

Appeal: The Appellants request a Variance to construct an eight (8) foot tall fence along the Western property line in excess of two (2) feet above the maximum height of six (6) feet.

Background

The subject property is located at 3343 NW 89th Avenue, Ankeny and is legally described as Lt 14 Forest Creek, within the NE ¼ of the SE ¼ of Section 20, Township 80 North, Range 24 West of the 5th P.M. (Crocker Township). The subject property is approximately 44,997 SF (1.033 acres) in size and zoned “RR” Rural Residential District. All surrounding properties are also zoned “RR” Rural Residential District and primarily contain existing single-family dwellings. The subject property is approximately 0.2 miles from the City of Ankeny’s corporate limits to the east. See *Attachment A* for a vicinity map of the subject property and surrounding area.

The subject property is rectangular shaped having approximately 141 feet of frontage along NW 89th Avenue and 311 feet of depth north to south. The subject property was created as part of the subdivision Forest Creek recorded in 1999. The property contains an existing single-family residence built in 2015 and an existing detached garage built in 2018. Additionally, the property contains an existing swimming pool and deck constructed in approximately 2021 without a permit. As part of this Variance application the appellant has been required to submit permit applications for the structures. The appellant proposes to construct an eight (8) foot tall fence along the Western property line in order to provide privacy and a degree of noise softening from the nearby highway 415, which is approximately 320 feet from the western-most point of the property.

Summary of Request

The Polk County Zoning Ordinance, *Article 4: Use Regulations, Division 6: Accessory Regulations, Section 5: Fences and Retaining Walls, (A1)* states that fences not exceeding four and one half (4 ½) feet in height are permitted in the front yard setback, and fences not exceeding six (6) feet in height are permitted in the side or rear yard setback. The Appellants request a Variance to construct an eight (8) foot tall fence along the Western property line in excess of two (2) feet above the maximum height of six (6) feet. See *Attachment B* at the end of this report for a copy of the Variance Appeal Application and site plan showing where the fence would be installed.

Staff mailed out 10 notices regarding this request, including the date and time of the public hearing, to surrounding property owners within the 250-foot notification boundary. To-date staff has received one (1) response in support of the variance and no responses in opposition.

Natural Resources

The subject property slopes substantially and consistently from the north to the south across the lot, having a high elevation of approximately 968 feet along its north boundary and a low elevation of approximately 952 feet along its south boundary. The subject property contains a few mature trees throughout, but no large clusters of woodlands. The property is not located within a mapped floodplain.

Roads & Utilities

The property has approximately 141 feet of frontage to the south along NW 89th Avenue where it takes access. NW 89th Avenue is a paved two-lane local roadway maintained by Polk County. Water service is provided by Des Moines Water Works via an 8" inch water main along the north side of NW 89th Avenue. The property is served by a private onsite wastewater treatment system. The septic system is located in the east front yard according to county records.

Recommendation

The Board of Adjustment may grant a variance if items 1 through 5 are affirmed.

- 1.) Are there exceptional or extraordinary circumstances or special conditions applying only to the property in question and which do not exist generally on other properties in the same zoning district which makes it impossible to place a use permitted in the district on the property?

No. A six-foot fence could be placed on the shared property line. Furthermore, single family homes with swimming pools, nearby neighbors, and adjacent roadways are common in Polk County.
- 2.) Is the variance necessary for the preservation and enjoyment of property rights possessed by other properties in the same zoning district in the same vicinity? (No variance can permit uses that are prohibited in a district)

No. Fences over six (6) feet but not exceeding twelve (12) are reserved for non-residential uses.
- 3.) Will the variance preserve adjacent property and support the purpose of the ordinance and the public interest?

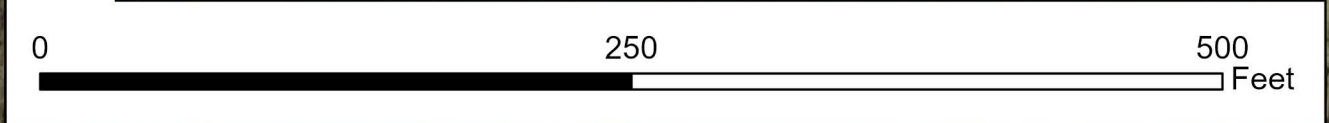
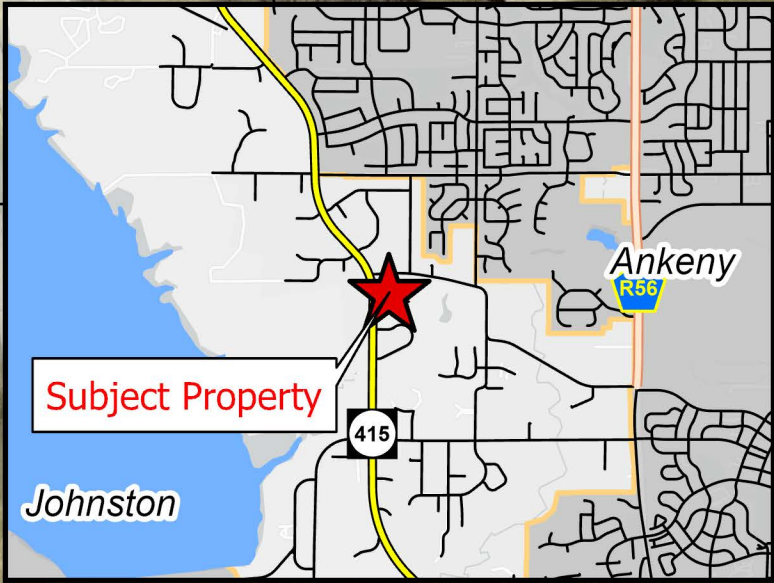
Yes. While an 8-foot fence would have minimal impact on adjacent neighbors, the allowed 6-foot fence should provide an adequate buffer between the two properties. Furthermore, plantings or a combination of fencing and plantings, could be utilized to buffer at a height greater than 6 feet if desired.
- 4.) Is there a special condition or circumstance that did not result from the actions of the applicant?

No. The property was purchased by the applicant with the knowledge that a neighbor's deck looked into their yard, and that it was near a highway. Furthermore, a pool and deck were constructed on the property with that same knowledge.
- 5.) Does the variance support the intent of Article 7 Natural Resource Protection and Article 8 Stormwater and Erosion Control Management of the Polk County Zoning Ordinance?

Yes. The appellants are required to meet the environmental provisions of the Polk County Zoning Ordinance. Upon staff's review no environmental areas are anticipated to be impacted.

The Board of Adjustment may grant a variance if items 1 through 5 are affirmed. Since items 1-5

were not answered in the affirmative, staff recommends denial of the requested variance.

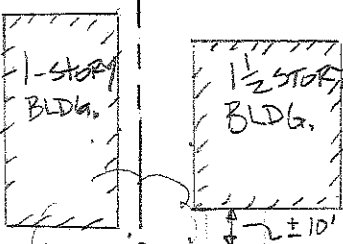
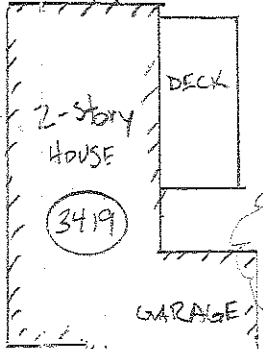


IA HIGHWAY 415

IDOT R.O.W.

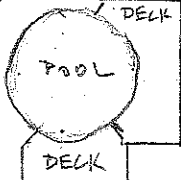
± 325'

JONES RESIDENCE

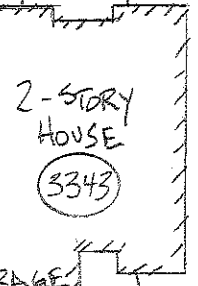


144 LF OF PROPOSED 8' TALL VINYL PRIVACY FENCE

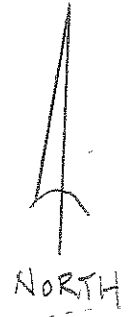
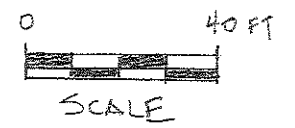
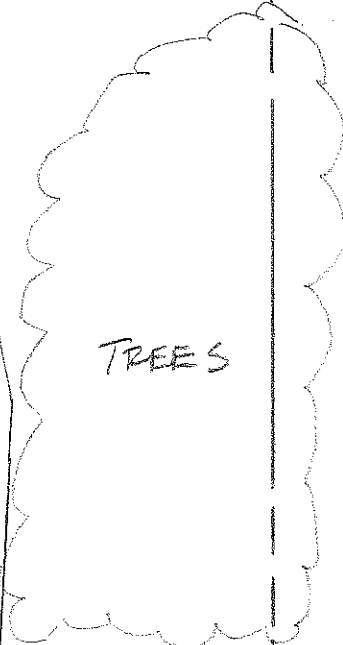
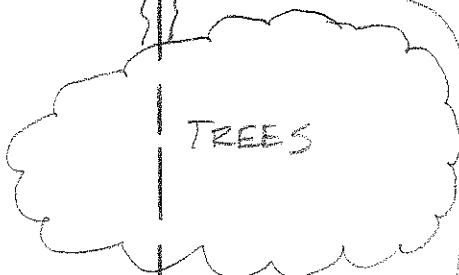
LANDSCAPE SCREENING



SEPTIC AND FILTER TANK



SEBERT RESIDENCE



CONC. DRIVE

CONC. DRIVE

FUTURE HEDGE

TREES

TREES

LOT LINE

APPROX. WATER LINE

DRIVE

DRIVE

± NW 89th AVE.

Variance Appeal Application



Board of Adjustment Authority

The Polk County Board of Adjustment is empowered by Iowa law and by the Zoning Ordinance of Polk County to hear requests and to make decisions on variance appeals to the Zoning Ordinance for individual properties where provisions of the Ordinance impose a unique and unnecessary hardship on the property owner and where the granting of a variance is not contrary to the intent of the Zoning Ordinance or to the public interest.

Each variance appeal is only a request to have a hearing before the Board of Adjustment. Notice of the hearing will be provided to all property owners located within 250 feet from the subject property. The Board of Adjustment will make a determination at a public hearing whether or not to approve or deny the request based on a staff report, applicant presentation, as well as public input. All appeals that are denied shall not come back to the Board of Adjustment for one year. Refunds will not be made once notice has been sent out to adjacent property owners.

Please complete the entire application and review the Variance Regulations on page 3.

1. The undersigned applicant requests that the Board of Adjustment consider this application for a variance appeal for the following general purpose. (Describe briefly the request)

We request that the Board allow the installation of an 8'-0" tall side yard privacy fence.

(time stamp)
Official Use Only

2. Subject Property Address: 3343 NW 89th Avenue, Ankeny, IA 50023

3. Subject Property Zoning District: Rural Residential

4. District and Parcel Number: 180/00767-414-000

5. Subject Property Legal Description (attach if necessary):

6. Filing Fee: \$366.00 per variance (each provision requested for a variance is considered a separate variance request)

7. Applicant(s) Information:

Steven L Seivert *Steven L Seivert* 7/24/2024
Applicant (Print Name) Signature date

Owner steve.isu@hotmail.com
Interest in Property (owner, renter, prospective buyer, etc.) Email

3343 NW 89th Avenue, Ankeny, IA 50023 515-371-0030
Address, City, State and Zip Phone Fax

8. Applicant(s) Representative:

If the appeal is going to be represented by someone other than the applicant please provide that information below

Applicant Representative (Print Name) Firm or Business Name

Address, City, State and Zip

Email Phone Fax

9. Property Owner Consent

The application must be signed by all the Titleholders, Contract Purchasers, or Option Purchasers of the subject property. The application may also be signed by the Registered Agent for a corporation or other person with similar legal authority to sign for a property owner. (if additional signatures are needed please attach)

Steven L Seivert _____ (Print Name)	<u>Steven L Seivert</u> _____ Signature	<u>7/24/2024</u> _____ date
Shanlyn F Seivert _____ (Print Name)	<u>Shanlyn Seivert</u> _____ Signature	<u>7/24/2024</u> _____ date
_____ (Print Name)	_____ Signature	_____ date
_____ (Print Name)	_____ Signature	_____ date

10. State the reason(s) the variance is necessary and why you cannot comply with the regulations of the Zoning Ordinance. Specifically explain the nature of the appeal.

Our property (Lot 14) and the adjacent neighbor's property (Lot 15) were owned by the same person for several years. We purchased lot 14 and built in 2015. The original house located on the neighbor's property is situated so that their backyard faces the east which is toward our house. The deck on the east side of their house is on the first floor and faces our house. Both lots slope from the north edge towards the street and their deck is about three feet high. While they previously did not use the deck, it has recently become more of their primary recreation area. Due to the higher elevation of their backyard and deck, and the downward slope of our property line, a standard 6-foot fence would not provide adequate privacy.

We live on a side street off IA Highway 415. Our house is located approximately 300 feet from the highway. According to DOT traffic maps, the average daily traffic is around 10,000 vehicles. The DOT maps from previous years indicate that traffic has continued to increase over time. Heavy traffic starts before 5 a.m. on weekdays. On weekends, several motorcycles and loud vehicles use the highway at high speeds, resulting in revving engines and a significant amount of noise.

We have invested a significant amount of time, energy, effort, and money into our property to make it an enjoyable place for our retirement. However, the noise from the highway and the lack of privacy caused by the positioning of our neighbor's house are negatively impacting our enjoyment.

We have discussed our intent to install a privacy fence along our west property line with our neighbors to the west, and they are in favor of an 8-foot-tall fence.

If the Board denies this request for the 8-foot fence, we request that a 7-foot fence be considered as part of this application.

A completed application with site drawing and filing fee are required for a submittal. Incomplete submittals will not be processed and returned to the Applicant.

Return completed forms to: Polk County Public Works, Planning Division 5885 NE 14th Street, Des Moines, IA 50313
 Phone (515) 286-3705 • Fax (515) 286-3437 Email: PublicWorks@polkcountyiowa.gov
 Forms available online <http://www.polkcountyiowa.gov/PublicWorks/> BOA Calendar CALENDAR

OFFICIAL USE ONLY			
Received by		Docket Number	
Date Received		Reviewed by	
BOA meeting date		BOA Approved	Y / N

Required Information: (must be included prior to making submittal)

1. Complete Application including the description of requested variance(s) with specific information for the request and state the reason(s) the variance is necessary and why you cannot comply with the regulations of the Zoning Ordinance.
2. Submit site drawing as required see details below.

Site Drawing

All variance appeals must submit three (3) 11x17 copies of a site drawing with the application. The site drawing must be fully dimensioned and legible. All required information must be drawn to a scale. The Zoning Administrator may require a petitioner to submit a site plan drawn by an engineer or architect. The site plan shall include the following:

1. Boundary drawing of the lot or area involved.
2. Location, dimensions, height and setbacks of all existing and proposed buildings and structures and the uses of each.
3. Use of the proposed addition to building or structure.
4. Approximate location of the vehicle entrance to the site.
5. Show the approximate location of water and sewer (septic system) facilities, if applicable.
6. Location of parking area and number of stalls required, if applicable.
7. General location of landscaping, buffer areas and screening, if applicable.
8. If the appeal is for a **sign**, the appeal must be accompanied by both a fully dimensioned, to scale elevation and site plan drawing of the sign, showing the exact location and size of the sign.

Variance Regulations

No variance from the provisions or requirements of this ordinance shall be authorized by the Board of Adjustment unless the Board finds beyond reasonable doubt that all the following conditions and circumstances exist. These regulations are found in the Zoning Ordinance, Article 17. Variance. The conditions and circumstances will be addressed by the Polk County Planning Division staff in reviewing the variance(s) request.

1. There must be exceptional or extraordinary circumstances or special conditions applying to the property in question, and do not exist generally on other properties in the same zoning district. By virtue of the unique or special conditions, it is, therefore, exceptionally difficult to place a use permitted in said district on the property.
2. The variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same zoning district and in the same vicinity and such variances will not permit uses that are prohibited in that district.
3. The authorization of such variance will not be of substantial detriment to adjacent property and will not be contrary to the purpose of this Ordinance and the public interest.
4. That the special conditions or circumstances did not result from the actions of the applicant.
5. The variance will not entirely void the natural resource protection requirements of this Ordinance.

The condition and/or situation of a property for which a variance is sought must be of an unusual nature. A variance shall not be authorized if the condition or situation is of a general or recurrent nature such that adopting a general regulation as an amendment to this Ordinance is a reasonably practicable solution.

The variance granted shall be the minimum necessary to permit a use of the property. A variance shall neither increase the number of permitted dwelling units by more than one (1), nor allow the minimum lot area required for a use to be decreased by more than ten (10) percent. If natural resources are involved, then mitigation for any damage to the environment shall be a condition of the variation.