

Docket Number: 19/8443

Appellant: Pat O'Dell, 6803 NE Berwick Drive, Ankeny, IA 50021 (Property Owner), represented by Rodney Knox with Contractors Group, Inc., 413 SW Cherry Street, Ankeny, IA 50023 (Contractor)

Appeal: The appellant requests a variance to construct a residential privacy fence within portions of the side and rear yards at eight (8) feet in height, in lieu of the maximum allowable height of six (6) feet.

Background

The subject property is located at 6803 NE Berwick Drive, Ankeny, and is legally described as Lot 1 of Ber-Oak Acres Plat 4, within Section 5 of Township 79 North, Range 23 West of the 5th P.M. (Delaware Township). The subject property is approximately 3.02 acres in size and is zoned "AT" Agricultural Transition District. The property contains an existing single-family dwelling constructed in 1991 as well as a number of accessory structures utilized for personal storage and the keeping of animals.

The subject property is located within the unincorporated area known as Berwick. Berwick includes the unincorporated neighborhoods located east of the City of Ankeny's corporate limits and Fourmile Creek along NE Berwick Drive, between NE 54th Avenue to the south and NE 78th Avenue (SE Oralabor Road) to the north. This unincorporated area largely consists of established single-family residential properties. See *Attachment A* at the end of this report for a vicinity map of the subject property and surrounding area. The "AT" Agricultural Transition District designation of the subject property and surrounding area is a holding zone given the proximity to the corporate limits of Ankeny. The zoning recognizes existing lot configurations and residential land uses, but prevents further subdivisions and development in an effort to maintain consistency with the future growth plans of the City of Ankeny and to preserve the ability to extend future utilities.

Over the last few months, Public Works staff has received several complaints regarding the subject property. The complaints have included accessory structures and additions constructed without proper building permits, the keeping of too many animals on the property, and complaints regarding the property's discharging septic system. At this time, the Polk County Housing & Code Enforcement Manager has confirmed that all registered complaints have been resolved, and the subject property is in compliance.

The subject property contains an existing privacy fence, six (6) feet in height, located along the western half of the property's southern, side lot line. The appellant is proposing to extend this privacy fence to the east along the remainder of the southern, side lot line as well as to the north along the entire eastern, rear lot line of the property. The new segments of privacy fence are proposed at eight (8) feet in height, in lieu of the maximum allowable height of six (6) feet. Under Polk County Construction Code, all fences over six (6) feet in height require a Building Permit.

Through review of this appeal application staff discovered that the existing six (6) feet tall privacy fence located along the western half of the southern, side lot line extends west to the front property line and edge of the County right-of-way along NE Berwick Drive. The Ordinance limits

the height of residential fences to no taller than four and one-half (4½) feet within a front setback. The front setback for the subject property is 50 feet. Therefore, the western 50 feet of this existing segment of privacy fence must be reduced to four and one-half (4½) feet in height or less. The appellant has agreed to complete this work when installing the new privacy fence segments. This reduction of the existing fence within the front setback must be completed regardless of whether the variance is approved or denied.

Staff mailed out 15 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 zero (0) responses in support and six (6) responses in opposition of this Appeal.

Summary of Request

Under the provisions of the Polk County Zoning Ordinance, *Article 4: Use Regulations, Division 6: Accessory Regulations, Section 5, Fences and Retaining Walls (A1)* limits the height of residential fences to four and one-half (4½) feet within a front yard setback, and six (6) feet within a side or rear yard setback. The subject property contains an existing privacy fence, six (6) feet in height, located along the western half of the subject property's southern, side lot line. The appellant is proposing to extend this privacy fence to the east along the remaining portion of the southern, side lot line as well as to the north along the entire eastern, rear lot line of the property. The new segments of privacy fence are proposed at eight (8) feet in height, in lieu of the maximum allowable height of six (6) feet. See *Attachment B* at the end of this report for a copy of the site plan submitted with the variance application.

Natural Resources

The subject property contains no areas of mapped floodplain, wetlands or other environmental hazards or features. The site topography slopes from west to east across the property, from a high elevation of approximately 922 feet along NE Berwick Drive to a low elevation of approximately 906 feet at the eastern, rear lot line. The property contains a few mature trees located along its frontage with NE Berwick Drive. The neighboring property to the east at 6785 NE Berwick Drive contains a few mature trees along the eastern lot line of the subject property. None of these trees are anticipated to be impacted by this proposal.

Roads & Utilities

The property has approximately 225 feet of frontage to the west onto NE Berwick Drive. NE Berwick Drive Avenue is a hard surfaced two-lane roadway maintained by Polk County. The subject property is served by an onsite wastewater treatment system that was replaced in 2018, and is located between the dwelling and the 50' x 106' accessory building on the southern portion of the property. Water service is provided by Des Moines Water Works. The latest data available from Des Moines Water Works indicates there is an existing six-inch (6") PVC water main located along the frontage of the property.

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?

Yes. The eastern half of the subject property sits at a lower elevation than adjacent properties, creating an exceptional circumstance whereby a traditional 6-foot tall privacy fence would provide less effective screening.

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)

Yes. Fences are permitted on residential properties up to six (6) feet in height within side and rear yard setbacks and up to four and one-half (4½) feet in height within front yard setbacks. The requested variance would permit the same use at a slightly taller eight (8) feet within portions of the subject property's side and rear yards.

3.) Will the variance preserve adjacent property and support the purpose of the ordinance and the public interest?

Yes. The proposed privacy fence will provide a desired barrier between adjacent properties with a recent history of disputes and conflict. Given the elevation of the eastern half of the subject property compared to surrounding properties, the visual impact of an eight (8) feet tall privacy fence will be similar to that of a six (6) feet tall privacy fence on flat terrain.

4.) Is there a special condition or circumstance that did not result from the actions of the applicant?

Yes. The change in grade and sloping topography are natural conditions of the property not resulting from the actions of the appellant.

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 appellant is required to meet the environmental provisions of the Polk County Zoning Ordinance. No environmentally sensitive areas of the property are impacted by this proposal.

The Board of Adjustment may grant a variance if items 1 through 5 are affirmed. Since items 1-5 were answered in the affirmative, staff recommends approval of the requested variance subject to the following conditions of approval.

1. The appellant shall obtain a Building Permit within six (6) months of the approval of this variance, and shall have one (1) year to complete construction of the fence after obtaining the Permit. If these timeframes are not met the variance shall be considered null and void.
2. The appellant shall reduce the height of the existing privacy fence along the southern lot line to no more than four and one-half (4½) feet within the 50-foot front yard setback prior to the issuance of the Building Permit noted in condition #1 above.

Attachment A

Vicinity Map

NE 70th Ave

Subject Property
6803 NE Berwick Dr

Ankeny

NE 29th St SE Four Mile Dr

Fourmile Crk

NE Berwick Dr

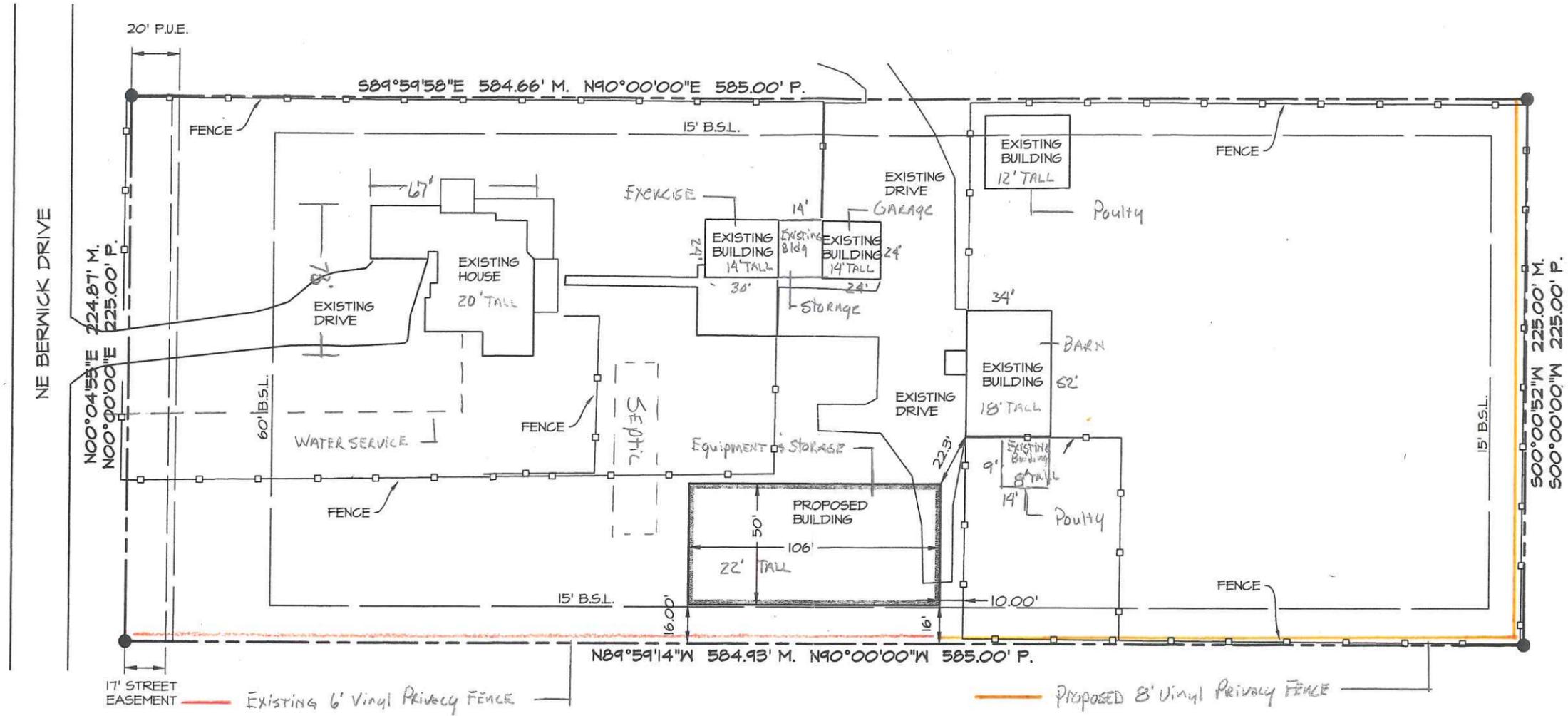


Attachment B

CONTRACTORS GROUP

LOT 1 - BER-OAK ACRES PLAT 4
6803 NE BERWICK DRIVE, ANKENY, IOWA

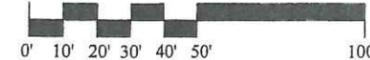
PAT & JILL O'DELL - OWNERS



SETBACKS:
60' - FRONT YARD
15' - REAR YARD
15' MIN. SIDE



Scale: 1"=50'



Civil Engineering Consultants, Inc.

2400 86th Street . Unit 12 . Des Moines, Iowa 50322
515.276.4884 . Fax: 515.276.7084 . mail@ceclac.com
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