

**Board of Zoning Adjustment  
Staff Report**  
August 3, 2015



<b>Case No:</b>	15VARIANCE1044
<b>Project Name:</b>	1648 Edenside Ave
<b>Location:</b>	1648 Edenside Ave
<b>Owner:</b>	Greg Guelda
<b>Applicant:</b>	Greg Guelda
<b>Representative:</b>	Greg Guelda
<b>Project Area/Size:</b>	1,100 sq. ft.
<b>Existing Zoning District:</b>	R-5, Single Family Residential
<b>Existing Form District:</b>	TN, Traditional Neighborhood
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	8 – Tom Owen
<b>Case Manager:</b>	Matthew Doyle, Planner II

**REQUEST**

- Variance from the Land Development Code to allow an existing fence to exceed the maximum height along the east side yard
- Variance from the Land Development Code to allow a structure (fence/trellis) to encroach into the rear east side yard
- Variance from the Land Development Code to allow a structure (pergola) to be located in the required front yard/public realm

<b>Location</b>	<b>Requirement</b>	<b>Request</b>	<b>Variance</b>
Fence height	8'	13.5'	5.5'
Rear east side yard	3'	0'	3'
Front yard/ public realm	25'	5'	20'

**CASE SUMMARY/BACKGROUND/SITE CONTEXT**

The applicant built a fence and trellis in the rear yard between the house and garage. The height of the fence/trellis is 13.5' along the rear east side yard. A stop work order was issued on 6/24/2015.

The applicant also built a pergola in the front yard/ public realm, approximately 5' from the public sidewalk.

The site is located in the Tyler Park neighborhood of the Highlands on the south side of Edenside Ave, three lots west of Quadrant Ave.

**LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE**

	<b>Land Use</b>	<b>Zoning</b>	<b>Form District</b>
<b>Subject Property</b>			
<b>Existing</b>	Single family residential	R-5	TN
<b>Proposed</b>	Single family residential	R-5	TN
<b>Surrounding Properties</b>			
<b>North</b>	Single family residential	R-5	TN
<b>South</b>	Single family residential	R-5	TN
<b>East</b>	Single family residential	R-5	TN
<b>West</b>	Single family residential	R-5	TN

## PREVIOUS CASES ON SITE

N/A

## INTERESTED PARTY COMMENTS

Staff has not received any comments on the proposal.

## APPLICABLE PLANS AND POLICIES

Land Development Code

### **STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE to allow an existing fence to exceed the maximum height along the east side yard**

(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 since it meets or exceeds all other development standards.

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

STAFF: The requested variance will alter the essential character of the general vicinity since privacy fences tend to be within the permitted height of 6 to 8 feet.

(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 since it meets or exceeds all other development standards.

(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 since privacy fences tend to be within the permitted height of 6 to 8 feet.

### 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 does not arise from special circumstances which do not generally apply to land in the general vicinity or the same zone as the grade of the lot where the fence has been constructed on the rear east side yard is relatively flat and level with the abutting property.

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 deprive the applicant of the reasonable use of the land since a fence constructed at a height permitted by the regulation would give the applicant sufficient privacy.

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.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE to allow a structure (fence/trellis) to encroach into the rear east side yard**

- (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 since it meets or exceeds all other development standards.

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

STAFF: The requested variance will alter the essential character of the general vicinity since it creates a continuous structure extending from the principal structure to the accessory structure in the private yard area, which is of a scale unlike any other in the general vicinity.

- (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 since it meets or exceeds all other development standards.

- (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 since it does not observe any setback along the east side yard, not even that of the house or garage.

**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 does not arise from special circumstances which do not generally apply to land in the general vicinity or the same zone since the lot is similar in shape and size to the abutting properties and subject to the same regulations.

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 deprive the applicant of the reasonable use of the land since the structure could have maintained the existing setback of the house.

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.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE to allow a structure (pergola) to be located in the required front yard/public realm**

- (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 since it meets or exceeds all other development standards.

(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 since it maintains the majority of the front yard/public realm, is not enclosed, and complements pedestrian access from the public sidewalk.

(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 since it meets or exceeds all other development standards; does not obstruct the path of pedestrians and/or the vision of drivers; and maintains an appropriate setback from the public right-of-way.

(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 since it maintains the majority of the front yard/public realm, is not enclosed, and complements pedestrian access from the public sidewalk.

#### 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 does not arise from special circumstances which do not generally apply to land in the general vicinity or the same zone.

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 deprive the applicant of the reasonable use of the land since it meets or exceeds all other development standards; does not obstruct the path of pedestrians and/or the vision of drivers; and maintains an appropriate setback from the public right-of-way.

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.

#### **TECHNICAL REVIEW**

The applicant needs to obtain a building permit for the fence/trellis as the height of the fence exceeds 7 feet and the area of the structure is greater than 200 sq. ft.

#### **STAFF CONCLUSIONS**

The variance requests to allow an existing fence to exceed the maximum height along the east side yard and to allow a structure (fence/trellis) to encroach into the rear east side yard does not appear to be adequately justified based on staff analysis in the standard of review.

- While it meets or exceeds all other development standards, it appears to alter the essential character of the neighborhood and allows an unreasonable circumvention of the zoning regulations.
- Also, the variance does not appear to have a special circumstance which does not generally apply to land in the general vicinity or the same zone that would override the request since the lot is similar in grade, shape, and size to the abutting properties and subject to the same regulations.

The variance request to allow a structure (pergola) to be located in the required front yard/public realm appears to be adequately justified based on staff analysis in the standard of review.

- It meets or exceeds all other development standards;
- It does not obstruct the path of pedestrians and/or the vision of drivers;
- It maintains an appropriate setback from the public right-of-way;
- It maintains the majority of the front yard/public realm;
- It is not enclosed; and,
- It complements pedestrian access from the public sidewalk.

Based upon the information in the staff report, the testimony and evidence provided at the public hearing, the Board of Zoning Adjustment must determine whether the proposal meets the standards for granting the variances established in the LDC.

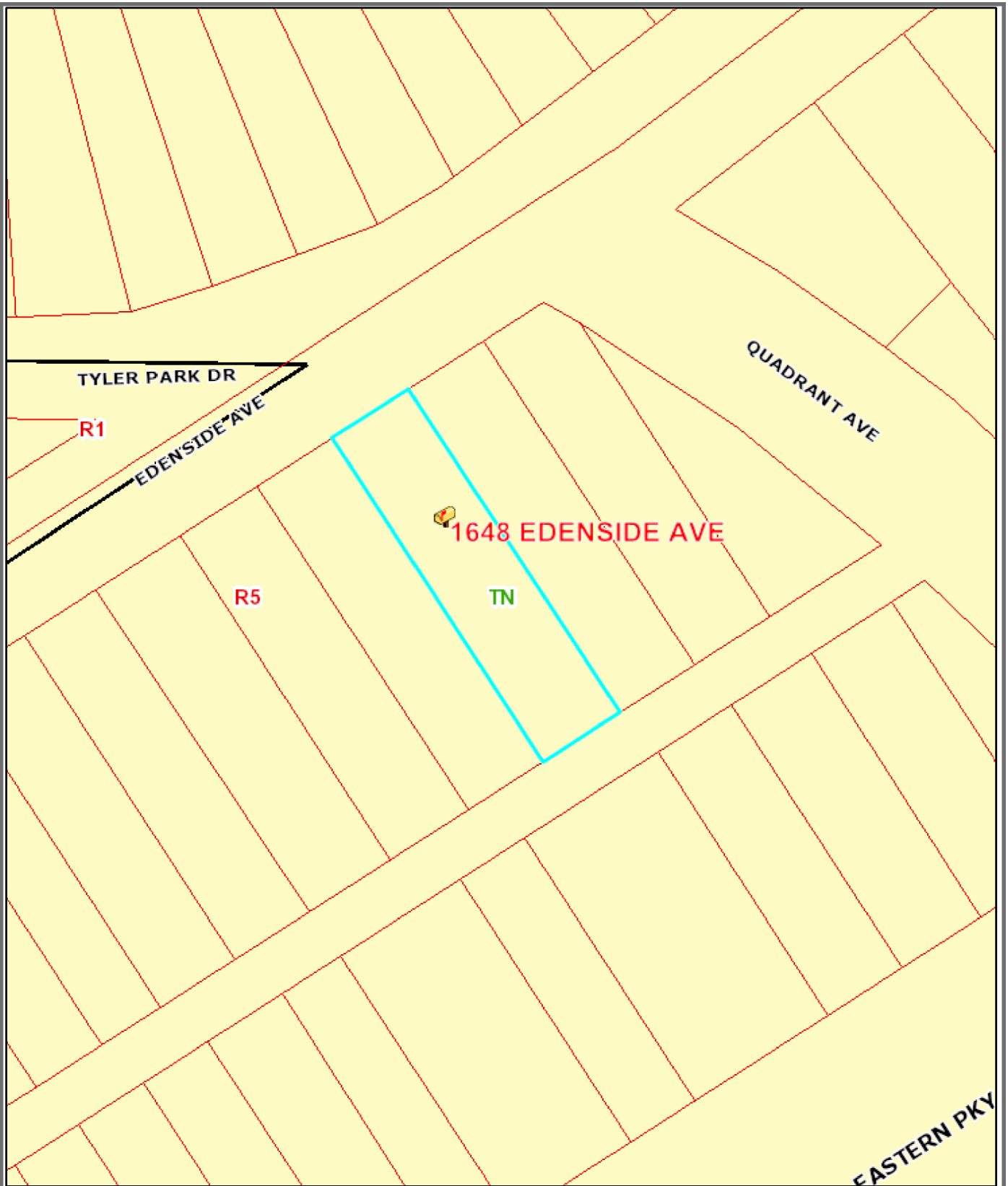
**NOTIFICATION**

<b>Date</b>	<b>Purpose of Notice</b>	<b>Recipients</b>
7/20/2015	BOZA	Adjoining property owners, applicant, representative, case manager, and neighborhood groups

**ATTACHMENTS**

1. Zoning Map
2. Aerial Photograph

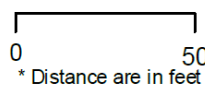
1. **Zoning Map**



1648 Edenside Ave



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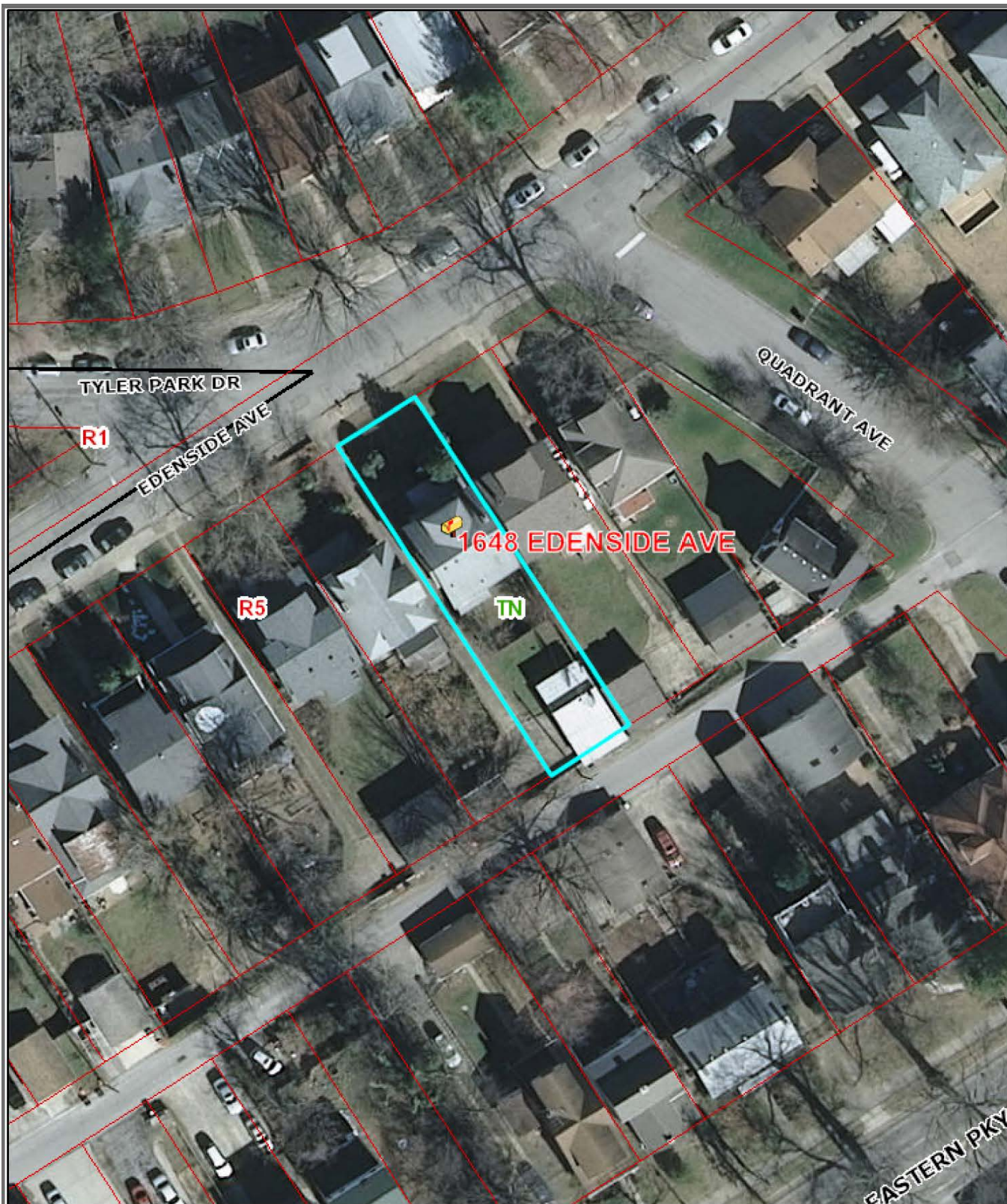


LOJIC Quickmap

Plot Date 7/27/2015



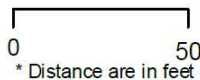
2. Aerial Photograph



LOJIC Quickmap

1648 Edenside Ave

Plot Date 7/27/2015



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