

Board of Zoning Adjustment

Staff Report

November 21, 2022



Case No: 22-VARIANCE-0130
Project Name: Macon Avenue Variance
Location: 513 Macon Avenue
Owner: Cobalt Homes LLC
Applicant: Cullen Bilyeu
Jurisdiction: St. Matthews
Council District: 9- Bill Hollander
Case Manager: Amy Brooks, Planner I

REQUESTS:

Variance from City of St. Matthews Development Code section 9.1.B.1.a to allow a fence to exceed a height of 48 inches in the street side yard setback.

Location	Requirement	Request	Variance
Street Side Yard Fence Height	48 in.	72 in.	24 in.

CASE SUMMARY/BACKGROUND

The subject property is zoned R-4 Residential Single Family and is in the Neighborhood Form District. It is on the southeast corner of Dayton and Macon Avenues in the City of St. Matthews. The site currently is developed with a one and half story single-family residential structure. The applicant is proposing to construct a solid, wooden privacy fence measuring 6 feet tall within the street side yard setback running parallel to Dayton Ave.

STAFF FINDINGS

Staff finds that the requested variance has not been adequately justified based on staff's analysis contained in the standard of review.

Based upon the information in the staff report, and the testimony and evidence provided at the public hearing, the Board of Zoning Adjustment must determine if the proposal meets the standards for granting a variance established in the City of St. Matthews Development Code section 9.1.B.1.a to allow a fence to exceed 48 inches in height in the street side yard setback.

TECHNICAL REVIEW

The City of St. Matthews has not expressed any objections.

INTERESTED PARTY COMMENTS

No interested party comments were received by staff.

RELATED CASES

No related cases.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE FROM SECTION 9.1.B

- (a) The requested variance will not adversely affect the public health, safety or welfare.

STAFF: The requested variance will not adversely affect the public health, safety or welfare, because the proposed fence will be setback far enough from the edge of the pavement and any vehicle corridor as not to obstruct vision clearance.

- (b) The requested variance will not alter the essential character of the general vicinity.

STAFF: The proposed height will alter the essential character of the general vicinity. While there are several other wooden privacy fences in the neighborhood that exceed the allowed maximum height in a street side yard setback, the closest property (directly east of the subject property) has a 4 foot fence in the street side yard setback.

- (c) The requested variance will not cause a hazard or nuisance to the public.

STAFF: The requested variance will not cause a hazard or nuisance to the public because the proposed fence will not obstruct any needed fields of vision associated with vehicles maneuvering along Dayton Ave.

- (d) The requested variance will not allow an unreasonable circumvention of the zoning regulations.

STAFF: The requested variance will allow an unreasonable circumvention of the zoning regulations because the proposed fence is capable of being constructed or modified to be within the height limits.

ADDITIONAL CONSIDERATIONS:

- a. The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or in the same zone.

STAFF: The requested variance does not arise from special circumstances which do not generally apply to land in the general vicinity or the same zone as the same requirements in street side yards are applicable to all residential fences in the City of St. Matthews, and there do appear to be any site constraints.

- b. The strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land or would create an unnecessary hardship on the applicant.

STAFF: The strict application of the provisions of the regulation would not create an unnecessary hardship on the applicant. The fence height could be reduced to meet prescribed Land Development Code regulations or be shifted out of the required street side yard setback.

- c. Such special circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulations.

STAFF: The circumstances are not the result of actions taken by the applicant subsequent to the adoption of the zoning regulation from which relief is sought as the fence has not been constructed and the applicant is requesting the variance.

- d. Reasons that the variance will not adversely affect the public health, safety and welfare, and will not alter the essential character of the general vicinity and will not cause a hazard or a nuisance to the public.

STAFF: While the variance will not adversely affect the public health, safety and welfare, the proposed fence will alter the essential character of the general vicinity. However, it would not cause a hazard or a nuisance to the public because the fence will be setback far enough from the edge of pavement on Dayton Avenue and the intersection with Macon Avenue as neither to obstruct vision nor impede with the safe movement of vehicles or pedestrians.

VARIANCE PLAN REQUIREMENT

In accordance with the St. Matthews Development Code Section 9.1.D, portions of this regulation that govern height, length, or setback requirements may be modified by the appropriate Board of Zoning Adjustment. The Board may grant a dimensional variance after a public hearing if the requirements of KRS 100.243 are found to be met.

NOTIFICATION

Date	Purpose of Notice	Recipients
11/3/2022	Hearing before BOZA	1 st tier adjoining property owners and current residents Registered Neighborhood Groups in Council District 9
11/8/2022	Hearing before BOZA	Notice posted on property

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Site Plan
4. Conditions of Approval
5. Site Photos

1. Zoning Map



2. Aerial Photo



3. Site Plan



4. Conditions of Approval

- 1) The finished side of wood fences must face out towards the public right of way.

5. Site Photos



To the left of subject property at the intersection of Macon Ave and Dayton Ave.



To the right of subject property.



View of variance area from Dayton Ave



View of variance area looking eastward along Dayton Ave.



Fences in street side yard setback in surrounding neighborhood.

