



Action Report

File #: 16-421

Town of Paradise Valley Action Report

TO: Mayor Collins and Town Council Members

FROM: Kevin Burke, Town Manager
Eva Cutro, Community Development Director
George Burton, Planner

DATE: December 1, 2016

DEPARTMENT: Community Development Department
George Burton, Planner, 480-348-3525

AGENDA TITLE:
Consideration of Article XXIV, Walls and Fences, Zoning Code Text Amendment (MI-16-2)

RECOMMENDATION:
Adoption of Ordinance 2016-07.

BACKGROUND

Request

The applicant requests an amendment to Article XXIV of the Town Zoning Ordinance to allow a partial view fence or "combination view fence" at a 20' front yard setback and to modify the definition of a view fence to accommodate decorative elements such as knuckles, scrolls, and spears.

History

The proposed text amendment is in response to a burglary at the prior Garner residence. The Garners purchased the property on April 2, 2013 and hired a metal works company to install wrought iron fencing on top of the existing fence wall in order to secure the house. A neighbor inquired about installing a similar fence, which brought the modified fence to the Town's attention. The Town checked and confirmed that the fence was modified without a permit and was in violation of the Zoning Ordinance. The applicant applied for a variance to keep the fence; however, the request was denied by the Board of Adjustment. The applicant is seeking a text amendment to allow for a 6' tall "combination view fence" located at a 20' front yard setback.

DISCUSSION/FACTS

Combination View Fence

Currently, the code allows all 3' tall fences at a minimum setback of 10' from the front property line and all 6' tall fences at a setback of 40' from the front property line. The applicant requests a text amendment that will allow for a combination view fence. The combination view fence will be limited to a maximum height of 6' tall and a minimum setback of 20' from the front property line. The combination view fence will also be limited to at least 50% of the wall being a view fence and the view portion of the fence located on the top or upper half of the wall.

The definition of "view fence" will also be modified. Currently, the code states that 80% of the fence must be open to qualify as a view fence. The applicant is proposing to add language to this definition that would allow for a minimum openness of 70% in order to accommodate decorative features such as knuckles, scrolls and ball caps.

Staff is supportive of the minimum openness of 70% to accommodate decorative features on view fences. However, staff has differing views regarding the combination view fence. The Chief of Police is supportive of a combination view fence provided no landscaping is placed in front of or behind the fencing that would block visibility. However, planning staff is not supportive of this change.

Wall Finishes

Staff is looking to make a minor change to Section 2403.b of the Zoning Ordinance. The code currently states that a wall adjacent to an adjoining property must be finished on the exterior side that is compatible with the architectural character of the neighboring house or a minimum finish of stucco and paint. Staff would like to update the language to limit the finish to a minimum of stucco and paint or with colors and materials agreed upon by the property owners.

Planning Commission Discussion

The Planning Commission discussed this topic at the August 18th, September 6th, September 20th, October 4th work study sessions, and the November 1st and November 15th public hearings. During the August 18th meeting, the Commission was generally agreeable with the modified language for the fence wall finish; however, there was no consensus regarding the combination view fence.

There discussion regarding the need to adjust the standards for fences adjoining minor arterial streets, how other cities regulate landscaping, and CPTED standards.

Chairman Strom felt there should be no limitation on vegetation. Commissioners Wincel and Mahrle stated they could not support the proposed provision without a vegetation restriction, with Commissioner Mahrle emphasizing a preference that walls should be placed behind the house. Commissioners Wastchak, Campbell, and Moore stated they may support this provision depending on the restriction on plantings. Commissioner Wainwright stated this is a complicated issue, and that homeowners should be able to make use of their front yard, and the provision as drafted may be hard to enforce.

Staff researched several city codes and website regarding fence and landscape regulations. The Town of Fountain Hills limits any wall or hedge located within the 40' front yard setback to a maximum height of 3'6" tall. The City of Scottsdale allows a 3' tall wall, fence or hedge on the front property line. The City of Phoenix allows 40" tall fencing anywhere on the property. 6' tall fencing is limited to the side and rear yards and landscape plans are required for new development projects (identifying a native plant inventory and general landscape plan). The Town Cave Creek limits 6' tall fencing to be located on the property

and requires landscaping that is located in the front yard or visible from a public street use a pallet outlined in their landscape technical design guidelines.

During the September 6th meeting, direction was given to provide a definition of hedge and create a code that is reasonable and enforceable. It was noted that the code change should allow a six-foot tall view fence at the 20-foot front yard setback with a landscape restriction (similar to Landscape Restriction Option #2 provided by the applicant). There was also discussion that the property owner would have to submit a form (similar to a drainage easement agreement), regarding the landscape restrictions associated with a view/combination view fence at the 20' front yard setback. This would help inform any new property owners that they have a landscape restriction associated with the combination view fence.

The Commission was supportive of the proposed changes to wall finishes. The Commission also noted that the number of attempts on Section 2403.b.2 should be codified (with two or three attempts).

During the September 20th Citizen Review meeting, the Commission provided additional feedback and refinement of the code updates. The Commission provided the following direction:

- Add a definition of front yard be added to the code to clarify that the return or side portion of the fence located within the 20' and 40' foot setback must be a view or combination view fence.
- Use Option No. 3 for the definition of hedge.
- Add an asterisk to Table 2404A to identify that there is a landscape restriction associated with the view fence/combination view fence.
- Identify and draft a document (similar to a drainage easement maintenance agreement) for the landscape restriction associated with the view/combo view fence. A self-remedy clause must be added to the form relieving the property owner of the landscape restriction if the view/combo view fence is removed.
- Codify the type of notice required for the fence wall finish such as a written letter sent via certified mail.

During the October 4th work session, direction was given to staff to update the definition of hedge, update the definition of front yard, and move the language regarding the hedge/landscape restriction to a different part of the code. The Commission also reviewed the hedge maintenance agreement form. The applicant also provided notice as an alternative to the hedge maintenance agreement; however, the Commission identified that they prefer the hedge maintenance agreement that was drafted by staff and identified several edits to the form.

During the November 1st meeting, direction was given to staff to update the definition of hedge, update the format of Table 2404.A, and make several edits to the hedge maintenance agreement form. However, there was no consensus on whether or not the definition of "Yard, Front" should be removed from the ordinance. The Commission continued to hearing to November 15th to review the final edits to the draft ordinance.

During the November 15th public hearing, the Commission made an edit to Table 2404.A to clarify that there is a landscape restriction associated with the view fence and kept the definition of "Yard, Front" in the ordinance. The Commission made a recommendation of approval of the draft ordinance, by a vote of 5 to 2.

Town Council Discussion

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The Town Council discussed the draft ordinance at the November 17th work session. The Council requested that a disclosure penalty be added to the hedge maintenance agreement and that language be added to the ordinance to clarify that the exterior finish is limited to stucco and paint provided the neighbors cannot agree on a finish for the adjoining fence wall. The requested changes have been incorporated into the proposed ordinance and the proposed hedge maintenance agreement.

Public Comment

Public notification was performed in accordance with the citizen review and public hearing process. Staff did not receive any public comment regarding the proposed code amendments.

ATTACHMENT(S)

- Application
- Applicant Text Amendment Narrative to Article XXIV
- Draft Ordinance Number 2016-07
- Draft View Fence/Combination View Fence Hedge Maintenance Agreement

C: - Taylor Earl (Applicant)
- Case File: MI-16-2