



CITY OF TONTITOWN PLANNING OFFICE

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Meeting: **June 22, 2021**
Project: **804 Bausinger Rd Variance Request**
Planner: Anthony Apple

AGENDA ITEM

4

VARIANCE REQUEST

804 Bausinger Rd
Parcel #: 830-37920-000

SUMMARY: Request to vary from the City code required maximum 36-inch fence height within the front yard of 804 Bausinger Rd (Parcel #830-37920-000) to 48-inch height.

CURRENT ZONING: R-3 – Single-Family Residential (three lots per acre)

PROPOSED USE: R-3 – Single-Family Residential (three lots per acre)

CITY WARD: 3 – Don Doudna and Tim Burress

INFRASTRUCTURE SERVICE AREAS (not a guarantee of service availability):

Water: Washington Water Authority

Sewer: Septic

Road Access: Direct access to Bausinger Rd

Electric: Ozarks Electric

Cable: Cox Communications

Phone: AT&T

Natural Gas: Black Hills Energy

School District: Springdale

PROJECT SYNOPSIS:

The project site is located at 804 Bausinger Rd (Parcel #830-37920-000). See attached Vicinity Map, Figure 1. The project site is located within an R-3 Single-Family Residential (three lots per acre) zoning district. The request is to vary from the City code 153.215 Fences (F) which states the following:

(F) Front yard. Unless approved by the _planning board, a fence over 36 inches in height shall not be located in the front yard or be positioned any closer to the front property line than the front surface of the building for a typical residential lot. Decorative fencing not exceeding 36 inches is allowed in front yards.

The lot in which the primary residence occupies is Parcel #830-37920-000. See attached Site Plan, Figure 2. The fence style being constructed is shown in Figure 3, Fence Style. Due to the lot west of the project site being another parcel, 830-37917-000, although owned by the applicant, the front yard of the primary residence extends only to the west property line of parcel 830-37920-000, as stated by code. Per code, the required maximum fence height within the front yard of Parcel #830-37920-000 can only be 36 inches. The request is to vary from the maximum 36-inch height to 48 inches along the north and south property lines between the west property boundary of Parcel 830-37920-000 to the front of residential structure. See Figure 2. The ultimate goal for the land owner is to construct a fence along the north and south property lines of both parcels, the west property line of Parcel 830-37917-000 and the east property line of Parcel 830-37920-000 with a uniform height of 48 inches. See Figure 4, Fence Location.

153.262 POWERS AND DUTIES

The Board of Zoning Adjustment shall have all the powers and duties prescribed by law and by these regulations, which are more particularly described as follows:

(B) To authorize upon appeal, in specific cases, such variance from the terms of this zoning chapter as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of these regulations would result in unnecessary hardship that would deprive the owner of any reasonable use of the land or building involved. A variance from the terms of these zoning regulations, shall not be granted by the Board of Zoning Adjustment unless and until:

(1) The applicant demonstrates that 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 district; that literal interpretation of the provisions of these regulations would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of these regulations; that special conditions and circumstances do not result from the actions of the applicant; and that granting the variance requested will not confer on the applicant any special privilege that is denied by the zoning regulations to other lands, structures, or buildings in the same district.

STAFF ANALYSIS: A special condition exists in that the front yard of the primary residential structure is on a lot that does not front the street (Bausinger Rd) to which it has access. Since the front yard is only the area between the western lot line of Parcel 830-37920-000 to the front face of the residential structure, a variance request is required to construct a fence height greater than 36 inches. Literal interpretation of the regulations would deprive the applicant of a more visually pleasing uniform fence height of 48 inches. The conditions are not a result of the applicant creating the condition. The conditions are the result of the applicant having purchased two parcels and building the residential structure on the parcel not fronting the street.

The granting of this variance will not confer to the applicant any special privilege denied by zoning regulations to other landowners by virtue of the location of the parcel in which the residential structure occupies.

(2) No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.

STAFF ANALYSIS: No other conditions of the neighboring lands were considered in support of the approval of this variance request. The site location is the primary aspect for supporting approval of this variance request.

(3) The Board of Zoning Adjustment shall further make a finding that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of land, building, or structure.

STAFF ANALYSIS: The granting of this variance will make possible the construction of a uniform fence height of 48 inches which will be more visually pleasing. Denying this variance would require the construction of a non-uniform section of fence with a height of 36 inches for a distance of approximately 110 feet along the northern and southern property boundaries of residential parcel.

(4) The Board of Zoning Adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of these zoning regulations, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

STAFF ANALYSIS: Granting of this variance request will be in general harmony with the zoning regulations and will not be injurious to the neighboring properties since a more visually pleasing uniform fence height will be constructed.

(5) In granting any variance, the Board of Zoning Adjustment may prescribe appropriate conditions and safeguards that it deems necessary or desirable. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of these regulations.

STAFF ANALYSIS: The granting of this variance will be upheld by the Building Inspection to ensure the fence will be constructed as outlined in the variance request.

(6) Under no circumstances shall the Board of Zoning Adjustment grant a variance to allow a use not permissible under the terms of these zoning regulations in the district involved, or any use expressly, or by implication, prohibited by the terms of these regulations in said district.

STAFF ANALYSIS: Per the Code 153.215, fences are permitted. The variance request is only relative to the height of the fence within the limits previously described.

TECHNICAL INFORMATION:

Utilities:

Water: The property is serviced by Washington Water Authority

Electric: Ozarks Electric

Sewer: The property is on a septic system

Cable: Cox Communications

Phone: AT&T - No concerns were submitted for the requested variance

Natural Gas: Black Hills Energy - No concerns were submitted for the requested variance

Streets:

This property has direct access to Bausinger Rd.

Fire:

No concerns were submitted for the requested variance.

Police:

The Police Chief has no concerns for the requested variance.

STAFF ANALYSIS: Due to the undeveloped condition of the neighboring property to the north and the general surrounding lot sizes are in excess of 2 acres, the impact of this variance request will be negligible to the surrounding area, existing utilities, and streets and fire.

NEIGHBOR COMMENTS: Staff received one verbal comment and one written verbal comment from neighboring properties within 200 feet of the property boundary that were notified by certified mail of this project. **Both comments were not in favor of the request. One of the dissenting comments**

expressed concern that a fence is to be constructed from the front of the house to Bausinger Rd and along the Bausinger Rd right-of-way.

STAFF FINDINGS: *Per City Code 153.215, the applicant can build a fence in the areas shown in Figure 4. A "literal enforcement of the provisions of the regulations" would result in a non-uniform fence height that would not be visually pleasing and detrimental to the applicant and surrounding properties. Due to the location of the parcel the residence occupies and the location the fence for which the variance is being requested, Staff does not perceive any way that granting this variance would afford the landowner a special privilege or will be injurious to the neighboring properties.*

STAFF RECOMMENDATIONS:

Staff recommends the approval of the variance request to vary from the required 36-inch maximum fence height to 48 inches for the fence location along the north and south property lines between the west property boundary of Parcel 830-37920-000 to the front of residential structure.



Figure 1: Vicinity Map

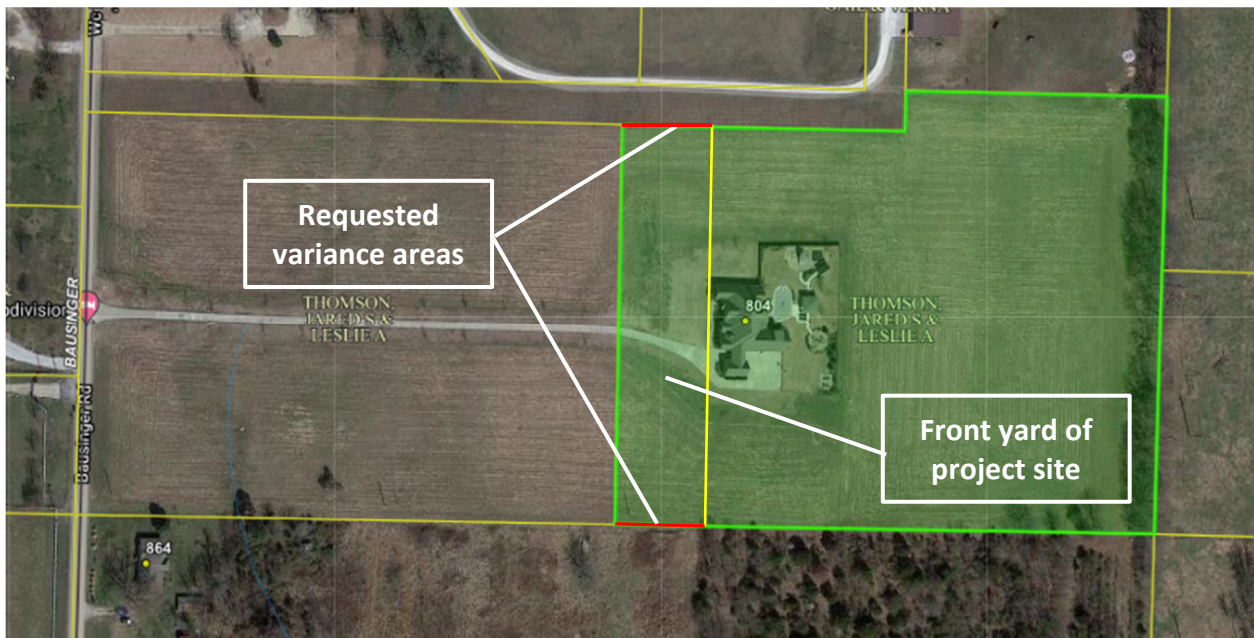


Figure 2: Site Plan



Figure 3: Fence Style

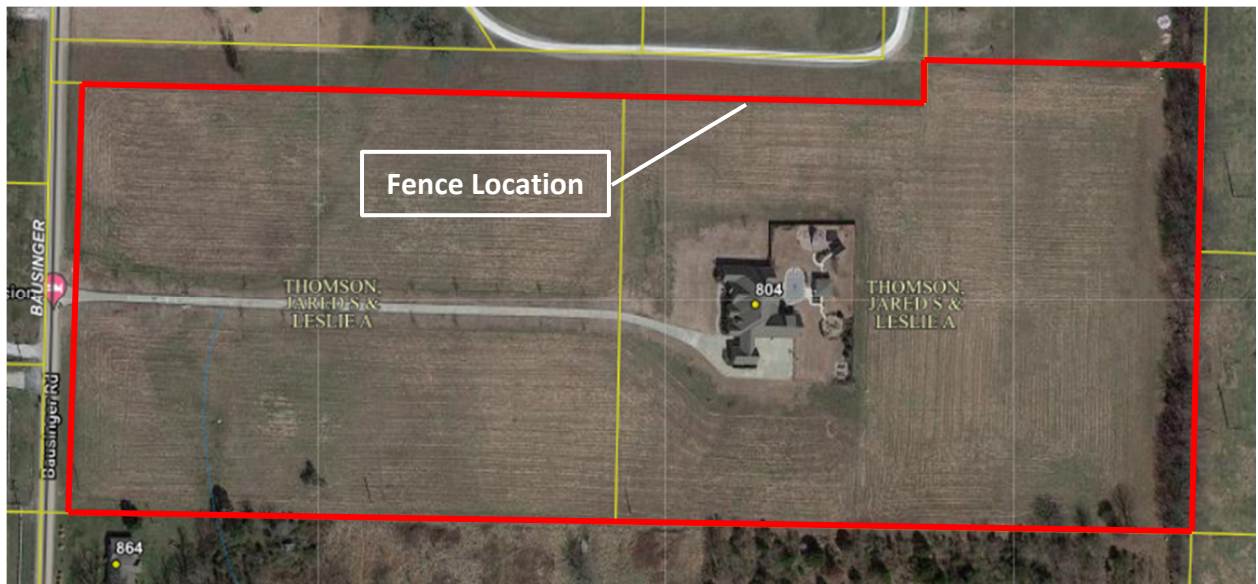


Figure 4: Fence Location