

Board of Zoning Adjustment Staff Report

October 17, 2016



Case No:	16VARIANCE1067
Request:	To allow a constructed metal fence to exceed the height requirements (3.5 feet) in a R-7 zoned parcel in a Traditional Neighborhood Form District.
Project Name:	1600 Cherokee Road
Location:	1600 Cherokee Road
Area:	.34330 acres
Owner:	Kevin Cogan – DPAC 1600 LLC.
Applicant:	Marv Blomquist – Blomquist Design Group LLC.
Representative:	Marv Blomquist – Blomquist Design Group LLC.
Jurisdiction:	Louisville Metro
Council District:	8 – Tom Owen
Case Manager:	Ross Allen, Planner I

REQUEST

- **Variance:** from the Land Development Code section 4.4.3.A.1.a to allow an existing metal aluminum/wrought iron fence of 7.5 feet to exceed the 3.5 foot maximum height in the front yard along Bonnycastle Avenue for an R-7 zoned parcel in a Traditional Neighborhood Form District.

Location	Requirement	Request	Variance
Front Yard Height	3.5 feet	7.5 feet	4 feet

CASE SUMMARY/BACKGROUND/SITE CONTEXT

The applicant has constructed a 7.5 foot tall fence in the street side yard along Bonnycastle Avenue. The owner, after construction was complete, received a Zoning Notice and Violation Notice (both with Case # 16PM14706-2705329) stating the fence was encroaching into the public right of way. The Board of Zoning Adjustment would only be asked to approve the height of metal fence, the right of way issues will be addressed with the Dept. of Public Works. The applicant, if the variance is approved will be required to apply for a Right of Way License Agreement between the owner and Metro Public Works (a fee paid) and Louisville Metro will need to be named on the owner’s insurance policy as an Additional Insured and maintained for an amount to be determined by the Dept. of Public Works, this would need to be conditions of approval if the variance is to be granted by the Board of Zoning Adjustment. Last, if the variance is not approved the owner will need to remove the fencing and landscaping from the public Right of Way.

The owner had the aluminum/wrought iron style fence constructed for the purpose of providing an outdoor amenity area for tenants of the apartment with landscaping, a pergola, and greenspace in the street side yard along Bonnycastle Avenue. However, the construction encroached into the right of way less than 5 feet from the sidewalk.

The subject property is bounded by Cherokee Road to the East, Bonnycastle Avenue to the North, a 15 foot private access easement to the West, and another R-7 zoned property to the South. The variance request lies along Bonnycastle Avenue since this is the shortest distance, acting as a front yard, where the fence height is limited to 3.5 feet in an R-7 zoning district within the front and street side yards in the Traditional Neighborhood Form District.

LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

	Land Use	Zoning	Form District
Subject Property			
Existing	Residential Multi-Family	R-7	Traditional Neighborhood
Proposed	Residential Multi-Family	R-7	Traditional Neighborhood
Surrounding Properties			
North	Residential Multi-Family	R-7	Traditional Neighborhood
South	Residential Multi-Family	R-7	Traditional Neighborhood
East	Residential Single Family	R-1	Traditional Neighborhood
West	Residential Single Family	R-5	Traditional Neighborhood

PREVIOUS CASES ON SITE

None

INTERESTED PARTY COMMENTS

No comments were received from concerned citizens.

APPLICABLE PLANS AND POLICIES

Land Development Code (July 2016)

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE

- (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 existing aluminum/wrought iron fence is located in a courtyard and outdoor patio area. The fence is located one foot from the public concrete sidewalk along Bonnycastle Avenue.

- (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 fence is an open wrought iron style, dark in color. No other aluminum/wrought iron style of fence exist within the general vicinity. Most homes and apartment complexes in the area have yards open with no fencing in place; however aluminum and/or wrought iron style handrails are common leading from residences to the public sidewalk.

- (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 does not, by definition of vision clearance, from the point of intersection of the intersecting lot lines for a distance of 30 feet in the sight triangle. However, a private access easement does exist where vehicles exiting adjacent properties to the rear of the subject site, as a result the vehicles exiting this private access could be visually impaired on the right hand side (East) from the intersection of the access easement and Bonnycastle Avenue.

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

STAFF: The requested variance will allow an unreasonable circumvention of the zoning regulations since the fence as situated on the subject sight is within the vision clearance for vehicles exiting onto Bonnycastle Avenue but does not block the vision of motorists turning onto Bonnycastle Ave.

ADDITIONAL CONSIDERATIONS:

- 1. The requested variance arises from special circumstances which do generally apply to land in the general vicinity or the same zone.

STAFF: The requested variance arises from special circumstances which do generally apply to land in the general vicinity or the same zone since many homes and apartment complexes in the general vicinity do not have fences in either their front or street side yards.

- 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 the reasonable use of the land since

- 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 of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought since

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 Land Development Code from section 4.4.3.A.1.a to allow an existing aluminum/wrought iron fence of 7.5 feet to exceed the 3.5 foot maximum height in the front yard along Bonnycastle Avenue for an R-7 zoned parcel in a Traditional Neighborhood Form District.

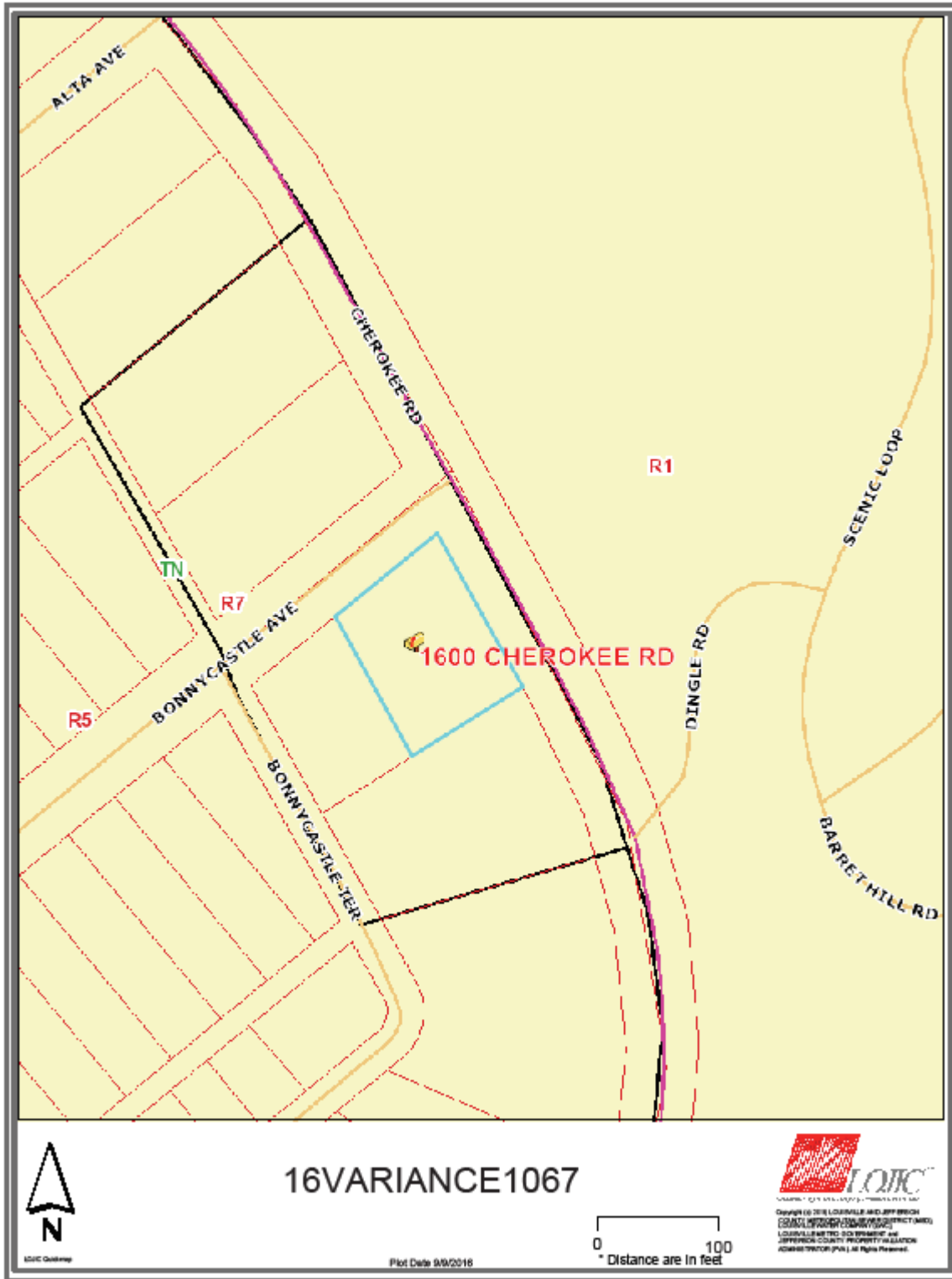
NOTIFICATION

Date	Purpose of Notice	Recipients
September 30, 2016	Hearing before BOZA	1 st tier adjoining property owners Subscribers of Council District 8 Notification of Development Proposals
September 30, 2016	Sign Posting for BOZA	Sign Posting on property

ATTACHMENTS

- 1. Zoning Map
- 2. Aerial Photograph

1. Zoning Map



2. Aerial Photograph

