

**Board of Zoning Adjustment
Staff Report**
June 16, 2014



Case No:	14Variance1045
Project Name:	None (Residence)
Location:	376 North 41 st Street
Owner(s):	Kristina Agnes Mucker
Applicant(s):	Kristina Agnes Mucker
Representative(s):	Kristina Agnes Mucker
Project Area/Size:	0.14 acres
Existing Zoning District:	R-5, Residential Single Family
Existing Form District:	Traditional Neighborhood
Jurisdiction:	Louisville Metro
Council District:	5- Cheri Bryant Hamilton
Case Manager:	Jon E. Crumbie, Planner II

REQUEST

- Variance from the Land Development Code to allow a proposed wood fence to exceed the maximum height along the Parker Avenue street side yard

Location	Requirement	Request	Variance
Parker Ave Street Side Yard	3' – 6"	6'	2' – 6"

CASE SUMMARY/BACKGROUND

The owner is proposing to remove an existing chain link fence and add a wood privacy fence. The fence will be 6 feet in height. The fence will be 13 feet from the edge of pavement and located along the Parker Avenue property line.

LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

	Land Use	Zoning	Form District
Subject Property			
Existing	Residential Single Family	R-5	TN
Proposed	Residential Single Family	R-5	TN
Surrounding Properties			
North	Residential Single Family	R-5	TN
South	Residential Single Family	R-5	TN
East	Residential Single Family	R-5	TN
West	Residential Single Family	R-5	TN

PREVIOUS CASES ON SITE

There are no previous cases of the site.

SITE CONTEXT

The site is irregular in shape and located on the southwest corner of Parker Avenue and North 41st Street. The site is surrounded by residential uses and there are numerous fences in the area of varying styles and sizes.

INTERESTED PARTY COMMENTS

Staff received 1 phone call from an adjacent resident located at 371 North 41st Street who is in support.

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 located in the sight triangle.

(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 there are numerous fences of varying styles and heights in the general 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 because the fence will not affect any pedestrian or motor vehicle movement from the alley or the street.

(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 there are numerous fences of varying heights and styles in the general area located on corner lots.

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 corner lot and high crime rate in the area may be considered a special circumstances.

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 safety of the property would be diminished.

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 fence, but not the corner lot or high crime rate.

TECHNICAL REVIEW

Transportation Planning reviewed the proposal and has no concerns (see attached information).

STAFF CONCLUSIONS

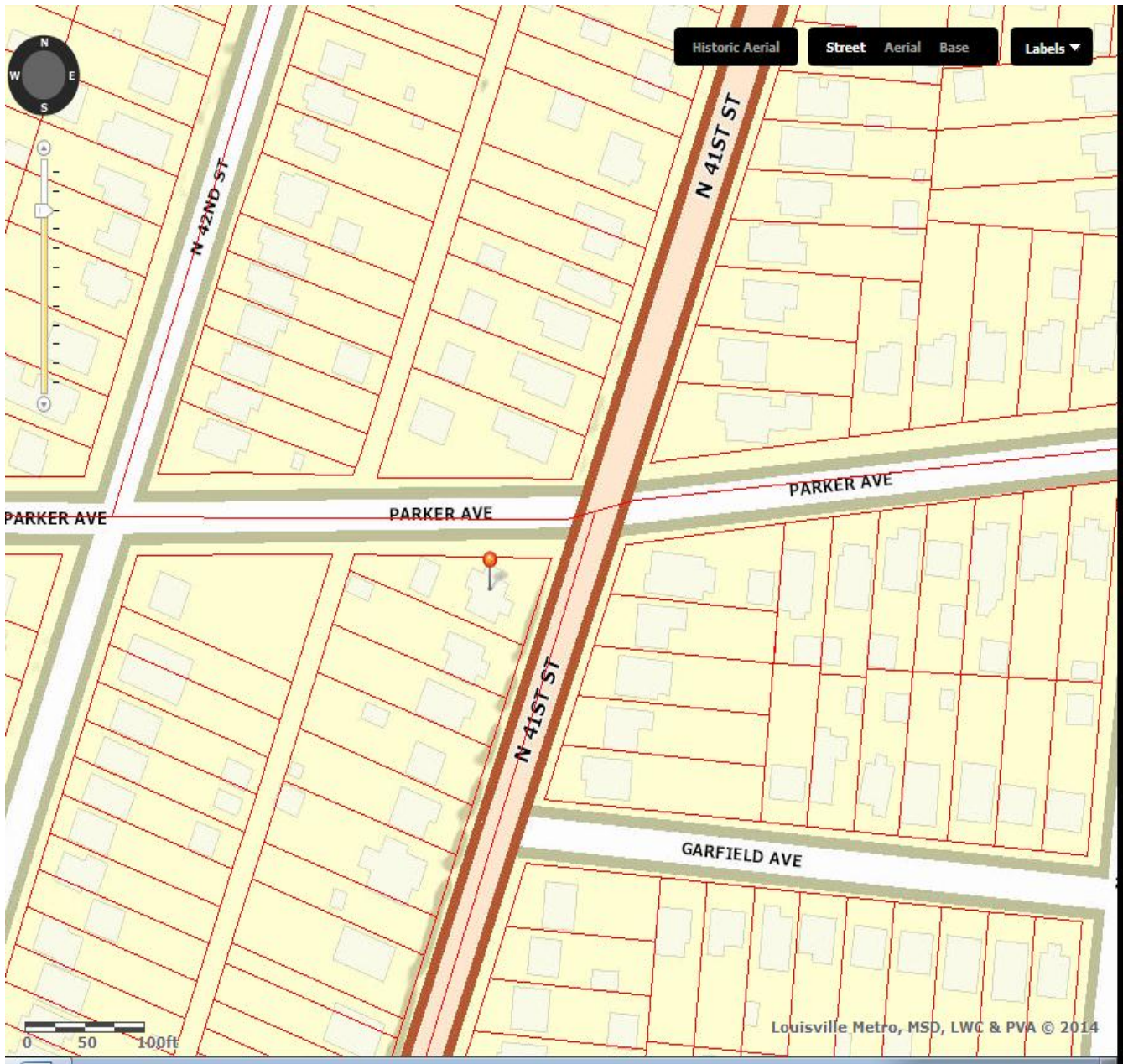
Based upon the information in the staff report, the testimony and evidence provided at the public hearing, the Board of Zoning Adjustment must determine if the proposal meets the standard for a variance established in the Land Development Code.

NOTIFICATION

Date	Purpose of Notice	Recipients
05/30/14	APO Notice	First tier adjoining property owners Neighborhood notification recipients
05/30/14	Sign Posting	Subject Property Owner

ATTACHMENTS

1. Zoning Map



2. Aerial Photograph



3. Applicant’s Justification Statement and Proposed Findings of Fact

Part 2 of 2

May 12, 2014

Kristina Agnes Mucker
376 North 41st Street
Louisville, Kentucky 40212
(502) 298-4679
(502)298-6258-alternate #

RE: Part 2 of 2- Variance Justification Request for:

Property Project Address: 376 North 41st Street- Louisville, Kentucky 40212
Primary Parcel ID: 009C00490000
Deed Book(s) Page Numbers: 10038-0909

I am respectfully submitting a request for a variance change of ^{1/2}2 feet for the fence on the property. There is no fence (currently in the back (southwest side) of the property. The change would mean a fence (totaling) six feet in the requested area.

Living in the 40212 zip code and the highest crime area in city, it has been difficult to feel safe and keep the negative elements away from the property. Historically, when my parent were younger they were able to talk to people who would randomly enter our yard or steal things and try to help them. They would even share the vegetables from our little garden. My parents have always been willing to share with others in the past, but the people who have been in the neighborhood for the last ten years are bolder, roam the streets all night and are scarier than ever before. They have no respect for me, as a young person, or my elderly parents. It is not uncommon to wake up and have someone in your yard sitting on your lawn furniture, urinating, stealing your aluminum cans or the vegetables, drinking, smoking marijuana, running from the police and fighting. The helicopters that come into the area let us know we cannot sit outside. The roamers will curse me or my parents. Every year it's getting worse. My mother has to tie down her hanging baskets and even that does not always secure that they won't be stolen.

My dad is 79 years old, a cancer survivor, and retired from Henry Vogt Machine Company after 42 years of service. My mother is 59 and a licensed social worker had to retire after 30 years of service as director of social services for a primary care facility. She has emphysema. I am currently primarily responsible for my parents. I am a sophomore at Spalding University and I work part-time. My father and mother take pleasure in their yard and their little garden. They are unable to protect themselves against the elements that exist today. Roaming people who randomly like to taunt older people in the neighborhood by hanging out in their yards, sitting in their yards, smoking and exhibiting lewd behavior in the alley and in the yards at night and sometimes during the day. The block watch, unfortunately is getting older and dying out. The police come but by the time they come the teenagers have run away. We are at risk and feel very vulnerable. I am currently director of the "Best Buddy's" Program at Spalding University for Handicapped Young People. I would like to plan picnic's in my "own" yard instead of going miles away. As a family, can't even sit out at night anymore.

Again, I respectfully request your help to help us protect ourselves. The variance will not cause a hazard or a nuisance. I rode around my street and my neighborhood and directly observed my neighbors fences. Our neighbors who are "renting" (374 no 41st St.) were just given permission from the homeowner to build a six-foot fence. They just completed it 03/10/14. This is the essential character that exist as we who have invested in our neighborhood and are homeowners who are trying to protect our investment. My parents worked all their life to invest in this community (40212) I hope that I will be able to continue to live here. Running and relocating to another neighborhood would not be a realistic solution for me, but a fence can at least keep the bad element a little further away and give my family some feeling of being safer. Thank you for your consideration.

Kristina Agnes Mucker- May 12, 2014

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14-VAR-1045

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Page 1 of 2

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.

1. The Variance **"will prevent"** the current problems with public drunkenness, drugs and lewd behavior in the areas detailed/requested by preventing the high volume of foot traffic, crossing and lounging in the areas of the private property. We are at risk due to the roamers and public (teenagers and adults) who insist on dwelling and menacing in the immediate areas outlined.

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

2. The Variance will not alter the essential character because there are at least five and six foot fencing in the immediate area (directly in the other two corner lots adjacent to my property, next door and through the neighborhood). The fencing is far enough back off the front that it actually enhances the property.

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

3. I currently have a lower fence that has actually created a situation that is not only a nuisance, it is more dangerous than ever before because of the foot walkers are getting bolder and believe they are more entitled to whatever they see in this already documented "high crime" 40212- area. We are afraid to sit outside on our own property at night and some days

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

4. The Variance will "not" allow an unreasonable circumvention. The fence will keep the crime that would occur on my property down and make me and my elderly parents at least feel safer by not giving the menacing element direct access to us

Additional consideration: — Page 1 of 2

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

1a. The Variance arises from special circumstances because of the "high crime" area and the steady high volumes of foot traffic, especially when the helicopters and police cars come through and the teenagers and adults start coming in my yard. We feel violated and fearful for our overall well-being. The night and weekends are the worse times.

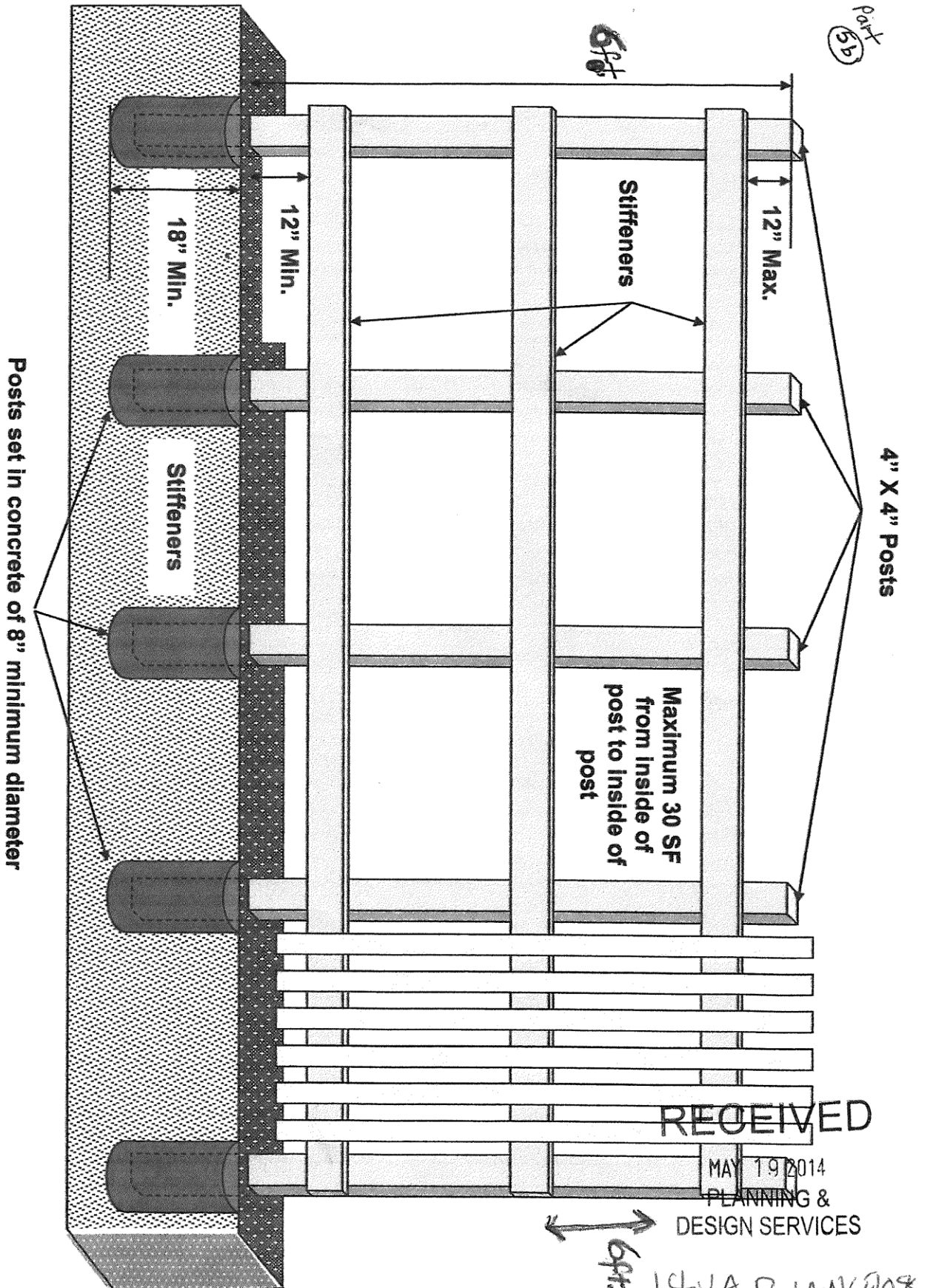
2. Explain how the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create unnecessary hardship.

2b. Growing up in my home and on my street it was not always this way. A long time ago, I did feel safe. Me and my family have been subjected to hardship because of the steadily increasing crimes that occur in this neighborhood by people who randomly come through and do whatever they please. We work hard for our things and would like to at least feel safe in our own yard.

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

3c. No, My family and I are seeking relief from the foot traffic, the unwelcomed invasion of our property and the menacing behavior that we are subjected to because the foot travelers and people who believe they have a right to just walk up to and come onto your property and help themselves to whatever they see, relieve themselves in your yards and sit on your property because they can access it

14VARIANCE1045



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6 ft.

14VAR1045

Crumbie, Jon

From: Markert, Tammy O
Sent: Friday, May 30, 2014 11:30 AM
To: Crumbie, Jon
Subject: 376 N 41st St, 14variance1045

Jon,

This isn't the multi-way stop I had in mind, must be down the street. Here's the corner shown below however the traveling public along N. 41st does not have to stop so they do not need to look to the left for safe movement. In my opinion, there would be no sight line issues in relation to safe traffic flow. These street name signs have swing around, so don't let the street view confuse you as shown below for those signs!



TAMMY MARKERT, AICP, PTP
TRANSPORTATION PLANNING COORDINATOR
444 S. 5TH STREET, STE 300
LOUISVILLE, KY 40202
OFFICE (502) 574-3875

Kristina Agnes Mucker
376 North 41st Street
Louisville, Kentucky 40212
(502) 298-4679
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N 41st Street
Parker Avenue

ALLEY

Variance for Side Yard Fence

Kristina Agnes Mucker
376 North 41st Street
Louisville, Kentucky 40212

Parcel "Primary" IO #:

009C00490000

Required - 42 inches

Requested - 30 inches (2 1/2 feet)

R-5 Single Family Residential

Deed Book(s) Page Numbers:

10038-0909

Existing Form District:

Traditional Neighborhood

* Requesting 2 1/2 feet
Variance to make fence
6ft.

X-X-X - Existing Fence 42 inch fence



1 inch = 20 ft

0 20

