

**CITY OF BLOOMINGTON**



**AUGUST 28, 2014 @ 5:30 p.m.  
COUNCIL CHAMBERS #115  
CITY HALL**

**CITY OF BLOOMINGTON  
BOARD OF ZONING APPEALS  
August 28, 2014 at 5:30 p.m.**

**Council Chambers - Room #115**

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**ROLL CALL**

**MINUTES TO BE APPROVED:** 6/26/14

**PETITION CONTINUED TO:** 9/25/14

- UV-46-13 **GMS-Pavilion Properties, LLC**  
306 E. Kirkwood Ave.  
Request: Use variance to allow a bank drive-through in the Commercial  
Downtown (CD) zoning district.  
*Case Manager: Jim Roach*

**REPORTS, RESOLUTIONS, AND COMMUNICATIONS:**

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**PETITIONS:**

- UV/V-24-14 **Stephen Cordell**  
822 W. 6<sup>th</sup> St.  
Request: Use variance to allow a duplex with a Residential Core (RC)  
zoning district. Also requested is a variance from parking standards.  
*Case Manager: Patrick Shay*
- V-30-14 **Christiana Ochoa**  
1012 S. Ballantine Rd.  
Request: Variance from fence standards to allow an 8-foot tall fence in the  
front yard.  
*Case Manager: Jim Roach*

**BLOOMINGTON BOARD OF ZONING APPEALS**  
**STAFF REPORT**  
**Location: 822 W. 6<sup>th</sup> Street**

**CASE #: UV/V-24-14**  
**DATE: August 28, 2014**

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**PETITIONER: Stephen Cordell**  
**3852 S. Swartz Ridge Road, Bloomington**

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**REQUEST:** The petitioner is requesting a use variance to allow a duplex within a Residential Core (RC) zoning district. Also requested is a parking variance.

**SUMMARY:** The petition site is located on the north side of W. 6<sup>th</sup> Street, midblock between N. Waldron Street and N. Maple Street. It is also located within the Near West Side Neighborhood. This Residential Core (RC) zoned property is .135 acres (40' x 147') and is also listed as a contributing structure on the City's 2001 Interim Report of Historic Sites and Structures.

Until recently, this structure had been owner-occupied for many years. At some point in the past, the previous owner created an internal separation and began to rent a portion of the home as a separate unit without any approvals from the City. The Housing and Neighborhood Development (HAND) Department became aware of the unregistered rental and inspected the rental portion of the structure. HAND issued a rental permit for the structure that included two units, an owner-occupied unit (not inspected) and a 1-bedroom rental unit.

Prior to the petitioner's recent purchase of the property, his due diligence research of the property included an inquiry to the HAND Department regarding the rental status of the property. Because there was a current rental permit for the property as a 2-unit structure without a note about a zoning compliance issue, the petitioner continued with his planned purchase of the property. Upon purchase, he contacted the HAND Department to update the ownership of the property and have it transferred to his name. Upon completion of rental inspections, the petitioner was issued a new rental permit in his name for two one-bedroom units. Shortly after the issuance, the Planning Department received a phone call regarding this property. The Planning Department determined that the current and previous rental permits for a 2-unit structure authorized by HAND were issued in error and not in compliance with the zoning standards of the RC district.

Staff met with the petitioner and indicated to him that the duplex use would have to receive a use variance to be permitted to continue, or the structure would have to be returned to a single family configuration. The petitioner has requested a use variance to allow the current 2-unit configuration to remain.

Staff analyzed the surrounding area to determine the current development pattern for this portion of the Near West Side Neighborhood. Of the approximately 98 residential structures within the two blocks of W. 6<sup>th</sup> Street and W. 7<sup>th</sup> Street between N. Elm Street and N. Fairview Street, approximately 50% of the structures are registered

rentals. In addition, approximately 11% of the structures housed multiple units. These structures range from 2-5 units in configuration.

Staff discourages conversions of single family homes in core neighborhoods, but finds this to be a unique situation that warrants strong consideration. Even though staff discourages these conversions because too many of them would alter the character of an area, these small bedroom and small unit structures are traditionally found interspersed throughout these types of neighborhoods and provide more affordable and alternate housing types.

If a duplex is approved, then the two total bedrooms would require a minimum of two parking spaces. These parking spaces would have to be located off of the adjacent alley. The petitioner is seeking a parking variance to allow the situation where street parking is utilized to serve the two units. The number of bedrooms associated with this project will prevent the overabundance of vehicular use of the property. Many of surrounding properties (including other multifamily structures) currently operate without on-site parking.

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#### **20.09.140 CRITERIA AND FINDINGS FOR USE VARIANCE:**

**Findings of Fact:** Pursuant to IC 36-7-4-918.4. the Board of Zoning Appeals or the Hearing Officer may grant a variance from use if, after a public hearing, it makes findings of fact in writing, that:

(1) *The approval will not be injurious to the public health, safety, morals, and general welfare of the community; and*

and

(2) *The use and value of the area adjacent to the property included in the use variance will not be affected in a substantially adverse manner; and*

**Staff Finding:** Although staff finds that conversion of a large number of the existing single family homes in this area could have a substantial impact to the general welfare of the surrounding neighborhood, staff does not find substantial impact by the proposed conversion of a single structure to two, one-bedroom units. The low bedroom count and size of the units limit many of the negative impacts associated with multifamily rentals in core neighborhoods. Due to the history of the structure and due diligence of the petitioner, staff finds this to be a unique situation that would not lend itself to a large number of converted structures that would have a significant impact to the area.

This property has been used as a duplex for a number of years. Therefore, the impacts of an approval would not change the current impacts to the surrounding area. Furthermore, staff finds that many of the potential impacts of this proposal can be further mitigated by placing development restrictions on the property. Specifically, staff recommends that 1) each unit be restricted to a maximum of two

unrelated adults 2) that any future owners be required to live in one of the two units or convert the structure to a single family home, and 3) to restrict the structure from being expanded or adding bedrooms unless it is converted back to a single family home.

- (3) *The need for the use variance arises from some condition peculiar to the subject property itself; and*

**Staff Finding:** It is highly unusual for a structure to be improperly issued a rental permit for a duplex within an RC zoning district. Without this history, a use variance would not likely be supported by staff. It has also been suggested that this structure was originally constructed as a duplex as the opening between the units did not appear to be original and if closed creates two separate spaces with separate exterior entries. When combined with the petitioner's research prior to purchase, staff believes that this criterion has been met.

- (4) *The strict application of the terms of the Unified Development Ordinance will constitute an unnecessary hardship if they are applied to the subject property; and*

**Staff Finding:** Strict application of the UDO would require the petitioner to revert this structure back to a single family home. This reversion would create a significant hardship to the petitioner. The petitioner purchased and received loans on the property based upon its duplex status. Due to the petitioner's due diligence prior to purchase regarding the current rental permit, staff finds that the construction, loss of revenue, and loan modification to be a significant burden to the petitioner.

- (5) *The approval of the use variance does not interfere substantially with the goals and objectives of the Growth Policies Plan.*

**Staff Finding:** This property has been designated as Core Residential by the Growth Policies Plan (GPP). These areas are "characterized by a grid-like system, alley access to garages, small setback, and a mixture of owner-occupants and rental tenants." The GPP policies for land use in these areas states that the "existing single family housing stock and development pattern should be maintained with an emphasis on limiting the conversion of dwellings to multi-family...encouraging ongoing maintenance and rehabilitation of single family structures."

With past requests for new multifamily uses within Core Residential areas, staff has found it difficult to find compliance with the GPP. However, staff finds this case to have extenuating circumstances. Specifically, the petitioner exercised due diligence in researching the permit status of the structure and received a rental permit for the requested use. Although the GPP discourages conversions to create multifamily uses in Core Residential areas, the use of older homes in this particular part of the Near West Side for multiple units is not that unusual. Additionally, the duplex has co-existed with neighboring properties for many years and is limited to only two bedrooms in scale.

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**CRITERIA AND FINDINGS FOR DEVELOPMENT STANDARDS VARIANCE**

**20.09.130 e) Standards for Granting Variances from Development Standards:** A variance from the development standards of the Unified Development Ordinance may be approved only upon determination in writing that each of the following criteria is met:

- 1) *The approval will not be injurious to the public health, safety, morals, and general welfare of the community.*

**STAFF FINDING:** Staff finds no injury with this request. This is not a new structure or new bedrooms. It is not anticipated that this use will generate a significantly different number of vehicles than could be expected with a 3-bedroom single family home.

- 2) *The use and value of the area adjacent to the property included in the Development Standards Variance will not be affected in a substantially adverse manner.*

**STAFF FINDING:** Staff finds no negative effects with this variance request. There will not be a noticeable difference to the existing parking situation. Staff finds that this would be an unnecessary loss of greenspace.

- 3) *The strict application of the terms of the Unified Development Ordinance will result in practical difficulties in the use of the property; that the practical difficulties are peculiar to the property in question; that the Development Standards Variance will relieve the practical difficulties.*

**STAFF FINDING:** The strict application of the UDO would require a paved parking area to be constructed in the rear yard. The petitioner is seeking an approval to legitimize the existing situation and is not proposing to increase the number of bedrooms or the size of the structure which are typically the main triggers to requiring the parking to be brought into compliance. Furthermore, this property is located in close proximity to the downtown and other services and allows for a greatly reduced dependence on cars. The UDO requirement for parking within the RC district is to prevent new and larger structures to be constructed without consideration of the parking impacts to the surrounding properties. This proposal will not have any significant changes to the parking available in this neighborhood.

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**NEIGHBORHOOD INPUT:** The Near Westside Neighborhood Association submitted a letter and provided comment at the Plan Commission meeting. Overall, the neighborhood was opposed to the petition unless one of the units was owner-occupied and no additions were permitted. The Plan Commission discussed the following options for this petition:

1. Denial of the use variance to require it to return to a single family structure.

- Approval of the historic duplex use, while allowing a maximum occupancy of 2, 3, or 4 adults.
- Approval of the duplex use with a deed commitment that any future owner must use a minimum of one of the units as an owner-occupied unit.
- Approval of a duplex use with a deed commitment that the current and any future owner of the property must use a minimum of one of the units as an owner-occupied unit. **This option has been recommended by the Near West Side Neighborhood Association.**

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**PLAN COMMISSION RECOMMENDATION:** The Plan Commission voted unanimously to forward the use variance request to the BZA with a positive recommendation. They concluded that the proposed use did not substantially interfere with the Growth Policies Plan.

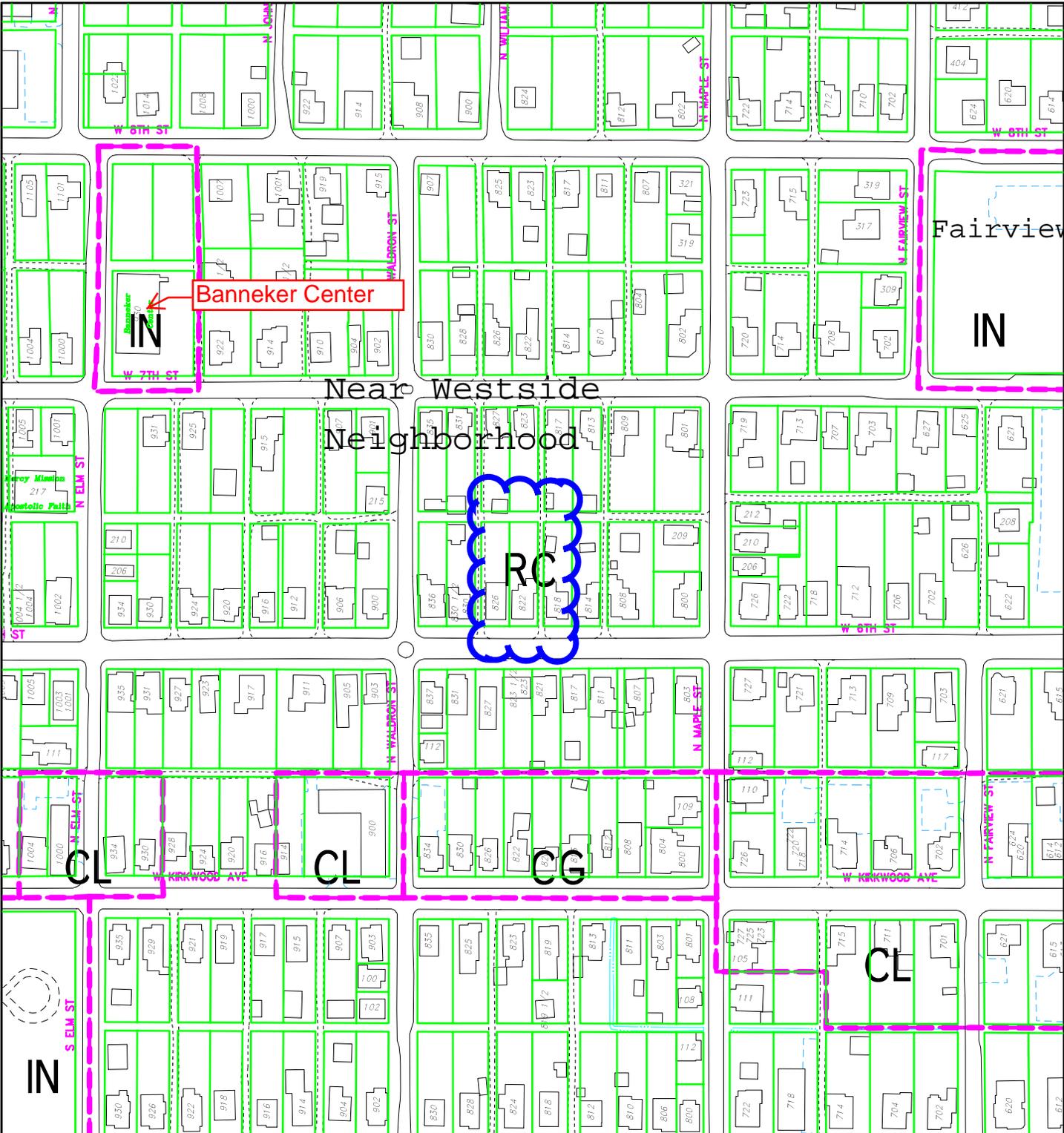
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**CONCLUSION:** Although the proposed conversion is typically not supported, staff finds this to be a unique case that is intended to resolve an error made by the City. Significant investment was based on information received by the petitioner. The prohibition on conversion of single family homes is largely due to the protection of the general character of core areas of the City. A large number of such conversions would most likely have detrimental impacts to the character and stability of the neighborhood. These older areas regularly have imbedded multifamily structures that function to provide alternative housing stock and affordable market rate housing. These structures are normally provided by lawful non-conforming structures. Ultimately, staff finds that the impacts of a single additional duplex with two total bedrooms will not have a negative impact and resolves an unfortunate error made by the City. This error would have a significant impact to the investment made by the petitioner and removal of the duplex status would create an undue burden on the petitioner.

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**RECOMMENDATION:** Based on the written findings of this report, staff recommends approval of UV/V-24-14 with the following condition:

- 1) The petitioner must record and attach zoning commitment to the deed of this property that states the following:
  - a) The structure may not be expanded and no bedrooms may be added unless the structure is returned to a single family structure. The final language of the commitment must be approved by the Planning and Legal Departments prior to recording.
  - b) Any future owners that utilize this property as two units must reside in one of the two units.
  - c) If utilized as a duplex, the occupancy of each unit shall be restricted to a maximum of two unrelated adults.



Banneker Center

Near Westside  
Neighborhood

RC

CL

CL

CG

CL

Fairview

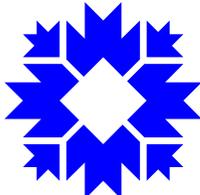
IN

UV/V-24-14 Stephen Cordell  
822 W. 6th St. Location/Zoning map  
Board of Zoning Appeals

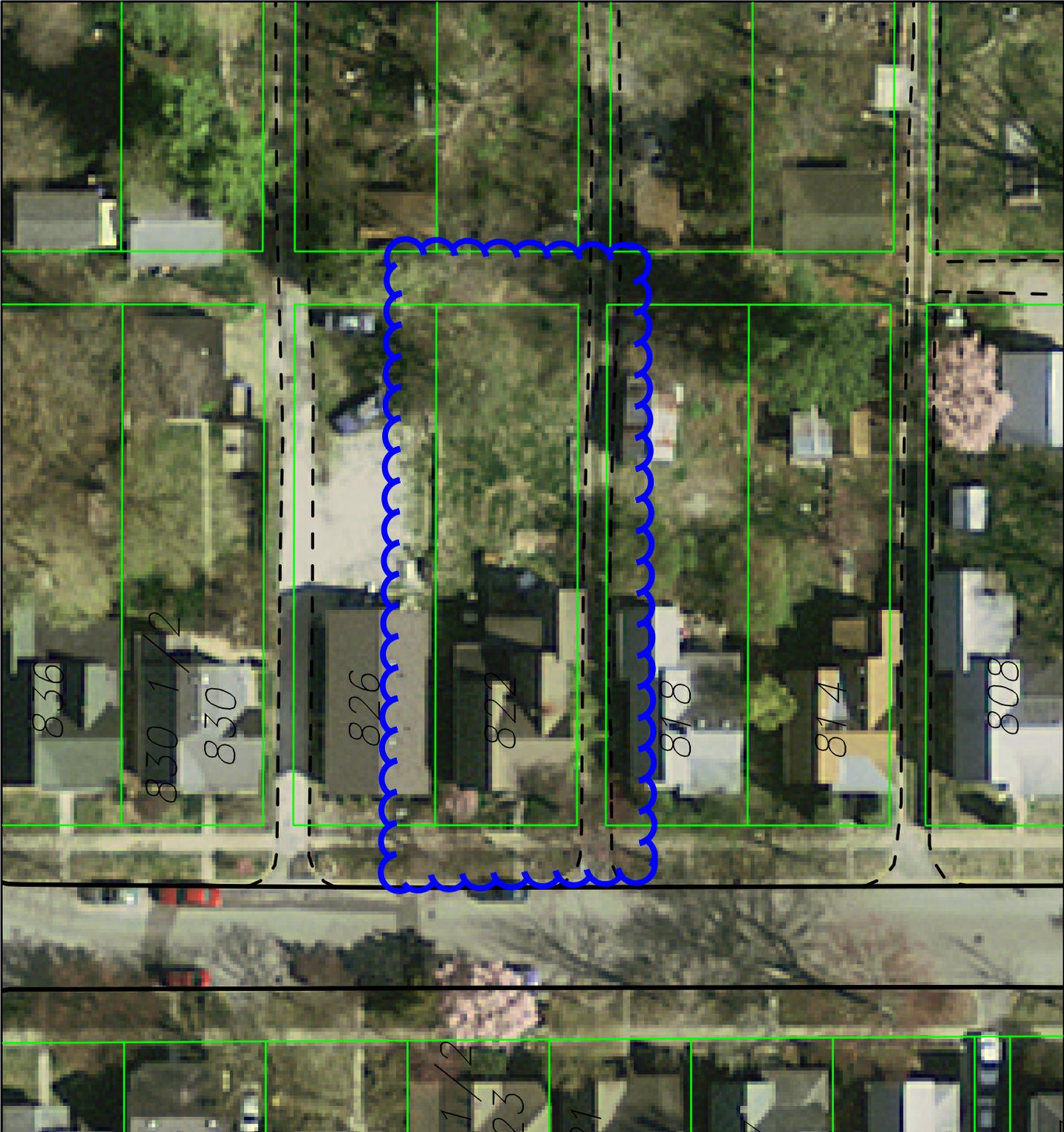
By: shay  
29 Jun 14



City of Bloomington  
Planning

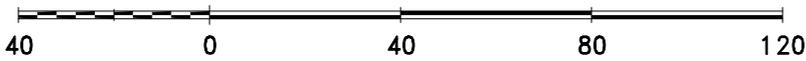


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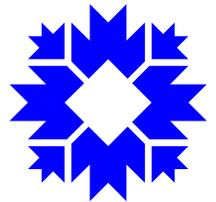


UV/V-24-14  
Aerial Photo

By: shayp  
9 Jun 14



City of Bloomington  
Planning



Scale: 1" = 40'

For reference only; map information NOT warranted.

**To: Planning Department and Board of Zoning Appeals**  
**Fr: Steve Cordell**  
**P.O. Box 3481**  
**Bloomington, IN 47402**  
**812-327-6930**  
**steve@cordellconstruction.com**

**Petitioner's Statement:**

**822 W. 6<sup>th</sup> Street**

**Request variance to allow duplex**

The 800 block of West Sixth street is typical of the vibrant Near West Side neighborhood—a healthy mix of rental and owner-occupied homes with professional, working, student and retired individuals living in a variety of housing types.

I bring this petition before you today because I was misled by HAND about the zoning of 822 W. 6<sup>th</sup> Street prior to my purchase of the property.

I purchased it after investigating the rental status at the Hand office, being assured by the HAND staff of the duplex designation of this property, and checking the Residential Rental Occupancy Permit which was for two units, one bedroom each, maximum occupancy of 3 per unit. After my purchase, the existing Occupancy Permit was transferred by the HAND office to my name from the previous owner on March 10, 2014. It is valid through June 4, 2016.

I proceeded to make significant upgrades and repairs to the interior and exterior of the property, including energy efficiency upgrades, siding replacement on some areas, general condition repairs, and painting. I am known in this community as a reputable high-quality builder and renovator with an emphasis on green, high-performance building and the work on this house reflects my reputation and commitment to responsible construction and housing.

I received a letter from HAND dated April 14, 2014, stating that the Occupancy Permit had been incorrectly issued, and that they wanted to identify the property as a singly family structure.

This property and its upgrades are a major investment for me based upon my financial analysis of this property renting as a duplex. I have tenants in both sides of the unit. One occupant on each side. One lease runs through July 2016 and the other through July 2015 with the option to renew.

I acted in good faith and made every attempt to abide by the rules of HAND. I feel this attempt at reclassification is absolutely unfair and unjust. If this had been represented correctly by the city before I purchased the property, my business plan would have been different and I would not

UV/V-24-14  
Petitioner's Statement

have purchased the property. I see no reason why I should suffer financially due to the city's mistake.

I request that the property remain a duplex as classified by the City of Bloomington just as it was when I purchased it. I wouldn't be here asking for this variance if I had not been misled prior to this purchase. My request is not for a change of use, but a continuation of use.

This continuation of the duplex occupancy status, introduces nothing new into the neighborhood. It is not injurious in anyway, and it does not change the use or value of the area adjacent.

The Use Variance arises simply from continuing what is already there. What's peculiar about it is that I was told it had a legal Occupancy Permit prior to purchase and was issued one after purchase.

The strict application of the terms of the Unified Development Ordinance, newly applied to this property, constitute an unnecessary financial hardship on me. I have gone into debt to buy the house and make repairs and improvements. If the house were to convert to a single family residence, my financial hardships would worsen considerably. According to the previous owner, the structure was built to be a duplex and was one when they purchased it. It does not have a floor plan conducive to a single family residence and would require a substantial investment to reconfigure the living space.

Allowing the duplex classification to continue does not interfere with the goals and objectives of the Growth Policies Plan which states in its Policy Essence CUF-5: That the development regulations for near downtown and near campus areas encourage increased residential densities.

It also encourages the rehabilitation of older housing stock in established neighborhoods for affordable housing, which is exactly what I am trying to do.

I petition for a reasonable consideration for variance.

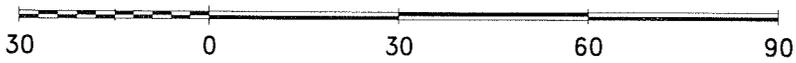
Respectively yours,

Steve Cordell

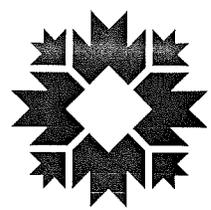


UV/V-24-14  
Site Plan

By: shayp  
9 Jun 14



City of Bloomington



Scale: 1" = 30'

For reference only; map information NOT warranted.

June 27, 2014

TO: City of Bloomington Plan Commission and Pat Shay, Development Review Manager  
FR: Near West Side Neighborhood Association Board  
RE: 822 W. 6<sup>th</sup> Street

The Board of the Near West Side Neighborhood Association met to discuss the request for a variance to convert 822 W. 6th St. to a duplex. The current owner, Steve Cordell, asserts that he will suffer financial loss if he cannot rent the house as a duplex since he purchased the house in reliance on a mistaken belief that the house was properly zoned for a duplex. However, we do not believe the reduction of revenue for Mr. Cordell (which we believe will be relatively minor) is sufficient grounds for permanently negating the single-family residence status of this property.

For several years the prior owner had maintained a separate rental apartment in her home prior to complaints from neighbors, which resulted in the city Housing and Neighborhood Development Department mistakenly issuing her a rental permit for the apartment. We feel that although that permit was improperly issued, the fact that one of the units in the house was owner-occupied makes it a very different situation to having both units being rental apartments.

We would not object to having the use under the previous owner continue with one unit being owner-occupied and the other rented. If such a variance were granted, Mr. Cordell could live in one of the units himself, or he could sell the house to someone who would benefit from the added income from the rental unit or from the availability of someone to assist in case of trouble. However, we would not want to have such a use be abused by someone who might expand the small rental apartment to facilitate renting it to large numbers of occupants.

Our unanimous position is that we oppose a variance to allow this property to be used as a duplex unless the following conditions are made a part of the variance:

- 1) One of the units in the duplex must be owner-occupied, and
- 2) No additions to the current square footage of the structure or number of rooms should be permitted.

Please let us know if you have questions regarding the above.

Sincerely,

Carol Gulyas  
President, Near West Side Neighborhood Association  
[stewartgulyas@gmail.com](mailto:stewartgulyas@gmail.com)  
(708) 305-3891 (mobile)

UV/V-24-14  
Neighborhood Letter

**BLOOMINGTON BOARD OF ZONING APPEALS**  
**LOCATION: 1012 S. Ballantine Rd.**

**CASE #: V-30-14**  
**DATE: August 28, 2014**

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**PETITIONER:**        **Christiana Ochoa**  
                              **1012 S. Ballantine Rd., Bloomington**

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**REQUEST:** The petitioner is requesting a variance to allow an 8 foot tall fence forward of the front building wall.

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**SUMMARY:** The property is located on the west side of S. Ballantine Rd., south of Southdowns/Sheridan. It has been developed with a single family house and is zoned Residential Single-family (RS). It is surrounded on all sides by other single family homes.

The house is unusual in that it has a garage that extends much closer to the street than the main mass of the house. This is unusual in this block. The petitioner desires additional privacy from the surrounding homes and would like to build an 8 foot tall privacy fence along the side property lines in the side and rear yards. In the front yard a 4-foot tall fence would be built.

The petitioner has designed an 8-foot tall fence along the south property line that would extend forward of the main mass of the house, but would be no closer to the street than the house to the south or the petitioner's existing garage. If the neighbor to the south were to build a fence, or if there was a shared fence, it could be built in this manner, but because it is proposed forward of the front building wall of 1012 S. Ballantine Rd. it is not permitted. The petitioner is not proposing to have any portion of the 8-foot fence run parallel to the street, forward of the house. The petitioner is requesting a variance.

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#### **CRITERIA AND FINDINGS FOR DEVELOPMENT STANDARDS VARIANCE**

**20.09.130 e) Standards for Granting Variances from Development Standards:** A variance from the development standards of the Unified Development Ordinance may be approved only upon determination in writing that each of the following criteria is met:

- 1) *The approval will not be injurious to the public health, safety, morals, and general welfare of the community.*

**STAFF FINDING:** Staff finds no injury with this request. The proposed fence would have no different impact than a compliant fence on the adjacent property.

- 2) *The use and value of the area adjacent to the property included in the Development Standards Variance will not be affected in a substantially adverse manner.*

**STAFF FINDING:** Staff finds no negative impacts from this variance. Fences along side property lines are very common. The fence is no closer to the street than

would be permitted for the surrounding houses. An eight foot tall fence is not proposed parallel to the street to block views of the house.

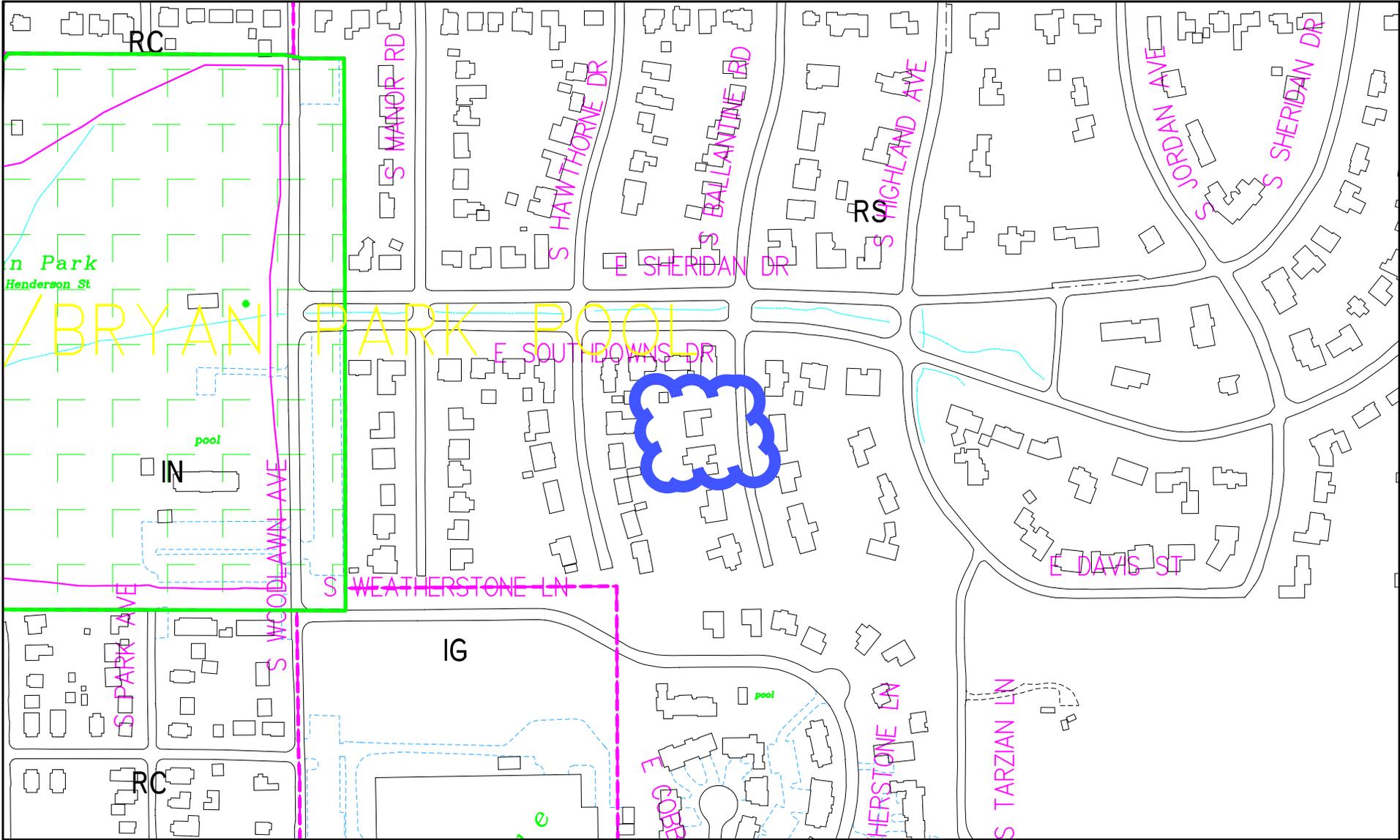
- 3) *The strict application of the terms of the Unified Development Ordinance will result in practical difficulties in the use of the property; that the practical difficulties are peculiar to the property in question; that the Development Standards Variance will relieve the practical difficulties.*

**STAFF FINDING:** Staff finds peculiar condition in the shape of the house and its placement on the lot. Staff finds practical difficulty in that a shared fence or a fence built by the neighbor to the south could be built as proposed. The proposed fence is no closer to the street than the petitioner's garage, the neighbor's house or any other house on the block.

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**RECOMMENDATION:** Based upon the written findings above, staff recommends approval of V-30-14 with the following conditions.

1. The 8-foot tall section of the proposed fence can be no closer to the street than the front building wall of the neighbor's house to the south.
2. This variance only authorizes a fence along the side property line. Any fence parallel to the street must meet the maximum front fence height of 4 feet.



V-30-14  
Location Map

By: roachja  
21 Aug 14



For reference only; map information NOT warranted.



City of Bloomington  
Planning

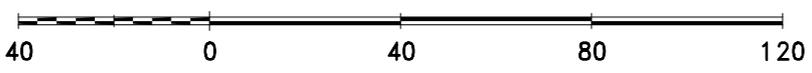


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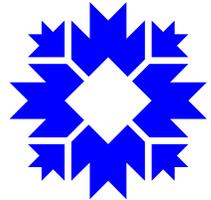


V-30-14  
2011 Aerial Photo

By: roachja  
21 Aug 14



City of Bloomington  
Planning



Scale: 1" = 40'

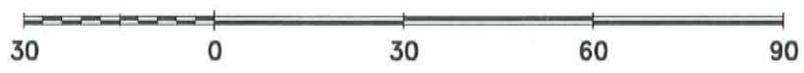
For reference only; map information NOT warranted.



\* variance sought for this portion of fence only

V-30-14  
Site Plan

By: roachja  
14 Jul 14



For reference only; map information NOT warranted.



City of Bloomington  
Planning



Scale: 1" = 30'

Petitioner's Statement:

I am building a fence in my front yard and seek a variance to extend the 8-foot portion of the southern wall of my fence to the point where it aligns with the front of my neighbor's home, rather than to the point where it aligns with mine (see Scaled Site Plans).

As shown in the Scaled Site Plans, my hope is to build an 8-foot cedar privacy fence from the point where it aligns with the existing back yard fence until the point where it aligns with the front of my neighbor's house, then to build a 4-foot cedar privacy fence for the remainder of the southern side of my property. The fence will be built 2-3 feet to the north of my southern property line, in order to allow me to easily maintain my fence without entering my neighbor's land. The remainder of the fence will have two additional sides of cedar picket fencing. One side (the eastern side) will be built on the eastern boundary of my property, while the other (the northern side) will be situated between my driveway and front yard.

I believe the variance is reasonable. If my neighbors to the south or to the north were to build fences in their front yards, they could build 8-foot fences between our properties in exactly the manner I am proposing without seeking variances, given that the front of their houses extend to that point. Indeed, if I were seeking to build an 8-foot fence on the north side of my property, I also could extend it to this point without a variance, given that my garage extends that far. It is peculiar to my property that I am restricted from constructing an 8-foot fence on the south side of my property to the point I am hoping to do so without seeking a variance and I hope you will relieve the difficulties that arise from this peculiar situation, especially given that it will not create an undue obstruction of view in the neighborhood, as you will note from the drawing I have included here (note a singular exception, below).

I am seeking as much privacy and protection as possible from my neighbors to the south, given ongoing disputes between us, including my own desire to protect my family and our privacy. I acknowledge that the variance I seek would fully obstruct the long-distance view out of one garage window of their home and would fully block the view from that window of my yard and my home. The other garage window of their home will be blocked from viewing the front of my home, including my bedrooms and bathrooms, but would maintain a view of a portion of my front yard and a view of the street. This is a desirable result and I believe it enhances and does not injure the safety, morals and general welfare of the community, as required by the criteria for a development standards variance. Finally, it bears noting that the fence I seek to build will not obstruct vehicular access or sight of the road in any way, as it will drop to 4 feet at the point where my neighbor's driveway meets their garage.

I have otherwise reviewed the criteria for a development standards variance and believe my application meets all of those criteria.



V-30-14  
 Site plan without  
 air photo

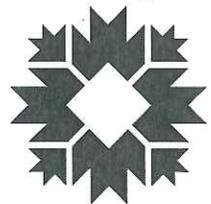
By: roachja  
 21 Aug 14



For reference only; map information NOT warranted.



City of Bloomington  
 Planning



Scale: 1" = 30'



V-30-14  
 Fence height zones of  
 surrounding properties

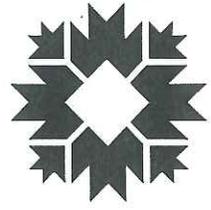
By: roachja  
 21 Aug 14



For reference only; map information NOT warranted.



City of Bloomington  
 Planning



Scale: 1" = 30'



AU23-4 2014

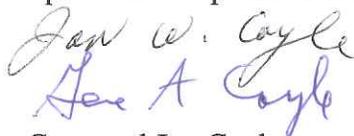
July 30, 2014

Mr. James Roach  
Senior Zoning Planner  
401 N. Morton St Suite 100  
PO Box 100  
Bloomington IN 47402

SUBJECT: Proposed Variance to Allow an 8 Foot Tall Fence at 1012 S. Ballantine Rd

There are currently NO fences forward of the front building walls of any height in any of the front yards of the properties on this block of S. Ballantine Rd, nor on any of the streets for blocks in any direction. We strongly oppose the granting of this variance for the property at 1012 S. Ballantine Rd for an 8 foot tall fence in front of the house. It would look ridiculous, spoil the "open" look of the street and very likely negatively affect the property values of the nearby homes.

I presume our position is clear.



Gene and Jan Coyle  
1018 S. Ballantine Rd.  
Bloomington, IN 47401

V-30-14 Letter of Remonstrance
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