



# Planning Commission Meeting

## July 17, 2024

### Item No. 3

### Staff Report

TO: Planning Commission

FROM: Nakeisha Lyon, AICP, City Planner  
Community Development Department

DATE: July 17, 2024

SUBJECT: For possible action: Matters pertaining to approximately 0.43 acres located at 601 Lido Drive:

A. A public hearing on an application for a variance

B. V-24-671: An application for a variance to permit portions of a 4' tall fence and gate (already built) within the public right of way adjacent to the front property line.

Action Requested: That the Planning Commission conduct the required public hearing and consider the application request (Attachment 1) for a variance as noted above.

Background Information:

Applicant / Tenant: Cynthia Kent

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.

Request: The applicant is requesting a variance for the installation of a 4' tall wrought iron fence with gates within the public right of way adjacent to their front property line along Lido Drive. Earlier this year, the City was made aware of the construction of the fence. Upon further inspection, the City noticed that portions of the fence encroach into the public right of way near the back of curb which does not meet setback and Engineering

requirements. Additionally, the fence was built without the appropriate permits which includes a public right of way encroachment permit and a building permit. On February 29, 2024, the City communicated these issues via mail to the applicant and property owner in order to remedy nonconformance with the City's code and standards. In order to address the encroachment and setback issues, an approved variance is required prior to review and approval of a public right of way encroachment permit and a building permit.

Variance: Sec. 11-20-4-B.1. of the City Code states that "a wall, fence or hedge may occupy any portion of **a required front yard**, except within the sight visibility zone as provided for in section 11-20-5 of this chapter" and provides maximum height requirements dependent on the zoning distinction. Sec. 11-1-3. of the City Code defines a **front yard** as "an open and unobstructed space between a building and the front lot line, being parallel to and along the front lot line, to be measured horizontally from the nearest line of any building, or enclosed or covered portion or the extension of the latter line, to the nearest point of the front lot line. In cases where the majority of lots located on one side of a street between two (2) intersecting streets have been occupied by buildings having a front building line different from the one stipulated in this title, any building or addition to an existing building hereafter erected shall conform to the line previously established by these buildings."

***Therefore, a fence, hedge, or wall is allowed to be installed along the front property line and within the required front yard area which is 20' from the front property line for R1-8 zoned properties.*** In many neighborhoods within Boulder City, the front property line along the street is not necessarily located at the back of the sidewalk. Within our jurisdiction, the city right of way typically extends beyond the sidewalk for a distance up to 4'6" behind the sidewalk, or up to 9'6" back of curb if there is no sidewalk. ***The front property line starts at 9'6" from the back of curb along Lido Drive which has no sidewalk. As constructed, portions of the fence and the two gates encroach into the public right of way, ranging from 0' (built right along the back of curb) to 8'11" (from back of curb).***

Sec. 11-20-4-B.4.c. of the City Code provides exceptions for residential districts regarding the maximum height of walls and/or fences. As referred to in Sec. 11-32-12.B. administrative variances may be allowed for certain heights in excess of the code limitations. ***However, all other variance requests would be subject to public hearing and planning commission approval as per Chapter 32 – Variances.***

Refer to the attached application and justification (Attachment 1), elevations, site plan and images (Attachment 2) and location map (Attachment 3) for additional details.

Required Criteria for Variances: Sec. 11-32-4 of City Code sets forth the criteria that must be met in order for a variance to be granted. It is necessary that findings be provided for all five criteria for the variance to be approved; failure to meet any one criterion is sufficient reason for denial of a variance. The criteria are as follows:

- A. There are exceptional and 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 uses in the same vicinity and zone.**

**Applicant's Response:** The applicant's justification denotes that due to the front property line along Lido Drive starting 9.5' from the back of curb, the central portion of the fencing would run through the middle of the driveway preventing or hindering ingress and egress to their garage.

**Staff's Response:** 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.

- B. The variance is necessary for the preservation and enjoyment of a substantial property right, possessed by other property in the same vicinity or zone, but which is denied to the property in question.**

**Applicant's Response:** The applicant's justification denotes that their variance request allows access to their garage as is possessed by other properties in the same vicinity and zone while providing a mechanism to prevent their dogs from leaving the subject property.

**Staff's Response:** Access to the garage is not denied to the subject property. The location of the fence and gates must conform to the City's standards, and the construction of the fence in the appropriate location may limit usability of their driveway. This substantial property right is processed by other properties along Lido Drive.

Over the last several years, the City does not allow fencing and/or gates within the public right of way and would require the fencing and gate to be located at the property line. Public Works does not support construction of these types of permanent features in the public right of way as these structures hinder future City improvements (e.g. street, sidewalk, or utilities). If the City has to perform any improvements within these areas, the permanent structures are removed. Any reconstruction or replacement of these structures would be at the property owner's expense.

The Public Works Department does not support the vacation of the right of way along 601 Lido Drive as this would significantly reduce the right of way available for future improvements such as a sidewalk along this corridor. It is important to note that no other properties along Lido Drive have vacated easements.

- C. The granting of such variance will not 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.**

**Applicant's Response:** The applicant's justification denotes that this variance request will not 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.

**Staff's Response:** Please see Staff's response to Condition B. The Public Works Department does not support the variance request.

**D. The granting of such variance will not adversely affect, or be contrary to, the Comprehensive Plan.**

**Applicant's Response:** The applicant's justification denotes that their variance request will not adversely affect, or be contrary to, the Comprehensive Plan.

**Staff's Response:** The Comprehensive Plan (2003 Master Plan) is a general policy guide for the future development of the City and it is not site (property) specific. Therefore, the requested variance would not be detrimental to the plan or its implementation.

**E. 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 formation of a general regulation of such conditions or situations.**

**Applicant's Response:** The applicant's justification denotes that their variance request 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.

**Staff's Response:** The allowance of this requested variance would set a precedent for a general or recurrent pattern so as to formulate a general regulation. The allowance of the fence within the public right of way conflicts with the current policy administered by the City's Public Works Department.

**Options:** Based on the foregoing analysis and findings, staff offers the following options for the Commission's consideration.

a. **Denial** of the requested variance, based on the following findings:

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 Planning Commission has not considered a variance such as this previously. For approval of a variance, the Commission has the option to associate conditions or modifications to the request (e.g. a lesser variance than requested, modifying findings or conditions, requirement to submit building permits or requiring additional conditions).

Public Notice Requirements:

This variance was noticed in accordance with Sec. 11-35-3.A. Notice of the public hearing and application request were mailed to all property owners within 500' of the subject property on July 3, 2024. Staff has received one written public comment (Attachment 4).

Department Recommendation:

**Requested Action:** That the Planning Commission hold the public hearing, deliberate and then make a motion to **either** approve or deny the request, using alternate draft motion language as follows (subject to modification as noted above):

APPROVE: "I move to conditionally approve V-24-671 based on the findings and subject to the condition contained on pages 3 and 4 of the staff report."

or

DENY: "I move to deny V-24-671 based on the findings contained on page 5 of the staff report."

Any final decision by the Planning Commission can be appealed to the City Council, subject to the requirements per Section 11-34-2 of the City Code and NRS 278.3195.

Attachments:

1. Application and Justification
2. Elevations, Site Plan, and Images
3. Location Map
4. Public Comment