

**CITY OF FAYETTEVILLE
STATE OF NORTH CAROLINA
ORDER TO APPROVE A VARIANCE**

**Variance to increase front and corner side yard fence height at 1651 Cedar Creek Road
(0446815034000).**

VARIANCE A26-23

Address: 1651 Cedar Creek Rd
REID Number: 0446815034000
Property Owner: James H. Smith Sr and Monica Smith
Applicant: James Smith

The Zoning Commission of the City of Fayetteville, North Carolina, conducted an evidentiary hearing on June 9, 2026, to consider a Variance application submitted by James Smith (“Applicant”), on behalf of James H. Smith Sr and Monica Smith (“Property Owners”), seeking approval to increase the front and corner side yard fence height from four (4) feet to six (6) feet at 1651 Cedar Creek Road (0446815034000) (“Subject Property”).

On May 27, 2026, notice of the public hearing was mailed to the Property Owners and all owners of property within three hundred (300) feet of the Subject Property, in accordance with applicable legal requirements. A public hearing notice sign was properly posted on the Subject Property on May 27, 2026. Additionally, on May 29, 2026, notice of the public hearing was submitted for publication in the legal notices section of *The Fayetteville Observer*, with the advertisement scheduled to run on May 29, 2026, and June 5, 2026.

Upon careful consideration of all sworn testimony, admitted evidence, and oral arguments presented by the parties at the properly held evidentiary hearing, the Zoning Commission of the City of Fayetteville hereby issues the following FINDINGS OF FACT and CONCLUSIONS OF LAW:

Findings of Fact

1. Chapter 30, Article 30-5, Subsection 30-5.D.4. of the City’s Unified Development Ordinance (“UDO” or “Ordinance”) establishes fence height standards based on the location within the lot.
2. In the Community Commercial zoning district, the maximum front and corner yard fence height is four (4) feet.
3. The Property Owners hold title to the Subject Property located on 1651 Cedar Creek Road. The Subject Property is zoned Community Commercial and is located within the municipal limits of the City of Fayetteville.

4. On March 23, 2026, the Applicant submitted an application requesting a variance to increase the permitted front and corner side fence height from four (4) feet to six (6) feet.

5. The Subject Property is designated as Low-Density Residential (LDR) on the City's adopted Future Land Use Map, which typically includes single-family residences.

6. The area surrounding the Subject Property is developed as low-density single family residential and commercial mini storage.

7. Pursuant to NCGS § 160D-705 The Applicant has the burden of proof to show that the Variance meets all the following statutory requirements for variances:

- a. Strict application of the Ordinance requirements results in practical difficulties and unnecessary hardships;
- b. 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 landowner's actions or conditions common to the neighborhood or the general public;
- c. The variance is the minimum action that will make possible a reasonable use of the land or structures;
- d. The variance is in harmony with the general purpose and intent of the Ordinance and preserves its spirit; and
- e. In granting the variance, the public safety and welfare have been assured, and substantial justice has been done.

8. Strict application of the Ordinance requirements would result in unnecessary hardship because the four-foot fence height limitation in the front and corner side yard areas restricts the security function of the fence.

9. The hardship results from conditions peculiar to the Subject Property, including its corner lot configuration and the resulting limited fence usability for security purposes, and does not result from actions taken by the Applicant or Property Owners.

10. The requested variance is the minimum relief necessary to allow a six-foot fence in the front and corner side yard areas to improve security for the storage facility under the circumstances.

11. The requested variance is consistent with the spirit, purpose, and intent of the Ordinance because it allows limited fence-height relief necessary to improve security while maintaining a fence height compatible with the Subject Property's use and surrounding conditions.

12. Granting the variance promotes public safety and welfare while ensuring substantial justice because the increased fence height improves security for the storage facility, reduces areas that are easier to climb, and does not create a threat to public safety.

Conclusions of Law

1. Pursuant to the authority conferred by the North Carolina General Statutes, the City of Fayetteville adopted the Unified Development Ordinance (“UDO”), as codified in Chapter 30 of the City Code, thereby consolidating the City’s zoning and subdivision regulatory authority into a single, comprehensive framework.
2. The Applicant duly submitted an application in full compliance with the procedural and substantive requirements of the UDO for consideration of a Variance.
3. The City of Fayetteville’s Zoning Commission provided adequate and lawful notice and conducted an evidentiary public hearing in accordance with the procedural requirements established under North Carolina law.
4. The City of Fayetteville’s Development Services Department is responsible for administering, coordinating, and enforcing the provisions of the UDO.
5. Based on the competent, material, and substantial evidence in the record, all of general and specific conditions precedent to the issuance of the requested Variance have been satisfied, in that:
 - a. Strict application of the Ordinance requirements results in practical difficulties and unnecessary hardships;
 - b. 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 landowner’s actions or conditions common to the neighborhood or the general public;
 - c. The variance is the minimum action that will make possible a reasonable use of land or structures;
 - d. The variance is in harmony with the general purpose and intent of the Ordinance and preserves its spirit; and
 - e. In granting the Variance, the public safety and welfare have been assured, and substantial justice has been done.

WHEREFORE, based on the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, it is ORDERED by the City of Fayetteville’s Zoning Commission that the application for the issuance of the Variance in Case A26-23 be APPROVED.

VOTE: 4-1

This, the 14th of July, 2026.

Kevin Hight
Zoning Commission Chair