TO:	Zoning Board of Adjustment
FROM:	Community Development Department
DATE:	July 12, 2017
RE:	**CASE #BA-17-003**
REQUEST:	A variance from Section 15.24.040(3)(e)(i), *Fences, General Requirements for Residential and Commercial Districts* of the Council Bluffs Zoning Ordinance to allow the placement of an electrically charged security fence 195 feet, as opposed to the required 300 feet, from a residential zoning district.
APPLICABLE CODE SECTION:	**Section 15.24.040 <u>Fence regulations</u>** (3) *General Requirements for Residential and Commercial Districts* (e) Fence, electrically charged security may be allowed in C-2 District in accordance with Section 13.16.485, subject to the following conditions: (i) The site shall not be within 300 feet of a residential district, or a legal non-conforming residential use.
RELIEF SOUGHT:	A 105 foot variance to allow the placement of an electrically charged security fence 195 feet, as opposed to the required 300 feet, from a residential zoning district.
LEGAL DESCRIPTION:	Lot 1, Camping World 2nd Addition
LOCATION:	East of 2802 South 21st Street, Council Bluffs, IA 51501
APPLICANT:	Camping World, 2802 South 21st Street, Council Bluffs, IA 51501
OWNER:	National Retail Properties, LP, 450 S. Orange Avenue, Suite 900, Orlando, FL 32801
REPRESENTATIVE:	Electric Guard Dog, LLC, 550 Assembly Street, 5th Floor, Columbia, SC 29201

BACKGROUND INFORMATION – On January 11, 2016, the City Council adopted Ordinance No. 6255, which amended the Council Bluffs Zoning Ordinance to allow electrically charged security fences on commercial and industrial zoned properties. The applicant's representative, Electric Guard Dog, LLC, proposed the text amendment in order to allow an electrically charged security fence around the perimeter of the existing Camping World retail store at 2802 South 21st Street. One of the adopted fence standards regulates the placement of an electrically charged security fence in proximity to a residential zoning district and/or use, as follows:

Section 15.24.040 <u>Fence regulations</u>

(3) *General Requirements for Residential and Commercial Districts*

(e) Fence, electrically charged security may be allowed in C-2 District in accordance with Section 13.16.485, subject to the following conditions:

(i) The site shall not be within 300 feet of a residential district, or a legal non-conforming residential use.

In June 2017, staff with the Council Bluffs Community Development Department conducted a final zoning inspection of the new Camping World sales lot on property legally described as Lot 1, Camping World 2nd Addition. This sales lot was granted a conditional use permit by the Zoning Board of Adjustment in February 2015 (Case #CU-15-001) and their approved plans showed the location of a new employee parking lot, recreational vehicle sales area and a six-foot tall chain link fence for security. During the inspection, City staff discovered a 10 foot-tall electrically charged security fence was installed around the perimeter of the new sales lot. The fence was installed without any City permits and was designed to match the existing electrically charged security fence around the perimeter of the Camping World retail store site at 2802 South 21st Street.

Plans submitted by the applicant show the electric fence is located 170 feet away from the subject property's east property line. The abutting South 19th Street right-of-way measures 50 feet wide and is split zoned C-2/Commercial District (west half) and R-1/Single-Family Residential District and R-3/Low Density Multi-Family Residential District (east half). Based on these measurements the electric security fence is located 195 feet, as opposed to the required 300 feet, from a residential zoning district. The applicant is requesting a 105-foot variance in order to allow the fence to remain its current location. The applicant claims the electric fence is needed to protect their sales lot from theft. The following attachments are included with this report for reference purposes:

Attachment A: Plan of operation
Attachment B: Statement by the applicant for granting the variance
Attachment C: Electric fence construction plans
Attachment D: Location/zoning map

CURRENT ZONING AND LAND USE – The subject property is zoned I-1/Light Industrial District and C-2/Commercial District. Surrounding zoning includes I-2/General Industrial District to the north; R-1/Single-Family Residential District and R-3/Low Density Multi-Family Residential District to the east; and I-1/Light Industrial District to the west. Surrounding land uses includes Camping World to the west, Complete Trailer Repair and unimproved 28th Avenue to the north, single-family residential dwellings and undeveloped land to the east and unimproved 29th Avenue to the south.

The following exhibits show the subject electrically charged security fence and the surrounding area:

Exhibit A: Aerial view of the subject property and surrounding area

Exhibit B: View of the electric security fence facing west

Exhibit C: View of the electric security fence that faces the residential area to the east.

Exhibit D: View of residential dwellings to the east of the subject property.

CITY DEPARTMENTS AND UTILITIES – All City departments and local utility providers were notified of the requested variance. The following comments were received:

- Public Works Department stated they have no comments regarding the variance request.
- Fire Department stated the fire gate on the north side of the sales lot shall be accessible at all times for emergency service purposes.
- Police Department stated they have no comments for variance and would like to be notified if the request is approved.
- Mid-American Energy stated they have no comments regarding the variance request.

NEIGHBORHOOD RESPONSE – All property owners within 200 feet of the subject property were notified of the requested variance. No comments have been received as of the date of this report.

COMMENTS - Evidence must be presented to demonstrate that a literal enforcement of the Ordinance will create a hardship for which relief is necessary. The Board of Adjustment shall approve a variance to grant relief when 'unforeseen applications of this Ordinance…create particular hardships'. No variance shall be granted unless the Board of Adjustment makes findings of fact based on the standards and conditions that follow. A variance less than requested may be granted by the Board when the record supports the applicant's right to some relief, but not to the entire relief requested. *(§15.02.080 – Variances)*

1. *The particular property, because of size, shape, topography or other physical conditions suffers singular disadvantage through the application of this ordinance, which does not apply to other properties in the vicinity.* The size, shape and topography of the property are typical of those in the general vicinity and surrounding area. The lot is generally flat with no physical impediments that would prevent the applicant from complying with the required 300 foot separation distance from a residential zoning district and/or use.

2. *Because of such disadvantage, the owner is unable to make reasonable use of the affected property.* The applicant can continue to utilize the subject property for recreational vehicle sales lot, in accordance with their conditional use permit (Case #CU-15-001), if the request variance is not granted.

3. *The disadvantage does not exist because of conditions created by the owner or previous owners of the property.* The applicant created the disadvantage by installing the electrically charged security fence without obtaining the appropriate City permit(s) beforehand. The variance request is the result of an operational need and a design preference by the applicant and not an unnecessary hardship with the property.

4. *Granting the variance will not confer on the applicant any special privileges that are denied by this ordinance to other properties or structures in the same district.* Granting the variance will confer a special privilege to the applicant that is denied to other commercial and industrial property owners in the City. The subject property has no physical impediments that prevent the applicant from complying with the 300 foot separation distance standard, as stated in Section 15.24.040(3)(e)(i), *Fences, General Requirements for Residential and Commercial Districts* of the Council Bluffs Zoning Ordinance.

5. *Granting the variance will not be contrary to the public interest, will not adversely affect other property in the vicinity, and will be in harmony with the purpose and intent of this ordinance.* Granting the variance will be contrary to the public interest as it will allow an electrically charged security fence to be located 195 feet away from a residential zoning district. Granting the variance will not be in harmony with the purpose and intent of Section 15.24.040(3)(e)(i), *Fences, General Requirements for Residential and Commercial Districts* of the Council Bluffs Zoning Ordinance. The variance process is to provide a narrowly circumscribed means by which relief may be granted from unforeseen applications of this ordinance that create particular hardships. The applicant is requesting the variance because of a design preference and operational need for their sales lot and not because of an unnecessary hardship with the subject property.

RECOMMENDATION

The Community Development Department recommends denial of the requested variance for property legally described as Lot 1, Camping World 2nd Addition, based on reasons stated above.

Rose E. Brown, AICP
Planning Coordinator

Christopher N. Gibbons, AICP
Planner

Plan of Operation

This site is strictly an inventory lot. This lot is for storage of high value inventory that is too large to keep inside of the main site indoors.

There is not relevant number of employees or persons expected to use the site. The attached site plans shows the points of access and also gives emergency responds 4 hour emergency access by way for the knox switch.

Normal hours of operation for the overall business match that of the store and are listed below.

Mon-Thurs:
8:30 AM - 7:00 PM

Fri:
8:30 AM - 6:00 PM

Sat:
8:30 AM - 5:00 PM

The Service center opens at 8:00am but does not have access to the lot in question. The accessory store is open on Sunday from 11:00 AM – 4:00 PM but also does not require access to lot in question.

Statement of Reasons
Why the Variance should be granted:

We are requesting a zoning variance to allow an electric fence to be installed within 300 FT of a residential zone. The property at 2182 S. 21st St. Council Bluffs, IA for Camping World, a reputable national RV dealer.

Special Conditions unique to the property are:

- High value of inventory that can be easily fenced.
- Due to size and nature of items, **must** be stored in outside lot and cannot be protected inside a building.
- As the storage area is over 1638 linear feet in perimeter added on to the existing 2270 feet that surrounds the existing site, it is not possible for security guards to effectively and constantly monitor the entire lot.
- Much of the perimeter is not accessible via road frontage. It is very easy to obtain access without being seen by patrolling Policemen or a neighborhood watch because of this. From the backside of the property, there is an open field which backs up to a neighborhood dead end. This could bring criminal activity into the neighborhood as would be criminals would find this the easiest point to gain access without proper security.

Special Circumstance and conditions of the location dictate that the electric security fence be permitted within 300 FT of a residential zone.

- The rest of the property is protected by the Electric Guard Dog.
- Having the storage/parking lot left unsecure puts the residential zone at risk of possible criminal traffic as a means to enter the property at its "weak spot".

The remote location of the property and the high value targets secured in the yard are an open invitation to the criminal class resulting in a crippling loss of inventory. The only system that actually PREVENTS crime and break-ins is the Electric Guard Dog security system.

The literal interpretation of the provisions will constitute unnecessary hardship to the applicant. Presently, the Council Bluffs code does not allow for electric fences within 300 FT of a residential zone. In our experience when we find this types of code, the intent was to contain/control livestock/agricultural fencing and were NOT intended to prevent businesses from protecting themselves from crime. This is why we are seeking this variation.

This variance is not being sought to relieve illegal acts or self-imposed hardships. The business is a reputable business, located in the appropriate zoning and complies with all other city ordinances. Current of previous property owners have not created any disadvantages for the business.

The granting of the variance will not be detrimental to the public welfare or unduly injurious to other property or improvements in the neighborhood in which the property is located. As the general safety and welfare of the public is maintained, crime is prevented, and the city can husband police resources torward crime other than property break-ins and vandalism. The variance requested is the minimum necessary to releive a practical difficulty and resulting hardship. Cameras record crime and don't prevent it, guards are unreliable (don't show up for work, sleep on the job, and at times are complicit in the criminal action). The EGD is the most reliable, most economical, and safest security application availible. In actuality the installation of the EGD will secure the property and increase the security of the surrounding properties and the immediate area by deterring the criminal element.

Much more effective and reliable than security guards, Electric Guard Dog will provide Old Dominion, LLC with an affordable means to protect their assets and employees, allowing them to invest monies into growth, resulting in continued employment and continued or increased tax base for the community. With rising crime rates on cargo/freight theft, they require our effective security system to remain a viable business. This security system requires the fence to be 10' high with voltage to be most effective. These variances are not being sought to relieve illegal acts or self-imposed hardships. The business is a reputable business, located in the appropriate zoning and complies with all other local ordinances.