

**Board of Zoning Adjustment**  
**Staff Report**  
 September 12, 2022



<b>Case No:</b>	22-VARIANCE-0100
<b>Project Name:</b>	Powell Avenue Fence Variance
<b>Location:</b>	3646 Powell Ave
<b>Owner/Applicant:</b>	Daniel Most
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	15 – Kevin Triplett
<b>Case Manager:</b>	Heather Pollock, 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 setbacks.

Location	Requirement	Request	Variance
Street Side Yard Fence Height	42 in.	72 in.	30 in.

**CASE SUMMARY/BACKGROUND**

The subject property is zoned R-5 Residential Single Family and is in the Traditional Neighborhood Form District. It is on the northwest corner of the intersection of Powell and Camden Avenues in the Jacobs Neighborhood. The site currently has a single-family residential structure and an existing garage. The applicant is proposing to construct a solid wood fence that is six feet in height within the street side yard setback; therefore, a variance is required for the height of the fence

**STAFF FINDINGS**

Staff finds that the requested variance does meet the standards of review of (a), (c), and (d). In addition, staff is concerned that the site plan may not show the correct property lines.

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.b.i.

**TECHNICAL REVIEW**

No outstanding technical review comments.

## INTERESTED PARTY COMMENTS

No interested party comments were received by staff.

## RELATED CASES

No related cases.

## 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 variance site plan does not adequately demonstrate the location of the fence in relation to the property lines and therefore may cause a potential safety issue to the public related to the sight triangle for vehicles entering and exiting the alley.

- (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 there are other wooden privacy fences along Camden Avenue on the adjacent blocks to the east that exceed 42 inches in height in the street side yard setbacks.

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

STAFF: The variance site plan does not reference a survey and does not appear to have been drafted by a design professional. As such, the plan does not reflect existing property lines accurately and it appears that the proposed fence location could be within the right-of-way, which could cause a hazard or nuisance to the public. Further, the Board does not have the authority to permit fences to be located in any right or way or required sight triangle.

- (d) The requested variance will not allow an unreasonable circumvention of the zoning regulations.

STAFF: **While it would enclose less area**, the proposed fence could be moved out of the street side yard and be allowed at the requested height without the need for the variance. Alternatively, the property owner could install a fence of a lesser height and/or different material on the property line without the need for a variance or a lesser 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 subdivision.

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 fence could easily be shifted out of the street 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 not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as the applicant is requesting the variance and has not begun construction.

### **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.

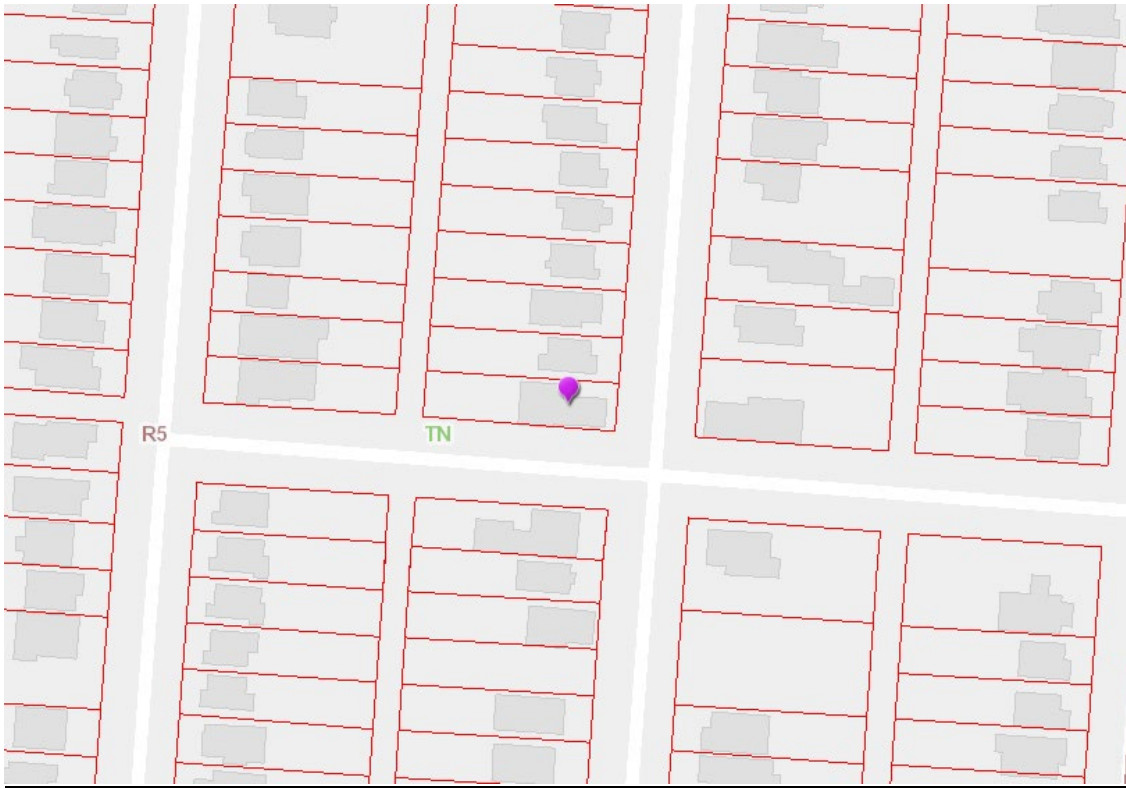
### **NOTIFICATION**

<b>Date</b>	<b>Purpose of Notice</b>	<b>Recipients</b>
<b>08/26/2022</b>	Hearing before BOZA	1 <sup>st</sup> tier adjoining property owners and current residents Registered Neighborhood Groups in Council District 2
<b>08/26/2022</b>	Hearing before BOZA	Notice posted on property

### **ATTACHMENTS**

1. Zoning Map
2. Aerial Photograph
3. Site Plan
4. Condition of Approval
5. Site Photos

# 1. Zoning Map



2. Aerial Photograph



### 3. Site Plan



### 4. Conditions of Approval

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

**5. Site Photos**



Front of subject property.



Property to the right.



Across Camden Ave





View from Alleyway

Network: Aug 26, 2022 at 1:08:51 PM EDT  
Local: Aug 26, 2022 at 1:08:51 PM EDT



View of variance area from intersection.

Network: Aug 26, 2022 at 1:10:12 PM EDT  
Local: Aug 26, 2022 at 1:10:12 PM EDT



View of variance area from alley and up Camden Ave