



**STAFF REPORT**  
**WEST ALLIS BOARD OF APPEALS**  
**Tuesday, June 13, 2023, 5:30 PM**  
**Room 128 – City Hall – 7525 W. Greenfield Ave.**

1. **Property Address: 2823 S. 111 St. Tax Key: 520-0111-000 Appeal by Thomas Little to construct a fence in the required front yard which is not allowed by code.**

**Request for Area Variance - Overview**

Thomas Little and Apurba Banerjee own the property and constructed a fence in the front yard area. In advance of installing the fence work, the property owners reviewed section 13.31 of the municipal code that regulates fences in residential areas and a corresponding fence handout guide as provided by the Code Enforcement department. While fence permits are not required by the city, property owners are required to adhere to both zoning yard requirements found in section 19.43 and fence construction regulations found in section 13.31 of the municipal code.

**Staff comment** – The property is zoned RA-3. The subject property is at the intersection of two streets (S. 111 St. and W. Mequanigo Dr.). The lot has a unique shape (it's not a rectangle – it's rounded). Most of the lot's frontage is along a rounded/curved section of lot line and flanked by two smaller segments of frontage. The front elevation of the home and attached garage face both streets.

The applicant disagrees with City Planning's determination of front yard and front lot line (see City Planning's diagram below). The applicants also assert that an error in code has created an unnecessary hardship to otherwise remove or relocate the fence.

**City Planning determination of front yard and front lot line**

**Yard areas**



### Applicant's interpretation of front lot line



### Zoning Chapter 19

Our zoning code [sec. 19.43](#) doesn't allow fences within the front yard area.

Front yard definition - the part of a lot from the front lot line to the principal building and any adjacent land.

Front lot line definition - If one street borders a lot, the portion of a lot that borders that street. If multiple streets border a lot, the portion of a lot that borders the street is deemed primary by the Manager of Planning and zoning.

2323 S. 111 St. - The front lot line is east of the home and the front yard is an area between the east side of the house and the street frontages. The home's orientation on the lot faces not one, but two streets. The front lot line are the three (3) parts that border the street. Planning considers the front lot line to be the sum of three parts (a 23.57-ft segment fronting Mequonigo Dr., a 112.13-ft rounded part fronting both Mequonigo Dr. and S. 111 St., and a 30.22-ft part fronting S. 111 St.).

The home's 1950's building permit references this as an internal lot, but that could be because it was in the center of a subdivision or deemed internal based on the home's orientation on the lot. Of note, both streets were in place back in 1951. Despite the building permit, Planning interprets this as a corner lot, with the front yard area being in front of the house including adjacent areas (see yard diagram previous page).

Planning believes its decision on front yard and front lot line determinations are sound. We also recognize the potential for misinterpreting the code regulations and how that could create an issue like this one. Staff acknowledges that a clean-up of sec. 13.31 to best align with our zoning code (sec 19.43) is in order.

### Building Code Chapter 13



The applicants indicate an issue with a portion of the [building code sec 13.31](#) fence regulations. The part that is misaligned with the city zoning ordinance is shared as follows:

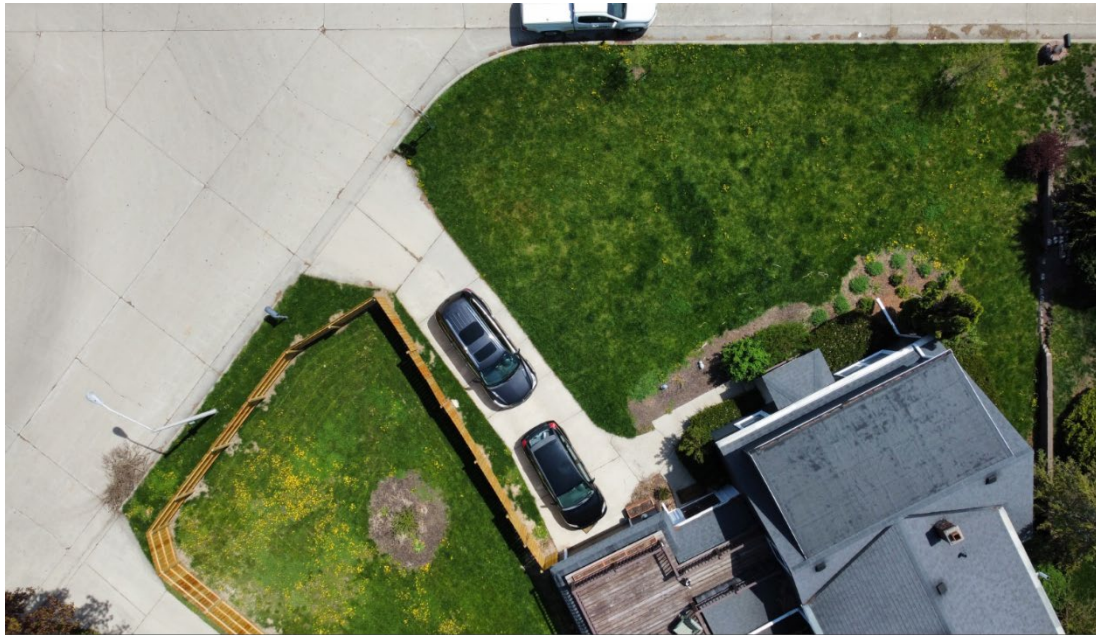
- 13.31(2)(a)(iii) Corner lots. The shorter dimension of a corner lot abutting a street shall be considered the front yard and shall not be permitted to have a fence in the required front yard setback regardless of the property address or other designation of the lot. The longer dimension of a corner lot abutting a street shall be considered a side yard and fences shall be allowed, not to exceed six (6) feet in height.

### Board of Appeals

The applicants state: If not for this 13.31(2)(a)(iii) language, referencing corner lot parameters (shorter/longer dimension...), that I saw in the "City of West Allis Code Enforcement Department Informational Bulletin "Fences and Site Obstructions" for One- and Two-family dwellings, I would not have built the fence as situated. We originally planned to put the fence in a similar place as we are told now it should have gone, but reading it made me believe that we could put the fence in the side lot. We paid almost double the price to extend the fence and it used up a lot of our savings. We thought it would be nice to have more yard for our dog to play in. It will cost a lot more to move the fence back and end up costing 3-4 times what it should have. Another layer of confusion is that our lot has a unique shape, so interpreting the code is difficult.



Based staff's review of the applicant's statement and Board of Appeals application staff notes that the zoning requirements in 19.43 are clear, but the building code requirements in 13.31 create some confusion, and correction to better sync zoning and building code is needed.



*State Statutes 62.23(7)(e)7 "area variance" means a modification to a dimensional, physical, or locational requirement such as a setback, frontage, height, bulk, or density restriction for a structure that is granted by the board of appeals under this paragraph.*

*The board of appeals shall have the following powers: To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this section or of any ordinance adopted pursuant thereto; to hear and decide special exception to the terms of the ordinance upon which such board is required to pass under such ordinance; to authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in practical difficulty or unnecessary hardship, so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.*

**Recommendation:** Recommend approval of an area variance to section 19.43 to allow the existing location of the fence as built within the front yard of property at 2823 S. 111 St. (Tax key no. 520-0111-000), subject to property owners proving that the fence is not located within city right-of-way. A survey being submitted to ensure the fence is located on their property and out of city right-of-way is recommended. If the fence is within the city right of way, it being relocated in accordance with the zoning code and out of the front yard area. One example of that is shown below.



City of West Allis Code Enforcement Department  
Informational Bulletin  
***Fences and Site Obstructions***  
for One and Two Family Dwellings

Fences may be constructed in all residential districts of the City. Permits are not required for fences; however there are several regulations that have to be followed for all fences. This handout will explain the basics of the fence requirements. A full list of fence requirements and regulations can be found in the Revised Municipal Code of West Allis.

<https://westallis.municipalcodeonline.com/book?type=ordinances#name=13.31 Fence Regulations>

For non-1 or 2 family use properties please contact the Planning Department for further submittal and approval requirements at [planning@westalliswi.gov](mailto:planning@westalliswi.gov).

#### **Fencing Materials**

- Fences must be constructed of approved materials such as prefabricated fencing sold at retail outlets or treated lumber. Fences may not be constructed of sheet metal or other salvage materials. The building inspector will determine appropriate building materials.
- Electrified fences are not permitted.
- Barbed wire fences are not permitted on residential properties.

#### **Good Side Out**

- The "good" side of a fence must face outward from the property towards the neighbor, the street, or the alley.

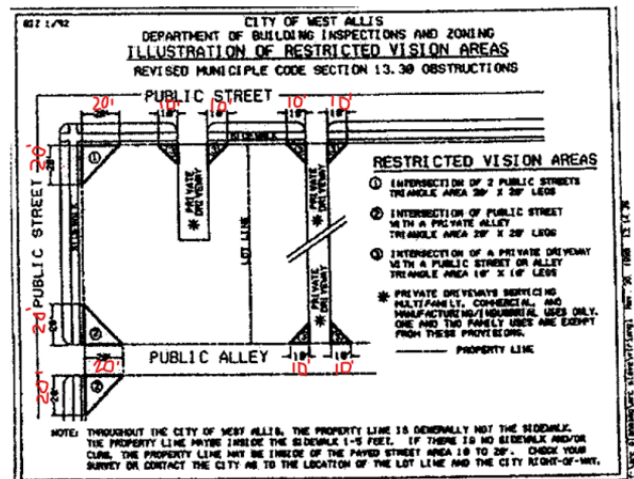
#### **Good Neighbor**

- The City suggests contacting your neighbors before installing your fence. Early discussions of property line locations and fence type may defuse disputes that may occur after the fence is installed. The City recommends that you have a surveyor mark your lot lines or visit the Department of Building Inspection and Neighborhood Services to see if we have a current survey on file for your property.
- Disputes between property owners as to property lines are a civil matter and are to be resolved between property owners. The City will not get involved in property line disputes. You may be required to get a survey of your lot to resolve disputes.

- All fences shall be kept in good repair. When a fence is located up to a neighbor's lot line, it is still the owner of the fence's responsibility to maintain the fence.

#### **Fence Locations & Height Requirements**

- Fences may be located up to a property line but may not extend onto or over the property line adjacent thereto or into the City right-of-way.
- Required Front Yard.** No fences are permitted in the required front yard. The required front yard is determined by the zoning district classification but typically will consist of the area in front of the house, not including porches or decks. Fences typically start at the front foundation wall of the house.
- Side and Rear Yards.** Fences are permitted in all side and rear yards.
- Corner Lots.** For corner lots, the longer dimension of the lot abutting the street is considered the side yard, regardless of how the property is designated for addressing or other purposes. Fences are permitted in the side yard area, but not in the required front yard setback.
- Fence Height.** The maximum height of a fence is 6' unless located within a vision triangle (see below).
- Vision Triangle.** The maximum height of a fence located in the vision triangle is three feet. Restricted vision areas include the area on a lot where two streets intersect; a street intersects with an alley; or an alley intersects with an alley.



**City of West Allis Code Enforcement Department**  
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