



## Office of the City Attorney

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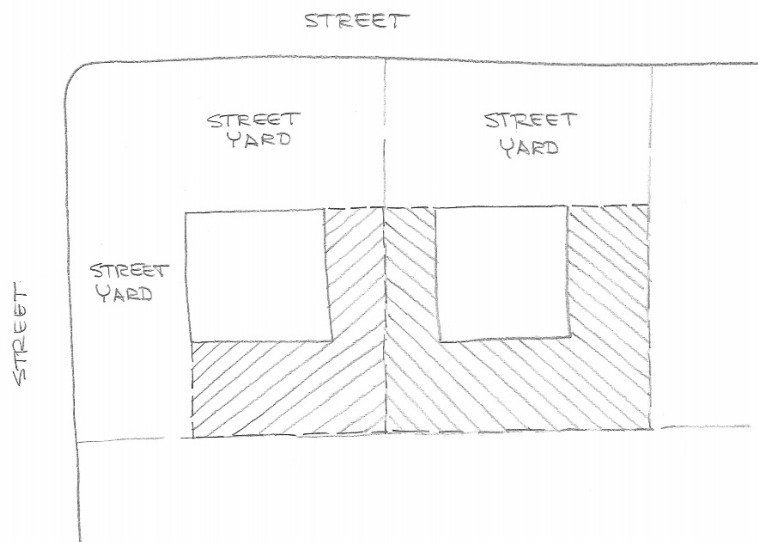
May 25, 2021

### Memorandum

To: Plan Commission  
From: Brian Running  
Re: Amendment to WMC §22.58(2)(j)(3) – Allowing Solid Fences in street yards of lots having more than one street frontage

Alderman Rick Lemke is sponsoring a proposal to amend Waukesha Municipal Code §22.58(2)(j)(3), to allow Solid Fences, defined in WMC §22.05(75), to be placed in street yards on lots that have more than one street frontage, such as corner lots or lots fronting on streets at both front and rear.

Current law prohibits Solid Fences in street yards, period. That means that owners of corner lots are very limited in the placement of privacy fences in their rear yards, and the area enclosed by privacy fences is therefore small compared to their neighboring lots.



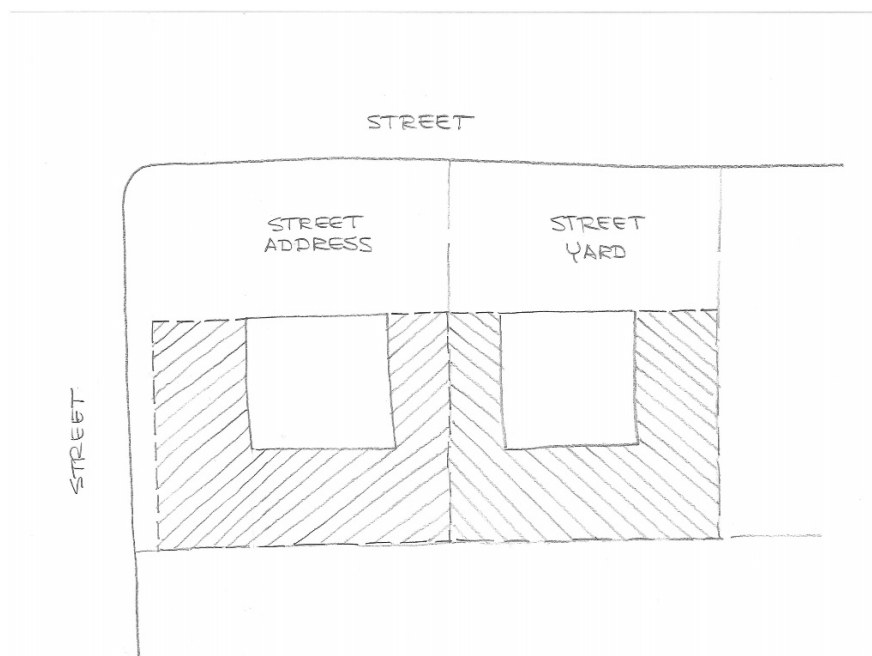
There are many instances in the city of Solid Fences that are in violation of this prohibition. Owners feel that they should be able to enjoy as much privacy-enclosed area in their backyards as their neighbors, so they have gone ahead and installed Solid Fences immediately adjacent to

the sidewalk in what they consider their rear yard. Sometimes this violation of our code is intentional, sometimes unintentional, and most of the time, the fences have been installed by contractors that do not check our code before installation and leave the owner to deal with the fallout.

Owners have also asked our Board of Zoning Appeals for variances to allow the placement of fences right next to the sidewalk, and the variances have sometimes been granted, and sometimes not.

This has led to property owners seeing apparently-illegal fences all over the city and logically concluding that they're allowed, but then they are issued citations by our building inspectors when they install similar fences. This has led to a large number of complaints to aldermen over the years.

There's no real compelling reason that Solid Fences should not be allowed in one of the street yards on corner lots or lots with front-and-rear street frontage. Allowing a Solid Fence in one of the street yards will correct an inequitable situation and allow corner and double-frontage lots to enjoy privacy in their yards the same as other property owners.



A proposed draft of the revised code section is below. As you can see, it changes the existing code to allow a Solid Fence in the street yard that is not the property's address. Solid Fences would still be prohibited in the street yard that is the property's address. That is generally, the "front" of a house. The amended code section also requires that solid fences in street yards be at least 3 feet from the right-of-way, which in most cases means 3 feet away from the sidewalk. This space allows room for snow to be piled up, and also gives room for crews to work when a sidewalk needs to be replaced. The amended section also requires a 6-foot vision triangle at driveways and alleys for pedestrian safety.

Because there are so many non-compliant fences already existing around town, it also allows existing fences to be grandfathered until they need major repair or replacement. The reason for this is that the non-compliant fences generally don't create a nuisance or dangerous situation

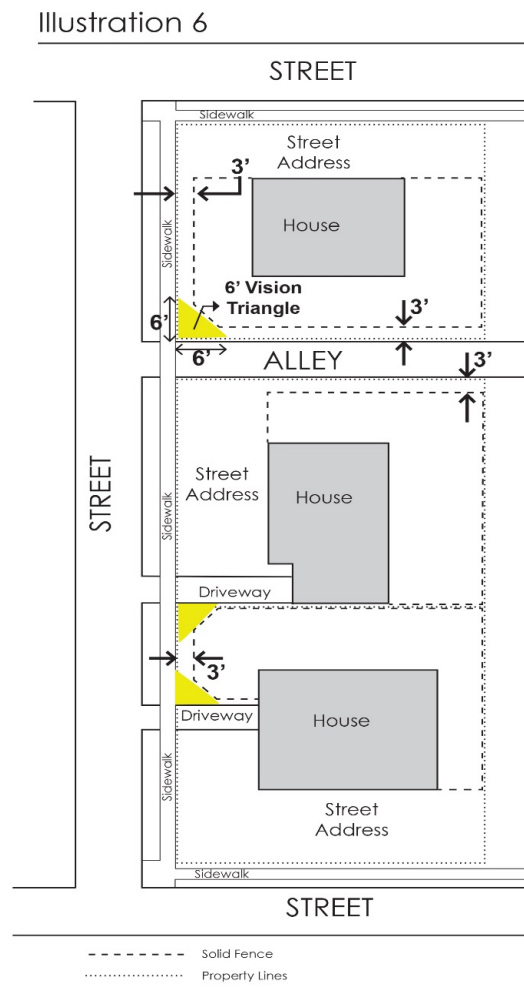
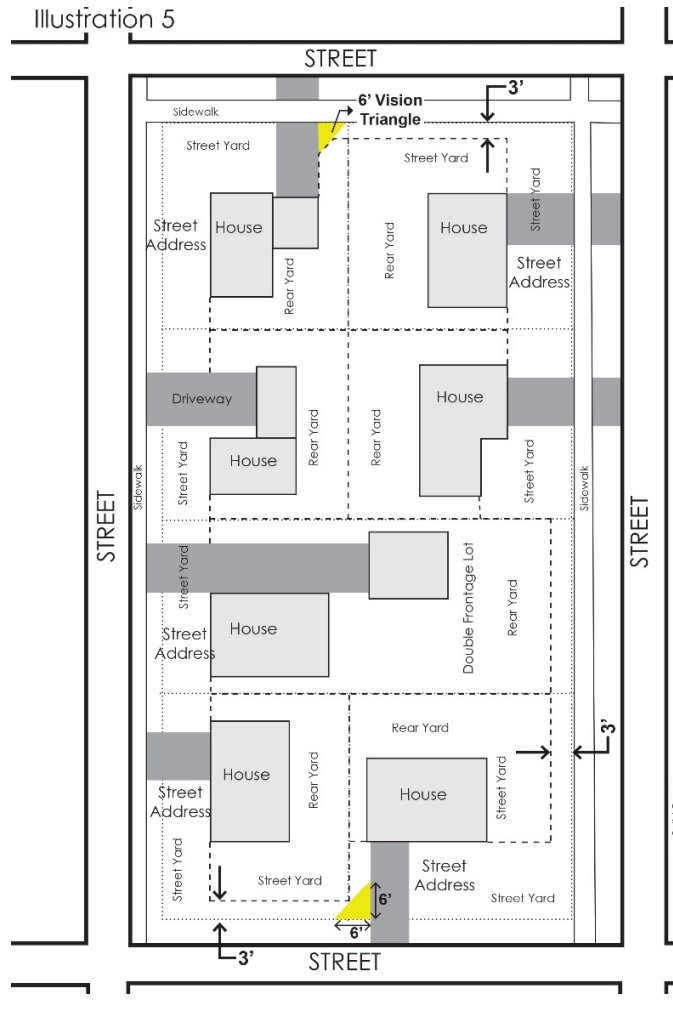
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Mun. Code §22.58(2)(j)(3), proposed amended full text:

3. 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 3 feet 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 3 feet 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 [the effective date of this amendment], 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.

(Illustration 4 unchanged)

(Illustrations 5 and 6 follow)



Redline comparison with current code section:

3. Solid Fences are permitted in residential zoning districts, subject to the following rules:
  - They
  - A. Solid Fences shall not exceed a height of 6 feet; they, 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; and they are not permitted in street yards, except that they, but may extend on or parallel to the lot line into the Street Yard, no farther than as far as the line of the adjacent property's street yard. front of the house in an adjoining lot (see Illustration No. 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 3 feet 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 3 feet 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 [the effective date of this amendment], 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.