



## *Office of the City Attorney*

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June 8, 2017

### **Memorandum**

To: Ordinance and License Committee  
From: Brian Running  
Re: Revisions to Municipal Code §22.58(2)(j)

This is a proposal, sponsored by Alderman Joe Pieper, to amend the zoning code to allow privacy fences in street yards under certain circumstances. This proposal has some history, here it is in a nutshell:

A property owner received a determination from the zoning administrator that he would not be allowed to build a privacy fence in the location he proposed, because our code currently does not allow privacy fences in street yards. Only ornamental fences are allowed in street yards.

The owner's property is unusual because the house is set back 85 feet from the street, but the minimum setback in the neighborhood is only 25 feet. His neighbors' houses are all built at the 25-foot setback, so his house is far back from the street compared to his neighbors. This means that the bulk of the usable part of his yard is in the front, and he has practically no rear yard at all. The code currently does not allow him to put a privacy fence to screen his front yard.

He applied for a variance from the Board of Zoning Appeals, which was granted. The Board found it significant that all of his neighbors could build a privacy fence right up to the 25-foot setback, but he could not. However, the owner's neighbor appealed the Board's variance to the circuit court, on the grounds that the Board did not follow proper legal procedures in granting the variance.

The circuit court agreed with the neighbor, and sent it back to the Board to reconsider the variance, this time applying the law properly. The second time around, the Board denied the variance.

Now, the owner has approached his alderman and asked for this situation to be remedied. He wants to be able to put up a privacy fence in the same location that all of his neighbors can. Joe agrees that he should have the same right that all of his neighbors have, and is sponsoring an amendment to the code to allow it.

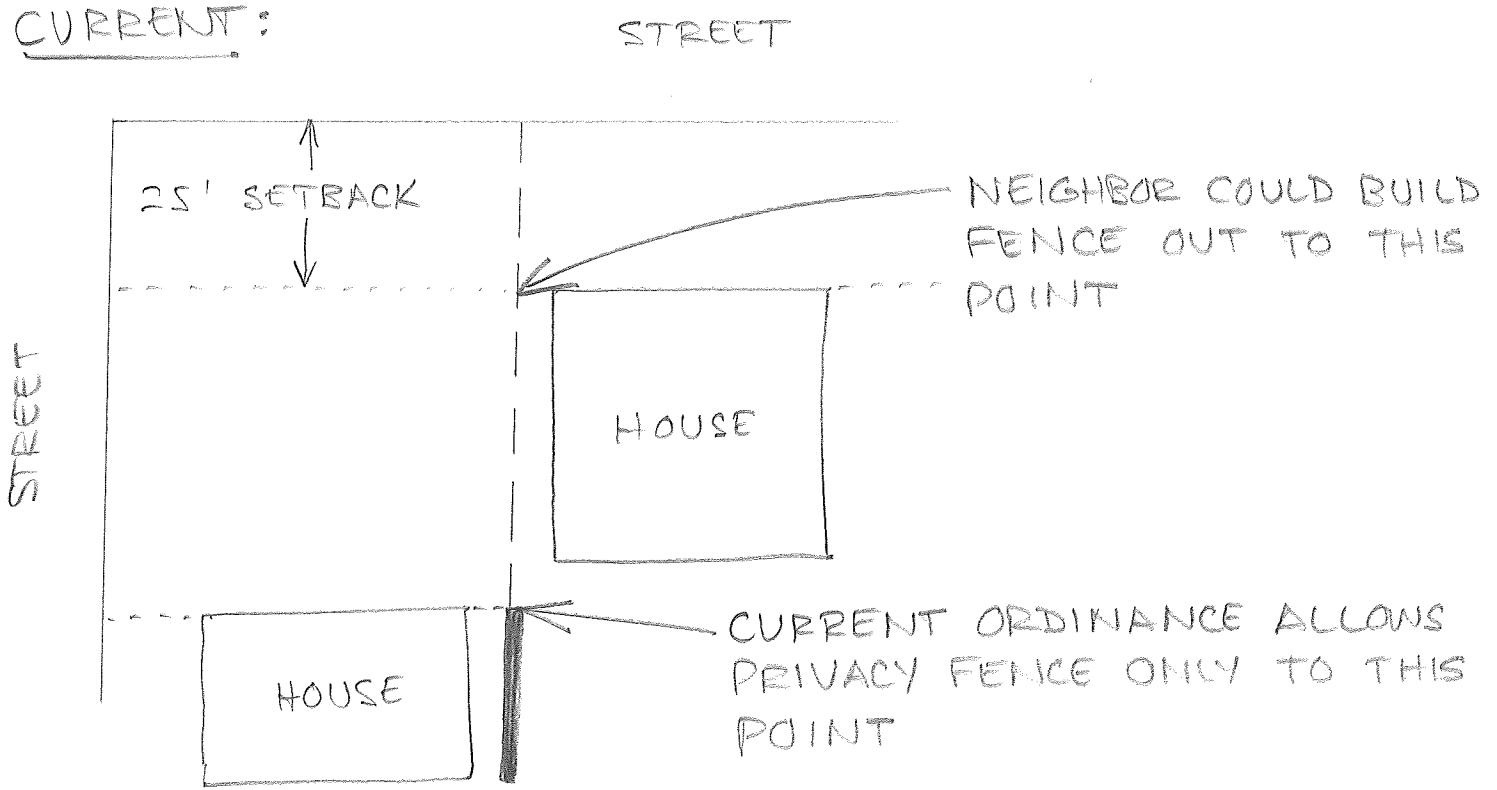
The proposed amendments will allow property owners to install privacy fences in their street yards, up to the plane of the adjoining neighbor's street yard. Street yards are defined as the yard between the front of a house and the street, so this means that a fence can be installed as far

toward the street as the front of the neighbor's house. It does *not* mean that a fence could be installed out to the setback. If a neighbor's house is also farther from the street than the minimum setback, the fence could only go out to the plane of the front of the house.

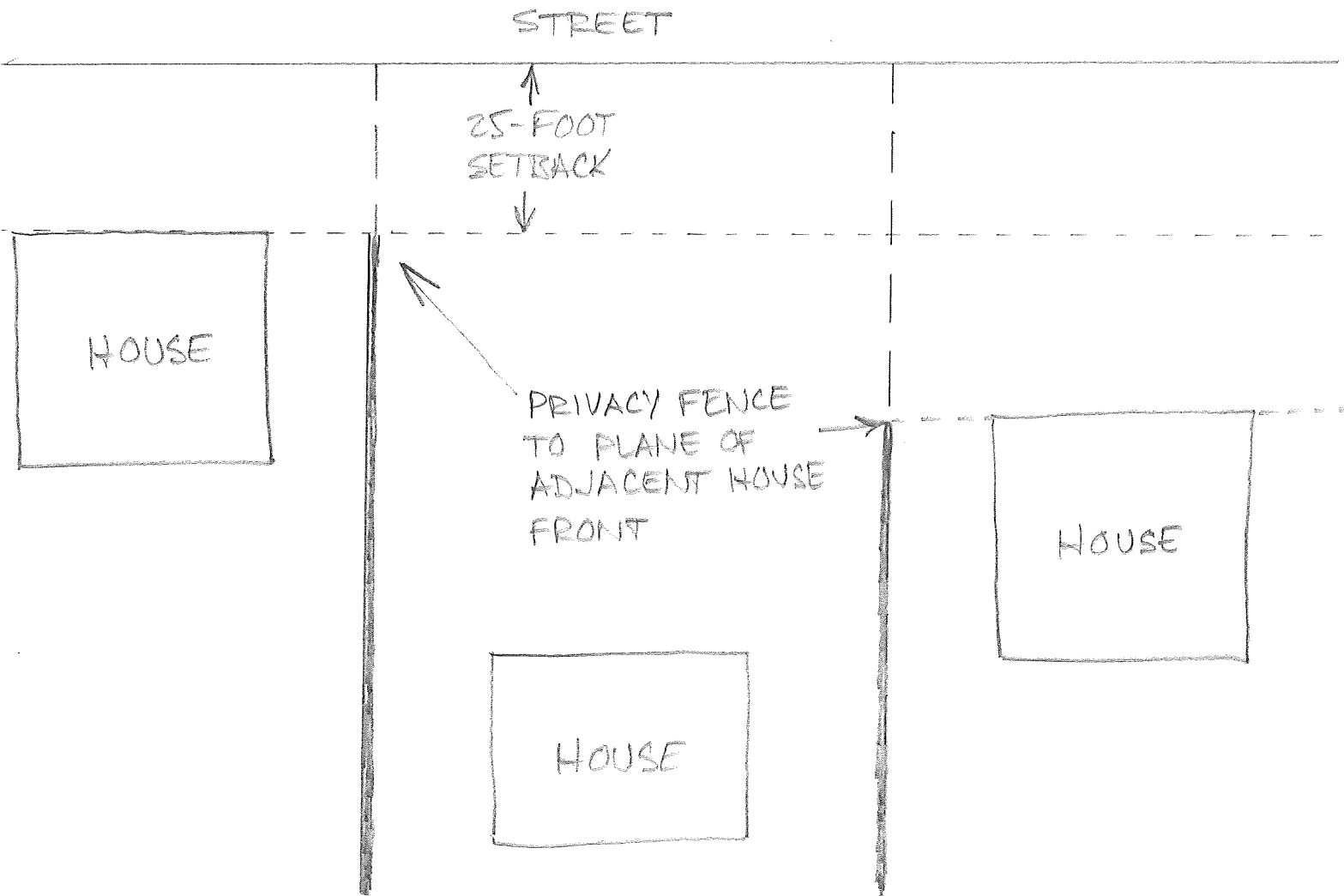
The Planning Department has approved the concept and the proposed revised ordinance. It's consistent with the purpose underlying the current ordinance, which is to prevent privacy fences from extending beyond houses and making the neighborhood look like a series of office cubicles, or stockyard pens. And, it allows for the occasional oddball house with a deep setback to enjoy the same privacy rights as everyone else in the neighborhood.

All of this will be much easier to understand when we discuss it live. Accompanying this memo are some illustrations, a redline mark-up of the changes to the ordinance, and a proposed ordinance.

CURRENT:



PROPOSED:



## Municipal Code §22.58(2)(j)

- j. Fences are a permitted accessory use in any zoning district. All fences shall comply with are subject to the following rules~~requirements~~:
1. ~~Barbed-wire fences and electric fences are prohibited except~~permitted only in the T-1 Temporary ~~District~~district, and only for control of livestock.
  2. ~~T-1~~Fences are not subject to setback requirements, except for street-yard setbacks for Solid Fences in subsection (3) and street-yard requirements for open Security Fences in subsection (7), and may be located on permitted up to the lot lines.
  3. ~~and shall not exceed four (4) feet in height in the street yard or six (6) feet in height in the side yard or rear yard. All fences erected in a street yard of the T-1 district shall be open fences as defined in Section 22.05.~~
  2. ~~Residential Solid fences~~Fences are permitted up to the lot line in the side and rear yards of residential zoning districts, subject to the following rules: ,butThey shall not exceed a height of six (6) feet; they are permitted in side and rear yards; and they are not permitted in street yards, except that they may extend on or parallel to the lot line into the street yard, no farther than the line of the adjacent property's street yard. (See Illustration No. 4), and shall not extend into the street yard. Residential fences may be solid fences as defined in Section 22.05.
  4. ~~Ornamental fences~~Fences, as defined in Section 22.05, are permitted in the street yards, side yards and rear yards in any zoning district, but shall not be erected in a street right-of-way, and shall not exceed a height of four (4) feet.~~Ornamental fences shall comply with the traffic visibility requirements set forth in Section 22.53.~~
  5. ~~Residential~~All fences shall be constructed in such a manner so that the finished side shall face the neighboring adjacent property, and. Fence posts shall be on the side of the fence facing face away from the neighboring adjacent property. ~~(See Illustration No. 4)~~
  6. All fences shall comply with the traffic-visibility rules in Section 22.53.
  7. ~~Security fences~~Fences are permitted up to the property lines in all zoning districts except residential districts, but shall not exceed ten (10) feet in height, and shall be openOpen fences Fences when located in the street yard. Security fences~~Fences~~ may include up to four strands of barbed wire on the top of the fence provided that the barbed wire is at least eight (8) feet above grade, and with the vertical supports for the barbed wire shall either extending vertically or slanting inward away from the property line. ~~Security fences shall comply with the traffic visibility requirements set forth in Section 22.53. Security fences shall be constructed in such a manner that the finished side shall face the neighboring property. Fence posts shall be on the side of the fence facing away from the neighboring property. All proposals for installation of Security Fences shall be submitted to the Plan Commission for review and approval before installation, and the Plan Commission shall have authority to require that Security Fences be in aesthetic harmony with surrounding properties.~~
  8. "Solid Fence" is defined in §22.05(75). "Security Fence" is defined in §22.05(74). "Ornamental Fence" is defined in §22.05(73). "Open Fence" is defined in §22.05(72).

**City of Waukesha, Wisconsin**

**Ordinance No. \_\_\_\_\_-17**

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**An Ordinance Amending Section 22.58(2)(j) the Waukesha Municipal Code,  
Regarding Regulation of Fences**

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The Common Council of the City of Waukesha do ordain as follows:

**Section 1.** Subsection (2)(j) of the Waukesha Municipal Code is amended to read in its entirety as follows:

- j.** Fences are a permitted accessory use in any zoning district. All fences are subject to the following rules:
  - 1.** Barbed-wire fences and electric fences are permitted only in the T-1 Temporary district, and only for control of livestock.
  - 2.** Fences are not subject to setback requirements, except for street-yard setbacks for Solid Fences in subsection (3) and street-yard requirements for open Security Fences in subsection (7), and may be located on lot lines.
  - 3.** Solid Fences are permitted in residential zoning districts, subject to the following rules: They shall not exceed a height of 6 feet; they are permitted in side and rear yards; and they are not permitted in street yards, except that they may extend on or parallel to the lot line into the street yard, no farther than the line of the adjacent property's street yard. (See Illustration No. 4)
  - 4.** Ornamental Fences are permitted in street yards, side yards and rear yards in any zoning district, but shall not be erected in a street right-of-way, and shall not exceed a height of 4 feet.
  - 5.** All fences shall be constructed so that the finished side faces the adjacent property, and fence posts face away from the adjacent property.
  - 6.** All fences shall comply with the traffic-visibility rules in Section 22.53.
  - 7.** Security Fences are permitted up to the property lines in all zoning districts except residential, shall not exceed 10 feet in height, and shall be Open Fences when located in the street yard. Security Fences may include up to four strands of barbed wire on the top of the fence provided that the barbed wire is at least 8 feet above grade, and the vertical supports for the barbed wire shall either

extend vertically or slant inward away from the property line. All proposals for installation of Security Fences shall be submitted to the Plan Commission for review and approval before installation, and the Plan Commission shall have authority to require that Security Fences be in aesthetic harmony with surrounding properties.

8. "Solid Fence" is defined in §22.05(75). "Security Fence" is defined in §22.05(74). "Ornamental Fence" is defined in §22.05(73). "Open Fence" is defined in §22.05(72).

**Section 2.** All ordinances, or portions of ordinances, inconsistent with this ordinance are hereby repealed.

**Section 3.** This Ordinance shall be effective immediately upon its publication.

Passed the \_\_\_\_\_ day of June, 2017.

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Shawn N. Reilly, Mayor

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Attest: Gina L. Kozlik, City Clerk