

TO: Zoning Commission

THRU: Jennifer Baptiste – Planning & Zoning Division Manager

FROM: Thomas Cohen – Planner I

Date: July 14, 2026

RE:

A26-27: A request by Donald Kinlaw for a variance in the maximum fence height standards (Section 30-5.D.4) as well as the minimum yard setback (Section 30-3.d.3) to allow a taller fence and shed at 151 Wheat Way (0408425302000).

COUNCIL DISTRICT(S)

9 – Deno Hondros

Relationship To Strategic Plan:

Goal I – Safe and Secure Community

- Objective 1.3 – To ensure low incidence of property and violent crime

Taller fences provide better privacy and reduce opportunity for property crime.

Goal II – Responsive City Government Supporting a Diverse & Viable Economy

- Objective 3.2 – To manage the City’s future growth and strategic land use

The addition of a large shed allows for the comfortable, continued, use of an existing single family home when otherwise sale and movement might be preferable.

Goal VI – Collaborative Citizen & Business Engagement Base

- Objective 6.2 – To ensure trust and confidence in City government through transparency and high-quality customer service

The case relies on a quasi-judicial evidentiary hearing in which decisions are based on fact and expert testimony which are all on record.

Executive Summary:

Applicant is requesting a variance to both the maximum fence height standards and corner side setback standards as they relate to a residential property within the Single Family 10 (SF-10) zoning district. To allow the reconstruction of privacy fencing to be replaced and to enable continued placement of a shed. Requirements are an increase to the fence height

by 2 feet and a reduction of the setback to 1.5 feet to accommodate the fence and shed respectively.

Applicant's request is post-hoc and triggered by three Notices of Violation served by City of Fayetteville Code Enforcement under Case Numbers CE20260409-04337, CE20260409-04338, and CE20260409-04339 which are currently under an agreement of stay pending variance outcome.

Background:

Owner: Donald Kinlaw

Request: Increased maximum fence height and decreased corner side setback.

Address: 151 Wheat Way

Parcel Identification Number (PIN): 0408425302000

Parcel Size: ± 0.28

Existing Site Conditions: Single floor single family home

Immediate Context: Single family residential neighborhood

Utilities: Public water, sewer, and power

Public Notice: Notification letters were sent to property owners within 300 feet of the subject site equating to 29 notices sent.

Related Cases: CE20260409-04337, CE20260409-04338, and CE20260409-04339

Issues/Analysis:

Variance Criteria

In accordance with NCGS § 160D-705(d) and UDO Section 30-2.C.14.f five standards must all be met for a variance to be granted.

1. **Unnecessary hardship** – Strict application of the Ordinance requirements results in practical difficulties and unnecessary hardships; it shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property; and
2. **Peculiar Conditions** – Any practical difficulties or unnecessary hardships result from unique circumstances related to the land, such as location, size, or topography, and are not the result of the actions of the land owner, nor may hardships resulting from personal circumstances as well as hardships resulting

from conditions that are common to the neighborhood or the general public be the basis for granting a variance; and

3. **Minimum Action** – The variance is the minimum action that will make possible a reasonable use of land or structures; and
4. **Spirit of the Ordinance** – The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit; and
5. **Public Safety** – In the granting of the variance, the public safety and welfare have been assured and substantial justice has been done.

Applicable Standards and Request

UDO Section 30-5.D.4 outlines the maximum fence height standards and Section 30-3.d.3 outlines the Dimensional Standards for the SF-10 zoning district.

- Existing Maximum Fence Height: 4 feet
 - Proposed Variance: 6 feet (Increase of 2 feet)
- Existing Corner Side Setback: 30 feet
 - Proposed Variance: 1.5 feet (Reduction of 28.5 feet)

Claim Summary

With the home being on a corner lot the corner side setback increases to 30 feet to match the front yard setback; in essence, there are two front yards. This reduces the buildable area to less than what it would be if not on the corner. In relation to the fence, it was removed due to deterioration and is to be replaced by one of equivalent height which is also equivalent to the neighboring property; that of 6 feet.

Required Variance Findings

The Commission must determine whether the evidence supports **EACH** of the five criteria and associated findings.

The applicant provides the following statements to support the variance criteria.

1. Unnecessary Hardship
 - With my home being located on a corner lot it is considered to have two front yards. One that faces the road I live on wheat way and the other facing the road to my left which is cotton valley dr. With requested side yard setback of 30' from property lines the house itself barely fits on the lot. Currently from my property line to the side of my home is 35'6". I'm asking that the setback be moved from the required 30' to 1'6" in order to allow me to have a 12'x24' shed set in my side property and my fence be reconnected to the shed. also

asking that my fence height be able to be taller than the required 4' tall and be allowed to be 6' tall to match my neighboring fence which is also located alone cotton valley dr. Reason needing the extra space of the storage shed is that I have a son on the way. In our 3-bedroom home we are currently cleaning out our spare room to make a nursery for him to arrive on or around july 4th.

2. Peculiar Conditions, Not Self-Created

- The hardships I'm currently running into are the size restrictions for our side yard. Because of my lot being a corner lot, I'm supposed to setback 30' from property lines and my fence be 4' or shorter. Asking for setback to give relief in order to be able to set storage shed in side yard and tie it into fence surrounding my back yard. My old fence was removed because it was rotting and falling over and didn't want to take the chance of it falling on my children or the neighbor behind me fence. With the size my lot and the location of my lot it seems really challenging to move the shed to any other location on the lot at the moment. The fence height that I had installed was the same height and material as the previously installed fence and also installed in same exact location of the previous fence that was removed. With the exception of the area that the shed is sitting and there the fence ties into the shed.

3. Minimum Action Necessary

- With this variance it allows me to have space on the side of my home for extra storage to help me organize my things and give them all a place to go. At the same time keeping my yard aesthetically pleasing to the eye. The shed is built to look and match my home color trim and appearance, and the fence ties into it perfectly also, with my fence matching the height of my neighboring fence helps one privacy to my yard and safety of my children but also keeps the flow from my neighbors yard to mine.

4. Spirit of the Ordinance

- With the variance in place everything stays well-kept and well presented to the public passing by. no variation of fence heights from yard to yard. also, helps me by giving me somewhere to store my things to help make room in my home for a son that i have on the way.

Budget Impact:

Approval or denial of the requested variance does not create immediate or direct impacts on the budget aside from the normal administrative costs for notice, staff review, and the quasi-judicial evidentiary hearing. Without the variance, the shed and fence will remain

non-compliant and the existing code enforcement cases and workload will resume as part of standard code administration.

Options:

- **Approval** – Find that the request meets all criteria
- **Approval, but with conditions** – Find that the request meets all criteria if adhering to a set of conditions
- **Denial** – Find that the request does not meet one or more criteria

Granting a variance requires an affirmative vote of at least four-fifths of the members who are eligible to vote.

Recommended Action:

N/A

Attachments:

1. Application
2. Aerial Notification Map
3. Current Zoning Map
4. Future Land Use Map
5. Site Pictures (Subject Site)
6. Site Pictures (Surrounding Properties)
7. Site Plan