

## REGULAR BOARD OF ADJUSTMENT MEETING 12-17-2018

### Call to order

The Regular Meeting of the Norwalk Board of Adjustment was held Tuesday, December 17, 2018 at Norwalk City Hall, 705 North Avenue, Norwalk, Iowa. Chairperson Christin Grant called the meeting to order at 6:00 pm. Members present at roll call were: Dennis Cassady, Rachel Parker and Chad Stevens. Absent: Brent Hinders

City Staff present were Elliot Klimowski, City Planner and Hillarie Ramthun, Community Development Coordinator.

### Approval of Agenda – 18-11

Motion by Cassady and seconded by Parker to approve the agenda. Approved 4-0.

### Approval of Minutes – 18-12

Motion by Stevens and seconded by Parker to amend the Minutes from the August 28, 2018 meeting. Amendment will be made to make the denial more clear. Approved 4-0.

### Welcome of Guests

Chairperson Grant welcomed the 2 guests present, with no guests wishing to speak; the business portion of the meeting was opened.

### Public Hearing on a variance request from Robert Condon to allow for the construction of a 6' privacy fence within the required setback for his house at 2620 Avery Drive—18-13

*Public Hearing opened at 6:02 p.m.*

City Staff received a zoning variance application on November 21, 2018 requesting the allowance of the construction of a 6' privacy fence at 2620 Avery Drive. According to the Zoning Ordinance and the fact that the property is a corner lot, the setback requirements are different and the fence would need to be set 15' from the right-of-way. The applicant has a shed on the lot that has been placed in an area that meets all requirements, but because of its placement on the property, the setback requirement for the fence would cause the fence to go through the middle of the shed in order to meet the City's requirements. This is the reason for the applicants request for a zoning variance.

City staff sent out notifications to neighboring landowners regarding the Public Hearing and it was also published in the Des Moines Register. The zoning of the property is R-1 (60) Single-Family Residential, and the applicable Zoning Code for this is:

Zoning Ordinance 17.40.280 "Fences, Walls, and Vision Clearance"

#### A. General Regulations

5. Corner Lots and Double Frontage Lots: On corner lots and double frontage lots, fences and walls not more than six feet (6') in height may be placed in a required front yard abutting a street where all of the following are met:
  - a. The required front yard abutting the street is used as a side yard and not as a front yard.
  - b. The fence or wall maintains the minimum setback from the ultimate right-of-way of fifteen feet (15').
  - c. The vision clearance area is maintained.
  - d. All other requirements of this title are met.
  - e. No fence or wall is permitted within a required buffer unless specifically approved by the City Council through the site plan or subdivision plat process.

Zoning Ordinance 17.04.190 (D): Powers and Duties The Board shall have the following powers and duties:

2. To grant a variation from the terms of this ordinance when a property owner can show that their property by reason of exceptional narrowness, shallowness, or shape of a specific piece of property, or where by reason of exceptional topographical conditions or other extraordinary or exceptional site conditions, the strict application of the terms of this ordinance actually prohibits the use of their property in a manner reasonably similar to that of other property in the same district, and where the Board is satisfied under the evidence before it that a literal enforcement of the provisions of this ordinance would result in unnecessary hardship; provided, however, that all variations granted under this section shall be harmony with the general purpose and intent of this ordinance.

In granting any variance, the Board may prescribe appropriate conditions and safeguards in conformity with this ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted shall be deemed a violation of this ordinance.

Under no circumstances shall the Board grant a variance to allow a use not permissible under the terms of this ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this ordinance in said district.

When the Board reviews the variance request, points to consider would be:

1. Does the requirement to set the fence back 15' from the right-of-way create an unnecessary hardship?
2. Would the approval of zoning variance have a negative impact on surrounding property owners?
3. Are there unique conditions on the site that require the granting of the zoning variance in order to install a privacy fence on the property?

Staff opinion on the points of emphasis to consider would be:

1. The applicant has the ability to construct a 6' privacy fence and clear the 15' setback as outlined but would not be able to encompass the shed that was permitted on the property prior to application of the fence permit. Since the ability is there, staff does not see the requirement as an unnecessary hardship.
2. The east side of the property would be the side affected by granting the variance. The result would be to move the fence between 10-15' east on the lot towards the 120' right-of-way. The granting of the variance would result on the partial shielding of the shed from view by landowners across E 27<sup>th</sup> Street/80<sup>th</sup> Avenue. Staff does not believe granting the variance would result in depreciation of land value nor any other negative effects on surrounding landowners.
3. There would be plenty of vision clearance maintained on E 27<sup>th</sup> Street/80<sup>th</sup> Avenue if a fence were to be constructed at the eastern edge of the 220' lot.

Staff recommends approval of variance even though unnecessary hardship has not been fully met as long as the homeowner understands what their responsibilities will be, what is required of them as far as setbacks go and that the applicant/homeowner understands the conditions of the building a fence within an established county water main easement.

Robert Condon of 2620 Avery Drive spoke.

*Public Hearing closed at 6:30 p.m.*

Board members discussed the matter. Cassidy asked about a future trail. Klimowski explained that a future trail, if placed at all, would be placed at the east side of E 27<sup>th</sup> Street/80<sup>th</sup> Avenue.

Grant entertained a motion; Stevens motioned to approve the variance request for the creation of a 6' privacy fence along the east side of the property maintaining a 2' setback from the right-of-way. This was seconded by Parker. Approved 4-0; all voted Aye.

**Adjournment – 18-14**

Motion by Parker and seconded by Cassady to adjourn meeting at 6:41 p.m. Approved 4-0.

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Brent Hinders, Chairperson

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Elliot Klimowski, City Planner