

CITY1669.DSS

Chairperson Blaser called the regular Board of Adjustment meeting of October 19, 2016, to order at 5:30 p.m. in the Council Chambers of West Des Moines City Hall, located at 4200 Mills Civic Parkway, in West Des Moines, Iowa.

Roll Call: Blaser, Celsi, Christiansen, Cunningham..... Present
Pfankuch..... Absent

Item 1 – Consent Agenda

Item 1 – Minutes of July 27, 2016 and September 7, 2016

Moved by Board Member Blaser, seconded by Board Member Celsi to approve the July 27, 2016 meeting minutes.

Vote: Blaser, Celsi..... Yes
Christiansen, Cunningham..... Abstain
Pfankuch..... Absent

Motion carried.

Moved by Board Member Christiansen, seconded by Board Member Cunningham to approve the September 7, 2016 meeting minutes.

Vote: Christiansen, Cunningham..... Yes
Blaser, Celsi..... Abstain
Pfankuch..... Absent

Motion carried.

Item 2 – Old Business

There were no Old Business items reported.

Item 3 – Public Hearings

Item 3a – 920 23rd Street Fence Variance, 920 23rd Street – Approval of a 15-foot variance of the required 15 foot setback for a six (6) foot fence along the side lot line of a corner lot – Kenneth Roberts – VAR-003242-2016

Chairperson Blaser opened the public hearing and asked the Recording Secretary to state when the public hearing notice was published. The Recording Secretary stated that the notice was published on October 7, 2016 in the Community Section of the Des Moines Register.

Chairperson Blaser then asked for a motion to make and accept a part of the record all testimony and all other documents received at this public hearing.

Moved by Board Member Christiansen, seconded by Board Member Cunningham, the Board of Adjustment accepts and makes a part of the record all testimony and all other documents received at this public hearing.

Vote: Blaser, Celsi, Christiansen, Cunningham..... Yes
Pfankuch..... Absent

Motion carried.

Kenneth Roberts, 920 23rd Street, West Des Moines, stated that his proposal is to build a privacy fence along the sidewalk of his corner lot which he pointed out on a location map. Currently, Mr. Roberts has a three foot chain link fence that runs along his driveway and to the back corner. With this proposal, he would move the fence nine feet further away from his driveway to eliminate any obstruction issues from streets and help on-coming traffic have a better view. There would then be a 6 foot privacy fence installed along the sidewalk, and around the rear and far side of the property.

Board Member Christiansen asked about the privacy fence and was informed by Mr. Roberts that it would be a wood fence.

Mr. Roberts pointed out the moving the fence nine feet to the west means the fence would be further back from 23rd Street and would not obstruct the driveway as it currently does now. He continued that the code requires the fence to be located 15 feet north (*off of the side lot line*) which would significantly reduce the size of his side yard by approximately 850 square feet. He pointed out on a map, noted by a black line, where the ordinance would allow the fence. Mr. Roberts desires that the fence to be located closer to the sidewalk.

Chairperson Blaser clarified that he understood the fence would be moved back from the driveway further than the current chain link fence but the new fence would be along the sidewalk. Mr. Roberts agreed.

Chair Blaser asked for clarification when Mr. Roberts says 'all the way around', did he mean it would end at the northwest corner of the house. Mr. Roberts stated that yes it would end at the northwest corner but not be located on the other side of the house. He continued that it was important to ensure that he could keep the square footage of his backyard. He commented that he has a large Siberian Husky and that everyone wants to pet his dog. A higher fence would prohibit anyone from reaching over and petting the "cute" dog. His dog is still a puppy and he would not want anyone to mistake a playful bite for something vicious. He didn't want that kind of lawsuit or insurance company issue. A higher fence would protect everyone, as well as his dog.

At this time, Mr. Roberts distributed a Gmail message from Ryan Wiederstein, WB Realty Company, to the Board Members in support of his request. The message suggested that having a larger fenced yard is always more valuable either through marketability or appraised value on a property. Mr. Roberts felt that shrinking his backyard could potentially reduce the value and impact resale. Mr. Roberts indicated that his fence would be similar to placement of others in the neighborhood.

Chairperson Blaser stated that as a matter of procedure, he would allow this information for this purpose, but typically to be taken into consideration, information should be provided to City staff prior to the meeting.

Board Member Christiansen asked Mr. Roberts to mark on the map where his fence is currently located and where would the new privacy fence be located. Mr. Roberts pointed out these locations for the Board.

Board Member Christiansen asked approximately how far would the new six foot privacy fence be located from the existing chain link. Mr. Roberts responded that from the sidewalk to the new fence would be approximately three feet.

Mr. Roberts commented that he takes pride in his home, especially for this area and neighborhood. If there is a big space on the side of the yard, he would have to spend about \$4.50 a square foot to landscape it. Since he does not have landscaping expertise, he would have to hire a landscaper to install plantings. He commented that there are privacy fences all down his street on Crown Flair Drive and that his would be the only fence located 15 feet into the yard, which would not be consistent with the neighborhood. If he did not know about the variance, it would seem like he was too cheap or financially unable to install his fence to the sidewalk to be consistent with the neighborhood fences.

Board Member Blaser asked where on Crown Flair Drive were the non-conforming six foot fences located and how far away are they from Mr. Robert's location. Three examples were provided, one directly across the street from the Mr. Roberts property and the others down the street to the east.

Chairperson Blaser then asked for any other questions or comments for the applicant or from the audience, and upon hearing none, declared the public hearing item closed and asked for staff comment.

Planner Munford stated that as part of the code, the vision of West Des Moines was for a suburban community that enjoys green space which does not allow structures right up to the property line. When conducting research, Mr. Munford found that there were references to 100 Street in Clive where there are six foot fences right on the property lines that have made for a tunnel effect. He noted that at first, the code stated that 6 foot fences on corner lots needed to be set back as far as the main structure. In about 1994, this was changed to the 15 feet for a 6 foot fence. He made it clear that the City allows for a 4 foot fence at this location; thus, his fence could be increased from 3 feet to 4 feet without any issues.

Mr. Munford continued that allowing the 6 foot fence would look odd and not achieve the aesthetic appearance as desired by the City for the community. Also, safety would be a concern with a 6 foot fence. When a fence is closer to the property line and street, as well as being taller, the sight distance and angles for vehicles moving around the corner would be more difficult. Code addresses this issue which is called a Site Distance Triangle design which Mr. Munford provided. When coming around the corner of a piece of property, fences and other structures need to be set back to ensure safe sight distances.

Mr. Munford reiterated that Staff has aesthetic and safety concerns. When staff looked at the findings, the proposed development is consistent with the Comprehensive Plan and that the fence is allowed. Second finding, special circumstances, Mr. Roberts has almost a two foot drop in his property which is not severe and not unique for West Des Moines. For practical difficulties or hardship, Staff does not see a specific hardship in place as there are many corner single family homes throughout the community. It is reasonable to assume that a number of those citizens have larger dogs and are able to comply with code. Staff would have a difficult time saying yes to this request as Mr. Robert's property is deep enough to accommodate the fence. While staff does understand the concerns with having a large dog, landscaping could alleviate this problem with the planting of taller bushes and trees in this area which would create a visual and physical barrier. Also, this application is not creating detrimental affects to the environment. As far as the sale of a home, Mr. Munford stated that corner lots have inherently different issues and one of them is fence placement. These rules apply to everyone else that has a corner lot in the community.

In closing, staff did not see that Mr. Roberts' proposal meets the intent of the code or the vision of the community. Mr. Munford expressed that staff recommends denial of this application.

Board Member Cunningham asked about the non-conforming fences that appear to surround Mr. Roberts property. He commented that he realized that others in the area may not have gotten a permit and apparently there is no City inspection. He questioned what would be the remedy for those that erect a fence without obtaining a permit. Mr. Munford stated that this is a dilemma. Planners do not have policing power, but instead have to depend on code enforcement to enforce the code.

Board Member Christiansen commented on those who have done the "right thing" when constructing a fence. Planner Munford made it clear that City Code dealing with this issue is not unique to West Des Moines and some cities have identical language. For a suburban community, the City is not asking for too much out of the ordinary and the requirement falls within the vision for the community.

Board Member Christiansen commented that Title 2 of the variance findings states that all five conditions must be met to grant a variance. Mr. Munford provided that the language for the five conditions was established by Iowa Code.

Board Member Christiansen asked how long the actual 15 foot distance was in place and were some of the fences that are in non-conformity constructed before the 15 foot requirement.

Mr. Munford responded that during research, he found that the 15 foot requirement came into place in 1994 when a citizen came before this board and asked for a varienace from the required 30 foot setback. That gentleman was denied, and than requested that City Council change the requirement. It was at that time, that the 30 foot setback was changed to 15 feet. As far as staff knows, never has a 6 foot fence been allowed up to the property line on a corner lot unless prior to Code establishment.

Chairperson Blaser stated that based on the information he had received, if a neighbor complained about the non-conforming fence, West Des Moines code enforcement would inform those in violation that the fence would have to be removed. Also, Chairperson Blaser commented that from a safety aspect he tried to super impose the traffic triangle in terms of driveway vision clearance, and he stuggled to determine there was a safety issue. He understands that it could be a possibility, but it seems like the line of sight from the applicants driveway and the drive to the west would more than adequate even with a 6 foot fence. He did not agree with finding number 5 in the staff report.

Director Twedt interjected that per City code, the applicant would have to come back 15 feet along his drive and the sidewalk and connect with an angle. She noted that site triangle visibility was not an issue with the neighbors drive.

Moved by Board Member Cunningham, seconded by Board Member Christiansen, the Board of Adjustment adopt a resolution denying the variance request.

Vote: Blaser, Celsi, Christiansen, Cunningham Yes
Pfannkuch Absent

Motion carried.

Mr. Roberts inquired if he could request a “need to build” and ask for a nine foot fence setback. Chair Blaser stated that if Mr. Roberts was going to work outside of the code, he needed to discuss with staff. He continued that he appreciated Mr. Roberts trying to follow the rules, but if this variance was approved, it would establish precedent for other variances that do not comply with Code.

Director Twedt commented that it was mentioned to City Council that staff does receive many requests for side yard variances in these situations, and it may need to be determined if 15 feet is the right number or should a different setback be identified. Mr. Roberts indicated he cannot wait.

Item 4 – New Business

There were no New Business items reported.

Item 5a – Staff Reports

There were no Staff reports.

Item 6 – Adjournment

Chairperson Blaser asked for a motion to adjourn the meeting.

Motioned by Board Member Celsi, seconded by Board Member Christiansen, the Board of Adjustment meeting adjourns.

Vote: Blaser, Celsi, Christiansen, Cunningham Yes
Pfannkuch Absent

Motion carried.

The meeting adjourned at 6:05 p.m.

Mike Blaser, Chairperson
Board of Adjustment

Kimberly Taylor, Recording Secretary

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