

# Board of Zoning Adjustment

## Staff Report

March 16, 2015



<b>Case No:</b>	15Variance1004
<b>Project Name:</b>	Existing Fence
<b>Location:</b>	3304 Bardstown Road
<b>Owner(s):</b>	Kelly Kado, Economy Inn & Suites
<b>Applicant:</b>	Tony Yaldo, Economy Inn & Suites
<b>Representative:</b>	Kelly Kado, Economy Inn & Suites
<b>Project Area/Size:</b>	3.017 Acres
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	10 – Jim King
<b>Case Manager:</b>	Sherie' Long, Landscape Architect

**(Continued from February 16, 2015)**

### REQUEST

Variance from the Land Development Code, Chapter 4, Section 4.4.3.A.1.a.ii., to allow an existing fence to exceed the maximum height.

#### Variance

<b>Location</b>	<b>Requirement</b>	<b>Request</b>	<b>Variance</b>
<b>Rear Yard (West)</b>	8 feet	12 feet	4 feet

### CASE SUMMARY/BACKGROUND/SITE CONTEXT

This case was continued from the February 16, 2015 BOZA hearing due to not having a quorum present. The applicant has received a "Notice of Violation" for constructing a fence over 7 feet without a building permit. This fence, located at the rear of the Economy Inn and Suites property, separates the subject property (zoned C-2) from the adjacent single family residential homes to the west (zoned R-5). This 12 foot fence was added in an attempt to eliminate and reduce the reoccurring criminal activities, littering, and disruptive behavior of the hotel tenants and guests on the adjacent residential properties. The new 12 foot fence does match the height of an existing fence located to the north. Plus a new shorter fence, 7 or 8 feet in height, has been constructed south of the 12 foot fence also separating the properties. The maximum height of fencing allowed along this perimeter is 8 feet; therefore a variance is required to allow the fence to remain 12 feet in height.

### LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

The site is zoned C-2 in the Suburban Marketplace Corridor (SMC) Form District. It is surrounded by commercial, office and residential properties zoned C-1, C-2, OR-1, R-5 and R-7 in the Suburban Marketplace Corridor (SMC) and Neighborhood (N) Form Districts.

	Land Use	Zoning	Form District
<b>Subject Property</b>			
<b>Existing</b>	Commercial	C-2	SMC
<b>Proposed</b>	Commercial	C-2	SMC
<b>Surrounding Properties</b>			
<b>North</b>	Commercial, Office & Multi-family Residential	C-2, C-1, OR-1 & R-7	SMC
<b>South</b>	Commercial, Multi-family Residential, & Single family Residential	C-2 & R-5	SMC & N
<b>East</b>	Commercial	C-1 & C-2	SMC
<b>West</b>	Single-family & multi-family residential	R-5 & R-7	N & SMC

### PREVIOUS CASES ON SITE

Violation Notice – 14PR1898 – Issued December 4, 2014 for building a fence over 7 feet without a building permit – Pending.

Several Property Maintenance and Zoning Violation cases are still open including: exterior surface (peeling paint), fire escape (inadequate or unsafe access), exhaust vent, and a donation bin without a permit.

### INTERESTED PARTY COMMENTS

Several inquiries have been received. A couple of phone calls from neighbors in support of the fence but very concerned about the activities which are occurring within and on the subject property; plus an email which is included under Attachment 5.

### APPLICABLE PLANS AND POLICIES

Land Development Code

### STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCES

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

STAFF: The variance will not adversely affect the public health, safety or welfare because the additional height of fencing is being provided in an attempt to prevent destruction of property, criminal activity, littering, and disruptive behavior of the hotel tenants and guest on the adjacent residential properties.

- (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 because the newer 12 foot wooden fence is similar to an existing older wooden fence located to the north.

- (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 because the new 12 foot fence is similar to the existing fence located north of the new fence. The added height is an attempt to relieve the adjacent property owners of both hazards and nuisances including: the reoccurring destruction of property, criminal activities, and disruptive behavior of the hotel tenants and guests.

- (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 existing fence height is similar to the older existing fence height to the north. Plus the circumstances have created a necessity for a sufficient barrier between the residential properties and the hotel property.

### **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 because the activities around the hotel have created a situation where a barrier is necessary to eliminate or reduce the impact on the adjacent residential properties. In order to create privacy, and eliminate the nuisance the taller fence is necessary.

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 not on the applicant but on the adjacent property owners. Without the taller fence the impact of the hotel tenant's and guest's activities will be disrupted and deprive the adjacent property owners of the use of their private rear yards.

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 owner did not willfully violate the zoning regulation, but instead was attempting to reduce the negative impact on the adjacent properties by installing a fence at the same height as the existing fence to the north.

### **TECHNICAL REVIEW**

No technical review issues.

### **STAFF CONCLUSIONS**

Based upon the information in the staff report, the analysis of the standards of review do support the request to grant a variance of 4 feet allowing the existing fence to remain at the current height and in the current location. Therefore, the Board of Zoning Adjustment must determine if the proposal meets the standard for a variance established in the Land Development Code based on the testimony and evidence provided at the public hearing.

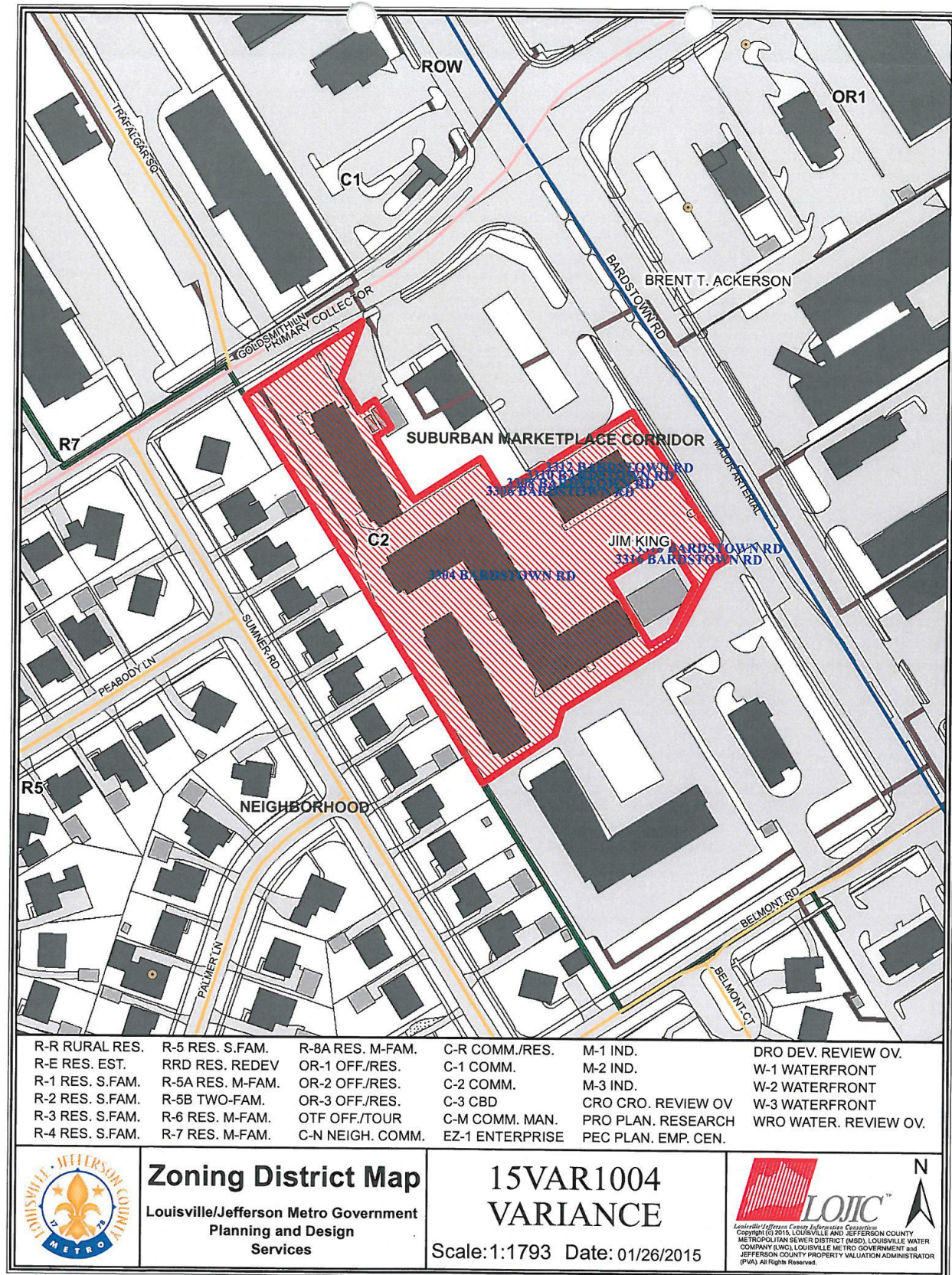
## NOTIFICATION

Date	Purpose of Notice	Recipients
01/28/2015	BOZA Hearing	Neighborhood notification recipients
01/30/2015	Sign Posting	Subject property
02/02/2015	BOZA Hearing	1 <sup>st</sup> tier adjoining property owners

## ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Site Plan
4. Applicant's Justification
5. Letter of Concern
6. Site Photographs

Attachment 1 - Zoning Map



R-R RURAL RES.	R-5 RES. S.FAM.	R-8A RES. M-FAM.	C-R COMM./RES.	M-1 IND.	DRO DEV. REVIEW OV.
R-E RES. EST.	RRD RES. REDEV	OR-1 OFF./RES.	C-1 COMM.	M-2 IND.	W-1 WATERFRONT
R-1 RES. S.FAM.	R-5A RES. M-FAM.	OR-2 OFF./RES.	C-2 COMM.	M-3 IND.	W-2 WATERFRONT
R-2 RES. S.FAM.	R-5B TWO-FAM.	OR-3 OFF./RES.	C-3 CBD	CRO CRO. REVIEW OV	W-3 WATERFRONT
R-3 RES. S.FAM.	R-6 RES. M-FAM.	OTF OFF./TOUR	C-M COMM. MAN.	PRO PLAN. RESEARCH	WRO WATER. REVIEW OV.
R-4 RES. S.FAM.	R-7 RES. M-FAM.	C-N NEIGH. COMM.	EZ-1 ENTERPRISE	PEC PLAN. EMP. CEN.	



**Zoning District Map**  
 Louisville/Jefferson Metro Government  
 Planning and Design  
 Services

**15VAR1004**  
**VARIANCE**  
 Scale: 1:1793 Date: 01/26/2015



Attachment 2 - Aerial Photo



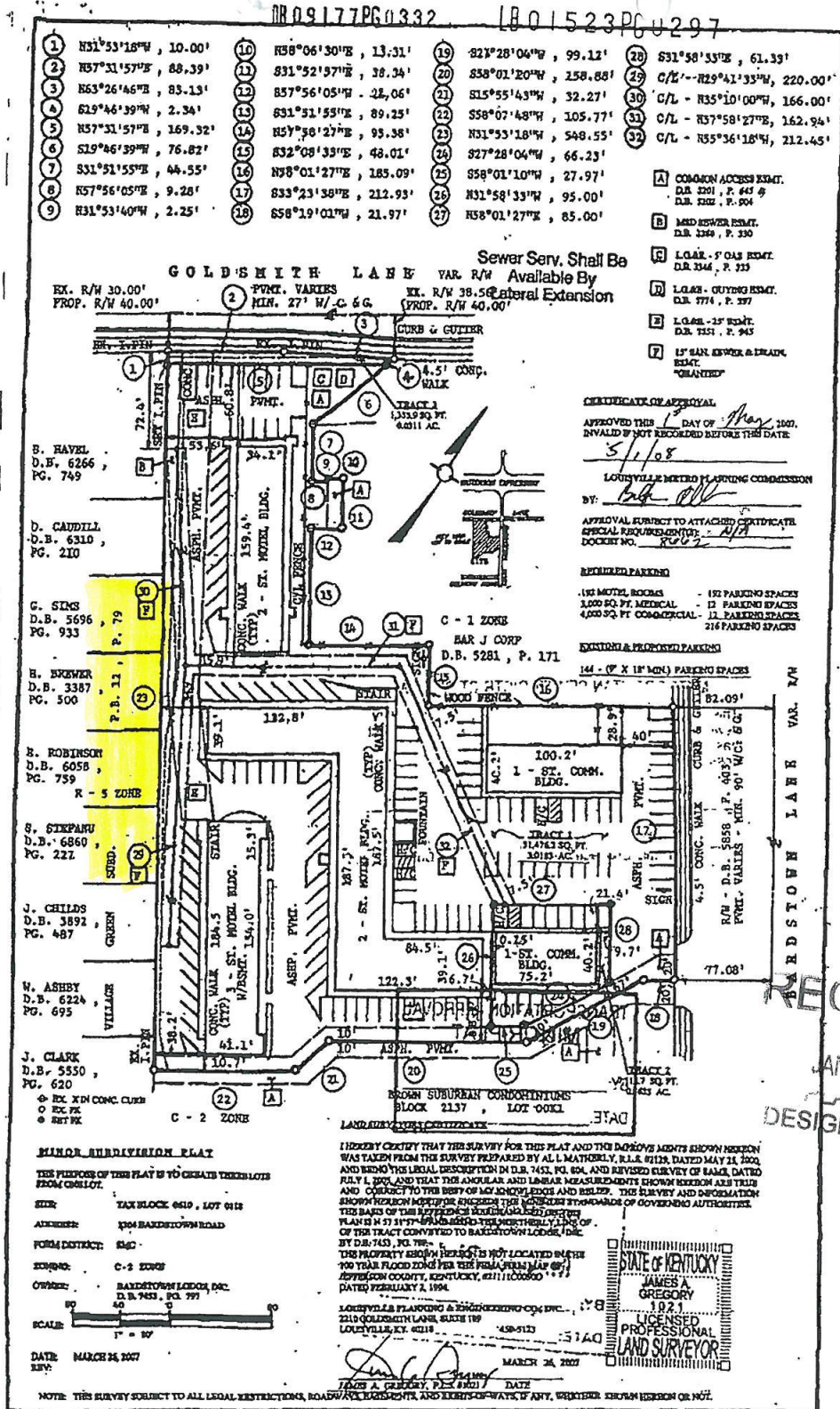
R-R RURAL RES.	R-5 RES. S.FAM.	R-8A RES. M-FAM.	C-R COMM./RES.	M-1 IND.	DRO DEV. REVIEW OV.
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**Zoning District Map**  
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 VARIANCE**  
 Scale: 1:1531 Date: 01/26/2015





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STATE OF KENTUCKY  
 JAMES A. GREGORY  
 1921  
 LICENSED  
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 LAND SURVEYOR

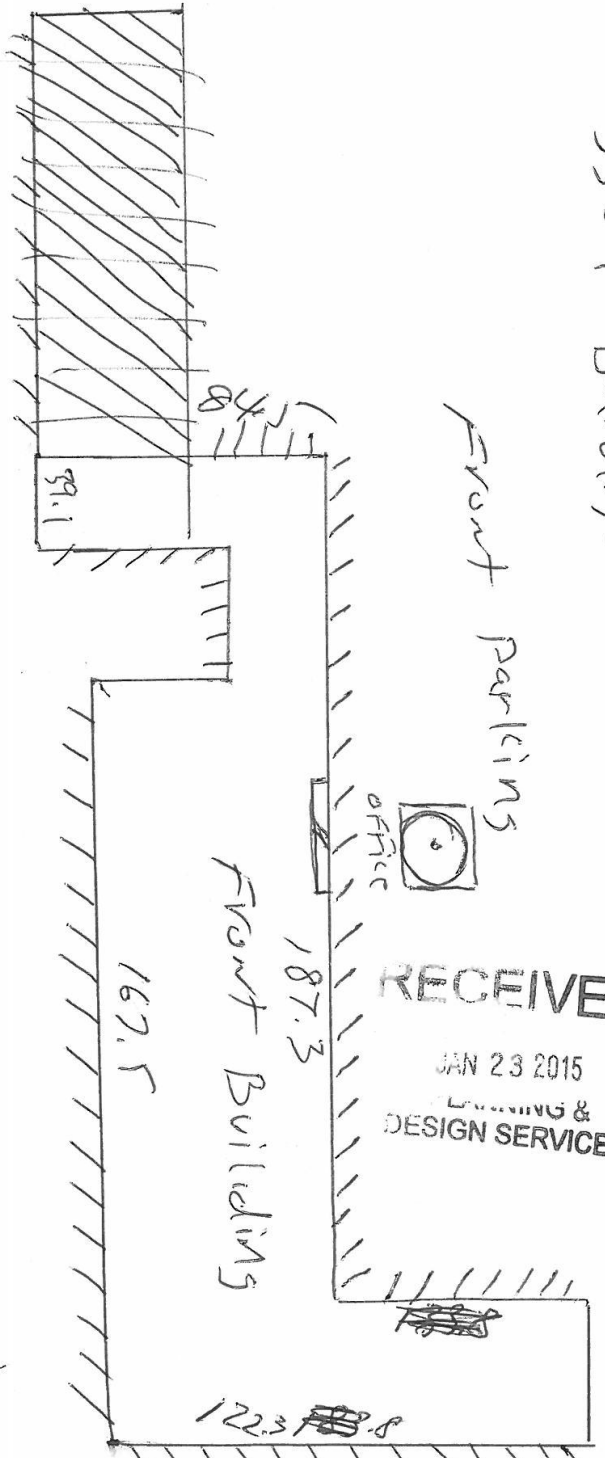
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3304 Bardonia

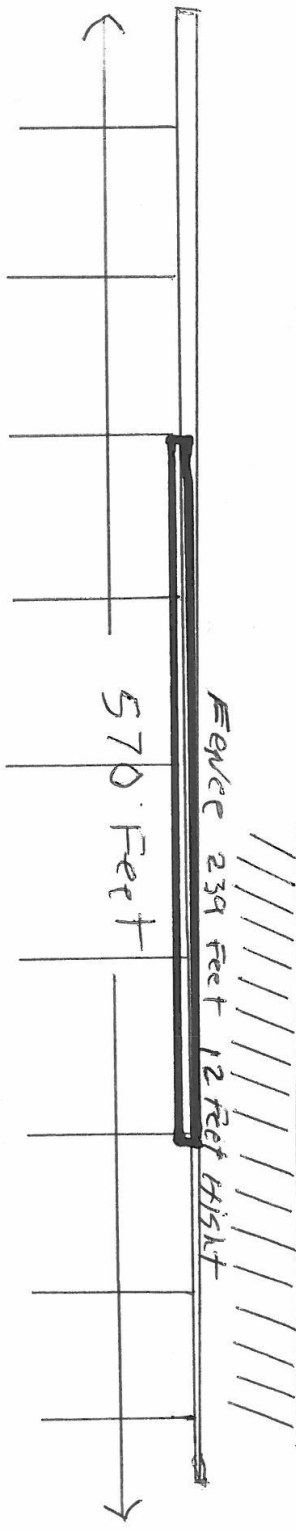
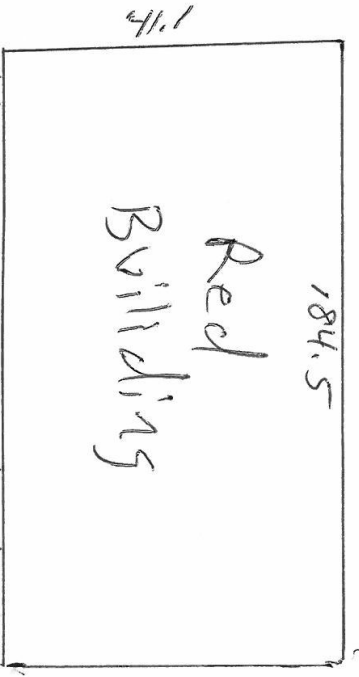
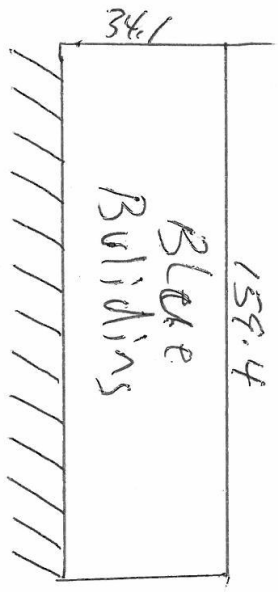
Front parking



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255 Feet  
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**Attachment 4 – Applicant’s Justification**

**Variance Justification:**

In order to justify approval of any variance, the Board of Zoning Adjustment considers the following criteria. Please answer all of the following items. Use additional sheets if needed. A response of yes, no, or N/A is not acceptable.

1. Explain how the variance will not adversely affect the public health, safety or welfare.

Fence was installed to prevent criminal activity and littering on to surrounding properties which was being constantly dealt with.

2. Explain how the variance will not alter the essential character of the general vicinity.

An existing 12ft Tall Fence was added to continue the look/performance of existing fence for security reasons.

3. Explain how the variance will not cause a hazard or a nuisance to the public.

We have improved the look/view of neighboring property to hide trash and or disruptive behavior due to random guests and or tenants.

4. Explain how the variance will not allow an unreasonable circumvention of the requirements of the zoning regulations.

An existing 12' Tall fence was added onto so the variance is an addition to a previous job.

*Additional consideration:*

1. Explain how the variance arises from special circumstances, which do not generally apply to land in the general vicinity (please specify/identify).

Hotel is multi-story dwelling and fence hides only a portion which is being obstructed by fence height. Tenants have thrown needles and trash into yards which is reason for fence height to prevent harm to neighbors.

2. Explain how the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create unnecessary hardship.

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3. Are the circumstances are the result of actions of the applicant taken subsequent to the adoption of the regulation which relief is sought?

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## Attachment 5 – Letter of Concern

**From:** Nick Spears <zoso512@yahoo.com>  
**Sent:** Tuesday, February 03, 2015 3:54 PM  
**To:** Long, Sherie  
**Subject:** Economy Inn 3304 Bardstown Rd

Hello,

I am a homeowner/resident and member of the Bon-air Neighborhood Association and I have been given your email as a way to be heard on the subject of the Economy Inn at 3304 Bardstown Rd.

This property has been an eyesore and blight of the surrounding neighborhood for years. Years ago, while still in high school, my friends and I would joke how "ghetto" and dangerous the hotel looked and the immediate surrounding area. Properties such as this only harm the neighborhood and bring down property values and give the impression to outsiders that our neighborhood is a "ghetto" and/or dangerous.

I hope that somehow we can make the property owner more accountable to clean up/close/raze the hotel in order to clean up this section of the Bardstown Rd corridor.

Thank you for your time.  
Truly,  
Nick Spears  
Resident - 3555 Terrier Ln

**Attachment 7 - Site Photos**



View of Economy Inn and Suites from Bardstown Road



Southern Portion of the new fencing along the rear of the property



Portion of the new fencing which is 12 feet tall along the rear of the property



12 feet fencing along rear of property



Northern portion of new 12 foot fence and the existing fence



Existing fencing along the rear of the property



View of the 12 foot fence from the adjacent residential properties