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

ORDINANCE NO. 24 - 03

**AN ORDINANCE GRANTING A ZONING VARIANCE FOR A
FRONT YARD FENCE AT 4431 N. NATCHEZ**

Passed by the Board of Trustees, April 11, 2024

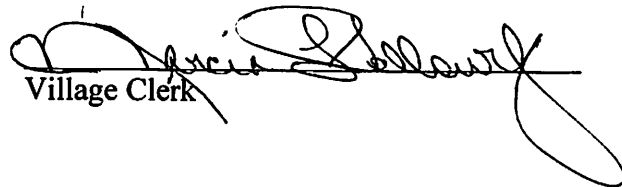
Printed and Published April 11, 2024 in Pamphlet Form
By Authority of the Village Board of Trustees

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
properly published in pamphlet form
by authority of the Board of Trustees
on the date stated above.


Village Clerk

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

ORDINANCE NO. 24-03

**AN ORDINANCE GRANTING A ZONING VARIANCE FOR A
FRONT YARD FENCE AT 4431 N. NATCHEZ**

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, YUMAIRA JARA (“Applicant”) is the owner of 4431 N. Natchez, Harwood Heights, Illinois 60706 (the “Property”), legally described as follows:

LOT 14 IN BLOCK 3 IN VOLK BROTHERS MONTROSE RIDGE, BEING A SUBDIVISION OF THE NORTHEAST FRACTIONAL ¼ SOUTH OF THE INDIAN BOUNDARY LINE OF SECTION 18, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JANUARY 15, 1925 AS DOCUMENT NUMBER 8740417 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(B) of the Village Code, which prohibits closed front yard fences in residential districts, in order to proceed with a planned five feet (5'0") tall closed wooden fence with aluminum posts in her front (and side) yards; and

WHEREAS, Applicant cited the location of her home near the rear of the Property and the resulting small backyard, along with the safety and privacy of her dogs and children family as the primary reasons for seeking a variance to allow the enclosure of her 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 23-02) on October 25, 2023 (the "Hearing") to consider Petitioner's application for a variance;

WHEREAS, at the conclusion of the Hearing, the PZC voted 6-3 to recommend approval of Applicant's amended proposal for a reduced 4'6" front yard fence to be otherwise constructed in accordance with applicable Village of Harwood Heights fence regulations, all as set forth more particularly in the factual findings and conclusions in the Planning and Zoning Committee's Findings and Recommendation attached hereto as **Exhibit A** ("PZC Report");

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 4'6" (or lower) closed wooden fence in the front yard of 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, 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 PZC Recommendation. The PZC 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, and all references in the PZC 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.B. of the Village of Harwood Heights Zoning Ordinance, which prohibits closed front yard fences in residential districts, and Applicant is hereby authorized to construct a four foot six inch or lower (4'6") 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 4. RESOLUTION OF CONFLICTS. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 5. 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 6. 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.

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VOTES

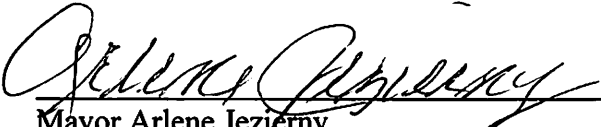
AYES: Trustee Brutto, Steiner, Brzezniak-Volpe, Brzozowski-Wegrecki, Zerillo, Lewandowski

NAYS:

ABSENT:

ABSTAIN:

Passed and Approved this 11th day of April, 2024.


Mayor Arlene Jezierny

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 YUMAIRA JARA)	PZC Hearing No. 23-01
for a Variance to Enable Construction of a)	
Front Yard Fence at 4431 N. Natchez)	

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

I. BACKGROUND

YUMAIRA JARA (“Applicant”) is the owner of 4431 N. Natchez, Harwood Heights, Illinois 60706 (the “Property”), legally described as follows:

LOT 14 IN BLOCK 3 IN VOLK BROTHERS MONTROSE RIDGE, BEING A SUBDIVISION OF THE NORTHEAST FRACTIONAL ¼ SOUTH OF THE INDIAN BOUNDARY LINE OF SECTION 18, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JANUARY 15, 1925 AS DOCUMENT NUMBER 8740417 IN COOK COUNTY, ILLINOIS.

(“the Property”).

Applicant is seeking a variance from Section 17.40.020(B) of the Village Code, which prohibits solid (closed) front yard fences in residential districts, and for such other relief as may be necessary to authorize the erection of a five (5’) high wooden privacy fence in the front yard of the Property.

As proposed, the wooden fence with aluminum posts would run along the front and southern side yard to meet an existing side and rear yard fence. Because front yard fences of any kind are prohibited without securing a variance or other special permissions in the case of nonconforming properties, Applicant requires a variance in order to install the desired fence in the front yard, (partially) enclosing the front yard of the property, which faces west and fronts Natchez. The Property is located in the R1 – Single Family Residential zoning district, and is improved with a single-family home.

Applicant testified that prior to her ownership of the Property, a chain link fence was at one time installed in the front yard, as evidenced by fencepost footings remaining on the Property. While Section 14.40.040 contemplates grandfathering in fences on certain nonconforming properties that predated the Zoning Code’s prohibition on such fences located in front yards, this provision is not self-effectuating where the fence has been wholly disassembled and removed from the front yard, as is the case in this instance.

In support of his application, Applicant notes that her 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.

Although Section 14.40.040 offers a shortcut to approval not involving a variance for a front yard fence where a house is either situated on the rear third of the lot with 65% of the parcel in front of the house or if the property is smaller than the standard lot size for its zoning district and the house is at least 25 years old, the PZC found this special procedure inapplicable in the absence of any testimony or evidence supporting a contention that the property

was nonconforming within the meaning of Section 14.40.040. To wit, Applicant introduced no evidence supporting a claim that her property was substandard in size or as to the age of the home. Moreover, the plat of survey submitted shows that the home, while situated a good distance from the street frontage, was not entirely within the rear third of the lot. In fact, the front of the house is located almost exactly at the midpoint (halfway) of the length of the 125' lot (64.6'). As such, Applicant must secure a variance from the Village Board following its PZC public hearing in order to secure permission to construct her desired fence in the front yard.

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 Applicant'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 October 25, 2023 to consider the Applicant's request for a variance. The Village properly and timely published notice of the public hearing as required by law and local ordinance more than fifteen days prior to the hearing. 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 her 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 October 25, 2023, the Harwood Heights PZC 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 a five-foot (5') tall closed wooden fence with aluminum posts totaling six feet (6') [the "Fence"] to partial enclose 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(B)).

4. The Applicant does not have a nonconforming property within the meaning of Section 17.40.040 of the Village Code and therefore may not construct and maintain the proposed Fence in the front yard of 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 two dogs, as well as offering visual privacy.

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

7. The Applicant is not seeking a special privilege denied to other structures in the R1 district because most homes are not similarly situated on the back half of the Property and therefore enjoy privacy and security within fenced-in yards as desired.

8. 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 and leisure.

9. The PZC ultimately found, however, that the five foot height of the Fence would create visual blight and therefore does not represent the minimum departure necessary from zoning regulations to enable reasonable use of the Property.

10. 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.

11. 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 a shorter fence would result in reduced property values or otherwise harm neighbors or the public, provided that the reduced-height fence would conform with all other applicable Village regulations governing fence construction.

12. Although Section 17.40.020.B. 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 as of right. 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.

13. Applicant consented to a reduced height of 4'6" and orally amended her application to request such reduced relief. Section 17.56.170.I.5. of the Village Code authorizes the PZC to allow amendments to the petition for zoning relief in a manner that reduces the intensity or density of the originally-requested zoning relief.

14. As detailed below, the PZC voted to reject Applicant's petition for a 5'0" front yard wooden 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 4'6" wooden fence in the same front yard location.

15. The PZC voted again on the amended variance application and approved the newly proposed 4'6" front-yard wooden fence by a 6-3 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.

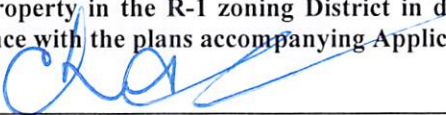
16. As amended, granting the requested amended variance would be not be inconsistent with the Comprehensive Plan.

17. 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 October 23, 2024, and based on the foregoing findings of fact and legal conclusions, the PZC acted on its authority pursuant to Section 17.56.170.I.5 of the Village Code to allow applicant Yumaira Jara to orally amend her pending application for zoning relief in such a manner as to reduce the intensity of the requested-relief. Specifically, the PZC allowed Applicant's oral motion to amend her variance request to reduce the height of the proposed front-yard fence from five feet (5') to four feet six inches (4'6") or less. **By a 6-3 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 4'6" or shorter closed wooden fence in the front yard of the Property in the R-1 zoning District in derogation of Section 17.40.020.B of the Village Code and in accordance with the plans accompanying Applicant's variance petition.**

By:



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 24-03 entitled:

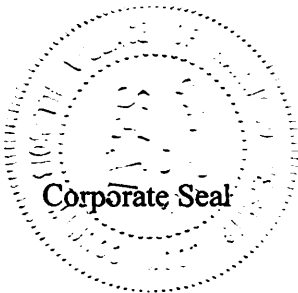
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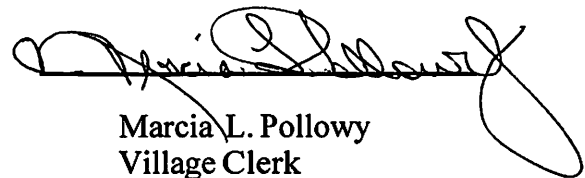
Is true and correct copy of an Ordinance adopted by the Board of Trustees of the Village of Harwood Heights at a meeting held on the 11th day of April, 2024.

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 12th day of April, 2024.




Marcia L. Pollowy
Village Clerk

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