

PLANNING COMMISSION

AUGUST 14, 2023

6:30 O'CLOCK P.M.

1. Call to Order
2. Minutes of the Previous Meeting – July 10, 2023

Public Hearings

- 3. Zoning Amendment – Privacy Fences at Corner Lots
 - 4.a Conditional Use Permit for Fence – Sinner (Tabled from July Meeting)
 - 4.b Variance for Fence in Front Yard – Sinner (Tabled from July Meeting)
 - 5. Conditional Use Permit for Fence – Bakken
6. What is a Fence? – Discussion

MINUTES OF PLANNING COMMISSION MEETING

July 10, 2023

Pursuant to due call and notice thereof, a regular Planning Commission meeting was held at City Hall on the 10th day of July, 2023 at 6:30 PM

THE FOLLOWING WERE PRESENT: Chairman Ferris, Commissioner Buckingham, Commissioner Fitch, Commissioner Egger, Commissioner Tinsley and Commissioner Johnson

THE FOLLOWING WERE ABSENT: Commissioner Hanson

THE FOLLOWING WERE ALSO PRESENT: Ian Albers, Planning/EDA Assistant, Sheldon Juhl, Brenda Juhl, Mike Sinner, Stacy Sinner

CALL TO ORDER AT 6:30PM

MINUTES OF THE PREVIOUS MEETING – June 12, 2023 Motion to Approve made by Commissioner Johnson, second by Commissioner Buckingham with All Voting Aye

PUBLIC HEARING – Conditional Use Permit for Fence – Juhl

Community Development Assistant Ian Albers gave a background on the request. The applicants are proposing a chain link fence no more than 6 feet in height. It would extend from the rear wall of the house to the property line and then along the side property line. There is a complication with the neighbor's garage and the property line. Part of the neighbor's garage encroaches on the Juhl's property. A remedy to this encroachment could be included as a condition of approval for the CUP. The easiest option would be for the Juhl's to grant an easement to the neighbors allowing for continued use of the property. The other option is for the Juhl's to split their lot and sell it to the neighbors. Access agreements with each of the neighbors should be included as a condition along with acknowledgement of the utility easement. Commissioner Egger asked how much of the garage is on the Juhl's property. Albers stated he didn't see a survey report. Mr. Juhl added that he had Massey do a four-corner survey and that the GIS map with property lines is pretty accurate. The property line is angled and goes through the front part of the neighbor's garage.

Public hearing opened

No comments

Public hearing closed

Commissioner Ferris stated he has no issue with the fence so long as it doesn't exasperate the issue with the property line. There needs to be some consensus on how they are going to address the issue before they put the fence in. Ferris recommended that this should be added as a condition of approval.

Motion to Approve with the added condition to address the property line issue made by Commissioner Egger, second by Commissioner Fitch with All Voting Aye

Further discussion followed regarding the property line issue. Commissioners recommended that the Juhls consult with the neighbor, the surveyor, and/or a real estate attorney. Albers stated he would follow up with the City Attorney for recommendations on possible solutions.

PUBLIC HEARING – Conditional Use Permit and Variance for Fence – Sinner

Albers stated that staff is recommending to table both the CUP and variance requests. The Sinner household is a corner lot and the City considers corner lots to have two front yards. The Sinners are requesting to build a privacy fence in their front yard. The ordinance only allows for fences in front yards if the transparency is less than 50% or the height is less than 3 feet. The CUP would be to allow the fence within 3 feet of the property line, and the variance would be to allow the privacy fence in the front yard. Albers went through the criteria for variances and stated that the request could be considered reasonable and there are other examples of privacy fences built in front yards. The uniqueness factor is the most difficult to justify since every other property on a corner lot would also need a variance. Albers recommended that the zoning ordinance could be amended instead, and it is not uncommon in other cities to have exceptions made for corner lots. Albers included sample language of the ordinance change in the staff report. The public hearing for the zoning amendment could take place at the next meeting. If the ordinance is changed, there would not be a need for a variance. Commissioner Eggler asked why the proposed location for the fence is considered a front yard if the front door of the house and the driveway are on a different side. Commissioner Johnson asked for a definition of a front yard and proposed changing this definition rather than making an exception to the transparency rule. Albers stated that not all corner lot properties look as neat as the Sinner's – some have more than one driveway, for example. Commissioner Johnson is in favor of tabling the discussion to the next meeting and asked Albers to provide some examples of ordinances from other cities. Commissioner Fitch is also in favor of tabling the discussion. Commissioner Ferris asked if the Sinners had any comments to share. Ms. Sinner stated she would not be in favor of the 20 foot setback for the fence since that would place the fence right outside her kitchen window and would make much of their yard unusable. Ms. Sinner also stated that the sight line from the neighbor's driveway would be clear to the corner if the fence is built in the proposed location. Mr. Sinner stated that a 3 foot fence would not be adequate for privacy.

Motion to Table made by Commissioner Eggler, seconded by Commissioner Johnson with All Voting Aye

NOISE ORDINANCE – Discussion

Albers went through the memo included in the meeting packet. The City Council asked the Planning Commission to discuss the noise ordinance because of an event permit request from the Legion that included several dates. The ordinance states that excessive noises between the hours of 11:30 pm and 7:00 am are considered to be nuisances. The current event permit process is a nice way for the City to review requests and notify any necessary emergency services in advance. Event permits are still requested even if street closures or emergency services are not needed. There are no restrictions on the number of event permits that can be requested, though there are a number of residents who live in/near downtown where most of the events take place. Commissioner Eggler stated that if a change is made, it would affect the whole city and not just downtown. Commissioner Johnson stated that it is possible for an exception to be made to the C-1 Central Business District. Commissioner Eggler is in favor of keeping it how it is so that events are publicly posted. Commissioner Buckingham asked if there were any complaints. Albers stated that he has received complaints about noise downtown in the past. Commissioner Fitch stated that some complaints come from the apartment building across the street from the Legion, and asked if there is some sort of notification that could come with approval of an event permit. Discussion followed on possible notification methods, such as mailing letters, sending out with utility bills, or posting online. Commissioner Ferris asked if the complaints received were tied to normal operations vs special events. Albers stated they seem to be tied to special events. Commissioner Fitch asked to get thoughts from the rest of the staff and stated that he did not think the ordinance needed to be changed. Commissioner Tinsley stated that requesting an event permit could be an incentive if the City sends out a notification. No further discussion.

WILKER'S CUP REVIEW – Update

Albers stated he went out to the property the previous week to observe the site and met with an employee who is familiar with the CUP and the review process. Albers took photos of the site and left a permit application with the employee for the addition to the building – allowed as a condition of the CUP. Albers went through the photos and the conditions included in the CUP. There is room for improvement, though the employee acknowledged this. Commissioner Egger stated that you can tell work is being done to clean up the property and they are trying to abide by the conditions. No further discussion.

OTHER – Commissioner Ferris asked how “fence” is defined in the ordinance. Commissioner Egger stated that Linda had provided a definition at a previous meeting. Albers stated he would investigate.

ADJOURN – 7:18pm

Respectfully Submitted,

Ian Albers, Community Development Assistant

MEMO

TO: The Planning Commission
FROM: Ian Albers, Community Development Assistant
DATE: August 14, 2023
RE: Zoning Amendment – Privacy Fences at Corner Lots

At the July Planning Commission meeting, there was discussion on the possibility of amending the zoning ordinance that regulates where certain types of fences can be located – specifically at corner lot properties. This was in response to a request to build a privacy fence in a front yard of a corner lot, which is not permitted under the current zoning ordinance. The zoning ordinance defines corner lots as having two front yards and two side yards. In addition, the zoning ordinance does not allow for fences with transparency over 50% (“privacy fences”) within any front yard, unless the fence is under 36 inches in height (“the transparency rule”). Effectively, this creates situations where corner lot properties are not permitted to construct privacy fences in front yards that would otherwise be a side yard if not for the presence of an abutting street.

As it currently stands, there are three options going forward. The first option is to leave the zoning ordinance how it is written and continue to not permit privacy fences within front yards of corner lots. With this option, corner lot property owners would be limited in the area that could be fenced in with a privacy fence. The second option would be to permit fences of this type through a variance. However, requests of this type would not adequately justify a variance if every corner lot property owner in Kasson needed one. This leaves the third option, which is to amend the zoning ordinance altogether.

As requested, I have researched ordinances in other cities to see what could be done in Kasson. True comparisons are challenging because each city has ordinances that are specific to that city. To summarize what I have found, some cities define corner lots as having one front yard, two side yards, and a rear yard just as an interior lot would, while others define the yards of corner lots in a similar manner to Kasson. Some cities do not have a transparency rule and simply limit all fence types to be shorter when in a front yard.

My recommendation is to amend the zoning ordinance thus:

(6) No portion of a fence or wall projecting into the front yard of a property shall exceed 36 inches in height unless one or more of the following is met:

- (a) The height is required by the city for screening, buffering or safety;
- (b) The transparency of the fence is 50% or more. **On corner lots, such fences may be placed within one required front yard area that lies between the side wall of the principal building and the abutting street with a conditional use permit as seen in division (B)(4) below.**

(7) The area between a fence and property line shall be maintained in an attractive condition at all times.

(8) Screening or fencing shall not be erected any closer than three feet from the property line, except as allowed with a conditional use permit as seen in division (B)(3) below.

(9) Where the property line is not clearly defined and located, a certificate of survey may be required by the Zoning Administrator or City Administrator to establish the property boundary prior to issuance of approval.

(B) *Approval required.*

(1) Fences on properties with three or more unit residences or nonresidential uses shall require a site plan review application and approval with the city, as described in § [154.066](#).

(2) Retaining walls measuring four feet in height or more shall require a building permit application and approval.

(3) *Property line screening or fencing.* A conditional use permit (CUP) shall be required for placement of screening or fencing closer than three feet to the property line.

a. Applicants will follow the process for a CUP, as described in § [154.067](#).

b. An access agreement on adjacent property may be required to ensure the ability to maintain the fence without trespassing on neighboring property.

(4) *Front yard fencing.* A conditional use permit (CUP) shall be required for placement of screening or fencing within one required front yard area that lies between the side wall of the principal building and the abutting street when the transparency of the fence is 50% or more.

a. Applicants will follow the process for a CUP, as described in § [154.067](#).

b. Fencing or screening when the transparency of the fence is 50% or more shall not be placed within the required front yard area that lies between the front wall of the principal building and the abutting street.

With this zoning amendment, a CUP would be required to place a privacy fence within the front yard of corner lots. However, the proposed language is written so that a privacy fence could not be placed between the front wall of the principal building and the street. “Front wall” is typically the wall where the front door is, and it is also typically the wall that runs parallel to the street where the property is addressed. This is not always the case, however, and there are irregular lots where some flexibility in interpretations would be needed. The CUP process would give the opportunity to review the proposed fence to ensure that it follows the code and would also allow the City to add conditions of approval, such as requiring that site triangles are kept clear. If a property owner also wanted to place the fence within three feet of the property line (which also requires a CUP), the property owner could apply for a single CUP that covers both items.

Ordinance examples from other cities:

Mendota Heights

“Permitted Encroachments Onto Public Ways: Notwithstanding the other requirements of subsection A or B of this section to the contrary, fences greater than four feet (4') in height but no greater than six feet (6') in height may be allowed to encroach into rear yards of corner and through lots or side yards of corner lots through administrative approval by the Public Works Director and Community Development Director (or their assigns) when said yard abuts a public street; provided, however, that in no event shall such fence be allowed to be constructed on a public easement for street, utility, or drainage purposes.”

*no transparency rule

*corner lots have a front yard and a side yard abutting a street

*privacy fences are allowed in equivalent side yards with staff approval

Oak Grove

“The required front yard of a corner lot shall not contain any fence which may cause danger to traffic on a street or public road, by obscuring the view. On corner lots, no fence shall be permitted within the 30-foot intersection sight distance triangle.”

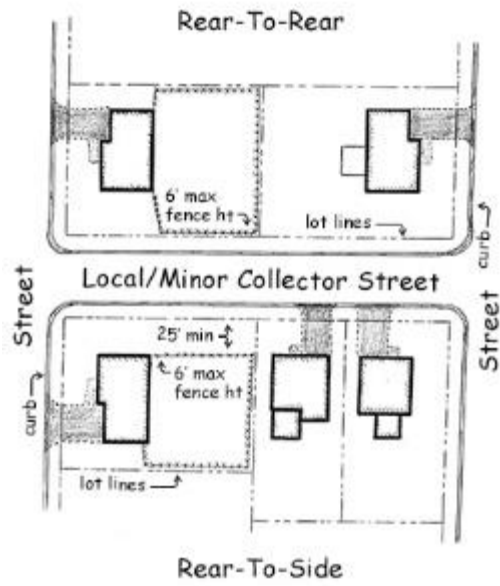
*no transparency rule

*corner lots have one front yard on the side where the property is addressed

*privacy fences are allowed in equivalent side yards

City of Plymouth

“Fences constructed of materials with an opacity of up to 100 percent and not exceeding 6.5 feet in height (measured from the adjoining grade at the bottom to the top of support posts/post caps), provided that the actual fence panels/boards do not exceed 6 feet, may be located at or behind the minimum front setback lines, as required for the principal structure on the lot. The exception is, on corner lots where the rear wall of the principal building (wall opposite the wall where the property is addressed) faces the rear wall of an abutting principal building, such fences may be located within the required front yard area that lies between the side wall of the principal building and the abutting side street, from the rear wall of the principal building to the rear lot line. Said fence may also be located within a required front yard area that qualifies as an equivalent rear or side yard as defined by this Chapter.”



*transparency rule present

*corner lots have two front yards

*privacy fences are allowed in equivalent side yards, although an exception is made to the transparency rule *only* if the rear wall of the building faces the rear wall of the abutting property – if the rear wall of the building faces the side wall of the abutting property then the front yard setback applies

STAFF REPORT

TO: Planning Commission
FROM: Ian Albers, Community Development Assistant
DATE: June 22, 2023
SUBJECT: Sinner CUP and Variance for fence
APPLICANT: Mike and Stacy Sinner
OWNER: Mike and Stacy Sinner
LOCATION: 504 10th St NE
MEETING DATE: July 10, 2023
COMPREHENSIVE PLAN: Low Density Residential
ZONING: R-1 Single Family Residential

BACKGROUND

The applicants, Mike and Stacy Sinner, have applied for a conditional use permit to place a fence closer than 3 feet to the property lines at 504 10th St NE. The applicants have also applied for a variance to allow for a fence with transparency greater than 50% to project into the front yard. The property is a corner lot, and as such it is considered to have two front yards. The proposed privacy fence would extend from the corner of the garage to the front property line, beyond which is a sidewalk in the ROW of 6th Ave NE. The fence would then extend along each of the side property lines before finally connecting back to the corner of the house. A conditional use permit is required to allow the fence to be placed closer than 3 feet from the property line. A variance would be required to place the fence within the front yard under the current language of the code. However, staff proposes that the zoning ordinance could be amended to allow for privacy-type fences within the front yard of corner lots. As zoning amendments require public hearings, the decision on the variance could be tabled until the next Planning Commission meeting on August 14.

REVIEW PROCEDURE

60-Day Land Use Application Review Process

Pursuant to Minnesota State Statutes Section 15.99, local government agencies are required to approve or deny land use requests within 60 days. Within the 60-day period, an automatic extension of no more than 60 days can be obtained by providing the applicant written notice containing the reason for the extension and specifying how much additional time is needed. For the purpose of Minnesota Statutes Section 15.99, "Day 1" for the conditional use permit application and variance application was determined to be June 22, 2023. The City's deadline for action is on August 21, 2023.

Public Hearing

City Code § 154.312(B)(3) requires a public hearing for review of a conditional use permit to be held by the Planning and Zoning Commission. The public hearing notice for the CUP was published in the Dodge County Independent and mailed to all affected property owners located within 350 feet of the subject properties.

City Code § 154.068(E)(2) requires a public hearing for review of a variance to be held by the Planning and Zoning Commission. The public hearing notice for the variance was published in the Dodge County Independent and mailed to all affected property owners located within 350 feet of the subject properties.

APPLICATION REVIEW

Existing Site Character

See attached pictures.

Conditional Use Permit Review

As described in Section 154.067(D)(4), the following should be considered during review of a conditional use permit application:

- (1) The effects of the proposed use on the comprehensive plan; and
- (2) The effects of the proposed use upon the health, safety and general welfare of occupants of surrounding lands.

Additionally, the following findings should be made, when applicable:

- (1) The proposed conditional use meets all of the applicable use specific standards listed within § 154.175 to 154.178;
- (2) The use is not in conflict with the comprehensive plan of the city;
- (3) The use is consistent with the purpose of this chapter and the purposes of the zoning district in which the applicant intends to locate the proposed use;
- (4) The use will not cause traffic hazards and the traffic generated by the proposed use can be safely accommodated on existing or planned street systems; and the existing public roads providing access to the site will not need to be upgraded by the city in order to handle additional traffic generated by the use;
- (5) Adequate measures have been taken or are proposed to prevent or control offensive odor, fumes, dust, noise, vibration or lighting which would otherwise disturb the use of the neighboring property;
- (6) Adequate utilities, parking, drainage and other necessary facilities will be provided;
- (7) The proposed use will not impede the normal and orderly development or improvements of the surrounding property;
- (8) The proposed use will not be injurious to the use and enjoyment of other property in the neighborhood and will not significantly diminish or impair the values of the property;
- (9) The use will not disrupt the character of the neighborhood; and
- (10) The structure and site shall have an appearance that will not have an adverse effect upon adjacent residential properties.

Variance Review

In its consideration of a variance request, the Planning and Zoning Commission shall consider the following questions when making their recommendation to the City Council, as described in § 154.068(E)(4):

- (1) Whether or not exceptional, unique or extraordinary circumstances apply to the physical surrounding, shape or topographic conditions of the parcel of land that result in practical difficulties for the owner;
- (2) Whether or not the variance requested will alter the essential character of the locality;

- (3) Whether or not granting the variance requested will:
 - a. Impair an adequate supply of light and air to adjacent property;
 - b. Substantially increase congestion in adjacent public streets;
 - c. Endanger the public safety; or
 - d. Substantially diminish or impair property values within the vicinity.
- (4) Whether the variance requested is the minimum variance that would alleviate the practical difficulties;
- (5) Whether or not the variance requested is consistent with the intent of this chapter and the city's comprehensive plan; and
- (6) Whether or not the variance requested provides for a reasonable and practical solution that eliminates the practical difficulties.

RECOMMENDATION

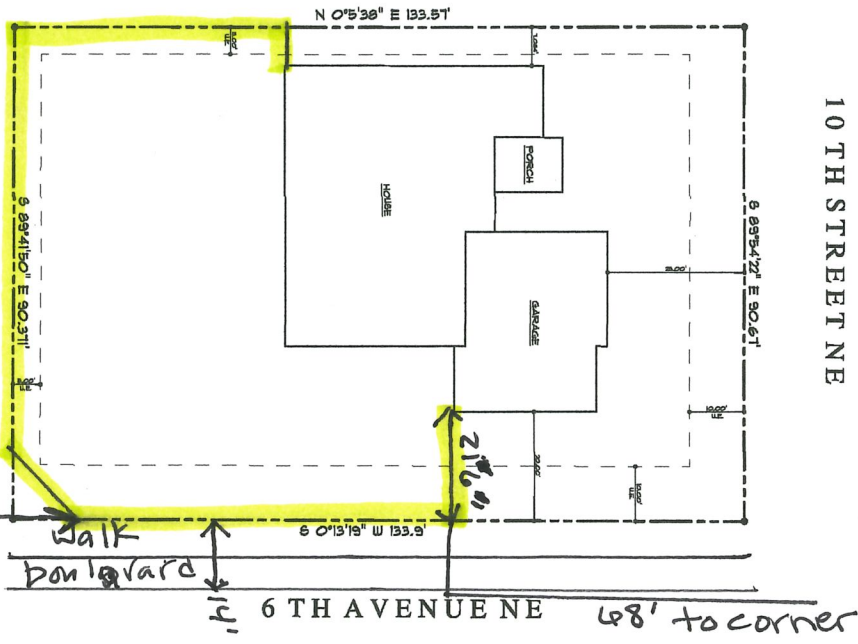
Staff recommends to the Planning Commission to table the recommendations for both the CUP and the variance until the next Planning Commission meeting on August 14. The purpose of this would be to have a public hearing to consider changing the zoning ordinance to allow for placement of privacy-type fences within the front yard of corner lots. Approval of the CUP to allow the fence on the property line would otherwise be recommended for approval, though the proposed location within the front yard does not comply with the current ordinance. Approval of the variance request is difficult to justify given the requirements that must be met by all variances. The request to locate the fence in the front yard could be considered a reasonable request given that non-corner lots are able to utilize what would be an equivalent space in their yards, and there are examples of non-compliant fences built in front yards of corner lots in Kasson. However, the uniqueness factor is the most difficult to justify in this case considering that there are a multitude of corner lots in Kasson that would also need variances if the property owners wanted to build similar fences. If this is the case, it is more advisable to change the zoning ordinance. A sample ordinance change could be:

- (6) No portion of a fence or wall projecting into the front yard of a property shall exceed 36 inches in height unless one or more of the following is met:
 - (a) The height is required by the city for screening, buffering or safety;
 - (b) The transparency of the fence is 50% or more. **The exception is, on corner lots, fences with transparency greater than 50% may be located within the required front yard area that lies between the side wall of the principal building and the abutting side street. Said fence may also be located within a required front yard area that qualifies as an equivalent rear or side yard as defined by this Chapter.**

As the City's deadline for action is on August 21, 2023, there is time available to table action on both requests until the August 14 Planning Commission meeting. If the Planning Commission were to recommend approval of a zoning amendment that would allow for privacy-type fences within the front yard of corner lots, the applicants would no longer require a variance, but would still need a conditional use permit to allow for a fence on the property lines.



SITE PLAN
(B) SCALE: 1" = 10'-0"



LEGAL DESCRIPTION
LOT 3, BLOCK 2
HOUSTON'S FIRST SUBDIVISION
DODGE COUNTY, MN

A hand-drawn site plan of a property. The plan shows a large rectangular area with a dashed border. Inside, there is a large rectangle labeled "HOUSE", a smaller rectangle labeled "PORCH" attached to its top-left side, and a larger rectangle labeled "GARAGE" attached to its top-right side. The plan is bounded by four survey lines with bearings and distances: North (N 0°5'30" E 133.51'), East (E 89°54'22" E 90.61'), South (S 89°41'50" E 90.371'), and West (W 0°15'19" W 133.5'). A yellow highlight is drawn along the West and South boundaries. A yellow arrow points from the "GARAGE" area towards the South boundary, labeled "21'6\"". A yellow highlight is also drawn along the South boundary near the bottom right corner. To the right of the property, there is a vertical line labeled "6TH AVENUE" and a horizontal line labeled "WALK". A yellow highlight is drawn along the "WALK" line. To the right of the "WALK" line, there is a vertical line labeled "POND" and a horizontal line labeled "48' to 60'".

SITE PLAN
SCALE: 1" = 10'-0"

52' to driver
clear view
down road

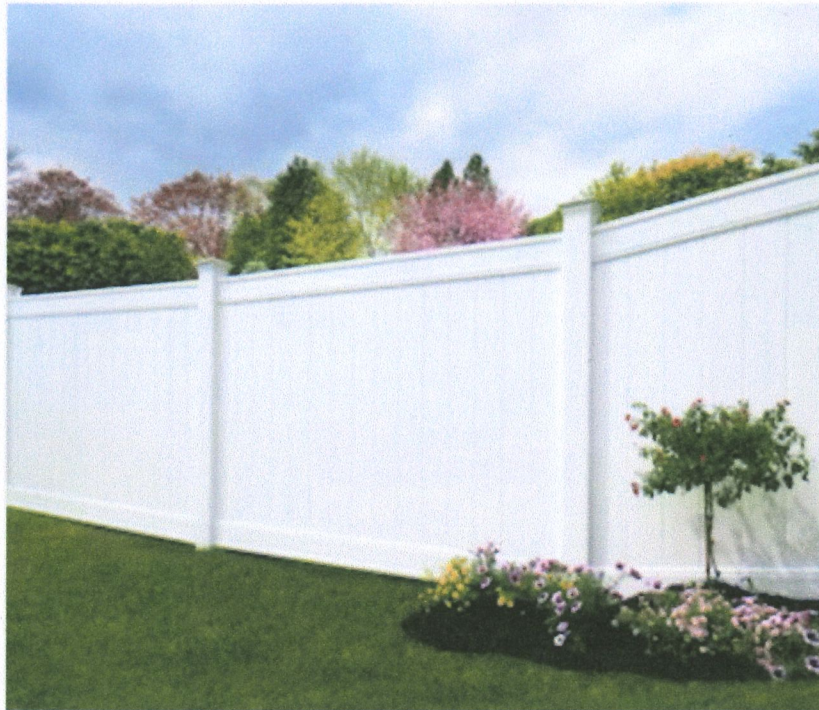
 **Rochester Lowe's** 
Open until 10 PM

Delivery to
55944 

Building Supplies / **Fencing & Gates** / Vinyl Fencing

Freedom 6x8 Emblem Ready-to-Assemble Fence

★★★★☆ 393



 Chat Now

AA

 lowes.com



April 20, 2023

To: Kasson City Counsel

We consent to having a fence installed on the property line between our home at 907 6th Ave NE and the Sinner home at 504 10th Street NE

Brian Rinehart

Name

5/18/2023

Date

[Signature]

Signature

Amanda Rinehart

Name

5/18/2023

Date

[Signature]

Signature

April 20, 2023

To: Kasson City Counsel

We consent to having a fence installed on the property line between our home at 502 10th Street NE and the Sinner home at 504 10th Street NE

Michelle R Rank

Name

4/18/23

Date

Michelle R Rank

Signature

Ronald L Rank

Name

4/18/23

Date

Ronald L Rank

Signature

10:20

95

6 Messages

< All Mail

Fence for 504 10th St....

Found in Important Mailbox

**Kristofor Johnson**

9/16/22

To: Tony, Stacy >

Hey Tony. I have copied the buyer of this property on this email. Her name is Stacy Sinner. She would like to install a privacy fence in the back and part way down the sides of the property.

Stacy - can you please respond to Tony with some fence specs? He wants to know what type of material you are using, what height it will be and where the fence will be going. If you can give him a drawing for the location, that would probably be best. I have attached the plans to this email. You could use the site plan to draw your fence location.

Talk to you soon, thanks!

--

**KRISTOFOR JOHNSON**
REALTOR® - GRI

kjohnson.counselorrealty@gmail.com



507.273.8019



www.kjohnson.counselorrealtyofrochester.com



facebook.com/getmovingwithKJ



504 10th S...l plans.pdf

8.9 MB



10:21

95

6 Messages
< All Mail Fence for 504 10th St.... ^ v

I thank you,

Tony

See More



Found in Gmail Sent Mailbox



Stacy Sinner

9/19/22

To: Tony Cc: Kristofor >

Thank you, Tony!

Sent from my iPhone

On Sep 19, 2022, at 8:12 AM, Tony Bigelow
<tony@bigelowhomes.net> wrote:

See More



Found in Important Mailbox



Tony

9/19/22

To: Stacy, Kristofor >

Hi Stacy,

I will review this today and get back to you today.

Thanks,

Tony



10:21

95

< All Mail

6 Messages



Found in Gmail Sent Mailbox



Stacy Sinner

9/19/22

To: Tony Cc: Kristofor >

Re: Fence for 504 10th St. NE Kasson

Thanks, Tony!

Sent from my iPhone

On Sep 19, 2022, at 8:59 AM, Tony Bigelow
<tony@bigelowhomes.net> wrote:

See More



Found in Important Mailbox



Tony

9/19/22

To: Stacy Cc: Kristofor >

Stacy,

We have reviewed the fence location and materials
and it is approved.

Thank you,

Tony



Reason for requesting a variance to build a fence

Introduction: Hello, we are Stacy and Michael (Mike) Sinner. We are relatively new residents of Kasson and reside at 504 10th Street NE.

Mike is retired and Stacy continues to work as a consultant for the U.S. Department of Justice and as an expert witness in criminal justice litigation.

We moved to the area, with our two miniature golden doodles in order to be closer to family. We currently have the opportunity to care for our 9 and 10 year old granddaughters Tuesday, Wednesday and Thursday through the summer months. During the school year, they stay with us after school until their parents, who also live in Kasson, come home from work.

Action so far: When we purchased the house in October of 2022, the builder, Kris Johnson assured us that we could build the fence we are proposing, we just needed formal permission from the “association”. We contacted the association representative, Tony Bigelow and he approved the fence. (see attached documentation) With permission in hand, we bought the fence material, had it delivered to our yard and hired a contractor to install the fence. We had family visiting at the time and they suggested we might need permission from the City, based on an experience they had in a Chicago suburb. We contacted the Kasson City Clerk and found out that we did not actually have the permission we needed. Since then, Ian and Linda have helped us understand the process of applying for a variance.

Reason for the variance: We have always maintained a focus on privacy and safety because of our career work. Stacy served as a correctional officer, correctional sergeant and Director of Detention Services for Olmsted, Co. in a career that spanned over 30 years. And as mentioned above, Stacy continues to work as a consultant for the DOJ and in the emotionally charged environment of criminal justice litigation as an expert witness.

Mike served as a correctional officer, correctional sergeant and jail administrator in Stearns, Co; St. Louis, Co and Goodhue Co Minnesota And as director of the Many Rivers Regional Juvenile Detention Center in a career that extended over 32 years.

Throughout our careers we have dealt with all kinds of people. And it is our vigilance, awareness and preparation that has and continues to keep us and our family members safe.

While we are not paranoid and we do not exclude ourselves from public activities, we do choose to avoid places that are regularly frequented by the people we came into contact with through our work. When out in public, we always practice situational awareness. A habit that has served us well by being prepared for unexpected meetings with past clients.

The fence we are proposing would provide a reasonable amount of non-public space as well as containment for our puppies. It would also help to establish the relative privacy and security that we feel is important for us and our family members.

Practical Difficulty:

- *The property owner proposes to use property in a reasonable manner that is not otherwise not permitted by an official control:* Our understanding is that the fence we are proposing is not typically allowed because a corner property (such as ours) effectively has “two front yards”, because two sides of the yard border on the street. This portion of the ordinance places owners of a corner lot at a disadvantage because of the loss of usable space by the placement of a fence that complies with the ordinance.
- *The plight of the property owner is due to circumstances unique to the property, not created by the owner:* Again, the reason our proposed fence requires a variance is because our corner lot borders on city two streets.

- *The Variance, if granted, will not alter the essential character of the locality:* This is true. There are 4 other residences, within a 1 block area (507 10th St NE, 905 6th Ave NE, 802 6th Ave NE and 801 8th Ave NE) that have the same style of fence that we are proposing. Our proposed fence does not block any necessary sight lines for traffic and has been approved and endorsed by our neighbors who are affected.
- *The need for the Variance involves more than economic considerations:* The only economic consideration for our proposed fence is the expense to us in order to have it built. We are happy to accept this cost.
- *“Practical Difficulties” also means and includes, but is not limited to, inadequate access to direct sunlight for solar energy systems:* Our proposed fence will not affect any solar energy systems.

Thank you for your consideration.

Sincerely,

Stacy and Mike

Reason for requesting a variance to build a fence
Addendum

Here are three examples of fences, already constructed in Kasson, that have similar proximity to the side walk that we are attempting to have authorized.

- 801 6th Ave NE (Cedar construction but, near the sidewalk)
- Dodge County Fairgrounds along 5th Ave NE (metal fence)
- 403 Mantorville Ave S (Casey's)

Thank you for your consideration.

Sincerely,

Stacy and Mike

STAFF REPORT

TO: Planning Commission
FROM: Ian Albers, Community Development Assistant
DATE: July 25, 2023
SUBJECT: Bakken CUP for fence
APPLICANT: Michael P. Bakken, Jr
OWNER: Michael P. Bakken, Jr
LOCATION: 97 5th Ave SE
MEETING DATE: **August 14, 2023**
COMPREHENSIVE PLAN: Low Density Residential
ZONING: R-1 Single Family Residential (PUD)

BACKGROUND

The applicant, Michael P. Bakken, Jr, has applied for a conditional use permit to place a fence closer than 3 feet to the side and rear lines at their property at 97 5th Ave SE. The proposed fence would extend from the north side of the house to a point closer than 3 feet to the north side property line and then eastward to the rear property line. The proposed fence would then extend along the rear property line to the south side property line and along this line before finally connecting to the south side of the house. A conditional use permit is required to allow the fence to be placed closer than 3 feet to the property line.

REVIEW PROCEDURE

60-Day Land Use Application Review Process

Pursuant to Minnesota State Statutes Section 15.99, local government agencies are required to approve or deny land use requests within 60 days. Within the 60-day period, an automatic extension of no more than 60 days can be obtained by providing the applicant written notice containing the reason for the extension and specifying how much additional time is needed. For the purpose of Minnesota Statutes Section 15.99, "Day 1" for the conditional use permit application was determined to be July 25, 2023. The City's deadline for action is on September 23, 2023.

Public Hearing

City Code § 154.312(B)(3) requires a public hearing for review of a conditional use permit to be held by the Planning and Zoning Commission. The public hearing notice for the CUP was published in the Dodge County Independent and mailed to all affected property owners located within 350 feet of the subject properties.

APPLICATION REVIEW

Existing Site Character

See attached pictures.

Conditional Use Permit Review

As described in Section 154.067(D)(4), the following should be considered during review of a conditional use permit application:

- (1) The effects of the proposed use on the comprehensive plan; and
- (2) The effects of the proposed use upon the health, safety and general welfare of occupants of surrounding lands.

Additionally, the following findings should be made, when applicable:

- (1) The proposed conditional use meets all of the applicable use specific standards listed within § 154.175 to 154.178;
- (2) The use is not in conflict with the comprehensive plan of the city;
- (3) The use is consistent with the purpose of this chapter and the purposes of the zoning district in which the applicant intends to locate the proposed use;
- (4) The use will not cause traffic hazards and the traffic generated by the proposed use can be safely accommodated on existing or planned street systems; and the existing public roads providing access to the site will not need to be upgraded by the city in order to handle additional traffic generated by the use;
- (5) Adequate measures have been taken or are proposed to prevent or control offensive odor, fumes, dust, noise, vibration or lighting which would otherwise disturb the use of the neighboring property;
- (6) Adequate utilities, parking, drainage and other necessary facilities will be provided;
- (7) The proposed use will not impede the normal and orderly development or improvements of the surrounding property;
- (8) The proposed use will not be injurious to the use and enjoyment of other property in the neighborhood and will not significantly diminish or impair the values of the property;
- (9) The use will not disrupt the character of the neighborhood; and
- (10) The structure and site shall have an appearance that will not have an adverse effect upon adjacent residential properties.

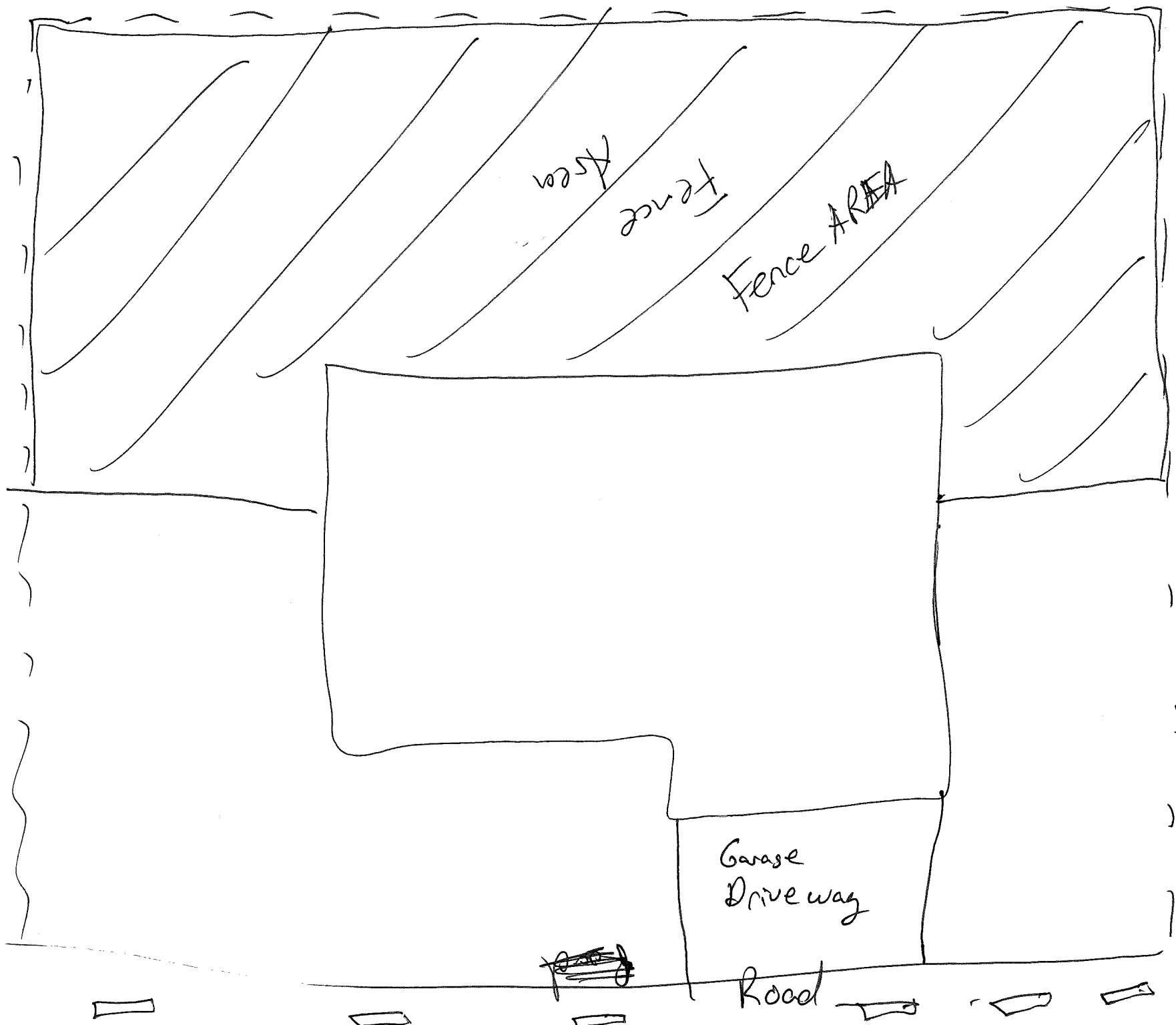
RECOMMENDATION

Staff recommends to the Planning Commission to recommend approval of the application for a CUP to allow placement of a fence closer than 3 feet to the side and rear property lines with the following conditions:

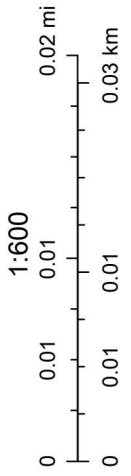
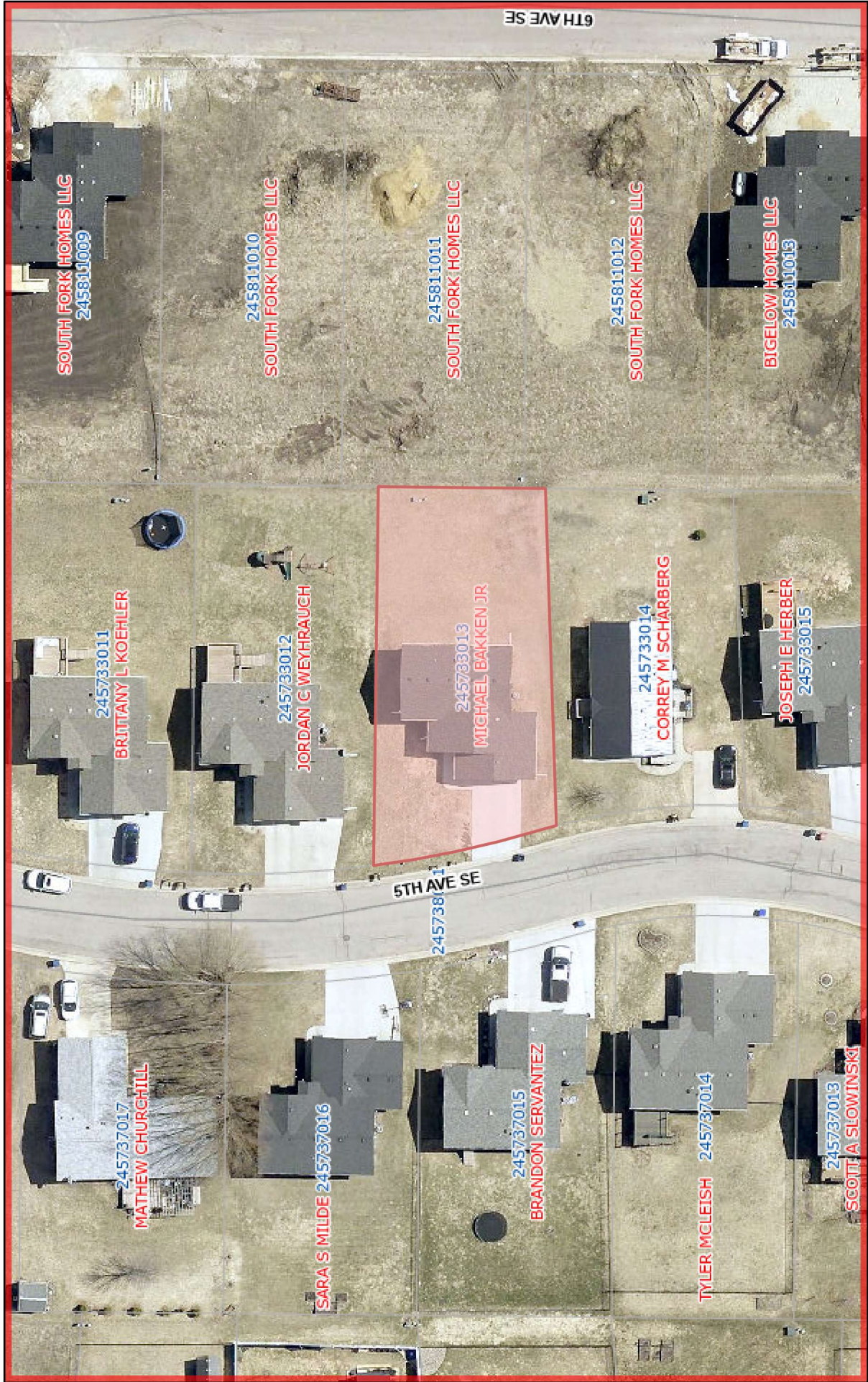
- (1) An access agreement shall be notarized and recorded with the property owners to the north, east, and south so that the fence can be placed closer than 3 feet to each property line.
- (2) The property owner at 97 5th Ave SE acknowledges that there is a 10-foot utility easement along the rear property line and any portion of the fence placed within the utility easement can be dismantled at owner's expense if this easement is utilized.

In recommending approval of the conditional use permit, staff offers the following findings of fact:

- (1) The property has a 10-foot utility easement along the rear property line.



ArcGIS WebMap



August 9, 2023

☐ Override 1 Roads ☐ PIN ☐ Parcels ☐ CITY ☐ Name