

P.O. Box 1390 • 10 North Public Square • Cartersville, Georgia 30120 Telephone: 770-387-5600 • Fax: 770-387-5605 • www.cityofcartersville.org

# **MEMO**

To: BZA

From: Randy Mannino/David Hardegree/Zack Arnold

CC: Keith Lovell
Date: May 3, 2023
Re: File # V23-11

Summary: To allow an outdoor play structure in the front yard; and,

To allow a 6ft tall decorative fence in the front yard of a double frontage lot.

## **Section 1: Project Summary**

Variance application by applicant Lifepoint Church for property located at 407 Douglas St, zoned M-U (Multiple-Use). Setbacks are Front- 10ft and Side- 10ft. Said property contains approximately 2.92 acres. This lot has road frontages and front yards along Tennessee St., Mary St., and Douglas St.

There are two variance requests:

The applicant wishes to construct an outdoor play structure, to the front of the church that will encroach into the front yard along Tennessee St. The proposed location of the accessory structure is behind the front yard setbacks for Tennessee St. and Mary St. Sec. 4.9. requires outdoor play structures to be placed in the side or rear yard and comply with the setbacks of the district.

The applicant would also like to install a 6ft decorative fence around the outdoor play structure. This fence will also be in the front yard along Tennessee St. and Mary St. The fence is not proposed to encroach on either front yard setback. The fence ordinance for a double frontage lot, Sec. 4.16, requires fences installed in a front yard to be decorative and no taller than 4ft.

## The variance request is for the following and per the submitted plans:

- 1. To allow an outdoor play structure in the front yard of a commercial use property.
- 2. To allow a 6ft tall decorative fence in the front yard of a double frontage lot.

## **Section 2. Department Comments**

**Electric Department:** CES takes no exceptions.

**Fibercom:** No comments received.

**Fire Department:** CFD takes no exceptions to the variance request to allow for a fence and playground in the front yard at 610 N. Tenn. St. provided all city adopted codes and ordinances are followed.

Gas Department: Takes no exceptions.

Public Works Department: Has no objection

Water Department: Takes no exceptions.

## Section 3. Public Comments Received by Staff

None received as of 5-3-23.

## **Section 4. Variance Justification:**

Please review the following findings, as stated in the Zoning Ordinance, that are to be utilized in determining justification for approval or denial of variance request(s).

## Sec. 9.2. M-U Multiple use district.

- 9.2.1. *M-U district scope and intent*. Regulations in this section are the M-U district regulations. The M-U district is intended to provide land areas for medium to high density residential land uses and commercial uses complimentary to office and institutional uses as further described in section 3.1.15 of this chapter and where existing and projected traffic patterns encourage such development. The M-U district is intended to:
  - A. Encourage the development of tracts of land in the community;
  - B. Encourage flexible, innovative, and creative concepts in site planning;
  - C. Encourage efficient use of land;
  - D. Provide a stable multiple use environment compatible with surrounding uses; and
  - E. Protect neighboring residential properties by locating less intense uses adjacent to residential developments or by locating buffers between nonresidential and residential uses.
- 9.2.2. *Use regulations*. Within the M-U district, land and structures shall be used in accordance with standards herein. Any use not specifically designated as a permitted use in this section shall be prohibited.

- A. *Permitted uses.* Structures and land may be used for only the following purposes:
  - Accessory apartments (SU).\*
  - Amateur radio transmitter.
  - Amenities (as defined by this chapter).
  - Amusement, indoor.
  - Apartments and condominiums, above, below, or behind commercial uses in the same building (SU).\*
  - Art galleries.
  - Assembly halls.
  - Automotive and light truck rental facility (allowed on properties fronting an arterial or major collector street only).
  - Automotive specialty shops (allowed on properties fronting an arterial or major collector street only and shall be limited to four (4) bays).
  - Barber shops.
  - Beauty salons.
  - Bed and breakfast inn (SU).\*
  - Brewpub.
  - Catering, carry out, delivery.
  - Clinics (excludes veterinary).
  - Clubs or lodges (noncommercial) (SU).\*
  - Colleges and universities.
  - Community center buildings.
  - Condominiums.
  - Construction contractors:
  - ▲ General building contractors (provided there is no exterior storage of equipment, materials, and construction vehicles).
  - ▲ Heavy equipment contractors (provided there is no exterior storage of equipment, materials, and construction vehicles).
  - ▲ Special trade contractors; including but not limited to, construction subcontractors, engineers, architects, and land surveyors (provided there is no exterior storage of equipment, materials, or construction vehicles).
    - Convenience stores.
    - Dancing schools.
    - Day care facilities.
    - Delicatessens.
    - Distillery (SU).\*

- Dry cleaners.
- Duplex dwellings.
- Family day care.
- Financial establishments.
- Funeral homes (allowed on properties fronting an arterial or major collector street only) (crematories may be allowed in conjunction with a funeral home with approval of a special use).\*
- Group homes (SU).\*
- Guest house.
- Gymnasiums/health clubs.
- Home occupations.
- Homeless shelters (SU).\*
- Hospices (SU).\*
- Hotels (allowed on properties fronting an arterial or major collector street only).
- Institutions of higher learning including business colleges, music conservatories, and similar institutions.
- Laboratories (medical and dental).
- Laundromats.
- Libraries.
- Medical offices (excludes veterinary).
- Microbreweries (SU).\*
- Multifamily dwellings.
- Museums.
- Nursing home facilities.
- Offices, general.
- Parking lots.
- Parks, private.
- Patio homes.
- Pawn shops and/or title pawn (SU).\*
- Pet grooming.
- Personal care homes (SU).\*
- Places of assembly (SU).\*
- Printing establishments.

- Pubs and taverns.
- Public utility facilities.
- Radio and television broadcast stations.
- Radio, television, or other communication towers.
- Religious institutions (SU).\*
- Repair services, light (shoes, small appliances or similar).
- Restaurants (drive-thru restaurants as SU).\*
- Retail, general.
- Retail package stores (including liquor and malt beverages and/or wine sales only in a multi-tenant shopping center development consisting of a minimum of seven (7) business suites and additionally, that detached, stand alone, retail package stores shall not be permitted).
- Retirement centers (SU).\*
- Reupholstery shops.
- Schools, private (SU).\*
- Service stations (allowed on properties fronting an arterial or major collector street only).
- Single-family attached dwellings.
- Single-family detached dwellings.
- Stadiums (allowed on properties fronting an arterial or major collector street only).
- Storage, warehouse (allowed on properties fronting an arterial or major collector street only).
- Theaters.
- Townhouses.
- Wholesale sales office.
- \* Special use approval required.
- B. *Accessory uses*. Structures and land may be used for uses customarily incidental to any permitted use and a dwelling may be used for a home occupation.

## 9.2.3. Development standards.

- A. *Height regulations*. Single-family residential buildings shall not exceed a height of thirty-five (35) feet or two and one-half (2½) stories, whichever is higher; multifamily and nonresidential buildings shall not exceed a height of forty-five (45) feet or three and one-half (3½) stories, whichever is higher.
- B. Front yard setback: Ten (10) feet.
- C. Side yard setback: Ten (10) feet.

• If single-family attached, ten (10) feet end of each row.

## D. Rear yard setback:

- Office/institutional/commercial: Twenty (20) feet.
- Multifamily: Twenty-five (25) feet.
- Townhouse: Twenty (20) feet.
- Single-family attached: Twenty (20) feet.
- Single-family detached: Twenty (20) feet.
- Duplex dwellings: Twenty (20) feet.

## E. Minimum lot area.

- Townhouse/attached: Two thousand (2,000) square feet.
- Single-family detached and duplex dwellings Seven thousand (7,000) square feet.

## F. *Maximum density*.

- *Multifamily:* Fourteen (14) dwelling units per acre.
- *Townhouse/attached:* Twelve (12) dwelling units per acre.

## G. Minimum lot width at building line.

- Office/institutional/commercial: One hundred ten (110) feet per lot.
- Multifamily: One hundred ten (110) feet.
- *Townhouse:* Twenty (20) feet per lot.
- Single-family attached: Fifty (50) feet per lot.
- Single-family detached: Sixty (60) feet per lot.
- Duplex dwellings: Fifty (50) feet per lot.

## H. Minimum lot frontage.

- Office/institutional/commercial: One hundred ten (110) feet per lot.
- *Multifamily:* One hundred ten (110) feet per lot.
- *Townhouse*: Twenty (20) feet per lot.
- Single-family attached: Fifty (50) feet per lot.
- Single-family detached: Sixty (60) feet per lot.
- Duplex dwellings: Thirty-five (35) feet per lot.

## I. *Minimum heated floor area per dwelling unit.*

- *Multifamily:*
- ▲ 3-bedroom: Nine hundred (900) square feet.
- ▲ 2-bedroom: Seven hundred fifty (750) square feet.

- ▲ 1-bedroom: Six hundred (600) square feet.
- ▲ Studio/loft (in existing buildings): Four hundred fifty (450) square feet.
  - *Townhouse/attached:* One thousand (1,000) square feet.
  - Single-family detached: One thousand (1,000) square feet.
  - Duplex: Nine hundred (900) square feet.
- J. [Metal panels, metal sheathing, standard gray concrete block.] The use of metal panels or metal sheathing and/or standard gray concrete block on the exterior walls of any building or structure shall be prohibited with the exception that such materials may be used if finished with a product consisting of brick, stone, hard-coat stucco, or fiber cement siding.
- K. [Air conditioning units and HVAC systems.] Air conditioning units and HVAC systems shall be thoroughly screened from view from the public right-of-way and from adjacent properties by using walls, fencing, roof elements, or landscaping on multifamily and nonresidential properties.
- L. [Gable or hip roofs.] Gable or hip roofs shall have a minimum roof pitch of 6/12. Both gable and hip roofs shall provide overhanging eaves on all sides that extend a minimum of one (1) foot beyond the building wall.
- M. [Front building facade.] The front building facade of all principal buildings shall be oriented toward street fronts or adjacent arterial street fronts.
- N. *Minimum buffer requirements*. In addition to required setbacks, all nonresidential and/or multifamily property uses within the M-U district which abut a single-family residential district or use shall provide a minimum fifteen-foot wide buffer, five (5) feet of which can be within required setback, to provide a visual screen in accordance with section 4.17 of this chapter.
- O. *Minimum open space*. Multifamily developments shall have a minimum twenty (20) percent of gross acreage set aside as open space and shall provide recreational areas within said open space.
- P. Maximum commercial building floor area: Twenty thousand (20,000) square feet.
- Q. Accessory structure requirements. See section 4.9 of this chapter.
- R. Other standards.
  - 1. Townhouse developments shall have a minimum development area of one-half (½) acre. In addition to required setbacks, a fifteen-foot wide buffer is required along all property lines which abut a single-family district or use to provide a visual screen in accordance with section 4.17 of this chapter.
  - (a) Minimum lot depth: one hundred (100) feet.
  - (b) No fewer than three (3) dwelling units in a row shall be allowed.
  - (c) Alley or private drive access required.
  - (d) Required parking shall be allowed in the rear yard only.
  - (e) Principal buildings shall front a private drive or public right-of-way.
    - 2. Multifamily developments shall comply with section 7.1.3.K. and N. of this chapter.

- 3. Outdoor storage of landscape supplies and materials may be allowed in the side and rear yards of a non-residential land use with a special use (SU) permit.
- S. *Guest house*. In addition to standards required in this chapter, the following standards shall be met for a guest house:
  - 1. No more than one (1) guest house structure per lot.
  - 2. A minimum lot size of fifteen thousand (15,000) square feet shall be required.
  - 3. A guest house shall be occupied by relatives, employees that work on the property, or guests only.
  - 4. Heated floor area shall not exceed fifty (50) percent of the heated floor area of the principal building.
  - 5. A guest house structure shall comply with the principal setbacks of the district.
  - 6. A guest house shall not be allowed in the front yard.
  - 7. A guest house shall not exceed the height of the principal building on the lot.
  - 8. Requires owner-occupancy of the principal building on the lot.
- 9.2.4. *Other regulations*. The headings below contain additional, but not necessarily all, provisions applicable to the M-U district.
  - City of Cartersville Landscaping Ordinance.
  - City of Cartersville Sign Ordinance.

(Ord. No. 69-12, § 2, 12-6-12; Ord. No. 01-13, § 6, 1-3-13; Ord. No. 11-13, § 1, 7-1-13; Ord. No. 02-18, § 2, 1-18-18; Ord. No. 09-18, § 1, 4-19-18; Ord. No. 11-18, § 2, 5-17-18; Ord. No. 34A-18, § 1, 12-6-18; Ord. No. 30-19, § 1, 8-1-19)

## Sec. 4.9. Accessory uses, buildings or structures.

Accessory uses, buildings, or structures on residential lots shall be located within a rear yard only and be a minimum of five (5) feet from all property lines which do not abut a street right-of-way. A detached garage or carport may be allowed in a side yard of a residential lot and, if so placed, shall comply with the side yard setback requirements of the district. In the case of a residential corner lot, in which a lot abuts or adjoins the intersection of two (2) or more streets other than an alley, an accessory structure may be allowed in a side yard and, if so placed, shall comply with the side yard setback requirements of the district.

Accessory uses, buildings, or structures on nonresidential lots shall not be allowed in the front yard and must comply with side and rear yard requirements established for the zoning district in which such accessory buildings or uses are located. The following accessory uses, buildings, or structures on nonresidential lots may be allowed in a front yard of a nonresidential lot and, if so placed, shall comply with the front yard setback requirements of the district: ATMs (automated teller machines) and service stations.

All accessory uses, buildings, or structures in all zoning districts shall be subordinate to the principal structure. An accessory building's floor area shall be no larger than fifty (50) percent of the principal structure floor area. Accessory structures shall not exceed the height of the most prevalent roof top of the principal building on the property.

Outdoor play structures or play sets in commercial districts, commonly associated with fast-food eating establishments, shall be located in a side or rear yard only and shall comply with the required yard setbacks of the district.

All site plans for multifamily, commercial, and industrial buildings shall include a solid waste container pad that has easy and safe access for a front-end loader. Solid waste containers shall be screened from all streets and adjoining properties with a solid, opaque fence or wall which shall be a minimum of six (6) inches taller than the container.

An amenity, as defined by this chapter, shall not be considered an accessory structure.

#### Sec. 4.16. - Fences and walls.

## A. In all zoning districts:

- 1. No fence or wall shall constitute an obstruction to the vision for or create a hazard to vehicular traffic.
- 2. No fence or wall, including retaining walls, shall be constructed of exposed concrete block, tires, junk or other discarded materials.
- 3. The fencing standards as stated in this section shall not apply to fencing for detention ponds.
- 4. The wall standards as stated in this section shall not apply to retaining walls approved by the plan review process for planned developments.

## B. In all residential and commercial zoning districts:

- 1. Any fence or wall which extends into the front yard shall be ornamental or decorative, and shall not be opaque. Any such fence or wall may be constructed of brick, stone, wood, wrought iron, split rail, or other decorative material as approved by the zoning administrator.
- 2. Fences and walls shall not exceed four (4) feet in height in a front yard and shall not exceed eight (8) feet in height in a side or rear yard.
- 3. Chain-link fencing material may be used in the front yard with prior approval of a variance by the board of zoning appeals. No variance is required if chain link fencing material is used in a side or rear yard.
- 4. For a corner lot or double frontage lot, a screening or opaque fence may be installed to the rear of the principal structure at a maximum of eight (8) feet in height provided that the fence shall be located behind the required front yard setback and shall not be located adjacent to or abutting a collector or arterial street.
- 5. Razor wire (ribbon) shall be prohibited.

C. In all industrial zoning districts:

Fences or walls shall not exceed (8) feet in height in front, side and rear yards

## Sec. 21.3. - Powers and duties of the board of zoning appeals.

The board of zoning appeals shall have the following powers and duties:

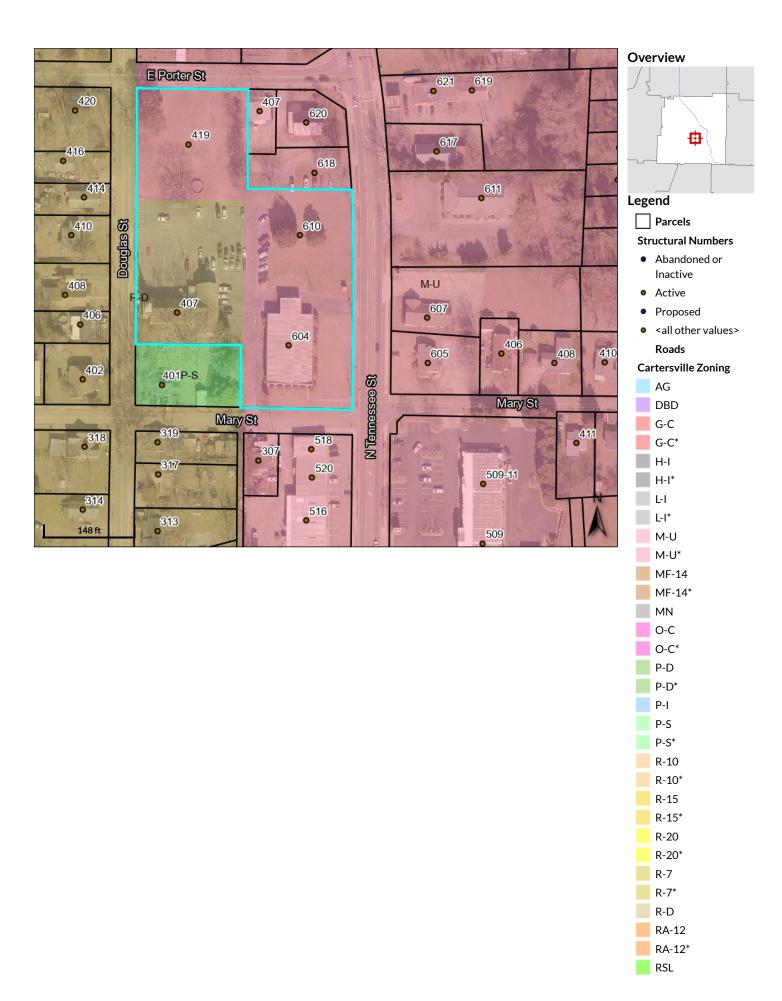
- 21.3.1. Appeals. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the zoning administrator in the enforcement of this chapter. Appeals to the board of appeals may be taken by any person aggrieved or by any officer, department, board, or agency of the City of Cartersville affected by any decision of the zoning administrator. Such appeal shall be taken within thirty (30) days of said decision by filing with the zoning administrator a written notice of appeal specifying the grounds thereof. Decisions on appeals shall be issued in writing within ten (10) business days of the hearing on the appeal.
- 21.3.2. Continuance of a nonconforming use. The board of zoning appeals may allow a nonconforming use to be reestablished after discontinuance for twelve (12) consecutive months. The procedure for the request shall be the same as if it was a variance. If it is deemed by the board of zoning appeals that one (1) or more of the following apply, the board may grant said request.
  - A. The design, construction, and character of the building is not suitable for uses permitted in the district in which the nonconforming use is situated; and
  - B. Undue hardships to the property owner would result in not allowing the building to be reopened for a nonconforming use; and
  - C. Adjacent property would not be unduly damaged by such use of the building; and
  - D. The use is to be identical or similar to the prior nonconforming use of the building.
- 21.3.3. *Variances*. The board of appeals has the power to hear requests for variances from the provisions of this chapter. Variance may be granted only if the board finds all of the following to exist:
  - A. That one (1) of the following is true, through no action or fault of the property owner or predecessor:
    - 1. The property is exceptionally narrow, shallow or unusually shaped;
    - 2. The property contains exceptional topographic conditions;
    - 3. The property contains other extraordinary or exceptional conditions; or
    - 4. There are existing other extraordinary or exceptional circumstances; and
  - B. That the strict application of the requirements of this chapter would result in practical difficulties to, or undue hardship upon, the owner of this property; and

C. That the requested variance relief may be granted without substantially impairing the intent and purpose of this chapter.

Variance decisions shall be issued in writing within ten (10) business days of the hearing.

- 21.3.4. *Conditions*. In granting a variance, the board of appeals may attach such conditions regarding the location, character and other features of the proposed building, structure, property, development standards or use as it may deem advisable so that the purpose of this chapter will be served, public safety and welfare secured and substantial justice done.
- 21.3.5. Limitations on variances; improper variance requests. Variances cannot be given to totally remove a requirement or to exempt a property or applicant entirely from a requirement. If a variance is being sought that is, in the judgment of the zoning administrator, a request that would constitute a text amendment, then the application shall not be accepted. The applicant shall instead be directed to file for a text amendment. Furthermore, the board of appeals shall not be authorized to grant a density variance or a use variance to permit a use in a district in which the use is prohibited. A variance application shall not be accepted if the variance seeks something that cannot be varied. A variance application shall not be accepted if the variance is contradictory to the ordinance.
- 21.3.6. Self-inflicted hardship. The board shall not grant variances when the hardship was created by the property owner or his predecessor, and shall not grant hardship variances based on shape or topography for lots of record not existing prior to November 7, 1996. Configuring a subdivision to create lots that are difficult to build is an example of a hardship created by the property owner or predecessor, that does not justify a variance.

Sections 21.3.7, Place of worship, and 21.3.8, Group homes, omitted. Not applicable.



## City of Cartersville Application for Variance

**Board of Zoning Appeals** 

Hearing Date: 5-11-2023 5:30pm	Application Number: <u>123-11</u>
	Date Received: 3-18-2023
Applicant LIFEPOINT CHURCH (printed name)	Office Phone 770 - 382 - 2040
Address GIO N. TENNESSEE ST.	Mobile/ Other Phone
City CARTERSVILLE State GA	Zip 30120 Email
Representative's printed name (if other than applicant)	Phone (Rep) <b>678 - 986 - 5587</b>
Representative Signature	Applicant Signature  Email (Rep) <u>ebruton@ heatco.com</u>
Signed, sealed and delivered in presence of:	My commission expires:
Rotary Public	3-16-23
* Titleholder LIFE POINT CONGREGATIONAL Phone 770 - 382 - 2040 (titleholder's printed name)	
Address GIO N. TENNESSEE ST. Signature	Email jw28jw@yaheo.com
Signed sealed, delivered in presence of:	My commission expires:
Notary Public	3-16-23
Present Zoning District CARTERSVILLE (DISTRICT 01) Parcel ID No. C010-0613-008	
Acreage 2.92 Land Lot(s) 157-164, 179-185 District(s) 338/4 Section(s)	
Location of Property: 610 N. TENNESSEE ST. MARY ST.  (street address, nearest intersections, etc.)  Zoning Section(s) for which a variance is being requested: 4.16(4) \$ 4.9	
Summary Description of Variance Request: INSTALL PLAYGROUND AND GPT. TALL FENCE	
(Additional detail can be provided on Justifation Letter)	

<sup>\*</sup> Attach additional notarized signatures as needed on separate application pages.

## **CONDITIONS VERIFICATION**

List the Article(s), Section(s) and Subsection(s) of the Zoning Ordinance for which a variance is

requested. Article IV Section 4.16 Subsection Section 4.9 Article\_\_\_\_IV Subsection\_\_\_\_\_ Article\_\_\_\_\_ Section\_\_\_\_\_ Subsection The Board of Zoning Appeals was established to hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the zoning administrator in the enforcement of the zoning ordinance. The Board has the power to hear requests for variances from the provisions of the zoning ordinance, Article XXI APPEALS. See Section 21.3 for additional information pertaining to conditions. To assist staff and the Board of Zoning Appeals in the analysis of the variance application, please check all of the following conditions that apply to your variance request: The property is exceptionally narrow, shallow or unusually shaped, 1. 2. The property contains exceptional topographic conditions, 3. \_\_\_\_ The property contains other extraordinary or exceptional conditions; and There are other existing extraordinary or exceptional circumstances; and The strict application of the requirements of this ordinance would result in practical difficulties to, or undue hardship upon, the owner of this property; The requested variance relief may be granted without substantially impairing the intent and purpose of this ordinance Additional Comments by Applicant: BASED ON ORIENTATION OF BUILDING AND ENTRANCE, THE DESIRED PLAN GROUND AND FENCE ARE LOCATED IN THE SIDE YARD. THE FENCE LOCATED AROUND THE PLAYGROUND MEJER GETS CLOSER TO THE ROAD(S) THAN THE CURRENT BUILDING. (43 PT. FROM TEUNESSEE ST.) (40 FT. FROM MARYS ST.) DESIRED FENCE TO BE G FT. TALL COMMERCIAL GRADE ALUMINUM FENCE (DARK BRONZE) WE ARE REPLICATING WHAT TABERNACLE BAPTIST CHURCH HAS FOR ALAYGICOUND PLACEMENT AND TALLER FENCELALSO ON TENNESEE ST.)

#### **Justification Letter**

To whom it may concern,

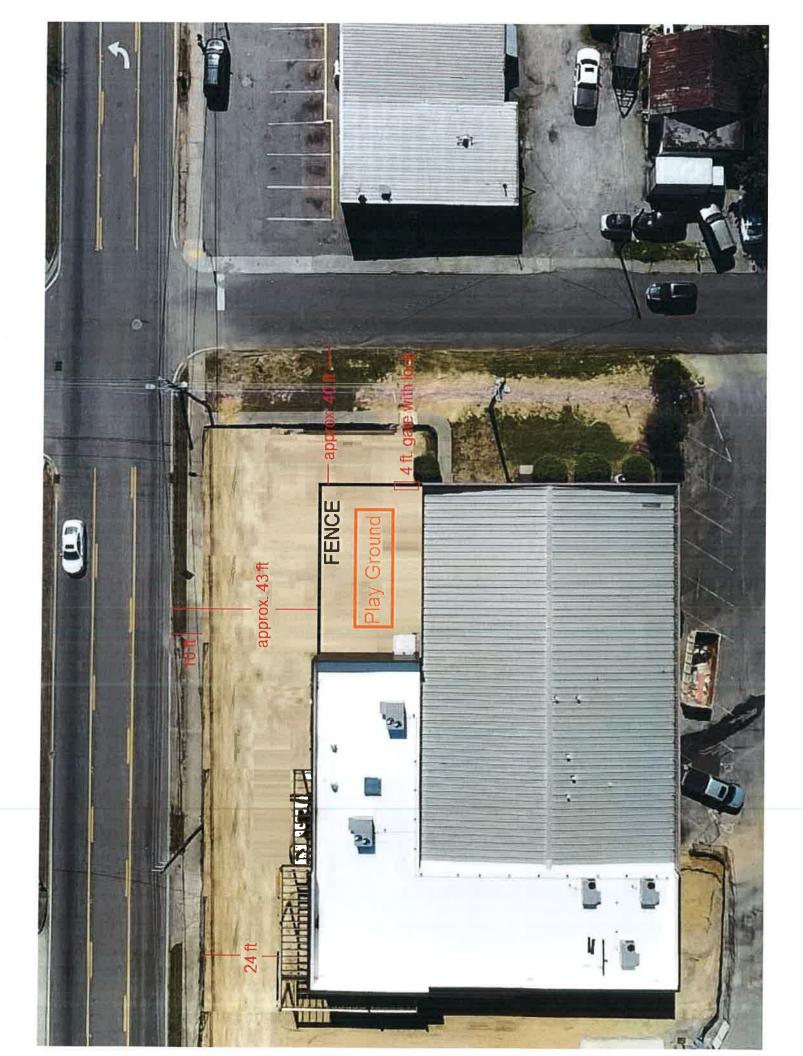
Lifepoint Church is looking to install a playground and a 6 ft tall fence on the corner of our property that is located at N. Tennessee St. and Mary St. We are asking for variance due to the clauses in the City Ordinance that are filled out in their entirety within this application.

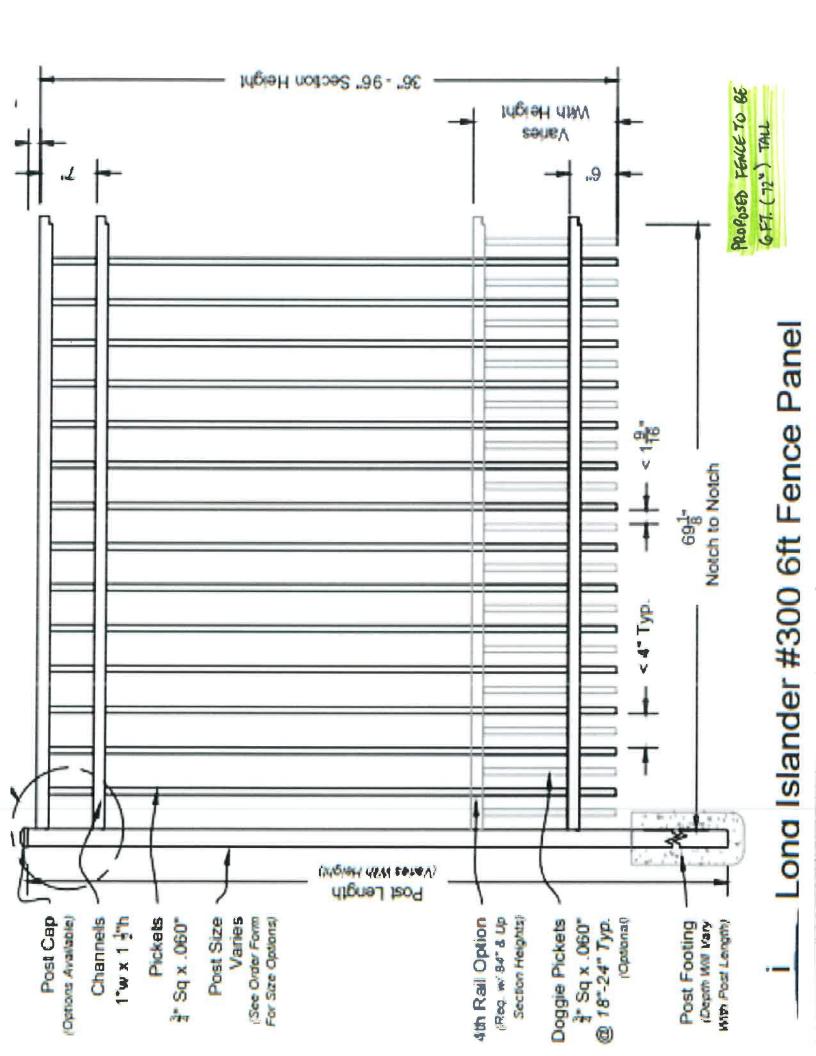
We feel that our proposed variance will not lead to degradation of aesthetics or value of neighboring properties. In all honesty, what Lifepoint Church wants to do should only increase property value for everyone in the area. The proposed fence that encloses the playground never encroaches on the streets any more than the current church building. Proper setbacks and clearances are all met with the proposed fence. We ask for a variance in fence height because the fence will house a playground and children. We feel as a safety precaution, a 6 ft fence would provide more safety and confidence than the City Ordinance requirement of no more than 4 ft in a front yard. The fence will be a painted aluminum (dark bronze) 6 ft tall fence as shown in the attached paperwork.

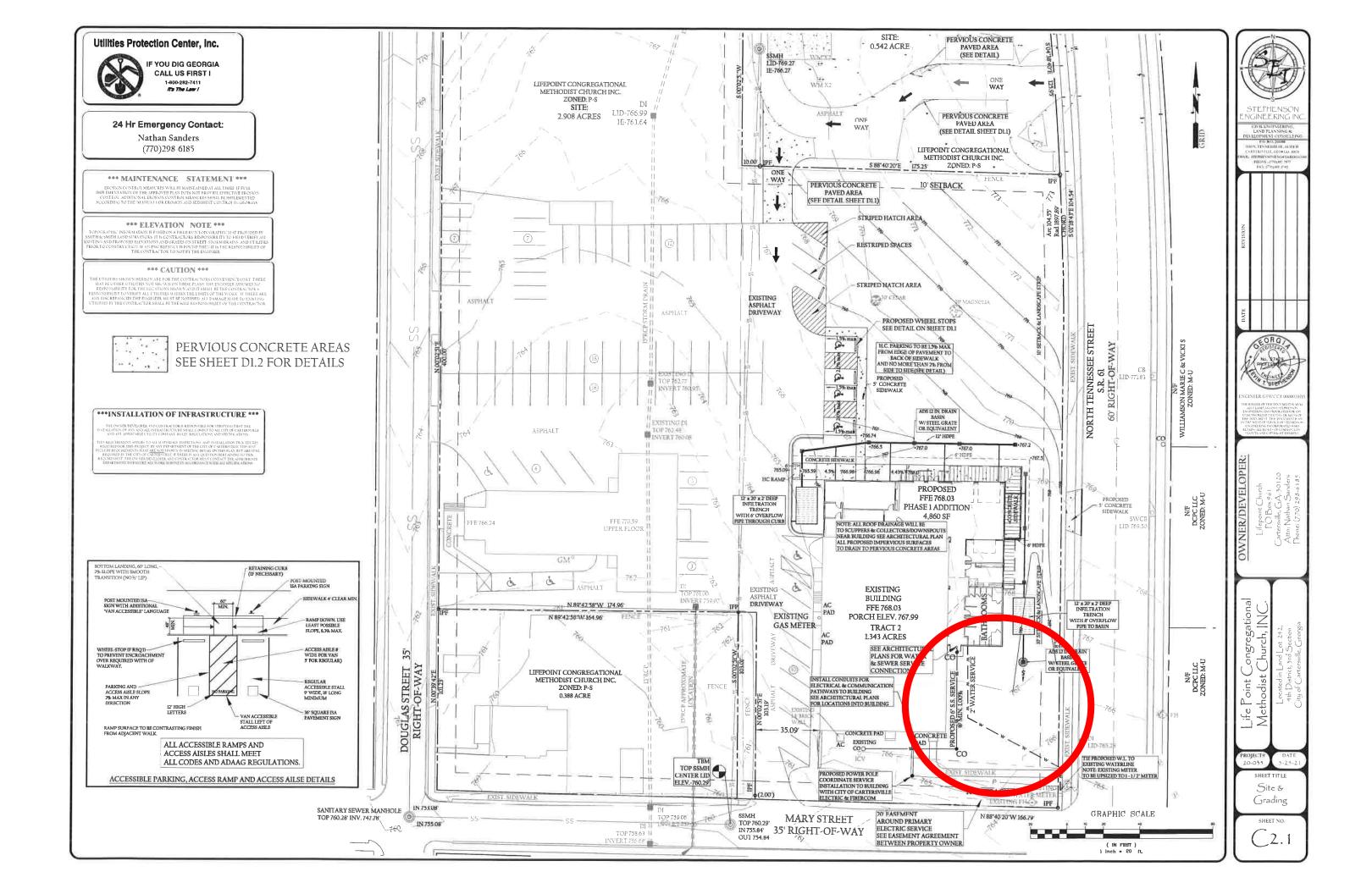
The other variance we are asking for is the placement of a playground in the "front yard". The proposed playground is in the back/side yard if you take into consideration the orientation of the building. When assessing other properties on Tennessee St. we found that Tabernacle Baptist church has the same set up. They have a playground between the church and Tennessee St. and a fence that surrounds it that is taller that 4 ft.

We will also be doing landscaping around the proposed fence at Lifepoint Church. There will be a mix of bushes and small trees that act as eventual shade and will also allow for more privacy.









# Images Taken 5-3-23











Imagen Taken 4-20-23

