

Board of Zoning Adjustment

Staff Report

October 19, 2020



Case No: 20-VARIANCE-0106
Project Name: Northwestern Variance
Location: 2405 Northwestern Parkway
Owner/Applicant: Mason Embry
Jurisdiction: Louisville Metro
Council District: 5 – Donna Purvis
Case Manager: Nia Holt, Planner I

REQUEST

- **Variance** from Land Development Code (LDC) section 4.4.3.A.1.a.i to allow a fence in the street side yard in a Neighborhood Form District to exceed 42 inches in height.

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

CASE SUMMARY/BACKGROUND

The subject property is in the Portland Neighborhood and is zoning UN Urban Neighbored in the Traditional Neighborhood Form District. It currently contains a single-family residence. The applicant has begun construction on a six-foot wooden privacy fence along Northwestern Parkway. Land Development Code section 4.4.3.A.1.a.i allows a fence in the street side yard setback in the Traditional Neighborhood Form District to be up to 42 inches in height. The fence on the subject site is located in the street side yard and is 6 feet or 72 inches in height.

STAFF FINDING

Staff finds that the requested variances are adequately justified and meet 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 42 inches in height.

TECHNICAL REVIEW

No technical review was undertaken.

RELATED CASES

There is an open enforcement case under case #ENF-ZON-20-000609.

INTERESTED PARTY COMMENTS

None.

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 fence is not within the right of way.

- (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 a few fences in either a front or street side yard setback with a similar height in the area.

- (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.

- (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 because the applicant's lot is unique to the area and the fence is similar to many of the existing fences in the community.

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 as the lot is 2-3 times the width of most of the lots in the area.

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 as the applicant would not be able to screen their larger than average lot from the traffic and pedestrians traveling on Northwestern Parkway.

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.

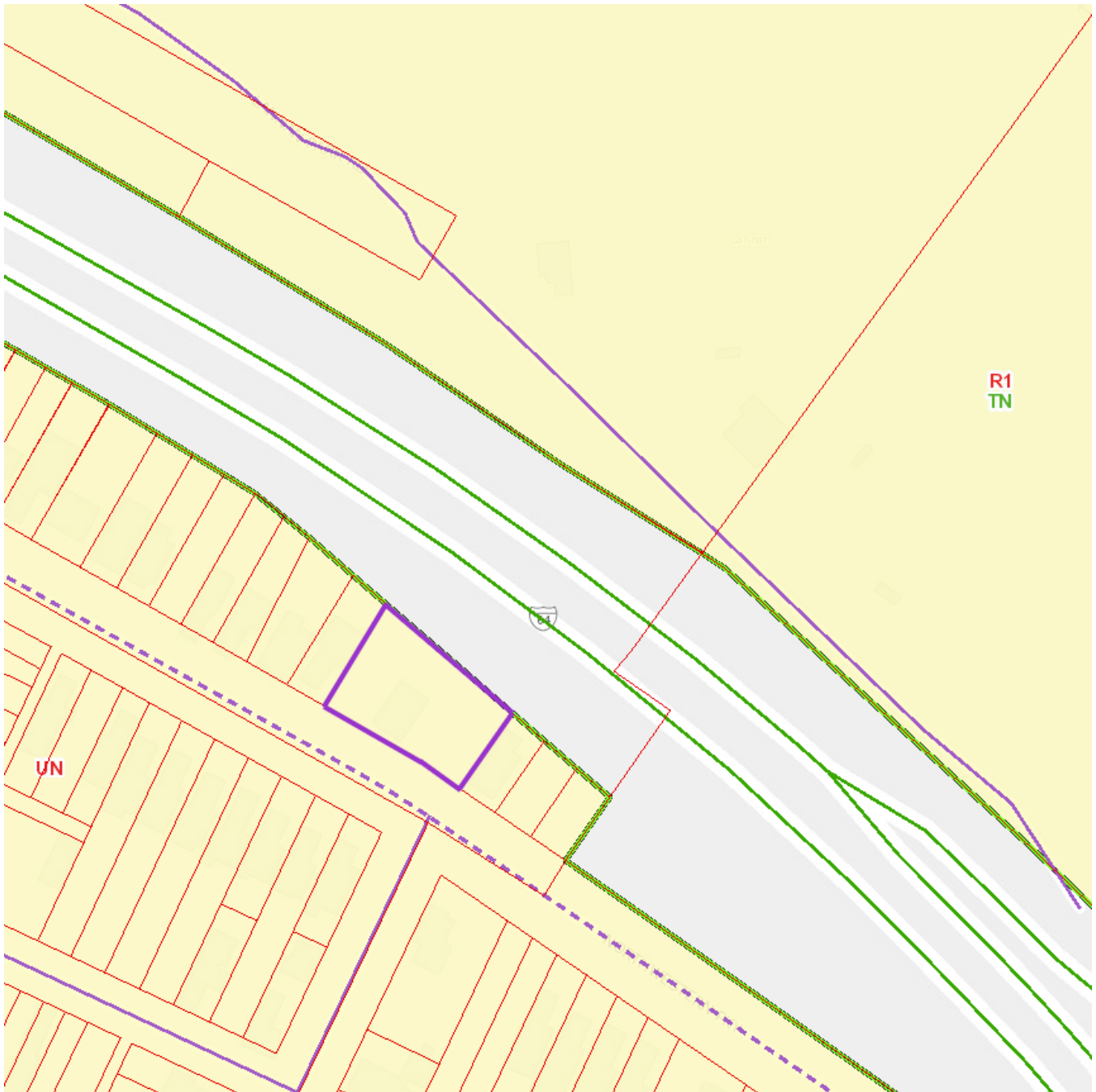
NOTIFICATION

Date	Purpose of Notice	Recipients
9/30/2020	Hearing before BOZA	1 st tier adjoining property owners Registered Neighborhood Groups in Council District 5
10/5/2020	Hearing before BOZA	Notice posted on property

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Site Plan
4. Agency Comments
5. Site Photos

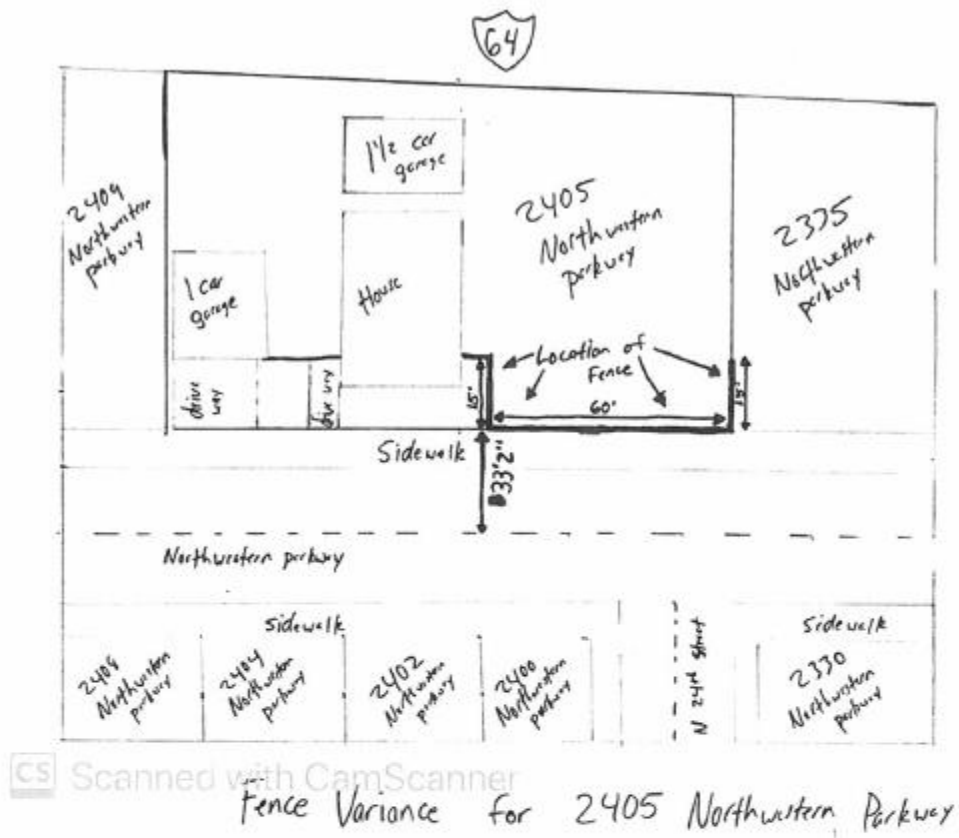
1. **Zoning Map**



2. Aerial Photograph



3. Site Plan



RECEIVED

AUG 19 2020

PLANNING & DESIGN
SERVICES

4. Agency Comments

Reply Reply All Forward IM



Mason Embry <membry031@gmail.com>

Holt, Nia

8/18/2020

Fwd: NW Pkwy Right of Way Width

Follow up. Completed on Wednesday, August 19, 2020.

Ok thank you very much.

Sent from my iPhone

On Aug 17, 2020, at 12:09 PM, Penick, Mike A <Mike.Penick@louisvilleky.gov> wrote:

Neither of those lines are quite accurate. Go by the YELLOW striped line in the actual roadway. You should also see the yellow road line if you zoom in on the sheet.

--Mike

From: Mason Embry [<mailto:membry031@gmail.com>]

Sent: Monday, August 17, 2020 12:01 PM

To: Penick, Mike A

Subject: Re: NW Pkwy ROW Width

CAUTION: This email came from outside of Louisville Metro. Do not click links or open attachments unless you recognize the sender and know the content is safe

Which line on the map represents the centerline of the road? The red solid line or the purple dotted line. Thanks

Reply Reply All Forward IM



Mason Embry <membry031@gmail.com>

Holt, Nia

8/18/20

Fwd: NW Pkwy Right of Way Width

Follow up. Completed on Wednesday, August 19, 2020.

On Aug 17, 2020, at 11:52 AM, Penick, Mike A <Mike.Penick@louisvilleky.gov> wrote:

Mr. Embry,

Per your request, attached is an updated LOJIC Map that shows NW Pkwy with as a total of 66' ROW, which measures 33' on both sides from the centerline of the road.

--Mike

<[image001.jpg](#)>

Mike Penick, MBA, SR/WA, etc.

Right-of-Way Manager, Division of Transportation

Louisville/Jefferson Co. Metro Government

444 S. Fifth Street, Suite 400

Louisville, KY 40202

(502) 574-5338

The information contained in this communication from the sender is confidential. It is intended solely for use by the recipient and others authorized to receive it. If you are not the recipient, you are hereby notified that any disclosure, copying, distribution or taking action in relation of the contents of this information is strictly prohibited and may be unlawful.

<[Northwestern Pkwy ROW.pdf](#)>

5. Site Photos



