



## **Zoning Board of Adjustment Meeting Agenda**

***Wednesday, August 14, 2024 - 4:30 PM***

Newton City Hall - Council Chambers  
101 W 4th St S  
Newton, IA 50208

**View this Meeting:** Mediacom Channel 12/85/121.12 or [www.newtongov.org/cablecast](http://www.newtongov.org/cablecast)

- I. Call to Order & Roll Call
- II. Review of Minutes of Previous Meeting:
  - 1. June 26, 2024
- III. Public Hearing
  - 1. V24-1: Variance to allow 6' privacy fence and patio/pergola in the front (east) yard of 1115 S. 13th Ave. E. Christopher & Elizabeth Braunschweig, applicants.
- IV. Other Business
- V. Adjourn

**ADA Compliance:** *The City of Newton is pleased to provide reasonable accommodations, in compliance with the Americans with Disabilities Act, for those individuals or groups who require assistance in being able to participate in the meeting. Please contact the Community Development Department at least 24 hours in advance of the meeting by calling 641-792-6622 to arrange for accommodations to be provided.*

**Chair:** Bev Rossow; **Vice Chair:** Noreen Otto; **Members:** Craig Trotter, Lynette Birkenholz, John Billingsley

# Minutes of Meeting Zoning Board of Adjustment Regular Meeting

***June 26, 2024***

ROLL CALL: Board members present: Billingsley, Birkenholz, Otto, Rossow, Trotter

Board members absent:

STAFF PRESENT: Brian Dunkelberger, Sr. City Planner  
Craig Armstrong, Development Specialist

A quorum being present, Chair Rossow called the meeting to order at 4:31 PM

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## Minutes

The Board reviewed the minutes of the previous meeting from April 3, 2024. **Motion** by Birkenholz, **seconded** by Billingsley to approve the minutes as written. **Voice vote:** approved, 5-0.

## Public Hearing

A. CU24-2: 1,000+ sq. ft. accessory building at 513 E. 5<sup>th</sup> St. N., Peck Child Development Center, applicant.

Dunkelberger reviewed the prepared staff report and shared maps and images of the subject property. Dunkelberger shared that no concerns were submitted by neighbors or residents in advance of the meeting. Rossow invited the applicant to speak.

Shanna Panknen, Board President for Peck, described the building and how it would be used. It would provide additional space for learning and recreation, events such as preschool graduations, and two more bathrooms. Rossow asked if this building would result in higher enrollment or additional staff. Panknen confirmed that about 2-3 staff were expected to be hired and the main outcome of the new building would be a boost to after school services offered.

Emily Thomason, 1405 W. 9<sup>th</sup> St. S., voiced her support for the conditional use permit. She shared how her family recently had to switch daycare providers due to limited space, but she had a great appreciation for the Peck Child Development Center. She reiterated that this building appeared to be a more affordable solution to address a significant need in the community.

Hearing no additional questions or comments, Chair Rossow called for a motion to close the public hearing.

**Motion** by Otto, **seconded** by Birkenholz. **Voice vote:** Approved 5-0.

Otto stated that she agreed with staff and their recommendation. She pointed out that this request and service provided is similar to a recent conditional use permit application the Board reviewed. There is clearly a need for child care in the community, and she felt all four criteria for granting conditional use permits were met. Billingsley asked if there was a need to consider special conditions. Board members discussed and all agreed that additional conditions were not necessary.

**Motion** by Birkenholz to approve CU24-2: a conditional use permit application authorizing a 1,200 sq. ft. detached accessory building to expand and enhance services offered by Peck Child Development Center at 513 E. 5<sup>th</sup> St. N., **seconded** by Billingsley. **Roll call vote:** Approved 5-0.

#### **Old/Other Business**

##### **B. Rules of Procedure and By-Laws**

Dunkelberger shared that all revisions pointed out during the last ZBA meeting on April 3, 2024, had been incorporated into the draft which included a few grammatical corrections and a stipulation requiring a review of these rules and by-laws every three years. Members had no additional comments and thanked staff. All members signed the document.

**Motion** by Otto to approve the amended Rules of Procedure and By-Laws for the Newton Zoning Board of Adjustment, **seconded** by Birkenholz. **Roll call vote:** Approved 5-0.

**Motion** by Otto to adjourn the meeting, **seconded** by Birkenholz. **Voice Vote:** approved, 5-0. The meeting was adjourned at 4:46 PM.

## Zoning Board of Adjustment - Staff Report: V24-1

Applicant: Christopher & Elizabeth Braunschweig  
Proposal: Variance to allow a 6' privacy fence and structure in the front (east) yard  
Location: 1115 S. 13<sup>th</sup> Ave. E. (Parcel #1303227003)  
Current Use: Single-family residence  
Current Zoning: R-2: One- and Two-Family Residential

1115 S. 13<sup>th</sup> Ave. E. is located within an R-2: One- and Two-Family Residential zoning district. After receiving an inquiry from the applicant exploring their options for replacing their fence, it was realized that the previous owner(s) never acquired zoning approvals to construct the 6' privacy fence or patio/pergola in the front (east) yard of the subject property. According to historic imagery, a fence has been at this location since as early as 2006. However, Staff cannot administratively approve the replacement of any of the non-conforming structures without this variance.

After reviewing their options, they decided to submit this variance application to "clean up" the situation. If approved, the variance would provide peace of mind to the "new" owners and effectively authorize them to pursue a complete replacement of the fence to be constructed by a proven contractor (additional info enclosed). In essence, this variance application is a request to authorize the replacement, and any future replacements, of a 6' privacy fence near the same location (on the property line) that it has been for more than a decade, along with the patio/pergola – all of which are located in the front (east) yard of this corner lot.

Answers to the 6 variance questions were provided by the applicant along with an open letter to the ZBA (both enclosed). Also, an aerial image and street view image of the property are included for reference.



**Variance Questions:**

The Zoning Ordinance includes specific criteria for granting variances. These are listed below, phrased as questions. For each question, the Board should try to determine what, if anything, distinguishes this case from other projects in the same zoning classification and if the applicant provided sufficient answers (enclosed).

**According to the ordinance and in order to grant the variance, the answer must be “yes” to the first three questions and “no” to the last three:**

1. Do the physical surroundings, shape, or topographical conditions of the specific property involved result in a particular hardship upon the owner, other than a mere inconvenience or loss of revenue?
2. Is the variance request based on conditions that are not applicable in general to other properties in the same zoning classification?
3. Does the proposed variance comply with the spirit and intent of the restrictions imposed by the zoning ordinance?
4. Did the present owner create the alleged difficulty or hardship?
5. Will granting the variance be materially detrimental to the public welfare or injurious to the neighborhood?
6. Will granting the variance impair an adequate supply of light and air to adjacent property, increase the congestion, increase the danger of fire, endanger the public safety, or substantially diminish property values within the neighborhood?

**Notice of Proposal:**

Notice of the public meeting was sent to surrounding neighbors on Thursday, August 1, 2024. Notice of the meeting was also published in the *Newton Daily News* on Friday, August 2, 2024. *If comments are received before the meeting, staff will share them at this point in the report.*

**Recommendation:**

Staff recommends that the Zoning Board of Adjustment only grant the variance if the answers provided to the six legal test questions are determined to be sufficient and/or if the Board determines that the request aligns with the spirit and intent of the Zoning Code. Staff finds that the requested variance is not detrimental to public health or welfare or to the neighborhood considering the circumstances and history of the property.

This recommendation applies with the understanding that neighborhood concerns are addressed to avoid anything that is contrary to the public interest. The findings of the ZBA shall be a determination to approve, conditionally approve, or deny this variance. If granted and the privacy fence can be replaced, then a fence permit can be issued immediately.

Open letter to the zoning board of adjustment:

My name is Christopher Braunschweig. I live at 1115 S. 13th Ave. E. in Newton. Although I have been working in Newton for the past 6 years now, my wife and I have only been living in the city since November 2021. We moved into an old farmhouse on the southeast side of town that had a lot of character to it. We loved the bones of the home and its relatively close proximity to my office and the Interstate. Before we even purchased the home we knew we would need to make some replacements of our own. In the inspection, we noticed just how many DIY fixes and projects were included in this home. Some were good. Most not so good. With respect to the previous owner, they did things for cheap and cut corners when they could.

Since we bought the home we installed a new water heater (the other was a Frankenstein mess of a contraption). We installed an updated heating system that would help save us some money and potential headaches down the road. We installed a mini-split AC unit on the property so that our master bedroom on the top floor could be comfortable and unencumbered by a loud and heavy AC unit that was installed to one of the windows. I particularly liked this project because it not only made summer nights more bearable to sleep through, but it also meant I would spend less time on the roof of my home trying to install that damn AC unit.

We're currently looking to update our sump-pump. We're adding new carpet to the living room and master bedroom. We just painted the living room and adjoining hallway. Our next project is something that my wife and I have been wanting replaced ever since we moved in. I would wager the fence around our home was constructed by the previous homeowners. Our city planner informed me that there was no variance applied for in the past.

They likely built it themselves and I was correct in assuming it is not up to code.

But now I've come to find out the new fence we want installed by American Fence Company from Johnston, Iowa is also not up to code. The fence we want is a backyard privacy fence that stands six feet high on all sides except for the western edge between the garage and the house, which would stand at 4 feet. But because our home is a corner lot, it is my understanding the east side of the fence would be considered part of the front yard. Which means the fence would need to be 4 feet high and 50 percent open.

I don't want to make the argument that it has been this way for years without any issue, but I can say none of my neighbors have come to me with issues about me or my property or my fence. But what I will argue is that the fence we will get will be a huge improvement to not only our property but the surrounding properties. Heck, it's gonna look better for all those motorists who love to speed by our home and rev their engines late at night. But that's a story for another time.

My wife and I would really like your approval of this variance. We feel as though this fence would at least drown out *some* of the noise and offer extra security when our child is outside playing. The look of the home would be much better if it had a privacy fence. Aesthetically, it would be zero change as far as the fencing style goes. But it will be a major change as far as height and quality. I feel like I need to stress this part, too — I, the homeowner, am not making this fence. It's going to be made by professionals who know what they're doing and are being paid good money for it.

Thank you for your consideration.

## QUESTIONNAIRE FOR VARIANCE

Variance for a 6-foot fence, 0 percent open.

-Christopher Braunschweig, 1115 S. 13th Ave. E.

1. Yes. We are living alongside a main highway (East 12th Street South/County Highway S74 South/Reasnor Road) that is very busy and very loud. Our home is in the area of the road where motorists accelerate past your typical in-town speeds. If you look to the south of us, we have neighbors that have a chainlink fence. However, their home is further away from the actual highway, and its back is to the street; they have backyards separating them from the street. In this small section of homes, our house is the closest to the street. To us, a privacy fence makes more sense in this regard. The topography of the home also places the structure on a "hill," which is different than the other properties in the area. Although this does not apply to the type of fence we want to build, mowing is extremely difficult on the sloped edges on the east side.

2. Yes. Again, our home is much closer to the highway than other homes, our property is on a hill and we're right at the busy intersection.

3. Yes. As I understand, the spirit and intent of the zoning ordinance is largely related to safety and aesthetics, preventing obstructions to public right-of-ways, preserving sight lines at intersections and protecting neighbors entering and exiting properties.

When it comes to the issue of safety, the fence itself does not compromise any line of sight or obstruct public right-of-ways because it is far enough away from the intersection, even more so with the rising elevation of the property. My neighbor to the south also does not have a driveway on the east side of their property,

therefore the fence would not impede any line of sight on their end.

My wife and I have a 20-month-old daughter that we're raising and she loves to go outside and enjoy the backyard. We've been spending more and more time in the backyard and we really enjoy the benefits of a closed view fence. Because of our property's proximity to the highway we feel as though a taller, 6-foot fence would offer additional security.

When it comes to aesthetics, I think we would be increasing the aesthetics of the neighborhood. Currently, our fence is made of two different types of wood and it is leaning and just horrible to look at in some places — particularly from inside our actual property. Our new fence is going to be miles ahead of the current fence as far as quality.

4. No. With respect to the previous owners, they sure as heck created the hardship for us by not applying for a variance in the first place.

5. No. I would argue it would improve the neighborhood's aesthetics.

6. Impair light and air? No. I would argue no matter what fence is installed there will be no amount of light added to or withheld from my neighbors. Even more so since the fence is actually going to be shorter in height.

Increase congestion? No. The fence is being built in relatively the same location, only it will be well-constructed this time and actually shorter than what it is now.

Increase the danger of fire? No.

Endanger public safety? No.

Substantially diminish property values within the neighborhood?  
No. I'd wager the property values will go up with how much better this fence will be. Seriously, the one we have now is so bad even the contractor couldn't help but say how much of a shoddy job it was.



**Newton**

## PLOT PLAN FORM

Property Address: 1115 S. 13th Ave. E.

NOTE: ALL of these items must be shown on the site plan below:

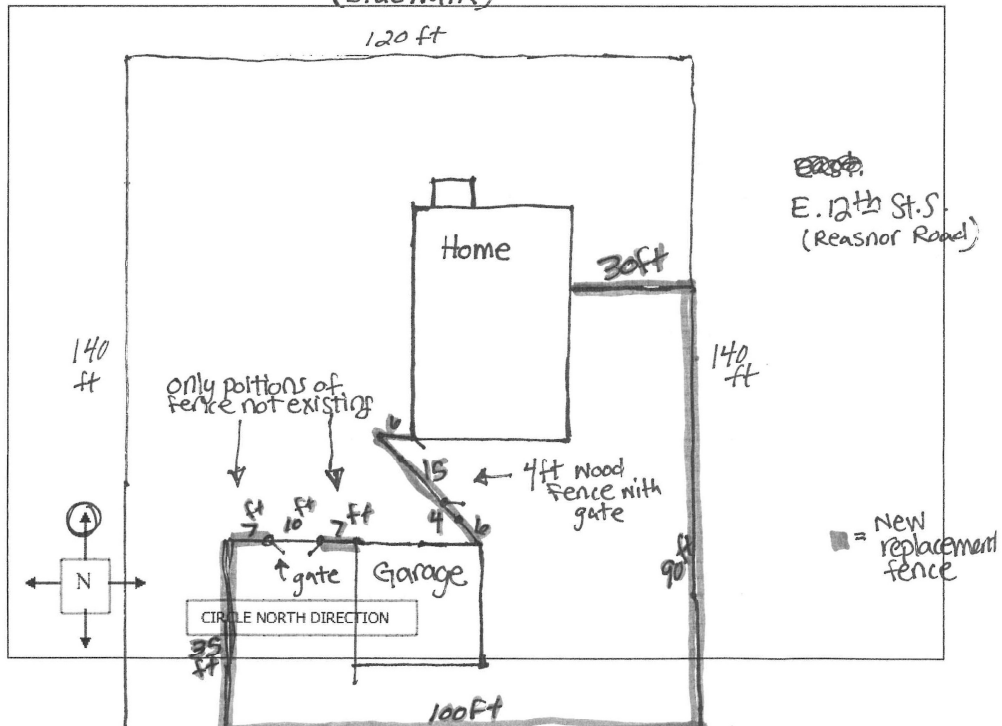
1. Draw all property lines with lot measurements (City staff is unable to locate property lines and/or property pins/markers).
2. Include a sketch of the existing house and any other structures with dimensions.
3. Indicate the proposed location of the storage unit.
4. Label streets.
5. Include any known easements.

I certify that the completed Plot Plan below is a true representation of this lot and accurately shows all dimensions, easements, proposed and existing structures on said lot. Any deviation from this approved Plot Plan may void the related permit and/or approvals.

Signature of Owner or Contractor: Chiu Phun

Date: 7-8-24

S. 13th Ave. 3  
(sidewalk)



# AMERICAN FENCE COMPANY

Omaha | Lincoln | Grand Island | Kearney | Sioux City | Des Moines | Cedar Rapids | Sioux Falls | Rapid City | Rochester  
AmeriFence: Kansas City | Madison | American Security & Gate : Fargo

## ADDRESS

6300 NW Beaver Drive, Johnston, IA 50131 PH:  
(515) 265-6100

## SALESMAN

Brandon Bradley

DATE 7/3/2024 PHONE: (515) 250-1564  
CUSTOMER ELIZABETH BRAUNSCHWEIG  
PROJECT LOCATION: 1115 S 13TH AVE E  
CITY NEWTON STATE IA ZIP 50208  
BILLING ADDRESS: \_\_\_\_\_ AFC JOB# \_\_\_\_\_  
CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_  
EMAIL ELIZABETH.KWHITE1421@GMAIL.COM

CELL \_\_\_\_\_  
WORK \_\_\_\_\_  
ZIP 50208  
AFC JOB# \_\_\_\_\_  
ZIP \_\_\_\_\_

## PHONE

PDES24-1080-A

| STYLE DRAWING | HEIGHT | LENGTH |
|---------------|--------|--------|
| W6-S18        | 6.0'   | 279.0' |
| W4-S18        | 4.0'   | 31.0'  |

## PROJECT TOTAL

## GATE INFORMATION

|     |                                        |                                        |
|-----|----------------------------------------|----------------------------------------|
| 10' | <input type="checkbox"/> SS            | <input checked="" type="checkbox"/> DD |
| 4'  | <input checked="" type="checkbox"/> SS | <input type="checkbox"/> DD            |
|     | <input type="checkbox"/> SS            | <input type="checkbox"/> DD            |
|     | <input type="checkbox"/> SS            | <input type="checkbox"/> DD            |

## Fence Price

## OPTIONAL ITEMS BELOW ARE NOT INCLUDED IN FENCE PRICE

DIRT HAUL

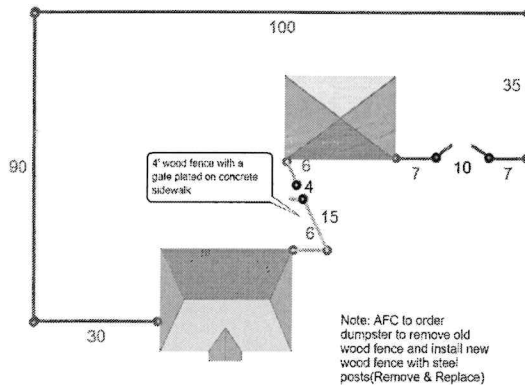
OPTIONAL ITEMS SUB  
TOTAL

OFFICE USE ONLY

DATE

TYPE

AMOUNT



Fence style legend  
This drawing is not to scale  
■ wood1  
■ wood2

## DESCRIPTION OF ELIZABETH BRAUNSCHWEIG PROJECT

QUOTE IS GOOD FOR 14 DAYS

**\*\*AFC to remove and replace old wood fence with steel posts.\*\* \*\*AFC to order dumpster to be placed in driveway for crew and removal of old fence\*\* \*\*Homeowner to obtain fence permit with the city\*\* \*\*AFC to call 811 to locate public utilities (hand digs required if within 18" of a public utility)\*\* \*\*AFC to set posts, then return the following week to build the fence\*\* \*\*Lead time 4-5 weeks weather permitting (Lead time does not start until paper work and deposit are received by American Fence)\*\***

On the back and or second page of this proposal are very important terms and conditions that we are requesting that you review. If you do not have these terms and conditions; do not execute and contact your sales rep. Upon your review, if you have any questions please contact us. After review and agreement, please sign below indicating that you have fully read, understood and agree with the terms and conditions stated above. **We impose a surcharge of 3% on all credit cards that is not greater than our cost of acceptance.**

AFC REPRESENTATIVE:

DATE  
7/3/2024

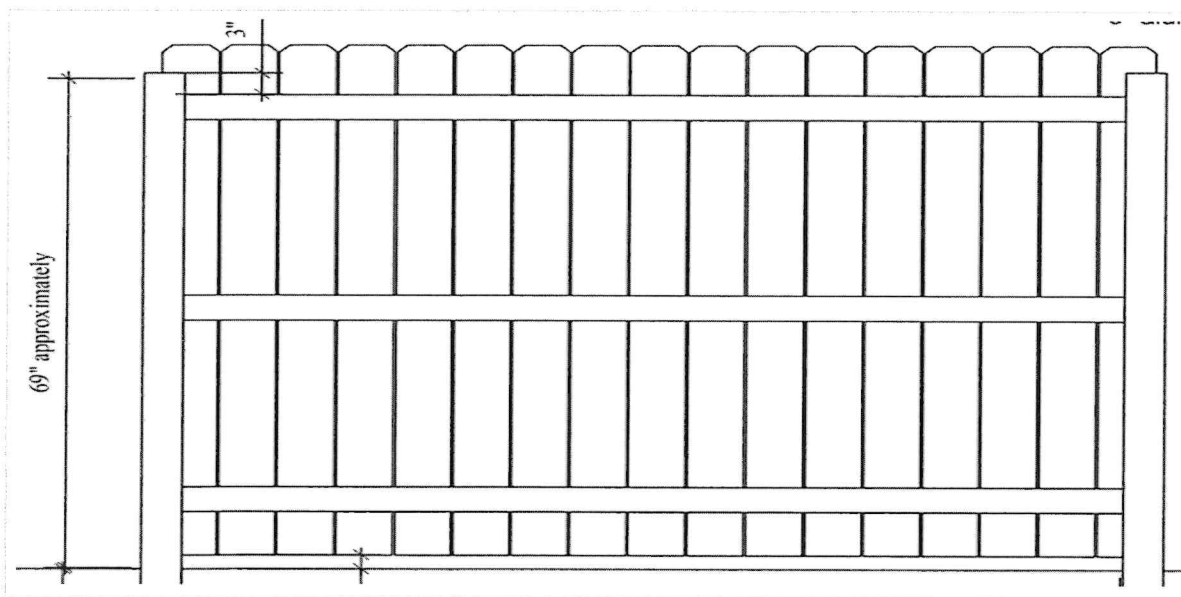
CUSTOMER SIGNATURE:

Elizabeth K Braunschweig

DATE  
7/3/2024

Please provide Billing Email Address:

elizabeth.kwhite1421@gmail.com



Wood

AFS FOREVER POST STD 8'  
PIPE 3" x 3" x 8' SQ 14 GA  
TERMINAL CAP - 3" SQ STEEL

Rails

2 x 4 x 8 FIR RAIL KD S4S #2 BTR

Pickets

5/8" X 5-1/2" X 6' DE SUGI JAPANESE CEDAR PICKET

Fittings

SAG KIT (337X)  
WOOD GATE LATCH MAXIMA DELUXE  
WOOD GATE STRAP HINGE PAIR  
WOOD GATE DROP ROD 36" BLK

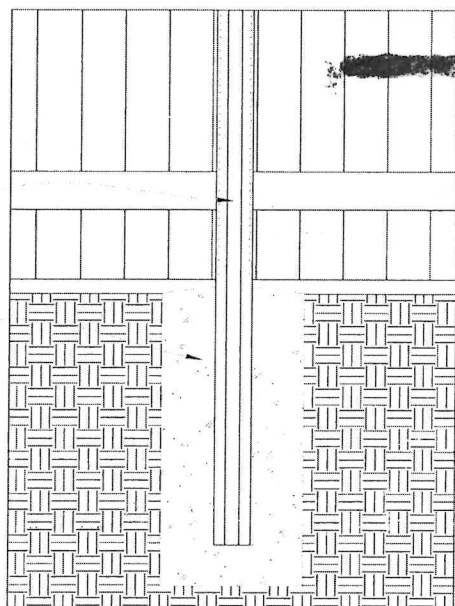
Gates

[Select Gate Here](#)

Drawing Number

W6-S18

**Post and Footing Detail**



AFC Representative: Brandon Bradley

Date: 7/2/2024

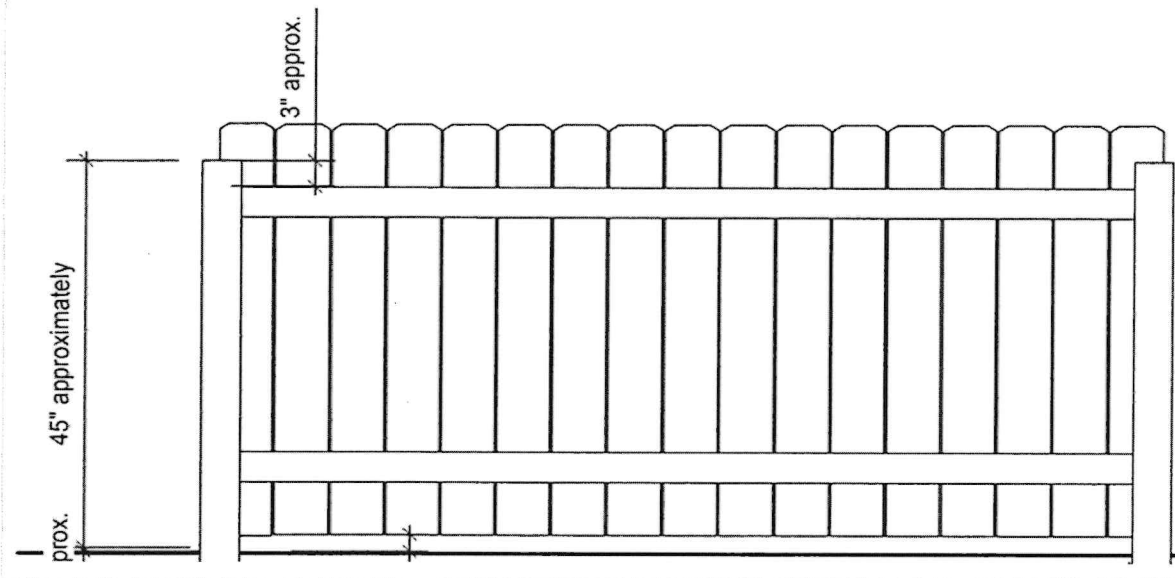
Customer Signature: \_\_\_\_\_

Date: \_\_\_\_\_

*Wood fencing is a natural product. Any splitting, bowing, warping, or cracking cannot be predicted thus cannot be warranted. At time of installation, wood pickets may have knots and slight checks. Treated posts will develop long vertical cracks that are inherent to the pressure treated process and are considered acceptable by industry standards. Color match cannot be guaranteed. Gates may need adjustment as materials dry.*

Last saved: 08-08-17 7:31:26 AM

☒ I have reviewed this style drawing and ensured its accuracy



Wood  
 AFS FOREVER POST STD 7'  
 PIPE 3" x 3" x 8' SQ 14 GA  
 4 x 4 x 6 STAIN TREATED POST  
 TERMINAL CAP - 3" SQ STEEL

Rails  
 2 x 4 x 8 FIR RAIL KD S4S #2 BTR

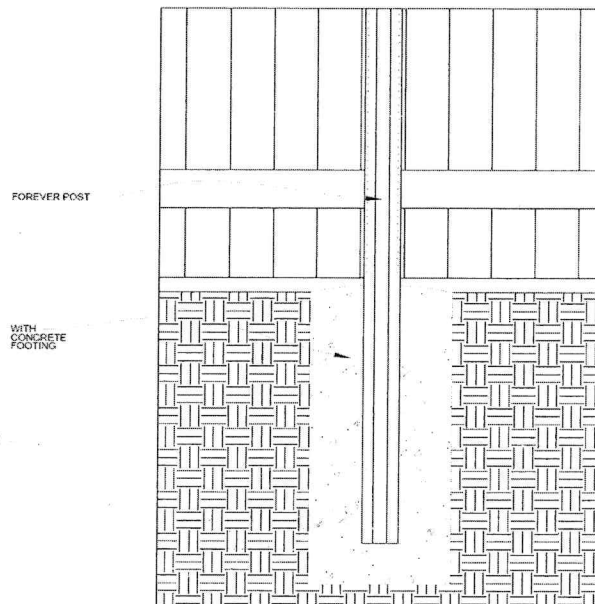
Pickets  
 1 x 6 x 4 CEDAR DE PICKET

Fittings  
 WOOD GATE LATCH MAXIMA DELUXE  
 WOOD GATE STRAP HINGE PAIR

Gates  
[Select Gate Here](#)

Drawing Number  
 W4-S18

Post and Footing Detail



AFC Representative: Brandon Bradley

Date: 7/2/2024

Customer Signature: \_\_\_\_\_

Date: \_\_\_\_\_

*Wood fencing is a natural product. Any splitting, bowing, warping, or cracking cannot be predicted thus cannot be warranted. At time of installation, wood pickets may have knots and slight checks. Treated posts will develop long vertical cracks that are inherent to the pressure treated process and are considered acceptable by industry standards. Color match cannot be guaranteed. Gates may need adjustment as materials dry.*

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