

Board of Zoning Adjustment

Staff Report

December 06, 2021



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|--------------------------|----------------------------|
| Case No: | 21-VARIANCE-0144 |
| Project Name: | Wainwright Avenue Variance |
| Location: | 446 Wainwright Avenue |
| Owner/Applicant: | Weilun Wang |
| Jurisdiction: | Louisville Metro |
| Council District: | 15– Kevin Triplett |
| Case Manager: | Heather Pollock, Planner I |

REQUESTS:

Variance from Land Development Code section 4.4.3.A.1.a.ii to allow a fence to exceed 96 inches in height in the side yard setback.

| Location | Requirement | Request | Variance |
|--------------------------|-------------|---------|----------|
| Street Side Fence Height | 96 in. | 108 in. | 12 in. |

CASE SUMMARY/BACKGROUND

The subject property is zoned R-4 Residential Single Family and is in the Neighborhood Form District. It is on the northeast corner of Copra Lane and Mile of Sunshine Drive in the Sunshine Acres, Section 3 subdivision. The site currently has a one-story single-family residential structure and the applicant has constructed an eight-foot privacy fence within the street side yard setback.

STAFF FINDINGS

Staff finds that the requested variance meets standards (a) and (c), but staff is concerned that the variance request does not meet standard (b) and (d) because the fence exceeds the standard height of a privacy fence and does not match the essential character of the general vicinity

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 Land Development Code section 4.4.3.A.1.a.i to allow a fence to exceed 48 inches in height in the street side yard setback.

TECHNICAL REVIEW

No technical review required.

INTERESTED PARTY COMMENTS

Interested party comments were received by staff; the adjoining property owner on the opposite side of the fence where the variance is requested expressed concerns about the height of the fence and alleged water damage caused to the detached garage located at 444 Wainwright Ave.

RELATED CASES

ENF-ZON-20-001199 – Zoning enforcement case for the fence height.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE FROM SECTION 4.4.3.A.1.a.i

- (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 must be constructed to comply with all building codes, including fire codes.

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

STAFF: The requested variance may alter the essential character of the general vicinity as there are no other fences in the area that exceed 96 inches in height in the side yard with the exception of the adjoining property which has a variance for the fence height

- (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 is located in the side yard with no access to the public and must be constructed to comply with all building codes.

- (d) The requested variance will not allow an unreasonable circumvention of the zoning regulations.

STAFF: The requested variance may allow an unreasonable circumvention of the zoning regulations as the fence is not a standard height for a privacy fence.

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 arise from special circumstances which do generally apply to land in the general vicinity or the same zone as the neighboring property has an approved variance for a fence over 8 feet in height and the applicant built their fence to match the height.

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 the height of the fence could be reduced to meet the requirement.

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 the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as the fence has been constructed and the applicant is requesting the variance after the fact.

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.

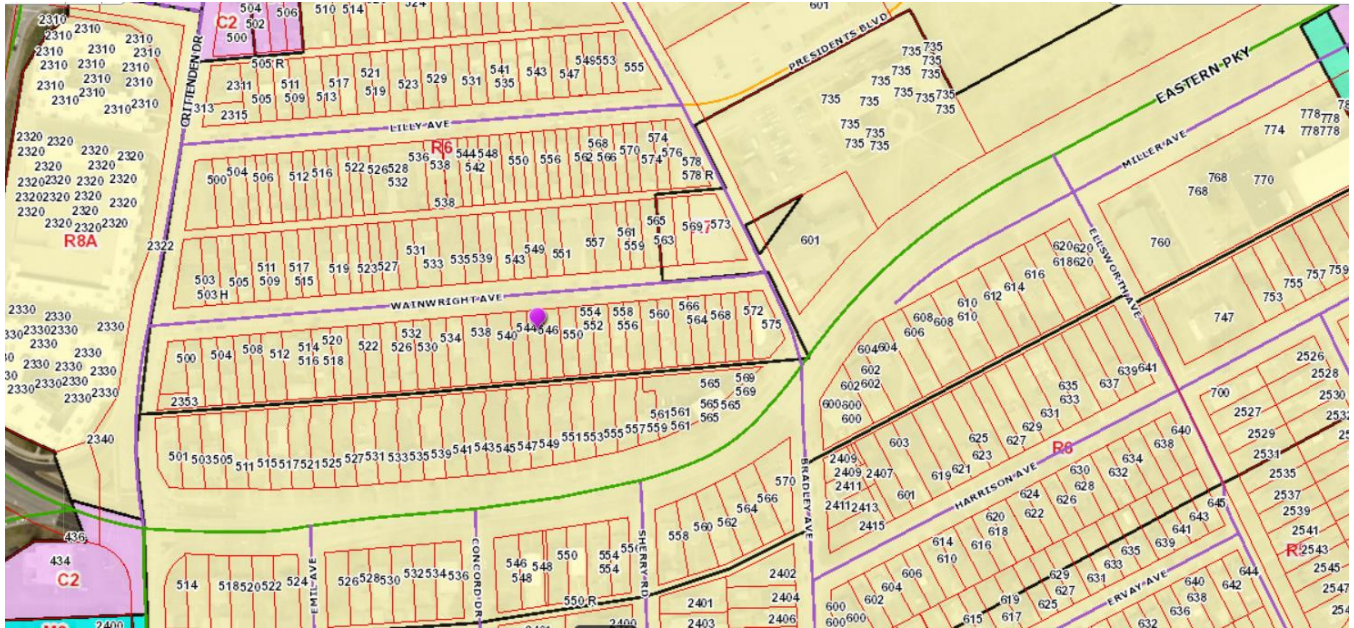
NOTIFICATION

| Date | Purpose of Notice | Recipients |
|-------------------|--------------------------|---|
| 11/19/2021 | Hearing before BOZA | 1 st tier adjoining property owners and current residents Registered Neighborhood Groups in Council District 15 |
| 11/18/2021 | Hearing before BOZA | Notice posted on property |

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Site Plan
4. Site Photos

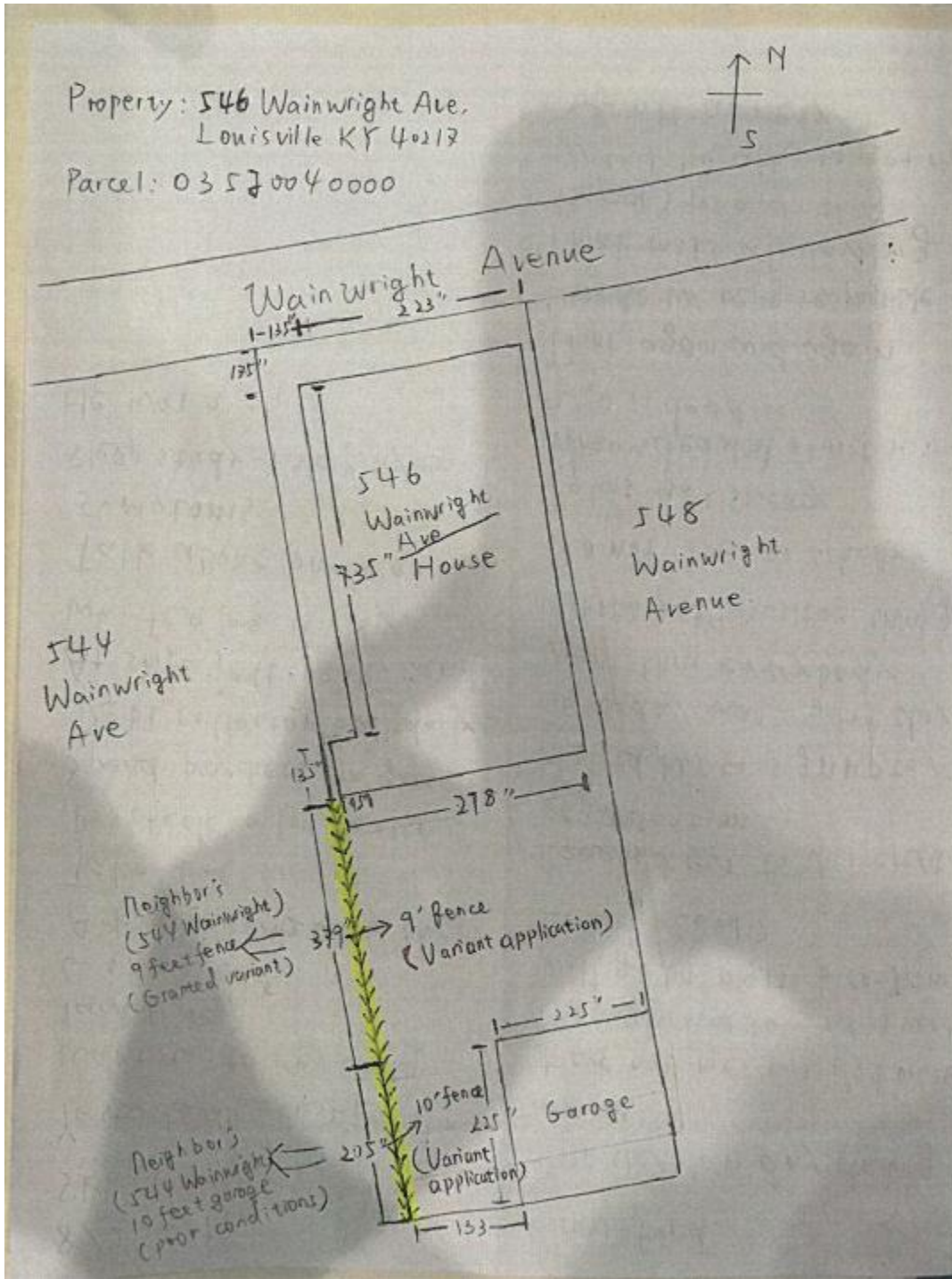
1. Zoning Map



2. Aerial Photograph



3. Site Plan



4. Site Photos



Front of subject property.



Property to the left.



Property to the right.



Across street.



View of variance area from side yard.



View of fence from rear of house.



View of fence from alley.