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BREMERTON
BUILDING DEPARTMENT

**BEFORE THE HEARING EXAMINER
OF THE CITY OF BREMERTON**

In the Matter of the Application of) NO. BP04-00327
)
Gerald VanFossen) FINDINGS, CONCLUSIONS
) AND DECISION
For Approval of a Special Use Permit)
)
_____)

SUMMARY OF DECISION

The request for a non-administrative Special Use Permit to exceed height standards and maintain a 6-foot tall fence in the front yard setback is **GRANTED**, subject to conditions.

SUMMARY OF RECORD

Request

Gerald VanFossen (Applicant) requests approval of a Special Use Permit (SUP) to exceed height standards and maintain a 6-foot tall fence in the front yard setback area of a residentially-zoned property at 2824 Callahan Drive, Bremerton, Washington.¹

Hearing Date

An open record public hearing on the request was held before the Hearing Examiner on August 17, 2004.

Testimony

The following individuals submitted testimony under oath at the open record public hearing:

1. Robert Grumbach
2. Gerald VanFossen, Applicant

Exhibits

The following exhibits were admitted to the official record at the hearing:

Exhibit 1:	Staff Report dated August 17, 2004
Attachment a:	SUP Application
Attachment b:	Comprehensive Plan Designation
Attachment c:	Ordinance 4906
Attachment d:	Photographs of the Subject Property and Fence
Attachment e:	Staff Comments

¹ The parcel's legal description is "Lot 1, Block 7, Amended Plat of Fourth Addition to Sheridan Park, According to the Plat recorded in Volume 9 of Plats, Page 1 to 3, inclusive, records of Kitsap County, Washington; being a re-recording of Volume 8 of Plats, Pages 58 to 60, inclusive, records of Kitsap County, Washington; situate in Kitsap County, Washington." The Tax Assessor's Parcel Number is 3968-007-001-0008.

Based upon the evidence and testimony admitted at the open record hearing, the Hearing Examiner enters the following Findings of Fact and Conclusions of Law:

FINDINGS

1. The Applicant requests approval of a SUP to exceed height standards and maintain a 6-foot tall fence in the front yard setback area of a residentially-zoned property at 2824 Callahan Drive, Bremerton, Washington. *Exhibit 1, Staff Report, page 1.*
2. The subject property is .23-acre lot with three street frontages: Sheridan Road to the north, Callahan Drive to the west, and Bullard Avenue NE to the east. Ingresses/egresses to the property are from Callahan Drive and Bullard Avenue NE. The property is in a "Residential Low Density" (DR) zone and is flat with one residential duplex. Surrounding zones include "Shopping Center" (SC) to the north, "Residential Low Density" (DR) to the south and to the west, and "Kitsap County" to the east. *Exhibit 1, Staff Report, pages 1-3; Exhibit 2, Power Point Hard Copy.*
3. A fence has been erected along the street frontages for 40 years, but the City has no records indicating whether that fence complied with height restrictions in place at the time of construction. The Applicant replaced the old fence with a 6-foot tall cyclone (chainlink) fence. *Exhibit 1, Staff Report, pages 1-3; Exhibit 2, Power Point Hard Copy.*
4. Ordinance 4906 was passed by the Bremerton City Council to amend Bremerton Municipal Code (BMC) 21.02.230 and became effective on August 15, 2004. The ordinance allows a maximum fence height in residential properties of 6 feet in rear and side yards, and 3 feet in front yards. The front yard fence height can be increased to 6 feet for mesh cyclone type fences. A corner lot is permitted to erect a fence of up to 6 feet on its secondary frontage. For corner lots, the primary frontage is treated as a front yard subject to the 3-foot fence height maximum and the secondary frontage is treated as a side yard with a maximum allowable fence height of 6 feet. This special exception for corner lot secondary frontages only applies if (1) the high fence will not block views that share the principal frontage to the same street, (2) the high fence will not be closer to the residence's front property line on the street of principal orientation than the closest part of the front façade of the residence, and (3) the high fence will not encroach into the front yard of the primary frontage where the maximum height limit takes precedence. Another exception exists for residential properties that border non-residential properties. When a residential property directly adjoins a non-residential property and the proposed fence would have a "finished" look, fences up to 8 feet tall are permitted. *Exhibit 1, Staff Report, page 3; Exhibit 1, Attachment c, Ordinance 4906.*
5. The SUP application was filed on July 28, 2004, before Ordinance 4906 became effective. The application vested under the fence regulations in effect at that time. Under BMC 21.02.230(b), in effect when the application was made, a Special Use Permit to erect a fence in excess of 3 feet was available if a need for security and residential privacy were demonstrated, or if the proposed high fence would benefit all affected parties. Those criteria

govern the Applicants' request. *Exhibit 1, Staff Report, page 3.*

6. The Applicant submitted that passer-bys have often trespassed on the subject property in order to take a shortcut to nearby retail stores and residences. He submitted that those passer-bys have pushed down fences, thrown paper in the yard and exchanged words with residents of the duplex. Moreover, Sheridan Road, located along the property's north property line, is a busy street with high traffic volumes. The Applicant cites the safety, security and privacy of the families living in the duplex as reasons necessitating the tall fence. *Exhibit 1, Staff Report, page 4; Exhibit 1, Attachment a, SUP Application.*
7. The project is exempt from State Environmental Policy Act (SEPA) regulation and no critical areas have been identified on-site. *Exhibit 1, Staff Report, page 1.*
8. The application was submitted to City of Bremerton departments for review. The Fire Department recommended approval; no other department commented. No public comments were received. *Exhibit 1, Staff Report, page 6.*
9. A Notice of Application and Notice of Public Hearing were posted on-site and published in The Sun newspaper on July 30, 2004. Notices were mailed to property owners within 300 feet of the subject property on July 28, 2004. However, the hearing date was printed incorrectly on the mailed notices and corrected notices were mailed on July 30, 2004. *Exhibit 1, Attachment f, Public Notices.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner is granted authority to hear and decide applications for Special Use Permits pursuant to Section 21.02.850 of the Bremerton Municipal Code. The decision may be to approve, approve with conditions, or deny the application.

Criteria for Review

To approve a Special Use Permit, the Hearing Examiner must find that the application satisfies the applicable criteria for review; is consistent with the Comprehensive Plan and other adopted plans; and conforms to all applicable City development regulations, minimum standards, and design guidelines. *BMC 21.02.885. BMC 21.02.905(d)* provides that a Special Use Permit may be approved if all of the following questions can be answered "yes":

1. Is the proposal consistent with the City's Comprehensive Plan and either designated "SUP" in the Zoning Ordinance, or is being processed as an "Unlisted Use"?
2. Will the proposal comply with all applicable development standards and requirements, including the availability of all needed utilities and services?
3. Will the proposal, along with any mitigation measures or other conditions of approval, avoid significant adverse environmental consequences?
4. Will the proposal be compatible with adjacent uses and surrounding neighborhood?
5. Does the proposal comply with all other criteria or design guidelines that are applicable to the specific use or type of development?

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The Hearing Examiner has authority to impose such conditions as site orientation, fencing, buffering, parking location, lighting, access, hours of operation or others as conditions of SUP approval if needed to prevent adverse impacts and/or ensure compatibility with the surrounding area. *BMC 21.02.905(e)*.

Conclusions Based on Findings

1. **With conditions, the proposal satisfies the criteria for approval of a Special Use Permit and is consistent with the Bremerton Comprehensive Plan and all other applicable City regulations.**
 - a. The project complies with the Bremerton Comprehensive Plan. It will allow a fence that exceeds height standards for residential properties in order to enhance the duplex's safety and security, but the character of the neighborhood will not be compromised. The cyclone fence will ensure that views are not impaired and there will be no detrimental effect on the environment. *Findings of Fact Nos. 1, 2,3, 6, and 7.*
 - b. With approval of the SUP, the project will comply with all applicable standards. This application vested before the effective date of Ordinance 4906 and the applicable standards allow for fence height adjustments with approval of a SUP. The availability of utilities and services is not applicable. *Findings of Fact Nos. 4 and 5.*
 - c. The project will not create adverse environmental impacts. The project is SEPA exempt and no critical areas have been identified on-site. *Findings of Fact No. 7.*
 - d. The project is compatible with surrounding uses and the neighborhood. The subject property is located along three roads, with residences and retail centers surrounding it. Fences are permitted in residential zones and, under the applicable standards, a 6-foot tall fence is permitted in the front yard of a residential property with approval of a SUP. No adjacent property will be impacted by the tall fence given that it is a cyclone fence. *Findings of Fact Nos. 2 and 5.*
 - e. The proposal complies with all applicable criteria. *Findings of Fact Nos. 5 and 7.*

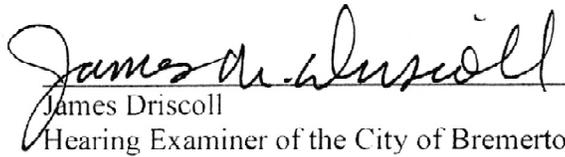
DECISION

The request for a non-administrative Special Use Permit to exceed height standards and maintain a 6-foot tall fence in the front yard setback is **GRANTED**², subject to the following conditions:

² The application vested under the former BMC regulations that permitted fences in excess of the height requirements with approval of a SUP in cases where there was a need for security or residential privacy. The granting of this SUP will allow the 6-foot tall fence to remain. Because it was granted pursuant to the former BMC regulations, it does not set a precedent. The 6-foot tall fence would not be permissible pursuant to the new BMC regulations set forth in Ordinance 4906.

1. Absolutely no part of the fence shall exceed six (6) feet in height.
2. A building permit shall be secured for all future fences and they will be reviewed pursuant to Ordinance 4906.
3. The Special Use Permit to allow a 6-foot tall fence in the front yard setback area shall run with the land.

Decided this 2 day of September 2004.


James Driscoll
Hearing Examiner of the City of Bremerton

