permit.
- 1.8 The Applicant has gardens and extensive landscaping located in their back yard which is exposed to 49th Place.
- 1.9 49th Place is a heavily trafficked street. The fence will afford the homeowners privacy in their back yard and protect their gardens from trespassing.
- 1.10 The fence matches up in height to the neighbors' chain-link fence on 49th Place.

- 1.11 The fence varies in height due to the lot's hilly topography and the Applicant's desire to keep the height of the fence consistent. The gap between the bottom of the fence and the ground varies causing the fence height to vary from 4-feet to 5-feet.
- 1.12 The Applicant desires to add a foot of lattice work to the top of the fence, which would increase the height up to 6-feet, in some places.

Section 2 Conclusions of Law

- 2.1 That a specific parcel of land has exceptional narrowness, shallowness or shape, exceptional topographic conditions or other extraordinary situation or condition.

There is an extraordinary situation because the Applicant has gardens and extensive landscaping that they want to protect and enjoy located in their back yard that is exposed to 49th Place.

- 2.2 That denial of the variance would result in a peculiar and unusual practical difficulty to, or exceptional or undue hardship to the property owner.

Denial of the variance to the extent recommended herein will result in the practical difficulty of the homeowners not being able to enjoy their backyard gardens protected from street activity and trespassing. However, an additional increase to a six-foot height by addition of the lattice is not required to resolve this difficulty.

- 2.3 Granting this variance will not adversely impact the intent purpose, and integrity of the City's Fence Ordinance.

- 2.4 The variance is consistent with the design guidelines adopted for historic district, if applicable.

The property is not in a locally designated Historic District.

- 2.5 The fence for which an appeal is requested incorporates openness and visibility as much as is practicable, provided however, that it shall not be constructed of chain link unless this material is consistent with the surrounding neighborhood.

The fence incorporates openness and visibility to the extent practical for its intended purpose.

Section 3

Based on the evidence and testimony presented, and the findings of fact and conclusions of law set forth hereinabove, the APC recommends by a 5-0-0 vote, approval of CEO-2023-02 to permit the fence to remain in place with the following 3 conditions:

1. The height of the fence shall not exceed 4.5 to 5-feet and will be based on the variability of the topography of the yard, and

- 2. The posts shall be reduced to the height of the slats, and
- 3. Lattice may not be applied to increase the height but can be attached to the slats in an overlapping manner, on the east side of 49th Place.

It was further determined that a variance from the material standard to allow a slatted wooden fence is not needed.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the City of College Park to approve CEO-2023-02 for variances from the City Fence Ordinance to permit the fence to remain in place with the following conditions:

- 1. The height of the fence shall not exceed 4.5 to 5-feet. The variability due to the topography of the yard,
- 2. The posts shall be cut down to the height of the slats,
- 3. Lattice may not be applied to increase the height but can be attached to the slats in an overlapping manner, on the east side of 49th Place.

ADOPTED, by the Mayor and Council of the City of College Park at a regular meeting on the 11th day of April 2023.

16th May

WITNESS

Janeen S. Miller
 Janeen S. Miller, CMC, CERA, City Clerk

CITY OF COLLEGE PARK
Suellen M. Ferguson
 Fazlul Kabir, Mayor
 City of College Park

APPROVED AS TO FORM AND
 LEGAL SUFFICIENCY

Suellen M. Ferguson
 Suellen M. Ferguson
 City Attorney