

Board of Zoning Adjustment Staff Report

April 6, 2015



Case No:	15Variance1010
Project Name:	Existing Fence
Location:	609 Winyan Lane
Owner(s):	Adam & Tara Green
Applicant:	Same as above
Representative:	Adam & Tara Green
Project Area/Size:	0.2869
Jurisdiction:	Louisville Metro
Council District:	18 – Marilyn Parker
Case Manager:	Sherie' Long, Landscape Architect
(Continued from March 16)	

REQUEST

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

Variance

Location	Requirement	Request	Variance
Street Side Yard (North)	48 inches (4')	72 inches (6')	24 inches (2')

CASE SUMMARY/BACKGROUND/SITE CONTEXT

This case was continued from the March 16, 2015 BOZA Hearing to allow the applicant to meet with the Homeowner’s Association.

The applicant received a “Notice of Violation” from Codes of Regulation’s in January of this year concerning the height of the existing fence located in the 25 foot setback along the Elsmere Circle frontage. An application requesting a variance for the height of the existing fence was submitted February 23, 2015.

This R-5 single family lot is located at the corner of Winyan Lane and Elsmere Circle in the Old Dorsey Place Subdivision located north of Shelbyville Road off of Dorsey Way. The applicant removed an existing wooden fence which was located around the perimeter of the existing in-ground swimming pool located to the rear of the house. However, the new 6 foot wooden fence, constructed to replace the existing fence, was not installed in the same location. But instead was constructed closer to the street just on the outside of the existing sidewalk and street right-of-way in the 30 foot building limit area and the 25 foot setback. Fences located within the Neighborhood Form District in the 25 foot setback are not too exceed 4 feet in height. The 6 foot fence which was constructed exceeds the allowable height by 2 feet.

The applicant provided an email (Attachment 7) from the Old Dorsey Place Homeowner’s Association Board addressing the request to construct a new fence. The Homeowner’s Association representative did not see any violation of the “deed restrictions” but did suggest a “survey” be completed and the applicant verify with “Louisville Metro Licensing and Permits” to ensure a “building permit” was not necessary.

The applicant stated in his justification statement that there are “many 6 foot fences” in the neighborhood. Please refer to Attachment 6 to see the existing fences located on other corner properties within the neighborhood and vicinity. Please note all the fences are either the 4 foot allowable height or are located outside the setback area when they are 5 or 6 feet in height.

Attachment 6, Example 5, shows a fence 5 or 6 feet in height on the property at 801 Foxfire Drive. This property owner received a notice of violation citing the height of the fence exceeding the maximum 4 feet in October 2014, however this property owner choose to move the 5 or 6 feet fence out of the 25 foot setback to avoid further enforcement procedures and conform to the zoning requirements.

LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

The site is zoned R-5 in the Neighborhood Form District (N). It is surrounded by residential property zoned R-5 and R-4 in the Neighborhood Form District (N).

	Land Use	Zoning	Form District
Subject Property			
Existing	Single-family residential	R-5	N
Proposed	Single-family residential	R-5	N
Surrounding Properties			
North	Single-family residential across Elsmere Circle	R-5 & R-4	N
South	Single-family residential	R-5	N
East	Single-family residential	R-4	N
West	Single-family residential across Winyan Lane	R-5	N

PREVIOUS CASES ON SITE

14PM29571 – Violation notice for “A fence taller than 4 feet located in the setback” issued January 2015. Pending

Foxboro Estates Subdivision, Section 2 – Recorded in Plat Book 34 Page 13 – October 13, 1980

Docket # 9-6-80 – Rezoning of property from R-4 to R-5 – approved 1980

Docket # 10-26-77 – Subdivision Case - approved 1980

INTERESTED PARTY COMMENTS

There was an inquiry from a concerned neighbor; however no written comments were received prior to publishing this staff report.

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 existing 6 foot fence is not blocking the visibility at the street intersection or interfering with the traveling public; nor is the fence blocking or interfering with the pedestrian use of the adjacent sidewalk. The location of the fence is also not impeding or interfering with the ability of the property owner to safely enter or exit his driveway.

- (b) The requested variance will alter the essential character of the general vicinity.

STAFF: The requested variance will alter the essential character of the general vicinity because the existing fences located in and around the neighborhood, which are taller than 4 feet are located outside the building limit areas and/or setbacks. The taller fences do not encroach into either the 25 foot setback or the 30 foot building limit areas with the exception of one fence located at 801 Foxfire Drive. This recently constructed fence was previously located in the 25 foot setback, but to avoid additional enforcement action, the property owner choose to relocate the fence out of the 25 foot setback area.

- (c) The requested variance will cause a hazard or nuisance to the public.

STAFF: The requested variance will allow a fence which does not conform to the standard established by the existing fences in the vicinity. The previous location of the fence on the subject property, adjacent to the in-ground swimming pool, was also non-conforming to the established neighborhood pattern of fences not being located in the building limit area. However the previous fence was setback at least 25 feet or more from the property line as required by the Development Code. The location and height of this new replacement fence has created enough of a nuisance and concern for a neighbor to contact zoning enforcement to address the conformance and the violation of the zoning regulations.

- (d) The requested variance will allow an unreasonable circumvention of the zoning regulations.

STAFF: The requested variance will allow an unreasonable circumvention of the zoning regulations because the fence is not conforming to the established pattern in the neighborhood. Even with the lot configuration, the location of the taller fence does not conform to other similar corner lots in the vicinity.

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: This lot is a corner lot where the rear of the house or private area is located adjacent to a street; however other corner lots in the vicinity have conformed to the requirements. Therefore, even with the configuration of this lot, the established pattern of using a lower fence or locating the fence out of the setback could be provided on this lot.

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 some hardship on the applicant because either the fence would need to be relocated out of the 25 foot setback to maintain the current 6 foot height or the fence would need to be reduced by 2 feet within the 25 foot setback.

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 willful violate the zoning regulation. The owner was provided approval from the Homeowners Association Representative. However, he was suggested the owner obtain a survey and verify if a building permit was necessary from Metro Licensing and Permits.

TECHNICAL REVIEW

There are no technical issues.

STAFF CONCLUSIONS

Based upon the information in the staff report, the analysis of the standards of review do not support the request to grant a variance of 2 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.

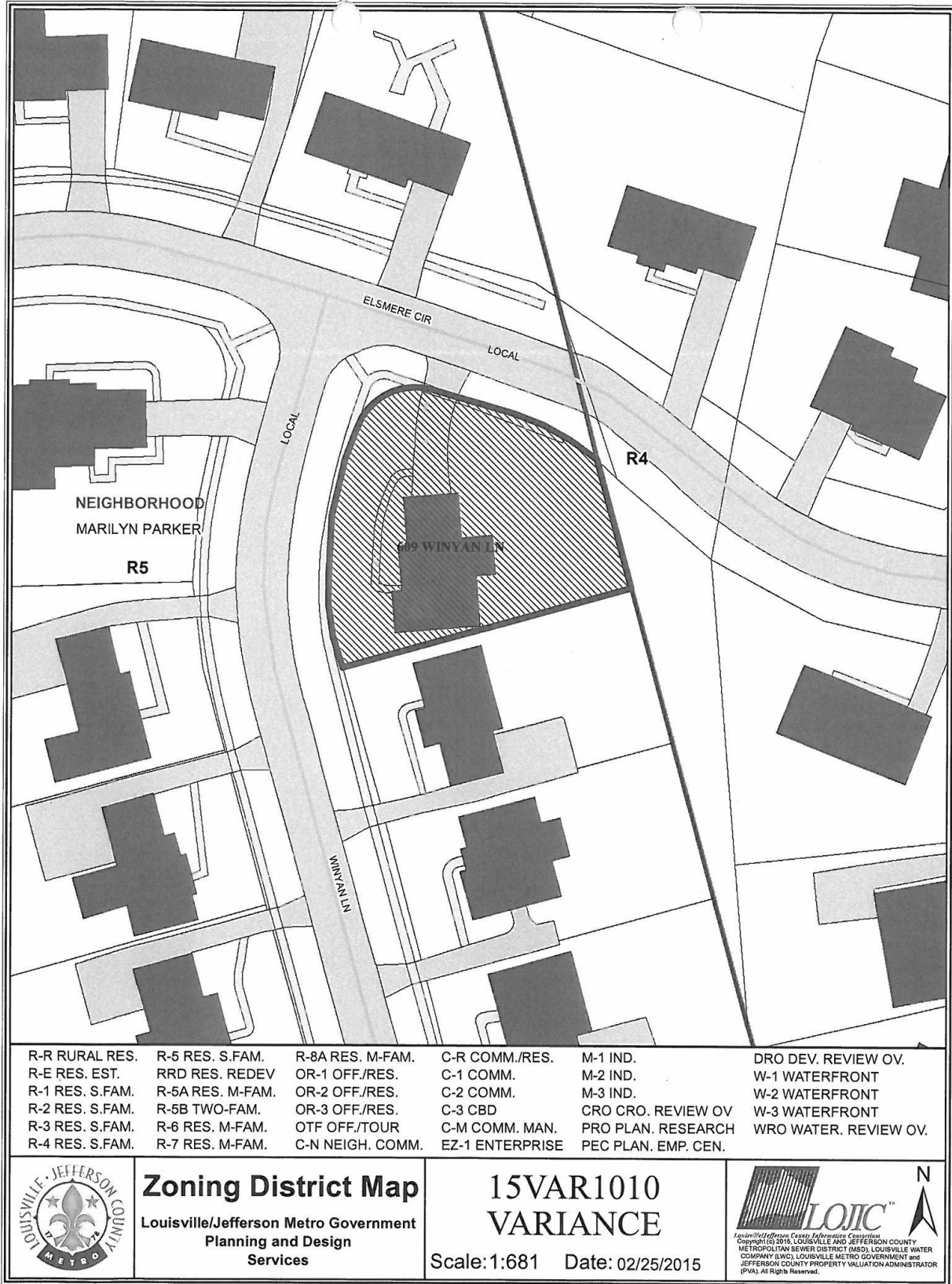
NOTIFICATION

Date	Purpose of Notice	Recipients
02/26/2015	BOZA Hearing	Neighborhood notification recipients
02/27/2015	BOZA Hearing	1 st tier adjoining property owners
02/27/2015	Sign Posting	Subject property

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Site Plan
4. Applicant's Justification
5. Site Photographs
6. Other Existing Fences in the Neighborhood
7. Correspondence with Homeowner's Association

Attachment 1 - Zoning Map



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

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 VARIANCE**

Scale: 1:681 Date: 02/25/2015



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.
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
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Scale: 1:320 Date: 02/25/2015



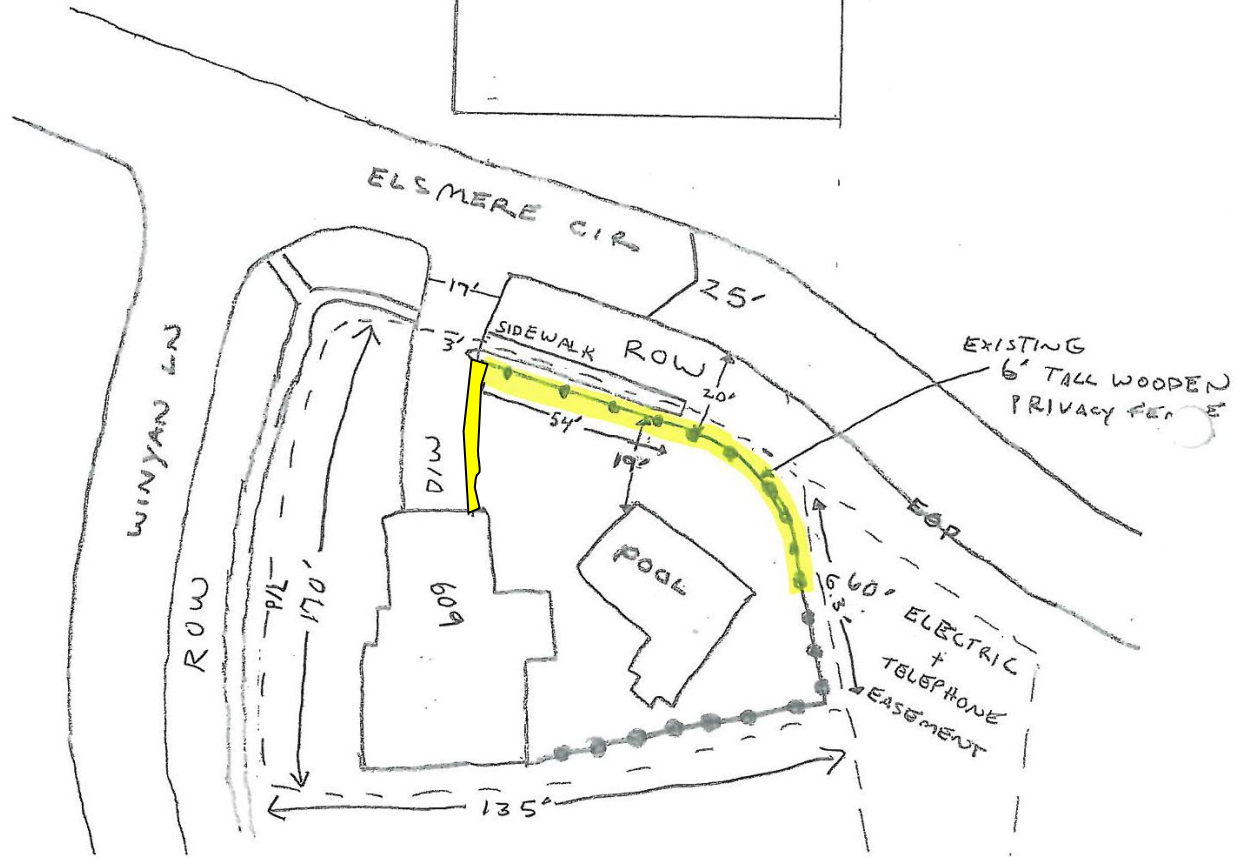
Attachment 3 - Site Plan



Variance for street side setback,
 MAX FENCE HGT: 4'
 REQUESTING HGT: 6'

609 WINYAN LN
 Parcel id: 174000830000

R5 SFR
 NEIGHBORHOOD FORM DIST.
 1" = 30'



Attachment 4 – Applicant’s Justification

RECEIVED

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.

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

I have a three small children, an inground Pool, and a German Shepherd dog. The 6’ fence provides added safety and protection for my children as well as all neighborhood children from pool accidents and dog jumping fence. If I have to shave 2’ off the fence it will cause a potential safety hazard.

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

There are many 6’ fences in my neighborhood and if anything in my opinion having to trim 2’ off of fence would alter the character more because it would not look near as nice.

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

By granting the variance I would be allowed to continue providing the additional safety & protection to the neighborhood children (there are many) and my own children that play in my front yard daily. It would also provide more barrier for my large dog so that it could not climb or jump over fence.

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

My fence is within all requirements of my hoa and I actually went to them before constructing nearly a year ago. They then gave me approval and instruction to proceed. I was completely unaware (and apparently so was our HOA) of setback rule of 4’ height and other than that it is in city compliance.

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).

I have the only corner lot in which the sidewalk ends in my yard a few feet past my driveway due to the subdivision ending into grassy easement. My fence runs several feet off but in line with the sidewalk that ends but. Nobody uses it & the only foot traffic are kids playing in grass with my kids.

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.

In this case having to trim 2’ off my fence would unnecessarily endanger all children who could climb a 4’ fence but not a 6’ fence and potentially drown in my pool. It could also cause potential issues with my dog climbing or jumping over the fence so that I would be forced to chain her up instead.

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

I don’t believe so because I went to my HOA and provided plans before constructing. I received a signed email stating I was free to construct fence & felt confident that I was doing everything the right way. I (nor my HOA it seems) knew there was a 4’ provision about street setbacks in the city code.

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Attachment 5 - Site Photographs



View of existing fence from Winyan Lane



View of fence from Intersection of Winyan Lane and Elsmere Circle



View of existing fence looking west along Elsmere Circle



View of existing fence from Elsmere Circle



View of existing fence from adjacent open space looking west



View of existing fence from street corner looking east



View of existing fence from street intersection looking east

Attachment 6: Other Existing Fences in the Neighborhood on Corner Lots



Example 1



Example 2



Example 2 (continued)



Example 3



Example 4



Example 5



Example 5 (continued)



Example 6



Example 7

Attachment 7: Correspondence with Homeowner's Association

Adam Green

From: Adam Green
Sent: Friday, January 23, 2015 5:18 PM
To: Adam Green
Subject: FW: fence

From: Dick Bowles [<mailto:dick.bowles@gmail.com>]
Sent: Saturday, May 31, 2014 1:08 PM
To: Adam Green
Cc: Richard Kline
Subject: Re: fence

Adam:

Thank you for consulting with Old Dorsey Place Homeowners Assoc Board regarding the plans for a new fence on your property, 609 Wynyan, on the southeast corner at Elsmere and Wynyan. As we discussed, you plan to erect a 6 foot wooden privacy fence several feet from the sidewalk along Elsmere, replacing apporportion of an existing fence and enclosing more of the back yard. You have not obtained a survey of your property line but it appears you are not approaching the property line. You might also consider a property survey to know for sure. The "appearance" side of the fence will face the street.

Please call BUD for buried cable marking (502) 266-5123 before the contractor digs. Your contractor should already know this. Louisville Metro Licensing and Permits should be consulted also to insure you do not need a permit. Their website is <http://www.louisvilleky.gov/ipl/Construction+Review/Building+Permits.htm>

In my opinion, these plans do not violate the deed restrictions. You are free to proceed.

As we discussed, it is desirable for the ascetics of the neighborhood to be as far back from the Elsmere sidewalk as is practical. I suggested 6 feet.

Thanks, neighbor.

Dick Bowles
Old Dorsey Place Homeowners Association
Area 2 Representative

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On May 30, 2014, at 9:07 AM, Adam Green <amgreen@ucseng.com> wrote:

Mr. Bowles,

Thank you for talking to me last night. As discussed, I have attached a layout of the new fence as well as the old. There are existing mature tree's already close to the sidewalk that I will not be touching nor taking the fence near. They will still be outside the fence. There is another mature Pine Tree near my driveway that will be in the fence line but is much further into my property. The sidewalk on the Elsmere side according to LOJIC (which is generally accurate) is inside my property as well, so counting the sidewalk I would have the fence 7' inside of the property line and 3' inside the sidewalk. I don't have any aspirations to plant anything close to the fence for several reasons but mainly because

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anything large puts pressure on the fence and also because I don't want anything hanging over and getting close to the sidewalk. It would also take up more yard which is why I am making the investment is to have enough space for my children to play safely. I hope this helps and I appreciate your time taken to help me with this matter.

Thanks,

Adam M Green

Operations Manager

<image001.jpg>

11403 Bluegrass Pkwy, Suite 710

Louisville, Ky 40299

OFF : 502-719-6969

CELL: 502- 424-0161

amgreen@ucseng.com

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