

Board of Zoning Adjustment
Staff Report
March 16, 2020



Case No:	19-VARIANCE-0039
Project Name:	E. Manslick Road Variance
Location:	6510 E. Manslick Road
Owner/Applicant:	Yenny Estrada
Jurisdiction:	Louisville Metro
Council District:	23 – James Peden
Case Manager:	Zach Schwager, Planner I

REQUEST

- **Variance** from Land Development Code section 4.4.3.A.1.a.i to allow a fence in the street side yard in a Neighborhood Form District to exceed 48 inches in height.

Location	Requirement	Request	Variance
Fence in Street Side Yard	48 inches	72 inches	24 inches

CASE SUMMARY/BACKGROUND

The subject property is a corner lot in Highview at the intersection of E. Manslick Road and Old Ironside Drive. It currently contains a single-family residence. The applicant has constructed a 72-inch wooden privacy fence in the street side yard. Land Development Code section 4.4.3.A.1.a.i allows a fence in the street side yard in the Neighborhood Form District to be up to 48 inches in height.

This case was continued from the January 6, 2020 public hearing of the Board of Zoning Adjustment. The applicant was required to provide staff with a boundary survey no later than March 6 and to have the property lines staked in the field for staff to make a site visit. Staff received the survey on February 7 and staff visited the site on February 13. According to the survey, the street side property line is 13.9 ft. from the side of the residence. Staff measured the distance from the side of the residence to the fence and it was 21 ft. +/- . Staff then measured the distance from the fence to a property line stake and it was 7 ft. 4 in. over the property line (photo attached to agenda item).

STAFF FINDING

Staff finds that the requested variance is adequately justified and meets 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 the Land Development Code to allow a fence in the street side yard setback in a Neighborhood Form District to exceed 48 inches in height.

TECHNICAL REVIEW

No technical review was undertaken.

INTERESTED PARTY COMMENTS

Staff has been contacted by John Torsky, the legislative aid for council district 23, multiple times to check on the status of the case. Staff has received a letter and three emails of support for the fence height variance.

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: The requested variance will not adversely affect the public health, safety or welfare as the existing fence is not within the sight triangle and there is adequate vision clearance for motorists and pedestrians.

- (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 fences over 48 inches in height in front and street side yards in the area. However, due to the length of the fence (approximately 413 ft.), staff recommends that the applicant in some way break up the monotony of the fence.

- (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 as the fence will not obstruct sight lines or create a hazard for motorists or pedestrians at the intersection.

- (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 fence is needed to provide privacy in the rear yard of a corner lot.

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 arises from special circumstances which do not generally apply to land in the general vicinity or the same zone as the property is a 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 create an unnecessary hardship on the applicant by requiring the applicant to construct a lower fence.

3. 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.

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.

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.

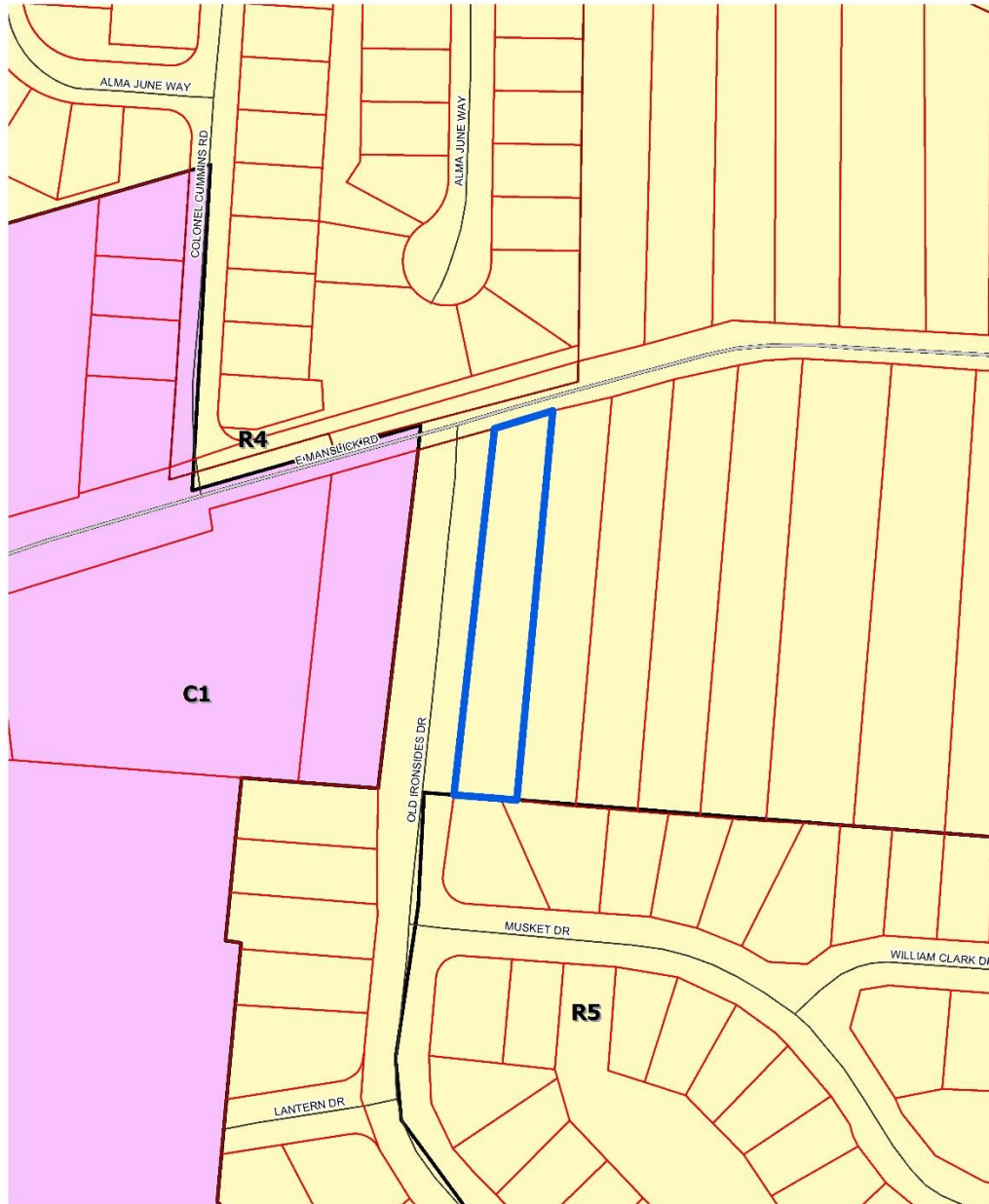
NOTIFICATION

Date	Purpose of Notice	Recipients
N/A	Hearing before BOZA	1 st tier adjoining property owners Registered Neighborhood Groups in Council District 23
N/A	Hearing before BOZA	Notice posted on property

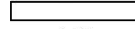
ATTACHMENTS

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

1. Zoning Map



6510 E. Manslick Road
feet



140
Map Created: 10/16/2019

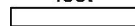


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2. Aerial Photograph



6510 E. Manslick Road
feet



Map Created: 10/16/2019



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4. **Site Photos**



Subject property.



Property to the left.



Fence from the front yard.



Fence looking south down Old Ironside Drive.



Fence from across Old Ironside Drive.



Property across E. Manslick Road with fence over 48 inches in the front yard setback.

6. Condition of Approval

#1) The applicant shall immediately remove the existing unlawful fence that was constructed without the necessary approvals from the right of way.