

**HOLDOVER**

APPLICATION NUMBER

**5540/5533**

A REQUEST FOR

**FENCE HEIGHT VARIANCE TO ALLOW THE  
CONSTRUCTION OF A 13.5 FOOT HIGH WALL ALONG  
THE REAR AND SIDE PROPERTY LINES IN AN R-1,  
SINGLE-FAMILY RESIDENTIAL DISTRICT; THE  
ZONING ORDINANCE ALLOWS A MAXIMUM WALL  
HEIGHT OF 8' ALONG THE PROPERTY LINES IN AN R-  
1, SINGLE-FAMILY RESIDENTIAL DISTRICT**

LOCATED AT

(East side of Drury Lane, 365'± North of Wimbledon Drive West)

APPLICANT / OWNER

**JOEL THOMAS DAVES & STEPHANIE DAVES**

**BOARD OF ZONING ADJUSTMENT**

AUGUST 2009

## HOLDOVER

**ANALYSIS APPLICATION 5540/5533**

**Date: August 3, 2009**

The applicant is requesting fence height variance to allow the construction of a 13.5 foot high wall along the rear and side property lines in an R-1, Single-Family Residential District; the Zoning Ordinance allows a maximum wall height of 8' along the property lines in an R-1, Single-Family Residential District.

The applicant is requesting to erect a wall greater than 8' in height along the rear property and east property lines. It is argued that there is a low area in the rear of the property. The applicant claims that the excessive wall height is needed in order to infill some of the property to contain storm water and divert it toward the street, rather than to neighboring properties.

The Zoning Ordinance states that no variance shall be granted where economics are the basis for the application. Furthermore, the applicant must present sufficient evidence to find that the variance will not be contrary to the public interest, and that special conditions exist such that a literal enforcement of the Ordinance will result in an unnecessary hardship. The Ordinance also states that a variance should not be approved unless the spirit and intent of the Ordinance is observed and substantial justice done to the applicant and the surrounding neighborhood.

Variances are not intended to be granted frequently. The applicant must clearly show the Board that the request is due to very unusual characteristics of the property and that it satisfies the variance standards. What constitutes unnecessary hardship and substantial justice is a matter to be determined from the facts and circumstances of each application.

Recently, the Board approved a request for increased in site coverage at this site. The applicant now wishes to erect a wall to a height greater than the maximum 8' allowed by the Zoning Ordinance. With regards to the applicant's argument, topographic data shows only a 4' elevation change across 130' of property (approximately 3% slope). Thus, if the purpose of the wall is to divert storm water to the street, then a simple retaining wall should be sufficient. Furthermore, photos submitted by the applicant do not show a "low area" anywhere on the property.

The applicant failed to illustrate that a literal enforcement of the Ordinance would result in an unnecessary hardship.

***Revised for the July 6<sup>th</sup> meeting:***

*This application was held over at the June 1<sup>st</sup> meeting at the applicant's request.*

*The applicant submitted both a detail of the proposed wall, referencing the height, and a topographical survey of the site, illustrating a 5' elevation change from the highest point (Northwest corner) to the lowest point (Southeast corner). Also submitted is a letter from*

*the engineer for the site explaining that approximately 4' of fill is needed in the Southeast corner of the site so as to allow for the proper drainage of storm water to the street, rather than onto adjacent properties.*

*The Zoning Ordinance allows a wall up to 8' in height, which is what the applicant wishes to erect; however after infill, the height of the wall from the view of the adjacent property will be approximately 12'; hence this application. The applicant states that to reduce the wall height to comply with the Zoning Ordinance would greatly reduce not only aesthetics, but also privacy.*

*It should also be noted that the adjacent property had a similar problem in 2006, and the Board approved a 12' wall.*

*With the additional information, the applicant has illustrated that there is a hardship imposed by the topography of the property.*

***Revised for the August 3<sup>rd</sup> meeting:***

*This application was held over from the Board's scheduled July meeting due to a lack of quorum.*

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**RECOMMENDATION 5540/5533**

**Date: August 3, 2009**

Based on the preceding, it is recommended that this application be approved.

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