

**Board of Zoning Adjustment**  
**Staff Report**  
 August 6, 2018



<b>Case No:</b>	18VARIANCE1063
<b>Project Name:</b>	Mount Holly Road Variance
<b>Location:</b>	504 Mount Holly Road
<b>Owner(s)/Applicant:</b>	Cecil Comstock
<b>Area:</b>	.44550 acres or 19,405.98 sq. ft.
<b>Zoning:</b>	R-4
<b>Form District:</b>	Village Center (Traditional Form District Type)
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	13 – Vicki Aubrey Welch
<b>Case Manager:</b>	Ross Allen, Planner I

**REQUEST**

- **Variance** from Land Development Code Section 4.4.3.A.1.a.i for an existing six feet tall solid wooden fence to exceed the maximum allowable height within the street side yard setback along Morgan Ave. on an R-4 zoned parcel within the Village Center Form District.

<b>Location</b>	<b>Requirement</b>	<b>Request</b>	<b>Variance</b>
<b>Street Side Yard Fence Height</b>	3.5 ft.	6 ft.	2.5 ft.

**CASE SUMMARY/BACKGROUND**

The subject property is located on the southeastern corner of Mount Holly Road and Morgan Ave. in southcentral Louisville Metro. The subject site is an R-4 zoned parcel within a Village Center Form District, a Traditional Form District, on a corner lot having two frontages, on Mount Holly Road and Morgan Ave. The owner recently constructed a 1,576 sq. ft. one story home on the lot and had constructed the rear yard portion of the fence but had not completely enclosed the rear yard area. The applicant upon completing the fence will require a fence height variance to encroach into the 15 ft. street side yard setback for a portion of the fence parallel to Morgan Ave. The fence as described by the owner is a six foot tall solid wood fence encroaching into the street side yard by approximately eight feet requiring that the applicant either reduce the height to the allowable 42 inches/three and one-half feet or request the variance.

**STAFF FINDING**

Staff finds that the requested variance is justifiable and meets the standard of review.

**TECHNICAL REVIEW**

The existing fence is not dimensioned on the site plan as submitted to Planning Staff. Based upon the existing construction plan survey in addition to the submitted site plan, PDS staff has estimated the

amount of encroachment of the fence into the 15 ft. street side yard setback to be approximately eight feet in depth with fence length of approximately 80 feet parallel to Morgan Ave. Additionally, staff has measured the distance from the closest driveway onto Morgan Ave. that may be visually impacted by the fence and has estimated that the existing fence is approximately 52 feet from the closest driveway on the same side of Morgan Ave. Lastly, the fence running parallel to Morgan Ave. is approximately 22 feet from the edge of pavement (15 ft. from edge of pavement to property line plus seven feet from the property line to the fence).

### **INTERESTED PARTY COMMENTS**

No interested party comments were received.

### **STANDARD OF REVIEW AND STAFF ANALYSIS FOR A VARIANCE from LDC Section 4.4.3.A.1.a.i for an existing 6 ft. tall solid wooden fence to exceed the maximum allowable height within the street side yard setback along Morgan Ave. on an R-4 zoned parcel within the Village Center Form District.**

- (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 as the applicant states that “The 6’ fence will not affect public health, safety or welfare because it simply offers security for our property. We have an above ground pool, so this offers added safety to the public. We have two indoor dogs that are outside from time to time. In addition, the fence will be about 100 ft. from the intersection.” The fence is located in the rear, side, and street side yard areas outside of the site triangle as found at the intersection of Mt. Holly Rd. and Morgan Ave. and the closest neighbor’s driveway is approximately 52 ft. south of the fence with visibility unobstructed. The fence as encroaching into the 15 ft. street side yard setback is approximately 22 feet from the edge of pavement along Morgan Ave.

- (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 as the applicant states, “Our lot is a corner lot and is on the backside of our home. There will be no fence on the front side (Mt. Holly Rd.). It is similar, in fact, to the ‘fence row’ formed by trees/bushes across the street from our home. The fence will be well-kept and maintained.” Fences in the general vicinity are chain link whereas, the applicant will have a vertical slat wooden fence six feet in height.

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

STAFF: The applicant/owner states in their justification, “The variance will not cause a hazard or nuisance to the public because it is several feet from the side road, and will not impede or hinder the neighbors and community from any of their normal activities. Again, the fence will be about 100’ from the main entrance/intersection.” The fence is located in the rear, side, and street side yard areas outside of the sight triangle as found at the intersection of Mt. Holly Rd. and Morgan Ave. and the closest neighbor’s driveway is approximately 52 ft. south of the fence with visibility unobstructed. The fence as encroaching into the 15 ft. street side yard setback is approximately 22 feet from the edge of pavement along Morgan Ave.

- (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 as the applicant/owner states, "The height of the fence on the side roads is set at four feet. However, in this case the home was built on the combination of a corner lot and an adjoining lot. The back lot away from the front road we are simply asking for the height to be increased to six feet to make the back yard more secure." Upon review of the site plan and aerial imagery staff estimates that the encroachment of the applicant's/owner's fence is within the 15 ft. street side yard setback, the fence is approximately seven feet interior from the property line along Morgan Ave. meaning an encroachment of eight feet into the street side yard with a height that is 2.5 ft. taller than the allowable 3.5 ft. (Village Center – Traditional Form District) The fence is located in the rear, side, and street side yard areas outside of the site triangle as found at the intersection of Mt. Holly Rd. and Morgan Ave. and the closest neighbor's driveway is approximately 52 ft. south of the fence with visibility unobstructed. The fence as encroaching into the 15 ft. street side yard setback is approximately 22 feet from the edge of pavement along Morgan Ave.

ADDITIONAL CONSIDERATIONS:

1. The requested variance does not arise 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 because the owner states "We purchased two adjoining lots, which form a 'corner' lot. The side road of our backyard is separated by an easement with a drainage ditch that we maintain." The owner/applicant had constructed the fence with encroachment into the street side yard and is requesting relief. The fence is located in the rear, side, and street side yard areas outside of the site triangle as found at the intersection of Mt. Holly Rd. and Morgan Ave. and the closest neighbor's driveway is approximately 52 ft. south of the fence with visibility unobstructed. The fence as encroaching into the 15 ft. street side yard setback is approximately 22 feet from the edge of pavement along Morgan Ave.

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 applicant/owner states, "The strict application of the provisions of the regulation 'could' deprive us the safety and security of our animals and our personal property, including the pool and its supplies, outside tools, etc." The applicant has stated previously in the justification that a pool is present in the rear yard which would result in the need for a fence to prevent the hazardous nuisance. The result of denial would require the applicant to reduce the existing fence height as found in the street side yard for approximately eight feet depth (perpendicular to Morgan Ave.) and for a length of approximately 78 ft. (parallel to Morgan Ave.) from the existing six feet height as currently in place.

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 applicant/owner states, “No”, the circumstances are not the result of actions of the applicant/owner taken subsequent to the adoption of the zoning regulation from which relief is sought. The applicant/owner erred when constructing or having the fence constructed when placing the fence in the street side yard. However, the fence is located in the rear, side, and street side yard areas outside of the sight triangle as found at the intersection of Mt. Holly Rd. and Morgan Ave. Additionally, the closest neighbor’s driveway is approximately 52 ft. south of the fence with visibility unobstructed. The fence as encroaching into the 15 ft. street side yard setback is approximately 22 feet from the edge of pavement along Morgan Ave.

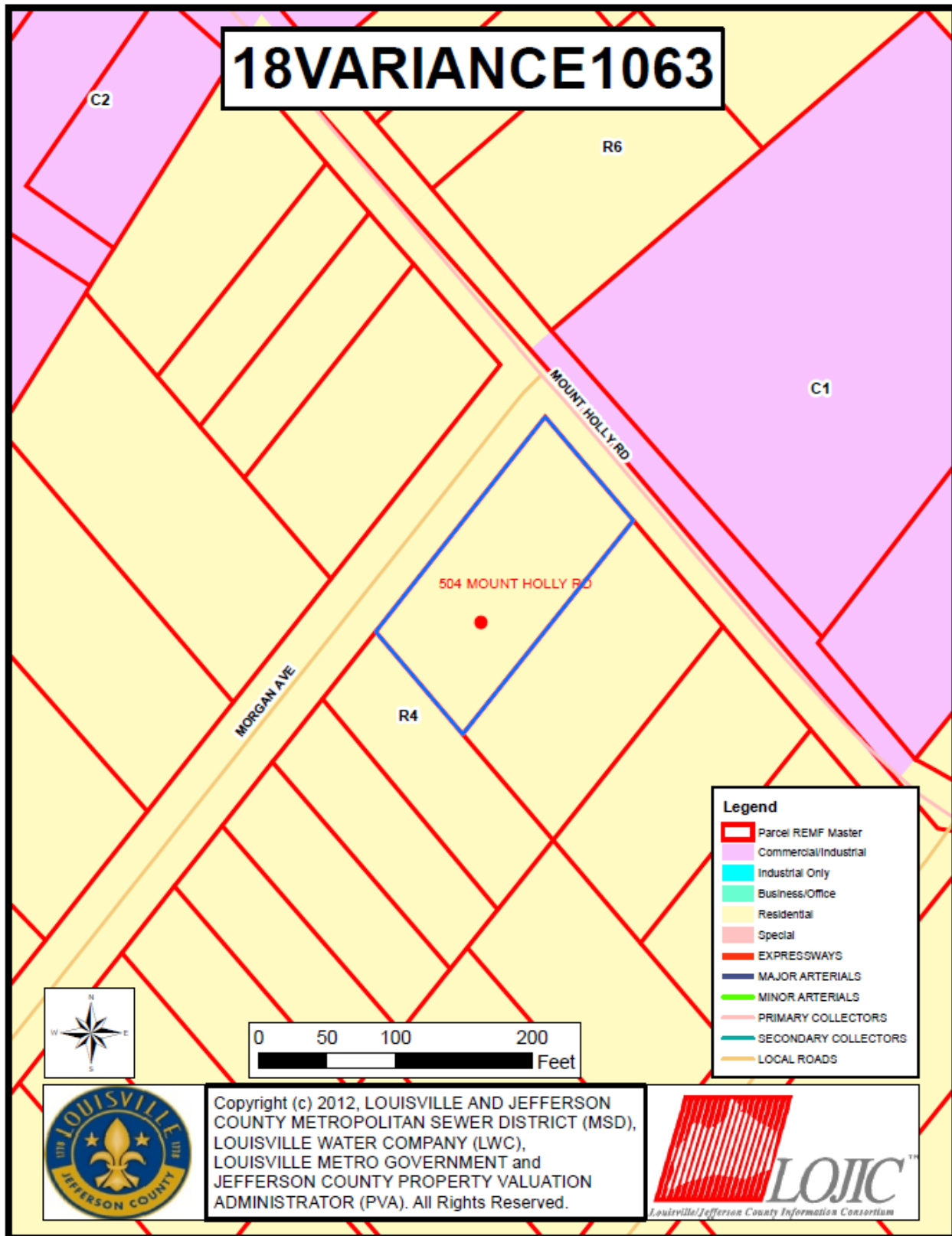
**NOTIFICATION**

Date	Purpose of Notice	Recipients
<b>07/23/2018</b>	Hearing before BOZA	1 <sup>st</sup> tier adjoining property owners Registered Neighborhood Groups in Council District 13
<b>07/19/2018</b>	Hearing before BOZA	Notice posted on property

**ATTACHMENTS**

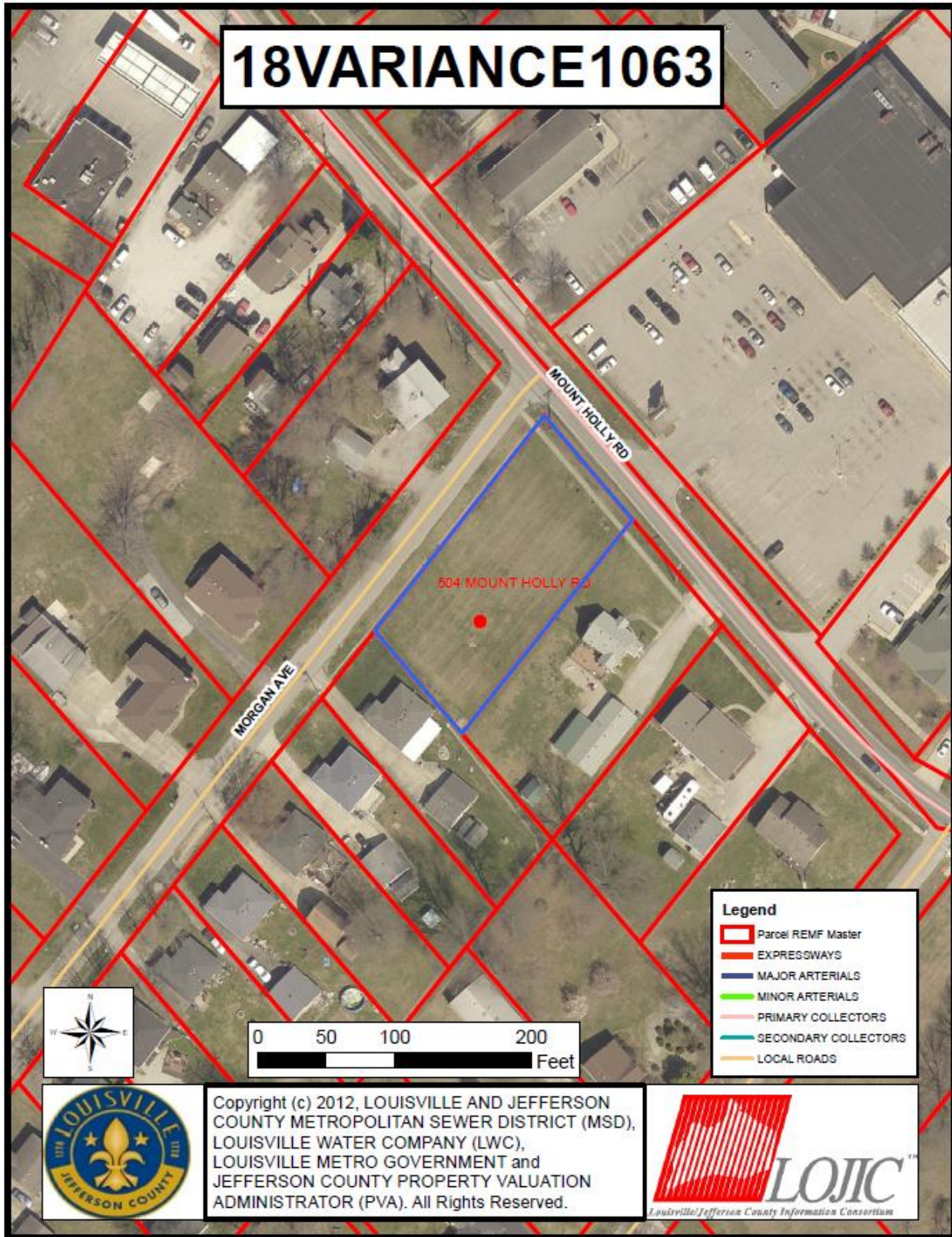
1. Zoning Map
2. Aerial Photograph
3. Site Plan

1. Zoning Map





2. Aerial Photograph



3. Site Plan

