

# Board of Zoning Adjustment Staff Report

July 11, 2016



<b>Case No:</b>	16VARIANCE1034
<b>Request:</b>	Proposed fence to exceed 42" inches in height within the street side yard.
<b>Project Name:</b>	1036 Mulberry Street
<b>Location:</b>	1036 Mulberry Street
<b>Area:</b>	.16550 acres
<b>Owner:</b>	Chase Harber and Meredith Cunningham
<b>Applicant:</b>	Charles Cunningham
<b>Representative:</b>	Charles Cunningham
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	10 – Pat Mulvihill
<b>Case Manager:</b>	Ross Allen, Planner I

### REQUEST

- Variance from the Land Development Code section 4.4.3.A.1.a.i. to allow a proposed fence to exceed 42" inches in height in the street side yard.

Location	Requirement	Request	Variance
Street Side Yard	42" in.	60" in.	18" in.

### CASE SUMMARY/BACKGROUND/SITE CONTEXT

The applicant is proposing to construct a 60" in fence in the street side yard of the property on an R-5 zoned parcel within a Traditional Neighborhood Form District. The applicant's fence will extend approximately 19' ft. outward from the home towards Hickory Street (approximately 51' ft. back from the front of the home) and continue parallel to the rear of the property along Hickory Street for approximately 50' ft. where the fence will terminate at front of the accessory structure (Concrete Block garage) along Hickory Street.

### LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

	Land Use	Zoning	Form District
<b>Subject Property</b>			
<b>Existing</b>	Residential Single Family	R-5	Traditional Neighborhood
<b>Proposed</b>	Residential Single Family	R-5	Traditional Neighborhood
<b>Surrounding Properties</b>			
<b>North</b>	Residential Single Family	R-5	Traditional Neighborhood
<b>South</b>	Residential Single Family	R-5	Traditional Neighborhood
<b>East</b>	Residential Single Family	R-5	Traditional Neighborhood
<b>West</b>	Residential Single Family	R-5	Traditional Neighborhood

### PREVIOUS CASES ON SITE

15VARIANCE1032 – withdrawn

## INTERESTED PARTY COMMENTS

No comments were received from concerned citizens.

## 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 requested variance will adversely affect the public health, safety or welfare since the proposed fence 60" inch fence is outside of the sight triangle at the intersection of Mulberry and Hickory Street. Additionally, the fence, as shown on the applicant's site plan would be two feet from the property line and not adversely affect public health, safety, or welfare along the public right of way adjacent to the fence along Hickory Street.

- (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 homes located at the corner of Hickory St. and Lydia St. have a wooden fence along Hickory St. Homes located at Hickory and Milton Streets, Mulberry and McHenry Streets, and Texas and Burnett Avenues also have fences 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 the proposed fence 60" inch fence is outside of the sight triangle at the intersection of Mulberry and Hickory Street. Additionally, the fence, as shown on the applicant's site plan would be two feet from the property line.

- (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 the fence poses no risk to the public welfare, health, or safety nor obstructs views near alley or street corners.

### 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 land in the general vicinity or the same zone since others homes in the general vicinity have fences similar to what the applicant is proposing.

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 the fence is allowed up to 42" inches in street side yard within the Traditional Neighborhood Form District. The applicant's proposed fence has a height of 18" inches

more than what would be required by LDC. Furthermore, the applicant states that fence is for the control and access for a large dog and dogs are common to the area.

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 since the applicant's recently purchased the property and have not made any attempts to construct a fence in the street side yard without the required variance.

### TECHNICAL REVIEW

- No technical review undertaken.

### STAFF CONCLUSIONS

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 established in the Land Development Code from section 4.4.3.A.1.a.i to allow the proposed fence to exceed the 42" inch height within a Traditional Neighborhood Form District by 18" inches for a total fence height of 60" inches.

### NOTIFICATION

Date	Purpose of Notice	Recipients
June 27, 2016	Hearing before BOZA	1 <sup>st</sup> tier adjoining property owners Subscribers of Council District 10 Notification of Development Proposals
June 27, 2016	Sign Posting for BOZA	Sign Posting on property

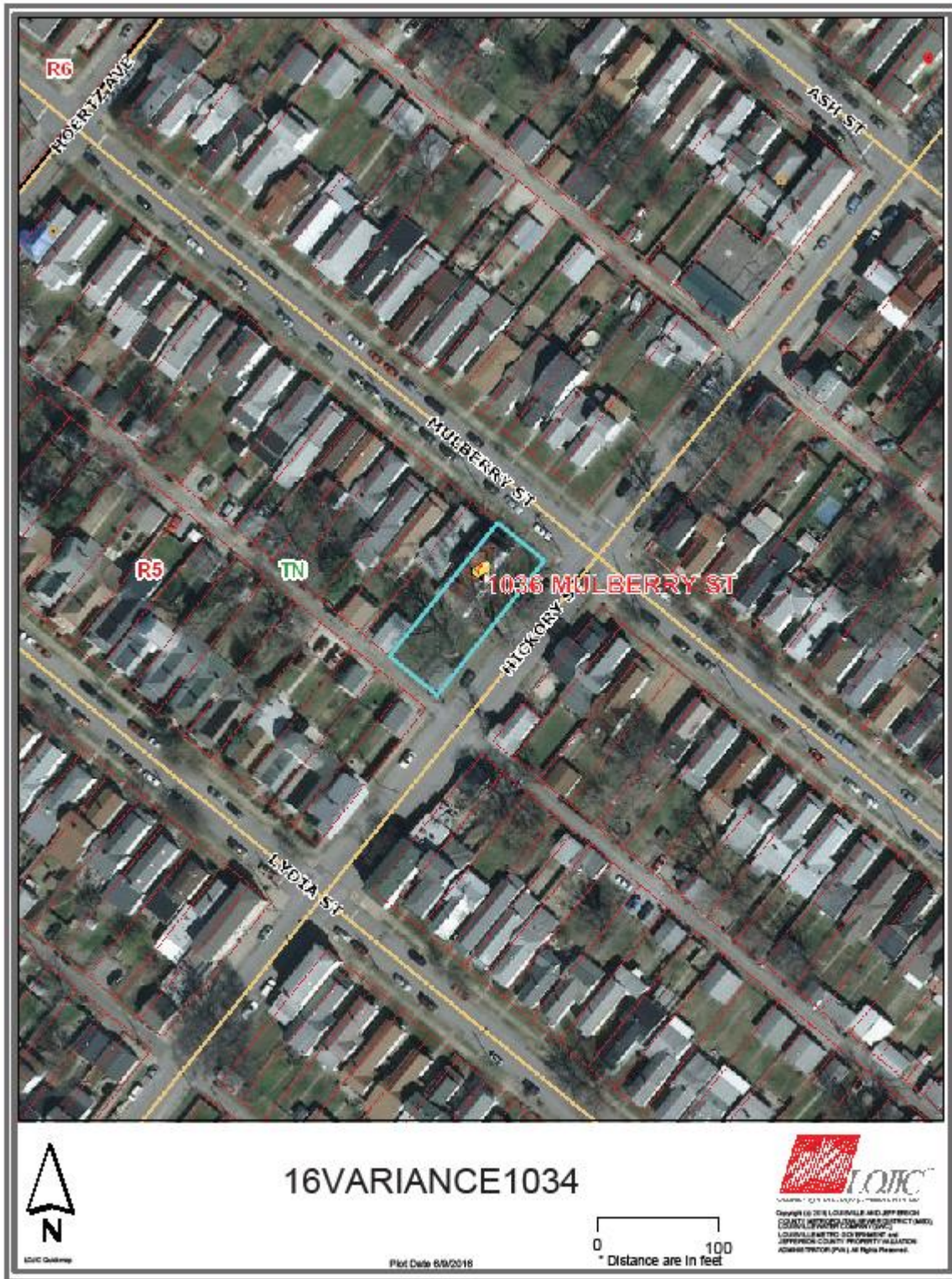
### ATTACHMENTS

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

1. Zoning Map

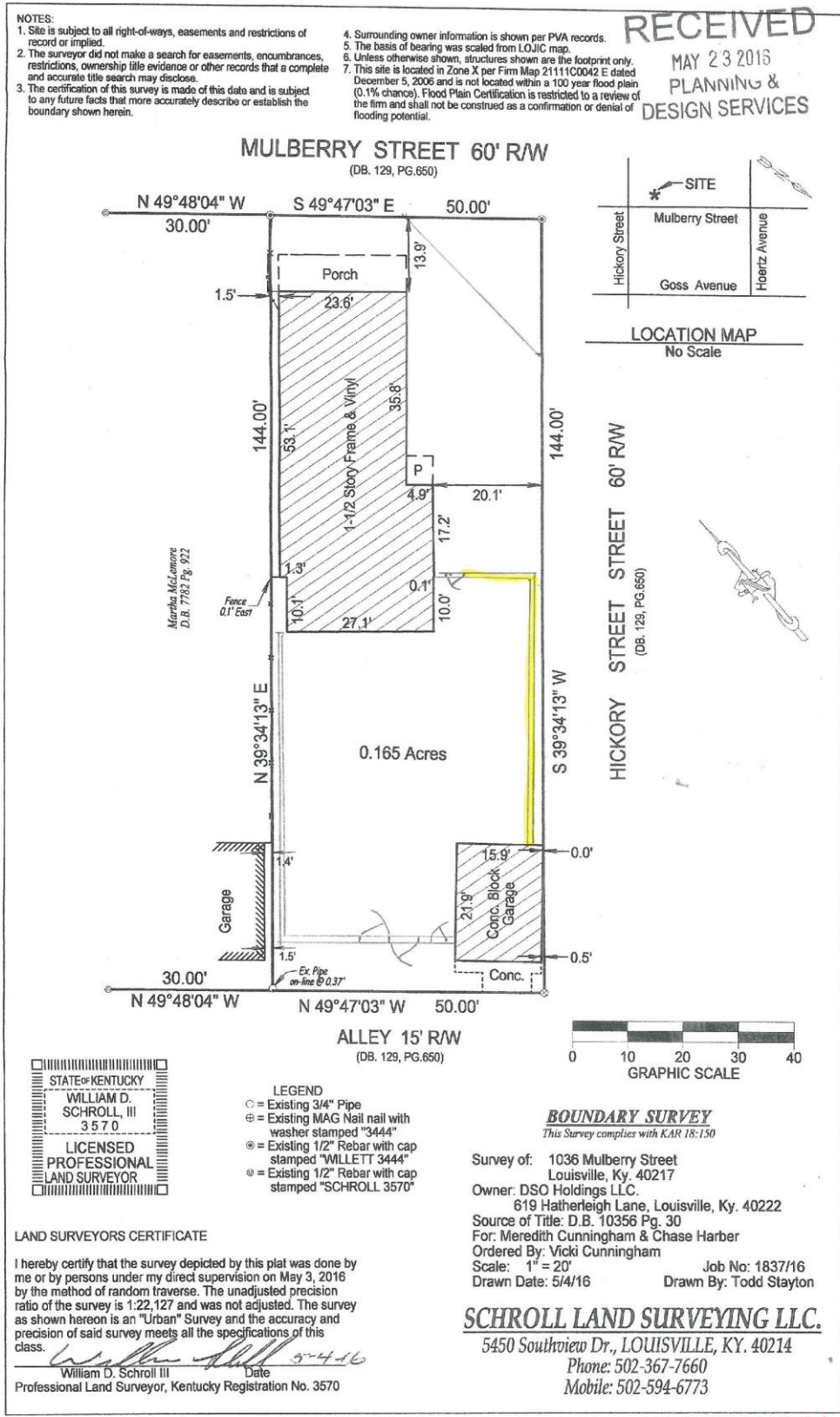


2. Aerial Photograph

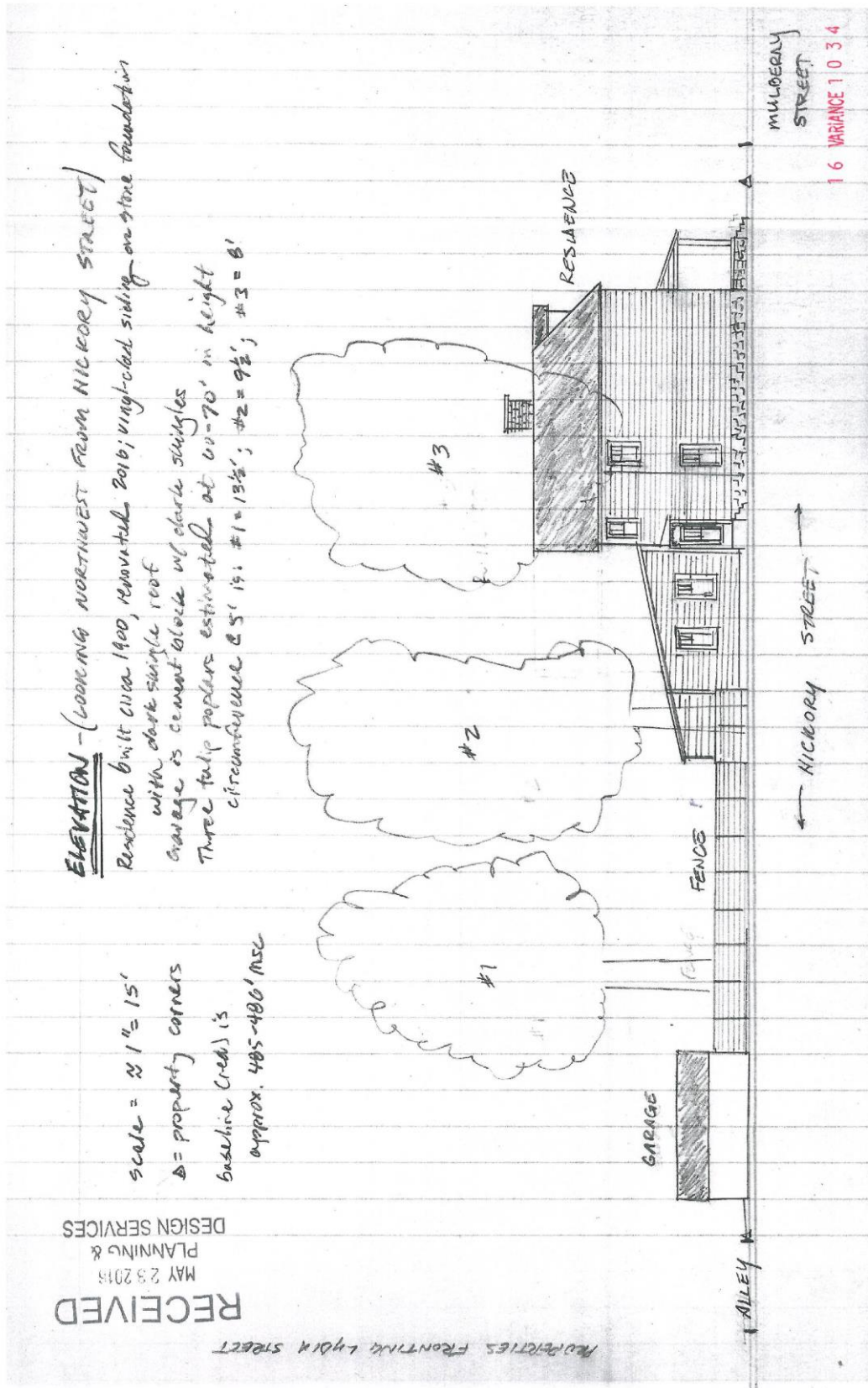




3. Site Plan



4. Fence Elevation





5. Site Inspection Photos



Looking at the front of the subject property located at 1036 Mulberry Street.





The street side yard where the proposed fence variance would be located.

**Surrounding Property Photos**



Looking across Hickory Street (west) at properties having fences, in this example there is a chain link fence and a wrought iron fence.





To the southwest of the subject site, along Hickory Street, another vertical plank wood fence.



Directly to the rear (Southeast) of the subject site, along Hickory Street, another vertical wood plank fence approximately six feet in height.