

Board of Zoning Adjustment Staff Report

April 21, 2014



Case No:	14VARIANCE1005
Project Name:	5228 Mercury Drive
Location:	5228 Mercury Drive
Owner(s):	Lois Ann Koontz, Robert and Ann Gutterman
Applicant:	Robert Gutterman
Representative(s):	Same as Applicant
Project Area/Size:	0.26 Acres
Existing Zoning District:	R-4
Existing Form District:	Neighborhood
Jurisdiction:	Louisville Metro
Council District:	12- Rick Blackwell
Case Manager:	Jessica Butler, Planner I, presented by Steve Hendrix

REQUEST

- Variance of Chapter 4.4.3.A.1.a. to permit an existing fence to remain.

Location	Requirement	Request	Variance
Front Yard: Gabriel Drive Fence	48 inches	77 inches	29 inches

CASE SUMMARY/BACKGROUND/SITE CONTEXT

The applicant has installed privacy fencing in their front yard. The property is a corner property. The house is oriented facing Mercury Drive, but the dimensions of this lot make the front yard, by LDC definition, the portion along Gabriel Drive.

The case was originally heard by BOZA on March 3, 2014. There were questions the Board wanted to direct to the fence builder, and it was decided that a subpoena would be served, and the case continued until the later date.

LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

	Land Use	Zoning	Form District
Subject Property			
Existing	Single-Family Residential	R-4	N
Proposed	Single-Family Residential	R-4	N
Surrounding Properties			
North	Single-Family Residential	R-4	N
South	Single-Family Residential	R-4	N
East	Single-Family Residential	R-4	N
West	Single-Family Residential	R-4	N

PREVIOUS CASES ON SITE

13PM13395 – Open - Property Maintenance violation for installing this fence without receiving a variance.

INTERESTED PARTY COMMENTS

Staff has received two phone calls from residents of the neighborhood. The first caller informed us that the sign, which was posted on-site, February 18, came down on the same day. He is opposed to this fence remaining. He feels as though it was installed with disregard for the resident next door. Also, he fears that it sets a precedent (if approved) for others in the neighborhood to install such fences into their front and street side yards. He acknowledged that this is, materially, a very attractive fence, but he does not want it to be placed as it is. He discussed safety issues along Gabriel Drive.

Another resident of the area (non-adjacent) called to state that she does not like seeing the fence built as it is.

APPLICABLE PLANS AND POLICIES

- Cornerstone 2020
- Land Development Code

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE

(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 fence will not be encroaching any vision triangle area, and it is placed within the applicant's property lines.

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

STAFF: The requested variance and the existing fence do alter the character of the neighborhood.

(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 by building this fence the property owner has enhanced protection of residents from their dogs, who would otherwise be able to jump the fence. Also, the applicant is considering the placement of a swimming pool, and this fence would keep children out of their yard.

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

STAFF: By placing the fencing without receiving the variance and neighborhood notification prior, there was unreasonable circumvention of zoning regulations. As a corner property, fencing variances are reasonable requests that do not unreasonably circumvent regulations; there are limited areas of the yards where a privacy fence may be placed.

ADDITIONAL CONSIDERATIONS:

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

STAFF: The subject property is a corner lot, and also the house is placed on the lot in a manner that has this portion of yard as front yard, making it a unique lot for placing fencing.

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

STAFF: The strict application of the provisions of the regulation would create an unnecessary hardship on the applicant because the size of yard that the Code allows them to fence in, with privacy fencing, would be rather reduced.

3. The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

STAFF: The owner is responsible for already installing the fence, without receipt of a variance.

TECHNICAL REVIEW

There are no technical review issues.

STAFF CONCLUSIONS

Based upon the information in the staff report, 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 LDC Variance.

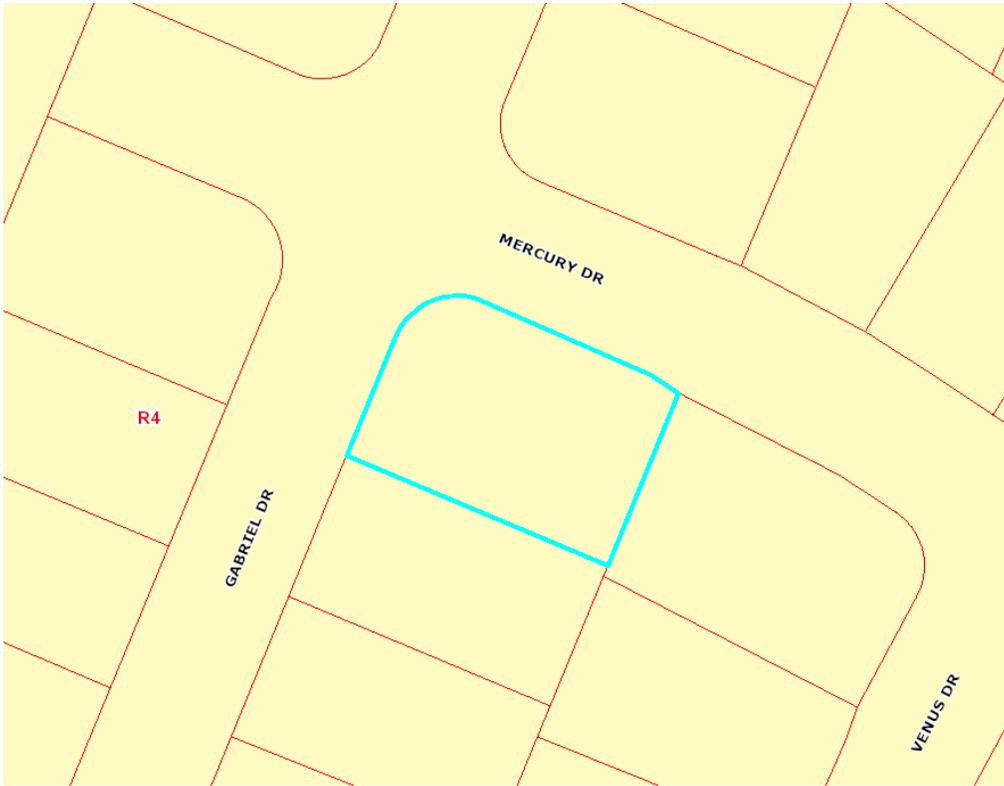
NOTIFICATION

Date	Purpose of Notice	Recipients
2/ 9/14	Notices Mailed	1 st tier adjoining property owners Subscribers of Council District 12 Notification of Development Proposals
2/4/14	Sign Posted	Neighborhood

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Cornerstone 2020 Staff Checklist for variances
4. Applicant's Justification Statements
5. Site Plan

Attachment 1: Zoning Map



Attachment 2: Aerial Photograph



Attachment 3: Cornerstone 2020 Staff Checklist

+/-

18	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1, 3.4-3.7, C4.1.-4.7	Community Form/Land Use Guideline 3: Compatibility	A.1: The proposal is generally compatible within the scale and site design of nearby existing development and with the form district's pattern of development.	+/-	The fence stands out as unique to the neighborhood, but is built with favorable materials and design.
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Attachment 4: Applicant's Justification Statement

RECEIVED

JAN 28 2014

PLANNING & DESIGN SERVICES

Variance Justification:

In order to justify approval of any variance, the Board of Zoning Adjustment considers the following criteria. Please answer all of the following items. Use additional sheets if needed. A response of yes, no, or N/A is not acceptable.

1. Explain how the variance will not adversely affect the public health, safety or welfare.

does not impede vision of cross streets ;
fence protects children from dogs and potential pool

2. Explain how the variance will not alter the essential character of the general vicinity.

It is a fence that was installed by a professional fence company

3. Explain how the variance will not cause a hazard or a nuisance to the public.

it serves as a protection of children next to a school; fence does not impede vision of roads

4. Explain how the variance will not allow an unreasonable circumvention of the requirements of the zoning regulations.

this is not unreasonable due to visually aesthetic situation & it serves as protection from dogs & pool

Additional consideration:

1. Explain how the variance arises from special circumstances, which do not generally apply to land in the general vicinity (please specify/identify).

fence is currently out of regulation, we are requesting variance

2. Explain how the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create unnecessary hardship.

by lowering fence, dogs could jump it and /or children could climb into yard

3. Are the circumstances are the result of actions of the applicant taken subsequent to the adoption of the regulation which relief is sought?

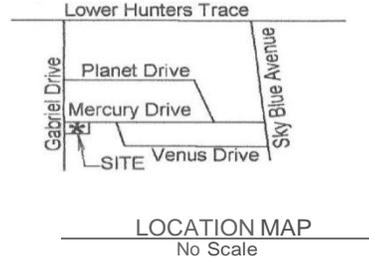
We put up fence after zoning regulation

Attachment 5: Site Plan

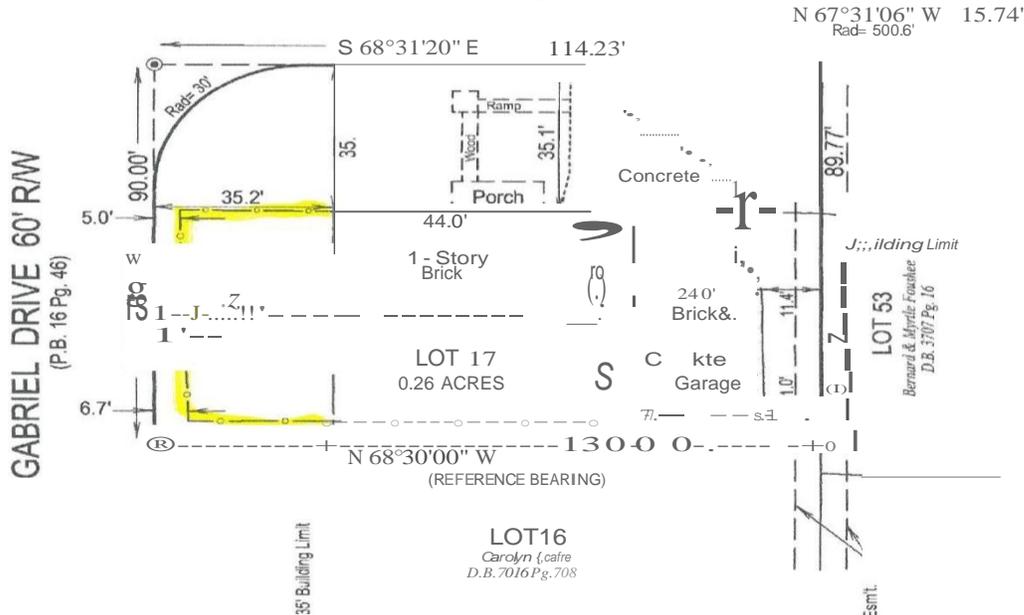
NOTES:

1. Site is subject to all right-of-ways, easements and restrictions of record or implied.
2. The surveyor did not make a search for easements, encumbrances, restrictions, ownership title evidence or other records that a complete and accurate title search may disclose.
3. The certification of this survey is made of this date and is subject to any future facts that more accurately describe or establish the boundary shown herein.
4. Surrounding owner information is shown per PVA records.
5. The basis of bearing was taken from the record plat.
6. This site is located in Zone X per Firm Map 21111C0071 E dated December 5, 2006 and is not located within a 100 year flood plain (0.1% chance). Flood Plain Certification is restricted to a review of the firm and shall not be construed as a confirmation or denial of flooding potential.

Being Lot 17, Sect. 1
Heavenly Heights
Plat Book 16, Page 46



MERCURY DRIVE 60' R/W
(P.B. 16 Pg. 46)



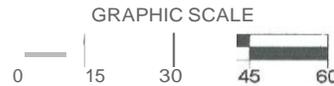
- LEGEND
- O = Existing 1" Pipe
 - @ = Set MAG nail with washer stamped "3570"
 - Ⓢ = Set 1/2" Rebar with yellow cap stamped "SCHROLL 3570"

STATE OF KENTUCKY
SCHROLL, III
PROFESSIONAL LAND SURVEYOR

LAND SURVEYORS CERTIFICATE

I hereby certify that the survey depicted by this plat was done by me or by persons under my direct supervision on January 07, 2014 by the method of random traverse. The unadjusted precision ratio of the survey is 1:30,400 and was not adjusted. The survey as shown hereon is an "Urban" Survey and the accuracy and precision of said survey meets all requirements of this class.

William D. Schroll III 1-7-14
Date
Professional Land Surveyor, Kentucky Registration No. 3570



BOUNDARY SURVEY
This file was compiled with KAR 18:150

Survey of: 5228 Mercury Drive
Louisville, Ky. 40258
Owner: Lois Ann Koontz
10306 Casa Landa Dr. Louisville, Ky. 40272
Source of Title: W.B. 0568Pg. 0180
For: Lois Ann Koontz
10306 Casa Landa Dr. Louisville, Ky. 40272
Ordered By: Lois Koontz
scale: 1" = 30'
Job No: 1172113
Drawn Date: 01/07/14
Drawn By: Todd Stayton

SCHROLL LAND SURVEYING LLC.
5450 Southview Dr., LOUISVILLE, KY. 40214
Phone: 502-367-7660
Mobile: 502-594-6773

14Variance1005