

Board of Zoning Adjustment Staff Report

January 9, 2017



Case No:	16VARIANCE1098
Request:	Variance to allow a fence to exceed the 4 ft. height in the street side yard.
Project Name:	6928 Village Gate Trace Fence
Location:	6928 Village Gate Trace
Area:	.16980 acres
Owner:	Shelia Johnson
Applicant:	Shelia Johnson
Representative:	Shelia Johnson
Jurisdiction:	Louisville Metro
Council District:	23 – James Peden
Case Manager:	Ross Allen, Planner I

REQUEST

- **Variance:** from the Land Development Code (Oct. 2016) from section 4.4.3.A.1.a.i, to allow fence to exceed the 4 ft. height on a R-5 zoned parcel within a Neighborhood Form District by approximately 2 ft.

Location	Requirement	Request	Variance
Street Side Yard (Fence Height)	4 ft.	6 ft.	2 ft.

CASE SUMMARY/BACKGROUND/SITE CONTEXT

The applicant has constructed a fence in the street side yard exceeding the 4 foot height as allowed in the LDC on a R-5 zoned parcel within a Neighborhood Form District. The fence was expanded at the rear by approximately 24 feet out towards Fernview Rd. (Perpendicular to Fernview Rd.) extending south towards Village Gate Trace (parallel to Fernview Rd.) in the Street Side Yard by approximately 54 feet and then extends west for approximately 24 feet and terminates at the principal structure. The expanded fence was completed between the dates of Sept. 2014 and/or Sept. 2016 for the purpose of allowing the applicant to maximize utilization of the yard on the corner lot, Village Gate Trace and Fernview Rd.

LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

	Land Use	Zoning	Form District
Subject Property			
Existing	Single Family Residential	R-5	Neighborhood
Proposed	Single Family Residential	R-5	Neighborhood
Surrounding Properties			
North	Single Family Residential	R-4	Neighborhood
South	Single Family Residential	R-5	Neighborhood
East	Single Family Residential	R-5	Neighborhood
West	Single Family Residential	R-5	Neighborhood

PREVIOUS CASES ON SITE

09-070-05: Ordinance 63, Series 2006: Change in zoning from R-4 to R-5 located at 8105 Glaser Lane, having 4.7 acres and being in Louisville Metro.

INTERESTED PARTY COMMENTS

No comments were received from concerned citizens.

APPLICABLE PLANS AND POLICIES

Land Development Code (Oct. 2016)

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE: from the Land Development Code (Oct. 2016) from section 4.4.3.A.1.a.i, to allow fence to exceed the 4 ft. height on a R-5 zoned parcel within a Neighborhood Form District by approximately 2 ft.

- (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 since the applicant maximized the "usability" area of the fenced in yard for family pets.

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

STAFF: The requested variance will not alter the essential character of the general vicinity since other homes, most notably 6929 Village Gate Trace, which is also a corner lot has a fence in the street side yard of similar material and color as the subject site. The fence is not affecting or restricting the public use of the right of way nor the electric/telecommunications easement as found on the subdivision plat.

- (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 since the fence is not restricting the public right of way (sidewalk) along Fernview Rd.

- (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 the applicant was not aware of height restrictions on the street side yard. The intent of the applicant, as found in their justification was to maximize and create a beautiful, secure, and safe outdoor space for our family and pets.

ADDITIONAL CONSIDERATIONS:

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

STAFF: The requested variance does not arise from special circumstances which do generally apply to land in the general vicinity or the same zone since the applicant is on a corner lot with a drainage easement found along the north/rear property. The applicant hired a professional fencing company and relied on their expertise to maximize their outdoor space, unfortunately neither applicant nor the fencing company were aware of applicable land development codes until after the completion.

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 since the fence serves two purposes: 1.) to maximize outdoor space and 2.) to ensure privacy and safety. The fence serves to ensure the safety of family and pets on a highly traveled corner of Village Gate Trace and Fernview Rd. A hardship would be inflicted if the applicant were required to remove or reconstruct the fence to code requirements, approximately \$7,003.00. (Please see applicant's justification for a more detailed explanation of the cost.)

3. The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

STAFF: Yes, the circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought since the fence was constructed prior to asking for a variance for the fence height. The applicant states "the professional fencing company that installed the fence was to ensure that all permits and regulations were to be provided and adhered to in the total cost of installation" (paraphrased, please see the variance justification for a more detailed explanation).

TECHNICAL REVIEW

- None

STAFF CONCLUSIONS

The variances requested appear to be adequately justified and both meet the standard of review. 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 standard of review for granting a variance as established in the Land Development Code (Oct. 2016) from section 4.4.3.A.1.b.i to allow an existing fence with a height of 6 feet to exceed the maximum height (4 ft.) in the street side yard as allowed in an R-5 zoned parcel within a Neighborhood Form District as found along Fernview Rd.

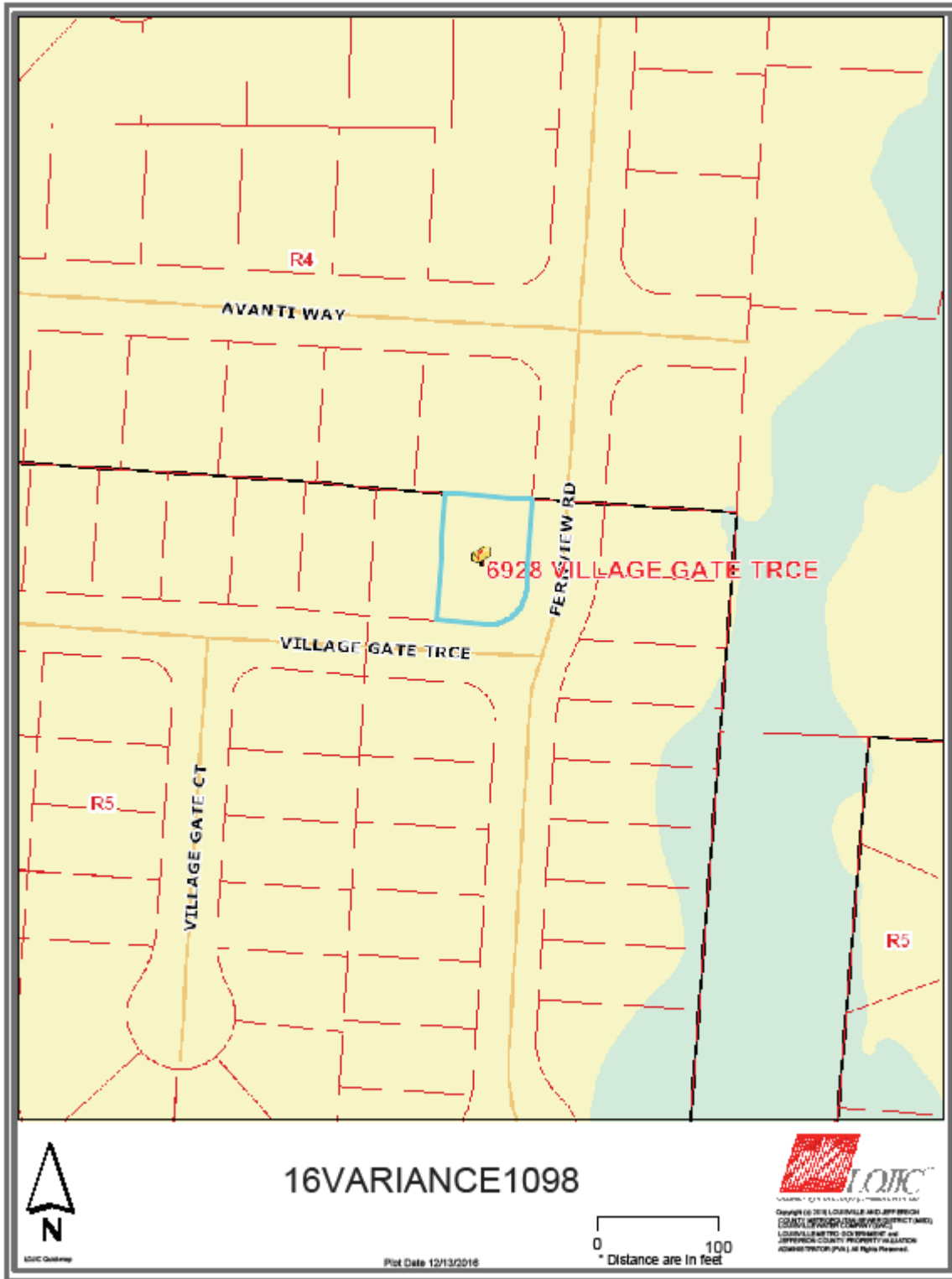
NOTIFICATION

Date	Purpose of Notice	Recipients
December 23, 2016	Public Hearing Notification BOZA	1 st tier adjoining property owners Subscribers of Council District 23 Notification of Development Proposals
December 23, 2016	Sign Posting for BOZA	Sign Posting on property

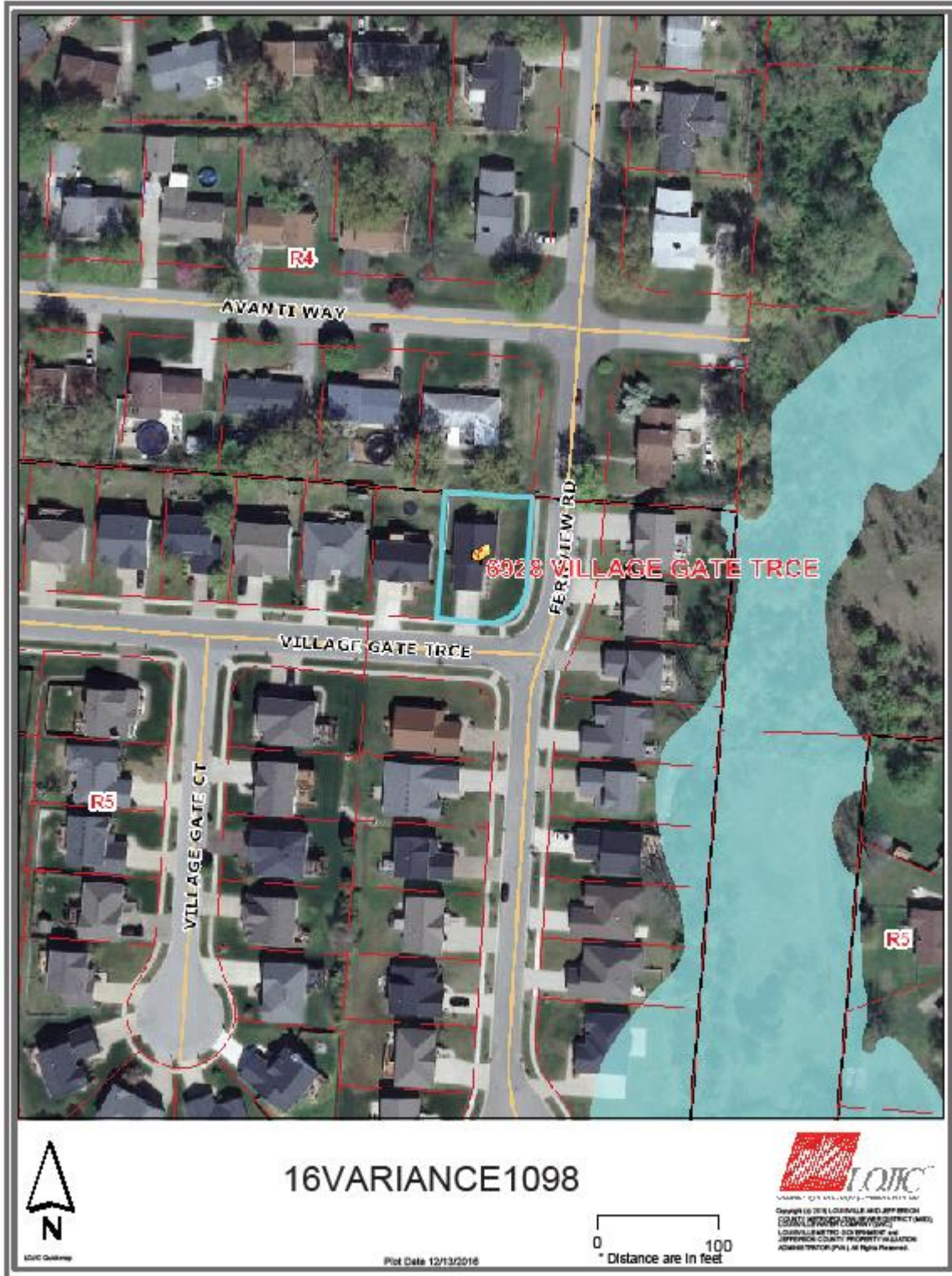
ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Second Aerial Photo (Showing the existing fence)

1. Zoning Map



2. Aerial Photograph



3. Aerial Photograph (Showing the existing fence)

