





Interoffice Memorandum

November 17, 2022

TO: Mayor Jerry L. Demings
-AND-
County Commissioners

FROM: Jon V. Weiss, P.E., Director
Planning, Environmental, and Development Services
Department 

CONTACT PERSON: Ted Kozak, AICP, Chief Planner 
Zoning Division
(407) 836-5537

SUBJECT: December 13, 2022 –Appeal Public Hearing
Applicant/ Appellant: Nathaniel Mitchell
BZA Case #VA-22-10-105, October 6, 2022; District 3

Board of Zoning Adjustment (BZA) Case # VA-22-10-105, located at 5343 Lake Jessamine Drive, Orlando, Florida, 32839, in the R-1AA Single-Family Dwelling, in District 3, is an appeal to the Board. The applicant is requesting variances as follows: 1) to allow an existing 6.6 ft. high wall in the front yard in lieu of 4 ft. high; 2) to allow a 6.6 ft. high wall with 6.6 ft. high gates within the clear view triangle; 3) to allow existing columns to extend up to 6.3 ft. in lieu of 6 ft. (24 inches above the height limitation of 4 ft); 4) to allow existing columns to be 5.4 feet apart in lieu of 10 feet apart.

The subject property is located on the east side of Lake Jessamine Dr., east of S. Orange Blossom Trl., west side of Lake Jessamine, north of W. Oak Ridge Rd., south of Holden Ave.

At the October 6, 2022 BZA hearing, staff recommended denial of the variances and the BZA also recommended denial of the variances.

The case was subsequently appealed by the applicant. The applicant/ appellant, Nathaniel Mitchell objects to the decision and requests another opportunity to demonstrate that the proposal meets the variance criteria under Section 30-43(3) of the County Code.

The application for this request is subject to the requirements of Article X, Chapter 2, Orange County Code, as may be amended from time to time, which mandates the disclosure of expenditures related to the presentation of items or lobbying of items before the BCC. A copy is available upon request in the Zoning Division.

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If you have any questions regarding this matter, please contact Ted Kozak, AICP at (407) 836-5537.

ACTION REQUESTED: Deny the applicant's requests; or approve the applicant's requests with conditions. District 3

**PLANNING, ENVIRONMENTAL, AND DEVELOPMENT SERVICES DEPARTMENT
ZONING DIVISION PUBLIC HEARING REPORT
December 13, 2022**

The following is a public hearing on an appeal before the Board of County Commissioners on December 13, 2022 at 2:00 p.m.

APPLICANT/ APPELLANT: NATHANIEL MITCHELL

REQUEST: Variances in the R-1AA zoning district as follows:
1) To allow an existing 6.6 ft. high wall in the front yard in lieu of 4 ft. high.
2) To allow a 6.6 ft. high wall with 6.6 ft. high gates within the clear view triangle.
3) To allow existing columns to extend up to 6.3 ft. in lieu of 6 ft. (24 inches above the height limitation of 4 ft).
4) To allow existing columns to be 5.4 feet apart in lieu of 10 feet apart.

Note: This is the result of Code Enforcement.

LOCATION: 5343 Lake Jessamine Drive, Orlando, FL 32839, east side of Lake Jessamine Dr., east of S. Orange Blossom Trl., west side of Lake Jessamine, north of W. Oak Ridge Rd., south of Holden Ave.

TRACT SIZE: +/- 2.05 acres (+/- 0.75 acres upland)

ZONING: R-1AA

DISTRICT: #3

PROPERTIES NOTIFIED: 82

BOARD OF ZONING ADJUSTMENT (BZA) HEARING SYNOPSIS ON REQUEST:

Staff described the proposal, including the location of the property, the site plan, and photos of the site. Staff provided an analysis of the six (6) criteria and the reasons for a recommendation for denial. Staff noted that four (4) comments were received in support, and no comments were received in opposition.

The owner stated the need for the requests and the desire to improve the property.

Code Enforcement discussed the history of the code violations.

There was no one in attendance to speak in favor or in opposition to the request.

The BZA noted that the existing height of the wall, the presence of the circular driveway, observed that the work was completed without a permit, discussed the variances and stated the lack of justification for the six (6) criteria and unanimously recommended denial of the variances by a 6-0 vote, with one absent.

BZA HEARING DECISION:

A motion was made by Juan Velez, seconded by Thomas Moses and unanimously carried to recommend DENIAL of the Variance requests in that there was no unnecessary hardship shown on the land; and further, they do not meet the requirements governing Variances as spelled out in Orange County Code, Section 30-43(3) (6 in favor, none opposed, and 1 absent).



ORANGE COUNTY ZONING DIVISION
 201 South Rosalind Avenue, 1st Floor, Orlando, Florida 32801
 Phone: (407) 836-3111 Email: Zoning@ocfl.net
www.orangecountyfl.net

Board of Zoning Adjustment (BZA) Appeal Application

Appellant Information

Name: Nathaniel Mitchell

Address: 5343 LAKE JESSAMINE DR. ORLANDO FL 32839

Email: npmitchell66@yahoo.com Phone #: 407-715-0234

BZA Case # and Applicant: _____

Date of BZA Hearing: _____

Reason for the Appeal (provide a brief summary or attach additional pages of necessary):

REASON FOR MY APPEAL IS THAT THEY DID NOT GIVE ME THE PROPER OPPORTUNITY TO PRESENT MY CASE. IT IS NOT FEAR THAT PEOPLE IN MY AREA HAVE FENCE THAT ARE HIGHER THAN 10 FT.

Signature of Appellant: [Signature] Date: 10/13/22

STATE OF Florida
 COUNTY OF Orange

The foregoing instrument was acknowledged before me this 13th day of October, 2022, by Nathaniel Mitchell who is personally known to me or who has produced _____ as identification and who did/did not take an oath.

[Signature]
 Notary Public Signature

Notary Stamp:

NOTICE: Per Orange County Code Section 30-45, this form must be submitted within 15 days after the Board of Zoning Adjustment meeting that the application decision was made.

Fee: \$691.00 (payable to the Orange County Board of County Commissioners)

Note: Orange County will notify you of the hearing date of the appeal. If you have any questions, please contact the Zoning Division at (407) 836-3111.

See Page 2 of application for the Appeal Submittal Process.

BZA STAFF REPORT

Planning, Environmental & Development Services/ Zoning Division

Meeting Date: **OCT 06, 2022**

Commission District: **#3**

Case #: **VA-22-10-105**

Case Planner: **Nick Balevich (407) 836-0092**

Nick.Balevich @ocfl.net

GENERAL INFORMATION

APPLICANT(s): NATHANIEL MITCHELL

OWNER(s): SHARON MITCHELL, NATHANIEL MITCHELL

REQUEST: Variances in the R-1AA zoning district as follows:

- 1) To allow an existing 6.6 ft. high wall in the front yard in lieu of 4 ft. high.
- 2) To allow a 6.6 ft. high wall with 6.6 ft. high gates within the clear view triangle.
- 3) To allow existing columns to extend up to 6.3 ft. in lieu of 6 ft. (24 inches above the height limitation of 4 ft).
- 4) To allow existing columns to be 5.4 feet apart in lieu of 10 feet apart.

Note: This is the result of Code Enforcement.

PROPERTY LOCATION: 5343 Lake Jessamine Drive, Orlando, FL 32839, east side of Lake Jessamine Dr., east of S. Orange Blossom Trl., west side of Lake Jessamine, north of W. Oak Ridge Rd., south of Holden Ave.

PARCEL ID: 14-23-29-4528-01-040

LOT SIZE: +/- 2.05 acres (+/-0.75 acres upland)

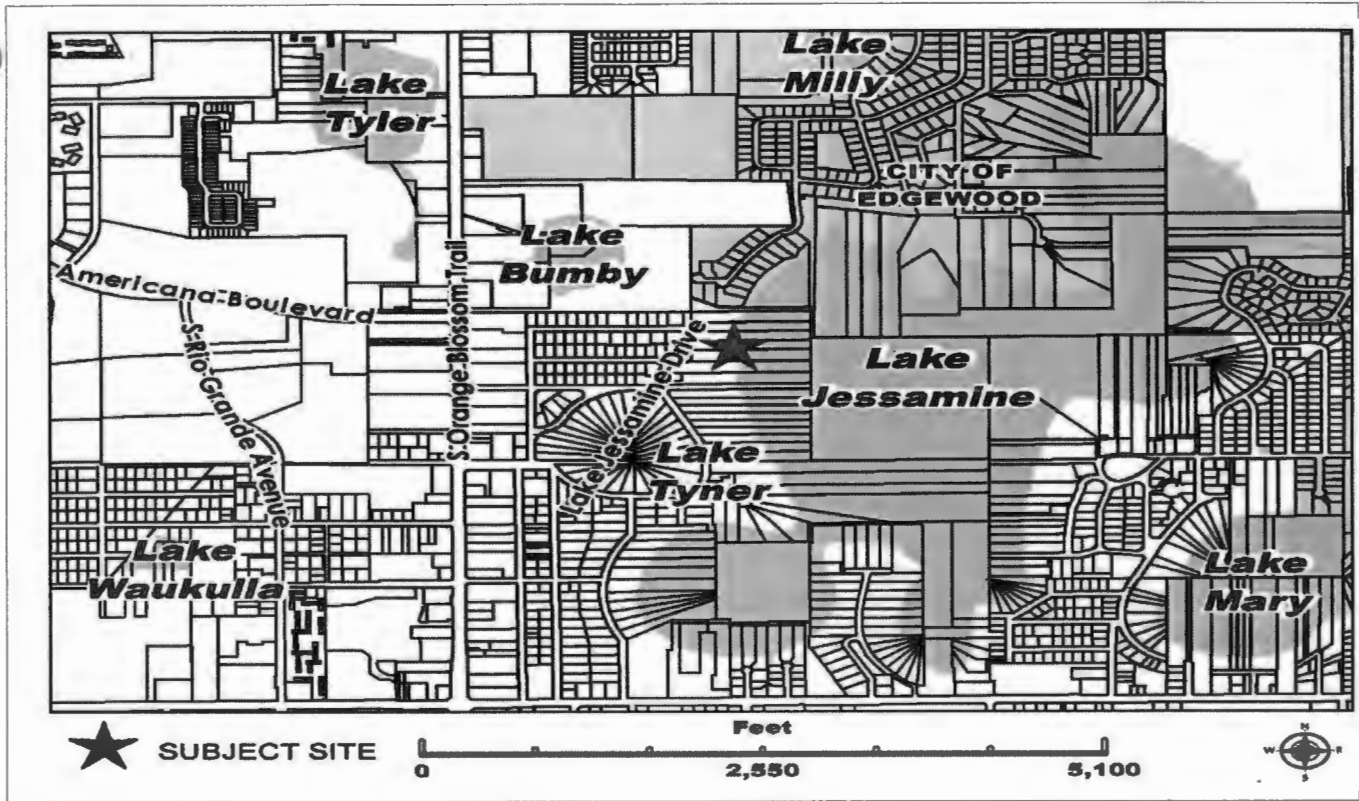
NOTICE AREA: 500 ft.

NUMBER OF NOTICES: 82

STAFF RECOMMENDATIONS

Denial. However, if the BZA should find that the applicant has satisfied the criteria necessary for the granting of the variances, staff recommends that the approval be subject to the conditions in this report.

LOCATION MAP



SITE & SURROUNDING DATA

	Property	North	South	East	West
Current Zoning	R-1AA	R-1AA	R-1AA	Lake Jessamine	R-1A
Future Land Use	LDR	LDR	LDR	Lake Jessamine	LDR
Current Use	Single-family residential	Single-family residential	Single-family residential	Lake Jessamine	Single-family residential

BACKGROUND AND ANALYSIS

DESCRIPTION AND CONTEXT

The subject property is located in the R-1AA, Single Family Dwelling District, which allows for single family uses. The Future Land Use is Low Density Residential (LDR), which is consistent with the zoning district.

The area around the subject site consists of single-family homes. The subject property is a 2.05 acre lakefront lot located on Lake Jessamine (0.75 acres upland), in the Lake Jessamine Shores Plat, recorded in 1948, and is considered to be a conforming lot of record. It is developed with a 3,889 gross sq. ft. single-family home, constructed in 2007. The owner purchased the property in 2009.

In 2010, the owner installed a wrought iron fence along the front of the property that was permitted and met code. In 2020, the owner replaced the wrought iron fence with a 6.6 ft. high wall/fence of which is a 3 ft.

wall with an additional 3.3 feet of decorative metal fencing, along the front of the property, in lieu of 4 ft. high, requiring Variance #1; with 6.3 ft. high columns and a 6.6 ft. high gate within the clear view triangle, requiring Variance #2 to encroach into the clear view triangle; and 6.3 ft. high columns in lieu of 6 ft. high, requiring Variance #3; and columns 5.4 ft. apart in lieu of 10 ft. apart, requiring Variance #4. County Code Sec. 38-1408(g)(1) allows fences to be a maximum of 4 ft. high within the front setback within the R-1AA district, and Sec. 38-1408(c) allows pillars and posts to extend an additional 24 inches, provided they are no less than 10 ft. apart. However, County Code Sec. 38-1408(b) prohibits fences to be within the clear view triangle area, which is an area on each side of the driveway that is formed by measuring 15 ft. along the road and 15 ft. along the edge of the driveway.

A Code Enforcement citation was issued in July, 2020 for the installation of a fence without a permit (Incident 567605). The applicant subsequently applied for a permit (F20006511), but the permit was voided because the permit was not issued before the expiration date, and a new Code Enforcement case was opened in February, 2022 (Incident 604852). Since then, the applicant has applied for a new permit (B22009327), which is on hold pending the outcome of the request.

The request to encroach into the clear view triangle raises safety considerations regarding pedestrian safety when using the adjacent sidewalk, but it also should be noted that the property has a semicircular driveway which would likely limit the need to backing out into the public right-of-way. While the fence is more than 50% transparent, allowing for some visibility, staff recommends denial, as the request does not meet the 6 standards for variance criteria. Furthermore, there are no other properties in the immediate vicinity that have been granted similar variances. The applicant has referenced fences that are over the allowed height, but these properties are over 0.5 miles away from the subject property

The Orange County Environmental Protection Division has reviewed the variances and has no objection to the requests.

As of the date of this report, 4 comments have been received in favor, which include the adjacent neighbors to the north and south, and 2 neighbors across the street to the west. No comments have been received in opposition to this request.

District Development Standards

	Code Requirement	Proposed
Max Height:	4 ft. fence within front setback	6.6 ft. fence (Variance #1), 6.6 ft. fence/gate within the clear view/ site distance triangle (Variance #2)
Min. Lot Width:	85 ft.	100 ft.
Min. Lot Size:	10,000 sq. ft.	2.05 acres

STAFF FINDINGS

VARIANCE CRITERIA

Special Conditions and Circumstances

There are no special conditions and circumstances, as the fence/wall, columns and gate could have been installed in compliance with the requirements of the code.

Not Self-Created

The need for the variances is self-created and result from the applicant constructing the improvements without a permit.

No Special Privilege Conferred

Granting the variances as requested will confer special privilege that is denied to other properties in the same area and zoning district, as the applicant could relocate or modify the improvements requested to a conforming height and location.

Deprivation of Rights

There is no deprivation of rights as a fence/wall, columns and gate could be installed in a location and manner compliant with code, as was the previous permitted fence.

Minimum Possible Variance

The requested variances are not the minimum possible, as the applicant could reduce the height or relocate or modify the fence/wall, columns and gate to a conforming location.

Purpose and Intent

Variances #1, 3 and 4: Approval of the variance will be in harmony with the purpose and intent of the Zoning Regulations and will not be detrimental to the surrounding area since the fence is located 18 feet from the edge of the road, and is more than 50 % transparent.

Variance #2: Encroachment into the clear view triangle is a safety issue, and such a request does not meet the standards for purpose and intent and could be detrimental to the surrounding area.

CONDITIONS OF APPROVAL

1. Development shall be in accordance with the site plan and fence and gate details received September 15, 2022, subject to the conditions of approval, and all applicable laws, ordinances, and regulations. Any proposed non-substantial deviations, changes, or modifications will be subject to the Zoning Manager's review and approval. Any proposed substantial deviations, changes, or modifications will be subject to a public hearing before the Board of Zoning Adjustment (BZA) where the BZA makes a recommendation to the Board of County Commissioners (BCC).
2. Pursuant to Section 125.022, Florida Statutes, issuance of this development permit by the County does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the County for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. Pursuant to Section 125.022, the applicant shall obtain all other applicable state or federal permits before commencement of development.
3. Any deviation from a Code standard not specifically identified and reviewed/addressed by the Board of County Commissioners shall be resubmitted for the Board's review or the plans revised to comply with the standard.
4. Permits shall be obtained within 180 days of final action on this application by Orange County or this approval is null and void. The zoning manager may extend the time limit if proper justification is provided for such an extension.
5. Prior to the issuance of a building permit, the property owner shall record in the Official Records of Orange County an Indemnification/Hold Harmless Agreement which indemnifies and holds harmless Orange County from any claims, lawsuits, and any other damage caused by the locating of the fence and gates in the clear view triangles adjacent to Lake Jessamine Drive as requested by the property owner, and shall inform all interested parties, including any future purchasers of the property, that the fence and gates are located within the clear view triangles and that the property owner, and the property owner's heirs, successors, and assigns shall be responsible for any claims, lawsuits, and other damage caused by installing the fence and gates in that location.

C: Nathaniel Mitchell
5343 Lake Jessamine Drive,
Orlando, FL 32839

COVER LETTER

FROM: NATHANIEL MITCHELL
5343 LAKE JESSAMINE LAKE
ORLANDO, FL 32839

TO: NICK BALEVCH
PLANNER II

RE: FENCE

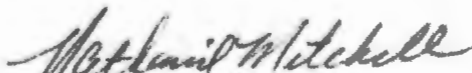
I am requesting to keep my fence and wall that has been since 2019. I have a permit on my previous fence in 2010.

1. To allow an existing 6.6 feet high wall in the front yard in lieu of 4 feet high.
2. To allow a 6.6 feet high wall with 6.6 feet high gates with the clear triangle.
3. To allow existing columns to extend up to 6.3 feet in lieu of 6 feet (24 inches above the height limitation of 4 feet)
4. To allow existing columns to be 5.4 feet apart in lieu of 10 feet apart.

NOTE: This is the result of Code Enforcement.

Thanking you in advance, if any further information is required please let me know.

Sincerely,


Nathaniel Mitchell

COVER LETTER

1. **Special Conditions and Circumstances** - Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures or buildings in the same zoning district. Zoning violations or nonconformities on neighboring properties shall not constitute grounds for approval of a proposed zoning variance.

This fence is lower than the fence
2 or 3 street over see pictures

2. **Not Self-Created** - The special conditions and circumstances do not result from the actions of the applicant. A self-created or self-imposed hardship shall not justify a zoning variance; i.e., when the applicant himself by his own conduct creates the hardship which he alleges to exist, he is not entitled to relief.

The only Hardship is Removing or
Reducing the Height - Will incurr a Greater
Cost - Especially in this current Economy cost are
high

3. **No Special Privilege Conferred** - Approval of the zoning variance requested will not confer on the applicant any special privilege that is denied by this Chapter to other lands, building, or structures in the same zoning district.

this will be NO Special Privilege due
to the fact that the fence 3 street over
from mine.

4. **Deprivation of Rights** - Literal interpretation of the provisions contained in this Chapter would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this Chapter and would work unnecessary and undue hardship on the applicant. Financial loss or business competition or purchase of property with intent to develop in violation of the restrictions of this Chapter shall not constitute grounds for approval or objection.

Financial loss will be Incurred by
ME.

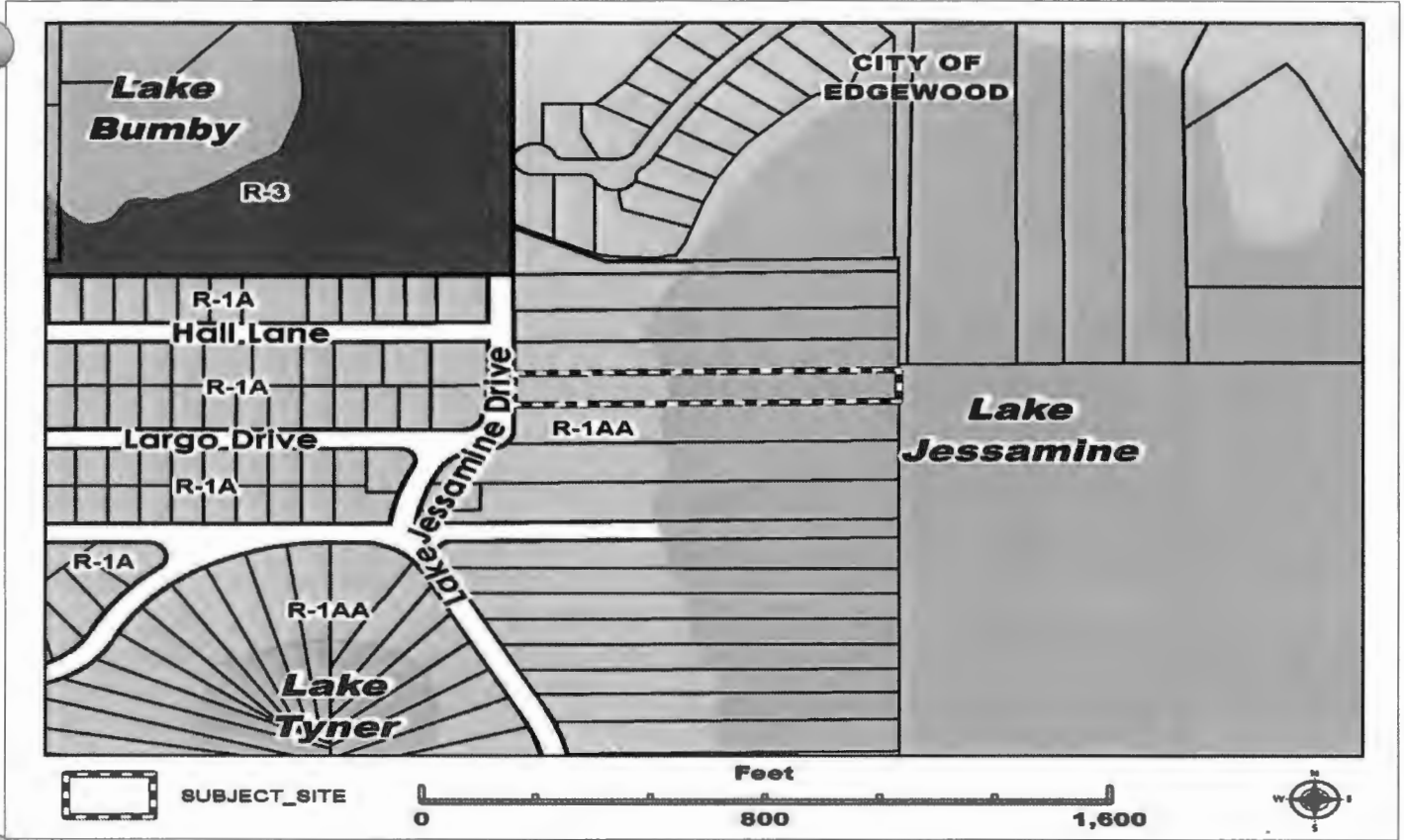
5. **Minimum Possible Variance** - The zoning variance approved is the minimum variance that will make possible the reasonable use of the land, building, or structure.

My fence is only 4 1/2 ft tall

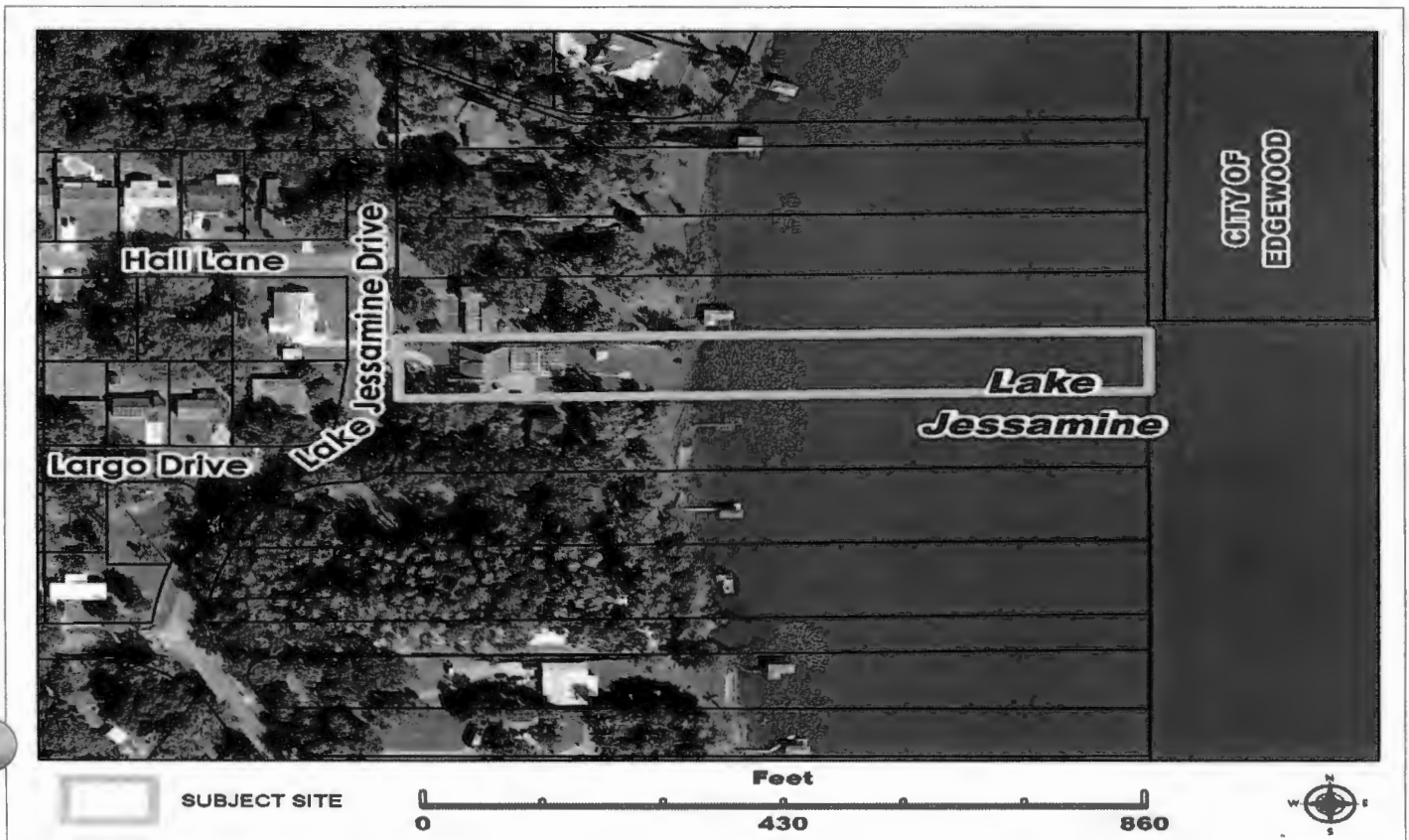
6. **Purpose and Intent** - Approval of the zoning variance will be in harmony with the purpose and intent of the Zoning Regulations and such zoning variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

Approval of this will not be injurious
to the Neighborhood - since the fence
3 street down is higher than mine.

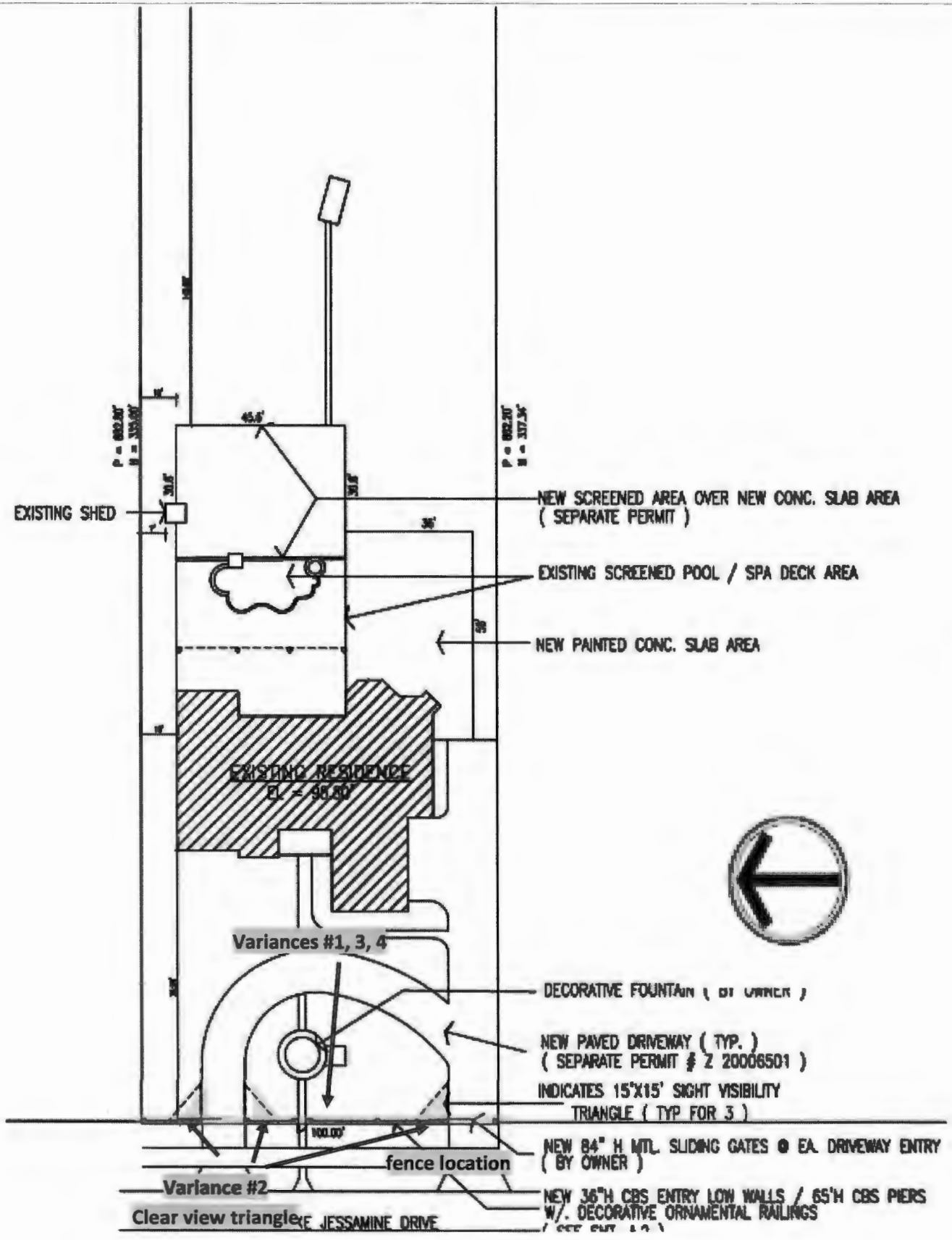
ZONING MAP



AERIAL MAP



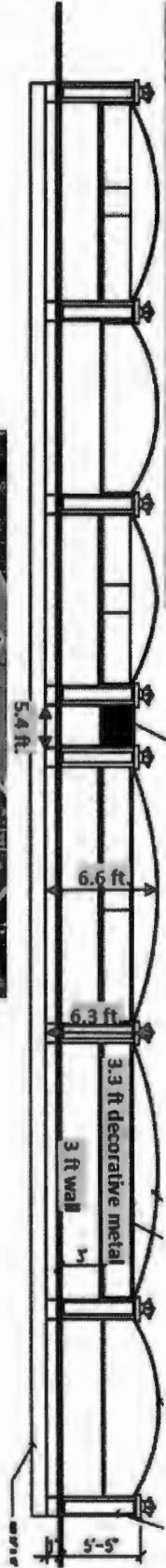
SITE PLAN



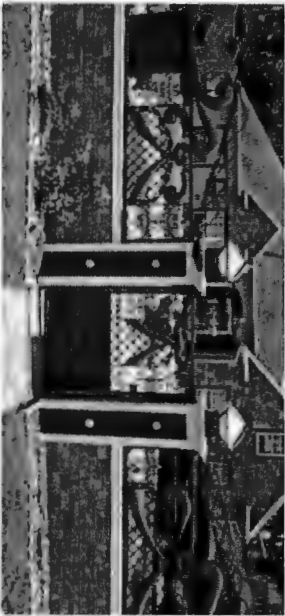
FENCE DETAILS



WALL PLAN



WALL ELEVATION



SITE PHOTOS



Front from Lake Jessamine Dr. facing east



6.3 ft. high columns with a 5.4 ft. separation in lieu of 10 ft.