

BOARD OF APPEALS - STAFF REPORT

TO: Board of Appeals

FROM: J. Korotev, Director of Code Administration

REPORT DATE: 6/23/11

BOARD OF APPEALS MEETING DATE: 6/28/11

SUBJECT: The Village of Howard Board of Appeals will hold a public hearing on June 28, 2011 at 6:30 p.m. in the Duck Creek Conference Room at 2456 Glendale Avenue concerning a variance petition from James A. Biening to permit the erection of a 5' high chain link fence in a front yard along the Dousman Street frontage of the property located at 2397 Yolanda Circle, VH-2030

SUMMARY: The Village staff has reviewed the petition for variance from James A. Biening to permit the erection of a 5' high chain link fence in a front yard along the Dousman Street frontage of the property located at 2397 Yolanda Circle, VH-2030. Section 50-592 (3) of the Zoning Ordinance limits the height of fences located in front yards to 3 feet. Section 50-6 of the Zoning Ordinance defines the lot in question as a "through" lot as follows:

Section 50-6 LOT, THROUGH *A lot having a pair of opposite lot lines along two (2) more or less parallel public streets, and which is not a corner lot. On a "through lot," both street lines shall be deemed front lot lines.*

Section 50-180 of the Zoning Ordinance requires that *"The Board of Appeals shall not vary the regulations of this ordinance unless it shall first make findings, based upon evidence presented to it by the applicant, that all the following variance standards are met."* These standards were provided to the applicant in printed form prior to receipt of the application.

Unnecessary Hardship The applicant must clearly show that the difficulty or hardship faced has been created by the zoning ordinance and is not self-imposed and that, in the absence of a variance, no feasible use of the property can be made. The difficulty or hardship must be unique to the parcel in question and not one which affects all parcels in the area similarly. Potential loss of profit or desire for financial gain is not, in and of itself, grounds for a variance. Additionally, violations by or variances granted to neighboring property owners does not justify the granting of a variance.

Unique Property Limitation The applicant must show that unique physical characteristics of the property itself, not his own personal desires or preferences prevent him from building or developing in compliance with the provisions of this ordinance. These characteristics may include topographical conditions, parcel shape, physical surroundings, wetland areas or soil types which limit the reasonable use of the property.

Protection of the Public Interest The applicant must show that the granting of a variance will not harm the public interest, including the interests of the public at large, not just those of nearby property owners. The granting of a variance must not result in an inadequate supply of light or air to adjacent property, a substantial increase in congestion of public streets, an increase in the danger of fire, endangerment of the public safety, or reduction or impairment of property values within the neighborhood. The lack of local opposition to a variance petition does not in itself mean that the variance will not harm the public interest.

STAFF FINDINGS:

- An argument can be made that the hardship faced by the applicant is created by the Zoning Ordinance because different fence rules to interior lots than apply to “through” lots.
- The lot in question is a “through” lot which makes it unique compared to other lots in the subdivision and in the R-1 zone. The Zoning Ordinance prohibits the erection of any fence exceeding three feet in height within 35 feet of the Dousman Street right-of-way line which severely limits the owners’ ability to erect a fence for privacy, safety or noise control.
- An argument can be made that (because of the heavy traffic along Dousman Street) the lack of an effective privacy, safety and/or noise control fence has a direct effect on the reasonable use of the property, especially the use of the yard area between the dwelling and Riverview Drive.
- Potential loss of profit or desire for financial gain is not a motivating factor in this petition.
- This is not a corner lot where vision clearance can be a problem or where obstructions in a front or corner side yard can be a safety concern. Fence heights are also limited in front yards because of aesthetic concerns, but the applicant in this case is not proposing to erect a fence between the front of a dwelling and a street (the fence would be behind the dwelling). An argument can be made here that granting the requested variance would have the effect of improving public safety for the occupants of the dwellings.
- The propose fence will be a chain link fence, the most transparent of fences.

RECOMMENDATION: Staff recommends the following:

- Visit the site of the proposed variance.
- Review the applicant’s submittals including reasons for requesting the variance.
- Review and discuss the above variance standards as they relate to the applicant’s proposal.
- Determine whether the variance standards are met per Section 50-180 of the Zoning Ordinance.
- Grant or deny the requested variance petition based upon findings and conclusions drawn.

ATTACHMENTS:

- I Variance petition submitted by applicant
- II Aerial site location map
- III Illustration showing proposed location of fence and code permitted location of fence

ATTACHMENT I

DEPARTMENT OF CODE ADMINISTRATION
 2456 Glendale Avenue, Green Bay, WI 54313
 (Office) 920-434-4640 (Fax) 920-434-4643
 mailto:jkorotev@villageofhoward.com



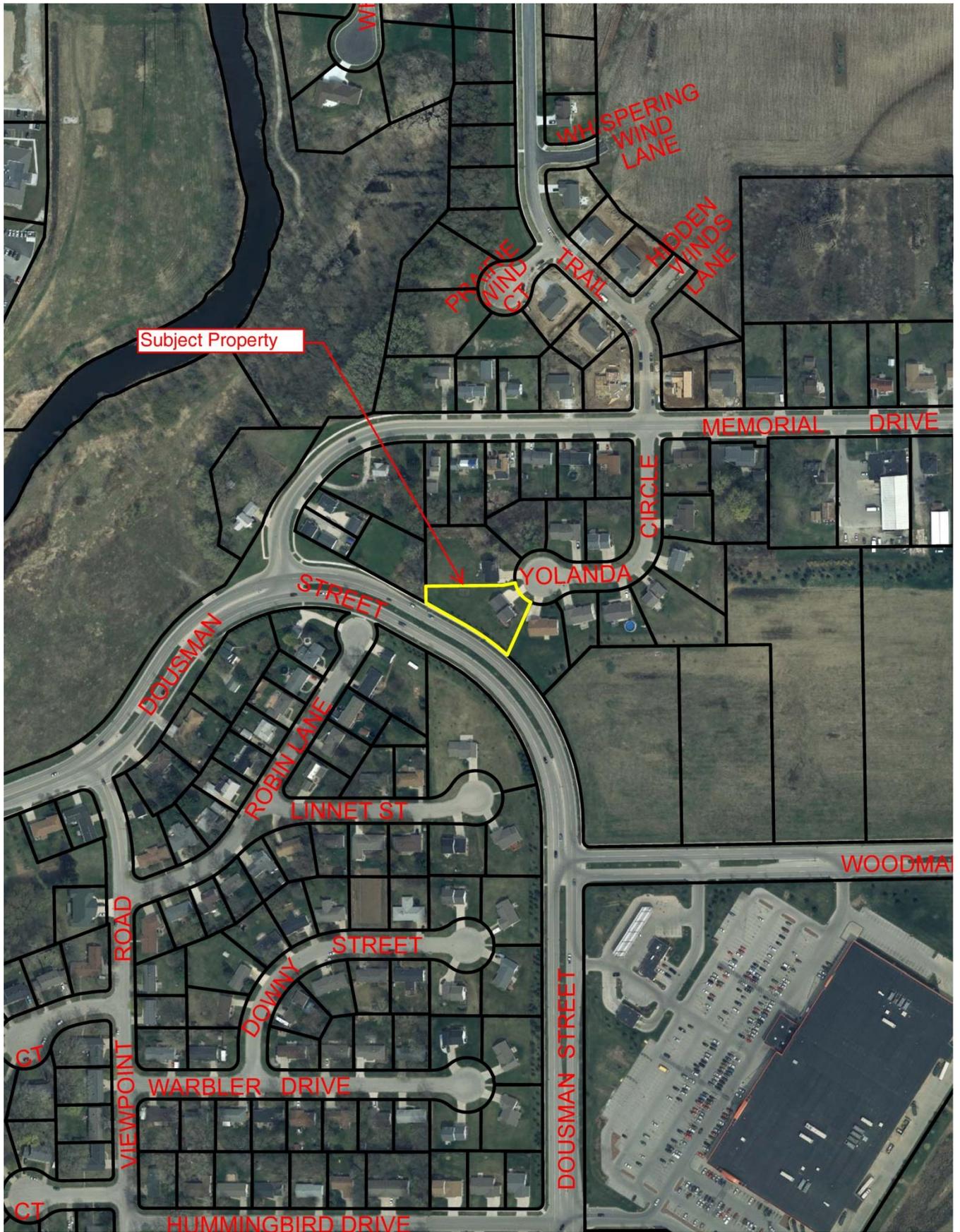
VARIANCE PETITION

IMPORTANT INFORMATION FOR APPLICANTS

- (1) ADDITIONAL INSTRUCTIONS AND FREQUENTLY ASKED QUESTIONS CAN BE VIEWED ON PAGE TWO.
- (2) INCOMPLETE APPLICATIONS CANNOT BE ACCEPTED OR PROCESSED
- (3) A SITE PLAN AND OTHER PERTINANT INFORMATION (MAPS, EXIHIBITS, ETC.) SHALL BE SUBMITTED WITH THIS APPLICATION. PLEASE SEE PAGE TWO FOR ADDITIONAL INFORMATION.
- (4) PROCESSING THIS APPLICATION MAY TAKE UP TO SIXTY (60) DAYS DUE TO LEGAL NOTICES MANDATED BY STATE LAW.
- (5) THIS APPLICATION MUST BE ACCOMPANIED BY A NON-REFUNDABLE APPLICATION FEE OF \$250 DOLLARS (\$500 IF CONSTRUCTION REQUIRING THE VARIANCE HAS STARTED).
- (6) PLEASE USE YOUR COMPUTER KEYBOARD TO FILL IN THIS APPLICATION FORM AND USE THE "TAB" KEY TO TAB FROM FIELD TO FIELD.
- (7) PLEASE SUBMIT YOUR COMPLETED APPLICATION, FEE AND SUPPORTING DOCUMENTATION TO THE DEPARTMENT OF CODE ADMINISTRATION AT THE ABOVE ADDRESS.

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| LOCATION | ADDRESS OF SUBJECT PROPERTY (Street Number and Name) 2397 Yolanda Circle | LOT # | SUBDIVISION 29/41 Residential (Woodman Dev.) | TAX PARCEL # |
| PROPERTY OWNER | PROPERTY OWNERS FULL NAME Debra and James Beining | DAYTIME PHONE # 920-498-0987 | ALTERNATE PHONE # 920-360-0458 | |
| | PROPERTY OWNERS MAILING ADDRESS (include Zip Code) 2397 Yolanda Circle Green Bay, WI 54303 | PROPERTY OWNER'S E-MAIL ADDRESS podrez@yahoo.com | | |
| APPLICANT/ AGENT | APPLICANT/AGENT FULL NAME AND BUSINESS NAME | APPLICANT/AGENT PHONE # | ALTERNATE PHONE # | |
| | APPLICANT/AGENT MAILING ADDRESS (include Zip Code) | APPLICANT/AGENT E-MAIL ADDRESS | | |
| PARCEL INFO | CURRENT ZONING CLASSIFICATION R-3 | REQUESTED ZONING CLASSIFICATION | DOES CURRENT ZONING CLASSIFICATION PERMIT PROPOSED USE? | |
| DESCRIPTION | <p align="center">IN THE SPACE BELOW, DESCRIBE IN DETAIL THE SPECIFIC NATURE OF THIS VARIANCE PETITION. INCLUDE A DISCUSSION OF THE VARIANCE STANDARDS FOUND ON PAGE TWO OF THIS APPLICATION AND DESCRIBE HOW EACH STANDARD WILL BE MET.</p> <p>We are applying for a variance that would allow us to install a 5ft. high Chain Link Fence around our yard. Since our backyard is deemed by ordinance to be a front yard, along with the traffic volume on Dousman Street, our house being struck twice by cars, the 35 mph speed limit on Dousman, the curviture of the roadway, and protection of my children and the neighborhood children that play in our yard are all reasons for us seeking a Variance to install a fence.</p> <p>The fence would be a professionally installed galvanized 5ft high chain link fence. We are also would like it to be about 17 feet from the curb thus fencing in our trees that are currently in the back/front yard of the house.</p> | | | |
| SIGNATURE | JB | ENTER YOUR INITIALS IN THIS BOX TO VERIFY THAT YOU HAVE READ AND AGREE TO THE TERMS AND CONDITIONS DETAILED BELOW (REQUIRED FOR APPLICATION TO BE PROCESSED) | | APPLICATION DATE June 7, 2011 |
| BY INITIALING THE BOX ABOVE, I DO HEREBY CERTIFY THAT ALL INFORMATION PROVIDED ON THIS APPLICATION IS TRUE AND CORRECT AND I UNDERSTAND THAT THE GRANTING OF A VARIANCE CREATES NO LEGAL LIABILITY, EXPRESSED OR IMPLIED, ON THE VILLAGE OF HOWARD OR ON ANY OF ITS EMPLOYEES. I FURTHER UNDERSTAND AND AGREE THAT I WILL BE BOUNDED BY AND SUBMIT TO ALL STATUTES OF THE STATE OF WISCONSIN, CONFORM TO ALL APPLICABLE CODES AND ORDINANCES OF THE VILLAGE OF HOWARD, AND ABIDE BY ALL RULES AND REGULATIONS PRESCRIBED BY THE DEPARTMENT OF CODE ADMINISTRATION. | | | | |

ATTACHMENT II



ATTACHMENT III

