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MEETING LOCATION:
CITY COUNCIL CHAMBER
401 CALIFORNIA AVENUE
BOULDER CITY, NV 89005

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PARKS & RECREATION DIRECTOR:
JULIE CALLOWAY, CPRP

City Council Meeting

August 27, 2024

Item No. 12

Staff Report

TO: Michael Mays, Acting City Manager

FROM: Nakeisha Lyon, City Planner

DATE: August 27, 2024

SUBJECT: For possible action: Matters pertaining to an appeal (CAP-24-01) of the Planning Commission's denial of a variance request (V-24-671) to permit portions of a 4' tall fence and gate (already built) within the public right of way adjacent to the front property line at 601 Lido Drive:

A. Public hearing on appeal

B. Determination on appeal

Business Impact Statement: As per NRS 237.060.2(c), the requirements for a business impact statement do not apply to a master plan and zoning matters (NRS Chapter 278).

Action Requested: That the City Council conduct the required public hearing and take action on the appeal, to approve or deny the variance.

Overview:

- The property owner at 601 Lido Drive has installed a 4' tall fence and gate within the public right of way adjacent to the front property line in violation of zoning requirements and Public Works policy.
- The property owner submitted a variance application for consideration by the Planning Commission as a method to remedy nonconformance with City standards.
- On July 17, 2024, the Planning Commission denied the variance request by a vote of 7-0.
- The appellant has appealed this action on behalf of the property owner.

Background Information:

Appellant: Kristen Damm

Representative: Caron Richardson

Property Owner: Cynthia Kent

Location: 601 Lido Drive

Assessor Parcel No. 181-33-511-001

Zoning: R1-8, Single Family Residential

Historic District: This property is not located within the Historic District.

Planning Commission Action: On July 17, 2024, The Planning Commission denied the requested variance by a vote of 7-0; refer to Attachment 2 for minutes.

Details about this variance request are in the staff report and backup information presented to the Planning Commission, Attachments 3 and 4.

Appeal Procedure: Chapter 11-34 governs appeals related to the zoning ordinance. Section 11-34-1 states “The purpose of an appeal procedure is to provide recourse in the event that the appellant is dissatisfied with any decision made by an administrative officer or the planning commission in the administration or enforcement of this Title.”

Section 11-34-6.A. states: “Upon hearing an appeal, the City Council shall consider the record and such additional evidence as may be offered and **may affirm, reverse or modify in whole or in part the decision appealed from, or make and substitute such other or additional decisions as it may find warranted under the provisions of this Title.**”

Section 11-34-6-B. states: “In reviewing the decision being appealed, the City Council shall consider the health, safety, morals, or the general welfare of the community, as per Nevada Revised Statutes 278.3195.2(f) and 278.020.”

Actions on variances must be supported by findings as stated in Section 11-32-4 of the zoning ordinance (reference Attachment 3).

Consideration of affirming the Planning Commission’s decision: Should the City Council decide to affirm the action of the Planning Commission (denying the variance), the same findings for denial of the variance may be used as noted in the Planning Commission staff report:

1. There are no exceptional or extraordinary circumstances or conditions applicable to the property or to its intended use that do not apply generally to the other

property or classes of use in the same vicinity and zone. The setback requirements for fences, gates, and hedges, and front property line provisions in consideration of the public right of way do apply generally to other properties along Lido Drive, other residential uses within the area, and in the R1-8 zoning district (Criterion A);

2. The variance is not necessary for the preservation and enjoyment of a substantial property right, possessed by other property in the same vicinity and zone, but which is denied to the property in question. Accessibility to the garage nor the installation of a fence and gate are not denied to the subject property. The City Code requires specific setback and location requirements which may limit usability of the property owner's driveway. Additionally, the Public Works Department does not allow for the construction of permanent structures within the public right of way. These structures hinder future improvements whether those be to the street, sidewalk, or underground utilities (Criterion B);
3. The granting of such variance will be materially detrimental to the public welfare or injurious to the property or improvements in such vicinity and zone in which the property is located based on the staff findings denoted in Criterion B (Criterion C);
4. The granting of this variance will not adversely affect, or be contrary to, the Comprehensive Plan (Criterion D); and
5. Approval of the variance would create a condition whereas a general or recurrent regulation is formed as the allowance of the fence within the public right of way conflicts with the current policy administered by the City's Public Works Department (Criterion E).

The property owner would be required to remove the gate and fencing from the public right of way.

Consideration of reversing the Planning Commission's decision: Should the City Council decide to reverse the action of the Planning Commission and approve the variance as requested by the appellant, new findings for approval of the variance must be made based on the criteria as stated in Section 11-32-4:

1. There are exceptional or extraordinary circumstances or conditions applicable to the property or to its intended use that do not apply generally to the other property or classes of use in the same vicinity and zone. (Criterion A);
2. The variance is necessary for the preservation and enjoyment of a substantial property right, possessed by other property in the same vicinity and zone, but which is denied to the property in question. (Criterion B);
3. The granting of such variance will be not materially detrimental to the public welfare or injurious to the property or improvements in such vicinity and zone in which the property is located. (Criterion C);

4. The granting of this variance will not adversely affect, or be contrary to, the Comprehensive Plan (Criterion D); and
5. The conditions or situations of the specific piece of property, or the intended use of said property for which the variance is sought, is not of so general or recurrent a nature as to make reasonably practicable the formulation of a general regulation of such conditions or situations (Criterion E).

Consideration of modifying or substituting in whole or in part components of the Planning Commission's decision: Should the City Council make modifications in whole or in part regarding the decision appealed, or making and substituting such other or additional decisions as it may be warranted, findings for such changes must be made based on the criteria as stated in Section 11-32-4 and allowed per Chapter 34, Appeals.

On August 7th, the representative and appellant met with City staff representatives regarding the variance appeal request. The representative and appellant discussed with City staff other options that would allow for the gate and fence to remain in the public right of way, but to be relocated in a manner that would limit hinderance on existing public utilities located in the area. A revised plan was presented to the Public Works Department for their review and consideration which relocated portions of the gate and fence further towards the property line, yet, still within the public right of way, not meeting zoning setbacks, and located over utilities in the area. Upon review, Public Works' position on the placement of the fence and gate still stands. Therefore, the Public Works Department continues to not support the gate and fence installation in the public right of way nor on top of existing utility infrastructure in this area.

Public Notice Requirements: This appeal was noticed in accordance with Sec. 11-32-5 which requires that notices and hearing shall be held in accordance with the procedures and requirements as set forth in chapter 35 of this Title. Notice of the public hearing and application request were mailed to all property owners within 500' of the subject property on August 15, 2024.

Financial:

No financial impacts anticipated at this time.

Boulder City Strategic Plan Goal:

Goal C: Manage Growth and Development

Department Recommendation: The Community Development Department Staff respectfully requests that the City Council conduct the required public hearing and make a determination on the appeal, to either affirm or reverse the Planning Commission's denial of V-24-671 for a 4' tall fence and gate installed within the public right of way adjacent to the front property line.

Attachments:

1. Appeal Application and Supporting Documents
2. Planning Commission minutes excerpt, 07-17-2024
3. Planning Commission Staff Report
4. Backup materials to Planning Commission Staff Report
 - Variance application and justification
 - Elevations, site plan and images
 - Location map
 - Written public comments