

# Board of Zoning Adjustment

## Staff Report

March 4, 2019



<b>Case No.</b>	19VARIANCE1006
<b>Project Name</b>	Fence Height Variance
<b>Location</b>	4521 S. 1st Street
<b>Owner/Applicant</b>	Gladys Diaz Perez
<b>Jurisdiction</b>	Louisville Metro
<b>Council District</b>	21 – Nicole George
<b>Case Manager</b>	Beth Jones, AICP, Planner II

**REQUESTS**

**Variance** to permit a fence to exceed the permitted height in a Traditional Neighborhood form district (LDC 4.4.3.A.1.a.i)

Location	Requirement	Request	Variance
Maximum fence height (street side yard)	42 in	72 in	30 in

**CASE SUMMARY / BACKGROUND**

The site is located on the east side of S. 1st Street at the intersection with Ottawa Avenue. It and all adjoining properties are zoned R-5 Single-Family Residential within a Traditional Neighborhood form district; all are in single-family residential use.

The fence is to be located along the Ottawa Avenue property frontage from near the front of the house to the garage at the rear of the property. According to the applicant, the additional height is being requested for safety reasons; the applicant plans to build a pool in the back yard and is concerned that a 42 inch fence will not provide a sufficient barrier. LDC 4.4.10 requires a vertical barrier, such as a fence, of at least 48 inches around swimming pools.

There appears to be at least once fence of a similar height one block from the site, at the corner of Ottawa Avenue and Allmond Avenue. It is also a corner parcel and the fence is also along the street side yard.

**STAFF FINDING**

Staff finds that the requested variance is adequately justified and meets 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 standards for granting a variance to permit a fence to exceed the permitted height in a Traditional Neighborhood form district (LDC 4.4.3.A.1.a.i).

## **TECHNICAL REVIEW**

No technical issues remain to be resolved.

## **INTERESTED PARTY COMMENTS**

Staff has received no comments from interested parties.

## **STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE FROM LDC 5.3.1 (Table 5.3.2)**

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

STAFF: The added fence height does not affect public health, safety or welfare. It offers additional security for the private yard area of the site, in which the applicant intends to build a swimming pool.

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

STAFF: The requested fence height is in character with existing development on the site and in the vicinity. The corner lot at the opposite end of the block has a similar fence which appears to be the same height.

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

STAFF: The fence height will not cause a public hazard or nuisance through excessive noise, vibration, odor or light. Its location does not interfere with sight lines for vehicles at the S. 1st Street/Ottawa Avenue intersection.

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

STAFF: Permitting the proposed fencing is not an unreasonable circumvention of zoning regulations in that the requested fence height would be permitted along a side yard not fronting a street.

## **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 proposed fencing will provide privacy and security along a street side yard as found on other corner lots in the vicinity.

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 application of the regulation would create an unnecessary hardship in that it is not out of character for parcels of the same type in the vicinity and does not interfere with sight lines for vehicles at the S. 1st Street/Ottawa Avenue intersection.

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 not the result of actions taken by the applicant, as a fence of the requested height would be permitted if it were not a corner lot. In addition, construction of a pool would require a higher fence for safety reasons.

**NOTIFICATION**

Date	Purpose of Notice	Recipients
2/15/2019	Hearing before BOZA	1st and 2nd tier adjoining property owners Registered Neighborhood Groups in Council District 15 Sign Posting

**ATTACHMENTS**

1. Zoning Map
2. Aerial Photograph

1. Zoning Map



2. Aerial Photograph

**VARIANCE AREA**

