



**ZONING BOARD OF
APPEALS MEETING**
December 20, 2022
2:00 PM

PUBLIC MEETING NOTICE

Zoning Board of Appeals

Dave Laspa, Chairperson
Jerry Feith
Lee Gossick
Mike Hittner
Bruce Kluver
Peggy Montag, 1st Alternate
Jake Cattanach, 2nd Alternate

AGENDA ITEM RECIPIENTS

Sue Schill, City Attorney
Erika Esser, Secretary
Jennifer Gossick, City Clerk

Notice is hereby given of a meeting of the **Zoning Board of Appeals** to be held in the Council Chambers at City Hall, 444 West Grand Avenue, Wisconsin Rapids, **Tuesday, December 20, 2022 at 2:00 p.m.** The meeting will be streamed live on the City of Wisconsin Rapids Facebook page and will also be broadcast live on Charter Cable Channel 985 and Solarus HD Cable Channel 3. If a member of the public wishes to access this meeting live via Zoom audio conferencing, you must contact the City Clerk at least 24 hours prior to the start of the meeting to coordinate your access. This meeting is also available after its conclusion on the City's Facebook page and Community Media's YouTube page, which can be accessed at www.wr-cm.org. It is possible that members of the Zoning Board may appear remotely via video or audioconferencing for this meeting.

AGENDA

1. Approval of the report from the November 16, 2022, Zoning Board of Appeals meeting
2. **VARIANCE 22-001288: Kevin Keith**; public hearing and action on a request from Kevin Keith for a variance from the side yard setback to construct a fence at 331 16th Avenue North (Parcel ID 3402193).
3. Adjourn

The City of Wisconsin Rapids encourages participation from all its citizens. If participation at this meeting is not possible due to a disability or other reasons, notification to the city clerk's office at least 24 hours prior to the scheduled meeting is encouraged to make the necessary accommodations. Call the clerk at (715) 421-8200 to request accommodations.

PUBLISH: December 6th and December 12th, 2022

NOTICE OF PUBLIC HEARING

Notice is hereby given of a meeting of the City of Wisconsin Rapids Zoning Board of Appeals to be held in the Council Chambers (first floor conference room) at City Hall, 444 West Grand Avenue, Wisconsin Rapids, on **Tuesday, December 20, 2022 at 2:00 p.m.** The meeting will be streamed live on the City of Wisconsin Rapids Facebook page and will also be broadcast live on Charter Cable Channel 985 and Solarus HD Cable Channel 3. The following item will be heard and possibly acted on:

1. Public hearing and action on a request from Kevin Keith for a variance from the side yard setback to construct a fence at 331 16th Avenue North (Parcel ID 3402193).

Further details regarding the specific request can be obtained within the Community Development Department at City Hall, or by calling the department at 715-421-8228.

If a member of the public wishes to access this meeting live via Zoom audio conferencing, you must contact the City Clerk at least 24 hours prior to the start of the meeting to coordinate your access. This meeting is also available after its conclusion on the City's Facebook page and Community Media's YouTube page, which can be accessed at www.wr-cm.org. It is possible that members of the Council (Committee) may appear remotely via video or audioconferencing for this meeting.

The City of Wisconsin Rapids encourages participation from all its citizens. If participation at any public meeting is not possible due to a disability, notification to the City Clerk's office at least 48 hours prior to the scheduled meeting is encouraged to make the necessary accommodations. Call the Clerk at (715) 421-8200 to request accommodations.

Jennifer Gossick,
Wisconsin Rapids City Clerk



REPORT OF THE ZONING BOARD OF APPEALS

November 16, 2022

The Zoning Board of Appeals met at 2:00 p.m. on November 16, 2022 in the Council Chambers at City Hall and via remote audioconferencing. Attending Board members were: Chairperson Dave Laspa, Jerry Feith, Mike Hittner, Bruce Kluver and 1st Alternate Peggy Montag. Lee Gossick was absent. Others in attendance included Community Development Director Kyle Kearns, Associate Planner Carrie Edmondson, Chad Wirl and Alderperson Dennis Polach.

The meeting was called to order at 2:03 p.m.

1. Approval of the report from the October 20, 2022 Zoning Board of Appeals meeting

Motion by Hittner to approve the report from the October 20, 2022 Zoning Board of Appeals meeting; second by Feith.

Motion carried (5 – 0)

2. VARIANCE-22-001203: Chad Wirl – Public hearing and action on a request from Chad Wirl for a variance from the side yard setback to construct an accessory structure at 850 Rosecrans Street (Parcel ID 3401550).

Kyle Kearns provided a summary of the request, recommending denial based on the analysis and findings in the staff report.

Public hearing opened at 2:06 p.m.

Speaking in favor: none

Speaking against: none

Public hearing closed at 2:07 p.m.

Mike Hittner asked what the distance was from subject property line to the railroad right-of-way, to which Mr. Wirl responded.

Motion by Hittner to grant the variance from the side yard setback to construct an accessory structure at 850 Rosecrans Street (Parcel ID 3401550), subject to the following condition:

1. Gutters shall be installed along the east side of the building where the reduced setback is granted under this approval

second by Feith.

Commissioner Hittner cited his original reasoning from the previous variance for the recommendation.

Motion carried (3 – 2; Laspa and Montag voting against)

3. Adjourn

Motion by Hittner to adjourn; second by Feith

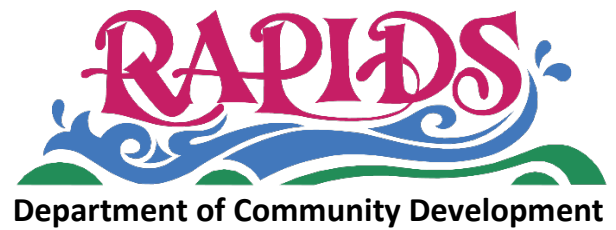
Motion carried (5 – 0)

Meeting adjourned at 2:14 p.m.

Respectfully submitted by Erika Esser, Secretary

Administrative Staff Report

Variance – Fence Setback
331 16th Avenue North
December 15, 2022



<p>Applicant(s):</p> <ul style="list-style-type: none"> Kevin Keith, Sons of Dick, LLC. <p>Staff:</p> <ul style="list-style-type: none"> Kyle Kearns, Director Carrie Edmondson, Associate Planner <p>Parcel Number(s):</p> <ul style="list-style-type: none"> 3402193 <p>Lot Information:</p> <ul style="list-style-type: none"> Effective Frontage: 208 feet Effective Depth: 118 feet Square Footage: 24,456 Acreage: 0.561 Acres <p>Zone(s):</p> <ul style="list-style-type: none"> "R-2" Mixed Residential District <p>Council District:</p> <ul style="list-style-type: none"> District 1 - Austin <p>Master Plan:</p> <ul style="list-style-type: none"> Residential <p>Current Use:</p> <ul style="list-style-type: none"> Residential Single-Family Home <p>Applicable Regulations:</p> <ul style="list-style-type: none"> Chapter 11 - Zoning 	<p>Request</p> <p>VARI-22-1288; Kevin Keith, Sons of Dick, LLC.: Public hearing and action on a request for a variance to allow a fence within the required side yard setback at 331 16th Avenue North (Parcel ID 3402193).</p> <p>Attachment(s)</p> <ol style="list-style-type: none"> Application(s) Site Plan Photos Property Data <p>Findings of Fact</p> <ol style="list-style-type: none"> The applicant is requesting a variance from the setback standards for a fence. The fence has already been constructed. The property is zoned "R-2" Mixed Residential District The Zoning Board of Appeals shall base its decision upon the standard for a variance described in s. 62.23(7)(e)(7), Wis. Stats., and applicable judicial interpretations of such statute. <p>Staff Recommendation</p> <p>Deny the request from Kevin Keith, Sons of Dick, LLC., for a variance to construct a fence within the setback at 331 16th Avenue North (Parcel ID 3402193), due to the following:</p> <ol style="list-style-type: none"> Unique property characteristics do not exist. An unnecessary hardship doesn't seem to exist, and any claimed appears to be self-created. Construction within the required setbacks has safety and privacy implications for motorists, pedestrians, and homeowners.
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Background

The applicant, Kevin Keith, is requesting a variance from setback requirements. A variance application was submitted (attached) requesting a fence to encroach within the required setback from alleys and within the required vision triangle. It is important to note that the variance is being requested after-the-fact, as the fence is already constructed. It was constructed to replace a previous fence that existed at the same location. However, it is the policy of the Community Development Department that all new fences require a fence permit and verifying that the fence location meets current requirements is an inherent part of the permit process. There was no fence permit obtained for the construction of the subject fence.

Chapter 11 – Zoning requires that residential fences maintain the following setbacks:

11.15.08 Minimum setbacks

(a) From public right-of-ways. Fences must be a minimum of 2 feet from the public right-of-way property line.

(b) From adjacent property lines. Fences may be installed up to, but not across adjacent property lines.

Exception: If an existing building is located on an adjacent lot, 2 feet is the minimum distance in which the fence must be set back from the existing building.

Note: Property owners must maintain their fence(s) as noted in s. 11.15.16. Erecting a fence too close to a property line can make it hard to maintain both sides of the fence.

(c) From alleys. *Fences must be a minimum of 5 feet from the alley property line. If the alley does not support traffic, the fence may be located up to, but not over the property line.*

(d) Vision clearance areas. *No fence or wall greater than 2 1/2 feet above the street grade shall be placed within the vision clearance area.*

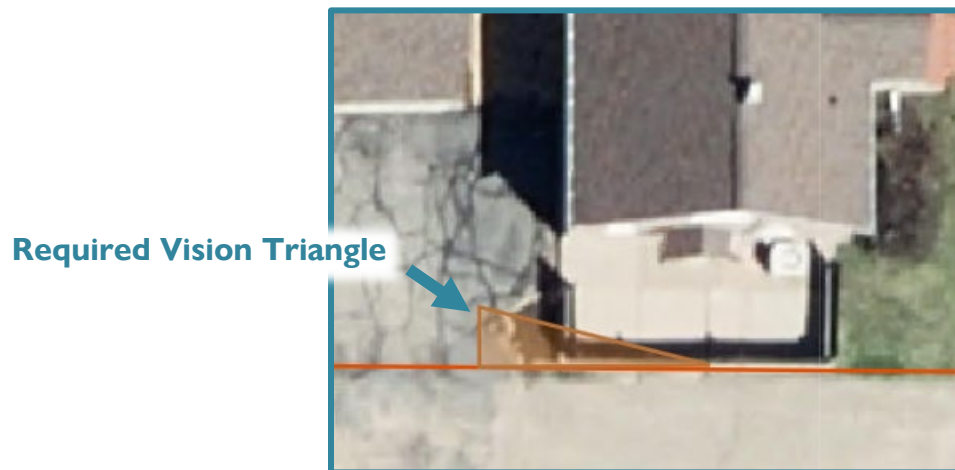
The subject fence is in violation of items (c) *From alleys* and (d) *Vision clearance areas* above. The fence is approximately 1 foot from the alley rather than the required 5 feet. The alley supports traffic which is evidenced by the fact the alley supports vehicular access for the detached garage on this property and the property to the south.

Additionally, Section 11.06.119 Vision triangle details the following:

(a) Purposes. *Vision triangles are established at the intersection of existing and proposed streets and alleys to help ensure that motorists are able to see pedestrians and cross traffic.*

(b) Establishment. *A vision triangle is formed by two lines along the right-of-way for the distances listed below and a chord connecting the end of those two lines (Exhibit 6-7). (1) 5 feet (driveway depth) by 20 feet (street/alley length) along an alley or driveway*

In this case the chord connecting 5 feet of driveway depth to the 20 feet of alley length would be located approximately here:



Therefore, the southwestern corner of the fence is clearly located within the required vision triangle and could impede motorists view of pedestrians and cross traffic.

Standards of review are analyzed below:

Photos



Standards of Review

- 1) Do unique physical limitations exist on the property including steep slopes or wetlands that are not generally shared by other properties that prevent compliance with ordinance requirements?

Analysis: The property is existing and meets current Mixed Residential (R-2) district standards. The house was constructed on the southernmost portion of the lot. The lot width is substantial and could easily accommodate two standard sized lots.

Findings: The lot size is larger than that of most of the surrounding properties. The size of the residence and detached garage on site are consistent with surrounding structures. The alley provides access to the detached

garage, which is the only vehicular access to the site. This lot and the surrounding lots are located within a traditional street grid pattern. The home has a small footprint of approximately 856 square feet, with a 117 square foot enclosed porch. In addition, there is a 1,096 square foot detached garage on site. The garage is nonconforming as it exceeds the current permitted area maximum. There is adequate space to construct a fence on the property. Given the above findings, staff has not determined that any unique property characteristics exist.

- 2) Is the request due to the existence of an unnecessary hardship? An unnecessary hardship cannot be due to conditions which are self-imposed or created by a prior owner. It has also been determined by the Courts that economic or financial hardship does not justify a variance. For an area variance, unnecessary hardship exists when compliance would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity unnecessarily burdensome.

Analysis: The applicant has the ability to construct a fence to enclose a portion of the side yard in question and has the ability to construct fencing on much of the remaining property or an outdoor patio area. The fence that existed previously was nonconforming and the newly constructed fence does not meet current requirements outlined in Chapter 11 – Zoning.

Findings: Any hardship claimed by the applicant seems to be out of desire to place the fence in the previous location. It is also important to note that establishment of setbacks and vision triangle requirements are to allow safety to vehicles and pedestrians, privacy both for the property owner and for those within the public right-of-way, and to provide environmental protection.

Staff has determined that while the requested variance, allowing for a fence within the required setback and vision triangle requirements, is suitable for the desires of the applicant, it does not constitute an unnecessary hardship which is not self-created. Further, given that the fence was constructed prior to the issuance of a permit, any burden claimed from the zoning code seems to be from self-created conditions. Again, many options for fencing or a patio on the property exist that would meet setback and vision triangle requirements. A precedent could also be set for similar requests in the future, if a hardship is acknowledged in this case based on the facts and standards of review.

- 3) Does the requested variance impact the interests of the neighbors, the entire community and the general public? These interests include:

- | | |
|--------------------------------------|---|
| ➤ Public health, safety and welfare; | ➤ Minimization of property damages; |
| ➤ Water quality; | ➤ Provision of efficient public facilities and utilities; |
| ➤ Fish and wildlife habitat; | and |
| ➤ Natural scenic beauty; | ➤ Any other public interest issues. |

Analysis: The subject property is located within a primarily single-family residential neighborhood. The surrounding properties are similar and are subject to the same setback and vision triangle requirements for fences. The requested variance would allow for a fence to exist within the required setbacks, potentially interfering with the safety and privacy of vehicles and pedestrians. A public hearing notice letter was provided as well to surrounding property owners within 300 feet of the property.

The purpose of setbacks is to protect the safety and privacy of citizens using the right-of-way and to maintain environmental protection, as well as neighborhood characteristics and aesthetics.

Findings: Allowing for the variance could impede the safety and privacy of drivers and pedestrians utilizing the sidewalk and public right-of-way. Additionally, it may set precedent for other lots adjacent to alleys that could make similar requests. At the date of this staff report the Community Development Department has not received any comments from the public regarding the request. With regards to public health, safety and welfare, additional information may be received prior to the meeting or during the public hearing which may relate to the interest of the neighbors and general public.

Based upon the findings for this request, staff recommends denial of VARI-22-1288 due to the following:

1. Unique property characteristics do not exist.
2. An unnecessary hardship doesn't seem to exist, and any claimed appears to be self-created.
3. Construction within the required setbacks has safety and privacy implications for motorists, pedestrians, and homeowners.



Variance Application

City of Wisconsin Rapids, Wisconsin

Version: January 3, 2019

Community Development Department
444 West Grand Avenue
Wisconsin Rapids, WI 54495-2780
P: (715) 421-8228 Fax: (715) 421-8291

Overview: A variance is a relaxation of requirements found within the City's zoning code. Variances are considered by the Board of Zoning Appeals on a case-by-case basis and decisions of the Board are based on the evidence and testimony received as part of the application, during a site visit, and through the public hearing process. The Board's job is not to compromise the requirements for a property owner's convenience, but to apply legal criteria provided in State law, court decisions, and the zoning code. Variances are meant to be an infrequent remedy where a zoning requirement imposes a unique and substantial burden and a variance would be appropriate to alleviate such hardship without circumventing or undermining the intent of the zoning code.

If you submit an application, do not contact any member on the Board of Zoning Appeals before the scheduled meeting.

Governing regulations: The procedures and standards governing the review of this application are found in Article 5 of the City's zoning code (Chapter 11 of the municipal code).

General instructions: Complete this application and submit one copy to the Community Development Department. Alternatively, you can submit your application online at <https://wisconsinrapids.zoninghub.com/>

Application fee: \$250.00

Application submittal deadline: Applications must be submitted at least 3 weeks prior to the Zoning Board of Appeals meeting, which are typically held the second Tuesday of the month at 1:00 pm.

Mandatory meeting with staff: To ensure that all the required information is provided and that there is a complete understanding of the process, the applicant must meet with City staff to discuss the request and necessary items. Please contact the Community Development Department to schedule an appointment.

Office Use Only

Date Received 11/29/22
Received By CE
Fee \$250.00
Case # 22-001288
Aldermanic District 1 Austin
ZBA Date Dec. 2022

1. Applicant information

Applicant name Kevin Keith, Sec of Dick, LLC
Street address 11321 64th St. S
City, state, zip code Wisconsin Rapids, WI 54484
Daytime telephone number 715.421.9924
Email Wis12128@gmail.com

2. Agent contact information. Include the names of those agents, if any, that helped prepare this application including the supplemental information. Agents may include surveyors, engineers, landscape architects, architects, planners, and attorneys.

Agent 1	Agent 2
Name	
Company	
Street address	
City, state, zip code	
Daytime telephone number	
Email	

3. Type of application (select one)

- ☐ Dimensional variance - Provides an increment of relief from a bulk regulation such as building height or setback.
☒ Use variance - Permits a use of land that is otherwise prohibited.

4. Subject property information

Physical address 331 16th Ave. N
Parcel number(s) 3402193

Variance Application
City of Wisconsin Rapids, Wisconsin
Page 2

Note: The parcel number can be found on the tax bill for the property or it may be obtained from the Community Development Department.

Is the subject property currently in violation of the City's zoning ordinance as determined by the City's zoning administrator?

- ☐ No
☒ Yes

If yes, please explain.

I repaired an existing fence. Zoning now says that it needs a Variance.

Comment: Pursuant to Section 11.04.10 of the City's zoning code, the City may not issue a permit or other approval that would benefit a parcel of land that is in violation of the zoning code, except to correct the violation or as may be required by state law.

Are there any unpaid taxes, assessments, special charges, or other required payments that are specifically related to the subject property?

- ☒ No
☐ Yes

If yes, please explain.

Comment: Pursuant to Section 11.04.11 of the City's zoning code, the City may not issue a permit or other approval that would benefit a parcel of land where taxes, special assessments, special charges, or other required payments are delinquent and unpaid.

5. Zoning information (refer to the City's current zoning map)

The subject property is located in the following base zoning district(s). (check all that apply)

- | | | |
|--|--|--|
| <input type="checkbox"/> RR Rural Residential | <input type="checkbox"/> R-8 Manufactured Home Park | <input type="checkbox"/> M-1 General Industrial |
| <input type="checkbox"/> R-1 Single-family Residential | <input type="checkbox"/> B-1 Downtown Commercial | <input type="checkbox"/> M-2 Heavy Industrial |
| <input checked="" type="checkbox"/> R-2 Mixed Residential | <input type="checkbox"/> B-2 General Commercial | <input type="checkbox"/> I-1 Institutional |
| <input type="checkbox"/> R-3 Multi-family Medium Density Residential | <input type="checkbox"/> B-3 Neighborhood Commercial | <input type="checkbox"/> P-1 Park and Recreation |
| <input type="checkbox"/> R-4 Multi-family High Density Residential | <input type="checkbox"/> B-5 Mixed Use Commercial | <input type="checkbox"/> C-1 Conservancy |

The subject property is also located in the following overlay zoning district(s). (check all that apply)

- | | | |
|--|--|--|
| <input type="checkbox"/> Planned Development (PDD) | <input type="checkbox"/> Shoreland | <input type="checkbox"/> Floodplain |
| <input type="checkbox"/> Downtown Design | <input type="checkbox"/> Shoreland-Wetland | <input type="checkbox"/> Wellhead Protection |

6. Current use. Describe the current use of the subject property.

Single family home.

7. Previous variance applications for the subject property. Describe any variances applications that have been submitted for the property; include the year, a general description, and whether the application was approved or not.

Not known.

Note: If a variance application has been denied, an application for the same variance may not be submitted for a period of 12 months following the date of decision, except if the zoning administrator determines that factors have changed or there is new evidence in support of the variance request. (See Section 11.05.381 of the zoning code.)

8. **Variance request.** Provide the requested information for each variance that may be required. If you need any assistance determining what variances may be required you should seek counsel from an attorney, surveyor, consultant, or other professional who is familiar with the City's zoning code.

Section number of zoning code	Describe the requirement from that Section	Proposal
1. 11.15.08(C)	5 ft fence setback from alleyway.	Section states if alley does not support traffic, no setback. Alley supports very little traffic.
2.		
3.		
4.		

9. **Proposed project.** Describe what you would like to do (e.g., build a house, garage, fence) that cannot be done because of the section of the zoning code listed above.

Fence was repaired. I was then notified of a 5 ft setback. Fence has existed for at least 20 yrs with current setback. I believe the alley supports very little traffic.

10. **Project alternatives.** Please describe the alternatives, if any, that were considered in designing the project so the variance request would not be necessary in the first place and/or the request is minimized and how they were incorporated or why they were deemed to be unacceptable.

Description	Was the alternative used? If not, why was it rejected?
1.	
2.	
3.	
4.	

11. **Unnecessary hardship.** Describe how the section(s) of the zoning code listed above create(s) a practical difficulty or is unreasonably burdensome in terms of severely limiting or prohibiting the reasonable use of the subject property as generally allowed under the City's zoning code. Attach additional pages as necessary.

12. **Unique property limitations.** Describe how the hardship is due to unique or special conditions or limitations affecting the subject property and/or structure that are not typical or generally shared by other properties in the City. Attach additional pages as necessary.

The side door and garage are facing the Alley. The fence provides privacy and protection from snow.

13. **Public interest.** Describe why the variance, if granted, would not be contrary to the public interest by creating or having the potential for creating an adverse impact on the public, health, safety, or welfare of adjoining and surrounding residents, properties or the community. Attach additional pages as necessary.

There is no demonstrated negative impact. The fence has existed for many years w/o any concerns. Ordinance states that no set back is required if the alley does not support traffic. It only supports parking.

14. **Supplemental materials.** Attach the following to this application form.

1. A project map with the information listed in Appendix F of the zoning code.
2. Proposed construction plans (if applicable)

15. **Attachments.** List any attachments included with your application.

Pictures

16. **Other information.** You may provide any other information you feel is relevant to the review of your application.

I believe that the current setback is about one foot. I wonder if the fence was originally built and allowed because the alley does not support traffic?

17. **Applicant certification**

- I understand that I, or any of my agents, may not discuss this application with any member of the Board of Zoning Appeals until after the Board renders a final written decision.
- I certify that all of the information in this application, along with any attachments, is true and correct to the best of my knowledge and belief.
- I understand that submission of this application authorizes City officials and employees, and other designated agents, including those retained by the City, to enter the property to conduct whatever site investigations are necessary to review this application. This does not authorize any such individual to enter any building on the subject property, unless such inspection is specifically related to the review of this application and the property owner gives his or her permission to do so.

- I understand that this application and any written materials relating to this application will become a permanent public record and that by submitting this application I acknowledge that I have no right to confidentiality. Any person has the right to obtain copies of this application and related materials or view it online.
- I understand that the zoning administrator will review this application to determine if it contains all of the required information. If he or she determines that the application is incomplete, it will not be scheduled for review until it is deemed to be complete.

Property Owner:

Kevin Keith, Sr. at Rock, LLC [Signature]
Name – print Name – Signature

11/22/22
Date

Name – print

Name – Signature

Date





11/29/2022, 12:51:36 PM

- Streets
-  Parcels
- Streets
- Schools

