



Staff Report

To: Planning and Zoning Board

From: Jessica Entwistle, Planner II, Planning and Development Services

Date: April 15, 2024

Re: Resolution No. 2024-19 Variance: To allow a six (6) foot wooden fence in the side street yard located on the property at 402 Bali Terrace within the R1, Single-Family Zoning Classification, within the City of Deltona.

Summary of Application:

The applicant is seeking a Variance from the Land Development Code Section 110-806, Fences, walls, and hedges. The Variance would allow the current six (6) foot wooden fence to remain in its current condition in the side street yard abutting Eleanor Avenue. The fence, per LDC Section 110-806, is required to be five (5) feet or retain a 15-foot setback from the property line.

Applicant: Brandon Monsanto

Tax Parcel No: 8130-22-25-0010

Property Acreage: ±0.27-acres (±11,875 square feet)

Property Location: 402 Bali Terrace, Deltona, FL 32725. The property is generally located at the corner of Eleanor Avenue and Bali Terrace. This property is front facing towards the south on Bali Terrace, with the west side of the property abutting Eleanor Avenue. The property behind the subject property is a single-family residence that is situated back-to-back with the residence at 402 Bali Terrace.

Legal Description: Lot 1, Block 622, DELTONA LAKES UNIT TWENTY-TWO, according to the plat thereof as recorded in Plat Book 27, Pages 11 through 15, inclusive, of the Public Records of Volusia County, Florida.

Existing Zoning:

1. **Subject Property:** R1, Single-Family Zoning Classification
2. **Adjacent Properties:**
 - North:** R1, Single-Family Zoning Classification
 - South:** R1, Single-Family Zoning Classification
 - East:** R1, Single-Family Zoning Classification
 - West:** R1, Single-Family Zoning Classification

Zoning Description:

The Single-Family zoning classification (R1) is the most common residential zoning classification in the City of Deltona which allows for permitted principal uses such as single-family homes and home offices. Accessory uses allowable within the R1 zoning include sheds and fences, as permitted by all other applicable Sections of the Land Development Code (LDC). The principal structure setbacks include 25 feet in the front yard, 10 feet in the rear yard, 6 feet on side yards, and 25 feet on side street yards. The City allows fences to be put on the property lines, unless there is a wetland, lake, or a side street. LDC Section 110-806, regarding fences states, "fencing along roads can harmfully impact pedestrian and motorist safety by impeding sightlines and visibility," the larger setback for side street yards is meant to assist with the safety of the traveling public.

The Variance seeks relief from Section 110-806, Fences, walls, and hedges. The newest Ordinance adopted amending this Section was passed by the City Commission on October 16, 2023, with the previous amendment being in 2016. The current language is similar to the previous Ordinance, but now allows for five (5) foot fences or under without adhering to the setback requirement for side street yards but requiring a setback for any fence six (6) to eight (8) feet in height. See the direct quote below for exact language. LDC Section 110-806 (e)(4) as follows:

"Side street yard. Any fence or hedge installed along a side street yard shall not exceed five (5) feet in height if located within the side street yard setback. Fences taller than five (5) feet in height but no greater than eight (8) feet in height within the side street yard shall be installed as allowed below, in order to facilitate greater use and privacy of the yard:

- a. The nearest exterior wall of the dwelling;
- b. The side street setback line; or
- c. The side street accessory structure setback line for the R1-AAA, AA, A, and R1 per section 11-307 (e)".

Background:

The 6-foot wooden fence is located on the west side of the primary structure and is adjacent to Eleanor Avenue. Per the applicant, it was constructed prior to Hurricane Ian, but when the storm occurred, it damaged the fence and required repair. This is anecdotal evidence provided by the applicant. There are no previous permits on record with the City of Deltona from prior to this time frame. The subsequent repair of the fence that occurred after the storm was unpermitted. There were incidental code violations that came as a result of this unpermitted work. The official timeline for this subject fence on file with the City is provided below:

November 27, 2022- Code Violation regarding fence work without a permit.

March 14, 2023- Code notice of Violation was posted a second time for noncompliance.

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| March 26, 2023- | Extension was granted to the applicant in order to obtain an updated survey to apply for the fence permit. |
| April 10, 2023- | Permit for the fence is granted with clear demarcations of where a five (5) foot fence is allowed. This is the area of fencing that stands at six (6) feet currently. It was noted that this work was a remove and reinstall, which provided that the applicant would remove nonconforming fencing and replace it with the appropriate height. |
| September 6, 2023- | A 90-day extension was granted for the fence permit. |
| January 1, 2024- | Another extension for the fence permit was granted in order to pursue the Variance application. |

During the hurricanes that occurred in the time frame that the applicant is citing, the City was allowing repair of up to two (2) panels and waived permitting fees for fences afflicted by the hurricane. With this being said, no previous permits for this fence existed within the records at the City of Deltona. It is apparent that a portion of the fence, prior to the replacement, at an unknown height had existed since July of 2006, at the minimum, per the Volusia County Property Appraiser's website imagery. The current footprint of the fence is not the same as the original. The original fence did not extend diagonally to meet the side of the dwelling, as it does now. The height of the fence in the historical imagery is not discernible given the aerial view. The only aspect of the fence that is in violation of LDC Section 110-806 (e)(4) is the height. If the fence were five (5) feet, as permitted, it would follow per LDC. Otherwise, the fence six (6) feet in height should take a setback of 15-foot because it is on a side street yard and is back-to-back with an existing Single-Family Residence.

Matters for consideration:

- 1. Special conditions and circumstances exist which are peculiar to the land, structure, sign, or building involved and which are not applicable to other lands, structures, signs, or buildings in the same zoning classification.**

The only special circumstance that exists at the subject property is the fact that this property is a corner lot. This is not unusual in nature, as many homes in Deltona are on corner lots that have to abide by the same criteria, per the LDC.

- 2. Special conditions and circumstances exist that do not result from the actions of the applicant.**

The fence of subject was estimated to have been erected in late 2023. The previous fence that seemed to have been existing since at least 2006, however, the previous fence existed in a slightly different footprint. It was not an exact like-for-like replacement as mentioned previously. Parts of the previous fence had been replaced, however the diagonal cross section of fence to connect to the side of the

house is different. While that in itself is not the issue, this new fence does result from the actions of the current owner as it was erected during their ownership. The applicant did not follow the permit that was approved on April 10, 2023, where the pink outline shows the approved 5-foot fence and the yellow outline shows the approved 6-foot fence. Since the applicant did not follow the approved Fence Permit BLDR23-2248, the circumstances are a result of the actions of the applicant.

3. Literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same zoning classifications, under the terms of the chapter, and would cause an unnecessary and undue hardship on the applicant.

Staff does not interpret the lack of a six (6) foot high fence as a hardship because all other corner lots are required to comply with this Section. However, there are many exceptions that exist within the City. This can be due to a myriad of reasons, including but not limited to previous code changes, historical work that is not of record with the City, work without permits, or oversights in the zoning approval process. The Fence Permit signed by Mr. Monsanto states, "The applicant agrees to comply with the Municipal Ordinances and with the conditions of this permit..." but the applicant refused to comply and is now requesting a Variance.

4. The variance granted is the minimum variance that will make possible the reasonable use of the land, building, structure, or sign.

The land is already being utilized as a single-family home. The current code does allow for a fence of five (5) feet or a setback of 15 feet from the property line if constructing a fence from six (6) to eight (8) feet in height. The most recent LDC changes allowed for more flexibility in allowing five-foot fences on the property line of the side street yard on corner lots.

5. The granting of the variance is in harmony with the general intent and purpose of this chapter and the City of Deltona Comprehensive Plan, as it may be amended from time to time, and that such variance will not be injurious to the area involved.

Granting of the Variance is not necessarily consistent with the Comprehensive Plan because the only policy regarding fencing delineates that the City shall maintain guidelines and regulations for fences and walls.

Policy FLU1-7.2, "The City of Deltona shall maintain the viability of existing and proposed residential neighborhoods by maintaining guidelines and regulations for vehicular and pedestrian access, roadway buffers, landscaping, fences and walls, and the maintenance and use of common open space areas."

Conclusion / Staff Recommendation:

The property located at 402 Bali Terrace is currently being utilized as a single-family residence. The property is not being prohibited from reasonable use and fencing is allowable, given certain restrictions. The status of the property as a corner lot is not particularly unusual for properties in Deltona, but there may be existing exceptions, irregularities, and nonconformance that currently exists within the City for various reasons.

Given the circumstances in which new fence work was done without a permit, and the applicant did not follow the approved fence permit survey that was approved in April of 2023. Staff recommends the Planning and Zoning Board recommend the City Commission deny the request for a Variance to allow for the current six (6) foot wooden fence to remain in its current condition in the side street yard abutting Eleanor Avenue on the property located at 402 Bali Terrace.