

Board of Zoning Adjustment

Staff Report

May 23, 2022



Case No: 22-VARIANCE-0048
Project Name: Cressbrook Drive Variance
Location: 605 Cressbrook Drive
Owner/Applicant: Michael Payne
Jurisdiction: Louisville Metro
Council District: 9 – Bill Hollander
Case Manager: Heather Pollock, Planner I

REQUESTS:

Variance from Land Development Code section 4.4.3.A.1.a.ii to allow a fence to exceed 96 inches in height in the side yard setback.

Location	Requirement	Request	Variance
Street Side Fence Height	96 in.	100 in.	4 in.

CASE SUMMARY/BACKGROUND

The subject property is zoned R-5 Residential Single Family Residential and is in the Neighborhood Form District. It is on the west side of Cressbrook Dr. in the Cherokee Gardens Neighborhood. The site currently has a one-story single-family residential structure and the applicant has constructed a privacy fence that exceeds the maximum height permitted within the side and rear yard setbacks. The height of the fence is variable with the maximum from grade height being 100 in.

STAFF FINDINGS

Staff finds that the requested variance meets standards (a) and (c), but staff is concerned that the variance request does not meet standards (b) and (d) because the fence exceeds the standard height of a privacy fence and it does not match the character of the general vicinity.

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

Fences over 7 ft. in height require a building permit.

INTERESTED PARTY COMMENTS

Interested party comments were received by staff; an adjoining property owner expressed concerns about the height of the fence.

RELATED CASES

ENF-ZON-22-000072: Zoning enforcement case for the fence height
ENF-BLD-22-00525: House renovations without a building permit.

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: The requested variance will not adversely affect the public health, safety or welfare, because the fence must be constructed to comply with all applicable building regulations and the Land Development Code, except where relief is requested.

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

STAFF: The requested variance may alter the essential character of the general vicinity as there does not appear to be any fences in the area that exceed 96 inches in height. However, the design of this fence along with its neutral color reduce the impact of its height.

- (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 is located in the rear and side yards with no access to the public and must be constructed to comply with all building codes.

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

STAFF: The requested variance may allow an unreasonable circumvention of the zoning regulations as the fence is not a standard height for a privacy fence.

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.

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 fence could be reduced to meet the requirement.

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 fence has been constructed and the applicant is requesting the variance after the fact.

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.

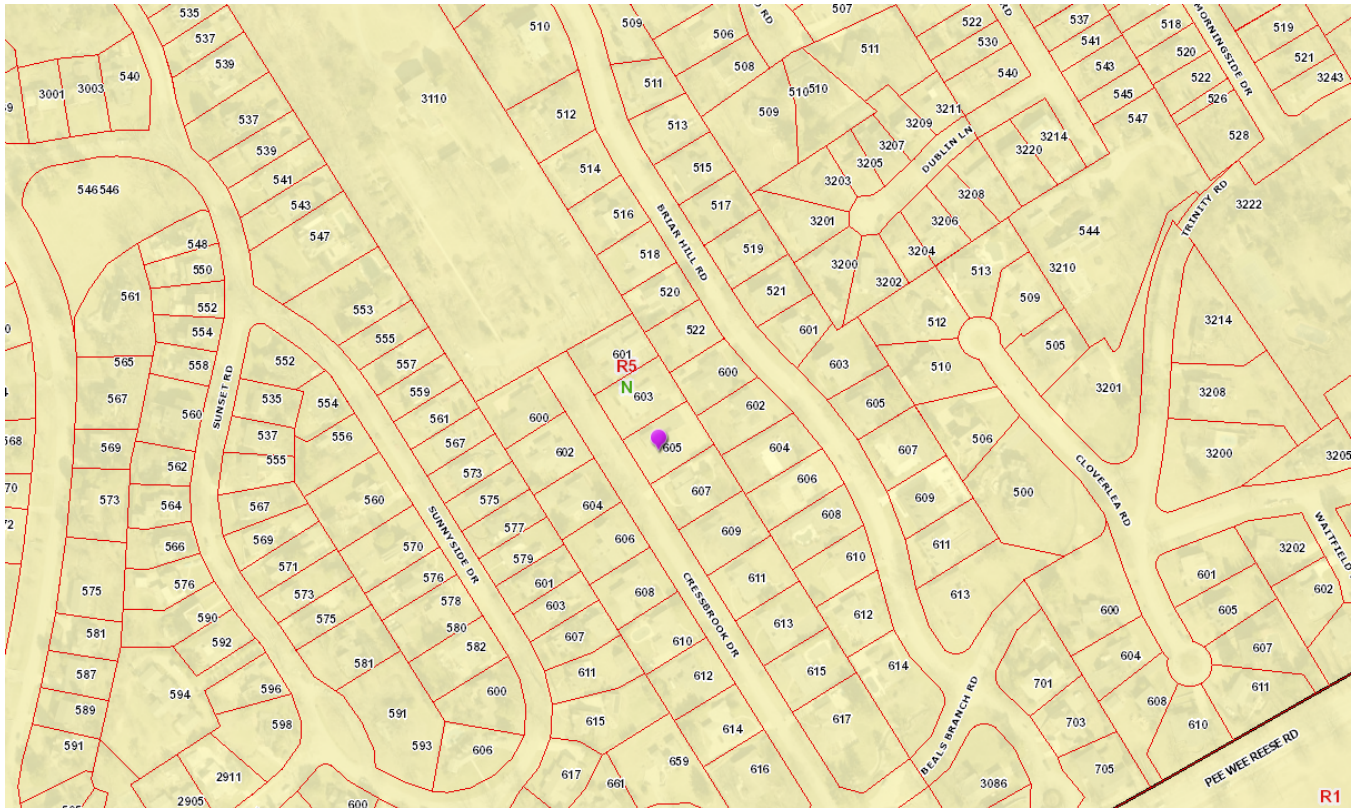
NOTIFICATION

Date	Purpose of Notice	Recipients
05/06/2022	Hearing before BOZA	1 st tier adjoining property owners and current residents Registered Neighborhood Groups in Council District 9
05/09/2022	Hearing before BOZA	Notice posted on property

ATTACHMENTS

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

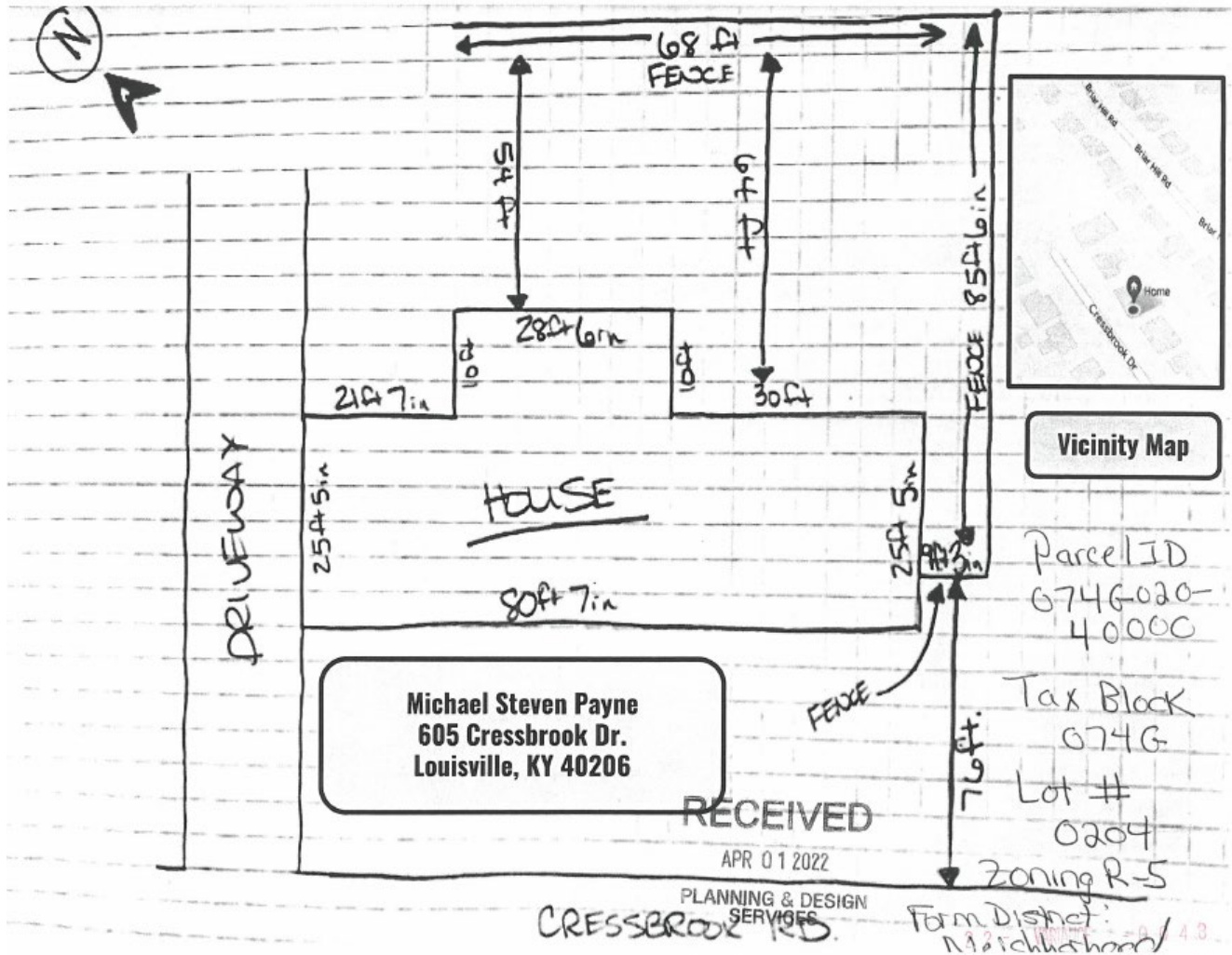
1. Zoning Map



2. Aerial Photograph



3. Site Plan



4. Conditions of Approval

1) The finished side of the fence facing out towards the public right of way shall be painted a light neutral color.

5. Site Photos



Front of subject property.



Property to the left, Google 2019.



Property to the right, Google 2019.



Across street, Google 2019.



View of fence from side yard.



View of fence from rear of house.



View of fence from rear yard area.