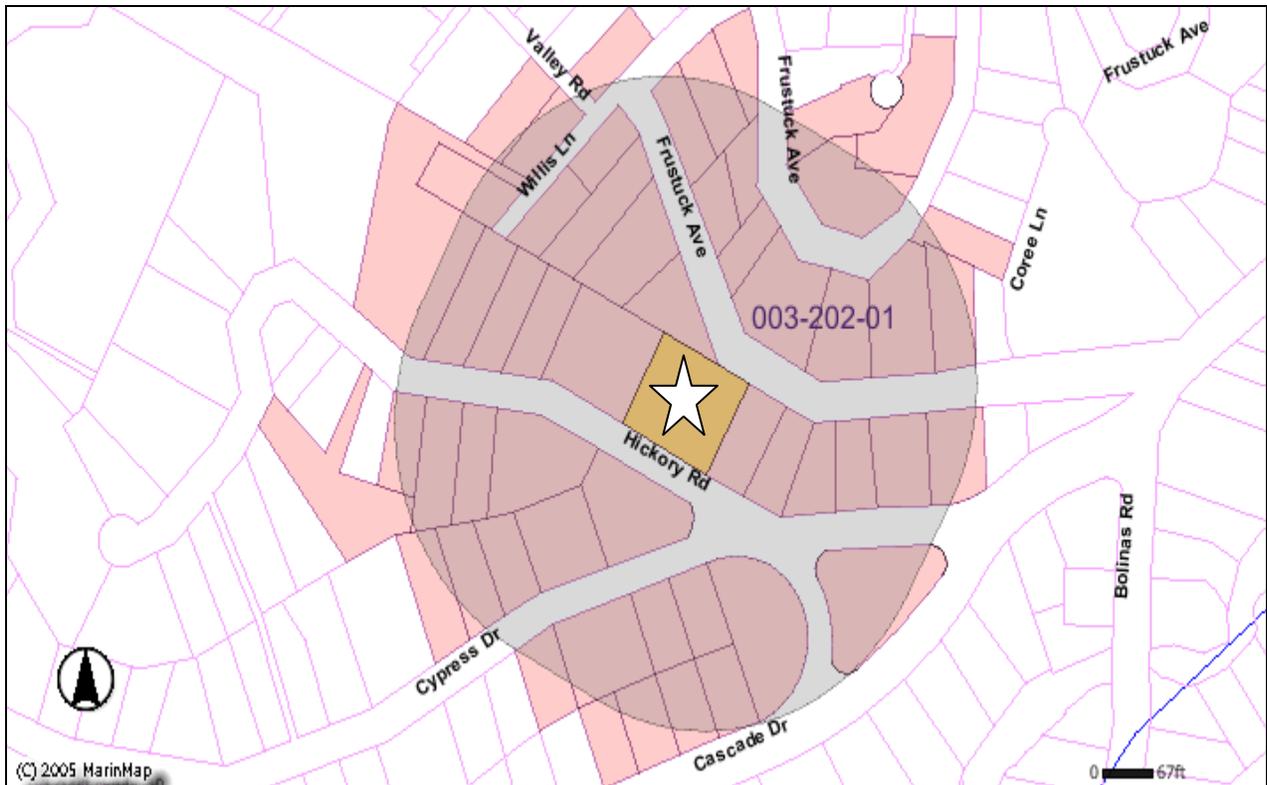


**TOWN OF FAIRFAX
STAFF REPORT**
Department of Planning and Building Services

TO: Fairfax Planning Commission
DATE: November 18, 2010
FROM: Jim Moore, Director of Planning and Building Services
Linda Neal, Senior Planner
LOCATION: 30 Hickory Road; Assessor's Parcel No. 003-202-01
PROJECT: Fence and entry trellis
ACTION: Fence Height Variance; Application # 10-29
APPLICANT: Larry and Holly Bragman
OWNER: Same as above
CEQA STATUS: Categorically exempt, § 15303(e)



30 HICKORY ROAD

BACKGROUND

The 15,000 square foot site is level and is bordered on the southern side by Hickory Road and the northern side by Frustuck Avenue. The house fronts on Hickory Road while the garage for the property fronts on Frustuck Avenue. Site is developed with a 2,339 square foot residence, a swimming pool, garage, guest unit without kitchen facilities and a pool shade cabana.

DISCUSSION

Town Code § 17.044.080(B)(1) allows fences not exceeding 4 feet in height at any point to be located along the front property line and anywhere within the 6 foot front yard setback area. Fences may increase to 6 feet in height anywhere behind the 6 foot front setback (Town Code § 17.044.080(A) and (B)(2).

The applicants are requesting a fence height variance to construct the following:

1. An 8 ½ foot entry arbor over the 4 foot entry gate.
2. A front fence along the southwestern portion of the front property line that will graduate in height from 4 feet, to a 5 foot tall rolling driveway gate, to a 25 foot section of 6 foot fence reaching to the southwest corner of the property (approximately 25% of the 125 foot frontage, not counting the 5' tall rolling driveway gate approximately 22' long).
3. Replacement of the western side fence and rear fence with fences that will reach 6.75 feet in height.
4. Replacement of the eastern side fence with a fence with 1 foot of lattice on the top that will reach 7 feet in height.

In order to approve a variance the Commission must be able to make legal findings that there is something inherent in the site itself that will make it difficult to comply with the regulations or some special need generated by the physical aspects of the property, beyond that of other similar sites in Town and/or the neighborhood, that warrant an exception to the Town's regulations.

The required findings are as follows:

1. Because of special circumstances applicable to the property, including size, shape, topography, location of surroundings, the strict application of this title will deprive the applicant of privileges enjoyed by other property owners in the vicinity and under identical zone classification.
2. The variance or adjustment will not constitute a grant of special privilege, is consistent with the limitations upon other properties in the vicinity and under identical zone classification, and is consistent with the objectives of this title.
3. The strict application of this title would result in excessive or unreasonable hardship.
4. The granting of the variance of adjustment will not be detrimental to the public welfare or injurious to other property in the vicinity in which the property is situated.

The 4 foot fence height limitation along the front property line has been in effect since the Town adopted it in 1973. The intent was to retain the open, "small town" feel that results from shorter front fences. Over time, more and more 6 foot fences have been erected along front property lines. The 1973 height limitation sought to avoid the walled in "tunnel" effect that tall fences along the roadway's result in.

The proliferation of 6 foot front fences may warrant the Town Council revisiting this section of the code to see if what the citizen's want/need with respect to privacy and the neighborhood appearance they are trying to achieve with the fence ordinance is still the same. However, if changes are considered they will need to be reviewed with the end result in mind. Every level lot in Town could be able to erect 6 foot fences around entire properties which could significantly change the look and feel of the Town.

Historically, the Town has granted front fence height variances in situations where properties are either located in the hillside areas and the houses were set even with or slightly below the roadway elevation (car lights shine directly into bedroom) or where properties are located on corner lots where the entire yard area is exposed to the public. These have been determined to be special circumstances that warrant exceptions to the fence height limitations.

A search of the records and a site visit to lower Cascade/Hickory revealed that no records can be found indicating that fence height variances have been granted for any 6 foot or higher fences/hedges along front or side property lines. It also revealed that the majority of the front fences are 4 feet in height. There are a number of properties that have a combination of 4 foot fences and 6 foot fences. Some of these combination fences are found on properties that either have pools or their outdoor living spaces front directly on the roadway.

Staff is unable to make findings for approving a 6 foot fence along the 25 feet of south western frontage of the project site, nor the 5 foot high and 22 feet long rolling gate. However, staff is sensitive to the safety issues that the applicant has raised with regards to the children's play area. Should the Planning Commission decide to grant the variance, please be advised that other properties in the neighborhood may follow suit. This is a policy question that supersedes staff's position. Likewise, the open picket fence design may alleviate some of the underlying concerns that the current Ordinance is trying to alleviate; that is something that the Planning Commission may also want to address.

We can, however, make findings for a 6 foot fence along the southeastern portion of the property where the pool fronts on Hickory Road.

We are also unable to make findings for a 7 foot fence (even though the top 1 foot is lattice) along the eastern side property line. There is not significant elevation change between 24 and 30 Hickory and the residence at 24 Hickory is one story so there are no second story windows overlooking the pool area.

There is an elevation change between the improved Frustuck Avenue roadbed and the elevation of the applicant's back yard which would enable passersby to look over a 6 foot fence. Therefore, to ensure usable private outdoor area at the rear of the residence, staff is able to support an exception to allow a 6 foot 8 inch fence along the rear property line.

The large site has a considerable amount of outdoor living area between the garage, guest house, main house and pool that provides the residents with the type of private outdoor space one would expect in a developed urban area.

Other Agency/Department Review

No other departments or outside agencies expressed any concerns about the project or requested that any conditions be placed upon it.

RECOMMENDATION

1. Open the public hearing and take testimony.
2. Close the public hearing.
3. Move to approve application # 10-29 based on the following findings and subject to the following conditions:

Suggested Findings

1. The swimming pool fronts on Hickory Road and the property has double frontages on both Hickory Road and Frustuck Avenue. The roadbed for Frustuck Avenue is elevated above the rear yard of the property enabling persons traveling along Frustuck to look over a 6 foot fence into the rear yard. These are the special circumstances that result in the strict interpretation of the fence height limitations depriving the applicants of the privacy enjoyed by other property owners in the vicinity and under identical zone classification.
2. The variance will not constitute a grant of special privilege because other properties with double street frontages and corner lots have been granted exceptions to the fence height limitation for 6 foot and over 6 foot fences along property lines to ensure some usable outdoor private space for a residence.
3. The strict application of this title would result in excessive or unreasonable hardship because the applicants would be unable to secure private yard space for their outdoor pool that fronts on Hickory Road and rear yard area which is adjacent to Frustuck Avenue.
4. The granting of the variance of adjustment will not be detrimental to the public welfare or injurious to other property in the vicinity in which the property is situated because the 6 foot fence along the southeastern front property line does not obstruct pedestrian or vehicular visibility for cars or pedestrians using Hickory Road.

Suggested Conditions

1. The fences along the northern and eastern property lines shall be decreased in height to 6 feet.
2. The fence and rolling driveway gate along the southwestern front property line and the western side fence within the 6 foot front setback shall be lowered to 4 feet in height.

3. The fence along the southeastern front property line is approved to be 6 feet in height jogging in to meet up with the southeast corner of the residence.
4. The entry arbor is approved at 8 ½ feet in height.
5. Prior to starting construction on the entry arbor, the applicant shall obtain the required building permit.

ATTACHMENTS

Applicant's supplemental information and plans