

**Board of Adjustment Public Hearing  
Minutes For Wednesday, September 17<sup>th</sup>, 2025 for 48 E James St Variance**

1. **Called to Order at 5:19 PM by Chair Roose.**
2. **Roll Call: White, Hernesmaa, Councilor Roose, Heil, Palcher.** Staff Kochendorfer.  
**Excused: Anderson, Burke**
3. **Additions or Deletions from Agenda**
4. **Public Hearing for the consideration of a Variance request for 48 E James St.**

The Variance public hearing procedure was read by chair Roose.

The Public hearing notice was read by Planning and Zoning Administrator Kochendorfer

5. **The applicant, Emily Tschida explained the request**

Tschida explained that her and her husband are requesting zero feet set-back on the E James St side of the address, as well as the S 1<sup>st</sup> Ave E Side. The retaining wall is roughly 4 feet from the side of the house. The intent is to install a fence on top of the retaining wall, which may encroach on the city ROW. The fence is needed to keep the dogs in the yard.

6. **Letters received/ and or phone call comments read into record**

- David and Jan Merhar, 108 E Boundary St- Support the fence variance.

7. **Those in support may comment**

- Dr. Catherine Clark, 21 E James St – Supports the fence variance. The homeowners have done some great improvements to the lot, and there is no reason not to grant the variance.

8. **Those opposed may comment**

- None

9. **Comments from those who wish to provide additional information**

- None

10. **Applicant will have the opportunity to answer additional questions**

11. **Closure of the hearing @ 5:26 PM**

12. **Reading of the Finding of Facts**

Planning and Zoning Administrator Kochendorfer read the finding of the facts (included in the agenda packet). **Planning and Zoning Administrator recommends approval of the variance on the following finding of facts:**

- **FACT:** The property in question will be used in a reasonable manor
  - **FINDING:** The Property is currently being used as a residential dwelling, and will continue to be used as such. The fence will only be 3 feet in height, and will be used to provide safety and security to owner's pets.
  
- **FACT:** The Plight of the owner of the property in question is due to circumstances unique to their property and not created by the landowner
  - **FINDING:** The owner did not build the house or design the layout of the property. Being a corner lot, it presents the unique challenge. The lot size is currently non-conforming, as it is only 25 feet wide, which is what the original plat was. The house was built within 3-4 feet of the property line to the E. There is a cement sidewalk that sits on top of the retaining wall that runs parallel with the E side of the house. The retaining wall has been fixed from time to time, but it appears the original retaining wall was installed many years ago, possibly before any zoning restrictions were in place. The house was built in 1938, prior to any zoning codes.
  - The retaining wall sits roughly 20 feet from the edge of S 1<sup>st</sup> Ave.
  - The fence on the north side of the property will be roughly 10 feet from the edge of the sidewalk, and will not inhibit any access to the city utilities.
  
- **FACT:** If the variance is granted, it will not alter the essential character of the locality
  - **FINDING:** The proposal is in the Residential (R1) Zoning District. The property will continue to be used as a residential dwelling, and will not alter the character of the property. The fence is being erected to securely contain the dogs within the yard, and also prevent falls off the retaining wall on the east side of the property.
  
- **FACT:** Economic considerations alone do not constitute a practical difficulty. Practical difficulties include but are not limited to: inadequate access to direct sunlight for solar energy systems.
  - **FINDING:** The placement of the house, and the fact that the house is on a corner, limits where the fence can be placed, as well as the sidewalk on the east side of the residence.

- Digging up the sidewalk could create further issues, as well as being costly to the homeowners.
- **FACT:** A Variance may not be granted for any use that is not a permitted use under this chapter for property in the district where the affected land is located.

**FINDING:** The property will not change uses, and will continue to function as a residential dwelling.

### **13. Decision rendered by the Planning Commission**

**Motion Heil to approve the variance, a zero set-back from the right of way property line on 1<sup>st</sup> Ave E and E James St, as well as a city encroachment of 0-6” on the E James St side, with the following conditions: If the city needs to reconstruct S 1<sup>st</sup> Ave E, or needs access to any of the utilities in the right of way, and the fence restricts the ability to do so, any extra costs to remove the fence will be the sole responsibility of the homeowner. If the current homeowner sells the property, all non-conforming aspects of the fence must be removed prior to sale of the property. / Second White. Motion carried without objection.**

### **14. Adjournment at 5:34 PM**