

# CITY OF BLOOMINGTON



AUGUST 22, 2013 @ 5:30 p.m.  
MC CLOSKEY ROOM #135  
CITY HALL



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**PETITIONER: Susan Seizer & Catherine Brennan**  
**1917 E. Ruby Lane, Bloomington**

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**REQUEST:** The petitioners are requesting a variance from fence height standards to allow an 8' tall fence.

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**REPORT SUMMARY:** The petitioners own a single family home at the northwest corner of E. Ruby Lane and S. Covenant Drive. The property is zoned Residential Single-family (RS). The house faces Covenant Dr. to the east and the driveway faces Ruby Ln. to the south. The property is surrounded by owner-occupied single family homes.

The petitioners are proposing to create a gardening area and orchard on their property that would occupy a majority of their front yard. One of the goals of this project is to create a handicap accessible path throughout the area to provide access for the petitioners. A series of planter beds will be created in the space for the gardening area. Various fruit trees will be planted along the perimeter and on the north side of the property.

In order to protect the proposed garden from deer that are common in this area, the petitioners are proposing two different fencing systems. One fencing system would be built along the south and east front property lines and would consist of two, 4' tall fences that are spaced approximately 5' apart. This double-tiered system is supposed to discourage deer from jumping into the small confined area between the fences and thereby protect the garden area. The second fencing system would consist of an 8' tall fence that would enclose 90' of the north property line and another small section immediately next to the house at the entrance to the garden area. These two, 8' tall fencing sections would run perpendicular to both Covenant Dr. and Ruby Ln. The two sections of 8' tall fence are proposed to be located between the front wall of the house and the adjacent street frontages and therefore require a variance.

The UDO prohibits fences above 4 feet in height 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 and the areas between the house and the street can only be bordered with a 4 foot tall fence. The petitioners assert, and staff concurs, that a 4 foot high front yard fence complying with code won't prevent deer from traversing through the proposed forest garden. While the double-tiered system is practical along the front property lines, constructing a double-tiered system in the area along the north property line would require the removal of trees and vegetation along the property line.

In this request, the petitioners are requesting Board of Zoning Appeals approval based on the following arguments:

1. That their urban agriculture project makes it unique compared to typical privacy

- arguments that attempt to justify taller fences.
2. That the migration of deer through this front yard creates an impossible situation to realize the owner's vision of establishing a thriving forest garden,
  3. A 4-foot tall front yard barrier is insufficient to prevent deer encroachment. Additionally, the petitioners are aware that the City's Deer Task Force recommends taller front yard fence heights to protect front yard gardens against deer encroachment.

The petitioners have proposed a creative resolution between the conflict found in the City's desire to encourage urban gardening and sustainable living, while discouraging the placement of taller fences along street frontages which has been found to have potential negative impacts to aesthetics and pedestrian experience.

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## 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 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. Since no electrification or barbed wire is proposed, the chosen fence styles will not endanger public health. In terms of safety, taller, solid fences in front yards are considered undesirable because they can create barriers that make it uncomfortable for pedestrians. Since the two sections of fence are perpendicular to the road the impacts of the taller fence are minimal.

2. *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:** Staff finds no adverse impact to adjacent properties for the sections of 8' tall fencing that are proposed. The north section of 8' fencing would be surrounded by vegetation and trees and thereby be visually obscured. In addition, the fence is perpendicular to Covenanter Dr. so there would not be a tall fence along the public right-of-way. The small section of 8' fencing along Ruby Ln. would only be approximately 10' long and once again be perpendicular to the right-of-way so the view from the street would not be obscured or impact adjacent properties.

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.*

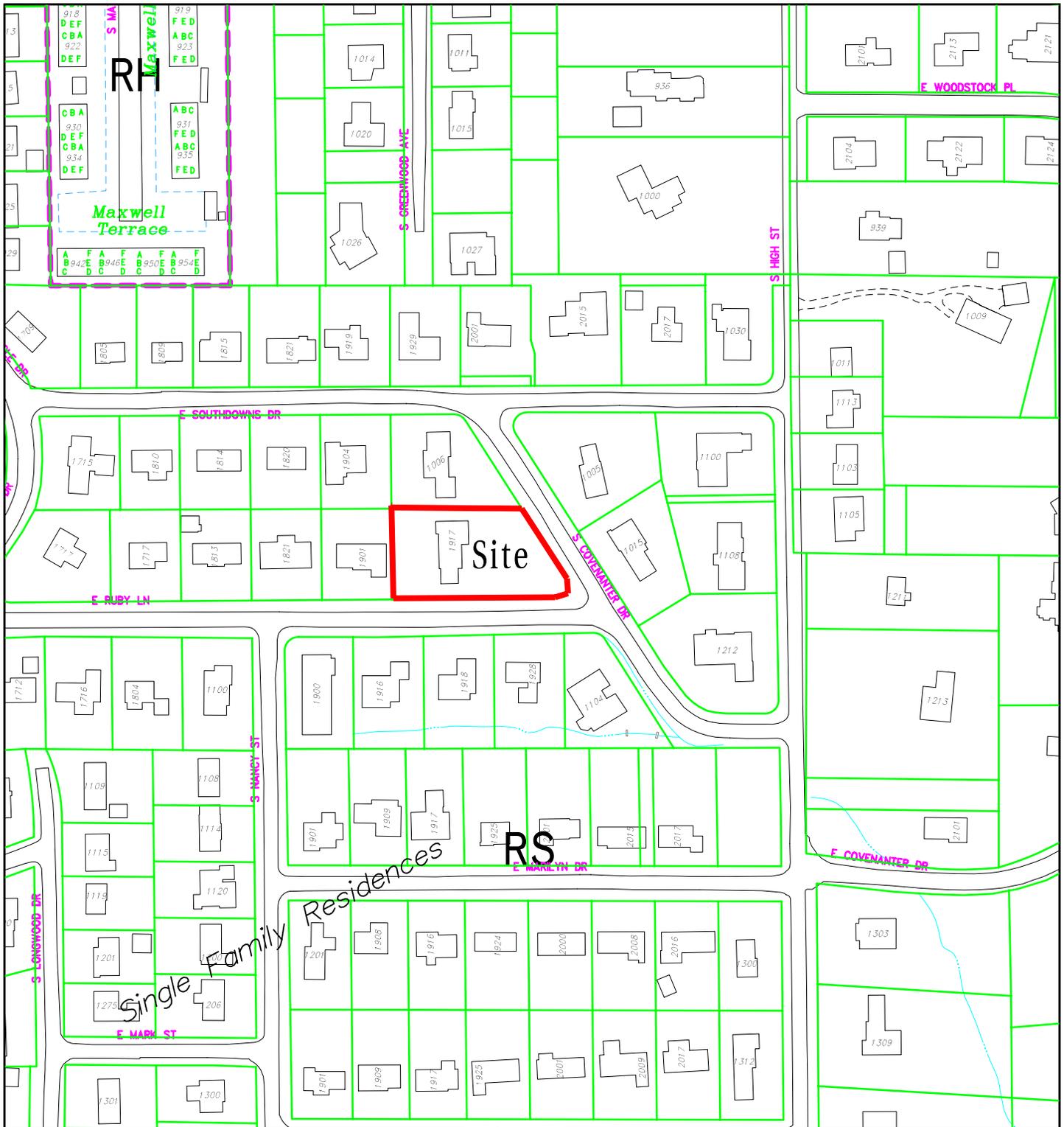
**Staff's Finding:** Staff finds peculiar condition in the sense that the taller fence will be needed to protect a front yard forest garden. That property condition distinguishes it from other fence cases the BZA has reviewed to date which have been based on privacy concerns. In this case, the proposal to establish a front yard forest garden coupled with a deer encroachment problem creates a peculiar

condition that creates a difficulty in buffering the property. Since front yard gardens are permitted by code and desired by the City, the proposed use and code required fence height restriction are clearly not compatible. Since the petitioners are only proposing two small sections of fence perpendicular to Covenanter Dr. and Ruby Ln., strict application of the of the 8' fence height standards creates the required practical difficulty

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

1. Only the two sections of fence that are perpendicular to the adjacent streets are permitted to extend above 4 feet in height.



V-37-13 Susan Seizer & Catherine Brennan

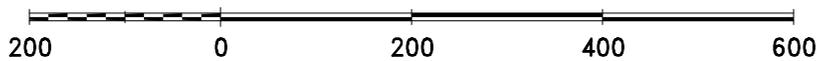
1917 E Ruby Lane

Board of Zoning Appeals

Site Location, Zoning, Land Use, Parcels

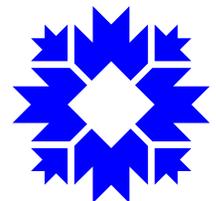
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15 Aug 13



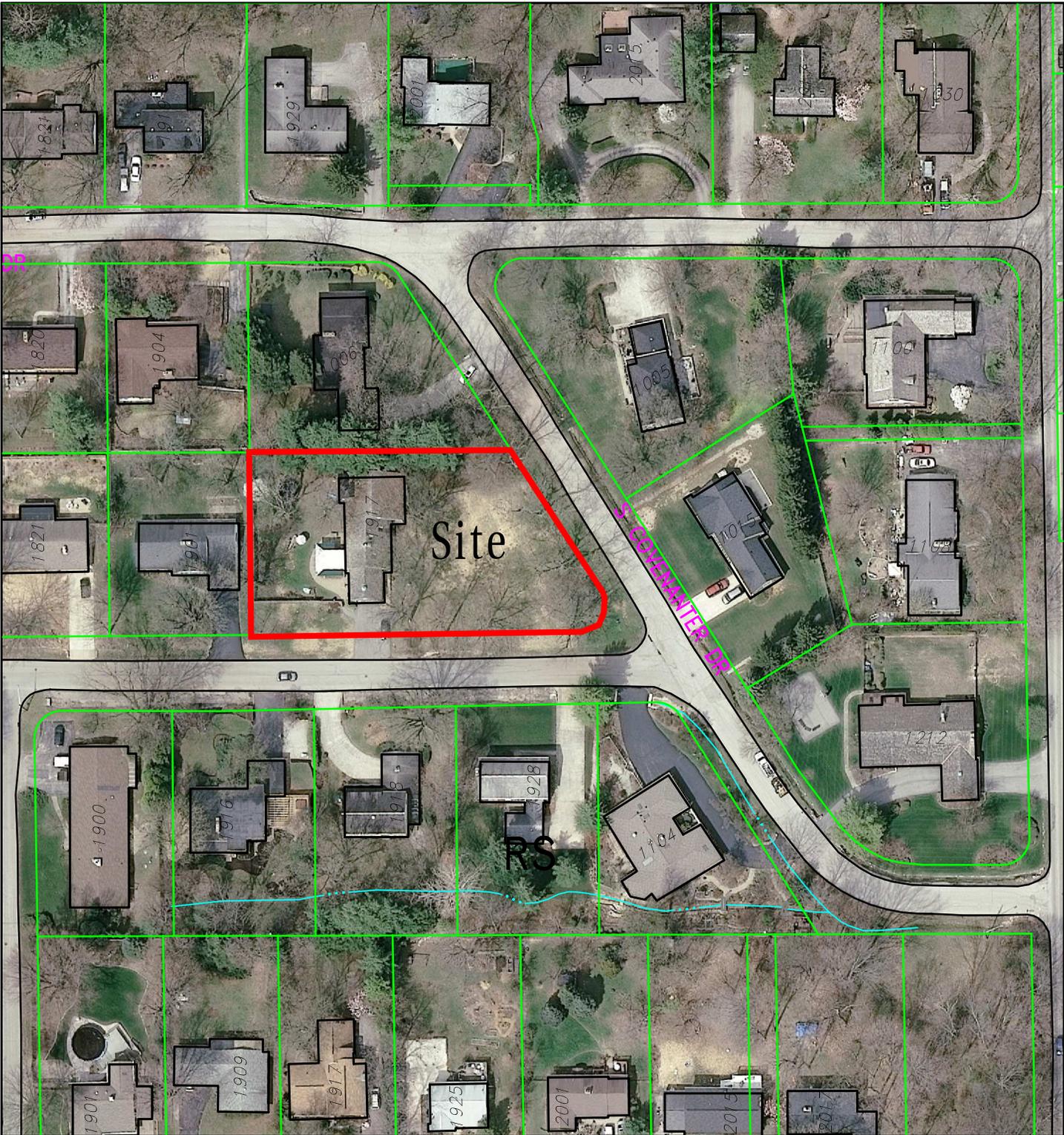
For reference only; map information NOT warranted.

City of Bloomington  
Planning



Scale: 1" = 200'





V-37-13 Susan Seizer & Catherine Brennan

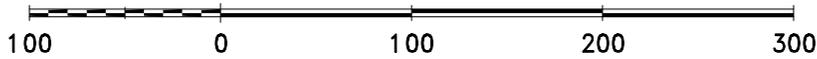
1917 E Ruby Lane

Board of Zoning Appeals

2010 Aerial Photograph

By: greulice

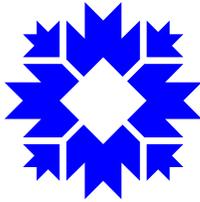
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For reference only; map information NOT warranted.



City of Bloomington  
Planning



Scale: 1" = 100'

\*\*\*Revision: July 29, 2013 to

**Petitioners' letter regarding request for a  
variance to the Unified Development Ordinance**

\*\*\*Main change: fences on yard bordering the streets to be 4' per code

Susan Seizer and Catherine Brennan at 1917 Ruby Lane  
Bloomington, 47401

We are planning a wheelchair accessible, sustainable orchard and edible garden in the front yard of our house at 1917 Ruby Lane. We envision the garden as an enhancement not only to our property but to the neighborhood as a whole. The plan for the garden includes a deer proof fence consisting of two 4' high parallel fences running along and just inside the property line. To make the fence truly deer proof, we are asking for a variance that will allow us to build a single 8' high section through the wooded area on the north side of our property. Building parallel fences through this area would be very difficult. This wooded section is the area of greatest pressure from the deer and is the place where the most thoroughgoing preventive is required. In addition, we would like to build another 8' high section on the western edge of the garden next to our driveway where a pair of parallel fences is impractical because this is where the gate will be situated. There are many deer in our neighborhood, which proved the impetus for the formation of the deer task force whose report was issued this last year in Bloomington. None of the sections of fence will obstruct traffic in any way, and will allow maximum visual transparency so that our neighbors can also enjoy the garden. Without it the garden would probably not survive.

In 2011 and 2013 we had to remove a total of nine mature silver maples from our property. These trees were roughly 75 years old and at the end of their natural life cycle had started to die and were dropping limbs in our yards, our neighbors' yards and on roadways (our property fronts onto both Covenanter and Ruby Lane). We were very aware of the danger to passing cars and pedestrians and made the difficult decision to cut these nine trees down. We are keen to mitigate the visual and ecological impact on our neighborhood from the loss of so many big leafy trees. We have asked Jonas Carpenter of Bread & Roses Nursery to help us design a sustainable garden. Jonas' design employs local plant and tree species and fosters their growth, uses local materials (limestone), and is primarily rain-water fed. We aim to be responsible custodians of this large corner property, seeing it as a neighborhood resource. We have designed the space as wheelchair accessible and ADA compliant as one of the owners, Susan Seizer, uses a wheelchair. This garden needs a safe enclosure that is non-intrusive and minimal, and which deters but does not harm the local wildlife, including deer. Hence our request for a variance.

We are aware that the front portion of our property bounded by Ruby Lane and Covenanter Avenue is very visible. Traffic entering the neighborhood from High Street and coming down Ruby Lane see the yard as they drive by. People from the neighborhood walking to school or work or exercising their dogs are all beneficiaries of the natural beauty of our property. The large dogwood on the corner is gorgeous, especially in spring and fall, and is well known by our neighbors. We feel that we are custodians of a public resource and the establishment of this new garden is an enhancement not only of our property but of the neighborhood. We're keen to share the

products of the garden as well. Most of our neighbors are not strangers but friends, and we want to consolidate those friendships and extend the feeling of community in our neighborhood (known locally as SoMax).

We're also hoping that our garden will create a cooling micro-climate which will mitigate the effects of increasingly hotter summers both in the larger community and also reduce our need for energy hungry air conditioning in our own house. One of the property owners lives with multiple sclerosis and her symptoms are made much worse by heat. Staying cool in summer is very important.

We understand that we are required by the City of Bloomington Planning Department to meet the following three criteria before a variance from the Unified Development Ordinance is granted.

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

The sections of fence requiring a variance will in be minimal and unobtrusive. The section on the north side of the property will be largely hidden by the trees in the area. The section on the western edge is short, no more than 90 feet. In both cases we will use wooden posts and welded wire which will have the lowest visual impact possible. Neither of these sections will affect traffic sightlines or prevent passers by from seeing the garden or the properties beyond.

***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.***

The proposed variance will make it possible to establish a garden which will benefit the whole neighborhood. We are designing an unobtrusive yet effective fence. This way our neighbors will have the benefits of the garden without the effects of an unsightly perimeter barrier.

***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.***

The Unified Development Ordinance specifies a fence no greater than 4 feet high in front gardens. Two parallel fences of this height sited round the majority of the property will keep deer out. However, this is not possible through the wooded area at the north of the property. This wooded area is contiguous with the property,s backyard.

The property at 1917 Ruby Lane has a much larger front than rear garden. The rear garden (which could under the Unified Development Standards be protected by an 8' fence) is shaded and small making it unsuitable for the kind of plantings we have in mind.

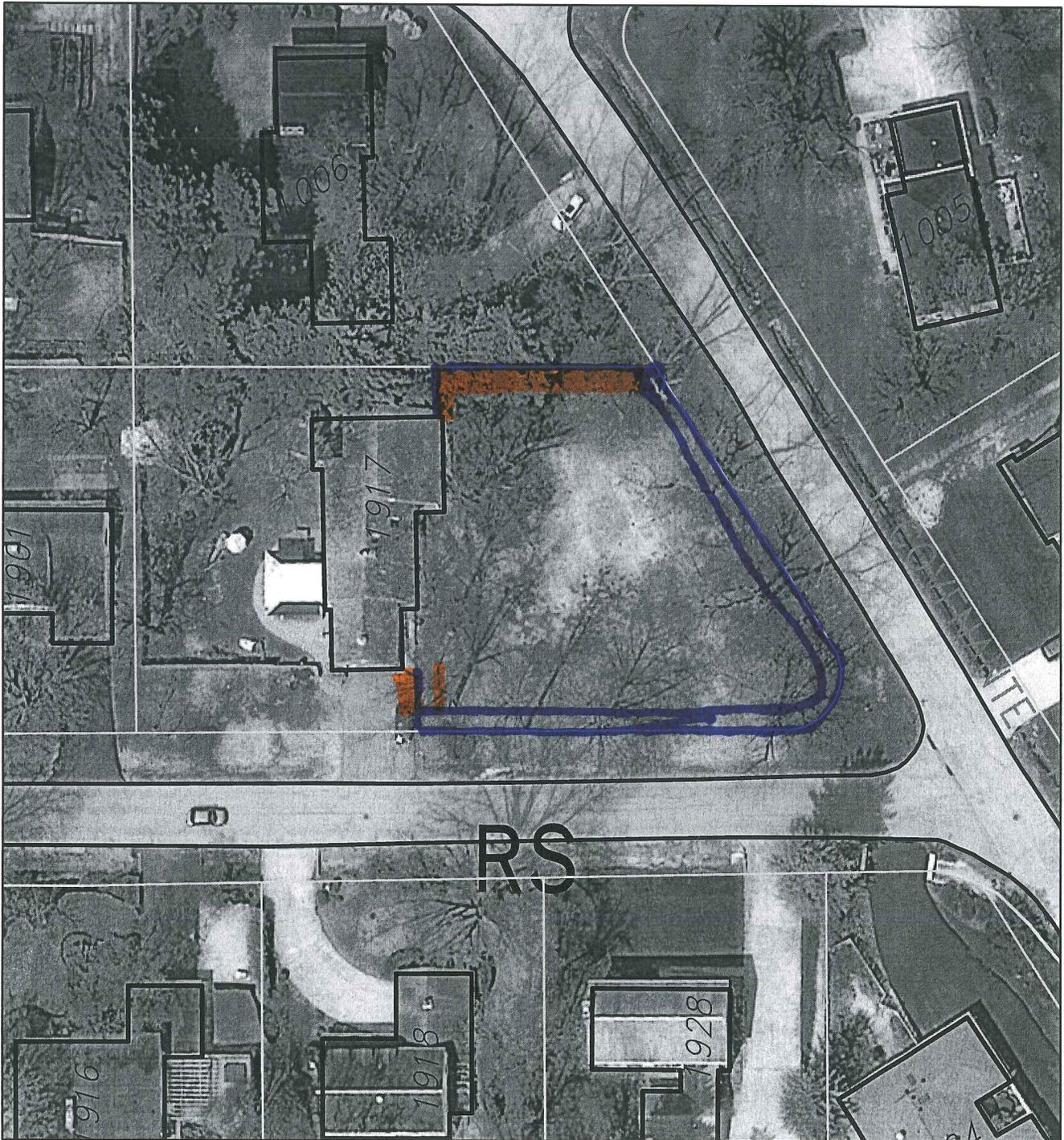
To place two four foot fences at the northern wooded side or the western driveway edge would mean that we would have to build four gates for entrance to the garden. This would effectively make the garden inaccessible to Susan Seizer who uses a wheelchair, as well as to our wheelchair using neighbors. It would also make it difficult to get material in and out of the garden. The solution is to build an short eight foot section of fence at the driveway with an eight foot gate.

A variance allowing us to build an eight foot fence in the two sections described will let us establish the bountiful garden we envision.

Susan Seizer

Catherine Brennan

Eric Greulich



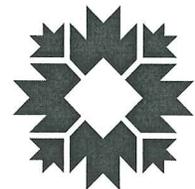
By: greulice  
5 Aug 13



For reference only; map information NOT warranted.



City of Bloomington  
Planning



Scale: 1" = 50'

 8' fences

 Parallel 4' fences



V-37-13  
Site Plan