

COMMONWEALTH OF VIRGINIA



SERVE

FREDERICKSBURG CIRCUIT COURT
Civil Division
701 PRINCESS ANNE STREET SUITE 100
FREDERICKSBURG VA 22401
(540) 372-1066

Proof Of Service

Virginia:

In the FREDERICKSBURG CIRCUIT COURT

Case number: 630CL15000676-00
Service number: 001
Service filed: November 18, 2015
Judge:

Served by: FREDERICKSBURG CITY

Style of case: STACEY N STRENTZ-MCLAUGHLIN vs CITY OF FREDERICKSBURG COUNSEL

Service on: KATHLEEN A DOOLEY
ATTORNEY FOR THE CITY
OF FREDERICKSBURG
601 CAROLINE STREET
FREDERICKSBURG VA 22401

Attorney:

Instructions: SEE ATTACHED PETITION, EXHIBITS 1-4, AND WRIT OF CERTIORARI

Hearing date :

Service issued: Wednesday, November 18, 2015

For Sheriff Use Only

NAME.....

.....

PERSONAL SERVICE

Being unable to make personal service, a copy was delivered in the following manner:

Delivered to person found in charge of usual place of business or employment during business hours and giving information to its purport.

.....

Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode of party named above giving information of its purport. List name, age of recipient and relation of recipient to party named above.

.....

Posted on the common door of usual place of abode, address listed above. (Other authorized recipient not found.)

Copy mailed to judgment debtor on date below after serving the guarantee unless a different date is shown below.

.....

Evicted Not Evicted

Served on registered agent

.....

Not Found

NO EFFECTS FOUND

DATE: _____

DEPUTY SHERIFF: _____

For Sheriff: _____

For county/city: _____

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF FREDERICKSBURG

In Re: September 21, 2015 Decision of the Board of Zoning Appeals of the City of Fredericksburg, Virginia (814 Cornell Street – APP 2015-01)

Case No.: CL 15-676

WRIT OF CERTIORARI

TO: The City of Fredericksburg Board of Zoning Appeals

THIS MATTER is before the Court on Stacey N. Strentz-McLaughlin and John J. McLaughlin's Petition for a Writ of Certiorari to review the City of Fredericksburg Board of Zoning Appeals ("BZA") September 21, 2015, decision in BZA appeal 814 Cornell Street APP 2015-01; and

IT APPEARING TO THE COURT that the Petition for Writ of Certiorari is properly filed pursuant to Virginia Code Section 15.2-2314 and that the granting of this Writ of Certiorari is just and proper in all respects; it is therefore

ADJUDGED, ORDERED AND DECREED that the Petition for Writ of Certiorari is GRANTED TO REVIEW THE BZA'S SEPTEMBER 21, 2015, DECISION IN BZA APPEAL, 814 CORNELL STREET – APP 2015-01; and it is further

ORDERED, ADJUDGED AND DECREED that the BZA shall certify and return to this Court and serve upon Petitioner's counsel, on or before 30 days after the entry of this Writ of Certiorari, a full, complete and certified or sworn record of the aforementioned proceeding including, but not limited to, the following material:

- 1) The appeal application and any staff reports prepared in connection therewith;

GLOVER & DAHNK
ATTORNEYS AT LAW
1103 PRINCESS ANNE STREET
P.O. BOX 207
FREDERICKSBURG, VIRGINIA 23404-0207

2) All exhibits and documents filed regarding the appeal application and any response thereto by any person or entities;

3) Any verbatim transcript and/or recording by videotape or otherwise, and all minutes of the proceedings before the BZA;

4) All photographs, resolutions, letters, reports, emails, correspondence, exhibits, memoranda, plats and other papers and things referring to or related to the proceedings before the BZA that were presented to the BZA; and it is further

ORDERED, ADJUDGED AND DECREED that the return shall set forth such other facts as maybe pertinent and material to show the grounds of the decision appealed from and shall be verified.

THIS MATTER IS CONTINUED.

ENTERED this 28 day of October, 2015



JUDGE, CITY OF FREDERICKSBURG CIRCUIT COURT

VIRGINIA
FREDERICKSBURG CITY CIRCUIT COURT
A COPY TESTE: JEFF SMALL, CLERK

BY: Weather Auburn
DEPUTY CLERK

DATE: 11-17-2015

WE ASK FOR THIS:

Stacey N. Strentz-McLaughlin and
John J. McLaughlin, Petitioners



By: Jeannie P. Dahnk, Esq.

VSB No. 25825

William E. Glover, Esq.

VSB No. 25965

Glover & Dahnk

P.O. Box 207

Fredericksburg, VA 22404-0207

Phone: (540) 373-8600

Fax: (540) 373-8629

Counsel for Petitioners

GLOVER & DAHNK
ATTORNEYS AT LAW
1103 PRINCESS ANNE STREET
P.O. BOX 207
FREDERICKSBURG, VIRGINIA 22404-0207

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF FREDERICKSBURG

STACEY N. STRENTZ-McLAUGHLIN
and JOHN J. McLAUGHLIN,

Petitioners

v.

Case No. CL 15-676

THE CITY COUNCIL OF THE CITY OF
FREDERICKSBURG, VIRGINIA

SERVE:

Kathleen A. Dooley, Esq.
Attorney for the City of Fredericksburg
601 Caroline Street
Fredericksburg, VA 22401
(City of Fredericksburg, VA)

ORIGINAL FILED ON

OCT 20 2015

Respondent.

IN FREDERICKSBURG CIRCUIT
COURT

ALSO SERVE:

Helen P. Ross, Chair
City of Fredericksburg Board of Zoning Appeals
City Hall
715 Princess Anne Street
Fredericksburg, VA 22401
(City of Fredericksburg, VA)

**In Re: September 21, 2015 Decision of the Board of Zoning Appeals
of the City of Fredericksburg, Virginia
814 Cornell Street – APP 2015-01**

PETITION FOR WRIT OF CERTIORARI

COMES NOW your Petitioners, Stacey N. Strentz-McLaughlin and John J. McLaughlin (hereinafter “McLaughlin”), and make this their Appeal of the Denial of the McLaughlin’s Fence Permit by the City of Fredericksburg Board of Zoning Appeals (hereinafter “BZA”), 814 Cornell Street – APP2015-01, pursuant to Section 15.2-2314 of the Code of Virginia, 1950, as amended and state as follows:

GLOVER & DAENE
ATTORNEYS AT LAW
1109 PRINCESS ANNE STREET
P.O. BOX 307
FREDERICKSBURG, VIRGINIA 22404-0207

1. On September 21, 2015, the BZA held a hearing regarding the appeal of the denial of the fence permit applied for by McLaughlin. Please see Exhibit 1, Denial of Fence Permit Application, attached hereto and made a part hereof.

2. On June 30, 2015, McLaughlin appealed the denial of the fence permit on the basis that the City of Fredericksburg's (hereinafter "City") Notice of Violation failed to cite an applicable ordinance section, that there is no City Code Section that supports the City's decision to deny McLaughlin's fence permit, that there is no basis to apply to fences City codes that only apply to buildings or structures. That the City has, in the past, approved and allowed 6 foot fences that are similar and has specifically done so for adjacent property owners to the McLaughlin's. Please see Exhibit 2, McLaughlin's appeal of the Denial of the Fence Permit, attached hereto and made a part hereof.

3. The determination by the City that the McLaughlin's fence was in violation of the City code is plainly wrong as there is no code that supports the City's interpretation that the McLaughlins lot, which is at the corner of Cornell and Littlepage streets, has "two front yards" and therefore is subject to a fence ordinance that limits the height of the fence to 4 feet. In the City's own preparation of its record of decision in Paragraph B, it identifies the "fence also runs across the rear of the lot..." (emphasis added), and by the City's own definition, the McLaughlins lot does not have any rear. Please see Exhibit 3, City's letter dated September 11, 2015, attached hereto and made a part hereof.

4. At the September 20, 2015 BZA hearing, the BZA upheld the denial of the McLaughlin's fence permit. Please see Exhibit 4, Record of Decision dated October 8, 2015, attached hereto and made a part hereof.¹

5. The BZA and the City Development Director were plainly wrong in denying the McLaughlins' fence permit application as the BZA and the City Development Director incorrectly applied inapplicable City Ordinances to the McLaughlin's fence permit application.

HISTORY

6. The McLaughlins' have owned their home at 814 Cornell Street since December 2004. The McLaughlins have had a fence in this exact same location since January 2005 and the prior owner, the Freid's, also had a fence in this same location.

7. There have been no complaints regarding this current fence or any prior fence at 814 Cornell Street by anyone, including neighbors, city residents or city staff until the Development Administrator, Marne E. Sherman, noted her own violation on May 14, 2015. A copy of Ms. Sherman's Notice of Violation (hereinafter "Notice") dated May 14, 2015 is attached hereto within Exhibit "2".

8. In the Notice, Ms. Sherman states that a fence permit had not been issued for the fence and requests that an application be made. Ms. Sherman further states that "Section 72-56.2.C limits the height of a fence in the front yard of a R-4, residential zoning district to a maximum of four feet (4') in height. As a corner lot, your property has two fronts (along Cornell Street and Littlepage Street). The fence appears to be in violation of this code."

¹ In the City's letter of September 11, 2015, the height of the current fence is identified as exceeding 72" in certain places. The Petitioners have no objection to making all of the fence 72".

9. Thereafter, on May 18, 2015, the McLaughlins filed a fence permit application with the City requesting a height of six feet for their fence.

10. On May 21, 2015, Mrs. McLaughlin sent a letter to the Development Administrator identifying that the McLaughlins were surprised that their fence was not in compliance with City Code, setting forth the history of the pre-existing and current fence and the safety reasons for the fence as it is currently constructed. A copy of Ms. McLaughlin's letter is attached within Exhibit "2".

11. On June 3, 2015, the Development Administrator disapproved the McLaughlins fence permit application.

DISCUSSION

12. The McLaughlins fence is compliant with City Code Section 72-56.2.A which allows the McLaughlins to have the current six foot fence.

13. In the Notice, Ms. Sherman identifies that "as a corner lot, your property has two fronts (along Cornell Street and Littlepage Street). The fence appears to be in violation of this code." (emphasis added). No City Code section is identified to support this statement and given that there are hundreds of corner lots in the City, homeowners would be surprised to learn that their front door does not indicate their front yard, that their side yard is their front yard, or that they do not have a back yard.

14. In addition, City Code Section 72-84: "Definitions" does not contain any definition for a "corner lot". The City Code definition section does contain a definition for "front (or primary) façade" of "the side or elevation of a structure that contains the structure's architectural front, or the portion of the structure facing the street from which the structure derives its street address." (emphasis added)

15. The City Code does not have an identification and/or a definition of "two front yards". The BZA based its upholding of the denial of the fence permit application on City Code Sections 72-82.3, 72-82.4(B)(3), 72-82.3(A)(3), 72-56.1(A)(3) and 72-56.2(B).

16. A review of these Sections does not identify corner lots as having "two front yards" for the purposes of determining location or height of fences. The stated purpose of Section 72-82 is to "clarify the rules of measurement and exemptions that apply to all principal and accessory uses allowed in this chapter" which would address the location of permanent structures such as houses, not fences or height of fences.

17. Adjacent to the Ms. McLaughlin's are several fences on other lots that are similar in height and location to their fence. It appears from an informal survey of the City that there are at least 50 similarly situated fences around the City.

18. It appears that the application and interpretation of the City Code Ordinance that governs the height and location of fences, based on existing fences throughout the City located on corner lots, is that only one "front yard" is identified for the purposes of determining the height and location of fences pursuant to City Code Section 72-56.2. Section 72-82.A.3 has no identification of a corner lot having "two front yards" under Section 72-82.3.A.(3) and/or Section 72-82.3.A(4).

19. The McLaughlins fence is compliant with the applicable City Code ordinances and it was constructed pursuant to City Code Section 72-56.2, where the front yard fence is not within the front setback and the fence does not go beyond the front of the principal structure and therefore can be six feet in height. The portion of the fence adjacent to and parallel with Littlepage Street as a side yard is compliant with 72-56.2.A which allows a fence to be six feet in height in any side or rear yard of a site up to the front of the principal structure on the site.

GLOVER & DAHNE
ATTORNEYS AT LAW
1100 PRINCESS ANNE STREET
P.O. BOX 907
FREDERICKSBURG, VIRGINIA 22401-0207

20. Finally, given the numerous examples of fences similarly situated on other corner lots, the City has previously interpreted the applicable codes to allow the type of fence that has been constructed in the McLaughlins yard. But there are also clear health and safety issues as demonstrated by Ms. McLaughlin's letter, within Exhibit "2", of the numerous reports to police regarding the trespassing upon her property and the incidents involving the safety of her family. The City's letter, Exhibit "3" attempts to use five (5) different ordinances, cobbled together, as the basis for its rationale that the McLaughlins fence is limited to 4 feet in height. It is clear from the City's own code that the code sections cited apply to buildings or structures not to ornamental items such as fences and that the City clearly has an ordinance section on fences that does not have any definition or limitation on a corner lot such as the McLaughlins.

21. It is also clear from the conduct of the City in approving and allowing similar 6 foot fences, and specifically for adjacent property owners, that the City's current interpretation of its ordinance is plainly wrong.

PRAYER FOR RELIEF

22. WHEREFORE, your Petitioners respectfully request that this Court:

1) Issue a Writ of Certiorari to the BZA in the form attached to this Petition and that this same be served upon the BZA requiring that a verified return be made within 30 days of the originals or certified copies of all exhibits, transcripts and other papers considered by the BZA in making its decision in 814 Cornell Street – APP2015-01, and that such return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from;

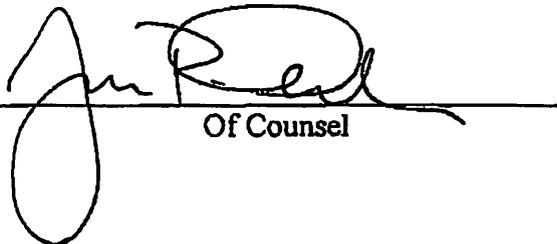
GLOVER & DAHNK
ATTORNEYS AT LAW
1103 PRINCESSES ANNE STREET
P.O. BOX 207
FREDERICKSBURG, VIRGINIA 22404-0207

- 2) Determine that the BZA and Development Administrator were incorrect to deny the Petitioners fence permit;
- 3) Reverse the decision of the BZA;
- 4) Find that the existing fence is compliant within the meaning of the applicable City's Ordinance; and
- 5) Grant Petitioners their attorney's fees and costs expended on their behalf in this Petition and for such other and further relief as the Court deems just and equitable.

Respectfully submitted,

STACEY N. STRENTZ-McLAUGHLIN
and JOHN J. McLAUGHLIN

BY



Of Counsel

Jeannie P. Dahnk, Esq.
VSB No. 25825
William E. Glover, Esq.
VSB No. 25965
GLOVER & DAHNK
Post Office Box 207
Fredericksburg, VA 22404-0207
Phone: (540) 373-8600
Fax: (540) 373-8629

Counsel for Petitioners
Stacey N. Strentz-McLaughlin and
John J. McLaughlin

GLOVER & DAHNK
ATTORNEYS AT LAW
1103 PRINCESS ANNE STREET
P.O. BOX 307
FREDERICKSBURG, VIRGINIA 22404-0307

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF FREDERICKSBURG

In Re: September 21, 2015 Decision of the Board of Zoning Appeals of the City of Fredericksburg, Virginia (814 Cornell Street – APP 2015-01)

Case No.:

WRIT OF CERTIORARI

TO: The City of Fredericksburg Board of Zoning Appeals

THIS MATTER is before the Court on Stacey N. Strentz-McLaughlin and John J. McLaughlin's Petition for a Writ of Certiorari to review the City of Fredericksburg Board of Zoning Appeals ("BZA") September 21, 2015, decision in BZA appeal 814 Cornell Street APP 2015-01; and

IT APPEARING TO THE COURT that the Petition for Writ of Certiorari is properly filed pursuant to Virginia Code Section 15.2-2314 and that the granting of this Writ of Certiorari is just and proper in all respects; it is therefore

ADJUDGED, ORDERED AND DECREED that the Petition for Writ of Certiorari is **GRANTED TO REVIEW THE BZA'S SEPTEMBER 21, 2015, DECISION IN BZA APPEAL, 814 CORNELL STREET – APP 2015-01;** and it is further

ORDERED, ADJUDGED AND DECREED that the BZA shall certify and return to this Court and serve upon Petitioner's counsel, on or before 30 days after the entry of this Writ of Certiorari, a full, complete and certified or sworn record of the aforementioned proceeding including, but not limited to, the following material:

- 1) The appeal application and any staff reports prepared in connection therewith;

GLOVER & DAHNK
ATTORNEYS AT LAW
1103 PRINCESS ANNE STREET
P.O. BOX 207
FREDERICKSBURG, VIRGINIA 22404-0807

2) All exhibits and documents filed regarding the appeal application and any response thereto by any person or entities;

3) Any verbatim transcript and/or recording by videotape or otherwise, and all minutes of the proceedings before the BZA;

4) All photographs, resolutions, letters, reports, emails, correspondence, exhibits, memoranda, plats and other papers and things referring to or related to the proceedings before the BZA that were presented to the BZA; and it is further

ORDERED, ADJUDGED AND DECREED that the return shall set forth such other facts as maybe pertinent and material to show the grounds of the decision appealed from and shall be verified.

THIS MATTER IS CONTINUED.

ENTERED this _____ day of _____, 2015

JUDGE, CITY OF FREDERICKSBURG CIRCUIT COURT

WE ASK FOR THIS:

Stacey N. Strentz-McLaughlin and
John J. McLaughlin, Petitioners



By Jeannie P. Dahnk, Esq.

VSB No. 25825

William E. Glover, Esq.

VSB No. 25965

Glover & Dahnk

P.O. Box 207

Fredericksburg, VA 22404-0207

Phone: (540) 373-8600

Fax: (540) 373-8629

Counsel for Petitioners

GLOVER & DAHNK
ATTORNEYS AT LAW
1100 PRINCESS ANNE STREET
P.O. BOX 207
FREDERICKSBURG, VIRGINIA 22404-0207



City of Fredericksburg
 COMMUNITY PLANNING & BUILDING DEPARTMENT
 715 Princess Anne Street / P.O. Box 7447
 Fredericksburg, VA 22404
 Telephone: 540-372-1179 Fax: 540-372-6412

FENCE AND/OR WALL PERMIT

Date of Application: 5/18/15 Project Address: 814 Cornell St, Fred VA 2240
 Zoning District: R-4

Is this property located in the Historic District? Yes No

Is this property located in any of the Gateway Corridor Overlay Districts? Yes No

Applicant Information

Name of Applicant: Stacey McLaughlin Phone: 540 840 7486

Address: 814 Cornell St Fred VA Email: smm-1028@yahoo.com

Property Owner Information (If different from applicant)

Name: _____ Phone: _____

Address: _____

The following information is required to be submitted with the application:

- Plat, tax map or sketch that shows the proposed location of the fence or wall, applicable easements and alleys.
- Height of the fence or wall: Height: 6 feet



By signing below, the property owner acknowledges that should any portion of the fence being erected in accordance with this permit interfere with work or access by public employees and/or their agents in the performance of their duties, the fence or portions of the fence may need to be taken down. Replacement of the fence shall be the sole responsibility of the property owner.

Applicant Signature: Stacey McLaughlin

Property Owner Signature: Stacey McLaughlin

This permit only grants permission under City Code §72-24 for a fence and/or wall on your property, based on information that you have provided. The City is not responsible for determining that you own the property on which the fence and/or wall will be placed, that you have all other permissions required to do so (for example, permission from anyone holding an easement on the property), or that you will not be interfering with utility lines.

For Completion by the Community Planning & Building Department

Approved Disapproved

Comments: REQUEST IS NOT IN COMPLIANCE WITH SECTION 72-56.2.B. OF THE UPO.
THIS DECISION CAN BE APPEALED IN ACCORDANCE WITH SECTION 72-24.7 OF THE UPO.

Sam G. J.
 Development Administrator

06/03/15
 Date

Permit #: 2015-36

received 05/22/15

GLOVER & DAHNK
ATTORNEYS AT LAW
1103 PRINCESS ANNE STREET
P.O. BOX 207
FREDERICKSBURG, VIRGINIA 22404-0207

JEANNIE P. DAHNK
WILLIAM E. GLOVER

(540) 373-8600
FAX (540) 373-8629

June 30, 2015

VIA HAND DELIVERY

Helen P. Ross, Chair
Board of Zoning Appeals
City of Fredericksburg
c/o Planning Services Division
715 Princess Anne Street
Fredericksburg, VA 22401

RE: John J. & Stacey N. Strentz-McLaughlin – 814 Cornell Street (Fence)

Dear Ms. Ross & Members of the City of Fredericksburg Board of Zoning Appeals:

Please let this letter serve as the appeal by John J. & Stacey N. Strentz-McLaughlin regarding the June 3, 2015 disapproval of the McLaughlin's fence permit for a fence at their home located at 814 Cornell Street in the City of Fredericksburg. I enclose this firm's check no. 20135 in the amount of \$400.00 representing the filing fee for the appeal as quoted by City Staff and seven (7) copies of this letter with exhibits as required by the City.

On June 3, 2015, the Development Administrator disapproved a fence permit for John J. & Stacey N. Strentz-McLaughlin (hereinafter "McLaughlins"), for a fence at their home at 814 Cornell Street. A copy of the disapproved fence permit is attached as Exhibit "1". The McLaughlins permit application sought approval for a portion of their fence to be six feet in height. The McLaughlins appeal the disapproval of their permit application. The McLaughlin's fence permit application was

filed within the time required by the Development Administrator and the appeal of the disapproval of their fence permit application has also been timely filed pursuant to City Ordinance and State Code.

HISTORY

The McLaughlins have owned their home at 814 Cornell Street since December 2004. The McLaughlins have had a fence in this exact same location since January 2005 and the prior owner, the Freid's, also had a fence in this same location.

There have been no complaints regarding this current fence or any prior fence at 814 Cornell Street by anyone, including neighbors, city residents or city staff until the Development Administrator, Marne E. Sherman, noted her own violation on May 14, 2015. A copy of Ms. Sherman's Notice of Violation dated May 14, 2015 addressed to the McLaughlins is attached hereto as Exhibit "2".

In the Notice, Ms. Sherman states that a fence permit had not been issued for the fence and requests that an application be made. Ms. Sherman further states that "Section 72-56.2.C limits the height of a fence in the front yard of a R-4, residential zoning district to a maximum of four feet (4') in height. As a corner lot, your property has two fronts (along Cornell Street and Littlepage Street). The fence appears to be in violation of this code."

Thereafter, on May 18, 2015, the McLaughlins filed a fence permit application with the City requesting a height of six feet for their fence.

On May 21, 2015, Mrs. McLaughlin sent a letter to the Development Administrator identifying that the McLaughlins were surprised that their fence was not in compliance with City Code, setting forth the history of the pre-existing and current fence and the safety reasons for the fence as it is currently constructed. A copy of Ms. McLaughlin's letter is attached as Exhibit "3".

On June 3, 2015, the Development Administrator disapproved the McLaughlins fence permit application.

On June 16, 2015, I met with the Development Administrator to review and discuss the City's position on the McLaughlins fence. It is my understanding that the Development Administrator made a mistake in her letter of May 14, 2015 wherein she cited the incorrect City Ordinance Section 72-56.2.C but instead had intended to identify City Code Section 72-56.2.B. That correction eliminated some of the confusion regarding the disapproval of the fence permit as it appears that City Code Section 72-56.2.C would not be applicable to the McLaughlins and their home at 814 Cornell Street.

DISCUSSION

It appears that the McLaughlins fence is compliant with the applicable City Code Ordinances and Section 72-56.2.A allows the McLaughlins to have the current fence.

In the Development Administrator's Notice of Violation, Exhibit "2", Ms. Sherman identifies that "as a corner lot, your property has two fronts (along Cornell Street and Littlepage Street). The fence appears to be in violation of this code." (emphasis added). No City Code section is identified to support this statement and given that there are hundreds of corner lots in the City, homeowners would be surprised to learn that their front door does not indicate their front yard or that their side yard is their front yard.

In addition, Section 72-84: "Definitions" does not contain any definition for a "corner lot". The City Code definitions section does contain a definition for "front (or primary) façade" of "the side or elevation of a structure that contains the structure's architectural front, or the portion of the structure facing the street from which the structure derives its street address."

Prior to my meeting with Ms. Sherman, I reviewed the City Code for an identification and/or a definition of “two front yards” and did not find one. But when I met with the Development Administrator on June 16, 2015, she identified that the ordinance she was using to identify “two front yards” was Section 72-82: Rules of Measurement, Sections 72-82.3.A(3) and 72-82.A(4)(b).

A review of this Section does not identify corner lots as having “two front yards” for the purposes of determining location or height of fences. The stated purpose of Section 72-82 is to “clarify the rules of measurement and exemptions that apply to all principal and accessory uses allowed in this chapter” which would address the location of permanent structures such as houses, not fences or height of fences.

In the last paragraph of Ms. McLaughlin’s letter, Exhibit “3”, she references several fences of other lots that are similar in height and location to her fence. Since reviewing this matter for the McLaughlins, I have informally identified approximately 50 similarly situated fences around the City. Based upon this, I would venture to suggest that there are hundreds of fences in the City that are the same as the McLaughlins.

It appears that the application and interpretation of the City Code Ordinance that governs the height and location of fences, based on existing fences throughout the City located on corner lots, is that only one “front yard” is identified for the purposes of determining the height and location of fences pursuant to City Code Section 72-56.2. Section 72-82.A.3 has no identification of a corner lot having “two front yards” under Section 72-82.3.A.(3) and/or Section 72-82.3.A(4).

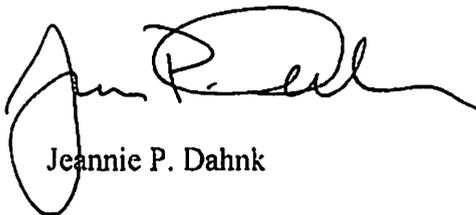
The McLaughlins fence is compliant with the applicable City Code Ordinances and it was constructed pursuant to City Code Section 72-56.2, where the front yard fence is not within the front setback and does not go beyond the front of the principal structure and therefore can be six feet in height. The portion of the fence adjacent to and parallel with Littlepage Street as a side yard is

compliant with 72-56.2.A which allows a fence to be six feet in height in any side or rear yard of a site up to the front of the principal structure on the site.

Finally, given the numerous examples of fences similarly situated on other corner lots, the City has previously interpreted the applicable ordinances to allow the type of fence that has been constructed in the McLaughlins yard. But there are also clear health and safety issues as demonstrated by Ms. McLaughlin's letter, Exhibit "3", of the numerous reports to police regarding the trespassing upon her property and the incidents involving the safety of her family.

We would be happy to meet and discuss the fence at 814 Cornell Street. We ask that the Board of Zoning Appeals grant this appeal and allow the fence at 814 Cornell Street to remain as it currently exists. We thank you for your time and attention to this matter.

Very truly yours,



Jeannie P. Dahnk

JPD/ah
Enclosures

cc: John J. & Stacey N. Strentz-McLaughlin (via email w/attachments)



City of Fredericksburg
 COMMUNITY PLANNING & BUILDING DEPARTMENT
 715 Princess Anne Street / P.O. Box 7447
 Fredericksburg, VA 22404
 Telephone: 540-372-1179 Fax: 540-372-6412

FENCE AND/OR WALL PERMIT

Date of Application: 5/18/15 Project Address: 814 Cornell St, Fred VA 22410
 Zoning District: R-4

Is this property located in the Historic District? Yes _____ No ✓

Is this property located in any of the Gateway Corridor Overlay Districts? Yes _____ No ✓

Applicant Information

Name of Applicant: Stacey McLaughlin Phone: 540 840 7486

Address: 814 Cornell St Fred VA Email: smm-1028@yahoo.com

Property Owner Information (if different from applicant)

Name: _____ Phone: _____
 Address: _____

The following information is required to be submitted with the application:

- Plat, tax map or sketch that shows the proposed location of the fence or wall, applicable easements and alleys.
- Height of the fence or wall: Height: 6 feet



By signing below, the property owner acknowledges that should any portion of the fence being erected in accordance with this permit interfere with work or access by public employees and/or their agents in the performance of their duties, the fence or portions of the fence may need to be taken down. Replacement of the fence shall be the sole responsibility of the property owner.

Applicant Signature: Stacey McLaughlin

Property Owner Signature: Stacey McLaughlin

This permit only grants permission under City Code §72-24 for a fence and/or wall on your property, based on information that you have provided. The City is not responsible for determining that you own the property on which the fence and/or wall will be placed, that you have all other permissions required to do so (for example, permission from anyone holding an easement on the property), or that you will not be interfering with utility lines.

For Completion by the Community Planning & Building Department

Approved Disapproved

Comments: REQUEST IS NOT IN COMPLIANCE WITH SECTION 72-56.2.B. OF THE UO. THIS DECISION CAN BE APPEALED IN ACCORDANCE WITH SECTION 72-24.7 OF THE UO.

Development Administrator: [Signature] Date: 06/03/15

Permit #: 2015-36
 received 05/22/15

Marne E. Sherman
Development Administrator and
Code Enforcement Officer



City of Fredericksburg
PO Box 7447
Fredericksburg, VA 22404-7447
Telephone: 540-372-1179
Fax: 540-372-6412
m Sherman@fredericksburgva.gov

May 14, 2015

John J. and Stacey N. McLaughlin
1 Oakleigh Place
Fredericksburg, VA 22405

Re: Notice of Violation: 812-816 Cornell Street
GPIN #: 7779-84-5870
Fence

Dear Property Owner:

This letter is a Notice of Violation of Section 72-24.1 of the Unified Development Ordinance which requires the issuance of a zoning (fence) permit prior to construction of a fence. To date, a fence permit has not been issued at this site. Further, Section 72-56.2.C limits the height of a fence in the front yard of a R-4, residential zoning district to a maximum of four feet (4') in height. As a corner lot, your property has two fronts (along Cornell Street and Littlepage Street). The fence appears to be in violation of this code. A fence permit application must be submitted by no later than Friday, May 29, 2015 to begin the process to bring the site into compliance. I have included a blank fence permit application that can be mailed to my attention.

The City's commitment to its citizens is to create and maintain a clean, safe environment. Thank you for your assistance in reaching this goal. If you need any further assistance please do not hesitate to call me at (540) 372-1179.

Sincerely,

Marne E. Sherman
Development Administrator and
Code Enforcement Officer





STRENTZ, GREENE & KRUEGER, PLC

Attorneys at Law

702 Princess Anne Street

Fredericksburg, Virginia 22401

Telephone: 540.479.1511 Facsimile: 540.479.1524

Stacey N. Strentz
Brenda L. Greene
Robin N. Krueger

sns@SGandKlaw.com
big@SGandKlaw.com
rnk@SGandKlaw.com

May 21, 2015

Marna E. Sherman
Development Administrator and Code Enforcement Officer
PO Box 7447
Fredericksburg, VA 22404-7447

Re: 814 Cornell Street

Dear Ms. Sherman:

I was surprised to receive your letter. I have had a fence in this exact same location since January of 2005. Prior to that I believe the Fraid's had owned the home and I know they had a similar fence as well. We purchased this home in December 2004. We moved to Stafford from April 2013 to May 1, 2015.

This fence was erected in April of this year on the exact same fence line as had previously sat a picket fence. I had a myriad of safety concerns and that is what led me to erect the fence prior to moving back into the home. Let me outline my safety concerns as I have two small children ages 4 and 7 and work part time so my children are left at least two days a week with a babysitter at my home.

1. In 2009 my babysitter was followed home by a man from Kenmore Park and verbally harassed the whole way. My child, at that time was two years old. She panicked and simply continued to walk throughout the neighborhood trying not lead him to our home but finally had to return home. I followed up with LaBarvia Jenkins and a Detective in the Fredericksburg Police Department and it was figured out eventually that this man had assaulted a nurse at Snowden and had psychiatric problems. The Detective ended up contacting the man and the man's family and convincing him that perhaps Fredericksburg was not the best place for him to be since now he was on the Police radar. This same man was witnessed by me at Kenmore park providing Beer to minors. I also reported that to the Fredericksburg Police.
2. Throughout my years then living on Cornell Street until April of 2013, when we moved to ferry farm for two years, we had weekly glass beer bottles and liquor bottles dumped over our fence. Those in turn when



- dumped would be glass shards and on two occasions cut my Jack Russell's foot and on another occasion cut my second dog's foot.
3. There is a dark haired man, known in the neighborhood for having mental health issues, who would routinely stand on the corner of Cornell Street and Lillipage and stare into my yard at my young children.
 4. We have had people who routinely walk the sidewalk from the apartments on the corner of Kenmore Avenue and Cornell Street stop and pee on and inside our fence as at that time it was a picket fence. This caused a stench at the corner of our fence.
 5. There was a drug raid at the apartments on the corner of Kenmore and Cornell with gunshots during the time we lived in the home prior to this.

In short, during our time in Stafford, we lived in Ferry Farm and my children became accustomed to a safe, calm environment as I did. We love living downtown but simply because we live on a corner lot my children's safety should not have to be jeopardized. So when we decided to move back to our home we erected our fence for safety reasons and never thought to get it approved because I already had a four foot picket fence on that very spot. We spent over \$7,000.00 on the fence. It is a beautiful design and was professionally installed by E & S Fencing. I have received numerous compliments on both the style of the fence and the look of it. People have called it "Zen".

Further, I took this design from two particular homes. The Cohens who live on Sunken Road have a corner lot on Grove Avenue and Sunken Road and have this same fence. The Dupuys who live on the corner of Prince Edward and Amelia Avenue have this same fence. And my Mother, Georgia Strentz, who lives on the corner of Grove and Sunken Road has this same style fence. So clearly there is precedent for allowing fences like this and this style in this zoning district.

I eagerly await your approval of my fence.

Sincerely,


Stacey (Strentz) McLaughlin

KATHLEEN DOOLEY
CITY ATTORNEY

ROB ECKSTROM
ASSISTANT CITY ATTORNEY



601 CAROLINE STREET, SUITE 200B
P.O. Box 7447
FREDERICKSBURG, VA 22401
540-372-1030

September 11, 2015
Helen P. Ross, Chair
Fredericksburg Board of Zoning Appeals
City Hall
715 Princess Anne Street
Fredericksburg, VA 22401

Re: 814 Cornell Street
Appeal of fence permit denial

Dear Ms. Ross and members of the Board of Zoning Appeals:

On behalf of Development Administrator Marne Sherman, I ask that the BZA uphold the denial of a permit for a permit for a fence at 814 Cornell Street, a corner lot. The denial of the application is consistent with the UDO's limitation of fence heights on streets to four feet. The purpose of the height limitation is to present a consistent, safe, and attractive streetscape, and homeowners are left with alternatives – including a four foot high fence, a hedge, pulling the taller fence out of the setback, or a variance application – to meet the specific needs of a particular owner or lot.

Brief summary of facts:

The 814 Cornell Street lot is a single family residential corner lot, with the house facing Cornell Street and one side of the house facing Littlepage Street. The rear of the lot is bordered by an alley. The site is zoned R-4, single family residential. For years, there was a wooden picket fence about four feet in height that began at the back of the front façade of the house and extended along Littlepage Street next to the sidewalk. A low brick wall ran along the rear of the lot. Trees and shrubs provided a vegetative backing to the picket fence and brick wall.¹

In April 2015, the homeowner replaced the picket fence with an opaque wood panel fence from the house to Littlepage Street, along Littlepage Street, and also along the alley, behind the low brick wall. The two new corner fence posts on Littlepage Street are 81 inches and 79 inches tall. The wooden slats are 74 inches tall. In other words, the fence exceeds six feet in height along the length of Littlepage Street. The fence line extends approximately 85 feet along Littlepage Street adjacent to the sidewalk. It does not extend into the "sight triangle" at Cornell Street and Littlepage Street.² The owner did not apply for a fence permit or inquire into any approval procedures for the fence.

¹ Please refer to the 2012 Google Maps photograph of the property, included in the meeting packet.

² Please refer to the 2015 photographs of the fence, included in the meeting packet.

In May, Development Administrator Marne Sherman issued a Notice of Violation to the homeowner, citing the fence for not having a permit. In addition, the May 14 notice advised the owner that the City Code limited fence heights along streets to four feet. The NOV required the owner to apply for a fence permit in order to begin the process of bringing the fence into compliance. The owner did so, filing the application on May 22, 2015, and citing concerns about safety in support of the height of the fence. Ms. Sherman denied the application on June 3, and the owner appealed on June 30th.

The UDO limits fence heights within any front yard to four feet:

Stated simply, the UDO permits fences to be located within any required yard; however, they are restricted as to height. The maximum height in a front yard is four feet; six feet in a side yard. On a corner lot, both sides of the lot that touch the street are considered front yards, and the four foot height restriction applies. The chart below summarizes the relevant provisions in the City Code. Taken together, these regulations prohibit the construction of the fence at 814 Cornell Street.

City Code Section	Rule
72-82.3	A corner lot is located at the intersection of two or more streets (other than alleys), regardless of whether or not such streets intersect at right angles.
72-82.4(B)(3)	On a corner lot or double frontage lot, the yards adjacent to the front lot line shall be considered front yards and the remaining yards shall be considered side yards.
72-82.3(A)(3)	The front lot line is the street line that forms the boundary of a lot.
72-56.1(A)(3)	Fences and walls may be located within any required yard.
72-56.2(B)	In any front yard of a site in any R district, a fence or wall shall not exceed four feet in height back to the front of the principal structure on the site.

The BZA applied this same rule in 2014 in the case of a double-frontage lot, when it denied a variance for a fence at 725 Lee Avenue. In that case, the applicant wished to install a six foot high fence along Kenmore Avenue, which formed a lot line 15 feet in length to the rear of the single family structure, which faced Lee Avenue.³ There, the homeowner asserted that the taller fence was needed for privacy, security, and aesthetics. In addition, the street frontage involved a busy roadway – Kenmore Avenue. It would be an anomaly for the BZA to deny a variance in the case of 725 Lee Avenue, and then decide that the prohibition did not even exist in this case.

As additional precedent, the BZA heard a variance application in 2011 involving a corner lot, under the former zoning ordinance, and granted a conditional variance to 1001 Kenmore Avenue, to permit a six foot fence on the lot's frontage on William Street. There, the BZA required the fence to taper from six feet to four feet in height, back-to-front.⁴ In that case, the BZA appeared to be persuaded to grant the variance by the volume of pedestrian traffic on William Street. The pre-UDO zoning regulation likewise limited fences in front yards to four feet in height, back to the front of the principal structure⁵, and provided that corner lots had two front yards.⁶ The 2011 decision shows that in an appropriate case, a variance may be granted to a specific site, to relieve a specific hardship, without throwing out the rule altogether.

It bears noting that the fence constructed exceeds the 6 foot maximum height for other yards. In order to completely resolve the appeal, the BZA should uphold the Development Administrator's application of the four foot maximum height. In any case, the fence permit should be denied because the fence is too tall.

Brief rebuttal of applicant's argument:

The application for the fence permit cites the owner's concern for her safety and that of her children. It also cites incidents of people routinely stopping and peeing inside her former picket fence, and incidents of littering. These concerns are similar to those advanced by the owners of 1001 Kenmore Avenue and 725 Lee Avenue variance applications. The BZA could take these concerns into account if a variance application were before it. These concerns might also be met through the installation of a hedge with a lower fence. However, this appeal contends that there is no law prohibiting a fence exceeding six feet in height at this location. This is an all-or-nothing approach that does not provide a platform for the BZA to consider site-specific concerns or solutions.

However, according to statistics maintained by the Fredericksburg Police Department, incidents of crime in this neighborhood – identified as "District 06" in the report – are extremely low.⁷ The crime rate would not seem to justify this fence as a security measure.

³ V2014-01, decided July 8, 2014.

⁴ V2011-02, decided July 19, 2011.

⁵ City Code §78-70.

⁶ City Code §78-1.

⁷ Please refer to the "Selected Crime Stats for Neighborhoods," in the meeting packet.

Ms. Dahnk's letter of June 30th raises the following legal arguments against the Development Administrator's application of the UDO:

1. Section 72-84, "Definitions" does not define a "corner lot." (page 3 last paragraph)

Response: Section 72-82.3 defines a corner lot as one that is located at the intersection of two or more streets.

2. The stated purpose of 72-82.3 is to "clarify the rules of measurement and exemptions that apply to all principal and accessory uses allowed in this chapter," which would address the location of permanent structures such as houses, not fences or height of fences. (page 4 second paragraph)

Response: This argument seems to be a little legalistic. In any event, the definition of a "corner lot" in section 72-82.3 does in fact apply to rules regulating fences. It applies to all "accessory uses." An "accessory use" is defined in 72-84 as "any land, building or structure the use of which is customarily found in association with, and serves the principal use; is subordinate in purpose, area or extent to the principal use served, and is located on the same lot as the principal use (emphasis added). A fence is a structure, customarily found in association with a house (the principal use of the property), subordinate in purpose, and located on the same lot. So, a fence is an "accessory use," to which 72-82.3 applies.

3. There are hundreds of fences in the City that are the same as the McLaughlins. This appears to support an interpretation of the ordinance that there is only one front yard on a corner lot for purposes of applying the fence regulations.

Response: The Development Administrator acknowledges the existence of other fences in the College Terrace neighborhood that exceed four feet in height along street frontages. For most of these fences, there is no record of a permit having been granted. When permits were granted, they typically required a maximum fence height of four feet or less in the front yards of corner lots. One permit was granted for a six foot transparent fence, but it appears to have been issued in error, since it is an anomaly. In addition, the BZA precedents listed above support the conclusion that the corner lot and double-frontage lot concept of two front yards has been consistently applied over many years.

4. There are clear health and safety issues that support the construction of a six foot fence.

Response: This is an argument that the BZA could consider in the context of a variance application, but not in the context of an appeal of an administrator's decision. In addition, the owner's safety concerns could be met through a permissible alternative, such as planting a hedge behind a lower fence.

Conclusion:

In the appeal of an administrator's decision, the determination of the administrative officer shall be presumed to be correct. The administrator has the burden of explaining her decision, but then the appellant has the burden of proof to rebut the presumption of correctness by a preponderance of the evidence.⁸ Ms. Sherman and I hope that this letter explains the basis for her decision. She will be present to provide her testimony directly to the BZA on September 21, 2015. We respectfully request that the BZA uphold the denial of the fence application. A proposed decision is attached for the Board's use.

Sincerely,

Kathleen Dooley, City Attorney

Ec: Jeannie P. Dahnk, counsel for the landowner
Marne Sherman, Development Administrator

⁸ Code of Virginia §15.2-2309.

CITY OF FREDERICKSBURG BOARD OF ZONING APPEALS

**APPEAL OF FENCE PERMIT DENIAL
814 CORNELL STREET
RECORD OF DECISION**

The City of Fredericksburg Board of Zoning Appeals heard the above-referenced appeal at its meeting on September 21, 2015. After consideration of the record of the appeal, the Board makes the following findings of fact:

FINDINGS OF FACT

- A. The fence that is the subject of this appeal is located at 814 Cornell Street, a single-family residential lot located in the R4 zoning district. The lot is located at the corner of Cornell and Littlepage Streets. The house on the lot faces Cornell Street. One side of the house faces Littlepage Street.
- B. The fence is an opaque wood panel fence, located adjacent to the public sidewalk on Littlepage Street, extending approximately 85 feet along Littlepage when measured from the rear of the lot. The fence also runs across the rear of the lot, behind the low brick wall. The fence slats are 6 feet 2 inches in height. The two corner fence posts on Littlepage Street are 6 feet 9 inches, and 6 feet 7 inches in height.
- C. The fence was constructed in April 2015, without a fence permit.
- D. The Development Administrator issued a Notice of Violation to the owner on May 14, 2015, citing the fence for not having a permit.
- E. The landowner applied for a fence permit on May 22, 2015; the permit was denied on June 3, 2015. The landowner filed this appeal of the denial of the permit on June 30, 2015.

CONCLUSIONS OF LAW

Under Code of Virginia §15.2-2309, the decision of the Development Administrator is presumed to be correct. The appellant has the burden of proof to rebut the presumption of correctness by a preponderance of the evidence. After consideration of the appeal record, the Board concludes that:

1. The lot at 814 Cornell Street is a "corner lot", as defined by City Code 72-82.3.
2. A corner lot has two front yards, as provided in City Code 72-82.4(B)(3).
3. The fence is located within one of two front yards at 814 Cornell Street.
4. A fence may be located within a front yard, under City Code 72-56.1(A)(3).
5. But City Code §72-56.2 limits the height of fences in the front yard to four feet.
6. The fence as constructed is taller than the maximum six foot height permitted in other yards.

CONCLUSION

The Fredericksburg Board of Zoning Appeals denies the appeal and upholds the decision of the Development Administrator to deny the fence permit.

FREDERICKSBURG BOARD OF ZONING APPEALS

Date: October 8, 2015


Helen P. Ross, Chair