

Board of Zoning Adjustment

Staff Report

May 1, 2023



Case No: 23-VARIANCE-0031
Project Name: Hull Street Fence Variance
Location: 1201 Hull Street
Owner: Eastland Properties LLC
Applicant: Hunter Makk
Jurisdiction: Louisville Metro
Council District: 9- Andrew Owen
Case Manager: Amy Brooks, Planner I

REQUESTS:

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

Location	Requirement	Request	Variance
Street Side Yard	42 in.	137 in.	95 in.

CASE SUMMARY/BACKGROUND

The subject property is zoned R-6 Multi-Family Residential within the Traditional Neighborhood Form District. Located on the northeastern corner of Hull and Cooper Streets in Irish Hill Neighborhood, the site currently is developed with a two-story, single-family residential structure and detached garage. The applicant has constructed a wooden privacy fence in the street side yard setback that measures 11.4 feet in height.

This case is related to an ongoing enforcement case for the fence exceeding the allowed maximum height.

STAFF FINDINGS

Staff finds that the requested variance is not justified as determined by staff's analysis in the standard of review.

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.

TECHNICAL REVIEW

No outstanding technical review comments.

INTERESTED PARTY COMMENTS

Several interested party comments were received by staff.

RELATED CASES:

20-VARIANCE-0179: second floor encroachment into the side yard setback

ENF-ZON-22-001560; the fence is zoning enforcement for exceeding the maximum 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: Staff is concerned that the built fence will adversely affect the public health, safety or welfare, because the increase in height will impede vision clearance for the vehicles exiting the existing garage at the rear of the property. This would adversely impact the safe movement of traffic and pedestrians along Cooper Street.

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

STAFF: The fence will alter the essential character of the general vicinity. While there are other examples of wooden privacy fences in the neighborhood that exceed the allowed maximum height in a street side yard setback, none of those fences exceed the prescribed height regulations to this extent. Adjacent properties on Cooper St and Hull Street have street side yard fences that appear to exceed 42 inches, but they are not compatible to the scale and impact of this fence. (See site photos for examples).

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

STAFF: The requested variance will cause a hazard or nuisance to the public as it potentially impacts the safety of both pedestrians and vehicles traveling along Cooper Street.

- (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 because the fence was/is capable of being modified to be within the height limits or at a lesser height that would require a smaller dimensional variance request.

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 generally apply to land in the general vicinity or the same zone as the property is similar in size and shape to other properties in the area of Irish Hill.

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 proposed fence could be reduced to conform with the existing regulations or shifted out of required side yard setback.

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 applicant has already constructed the fence.

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.

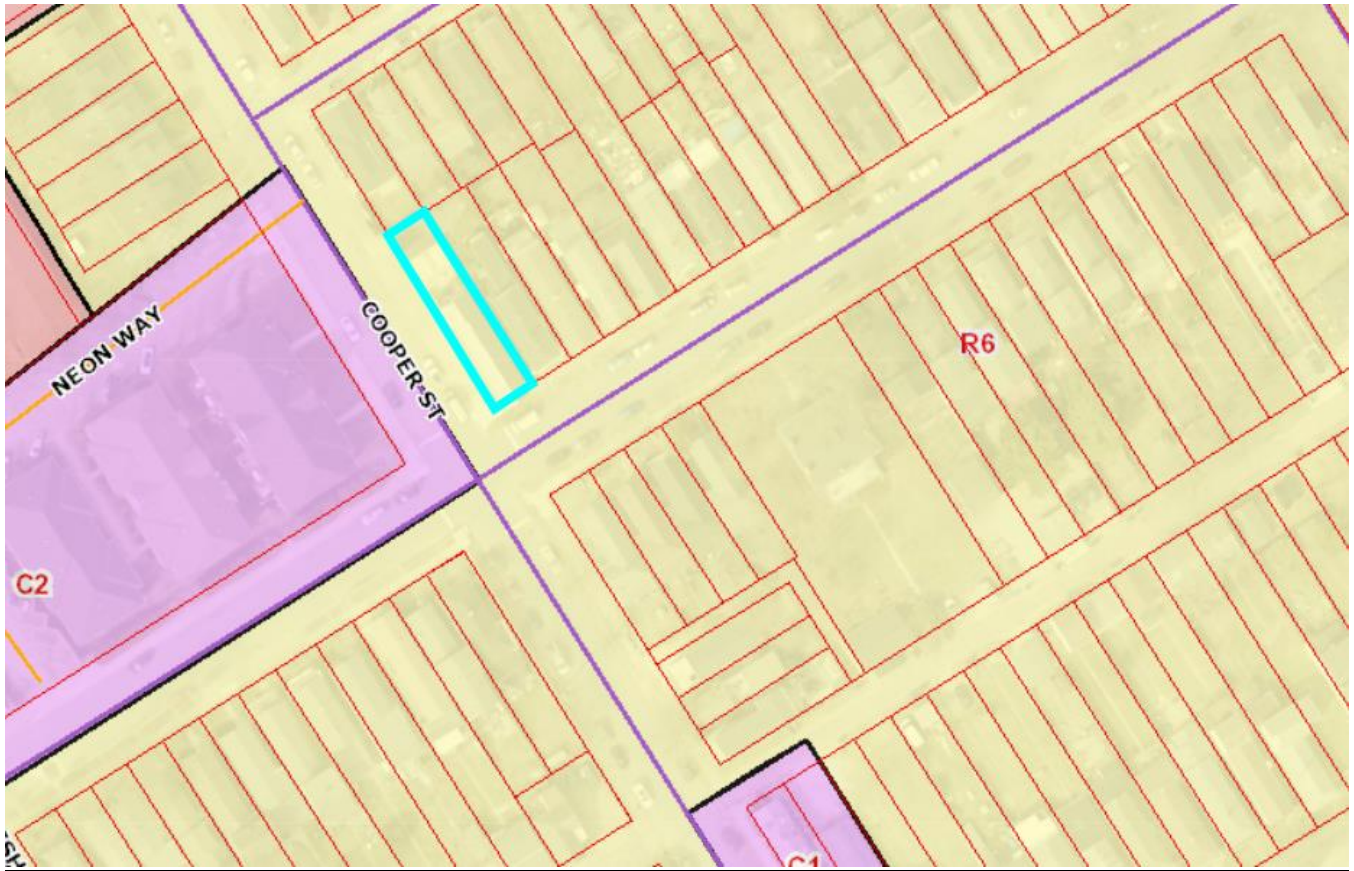
NOTIFICATION

Date	Purpose of Notice	Recipients
4/14/2023 4/17/2023	Hearing before BOZA	1 st tier adjoining property owners and current residents Registered Neighborhood Groups in Council District 9
04/19/2023	Hearing before BOZA	Notice posted on property

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Site Plan
4. Survey
5. Conditions of Approval
6. Site Photos

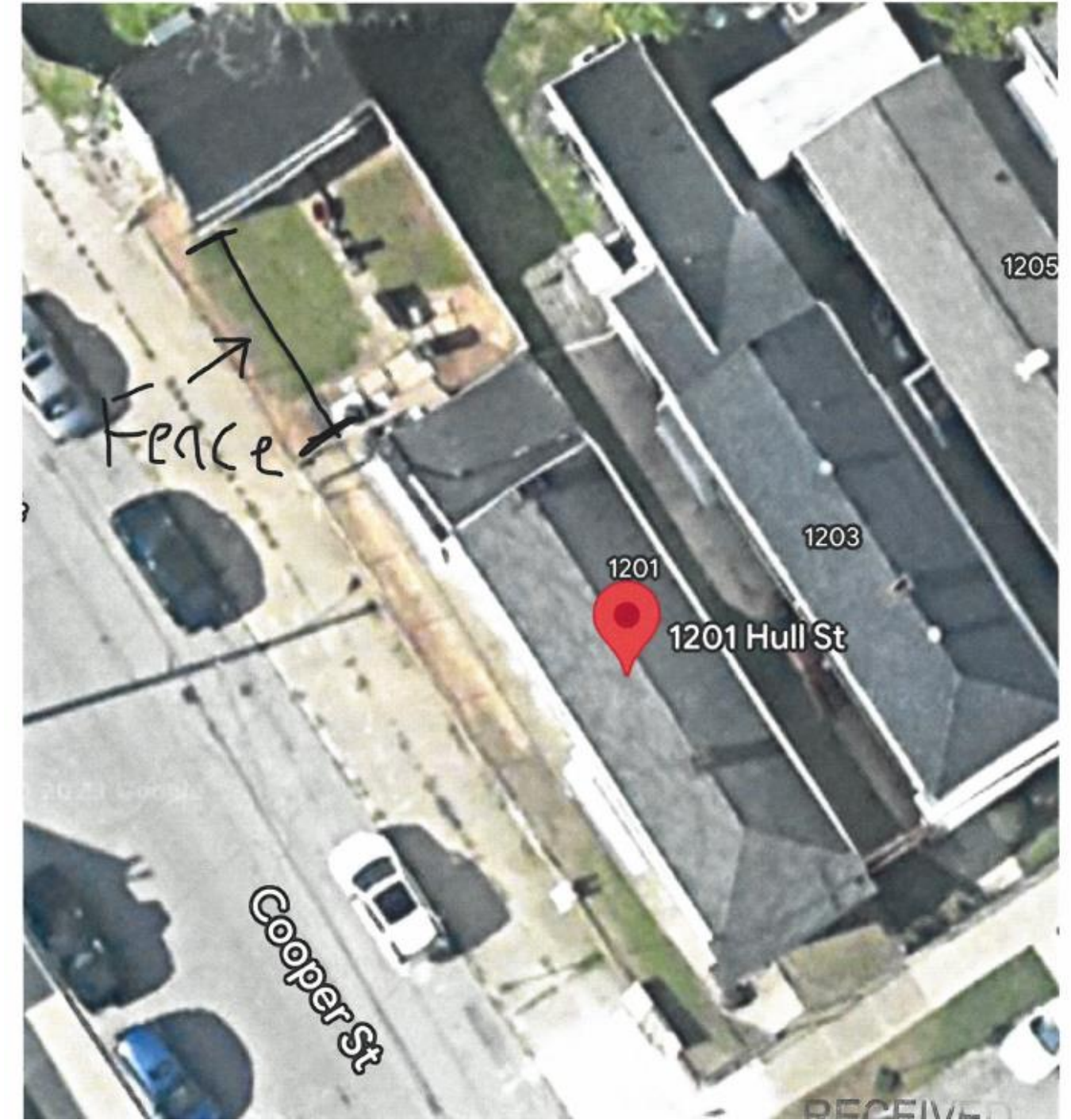
1. Zoning Map



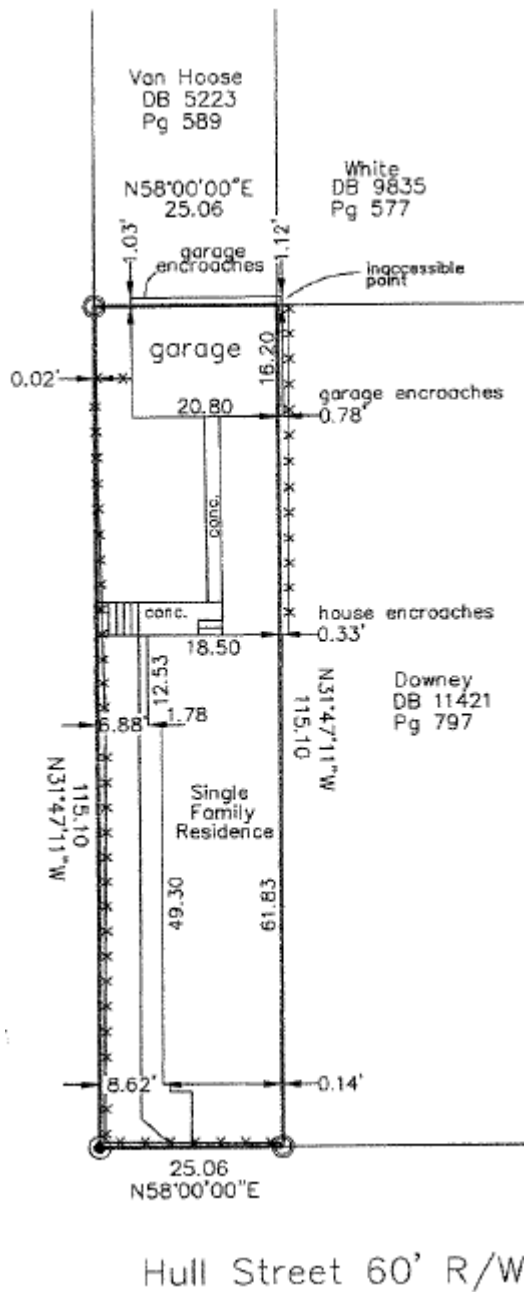
2. Aerial Photograph



3. Site Plan



4. Boundary Survey



5. Conditions of Approval

- 1) The finished side of fences must face out towards the public right of way and adjoining properties.

6. Site Photos



Front of subject property.



Property to the right.



Property to the left.



Across the street .



View of variance area.



Example of street side yard fence at Cooper Street



Variance area looking toward Hull Street.



Example of street side yard fence along Hull Street.