



Board of Zoning Appeals Meeting

Whitewater Municipal Building Community Room,
312 West Whitewater St., Whitewater, WI 53190
*In Person and Virtual

Thursday, December 07, 2023 - 6:00 PM

Citizens are welcome (and encouraged) to join our webinar via computer, smart phone, or telephone.
Citizen participation is welcome during topic discussion periods.

Board of Zoning Appeals
Dec 7, 2023, 6:00 – 8:30 PM (America/Chicago)

Please join my meeting from your computer, tablet or smartphone.

<https://meet.goto.com/624685101>

You can also dial in using your phone.

Access Code: 624-685-101

United States: [+1 \(408\) 650-3123](tel:+14086503123)

Get the app now and be ready when your first meeting starts:

<https://meet.goto.com/install>

Please note that although every effort will be made to provide for virtual participation, unforeseen technical difficulties may prevent this, in which case the meeting may still proceed as long as there is a quorum. Should you wish to make a comment in this situation, you are welcome to call this number: (262) 473-0108.

AGENDA

CALL TO ORDER AND ROLL CALL

APPROVAL OF AGENDA

A councilmember can choose to remove an item from the agenda or rearrange its order; however, introducing new items to the agenda is not allowed. Any proposed changes require a motion, a second, and approval from the council to be implemented. the agenda shall be approved at reach meeting even if no changes are being made at that meeting

SECRETARY PRESENTS CASE TO BE HEARD

1. Applicant: RLA Properties
Property: 315 W. James Street
Relative Code: 19.15.060 Yard Requirements Side yard of 10 feet.
Variance Requested: To place new structure on old structure location that is only 4.5 feet from side property line.

This matter will not be heard due to a lack of quorum available to hear this matter. This matter will be need to be postponed.

2. Applicant: Jes Cisneros
Property: 421 Indian Mound Parkway
Applicable Code: 19.06.120-Fence Height
Variance Requested: To exceed the 4 foot height in street yard.

PRESENTATIONS

3. Board presentation of hearing procedures.
4. Applicant Presentation requesting Variance.
5. Statement by Neighborhood Services Director.
6. Public Comment and Input.
7. Written input presented.
8. Applicant response to statements.
9. Board deliberations of case (Open Session).
10. Board action on request, including findings regarding variance request.

ADJOURN

A written decision will be issued at a later date.

Anyone requiring special arrangements is asked to call the Office of the City Manager / City Clerk (262-473-0102) at least 72 hours prior to the meeting.



Neighborhood Services Department
 Planning, Zoning, Code Enforcement, GIS
 and Building Inspections

www.whitewater-wi.gov
 Telephone: (262) 473-0540

December 4, 2023

Staff Memorandum
 Zoning Board of Appeals
 RE: 421 Indian Mound Parkway

Project History

The applicant Jes Cisneros, property owner of 421 Indian Mound Parkway requested a variance to construct a 6-foot privacy fence around the backyard of the parcel to help with noise elimination from street traffic. The property owner is surrounded by 3 street yards, S Ventura Lane, Indian Mound Parkway, and W Walworth Avenue. Per section 19.06.120, fence height within the street yard shall not exceed 4 feet or create an obstruction of traffic/vision triangle. Due to this code requirement, a 6-foot fence is not permitted in the street yard on Indian Mound Parkway, or W Walworth Avenue, and the height is limited to 4 feet.

Findings prerequisite to grant of variance.

No variance to the provisions of this title shall be granted by the board unless it finds beyond a reasonable doubt that all of the following facts and conditions exist, and so indicates in the minutes of its proceedings:

- A. The particular physical surroundings, shape, or topographical conditions of the specific property involved would result in a particular hardship upon the owner as distinguished from a mere inconvenience, if the strict letter of the regulations were to be carried out;
- B. The conditions upon which the application for a variance is based would not be applicable generally to other property within the same zoning classification;
- C. The purpose of the variance is not based exclusively upon a desire for economic or other material gain by the applicant or owner;
- D. The hardship is not one that is self-created;
- E. The proposed variance will not impair an adequate supply of light and air to adjacent property or substantially increase the congestion in the public streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair property values within the neighborhoods;
- F. The proposed variance will not have the effect of permitting a use which is not otherwise permitted in the district;
- G. No variance shall be granted in a floodland district where not in compliance with Section 19.46.070C.4. of this title.



Decisions—Time limit—Additional conditions—Expiration and extensions.

- A. The board of zoning appeals shall decide all appeals and applications within thirty days after the final hearing, and shall transmit a signed copy of the board's decision to the appellant or applicant, zoning administrator, and city plan commission
- B. Conditions may be placed upon any zoning permit ordered or authorized by this board.
- C. Variances, substitutions or zoning permits acted upon by the board shall expire within six months unless substantial work has commenced pursuant to such grant. Extension may be granted by decision of the board.

Following are some excerpts from Wisconsin State Statutes 62.23(7)(e)7 relating to Board of Appeals:

b. 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.

d. A property owner bears the burden of proving "unnecessary hardship," as that term is used in this subdivision, for an area variance, by demonstrating that strict compliance with a zoning ordinance would unreasonably prevent the property owner from using the property owner's property for a permitted purpose or would render conformity with the zoning ordinance unnecessarily burdensome or, for a use variance, by demonstrating that strict compliance with a zoning ordinance would leave the property owner with no reasonable use of the property in the absence of a variance. In all circumstances, a property owner bears the burden of proving that the unnecessary hardship is based on conditions unique to the property, rather than considerations personal to the property owner, and that the unnecessary hardship was not created by the property owner.

Regards,

Allison Schwark
Municipal Code Enforcement
Zoning Administrator
262-249-6701
mcodeenforcement@gmail.com

Print

Item 2.

Board of Zoning and Appeals Application Procedure - Submission #663**Date Submitted: 10/27/2023****City of Whitewater**

Municipal Building
312 W. Whitewater St
Whitewater, WI 53190

Board of Zoning Appeals Application Procedure**Notice**

The Board of Zoning Appeal meetings are scheduled on the 4th Thursday of the month. All complete plans must be in by 9:00 a.m. Monday prior to the 1st Thursday of the month. If not, the item will be placed on the next available Board of Zoning Appeal meeting.

PLEASE COMPLETE THE FOLLOWING APPLICATION

Refer to Chapter 19.72 of the City of Whitewater Municipal Code of Ordinances, entitled BOARD OF ZONING APPEALS, for more information on the application.

SITE PLAN SUBMITTAL REQUIREMENTS

Item 2.

We want to build a cedar fence 6 ft. in height for its entirety, not just along the back of the house. Current code indicates that along both Walworth Ave. and Indian Mound Parkway the fence may not exceed 4 ft. in height. The main reason we wish to build the whole fence at 6 ft. is that our home's location and bedrooms within are constantly subjected to the nuisance of noise from passing vehicles (especially diesel trucks revving their engines). My wife Bonnie and I both suffer from sleep conditions that a 6 ft. fence would help to mitigate against regarding the noise impacting the structure of the house directly. We had also received in-writing, confirmation and approval for the 6 ft. fence from Pam Cronce (who we understand has since retired) that she had had our request checked out and approved, as there was no hazard or visual impairment that would result from the fence structure. This was 1 year ago, though now we are ready to move forward with the project and have contractor lined-up. We are good neighbors and have proudly made many improvements to our home/property. We love Whitewater and raising our family here. The traffic noise issue is making things a bit unbearable though, and respectfully request that you approve our fence for 6 ft. height in its entirety.

1. Site plan, including location and dimensions of all buildings, parking, loading, vehicle and pedestrian circulation, signs, walls, fences, other structures, outdoor storage areas, mechanicals, and dumpsters. Adjacent streets and uses and methods for screening parking, loading, storage, mechanical, and dumpsters areas should be shown. Statistics on lot area, green space percentage, and housing density should be provided. The Plan Commission encourages compliance with its adopted parking lot curbing policy.
2. Natural Features Inventory map, showing the existing limits of all water bodies, wetlands, floodplains, existing trees with trunks more than 4 inches in diameter, and any other exceptional natural resource features on all or part of the site.
3. Landscape Plan, prepared by a professional, and showing an overhead view of all proposed landscaping and existing landscaping to remain. The species, size at time of planting, and mature size should be indicated for all plantings. Areas to be left in green space should be clearly delineated. The Plan Commission encourages compliance with its adopted landscaping guidelines, available from the Zoning Department.
4. Grading and drainage plan, meeting the City's stormwater management ordinance if required. The plan should show existing and proposed surface elevations on the site at two foot intervals or less, and proposed stormwater management improvements, such as detention/retention facilities where required. Stormwater calculations may be required.
5. Utilities plan, showing locations and sizes of existing and proposed connections to sanitary sewer, water, and storm sewer lines, along with required easements. Sampling manholes may be required for sanitary sewer. The City's noise ordinance must be met.
6. Building elevation, showing the dimensions, colors, and materials used on all sides of the building. The Plan Commission encourages variety and creativity in building colors and architectural styles, while respecting the character of the surrounding neighborhood.
7. Sign plan, meeting the City's sign ordinance, and showing the location, height, dimensions, color, materials, lighting and copy area of all signage.
8. Lighting plan, meeting the City's lighting ordinance, and showing the location, height, type, orientation and power all proposed outdoor lighting both on poles and on buildings. Cut sheets and photometric plans may be required for larger projects.

1 full set, 15 11 x 17 and 1 Electric Copy (color copies if possible) should be submitted. All plans should be drawn to a scale of not less than 50 feet to the inch; represent actual existing and proposed site conditions in detail; and indicate the name, address, and phone number of the applicant, land owner, architect, engineer, landscape designer, contractor, or others responsible for preparation. it is often possible and desirable to include two or more of the about 8 plans on one map. the Zoning Administrator or Plan and Architectural Review Commission may request more information, or may reduce the submittal requirements. If any of the about 8 plans is not submitted, the applicant should provide a written explanation of why it is not submitted.

TO: THOSE REQUESTING A VARIANCE OF ZONING REQUIREMENTS

FROM: THE BOARD OF ZONING APPEALS

Item 2.

THINGS YOU WILL HAVE TO PROVE TO BE GRANTED A VARIANCE

The Board of Zoning Appeals has the power "to hear and grant applications for variances as will not be contrary to the public interest where, owing to special conditions, a literal enforcement will result in practical difficulty or unnecessary hardship, so that the spirit and purposes of the ordinance shall be observed and the public safety, welfare and justice secured." **USE VARIANCES WILL NOT BE GRANTED**

FINDINGS PREREQUISITE TO GRANTING A VARIANCE

No variance to the provisions of this title shall be granted by the Board unless it finds beyond a reasonable doubt that ALL of the following facts and conditions exist, and so indicates in the minutes of its proceedings:

- A. The particular physical surroundings, shape, or topographical conditions of the specific property involved would result in a practical hardship upon the owner as distinguished from a mere inconvenience, if the strict letter of the regulations were to be carried out;
- B. The conditions upon which the application for a variance is based would be applicable generally to other property within the same zoning classifications;
- C. The purpose of the variance is not based exclusively upon a desire for economic or other material gain by the applicant or owner;

The proposed variance will not impair an adequate supply of light and air to adjacent property or substantially increase the congestion in the public streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair property values within the neighborhood.

Please consider the above items in presenting your oral testimony, for a lack of such testimony may result in denial of the variance.

All questions in the application must be answered.

Applicant's First Name*

Jes

Applicant's Last Name*

Cisneros

Applicant's Address*

421 Indian Mound Parkway

City

Whitewater

State

WI

Zip Code

53190

Applicant's Email*

Item 2.

jes.cisneros@gmail.com

Owner of Property Site as of date of application, according to current property tax records:

Jes Cisneros

Street Address of Property (if vacant land, describe in detail the property location);

421 Indian Mound Parkway, Whitewater, WI 53190

Legal Description of Property (Name of Subdivision, Block and Lot, or other legal description):

Single family home on corner of Indian Mound Pkwy and Walworth Ave. - Mound Park Acres

Agent or Representative Assisting in the Application (Engineer, Architect, Attorney, Etc.)

Agent or Representative First Name

Agent or Representative Last Name

Firm Name

Address

City

State

Zip Code

Office Phone Number

Office Fax Number

Email Address

Existing and Proposed Uses

Item 2.

Current Principal Use:*

Primary residence

Accessory or Secondary Uses:*

N/A

Proposed Use (Describe need for Variance):*

N/A

Have you been granted any variances in the past, on any properties, whether fully or partially owned by you.*

Yes

No

If YES, list addresses of those properties and whether the requirements of the variance granted have been completed.

Plans to Accompany Application

Applications for permits shall be accompanied by drawings of the proposed work, drawn to scale, showing, when necessary, floor plans, sections, elevations, structural details, computations and stress diagrams as the building inspector may require.

Plot Plan

When required by the building inspector, there shall be submitted a plot plan in a form and size designated by the building official for filing permanently with the permit record, drawn to scale, with all dimension figures, showing accurately the size and exact location of all proposed new construction and it's relationship to other existing or proposed buildings or structures on the same lot, and other buildings or structures on adjoining property within 15 feet of the property lines. In the case of demolition, the plot plan shall show the buildings or structures to be demolished and the buildings or structures on the same lot that are to remain.

Zoning District in which the property is located:*

Residential

No. of Occupants Proposed to be accommodated:

3

No. of Employees, if applicable:

Section of the City of Whitewater Zoning Ordinance that prohibits the proposed usage of the property. It is this section of Ordinance for which a variance is requested:*

Chapter 19.06

STANDARDS

The following are Standards that the City of Whitewater Zoning Ordinance sets for decisions on variances. Explain how your proposal meets these standards.

A. The particular physical surroundings, shape, topographical conditions of the specific property involved would result in a particular hardship upon the owner as distinguished from mere inconvenience, if the strict letter of the regulations were to be carried out.*

Traffic noise level on corner of intersection

B. The conditions upon which the application for a variance are based would not be applicable generally to other property within the same Zoning classification.*

We are most impacted as we are on the corner of the intersection.

C. The purpose of the variance is not exclusively upon the desire for economic or other material gain by the applicant or owner.*

Not looking for economic gain, just a livable home environment and reduction of negative health impact

D. The proposed variance will not impair an adequate supply of light and air to adjacent property or substantially increase the congestion in the public streets, or increase the danger of fire or endanger the public safety, or substantially diminish or impair property values within the neighborhood.*

None of the above would be impaired.

CONDITIONS

The City of Whitewater Zoning Ordinance authorizes the Board of Zoning and Appeals to place conditions on approved variances. Please keep this in mind & supply ALL pertinent information.

Applicant Signature*

Jes Cisneros

Date*

10/27/23

AGREEMENT OF SERVICES

Item 2.

REIMBURSABLE BY THE PETITIONER/APPLICANT.

The City may retain the services of professional consultants (including planners, engineers, architects, attorneys, environmental specialists, recreation specialists, and other experts) to assist in the City's review of a proposal coming before the Plan Commission, Board of Zoning Appeals and/or Common Council. The submittal of a development application or petition by a Petitioner shall be construed as an agreement to pay for such professional review services applicable to the proposal. the City may apply the charges for these services to the Petitioner and/or property owner.

The City may delay acceptance of the application or petition as complete, or may delay final approval of the proposal, until the Petitioner pays such fees. Review fees which are applied to the Petitioner, but which are not paid, may be assigned by the City as a special assessment to the subject property. The Petitioner shall be required to provide the City with an executed copy of the following form as a prerequisite to the processing of the proposed application (Architectural Review, B.Z.A., Planning, Zoning Change):

Applicant Name*

the applicant/petitioner for

Jes Cisneros

(Owner's Name)

Dated

Jes Cisneros

10/27/23

Phone #

Tax Key #(s)

224-523-6800

Agrees that in addition to those normal costs payable by an applicant/petitioner (e.g. filing or permit fees, publication expenses, recording fees, etc.), that in the event the action applied or petitioned for requires the City of Whitewater, in the judgement of its staff, to obtain additional professional service(s) (e.g. engineering, surveying, planning, legal) than normally would be routinely available "in house" to enable the City to properly address, take appropriate action on, or determine the same, applicant/petitioner shall reimburse the City for the costs thereof.

Date this*

day of *

Year

27

October

2023

Signature of Applicant*

Date*

Jes Cisneros

10/27/23

Signature of Owner of Property

Jes Cisneros

APPLICATION FEES

Fee for Variance application-\$200.00

Item 2.

(to be completed by City Staff)

Date Fee received by City

Receipt #

10-27-2023

6.016816

Received by

Alana Dostie

Date Notice sent to owners of record:

By

Date(s) published in Newspaper

Date set for Hearing before Board of Zoning Appeals:

NOTICE OF ZONING HEARING

Publish in Whitewater Register on November 16, 2023 and November 23, 2023

TO ALL CONCERNED:

A public hearing will be held by the Board of Zoning Appeals of the City of Whitewater on December 07, 2023, at 6:00 p.m. in the Whitewater Municipal Building Community Room, 312 W. Whitewater Street, Whitewater, Wisconsin.

Applicant: Jes Cisneros

Property Location: 421 Indian Mound Parkway

Applicable Code: Zoning code section 19.06.120 -Fence Height

Variance Requested: Current Zoning relating fence height to 4 feet in the required street yard. The applicant wishes to exceed the limitation.

Reason for Request: Desire to have a 6-foot fence on the street side of the yard.

This notice is being mailed to owners of record within 300 feet of the property in question, to the City Planner and the Plan Commission in accordance with Section 19 of the Code of Ordinances. THE PROPOSAL FILED BY THE OWNER IS NOW OPEN TO PUBLIC INSPECTION AT THE OFFICE OF THE CITY PLANNER DURING NORMAL BUSINESS HOURS (Monday – Friday 8:00 a.m. to 4:30 p.m.)

BOARD OF ZONING APPEALS

Karri Anderberg, Secretary, BZA

Dated: November 7, 2023



Neighborhood Services Department
*Planning, Zoning, Code Enforcement, GIS
and Building Inspections*

www.whitewater-wi.gov
Telephone: (262) 473-0540

October 30, 2023

Jes Cisneros
421 Indian Mound Parkway
Whitewater, WI 53190

RE:
421 Indian Mound Parkway
6 foot fence installation
Parcel # /MO 00001

Dear Jes:

On October 26, 2023 you filled an application to document installation of a fence to be placed at 421 Indian Mound Parkway.

Per the application and the zoning code section 19.06.120 fence height shall not exceed a height of four feet in the required street yard.

As such the application has been denied by our office.

Please contact me with any questions or concerns.

Thank you.

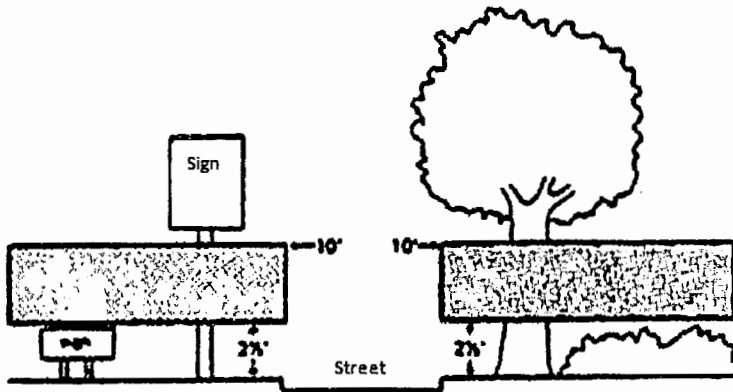
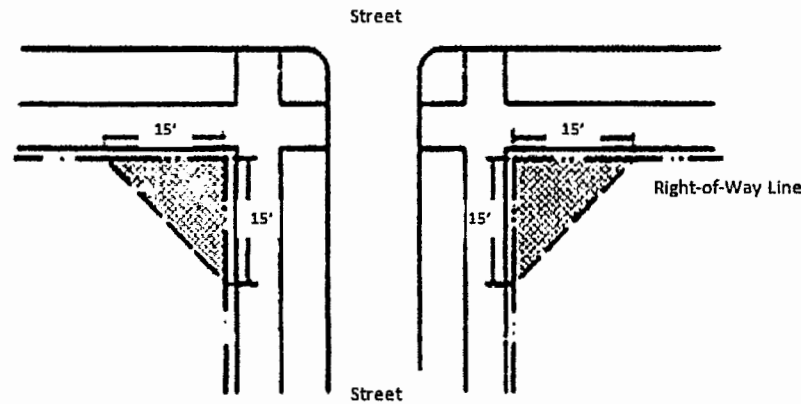
Regards,


Allison Schwark
262-249-6701
mcodeenforcement@gmail.com

19.51.010 - Intersection visibility requirements.

Item 2.

- A. At all intersections of streets or alleys, no fence, hedge, wall, sign or other structure shall be erected, placed, planted or allowed to grow in such a manner as to collectively impede more than fifteen percent of the vision area between a height of two and one-half feet and ten feet above the established curb level of the intersection of streets or alleys in the area bounded by the right-of-way lines and a line joining points along the right-of-way fifteen feet from the point of intersection. (Refer to diagram below.)
- B. In the case of major streets and highways intersecting with other arterial streets or railways, the corner cutoff distances establishing the triangular vision clearance space shall be increased to forty feet.



 No Visual Obstructions Allowed in this Area

(Ord. No. 1914A, 2-18-2016)

Print

Item 2.

Application to document the installation of a fence - Submission #662

Date Submitted: 10/26/2023

City of Whitewater
312 W Whitewater Street
P.O. Box 178
Whitewater WI 53190
(262) 473-0540
www.whitewater-wi.gov

This is an application to document the installation of a fence.

Filed in Property Record

Address of Subject:*

421 Indian Mound Parkway

Applicant's Name*

Jes Cisneros

Email Address*

jes.cisneros@gmail.com

Address*

421 Indian Mound Parkway

City*

Whitewater

State*

WI

Zip Code*

53190

Phone Number*

224-523-6800

Fax Number

Address of Agent or Representative (Planner, Engineer, Architect, Attorney, etc.)

Name

Email Address

Item 2.

Address

City

State

Zip Code

Phone Number

Fax Number

Documentation of representing the current land owner:

Attach files (if necessary)

Choose File No file chosen

Land Owners Name and Contact Information (if different)

Name

Email Address

Address

City

State

Zip Code

Phone Number

Fax Number

It is the applicants' responsibility for the fence being located on the intended property and to meet all City of Whitewater regulations. This memorandum of understanding follows the City of Whitewater ordinance 19.06.120. Please read and check each box below. Please complete all items. Leave blank, if not applicable. Attach additional pages as necessary.

Item 2.

General Responsibilities*

- Residential fences and walls are permitted either within or on the property line.
- Fences and walls shall not exceed a height of six feet in the side yard or rear yard area and shall not exceed a height of four feet in the required street yard.
- Fences or walls exceeding a height of six feet in the side or rear yard area may be permitted by written approval of the Director of Neighborhood Services and a Building Permit.
- All driveway openings abutting a public right-of-way shall have a fifteen-foot free vision triangle set back from both sides of the driveway. (Similar to Section 19.51.010.)
- The finished face of the fence shall face outward to the street (for the front yard) and toward the outer perimeter for side and rear yard fences.
- Fences shall be kept in good repair and be properly maintained, which shall include maintenance of paint, stain or other finishing products.
- Fences shall have consistent fence building material which may include naturally resistant or treated wood, brick or masonry, natural stone, wrought iron, vinyl, galvanized and/or coated chain link.
- Fence material, other than these materials, shall require review approval by the Neighborhood Services Director

Security Fences*

- Yes
- No

Check if fence is for security purposes

Within the B-3 and M-1 districts, security fences are permitted within the side and rear yard areas. Such fences shall be designed to enclose the entire area for security and shall not exceed ten feet in height. Barbed wire is permitted only on security fences at least six feet above established grade levels.

Item 2.

Swimming Pools*

Yes

No

Check if fence is for a swimming pool

For the purpose of this chapter, "pool" shall include swimming pools, hot tubs, whirlpools or other similar devices, but shall not include:

- a. Storable swimming or wading pools having a diameter of eighteen feet or less and a wall height of twenty-four inches or less and which are constructed in such a way as to be readily disassembled for storage and reassembled to original integrity; or
- b. Storable swimming or wading pools with nonmetallic inflatable walls regardless of dimension.
- c. All temporary swimming pools shall be removed and stored by November 1. Swimming pools shall not be allowed in front yards. Swimming pools on side or in backyards shall be a minimum of fifteen feet from the property line.
- d. All swimming pools shall be covered and ladders removed when not in use.
- e. Pools within the scope of this section which are not enclosed within a permanent building shall be completely enclosed by a fence of sufficient strength to prevent access to the pool. Such fence or wall shall not be less than six feet in height and shall be so constructed as not to have voids, holes or openings larger than six inches in one dimension. Gates or doors shall be kept locked (which includes the use of self-locking devices) while the pool is not in actual use.

Signature

THE APPLICANT IS RESPONSIBLE FOR THE FENCE BEING LOCATED ON THE INTENDED PROPERTY and certifies that the fence does not encroach into any utility easement, public right-of-way, vision clearance area, or neighboring properties.

THE APPLICANT FURTHER AGREES THAT IF THE FENCE IS BUILT IN OR ACROSS ANY OF THESE AREAS, THE APPLICANT WILL BE RESPONSIBLE FOR REMOVING AND REPLACING THE FENCE.

I agree to abide by applicable rules and regulations regarding the standards for fences within the City. I understand that this is not a permit, but a memorandum of understanding that I have read and understand the City ordinance regulations and will meet City Code when installing a fence on my property.

File Upload (if necessary)

Fence computer sketch.jpg

File Upload (if necessary)

Choose File No file chosen

Signature of applicant*

Date*

Jes Cisneros	10/26/23
--------------	----------

Please call Digger's Hotline at 1-800-242-8511 before beginning construction.