BOARD OF ADJUSTMENT MEETING MINUTES
City Council Chambers
401 4th Street
December 1, 2022 at 5:30 PM

Meeting called to order by Clark at 5:30 PM

IN ATTENDANCE WERE:
Present: Clark, Johnson, Lamb
Absent: None

Others present:
James Colvert, Building Inspector
Danny Christoffers, Secretary
Sarah Kleber, City Attorney

Approve Minutes of the Previous Meeting
A motion was made by Lamb, seconded by Johnson to approve the minutes of September 28, 2022 meeting with typographical corrections.
All ayes, motion carried.

Public Hearing
The public hearing is being held to consider a variance request for 200 Frontier Street. The request is for a variance from Zoning Code 165D.04 (F) (1) which states: "The maximum height of a fence within a required front yard or street side yard shall be 42 inches not exceeding 50 percent closed construction, or 48 inches not exceeding 25 percent closed construction". The applicant is requesting to move/install a 6' foot tall (72 inches) fence.

A motion was made by Lamb, seconded by Clark to open the public hearing at 5:32 pm.
All ayes, motion carried.

Deanna Cloud explained that she would like to put a fence closer to the sidewalk to match the line of her neighbors fence. Her neighbors asked her questions about what they were doing and it was explained to them. They were ok with it. The neighbors south of them were ok with it, they have a shared agreement. It would extend the usage of her backyard and not have to chop down a tree, also to make use of her garage.

Garry Clark asked if the fence will extend past the deck up to the front of the house.
Deanna said it will not, it will be in the back yard. It angles off the deck, it will not be extended to the front of the deck.

Garry asked how long has the fence been there? Would this be new construction or moving the old fence?

Deanna thought about 10 years. It would just be moving the old fence and fixing some of the posts and putting a better gate latch on.

Anthony Lamb asked what her relationship is with the owner? Who is the current trustee of the house? Deanna explained that she is the POA of her mother. She has been living with her since she bought the house 18 years ago. She is the trustee along with two other parties. They have signed the consent. James provided an image of the Final Plat drawing of the home which referenced a 10' utility & sidewalk easement.

James Colvert said that the fence code has changed, but the fence code pertaining for a 6-foot fence going by a sidewalk has not changed. The only part of the fence language change is that a fence can go into a drainage easement but it has to be raised up to not impede the flow of water. James provided an image of the Final Plat drawing of the home which referenced a 10' utility & sidewalk easement. That is inside her property line, the sidewalk is within her property line which is in the middle of the right-of-way, the developer gave that easement to the city to do utilities and a sidewalk. He discussed the fence code which allows it to be 15 feet off the property line. He described how if Deanna Cloud puts her fence in compliance with the current language there might be a foot of the south neighbors fence exposed on that corner. If she wants to go closer to the sidewalk, she may erect a 4 foot fence.

Garry it appears that if you [do it the way James described] you don't need a variance. He asked if she would be ok with that?
Deanna said she would be ok with it, but it wouldn't line up with the neighbors.
James explained that he had issued a building permit for the south neighbor when he was new to the position in 2019 and misunderstood the code. He later realized he had made a mistake and has been enforcing it since that time.
Garry asked if the fence were changed or do something to it – would he have to come into compliance?
James confirmed he would have to come into compliance. He reviewed some neighborhood properties down Sergeant Square Drive (201 Topaz, 201 Prairie Lane, 201 Carriage Lane) that have some fences on the Sergeant Square Drive that have fences close to the sidewalk. Property: 201 Topaz was a permit he issued, Property: 201 Prairie Lane is a 4 foot rod iron fence that is within compliance, Property: 201 Carriage Lane is a 6 foot wooden fence next to the sidewalk which was completed in 2018.

Deanna asked if the wood fence at 201 Topaz would deteriorate, would they have to move it?
James explained that it has to deteriorate to over 50% of the cost of the fence. They can do general maintenance on the fence.

<u>Board Discussion</u>
Danny Christoffers said that the public hearing notice was posted at the three normal locations, it was published in the Sergeant Bluff Advocate, and was mailed to the property owners within approximately 200 feet. He received no comments or questions.

Anthony stated that as he looks at our codes, he doesn't see any of the factors being met to justify the issuance of a variance. [He read the requirements of Ordinance 165E.03 and indicated that he did not believe those had been met]. The argument has been primarily the aesthetics of the fence, particularly if the fence next door were to be destroyed we would require them move it.

Garry said that you do have the ability to move the fence with only a foot difference. He does not believe a variance is necessary at this time.

A motion was made by Johnson, seconded by Lamb to close the public hearing at 5:50 pm.
All ayes, motion carried.

Board Decision

A motion was made by Lamb, seconded by Johnson to decline the variance application for 200 Frontier Street submitted by Diana Cloud.
Roll Call Vote: Johnson- yes; Clark- yes; Lamb- yes.
Unanimous Motion Carried.

Public Hearing

The public hearing is being held to consider a variance request for 407 G Street. The request is for a variance from Zoning Code 165D.04 (F) (1) which states: "The maximum height of a fence within a required front yard or street side yard shall be 42 inches not exceeding 50 percent closed construction, or 48 inches not exceeding 25 percent closed construction". The applicant is requesting to install a 6' foot tall (72 inches) fence.

A motion was made by Johnson, seconded by Lamb to open the public hearing at 5:52 pm.
All ayes, motion carried.

Trent Stulich explained that they bought the property for a month and a half ago. They intend to fix it and resell it or rent it. An image was provided as part of their application that showed a space that is about 20 feet from the sidewalk to the curb. He asked if most in town are 10 feet?
James Colvert said that he believes it is in 13 feet in town.

Trent said that he is trying to enhance the back yard. Looking to the north along the brickyard is not a desirable view. He provided an image of what can be seen from the property. It's not a busy corner, he does not believe the fence would hinder anything.

Garry Clark asked how far off the side yard he would be?
Trent said he would be maybe 6-10 inches off the sidewalk.

Danny Christoffers said that he received no public comments.

Trent said that he talked to some of the neighbors who were for it. They do get trash that is blown onto the property, a 4 or 6 foot fence will help.

Garry commented that he would not need a variance if he got a 4 foot fence.

Anthony Lamb asked if the house faces the brickyard?
Trent said it faced to the east and affirmed that it was kind of a side yard.
Garry commented that he drove over there and it's like an industrial area.

Anthony asked if the greenspace is an easement? Is it part of your property?
Trent said that it's parking that goes east and west. He maintains it.
James Colvert stated that it's part of a right-of-way that is around his property on that corner. Old Town has the largest setbacks.
Trent said that the previous owner had a hedge but they were not maintained well so they took them out.
James expressed his appreciation for the removal of the hedges because they were inhibiting the pathway of the sidewalk.

James reviewed a document that he submitted that shows an overhead view of the neighborhood of the property location. Out of all the lots in the Blairs Addition area there is only one property that has a fence that is on a corner lot – marked as 400 G Street. Their fence along the sidewalk is a 4 foot chain link fence that is in compliance with the code. Mr. Stulich is the only one that would have a fence put up on that corner (the street side yard). By code it would have to right off the corner of his house. He understands that it is not great to look at the brick yard. What you see on the north side of his house is the garage which is not part of the house where you would look outside and stare at the brickyard. The windows are on the east and west side, maybe one on the south side. If he puts up the 6 foot fence off the corner of the house – it would provide greater obstruction to Sioux City Brick because it's closer to the house. If it's moved closer to the sidewalk you will see more of the Brickyard. He did submit a fence permit with an accurate drawing – he had explained to Trent Stulich that he can't approve it due to our fence code.

Garry asked where his property line is.
James said it is approximately the location of the blue lines on the overhead map he provided. That is not an exact location.
Trent said that there is a window on the north side.
James reviewed Spencer,Iowa's code ordinance which has the same requirement that we do for a 6 foot fence.
Trent stated that there are properties around town that have 6 foot fences along the sidewalk. Considering the location and the industrial side to the property, he doesn't feel like it will be a hindrance to traffic and it will add value to the property.
Garry asked if he would consider a variance that would allow him to put the fence back 5 feet from the sidewalk, or any other type of variance?
Trent is open to the options, but he is trying to gain as much yard space as possible. Maintenance is a factor too.

Anthony asked how wide is that between the north side of the garage and the side walk? (approximately)
Trent believed it to be 20-25 feet.

Garry stated that he understands that he's trying to screen off the brickyard. He asked if they get a lot of trucks through there?
Trent confirmed that is correct.

James showed that trucks can be seen on the street view map on Google. They park until they can go into the brickyard. There used to be a residential home nearby that was demolished by the Brickyard to provide parking.

Garry asked if there are other alternatives?
Trent said that he could plant some street maples to create a barrier. They also get noise from the trucks.

Danny said that Public Hearing notice was published in Sergeant Bluff Advocate and mailed to the property owners within 200 feet.

Garry said the house is in an industrial/business area. It is not strictly residential. It is a variation from our codes and we need to deal with it in a manner that is fair and equal. He considered doing a different type of setback rather than 15 feet – he wasn't certain if that would accomplish anything. A 4 foot fence does not provide much screening.

Anthony Lamb said that the goal is to get 15 feet off the property line – under normal circumstances that would be the curb line – you'd be back inside of the sidewalk near where he wants to put it as-is. One of the things the Board of Adjustment is tasked with is to consider the spirit of the zoning code. While he was a Planning & Zoning Commissioner one of the commission's goals was to create buffers between conflicting uses. Having a residential area right next to an industrial area is not ideal. The request is a reasonable one considering the unique nature of that neighborhood.

Carol Johnson asked who owns the parking?
James explained that is called the street right-of-way so that the City (through the grass) can lay their utilities etc. Technically it belongs to the city but through the State code and the Municipal code we require all property owners to take care of those right-of-ways or that parking around their property. Mr. Stulich or his tenant have to mow that grass or scoop the sidewalk.

Garry said that is seems reasonable since the Planning & Zoning Commission is tasked with creating buffer zones and accommodate the growth. It may be reasonable to approve this variance because of that situation.

A motion was made by Johnson, seconded by Lamb to close the public hearing at 6:15 pm.
All ayes, motion carried.

<u>Board Decision</u>
Garry explained that he can see both sides. We like to maintain city codes but there comes a time where can't always follow city codes. We have a residential area next to an industrial area. It seems reasonable to grant a variance.

Carl agrees with that, but asked where he is going to put the fence? Does our code say it has to be two feet from the property line?

James said that it has to be on his property line or within his property. He will have to find his pins. If it's a foot off the sidewalk, that's the closest he can put the pins. If the neighbors disagree he will have to put it two feet from the pins.
Garry said it may require a survey to determine the property line.

A motion was made by Lamb, seconded by Johnson to approve the variance for 407 G Street to build a 6' foot tall (72 inches) fence provided that the fence is at least one foot off the sidewalk, or on the property line, whichever is further from the sidewalk with the condition that property line is verified. The City Attorney is directed to provide the findings of fact pursuant to the discussion.
Roll Call Vote: Johnson- yes; Clark- yes; Lamb- yes.
Unanimous Motion Carried.

Set date for possibly regular meeting date
Danny Christoffers expressed an interest in having a regular meeting date for the purposes of reviewing minutes and discussion topics.

It was the consensus not to have a regular meeting date, but to have a meeting when there is a large gap between meetings.
Sarah Kleber, City Attorney, encouraged them to review the Rules of Procedure at an upcoming meeting.

A motion was made by Johnson, seconded by Lamb to adjourn at 6:23 pm.
All ayes, motion carried.

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Danny Christoffers, Secretary Garry Clark, Chairman