

Board of Zoning Adjustment
Staff Report
October 5, 2015



Case No:	15Variance1059
Project Name:	Existing Fence
Location:	1913 Stevens Avenue
Owner(s):	Irvon and Carol Clear
Applicant:	Owner
Representative:	Cliff Ashburner
Project Area/Size:	0.0768
Jurisdiction:	Louisville Metro
Council District:	8- Tom Owen
Case Manager:	Sherie' Long, Landscape Architect

REQUEST

Variance: Fence Height

Variance from the Land Development Code Chapter 4, Section 4.4.3.A.1.i, to allow an existing fence in the front yard setback to exceed the maximum height.

Location	Requirement	Request	Variance
Front Yard Setback	3.5' (42")	8' (96")	4.5' (54")

CASE SUMMARY/BACKGROUND/SITE CONTEXT

The applicant has received a Notice of Violation (NOV) for having an existing fence, which is taller than the allowed 42", in the front yard setback. An existing 8' solid wood privacy fence has been installed by the property owner at the northeast corner of the house to screen and separate the front yard area from an encroaching 7-8' barbed wire security fence belonging to the adjacent LG&E substation.

LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

The site is zoned R-5 within the Traditional Neighborhood Form District (TN). It is surrounded by single family residential, multi-family residential, a utility substation, and commercial property zoned R-5, and C-2 in the Traditional Neighborhood Form District (TN) and the Traditional Marketplace Corridor (TMC) Form District.

	Land Use	Zoning	Form District
Subject Property			
Existing	Single-family Residential	R-5	TN
Proposed	NA		
Surrounding Properties			
North	Utility Substation & Commercial	C-2	TMC
South	Single-family and Multi-family Residential	R-5	TN
East	Utility Substation, Commercial, Single-family & Multi-family Residential	C-2 & R-5	TMC & TN
West	Single-family and Multi-family Residential	R-5	TN

PREVIOUS CASES ON SITE

15PM14992 – Notice of Violation (NOV) for existing fence exceeding the maximum height allowed for the form district. Pending

INTERESTED PARTY COMMENT

An inquiry has been received from an adjacent property owner concerning the request. A copy of the written inquiry has been included as Attachment 5.

APPLICABLE PLANS AND POLICIES

Land Development Code
Cornerstone 2020

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE

Variance: Fence Height

Variance from the Land Development Code Chapter 4, Section 4.4.3.A.1.i, to allow an existing fence in the front yard setback to exceed the maximum height.

- (a) The requested variance will not adversely affect the public health, safety or welfare.

STAFF: The variance will not adversely affect the public health, safety or welfare because the existing 8' solid wood fence is separating the existing front yard from the existing barbed wire security fence and concealing the view of the adjacent utility substation.

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

STAFF: The requested variance will not alter the general character. The existing 8' wood privacy fence compliments the residential character of the area. The existing wood fence hides the "not so friendly" 7-8' security barbed wire fencing located between the brick column and access drive of the utility substation adjacent to the applicant's home.

- (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 existing 8' wood fence provides a separation of the front yard from the existing barbed wire security fence. The barbed wire fence could be considered a hazard to the public; therefore the existing 8' wood fence is providing relief from a potential hazard.

- (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 location of a substation adjacent to the subject property has required the use of the taller fence to screen views and provide a separation from the existing barbed wire security 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 arise from special circumstances. The proximity of the utility substation abutting the applicant's property has created a situation which is unique.

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 a hardship and possibly create a situation which would be considered a potential hazard if the existing barbed wire security fence could not be concealed and a physical separation provided.

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 the applicant took subsequent to the adoption of the zoning regulation from which relief is sought since the applicant installed the 8' privacy fence prior to being granted a variance for the additional height. However, the additional height of the fence is necessary to conceal and separate the residential property from the potential hazardous barbed wire security fence.

TECHNICAL REVIEW

There are no technical review issues.

STAFF CONCLUSIONS

The standards of review and staff analysis support the granting of the variance to allow the 8' privacy fence in the front yard. The height and location of the solid wood fence separates the front yard from the existing 7-8' security barbed wire. A fence at the allowable height of 42" would not achieve the screening or separation of the existing barbed wire fence from the front yard.

Based upon the information in the staff report, the analysis of the standards of review support the request to grant the variance, therefore, the Board of Zoning Adjustment must determine if the proposal meets the standard for a variance established in the Development Code based on the testimony and evidence provided at the public hearing.

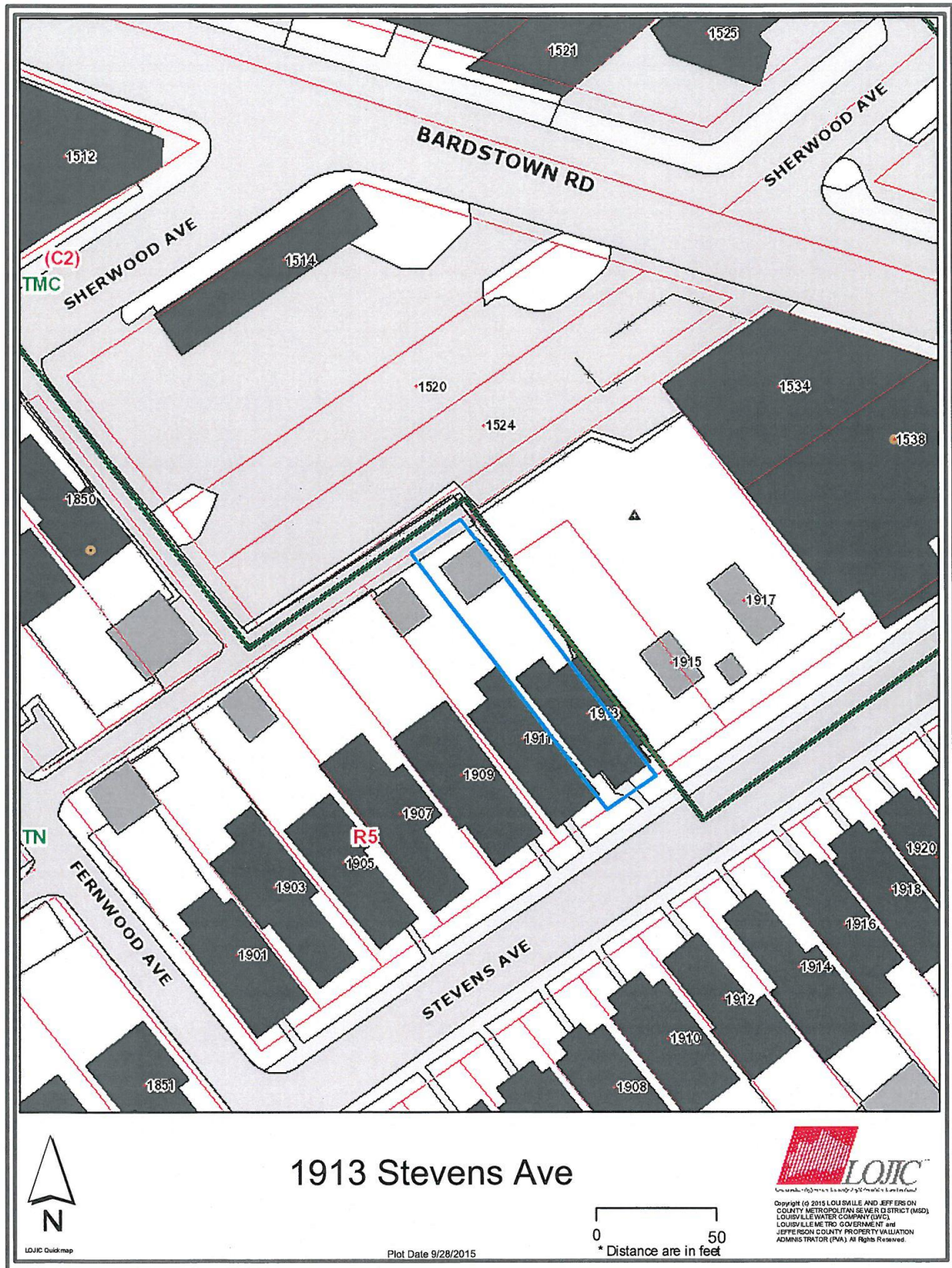
NOTIFICATION

Date	Purpose of Notice	Recipients
09/18/2015	BOZA Hearing	Neighborhood notification recipients
09/18/2015	BOZA Hearing	1 st tier adjoining property owners
09/22/2015	Sign Posting	Subject property

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Site Plan
4. Applicant's Justification Statement
5. Interested Party Comments
6. Site Photographs

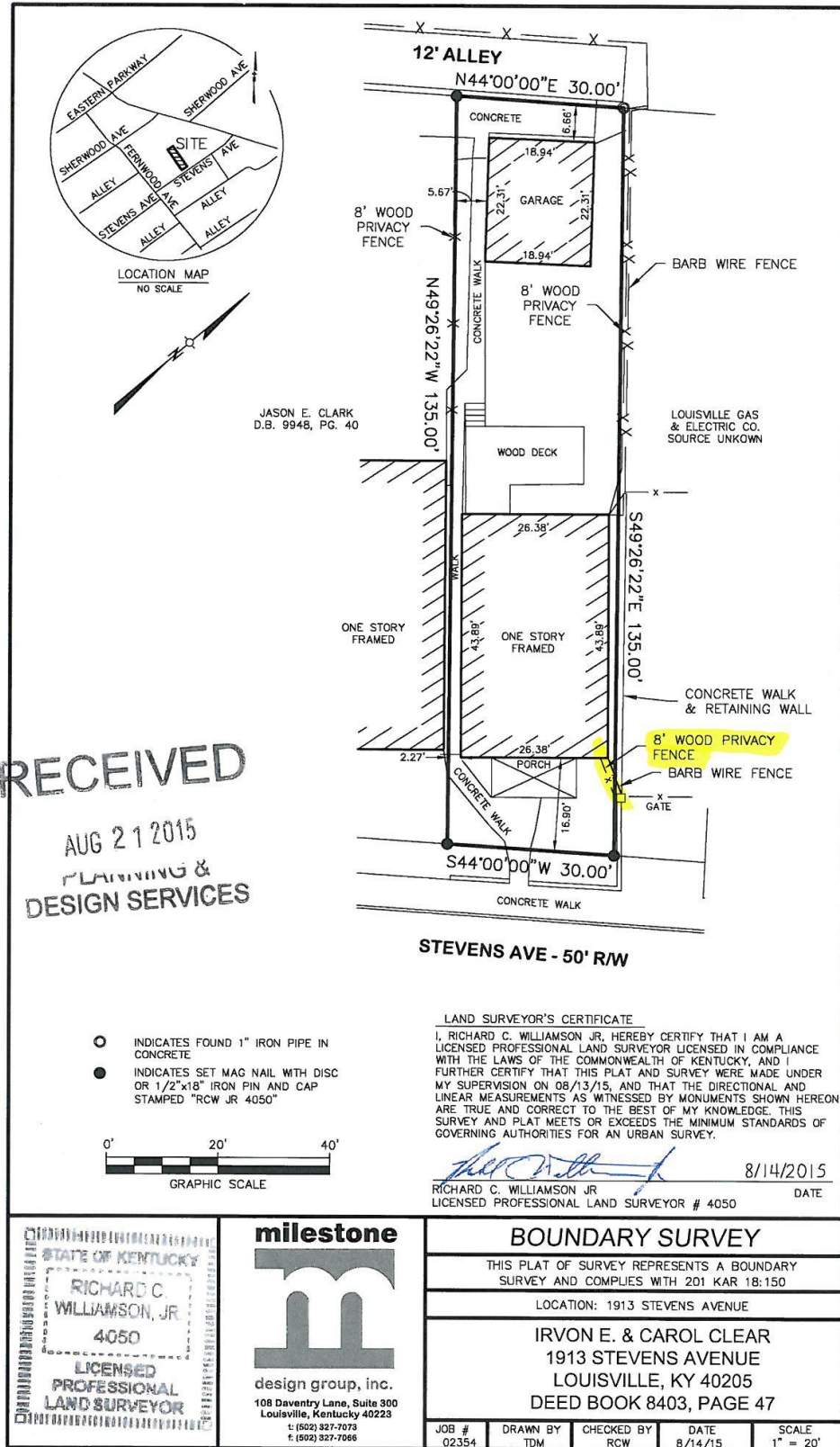
Attachment 1: Zoning Map



Attachment 2: Aerial Photo:



Attachment 3: Site Plan:



15VARIANCE1059

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VARIANCE JUSTIFICATION
CASE NO. 15PM14992-680245
1913 STEVENS AVENUE

AUG 21 2015
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PROPOSED VARIANCE: TO ALLOW FRONT YARD PRIVACY FENCE TO EXCEED 42" SO ADJACENT INDUSTRIAL DRIVEWAY IS NOT VISIBLE FROM APPLICANT'S RESIDENCE

1. The Applicant's residence is located at the point on Stevens Avenue where the properties change from commercial to residential. As a result, the northeast boundary of the Applicant's property borders a Louisville Gas & Electric ("LG&E") substation. A barb wire fence is currently constructed along much of this property line. The substation is accessed via a driveway that runs adjacent to the Applicant's front yard. The driveway's grading is several feet lower than the Applicant's front yard, thereby, causing a drop-off at the property line. The Applicant's proposed variance will allow the continued maintenance of an eight foot tall wood privacy fence (the "Privacy Fence"). The Privacy Fence is used to conceal the view of the substation and the associated driveway from the front of the Applicant's residence.
2. The proposed variance will not adversely affect the public health, safety or welfare of the area because the Privacy Fence helps separate the residential portion of Stevens Avenue from the industrial and retail portion of Stevens Avenue. Furthermore, the Privacy Fence is constructed in a manner so that it does not obstruct the view of passing motorist.
3. The proposed variance will not alter the essential character of the general vicinity because the Privacy Fence is a residential style privacy fence that conceals an electric utility substation and portions of a barb wire fence. As a consequence, the Privacy Fence actually helps promote and preserve the residential character of Stevens Avenue.
4. The proposed variance will not cause a hazard or nuisance to the general public. As previously noted, the Privacy Fence is constructed to be aesthetically pleasing and not adversely affect the safety of passing motorist. Moreover, the Privacy Fence prevents people from falling off the several feet drop-off between the Applicant's property and the substation's driveway.
5. The proposed variance will not allow an unreasonable circumvention of the zoning regulations because the proposed variance arises from special circumstances, which do not generally apply to land in the general vicinity. The Applicant's property is unique in its close proximity to the LG&E substation. This proximity creates the need for the proposed variance. Other nearby property owners do not have this same need.
6. The strict application of the zoning regulations would unnecessarily harm the Applicant in the name of maintaining the letter, not the spirit, of the zoning regulations. The applicable height restriction is intended to promote aesthetics. However, the strict enforcement of said restriction in the present situation would only serve to prevent the Applicant from concealing an unsightly electric utility substation.

15VARIANCE1059

7. The present circumstances are not the result of actions the Applicant has taken since the adoption of the height restriction. The circumstances are, instead, the result of the substation's close proximity to the Applicant's property. The Board of Zoning Adjustment has been characterized in Kentucky case law as a "relief valve" for zoning regulations. Here, the Applicant has a unique situation, warranting the requested "relief."

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AUG 21 2015

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15VARIANCE1059

Attachment 5: Interested Party Comments

9/21/2015

Print

Subject: Re: Notice of BOZA public hearing on Oct. 5, 2015, Case No. 15VARIANCE1059
From: Alan Scherer (scherer8@bellsouth.net)
To: Terra.Long@louisvilleky.gov;
Date: Monday, September 21, 2015 6:26 PM

Thanks for the notice.

I will be on vacation and unable to attend this meeting.

A little history.

Two years ago my neighbors at 1907 Stevens wanted to build a tall fence, I suggested they check out the specifics before they build. They did and scaled back the height of the fence.

Recently my neighbor at 1913 Stevens had the fence posts in the ground and I mentioned to him there was a code regarding height of the fence. He said he knew what he was doing and built the fence anyway.

I don't think we can reward someone who builds, then we say that is ok.

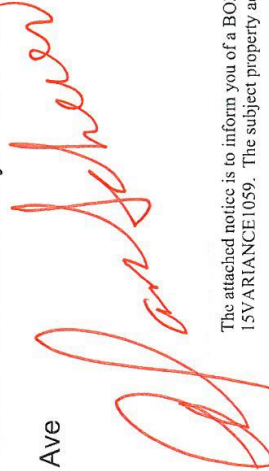
I like the system of checks and balances we have in the City.

As neighborhood President I cannot make an exception to a neighbor.

DPNA must view all residents the same.

Thank you for your enforcement and hard work you do on a daily basis.

Alan Scherer
1909 Stevens Ave
459-9746..



The attached notice is to inform you of a BOZA public hearing on Oct. 5, 2015, Case No. 15VARIANCE1059. The subject property address is 1913 Stevens Avenue.

- [15VARIANCE1059_BOZA_APO_notice_010052015.pdf](#)

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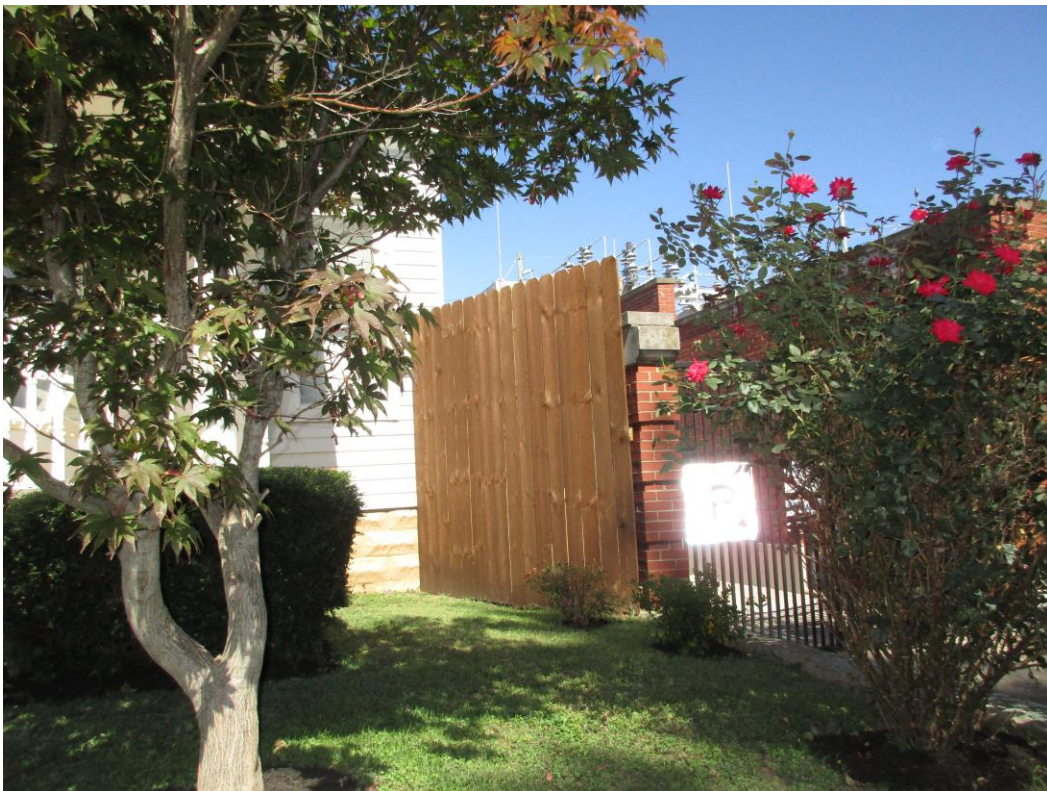
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Attachment 6: Site Photographs



Front of the home



Existing 8' Solid Wood Privacy Fence



Existing 7-8' security barbed wire fence



Existing 7-8' security barbed wire fence



Existing brick wall around a portion of the LG&E substation