

# Board of Zoning Adjustment Staff Report

January 13, 2014  
(Continued from December 2, 2013)



<b>Case No:</b>	13Variance1046
<b>Project Name:</b>	None (residence)
<b>Location:</b>	420 Macon Avenue
<b>Owner(s):</b>	JNC Holdings, LLC
<b>Applicant(s):</b>	Beverly "Lindsey" Miller
<b>Representative(s):</b>	Same as Applicant
<b>Project Area/Size:</b>	6,446 square feet
<b>Existing Zoning District:</b>	R-4, Single Family Residential
<b>Existing Form District:</b>	Neighborhood
<b>Jurisdiction:</b>	St. Matthews
<b>Council District:</b>	9- Tina Ward Pugh
<b>Case Manager:</b>	Jessica Butler, Planner I

## REQUEST

- Variance from Chapter 9.1.B.1.a of the Development Code to allow a proposed fence to exceed the maximum permitted height along Willis Avenue, the property's street side yard.

Location	Requirement	Request	Variance
St. Matthews	48"	72"	24"

## CASE SUMMARY/BACKGROUND

This case had been docketed for December 2, 2013. It was continued to January 13, 2014, because no representative for the applicant was present to confirm the details of the proposed fence style.

The owner is proposing to build a fence around their rear yard at this corner property. The street side yard fence height, allowable, is 48". The applicant proposes to build a privacy fence at 72".

## LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

	Land Use	Zoning	Form District
<b>Subject Property</b>			
<b>Existing</b>	Residential, Single Family	R-4	N
<b>Proposed</b>	Residential, Single Family	R-4	N
<b>Surrounding Properties</b>			
<b>North</b>	Residential, Single Family	R-4	N
<b>South</b>	Residential, Single Multi-Family	R-4	N
<b>East</b>	Residential, Single Family	R-4	N
<b>West</b>	Residential, Single Family	R-4	N

## PREVIOUS CASES ON SITE

None

## SITE CONTEXT

This property is within St. Matthews, and is surrounded by bungalow style homes. As a corner property, along Willis Avenue, this property owner seeks approval for privacy fencing like what exists at numerous other properties within near proximity.

## INTERESTED PARTY COMMENTS

Staff received a call from two adjacent neighbors. Once one was explained the proposal, they voiced no concern. The other caller stated that she does not want to see additional privacy fences put up along Willis, as she thinks all of them have detracted from the quality of the neighborhood.

## APPLICABLE PLANS AND POLICIES

Cornerstone 2020  
Land Development Code

## 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 because the fence will not be encroaching any vision triangle area.

(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 fences are built at this height at many properties along this primary collector, Willis Avenue.

(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 by building this fence the property owner, residents, and guests will be better guarded or less visible for travelers along Willis Avenue.

(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 numerous fences exist, at the requested height, along this 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 subject property is a corner lot, and therefore is not allowed the 6' fence that inter-block properties would be allowed in their rear yard.

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 on the applicant because there are numerous fences of like height along this street, and a 48" tall fence would not serve their purposes of gaining privacy.

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 is responsible for the placement of the new structure.

### TECHNICAL REVIEW

There are no outstanding technical review items.

### STAFF CONCLUSIONS

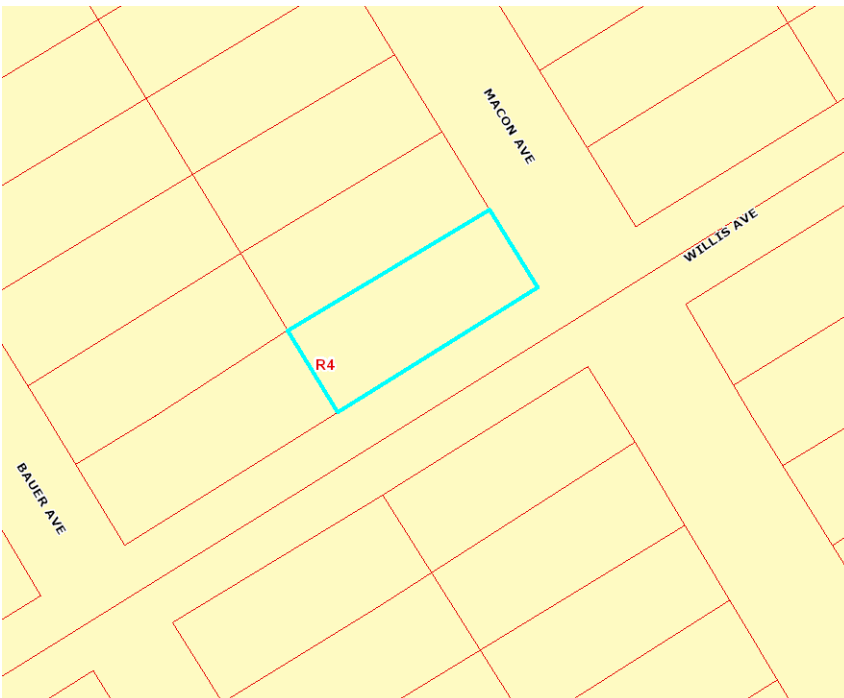
Based upon the information in the staff report, the testimony and evidence provided at the public hearing, the Board of Zoning Adjustment must determine if the proposal meets the standard for a variance established in the Land Development Code.

### NOTIFICATION

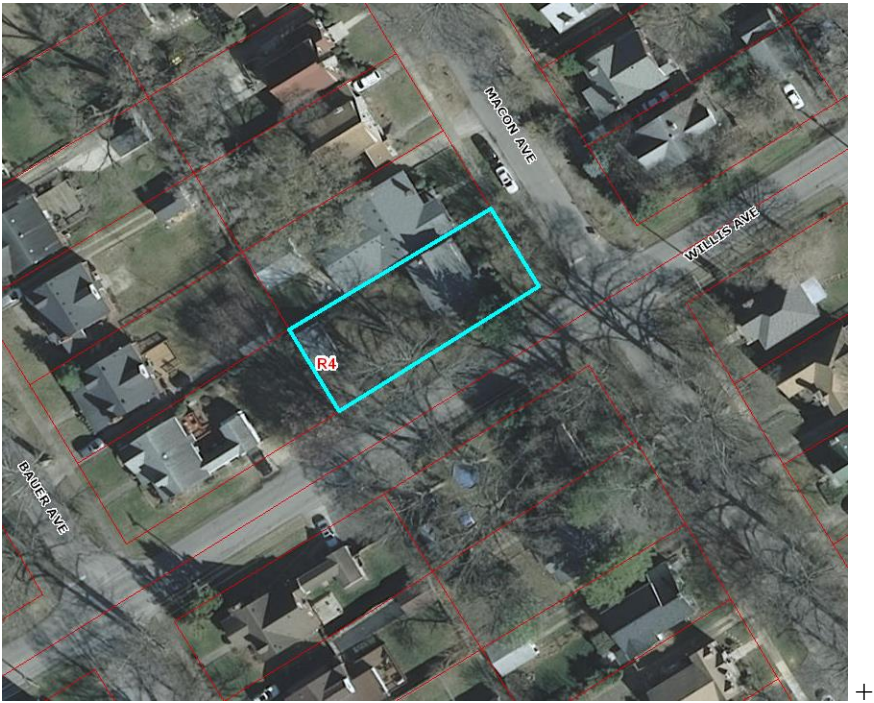
Date	Purpose of Notice	Recipients
11/15/13	APO Notice	First tier adjoining property owners Neighborhood notification recipients
11/15/13	Sign Posting	Subject Property Owner
12/31/13	Sign Re-posting	Subject Property Owner

### ATTACHMENTS

1. Zoning Map



## 2. Aerial Photograph



## 3. Cornerstone 2020 Staff Checklist

Cornerstone 2020 Guidelines & Policies	Cornerstone 2020 Plan Element	Plan Element or Portion of Plan Element	Final Finding	Final Comments
Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1, 3.4-3.7, C4.1.-4.7	Community Form/Land Use Guideline 3: Compatibility	A.23: Setbacks, lot dimensions and building heights are compatible with those of nearby developments that meet form district standards.	√	This proposal is for fencing at a corner structure, along a primary collector roadway.

#### 4. Applicant's Justification Statement

##### Additional Information

In order to justify approval of any Variance, the Board considers two criteria. Please answer all of the following items. (Use additional sheets if needed)\*  
**All questions must be answered. A response of yes, no & N/A is not acceptable.**

**1. Reasons that the granting of the variance:**

**a) Will not adversely affect the public health, safety or welfare.**

The fence will be aesthetically pretty. In no way will it obstruct traffic or be an eyesore. At the highest point it will be 6 feet tall. There will be a 6" swoop down every 8 feet to make it look more attractive. (see attached photo) Thank you for your consideration!!

**b) Will not alter the essential character of the general vicinity.**

This house was built in 1928. It is in dire need of repair. I am fixing it up to make it livable.

**c) Will not cause a hazard or a nuisance to the public.**

I am adding to the value of the street and the neighborhood.

Section 9.1B says you can only erect a 4" tall fence on a corner lot. along the property line.

**d) Will not allow an unreasonable circumvention of the requirements of the zoning regulations.**

Lots of people have 6 foot tall fences who live on corner lots in St. Matthews, I guess they received permission to do so. A 4' fence would not serve much purpose in terms of privacy and noise reduction. I would be nervous about children playing in the back yard with a 4 foot tall fence in terms of security. I think it makes the back yard too visible to all of the cars & trucks going by on Willis.

**2. Additional consideration.**

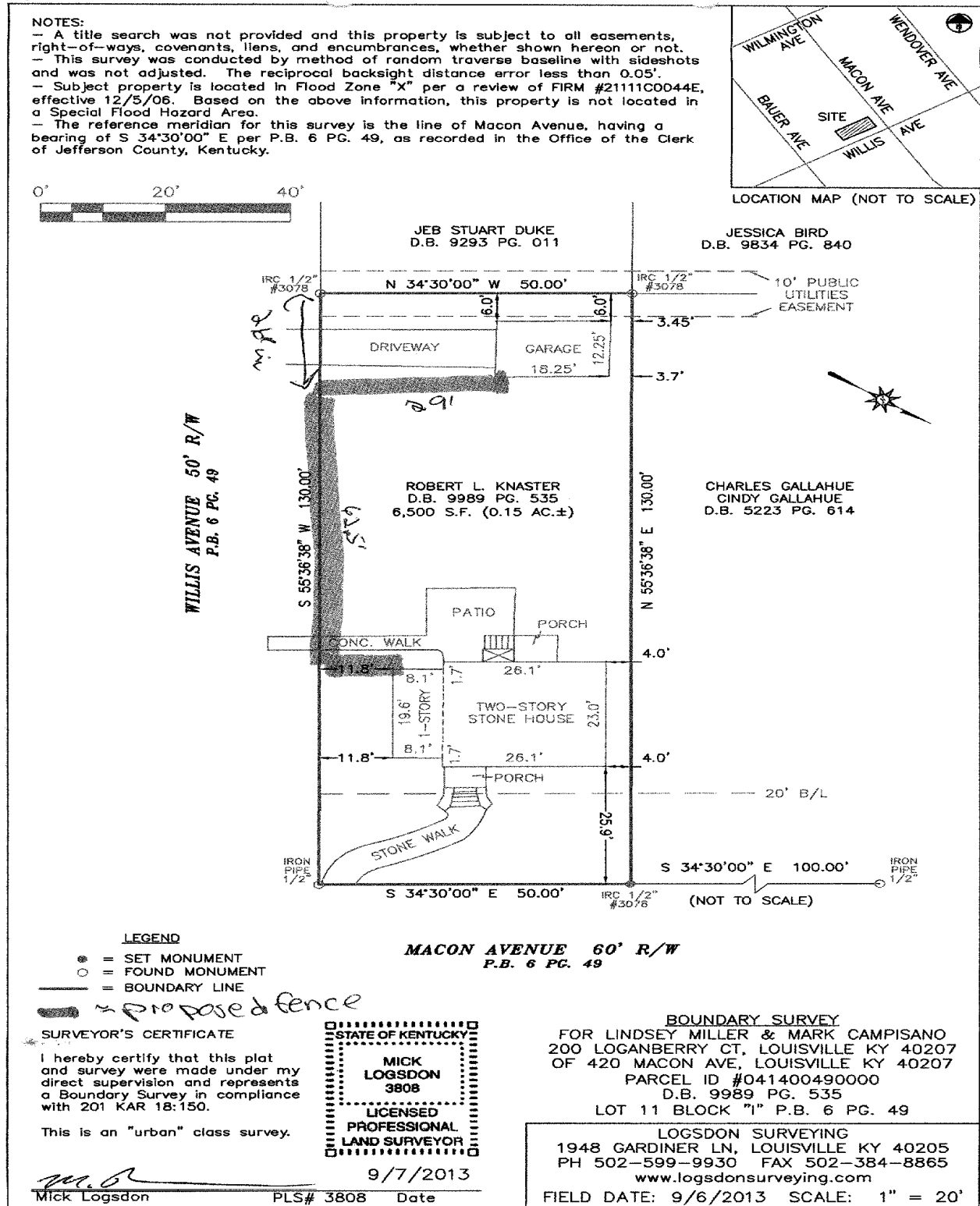
**a) Whether the variance arises from special circumstances, which do not generally apply to land in the general vicinity; (Please specify/identify)**

Section 9.1B says you can only erect a 4" tall fence on a corner lot along the property line. I would like to put up a 6' fence, it would measure 5' 6" at the low end of the swoop down.

**b) Whether the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship.**

**c) Whether the circumstances are the result of actions of the applicant taken subsequent to the adoption of the regulation which relief is sought.**

## 5. Site Plan



13VARIANCE1046