BOARD OF ADJUSTMENT MEETING MINUTES
City Council Chambers
501 4th Street
May 2, 2024 at 5:30 PM

Meeting called to order by Clark at 5:30 PM

IN ATTENDANCE WERE:
Present: Clark, Johnson, Lamb , Jensen, McCrory
Absent:

Others present:
Aaron Johnson, Building Inspector
Danny Christoffers, Secretary

Approve Minutes of the Previous Meeting
A motion was made by Lamb, seconded by Jensen to approve the minutes December 1, 2022 & March 28, 2023
All ayes, motion carried.

Public Hearing
The public hearing is being held to consider a variance request for 500 Jamie Lane. The request is for a variance from Zoning Code 165D.04 (F) (3) which states: "On corner lots, a fence built in accordance with the required fifteen-foot setback of the street side yard (See Chapter 165B Zoned District Requirements) may have a maximum height of six feet unless other requirements are stated."
The applicant is requesting to have a 6-foot fence built within the required 15-foot setback for a corner lot.

A motion was made by Johnson, seconded by Lamb to open the public hearing at 5:31 pm.
All ayes, motion carried.

Drew Cookman, 500 Jamie Lane, discussed his request with the Board of Adjustment. He explained that he has three priorities. They've seen a significant increase on Serenity as more houses are built, impacting the safety of his children. Traffic laws are not routinely followed there, therefore a fence needs to be installed. He expressed concerns about his pet safety, a four foot fence would not be adequate to keep his dog in the yard, so he is requesting a six foot fence. An underground fence have provide unreliable for medium-to-large sized dogs. The dog also barks, a fence would prevent view of the public so that his relations with his neighbors aren't impacted. He believes the intent of the ordinance is pedestrian safety, in speaking with city employees that was the primary focus. His sidewalk does not interconnect with any sidewalk on the east side, it exits out to a highway. There is limited pedestrian traffic using that sidewalk. One other intention of the ordinance is to address visibility barriers. Where the fence would be placed is roughly 100+ feet away from the cross-street. There would be no visibility barriers for oncoming traffic driving west on Serenity Lane coming to that intersection. The property is unique as a corner lot because their backyard is adjacent to their neighbors backyard. There are going to be no properties with a north facing property behind theirs, they are more similar to a center lot than a corner lot. No one else's front yard would be impacted by installing the fence around

the perimeter of his back yard. The fence will create no hazards or obstructions of view from the adjacent front yards. By adhering to the ordinance he feels there would be a significant reduction to their property value, his lot is approximately 90 feet wide, installing a fence 15 feet off of the sidewalk takes away 17% of his usable back yard which is significant. In his research he found 17-like properties in the City of Sergeant Bluff, corner lots, with 6 foot fences directly adjacent to the sidewalks. He only found 1 that had a setback and he believes that fence was installed prior to the ordinance, which would indicate that would be due to the choice of the homeowner. If he were to go to sell his property, what used to be a desirable corner lot, going into competition with the other 17 houses, he would be at an immediate disadvantage. One of those homes is part of Serenity Point which is a corner lot that has a fence that is directly next to the sidewalk, this ordinance in his subdivision has not been enforced, therefore he is requesting from the Board of Adjustment a variance to allow him to place a fence within the 15 foot barrier of the sidewalk.

Danny Christoffers explained that the notice of Public Hearing was sent to the property owners within approximately 200 feet. It was also posted in the three normal locations and published in the local paper. He received no comments from the public.

Drew said that he didn't receive any objections from his neighbor.
Brent Jensen asked if his backyard neighbor have any thoughts?
Drew said that his only request was that they be careful with drainage.

Aaron Johnson explained that the property previously referred to, 1226 Zach Road, was overlooked by a previous inspector. His job as a building inspector was to make sure anything new built adhere to the ordinance. Aaron discussed another nearby property also requested a 6 foot fence on a corner lot, that owner opted for a chain link fence, that property owner's neighbor also asked for the 6 foot privacy fence but he informed them of the ordinance and they built to the 15 foot setback.

Brent explained that his personal fence was built into the utility zone prior to the enforcement of this ordinance, but he understands that in the event the utility needs access and damage occurs, that is his responsibility. He reminded the applicant that would be the case for them as well. Brent's bigger concern is the drainage.

Aaron said that the fence would have to be raised six inches to permit drainage.

Anthony Lamb asked if he's ever had his dog go over a 4 foot fence.
Drew said that he hadn't yet, but his dog comes from the same breeder as his parents golden retrievers, and they have 6 foot kennels and they can get their head above the 6 foot kennel. His dog is very active. He also has a neighbor who has a 4 foot fence and their dog routinely shows up on their property.

Garry Clark expressed the problem when a variance is issued, it is often expected to be received by others. The goal is to be responsibility to the community and to the applicant, to use good judgement down the road. We want to have a community that is open, agreeable, and not creating difficulties with building or people that live here.

The map was reviewed by the Board to see how many other properties might have similar issues. There was one property to the south where Jace Road and Jamie Lane connect, that would encounter a similar situation. There was discussion about the fences at other properties in the area.

Brent said that the way those lots are laid out are a unique situation, his initial thought would be to approve this as long as the allowance for drainage is right.
There was further discussion about how the water drains on the property.

Aaron said that it does not obstruct the sight triangle. One concern he has is that people coming down off of Pioneer Valley, from that stop sign and you look down that road where can you see? Will that corner be obscured with the fence? It would probably be obscured.

Anthony asked if the 15 foot set back from the edge of the sidewalk or is that from the edge of the street?
Aaron said it would be from the property line. This would be essentially one foot inside the sidewalk.
Anthony said that you'd have to be about 16 feet inside of the sidewalk.
Drew said that the fence would follow the property line.
Anthony proposed the possibility of doing a variance for a different distance, such as 5 feet.
Brent said that for line of sight, you're going to be able to see the whole way.
Anthony just wants to be careful about precedent.
Brent said that we have 7 or 8 lots that are already backed up to the property that were grandfathered in, that are already in the easement.
Anthony said that was can't think about it just as this neighborhood, it's a city-wide ordinance.
Garry asked in what way this would be limited to this development and whether that's possible.
Anthony described how anyone could request the variance, if it's an unfair result because of something unique about the property, this group is to consider the request.

Carl Johnson said that when he first started on the Board of Adjustment, fences were the vast majority of the requests. He agrees with the issues with dogs barking. If it helps keep the dog in and other dogs out – because an underground wired fence won't do any good.

Jenni McCrory said that she is one of the lots in town that has a corner lot with a fence next to the sidewalk. That was how it was when she bought the house, she has not had problems and she does not have a stop sign at her corner. Having a stop sign at the corner makes her feel better.

Drew said that he understands the concerns, he also understands the intent of the ordinance. He appreciated the board taking time to take into consideration his standpoint.

A motion was made by McCrory, seconded by Johnson to open the public hearing at 5:58 pm.
All ayes, motion carried.

<u>Board Discussion & Decision</u>
There was no additional discussion among the board.

A motion was made by Lamb, seconded by Jensen approve the variance for 500 Jamie Lane to have a 6-foot fence built within the required 15-foot setback for a corner lot with the condition that the fence would be 1 foot off of the sidewalk.
<u>The findings of fact were as follows:</u>
In considering Ordinance Chapter 165E.03. Paragraph 2 Section A. states:
"That granting the variance shall not be contrary to the public interest."

Finding: Based upon the question and comments it is not contrary to the public interest because it will not impede the sight triangle and the flow of traffic. It is consistent with the public interest.

Paragraph 2 Section B. states:

"That without grant of the variance, and due to special conditions, a literal enforcement of the Zoning Code will result in unnecessary hardship. Unnecessary hardship exists when:

(1) The land in question cannot yield a reasonable return if used only for a purpose allowed in the zone.

(2) The plight of the owners is due to unique circumstances and not to the general conditions of the neighborhood.

(3) The use to be authorized by the variance will not alter the essential character of the locality."

Finding: It will remain a residential neighborhood, it is a unique lot due to the new development backing up to Pioneer Valley. That cannot be contemplated under all circumstances. It remains consistent with the general conditions of the neighborhood. The applicants make a fair point that it would diminish their return on their investment of the property if they are losing 17% of their backyard.

Paragraph 2 Section C. states:

"C. The spirit of the Zoning Code shall be observed even when the variance is granted."

Finding: Granting the variance will maintain the spirit of the Zoning Code.

Paragraph 2 Section C. states:

"D. Substantial justice shall be done as a result of granting the variance."

Finding: The factors previously stated in this motion weigh in favor of substantial justice being done in granting the variance.

All ayes, motion carried.

Adjournment

A motion was made by Johnson, seconded by Lamb to adjourn at 6:03 pm.

Johnson – Lam

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Danny Christoffers, Secretary Garry Clark, Chairman