

Board of Zoning Adjustment Staff Report

January 9, 2017



Case No:	16VARIANCE1095
Request:	Variance to allow a proposed fence to exceed the maximum height in a side and rear yard in the City of St. Matthews.
Project Name:	3935 Kennison Court
Location:	3935 Kennison Court
Owner:	Mary Burkhart – Mildred’s Nest LLC.
Applicant:	Mary Burkhart – Mildred’s Nest LLC.
Representative:	Mary Burkhart – Mildred’s Nest LLC.
Jurisdiction:	City of St. Matthews
Council District:	9 – Bill Hollander
Case Manager:	Ross Allen, Planner I

REQUEST

- **Variance #1:** from the St. Matthews Development Code Article 9, section 9.1.B.1.b to allow a proposed fence to exceed the maximum height in the required side yard for a parcel zoned R-4.

Location	Requirement	Request	Variance
Side Yard (Fence Height)	7 ft.	10 ft.	3 ft.

- **Variance #2:** from the St. Matthews Development Code Article 9, section 9.1.B.1.b to allow an existing fence to exceed the maximum height in the required side and rear yards for a parcel zoned R-4.

Location	Requirement	Request	Variance
Side and Rear Yard (Fence Height)	7 ft.	10 ft.	3 ft.

CASE SUMMARY/BACKGROUND/SITE CONTEXT

The applicant is proposing to construct a 4 foot high bamboo screen above an existing 6 foot high stone wall with a total height of 10 feet and for a length of 23.5 foot along the eastern property line adjacent to the applicant’s driveway. The applicant stated that the neighbor’s home has a black insulated copper condensing line that leads from the A/C unit into the interior of the home and a blank wall that she would like to screen. The subject site had been visited by St. Matthew’s Zoning Enforcement Officer and it was stated to the applicant’s that not only the proposed bamboo screen (fence) would need a variance but also the fence as found to the rear and side yards of the property. The bamboo fencing/screening, constructed in 2009, is tiered from approximately 7 feet to 10 feet in height along portions of the eastern and western property lines (side yards) and the northern property line (rear) which as defined by the St. Matthews Development code is allowed to be seven feet in height, the same as the side yard. The subject property is found along a dead end street, Kennison Court, which has four homes facing Kennison Court.

LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

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

PREVIOUS CASES ON SITE

No previous cases on the subject site.

INTERESTED PARTY COMMENTS

Email was received from concerned citizen on regarding the following issues:

- Fence does not match any neighboring homes in the area, and not to mention does not even match the fence in the Burkhart’s backyard (brown trim in the back, white trim in the front yard). This aesthetic is what will draw future buyers invest above market for the homes on Kennison Court.
- The Height. The fact that they want to put 12’ of fencing around their entire house has questionable intentions, but the property value of my house having to stare at that size of a structure has real monetary repercussions.
- Safety. Safety walking down the street, if I can’t see them they cannot see children playing or us walking. Not to mention the safety of our police, etc.

Staff determined that many of the comments are not founded.

APPLICABLE PLANS AND POLICIES

City of St. Matthews Development Code

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE #1: from St. Matthews Development Code Article 9, section 9.1.B.1.b to allow a proposed fence to exceed the 7 foot height limit in the required side yard on a lot zoned R-4 along the eastern property line for approximately 23.5 feet.

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

STAFF: The requested variance will not adversely affect public health safety or welfare since the proposed screen is not visible to other adjoining property owners as found along the driveway on the north. The adjacent neighbor to the northeast of the subject site has a blank wall facing the property, neighbors to the southwest would be unable to view the 10 foot stone/bamboo fence/screen since the applicants garage blocks visibility.

- (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 the proposed fence which was already a 6 foot tall stone wall is being added upon with Bamboo for approximately 4 feet, for a total height of 10 feet.

- (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 screen is found on the applicant's property and is visible to only neighbors found south across Kennison Court.

- (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 zoning regulations since the proposed screen as is currently constructed has a height of 6 feet for the stone wall, the addition of a four foot bamboo screen portion on the top would require the variance to allow relief for the applicant.

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 requested variance does not arise from special circumstances which that generally apply to land in the general vicinity or the same zone because the proposed fence/screen is unique to the area, fences are common on either side of the applicant's parcel but screening/fencing along the driveway is not found within the general 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 strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land since the screening/fencing requested exceeds the height requirement is not visible to adjacent neighbors and the neighbor along the northwestern property line has a blank wall facing the applicant's property.

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: No, 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 applicant had constructed a 6 foot portion of the screen/fence prior to the variance request but it did not exceed the height requirements, the addition to the top of the stone wall portion would require a variance and the applicant is requesting relief.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE #2: from St. Matthews Development Code Article 9, section 9.1.B.1.b to allow an existing fence to exceed the 7 foot height limit in the side and rear yards on a lot zoned R-4 along the northern and northwestern property lines.

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

STAFF: The requested variance will not adversely affect public health safety or welfare since the fence has existed since 2009 (stated by the applicant in their justification). The fence does exceed the height requirement per the Development Code (St. Matthews) but has not had any impact upon the public health, safety or welfare in that time period.

- (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 fences are currently constructed on both adjacent neighbors as found on the northeastern and southwestern properties, heights of these fences may exceed what is required by St. Matthews Development code.

- (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 applicant's existing fences have been in place since 2009 (as stated on the Variance justification) and no enforcement actions are known to exist for the subject site.

- (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 zoning regulations since the fence has been in place since 2009 and the applicant states they were unaware of the height restrictions when the fence was constructed.

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 requested variance does not arise from special circumstances which that generally apply to land in the general vicinity or the same zone since the fence as found along the side yard and rear of the property exceeds the height requirements by three feet and the applicant states they were not aware of the restrictions at the time of construction in 2009.

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 deprive the applicant of reasonable use of the land since the existing fence has been present since 2009, the applicant states that privacy concerns and protecting property value are contributing factors to why a fence exceeding 7 feet in height is required. The removal or reconstruction of the existing fence would pose a hardship if required to comply with the Development Code for St. Matthews.

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: 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 in 2009 and was not in compliance at the time of construction.

TECHNICAL REVIEW

- None

STAFF CONCLUSIONS

The variance request appears to be 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 standard of review for granting a variance as established

in the St. Matthews Development Code from Article 9, section 9.1.B.1.b to allow an existing fence to be 10 foot tall and exceeding the 7 foot height requirement in the rear and side yards on the northeastern property line (side yard) and northern property line (rear yard) and to allow a proposed fence/screen to exceed the height requirement in the side yard by approximately 3 feet (10 foot total height) as allowed in an R-4 zoning district along the northeastern property line for approximately 23.5 feet in length.

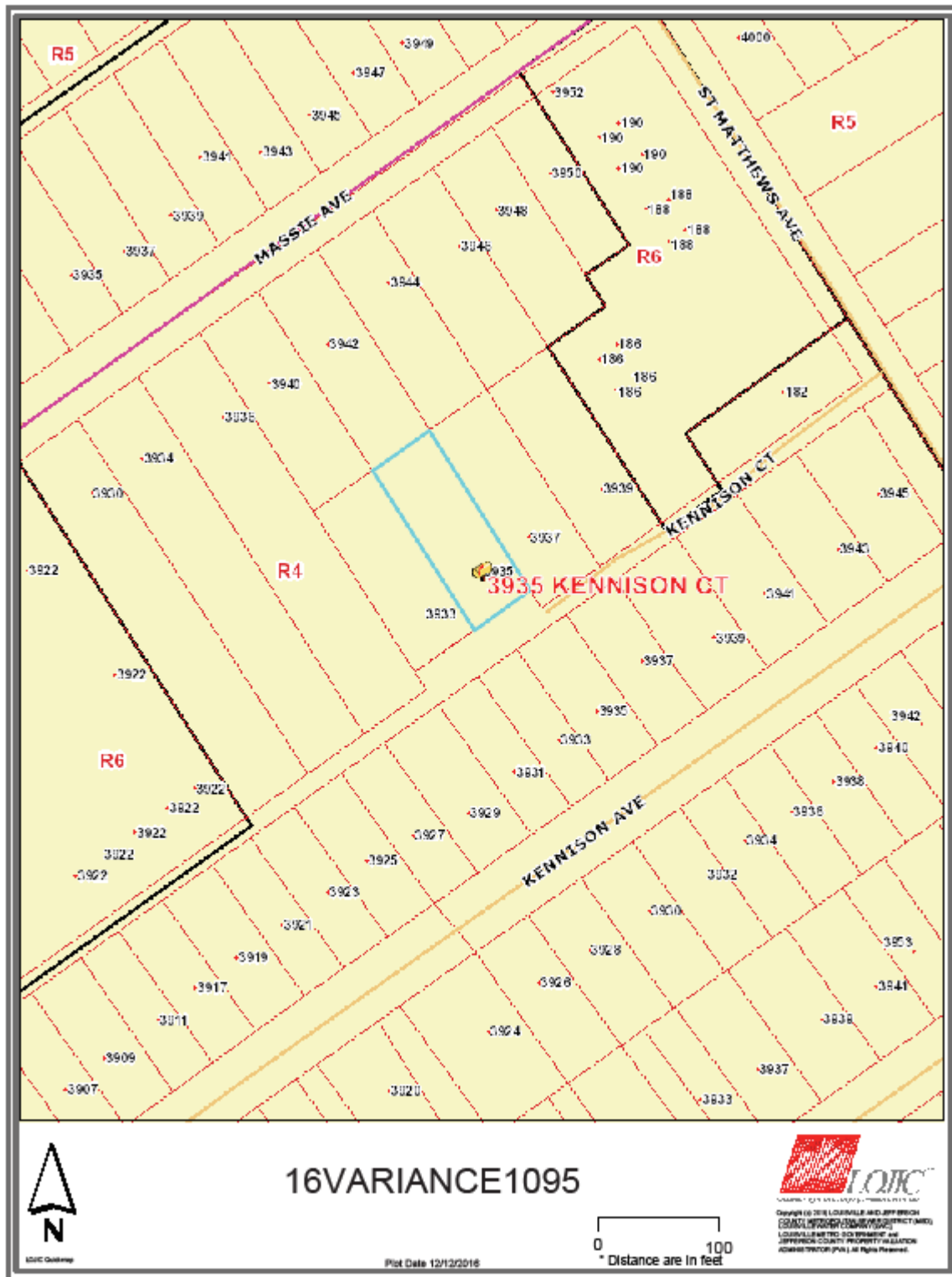
NOTIFICATION

Date	Purpose of Notice	Recipients
December 23, 2016	Hearing before BOZA	1 st tier adjoining property owners Subscribers of Council District 18 Notification of Development Proposals
December 23, 2016	Sign Posting for BOZA	Sign Posting on property

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph

1. Zoning Map



2. Aerial Photograph

