
**VILLAGE OF HARWOOD HEIGHTS
COOK COUNTY, ILLINOIS**

ORDINANCE NO. 21 - 15

**AN ORDINANCE APPROVING ZONING VARIANCE FOR A FIVE FOOT (5')
FRONT YARD FENCE AT 6675 W. MONTROSE AVENUE**

Passed by the Board of Trustees, October 28, 2021

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By Authority of the Village Board of Trustees

**VILLAGE OF HARWOOD HEIGHTS
COOK COUNTY, ILLINOIS**

**ARLENE C. JEZIERNY, MAYOR
MARCIA L. POLLOWY, VILLAGE CLERK**

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I hereby certify that this document was
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Village Clerk

**VILLAGE OF HARWOOD HEIGHTS
COOK COUNTY, ILLINOIS**

ORDINANCE NO. 21-15

**AN ORDINANCE APPROVING ZONING VARIANCE FOR A FIVE FOOT (5')
FRONT YARD FENCE AT 6675 W. MONTROSE AVENUE**

WHEREAS, the Village of Harwood Heights (the "Village") is an Illinois municipal corporation organized and operating pursuant to authority granted by the Constitution and Laws of the State of Illinois;

WHEREAS, the Village is a home rule unit of government pursuant to Section 6(a), Article VII of the 1970 Illinois Constitution;

WHEREAS, pursuant to its home rule power, the Village may exercise any power and perform any function relating to its government and affairs;

WHEREAS, the Village Board has a duty pursuant to Section 17.56.010 of the Village of Harwood Heights Code of Ordinances to act as the final decision-making body for variances;

WHEREAS, Sam Dauahera ("Applicant") is the owner of 6675 W. Montrose Avenue, Harwood Heights, Illinois 60706 (the "Property"), bearing tax identification number 13-18-401-014-0000 and legally described as follows:

LOT 9 IN BLOCK 2 IN VOLK BROTHERS MONTROSE AND OAK PARK AVENUE SUBDIVISION, BEING A SUBDIVISION OF THE SOUTH ½ OF SECTION 18, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, NORTH OF THE INDIAN BOUNDARY LINE, LYING EAST OF THE WEST 2329.4 FEET (EXCEPT THEREOF CONVEYED TO THE CHICAGO TERMINAL TRANSFER RAILROAD COMPANY BY WARRANTY DEED RECORDED MAY 16, 1898 AS DOCUMENT 2686698 IN BOOK 6186, PAGE 303), IN COOK COUNTY, ILLINOIS.

("the Property"); and

WHEREAS, the Property is located in the R-1 Single Family Residential District (R-1);
and

WHEREAS, Applicant applied for a variance from Section 17.40.020(A) of the Village Code, which prohibits open front yard fences in residential districts, to authorize the erection of a six foot (6') high chain link fence in his front (and side) yards; and

WHEREAS, Applicant cited the location of his home near the rear of the Property and the resulting small backyard, along with the safety and privacy of his dogs and family as the primary reasons for seeking a variance to allow the enclosure of his front yard with a fence; and

WHEREAS, pursuant to Section 17.56.030(E)(2) of the Village Code, the Planning and Zoning Commission ("PZC") has jurisdiction to act as an advisory body and hear and recommend the rejection or approval of Applicant's variance request to the Village Board; and

WHEREAS, the Village Board finds that the PZC convened a duly noticed public hearing (Hearing 21-02) on September 22, 2021 (the "Hearing") to consider Petitioner's application for a variance;

WHEREAS, at the conclusion of the Hearing, the PZC voted 5 – 4 to recommend denial of the variance as originally proposed by the Applicant, finding that the proposed 6' fence height was not the minimum variance necessary to afford effective relief to the Applicant from hardships imposed by the literal application of the Zoning Code, as set forth more particularly in the factual findings and conclusions as set forth more particularly in the Planning and Zoning Committee's Findings and Recommendation dated October 15, 2021 ("PZC Report");

WHEREAS, pursuant to Section 17.56.170.I.5 of the Village Code, the PZC allowed Applicant to orally amend his application for a variance from Section 17.40.020.A of the Zoning Code to instead propose the erection of a shorter five foot (5') fence in the front yard and then

voted unanimously (9 – 0) to favorably recommend approval of the amended variance application;

WHEREAS, Section 17.56.170.I.3. of the Village Code allows the Village Board to override a negative recommendation on an application for zoning relief from the advisory body by a two-thirds super-majority vote of the President and Trustees, meaning that by a five-vote supermajority, the Village Board may still approve the original variance request authorizing erection of a six foot (6') tall front yard chain link fence on the Property; and

WHEREAS, a simple four-vote majority of the Village Board may concur with the PZC and grant the amended variance request to allow construction of a five foot (5') tall tall front yard chain link fence on the Property; and

WHEREAS, the Village Board reviewed and considered Applicant's plans, PZC Report, and the legal standards and variance criteria set forth in the Village Code;

WHEREAS, the Corporate Authorities find and determine that Applicant has satisfied each of the variance criteria set forth in the Village of Harwood Heights Zoning Code; and

WHEREAS, except as otherwise noted herein, the Village Board concurs with the factual findings of the PZC and substantially agrees with the recommendations made by that body as set forth in the PZC Report with respect to the original variance, subject to and contingent upon the conditions set forth in this Ordinance;

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Harwood Heights, County of Cook, Illinois, in the exercise of the Village's home rule powers:

SECTION 1. RECITALS. The foregoing recitals shall be and are hereby incorporated into and made a part of this Ordinance as if fully set forth in this Section 1. The findings and recitals herein are declared to be prima facie evidence of the law of the Village and shall be received in evidence as provided by the Illinois Compiled Statutes and the courts of the State of Illinois.

SECTION 2. ENACTMENT.

A. Incorporation of ZBA Recommendation. The ZBA Report and the findings of fact and conclusions set forth therein are hereby adopted by reference to the same effect as if fully recited herein at length, except that the Village Board finds that the originally proposed six foot (6') height of the chain link fence to be located in the front and side yards of the Property is the minimum departure necessary from the Village Zoning Code to grant effective relief and that such height will not have a deleterious impact on neighboring properties. Otherwise, all references in the ZBA Report are made the references of the President and Board of Trustees of the Village of Harwood Heights.

B. Incorporation of Exhibits. Exhibit A is attached to this Ordinance is, by this reference, incorporated in, and made a part of this Ordinance.

C. Approval of Variances. A variance is hereby granted from Section 17.40.020.A. of the Village of Harwood Heights Zoning Ordinance, which prohibits open front yard fences in residential districts, and Applicant is hereby authorized to construct a five foot (5') tall front yard fence on the Property, subject to the conditions set forth in Section 3 of this Ordinance.

SECTION 3. CONDITIONS. The approval of the variances in Section 2 is conditioned upon and limited by the following requirements, conditions, and restrictions, the violation of any of which shall, in the sole discretion of the President and Board of Trustees, invalidate the variance approval:

A. **NO AUTHORIZATION OF WORK.** This Ordinance does not authorize commencement of any work on the Property. Except as otherwise specifically provided in writing in advance by the Village, no work of any kind shall be commenced on the Property pursuant to this Ordinance unless and until all conditions precedent to such work have been fulfilled, including without limitation the issuance of a fence permit by the Village of Harwood Heights Building Department.

B. **COMPLIANCE WITH LAWS.** Except for the provision from which a variance is hereby granted, all applicable Village ordinances and regulations shall continue to apply to the Property, and the development and use of the Property shall comply with all laws and regulations of all other federal, state, and local governments and agencies having jurisdiction.

C. **COMPLIANCE WITH PLANS.** The construction, maintenance, and operation of the proposed improvements on the Property will be in substantial compliance with the Application and the plans submitted to the Village for review and approval with the Application, except for minor changes and site work approved by Village staff (for matters within their authority) in accordance with all applicable Village rules, regulations, and ordinances.

D. **EXPIRATION OF VARIANCE.** The variances shall run with the land and not be personal to the Applicant, but said variances shall expire and become null and void one (1) year from the date of this Ordinance unless any and all permits required for the construction of the fence on the Property have been issued by the Village by said date.

SECTION 3. RESOLUTION OF CONFLICTS. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 4. SAVING CLAUSE. If any section, paragraph, clause, or provision of this Ordinance shall be held invalid, the invalidity thereof shall not affect any of the other provisions of this Ordinance, which are hereby declared to be separable.

SECTION 5. EFFECTIVE DATE. This Ordinance shall be in full force and effect from and after its passage, approval, and publication in pamphlet form in the manner provided by law.

VOTES

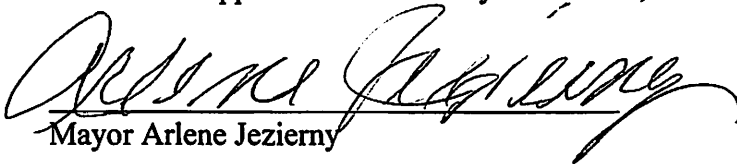
AYES: Trustee Brutto, Steiner, Brzezniak-Volpe, Brzozowski-Wegrecki, Zerillo, Lewandowski

NAYS:

ABSENT:

ABSTAIN:

Passed and Approved this 28th day of October, 2021.


Mayor Arlene Jeziorny

ATTEST:

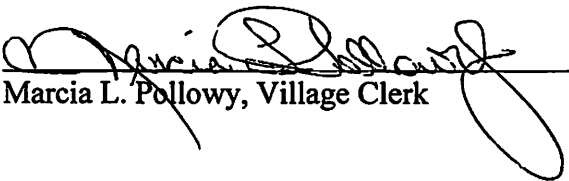

Marcia L. Pollowy, Village Clerk

EXHIBIT A

**VILLAGE OF HARWOOD HEIGHTS, COOK COUNTY, ILLINOIS
PLANNING AND ZONING COMMISSION**

In Re the Matter of:)
Petition of SAM DAUAHERA) **PZC Hearing No. 21-02**
for a Variance to Enable Construction of a)
Front Yard Fence at 6675 W. Montrose)

REPORT OF FINDINGS OF FACT AND RECOMMENDATION
TO THE VILLAGE BOARD OF TRUSTEES
TO GRANT VARIANCES

I. BACKGROUND

SAM DAUAHERA (“Applicant”) is the owner of 6675 W. Montrose Avenue, Harwood Heights, Illinois 60706 (the “Property”), bearing tax identification number 13-18-401-014-0000 and legally described as follows:

LOT 9 IN BLOCK 2 IN VOLK BROTHERS MONTROSE AND OAK PARK AVENUE SUBDIVISION, BEING A SUBDIVISION OF THE SOUTH ½ OF SECTION 18, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, NORTH OF THE INDIAN BOUNDARY LINE, LYING EAST OF THE WEST 2329.4 FEET (EXCEPT THEREOF CONVEYED TO THE CHICAGO TERMINAL TRANSFER RAILROAD COMPANY BY WARRANTY DEED RECORDED MAY 16, 1898 AS DOCUMENT 2686698 IN BOOK 6186, PAGE 303), IN COOK COUNTY, ILLINOIS.

(“the Property”).

Applicant is seeking a variance from Section 17.40.020(A) of the Village Code, which prohibits open front yard fences in residential districts, and for such other relief as may be necessary to authorize the erection of a six foot (6’) high chain link fence in the front (and side) yards. The proposed fence would run along the front and side yards to the front of the home, enclosing an approximately 46’+/- x 25’ front yard. The fence would continue along the eastern boundary of the property to the southern boundary. The Property is located in the R1 – Single Family Residential zoning district, and is improved with a single-family home.

In support of his application, Applicant notes that his single-family house is situated towards the rear of the lot, leaving a small backyard which is further utilized by a detached garage, as contrasted with a relatively large front yard area. Applicant has two dogs and, following a recent incident in which the dogs were attacked near his front door within the unfenced front yard, Applicant wishes to enhance security for his pets and family.

Pursuant to Section 17.56.030(E)(2) of the Village Code, the PZC is empowered to hear and recommend the rejection or approval of Owner’s variance request to the Village Board.

II. PUBLIC HEARING

After reviewing Applicant's application for a variance and comments from the Village attorney, the PZC conducted a properly noticed public hearing on September 22, 2021 to consider the Applicant's request for a variance. The Village published notice of the public hearing in the *Chicago Daily Law Bulletin* on September 7, 2021. In addition, the Village mailed notice of the hearing to all property Applicants within 250 feet of the Property. The notices were consistent with the requirements set forth in the Village Code.

At the public hearing, the PZC listened to testimony presented by Applicant in support of his requested variance. Applicant called no witnesses. No Village residents submitted inquiries, objected to the granting of the variance, or otherwise offered testimony at the public hearing.

III. STANDARDS

Pursuant to Section 17.56.220 of the Village of Harwood Heights Zoning Code, the PZC considered the following criteria in evaluating the proposed variances:

- 1) whether the Applicant demonstrated an undue hardship not generally applicable to other parcels in the R1 district, and that the Applicant did not create the undue hardship;
- 2) whether the Applicant is seeking a special privilege denied to other structures in the R1 district;
- 3) whether the literal interpretation the zoning regulations would deprive the Applicant of rights commonly enjoyed by other properties in the R1 District and would work unnecessary and undue hardship on the Applicant;
- 4) whether the requested variance is the minimum departure necessary from zoning regulations to enable reasonable use of the land;
- 5) whether granting the variance would result in reduced property values or otherwise harm neighbors or the public; and
- 6) whether granting the variance would conflict with the purposes of the Comprehensive Plan or Zoning Code.

IV. FINDINGS OF FACT & LEGAL CONCLUSIONS

After reviewing all application materials, hearing testimony and receiving evidence at the public hearing held on September 22, 2021, the Harwood Heights Zoning Board of Appeals finds as follows:

1. The foregoing recitals set forth in Sections I – III shall be and are hereby incorporated into and made a part of the Findings of Fact & Legal Conclusions as if fully set forth herein.

2. The Applicant desires to construct and maintain an open chain link fence totaling six feet (6') in height in the front yard of the Property.

3. As presented, the Applicant's proposed fence does not conform to the Village's residential district front yard fence prohibition (Section 17.40.020(A)).

4. The Applicant may not construct and maintain the proposed fence on the Property without obtaining a variance from the Village.

5. Applicant testified, and the PZC credited said testimony, that the proposed front-yard fence would provide security to Applicant's family, including Applicant's children and dogs, the latter of which were the victims of a recent attack while located within the unsecured front yard.

7. The Applicant demonstrated an undue hardship not generally applicable to other parcels in the R1 district based on the location of his home on the rear portion of the parcel, ensuring that substantially all open space on the Property is located in the front yard, increasing the need for enclosure. The Applicant did not create the undue hardship.

8. The Applicant is not seeking a special privilege denied to other structures in the R1 district because many properties along Montrose have fenced-in rear yards of such size as to allow for privacy and security for family leisure.

9. The literal interpretation the zoning regulations would deprive the Applicant of the ability to maintain a front yard fence on the Property. The literal interpretation of the Village's fence regulations would work unnecessary and undue hardship on the Applicant in that it would leave Applicant without a secure and sufficiently sized area for recreation.

10. The PZC ultimately found, however, that the six foot height of the proposed chain link fence would create visual blight and therefore does not represent the minimum departure necessary from zoning regulations to enable reasonable use of the Property.

11. A front yard fence of reduced height would afford the same benefits to the owner while minimizing the impact on neighboring property owners and residents.

12. While the proposed fence height might harm neighbors by presenting intrusive visual blight out of character with the neighborhood, the PZC finds no evidence in the record that the a shorter fence would result in reduced property values or otherwise harm neighbors or the public.

13. Although Section 17.40.020.A. of the Village Code allows fences to rise to a height of 6' feet in the back and sides of residential properties, the PZC finds that this height may not be appropriate for residential front yards, where fences are not allowed at all. The PZC found that a variance to allow a front yard fence to be constructed in this case may be more appropriate with a shorter fence that minimized visual intrusiveness within the neighborhood.

14. Section 17.56.170.I.5. of the Village Code authorizes the ZBA to allow amendments to the petition for zoning relief in a manner that reduces the intensity or density of the originally-requested zoning relief.

15. As detailed below, the ZBA voted to reject Applicant's petition for a 6' front yard chain-link fence due to the intrusive nature of the height and perceived negative impact on the character of the neighborhood. In response, Applicant moved to orally amend his proposal to provide for the construction of a reduced 5' tall chain-link fence in the same front yard location.

16. The ZBA voted again on the amended variance application and approved the newly proposed 5' front-yard chain link fence by a unanimous 9 – 0 vote, finding that the reduced height minimized deleterious impacts on neighborhood character and neighboring property values and that the amended request represented the minimum departure necessary from the Village Code while still providing the security and privacy benefits sought by Applicant.

17. As amended, granting the requested amended variance would be not be inconsistent with the Comprehensive Plan.

18. Despite providing notice of the public hearing in conformance with the Village Code, no neighbors submitted comments objecting to the requested variance.

V. RECOMMENDATION

NOW THEREFORE, following a public hearing conducted by the Village of Harwood Heights Planning and Zoning Commission on September 22, 2021, and based on the foregoing findings of fact and legal conclusions, by a 5 - 4 vote, the Planning and Zoning Commission recommends that the Village Board deny the Applicant's originally requested variance from Section 17.40.020(A) of the Village Code to allow the construction of a six foot tall (6') open, chain-link front yard fence on the Property in the R-1 zoning District.

Acting on its authority pursuant to Section 17.56.170.I.5 of the Village Code to allow an amendment to a pending application for zoning relief having the effect of reducing the intensity of the requested-relief, the ZBA allowed Applicant's oral motion to amend his variance request to reduce the height of the proposed front-yard fence from six feet (6') to five feet (5'). By a unanimous 9 – 0 vote of those in attendance, the Planning and Zoning Commission favorably recommends that the Village Board approve Applicant's amended variance request and allow the construction of a five foot tall (5') open, chain-link front yard fence on the Property in the R-1 zoning District in derogation of Section 17.40.020.A of the Village Code.

By:

 10/18/2021
Chris White, Planning & Zoning Commission Chair

STATE OF ILLINOIS

COUNTY OF COOK

CERTIFICATION

I, Marcia L. Pollowy, do hereby certify that I am the duly elected and acting Clerk of the Village of Harwood Heights, County of Cook, State of Illinois.

I do further certify that the foregoing Ordinance 21-15 entitled:

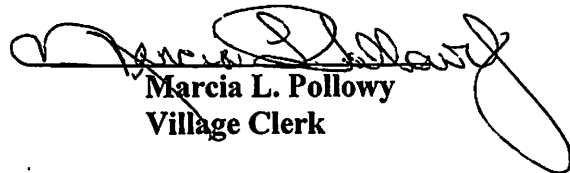
**AN ORDINANCE APPROVING ZONING VARIANCE FOR A FIVE FOOT (5')
FRONT YARD FENCE AT 6675 W. MONTROSE AVENUE**

Is true and correct copy of an Ordinance adopted by the Board of Trustees of the Village of Harwood Heights at a meeting held on the 28th day of October, 2021.

I do further certify that the original of which the foregoing is a true copy is entrusted to my care and safekeeping, and that I am keeper of the same.

I do further certify that I am the keeper of the records, ordinances, and resolutions of said Village of Harwood Heights, Cook County, Illinois.

In witness whereof I have hereunto set my official hand and seal this 29th day of October, 2021.


Marcia L. Pollowy
Village Clerk

Corporate Seal