

# Board of Zoning Adjustment

## Staff Report

August 21, 2023



<b>Case No:</b>	23-VARIANCE-0095
<b>Project Name:</b>	Heatherview Road Fence Variance
<b>Location:</b>	4000 Heatherview Road
<b>Owner/Applicant:</b>	Sadak Sajib
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	2 – Barbara Shanklin
<b>Case Manager:</b>	Jeremy Chesler, Planner I

**REQUESTS:**

- **Variance** from Land Development Code (LDC), Section 4.4.3.A.1.a.i to allow a fence to exceed the maximum height of 48 inches (4’) in the street side yard setback.

Location	Requirement	Request	Variance
<b>Street Side Yard Setback</b>	<b>48 in. (4’)</b>	<b>72 in. (6’)</b>	<b>24 in. (2’)</b>

**CASE SUMMARY**

The subject property is within the Neighborhood Form District. The property is located at the southeast corner of Meadow Ridge Drive and Heatherview Road. The site is developed with a single-family home. The applicant has constructed a wooden privacy fence along the street side yard property line that is approximately 72 inches or 6’ tall. The fence exceeds the allowed maximum height in the required street side yard setback by 24 inches or 2’.

**STAFF FINDINGS**

Staff finds that the requested variance is adequately justified based on staff’s analysis contained in the standard of review.

**TECHNICAL REVIEW**

- This case is related to an ongoing enforcement case due to the fence exceeding the maximum height allowed, case ENF-ZON-23-000713

## **STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE**

- (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, because the fence is setback several feet from the sidewalk and does not appear to create any safety concerns for pedestrians or road users.

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

STAFF: The fence will not alter the essential character of the general vicinity as there are several other properties within the Breckenridge Meadow Subdivision with fences that exceed the maximum allowed height in the street side yard setbacks.

- (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 because the fence does not impede vision for pedestrians or drivers. The fence is set back several feet from the sidewalk which provides sufficient visual and physical space for pedestrians. The fence appears to be well built and structurally sound.

- (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. The applicant has limited options for constructing a fence on the property in a manner that would be in compliance with regulations.

### **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 arise from special circumstances which do not generally apply to land in the general vicinity or the same zone due to the particularly unique shape of this corner lot.

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 regulations.

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. The property has an open zoning enforcement case which has led the applicant to apply for the variance.

**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.

**REQUIRED ACTIONS**

- **APPROVE or DENY the Variance from Land Development Code, Section 4.4.3 to allow a fence to exceed the maximum height of 4' in the street side yard setback.**

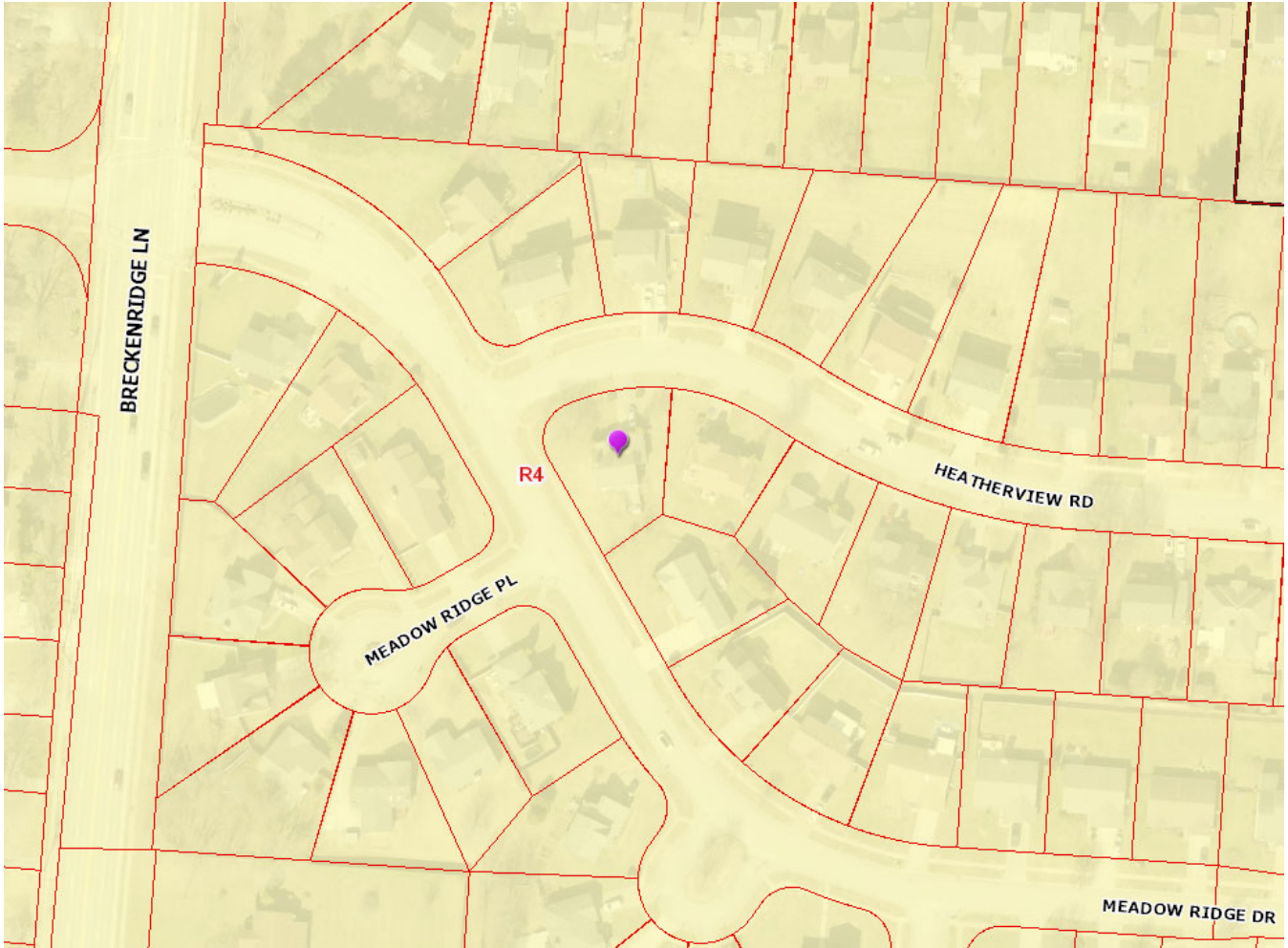
**NOTIFICATION**

<b>Date</b>	<b>Purpose of Notice</b>	<b>Recipients</b>
<b>8/4/2023</b>	Hearing before BOZA	1 <sup>st</sup> tier adjoining property owners Registered Neighborhood Groups in Council District 2
<b>8/4/2023</b>	Hearing before BOZA	Notice posted on property

**ATTACHMENTS**

1. Zoning Map
2. Aerial Photograph
3. Fence Exhibit

1. Zoning Map



2. Aerial Photograph





**3. Fence Exhibit**



Subject property: 72" tall fence in street side yard setback along Meadow Ridge Drive