

Board of Zoning Adjustment

Staff Report

March 18, 2024



Case No: 24-VARIANCE-0002
Project Name: Briar Hill Variance
Location: 500 Briar Hill Road
Owner: George & Corey Johns
Applicant: George & Corey Johns
Jurisdiction: Louisville Metro
Council District: 9 – Andrew Owen
Case Manager: Jeremy Chesler, Planner I

REQUESTS:

- **Variances:**
 1. **Variance** from the Land Development Code (LDC), Section 5.1.12.B.2.e.i.1 to allow a swimming pool to encroach into the required infill street side yard setback.
 2. **Variance** from the LDC, Section 4.4.3.1.a.i to allow a fence to exceed the maximum height of 48 inches in the required street side yard setback

Location	Required	Request	Variance
Infill- Street Side Yard Setback	52 feet	17 feet	35 feet
Fence Height – Street Side Yard	48 in. (4')	72 in. (6')	24 in. (2')

CASE SUMMARY

The subject site is in the R-5, single-family residential zoning district and neighborhood form district. Located on the southwest corner of Briar Hill and Lexington Roads, the property is developed with a 2-story, single-family residential structure. The property owners hired a contractor(s) to install a swimming pool, and a fence which is required to surround the pool. Although the pool permit was issued and the pool has subsequently been installed, it was later determined that the pool is within the required street side yard setback, triggering the need for the variance. Infill regulations state that the street side yard setback shall fall within the range of the front yard or street side yard setbacks on the two nearest lots containing principal structures within the same block face. In this case the street side yard setback, along Lexington Road, is required to be a minimum of 52' (nearest structure within block face located at 3036 Lexington). The pool is located 17' from the street side yard property line. As stated in LDC Section 4.4.10.D, private swimming pools are required to have a continuous 48" tall barrier such as a fence or a wall, surrounding the fence. To fulfill this requirement and provide privacy from the arterial roadway, the applicant had a 72" tall fence installed within the street side yard setback, which would require a variance of 24".

STAFF FINDINGS

Staff finds that the requested variances are adequately justified for approval based on the staff's analysis contained within the standard of review.

TECHNICAL REVIEW

- RES-POOL-23-00153: pool permit was issued in August, 2023
- ENF-ZON-23-001553: pending zoning enforcement related to fence exceeding maximum height allowed within street side yard setback

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE (SWIMMING POOL)

- (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. A building permit for the pool was issued, with all of the appropriate agencies approving the plan, including the Health Department and MSD. Additionally, the location of the pool on the property does not impede the safe movement of pedestrians or motorists.

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

STAFF: The requested variance does not alter the essential character of the general vicinity as the location of pool is compatible with the suburban pattern of development nearby. There are large amounts of trees and dense vegetation between the variance area and the adjoining property, as well as a privacy fence which will conceal the view of the pool from outside of the property.

- (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 because the structure will not result in any hazardous conditions. The pool will be enclosed by the required barrier, mitigating any potential hazards from the presence of a pool.

- (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. The proposal will not adversely impact public health, will not alter the essential character and will not cause a hazard or nuisance to the public.

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 the land in the general vicinity or the same zone because the lot is not similar in size and shape to the surrounding properties. This is a corner lot with several physical and regulatory constraints. Additionally, a large portion of the property where the zoning regulations would allow the pool, is occupied by utility easements.

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 would deprive the applicant of the reasonable use of the land, as there are utility easements and challenging topography that greatly reduce the area of the lot where the pool could be installed.

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, as the applicant hired the contractor that applied for the permits and installed the pool.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE (FENCE)

- (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. The fence sits far enough back from the intersection of Lexington and Briar Hill Roads, that it does not impact the vision or safe movement of any pedestrians or motorists.

- (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 privacy fences on corner lots are common in suburban areas to provide safety, security, and privacy in areas where vehicles are the predominate form of transportation and no other barrier is provided. Fences and dense vegetation are common for properties along Lexington Road, a busy arterial roadway. However, due to the presence of the pool on the property dense vegetation is not an option, and a fence or similar physical barrier is required. There are mature trees between the fence and the public sidewalk which serve to visually break up the span of 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 height and location of the proposed fence does not impede the safe movement of pedestrians or motorists. The fence was professionally installed and does not pose the risk of any physical hazard to the public.

- (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 it will not adversely affect public health, alter the essential character, or cause a hazard or nuisance to the public. The fence is a required feature of the pool that was installed on the property, the added height will allow the fence to provide privacy to the property owner, in addition to serving as the required physical, safety barrier surrounding the pool.

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 the land in the general vicinity or the same zone because the lot is not similar in size and shape to the surrounding properties. This is a corner lot with several physical and regulatory constraints. The two sides of the stone retaining wall on the property sit at different elevations, with the right-of-way side of the wall being approximately 20"-30" higher than the side further onto the property. A 48" tall fence would not provide the security required to surround the pool, due to the change in grade.

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 would deprive the applicant of the reasonable use of the land. The fence is required to accompany the pool, which had to be located within the street side yard setback due to the easements and environmental constraints on the property. The added height will help provide privacy for the property owners' and their family.

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 as the applicant did hire a contractor to install the fence.

REQUIRED ACTIONS

- **Approve or Deny:**
 1. **Variance** from the Land Development Code (LDC), Section 5.1.12.B.2.e.i.1 to allow a structure to encroach into the required infill street side yard setback.
 2. **Variance** from the LDC, Section 4.4.3.1.a.i to allow a fence to exceed the maximum height of 48 inches in the required street side yard setback

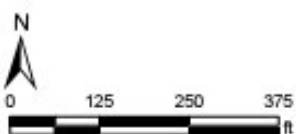
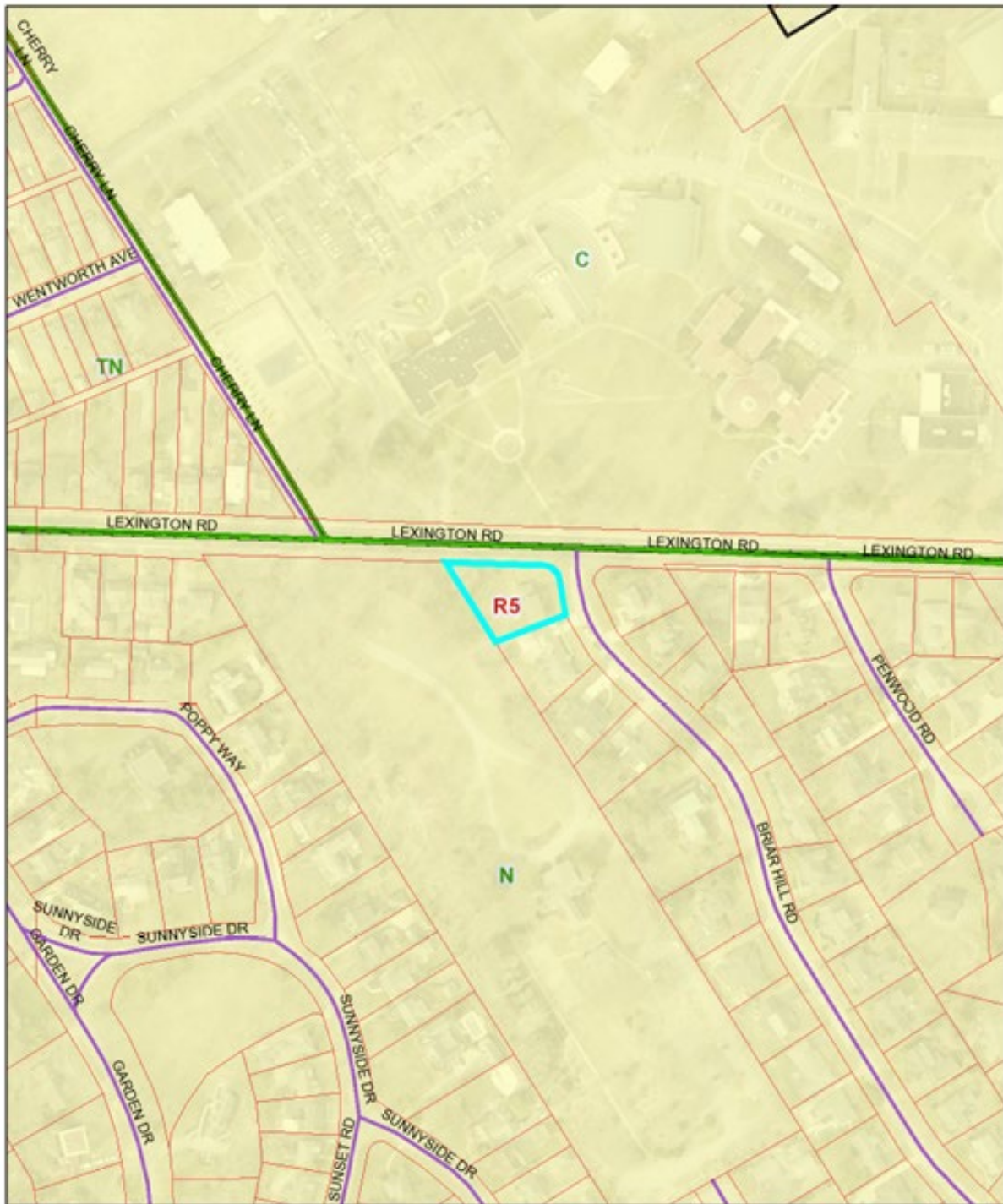
NOTIFICATION

Date	Purpose of Notice	Recipients
3/1/2024 2/29/2024	Hearing before BOZA	1 st tier adjoining property owners Registered Neighborhood Groups in Council District 9
3/1/2024	Hearing before BOZA	Notice posted on property

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph

1. Zoning Map



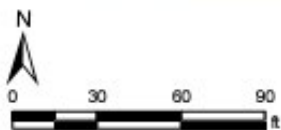
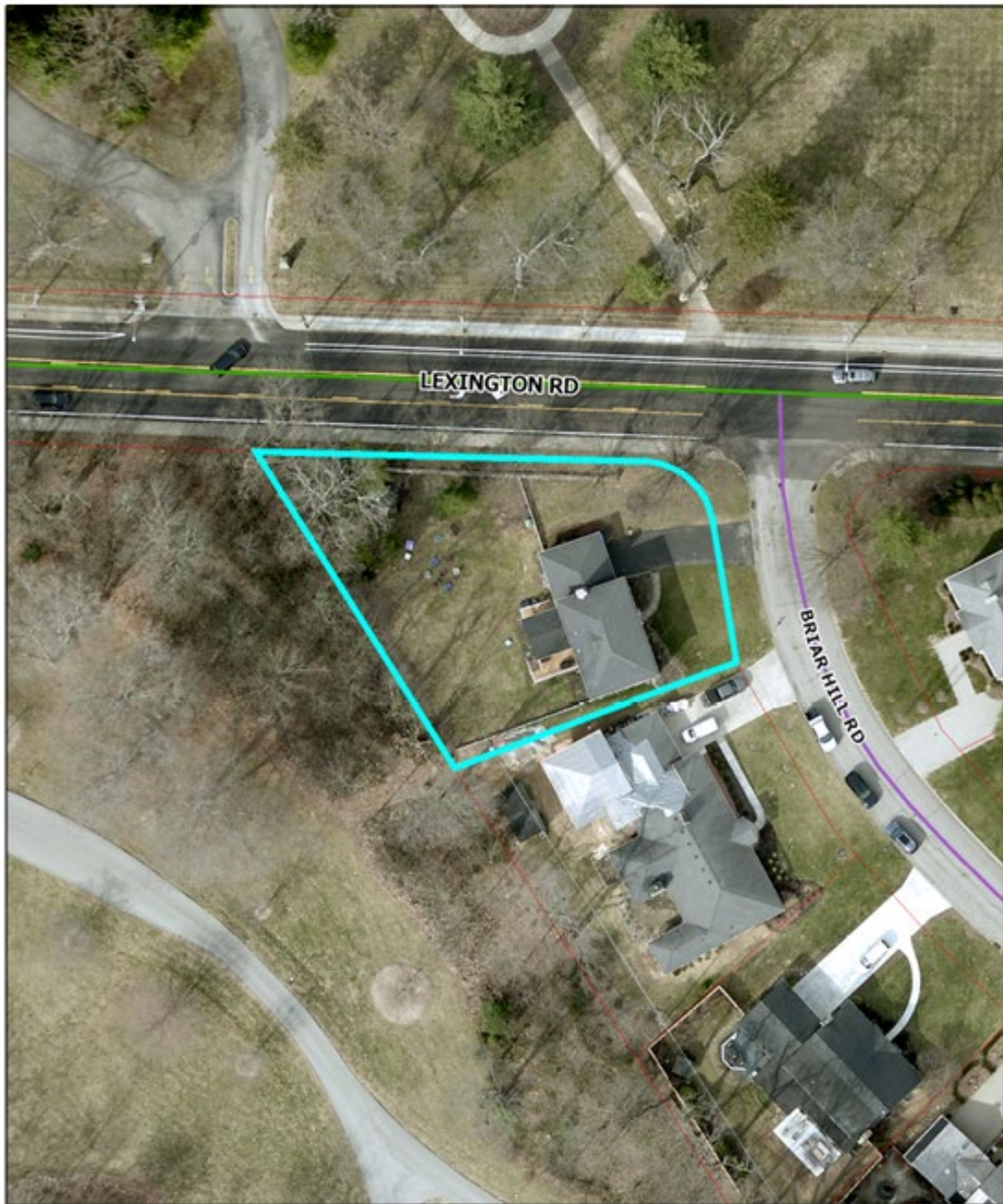
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2. Aerial Photograph



Thursday, March 7, 2024 | 10:23:44 AM



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