

Board of Zoning Adjustment Staff Report

November 17, 2014



Case No:	14Variance1097
Project Name:	None (existing fence)
Location:	5411 Gaskin Ct.
Owner(s):	Michael Beinlein
Applicant:	Same
Representative(s):	Same
Jurisdiction:	Louisville Metro
Council District:	13 – Vick Aubrey Welch
Case Manager:	Latondra Yates, Planner II

REQUEST

- Variance of Sec. 4.4.3.A.1.a.i. of the Land Development Code (LDC) to allow a fence to exceed the maximum 48-inch height in the street side yard. The requested height is 96 inches, a variance of 48 inches.

Variance

Location	Requirement	Request	Variance
Street side yard (Paramid Rd.)	48 inches	96 inches	48 inches

CASE SUMMARY/BACKGROUND/SITE CONTEXT

The variance is for an existing wood fence. The applicant has been cited for constructing the fence above the maximum height and without a permit.

The applicant has provided documentation that has fence and wall heights that they state that they believed to be compliant and used in erecting the fence. The applicant states in their justification that the fence was also erected to match the height of a neighboring fence and to alleviate problems with intruders, some of whom would get into the swimming pool in the back yard. The applicant has also provided letters of support from neighbors.

LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

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

	Land Use	Zoning	Form District
<i>Subject Property</i>			
Existing	Vacant	R-4	NFD
Proposed	Single-family residential	R-4	NFD
<i>Surrounding Properties</i>			
North	Single-family residential	R-4	NFD
South	Golf course	R-4	NFD
East	Single-family residential	R-4	NFD
West	Single-family residential	R-4	NFD

PREVIOUS CASES ON SITE

The site is part of Caven Village Subdivision, Sec. 1C, recorded in Plat Book 31, Pg. 37.

INTERESTED PARTY COMMENTS

None

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 it was erected to keep intruders out of the yard, some of whom were using the swimming pool.

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

STAFF: The variance will not alter the essential character of the general vicinity because there appear to be fences of similar heights in the neighborhood.

- (c) The requested variance will not cause a hazard or nuisance to the public.

STAFF: The variance will not cause a hazard or nuisance to the public because the fence appears to be situated in a manner that will not impede sight distance or negatively affect the view of neighboring properties.

- (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 appear to be other fences in the neighborhood of similar heights.

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 variance arises from the request to allow the taller fence.

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 provision of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant because it would require removal of the fence or costly modifications.

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 the request to allow the taller fence.

TECHNICAL REVIEW

No outstanding technical review items.

STAFF CONCLUSIONS

Staff's analysis of the standards of review supports the granting of the variance.

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 standards for granting a variance as established in the Land Development Code.

NOTIFICATION

Date	Purpose of Notice	Recipients
11/1/2014	BOZA Hearing	1 st and 2 nd tier adjoining property owners
10/31/2014	Sign Posting	On Property

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Site Plan
4. Elevation
5. Notice of Violation
6. Document from applicant containing fence and wall heights
7. Letters of support
8. Applicant's Justification Statement

1. **Zoning Map**



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.	



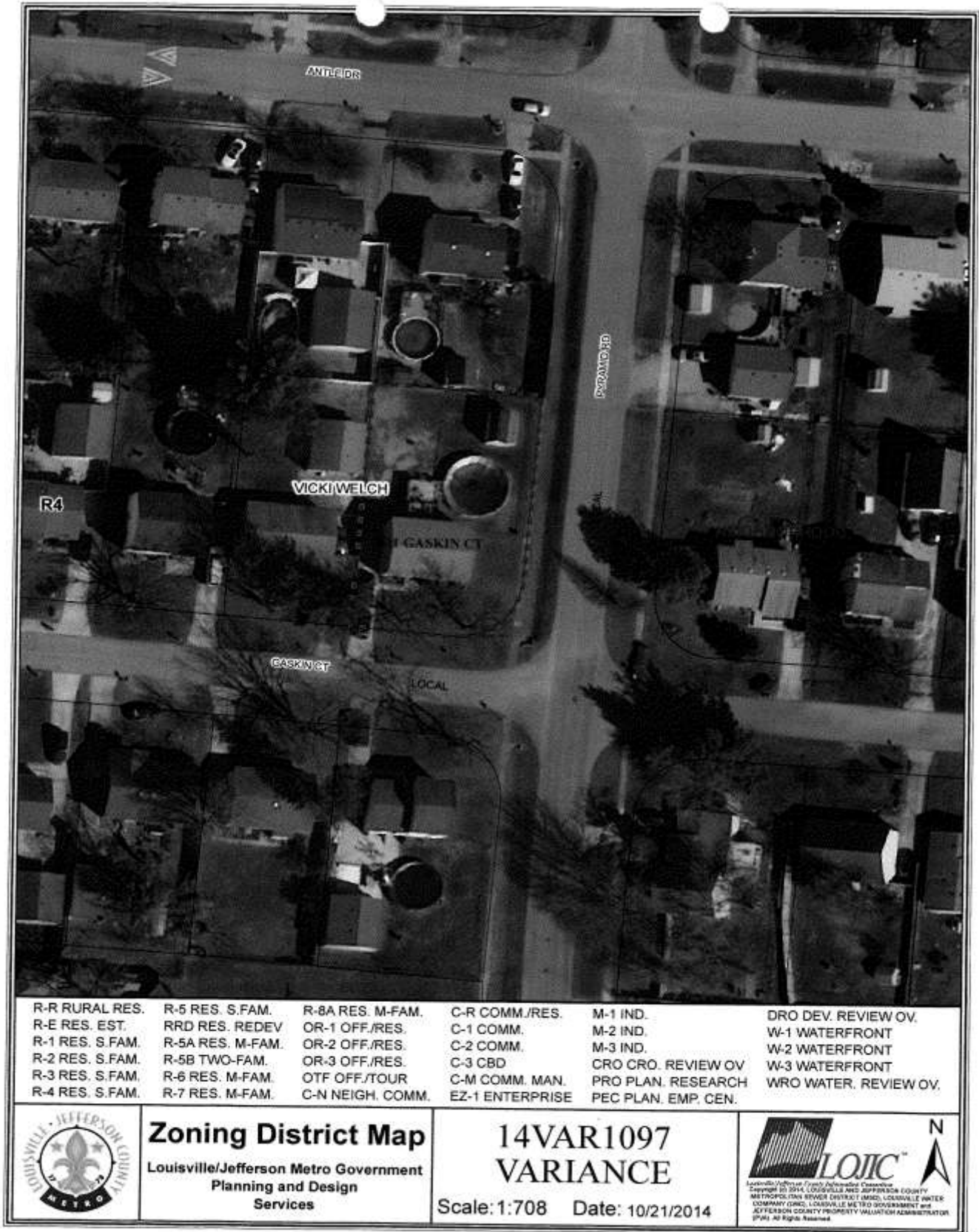
Zoning District Map
 Louisville/Jefferson Metro Government
 Planning and Design
 Services

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 VARIANCE**

Scale: 1:807 Date: 10/21/2014



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.
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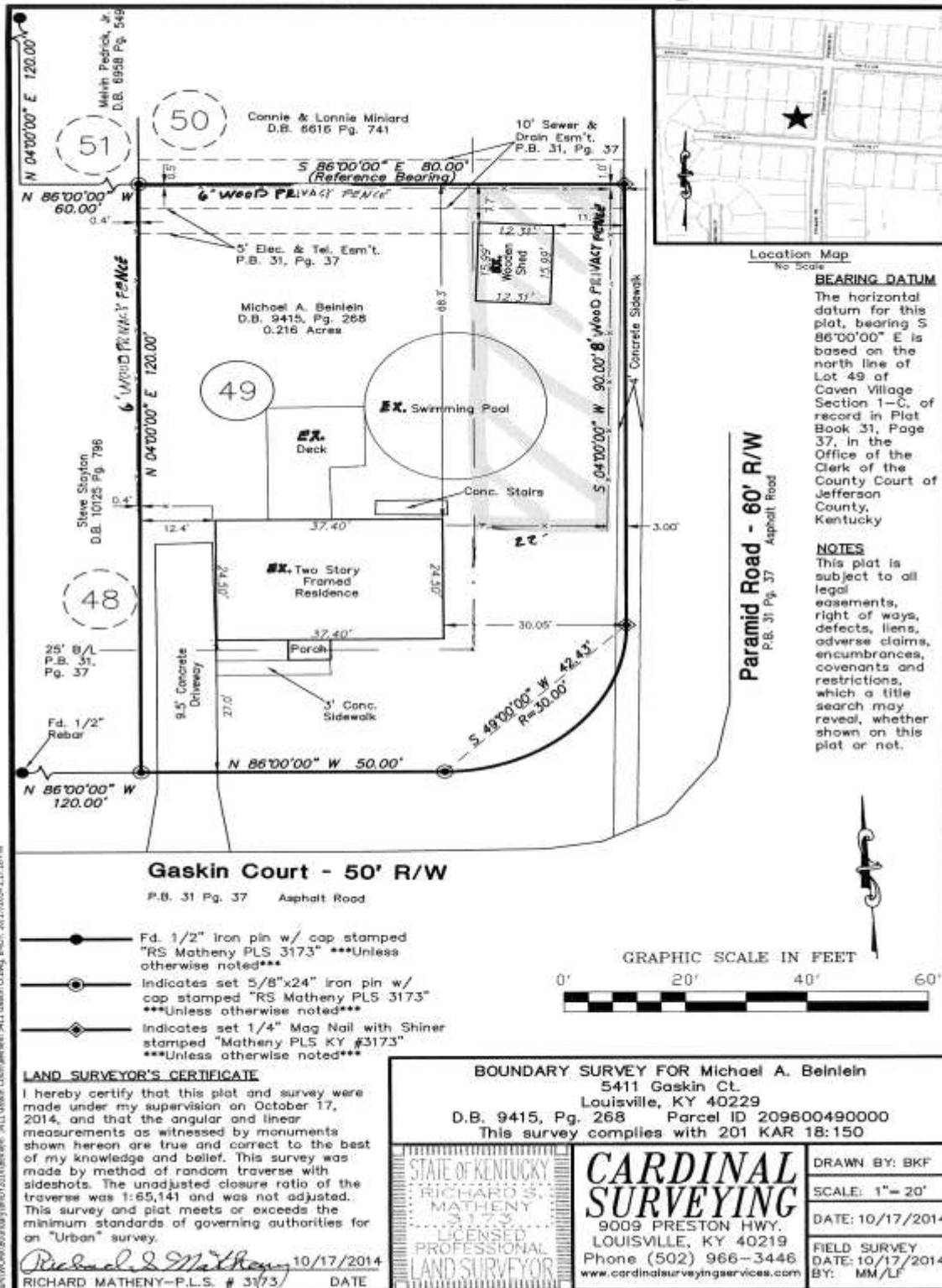
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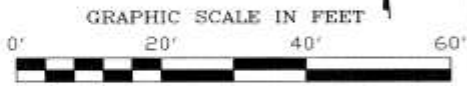
3. **Site Plan**



BEARING DATUM
 The horizontal datum for this plat, bearing S 86°00'00" E is based on the north line of Lot 49 of Caven Village Section 1-C, of record in Plat Book 31, Page 37, in the Office of the Clerk of the County Court of Jefferson County, Kentucky

NOTES
 This plat is subject to all legal easements, right of ways, defects, liens, adverse claims, encumbrances, covenants and restrictions, which a title search may reveal, whether shown on this plat or not.

- Fd. 1/2" Iron pin w/ cap stamped "RS Matheny PLS 3173" ***Unless otherwise noted***
- Indicates set 5/8"x24" iron pin w/ cap stamped "RS Matheny PLS 3173" ***Unless otherwise noted***
- ◆ Indicates set 1/4" Mag Nail with Shiner stamped "Matheny PLS KY #3173" ***Unless otherwise noted***



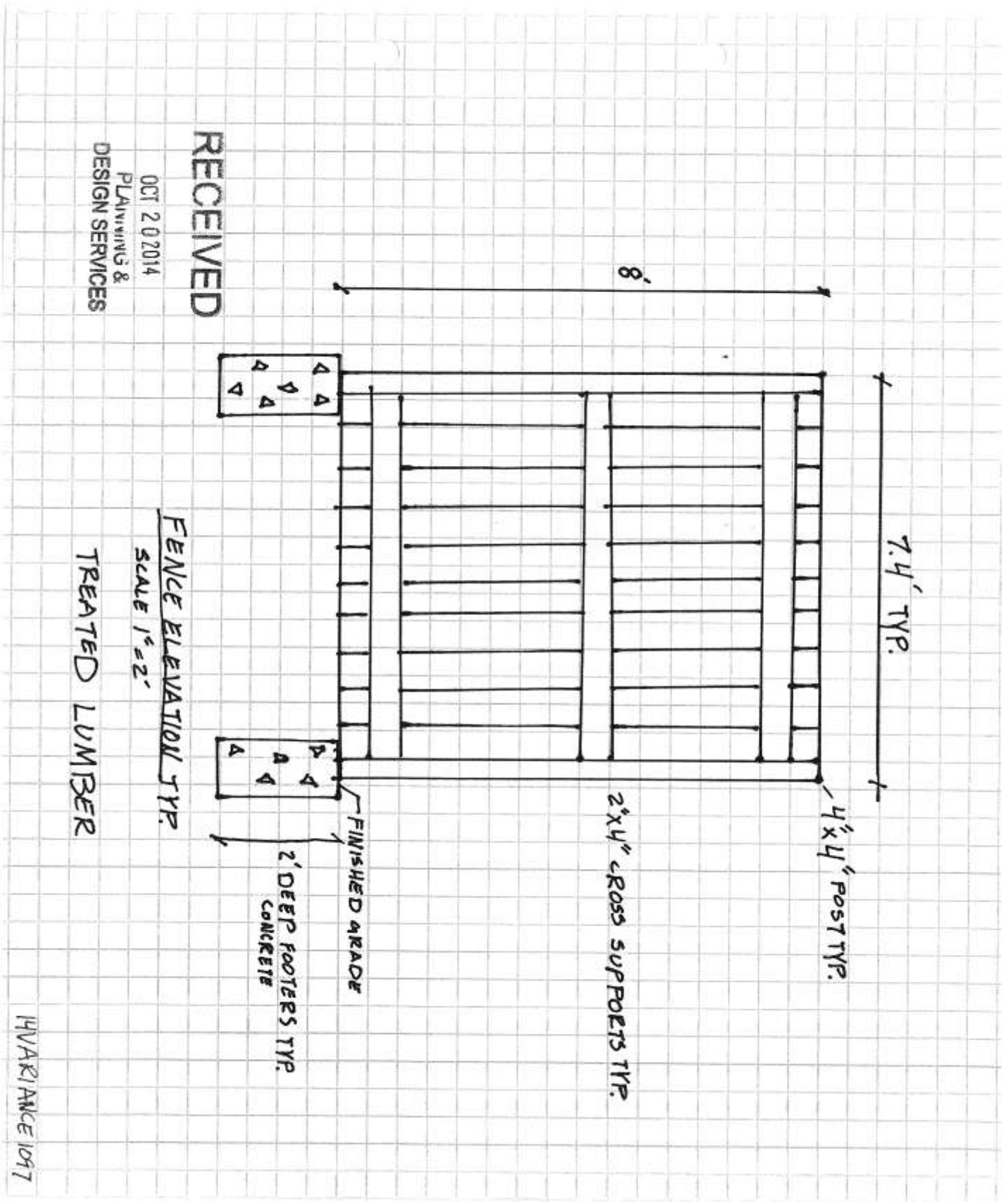
LAND SURVEYOR'S CERTIFICATE
 I hereby certify that this plat and survey were made under my supervision on October 17, 2014, and that the angular and linear measurements as witnessed by monuments shown hereon are true and correct to the best of my knowledge and belief. This survey was made by method of random traverse with sideshots. The unadjusted closure ratio of the traverse was 1:55,141 and was not adjusted. This survey and plat meets or exceeds the minimum standards of governing authorities for an "Urban" survey.
Richard S. Matheny 10/17/2014
 RICHARD MATHENY-P.L.S. # 3173 DATE

BOUNDARY SURVEY FOR Michael A. Beinlein
 5411 Gaskin Ct.
 Louisville, KY 40229
 D.B. 9415, Pg. 268 Parcel ID 209600490000
 This survey complies with 201 KAR 18:150

STATE OF KENTUCKY RICHARD S. MATHENY #3173 LICENSED PROFESSIONAL LAND SURVEYOR	CARDINAL SURVEYING 9009 PRESTON HWY. LOUISVILLE, KY 40219 Phone (502) 966-3446 www.cardinalsurveying.com	DRAWN BY: BKF SCALE: 1" = 20' DATE: 10/17/2014
		FIELD SURVEY DATE: 10/17/2014 BY: MM/LF

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4. Elevation



5. Notice of Violation



Louisville-Jefferson County Metro Government

Department of Codes & Regulations

Property Maintenance Division

444 S. 5th Street, Suite 200 - Louisville, KY 40202

Phone: (502)773-2079 Email: Matt.Gallagher@louisvilleky.gov Web Site: louisvilleky.gov/pl/

Case Number: 14PM24528-1009323

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Z164 FENCES-HEIGHT/LOCATION

Chapter 4.4.3.a/Article 9.1. Fences, Walls and Signature Entrances: You have erected or allowed the erection of a fence which is in violation of the Land Development Code for Louisville and Jefferson County (Chapter 4.4.3.A) in regards to height and location.

Comments: YOU HAVE ESTABLISHED A FENCE IN THE STREET SET BACK OVER FOUR FEET IN HEIGHT

Location: RIGHT SIDE

Responsible: OWNER

Subject violation needs to be in compliance on or before October 29, 2014 to avoid additional fines and court action.

Z194 NON-PERMITTED USE-RESIDENTIAL

Chapter 2.2.2-13/Article 4.1-13 Non-Permitted Use: You are allowing a non-permitted use to exist on the above referenced residential property. This is in violation of The Land Development Code for Louisville and Jefferson County (Chapter 2.2.2-13) OR You are allowing a non-permitted use to exist on the above referenced residential property. This is in violation of The Development Code for Louisville and Jefferson County (Article 4.1-13).

Comments: PERMIT MUST BE OBTAINED FOR FENCE INSTALLATION DUE TO FENCE IS TALLER THAN 7 FEET

Location: VARIOUS

Responsible: OWNER

Subject violation needs to be in compliance on or before October 29, 2014 to avoid additional fines and court action.

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6. Document from applicant containing fence and wall heights

FOLLOWED THESE REGULATIONS + THOUGHT I WAS BEING COMPLIANT.

CODES & REGULATIONS

Contact

Codes & Regulations
(502) 574-2508

444. S. 5th Street
Louisville, KY 40202

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Fence and Wall Heights

The following regulations shall apply to fence and wall heights in the R-R, R E, R 1, R 2, R 3, R 4, R 5, PRD, U-N, R 5A, R 5B, TNZD, R 6, R 7, R 8A, OR, OR 1, OR 2, OR 3 and OTF Districts:

Fence Location	Maximum Height
Required front and street side yards	4 feet
Required side and rear yards	8 feet when constructed of solid materials; 6 feet when constructed of chainlink materials

In all other zoning districts, fences and walls shall be restricted by the maximum building height of that zoning district except when abutting an R-R, R E, R 1, R 2, R 3, R 4, R 5, PRD, U-N, R 5A, R 5B, TNZD, R 6, R 7, R 8A, OR, OR 1, OR 2, OR 3 or OTF district, in which case the above standards shall apply.

Fences and walls not located within a required yard shall be restricted by the maximum building height of that form district.

Fences and walls are required for swimming pools. They shall be a minimum height of 4 feet above grade and have a self-closing, self-latching lockable gate.

SIGNATURE ENTRANCE

Any wall(s), fence(s), guard house(s) or similar structures exceeding 4 feet in height, constructed at an entrance to a major single-family subdivision or to a multi-family complex of ten units or more.

The maximum height of a signature entrance varies depending on the setback from the right-of-way.

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Setback Distance	Maximum Height Allowed
10 feet	14 feet
9 feet	13 feet
8 feet	12 feet
7 feet	11 feet
6 feet	10 feet
5 feet	9 feet
4 feet	8 feet
3 feet	7 feet
2 feet	6 feet
1 feet	5 feet
0 feet	4 feet

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When signature entrances are constructed on man made berms, the berm will be considered in the overall height.

Please see Chapter 4, Part 4, Section 3 of the Land Development Code for the entire text of the signs, walls and signature entrances regulation.

Light fixtures and guard houses may extend an additional 4 feet.

The maximum length of a signature entrance shall not exceed 150 feet on each side of the entrance roadway. Any structure extending beyond this length shall be considered a fence or wall and shall meet the requirements summarized above (see Section (B) of the fences, walls and signature entrances section of the Land Development Code).

Two signs, not exceeding 15 square feet in area each, attached to the signature entrance may be provided at each entrance to the development (refer to Chapter 8, Sign Regulations, for specific information).

Signature entrance plans shall be reviewed for compliance and approved by the Division of Planning and Design Services, as well as Public Works Department if the signature entrance is located in the public right-of-way.

HEIGHT MEASUREMENT

The following methods shall be used to measure the height of a fence, wall or signature entrance:

- The height of fences or walls located in a required side or rear yard shall be measured from the lowest grade within a distance of one foot on either side of the fence to the highest point of any portion of the fence.
- The total height of fences within 5 feet of a public sidewalk or roadway pavements shall be measured by adding the height of the fence and the height of the change of grade.
- The total height of fences more than 5 feet from a public sidewalk or roadway pavements shall be measured by measuring the height of the fence only.

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OTHER REQUIREMENTS

These requirements shall also apply to fences, walls and signature entrances:

- Razor wire is permitted only if located at all points at least 8 feet above grade level.
- In residential form districts (TNFD, NFD, VFD), barbed wire fencing located less than six feet above grade level is permissible only when used to enclose livestock.
- Fences that adjoin residentially used or zoned property in any form district may include barbed wire or razor wire only if reviewed and approved by the Planning Director or designee.
- A fence installed to meet a screening requirement must have its finished side toward the lower intensity use.



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7. Letters of support

10-12-14

TO WHOM IT MAY CONCERN

This is in regards to the fence and the property next to ours. The chain-link fence that was erected years ago was not adequate to keep out the (drivers) who were jumping the fence and causing damage, and (DANGER) to the children in their own back yard, which is supposed to be a (safe place) for them. The property is one of the cleanest, & safest places in our subdivision. Whom ever complained about: 54. Property is not telling the truth and I think are concerned that such a nice new privacy fence is making their property really looking shabby and possibly a danger to pedestrians. The new fence that MICHAEL has constructed is not only very nice looking but is also a safety place for his children. The fence is made of top quality lumber and the construction is one of the best we have seen in years. We are very proud to have neighbors like Michael & family. They are very proud of their home and maintain on a regular basis.

Steve Staylor
Agnes Staylor
Agnes Staylor

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I Water Miller at 5500 Gentle Dr.
I have seen the kids in the area
jumping over the fence across
the street from me and getting in
Mike yard around his pool + shade

Water Miller

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8. Applicant's Justification Statement

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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 acceptable.

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

~~had to consider~~ Considering walkers and bike riders. So the handle bars of a bike would not hit fence to make bikers fall off. to keep people from jumping fence to get in my yard to keep a safe place because of pool. put fence 1 1/2" off of sidewalk.

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

Matching Neighbors 8ft fence behind my yard.

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

pedestrian and safety by pulling fence off sidewalk (1 1/2 off) Keep people from getting hurt in my pool.

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

Neighbor has 8ft fence. Every one has fences. I had Neighbors complaining about people in my yard/pool when I not home.

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).

base on infill, would create 30 feet of unusable Land or how Land is layd out.

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.

My house sets far off of street. It would not allow me or my family use the land for pools ect. It would cause a financial hardship to remove fence that I installed waste mint.

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

Yes I'm sorry. I spoke to a Land Surveying company. thought I was in compliant. Got on web site, and found info.