

Board of Zoning Adjustment

Staff Report

September 23, 2024



Case No:	24-VARIANCE-0101
Project Name:	Fence Height Variance
Location:	3610 Herman St
Applicant:	Helen Akhtar
Representative:	Helen Akhtar
Jurisdiction:	Louisville Metro
Council District:	5 – Donna Purvis
Case Manager:	Mark Pinto, Planner I

REQUESTS:

- **Variance** from the Land Development Code (LDC), Section 4.4.3.A.1.a.i to allow a fence to exceed the maximum height within the front yard setback.

Location	Requirement	Request	Variance
Fence – Front Yard	42 in. (3.5 ft)	74.5 in (6.2 ft)	32.5 in (2.7 ft)

CASE SUMMARY

The subject property is located within the R-5 residential zoning district, Traditional Neighborhood form district, and north of W Muhammad Ali Boulevard near the intersection of S 38th Street and Herman Street. The property is developed with a one-story residence. The metal chain link fence is existing on the site. The fence is 4 ft 10 in and is built on top of an existing 1 ft 4.5 in retaining wall. Since the retaining wall and fence are within 5 ft of a public sidewalk, the overall height is 74.5 in, or 6.2 ft.

RELATED CASE

ENF-ZON-24-000769: Zoning enforcement case opened on 6/13/2024 originally for a lighting issue involving a bright light on the side of the home. Notice of violation issued on 6/18/2024 for a fence that exceeds the maximum height permitted within the required front yard.

STAFF FINDINGS

The requested variance is adequately justified for approval based on staff's analysis contained in the standard of review.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE

- (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, since the fence height does not impede the safe movement of vehicles travelling along Herman Street, or pedestrians along the sidewalk directly adjacent to the fence.

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

STAFF: The variance would not alter the essential character of the general vicinity since there are other chain link fences constructed atop retaining walls within required front yards and 5 ft from the public sidewalk within the general vicinity. These fences are comparable in height, size, location, and materials.

- (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 since the fence is contained within the subject property and does not encroach onto any neighboring properties.

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

STAFF: The requested variance would not allow an unreasonable circumvention of the zoning regulations since the overall fence height is increased due to being built atop an existing retaining wall, and within 5 ft of a public sidewalk. Also, there are other fences constructed that share characteristics such as height and materials with the subject fence. These fences were constructed atop existing retaining walls and are located within the general vicinity.

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 generally apply to the land in the general vicinity or the same zone since the property is similar in shape, size, and scale to properties in the general vicinity.

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 deprive the applicant of the reasonable use of the land, since fences of the requested height may be constructed within other locations on the property, such as the rear yard. Also, fences with a maximum height of 3.5 ft are permitted in the required front yard. However, the strict application of the provisions of the regulations could create a hardship on the applicant since the fence has been constructed in likeness to other fences in the general vicinity and may create a financial burden to alter the existing fence.

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. The fence has existed on the property since at least June 2024, and the variance has been requested.

REQUIRED ACTIONS

- **APPROVE** or **DENY** the **Variance** from LDC Section 4.4.3.A.1.a.i to allow a fence to exceed the maximum height within the required front yard.

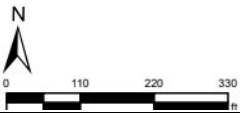
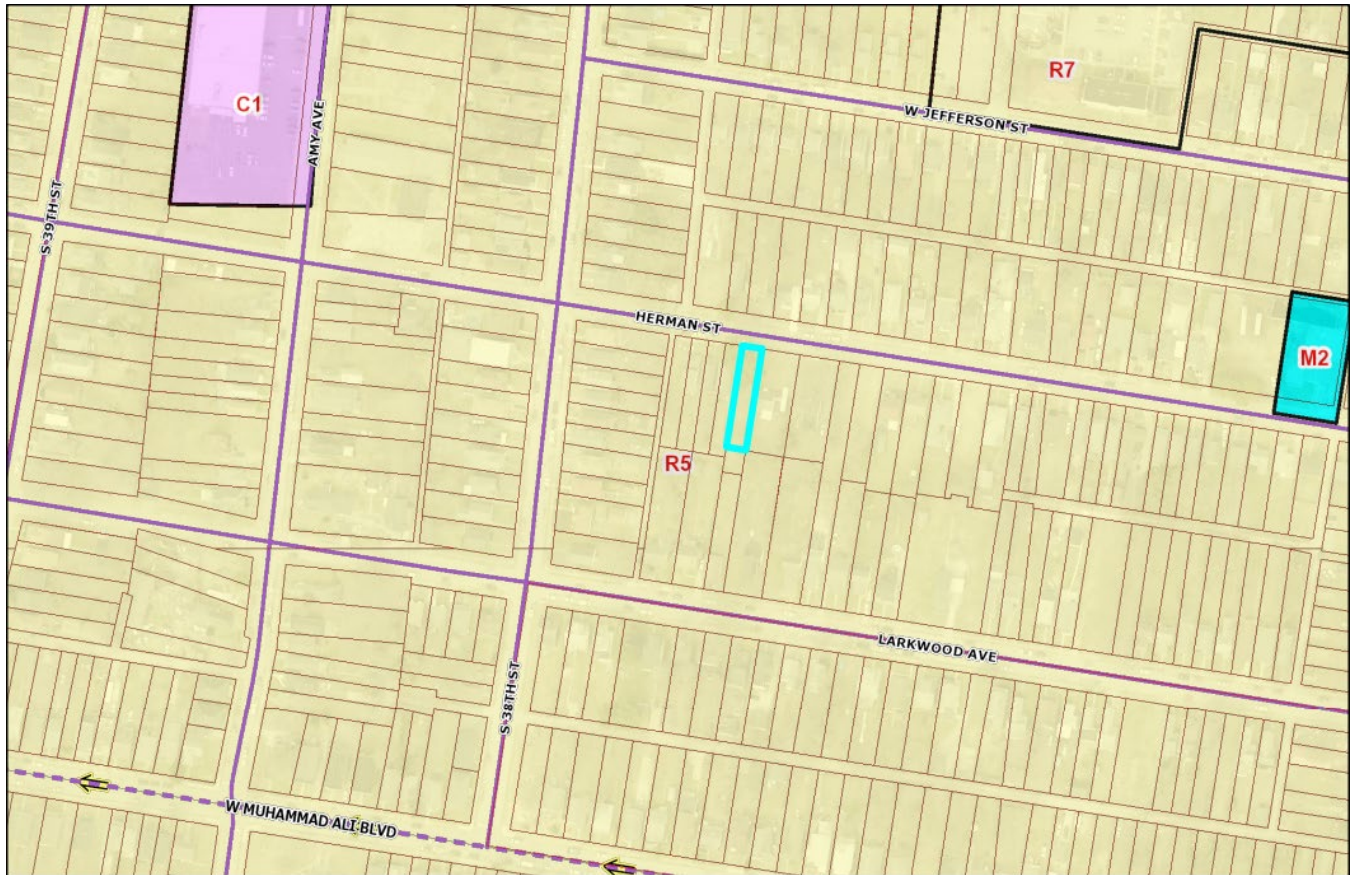
NOTIFICATION

Date	Purpose of Notice	Recipients
8/15/2024 8/23/2024	Hearing before BOZA	1 st tier adjoining property owners and current residents; Registered Neighborhood Groups in Council District 5
8/23/2024	Hearing before BOZA	Sign posted on property

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph

1. Zoning Map

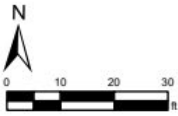


Wednesday, August 28, 2024 | 9:39 AM



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2. Aerial Photograph



Wednesday, August 28, 2024 | 9:40 AM



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