

**CITY OF WEST DES MOINES  
BOARD OF ADJUSTMENT COMMUNICATION**

**Meeting Date:** September 4, 2019

**Item:** Gordon Variance, 206 5th Street – Vary the maximum allowable fence height from six feet (6') to ten feet (10') for the construction of a security fence – Betty Gordon (VAR-004456-2019)

**Requested Action:** Adopt Findings Regarding Fence Height Variance Request

**Case Advisor:** J. Bradley Munford, Planner



**Applicant's Request:** The applicant, Betty Gordon, is requesting a four-foot variance to the maximum allowable fence height for property located at 206 5th Street. The variance would increase the allowed height of the fence from the maximum six feet (6') currently allowed in the Valley Junction Historic Business (VJHB) district to up to ten feet (10'). Mrs. Gordon's property has a spiral staircase in the back that serves as an emergency exit for the second-floor apartment within the building. Staff has been informed that numerous people other than the tenant have been utilizing the staircase to get on the roof of her building as well as adjacent buildings for various reasons including unusual location to have dinner, skateboarding, mini bonfires, and general 'hanging out'. Mrs. Gordon specifically has indicated her rationale for the variance request are a break in, graffiti and vandalism, neighbor complaints about a substantial number of people going over the existing staircase gate and climbing the spiral staircase to access the roofs of her building and adjacent buildings and fear that someone may eventually fall from the roof (see Attachment D – Applicant Reason for Variance).

**History:** The property is currently the applicant's business and is zoned Valley Junction Historic Business District (VJHB). Per the County Assessor, the building was built in 1900.

**Staff Review and Comment:** Staff notes the following:

- **City Code Regulation:** 9-14-11-C.4 of City Code allows fences and walls within side and rear yards to not exceed six feet (6') in height within the Valley Junction Business District (VJHB) which the subject property is zoned. It should be noted, the same section of city code does allow up to eight foot (8') fences in the Residential Estate (RE) district when design to maintain 50% openness (e.g. wrought iron); fences and walls up to eight feet (8') in height in the Industrial districts; and fences and screen walls up to twelve feet (12') in height in the Warehouse Retail district.
- **Procedural Note:** Under Code, variances applications are only to consider the particular bulk area standard being requested (in this case, fence height). The aesthetics of the fence such as material and construction methods are not under review at this time. Prior to installation of any fence, including if the height variance is approved, a separate Level 1 Minor Modification to review the design and materials of the fence will need to be submitted and approved by Staff and a Fence Permit will need to be obtained from the Building Division prior to construction. Staff recommends the following condition of approval expressing these requirements:

Applicant acknowledging and agreeing that any approval from the Board of Adjustment only pertains to allowance related to the maximum height of the fence. A separate Level 1 Minor Modification Permit application to review the design and materials of the fence will need to be

submitted and approved by Planning Staff prior to construction. Additionally, a Fence Permit will need to be obtained from the Building Division prior to construction.

**Noticing Information:** On August 26, 2019, a notice of the September 4, 2019, Board of Adjustment public hearing was published in the *Des Moines Register*. Notice of this public hearing was mailed to all surrounding property owners within 370 feet of the subject property on August 21, 2019.

**Property Owner and Applicant:** Betty Gordon  
3769 NW 90<sup>th</sup> Place  
Polk City, IA 50226

**Attachments:**

- Attachment A - Board of Adjustment Resolutions (Approval and Denial)
- Exhibit A - Conditions of Approval
- Attachment B - Location Map
- Attachment C - Pictures of Property
- Attachment D - Applicant Reason for Variance
- Attachment E - Findings from Staff
- Attachment F - Letter of Support from Neighbor

Prepared by: J.B. Munford West Des Moines Development Services PO Box 65320 West Des Moines IA 50265-0320 515-222-3630  
When Recorded, Return to: City Clerk, City of West Des Moines PO Box 65320 West Des Moines IA 50265-0320

**RESOLUTION BOA-2019-13**

**A RESOLUTION OF THE BOARD OF ADJUSTMENT OF THE CITY OF WEST DES MOINES, (APPROVING OR DENYING) \_\_\_\_\_ THE VARIANCE REQUEST (VAR-004456-2019) OF A FOUR FOOT VARIANCE TO THE MAXIMUM SIX FOOT FENCE HEIGHT RESTRICTION FOR PROPERTY LOCATED AT 206 5TH STREET FOR PURPOSES OF BUILDING A SECURITY FENCE.**

**WHEREAS**, pursuant to the provisions of Title 9, Chapter 1 et seq, of the West Des Moines Municipal Code, the applicant, Betty Gordon, has requested approval of a variance from Title 9, Zoning, Chapter 14 (Accessory Structures), Section 11 (Fences and Walls), Subsection C4. The variance request is to allow up to an additional four feet (4') of fence height above the maximum allowed six foot (6') height for the zoning district resulting in up to a ten foot (10') tall fence for security purposes on property located at 206 5th Street and legally described as:

Legal Description of Property

ALL OF LOT 8, BLOCK 10, VALLEY JUNCTION. EXCEPT THE WEST 8 FEET AND THE NORTH 22 FEET THERE OF, NOW IN AND FORMING A PART OF THE CITY OF WEST DES MOINES, POLK. COUNTY, IOWA

**WHEREAS**, studies and investigations were made, and staff reports and recommendations were submitted which is made a part of this record and herein incorporated by reference;

**WHEREAS**, on September 4, 2019, the Board of Adjustment held a duly-noticed public hearing to consider the application for a variance (VAR-004456-2019);

**WHEREAS**, based upon a review of the submitted variance request, the Board of Adjustment finds **(In Favor of Applicant's Findings, In Favor of Staff Findings, or in Favor of the Board's Findings)** \_\_\_\_\_ as attached at Exhibit E;

**NOW, THEREFORE**, THE BOARD OF ADJUSTMENT OF THE CITY OF WEST DES MOINES DOES RESOLVE AS FOLLOWS:

**SECTION 1.** A Variance Request (VAR-004456-2019), for up to an additional four feet (4') of fence height above the maximum six feet (6') fence height allowed for the zoning district for property locally known at 206 5th Street to allow the construction of up to a ten foot (10') tall a security fence is \_\_\_\_\_ **(approved or denied).**

**PASSED AND ADOPTED** on September 4, 2019

\_\_\_\_\_  
Angie Pfannkuch, Chair

ATTEST:

\_\_\_\_\_  
Recording Secretary

I HEREBY CERTIFY that the foregoing resolution was duly adopted by the Board of Adjustment for the City of West Des Moines, Iowa, at a regular meeting held on September 4, 2019, by the following vote:

AYES:

NAYS:

ABSTAIN:

ABSENT:

ATTEST:

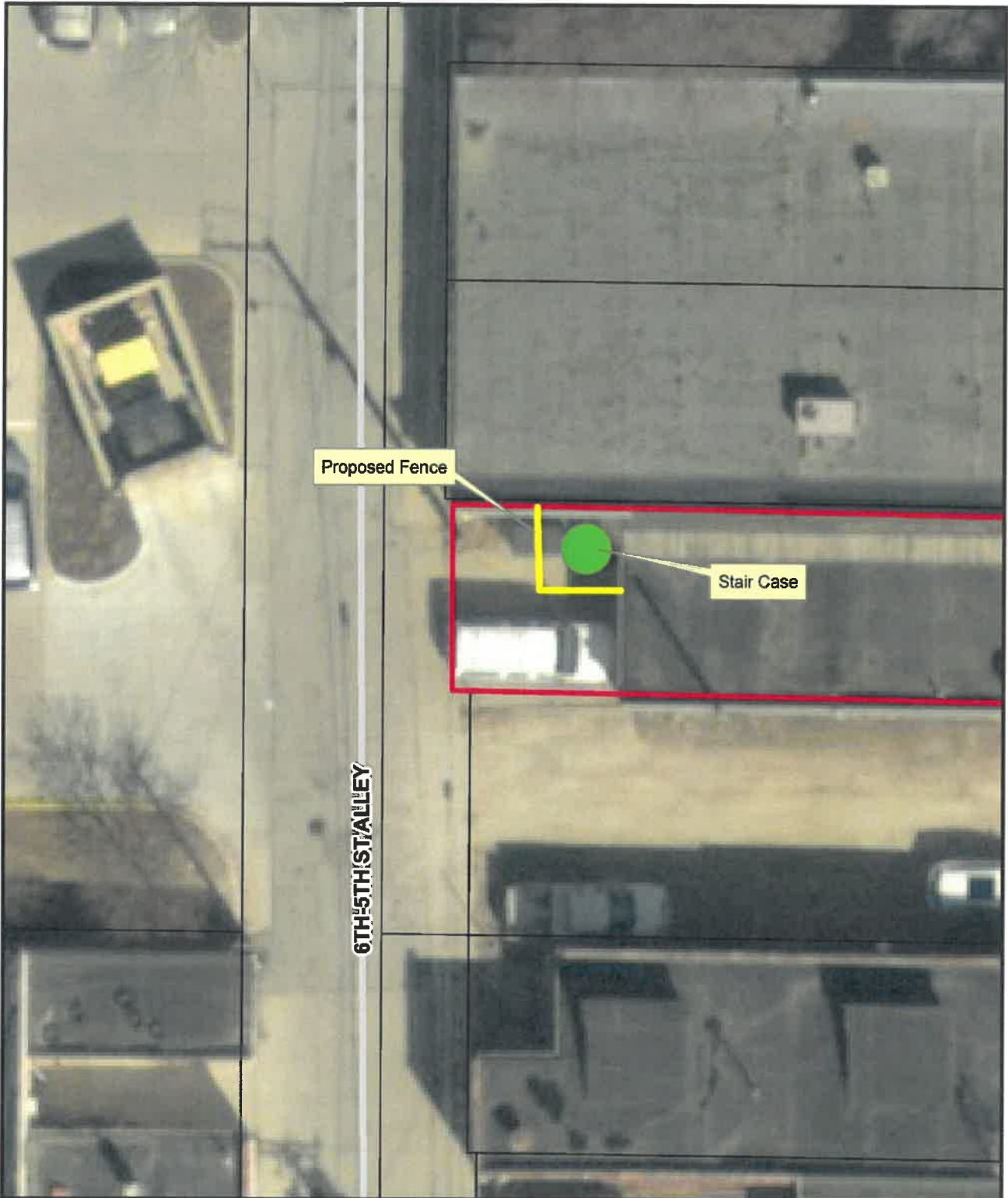
\_\_\_\_\_  
Recording Secretary

**Exhibit A**  
**Conditions of Approval**

**EXHIBIT A**

1. Applicant acknowledging and agreeing that any approval from the Board of Adjustment only pertains to allowance related to the maximum height of the fence. A separate Level 1 Minor Modification Permit application to review the design and materials of the fence will need to be submitted and approved by Planning Staff prior to construction. Additionally, a Fence Permit will need to be obtained from the Building Division prior to construction.





Proposed Fence

Stair Case

6TH-5TH ST ALLEY

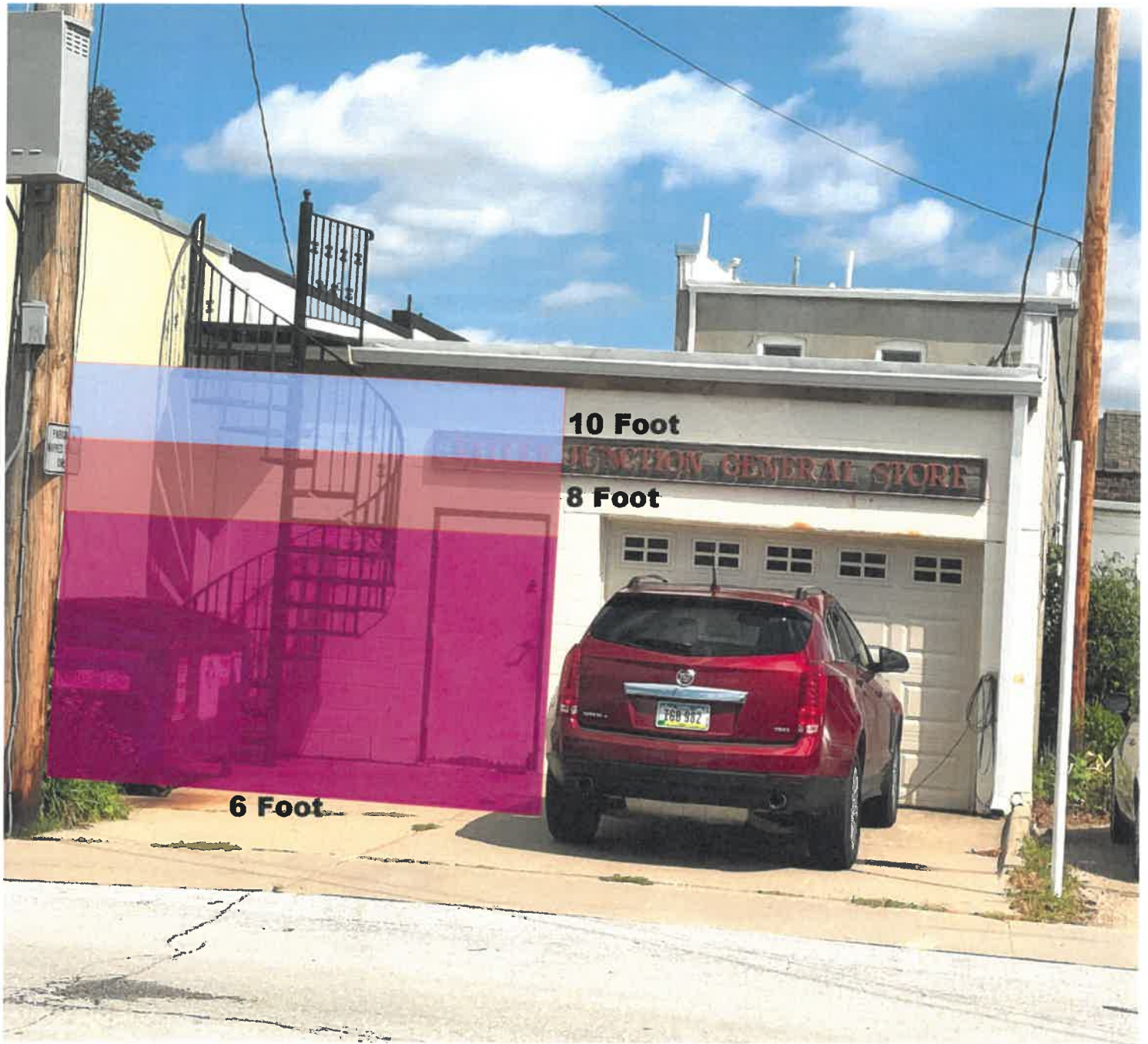
206 5th Street











## ATTACHMENT D

### APPLICANT REASON FOR VARIANCE

with the regulations of the Zoning Ordinance: I would like to have a variance for a 10' fence to surround my circular staircase because people of all ages are climbing over the existing gate to gain access to my roof & my 3 neighbors roofs. I have had numerous complaints from neighbors of children as young as 6-7 skateboarding on over new roofs. I have repeatedly had to repaint walls that have been painted with graffiti. I have also had 1 break in upstairs with the access being the circular stairway. Also concerned that someone will fall off of the roof. There are no trespassing signs & have called the police on several occasions. I believe it would be fairly easy to climb over a 6' fence & a 10' fence will work to stop the problems.

# ATTACHMENT E

## CITY OF WEST DES MOINES STAFF VARIANCE APPLICATION FINDINGS

1. That the proposed development or use is consistent with the West Des Moines comprehensive plan and any applicable sub-area plan.

*The use of commercial and a second-floor apartment is consistent with the West Des Moines Comprehensive Plan and Valley Junction Historic Business designation on the Comprehensive Plan Land Use Map.*

2. That there are special circumstances or exceptional characteristics applicable to the subject property with regard to size, shape, topography or location, which do not apply generally to comparable properties in the same vicinity and zones.

*The subject property is located in the Valley Junction Historic Business district. The building on the subject property dates back to the 1900's and likely was originally established as work-live with the business owner living above the business. Exterior staircase access to the second floor would have been typical of the development period and this zoning district but is not typically done today in mixed use development. This building's spiral staircase is intended only as a fire escape for the 2<sup>nd</sup> floor apartment located within this building. The staircase is however being used by various individuals to access the roof of this building and neighboring buildings for reasons unassociated with the apartment. Many of the activities occurring on the roofs are undesirable and cause safety and security concerns.*

*While characteristic of the time period the structure was built, Staff cannot definitively say there are special circumstances or exceptional characteristics with this property to justify a variance from code. On one hand, it is a Fire Code requirement to have a fire escape for the second-floor apartment within the building which is allowed per city code. On the other hand, that escape does not have to be a spiral staircase that is arguably more attractive and accessible to trespassers. Even though the staircase is located at the back of the building in an area that does not have high pedestrian activity or visibility; it is assumed that there are buildings throughout our community with similar limited visibility or activity levels that have valuable assets and attractive nuisances that have been able to keep trespassers out with a fence compliant with city code. It is a matter of opinion whether a six foot fence would be enough to deter trespassers or if taller is needed to ensure trespassers can't gain access.*

3. That the strict application of the zoning regulations as they apply to the subject property will result in practical difficulties or unnecessary hardships inconsistent with the general purpose of such regulations provided that such hardships shall not be self-imposed by the applicant or his or her successor in interest.

*City Code restricts the height of fences to six feet (6') in all zoning districts except Residential Estate and Industrial which allows up to eight feet (8') and the Warehouse Retail district which allows up to a 12' fence. It is believed the Residential Estate district allows for a taller fence to accommodate animals such as horses that may be allowed and the Industrial and Warehouse Retail districts allow for taller fences for purposes of security and visual screening of materials being stored outside.*

*The premise of fences is traditionally to define the boundaries of one's property and/or enclose an area for privacy and security. The applicant's request to fence just the staircase to deter unauthorized access in many ways is an atypical application for a fence that may warrant a taller structure to achieve the intended prevention of trespassing. City Code does not grant staff authority to allow a fence taller than City Code allows, which is six feet in this zoning district.*

*Upon evaluation of the request, the existing site condition and comparison to similarly situated properties, it is unclear if the strict application of the zoning ordinance results in*

*practical difficulties or unnecessary hardship or that the hardship could be considered self-imposed by the applicant. Given that it is trespassing that is causing the issues, Staff believes that it could be argued that the need for a fence is not a self-imposed hardship. However, it is the applicant's opinion that a six-foot fence would not work when to date no fence of any height has been tried, raising questions whether or not the variance is necessary. The applicant's opinion, although logical in that taller would deter more, is not based on any tangible evidence. With that said, it could be argued that if a six-foot fence is constructed and it does prove to not be sufficient in height to prevent trespassing, there would be a resulting financial hardship in reconstructing a fence at a taller height.*

4. That there have been no changes in the character of the site or its surroundings which detrimentally affect the environment.

*While there have not been any changes to the character of the site or surroundings which detrimentally affect the environment, it could be argued that the accessing of the roof of this and adjoining buildings could be detrimental to the building structures themselves.*

5. That the granting of such variance does not, under the circumstances and conditions applied in the particular case, adversely affect the health or safety of persons, is not materially detrimental to the public welfare, nor injurious to nearby property or improvements.

*Staff believes that the granting of a variance to allow a taller fence in this limited area to deter trespassers would not have a negative impact on the property and/or surrounding area, but rather would seem to provide more safety and protection for both the trespassers themselves, as well as protect the structures from further damage.*

City of West Des Moines  
Development Services  
Building Division

Attention: J. Bradley Munford  
Planner

Subject:

206 5th. Street \_ Valley Junction General Store  
Circular staircase fire escape, rear of building.

There has been a recurring problem with young people using the circular fire escape to gain access to the rooftops of 206 -208- and 210 5th street. They have for several years been going up and skateboarding, smoking cigarets and marijauna, as well as breaking the lightbulbs in the Christmas light display. They have also started a fire on the rooftop.

As current conditions are, access to the fire escape presents an attractive nuisance, which makes the owners of said buildings liable, should someone get injured.

To remedy this problem, the owner of the General Store has agreed to enclose the circular stairway with an 8' - 10' metal structure, including a steel door with the required panic bar for fire safety.

It is understood that the city height restriction is 6'. We are asking for a variance allowing the owner to construct the 8' - 10' enclosure needed to remedy this issue.

Thank you

Tom Jordison  
Cedar Hill Land & Cattle Co.  
Owner of 208 & 210 5th street  
Valley Junction, West Des Moines, Iowa