



Wauwatosa, WI

Board of Zoning Appeals

Meeting Agenda - Final

7725 W. North Avenue
Wauwatosa, WI 53213

Thursday, September 26, 2024

6:00 PM

Zoom Only:
<https://us02web.zoom.us/j/89325102239>,
Meeting ID: 893 2510 2239

Regular Meeting

VIRTUAL MEETING INFORMATION

Members of the public may observe and participate in the meeting via Zoom only at the link above. To access the Zoom meeting via phone, call 1-312-626-6799 and enter the Meeting ID.

CALL TO ORDER

ROLL CALL

NEW BUSINESS

1. Consideration of the request by Gregory Frederick for a side yard fence height exception at 1109 N. 120th Street. [24-1230](#)

ADJOURNMENT

NOTICE TO PERSONS WITH A DISABILITY

Persons with a disability who need assistance to participate in this meeting should call the City Clerk's office at (414) 479-8917 or send an email to tclerk@wauwatosa.net, with as much advance notice as possible.



Staff Report

File #: 24-1230

Agenda Date: 9/26/2024

Agenda #: 1.

Consideration of the request by Gregory Frederick for a side yard fence height exception at 1109 N. 120th Street.

Submitted by:

Andy Krause

Department:

Development/Building & Safety Division

A. Issue/Background

The applicant is requesting a fence code exception for an approximately five-foot tall fence located within the side yard along the west side of the house for a length of 68 feet. Although the address is 120th Street, the front of the lot is Christine Drive as it is the narrowest side of the lot along a street. The fence is already constructed and in conflict with the issued fence permit and code requirements.

Constructed fence:

The side yard fence is approximately 5'-1" to 5'-2" above grade for a length of 68 feet in the western side yard.

Allowed by City code:

Under 15.28.030A, fences located in the side yard not abutting a street are allowed up to four and one-half feet or less in height.

Attachments to this report include the applicant's narrative addressing the exception criteria, fence contract, a proposal to correct the fence, fence photos, and City email exchanges with applicant prior to issuing the fence permit, and issued permit.

B. Recommendation

Under the exception provisions, the applicant must demonstrate to the Board that a hardship exists created by conforming to the fence regulations. The Board should consider all of the following, making findings that each of these factors applies in favor of granting the exception:

1. Whether strict application of the code would create a hardship to the property owner;
2. Whether the hardship results from conditions which are unique to the property, or unusual in comparison to the properties to which the code is generally applicable; and
3. Whether the application of the exception will be consistent with the intent of the ordinance and not impair public safety.



WATERTOWN PLANK RD

1120TH S

12017

1127

1126

1170

1102

1078

1066

12012

1109

CHRISTINE DR

12011

1" = 50'

1109 N 120

City of Wauwatosa



Application Materials from Applicant

Andrew Krause asked me to address three additional criteria for the Board of Zoning Appeals to consider in granting an exception to strict enforcement of Wauwatosa's fence code for the property at 1109 N. 120th Street.

Whether strict application of the code would create a hardship to the property owner.

My daughter paid Chuck's Fences \$14,500 to install the fence, and it would cost \$8,700 more to lower its height by six inches to conform to the code. (See the attached estimate from Chuck Ewers, the same contractor who built the fence.) Additionally, the resulting appearance of the fence is likely to be significantly less attractive. My daughter is a single mom and public-school teacher. My wife and I are already subsidizing her monthly mortgage payments by covering the HELOC loan we took out for the downpayment on the house, the interest on which is almost \$700 a month as is. Neither Kelly nor my wife and I can afford to take on another \$8,700 in debt.

Whether the hardship results from conditions which are unique to the property, or unusual in comparison to the properties to which the code is generally applicable; and

What is unique to the property is its proximity to neighboring houses with fences that measure six feet tall. They are lovely. Our five-foot fence fits the character of the neighborhood and enhances the value and beauty of both 1109 N. 120th St as well as the surrounding area.

Whether the application of the exception will be consistent with the intent of the ordinance and not impair public safety.

The application of the exception will be consistent with the intent of the ordinance in that it both contributes to public safety while also complementing the character of surrounding homes. If we try to modify the fence to conform to the code ourselves to save the expense of paying Mr. Ewers, the result is more likely to appear as a botched DIY project than a professionally installed and expertly crafted one. Neighbors' responses to the fence as Mr. Ewers installed it have been universally positive.

The permit we received for building a fence said: “Contractor to install a six foot high pressure treated wood fence of 198 linear feet to enclose backyard at 1109 N. 120th ST.”

I understand that the language of the signed permit and the language of earlier email correspondence with code enforcement officer, Andrew Krause, does not match. We (my, wife, daughter, and I) and our contractor, Chuck Ewers of Chuck’s Fence, believed that the permit itself superseded any of our previous correspondence.

All of us clearly were operating under the understanding that this was the case. Mr. Ewers received the signed permit that indicated the fence could be as high as six feet. Modifying the two sections of the fence he installed that measure five feet instead of four feet, six inches now would present financial hardship for my daughter, Kelly Frederick Mizer, a long-time art teacher at Tosa East who lives in the home with her 14-year-old son. All of us were attempting to do our due diligence throughout the process of making this improvement to the property, an improvement that improves the value of the property significantly. I humbly request you grant this exception if we misunderstood what the permit allowed.

The installed fence does not extend into the front yard at all. The aerial view photograph shows a preliminary plan that does include lines for a fence that partially extends into the front yard, but both for cost and aesthetic reasons we decided that it would be better if the fence was flush the house itself, enclosing just the backyard. Mr. Ewers received only the signed permit as did another contractor with whom we initially sought a bid for the work. We chose Mr. Ewers even though his bid was higher because of his craftsmanship and quality of materials.

The signed contract with Chuck’s Fence indicates that we had intended the fence to measure 4 feet, six inches all around. However, because the permit Chuck’s Fence received indicated the allowable height could be six feet all around, Mr. Ewers advised that it would actually be less expensive to install at five feet due to the extra labor involved in cutting the five-foot boards to measure 4 feet, six inches.

Additionally, since receiving notice from Mr. Krause that Mr. Ewers’s work violates Wauwatosa’s fence ordinance, my daughter has noted that the home kitty-corner from her own has a fence that measures six feet tall. The feedback my daughter has received from neighbors has been very positive. The addition of the fence not only enhances the beauty of the neighborhood but increases everyone’s safety as well.

My daughter has lived in Wauwatosa for more than 25 years, and she raised four children there. Her work at Wauwatosa East has earned its art department national recognition and contributed to the success of countless students. While these facts have nothing to do with the ordinance which we mistakenly violated, please know that in granting this variance you would be sparing a very fine person financial hardship as well as making her very relieved and happy.

Thank you for considering this request.

Respectfully,

Gregory R. Frederick

Chuck's Fence LLC

Contract for Services

Chester Ewers (414) 534-3024

This is a contract for services to be rendered in the future for an agreed upon price stated in this document.
Please read it carefully before signing

The Parties: The parties to this contract are: 1109 N 120th St
Kelley who is called "you".

• **Services:** The services to be performed by the company are as follows:

A. Installation of a fence as described: 4.5' tall western red cedar

B. Digging of holes as described below:

C. Other services as described below: 1 gate in front

• **Price:** The Price agreed upon for the services to be performed is:

\$14,150.00
To be paid as follows: 50% downpayment upon signing of contract / 50% upon completion of the project

• **Your Obligations:** You agree to the following:

- I. To pay the price for the services to be performed.
- II. To secure any necessary building permits.
- III. To determine that the services to be performed will be in compliance with all zoning requirements, municipal ordinances, and restrictive covenants.
- IV. That you are the owner of the property where the services are to be performed.
- V. That you are responsible for lot lines and dirt removal.
- VI. The company is not responsible for hauling away old fence, posts, cutoffs, or any other material unless specified in the contract.

• **Additional Payments:** You agree to pay the company additional money for tree, bush or other obstacle removal, or if it encounters underlying rock, tree roots, concrete or any other buried obstructions.

• **Indemnification:** You agree to pay the Company additional money for any damages it pays or is required to pay to another for damages done to sewer pipes, cable, or other utility lines. The company assumes no responsibility for damage to any buried lines not located by Diggers Hotline. These include, but are not limited to buried electric, gas, plumbing, sprinkler, grill or pool service.

• **Company Obligations:** The Company agrees to the following:

- I. To perform the services described in the contract in a timely, professional workmanlike manner.
- II. To notify you of the amount of additional compensation required, if any, as soon as it can be determined.
- III. To refund any money paid to the Company if the services to be performed cannot be accomplished,

provided that you did not prevent the Company from being able to perform the services.

• **Other conditions:** You and the Company agrees to the following:

- I. That this Contract for Services constitutes the only agreement between the parties and if any previous discussions regarding the services occurred they are not binding on either of the parties.
- II. That the laws of the State of Wisconsin shall govern this Contract for Services.
- III. That the Company shall not be required to dig within 18 (eighteen) inches of any underground utility.

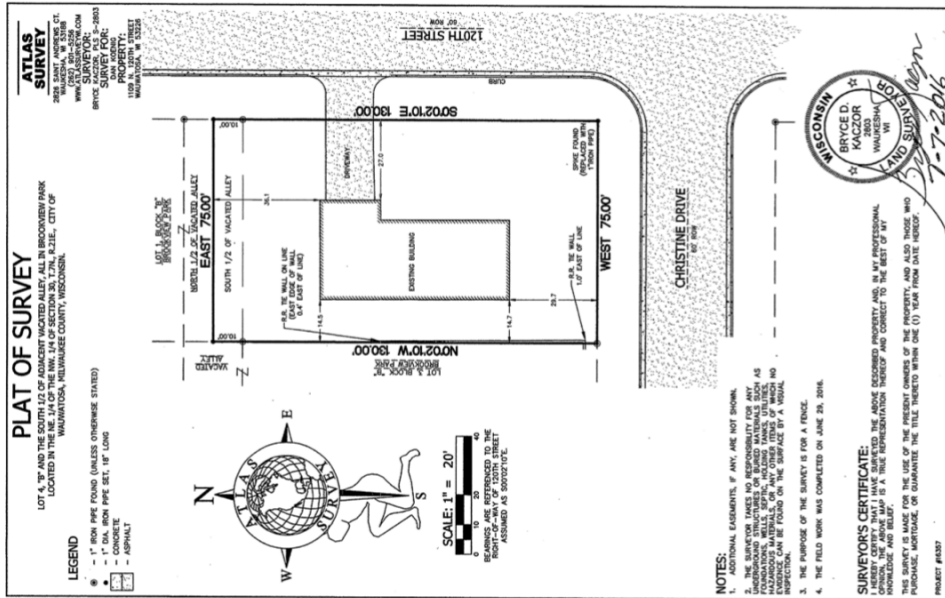
• **Warranty:** 10 year labor

• **Date and signature:** Kelley (PLEASE PRINT NAME) [Signature] (SIGNATURE) 4/21/24 (DATE)

Chester Ewers (PLEASE PRINT NAME) [Signature] (SIGNATURE) April 21, 2024 (DATE)



180641



3:11

5G 57

19 Messages

839

Fence layouts and hei...

<https://munisselfservice.wauwatosa.net/css/default.aspx>











City Permit Information

Andrew Krause

From: Andrew Krause
Sent: Wednesday, April 17, 2024 10:42 AM
To: 'Greg Frederick'
Subject: RE: [External] Re: Fence layouts and heights

Yes, once you have it all worked out, please label it on the survey all the height locations.

Thank you

Andy Krause

Code Enforcement Officer
Building & Safety Division
City of Wauwatosa
7725 W. North Avenue
Wauwatosa, WI 53213
414-479-8981

Akrause@wauwatosa.net

<https://munisselfservice.wauwatosa.net/css/default.aspx>

From: Greg Frederick <gregfreder@gmail.com>
Sent: Wednesday, April 17, 2024 10:40 AM
To: Andrew Krause <akrause@wauwatosa.net>
Cc: Kelly Frederick Mizer <kellymizer@gmail.com>
Subject: Re: [External] Re: Fence layouts and heights

OK. Thanks, Andy.

Just for your information, 1109 N.120th is only technically a corner lot. The next door neighbor's house faces Christine ST but is immediately behind and next door to 1109 N. 120th.

I am not sure if that makes any difference with respect to permit requirements.

The proposed fence will not border either 120th or Christine streets.

Once the contractor and I have decided on the area for the 4 1/2" for fence, will you need another diagram?

Greg

On Apr 16, 2024, at 2:09 PM, Andrew Krause <akrause@wauwatosa.net> wrote:

Unfortunately that is not permitted. Lattice will be considered part of the fence. The fence has a max height of 4'-6" above grade

Andy Krause

Code Enforcement Officer
Building & Safety Division
City of Wauwatosa

7725 W. North Avenue
Wauwatosa, WI 53213
414-479-8981

Akrause@wauwatosa.net

<https://munisselfservice.wauwatosa.net/css/default.aspx>

From: Greg Frederick <gregfreder@gmail.com>

Sent: Monday, April 15, 2024 9:54 AM

To: Andrew Krause <akrause@wauwatosa.net>

Cc: Kelly Frederick Mizer <kellymizer@gmail.com>; Pat Frederick <pat.fred888@gmail.com>

Subject: [External] Re: Fence layouts and heights

Andy, I've shopped around for contractors since last we communicated about the permit for a fence at 1109 N. 120th ST.

The current contractor wanted to know if Wauwatosa would permit a 4-foot fence with a 1 foot lattice section at the top.

For both cost and aesthetic reasons, that option sounds best to me.

Is that doable?

Thanks,

Greg

On Apr 5, 2024, at 9:33 AM, Andrew Krause <akrause@wauwatosa.net> wrote:

Andy Krause

Code Enforcement Officer

Building & Safety Division

City of Wauwatosa

7725 W. North Avenue

Wauwatosa, WI 53213

414-479-8981

Akrause@wauwatosa.net

<https://munisselfservice.wauwatosa.net/css/default.aspx>



City of Wauwatosa

7725 W North Avenue
Wauwatosa, WI 53213

Permit

Permit NO.: BR2024-0207

Permit Type: **B&S - Residential**

Work Classification: **Fence**

Permit Status: **Issued**

Issue Date: **04/25/2024**

Expiration: 04/25/2025

Location Address

Parcel Number

1109 120TH ST, Wauwatosa, WI 53226

3770015000

Contacts

Owner
Gregory Frederick
1109 N. 120th ST, Wauwatosa, WI 53226
(414)460-3004 gregfreder@gmail.com

Applicant
Gregory Frederick
1109 N. 120th ST, Wauwatosa, WI 53226
(414)460-3004 gregfreder@gmail.com

Contractor
Chuck's Fence
(414)534-3024 chucksfencebuilding@gmail.com

Description: Contractor to install 6 foot high, pressure treated wood fence of 198 linear feet to enclose backyard at 1109 N 120thg ST.

Valuation: \$10,000.00

Total Sq Feet: 3,164.00

Inspection Requests:

Fees	Amount
B&S - Residential - Permit Reside, Reroof & Fence	\$50.00
Total:	\$50.00

Payments	Amt Paid
Total Fees	\$50.00
cc Default	\$50.00
Amount Due:	\$0.00

Inspections:	
Inspection Type	
Final Building	

Andrew Krause

Issued By: Andrew Krause

April 25, 2024

Date

To setup Inspection:

Electrical/Garage Inspections

East of 92nd, email Joe Glorioso at jglorioso@wauwatosa.net or call 414-479-8910

West of 92nd, email Adam Pluer at apluer@wauwatosa.net or call 414-479-8911

Plumbing Inspections

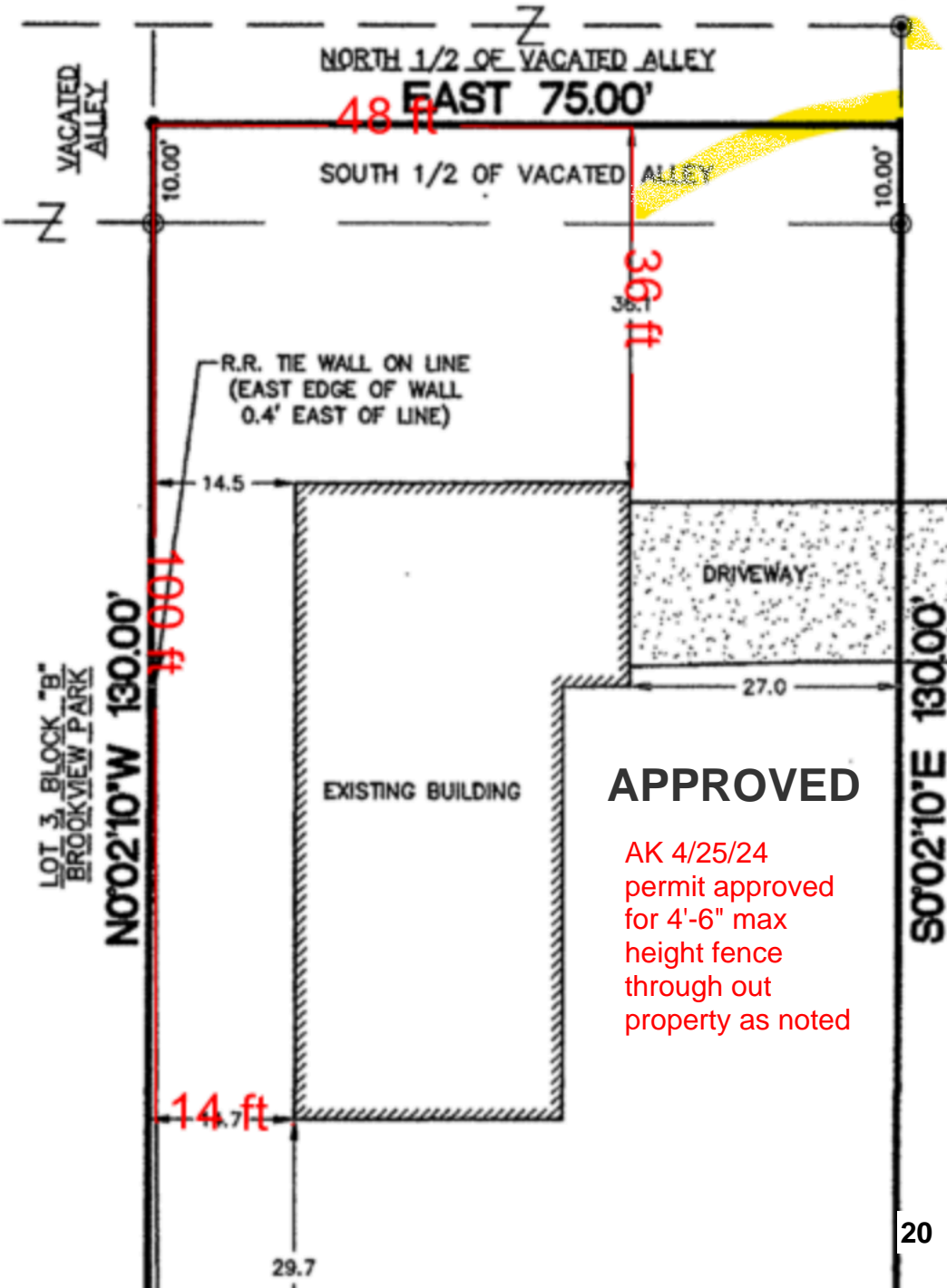
email Frank Lant at flant@wauwatosa.net or call 414-479-8912

Building inspections

East of 92, email Paul Wolfgramm at pwolfgramm@wauwatosa.net or call 414-479-8908

West of 92nd email Mike Niedermann at mniedermann@wauwatosa.net or call 414-479-8909

The City of Wauwatosa charges fees for inspection services. To see the fee amount, please contact the appropriate inspector and explain your specific request. Note there are fees for missed appoints.



APPROVED

AK 4/25/24
permit approved for 4'-6" max height fence through out property as noted