

EXHIBIT B

PAYMENT RECVD

5/4/2023

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Fee: \$1000.00

PROJECT #: BU 2023-018

23-33000004

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**APPEAL OF DECISION BY BOA, PZC, OR DRC TO BCC**

Including Decisions by Director or Manager

APPELLANT INFORMATION

Name: Marta Garcia Barcia
Address: 1252 Valley Creek Run City: Winter Park Zip code: 32792
Telephone Number(s): 954-806-3150 / 407 2715611
Email Address: martagarcia@gmail.com / maria.a@ontelincfence.com

APPEAL INFORMATION

Project name and number being appealed: Garcia Barcia 2023-018
Project Address: 1252 Valley Creek Run City: Winter Park Zip code: 32792
Tax/Parcel ID Number: 23-21-30-SLT-0000-1010
Appealing decision of: Denial of Variance
Decision date: April 24th 2023
Signature: MARTA GARCIA BARCIA Date: 5/2/23

SUBMITTAL CHECKLISTSubmittal requirements vary based upon the decision being appealed.
All items must be provided prior to scheduling the BCC hearing.

☐	Completed application.
☐	Written Notice of Appeal.
☐	Appeal fee.
☐	Additional information and supporting documents.

Revised March 2020

BOARD OF COUNTY COMMISSIONERS
Seminole County
1101 East First Street, Room 2204,
Sanford, Florida 32771

May 2, 2023

Re: Letter in Support of Appeal to Denial of Variance Application for 1252 Valley Creek Run

To whom it may concern –

This letter is being filed together with the Notice of Appeal of the Seminole County's Board of Adjuster's ("BOA") decision to deny the Variance Application for 1252 Valley Creek Run, Winter Park, FL 32792 ("Property"). We hope that this letter will serve to better illustrate the Property's case and bring a resolution to everyone's satisfaction.

Background:

In or about March 2022, Marta Garcia Barcia and Andrew R. Gotschall, owners of the Property ("Owners"), engaged a fence contractor to replace the Property's old wooden fence ("Old Fence") with a new vinyl fence ("New Fence"). The contractor filed for a permit on March 18, 2022, permit no. 22-4419, which was denied. The contractor advised the Owners that based on the fact that they had their Homeowner's Association ("HOA") approval and there had always been a fence in the Property (prior to the Owner's acquiring the Property), they should proceed with the fence replacement. Since the Old Fence had splinters, rusty nails poking out, and mold in different spots, the Owners agreed to replace the Old Fence, which was already in the Property when the Owners purchased it in August of 2020.

Later, on June 22, 2022, the Owners received a Notice of Code Violation, Case No.: 22-92 ("Violation"). Immediately upon receipt of the Violation, the Owners began to work to redress the situation immediately.

Among others, they frequently communicated with Mr. Kassik from the office of Code Enforcement (see composite Exhibit A) and began the process to obtain a permit for the New Fence.

First Variance Application:

In order to obtain a permit for the New Fence, on June 24, 2022, the Owners personally travelled to Seminole County's Building Department to file a permit for their fence, permit no. 22-10791, which the staff assisted the Owner's with filling in and filing. That permit was denied due to the need of a variance, two weeks later. Notwithstanding, the Owners were advised by the staff

at the Building Department, that they may be eligible for setback clearance since their fence was 15ft from the side street, this request was filed by the Owners, in person, with assistance from the Building Department, on July 18, 2022, and later denied, when they were advised that the 15ft setback is from the property line, not the side street.

At this point the Owners, sought once again guidance from the Building Department with the filing of their variance ("Variance I"). The staff suggested that if a similar corner lot, with similar challenges had already obtained a variance in their neighborhood, they should highlight this fact in their application to ensure they would obtain the same result. Based on this advice, the Owners filed a Public Record Request on August 1, 2022. On August 10, 2022, the records were made available to the Owners, who then proceeded to file their Variance I on August 19, 2022.

Variance I highlighted the numerous safety issues that the Property faces without a fence. See composite Exhibit B. To summarize, the owners argued the following:

- i. Swimming Pool: The Property has a swimming pool, which could attract youngsters in the community if no fence safekeeps them from the danger.
- ii. Traffic and Play Hazard: the Property is one of the corner lots located next to the main access point to the Lost Creek Community ("Community"). Having no fence would create a new side space in the Community, next to a highly transited road, and the only entry and exit point in the Community, that could attract children and put them in harms' way. Installing the New Fence, which merely replaces the Old Fence that had been there for years, would reduce this risk, as well as protect the Owners' own small child and pet from inadvertently being hurt by a moving vehicle.
- iii. Previous Neighborhood Variances: Seminole County has granted variances like the one that the Owners are requesting to other corner lot neighbors, with similar challenges, such as the one granted to 3841 Heartleaf Pl, Winter Park, FL 32782.
- iv. The fence was installed pursuant to the requirements and with the Community's HOA's approval. See Exhibit C.

Despite the Owners best efforts, on October 24, 2022, the BOA denied Variance I. During the meeting several points were highlighted by the BOA's members:

- i. Despite the advice of the Building Department's staff, the BOA stated that it does not like "precedent" being argued during a variance request application.
- ii. The survey was very hard to read and made it very difficult to see what the need for a variance was for the Property.

See excerpt from the meeting minutes attached as Exhibit D.

Second Variance Application:

Following the denial of Variance I, on October 25, 2022, the Owners engaged Ms. Maria D. Arevalo, from On the Line Fence, LLC ("On the Line"), to assist them. Since then, On the Line has been handling the case and working with Seminole County.

Based on the BOA's remarks, On the Line requested a new Property survey, filed a new building permit and a new variance request, which took into consideration all of the Property lines relevant to where the New Fence stands ("Variance II"). See attached as Exhibit E.

Variance II argued, along with the safety arguments raised during Variance I that:

- (i) By reason of the new survey, it was discovered that the majority of the New Fence was installed within 5-5.5 ft in most areas, but, due to the Property lines themselves, at the furthest end of the Property, where the last panel stands, the New Fence is installed 6 inches from the Property line.
- (ii) Beyond the 5ft where the New Fence is installed, there is an additional 3.4ft of HOA grass, which would put the majority of the fence at around 8.8 ft.
- (iii) The neighbor directly abutting to the Property's backline, has a fence installed that covers the majority of the Property's backyard, with the exception of 20ft of the Property's side street. Therefore, regardless of any setback rules, the Owners would still need a variance in order to be able to properly "close off" the Property.
- (iv) The current Seminole County setback rules were not followed by the Builder when building the Community, as no side lot has been built to comply to the 25ft setback. In the case of the Property, the setback rules would require the New Fence to be installed inside of the Property and its permitted screen enclosure.
- (v) The HOA has perimeter walls benefiting the neighbors directly in front and across the street from the Property, the only dwelling that lacks a buffer that acts as a safety precaution to children or pets is the Property, creating a potential for negligent actions and liability for the Owners.
- (vi) The new survey revealed a gas meter and main line that runs through the side yard and connects several neighbors, as well as the Property, which would be better safekept inside of a fenced property to avoid accidents.

- (vii) There are several mature trees along the side of the yard that would need to be removed in order to comply with any setback other than the one requested in Variance II. This would not be the Owners or the HOA's preference.
- (viii) The Owners obtained over 30 signatures from neighbors in support of Variance II and the New Fence.

Once again, and despite these numerous detailed arguments and Seminole County's attorneys' observations that "compelling facts" had been presented satisfying the six criteria that would generally be required for a variance to be granted in Seminole County, on October 24, 2023, the BOA denied Variance II. See excerpts from meeting attached as Exhibit F.

Appeal's Reasoning:

Believing that the six criteria listed in Variance II demonstrate that the request by the Owners meets the standards of Land Development Code of Seminole County Sec. 30.43(3), we are appealing the BOA's decision based on the arguments detailed in the Appeal application attached hereto.

Appeal's Request:

Based on the foregoing arguments, we respectfully request that the Board of Commissioners reverse the denial of Variance II and issue a 6 inch variance for the Property. Additionally, we wanted to reiterate the Owners willingness to cooperate and work with the County on a resolution of this matter and remain amenable to a solution that might satisfy all parties.