

CITY OF BLOOMINGTON



MARCH 22, 2012 @ 5:30 p.m.
COUNCIL CHAMBERS #115
CITY HALL

ROLL CALL

MINUTES TO BE APPROVED: December 15, 2011

PETITIONS:

- CU-9-12 **Chad's LLC**
3170 S. Walnut St.
Request: Conditional use to allow an auto impound lot within a Commercial Arterial (CA) zoning district. Also requested is a variance from maximum parking requirements.
Case Manager: Patrick Shay

- V-10-12 **Debby Herbenick and James Copo**
528 S. Highland Ave.
Request: Variance from maximum fence height standards.
Case Manager: Jim Roach

PETITIONER: Chad's LLC
3170 S. Walnut Street, Bloomington

REQUEST: The petitioner is requesting conditional use approval to allow an Impound Vehicle Storage Lot within a Commercial Arterial zoning district.

REPORT: The petitioner moved their existing vehicle impound use to an existing industrial building located on the west side of the 3100 block of S. Walnut Street. The building is part of a larger 3.28 acre property zoned Commercial Arterial (CA). The property also includes a moving company and a small retail store in a larger building located to the north of the subject building. Although the property has a small amount of property frontage along Walnut St. (10 feet), the majority of the property is located approximately 285 feet from the street, behind a building currently being used as a dry cleaning business. The proposed use of impound vehicle storage is a conditional use within this zoning district. The petitioner is seeking a conditional use approval to legitimize the use at this location.

The petitioner intends to utilize the large building to house impounded vehicles. Although not initially desired, the petitioner is seeking approval to allow the possible outdoor storage of vehicles to the rear of the building in the future. Staff recommends that if this storage is utilized, an opaque fence must be installed per UDO requirements to contain the impound yard. In addition to the indoor and outdoor storage of impounded vehicles, the petitioner intends to utilize the building to house the office and dispatch of the business, online auto sales and small on-site vehicle auctions, vehicle repair, and a small real estate management office. These uses are permitted within this district. All of these uses are permitted or accessory to the impound storage use.

The proposed use requires that the site be brought into compliance with several site planning standards of the Unified Development Ordinance (UDO). The petitioner has committed to comply with all of the required site planning requirements. These improvements to the property include items such as parking lot striping, handicap marking improvements, installation of bike parking, new landscaping, and lighting compliance.

Criteria and Findings for Conditional Use Permits
20.05.023 Standards for Conditional Use Permits

No Conditional Use approval shall be granted unless the petitioner shall establish that the standards for the specific Conditional Use are met and that the following general standards are met.

- 1. The proposed use and development must be consistent with the Growth Policies Plan and may not interfere with the achievement of the goals and objectives of the Growth Policies Plan;*

Staff's Finding: The Growth Policies Plan (GPP) designates this area as a Community Activity Center. Staff finds no significant interference with the goals and objectives of the GPP in placing a vehicle impound storage use at this property. The location of this use several hundred feet from the public street, the good truck access, and the access directly to an arterial roadway help make this an appropriate location for this use. This use is traditionally difficult to locate. Staff finds that this location works well and will not compromise the goals and objectives of the GPP.

- 2. The proposed use and development will not create nuisance by reason of noise, smoke, odors, vibrations, or objectionable lights;*

Staff's Finding: The proposed use will not have excessive noise, smoke, odor, vibrations, or objectionable lights. The site is very large and will not have significant impacts to adjacent uses and properties.

- 3. The proposed use and development will not have an undue adverse impact upon the adjacent property, the character of the area, or the public health, safety and general welfare;*

Staff's Finding: Staff finds no adverse impacts to the adjacent properties or character of the area as a result of this use. This is within a CA zoning district and has been used as industrial in the past. It is also located next to a moving company that also uses large trucks in a similar manner.

- 4. The proposed use and development will be served adequately by essential public facilities and services such as streets, public utilities, stormwater management structures, and other services, or that the applicant will provide adequately for such services;*

Staff's Finding: The proposal will not impact the use of public facilities. The property is connected to all public utilities and has adequate access to public streets.

- 5. The proposed use and development will not cause undue traffic congestion nor draw significant amounts of traffic through residential streets;*

Staff's Finding: This site is located along Walnut St., a primary arterial street. This proposed use will not create any new traffic through residential streets.

- 6. The proposed use and development will not result in the excessive destruction, loss or damage of any natural, scenic, or historic feature of significant importance;*

Staff's Finding: There are no known natural, scenic, or historic features of significant importance on the property. In addition, there are no proposed expansions to the site or the structure proposed.

- 7. The hours of operation, outside lighting, and trash and waste collection must not pose a hazard, hardship, or nuisance to the neighborhood.*

Staff's Finding: Staff finds that the proposed use is not located within an established neighborhood and will not create a hardship to any residential areas. Again, the use is located several hundred feet from the nearest public street and will have limited visibility and impact by way of noise, lighting, and trash and waste collection.

8. *Signage shall be appropriate to both the property under consideration and to the surrounding area. Signage that is out of character, in the Board of Zoning Appeal's determination, shall not be approved.*

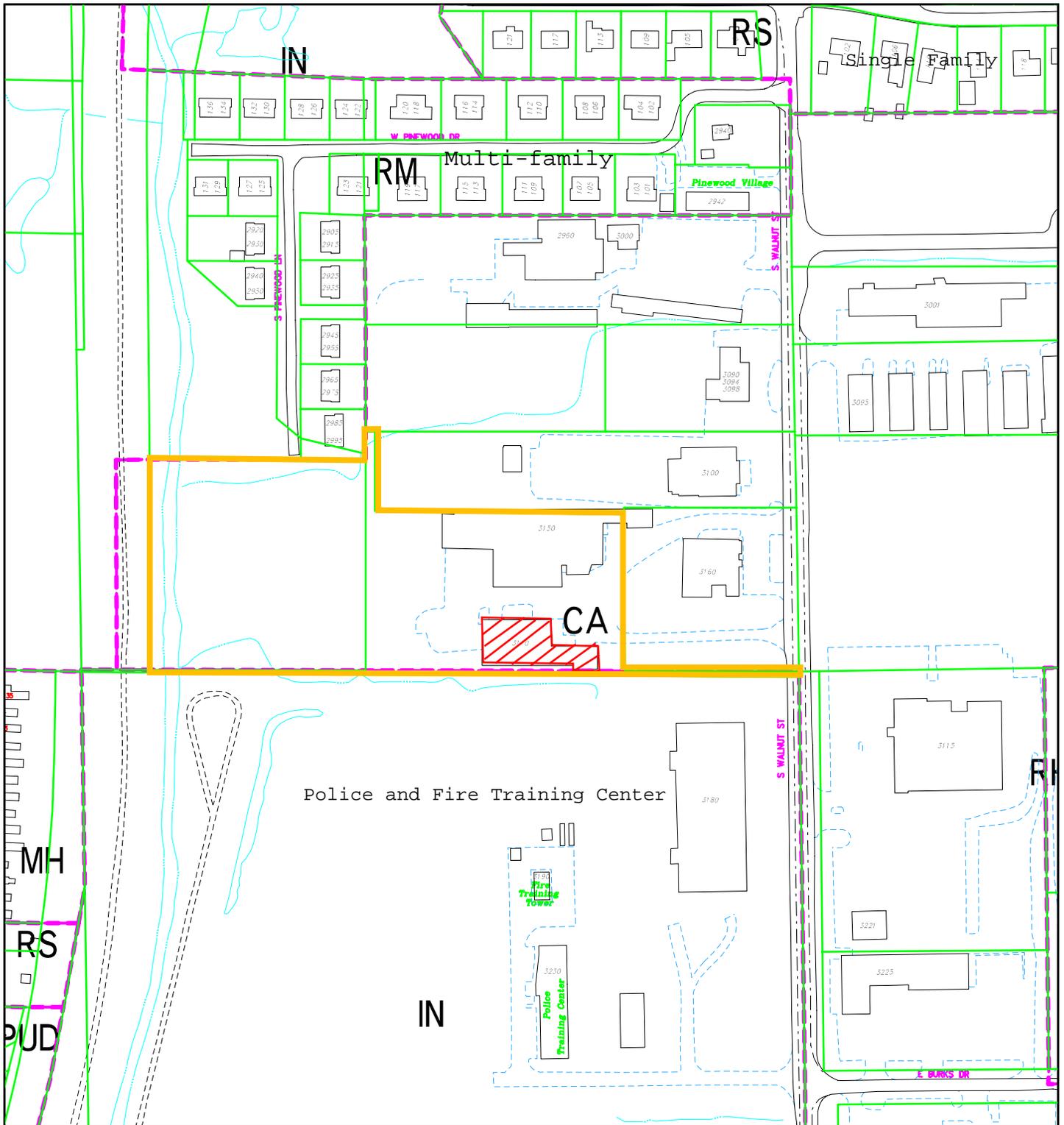
Staff's Finding: The property will meet all signage requirements of the Commercial Arterial zoning district.

9. *The proposed use and development complies with any additional standards imposed upon the particular use by Chapter 20.05; CU: Conditional Use Standards.*

Staff's Findings: No individual conditional use standards are required with vehicle impound lots.

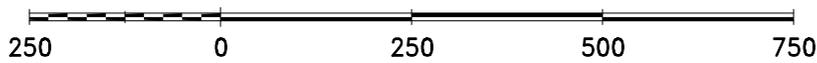
RECOMMENDATION: Staff recommends approval of CU-9-12 with the following conditions:

1. If any outdoor storage of vehicles is utilized, an 8-foot opaque fence must be installed around the entire outdoor storage area.
2. All site improvements described within the petitioner's statement must be completed within 60 days of this approval.



CU-09-12
 Chad's Towing
 2170 S. Walnut St.
 Zoning and Land Use Map

By: bannok
 15 Mar 12



For reference only; map information NOT warranted.

City of Bloomington
 Planning

N

Scale: 1" = 250'

CONDITIONAL USE PETITIONERS STATEMENT

Property Location: 3170 S. Walnut St.

Property Legal Description: 015-22390-00 PT W1/2 16-8-1W3.14A & .14A Plat 42

Parcel Number: 53-08-16-200-066.000-009

Property Size: Approximately 3.28 Ac. Total. This is the total size of the property. We lease a portion of this from John Craft at Soft Touch Moving & Storage. Our parcel consists of approximately .90 Ac.. The perimeter is 120' x 320'.

Current Zoning: Commercial Arterial / Warehouse

Existing Buildings:

- 80' X 120' Warehouse
- 29' X 43' Office Complex
- 44' X 40' Two Bay Truck Garage

Proposed Changes to Buildings: None

Current Use: Warehousing, Small Business

Surrounding Land Use:

- South parcel is City of Bloomington, not certain of all uses there.
- West parcel is wooded and unused
- North is the Eagles Fraternity Lodge
- East has Spring Cleaners directly in front of us. Our access is via easements on the North and South of Spring Cleaners. The east is bordered by S Walnut St.
- East of S Walnut St. is Royal Auto Dealerships and a large parcel of land that has been under excavation for many years.
- Other uses in the area include a small used car dealership, a vehicle impound/storage yard, a U Haul dealership, the Monroe Co Solid Waste recycle center, mini warehouses, a hotel converted to apartments, a bakery outlet, the old Channel Kor building as well so other municipal and commercial users. To the northwest there is a limited amount of residential and there are other residential areas beyond the immediate adjoining parcels mentioned. (See attached aerial views from GIS.)

Proposed New Use at 3170 S. Walnut St. by Chad's LLC:

- Vehicle Impound & Inside Vehicle Storage Facility
- Towing Company Dispatch and Business Office
- Online & By Appointment Auto Sales Facility
- Vehicle Repair Facility
- Real Estate Management Office
- Auction Facility for Vehicles and other Personal Property

Vehicular Access: The primary access to the property is the easement drive on the S. Side of Spring Cleaners. A secondary access is the easement on the N. Side of Spring Cleaners. These access points both turn West off of S. Walnut St.. Both roadways are approximately 20' wide, double lane entry/exit drives, providing more than adequate access to the property for all current and future business activities.

CU-9-12 Petitioner's
Statement

Parking: The existing 10 parking spots are outlined in our site plan and will be restriped. This will include a handicap spot in the number one spot in front of office area.

Public Access / Pedestrian Facilities: This parcel has no road frontage and therefore has no obligation for sidewalks or other public / pedestrian access.

Handicap Access: The handicap parking will provide access for those with disabilities. The building itself is a slab structure with good single level access. No ramps or other special equipment is necessary.

Environmental Issues: There are no proposed changes that will result in any Environmental Impact.

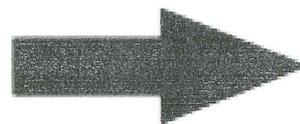
Drainage Plans: No changes to the properties existing drainage are proposed.

COMMENTS:

As noted in our statement, the changes to the property as it exists today are minimal. We are using the existing buildings without modification or change. The exterior of the buildings will remain the same except for some general maintenance improvements. Signage will be modest and well within the sign ordinance allowance. Below is a list of improvements we propose to make at the property at 3170 S. Walnut St... Proposed changes are to be completed by June 1st, 2012:

- The parking lot will be professionally striped
- All handicap spots will be striped and marked, including signage
- A bicycle rack will be placed in front of the office complex
- All green space, while limited at this location, will be landscaped per appropriate ordinance and at the direction of the Planning Department
- All lighting will be replaced or modified to meet the ordinance regarding exterior lighting and at the direction of the Planning Department
- Signage will consist of informational signs on doors, building number and a small sign over the main garage entry on the front of the building
- There will be no on-site dumpster or waste collection enclosure

West

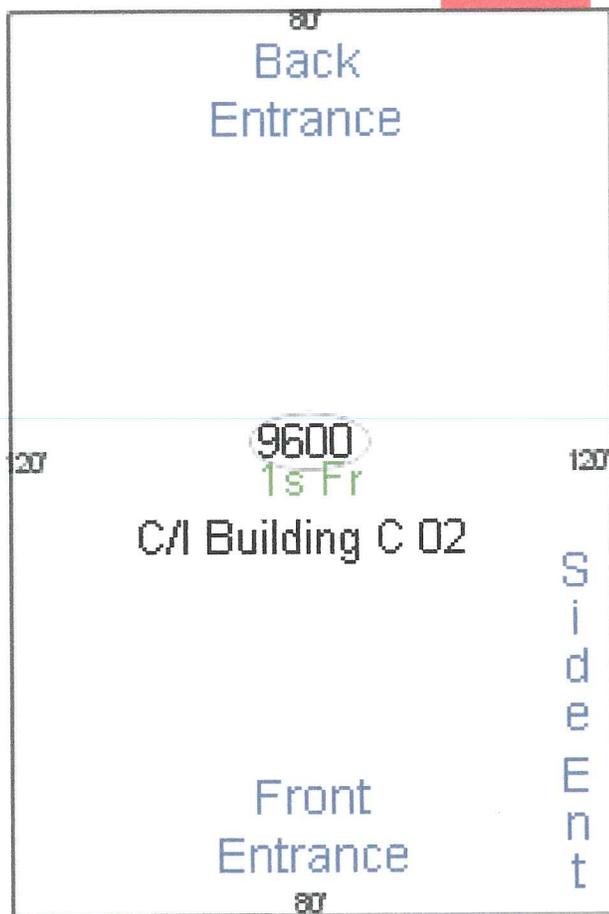


North

1000 Gallon Non-Permanent Double Wall Fuel Tank



South



Sid e n t
5 S p a c e s

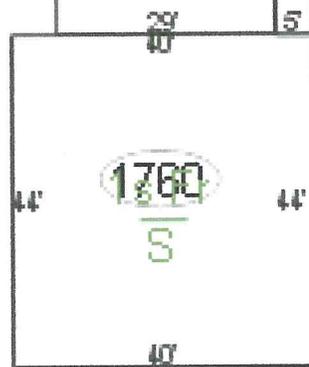
S h a r e d A c c e s s

400 Sq Ft

Parking
2 Spaces Total
1 Handicapped

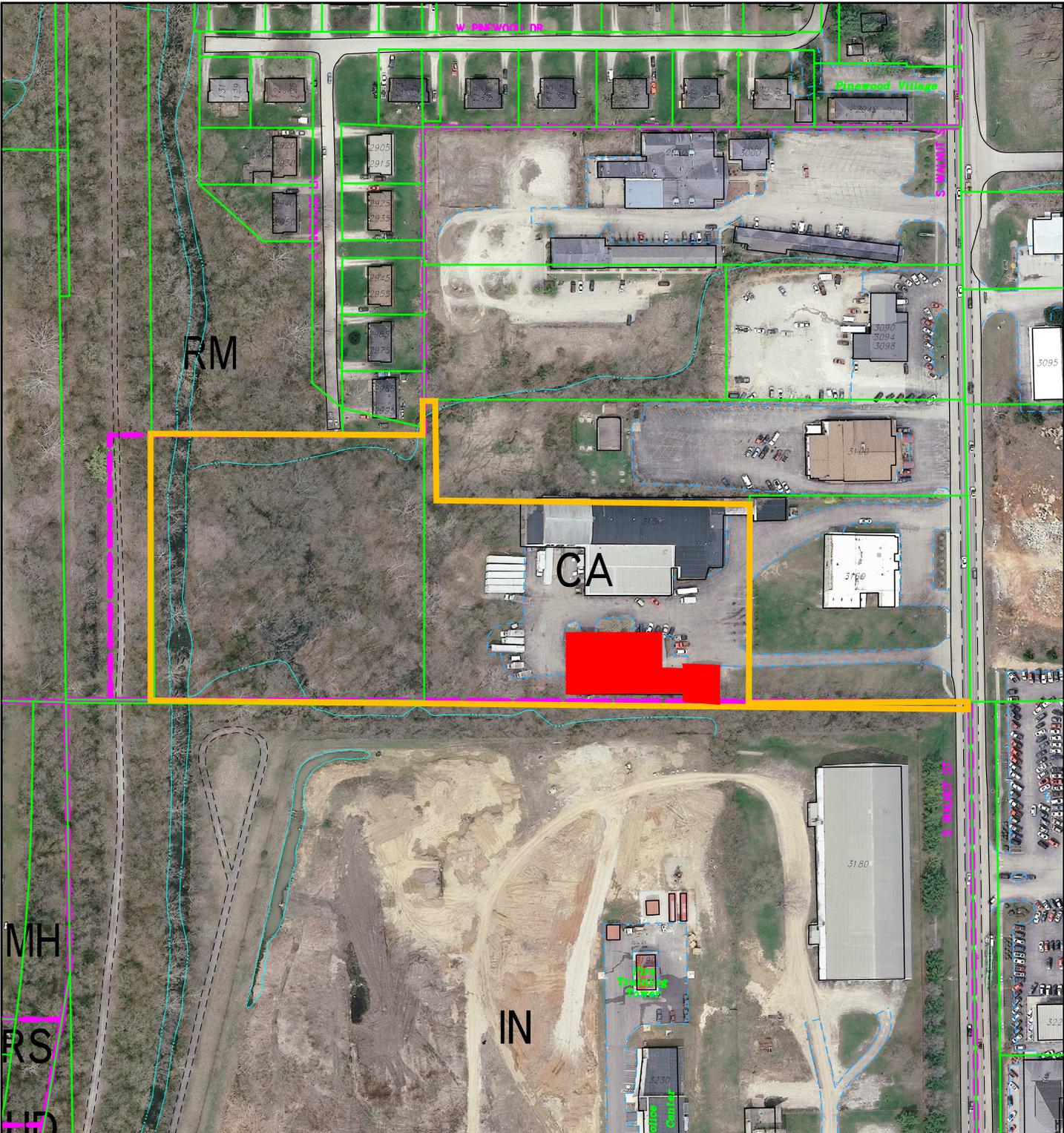


Bicycle Parking



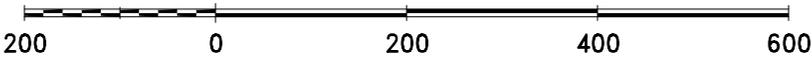
Parking 3 Spaces

East

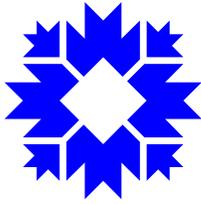


CU/V-09-12
 Chad's Towing
 3701 S. Walnut St.
 2010 Aerial Photo

By: bannonk
 15 Mar 12



City of Bloomington
 Planning



Scale: 1" = 200'

For reference only; map information NOT warranted.

BLOOMINGTON BOARD OF ZONING APPEALS
STAFF REPORT
LOCATION: 528 S. Highland Ave.

CASE #: V-10-12
DATE: March 22, 2012

PETITIONER: Debby Herbenick and James Capo
528 S. Highland Ave., Bloomington

REQUEST: The petitioners are requesting a variance to allow a fence in excess of the Unified Development Ordinance maximum height requirements.

| | Fence Height |
|------------|-------------------------------------|
| Proposed: | 4 feet solid board + 2 feet lattice |
| Permitted: | 4 feet |

REPORT SUMMARY: The petitioners own the single family home at the northwest corner of S. Highland Avenue and E. 2nd Street. The property is zoned Residential Core (RC). Both the house and the driveway face Highland Ave. All other homes on this block of Highland Ave. face this street, however there are many homes in the area that face 2nd Street.

This petition comes to the Board of Zoning Appeals as a result of a zoning violation and subsequent enforcement action. The petitioners constructed an addition to a grandfathered 6-foot tall fence in 2009. The existing fence was replaced and repaired and a 30-foot section of new 6-foot tall fence was added along the 2nd Street frontage. The Planning Department issued a notice of zoning violation on October 20, 2010.

The UDO prohibits fences above 4 feet tall between the street and the “front building wall.” The “front building wall” is defined as “the building elevation which fronts on a public street.” Corner lots have two front building walls. The area between the house and the street can be fenced with a 4-foot fence, but not the 6-foot fence that was constructed.

In February, the BZA denied a very similar petition for this property, case #V-17-11. That variance proposed to retain the 6-foot tall fence that had been constructed. After denial of the variance, the petitioners presented an amended fence proposal to staff. Staff found that the change in the fence design to be a “material change” in the proposal and permitted the filing of a new variance.

The petitioners’ current proposal is to remove the top 2 feet of the solid board privacy fence. The support posts would remain and an open weave wood lattice would be installed above the solid fence for a total height of 6 feet. The grandfathered section of 6-foot tall solid privacy fence would remain in place. A variance is still required for the new portion of 6-foot tall fence between the front building wall and the street.

The petitioners contend that a fence taller than 4 feet tall is necessary because of a high volume of traffic on 2nd Street, the desire for privacy, a small back yard, the need to keep a dog contained and provide a place for it to run, and a need for security because of a past history of Ms. Herbenick being a victim of stalking. The petitioners have submitted a copy of a protective order issued by the Monroe County Circuit Court in January 2011 and is a part

of the file.

With the change in the fence design, staff finds that the proposed fence meets the guidelines for support outlined by the BZA as used on past front yard fence variance cases.

1. The lot is a corner lot
2. The fence is on the “side street” and not between the functional front of the house and the street.
3. The “side street” is a classified street.
 - While E. 2nd Street is not a classified street at this location, it does see considerable traffic (approx. 4000 cars/day), comparable with S. High Street (approx. 4700 cars/day) and S. Jordan Avenue (approx. 4500 cars/day) near this location.,
4. The fence is only completely opaque for the first 4 feet and the height above 4 feet is partially transparent or is set back from the sidewalk.

CRITERIA AND FINDINGS

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 use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner.*

Staff’s Finding: No adverse impact to adjacent properties is anticipated. The new fence section is approximately 30 feet from the sidewalk along Highland Ave. The portion of the fence along E. 2nd St. is no closer to the street than the older fence section. Property owners to the west and north will not be affected, as these portions of the fence are older grandfathered sections.

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

Staff’s Finding: Staff finds no injury to the general welfare. The fence does not create any visibility issue from adjacent streets and sidewalks.

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 variance will relieve practical difficulties.*

Staff’s Finding: The Board of Zoning Appeals ruled on a similar case in 2009 (V-17-09), where a petitioner requested a variance from fence height standards to allow for a 6-foot fence between the street and the front building wall along High St. for the property located at 2105 E. Meadowbluff Ct. The BZA approved the variance request, finding that the peculiar condition could be found in the combination of three issues: First, that the property in question was on a corner lot, Second that the street along the “non-functional side” of the house is a classified street with heavy traffic. These issues

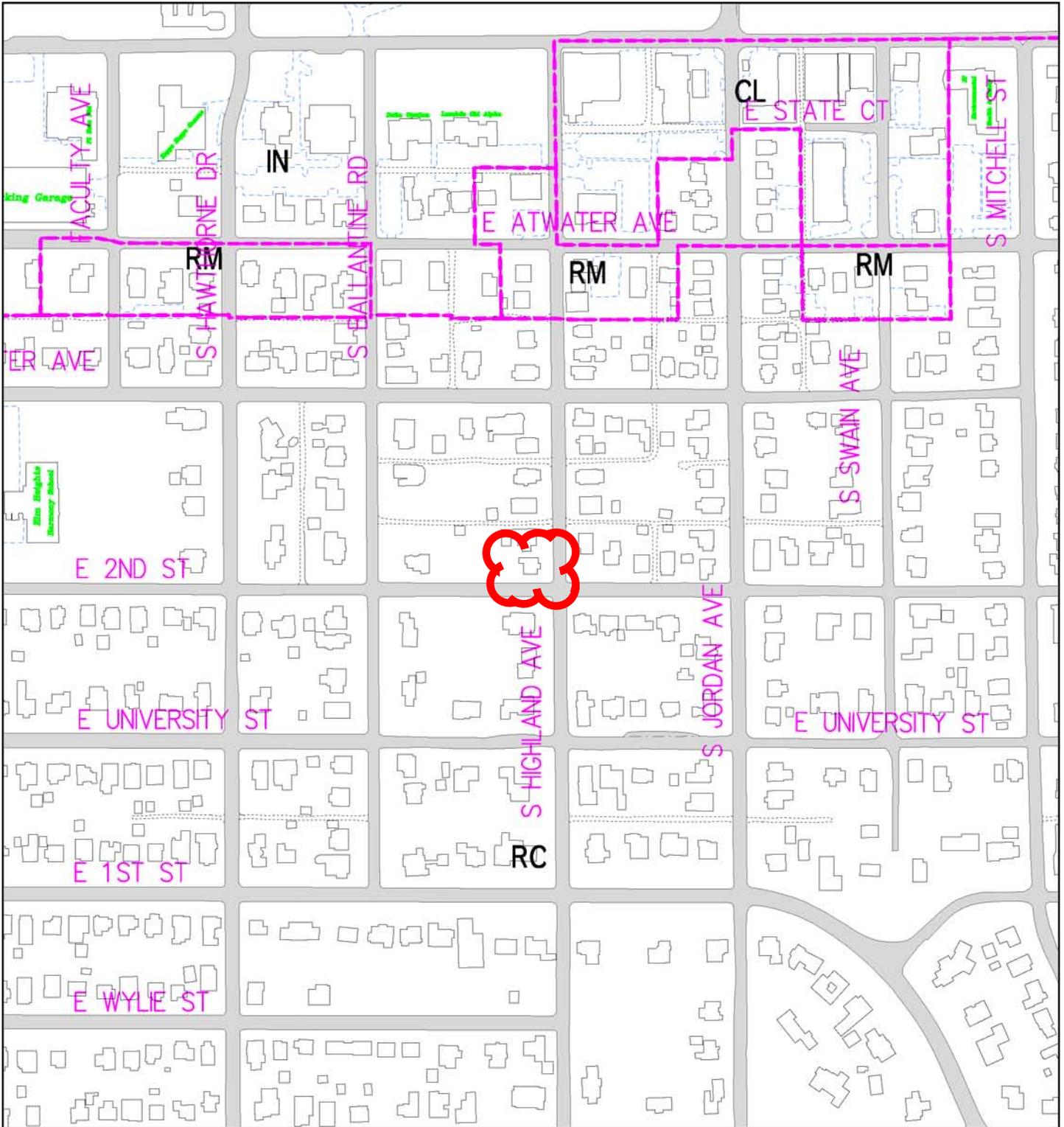
created a privacy need that could not generally be achieved with a 4-foot tall fence. Third, the part of the fence taller than 4 feet tall was constructed of lattice and was not solid.

The petitioners' new proposal also meets all of these criteria, except that 2nd street is not a classified street at this location. 2nd Street does however have traffic counts similar to S. High St. and S. Jordan Ave. which are both classified as Primary Collectors.

Peculiar condition is found in the small lot size, existing grandfathered fence section, the fact that this is a corner lot and the side street has high levels of traffic. This results in the need for additional levels of privacy. Practical difficulty is found in the fact that the upper 2 feet of the fence are partially transparent, thus meeting the goals of the UDO, but not the letter of the requirements.

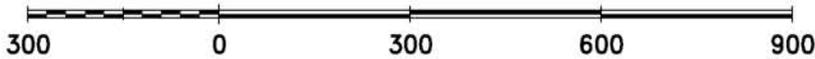
RECOMMENDATION: Based on the written findings, staff recommends approval of the variance, with the following conditions:

1. The fence can not exceed 6 feet tall.
2. Any part of the new fence section with a height of more than 4 feet must be constructed of a wood lattice.



V-10-12
Location Map

By: roachja
9 Nov 11



City of Bloomington
Planning



Scale: 1" = 300'

For reference only; map information NOT warranted.

Petitioner's Statement

Our property, 528 S. Highland is located at the corner of Highland Ave and 2nd Street. The property is owned by Debra Herbenick where she currently lives with her husband James Capo. We are requesting a variance to allow a two-foot lattice to a four-foot fence on the side of our house (considered one of two "front yards" given that our home is on a corner lot). The fence is currently six feet; we are proposing that the top two feet be removed and replaced with a two-foot lattice (for a total of six feet tall, to be similar to other 6 foot tall fences in the neighborhood whose top two feet are comprised of lattice).

We find that there is precedent in this situation as the BZA previously approved fences in similar situations. Specifically, during our previous hearing we found that The Board of Zoning Appeals ruled on a similar case in 2009 (V-17-09), where a petitioner requested a variance from fence height standards to allow for a 6-foot fence between the street and the front building wall along High St. for the property located at 2105 E. Meadowbluff Ct. The BZA approved the variance request, finding that the peculiar condition could be found in the combination of three issues: First, that the property in question was on a corner lot, Second that the street along the "non-functional side" of the house is a classified street with heavy traffic (E 2nd Street has traffic counts similar to portions of High Street). These issues created a privacy need that could not generally be achieved with a 4-foot tall fence. Third, the part of the fence taller than 4 feet tall was constructed of lattice and was not solid.

Having a four-foot tall fence with a two-foot lattice provides several significant benefits for us, including:

1) We have a greater sense of privacy. There are only two living areas on the ground floor of the home the living room and dining room - and both of these feature large windows that look out onto, and in from, E 2nd Street which is a busy street with sizable high traffic counts that are approximately 6-7 times higher than neighboring parallel streets (E.g., Hunter Ave, one block over). There are many student rentals in our area and it is not unusual for individuals to loiter on our corner or to park their cars there. A school bus stop also lets out by our house. A 4-foot tall fence with a two-foot lattice would provide significantly more privacy in these two living areas. It would also provide for privacy in the yard. The house across the street is positioned at a significantly higher elevation than our house - it's front door, which faces our side yard, is positioned at approximately 9 feet higher than street level, with the front windows and doors looking into our yard and windows.

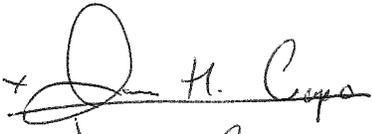
On a related note, Debby is the victim of stalking and has a protective order against a man who has sent more than 1,200 emails to Debby, many of which are sexually graphic, threatening and violent in nature. Although he has not come to our home (to our knowledge) he has referenced coming to Bloomington and has referenced being able to find our home address. Although it may seem a small matter to others; to us it is extremely valuable that we have a fence that shields our living area from plain public view.

2) Our dog has a place to run that keeps passerby safe. Our dog is able to jump up to four feet ledges (she does so on neighborhood walks) though we don't know if she can actually jump

over a four-foot fence- nor do we wish to find out! She is not friendly to other dogs or to men. Having a fence gives us confidence about others' safety.

We have already incurred significant expense including paying \$1900 for the new fence, removal of the old fence, removal of the old iron fence, and removal of the wood deck. We have experienced a loss in the perceived size of our lot (due to the seller not disclosing the true property lines or the encroachment) and we have experienced a loss in the value associated with having a deck.

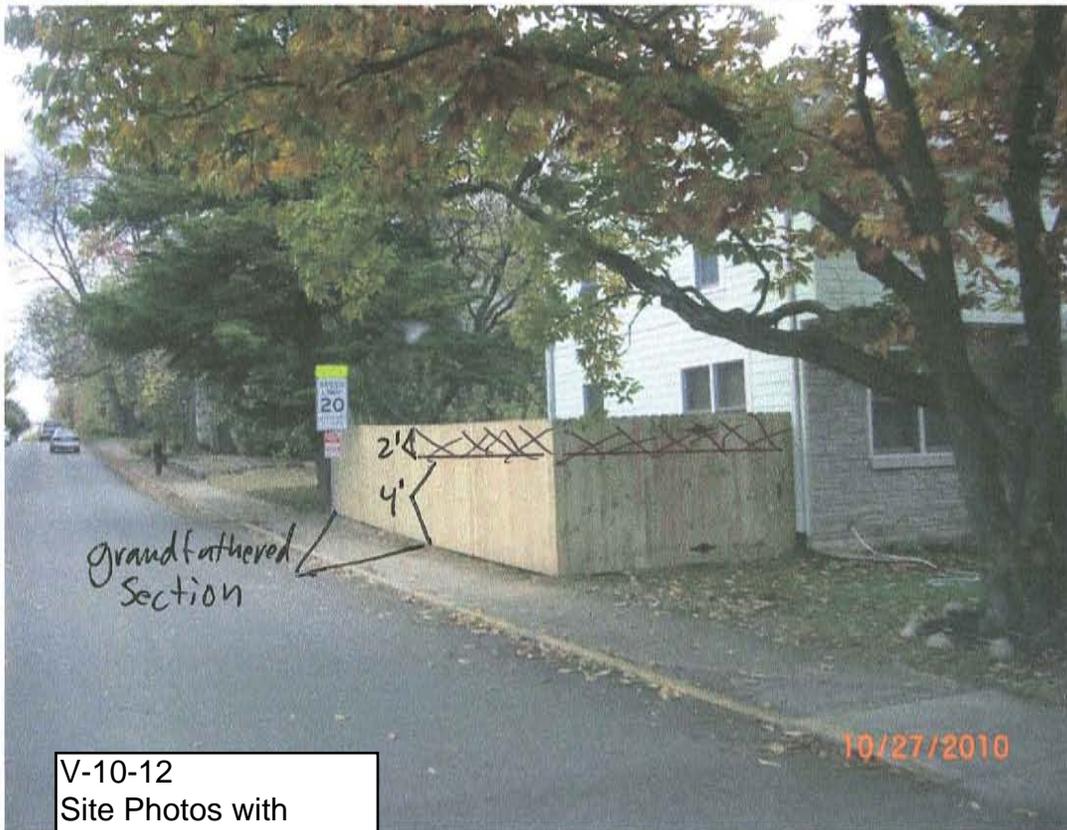
We would greatly appreciate the committee's consideration to allow us to install a four-foot fence with a two-foot lattice variance. We have received estimates on a new fence including a four-foot fence, which greatly concerns us due to privacy and dog-related concerns and that estimate is approximately \$750 to \$900. We also received an estimate on adjusting the side yard fence to be a lattice fence of and that estimate was approximately \$1100. Further if the portion of the fence has to be cut to four feet, we will then have three fence types (it won't match the rest of the 6 foot fence which is allowed) and it thus won't be aesthetically appealing to neighbors, who also prefer for us to have a consistent fence design. As such, we kindly petition the committee to consider our request for a variance on our fence.

signed by 
James Capo

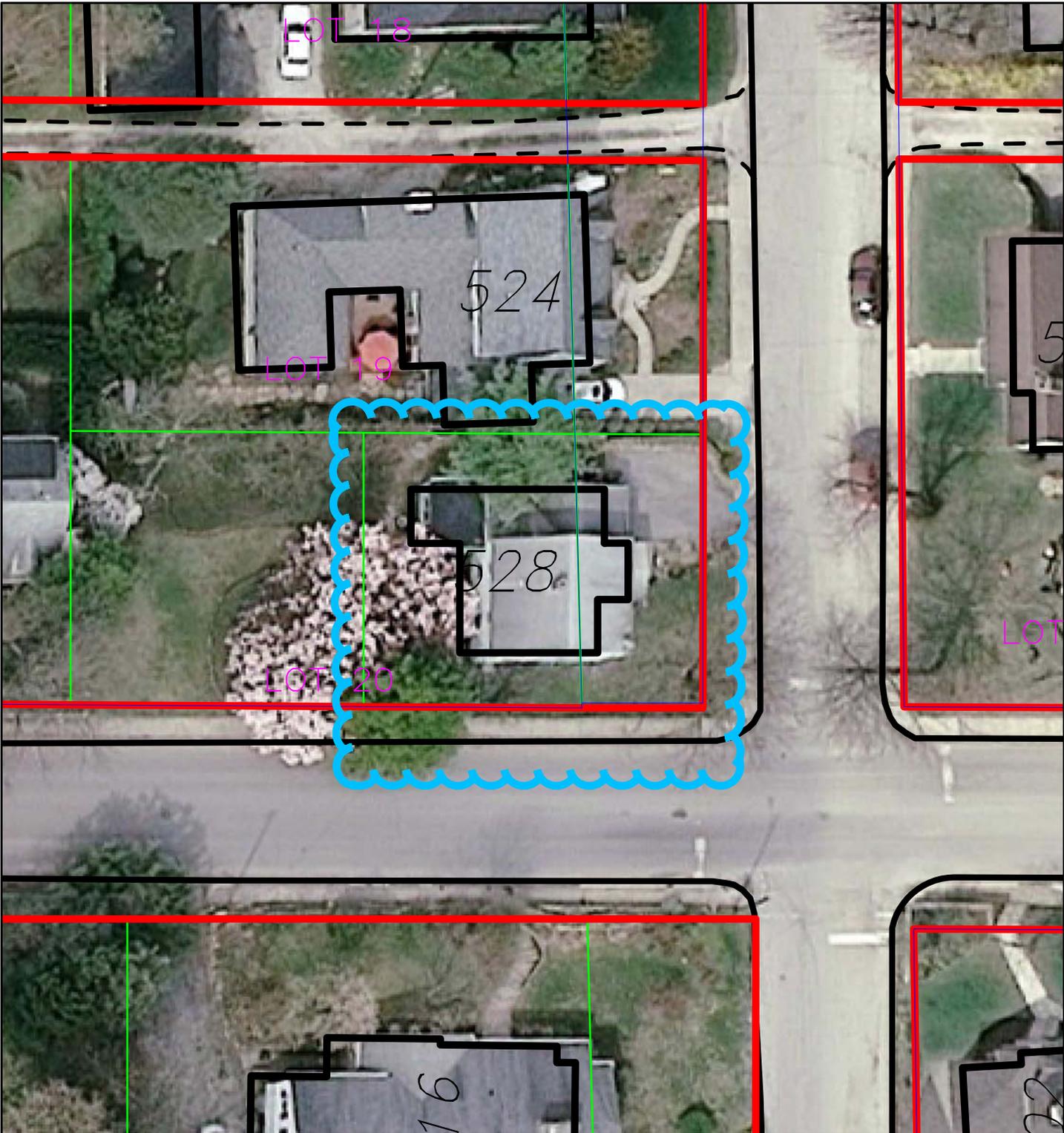


V-10-12
Petitioner's Photo

Highland Ave-view

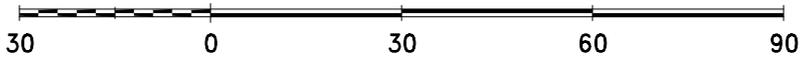


V-10-12
Site Photos with
fence revisions



V-10-12
2010 Aerial Photo

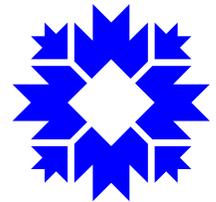
By: roachja
9 Nov 11



For reference only; map information NOT warranted.



City of Bloomington
Planning



Scale: 1" = 30'



James Roach <roachja@bloomington.in.gov>

528 S. Highland Fence

1 message

lukasd@comcast.net <lukasd@comcast.net>

Wed, Nov 2, 2011 at 9:03 AM

To: roachja@bloomington.in.gov

Cc: James Hunter Capo <jcapo@indiana.edu>

Dear Mr. Roach,

This letter is in regards to the variance from maximum height of the fence on the property of Debby Herbenick on 528 S. Highland Ave. We own the house across the street on 1206 E. Second St. that faces the fence. We have NO problem with the wooden fence that affords privacy to the small yard on a busy street. It does muffle the noise from traffic on one side, and noise from the household like pets & music on the other. The current fence is esthetically appealing and does not hamper the view of drivers on Second St. or Highland Ave.

Thank you for your consideration of our opinions.

Sincerely, Dawn & Rod Lukas

V-10-12
Letter of support



James Roach <roachja@bloomington.in.gov>

Debby Herbenick Petition

2 messages

Kevin Weiss <KWeiss@authorsolutions.com>

Thu, Nov 3, 2011 at 10:51 AM

To: roachja@bloomington.in.gov

Dear Mr. Roach - I'm writing in support of Debby Herbenick's petition for a fence height variance for her home on 528 S. Highland Ave. My wife and I currently live on the next block (500 S. Ballantine) but we were Debby and James' neighbors on Highland last year. They have an unusually small yard that is enhanced by having it fenced in. The height of the fence serves to increase their privacy, muffle sound from the road, as well as keep their dog on their property. They have also already experienced significant expense, burden and distress related to the property line issue with David Jacobs, the removal of their old fence, replacement with a new one and the necessary removal of their deck.

As a neighbor, I have no problem with the height or appearance of their fence. I actually enhances the appeal of the property. I support their petition for a variance.

My best – Kevin

Kevin Weiss

President & CEO

AuthorSolutions, Inc.

1663 Liberty Drive

Bloomington, Indiana 47403

o: [812.334.5408](tel:812.334.5408)

f : [812.349.0808](tel:812.349.0808)

James Roach <roachja@bloomington.in.gov>

Thu, Nov 3, 2011 at 10:56 AM

To: Kevin Weiss <KWeiss@authorsolutions.com>

Thank you Kevin,

I'll pass your e-mail on to the Board of Zoning Appeals.

James

[Quoted text hidden]

--

James C. Roach, AICP
Senior Zoning Planner

V-10-12
Letter of support



James Roach <roachja@bloomington.in.gov>

In Support of Debby Herbenick

Dodge, Brian Mark <bmdodge@indiana.edu>

Thu, Nov 3, 2011 at 10:42 PM

To: "roachja@bloomington.in.gov" <roachja@bloomington.in.gov>

Dear Mr. Roach,

This letter is intended to be in support of Debby Herbenick's petition for a fence height variance (528 S Highland Avenue). I am an Elm Heights resident, living only two streets away from Dr. Herbenick on S. Hawthorne. As a neighbor, I support her petition for the height variance; she and her fiancé have a very small yard and having a fence provides a more reasonable amount of space for her dog to be let out into. The fence is attractive and in keeping with neighborhood aesthetics, many of whom have similar/identical fences - particularly on corners.

I am also a colleague of Dr. Herbenick's and am aware of the enormous strain and distress she was caused by a man who she has never met, now has a protective order against, but who she has long been in fear of given the more than a thousand emails he sent to her. The fence height provides her with privacy which would be important to anyone but is especially important to someone who has received the kinds of sexually violent threats that she has received.

Thank you.

Brian Dodge (422 S. Hawthorne)

Brian M. Dodge, Ph.D
Indiana University - Bloomington
Associate Professor, Department of Applied Health Science

Sent from my iPhone

FEB 23 2012

To the Board of Zoning Appeals

The Elm Heights Neighborhood Association Board has reviewed the request for a fence height variance at 528 S. Highland. The board supports the fence height regulation in general. In this instance the Board supports the variance request, in view of specific circumstance relating to this property:

- The backyard and the north side yard are very small, so the 2nd street side yard provides alternative outdoor space which benefits from a privacy fence;
- the low elevation of the house and yard relative to surroundings reduces the effectiveness of the fence; more height improves much needed privacy along this busy street.

This specific set of circumstances is not prevalent and a variance here would not open a floodgate of fence variances in our neighborhood. In general, we are inclined to support variances which help a resident remedy a problem which might make a property less livable, and which do not increase the intensity of use of the property or increase its propensity to create disturbances.

BZA member Jenny Southern has not participated in the Board's discussion.

For the Elm Heights Neighborhood Association Board

Beth Baxter

Suzann Mitten Owen

Kathy Holland

Tim Mueller

Julie Lawson

Daniel Roussos