



Interoffice Memorandum

December 1, 2021

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 14, 2021 - Appeal Public Hearing
Applicant/ Appellant: Juan Frias
BZA Case #VA-21-09-081, September 2, 2021; District 5

Board of Zoning Adjustment (BZA) Case # VA-21-09-081, located at 9067 Stockton Court, Orlando, Florida, 32817, in the R-1AA Single-Family Dwelling district, in District 5, is an appeal to the Board. The variance request is to allow a 6 ft. high fence within the clear view triangle from the right-of-way line for visibility from the driveway on an adjacent lot. The subject property is located at the northeast side of Stockton Ct., east of N. Econlockhatchee Trail, and north of University Boulevard.

At the September 2, 2021 BZA hearing, staff recommended denial of the request to allow a 6 ft. high fence within the clear view triangle and the BZA recommended denial of the variance on a 4-2 vote.

The case was subsequently appealed by the applicant. The applicant/ appellant, Juan Frias, 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.

At the November 9, 2021 Board hearing, the applicant and no one else was in attendance, and the Board voted to deny the request. After the hearing, however, it was discovered that the wrong hearing date had been provided to the applicant and the public. Therefore, at the November 30, 2021 Board meeting, Commissioner Bonilla (the District Commissioner for this case) announced her intent to move to rescind the November 9, 2021 vote at the December 14, 2021 Board meeting in order to allow for correct noticing and a new hearing on the afternoon of December 14, 2021.

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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.

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

ACTION REQUESTED: Deny the applicant's request; or approve the applicant's request with conditions. District 5

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

December 14, 2021

The following is a public hearing on an appeal before the Board of County Commissioners on December 14, 2021 at 2:00 p.m.

APPELLANT/ APPLICANT: JUAN FRIAS

REQUEST: Variance in the R-1AA zoning district to allow a 6 ft. high fence within the clear view triangle from the right-of-way line for visibility from the driveway on an adjacent lot.
This is the result of Code Enforcement action.

LOCATION: 9067 Stockton Court, Orlando, Florida, 32817, northeast side of Stockton Ct., east of N. Econlockhatchee Trl., and north of University Blvd.

TRACT SIZE: 0.25 acres

ZONING: R-1AA

DISTRICT: #5

PROPERTIES NOTIFIED: 94

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, including but not limited to, safety reasons.

Staff noted that six (6) comments were received in support and no comments were received in opposition.

The owners discussed the request, including the history of the replacement of a prior existing fence in the same location, and the need for the fence to enclose the pool area for safety.

No one was present to speak in opposition to the request. Two persons spoke in favor of the request, citing that the proposed fencing was an improvement to the fence that was replaced at the same height and location.

Code Enforcement Staff discussed the history of the citation, the violation of the sight distance triangle and the minimum required pool fence height.

The BZA discussed the sequence of fence replacement and reinstallation, the lack of compliance with the issued fence permit, how the request was self-created, that the location of the fence was a possible safety concern and recommended denial of the variance by a 4-2 vote.

BZA HEARING DECISION:

A motion was made by Roberta Walton, seconded by Wes Hodge and carried to recommend DENIAL of the Variance request in that there was no unnecessary hardship shown on the land; and further, it did not meet the requirements governing variances as spelled out in Orange County Code, Section 30-43(3) (4 in favor, 2 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: Juan Maria Frias and Ramona Pina

Address: 9067 Stockton Court, Orlando, FL 32817

Email: jfrias1218@hotmail.com Phone #: (917) 650-5456

BZA Case # and Applicant: # VA-21-09-081 Juan Maria Frias and Ramona Pina

Date of BZA Hearing: September 2, 2021

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

We are appealing in order to appear at a second hearing and explain the variance in more detail. The owner of the house directly affected by the variance would like to attend the hearing as well to explain why she has no issue with the variance being approved. There was a misunderstanding during the hearing as the fence had already existed prior to the permit being requested. We did not install the fence after receiving notice of the variance or the permit being issued and would like a second opportunity to explain this.

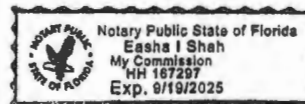
Signature of Appellant: [Signature] / [Signature] Date: 9/8/2021

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 8th day of September, 2021, by JUAN MARIA FRIAS/RAMONA PINA who is personally known to me or who has produced FLDL F20-033-SU-458-1 as identification and who did/did not take an oath. NYIDL 666 366-800

[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: **SEP 02, 2021**

Case Planner: **Laekin O'Hara (407) 836-5943**

Case #: **VA-21-09-081**

Commission District: **#5**

GENERAL INFORMATION

APPLICANT(s): **JUAN FRIAS**

OWNER(s): **PINA RAMONA, JUAN FRIAS**

REQUEST: Variance in the R-1AA zoning district to allow a 6 ft. high fence within the clear view triangle from the right-of-way line for visibility from the driveway on an adjacent lot. This is the result of Code Enforcement action.

PROPERTY LOCATION: 9067 Stockton Court, Orlando, Florida, 32817, north of University Boulevard, east of N. Econlockhatchee Trail

PARCEL ID: 06-22-31-9090-00-020

LOT SIZE: +/- 0.25 acres

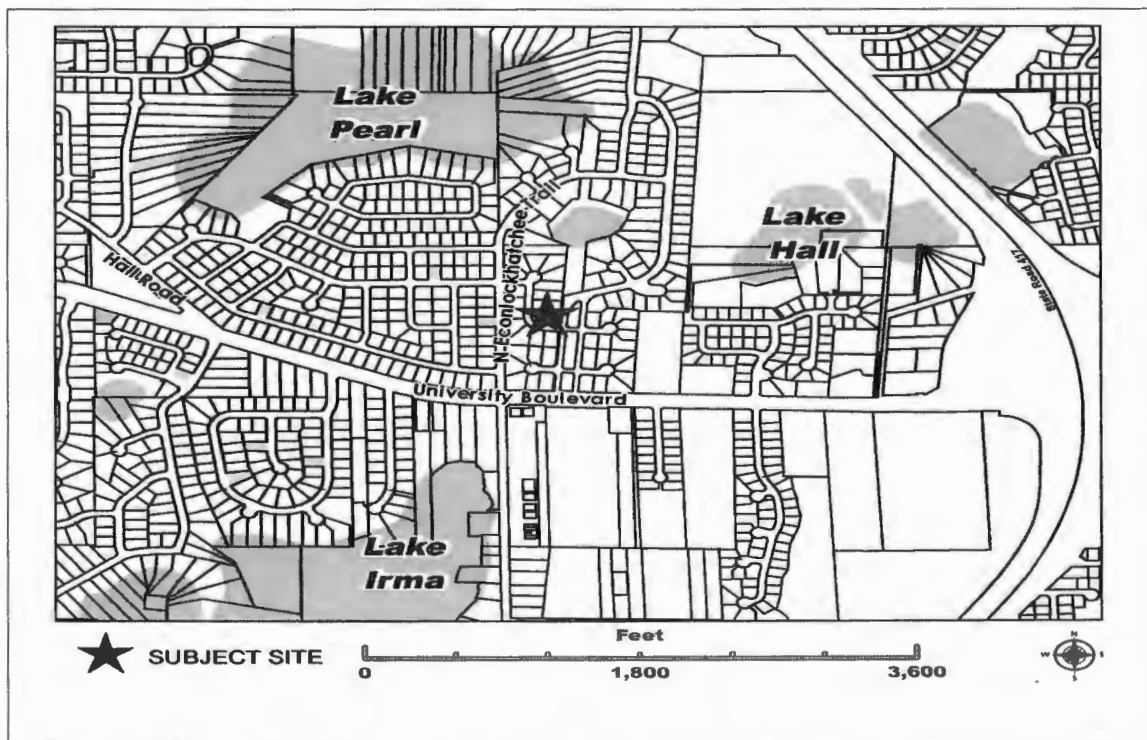
NOTICE AREA: 500

NUMBER OF NOTICES: 94

STAFF RECOMMENDATIONS

Denial. However, should the BZA find that the request satisfies the criteria for the granting of a variance, 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	R-1AA	R-1AA
Future Land Use	LDR	LDR	LDR	LDR	LDR
Current Use	Single-Family	Single-Family	Single-Family	Single-Family	Single-Family

BACKGROUND AND ANALYSIS

Description and Context

The subject property is zoned R-1AA, Single-Family Dwelling district, which allows single-family homes and associated accessory structures. The area around the subject site consists of single-family homes. The subject property is a +/- 0.25 acre lot that was platted in 1984 as lot 2 of the Watermill West subdivision.

The site is developed with a 2,308 sq. ft. single-family home, which was constructed in 1985, and a pool at the rear of the property. The owner purchased the property in 2016.

The property is a reverse corner lot (the rear yard is the side yard of the adjacent lot to the north) with a driveway located approximately 11 ft. away on the property to the north. The applicant requested a to allow a 6 ft. high fence vinyl privacy fence within the reverse corner lot visibility triangle. Per Code Sec. 38-1408(j), "on any reversed corner lot (corner lot where the rear yard abuts the side of another lot) no part of any fence greater than four (4) feet in height shall be located within the required front yard setback of the adjacent lot as measured from the common corner of each lot...". A fence installed outside of the visibility triangle would be permitted to be a maximum of eight (8) feet high. The applicant submitted a fence permit (F21011876) in May 2021 with the fence in this configuration, but was subsequently revised to meet code. The fence permit was issued on June 28, 2020. The fence was constructed not in compliance with the approved plan. A code violation is currently active (591124) for the construction of the fence that does not meet code.

The applicant has submitted two letters of no objection from the adjacent neighbors to the east and north.

District Development Standards

	Code Requirement	Proposed
Max Height:	8 ft. for fence in the side and rear yards, 4 ft. for fence located within the required front yard setback of the adjacent lot as measured from the common corner of each lot.	6 ft. high fence along property line, including the visibility triangle / front-yard section of adjacent lot (Variance)
Min. Lot Width:	85 ft.	95 ft.
Min. Lot Size:	10,000 sq. ft.	11,016 sq. ft.

STAFF FINDINGS

VARIANCE CRITERIA

Special Conditions and Circumstances

There are no special conditions and circumstances, as the fence could have been installed in compliance with the requirements of the code and the issued fence permit.

Not Self-Created

The need for the variance is self-created, as the owner installed the fence in this configuration and location, which is not consistent with the issued permit. The owner had the opportunity to install the fence at a conforming height in a conforming location.

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 a fence could be installed in a location compliant with code.

Minimum Possible Variance

The requested variance is not the minimum possible, as the applicant could relocate or modify the improvements requested to a conforming height and location.

Purpose and Intent

Approval of the requested variance will allow improvements in an appropriate location which is in harmony with the purpose and intent of the Zoning Regulations. As proposed the request would not be detrimental to the surrounding area since the adjacent driveway is located at a distance which will limit any visibility issues.

CONDITIONS OF APPROVAL

- Development shall be in accordance with the site plan dated July 20, 2021, 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. A permit for the as built fence 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.

C: Juan Frias
9067 Stockton Ct.
Orlando, FL 32817

COVER LETTER

July 20, 2021

Via Email

Orange County Zoning Division
201 S. Rosalind Avenue, 1st
Orlando, FL 32801

RECEIVED

JUL 30 2021

**ORANGE COUNTY
ZONING DIVISION**

Re: 9067 Stockton Court, Orlando, FL 32817

To Whom It May Concern:

I am writing to seek a fence variance for my single-family home at 9067 Stockton Court, Orlando, FL 32817 (Code case# F21011876, Case # VA-21-09-081). Current zoning rules say that a 6ft fence cannot be installed within 30'x30' from the right-of-way line or the edge of the driveway for visibility from driveways on the adjacent lot.

I respectfully request variances in the R-1AA zoning district as follows:

- 1) To allow a 6 ft. high fence within the reverse corner lot visibility triangle.
- 2) To allow a 6 ft. high fence within the side street setback.

The enclosed images depict the specific corner on the north side of the property that is the subject of this matter (see enclosed image with 'Variance A' and Variance 'B').

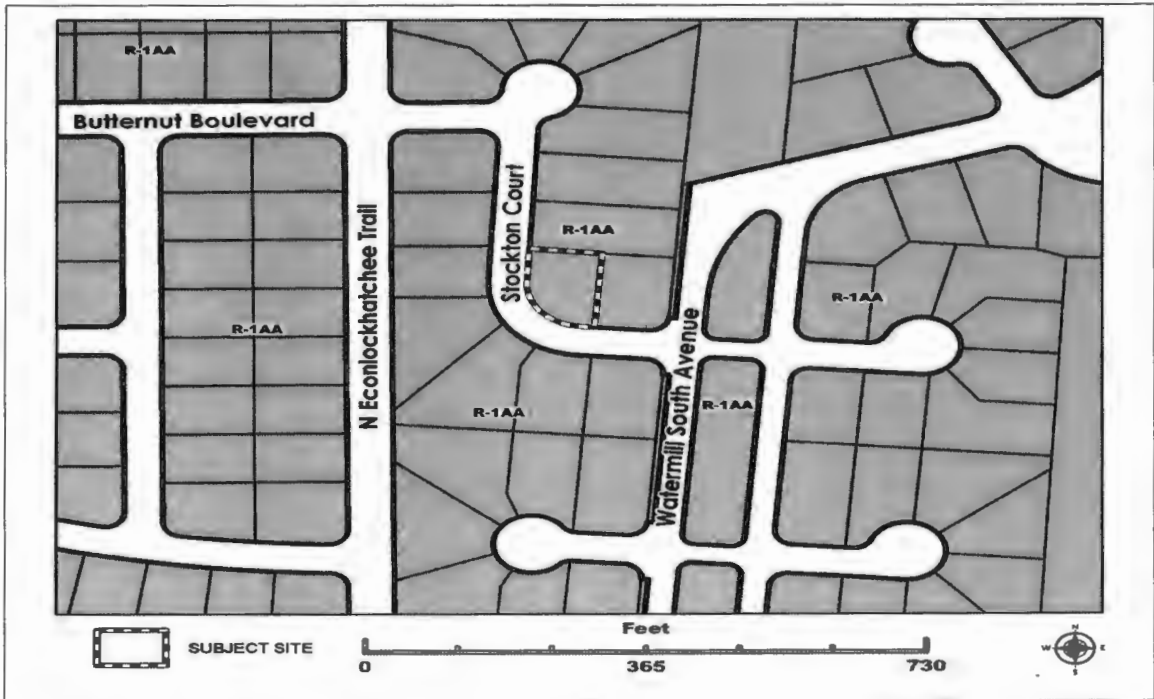
We purchased this home in 2016 and the 6-foot fence was already there, installed by the previous owner. Over the last few months, I have started to replace the fence due to it being old and damaged. I applied for a permit, which is now on hold due to the pending variance request. I have communicated with my neighbor, who lives directly behind my house, regarding the height of the fence being that it blocks part of her view from the driveway, and per the attached notarized letter, she has no objection to the 6-foot fence being in place.

The special conditions that exist is that the fence was installed by the previous owners. I have done my due diligence to apply for the permit, which has now been approved, so it can be in compliance with the city even though it was never completed by the previous owner. No one will be prejudiced by this request.

Below are the six variance criteria:

1. **Special Conditions and Circumstances** – The property on the north has a driveway adjacent to the rear fence of my home.
2. **Not Self-Created** - The special conditions and circumstances are not a result of the applicant.
3. **No Special Privilege Conferred** – Special privilege would be a six foot fence within the visibility triangle of adjacent property driveway.
4. **Deprivation of Rights** – No.
5. **Minimum Possible Variance** – Yes.
6. **Purpose and Intent** – Approval of the zoning variance will not be injurious to the neighborhood or detrimental to the public welfare.

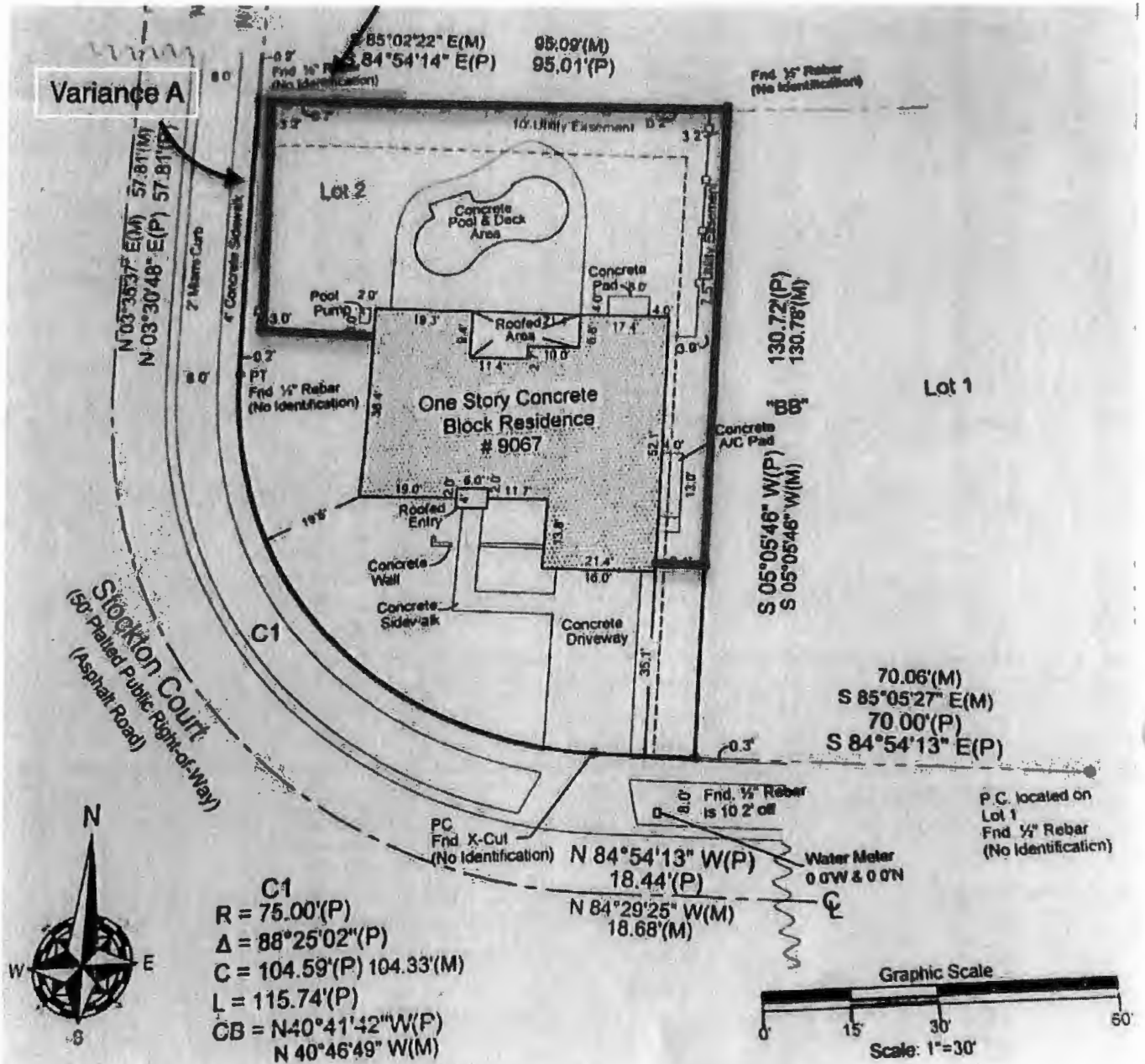
ZONING MAP



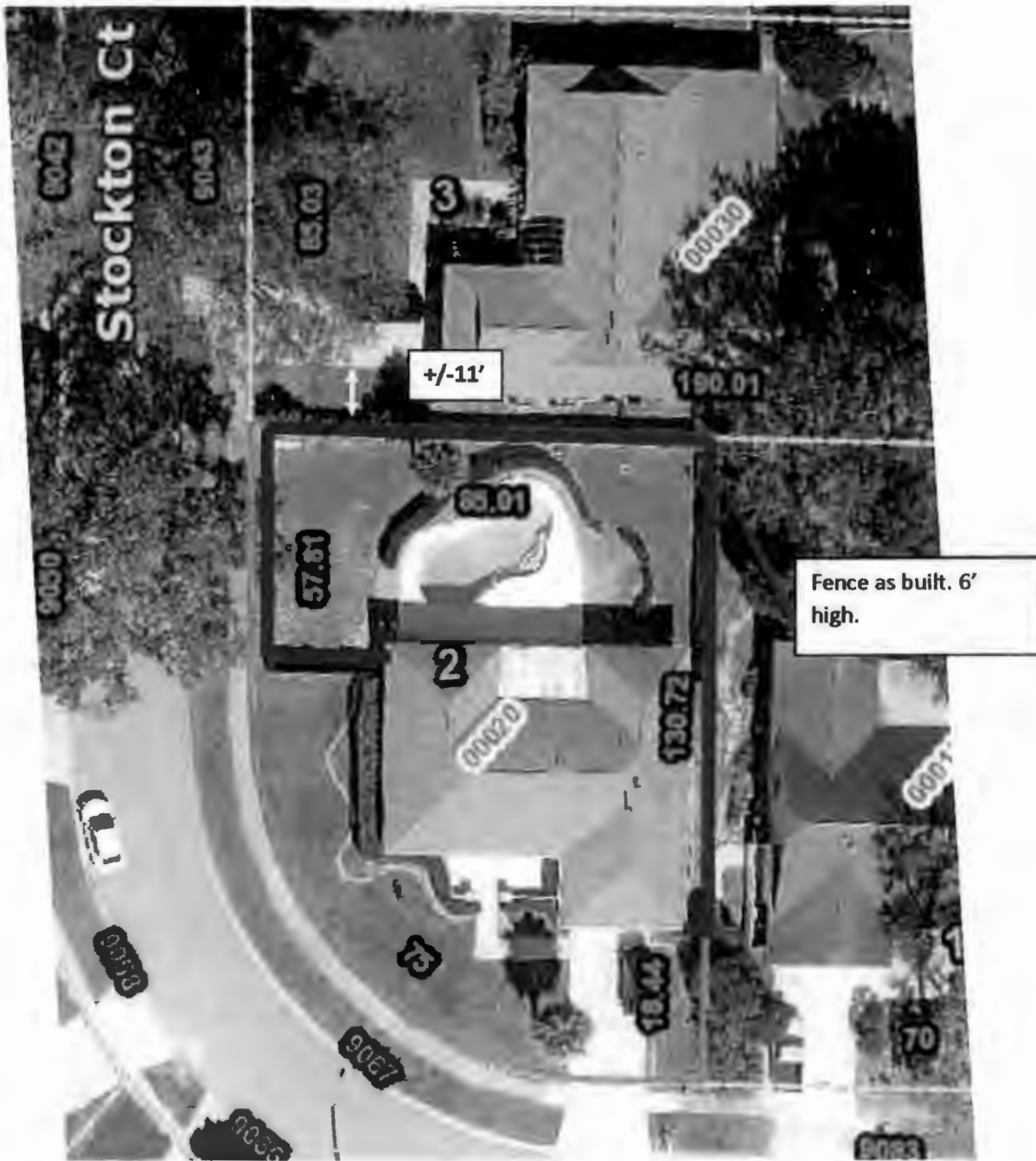
AERIAL MAP



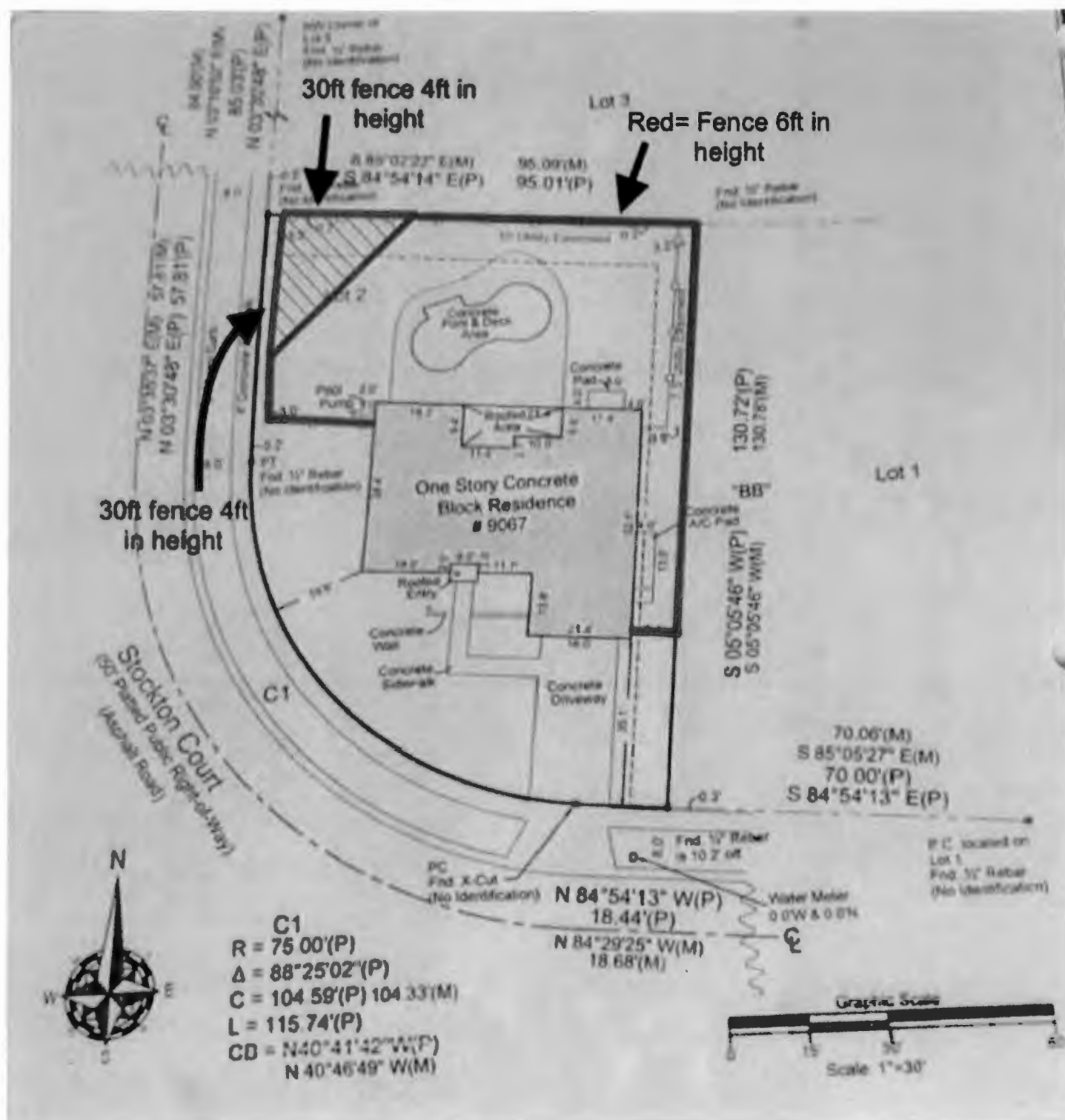
SITE PLAN



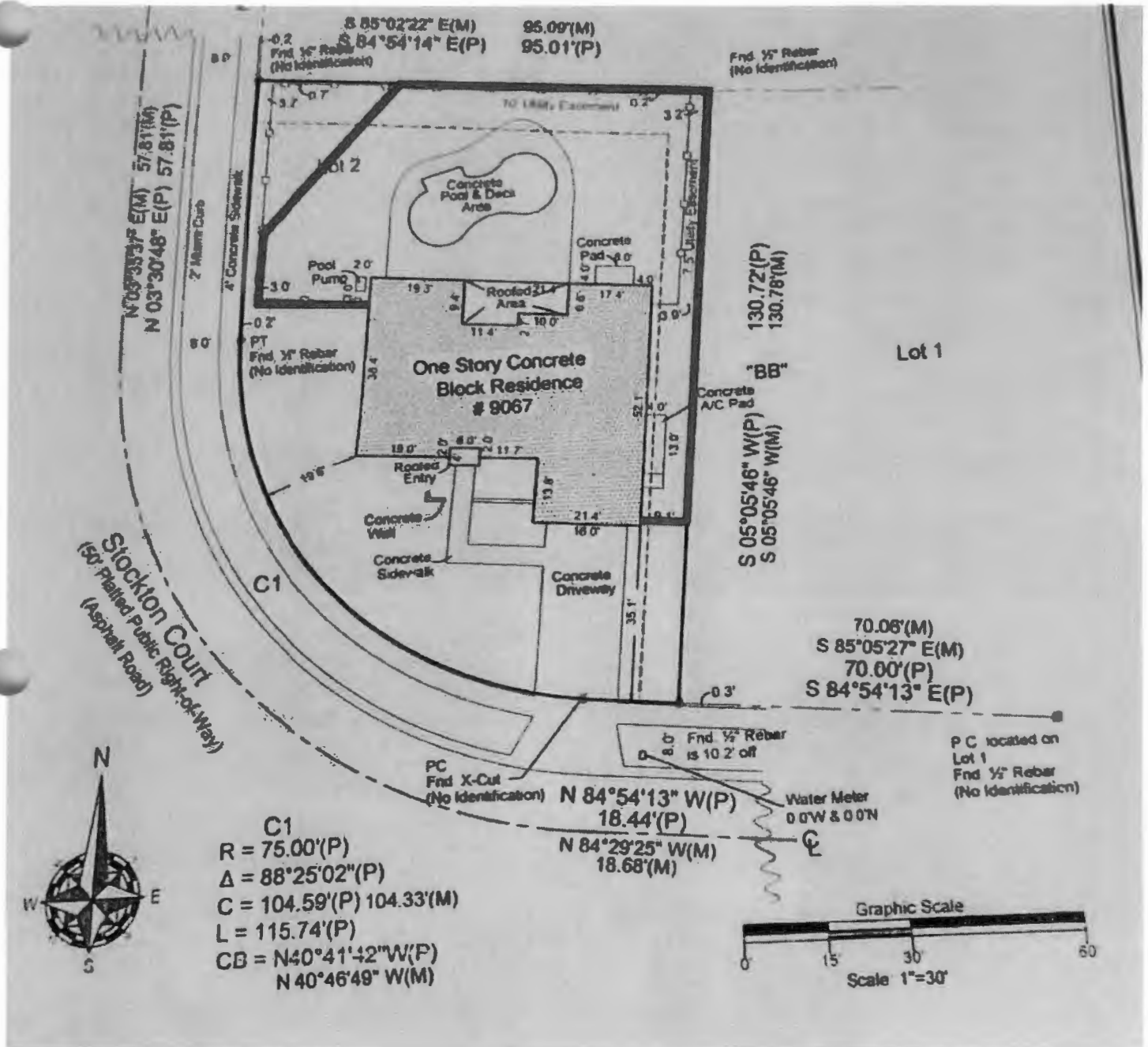
SITE PLAN WITH AERIAL



CODE COMPLIANT SITE PLAN



SITE PLAN FOR ISSUED FENCE PERMIT



SITE PHOTOS



View of fence facing south east from Stockton Court



View of fence from affected driveway to the north

SITE PHOTOS



View of fence facing north from Stockton Court



View of fence facing east from Stockton Court