

STAFF REPORT
September 14, 2004

No. 04FV012 - Fence Height Exception to allow a seven foot six inch fence in a Low Density Residential District

GENERAL INFORMATION:

PETITIONER	Dennis Rogers
REQUEST	No. 04FV012 - Fence Height Exception to allow a seven foot six inch fence in a Low Density Residential District
EXISTING LEGAL DESCRIPTION	Lot 13, Block 16, South Robbinsdale Subdivision, Section 7, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota
PARCEL ACREAGE	Approximately 0.18 acres
LOCATION	801 East Indiana Street
EXISTING ZONING	Low Density Residential District
SURROUNDING ZONING	
North:	Low Density Residential District
South:	Low Density Residential District
East:	Low Density Residential District
West:	Low Density Residential District
PUBLIC UTILITIES	City water and sewer
DATE OF APPLICATION	05/17/2004
REVIEWED BY	Todd Tucker / Sig Zvejnieks

RECOMMENDATION: Staff recommends that the Fence Height Exception to allow a seven foot six inch fence in a Low Density Residential District be **continued to the November 9, 2004 Public Works Committee meeting to allow the applicant time to bring the existing swimming pool into compliance with the zoning regulations.**

GENERAL COMMENTS: (September 8, 2004 Update) This item was continued at the **August 31, 2004 City Council meeting to allow the applicant time to obtain a variance from the Zoning Board of Adjustment, to allow a swimming pool within the required side yard.**

On September 8, 2004 staff visited the subject property and measured the existing fence. The fence is six feet in height located on top of an 18 inches high retaining wall. Section 15.40.020 of the Rapid City Municipal Code allows fences to be constructed on top of retaining walls provided that the maximum height requirements are met. As such, the request is to allow a six foot high fence located in the required front yard setback.

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(August 13, 2004 Update) This item was continued at the July 27, 2004 Public Works Committee meeting to allow the applicant time to obtain a variance from the Zoning Board of Adjustment to allow a swimming pool within the required side yard.

The applicant obtained a Zoning Board of Adjustment application on August 3, 2004. However, the applicant has not submitted that application as of this writing.

(This Staff Report was revised on July 12, 2004. All revised and/or added text is shown on bold text.) This item was continued at the June 15, 2004 Planning Commission meeting to allow the applicant time to obtain a variance from the Zoning Board of Adjustment to allow a swimming pool within the required side yard.

As of this writing the applicant has not submitted an application seeking the required variance to allow a swimming pool within the required side yard.

The applicant is seeking approval for a seven foot six inch high privacy fence located in a Low Density Residential Zoning District. The subject property is located at the northeast corner of Hawthorne Avenue and East Indiana Street. The existing fence was constructed in violation of the fence height provisions of Section 15.40 of the Rapid City Municipal Code in 2003. A complaint was received by Rapid City Code Enforcement about the fence. A Code Enforcement Officer notified the applicant that the fence was in violation of City Code and explained that a fence height exception is required for a fence located within the required front yard setback which exceeds the permitted four feet.

There is approximately 75 linear feet of existing six foot high wood privacy fence located on an 18 inch high retaining wall within the required 25 foot front yard setback along Hawthorne Avenue.

STAFF REVIEW: Section 15.40.040 of the Rapid City Municipal Code states that, a variance to the fence height requirements can be granted by the City Council if the exception is not contrary to the public interest and the exception will not be injurious to the surrounding neighborhood. Staff has reviewed the proposed Fence Height Exception as it relates to the applicable provisions of the Rapid City Municipal Code and has noted the following issues:

Swimming Pool: The applicant has indicated that the existing fence was installed to meet the fencing requirements for swimming pools. Section 17.50.320 (A)(3) of the Rapid City Municipal Code requires that the swimming pool area shall be so walled or fenced so as to prevent uncontrolled access by children from the street or from adjacent properties. The fence or wall shall be not less than five feet in height and maintained in good condition. However, the swimming pool is located in the required side yard setback which is in violation of Section 17.50.320 (A)(2) which requires that no swimming pool or part thereof, excluding aprons, walls and equipment rooms, shall protrude into any required front or side yard. The applicant has indicated that the existing fence was constructed in 1967 or 1968. The requirement that swimming pools not be allowed within the required front or side yard has not changed since 1962.

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Staff also noted that the City has no record of a Building Permit ever being obtained for the existing swimming pool. Staff also noted that the requirement to obtain a Building Permit for the construction of swimming pools was in effect in 1967. As such staff recommends that this request for a fence height exception be continued to the October 12, 2004 Public Works Committee meeting to allow the applicant to obtain a variance from the Zoning Board of Adjustment to allow a swimming pool within the required side yard. Staff also noted that a Building Permit shall also be obtained for the existing fence.

At the request of a City Council member, staff further reviewed the Building Permit records and staff found a Building Permit that was issued for the swimming pool on August 15, 1975. The information on the Building Permit application indicates the swimming pool would be located 36 feet from the property line abutting Hawthorne Avenue. However, on September 8, 2004 staff measured the distance the swimming pool is setback from the property line along Hawthorne Avenue and found the swimming pool was constructed only 22 feet from the property line abutting Hawthorne Avenue. The existing swimming pool encroaches three feet into the 25 foot front yard setback along Hawthorne Avenue, and was not constructed in accordance with the approved Building Permit. Section 17.50.320 of the Rapid City Municipal Code states that no swimming pool or part thereof, excluding aprons, walks and equipment rooms, shall protrude into any required front or side yard. As such a variance must be obtained from the Zoning Board of Adjustment to allow a swimming pool within the required 25 foot front yard setback.

If an application for a Zoning Variance is not submitted by October 6, 2004, the staff will recommend that this fence height exception be denied without prejudice.

Staff noted that the applicant has not applied for a Zoning Variance for the swimming pool. As such, staff recommends this item be continued to the November 9, 2004 Public Works Committee meeting to allow the applicant time to bring the existing swimming pool into compliance.