

Board of Zoning Adjustment

Staff Report

April 5, 2021



Case No:	21-VARIANCE-0024
Project Name:	N. Bellaire Avenue Variance
Location:	178 N. Bellaire Avenue
Owner:	Elizabeth Fitzgibbons & Daniel Slaton
Applicant:	Elizabeth Fitzgibbons
Jurisdiction:	Louisville Metro
Council District:	9 – Bill Hollander
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 setback in a Traditional Neighborhood Form District to exceed 42 inches in height.

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

CASE SUMMARY/BACKGROUND

The subject property is in the Clifton neighborhood and preservation district on the southwest corner of N. Bellaire Avenue and Onyx Avenue. The applicant is proposing to construct a six-foot privacy fence in the street side yard setback along a portion of Onyx Avenue and the rear property line to enclose the private yard area.

Historic Landmarks and Preservation Commission staff approved the fence on condition under case number 21-COA-0044 on March 25, 2021. Planning & Design Staff does not have any recommended conditions.

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 Land Development Code section 4.4.3.A.1.a.i to allow a fence within the street side yard setback in a Traditional Neighborhood Form District to exceed 42 inches in height.

TECHNICAL REVIEW

No technical review required.

INTERESTED PARTY COMMENTS

No interested party comments were received by staff.

RELATED CASES

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 proposed fence provides a sight triangle at the intersection of the alley and Onyx Avenue, which provides 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 Historic Landmarks and Preservation Commission staff approved the certificate of appropriateness for 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 the proposed fence provides a sight triangle at the intersection of the alley and Onyx Avenue, which provides vision clearance for motorists and 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 as the proposed fence along Onyx Avenue provides a reasonable amount of privacy for the private yard area.

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 surrounded by residential uses.

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 along Onyx Avenue.

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 not 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 not 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.

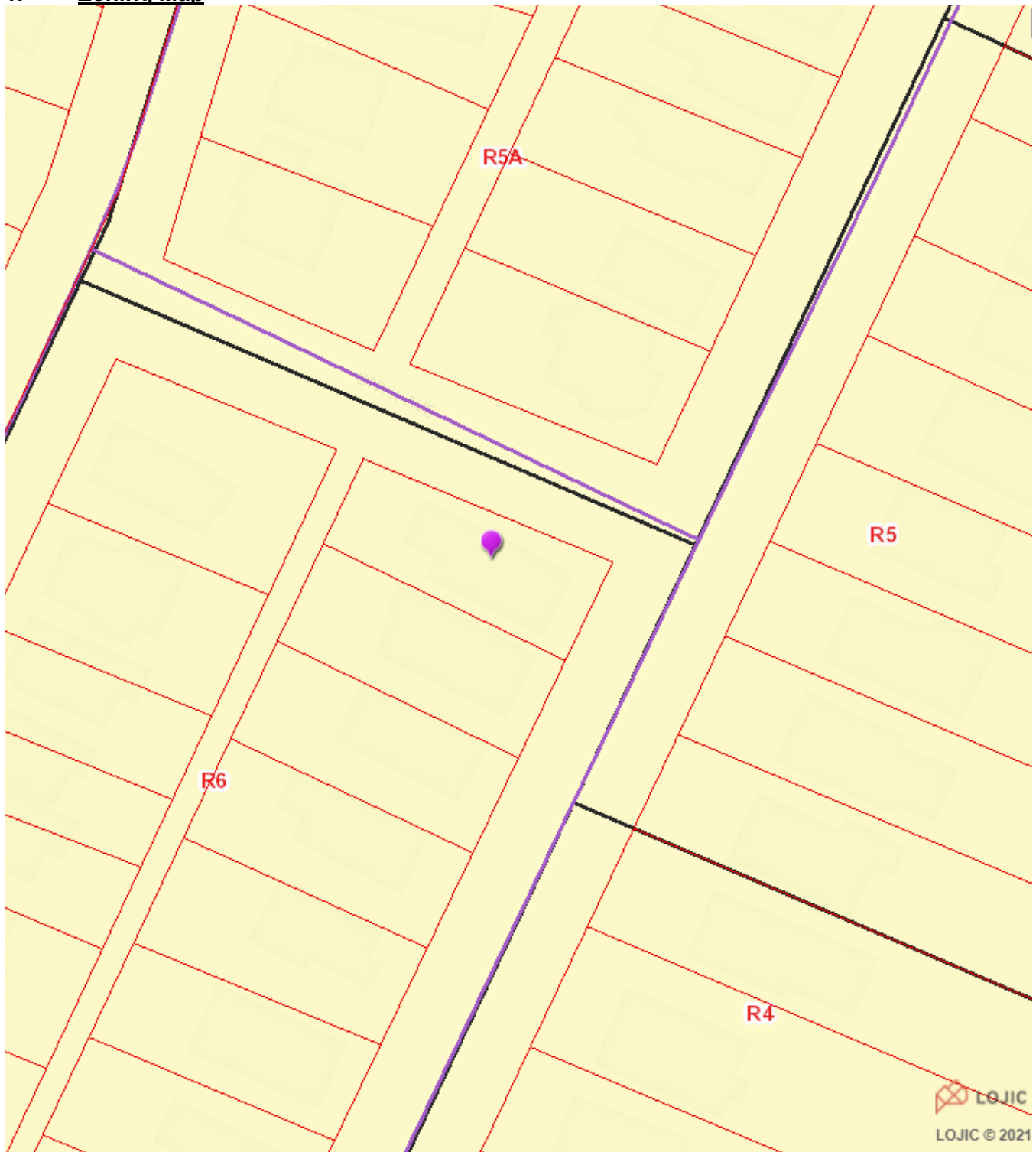
NOTIFICATION

Date	Purpose of Notice	Recipients
3/19/2021	Hearing before BOZA	1 st tier adjoining property owners Registered Neighborhood Groups in Council District 9
3/22/2021	Hearing before BOZA	Notice posted on property

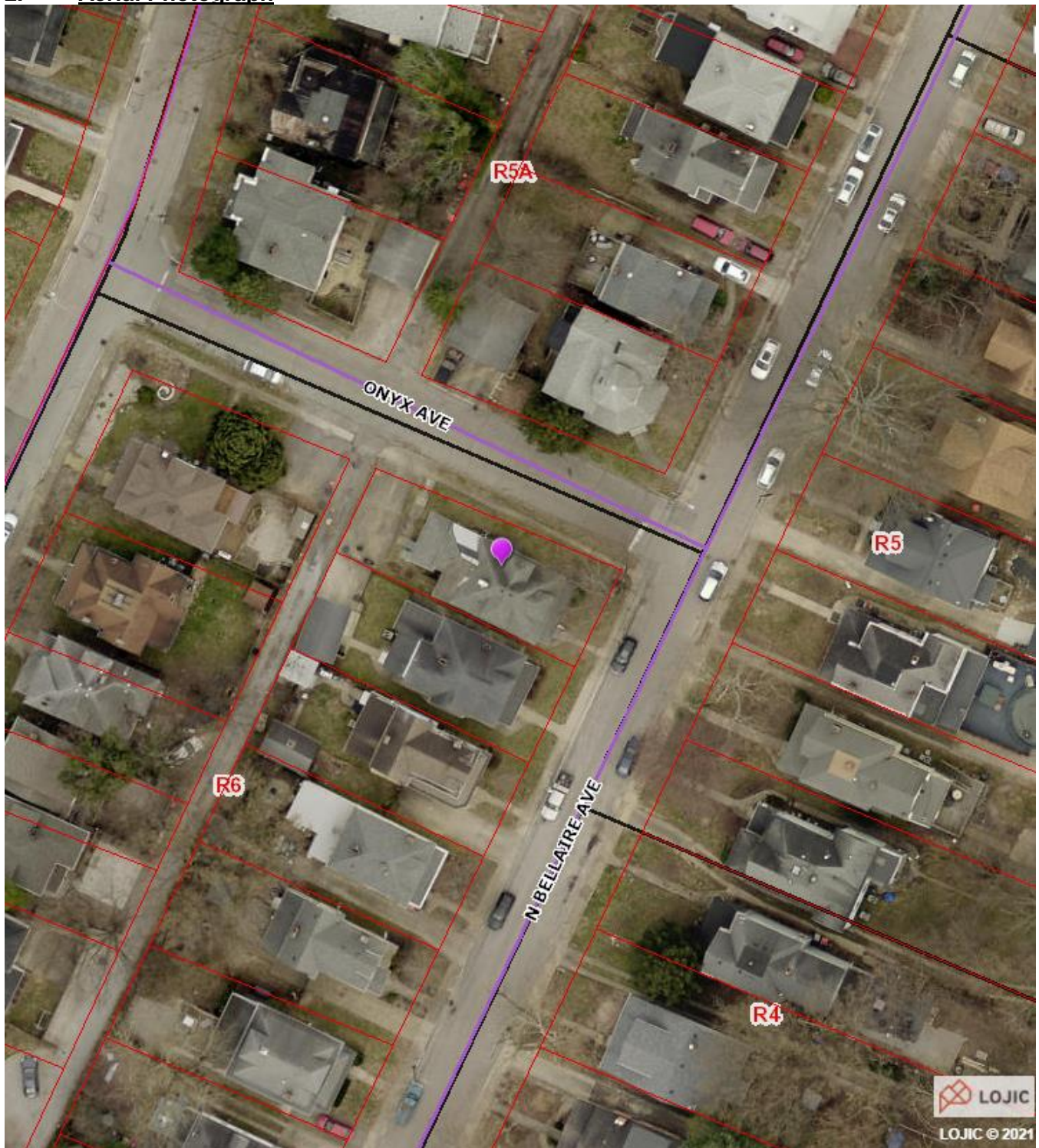
ATTACHMENTS

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

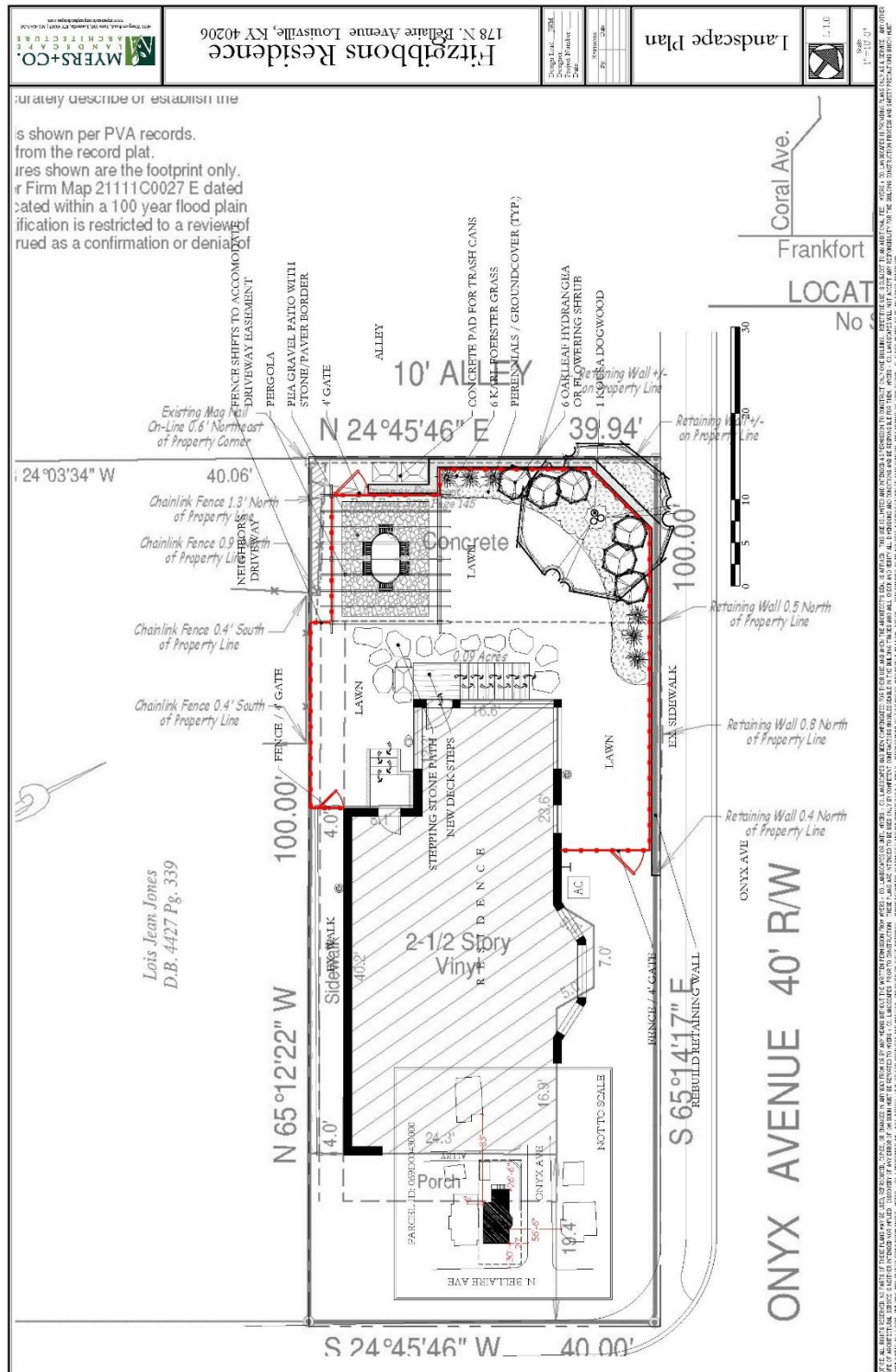
1. **Zoning Map**



2. Aerial Photograph



3. Site Plan



4. **Site Photos**



Front of subject property.



Properties across N. Bellaire Avenue.



Looking west down Onyx Avenue.



Location of proposed fence.



Location of proposed fence.



Similar fence on Onyx Avenue.



Side of subject property.