



Advisory Planning Commission
City of College Park
7401 Baltimore Avenue, Suite 201
College Park, Maryland 20740
Telephone: (240) 487-3538

**NOTICE OF RECOMMENDATION (RESOLUTION)
OF THE
ADVISORY PLANNING COMMISSION
OF THE
CITY OF COLLEGE PARK**

RE: Case No. CEO-2023-01 Name: Adam Claudy

Address: ^{49 mb} 9400 48th Avenue, College Park, MD 20740

Enclosed herewith is a copy of the Recommendation setting forth the action taken by the Advisory Planning Commission of the City of College Park in your case on:

March 2, 2023

Public Hearing Date

CERTIFICATE OF SERVICE

This is to certify that on March 22, 2023, the above notice and attached Recommendation were mailed, postage prepaid, to all persons of record.

NOTICE

Within fifteen (15) calendar days from the date this notice was mailed any person of record may file exceptions to the Commission's recommendation, and a request for oral argument before the Mayor and Council. Exceptions shall be addressed to the City Clerk, 7401 Baltimore Avenue, Suite 201, College Park, Maryland 20740 by April 6, 2023

Terry A. Schum
Planning Director

cc: Mayor & Council
City Attorney
Advisory Planning Commission
Parties of Record

***RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF COLLEGE PARK
ADOPTING THE RECOMMENDATION OF THE ADVISORY PLANNING
COMMISSION FOR APPLICATION NUMBER CEO-2023-01, 9400 49th AVENUE,
COLLEGE PARK, MARYLAND, RECOMMENDING APPROVAL OF VARIANCES
FROM CITY CODE §87-23.C, TO PERMIT THE INSTALLATION OF A 5-FOOT-
HIGH BOARD-ON-BOARD FENCE ALONG THE SIDE YARD OF A STREET.***

WHEREAS, the City of College Park (“City”), in accordance with §25-303 of the Land Use Article, Annotated Code of Maryland, has 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 height and material restrictions 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 January 18,2023, Adam Claudy (“Applicant”), submitted an appeal from City Code §87-23, for three-foot fence height and material variances, in order to install a six-foot-high, board-on-board fence along a street side yard of the property located at 9400 49th Avenue, College Park, Maryland (“Property”); and

WHEREAS, on March 2, 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.

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-2022-03 recommending approval of variances from City Code 87-23C., to permit the installation of a 5-foot-high stockade fence with lattice on top along the side yard of a street two feet from the property line.

Section 1 Findings of Fact

- 1.1 The Property is a corner lot located on the west side of 49th Avenue Street and north side of Fox Street, and so is considered to have two front yards.
- 1.2 The rectangular Property is 8,205 square feet (approximately 96 feet by 73 feet).
- 1.3 The Property is improved with a 2-story, single-family home built in 1902. It has a detached 14-foot by 24-foot garage and a dirt driveway. The house also has an uncovered front porch/deck and a covered patio in the rear.
- 1.4 The surrounding neighborhood is single-family residential.
- 1.5 The Applicant testified that he is seeking to install a fence that will keep his dog safely confined in his back yard and that his dog is able to jump over a 3-foot fence.
- 1.6 The house has two exterior doors: one facing 49th Avenue, and one facing Fox Street, the two front yards. There are no doors on the two sides of the house that are adjacent to the back yard where the fenced area will primarily be located.
- 1.7 The Applicant is requesting approval to extend the proposed fence to include a portion of the front yard on the Fox Street side of the house in order to have the fenced area include the exterior door on that side of the house.
- 1.8 The Applicant proffered to lower the proposed fence to 5 feet in height and relocate the section on the Fox Street side of the house so that it is further away from the street (i.e., approximately 10 feet from the house rather than the originally proposed 20 feet).

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.

The extraordinary situation is that the house is situated on the property such that the only two exterior doors provide access only to the two front yards and not to the side or rear yards where a 6-foot fence could be located without a variance.

- 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 will result in the practical difficulty of the owner not being able to adequately secure the dog while providing convenient access from the house to the fenced area.

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

Granting this variance, as amended, will not adversely impact the intent, purpose, and integrity of the City's Fence Ordinance because the proposed fence height has been lowered from 6 feet to 5 feet and relocated further away from Fox Street and parallel to the street to minimize any obstruction to the view of the adjoining property on Lot 5.

- 2.4 The variance is consistent with the design guidelines adopted for the 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 proposed stockade fence will have one foot of lattice-style fencing at the top which incorporates openness. Stockade fences are common in this area and a reasonable material at this location to provide protection.

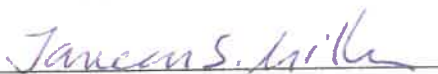
Section 3

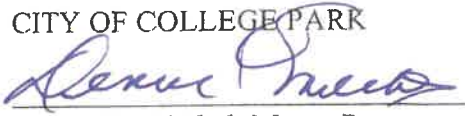
Based on the evidence and testimony presented, and the findings of fact and conclusions of law set forth hereinabove, the APC recommended by a 5-0-0 vote, approval of CEO-2023-01 for a 2-foot fence height and material variance from the City Fence Ordinance to allow a 5-foot-high board-on-board fence with lattice-style fencing for the top 1 foot of the fence to be located approximately 10-feet from the house and to run parallel to Fox Street.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the City of College Park to approve CEO-2022-03 for variances from the City Fence Ordinance to grant a 2-foot fence height and material variance from the City Fence Ordinance to allow a 5-foot-high board-on-board fence, with lattice-style fencing at the top 1 foot of the 5-foot-high fence, to be located approximately 10-feet from the house and to run parallel to Fox Street.


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

WITNESS


Janeen S. Miller, CMC, City Clerk

CITY OF COLLEGE PARK

Denise C. Mitchel, Mayor Pro-tempore

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY


Suellen M. Ferguson
City Attorney