

**Common Council**  
**City of Waukesha, Wisconsin**

**Ordinance No. 2023 - \_\_\_\_\_**

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**An Ordinance to Rezone Certain Property and to Amend the  
Zoning Map of the City of Waukesha, Wisconsin**

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**Whereas** City staff requested an amendment to section 22.05(99) and 22.58(2) of the zoning code to clarify and improve regulation of pergolas, arbors, and other garden decorations,

**Whereas** on September 27<sup>th</sup>, 2023, the Plan Commission passed a resolution by which the proposed zoning code amendment was recommended to the Common Council; and

**Whereas** a notice of a public hearing of the proposed zoning code amendment to be held on October 17<sup>th</sup>, 2023, was published as a Class 2 notice pursuant to Chapter 985 of the Wisconsin Statutes on October 3<sup>rd</sup>, 2023, and October 10<sup>th</sup>, 2023; and

**Whereas** a public hearing of the proposed zoning code amendment was held at the regular Common Council meeting on October 17<sup>th</sup>, 2023; and

**Whereas** the Common Council, at its November 7<sup>th</sup>, 2023, regular meeting considered the Plan Commission's recommendation, the supporting materials, the statements given during the public hearing, and the statements of City staff; and

**Whereas** the Common Council had full debate on the proposed re-zoning and found that the proposed re-zoning is in the best interests of the City; and

**Whereas** a motion to adopt the recommendation of the Plan Commission and to approve the re-zoning was made, seconded and carried by the affirmative vote of a majority of the Common Council members present and voting;

**Now, therefore**, the Common Council of the City of Waukesha do ordain as follows:

**Section 1.** Section 22.05(99) of the Waukesha Municipal Code is amended to read as follows:

**22.05 Definitions.**

(99) "Gazebo/Pergola" An accessory structure no larger than 150 square feet in area which is covered by a roof or shade structure, may be enclosed with screening and is intended to be used for outdoor living activities.

**Section 2.** Section 22.58(2) of the Waukesha Municipal Code is amended to read as follows:

**22.58 Accessory Use Regulations.**

1. SPECIFIC REGULATIONS.

- a. Garages, garden and utility sheds, and gazebos/pergolas are permitted upon the issuance of a building permit, provided that:

- (1) (Am. #61-02) The nearest point of any accessory building shall be located no closer than five (5) feet from the permitted principal structure; shall be placed on a pad of concrete, asphalt, wood, or metal; shall be located so that the foundation is not closer than five (5) feet to a lot line; and shall not exceed the height restrictions specified in

the applicable zoning district and shall not exceed the height of the principal structure. Any accessory building for motor vehicles shall be placed on a concrete floor or pad. Accessory buildings shall be set back at least five (5) feet from an alley, except if vehicular access to the lot is from the alley, accessory buildings shall be set back at least eight (8) feet from the alley.

- (2) (Am. #61-02) No more than one accessory building shall be erected on a lot in any residential district when the principal dwelling has an attached garage. No more than two accessory buildings shall be erected on a lot in any residential district when there is no attached garage. When two accessory buildings are permitted, one structure shall not exceed seven hundred twenty (720) square feet in area when accessory to a single-family dwelling, and shall not exceed one thousand one hundred and fifty two (1152) square feet when accessory to a two- family or larger dwelling; and the second structure shall not exceed one hundred fifty (150) square feet in area. When only one accessory building is permitted, it shall not exceed one hundred fifty (150) square feet in area. The Plan Commission may, at its discretion, permit more than two accessory structures when it determines that more than two (2) such structures are necessary to the efficient development of the property and that sufficient, usable open space areas remain on the lot.
  - (3) A gazebo connected to a deck which is attached to the permitted principal structure shall be located no closer than three (3) feet to a lot line, but not in the minimum side yard when located adjacent to the wall of a permitted principal structure, or within fifty (50) feet of the front lot line, except where adjacent to an alley or a street side lot line.
  - (4) (Cr. #15-14) The roofs of all accessory buildings shall be covered with asphalt shingles, wood or shake shingles, standing seam metal, aluminum or other metal, tile roofing, or slate roofing. Membrane structures are only permitted as a temporary use subject to Section 22.64 of the Zoning Ordinance. Any proposals to use membrane structures in excess of 30 days shall require Plan Commission approval.
  - (5) (Cr. #15-14) The exterior walls of accessory structures shall be covered by aluminum or metal panels, cement fiber, wood, wood clapboards, wood shakes, vinyl, steel or aluminum beveled siding, brick, stone or other masonry-type veneer materials or other similar materials. Membrane structures are only permitted as a temporary use subject to Section 22.64 of the Zoning Ordinance. Any proposals to use membrane structures in excess of 30 days shall require Plan Commission approval.
- b. Arbors, trellises, and similar garden decorations may be erected, without a building permit, in any yard, provided that:
- (1) Arbors shall not exceed 10 feet in height or 50 feet in total area.
  - (2) Arbors which are standalone structures shall be located no closer than five feet to any lot line.
  - (3) Arbors which are incorporated into a decorative fence may match the setback of the fence, provided that they comply with the traffic-visibility rules in Section 22.53 and provide a vision triangle 6-feet on the right angle sides at driveways and alleys.
- c. Patios, constructed at or below yard grade, may be erected, without a building permit, adjacent to the permitted principal structure, and shall be located not closer than three (3) feet to a lot line.
- d. Decks which are constructed twelve (12) inches or more above lot grade, and which are attached to or closer than ten (10) feet to a permitted principal structure, shall be located not closer to a side lot line than the required side yard requirements for the district in which they are located and shall require the issuance of a building permit. Decks may project a distance not to exceed ten (10) feet into any required rear yard. Freestanding decks or decks surrounding

- private swimming pools separated from the principal structure shall be located at least ten (10) feet from the permitted principal structure and shall be located not closer than three (3) feet to a lot line. All decks which are constructed less than twelve (12) inches above yard grade shall be located not closer than three (3) feet to a lot line.
- e. Playhouses and children's swing sets are permitted without a building permit, provided that such uses shall be located no closer than three (3) feet from a lot line.
  - f. Central air conditioning compressors are permitted in the rear yard or the side yard without a building permit, provided that the compressor shall be located at least three (3) feet from a lot line. Where it is determined that it is impractical to locate a central air conditioning compressor in the side or rear yard, the building inspector may permit placement in the street yard provided that the air conditioning compressor is screened from view.
  - g. Accessory pet kennels may be placed in the rear yard of any residential district upon the issuance of a building permit provided that the kennel is located not closer than five (5) feet from a lot line; that the kennel is placed on a pad of concrete, asphalt, or coarse stone or gravel; that the kennel is enclosed by a fence not less than four (4) feet nor more than six (6) feet in height; and that no pet kennel shall exceed three hundred (300) square feet in area.
  - h. Chicken keeping enclosures may be constructed upon the issuance of a Chicken Keeping Permit, subject to all applicable regulations in Municipal Code Sec. 33.07 and this Chapter, and provided that:
    - (1) Chicken enclosures shall be located so the nearest point is no closer than 5 feet from the permitted principal structure and no closer than 5 feet from any lot line.
    - (2) Chicken enclosures shall not exceed 11 feet in height.
    - (3) Chicken enclosures must be used for chicken keeping purposes only and may not be combined with or attached to other accessory uses or structures.
  - i. One (1) accessory compost bin, not to exceed six (6) feet in height is permitted without a building permit, provided that such use shall be located at least three (3) feet from a lot line.
  - j. Private swimming pools are permitted, upon the issuance of a building permit, provided that:
    - (1) (Rep. & Recr. #38-02) (Am. #58-03) Private swimming pools shall be walled or fenced by a detached wall or fence at least four (4) feet high and no closer to the perimeter walls of the pool than four (4) feet at any point. Such wall or fence must be constructed so as to prevent uncontrolled access by children from the street or adjacent properties. All fence openings or points of entry into the pool area enclosure shall be equipped with gates that have self-closing and self-latching devices placed at the top of the gate. (See Sec. 11.38 of this Code for other requirements regarding swimming pool locks.)
    - (2) (Rep. & Recr. #38-02) Properties containing private swimming pools are not subject to subsection 1. if the entire property upon which the swimming pool is located is enclosed by a detached wall or fence that fully complies with that subsection.
    - (3) (Rep. & Recr. #38-02) Properties containing private swimming pools are not subject to subsection 1. if the private swimming pool is an above-ground swimming pool with a deck, the bottom of said deck to be at least 48 inches above grade level and extended out perpendicular from the sides of the pool. Such deck shall have, on its outer edges, a fence at least thirty- two (32) inches in height above such deck level, and be of a type which will prevent uncontrolled access by children from the street or adjacent properties. Such fence and deck shall have a ladder at the opening of the fence, with a gate which is equipped with self-closing and self-latching devices placed at the top of

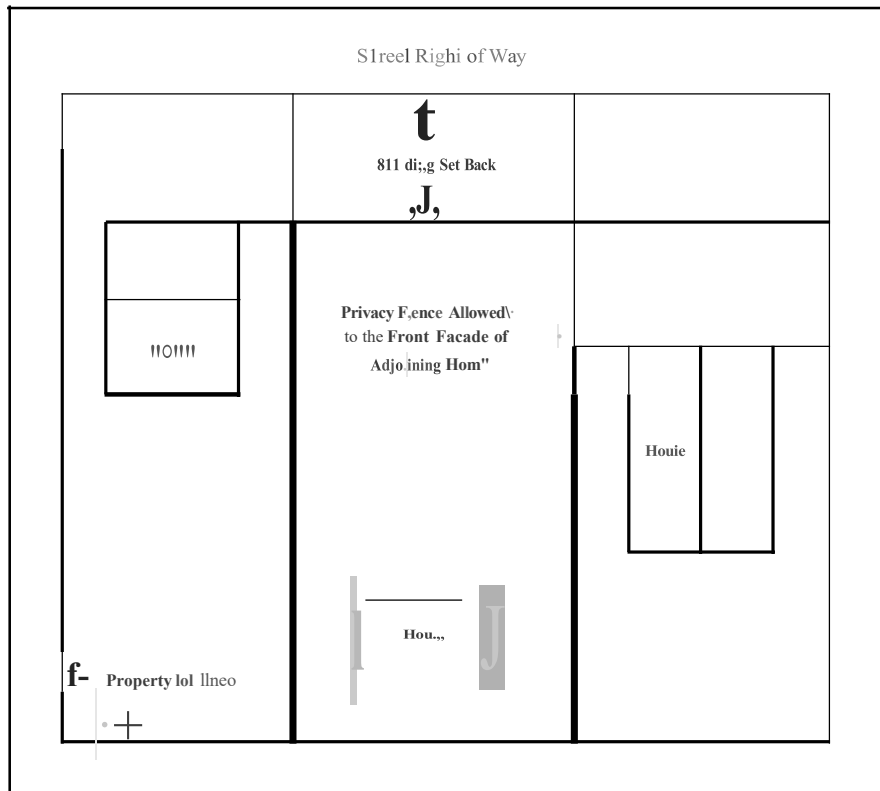
the gate.

- (4) (Am. #38-02) Swimming pools shall not be constructed directly under or over electric lines or within five (5) feet of underground lines or ten (10) feet of overhead lines. All electrical connections to a swimming pool shall comply with all local and state electrical codes.
  - (5) No water drained from swimming pools shall be discharged onto adjacent properties without written consent of the owner, or into a municipal sanitary sewerage system, or directly into a navigable body of water;
  - (6) Equipment shall be provided for the disinfection of all pool water. No gaseous chlorination shall be permitted.
  - (7) Heating units, pumps, and filter equipment shall be adequately housed and muffled in such a manner as not to create a nuisance. Such equipment shall be located not closer than twenty (20) feet to a lot line.
  - (8) There shall be an unobstructed areaway around all pools of at least three (3) feet in width.
  - (9) No private swimming pool, including areaways surrounding the pool, shall be located closer than ten (10) feet to a lot line.
  - (10) Private swimming pools, together with other accessory structures regulated by this section shall not occupy more than fifty percent (50%) of the rear yard area.
- k. Rummage Sales may be conducted in any district provided that the rummage sale does not exceed four (4) consecutive days in length and is not conducted more often than three (3) times per year. Rummage sales do not require the issuance of a building permit.
- l. (Am. #6-17) Fences are a permitted accessory use in any 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) (Am. #2021-7) Solid Fences are permitted in residential zoning districts, subject to the following rules:
    - (A) Solid Fences shall not exceed a height of 6 feet, measured vertically from the ground.
    - (B) On residential lots having only one street frontage, Solid Fences are permitted only in Side Yards and Rear Yards, but may extend into the Street Yard as far as the line of the front of the house in an adjoining lot (see Illustration 4).
    - (C) On residential lots having two street frontages (for example, a corner lot or a lot having street frontage at both the front and the rear), Solid Fences are allowed in Side Yards, and Rear Yards. For purposes of this subsection, only the Yard fronting the street that is the property's address is deemed to be a Street Yard; Solid Fences are permitted in the Yard fronting a street that is not the property's address (see Illustration 5).
    - (D) Solid Fences may not be located closer than 1 foot to a public right-of-way (see Illustration 6). Note: Public sidewalks and alleys are within public right-of-way.

In most cases, this means that Solid Fences may not be closer than 1 foot to a public sidewalk or alley.

- (E) Solid Fences shall provide for a vision triangle 6 feet on the right-angle sides at driveways and alleys (see Illustration 6).
- (F) Solid Fences that are, as of June 15, 2021, not in compliance with this subsection 3, may remain in place until more than 50% of the supporting structure is removed or in need of replacement, at which time the Solid Fence must be relocated and otherwise brought into full compliance with this subsection 3.
- (G) For lots having an address-side Street Yard less than 20 feet in depth, compliance with Municipal Code §22.53(1) may be required.

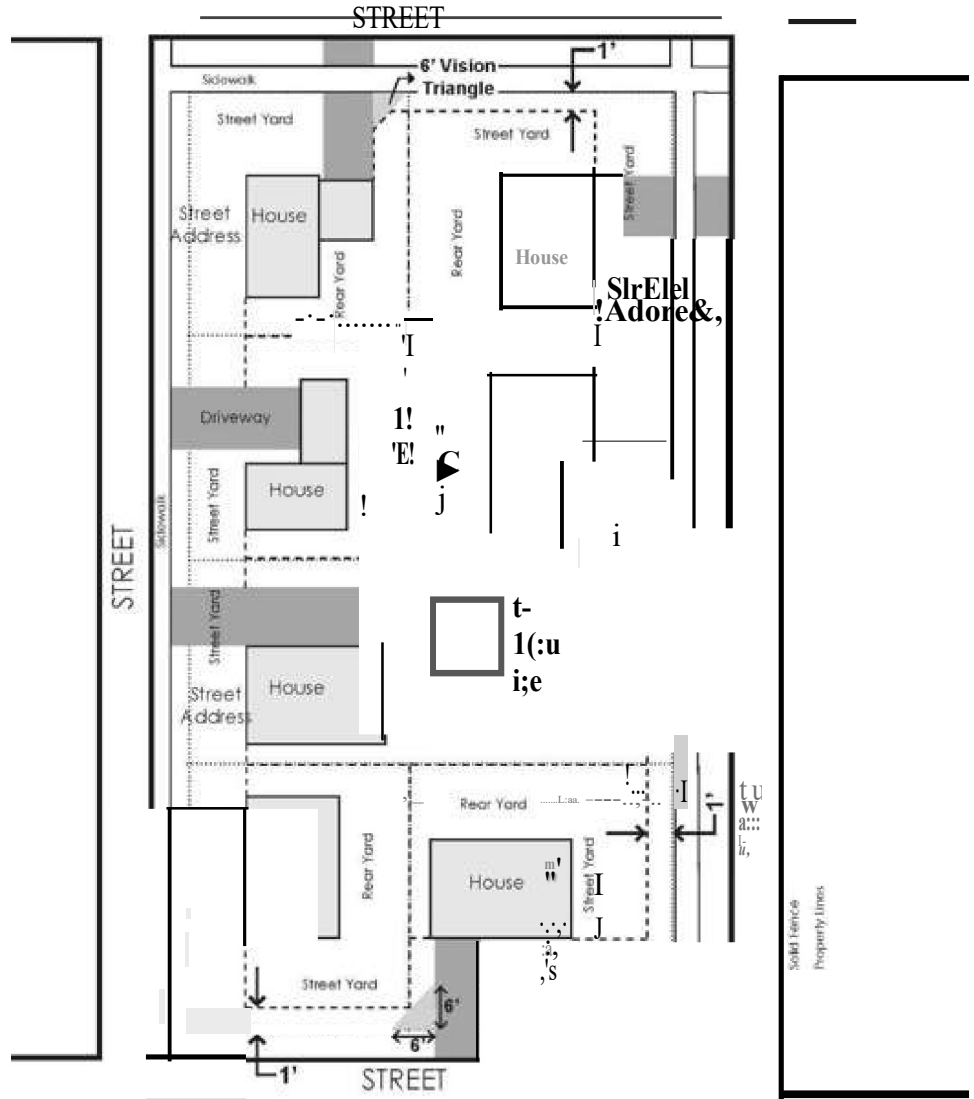
Illustration No. 4



**Plan view diagram illustrating allowed residential privacy fence locations between adjoining lots.**

(Illustration 5 created #2021-7)

Illustration 5



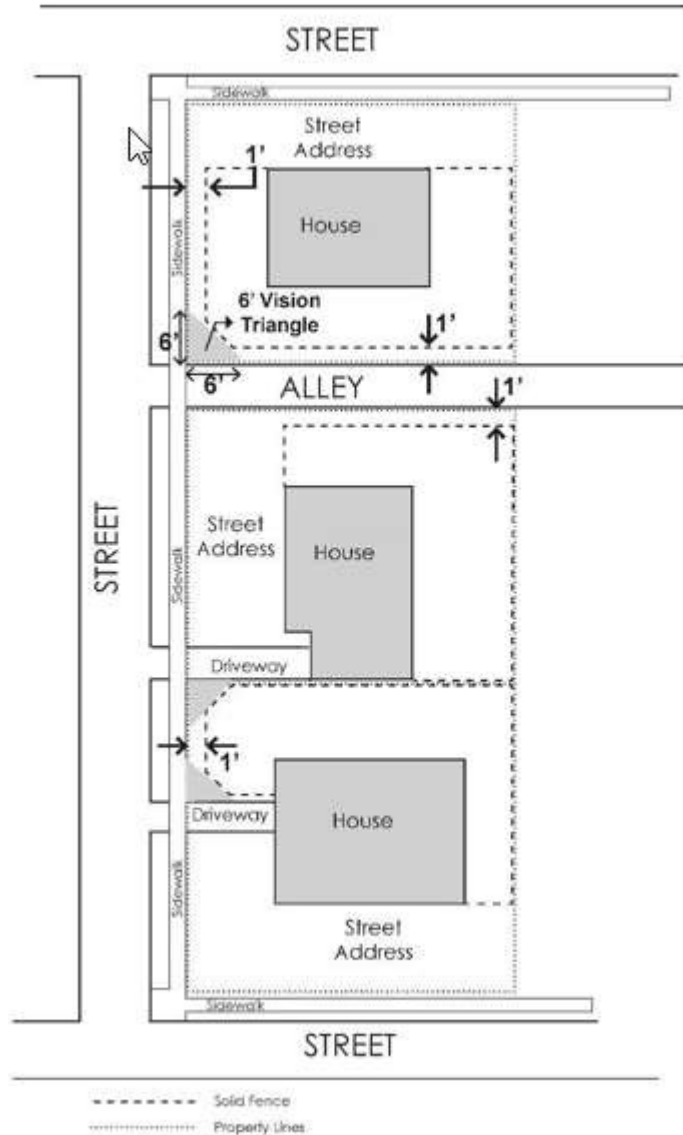
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(Illustration 6 created #2021-7)

Illustration 6



- (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 3.** All ordinances or parts of ordinances inconsistent with or contravening this ordinance are hereby repealed.

**Section 4.** This ordinance shall be in effect the day after its publication.

Passed the 7<sup>th</sup> day of November, 2023.

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Shawn N. Reilly, Mayor

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Gina L. Kozlik, City Clerk-Treasurer