



TO: City Council
XC: Sandy Riffle, Interim City Clerk
Brett Sollazzo, Administrative Assistant
Drew Smith, City Attorney
Allen C. Lane, Jr., P.E., CPH Engineering
FROM: Ellen Hardgrove, AICP, City Planning Consultant
DATE: August 9, 2022
SUBJECT: Tennis Court Fence Variance at 510 Gatlin Avenue

REQUEST DESCRIPTION/BACKGROUND

The request is to approve a variance to allow a ten feet high fence in the front yard of the property located at 510 Gatlin Avenue. Exhibit 1 provides an illustration of the subject property's location. The variance is specifically requested to replace an existing fence around an existing tennis court. The tennis court location is shown in Exhibit 2 with photos of the court and fence in Exhibit 3.

Exhibit 1 - Property Location N↑

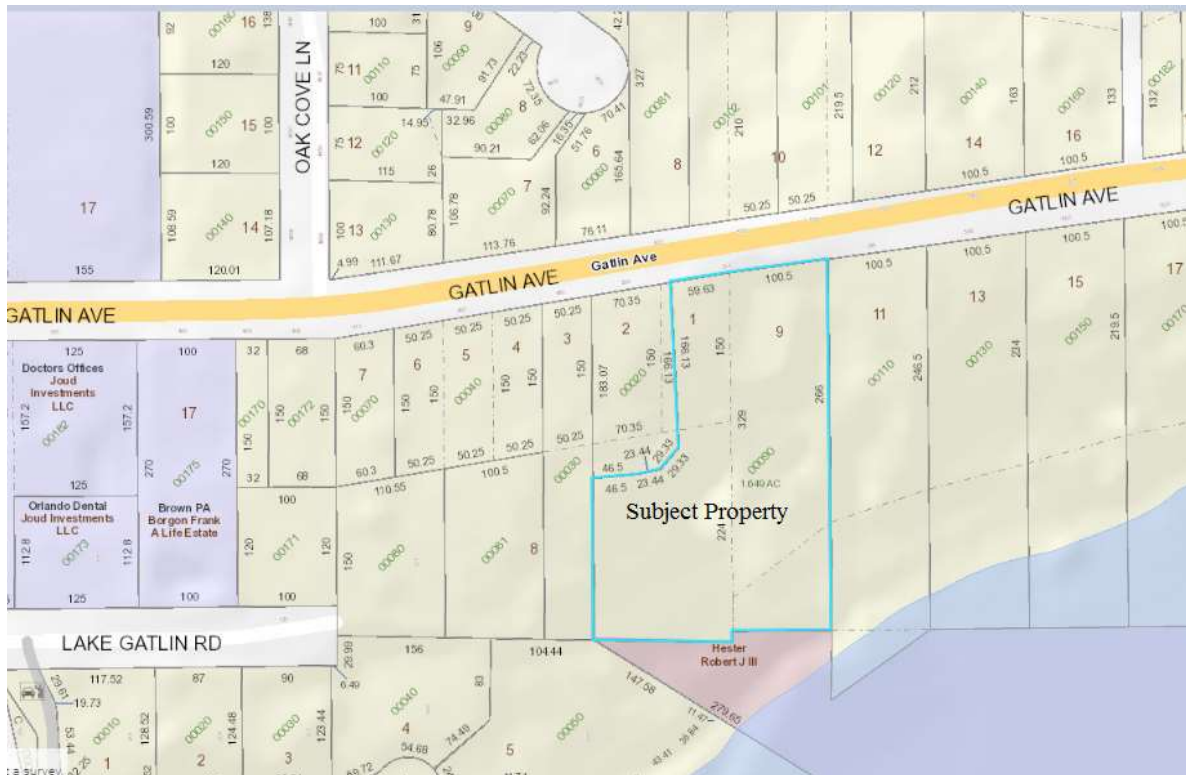


Exhibit 2 – Tennis Court Location

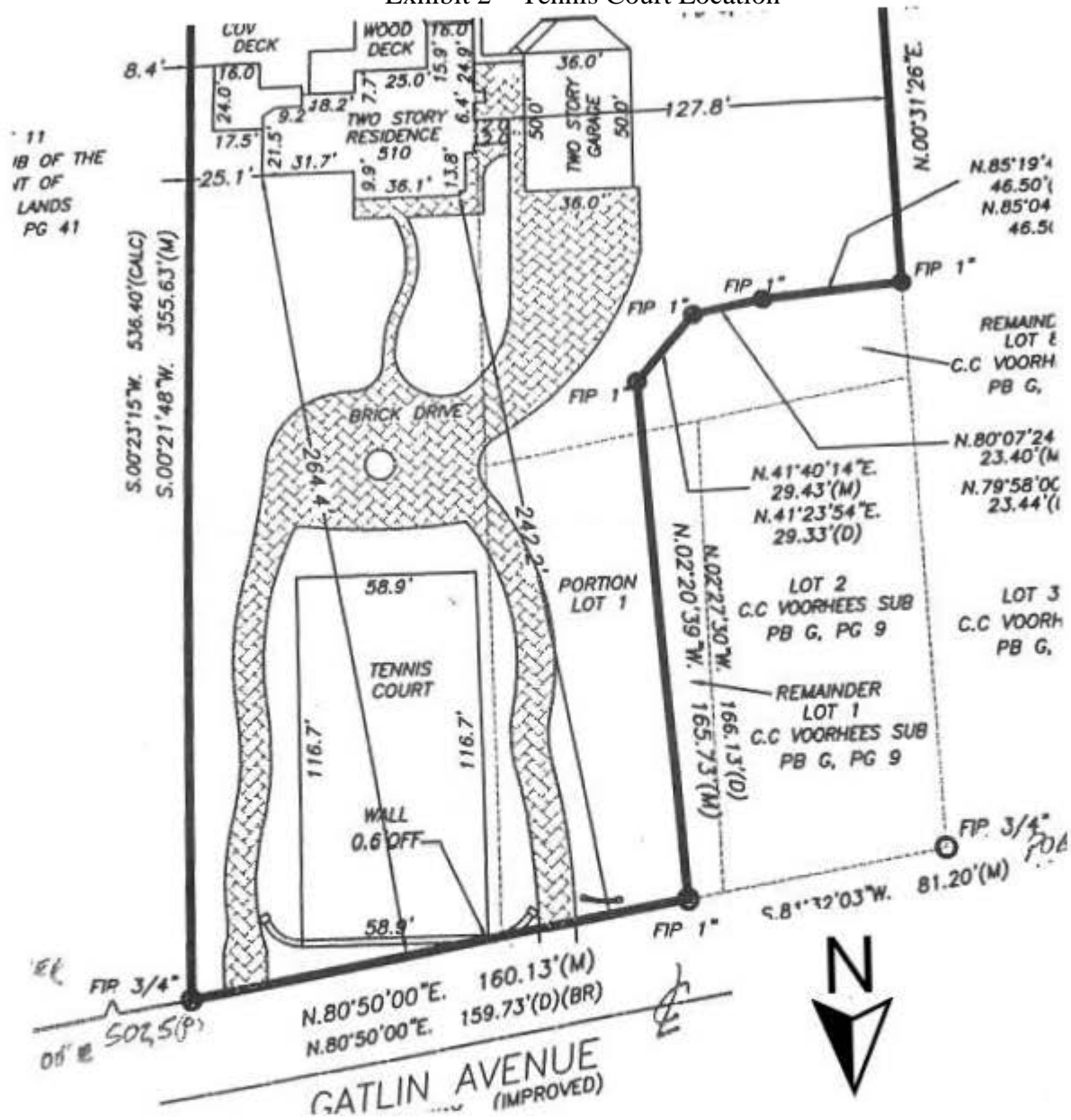


Exhibit 3 – Photos of the Existing Court

Looking north from the court toward Gatlin (8.5ft wall)



Northeast corner of court (9.5ft fence)



East side of court (5ft)



Looking at Southeast corner of court



West side of court (10ft)



Looking at southwest corner of court



West side of court (8.5ft)



Looking at Northwest corner of court



The existing fence varies from five (5) to ten (10) feet, with most of the segments in the front setback 8.5 to 9.5 feet, exceeding the maximum permitted in the front setback: four (4) feet per Code Section 134-517. The portions exceeding four feet in the front setback are viewed as legally nonconforming. As a note, the existing tennis court is also viewed as a legal nonconformity as an accessory use is not allowed in front of the principal building.

The date the tennis court was constructed is uncertain; the Orange County Property Appraiser online record identifies its construction as 1935, the same year the original house was built. The property was annexed into Edgewood in 1971. The assumption is that the tennis court and fence existed prior to annexation and likely prior to County regulation of fence height as the County's maximum fence height is identical to the City's.

Code Section 134-38 (Nonconforming uses) allows nonconformities to continue, but does not encourage their survival. Replacement requires conformance with code; i.e., maximum four feet in height in the north 25± feet of the court.

CRITERIA FOR VARIANCE APPROVAL

Variances are allowed where there are practical difficulties or unnecessary hardships in complying with the strict letter of the land development regulations. Per Section 134-104(3), prior to recommending approval of any variance, P&Z and City Council must find:

1. 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 zoning district;
2. That the special conditions and circumstances do not result from the actions of the applicant;
3. That approval of the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, buildings or structures in the same zoning district;
4. That 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;
5. That the variance approved is the minimum variance that will make possible the reasonable use of the land, building or structure; and,
6. That approval of the variance will be in harmony with the general intent and purpose of this chapter and that such variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

ANALYSIS

1. **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.** The tennis court is reportedly to have been constructed in 1935, not only pre-zoning but also when Gatlin Avenue was likely a non-major road. Gatlin is now a major road with records showing $\pm 8,000$ vehicles a day use.
2. **The special conditions and circumstances do not result from the actions of the applicant.** As stated in the report, it is reasonably probable that the tennis court and fence have been there over 50 years and predate zoning regulations. The current property owner acquired the property in 2006.
3. **Approval of the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, buildings or structures in the same zoning district.** Approval of the request will not confer on the applicant a special privilege. A tennis court is a permitted use on all R1AA zoned property. Typically these courts are located outside the front yard where the fence height is not restricted. It should be noted that the pending fence regulation re-write contemplates allowing higher fences in residential districts by special exception. If the fence regulation is approved as currently proposed, the requested fence height could be approved via the special exception application instead of a variance.
4. **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.** Denial of the request could deprive the applicant rights commonly enjoyed by other residential property owners with an existing tennis court on their property. In order for the property owner to enjoy the tennis court on the property, the higher fence is needed to constrain balls flying onto a major road.
5. **The variance approved is the minimum variance that will make possible the reasonable use of the land, building or structure.** Industry standard for fence height around hard courts is 10-feet with that height commonly extending at least 20 feet from each corner along the court's sides. The connecting fence lengths are typically the same height, shorter or non-existent.
6. **Approval of the variance will be in harmony with the general intent and purpose of this chapter and improves the public welfare by increasing the safety of motorists on the adjacent road.**

STAFF AND PLANNING AND ZONING BOARD RECOMMENDATION

“Approval of a ten feet high fence in the front yard conditioned on the location limited to around the existing tennis court on the subject property.”