



CITY OF
TOPEKA

AGENDA

BOARD OF ZONING APPEALS

Monday, May 10, 2021
5:30 P.M.

VIA VIDEO CONFERENCE

MEMBERS OF THE BOARD

Tim Carkhuff (Chair)
Walter Schoemaker (Vice Chair)
Toni Beck
Helen Crow
Camille Nohe
Carole Jordan
Travis Thomas

-
- The Topeka Board of Zoning Appeals holds a public hearing on the second Monday of each month to consider certain appeals, variances, and exceptions as may be granted by the Comprehensive Zoning Regulations of the City of Topeka, Kansas.
 - The following agenda identifies and describes each proposal to be considered by the Board.
 - Each item to be considered by the Board will be introduced by the Planning Department Staff. The Board will then hear and consider arguments both for and against each proposal.
 - Individuals wishing to address the Board are requested to state their name and address for the official hearing record.
 - Motions on all matters, which require a decision by the Board, are made in the affirmative. On a roll call vote, Board members then vote yes, no, or abstain based on the affirmative motion.
 - Any person, official or government agency dissatisfied with any order or determination of the Board may bring an action in the district court of the county to determine the reasonableness of any such order or determination. Such appeal shall be filed within 30 days of the final decision of the Board.



ADA Notice: For special accommodations for this event, please contact the Planning Department at 785-368-3728 at least three working days in advance.



CITY OF
TOPEKA

BOARD OF ZONING APPEALS

Agenda for Monday, May 10, 2021

- A. Call to Order**
- B. Approval of Minutes from April 12, 2021**
- C. Declaration of Ex Parte Communications**
- D. BZA21V/04 by Leslie Watson and Roni Davis-Watson**, requesting a variance to exceed the maximum 4' fence height allowed beyond the front face of a principal structure as restricted by section 18.210.040 (a) of the Topeka zoning regulations. Approval of the requested variance will allow the owner to obtain a permit to replace an existing 6' high wooden fence with another 6' high wooden fence in its present location on the site at 3121 SW Belle Avenue.
- E. Location/Mode of future meetings**
- F. Adjournment**



ADA Notice: For special accommodations for this event, please contact the Planning Department at 785-368-3728 at least three working days in advance.

CITY OF TOPEKA
BOARD OF ZONING APPEALS



M I N U T E S

Monday, April 12, 2021

Via Video Conference

Members present: Tim Carkhuff (Chair), Toni Beck, Helen Crow, Camille Nohe, Walter Schoemaker, Travis Thomas (6)

Members Absent: Carole Jordan (1)

Staff Present: Mike Hall, Current Planning Manager; Mary Feighny, Deputy City Attorney; Kris Wagers, Administrative Officer

Call to Order

The meeting was called to order by Chairman Tim Carkhuff. Roll was taken with 6 members present for a quorum.

Declaration of Ex Parte Communications –

None

Mr. Carkhuff welcomed Ms. Nohe to the board.

Mr. Carkhuff spoke about the Hacker v Sedgwick County Court of Appeals case, especially to the court's discussion about the fact that the Board of Zoning Appeals (BZA) can grant area variances only if 5 statutory criteria are met. Each finding must be supported by substantial evidence. Mr. Carkhuff spoke about staff reports and staff's evaluation of each criteria, the fact that BZA motions are made in the affirmative, and the fact that if the BZA takes action contrary to staff recommendations, it is incumbent upon them to make sure the appropriate findings are made and supported. The BZA does not make recommendations to the City Council or Governing Body. Appeals to BZA decisions go to the District Court.

Mr. Carkhuff called the case on the evening's agenda: **Public Hearing of BZA21V/03 by Nick Reilly**, requesting a variance to exceed the maximum 90 percent building coverage ratio of accessory buildings to principal building as restricted pursuant to section 18.60.020 of the Topeka zoning regulations for the construction of a detached accessory shop building at 3724 NW Lower Silver Lake Road.

Mr. Hall presented the staff report and recommendation that the board not approve the variance as requested. Mr. Hall noted there are different numbers given regarding the sizing of the property. He explained that the survey map provided by the applicant indicates the property is 1.23 acres and this includes the street right of way. The staff report indicates the property is 1.1 acres and this is based on records of the Shawnee County Appraiser which do not include the street right of way. The difference is not enough to change or affect the findings. Elsewhere in the staff report the property is described as being 3 acres but this is simply an error.

Mr. Hall reviewed the findings provided in the staff report. He added that in the event the BZA wishes to grant a variance allowing for a building smaller than that being requested by the applicant, the staff report includes "Conditions of Approval" that the Board may wish to include.

Ms. Crow asked if the property could potentially be re-zoned and thus allow the owners to have the larger building that they're wanting. Mr. Hall said that the owner could seek a zoning change that would allow for a residence for a "caretaker". He added that seeking a zoning change is expensive, it's a long and not uncomplicated process, it is not a guaranteed outcome, and Mr. Hall is not certain staff would support it.

Ms. Beck also asked about the possibility of re-zoning and Mr. Hall spoke again about the complexity and uncertain outcome. Ms. Beck stated her concern is that the proposed building is twice the size of what would be allowed without a variance.

Mr. Carkhuff questioned whether the limit imposes an unnecessary hardship on the owner. He noted that the zoning is R-1 Single Family and the proposed building appears to be more of a commercial or industrial building. Under R-1 zoning, owners can expect to have a garage or other accessory building. Under current zoning regulations, the size of the lot is not really relevant, but rather the size of the principal structure. Based on that, the owners would be allowed to construct an almost 1,100 SF building without a variance. He noted that this is much larger than a normal 2-car garage. The fact that they want something larger than what is allowed may be a hardship for them, but it is not an unnecessary hardship. Anyone in R-1 zoning must comply with the restriction regardless of the size of the property. Mr. Carkhuff asked Mr. Hall why staff thinks that an unnecessary hardship may be found.

Mr. Hall noted that restricting the owner to the standard is not necessary to protect neighboring property owners and accomplish the primary purposes of zoning. Mr. Carkhuff countered that the owners were aware of the zoning and the need to adhere to zoning regulations. He suggested that seeking to re-zone the property may be more appropriate and stated it would set a horrible precedent; people would claim an unnecessary hardship because they can't use their property the way they want to.

With no more questions for staff, Mr. Carkhuff invited the applicant to speak. Ramin Mahmoudian introduced himself as the applicant's architect. Also present were Nick Reilly and his wife Merti Richter, the owner of the property.

Mr. Mahmoudian explained that the intent is to build a structure for personal use to allow for vehicle storage and a small workshop. He added that due to the uniqueness and unusual location of the property, this is an example of where zoning code does not speak adequately to every situation that might be encountered. He said the owners would like to tear down the current two-car garage and build a space that would house a couple of classic cars, a working shop for Mr. Reilly, RV storage, a craft room for Mrs. Richter, and some additional storage space. He talked about the fact that they are aging and would like to have their property "all in one place" rather than have to store their classic cars offsite, etc. Mr. Mahmoudian noted that if the house were larger they would be able to add a larger accessory structure, but it's impractical to build a bigger house. The ability to add the proposed structure will help them to live a more fulfilled life. He feels that based on the uniqueness of the property, its location and surrounding properties, it is unreasonable to deny them the ability to build the desired building. He added that it would be a hardship to not allow them to fully enjoy the space to enjoy these activities in retirement.

Mr. Reilly stated that Mrs. Richter purchased the home in 2010 and they have done extensive remodels to bring it up to date. He stated they have 2 classic cars, two cars they drive, and a camper. He would like a workshop, and they want to bring all their belongings onto one site. He spoke about the location and unique surroundings of their home.

Mrs. Richter stated she agrees with Mr. Reilly.

Ms. Nohe asked the length of their RV and was told it is 26'.

Mr. Carkhuff noted that for a finding of hardship, one of the requirements is that the action is not created by the property owner or applicant. In this instance that is not true; they have alternative options for where to store their RV, etc. The proposed building is far in excess of what might be expected in R-1 single family zoning.

Ms. Beck noted that numerous people own classic cars and store them off-site.

Ms. Nohe stated that if they were requesting a variance for a smaller building it might not be so much of a problem. Most people understand when they purchase a property that there are certain rules they must comply with and this request seems in excess of what the statute and ordinance would allow.

Mr. Schoemaker stated that he feels empathy for the applicants but doesn't believe this body has the authority to grant a variance because it does not meet case law definition of unnecessary hardship.

Mrs. Crow added that this is one of those times it might be frustrating but the BZA simply enforces rules or laws, it doesn't make them. Single Family Zoning is part of the zoning code and the BZA doesn't have the authority to change it regardless of how much they might like to make exceptions.

Mrs. Beck noted the requirement to make the 5 findings, stating the BZA does not have the power to make a decision contrary to those findings.

Mr. Carkhuff stated that the court of appeals in the Hacker case made the point that the Board must find all 5 criteria – not simply 4 or a majority – and facts and circumstances must back up the findings.

Motion by Mrs. Beck to accept the findings of the staff and deny the variance; second by Mr. Thomas.
APPROVED 6-0-0.

Approval of Minutes from February 8, 2021

Motion by Mr. Carkhuff to approve. **APPROVED 5-0-1** with Ms. Nohe abstaining

Mr. Hall stated that there will likely be a BZA meeting in May and it will be held via Zoom. Beginning in June staff anticipates being able to meeting in person again if that is the wish of the board. The board would also have the option of continuing to meet via Zoom instead. This can be further discussed at the May meeting.

Adjourned at 6:27PM

**VARIANCE EVALUATION
CITY OF TOPEKA PLANNING DEPARTMENT
FOR
TOPEKA BOARD OF ZONING APPEALS**

Date of BZA Meeting: May 10, 2021

Case No.: BZA21V/04

Applicant Name: Leslie Watson and Roni Davis-Watson
Address of Property: 3121 SW Belle Ave.
Parcel ID No.: 1451601012001000
Zoning of Property: "R-1" Single Family Dwelling District

Regulations from which a Variance is Requested: The applicant is requesting variance to exceed the maximum 4' fence height allowed beyond the front face of a principal structure as restricted by section 18.210.040 (a) of the Topeka zoning regulations. Approval of the requested variance will allow the owner to obtain a permit to replace an existing 6' high wooden fence with another 6' high wooden fence in its present location.

The property owner has two options to comply with the fence standards for height and setbacks: 1) replace the fence in its current location with the fence no higher than 4 feet, or 2) replace the fence with a fence higher than 4 feet but at a location approximately 13 feet south of its current location. Because of the location of the pool and the surrounding deck, installing the fence to comply with the setback (for a fence over 4 feet high) requires the fence to be installed over the top of the concrete deck surrounding the swimming pool.

The following text and diagram describe fence height limits.

18.210.040 Fences.

(3) In R and M districts, fences beyond the front face of the principal structure shall not exceed four feet in height. On corner lots, but not including reversed corner lots, fences beyond the front face of the principal structure where the fence is located along an arterial street that runs perpendicular to the corner lot's established rear yard shall not exceed six feet in height. On reversed corner lots, fence heights shall be limited to four feet within all required front yards. On double frontage lots, fence heights shall be limited to four feet where such lots abut the established minimum front yard of any adjoining lot. The following diagram illustrates the setback requirements established in this section:

Fence Height Limit Diagram* (for "R" and "M" zoning districts)



Project and Property Data:

Proposed Fence:	6' high, wood
Property Dimensions:	100 feet (along west property line) x 120 feet
Property Size:	11,761 sf (.27 acre)
Property Description:	Lot 7, Block C, Foxcroft One Subdivision, Topeka, Shawnee County, Kansas
Record of Previous Permits:	July 1978, SF Residence (by builder R.A. FulmerCo.) July 1989, In-ground Swimming Pool (by owner Bruce Hobbs)
Existing Land Use	Single family dwelling on a "reversed corner lot"; its rear yard is along the west side of the lot and adjoins the side yard of the adjacent residence to the west. A "reversed corner lot" is a corner lot, the rear of which abuts the side of another lot. (TMC 18.55.120)
Zoning of Property:	"R-1" Single Family Dwelling District
Surrounding Zoning and Land Uses:	Surrounded on all sides by R-1 Single Family Dwelling zoning and single family residential land use.
Neighborhood Health:	"Healthy" (optimal conditions); the highest rating on the Neighborhood Health Map.

Applicant's Stated Grounds for Variances

Refer to "Answer Sheet" attached as part of application for full statement by applicant. Staff summarizes applicant's stated grounds as:

Conditions Unique to the Property, etc. (finding a): The fence and swimming pool were present at the time the applicant moved to the property in 1994 and the fence now needs to be replaced. The fence surrounds an in-ground swimming pool with a concrete deck and diving board. Changing the location of the fence and maintaining its 6 foot height in compliance with the fence regulations means the fence would run across the top of the concrete deck around the pool.

Effect of the Variance on Adjacent Property Owners (finding b): Per conversation with neighbor, the neighbor will not be adversely affected as the fence will abut the neighbor's fence line, and the neighbor's fence is 6 feet high.

Application of Zoning Requirements Constitute an Unnecessary Hardship (finding c): Restricting the fence height to 4 feet results in a loss of privacy for back yard and pool. Locating the fence further from the north property line, to allow for a height of 6 feet, would require removal of the diving board and possibly re-wiring and re-plumbing related to the pool.

A difference in grade between the pool and the area outside the existing fence location means the pool area is highly visible (pool is higher than the area north of the fence) and thus a 4 foot high fence renders the pool an "attractive nuisance."

Potential for Adverse Effect on the Public Health, Safety, Morals, Order, Convenience, Property, and General Welfare (finding d): Replacing the 6 foot fence in its current location does not impede traffic or sight distance, and is not detriment to public safety.

Variances is not in Conflict with the General Spirit and Intent of the Regulations (finding e): *"Granting of the variance for a 6 foot fence at the existing fence line would allow continuity of street appeal as all existing dog eared, cedar plank fences in the neighborhood are 6 feet in height. . . . a 4 foot fence would greatly vary from all other existing fences. . ."*

Analysis and Findings:

Pursuant to K.S.A. 12-759, and as set forth in TMC 2.45.110, the Board of Zoning Appeals shall find that **all** of the following conditions are met before a variance may be granted.

- a. **That the variance request arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district and is not created by action of the property owner or applicant;**

The property contains an in-ground swimming pool in the rear yard of a reversed corner lot, and the north edge of the pool is set back the same distance from the north property line (at street right-of-way) as the north side of the house. The setback at the north edge of the house is the minimum setback required for a fence exceeding a height of 4 feet

(applies to fences along the side yard of a reversed corner lot where the side yard abuts a street not classified as an arterial).

The pool has a concrete deck surrounding it, and the width of the deck on the north side of the pool is over 4 feet and as much as 6 feet, meaning the deck is located at least 4 feet closer to the front property line than the edge of the pool. Additionally, there is a diving board mounted on top of the concrete deck.

The conditions of the property leave the owner with two unpalatable options for complying with the fence standards: 1) replace the fence in its current location with the fence no higher than 4 feet, or 2) replace the fence with a fence higher than 4 feet but at a location approximately 13 feet south of its current location and over the top of the concrete deck surrounding the swimming pool.

The owner and applicant did not create the conditions regarding the swimming pool, deck, and fence. The City issued a permit for the swimming pool in 1989. The applicant moved to the property in 1994 and the pool and fence were present at that time.

The finding supports the requested variance.

b. That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residences;

According to the applicant, the existing fence has been in its current location since 1994 or before, when the current owner moved into the property. There is no record of a permit for the fence. Presumably the adjacent neighbors are accustomed to the fence. The fence that replaces the current fence will be in a new condition, which under most circumstances is preferred over a fence that has been in place for over 20 years.

The existing and proposed fence are set back approximately 17 feet behind the sidewalk. There is a lawn with and ornamental grasses and shrubs between fence and the sidewalk. The landscaped setback mitigates the potential harsh visual effect of the fence.

Planning staff notified adjacent property owners of the variance request and hearing. As of the date of this written report no comments or concerns have been received from neighboring property owners or other citizens.

The finding supports the requested variance.

b. That the strict application of the provisions of this chapter of which the variance is requested will constitute an unnecessary hardship upon the property owner represented in the application;

The applicant has established that compliance with the four foot fence restriction would constitute an ‘unnecessary hardship.’ The applicant purchased the property with a swimming pool and a six foot fence – unaware that: (1) no permit had been applied for the fence; and (2) the fence violated the four foot fence restriction. The applicants did not create the problem that spawned this variance request. Rather, they inherited the problem. While the applicant could remove the current fence and replace it with a four foot fence, in light of the proximity of the in-ground swimming pool to the sidewalk, a six foot fence is better able to protect the privacy of the property owners and promote

public safety by minimizing the opportunities for intruders. Furthermore, installing the new fence at a height of 6 feet at an increased setback, as required for a fence higher than 4 feet, is impractical and would greatly diminish the owner's use of the swimming pool.

The finding as stated supports the requested variance.

d. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare;

Granting the variance will have no significant adverse effect on the general welfare of the neighborhood and community. Approval of the variance enhances the owner's enjoyment of the property and for that reason helps to maintain or improve the value of the property. The variance will allow the owner to replace a deteriorating fence, and maintain privacy and security for the owner with no detriment to neighboring owners and residents.

The finding as stated supports the requested variance.

e. That granting the variance desired is not opposed to the general spirit and intent of this chapter.

The fence regulations (TMC 18.210.040) clearly restrict fences higher than 4 feet to be setback at or behind the front face of the principal residential building. On reversed corner lots the restriction applies to the both sides of the lot that abut street rights-of-way, as does 3121 SW Belle Avenue. The restriction is presumed to be intended to promote visually attractive residential neighborhoods and to protect adjacent owners and residents from unsightly fences. Regulating the location and height of fences is a way to mitigate the negative effects of unattractive fences.ⁱ A 6 foot high fence along the side of the rear yard of a reversed corner lot, when installed between the principal building and the street right-of-way, can disrupt the visual continuity along the street. Restricting the fence to 4 feet might lessen the negative impact of an unattractive fence conspicuously located along the edge of the street.

The proposed fence will be set back 15 to 17 feet behind the sidewalk. The lawn and other plants between the fence and sidewalk will mitigate the potentially negative visual effect of the fence, and in this way will accomplish the desired intent of the fence regulations.

The finding as stated supports the requested variance.

Planning Staff Recommendation

Based on the above findings staff recommend the Board of Zoning Appeals **APPROVE** the variance requested subject to the following conditions.

Conditions of Variance Approval

1. The fence shall be located no closer to the front property line than six (6) inches north of the fence existing at the time of the variance application on April 2, 2021.

2. The fence shall not exceed 6 feet in height and be constructed of wood. Approval of the Board of Zoning Appeals is required for a design and use of a material different from what is proposed in the variance application.
3. The finished side of the fence shall face SW 31st Terrace.
4. The owner shall maintain a lawn and ornamental plants between the fence and the sidewalk.
5. The fence shall be maintained in “good condition.” A fence in “good condition” means all of the wood planks and other materials are intact and the fence stands upright and is not leaning.

Staff Report by: Mike Hall, AICP, Current Planning Manager

Exhibits:

1. Variance Application including “Answer Sheet”
2. Photos by Owner/Applicant:
 - a. Photo #1 - Rear Yard, Pool, Deck, and Fence
 - b. Photo #2 - Back Side of Existing Fence. Black line indicates height of a 4 foot high fence compared to existing 6 foot high fence.
 - c. Photo #3 - View of Fence from SW 31st Terrace
3. Aerial Photo (by Owner/Applicant) of Site Showing Location of Fence
4. Aerial Map
5. Zoning Map
6. Exhibit: Aerial and Street Views by Planning Staff. Aerial view indicates location of fence and setback line

ⁱ TMC 18.210.040 (c) Requires fences to be constructed of “normally used fencing materials such as chain link, wood slats, masonry, iron, vinyl or other materials typically supplied by vendors of fencing materials” and requires the finished side of the fence to face the street.



APPLICATION TO THE BOARD OF ZONING APPEALS VARIANCE / EXCEPTION

CITY OF TOPEKA PLANNING DIVISION

620 SE MADISON, 3RD FLOOR (UNIT #11) | TOPEKA, KS 66607-1118
PHONE 785.368.3728 | EMAIL: PLANNING@TOPEKA.ORG

Applicant Information

Name: Leslie D Watson and Roni Davis-Watson

Address: 3121 SW Belle Ave Topeka KS 66614

Phone: 785-633-9947

Email: lrpWatson@aol.com

**For Planning &
Development
Use Only**

Case #

BZA21V/04

Hearing Date:

May 10, 2021

Property Information

Location of property: 3121 SW Belle Ave Topeka KS 66614

Legal description of property: (attach additional sheets if necessary)

Foxcroft One Subdivision Block C Lot 7.

Legal Ad Date:

4-9-21

Action Sought:

☒ **A variance** from a provision of the Zoning Ordinance

(Section to be appealed: 18.210.040)

☐ **An exception** from a provision of the Zoning Ordinance

(Section to be appealed: _____)

Description of Action Sought:

Requesting a variance to replace existing 6 foot high fence with new 6 foot high fence instead of a 4 foot high fence.

Zoning District:

Building Height:

Number of Stories:

Parcel Size:

Lot Dimensions:

Applicant offers the following as grounds for this action:

In accordance with Section 2.45.110 of the Topeka Municipal Code, the Board of Zoning Appeals must determine that **ALL** of the following conditions governing unnecessary hardship have been met before a variance may be granted.

All items must be addressed or the application will be deemed incomplete.

1. That the variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district and is not created by an action of the property owner or applicant *(The problem must relate to the land. Community needs or personal hardships do not qualify as legitimate grounds for issuing a variance.)*;
See Answer Sheet

2. That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents;
See Answer Sheet

3. That the strict application of the provisions of this chapter of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application;
See Answer Sheet

4. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, property, or general welfare;
See Answer Sheet

5. That granting the variance desired will not be opposed to the general spirit and intent of this chapter.
See Answer Sheet

ANSWER SHEET

Page 2 Question #1.

Currently we have a 6 foot vertical, dog eared, cedar plank fence surrounding the north side of our backyard. Within the backyard is a 16x32 foot, in-ground swimming pool with diving board. There is a concrete deck around the pool so the total dimensions of the pool and deck are 20x38 feet. The existing fence has been 6 foot in height since we moved to this property in 1994. This fence now needs to be replaced.

We contracted with Kansas Fencing to do the replacement. In the course of getting the permit to replace the fence, it was learned that the current fence is not in compliance with existing code since the fence is not set far enough back from the street to the fence's north and remain 6 foot in height.. To remedy this noncompliance, without a variance, we could move the fence from its current location and keep it at 6 foot, or erect a 4 foot high fence at its current location..

For us to retain a 6 foot high fence, we would need to construct a new fence approximately 10 feet to the south of the current fence's location. This would cause the new fence to run across the concrete pool deck and have us remove the diving board. If the fence were to stay at its present location, the fence height would be lowered to 4 foot. As explained later in this application a 4 foot high fence would cause us unnecessary hardship and be an anomaly in our neighborhood where predominantly all cedar plank fences are 6 foot in height.

Therefore we are asking for a variance so we can keep the fence at its current location and retain the 6-foot fence.

Page 2 Question #2

Based upon recent conversations with our neighbor, we believe the adjacent property owner will not be adversely affected. The fence that we are seeking the variance abuts with common fence line with us and this neighbor. Both fences are currently 6 foot in height.

Page 2 question 3

Installing a 4 foot fence at the existing fence line would result in us having very little privacy for our backyard and pool area. The pool area and backyard are approximately 4 foot higher in elevation than the existing fence line. As such a 4 foot fence makes our backyard and pool area highly visible from the sidewalks and street. This gives us concern not only for the decrease of privacy but also for the attractive nuisance our pool would become because of the increased visibility. Therefore the continuing of a 6 foot fence at the existing fence line offers us more relief for our privacy and overall safety of our pool and backyard.

In addition, if required to move the fence line further back from the street, the newly constructed fence line would cross the north end of our pool deck and require us to remove the existing pool diving

board. We also are highly suspect that pool rewiring and re-plumbing would be required because of this newly constructed fence line. This adds to the cost and time needed to complete the fence replacement project.

Page 2 Question #4

Replacing the existing fence line with a 6 foot fence does not impede visibility of traffic on 31st Street Terrace or Belle Avenue. Nor would it block or impede foot traffic along the 31st Street Terrace sidewalk. Based upon this, we believe that allowing the requested variance will not adversely affect the public health, safety, morals, convenience, property or general welfare.

As stated earlier, the requirement to install a 4 foot high fence at the existing fence line would adversely affect privacy and enjoyment of our pool and backyard since these areas would become highly visible from the sidewalks and street.

Page 2 Question #5

As stated before, granting a variances for a 6 foot fence at the existing fence line will not impede or block sidewalk and/or car traffic along 31st Street Terrace or Belle Avenue. This provides safety to others as well as increase our opportunities to use and enjoy our property which we believe does not oppose the general spirit and intent of this chapter.

Also granting of the variances for a 6 foot fence at the existing fence line would allow continuity of street appeal as all existing dog eared, cedar plank fences, in the neighborhood are 6 foot in height. We believe this to is in keeping with the general spirit and intent of this chapter since a 4 foot fence would greatly vary from all other existing fence and become the anomaly.

Authorization

Property Owner(s):

I/We the undersigned owner(s) of record hereby authorize the filing of this application and declare that all required materials are submitted along with this application and that the information and material is complete and accurate. I/We hereby acknowledge that all appropriate procedures, policies, and regulations have been reviewed and also understood that this application will be processed in sequence with respect to other submittals.

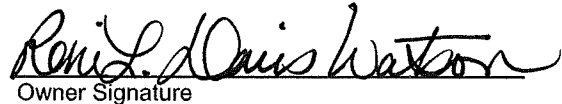
Leslie D Watson

Owner Name (print)


Owner Signature

Roni L Davis-Watson

Owner Name (print)


Owner Signature

Owner Name (print)

Owner Signature

Authorized Agent:

If the owner(s) of record are to be represented by legal counsel or an authorized agent, please complete the following information so that communications and correspondence pertaining to this application may be forwarded to such individual.

Authorized Agent Name (print)

Signature – Authorized Agent

Mailing Address:

STREET ADDRESS

CITY

STATE

ZIP

Phone: 785-633-9947

Email:

Applicant:

Leslie D Wataon

Applicant Name (print)

Applicant Signature

Additional Requirements

At the discretion of the City Planning & Development Staff, the applicant may be required to submit a site plan showing the subject property and the variance requested. This site plan may be required to identify some or all of the following items:

- Vicinity Map
- Scale equivalent to 1": 20'
- North Arrow
- Lot lines and dimensions
- All improvements located on the property
- All proposed improvements to the property
- Topography
- All dedicated easements on the property
- Building setback lines
- Property legal description
- A note detailing the proposed improvement
- Names and addresses of adjoining property owners
- Name and Address of Surveyor or Engineer
- Names and Right-of-way dimensions of adjacent streets
- Date of preparation
- Copy of Deed

It may be necessary to secure the services of a certified land surveyor or engineer in order to comply with the above stated requirements.

In addition to the above stated requirements, **PROOF OF OWNERSHIP MUST ACCOMPANY APPLICATION.**

This page does not need to be turned in with application.

ADDITIONAL INFORMATION

We have sent three photos of our backyard, pool area and the existing 6-foot-high fence.

Photo #1 was taken from our deck. It illustrates the backyard area, pool and existing fence.

Photo #2 was taken from the north end of the pool deck. The black line of the fence plank indicates where a 4-foot-high fence would be. This photo illustrates how visible our pool area and backyard would be if we were required to have a 4-foot-high fence at the existing fence line.

Photo #3 was taken from the curb of 31st Street Terrace. This photo illustrates the need for a fence replacement and that a 6-foot fence would not be an impediment to foot or auto traffic along 31st Street Terrace.

EXHIBIT 2a

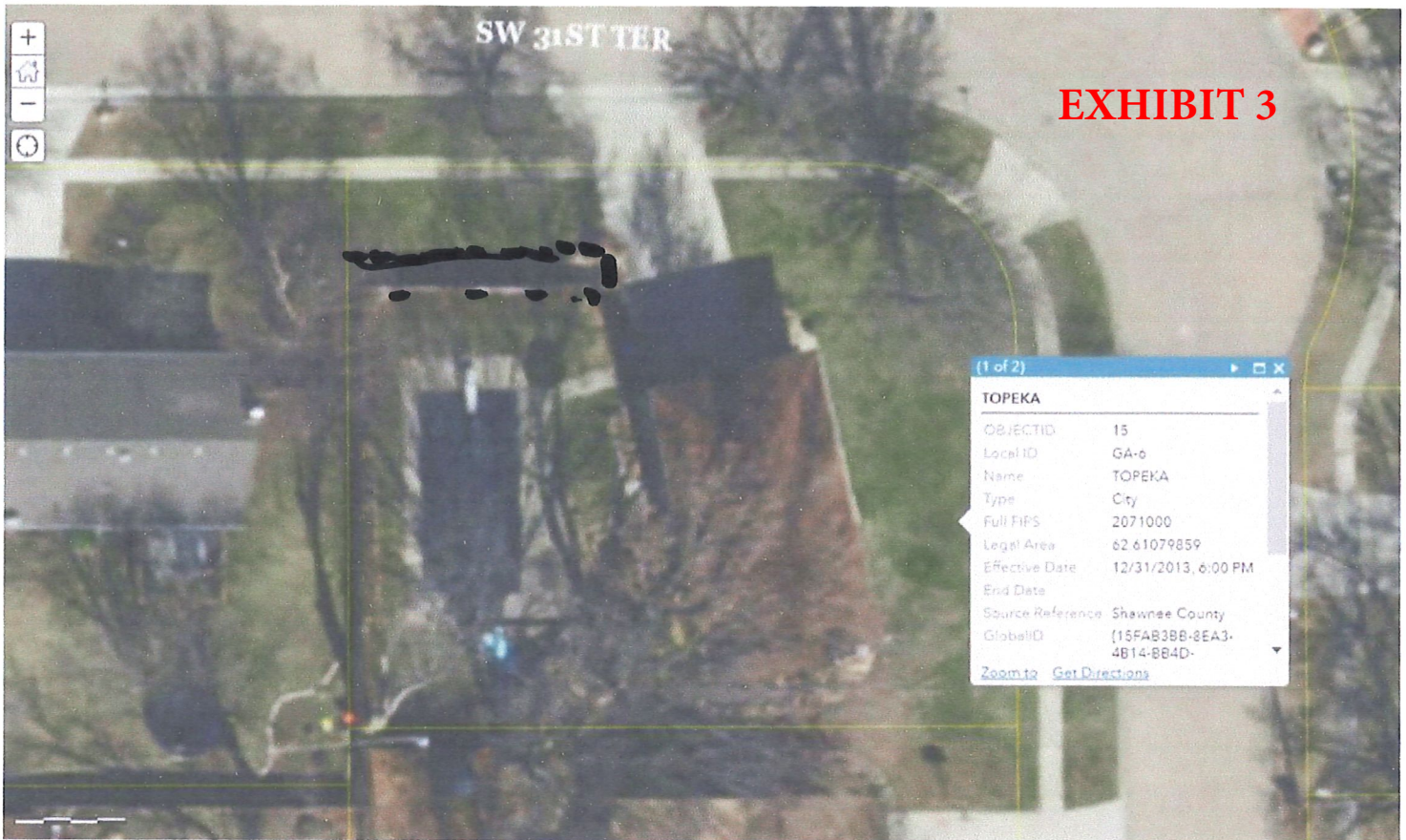


EXHIBIT 2b



EXHIBIT 2c



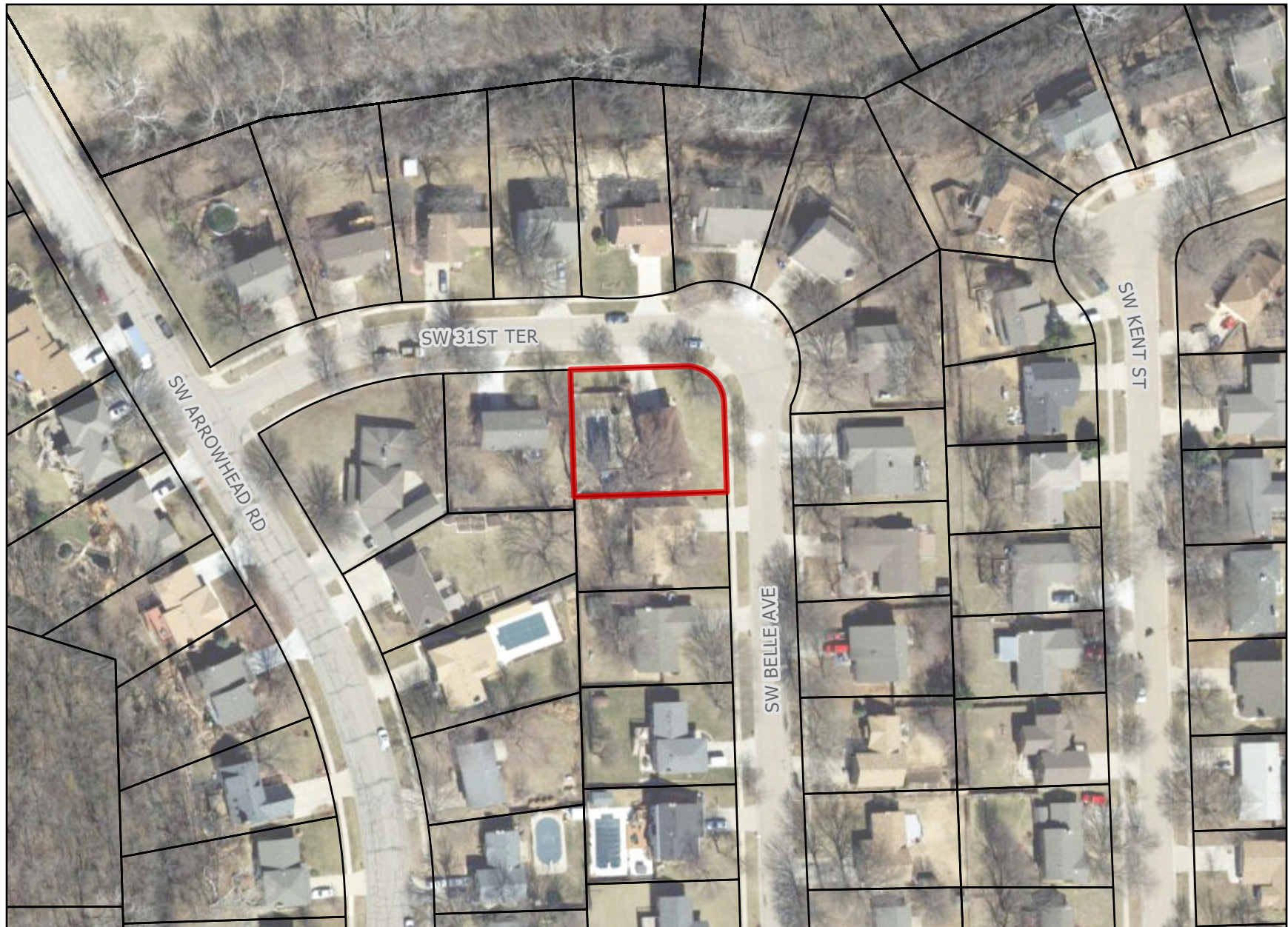


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EXISTING FENCE

BZA21V-04 by Leslie & Roni Davis-Watson

EXHIBIT 4



City of Topeka
Planning and Development
Department

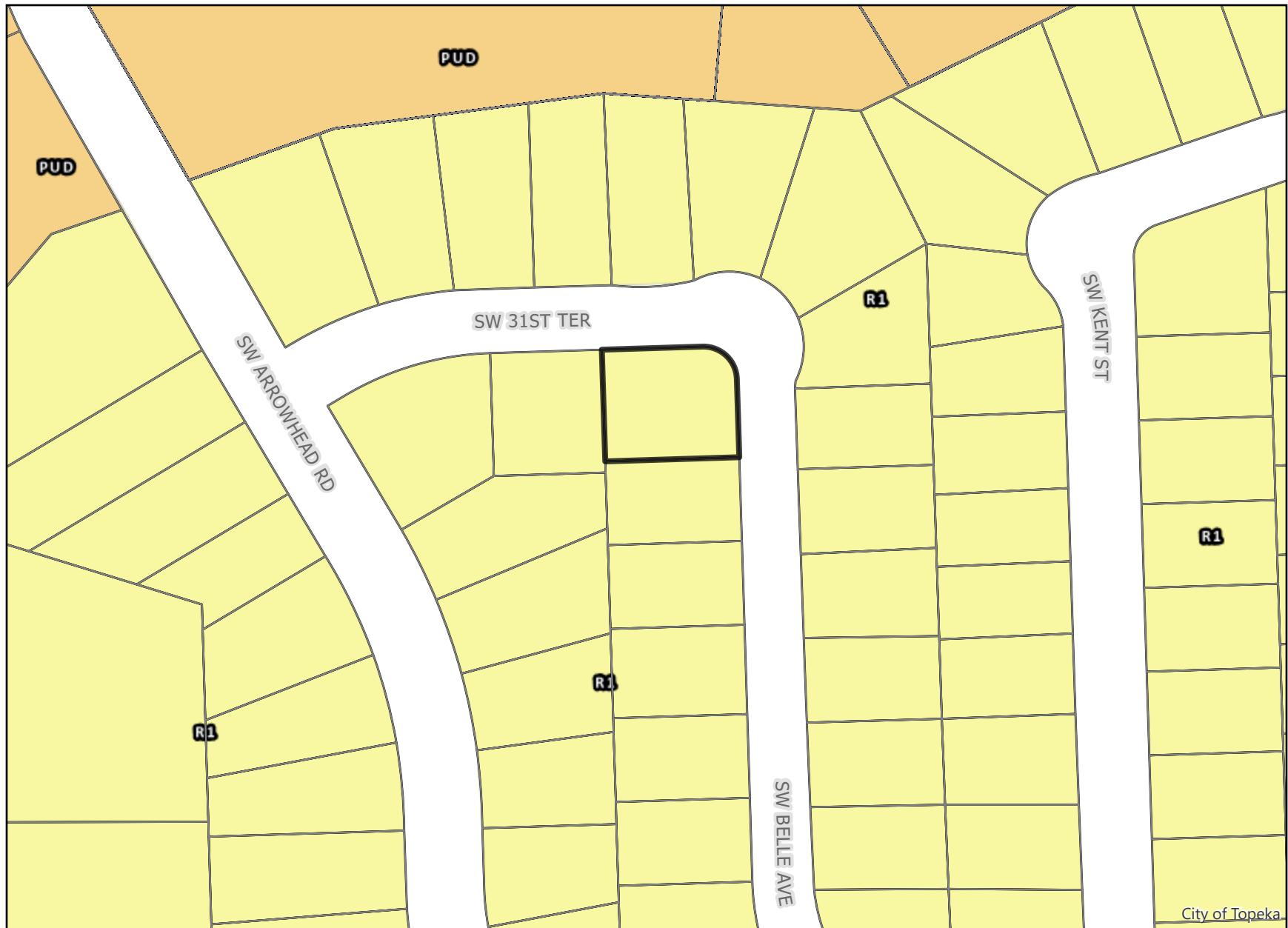


Subject Property

Aerial Map

BZAV21/04 by Leslie & Roni Davis-Watson

EXHIBIT 5



City of Topeka
Planning and Development
Department

Legend

 Subject Property

Zoning Map





Looking South from SW 31st Terrace



**Looking Southeast from SW 31st Terrace
Neighboring Property in Foreground on the Right**