

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

Meeting Date: October 19, 2016

Item: 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

Requested Action: Denial of a Variance

Case Advisor: J. Bradley Munford 

Applicant's Request: The applicant, Kenneth Roberts, requests a 15 foot variance of the required 15 foot setback for a six (6) foot fence along the side yard of a corner lot located at 920 23rd Street. Title 9, *Zoning*, Chapter 14, *Accessory Structures*, Section 11, *Fences and Walls*, Subsection D-2 provides that for 6 foot tall fences along the side yard of a corner lot, the fence shall be setback a minimum of 15 feet from the ultimate right-of-way. The applicant is requesting the variance so that he can build a fence to contain his dog (see Attachment C: Letter from Applicant).

History: The property is platted as the South 9 feet of Lot 8 and all of Lot 9 Corrected Fairmeadows Plat 18. According to the Polk County Assessor's website, the home was built in 1965.

Staff Review and Comment on the Variance Request: This request was distributed to other City departments and other agencies for their review and comment.

Intent of the City Code: The intent of the requirement for corner lots is to provide for the two front yards on the street to be the same or similar as the front yards on the adjacent properties. This requirements ensures a consistency throughout the district and provides corner lots an opportunity to orient the house toward either street when constructed. Some deference in given to the frontage that after construction acts as a side yard rather a front yard, by allowing the construction of fences greater than 4 feet in height to be setback 15 feet instead of the more typical 30 or 35 feet required front yard setback. The Code provides that 4 foot high fences can be located within the front yard setback at the property line; this would apply to corner lots on each side facing the street as the yards are considered front yards. The 4 foot height is to allow for a fence, but to maintain sight distances, an open yard, and be visually appealing. While the 4 foot fence is allowed at the property line, Code does also require that vision triangles be maintained at street intersections, as well as driveway intersections (see attachment D: Vision Triangles Illustration).

Comparable Properties: There are corner properties in the city which have not followed the requirements of the zoning code. Many illegal fences are constructed on weekends and/or otherwise without obtaining a fence permit. Even if the City processes a fence permit which shows proper height and setbacks, because there is no occupancy permit tied to the improvement, the City does not inspect the fence upon construction to document the fence was constructed according to code. City staff does not encourage property owners to ignore the requirements and advises owners of the requirements for setbacks with the permit and with requests for information.

Noticing Information: On October 7, 2016, notice of the October 19, 2016, 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 October 3, 2016.

Variance Findings. Title II of the City Codes discusses the variance procedure. All five (5) of the following conditions must be met in order to grant a variance. Based upon a review of the submitted variance request, staff has made the following findings on the proposed project:

1. That the proposed development or use is consistent with the West Des Moines comprehensive plan and any applicable subarea plan. *The Comprehensive Plan Land Use Map designates the land use of this property*

of Single Family Residential; the property is zoned consistent with the Comprehensive Plan. Fences are an allowed use in the residential zoning district.

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. *While there is a sight drop-off of the property towards the street, it is not severe and not unusual for parcels to have some topography. There appears to be no special circumstance with regard to the size, shape, topography, or location of this property which differentiates it from other comparable properties.*
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. *The strict application of the regulations does not appear to present practical difficulties or unnecessary hardship for this property. The yard which the variance would apply is greater in depth to the principal structure than 15 feet, thus the fence could be accommodated at the required setback. If the applicant does not wish to lose yard, the applicant could place a row of taller shrubs on the interior side along the existing chain-link fence (or new 4' fence) that would prevent both the dog jumping over and individuals reaching over the fence.*
4. That there have been no changes in the character of the site or its surroundings which detrimentally affect the environment. *There are no changes proposed that detrimentally affect the site, its surroundings or the environment.*
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. *The granting of the variance appears to present a safety issue with regard to sight distances and the visual triangle. Placing a 6 foot high fence at the property line appears to impede the sight distance for both the property owner and the neighbor to the west when backing vehicles out of the driveway. According the same code Chapter, a vision triangle is required to be maintained that is 15 feet along the property lines forming a triangle where vision is not impeded by the structure.*

Staff Recommendations and Conditions of Approval for the Variances: Although consistent with the Single Family Residential land use designation of the Comprehensive Plan, due to the findings stated above, staff recommends the Board of Adjustment adopt a resolution denying the variance request.

Property Owner and Applicant: Kenneth Roberts
920 23rd Street
West Des Moines, Iowa 50265
Ken.Roberts20@gmail.com

Attachments:

Attachment A	-	Resolution of Denial of Variance Request
Attachment B	-	Location Map
Attachment C	-	Letter from applicant
Attachment D	-	Vision Triangle Illustration
Attachment E	-	Pictures of property

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

A RESOLUTION OF THE BOARD OF ADJUSTMENT OF THE CITY OF WEST DES MOINES, DENYING THE VARIANCE REQUEST (VAR-003242-2016) FOR A 15 FOOT VARIANCE OF THE REQUIRED 15 FOOT SETBACK FOR A SIX (6) FOOT FENCE.

WHEREAS, pursuant to the provisions of Title 9, Chapter 1 et seq. of the West Des Moines Municipal Code, the applicant, Kenneth Roberts, has requested approval of a variance from Title 9, *Zoning*, Chapter 14, *Accessory Structures*, Section 11, *Fences and Walls*, Subsection D, Number 2, to vary the fifteen foot setback by fifteen feet to allow a six foot fence along the side yard of the corner lot located at 920 23rd Street, and which is legally described as:

Legal Description of Property

THE SOUTH 9 FEET OF LOT 8 AND ALL OF LOT 9 CORRECTED
FAIRMEADOWS PLAT 18, A SUBDIVISION LOCATED WITHIN 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 October 19, 2016, the Board of Adjustment held a duly-noticed public hearing to consider the application for a variance (VAR-003242-2016);

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

SECTION 1. The findings for denial of the variance request as stated in the staff report dated October 19, 2016, are adopted.

SECTION 2. The Variance Request (VAR-003242-2016), for a fifteen foot (15) variance from the required fifteen foot (15') side yard fence setback requirement on corner lots to permit the construction of a six (6) foot fence at 920 23rd Street is **denied**.

PASSED AND ADOPTED on October 19, 2016

Michel R. Blaser, Chairperson
Board of Adjustment

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 October 19, 2016, by the following vote:

AYES:
NAYS:
ABSTAIN:
ABSENT:

ATTEST:

Recording Secretary



920 23rd Street - Location Map



1:480



Disclaimer: The City of West Des Moines makes no warranties regarding the accuracy or completeness of the data provided herein.

NAD_1983_StatePlane_Iowa_South_FIPS_1402_Feet
© City of West Des Moines, Iowa

THIS MAP IS NOT TO BE USED FOR NAVIGATION

September 29, 2016

To the Board of Adjustments
City of West Des Moines, Iowa

My name is Kenneth Roberts, and I'm a current resident of West Des Moines at 920 23rd street and I have been a resident of West Des Moines since 2012. The project in question is a 6-foot privacy fence I would like to install in the backyard of my property. I have a large dog and would like to make it secure to mutually benefit my dog and the neighborhood. As an important note, my dog is the furthest thing from aggressive, however it would keep pedestrian's from reaching over my current fence and trying to pet him. My current fence height is 3-feet chain-link, which I have found to be insufficient for my dog, thus the need for an upgrade for my property and as well as visually for the neighborhood.

The current zoning requirements state the setback from the side walk be 15 feet, however, in my current neighborhood and size of property I feel this requirement isn't consistent with other properties directly around my house and within a 10 block radius. Most importantly, by having to shrink my yard considerable, I would lose approximately 1,000+ square feet of enclosed backyard. This would result in an inconsistent look with surrounding residences, and loss of area within my backyard will negatively affect my property value and resale ability. Not only that, but I would have to spend additional monies in order to landscape the newly created side yard to be visually appealing, and not become a blemish within the community.

My plan indicates that not only does my fence have a current considerable setback from 23rd street but I also plan to increase the distance from 23rd street to my fence with the intention of enhancing visibility. The privacy fence would be a total distance of approximately 82 feet from 23rd street.

Thank you for your time and consideration and I look forward to addressing the board in person to discuss my appeal.

Sincerely,



Kenneth Roberts
West Des Moines Resident



