

Board of Zoning Adjustment Staff Report

May 23, 2022



Case No:	22-VARIANCE-0060
Project Name:	Fence Height
Location:	931 Schiller Avenue
Owner/Applicant:	Justin and Kelly Toon
Jurisdiction:	Louisville Metro
Council District:	6 – David James
Case Manager:	Joel Dock, AICP, Planning Coordinator

REQUEST:

- **Variance** from Land Development Code, Section 4.4.3 to allow a fence located in the rear and side yard setback to exceed the maximum height of 8' and be 8'6" in height

CASE SUMMARY/BACKGROUND

The subject property is located between E. Kentucky and Breckenridge Streets along Schiller Avenue. An 8'6" fence at its highest point has been constructed along the side and rear property lines adjacent to the rear alley. The fence is constructed from galvanized steel roof panels and attached to the existing wood privacy fence.

STAFF FINDINGS

Staff finds that the requested variance has not been adequately justified based on staff's analysis contained in the standard of review.

Based upon the information in the staff report, and 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.

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 as the increase in height does not impede the safe movement of pedestrians or vehicles.

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

STAFF: The proposed height will alter the essential character of the general vicinity as the height of fences located in side yards is more common to be less than 8' and constructed of wood or chain link. The height along the alley appears consistent with taller fences or walls at the alley, including accessory structures.

- (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 it does not interfere with the movement of people or vehicles and no natural features are impacted.

- (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 as the fence was/is capable of being constructed or modified to be within the height limits, especially along the side property lines.

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 does not arise from special circumstances which do not generally apply to the land in the general vicinity or the same zone as the same requirements for fences in side or rear yards are applicable to all residential fences in Traditional forms and there do not appear to be any site constraints.

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 create an unnecessary hardship on the applicant as a fence meeting the requirements are capable of being accommodated.

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, but these actions have occurred in violation of the requirements.

VARIANCE PLAN REQUIREMENT

In accordance with LDC Section 11.5B.1.C (Requirement to Follow Approved Plan), a variance shall be approved only on the basis of the plan approved by the Board and shall be valid only for the location and area shown on the approved plan. All construction and operations must be conducted in accordance with the approved plan and conditions attached to the variance.

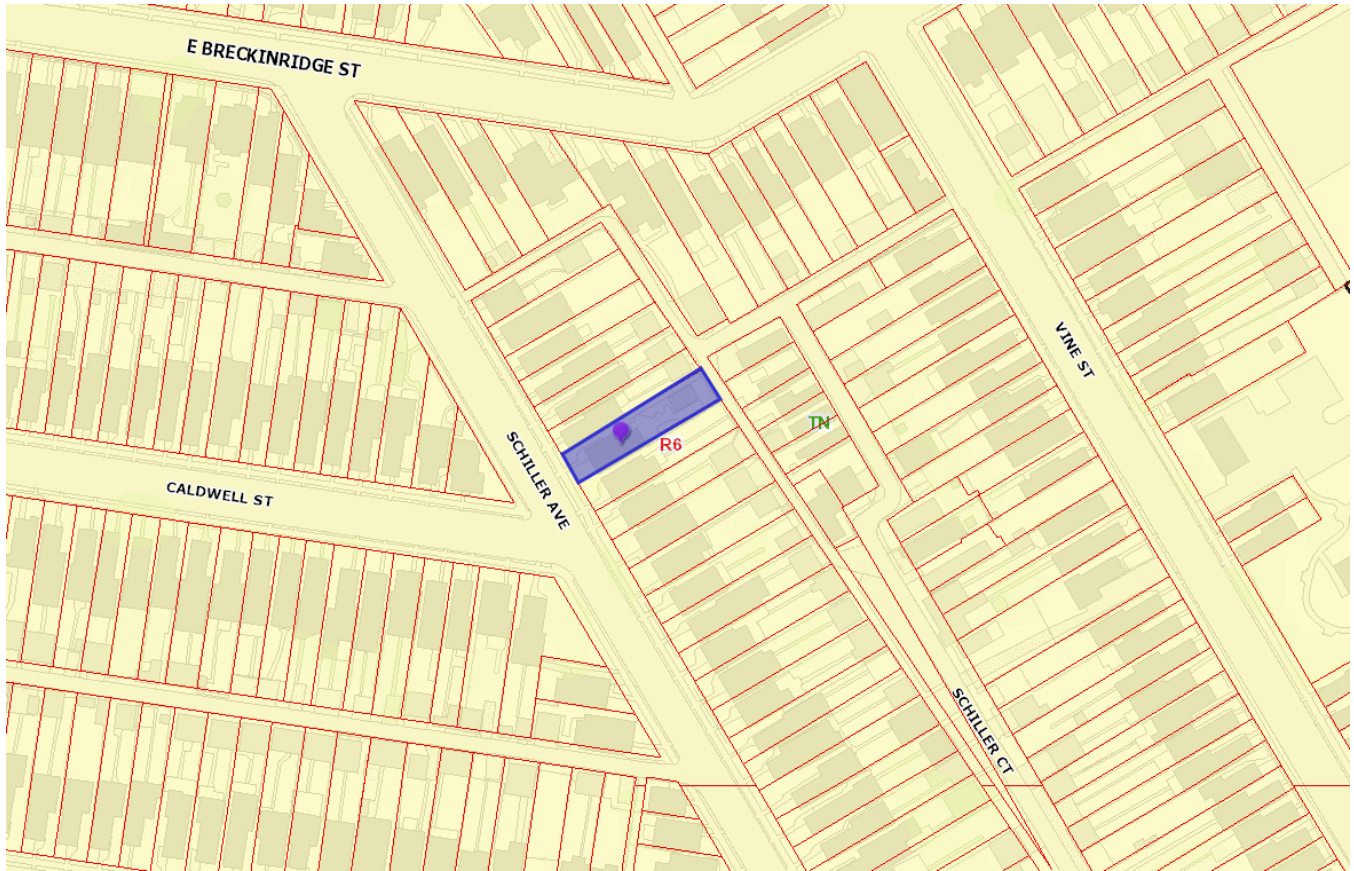
NOTIFICATION

Date	Purpose of Notice	Recipients
05/05/22	Hearing before BOZA	1 st tier adjoining property owners Registered Neighborhood Groups in Council District 6
05/09/22	Hearing before BOZA	Notice posted on property

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph

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2. Aerial Photograph

