

UNIVERSITY HEIGHTS BOARD OF ADJUSTMENT
MEETING AGENDA - JUNE 7, 2012, 7:00 p.m.
1004 MELROSE AVENUE

1. Call to order.
2. Consideration of variance request application concerning 149 Koser Avenue. The property owner, Erling Anderson (on behalf of K2 LLC), seeks a variance to permit a fence on the property to remain in its present location.
3. Consideration of variance request application concerning 20 Olive Court. The property owners, Mike Ritchie and Jason Birt, seek a variance from the requirement that fences be set back two feet from right-of-way lines.
4. Adjourn.

THE LAW OFFICES OF
LEFF LAW FIRM, L.L.P.

CHARLES T. TRAW
RANDALL B. WILLMAN
STEVEN E. BALLARD
MARK C. DANIELSON
TIMOTHY S. GRADY
THOMAS E. MAXWELL
PATRICK J. FORD

222 SOUTH LINN STREET
P.O. BOX 2447
IOWA CITY, IOWA
52244-2447

TELEPHONE: (319) 338-7551
FACSIMILE: (319) 338-6902
www.lefflaw.com

ARTHUR O. LEFF (1906-1989)
PHILIP A. LEFF (Of Counsel)
R. BRUCE HAUPERT (Of Counsel)

Writer's email: ballard@lefflaw.com

June 5, 2012

Via U.S. Mail & Email
Ms. Margaret Donnelly
909 Melrose Avenue
Iowa City, Iowa 52246
russcl802@aol.com

Via Email Only
Mr. Thomas Breese - captrrb@gmail.com
Dr. Michael Flaum - michael-flaum@uiowa.edu
Mr. Larry Wilson - larry-wilson@uiowa.edu
Ms. Ann Dudler - ann@adudler.com

**Re: Board of Adjustment Meeting June 7, 2012
Variance Application - 149 Koser Avenue
Variance Application - 20 Olive Court**

Ladies and Gentlemen:

The University Heights Board of Adjustment will meet at 7:00 p.m. June 7, 2012, at the University Heights City Office, 1004 Melrose Avenue. At this meeting, the Board of Adjustment will consider two applications for variances: one filed by Erling Anderson on behalf of K2 LLC concerning 149 Koser Avenue; the other filed by Mike Ritchie and Jason Birt concerning 20 Olive Court. I will address each application separately.

149 Koser Avenue. The owner of this property, K2 LLC, seeks a variance to permit a fence on the property to remain in its present location. The fence presently violates the provisions of Ordinance No. 105(2)(C) , which provides that fences "shall be located so no part thereof is within two feet (2') of any alley or a street right-of-way-line. The variance application, in the form of an email, is attached for your reference; it explains the reasons for the variance request.

The Board of Adjustment has authority pursuant to Ordinance No. 105(5) (E) to grant a variance permitting the fence to remain in its present location. The ordinance provides as follows:

The Board of Adjustment shall have the authority to . . . authorize a variance from the terms of this ordinance that will not be contrary to the public interest where owing to special conditions a literal enforcement of the provisions of this ordinance will result in an unnecessary hardship and so that the spirit of the ordinance shall be observed and substantial justice done.

Ordinance 105(5)(E) (emphasis supplied). Thus, in considering whether to grant the variance request, the Board must consider the following:

1. Whether the variance is contrary to the public interest;
2. Whether special conditions make literal enforcement of the ordinance a hardship;
3. Whether the variance is consistent with the spirit of the ordinance and will promote substantial justice.

The Board has considerable discretion in considering and applying these criteria. I anticipate that Mr. Anderson will be at the meeting on behalf of K2 LLC to answer questions the Board may have.

20 Olive Court. The owners of this property, Mike Ritchie and Jason Birt, also seek a variance from the requirement that fences be set back two feet from right-of-way lines, as provided in Ordinance 105. A copy of this application, in the form of Mr. Ritchie's email to me dated May 24, 2012, is attached.

As you will note, the drawings submitted in support of this application concern more than just the proposed fence/retaining wall. In addition, the drawings show substantial enlargement of pavement and changes to a rear deck off the home. The City Engineer, Josiah Bilskemper, and I met with the property owners several weeks ago to discuss their plans. After that meeting, I sent the owners an email (dated May 18, 2012 - attached) indicating that their plans would require much more than simply a fence variance from the Board of Adjustment. The owners would like to proceed with the fence variance. I assume they will approach the City Council with respect to the balance of their plans.

The Board is governed by the same criteria set forth above with respect to this variance application. I expect that Mr. Ritchie and/or Mr. Birt will be in attendance to answer questions the Board may have.

Please call me or email if you have questions in advance of Thursday's meeting.

Very truly yours,

LEFF LAW FIRM, L.L.P.

A handwritten signature in black ink, appearing to read 'S. E. Ballard', with a stylized flourish at the end. To the right of the signature, the text '/by SDS' is written in a smaller, less stylized hand.

Steven E. Ballard

Enclosures

Cc: The Hon. Louise From
The Hon. Brennan McGrath
Mr. Mike Ritchie
Mr. Jason Birt
Mr. Erling Anderson
Ms. Christine Anderson
Mr. Josiah Bilskemper
Mr. Terry Goerdt
Mr. Norm Cate

University Heights Board of Adjustment

I received a letter regarding a required one foot setback for a fence from the sidewalk for 149 Koser.

I talked to Steve Ballard and Andy Dudler who told me you were the person to contact.

I did not own the 149 Koser house when the fence was built but lived next door at 147 Koser. This was about 20 years ago.

The odd lot configuration of 149 Koser (the "front" of the house actually faces George street but the lot is not deep enough if configured with the front set back being on Koser). This results in a large lawn on the corner of George and Koser Avenues. As a consequence, people cut the corner short and simply walked over the lawn and down the driveway of 147 Koser.

The owners at the time built a fence. This solved most of the problem but people still crossed the lawn until I planted Arbor Vitae so they would have to go around the plants.

While this helped reduce people taking short cuts, eventually the set back created a different problem: on football game days large groups of people walking to the game would spread out taking up the sidewalk and lawn on both sides of the sidewalk. This killed the flowers planted between the fence and the sidewalk. This turned worse after rains or when the ground was wet. The 12" setback area turned into mud.

The solution the owners decided upon was to move the fence closer to the sidewalk and put the plantings inside the fence. This worked but a problem was game day crowds pushing on the fence and leaning it. The owners then put the posts in cement and this has solved the problem.

In addition, the current placement of the fence still allows substantial room for pedestrians on the street side of the sidewalk.

In order to move the fence, I would have to remove the cemented posts (which are quite secure having been placed in large poured cement footings) and dig new holes, pour new cement, reset the posts and rebuild the horizontal boards. This would move the fence the require 12".

Unfortunately, moving the fence back 12" would revived the problem of the mud/raw dirt that would again return. There is no obvious solution to this problem. Indeed, the problem of mud and barren soil is year round and quite unsightly.

As a result, I would request permission to leave the cemented and sturdy fence as is and be allowed a waiver of the requirement of the 12" setback.

Game days are a real trouble for owners of well trafficked sidewalks and during the time I was on the City Council, we granted a waiver of the set back requirement for a fence installed by the owners of the property at the North West corner of Melrose and Koser for virtually the same reason: crowd control (crowds were transiting the lawn) and lawn destruction.

Sincerely,

Erling Anderson
K2 LLC
220 George St
University Heights
319-430-6730

Suzanne Stoltze

From: Steven Ballard <ballard@lefflaw.com>
Sent: Friday, May 18, 2012 1:15 PM
To: Mike Ritchie; jkbirt@mchsi.com
Cc: Louise From; Brennan McGrath (brennan-mcgrath@university-heights.org); jbilskemper@shive-hattery.com; Suzanne Stoltze (stoltze@lefflaw.com)
Subject: RE: 20 Olive Court
Attachments: 20 Olive Court

Mike and Jason,

Thanks for the emails and the drawing. I'm cc'ing the City Engineer, Josiah Bilskemper, as well as our Mayor and the chair of the City Council's building, zoning, and sanitation committee, and attaching what you sent so that they have ready access.

I appreciated the opportunity to meet with you and Josiah last week at your property. That meeting, coupled with the drawing, gives me a better handle on you are proposing. I know that I gave you a rather complex description on your options for proceeding with your proposal, and I thought it might be best to set those out in an email. Here they are:

1. **Apply for a fence variance.** You may ask the University Heights Board of Adjustment for a variance from Ordinance No. 105 (link here - <http://www.university-heights.org/ord/ord105.pdf>). That ordinance provides that fences (including your proposed retaining wall) must be set back 2 feet from property lines. The ordinance permits the Board of Adjustment to grant variances in certain cases. **If** the Board granted your request, you could build the wall on the property line, **but** that would **not** allow you to extend the pavement as you propose; the Board does **not** have authority to grant that sort of exception or variance to the Ordinance No. 79, the City's Zoning Ordinance (link here - <http://www.university-heights.org/ord/ord079amend.pdf>). The procedure for requesting a variance is to submit some narrative (a letter email describing what you propose) along with more detailed drawings, including dimensions, property lines, etc. There is a \$50.00 filing fee, as well.
2. **Ask the Council to amend the zoning ordinance.** As mentioned above, your drawing implicates issues broader than just locating a fence on the boundary line. You're also asking to extend pavement into a required back yard, and the proximity of the proposed pavement to the alley behind your property gives rise to the very real possibility that cars may park on the proposed pavement. The deck proposed on your drawing may also present zoning issues (I cannot tell from the drawing – we'll need some dimensions). The Council would have the authority to amend the Zoning Ordinance to permit the proposal you have outlined; I don't know if the Council would take that action but it could if it wanted to. If you want the Council to consider an amendment to the Zoning Ordinance, there are 2 ways for you to proceed:
 - a. Ask the Council **generally and generically** to reconsider provisions of the ordinance and make amendments as they relate to your property (an perhaps others on the east side of Olive Court); or
 - b. Ask the Council **with specific reference to your proposal** to make such amendments. This option will require more detailed drawings than you've submitted so far; you will have to determine whether the cost involved is a factor as you decide how you would like to proceed.

The University Heights Board of Adjustment is meeting at 7:00 p.m. June 7, 2012, to take up another matter. I am going to include your fence variance request on the Board's agenda, **in the event you wish to submit an application and proceed under Option #1 above.** If you don't want to proceed that way, the Board simply won't take any action at that meeting.

One final comment about timing: the Board of Adjustment has authority to grant a variance about the fence issue at its meeting June 7; the Council's process for considering a zoning change could take different forms but amending the Zoning Ordinance would take a minimum of 3-4 months, in my opinion.

Please give this some thought and let me know how you would like to proceed. Of course, call if you have questions or wish to discuss this further.

Steven E. Ballard
Leff Law Firm, L.L.P.
P.O. Box 2447
222 South Linn Street
Iowa City, Iowa 52244-2447
office: 319/338-7551
mobile: 319/430-3350
facsimile: 319/338-6902
e-mail: ballard@lefflaw.com

This message is intended only for the use of the person to whom it is addressed and may contain information that is confidential and subject to the attorney-client privilege. It should not be forwarded to anyone else without the consent of the sender. If you received this message and are not the intended recipient, you have received this message in error. Please notify the person sending the message and destroy your copy and any attachments.

Since email messages sent between you and Leff Law Firm, L.L.P. and its employees are sent over the Internet, Leff Law Firm, L.L.P. cannot assure that such messages are secure. You should carefully consider the risks of email transmission of information to Leff Law Firm, L.L.P. that you consider to be confidential. If you are not comfortable with such risks, you may choose not to utilize email to communicate with Leff Law Firm, L.L.P.

To ensure compliance with requirements imposed by the IRS, including IRS Circular 230 Notice, we inform you that any U.S. tax advice contained in this communication is not intended or written to be used, and cannot be used by any taxpayer, for the purpose of avoiding U.S. tax penalties.

From: Mike Ritchie [mailto:mkritchie@southslope.net]
Sent: Thursday, May 17, 2012 6:25 PM
To: Steven Ballard
Subject: 20 Olive Court

Steve,

I see that Jason sent you our plans for the backyard of 20 Olive Court. As you can see this is a great improvement for the property and the area. Do you think we should send copies of this to all of the people on the University Heights City Counsel or should we just get on the agenda for June and present this then. We would like to get started on this project as soon as possible.

Mike

Suzanne Stoltze

From: Mike Ritchie <mkritchie@southslope.net>
Sent: Thursday, May 24, 2012 4:36 PM
To: Steve Ballard; louise-from@university-heights.org; mike-haverkamp@university-heights.org; rosanne-hopson@university-heights.org; jim-lane@university-heights.org; jan-leff@university-heights.org; brennan-mcgrath@university-heights.org; uhclerk@yahoo.com; Suzanne Stoltze
Cc: Jason Birt
Subject: Variance application and June 12th counsel meeting
Attachments: 20 Olive Court.pdf

Steven,

Please consider this as our application for a variance between our property located at 20 Olive Court and the adjacent property located at 16 Olive Court. As you have seen there is a slope between the two properties that we want to do away with to improve both properties. What we would be doing is constructing a retaining wall that would be located on the property line extending from 6 feet from the edge of our house located at 20 Olive Court and proceeding to within 2 feet of the alley behind our property. At the very beginning of the retaining wall the height would be approximately 3 and a half feet working its way down to no more than 2 feet at the end. We would then backfill the adjacent property located at 16 Olive Court. This would make the adjacent property level as well as ours. We would then erect a black wrought iron fence on the retaining wall for safety purposes.

In the attachment that I am sending along with this application on page 2 it will show the length from the rear of the house to the alley at 64 feet. But we are going to stay between 6 to 8 feet away from the house to prevent breaking the frost line. The design of the block has not been determined as of yet but would like to do something like at Stella's to fit into the neighborhood.

I would like to know who to send the \$50,00 application fee to or should we just bring it to the Board of Adjustment meeting June 7, 2012.

If you or anyone has any questions please contact me at 319 371 7557.

Thank you.

Mike Ritchie



1 {3D}

Autodesk® Revit®

www.autodesk.com/revit

Mike Ritchie

20 Olive Court

3D Model

Project number 001

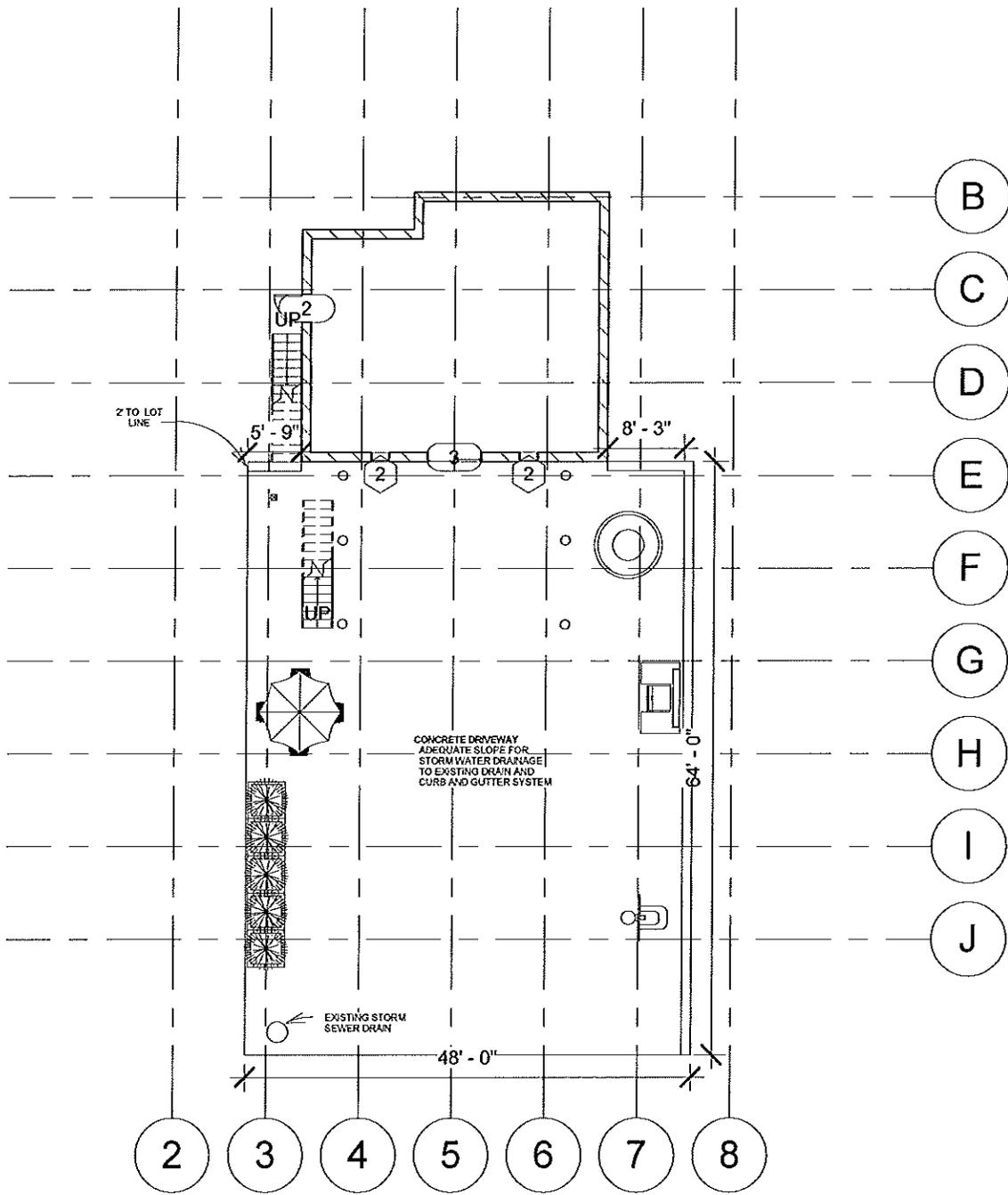
Date 5/18/2012

Drawn by Author

Checked by Checker

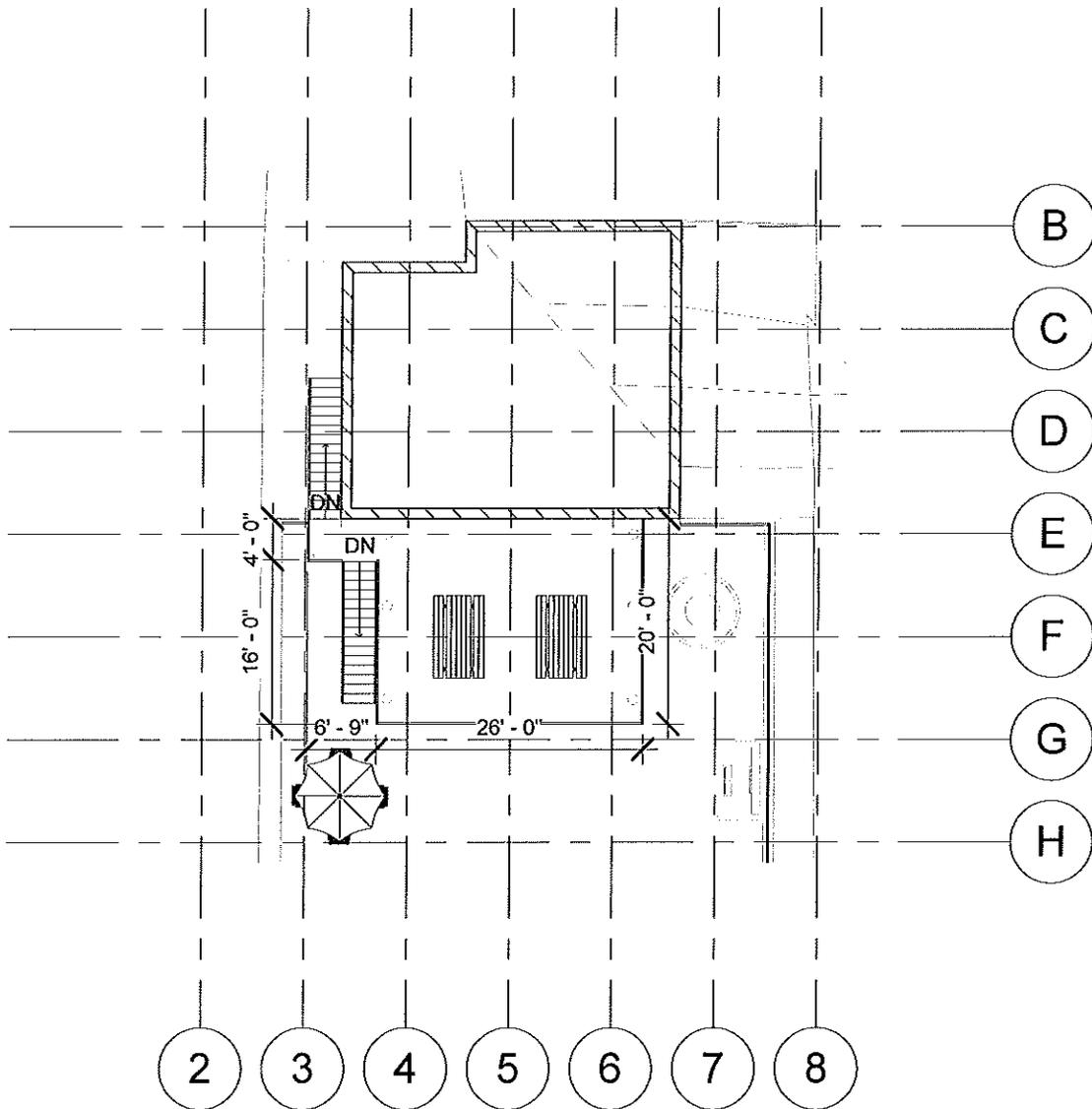
A101

Scale



① Ground Floor
1/16" = 1'-0"

Autodesk Revit [®]	Mike Ritchie	Ground Level	
	20 Olive Court	Project number	001
Date		5/18/2012	A102
Drawn by		Author	
www.autodesk.com/revit		Checked by	Checker
			Scale 1/16" = 1'-0"



① Deck Level
1/16" = 1'-0"

Autodesk Revit®	Mike Ritchie	Deck Level	
	20 Olive Court	Project number	001
Date		5/18/2012	A103
Drawn by		Author	
Checked by		Checker	Scale 1/16" = 1'-0"
www.autodesk.com/revit			

ORDINANCE NO. 105 (as amended)

AN ORDINANCE REGULATING FENCES, HEDGES, AND OTHER PLANTINGS
AND PROVIDING PENALTIES

SECTION:

- 1 PERMIT REQUIREMENTS
- 2 FENCE AND HEDGE LOCATION AND
HEIGHT REQUIREMENTS
- 3 FENCES REQUIRED
- 4 BARBED WIRE AND ELECTRIC FENCES
PROSCRIBED
- 5 APPEALS AND VARIANCES - BOARD OF ADJUSTMENT
- 6 PENALTIES
- 7 REPEALER AND MISC.

1: **PERMIT REQUIREMENTS:**

It shall be unlawful to install or construct or cause to be installed or constructed any fence over six feet (6') in height without obtaining a permit from the University Heights Building Official. All applications for fence permits shall be submitted to the Building Official and shall be accompanied by a sketch or design of the proposed fence and a plot showing the location of the proposed fence.

2: **FENCE AND HEDGE LOCATION AND HEIGHT REQUIREMENTS:**

- A. No portion of a fence more than ten percent (10%) solid shall exceed eight feet (8') in height.
- B. Fences and hedges or other plantings shall be located so no part thereof is within two feet (2') of any alley or a street right-of-way line.
- C. At street intersections, no fence, hedge, or other planting more than three feet (3') in height above the curb level shall be located within a triangular area, two (2) of its sides twenty-five feet (25') in length and measured along the right-of-way lines from the point of intersection. Any fence, hedge, or other planting in existence upon adoption of this ordinance and not in compliance with this subsection (2(c)) shall be brought into conformance within thirty (30) days of

publication of the ordinance. Provided, however, that this subsection 2(c) shall not apply to the following:

1. Fences, hedges, or other plantings that presently are situated upon or near the lot lines of properties abutting the west right-of-way line of Sunset Street south of Melrose Avenue provided such structures are parallel to the right-of-way line or approximately so.
2. Fences erected or hedges or other plantings planted to replace those existing upon enactment of the ordinance as identified in subsection 2(c)(1) herein.

Provided further that a fence otherwise subject to this subsection 2(c) is not in violation so long as it is no more than ten percent (10%) solid.

- D. At street intersections, all trees shall be trimmed such to a height not less than eight feet (8') within a triangular area, two (2) of its sides twenty-five feet (25') in length and measured along the right-of-way lines from the point of intersection.
- E. Fences within the front yard shall not exceed four feet (4') in height, unless the University Heights City Council authorizes a fence exceeding four feet (4') in writing at the request of the property owner or party in possession.

3: FENCES REQUIRED:

Except as otherwise provided, fenced enclosures shall be provided for swimming pools with a depth of eighteen inches (18") or more and for dog runs and shall be subject to the following requirements.

- A. An outdoor swimming pool, the edge of which is less than four feet (4') above grade, shall be completely enclosed by a fence not less than four feet (4') in height. The fence shall be so constructed as not to allow a five inch (5") diameter sphere to pass through the fence. A principal or an accessory building may be used as a part of such enclosure.
- B. All gates or doors opening through an enclosure shall be equipped with a self-closing and self-latching device for keeping the gate or door securely closed at all times when not in actual use, except the door of any building which forms a part of the enclosure need not be so equipped. The Building Official may permit other protective devices or structures to be used so

long as the degree of protection afforded by the substitute device or structure is not less than the protection afforded herein.

- C. Dog runs shall be enclosed by a fence of sufficient height and construction to contain the dog at all times.

4: BARBED WIRE AND ELECTRIC FENCES PROSCRIBED:

Barbed wire and electric fences are prohibited and no barbed wire fence or electric fence shall be constructed or erected within the City of University Heights.

5: APPEALS AND VARIANCES - BOARD OF ADJUSTMENT:

The University Heights Board of Adjustment is authorized to hear appeals from decisions of the Building Official and requests for variances from the terms of this ordinance.

- A. Appeals to the Board may be taken by any person aggrieved by a decision of the Building Official based on the provisions of this ordinance. Such appeal shall be taken within a reasonable time by filing a notice of appeal with the City Clerk, specifying the grounds thereof. The City Clerk shall transmit a copy of the notice to the Building Official and to the Board of Adjustment. The Building Official shall promptly transmit to the Board all of the papers constituting the record upon which the action appealed from was taken.
- B. Any person may make application to the Board of Adjustment for a variance to this ordinance by filing a written application with the City Clerk, who shall promptly notify the Board of Adjustment of the application.
- C. The concurring vote of three members of the Board of Adjustment shall be necessary to affirm, reverse, revise, or modify any decision of the Building Official, or to decide in favor of an applicant seeking a variance.
- D. A filing fee of \$50.00 shall be paid to the City of University Heights with the filing of any appeal or application provided for herein.
- E. The Board of Adjustment shall have the authority to affirm, reverse, revise, or modify any decision of the Building Official and to authorize a variance from the

terms of this ordinance that will not be contrary to the public interest where owing to special conditions a literal enforcement of the provisions of this ordinance will result in an unnecessary hardship and so that the spirit of the ordinance shall be observed and substantial justice done.

6: PENALTIES:

Any violation of this Ordinance shall constitute a simple misdemeanor, and any person convicted of violating this Ordinance shall be subject to confinement for up to thirty (30) days in jail or a \$100.00 fine or both such confinement and fine.

7: REPEALER AND MISC:

All Ordinances or parts of Ordinances not specifically provided for and in conflict herewith are hereby repealed. If any section, provision, or part of this Ordinance shall be adjudged to be invalid or unconstitutional, this determination shall not affect the validity of the Ordinance as a whole or any section, provision, or part of the Ordinance not determined to be invalid or constitutional.

EFFECTIVE DATE:

This Ordinance shall be in full force and effect upon its passage and publication in accordance with law.

Adopted this 10th day of March, 1998 and approved this 10th day of March, 1998.

Donald S. Swanson, Mayor,
City of University Heights

Attest: _____
Pat Birk, City Clerk

*The original ordinance is on file with the University Heights City Attorney.

Ordinance No. 164, adding Section 5 regarding Appeals and Variances - Board of Adjustment, and subsequently renumbering the following sections, was passed and approved the 11th day of September, 2007, and published in the Iowa City Press Citizen September 15, 2007. The amendment authorized the Board of Adjustment to hear appeals from decisions of the Building Official and requests for variances.