

## CITY OF WEST DES MOINES STAFF REPORT COMMUNICATION

**Meeting Date:** June 21, 2023

**ITEM:** Wihlm Residence, 4105 Vividell Circle - Variance of 15' setback requirement to accommodate the construction of a six (6) foot privacy fence – Jolli Wihlm – VAR-006080-2023

**REQUESTED ACTION:** Variance of the Required 15' Setback

**Applicant's Request:** The applicant and property owner, Jolli Wihlm, is requesting a Variance to reduce the required setback from along Woodland Ave from 15 feet to zero feet to accommodate the construction of a six (6) feet tall privacy fence on the property line. The applicant is requesting the variance to stop people from cutting through her back yard, contain pets, as a noise barrier from Woodland Avenue and I-235, and to screen the view from the apartments across the street to her property.

**History:** The property was platted as Lot 13 Maplenol Plat 6 in 1972. According to the Polk County Assessor records the house was constructed in 1974. With the records the City holds, there have been no permits or plans for the property until the recently submitted fence permit.

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

- City Code Requirement as Relates to Request: City Code, Title 9, Zoning, Chapter 14, Accessory Structures, Section 11, Fences, Paragraph B-4-a-4-B provides that on double frontage lots (where a lot has front and rear yards adjacent to public streets), a six (6) feet tall fence is allowed so long as it is setback 15 feet from the ultimate road right-of-way line/property line; a four (4) feet tall fence is allowed at the property line.

The applicant is requesting a variance from this code requirement to allow a six (6) foot tall fence at the property line in the rear yard adjacent to a public street (Woodland Ave). As noted above, the applicant has indicated the following reasons for the desired 6' fence:

- Deter individuals from cutting through her back yard
  - Contain pets
  - Serve as a noise barrier to traffic and activity on immediately adjacent Woodland Ave and nearby I-235 (approx. 1,000' north)
  - Screen her property from apartments on north side of Woodland Ave
- Variance vs Zoning Exception: In the fall of 2020, city code was amended to provide an alternative to the variance process (AO-004860-2020). This amendment created the Zoning Exception process specifically for existing residential properties wanting to make improvements. A variance is similar to a zoning exception in that it is a relaxation of the applicable zoning requirement; however, a variance requires the applicant show there is an "unnecessary hardship," while an applicant must only show there is a "practical difficulty" for a zoning exception request. Specifically defined allowable Zoning Exceptions only apply to existing single-family zoned and developed properties. Relief from zoning regulations for undeveloped single-family lots, as well as requests associated with non-single-family zoned parcels must be considered as a variance. Neither a variance nor a zoning exception is permission to circumvent zoning regulations just because a resident

wants an improvement: the necessary findings applicable to each request (variance or zoning exception) must be made in granting the request.

This request is for a variance since the property owner is desiring to reduce the setback the full 15' required. A Zoning Exception would be an option in this situation. City Code Title 9, Zoning, Chapter 2, Definitions defines "Accessory Structure" as "An independent free-standing structure that does not meet the definition of a building and which meets or exceeds the minimum separation distance from the principal building for the zoning district as noted in chapter 7 of this title. Detached accessory structures include but are not limited to enclosures for mechanical equipment and trash receptacles, **fences**, pools, and gazebos." Chapter 14, Accessory Structures, Section 11, Fences, Subsection B, Height and Setback Requirements provides that for purposes of determining fence height and setback requirements, the rear yard shall be considered to be that lot boundary generally parallel to the rear plane of the structure. These two code provisions would allow the Zoning Exception option of "a reduction of no more than fifty percent (50%) of City Code required side and rear yard setbacks for accessory structures" to be considered. The code required setback from the roadway along the rear lot line of a double frontage lot is 15', thus a 50% reduction would allow the fence to be setback 7 ½ 'from Woodland Ave. If the requested variance is not approved and the applicant wishes to pursue a Zoning Exception, it would need to be considered by the Board of Adjustment at a separate meeting so that proper public hearing noticing can be completed.

**City Council Subcommittee:** This item was presented to the Development and Planning City Council Subcommittee as an upcoming project only. There was no discussion on the request as the City Council does not have authority over variance or zoning exception requests.

**Variance Findings:** To grant the variance, all of the following findings must be made, or conditions and limitations, as the Board deems necessary, imposed to allow it to make said findings.

1. That the granting of the variance shall not be contrary to the public interest.
2. That without the granting of the variance, and due to special conditions, a strict application of the zoning regulations as they apply to the subject property will result in an unnecessary hardship. An "unnecessary hardship" exists when:
  - a. The subject property cannot yield a reasonable return from any use or improvement permitted by the subject zoning regulations. Failure to yield a reasonable return may only be shown by proof that the owner has been deprived of all beneficial or productive use of the subject property. It is not sufficient to merely show that the value of the land has been depreciated by the regulations or that a zoning variance would permit the owner to increase the value in the subject property;
  - b. The plight of the owner is due to unique circumstances not of the owner's making and not due to the general conditions in the neighborhood; and
  - c. The use or construction to be authorized by the variance will not alter the essential character of the neighborhood.
3. That the spirit of the ordinance shall be observed when the variance is granted; and
4. Substantial justice shall be done as a result of granting the variance.

It is the responsibility of the applicant to prove to the satisfaction of the Board that the above findings can be made. The applicant's findings to grant the variance and staff's findings, are included herein for the Board's consideration in making their decision.

**Lead Staff Member: Kara Tragesser**

**Staff Report Reviews:**

<input checked="" type="checkbox"/> Development Coordinator or Director	<input checked="" type="checkbox"/> Legal Department
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**Publications (if applicable)**

Published In:	Des Moines Register
Date(s) Published	June 9, 2023
Date(s) of Mailed Notices	June 7, 2023

**Subject Property**



## Applicant's Findings

A variance shall only be granted if all of the following findings are made; or if conditions and limitations, as the Board deems necessary, are imposed to allow it to make said findings. **It shall be the responsibility of the applicant to prove to the satisfaction of the Board that the following findings can be made:**

1. That the granting of the variance shall not be contrary to the public interest:  
**APPLICANT RESPONSE:** *My property is in the middle of the block so there would be no obstruction to traffic at the intersection of Vividell Lane and Woodland Avenue.*
  
2. That without the granting of the variance, and due to special conditions, a strict application of the zoning regulations as they apply to the subject property will result in an unnecessary hardship. An "unnecessary hardship" exists when:
  - a. The subject property cannot yield a reasonable return from any use or improvement permitted by the subject zoning regulations. Failure to yield a reasonable return may only be shown by proof that the owner has been deprived of all beneficial or productive use of the subject property. It is not sufficient to merely show that the value of the land has been depreciated by the regulations or that a zoning variance would permit the owner to increase the value in the subject property; and
  - b. The plight of the owner is due to unique circumstances not of the owner's making and not due to the general conditions in the neighborhood; and
  - c. The use or construction to be authorized by the variance will not alter the essential character of the neighborhood.**APPLICANT RESPONSE:** *Multiple houses on the same street have 6-foot fencing near the sidewalk and for aesthetic purposes extend that continuity into my property. A good portion of my back yard (roughly 166 x 15 ft) would become unusable space. Fifty percent of my windows/doors are on the backside of my house allowing numerous tenants of the apartment complex across the street and people on the highly traveled sidewalk direct view into my house.*
  
3. That the spirit of the ordinance shall be observed when the variance is granted; and  
**APPLICANT RESPONSE:** *The privacy fence would be erected with the good side facing outward, no sight obstructions and boundaries clearly defined.*
  
4. Substantial justice shall be done as a result of the granting of the variance.  
**APPLICANT RESPONSE:** *The fence will provide security, containment, increate privacy, and offer protection from noise and other elements.*

## Staff's Findings

A variance shall only be granted if all of the following findings are made; or if conditions and limitations, as the Board deems necessary, are imposed to allow it to make said findings. **It shall be the responsibility of the applicant to prove to the satisfaction of the Board that the following findings can be made:**

1. That the granting of the variance shall not be contrary to the public interest:  
**STAFF'S RESPONSE:** *Staff finds that the granting of the variance would not be in the public interest. The ordinance was put into place to avoid a "tunnel" effect when driving or walking down the street. Staff realizes that there are no fences on the north side of the street due to the zoning and use of those properties to complete the 'tunnel' effect, however, on a street lined with residences whose rear yards abut a street on both sides, the precedent setting grant of the variance would create the "tunnel" effect that the City does not want to encourage for aesthetic purposes.*
  
2. That without the granting of the variance, and due to special conditions, a strict application of the zoning regulations as they apply to the subject property will result in an unnecessary hardship. An "unnecessary hardship" exists when:
  - a. The subject property cannot yield a reasonable return from any use or improvement permitted by the subject zoning regulations. Failure to yield a reasonable return may only be shown by proof that the owner has been deprived of all beneficial or productive use of the subject property. It is not sufficient to merely show that the value of the land has been depreciated by the regulations or that a zoning variance would permit the owner to increase the value in the subject property; and
  - b. The plight of the owner is due to unique circumstances not of the owner's making and not due to the general conditions in the neighborhood; and
  - c. The use or construction to be authorized by the variance will not alter the essential character of the neighborhood.

**STAFF'S RESPONSE:** *Staff finds that an unnecessary hardship for this property does not exist. There are other options for addressing pet containment, such as an allowed four feet tall fence, and the cut through of people crossing the property through the use of a four feet fence and dense landscaping or, for example, a four feet tall fence with evergreen landscaping such as 6ft tall evergreen trees may prevent viewing of the back yard and house similar to a six-foot fence.*

3. That the spirit of the ordinance shall be observed when the variance is granted; and  
**STAFF'S RESPONSE:** *The spirit of the ordinance will be compromised with the granting of the variance. As well as the finding in Item #1 about the tunnel effect, the ordinance is intended to provide an aesthetic of openness along our roadway corridors with green landscape space provided, vegetation provided and a sense of security when walking on a sidewalk where the pedestrian can see potential obstacles.*
  
4. Substantial justice shall be done as a result of the granting of the variance.  
**STAFF'S RESPONSE:** *This specific property would gain justice if the variance was granted in that approximately ½ of the rear yard would not be divided and the applicant would enjoy similar benefit as the other properties along Woodland Avenue that already have fences at the property line.*

Prepared by: Kara Tragesser, City of West Des Moines Development Services Dept., PO Box 65320,  
West Des Moines, Iowa 50265-0320 515-222-3620  
When Recorded, Return to: City Clerk, City of West Des Moines, PO Box 65320, West Des Moines, IA 50265-0320

**RESOLUTION BOA-2023-11**

**A RESOLUTION OF THE BOARD OF ADJUSTMENT OF THE CITY OF WEST DES MOINES,  
(APPROVING / DENYING) THE VARIANCE REQUEST FOR A 15 FEET REDUCTION  
IN SETBACK FOR A FENCE ALONG THE REAR PROPERTY LINE OF  
PROPERTY LOCATED AT 4105 VIVIDELL CIRCLE**

**WHEREAS**, pursuant to the provisions of Title 9, Chapter 1 et seq, of the West Des Moines Municipal Code, the property owner, Jolli Wihlm, has requested approval of a Variance from Title 9, Zoning, Chapter 14 (*Accessory Structures*), Section 11 (*Fences*), Subsection Paragraph B-4-a-4-B of the required 15 feet setback resulting in a zero setback for the installation of a six foot (6') tall fence on the rear property line of a double frontage lot on the property located at 4105 Vividell Circle and legally described as:

**LOT 13, MAPLENOL PLAT 6, AN OFFICIAL PLAT NOW WITHIN 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; and

**WHEREAS**, on June 21, 2023, the Board of Adjustment held a duly noticed public hearing to consider the application for a Variance (VAR-006080-2023).

**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 B;

**NOW, THEREFORE**, the Board of Adjustment of the City of West Des Moines does resolve that a Variance Request to allow a variance of 15 feet of the required 15 feet setback resulting in a zero setback is (**approved / denied**).

**PASSED AND ADOPTED** on June 21, 2023.

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Angie Pfannkuch, Chair

ATTEST:

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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 June 21, 2023, by the following vote:

AYES:

NAYS:

ABSTAIN:

ABSENT:

ATTEST:

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Recording Secretary

**Exhibit A**  
Conditions of Approval

1.

**Exhibit B**  
Board of Adjustment Findings