

**PLANNING COMMISSION  
MINUTES  
SEPTEMBER 13, 2022  
LOWER LEVEL – LIBRARY COMMUNITY ROOM  
702 E. FRONT AVENUE**

**COMMISSIONERS PRESENT:**

Tom Messina, Chairman  
Jon Ingalls, Vice-Chair  
Lynn Fleming  
Phil Ward  
Peter Luttrupp  
Sarah McCracken  
Brinnon Mandel

**STAFF MEMBERS PRESENT:**

Hilary Patterson, Community Planning Director  
~~Tami Stroud, Associate Planner~~  
~~Sean Holm, Senior Planner~~  
Mike Behary, Associate Planner  
Shana Stuhmiller, Public Hearing Assistant  
Randy Adams, City Attorney

**COMMISSIONERS ABSENT:**

**CALL TO ORDER:**

The meeting was called to order by Chairman Messina at 5:30 p.m.

**APPROVAL OF MINUTES:**

Motion by Luttrupp, seconded by Mandel, to approve the minutes of the Planning Commission meeting on August 9, 2022. Motion approved.

**PUBLIC COMMENTS:**

Mary Merrill, commented that she is here tonight to request preserving the current zoning at Oakcrest Mobile Home Park as a manufactured park to make a commitment to maintain the zoning now and into the future.

Kristine Mazini stated that she is a resident of Oakcrest Park and is concerned that the park that was purchased by a capital investment group last year have raised the rents for new residents to \$795.00 a month and she has heard that this group is known to shift zoning, so they can sell properties in order to have high density housing built. She is here to request that the Planning Commission protect the zoning of this mobile home park in the City of Coeur d'Alene.

Commissioner Luttrupp suggested to get in contact with Hilary Patterson, Community Planning Director who is part of a group working on affordable housing options in the City of Coeur d'Alene.

## **STAFF COMMENTS:**

Hilary Patterson (formerly Hilary Anderson), Community Planning Director provided the following statements.

- She stated that she has a new last name and is now known as Hilary Patterson. She wanted to make the announcement so that the public was aware, and also so that in the record it was clear why one month we referred to Ms. Anderson and were now referring to Ms. Patterson.
- She stated that Coeur Terre public hearing is scheduled for October 11<sup>th</sup> starting at 3:00 p.m. and adjourn at 9:00 p.m. and if public testimony hasn't concluded, will be continued to the next day on Wednesday, October 12<sup>th</sup> at 3:00 p.m. She added that the commission will take a break from 5-5:30 p.m. on both days and then resume the hearing at 5:30 p.m.
- She noted an update to the Short-Term Rental ordinance which has been in the paper staff is evaluating different options for looking at our code and explained recently we did two presentations to council members through the General Services/Public Works subcommittees to get their input. In the past, it was valuable to get council's input before we went "too far down the road". She added that we received feedback from some stakeholders. There will be additional stakeholder outreach to the neighborhood groups, short term rental owners and Realtors Association. Plus staff will be contacting some Short-Term Rental compliance companies to get information on their services, prices and options. Once we have that information, can schedule a Planning Commission/City Council joint workshop to have discussion including public comment. Following that workshop, we will bring forward a draft code and have a public hearing.

## **COMMISSION COMMENTS:**

Commissioner Fleming announced an event happening this weekend called "Kids to Draw Architecture Downtown" hosted by The Coeur d'Alene Arts & Culture Alliance and the Tribe. She stated that there will be a lot of things available for kids 10 and over. The cost is \$10.00 which includes a backpack tee-shirt and drawing supplies/book. She noted if you want to attend the event, the sign up is available online at: [artsandculturecda.org](http://artsandculturecda.org)

Commissioner Ingalls commented about the speakers who previously shared their concerns on Oakcrest. He complimented them for getting involved and understands even though there has been no action regarding a possible rezone, it's great getting involved before any requested action to be the most effective. He explained we recently had a hearing where the neighborhood was organized that was very effective on the outcome of the hearing. He questioned staff if and when there may be an action if a notice be sent out to all residents of Oakcrest since they don't own the land, only their home. Mrs. Patterson explained notices will be sent out to all residents living within a 300-foot radius.

## **PUBLIC HEARINGS**

1. Applicant: Jack Riggs  
Location: 801 S. 11th  
Request: The applicant is requesting a variance in fence height to allow a six-foot fence in the front yard setback area rather than a maximum fence height of four feet as allowed.  
QUASI-JUDICIAL, (V-1-22)

Mike Behary, Associate Planner made the following statements:

- The subject property's principal use is a single-family residence. The subject site has split zoning with the northern portion of the property zoned R-8 and the southern portion of the property zoned R-3. The fencing regulation are the same for both of these zoning districts.

- The property is over an acre in size, as compared to a 5,500 square foot standard City residential lot. The City's fencing regulations are the same for all single-family residences in all residential zoning districts throughout the City.
- The City does not require a building permit to be obtained in order to construct a fence on one's property; however, homeowners and their contractors are required to adhere to the Zoning Code in regards to fencing requirements, and it is their responsibility to learn and verify height and setback requirements for fences. Requirements such as fencing must be installed within one's private property (not to be installed in the public right-of-way), and are limited to a maximum fence height of four feet in the front yard setback area, and a maximum height of six feet in the side and rear yards.
- The applicant's contractor began construction of a six-foot fence behind the back of sidewalk along 11<sup>th</sup> Street, which is considered the front yard setback area. The zoning ordinance states that fences in the front yard are allowed a maximum height of four feet.
- The applicant was notified by staff that the six-foot fence was a violation of the Zoning Code regarding the maximum allowed fence height in the front yard and provided with all applicable sections of the code, the Fencing Handout, and staff's opinion on the fencing regulations relative to the subject property. Additionally, the applicant was provided with images of the subject property showing the approximate property line in relation to the aerial photo and advised to verify property lines to ensure that the fencing is outside of the City's Road right-of-way. When asked by staff if the fencing contractor had contacted the city to find out about the fencing standards and maximum height, the applicant indicated that he did not know but that the contractor indicated to him that the maximum fence height was six feet. Staff informed the applicant that he could follow up with the contractor on the error to see if they could share the cost burden of having the build the fence per City Code. Subsequently, the applicant requested information on the Variance and Administrative Appeal procedures, which was provided.
- Following notification of the violation and discussions with City staff, the applicant had the fence posts cut down to four feet along 11<sup>th</sup> Street, which would comply with the maximum fence height allowed per the Zoning Code in the front setback and had a survey conducted. The surveyor placed stakes along the property line behind the sidewalk on 11<sup>th</sup> Street, slightly behind where the fence posts were placed; however, the applicant proceeded to apply for a variance request to allow a six-foot fence in the front setback area and informed staff that there was a utility easement along the front property line that would require the fence to be moved further back from the front property line to avoid conflicts with the easement. It is unclear to staff as to why the applicant would have cut down the fence posts to four feet (in compliance with the code), but subsequently requested a variance to allow a six-foot tall fence in the front yard.
- He noted the three findings that the commission would need to consider when making a decision:
  - **Finding B8A:** There is an undue hardship because of the physical characteristics of the site.

The property does not have any physical characteristics or topographic issues that would prohibit the applicant from building a four-foot fence in the front yard of his property. Staff does not believe the topographical change on the rear of the subject property is a physical hardship warranting a variance, which is further supported by the fact that staff believes there are two viable options for the fence height: 1) construct with a four-foot fence within the front setback area to tie into the existing four-foot wall and increase the fence height to six feet within the allowable side and rear yards, or 2) moving the fence line back to the front yard setback and install a six-foot fence that meets all Code requirements. Staff has concluded that there is not an undue hardship because of the physical characteristics of the site.

*In staff's opinion, this condition has **not** been satisfied. The applicant will need to demonstrate to the Planning Commission how this condition is satisfied.*

- **Finding B8B:** The variance is not in conflict with the public interest.

The intent/reasoning for the requirement for allowing a maximum fence height of four feet is threefold. First is public safety, for pedestrians traveling along the sidewalk and vehicles traveling along 11<sup>th</sup> Street. The danger of having a car backing out of the driveway into pedestrians and oncoming traffic is in conflict with the public's interest.

Second is aesthetics and compatibility with the other residential properties in the area, and residential neighborhoods throughout the City. The proposed variance to allow a six-foot fence in the Front Yard setback area is in conflict with the public's interest because all other fencing along 11<sup>th</sup> Street conforms with the zoning ordinance and is aesthetically uniform along 11<sup>th</sup> Street and throughout the community.

Third and final is the integrity of the zoning ordinance in that this proposed variance would undermine that ordinance. This presents a major conflict with the public interest. Requiring all similarly situated properties to be subject to the same rules is in the best interest of the public. To allow one homeowner to have a fence in excess of the height limitation, but require everyone else who lives in the City (and particularly those who have significantly smaller lots) to follow the laws and regulations is not in the public's interest. The proposed variance would undermine the zoning ordinance and staff's ability to enforce the Code. The proposed variance is in conflict with the public interest.

*In staff's opinion, this condition has **not** been satisfied. The applicant will need to demonstrate to the Planning Commission how this condition is satisfied.*

- Finding B8C: The granting of said variance will be in conformance with the Comprehensive Plan.

Per staff's analysis, the proposed variance is not in conformance with the Comprehensive Plan. There is no support within the Comprehensive Plan to allow for this special treatment for one property owner in a single-family residential area, when other property owners are held to the City Code standards. *In staff's opinion, this condition has **not** been satisfied. The applicant will need to demonstrate to the Planning Commission how this condition is satisfied.*

- He noted that it is staff's recommendation would be the Planning Commission to deny the Variance request based on the facts stated in the staff report that the required findings can't be met.

Mr. Behary concluded his presentation

**Commission Comments:**

None.

### **Public testimony open.**

Jack Riggs, Applicant provided the following statements:

- He is here for the commission to make a decision contrary to the staff report. He thanked the commission for having this hearing that includes a Variance process available.
- He is a resident of Coeur d'Alene and has lived at this address for over 36 years and has always supported the Coeur d'Alene the law, rules and regulations.
- He questioned what do you do when the current definitions don't describe an existing property and the reason why I'm asking for a variance because of the uniqueness and oddness of the property, and aware that staff doesn't support this request since variance requests are uncommon, but is a tool available to all citizens.
- He noted a section in the staff report where it states by approving this request "a floodgate would open" and our entire community would be "at risk" which he disagrees with that statement.
- He explained that 6-foot solid fences are allowed in the city placed next to sidewalks and streets with no property line setbacks for side yards on corner lots.
- He explained that this request is about the definition of a front yard as opposed to a side yard. He added that they are requesting to allow a 6-foot non site obstructing rod iron fence on the side yard in the same way that is allowed on corner lots around town.
- He commented as Planning Commissioners you have the authority and responsibility to look at unusual circumstances and make decisions for unique situations. He explained that they are requesting that their side yard be considered a front yard.
- He provided photos showing various 6-foot fences on corner lots next to the side yards next to the sidewalk in his neighborhood.
- He questioned a front yard vs side yard and that the current definitions are a little bit "rigid" with the definition in the dictionary defined that "The front yard is the yard in the front of the house "where that definition describes the majority of houses in the city.
- He noted a photo of his house sitting on an angle that slopes down to the 11<sup>th</sup> Street Marina and in his opinion, there is a front yard, but by definition the side of the house is to the right of the property and that would make the area by the basketball court the side yard which is not according to the definition as it exists, but from looking at the property there is a front yard and side yard.
- He provided various photos showing the front of the house and the garages and noted another photo with the view from the porch perpendicular parallel to the front of the house towards Tubb's Hill.
- He showed a photo of the basketball court that would be if defined in the front yard setback and questioned in my front yard setback to see the back of the house.
- He noted on another photo a line drawn where the 20-foot setback being proposed in the staff report from the street and explained that if a fence was placed there it would be allowed but wouldn't make sense because you would eliminate 20 feet and that there isn't a house behind the line. where the fence would be located back 20 feet which doesn't make sense.
- He commented in this neighborhood we have many rod iron fences within the Sander's Beach neighborhood where some fences are between 4-5 feet with posts over 6' feet with many non-conforming fences that don't meet the requirements.
- He referenced various photos showing a problem with deer eating everything and how his wife has tried many things to deter the deer eating everything and why we are requesting a fence to protect the property from deer.
- He noted that staff did forward citizen comments where there was eight in favor with six adjacent to our property, two that are a block away, and one around the corner that was opposed.
- He summarized to please recognize that this property doesn't fit the standard definition and to please consider this a corner lot noted by the various photos that allows a 6-foot fence on the

side and back yard specially a side yard on the corner. He added because the house sits at an angle functionally it's like a corner, but doesn't meet the definition of a corner lot and would say this property is unique and odd with hardships on part of it.

The applicant concluded his presentation.

**Commission Comments:**

Commissioner Ingalls referenced a photo in the staff report showing the basketball court with a masonry wall next to the court and inquired the height of that wall. Mr. Riggs stated that the wall is 4 feet. Commissioner Ingalls inquired if that wall is to be considered part of the proposal to raise the height to 6 feet. Mr. Riggs commented that the fence would abut next to the wall and explained when we started the project staff questioned why we cut the posts and the reason was because Avista has a gas line in that location and they asked us to move the posts with part of the plan is to move the posts back behind the property flags 18 inches.

Commissioner Luttrupp commented for him the question is the definition of a side yard vs. front yard and that we may have a disagreement on that definition. Mr. Riggs concurred that the definition fits 99% of properties in town, but because of the uniqueness of this property doesn't fit since the front of the house is turned similar as a corner lot with the flat area located on the side of the house but under the strict interpretation of the definition the front yard setback has to be met even though it is on the side 120 feet from the house.

Commissioner Ingalls explained that the staff report takes the position that there is no hardship. Mr. Riggs answered that the hardship would be the uniqueness of the property and noted that the house was built in 1950 and if a new owner was building a house on this site would have to meet current setbacks. He commented that staff did say it doesn't matter where the house is located would not be considered a hardship. He explained that this home was constructed many years ago before these requirements were adopted and now, we are left with "what is the definition of a front yard. He added that the house is 20 feet from the street and when pulling out of his driveway with a 6 foot fence it wouldn't be unsafe and not an obstruction.

Chairman Messina inquired by code how is a front yard determined. Mr. Adams stated that information is located on page 11 in the staff report that states "its is determined by the lot line" not by the orientation of the house, so the front lot line is located along the street and the side lot line is the side of the lot not within the front or rear yards.

Commissioner Mandel inquired at the end of the lot closest to the water going down on the grade is a hedge with a retaining wall next to the steps and questioned if that hedge is higher than 6 feet. Mr. Riggs explained that is an original hedge and not sure how tall. Commissioner Mandel commented that she recognized some of the properties in the photos showing high blocking fences that face 11<sup>th</sup> Street. Mr. Riggs explained that many of the photos of fences were taken on 11<sup>th</sup> Street and if you have a corner lot it's acceptable to put a 6-foot site obscuring fence on the property line with most people putting the fence on the sidewalk. He explained this is the reason because the side lots are corner lots and why we are asking that the flat part of the property to be considered a side yard since it's the side of the house.

Commissioner McCracken noted on photos one and two there is a picture of a brick wall with hedges and if the posts in the ground were cut to 4 feet makes the brick wall 4 feet. Mr. Riggs explained that brick wall is around the basketball court.

Commissioner Luttrupp stated that you took pictures of various fences in the neighborhood that in the front yard an excess of 4 feet. He questioned would you agree to limit your fence to the height of the tallest fence among the neighbors. Mr. Riggs answered yes, he would agree to that. Commissioner Luttrupp questioned if there are fences on the front lots that are higher than what is permitted and inquired how does staff deal with those situations. He added we had a variance request to allow the applicant 10' inches added to his roof and that request was denied by the commission.

Chairman Messina questioned if a 4-foot fence is allowed by code on the property line. Ms. Patterson explained that there is an easement that the fence would need to be placed outside of the easement but they can put a 4-foot fence on the property line. She added that Mr. Adams clarified that when looking at the code there is a provision for a Special Use Permit for a sport court that allow a 6-foot fence around the basketball court.

Commissioner Fleming commented that she sees this fence as a sport court and that the R-8 portion of the property should be allowed to have a 6-foot fence going back to the garage. She added that she doesn't like having a fence in front of the stairs going to the house that is surrounded by nice hedges. She explained that she would like to isolate the fence bring it around the back in order to keep the deer out. Mr. Riggs commented that they have discussed not having the fence there and placing it up higher across the front yard. Commissioner Fleming concurs that a fence placed along the property line would look like a barricade and concurs that the lot configuration is a challenge.

Commissioner Ward appreciates the detail in the staff report regarding the recommendation and that this request is for a side yard legally by definition and not sure the definition is correct for this property. He explained this lot has a strange configuration which makes this lot all side yard property. He added the site is controlled by the "flat" so you can't change the lot lines with a situation. He added that he disagrees that there is a precedence with the approval of this request because due to the unique character of the site and would agree to the variance.

Commissioner Luttrupp questioned if the hardship considered to be the orientation of the house. Commissioner Ward concurred.

Commissioner Luttrupp explained that the definition of a front yard follows the street so the applicant is requesting to change the definition and questioned if its our authority to change that definition. He stated that he sympathizes with the applicant, but has a hard time going against staff's recommendation and support their decision for denial.

Commissioner Mandel explained that she grew up in south west Portland that had many hills, crazy shaped property and terrain with the orientation and agrees that every property not the same for every lot and explained that the typical shape of lots downtown is more traditional with a designated side yard and front yard which this lot is unique. She added that this request is because of the location/orientation of the lot and understands the staff report, but this lot is unique.

Mr. Riggs stated that he's not asking to change the code but try to point out that the definition applies to 99% and makes sense for those properties, but for this property trying to decide what is the front yard/side yard the current definition doesn't apply. He added that he wasn't aware about getting a special use permit for the sport court and if the approach was to allow a 6-foot fence on the north lawn because of the sport court that would be acceptable based on Commissioner Flemings comments we would be agreeable to not do the fence along the driveway on the southside and be acceptable to move it up where no one would see it that would be an agreeable solution.

Chairman Messina inquired if what was said could be a condition. Ms. Patterson explained with a variance you can't place a condition. That's not an option, and if a special use permit is required for the sport court, that can't be considered part of the variance request. Chairman Messina inquired do we approve/deny this request as is since we can't change the original request. Mr. Adams stated you have to make the findings and the commission isn't bound by anything in terms of making those findings and as an example, you have to make a finding that part of this property line is a side yard line and part is a front yard line, but would have to have a justification by reasoning for supporting the finding. He added if the commission finds this is an unusual hardship would have to support with facts and can grant a variance in part and deny in part if you make the findings what is the front lot line/side lot line an unusual hardship so it's up to the commission and provide some guidance but not bound by the request as written especially if the applicant wants to change the request.

Mr. Riggs commented on the application under justification noted paragraph A he split his comment into an "A" and "B," with "A" referencing the area north of the driveway and the "B" request was south of the driveway.

**Public testimony closed.**

**Discussion:**

Commissioner Ingalls commented a few years back, a request for a 10-inch variance which was a struggle with the people who built a house on the southside of Sherman that was 10 inches too high and at that hearing the neighbors said they were fine with the request but the commission tried to define what was the hardship was, and there wasn't one. For the integrity of process, it was denied. He commented that Idaho has a "high bar" code for the definition of hardship. He noted Commissioner Ward's comments that this is a unique site which doesn't look like a typical lot diagram but struggles with the hardship justification.

Commissioner Fleming explained that the side yard on the northside is on the side of the home which would be the side yard and this much real-estate should have the right to be fenced because they have the sport court, and because this is an unusual lot that constitutes their side yard which could be considered a two piece element where you have this grand home that is twisted on the lot and move the fence back and agree to part A on the northside would make sense and B should move back up the hill 20-foot setback which meets the requirement.

Commissioner McCracken inquired in an R-3 zone what is the side setback requirement. Ms. Patterson explained if there is an alley then is "5/5" (five-foot on each side) setback, and if no alley it is a "5/10" (five-foot on one side and 10-foot on the other) setback. Commissioner McCracken noted on page 8 there is a parcel line that goes along the garage and if we would consider that R-3 zoned lot that met all the requirements for fencing within that parcel then the adjoining R-8 parcel from the garage to the front is 20 feet back, then the R-8 parcel would be considered a sport court but the R-3 parcel would still meet all fencing requirements by moving on the south and maintaining a 20-foot setback on the front yard.

Commissioner Luttrupp inquired if the front yard be the R-3 and the side yard would be the R-8. Commissioner McCracken commented that the R-3 side yard could meet the setbacks with the changes with the parcels being separated and that the R-3 wouldn't need a variance and if allowed the R-8 parcel would obtain a special use permit for a sport court, and that would be separate.

Chairman Messina for clarification that we aren't approving a special use permit only a variance request.

Commissioner Luttrupp commented that Mr. Adams said that he would be able to guide us to make findings and the question is if the property along 11<sup>th</sup> an R-3/R-8 is the front yard or side yard. He inquired if staff could help us determine where the property line should be. Mr. Adams explained he can't help with that request and that there are two parcels with discussion calling the R-8 parcel a side yard and to make that parcel into a parcel without a front lot line or a principal use, and he wouldn't know how to do that. Mr. Adams explained when he said he would help it was regarding telling the commission what findings are necessary. A motion needs to be made first and then you work through the findings.

Commissioner Ingalls inquired if a 6-foot fence could be constructed from the masonry wall down to the driveway, and if there was a proposal for another fence south of the steps that go up to the house. Commissioner Fleming explained that no fence should be allowed south of the steps. He added so the variance allows the fence height from the masonry fence to the driveway back to the garage.

Commissioner McCracken appreciates staff's comments and is hesitant we might have more of the requests similar to the applicants and not a position that can be met with the current ordinance.

**Motion by Fleming, seconded by Messina , to approve Item V-1-22. Motion approved.**

**ROLL CALL:**

Commissioner Fleming	Voted	Aye
Commissioner Ingalls	Voted	Aye
Commissioner Mandel	Voted	Aye
Commissioner McCracken	Voted	No
Commissioner Luttrupp	Votes	No
Commissioner Ward	Voted	Aye
Chairman Messina	Voted	Aye

Motion to approve carried by a 5 to 2 vote.

**ADJOURNMENT/CONTINUATION:**

Motion by Mandel, seconded by Luttrupp to adjourn the meeting. Motion approved.

The meeting was adjourned at 7:06 p.m.

Prepared by Shana Stuhlmiller, Public Hearing Assistant