

ORDINANCE NO. 1140

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF CLIVE,
IOWA, 2019, BY AMENDING PROVISIONS OF THE ZONING ORDINANCE REGARDING
REAR YARD EXCEPTIONS

Be It Enacted by the City Council of the City of Clive, Iowa:

SECTION 1. INTERNAL REFERENCES. All references to section numbers in this ordinance shall be to sections contained with Title 11 in the Zoning Ordinance, unless otherwise specified.

SECTION 2. AMENDMENT – REAR YARD, EXCEPTIONS. In Title 11, Chapter 4 (entitled “General Regulations”), Section 11-4-17 (entitled “EXCEPTIONS, MODIFICATIONS AND INTERPRETATIONS”), is hereby amended by adding the following:

- D. Rear Yard; Exceptions: Detached single-family dwelling units shall be permitted up to twenty feet (20’) of the dwelling to be constructed at a twenty-five foot (25’) rear yard setback. The twenty feet (20’) shall be measured linearly along the plane of the dwelling’s rear façade.

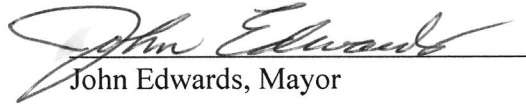
SECTION 4. REPEALER. All parts of the "CODE OF ORDINANCES OF THE CITY OF CLIVE, IOWA, 2019" in conflict herewith are hereby repealed.

SECTION 5. SEVERABILITY CLAUSE. If any section, provision, sentence, clause, phrase or part of this Ordinance shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of this Ordinance as a whole or any section, subsection, provision, sentence, clause, phrase or part thereof not adjudged invalid or unconstitutional.


SECTION 6. WHEN EFFECTIVE. This Ordinance shall be in effect from and after its final passage, approval and notice of its passage is given as provided by law.

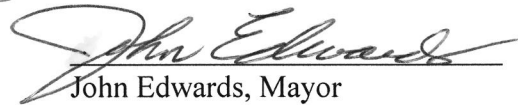
PASSED AND APPROVED by the City Council on the 14 day of September, 2023.


Matthew Graham, City Clerk


John Edwards, Mayor


Ordinance No. 1140 authenticated this 14 day of September, 2023.


Matthew Graham, City Clerk


John Edwards, Mayor

Officially published on the 18 day of September, 2023.

CERTIFIED BY:


Matthew Graham, City Clerk



CLIVE, CITY OF
1900 NW 114TH ST

CLIVE IA 503257077

of Affidavits 1

This is not an invoice

AFFIDAVIT OF PUBLICATION

State of Wisconsin

County of Brown, ss.:

The undersigned, being first duly sworn on oath, states that The Des Moines Register and Tribune Company, a corporation duly organized and existing under the laws of the State of Iowa, with its principal place of business in Des Moines, Iowa, the publisher of

THE DES MOINES REGISTER

newspaper of general circulation printed and published in the City of Des Moines, Polk County, Iowa, and that an advertisement, a printed copy of which is attached as Exhibit "A" and made part of this affidavit, was printed and published in The Des Moines Register in the editions dated:

Ad No.	Start Date:	Editions Dated:	Order Cost:
0005823735	9/18/23	09/18/2023	\$52.01

Copy of Advertisement
Exhibit "A"

Staff member, Register Media

Subscribed and sworn to before me by said affiant this

18 day of September, 2023

Notary Public

Commission expires

VICKY FELTY
Notary Public
State of Wisconsin

**ORDINANCE NO. 1140
AN ORDINANCE AMENDING
THE CODE OF ORDINANCES OF
THE CITY OF CLIVE, IOWA,
2019, BY AMENDING
PROVISIONS OF THE ZONING
ORDINANCE REGARDING
REAR YARD EXCEPTIONS**

Be It Enacted by the City Council
of the City of Clive, Iowa:

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REFERENCES.** All references to
section numbers in this ordinance
shall be to sections contained with
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unless otherwise specified.

**SECTION 2. AMENDMENT -
REAR YARD EXCEPTIONS.** In
Title 11, Chapter 4 (entitled
"General Regulations"), Section
11-4-17 (entitled "EXCEPTIONS,
MODIFICATIONS AND
INTERPRETATIONS"), is hereby
amended by adding the following:

D. Rear Yard Exceptions:
Detached single-family dwelling
units shall be permitted up to
twenty feet (20') of the dwelling to
be constructed at a twenty-five
foot (25') rear yard setback. The
twenty feet (20') shall be
measured linearly along the plane
of the dwelling's rear facade.

SECTION 4. REPEALER. All
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herewith are hereby repealed.

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CLAUSE.** If any section,
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adjudged to be invalid or
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Ordinance as a whole or any
section, subsection, provision,
sentence, clause, phrase or part
thereof not adjudged invalid or
unconstitutional.

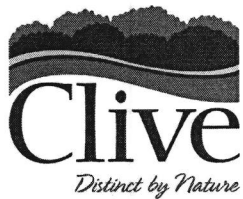
**SECTION 6. WHEN
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shall be in effect from and after
its final passage, approval and
notice of its passage is given as
provided by law.

PASSED AND APPROVED by the
City Council on the 14th day of
September, 2023.

Matthew Graham, City Clerk
John Edwards, Mayor
Ordinance No. 1140 authenticated
this 14th day of September, 2023.

Matthew Graham, City Clerk
John Edwards, Mayor
Officially published on the 18th
day of September, 2023.

CERTIFIED BY:
Matthew Graham, City Clerk



Memo

TO: Mayor and Council Members

FROM: Amanda Grutzmacher

DATE: 9/14/2023

RE: 3rd Consideration of Ordinance 1140 - Zoning Ordinance Amendment Regarding Rear Yard Exceptions

Set to
Pub 9/18

2

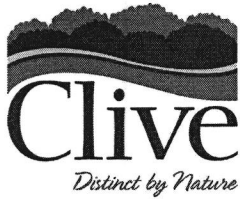
SYNOPSIS:

No changes or public comments have been received since the previous City Council meetings. Staff recommends approval of Ordinance 1140 for an Zoning Ordinance Amendment Regarding Rear Yard Exceptions.

If you have questions or need additional information prior to the meeting, contact Amanda at 515-223-6221 or agrutzmacher@cityofclive.com.

ATTACHMENTS:

Description	Type	Upload Date
▣ Ordinance 1140	Cover Memo	9/7/2023



Memo

TO: Mayor and Council Members

FROM: Amanda Grutzmacher

DATE: 8/24/2023

RE: 2nd Consideration of Ordinance 1140 - Zoning Ordinance Amendment Regarding Rear Yard Exceptions

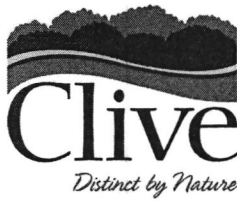
SYNOPSIS:

There have been no changes or public comments received on the proposed revisions to rear yard exceptions since the public hearing on August 10. Staff recommends approval of the second consideration of Ordinance 1140.

If you have questions or need additional information prior to the meeting, contact Amanda at 515-223-6221 or agrutzmacher@cityofclive.com.

ATTACHMENTS:

Description	Type	Upload Date
Ordinance 1140	Cover Memo	8/18/2023



Memo

TO: Mayor and Council Members

FROM: Amanda Grutzmacher

DATE: 8/10/2023

RE: Public Hearing - 6:00 p.m. - Zoning Ordinance Amendment Regarding Rear Yard Exceptions

PH notice published
7/26/2023
First Reading
8/10/2023

SUBJECT:

a. Consideration of Proposed Ordinance No. 1140 - Zoning Ordinance Amendment Regarding Rear Yard Exceptions

SYNOPSIS:

As previously discussed, staff has recommended adding an exception to rear yard setbacks to better accommodate additions and enhanced features for existing and new construction single-family homes. Specifically, staff is recommending allowing up to 20' of the rear facade of detached single-family homes to extend to a 25' rear yard setback.

Planning and Zoning Commission considered the proposed ordinance amendment at their meeting on August 3, 2023. There was discussion about the desire for plain language to help property owners understand what they are permitted to construct. Planning and Zoning Commission recommended approval of the ordinance revision with staff looking into simplifying the text. Staff has amended the text per that discussion, but the impact of the language has not changed.

The original proposed language was:

Detached single-family dwelling units shall be permitted up to twenty feet (20'), measured linearly, of the primary structure to be constructed at a twenty-five feet (25') rear yard depth.

The currently proposed language is:

Detached single-family dwelling units shall be permitted up to twenty feet (20') of the dwelling to be constructed at a twenty-five foot (25') rear yard setback. The twenty feet (20') shall be measured linearly along the plane of the dwelling's rear façade.

Staff recommends approval of the first consideration of Ordinance 1140 regarding rear yard setbacks.

If you have questions or need additional information prior to the meeting, contact Amanda at 515-223-6221 or agrutzmacher@cityofclive.com

ATTACHMENTS:

Description	Type	Upload Date
▢ Staff Report and attachments	Cover Memo	8/3/2023
▢ Ordinance 1140	Cover Memo	8/7/2023



CLIVE, CITY OF
1900 NW 114TH ST

CLIVE IA 503257077

of Affidavits 1

This is not an invoice

AFFIDAVIT OF PUBLICATION

State of Wisconsin

County of Brown, ss.:

The undersigned, being first duly sworn on oath, states that The Des Moines Register and Tribune Company, a corporation duly organized and existing under the laws of the State of Iowa, with its principal place of business in Des Moines, Iowa, the publisher of

THE DES MOINES REGISTER

newspaper of general circulation printed and published in the City of Des Moines, Polk County, Iowa, and that an advertisement, a printed copy of which is attached as Exhibit "A" and made part of this affidavit, was printed and published in The Des Moines Register in the editions dated:

Ad No.	Start Date:	Editions Dated:	Order Cost:
0005772717	7/26/23	07/26/2023	\$42.27

Copy of Advertisement
Exhibit "A"

Staff member, Register Media

Subscribed and sworn to before me by said affiant this

26 day of July, 2023

Notary Public

Commission expires

KATHLEEN ALLEN
Notary Public
State of Wisconsin

NOTICE OF PUBLIC HEARING
ON AMENDMENT TO CITY OF
CLIVE ZONING ORDINANCE
REGARDING REAR YARD
EXCEPTIONS

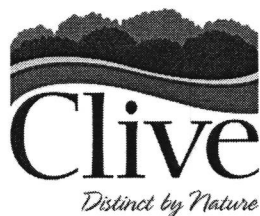
NOTICE IS HEREBY GIVEN that the City Council of the City of Clive, Iowa, will meet at the Clive City Hall, 1900 N.W. 114th Street, in the City of Clive, Iowa, at 6:00 p.m. on the 10th day of August, 2023, at which time and place the City Council will hold a public hearing on amending the Zoning Ordinance regarding regulations associated with Rear Yard Exceptions. Such amendment is set forth in the proposed Ordinance(s) entitled as follows:

AN ORDINANCE AMENDING
THE CODE OF ORDINANCES OF
THE CITY OF CLIVE, IOWA, 2019
BY AMENDING THE ZONING
ORDINANCE REGARDING
REAR YARD EXCEPTIONS

For all the particulars of the proposed amendments, see the proposed Ordinance(s) entitled as set forth above now on file at the Clive City Hall with the City Clerk of the City of Clive, which may be examined there. The proposed Ordinance(s) is by this reference made a part of this Notice.

All interested persons may appear at the public hearing and at such time and place the Clive City Council will consider any objections to the proposed amendments described above and give all interested persons an opportunity to be heard. This Notice is given by order of the City Council of the City of Clive, Iowa.

John Edwards, Mayor
ATTEST:
Matthew Graham, City Clerk



Memo

TO: Mayor and Council Members

FROM: Amanda Grutzmacher

DATE: 7/13/2023

RE: Resolution Setting Public Hearing (8-10-2023, 6:00 p.m.) - Zoning Ordinance Amendment Regarding Rear Yard Exceptions

SYNOPSIS:

Background

At the May 25 meeting, Council provided direction to staff to prepare a recommendation on revisions to the zoning ordinance that would provide additional flexibility to single-family residential properties by amending the rear yard setback. Since that meeting, staff has reviewed zoning requirements for neighboring communities and further evaluated previous variance requests. Of the neighboring communities staff contacted, only West Des Moines allows a different rear setback for a covered deck than for the primary structure. Johnston staff indicated they are having similar discussions at the staff level on whether reduction to rear yard setbacks is appropriate with the increase in requests for covered decks.

	Primary Structure Setback	Covered Deck Setback	Deck Setback
Clive (current)	35'	35'	5'
Grimes	25'	25'	5'
Johnston	35'	35'	25'
Urbandale	30'	30'	30'
Waukee	30'	30'	5'
West Des Moines	35'	20'	20'

The staff report from May 25 is included as an attachment for reference.

Proposed Ordinance Amendment

Staff's recommendation is to amend Section 11-4-17 Exceptions, Modifications and Interpretations to create a Section D for rear yard exceptions. This proposed language allows for detached single-family dwellings to construct up to 20' of the rear façade to a 25' rear yard setback. The remaining façade would be required to meet the current 35' rear yard setback.

Staff recommends allowing 20' of the façade be permitted at the 25' rear yard setback in order to accommodate a comfortably sized covered deck and typical patio furniture. The proposed revision would allow for various additions to the primary structure, e.g. open covered deck, enclosed 4-seasons room, kitchen addition, etc.

Amending the rear yard setback as recommended would not eliminate all of the variances that have been requested for a reduction in the rear yard setback. Based on the Board of Adjustment case history, staff estimates approximately 85% of the applicable variance requests would be permitted under the proposed rear yard setback revision, and future similar requests would only require submittal and approval of a building permit.

Aerial photos of a selection of previously approved rear yard setback variances is included for visual reference of what could be allowed under the proposed ordinance revision.

Recommendation

Staff recommends setting a public hearing for August 10, 2023 to consider an ordinance creating exceptions to rear yard depth for detached single-family dwellings.

Please contact me at 515-223-6221 or agrutzmacher@cityofclive.com if you have questions or need additional information prior to the meeting.

ATTACHMENTS:

Description	Type	Upload Date
<input type="checkbox"/> May 25 Council Staff Report	Cover Memo	7/10/2023
<input type="checkbox"/> Aerial Photo Examples	Cover Memo	7/10/2023
<input type="checkbox"/> Proposed Ordinance Rear Yard Exceptions	Cover Memo	7/10/2023
<input type="checkbox"/> Resolution Setting Public Hearing	Cover Memo	7/10/2023

RESOLUTION NO. 2023-213

RESOLUTION SETTING DATE OF PUBLIC HEARING TO CONSIDER AMENDING
PROVISIONS OF THE ZONING ORDINANCE OF THE CITY OF CLIVE, IOWA,
REGARDING REAR YARD EXCEPTIONS

WHEREAS, the City Council of the City of Clive, Iowa (the "City") desires to consider certain amendments to the Zoning Ordinance ("the Zoning Ordinance") of the City of Clive Code of Ordinances regarding the regulation of home occupations; and

WHEREAS, it is the desire of the City Council that the proposed amendments to the Zoning Ordinance be considered by the Clive Planning and Zoning Commission and that such Commission file its report with the City Council prior to the time established herein for public hearing on said proposed amendments; and

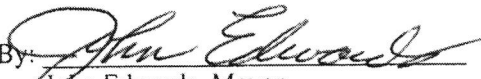
WHEREAS, a public hearing upon the proposed amendments to the Zoning Ordinance should be held and a time and place for hearing thereon should be fixed.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CLIVE, IOWA:


1. That a public hearing be held by the Clive City Council on the proposed amendments to the Zoning Ordinance, at the Clive City Hall, 1900 NW 114th Street, Clive, Iowa, at 6 p.m. on August 10th, 2023, at which time the City Council will consider any objections to the proposed amendments and will hear all interested persons.
2. That the Mayor and Clerk be and hereby are authorized and instructed to give Notice of said public hearing, as required by law.
3. That the Planning and Zoning Commission be and is hereby directed to consider said proposed amendments to the Zoning Ordinance and to file its report with the City Council prior to the time of said public hearing.

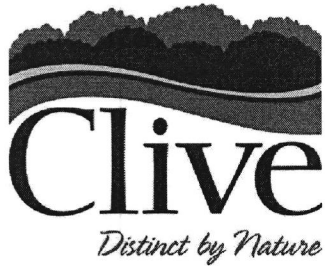
PASSED AND APPROVED THIS 13 of July, 2023.

CITY OF CLIVE, IOWA

By: 
John Edwards, Mayor

ATTEST:


Matthew Graham, City Clerk



Memo

TO: Mayor and Council Members

FROM: Amanda Grutzmacher

DATE: 5/25/2023

RE: Amendment to Residential Zoning Districts Rear Yard Setbacks

SYNOPSIS:

Staff requests Council discuss and provide direction on whether a zoning ordinance amendment adjusting rear setbacks for residential zoning districts should be prepared for consideration. Since 2020, there has been a significant increase in the requests for rear yard setback variances. Staff believes this is due to the shifting use of outdoor space in response to social distancing and other societal changes that have occurred due to the COVID-19 pandemic.

Since March 2020, there have been eight applications for variances to rear yard setbacks. All eight applications were to convert an existing open deck to either a covered deck or 3-seasons room. An open deck is an accessory structure. Construction of a covered deck or 3-season room attached to the dwelling is a building addition, and therefore must meet the same setback as the primary structure.

Six of the eight applications submitted since March 2020 were approved. The reductions requested ranged from approximately 4 feet to 13.1 feet. The median variance requested during this time was 8.58 feet. In staff's opinion, the two applications that were denied did not have significantly different circumstances from the five applications that were approved during this time. These two cases received public comments, which staff feels resulted in the requested variances being denied.

Further, since 2020, approximately 48 building permits have been issued to allow for conversion of an existing deck to a covered deck or 3-season room. The 49 issued permits include the six approved rear yard setback variances. In the preceding 20-years, approximately 103 building permits were issued for covered decks or 3-season rooms.

Increasing Variance Requests

If applications continue at the current pace, the number of variance applications for rear yard setback will have approximately doubled compared to the preceding two decades. From 2000 through 2019, 23 applications were submitted for variances to the rear yard setback for residential properties. 22 of the applications were approved. The reductions requested ranged from approximately 1.3 feet to 20 feet. The median variance requested during this time was 7 feet. The majority of requests during this time were also related to covered decks or 3-season rooms. Requests associated with setbacks for accessory buildings or commercial properties have not been included.

From the time of adoption of the first Clive Zoning Ordinance in 1957 through 1999, 26 applications were submitted for variances to the rear yard setback for residential properties. 25 of the applications were approved. The reductions requested ranged from approximately 1.5 feet to 17 feet. The median reduction requested during this time was 7.5 feet. Due to changes in recordkeeping practices, in order to determine the specific reasons for a requested variance

during this timeframe each individual case record would require review. Requests associated with setbacks for accessory buildings or commercial properties have not been included.

Additional information on variances, the role of the Board of Adjustment, and tests required to grant a variance is provided in later sections of this staff report.

Housing Strategy Report

The Housing Strategy Report series that was presented to Council in 2018 and 2019 recommended a reduction in rear setbacks from thirty-five feet to twenty-five feet would allow greater opportunities to add amenities to existing homes, such as covered rear decks or bump outs for kitchen expansions or additional living space. A reduction could be applied to the entire rear yard or limited to a percentage of the rear building façade. For example, a home could be allowed an addition at 25' setback for up to 50% of the rear façade of the home and the remaining 50% would require a 35' setback.

With current rear setback requirements, approximately 60% of all single-family properties could accommodate a 10' covered deck or bump out, and approximately 49% could accommodate a 15' covered deck or bump out. If rear setbacks were reduced to 25 feet, approximately 86% and 73% of single-family properties could accommodate a 10' or 15' covered deck or bump out addition, respectively. These estimates include properties that may already have covered decks or other additions.

Sufficient data is not currently available to statistically compare property values for homes in Clive with covered decks or bump out additions versus homes without. However, the case study properties reviewed during preparation of the Housing Strategy Report series showed a positive impact to property values for covered deck additions. The addition of other types of additional living space would increase land efficiency by further utilizing already developed property and would likely result in a positive impact to property values.

What is a Variance

A variance, also commonly referred to as an adjustment, is a minor exception to the existing zoning rules. The Zoning Ordinance grants power to the Board of Adjustment to grant variances from zoning ordinance requirements. Variances permitted under the powers granted to the Board are not adjustments of a particular provision of the ordinance. Variances are, rather, an adjustment in the application of the provision to a particular parcel of land due to unique circumstances.

Granting or denying a variance does not set a legal precedent that must be considered for other similar requests since each variance requested must be considered of its own merits; however, granting a variance request will result in the public perception of a precedent and can raise concerns related to fairness when similar variance requests are denied.

Role of Board of Adjustment

When a city adopts a zoning ordinance the State of Iowa requires a Board of Adjustment appointed by City Council to carry out the functions as set out in the state zoning law. §414.8 - §414.18 of the Code of Iowa, establishes the procedures for the Board of Adjustment and the methods of appeal. The Board of Adjustment is one of the administrative devices which cities may use to provide for special cases where the exact application of the zoning ordinance would be unduly restrictive. The Board of Adjustment hears and decides appeals when a person is aggrieved by any decision on enforcement of the Zoning Ordinance.

In performing its functions, the Board must accept the zoning ordinance as set forth in the City

of Clive Code of Ordinances. The Board has no power to adjust certain cases if doing so would violate the intent of the Ordinance. All proposals must be considered within the scope and purpose of the Zoning Ordinance. Correcting what it may consider improper zoning is not within the power of the Board, rather the City Council shall hear and decide such cases. No matter how worthwhile the Board may believe a proposal to be, it has no power to consider the proposal except within the scope and purposes of the Zoning Ordinance.

The Board of Adjustment hears three categories of appeals, (1) variances, (2) special use permits, and (3) requests for interpretation. A vast majority of Board of Adjustment applications are for variance requests.

Tests for a Variance

Each application for a variance which comes before the Board must meet several conditions or tests before the application may be approved.

1. Unnecessary hardship must be proven. Key guidelines for proving unnecessary hardship from legal precedent include,
 - a. The premises cannot be used in a manner permitted by the zoning ordinance unless the variance is granted.
 - b. A strict application of the terms of the zoning ordinance will preclude its use for any purpose to which the land is reasonably adapted.
 - c. The hardship must be a compelling force.
 - d. Inability to put the property to its most profitable use does not constitute unnecessary hardship.
 - e. Mere inconvenience to the applicant is not sufficient grounds for unnecessary hardship.
 - f. Value alone is not the proper criterion in determining unnecessary hardship within the meaning of the law.
2. The property must have unique physical characteristics related to the variance requested. These physical characteristics should not be similar to the typical characteristics found in the immediate neighborhood or City as a whole.
3. The public interest must be served. The Board may not grant a variance when the action would injure and/or endanger other property or persons. Objection from a neighbor is not sufficient grounds to deny a variance on its own. The neighbor's objections may not rise to a level of being injurious.
4. The spirit of the ordinance must be upheld. It is incumbent upon the Board of Adjustment to see that the granting of the variance will not be contrary to the general land use plan which the ordinance establishes.
5. Substantial justice must be done. It is the duty of the Board to see that substantial justice is done to all parties concerned: the applicant, the people directly affected, and the general public.

Summary

Due to changes in staff, unforeseen extended leaves of absence and vacancies in the planning division, and volume of work related to current development projects, staff has not been able to complete an in-house update of the Zoning Ordinance to comprehensively address changes to zoning districts and other development requirements. Based on permit activity and variance applications, staff feels there is a significantly increasing desire by residents to be able to upgrade their homes with the addition of covered decks or 3-season rooms. Due to this increasing demand, staff felt it was appropriate to ask City Council if they would consider amending the rear setback prior to staff bringing forward a comprehensive amendment to the Zoning Ordinance. Staff is requesting Council direction on whether to prepare an amendment specifically related to rear yard setbacks in residential zoning districts.



9' rear yard variance granted in 1996



6' rear yard variance granted in 2005



7' rear yard variance granted in 2022



9' rear yard variance granted in 2018