

# Board of Zoning Adjustment Staff Report

February 20, 2017



|                          |                                                                           |
|--------------------------|---------------------------------------------------------------------------|
| <b>Case No:</b>          | 17VARIANCE1000                                                            |
| <b>Request:</b>          | Variance to allow a fence in the required yard to exceed 8 feet in height |
| <b>Project Name:</b>     | 5305 Pendleton Road Fence                                                 |
| <b>Location:</b>         | 5305 Pendleton Road                                                       |
| <b>Area:</b>             | 3.5123 Acres                                                              |
| <b>Owner:</b>            | Eric Bennett                                                              |
| <b>Applicant:</b>        | Eric Bennett                                                              |
| <b>Representative:</b>   | Eric Bennett                                                              |
| <b>Jurisdiction:</b>     | Louisville Metro                                                          |
| <b>Council District:</b> | 14 – Cindi Fowler                                                         |
| <b>Case Manager:</b>     | Dante St. Germain, Planner I                                              |

## REQUEST

- Variance from Land Development Code section 4.4.3.A.1.a to allow a fence in the required side yard to exceed 8 feet in height.

| Location                         | Requirement | Request | Variance |
|----------------------------------|-------------|---------|----------|
| Height of Fence in Required Yard | 8 ft.       | 10 ft.  | 2 ft.    |

## CASE SUMMARY/BACKGROUND/SITE CONTEXT

The applicant proposes a fence separating the subject property from a neighboring property. The fence has been constructed and is existing. The fence consists of wooden supports and metal panels. The property shares a driveway with the neighboring property, and the fence is constructed so as to separate the portions of the driveway used by the two properties. The fence has been constructed on a corner, with the fence approximately 6 inches from the property line on the north side of the corner, and varying from 1 to 3 feet from the property line on the east side of the corner. With the entirety of the fence within the required side yard setback, the fence is restricted to a maximum of 8 feet in height from grade. The applicant requests a variance to allow the existing portions of the fence which reach approximately 10 feet from grade to remain.

## LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

|                               | Land Use                                 | Zoning | Form District |
|-------------------------------|------------------------------------------|--------|---------------|
| <b>Subject Property</b>       |                                          |        |               |
| <b>Existing</b>               | Single Family Residential                | R-4    | Neighborhood  |
| <b>Proposed</b>               | Single Family Residential                | R-4    | Neighborhood  |
| <b>Surrounding Properties</b> |                                          |        |               |
| <b>North</b>                  | Single Family Residential                | R-4    | Neighborhood  |
| <b>South</b>                  | Single Family Residential & Agricultural | R-4    | Neighborhood  |
| <b>East</b>                   | Single Family Residential                | R-4    | Neighborhood  |
| <b>West</b>                   | Single Family Residential                | R-4    | Neighborhood  |

## PREVIOUS CASES ON SITE

### 16PM19227

Zoning Enforcement issued a violation for a fence over the allowed height in a required yard on 08-17-2016.

### BL998009

A building permit was issued for a fence 7' 11" in height on 09-15-2016.

## INTERESTED PARTY COMMENTS

No interested party comments were received by staff.

## APPLICABLE PLANS AND POLICIES

Land Development Code

### STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE FROM SECTION 4.4.3.A.1

- (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 as the fence is located approximately 40 feet from the abutting public right-of-way. It will not interfere with visibility along Pendleton Road.

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

STAFF: The requested variance will alter the essential character of the general vicinity as the area is residential and agricultural in nature and fences of the proposed height are not characteristic of the area.

- (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 as the fence is approximately 40 feet from the abutting public right-of-way.

- (d) The requested variance will allow an unreasonable circumvention of the zoning regulations.

STAFF: The requested variance will allow an unreasonable circumvention of the zoning regulations as an 8 foot fence would be adequate to separate the two properties and provide privacy.

### 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 arises from special circumstances which do not generally apply to land in the general vicinity or the same zone as the two properties separated by the fence share a driveway.

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 not deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant because the fence could be reduced in height to 8 feet and would not need a variance at that height.

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 actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as the applicant is requesting the variance for a fence that was constructed in August 2016.

#### **TECHNICAL REVIEW**

- No technical review undertaken.

#### **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 variance established in the Land Development Code from section 4.4.3.A.1 to allow a fence in the required yard to exceed 8 feet in height.

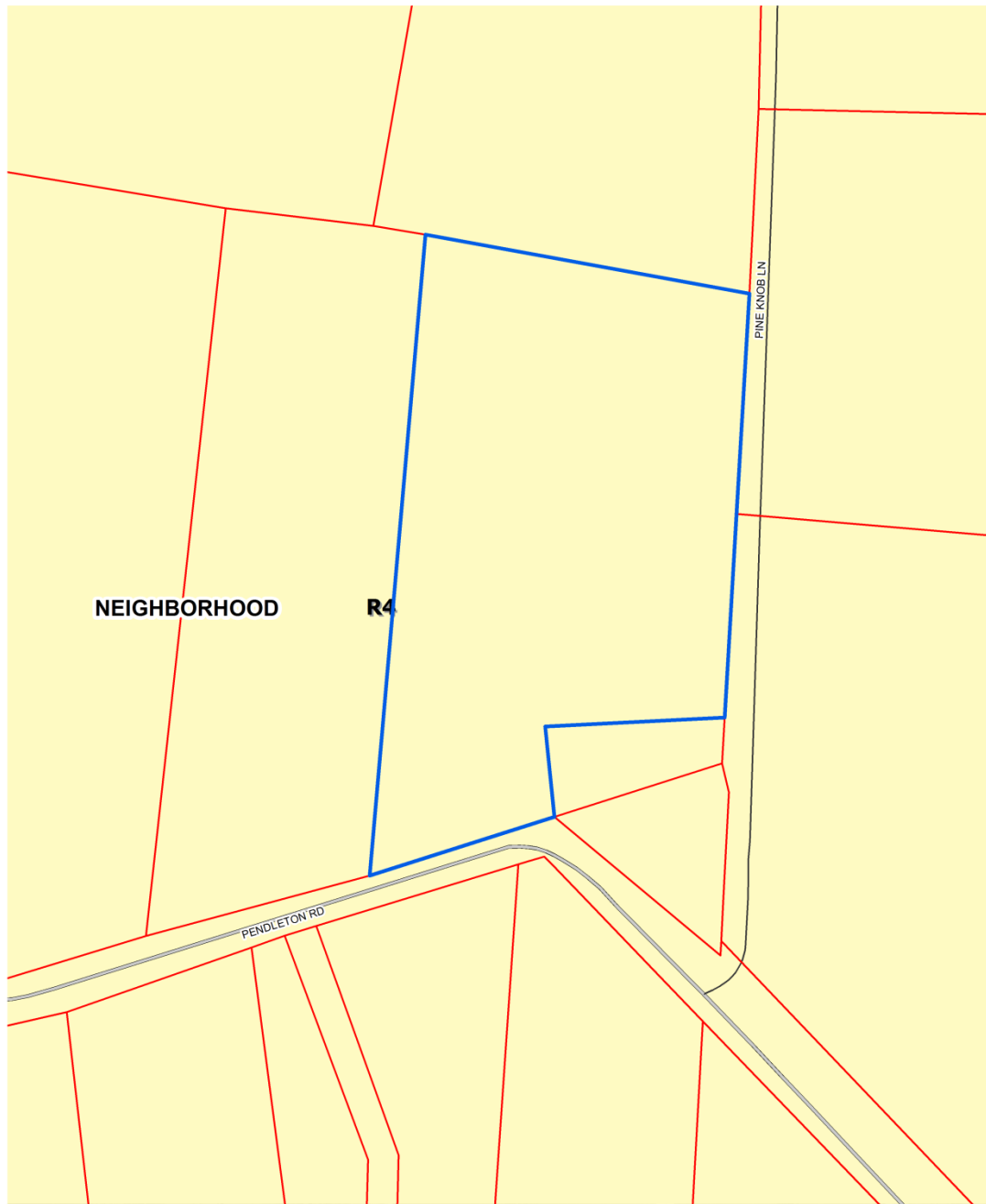
#### **NOTIFICATION**

| Date       | Purpose of Notice     | Recipients                                                                                                                 |
|------------|-----------------------|----------------------------------------------------------------------------------------------------------------------------|
| 02-03-2017 | Hearing before BOZA   | 1 <sup>st</sup> tier adjoining property owners<br>Subscribers of Council District 14 Notification of Development Proposals |
| 02-03-2017 | Sign Posting for BOZA | Sign Posting on property                                                                                                   |

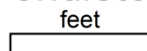
#### **ATTACHMENTS**

1. Zoning Map
2. Aerial
3. Site Plan
4. Site Photos

1. Zoning Map



5305 Pendleton Road



Map Created: 2/9/2017



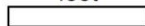
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2. Aerial



5305 Pendleton Road

feet



120

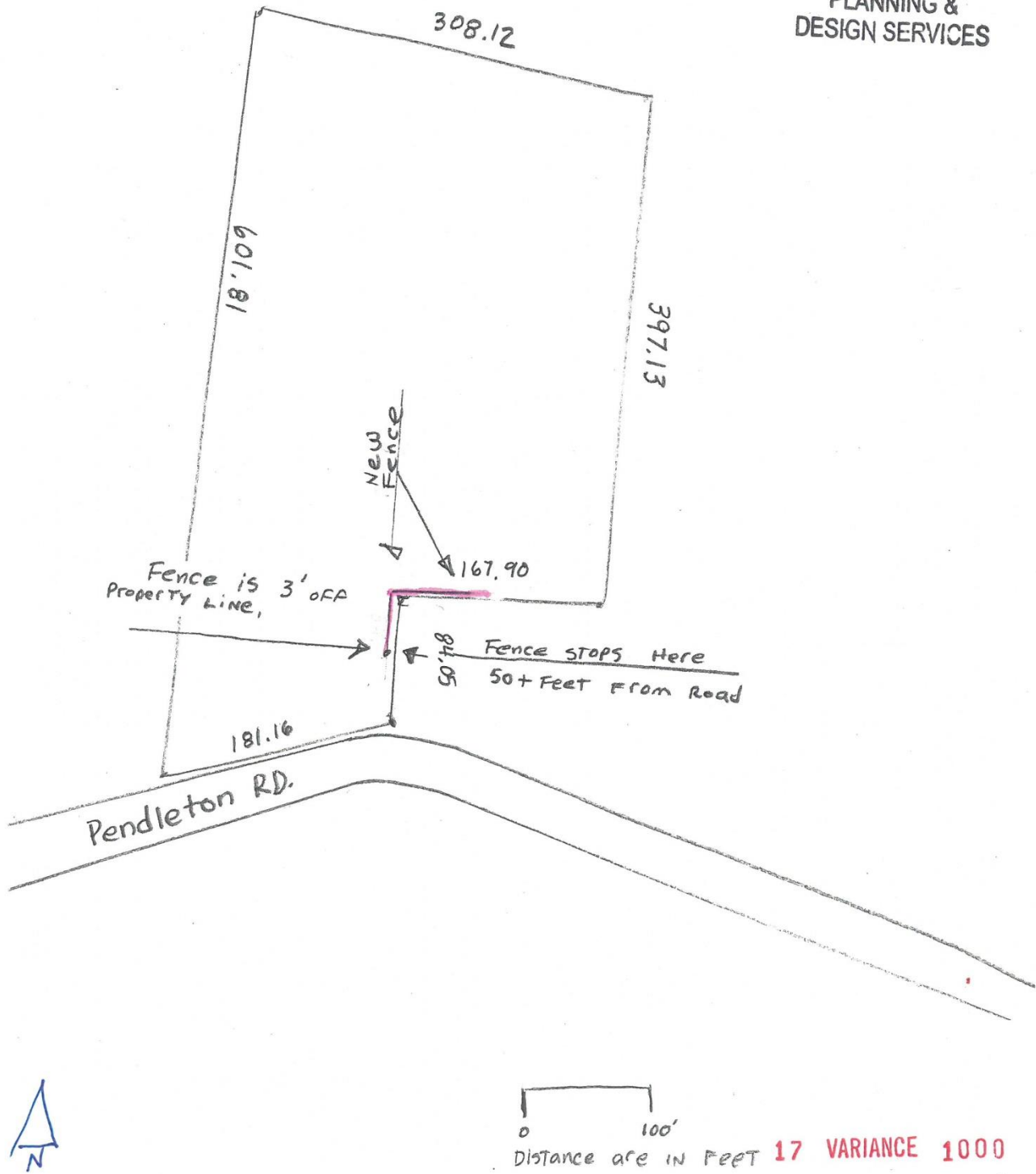
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3. Site Plan

RECEIVED  
JAN 10 2017  
PLANNING &  
DESIGN SERVICES



4. Site Photos



View of the west side of the fence from the subject property



The west side of the fence from the subject property.



The north side of the fence from the subject property.



View of the fence from across the street.



View of the west side of the fence from the neighboring property.



View of the north side of the fence from the neighboring property.