

# Board of Zoning Adjustment Staff Report

March 2, 2015



<b>Case No:</b>	15Variance1003
<b>Project Name:</b>	None (existing fence)
<b>Location:</b>	4305 Lincoln Ct.
<b>Owner(s):</b>	Richard & Charlotte Vowels
<b>Applicant:</b>	Same
<b>Representative(s):</b>	David Cary Ford, Ford, Klapheke & Meyer
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	10 – Steve Magre
<b>Case Manager:</b>	Latondra Yates, Planner II

## REQUEST

- Variance of Sec. 4.4.3.A.1.a.i. of the Land Development Code (LDC) to allow a fence to exceed the maximum 48-inch height in the front side yard. The requested height is 96 inches, a variance of 48 inches.

### Variance

Location	Requirement	Request	Variance
Front yard (Lincoln Ct.)	48 inches	96 inches	48 inches

## CASE SUMMARY/BACKGROUND/SITE CONTEXT

This case was continued from the February 16<sup>th</sup> meeting. The variance is for an existing wood fence. The applicant has been cited for constructing the fence above the maximum height and without a permit.

## LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

The site is zoned R-5 in the Suburban Workplace (SW) Form District. It is surrounded by residential property zoned R-5 in the SW.

	Land Use	Zoning	Form District
<b><i>Subject Property</i></b>			
<b>Existing</b>	Single-family residential	R-5	SW
<b>Proposed</b>	Single-family residential	R-5	SW
<b><i>Surrounding Properties</i></b>			
<b>North</b>	Single-family residential	R-5	SW
<b>South</b>	Golf course	R-5	SW
<b>East</b>	Single-family residential	R-5	SW
<b>West</b>	Single-family residential	R-5	SW

**PREVIOUS CASES ON SITE**

The site is Lot 5 of Lincoln Court Subdivision, recorded in Plat Book 13, Pg. 45.

**INTERESTED PARTY COMMENTS**

None

**APPLICABLE PLANS AND POLICIES**

Land Development Code

## STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCES

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

STAFF: The variance will not adversely affect the public health, safety or welfare because it appears to be situated in a manner that will not impede sight distance or negatively affect the views of neighboring properties.

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

STAFF: The variance will not alter the essential character of the general vicinity because there appear to be fences of similar heights in the neighborhood.

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

STAFF: The variance will not cause a hazard or nuisance to the public because the fence appears to be situated in a manner that will not impede sight distance or negatively affect the view of neighboring properties.

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

STAFF: The requested variance will not allow an unreasonable circumvention of the zoning regulations because there appear to be other fences in the neighborhood of similar heights.

### 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 variance arises from the request to allow the taller fence.

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 provision of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant because it would require removal of the fence or costly modifications.

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 circumstances are the result of the request to allow the taller fence.

## TECHNICAL REVIEW

No outstanding technical review items.

## STAFF CONCLUSIONS

Staff's analysis of the standards of review supports the granting of the variance.

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 variance as established in the Land Development Code.

## NOTIFICATION

Date	Purpose of Notice	Recipients
2/3/2015	BOZA Hearing	1 <sup>st</sup> and 2 <sup>nd</sup> tier adjoining property owners

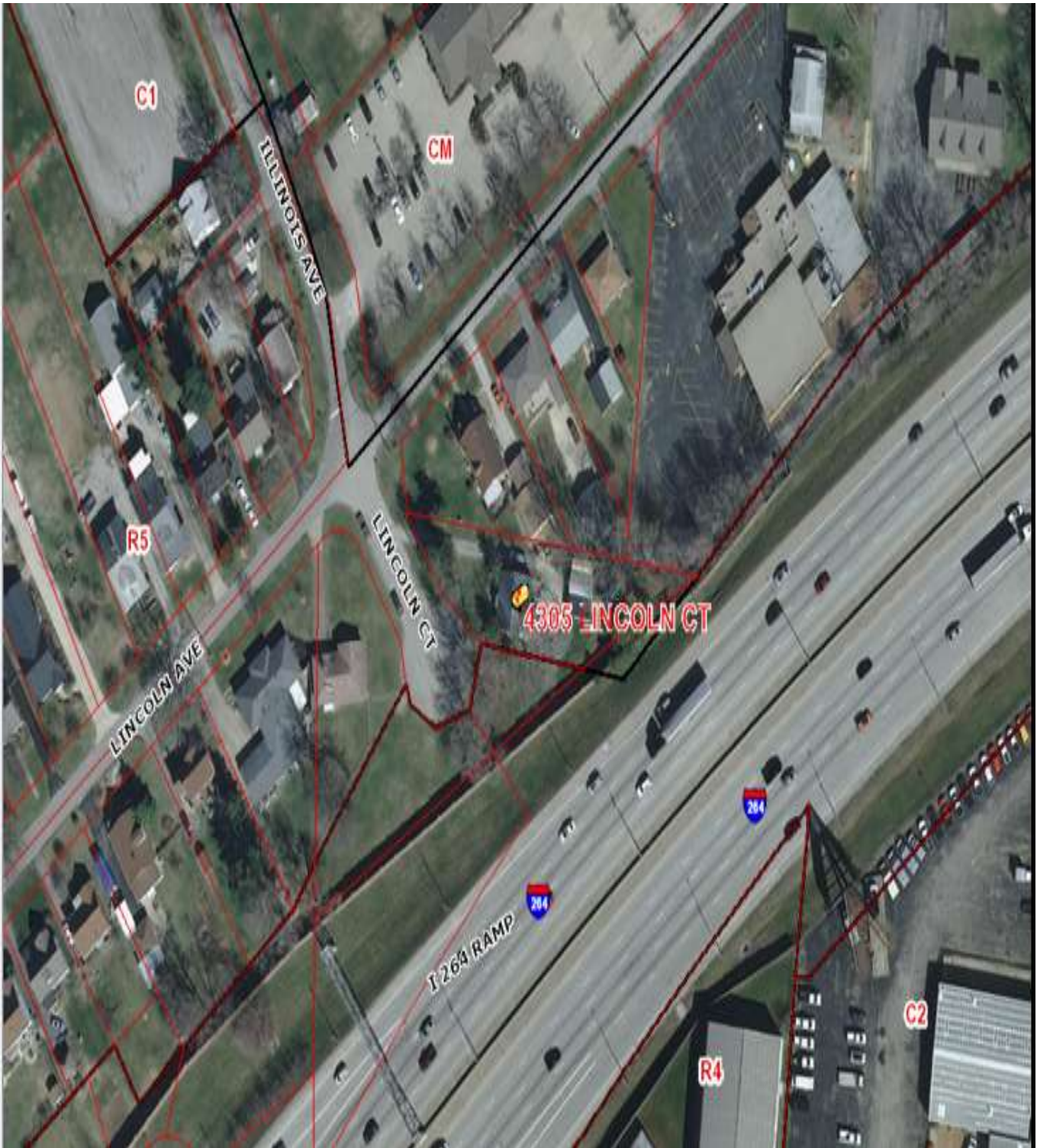
## ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Site Plan
4. Notice of Violation
5. Applicant's Justification Statement

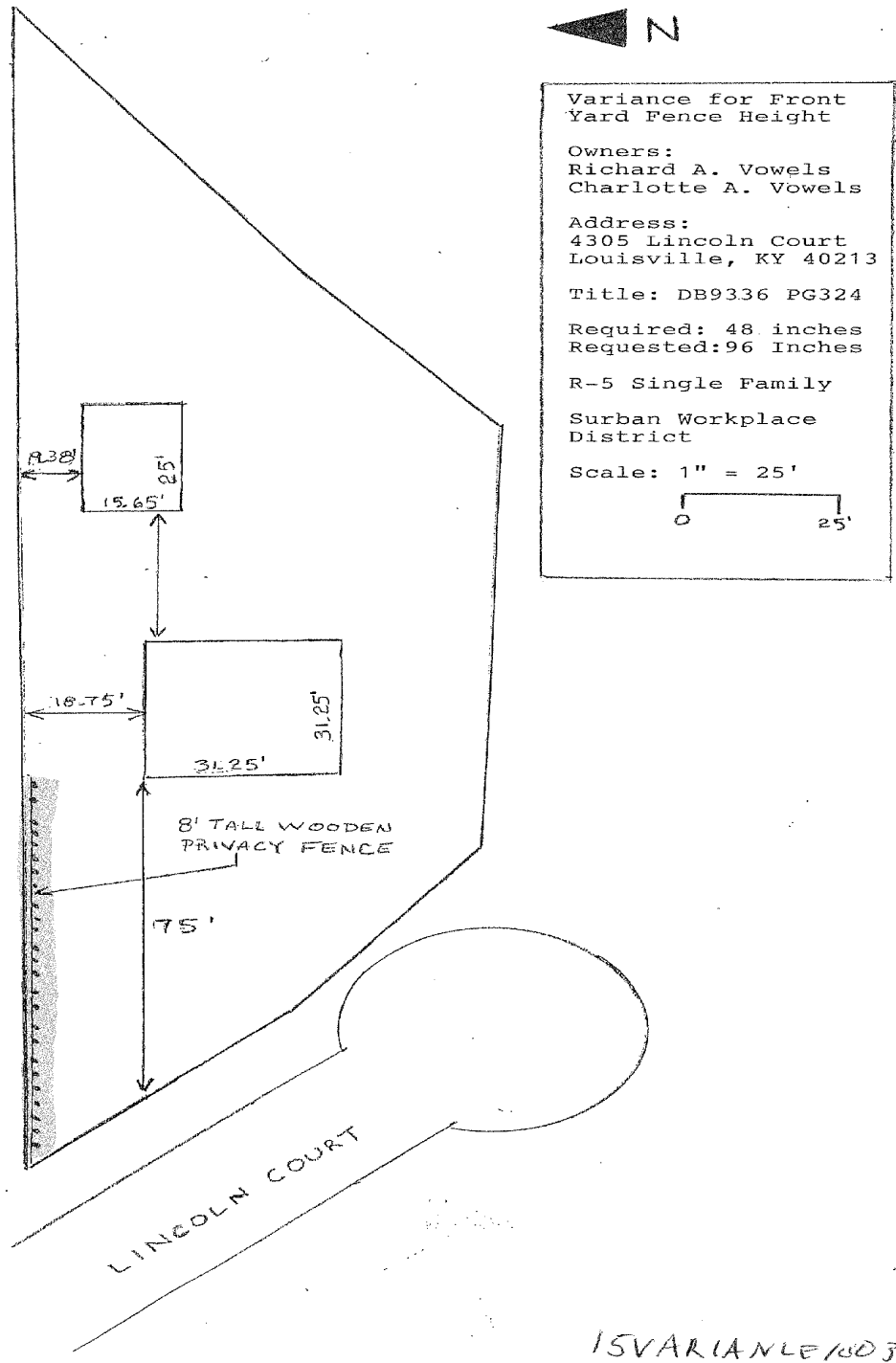
1. **Zoning Map**



2. Aerial Photo



3. Site Plan



4. **Notice of Violation**



Louisville-Jefferson County Metro Government

**Department of Codes & Regulations**

**Property Maintenance Division**

444 S. 5th Street, Suite 200 - Louisville, KY 40202

Phone: (502)773-2069 Email: james.mullarkey@louisvilleky.gov Web Site: louisvilleky.gov/ipl/



Case Number: 14PM25971-990580

12/23/2014

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VOWELS, RICHARD A VOWELS CHARLOTTE A  
4305 LINCOLN CT  
LOUISVILLE, KY 40213-1821

**Location:** 4305 LINCOLN CT

Your property was inspected on December 22, 2014 and found the existence of one or more violations of the Louisville/Jefferson County Development Code.

You must cease immediately using this property in violation of the Land Development Code.

Failure to comply with this Notice will result in fines against you of not less than \$10 but not more than \$500 for each violation with each day of violation. Each day that a violation continues after this notice shall be deemed a separate offense.

If you disagree with this Notice, you may file an appeal to the Board of Zoning Adjustment (BOZA). Appeals must be filed within thirty (30) days of this Notice, using the official BOZA appeal form along with any supplemental documentation required. A copy of the appeal must also be forwarded to me at the time the appeal is filed. BOZA appeal application forms are available at the Department of Codes & Regulations Customer Service Desk or online at [http://www.louisvilleky.gov/planningdesign/checklists\\_application.htm](http://www.louisvilleky.gov/planningdesign/checklists_application.htm). The department is located at 444 S. 5th Street, Louisville, KY 40202.

I will be returning to your property in the near future to ensure that you have complied with this Order. Should you have any questions, please call me at the number below.

**JAMES MULLARKEY**

Inspector

(502)773-2069

james.mullarkey@louisvilleky.gov

**RECEIVED**

JAN 22 2015

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15VARIANCE1003





Louisville-Jefferson County Metro Government  
Department of Codes & Regulations

Property Maintenance Division  
444 S. 5th Street, Suite 200 - Louisville, KY 40202  
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Z164 FENCES-HEIGHT/LOCATION

Chapter 4.4.3.a/Article 9.1. Fences, Walls and Signature Entrances: You have erected or allowed the erection of a fence which is in violation of the Land Development Code for Louisville and Jefferson County (Chapter 4.4.3.A) in regards to height and location.

**Comments:** You have established a fence that is taller than 4 feet past the front fascia of the house. The fence cannot be taller than 4 feet from the front fascia to the street.

**Location:** Left side

**Responsible:** OWNER

Subject violation needs to be in compliance on or before January 22, 2015 to avoid additional fines and court action.

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5. Applicant's Justification Statement

Variance Justification

1. The Applicant is the only house on a cul-de-sac and the side yard which contains the fence runs along the rear property line of the adjoining properties. Any public health, safety or welfare issues are not affected or altered in any way. In fact, due to the harassment that the Applicant has endured from the adjoining neighbor the placement of the privacy fence beyond the front of the house towards the street is in fact intended to prevent or discourage the neighbor from entering the Applicants' yard and to prevent the continuation of the verbal harassment that the Applicant has received from the adjoining neighbor
2. The portion of the fence that this variance is requested for runs along the Applicants' side yard and the rear yard of the adjoining neighbor. The fence should have no adverse effect on the Applicants' and the adjoining neighbors' use of their property. It is the Applicants' understanding that this same fence, were it moved onto the adjoining property owners property would be classified as being in their rear yards, and as such, would be permitted without the necessity of a variance.
3. The variance will not alter the use of the property as a residence. The fence is intended to provide privacy and a buffer and safety for the Applicants and it is intended to foster their quiet use and enjoyment of their property free of any harassment from adjoining neighbor. It is the intention that the variance will in fact prevent or deter any escalation of the harassment to a physical confrontation which is in the best interest of both the Applicants and the neighbors.
4. The variance would not be an unreasonable circumvention of the requirements of the zoning regulations due to the fact that if all of the adjoining neighbors erected this same fence on their side of the property line the fence would be in their rear yard and the fence would be in compliance with the regulations making the need for a variance unnecessary.

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Additional Considerations

1. Although this variance runs along the Applicants' side yard it affects the rear yard of any adjoining property. On the other side of the Applicants' property there is a vacant lot owned by the Applicant which is next to a brick wall running along sided of the Waterson Expressway.
2. The strict application would prevent the Applicant from enjoying the peaceful and quiet use and enjoyment of their property. Additionally, strict application would prevent the separation or buffer that the Applicants feel is necessary to prevent the continuation and possible escalation of the harassment which had occurred in the past.

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