

## Legislation Text

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**File #:** 2023-476, **Version:** 1

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**Title:**

**3238 Upland Point** - Request for a side street (south) setback variance from fifteen (15) feet to three and one-half (3.5) feet for a privacy fence in the PD (Planned Development) district; BV2023-029 (Michael & Katrina Dantes, Applicants) District 1 - Dallari (Hilary Padin, Project Manager)

**Department/Division:**

Development Services - Planning and Development

**Authorized By:**

**Kathy Hammel**

**Contact/Phone Number:**

Hilary Padin - (407) 665-7331

**Motion/Recommendation:**

1. Deny the request for a side street (south) setback variance from fifteen (15) feet to three and one-half (3.5) feet for a privacy fence in the PD (Planned Development) district; or
2. Approve the request for a side street (south) setback variance from fifteen (15) feet to three and one-half (3.5) feet for a privacy fence in the PD (Planned Development) district; or
3. Continue the request to a time and date certain.

**Background:**

- The subject property is located in the Hideaway Cove at Oviedo subdivision and is within the Hideaway Cove Planned Development (PD).
- The subject property is a corner lot and, as such, considered to have two (2) front yards for setback purposes. The front of the house faces Upland Point. The Scenic Edge Way side is where the variance is being sought.
- The request is to construct a six (6) foot vinyl privacy fence eleven and one-half (11.5) feet into the required side street setback.
- The proposed privacy fence is three and one-half (3.5) feet from the sidewalk and fifteen (15) feet from the edge of pavement.
- The proposed fence encroaches into a utility easement and at building permitting will be required to meet the criteria for placement with an estoppel letter.
- Traffic Engineering has no objection to the placement of the fence as it relates to site visibility.
- Two (2) letters of support have been received from neighbors.

- The request is for a variance to Section 30.451 of the Land Development Code of Seminole County for Development Standards for Planned Developments.
- There have not been prior variances for the subject property.

### **Staff Findings:**

The applicant has not satisfied all six (6) criteria under Section 30.43(b)(3) of the Seminole County Land Development Code for granting a variance as listed below:

- a. That special conditions or circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures or building in the same zoning district; and
- b. That the special conditions and circumstances do not result from the actions of the applicant; and
- c. That the granting of the variance requested will not confer on the applicant special privileges that are denied by Chapter 30 to other lands, buildings, or structures in the same zoning district; and
- d. That the literal interpretation of the provisions of Chapter 30 will deprive the applicant of rights commonly enjoyed by other properties in the same zoning classification; and
- e. That the variance requested is the minimum variance that will make possible reasonable use of the land, building or structure; and
- f. That the grant of the variance would be in harmony with the general intent of Chapter 30.

Staff finds that the following variance criteria has not been satisfied:

The general intent of the Land Development Code is to maintain consistent setbacks; therefore, the grant of the variance would not be in harmony with the general intent of Chapter 30. Section 30.43(b)(3)(f)

### **Staff Conclusion:**

Based upon the foregoing findings, the requested variance is not in the public interest and failure to grant the variance would not result in an unnecessary and undue hardship.

### **Staff Recommendation:**

Based on the stated findings, staff recommends denial of the request, but if the Board of Adjustment determines that the applicant has satisfied all six (6) criteria under Section 30.43(b)(3) of the Seminole County Land Development Code for granting a variance, staff recommends the following conditions of approval:

1. Any variance granted will apply only to the privacy fence as depicted on the attached site plan; and
2. Any additional condition(s) deemed appropriate by the Board of Adjustment, based on information presented at the public hearing.