

Meeting Minutes
Zoning Board of Adjustment
Tuesday, December 17, 2024
Ankeny City Council Chambers
1250 SW District Drive, Second Floor, Ankeny, Iowa

CALL TO ORDER

Chair Matt Ott called the December 17, 2024 regular meeting of the Zoning Board of Adjustment to order at 5:00 p.m.

ROLL CALL

Members present: Matt Ott, Jeff Baxter, Kristi Tomlinson, Nichole Sungren and Brett Walker. Staff: E.Jensen, E.Carstens, Derek Silverthorn, J.Heil, L.Hutzell, R.Kirschman and B.Fuglsang.

AMENDMENTS TO THE AGENDA

There were no amendments to the agenda.

MINUTES OF THE NOVEMBER 5, 2024 REGULAR MEETING

Motion by K.Tomlinson to approve the meeting minutes as submitted. Second by J.Baxter. Motion carried 5 – 0.

COMMUNICATIONS / CORRESPONDENCE

The Board received correspondence regarding Appeal #24-20 from Jennifer Van Thomme, Nicole Schuchart and an Anonymous Neighbor.

BUSINESS ITEMS

PUBLIC HEARINGS:

#24-20

Cody Moravec

for property located at

2324 SW Abilene Road

Lot 14, Estates at Prairie Trail Plat 3

RE: Variance - Fence

Chair M.Ott opened the public hearing.

Cody Moravec, 2324 SW Abilene Road, Ankeny said he is requesting a variance to allow him to place a 6-foot privacy fence in the back yard of his property.

There were no questions from the Board.

E.Jensen reported that the applicant is requesting a Variance to allow for a six-foot tall privacy fence to be constructed approximately 20 feet into the street side yard setback adjacent to the southern property line. He said the subject property is located at 2324 SW Abilene Road in the Prairie Trail PUD and contains a single-family house on the lot. The property is approximately 15,684 sq. ft. in size and is zoned Prairie Trail Planned Unit Development. He noted that the properties to the north, east and west are single family homes and the property to the south is the Sterling at Prairie Trail multifamily community. E.Jensen stated that the subject property is classified as an Estate Lot, which is one of the larger classifications in the Prairie Trail development and noted that the home faces SW Abilene Road. As a corner lot in Prairie Trail, the lot is required to have a front yard setback and a street side yard setback, which is along SW Plaza Parkway. He presented the site plan that was submitted when the house was constructed and provided the setback requirements for the subject property, noting that the house is set back 27 feet from the front property line along SW Abilene Road and 20 feet from the street side yard property line along SW Plaza Parkway. E.Jensen explained that the lot was platted in 2014 and the residence on the property was constructed in 2015 – 2016. According to the Polk County Assessor's records, the applicant purchased the home in September 2016. He noted that as of today, there is not currently a fence on the property. E.Jensen stated that the applicant submitted a fence permit in November of this year to construct a six-foot tall vinyl privacy fence that would enclose the rear and street side yard of the

lot. E.Jensen explained the proposed location of the fence, noting that the fence along the street side yard would be within approximately two feet of the sidewalk. The fence permit was denied due to the fence regulations of the Prairie Trail Planned Unit Development (PUD). Additionally, the applicant was informed by staff that the proposed fence was also likely to be in conflict with the private covenants of the Prairie Trail Development. E.Jensen shared that the City does not administer private covenants, but staff does try to monitor them and notify property owners if they may be in violation. Upon denial of the fence permit, the applicant submitted a Variance application.

E.Jensen noted that since the Board has never seen a Variance request within the Prairie Trail PUD, his report will include background information related specifically to this development. He explained that the Prairie Trail development was a partnership between DRA Properties and the City of Ankeny; and that there are three regulating documents for Prairie Trail that build on one another, which include the Master Plan, the Pattern Book and the Planned Unit Development (PUD) Ordinance. E.Jensen presented to the Board information on how Prairie Trail was to be developed beginning in 2006, further explaining in detail the intention of the Master Plan, the Pattern Book and the PUD Ordinance as they relate to all properties that lie within the Prairie Trail development.

He specifically shared that with regard to the Variance request for the fence, the Pattern Book includes specific guidelines for fencing. For this specific request, the relevant sections are located on Page F-22, which states *"For side yards along public streets, fences shall have a maximum height of 48 inches..."* and on Page F-18, which is specific for Estate Lots that are also corner lots, such as the subject property, it states that fences can be a *"...36 or 48-inch fence along side property line."*

The original PUD document, which was adopted in 2007, specifically with regard to fencing, contained the following requirements:

- *"Fences and Hedges are encouraged on corner lots and must respect the visibility at street and sidewalk intersections. Front yard and street side yard locations may not exceed 48" and need to adhere closely to the landscaping character established by Section D of the Pattern Book. Fencing in the rear yard locations and exceeding 48" in height is required to be a two pattern fence with the top two feet being open weave of 50% opacity."*

The relevant section of the original PUD fence language above states that fences may not exceed 48" in front yard and street side yard locations. In 2011, the PUD was amended and the fencing language was updated to be clearer and rely less on references to the Pattern Book. The new language section relevant to the current Variance request is as follows:

- *Fences shall be permitted in any yard.*
 - *Fences located in front and side yards adjacent to a public street right-of-way shall not exceed 42 inches in height.*

E.Jensen stated that after the 2011 adoption of these new standards, it was noted that the original PUD allowed 48-inch fences in front yards and street side yard locations and that the new language limited those fences to only 42 inches. He noted that the Pattern Book guidelines also allowed up to 48-inch fences in these situations. He said that because it is clear that the original intent of the Pattern Book and the PUD was that 48-inch fences should be allowed in front and street side yards, staff has administratively allowed 48-inch fences in those circumstances. He said that, to date, there has not been a Variance, of any kind, applied for in Prairie Trail and no fence has been permitted in Prairie Trail that violates these standards. He noted that the design requirements apply to more than just the fences, nearly all aspects of the built environment are regulated. E.Jensen provided to the Board staff's analysis of the proposed Variance with the adopted criteria necessary for approving any Variance request. He stated that based on the criteria for review dictated by the Zoning Ordinance and the reasons outlined in the report, it is Staff's position that the Zoning Board of Adjustment deny a Variance to the Prairie Trail Planned Unit Development (PUD) Ordinance, specifically Section 7.E.3.b.i. of the PUD, which limits the height of fences located within front and side yards adjacent to public street right-of-way to 42 inches, to allow a six-foot tall privacy fence to be constructed two feet from the sidewalk (approximately one foot from the southern property line) adjacent to SW Plaza Parkway at 2324 SW Abilene Road. The staff position is based on a determination that the reduced setback and increased fence height along the public right-of-way is not in harmony with the intended spirit and purpose of the Zoning Ordinance and the Prairie Trail PUD. E.Jensen noted that notices were sent to property owners within 250' of the subject property and staff received three

pieces of correspondence, which was provided to the Board along with letters from the two different associations for Prairie Trail.

Related to the private covenants, J. Baxter said based on the email received from Ashley Johnson, DRA Properties and the letter from Matt Hudson, Hudson Property Management Group, the private covenants would prohibit this fence request. J. Baxter asked staff that if the Board would grant the Variance, DRA Properties and Hudson Property Management Group would have a private right of enforcement to prevent the fence from being built as requested. E. Jensen responded that it would be a possibility, based on the information staff has been provided from Ashley Johnson and Matt Hudson.

M. Ott asked staff to clarify where the 6-foot privacy fence could be located according to the street side yard setback line. E. Jensen said that the 6-foot fence can not be in front of the building wall. In this case, the fence would be allowed at 20-feet since the building wall is at 20-feet. It just can not be any further out then the back corner of the home.

There was no one in the audience to speak for or against the request.

Cody Moravec said, if he understood E. Jensen correctly, that if he built a 10-foot addition onto his home he could have an additional 10 feet of side yard enclosed by his fence. E. Jensen responded, yes. Cody Moravec directed comments toward staff related to his request including, but not limited to, that staff believes people who locate in Prairie Trail should be aware of the covenants regarding fences and the neighbors on his street would be able to build 6-foot fences in their back yard but his property along with another one will somehow throw off the aesthetics of the neighborhood with a privacy fence in their back yard. E. Jensen responded that the neighboring fences are not located along a public street. Cody Moravec further commented that the regulations were written 20 years ago. He noted that his neighbor right next to him has a pool and he has video of people stopping to watch the neighbor's teenage daughters in the pool. He is only trying to protect his children from such activity.

Cody Moravec stated that if he placed a 6-foot fence in line with the wall of his home, he believes it would be violating the required space needed for an egress window and asked staff if he would be violating code? E. Jensen responded that he had the Building Division staff take a look at his question related to the egress window. Staff felt that there was plenty of room for someone to get out of the egress window, if the fence was located in the required location. Cody Moravec further commented that, in theory, he could extend his home 10-feet toward SW Parkway Plaza and build the fence to align with his house and the fence would miraculously be okay. E. Jensen responded yes, as long as it is aligned with your home.

Cody Moravec said he is losing privacy in 200-square feet of his yard. The 4-foot fence does not grant him privacy, nor will it be high enough for his German Shephard. He further commented that Prairie Trail started in 2005, and questioned whether they anticipated the current traffic pattern and the amount of people walking on the sidewalks. E. Jensen responded yes, as it was designed to be a major collector street. Cody Moravec questioned whether the original design included the apartments across the street. E. Jensen responded that the plan was for multi-family. Cody Moravec further shared that when he bought the house he was told that he could have a fence and that there would be condos across the street.

Cody Moravec referenced the staff report and commented that he has not had funds until now to put in a pool and his family dynamics has changed, which is prompting the request for his fence. He said that just because he did not build a fence right away does not mean he doesn't need a fence. He said in all the variance requests he has reviewed, staff did not put on a presentation like they have for his request and feels he is being singled out. He questioned the differences in the HOA letter that he received versus the HOA letter that was sent to city staff. He further said he did not see any objections from his neighbors. E. Jensen shared that staff did receive two pieces of correspondence in opposition, which were presented to Cody Moravec.

The Board had no further questions for the applicant.

Motion by M. Ott to close the public hearing, receive and file correspondence. Second by J. Baxter. All voted aye. Motion carried 5 – 0.

N. Sungren shared that her home is on a three-sided corner lot but it is not in Prairie Trail. The home when they moved in had an existing 6-foot fence that was lined up with the house and their entire side yard was not fenced

in due to the setbacks. She stated that it is part of the responsibility when purchasing a home. She does not see anything with this request that makes it a hardship.

M.Ott commented that the Prairie Trail Development is unique. J.Baxter also commented that they intentionally layered restrictions on the property.

K.Tomlinson said that she is not aware of any variance request from a property owner in Prairie Trail. She believes that most of the people moving into Prairie Trail are aware that there are stricter regulations in place.

J.Baxter pointed out that Cody Moravec could still build the requested privacy fence, it just could not be as tall. K.Tomlinson suggested that he could add landscaping in front of the fence for privacy.

B.Walker said he does not see any hardship created by requiring the fence to be in line with the home as required.

K.Tomlinson responded to the argument that there was too much time spent on this request. She believes that it was because the Board has not seen a Variance request in the Prairie Trail Development. She commented that she has been on the Board for 20 years and did not realize how layered Prairie Trail is and how involved the City was in planning it with DRA. It was good information for the Board to know since they have never done a variance in Prairie Trail prior to this request.

Board Action on Filing #24-20 for property located at 2324 SW Abilene Road

Motion by N.Sungren that the Zoning Board of Adjustment deny a Variance to the Prairie Trail Planned Unit Development (PUD) Ordinance, specifically Section 7.E.3.b.i. of the PUD, which limits the height of fences located within front and side yards adjacent to public street right-of-way to 42 inches, to allow a six-foot tall privacy fence to be constructed approximately two feet from the sidewalk (approximately one foot from the southern property line) adjacent to SW Plaza Parkway at 2324 SW Abilene Road. The Board's position is based on a determination that the reduced setback and increased fence height along the public street right-of-way is not in harmony with the intended spirit and purpose of the Zoning Ordinance and the Prairie Trail PUD. This motion is predicated on a 48-inch fence being allowed within the street side yard and administratively approved by staff. Second by J.Baxter. Motion carried 5 – 0.

Chair M.Ott stated by a vote of 5 – 0 the Variance is denied.

REPORTS

Renewed Special Use Permits

#10-06 Lindo Jalisco Mexican, 1810 SW White Birch Cir., Suite. 118

#12-02 The Sports Page, 1701 N Ankeny Blvd.

#15-01 Main Street Cafe & Bakery, 2510 SW White Birch Dr., Suites 1 & 2

E.Jensen thanked Kristi Tomlinson for her 20 years of service on the Board of Adjustment.

There being no further business, meeting adjourned at 5:44 p.m.



Submitted by Brenda Fuglsang, Recording Secretary
Zoning Board of Adjustment