

Board of Adjustment
Thursday, January 7, 2015
7:00 PM
Hood Room, Matthews Town Hall

AGENDA

- I. CALL TO ORDER
 - II. INVOCATION
 - III. APPROVAL OF MIINUTES
 - IV. VARIANCE REQUEST: BA 2016-1, Fence Height Variance at 3247 Winding Trail
 - V. ADJOURNMENT
- .

**MINUTES
BOARD OF ADJUSTMENT
THURSDAY, DECEMBER 3, 2015
HOOD ROOM, MATTHEWS TOWN HALL**

PRESENT: Members Cecil Sumners, and Jeanne Moore; Alternate Members Thomas Lawing, Gary Smith and Peter Tuz; Attorney Robert Blythe; Senior Planner Jay Camp and Administrative Assistant/Deputy Town Clerk Betty Lynd

ABSENT: Chairman Jim Jiles; Members Jerry Meek and Jim Mortimer

CALL TO ORDER/INVOCATION:

Mr. Sumners called the meeting to order at 7:00 p.m.

Alternates Thomas Lawing, Gary Smith, and Peter Tuz will act as voting members for the meeting.

Attorney Robert Blythe gave the invocation.

APPROVAL OF THE MINUTES:

Ms. Moore made a motion to approve the minutes of the July 9, 2015 meeting as submitted. Mr. Lawing seconded the motion and it passed unanimously.

SWEARING IN:

Mr. Sumners swore in all potential speakers.

VARIANCE REQUEST: BA2015-5, Rear Yard Variance, 1400 Four Lakes Dr

STAFF REPORT:

Mr. Camp stated the request is a variance to the rear yard to construct a single family home. The applicant is requesting a 15 yard variance. This site is zoned R-15 and is bordered by similar residential lots and East Independence Boulevard (U.S. 74). The site is larger than a typical R-15 lot, measuring 21,000 square feet. Mr. Camp showed the board the submitted survey on the projector screen.

Planning staff notes that it is possible to build a home on this lot without the variance. Staff has provided measurements of similar size homes on nearby lots.

Ms. Moore asked if the whole area outlined in green is the applicant's lot. Mr. Camp stated that it is. Ms. Moore asked if this would encroach on his neighbors. Mr. Camp stated that he could not legally encroach on neighboring properties. The variance request will place his home closer to neighboring lots.

Applicant Bob Rahilly, of John Street stated that the problem is the lot shape. He stated that he requested the variance in order to center the home on the lot. Mr. Rahilly explained that his home would sit closer to his neighbor's home than other adjacent homes so it would not look similar to the rest of the neighborhood without the variance. He stated that his lot is approximately 8 foot higher than the adjacent commercial building.

Ms. Moore asked how far away from the rear lot line would the home be located.

Luis Albiza, the contractor building the home, stated that to the right side of the property the neighbor has built their home almost on the side setback line. If Mr. Rahilly were to fit the home into the required

setbacks, he would also have to build very close to the side yard setback and the two homes would be closer together visually than other homes in the neighborhood. Mr. Albiza stated the variance would allow Mr. Rahilly's home to conform to the rest of the neighborhood's visual appearance.

Ms. Moore asked if the applicant had considered floorplans that would fit the current allowed building pad. Mr. Albiza stated that it would increase the cost of construction and stop Mr. Rahilly from building a ranch floor plan that he desires.

Mr. Albiza presented photos of the site, which have been included in the record.

Brandy Cox, of Forest Drive came forward to speak for the neighbors. She stated there is no opposition from the neighborhood in granting the variance.

Mr. Rahilly stated that he appreciated the board's consideration.

DELIBERATION:

Mr. Sumners stated that from his perspective, the variance would allow the home to conform to the neighborhood. Ms. Moore stated she believe it was a reasonable request.

Findings of Fact

1. There would be unnecessary hardship from strict application of the ordinance.
2. Hardship results from the conditions that are peculiar to the property, without granting the variance.
3. The hardship did not result from actions taken by the applicant or property owner.
4. The requested variance is consistent with the spirit, purpose, and intent of the title, because public safety is secured and justice is achieved.

Mr. Smith stated that the shape of the lot and the required setbacks restrict the size of the building pad. Mr. Tuz stated the property owner is coming forward now as opposed to this matter being discovered by staff once the home is built. The shape of the lot would still be an issue no matter who the property owner is. Mr. Tuz also stated that it will enhance the neighborhood by allowing the home to not be so close to neighboring homes.

Ms. Moore made a motion to approve BA2015-5, variance to the rear yard setback. Mr. Tuz seconded the motion and the motion passed unanimously.

ADJOURNMENT:

Mr. Smith made a motion to adjourn the meeting at 7:32 p.m. Mr. Lawing seconded the motion and the motion passed unanimously.

Respectfully submitted,

Betty Lynd
Zoning Technician/Deputy Town Clerk

**Matthews Board of Adjustment
Variance Request for 3247 Winding Trail
January 7, 2016**

Summary of Request

The applicant requests a variance of 3' +/- to allow an existing fence with a height of up to 9' or more to remain on the property.

Background

The property at 3247 Winding Trail, further identified as tax parcel 21517134, is a corner lot near the entrance to the Saddlebrook subdivision. The area of the lot in question is a side lot line on the south side of the property adjoining 3239 Winding Trail. Town Code Enforcement Officer Carlo McKoy issued a Notice of Violation on November 19, 2015. In the notice, which can be found later in this report, Mr. McKoy cites the owner of the property for a privacy fence that is greater than 6' on some portions of the property. Within the Town of Matthews, fences and walls in residential districts may only extend 6' from the ground as measured directly under the fence. The property owner has corrected the excess fence height on the street side of the lot. In the variance application, the applicant complains of privacy and safety concerns as the primary reason for retaining the portion of the fence on with additional height on the interior side. However, this is a common issue for homeowners in a subdivision setting and does not present a unique situation worthy of the granting of a variance. If a variance is granted, it could indeed set a precedent for homeowners seeking to construct taller privacy fences in the community.

Potential Solutions

Unlike the majority of homes in subdivisions in Matthews, there exists a large distance of approximately 60' between the subject home and the adjacent home. This gracious separation allows more room for plantings and vegetation. The subject home is also located at a higher elevation than the property from which they are attempting to gain privacy from. There are several solutions which the property owner has not indicated they have attempted which may remedy privacy concerns. Additional landscaping can be installed along common lot lines where privacy is an issue. Also, the 6' height limit only applies within the required yard areas. This property, zoned R-15, has a 10' side yard requirement. The owner could elect to move the fence 10' inward and build the fence as high as they choose without impacting the adjacent owner.

Example Findings of Fact

In reaching a decision on a variance request, the Board shall make findings upholding all of the following criteria:

1. Unnecessary hardship would result from the strict application of this Title. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

The owner has several options available to created the intended level of privacy without violation of Town Code. This options include, but are not limited to, increased landscaping and relocation of the fence.

2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. (Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.)

The condition is die to personal issues, not unique circumstances related to the land, which is the criteria needed to make a hardship finding.

3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

The fence appears to have been constructed by a previous owner.

4. The requested variance is consistent with the spirit, purpose, and intent of this Title, public safety is secured, and substantial justice is achieved.

The request is inconsistent with the UDO. The argument provided in the application is not inconsistent with virtually any typical subdivision lot within the Town. Using the argument provided, any homeowner could request a variance to fence height within the Town.

Findings of Fact Standards for Zoning Variances

In granting any zoning variance, the Board of Adjustment shall make findings that the spirit of the ordinance shall be observed, public safety and welfare shall be secured, and substantial justice shall be done. To reach these findings, the Board of Adjustment shall consider the following 7 standards:

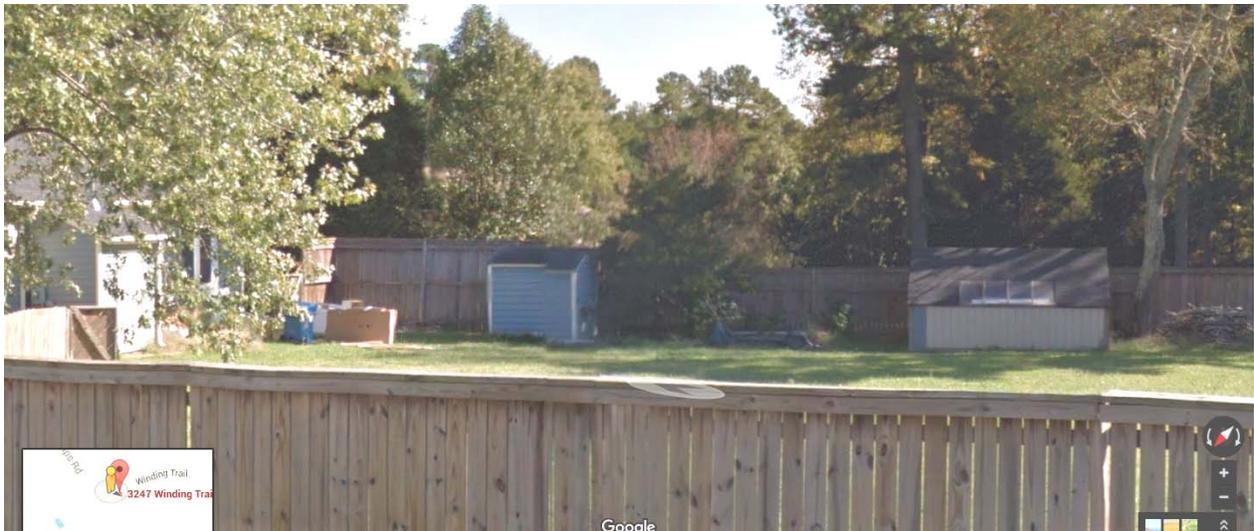
1. That special or unique circumstances or conditions or practical difficulties exist which apply to the land, buildings or uses involved which are not generally applicable to other land, buildings, structures, or uses in the same zoning districts.
2. That the special conditions or circumstances or practical difficulties do not result from the actions of the property owner or applicant, their agent, employee, or contractor. Errors made by such persons in the development, construction, siting or marketing process shall not be grounds for a variance except in cases where a foundation survey submitted to the Planning Director, or designee, before a contractor proceeds beyond the foundation stage has not revealed an error which is discovered later.
3. That the unique hardship situations cited by the applicant are not hardships resulting from personal or household members' circumstances which would no longer be applicable to the location if the applicant or household was no longer present at the property.
4. That the strict enforcement of this Title would deprive the owner or applicant of reasonable use of the property that is substantially consistent with the intent of this Title.
5. That the granting of a variance will not result in advantages or special privileges to the applicant or property owner that this Title denies to other land, structures, or uses in the same district, and it is the minimum variance necessary to provide relief.
6. That the proposed use and the appearance of any proposed addition or alteration will be compatible with, and not negatively impact, nearby properties.
7. That the variance shall not be materially detrimental to the health, safety or welfare of persons residing or working in the neighborhood. Consideration of the effects of the variance shall include but not be limited to, increases in activity, noise, or traffic resulting from any expansion of uses allowed by the variance.

**Matthews Board of Adjustment
Variance Request for 3247 Winding Trail
January 7, 2016**

The aerial image below shows the approximate location of the portion of the fence in violation.



**Matthews Board of Adjustment
Variance Request for 1400 Four Lakes Dr
January 7, 2016**





232 Matthews Station Street
Matthews, NC 28105
704.847.4411

APPLICATION FOR A ZONING VARIANCE

Date Filed: 12/15/2015

Hearing Date: January 7, 2016 Hearing Time: 7:00 p.m.

HEARING LOCATION: Hood Room, Matthews Town Hall, 232 Matthews Station Street, Matthews, NC 28105

Property Owner Name(s): Walter L. Trapp III and Hannah Trapp

Subject Property Street Address: 3247 Winding Trail, Matthews, NC 28105

Subject Property Tax Parcel ID: 215-171-34

Current Zoning District of Subject Property: _____

Subject Property is Concurrently Seeking a Change in Zoning Classification To: _____

Property Owner is Applicant Appearing Before Board of Adjustment: Hannah Trapp

Applicant Appearing Before Board of Adjustment is Purchasor*/ Lessee*/Other* N/A

*Written explanation is required _____

To the Town of Matthews Zoning Board of Adjustment:

This Application for a Zoning Variance is being submitted because the property identified above cannot be used in the following manner: As homeowners, we would be unable to utilize our backyard as a safe and secure play

area for our children due to concerns about the neighbors who live at 3239 Winding Trail having a direct line of sight into our backyard without a privacy fence elevated above six feet on the left side of our property. There have been documented cases of police reporting to 3239 Winding Trail and we have also observed erratic behavior of our neighbors which could cause harm to our children if the neighbors were able to observe our children playing in the backyard (which would result if the fence height is reduced to six feet).

Without relief from one or more specific provisions of the Unified Development Ordinance (UDO). UDO section(s) which affect this ruling is/are: 155.601.21 Fences and Walls in Residential Districts and Developments, Section A, which states:

"Wthin the single-family residential districts (R-20, R-15, R-12, R-9, R-MH, R-VS, CRC), no wall or fence may exceed...more than six feet (6') in height within any required side or rear yard."

APPLICATION FOR A ZONING VARIANCE, CONTINUED

FACTORS RELEVANT TO THE ISSUANCE OF A VARIANCE

The Board of Adjustment does not have unlimited discretion in deciding whether to grant a variance. By law, the Board is required to reach four (4) conclusions as a prerequisite to issuing a variance: (i) that unnecessary hardship would result from the strict application of the ordinance; (ii) that the hardship results from conditions that are peculiar to the property; (iii) that the hardship does not result from actions taken by the applicant or the property owner; and, (iv) that the variance is consistent with the spirit, purpose, and intent of the zoning code, public safety is secured, and substantial justice is achieved. In the spaces provided below, indicate the facts that you intend to show and the arguments that you intend to make to convince the Board that it can properly reach these four required conclusions. **IT WILL BE YOUR RESPONSIBILITY TO PRESENT THESE FACTS BY SWORN TESTIMONY AND COMPETENT EVIDENCE.**

- (i) **UNNECESSARY HARDSHIP WOULD RESULT FROM THE STRICT APPLICATION OF THE ORDINANCE.** It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property. (State facts and arguments to show that the variance will not result in advantages or special privileges to the applicant or property owner that the ordinance denies to other land, structures, or uses in the same district, and it is the minimum variance necessary to provide relief.):

There is unnecessary hardship due to the fact that neighbors at 3239 Winding Trail can see directly into our backyard (the reason for this is addressed in the following section ii), without the presence of the privacy fence which is currently elevated above six feet (approximately 8-9 feet in height for a length of approximately ~~14~~¹² feet on the left side, and approximately 7 feet in height on the remainder of the left side of the fence). This unnecessary hardship results in our inability to use the backyard as a private, secure, and safe place for our young children to play. The neighbors at 3239 Winding Trail have demonstrated criminal activity with seven police reports in the past ten years, with two of these being violent in nature. Also, we have remedied the right side of the fence (the side facing the road) to be in compliance with the zoning code as well as the rear fence to be an average of six feet in height. This does not grant any special advantage; it is merely the commonly accepted use of a private backyard as a safe play area for children. We only ask to keep the elevated height on the road-facing and left side of the property that borders 3239 Winding Trail, and we have already complied with the zoning code to ensure this is the minimum variance necessary to provide relief.

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- (ii) **THE HARDSHIP RESULTS FROM CONDITIONS THAT ARE PECULIAR TO THE PROPERTY, SUCH AS LOCATION, SIZE, OR TOPOGRAPHY.** Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. (State facts and arguments to show that special and unique circumstances or conditions exist which apply to the land, buildings or uses involved which are not generally applicable to other land, buildings, structures, or uses in the same zoning district.):

The neighbors at 3239 Winding Trail have a second story balcony-style deck which provides a direct line of sight into our backyard without use of our privacy fence which is elevated above six feet in height. However, the elevated height on the left side of the fence provides privacy and a physical barrier for safety. The neighbors at 3239 Winding Trail have had seven police reports filed within the past ten years, two of which are violent in nature. Also we have observed on one occasion one of the neighbors at 3239 Winding Trail swinging at the bushes in the yard which separate the two yards with a baseball bat. The neighbor acknowledged our presence and did not make any physical advances, but we suspect that the neighbor believed there was something in the bushes which needed to be removed (i.e. a hallucination). This same neighbor later stated to Walter (my husband) that he was "trying to get the kids out of the bushes." There are also frequently many different cars coming and going from the front yard which do not belong to the owners of the home. By obstructing the direct line of sight into backyard, this could prevent a potentially dangerous situation for anyone who is in our backyard, including ourselves and our children.

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APPLICATION FOR A ZONING VARIANCE, CONTINUED

- (iii) THE HARDSHIP DOES NOT RESULT FROM ACTIONS TAKEN BY THE APPLICANT OR THE PROPERTY OWNER. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship. (State facts and arguments to show that the hardship did not result from personal circumstances which would no longer be applicable to the location if the applicant or household was no longer present at the property.):

We purchased the home at 3247 Winding Trail in January 2015. The privacy fence was already in place at that time and we have not increased the height or modified the fence in any way, prior to the citation filed on November 19, 2015, when we lowered the height of the rear fence and the right side of the fence (the side facing the road). We have reduced the height of the fence to an average of six feet on the other sides of the fence; our only request is to keep the fence at its current elevated height on the side which borders 3239 Winding Trail.

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- (iv) THE REQUESTED VARIANCE IS CONSISTENT WITH THE SPIRIT, PUPOSE, AND INTENT OF THE ZONING CODE, PUBLIC SAFETY IS SECURED, AND SUBSTANTIAL JUSTICE IS ACHIEVED. (State facts and arguments to show that, on balance, if the variance is denied, the benefit to the public will be substantially outweighed by the harm suffered by the applicant.):

If the variance requested is denied, then there will be substantial harm to ourselves as homeowners and residents of the Town of Matthews. This harm would be in the form of our children being unable to play safely in their own backyard. Even with close supervision, if the neighbors at 3239 Winding Trail are able to see directly into our backyard, then we will be unable to allow our children to play outside in good conscience. With the line of vision obstructed, our children will be able to play in the backyard with supervision. There is no benefit to the public by reducing the fence height on the left side of the yard; future residents of our property will also require the elevated fence height on the left side of the property to ensure privacy and safety. Any concern about the aesthetics of the fence at our property were originally generated due to a complaint regarding the right side of the fence (the side facing the road) and this has been remedied, so that it is no longer an issue. We urge you to consider allowing us to keep the left side of our fence at its elevated height so that we may have our safety secured and that justice for us as homeowners may be achieved.

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APPLICATION FOR A ZONING VARIANCE, CONTINUED

I certify that all of the information presented by me in this application, including attachments, is accurate to the best of my knowledge, information and belief.

Hannah Trapp

Print applicant name

Print representative name



Signature of applicant

Signature of representative

3247 Winding Trail

Mailing address of applicant

Mailing address of representative

Matthews, NC 28105

City, State Zip

City, State Zip

hannah.trapp@gmail.com

Email address of applicant

Email address of representative

12-15-2015

Date

Date

NO REQUEST FOR A ZONING VARIANCE WILL BE CONSIDERED COMPLETE AND PROCESSED PER § 155.403.2.B. UNTIL ALL SECTIONS HAVE RESPONSES, ALL DOCUMENTS AND EXHIBITS ARE ATTACHED, AND THE PROPERTY OWNER HAS SIGNED THE APPLICATION FORM.

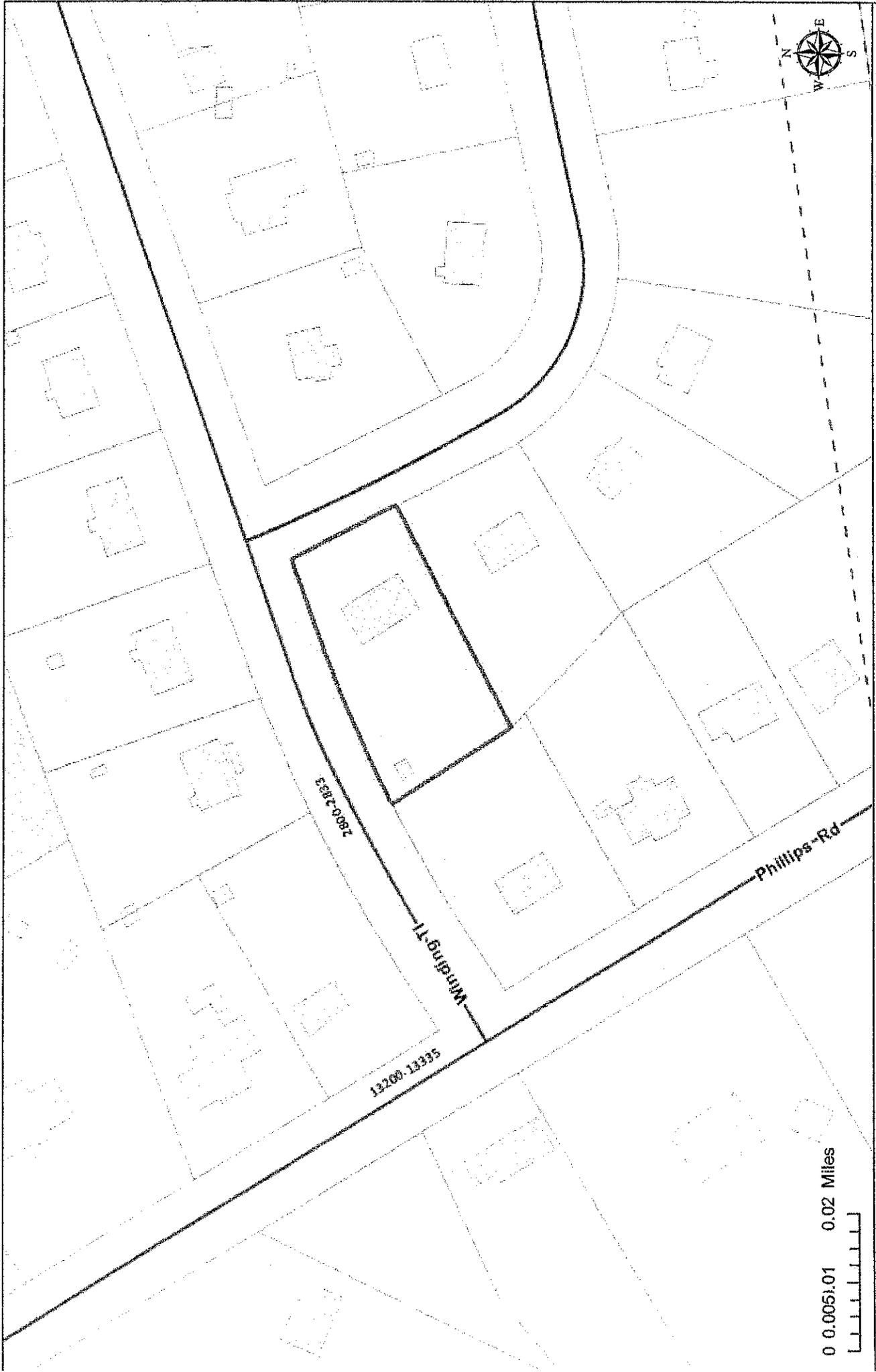
IN THE SITUATION THAT THE PROPERTY OWNER IS NOT AN INDIVIDUAL, PLEASE INCLUDE DOCUMENTATION THAT APPLICANT IS AN AUTHORIZED REPRESENTATIVE.

IF THE PROPERTY OWNER IS NOT THE APPLICANT APPEARING TO SPEAK BEFORE THE BOARD OF ADJUSTMENT, SUCH AS LESSEE, PLEASE PROVIDE EXPLANATION OF RELATIONSHIP TO APPLICANT/REPRESENTATIVE. PRESENTING REPRESENTATIVE'S AUTHORITY TO APPEAR SHALL BE VERIFIED BEFORE THE APPLICATION IS CONSIDERED COMPLETE.

Polaris 3G Map – Mecklenburg County, North Carolina

3247 Winding Trail (Our house)

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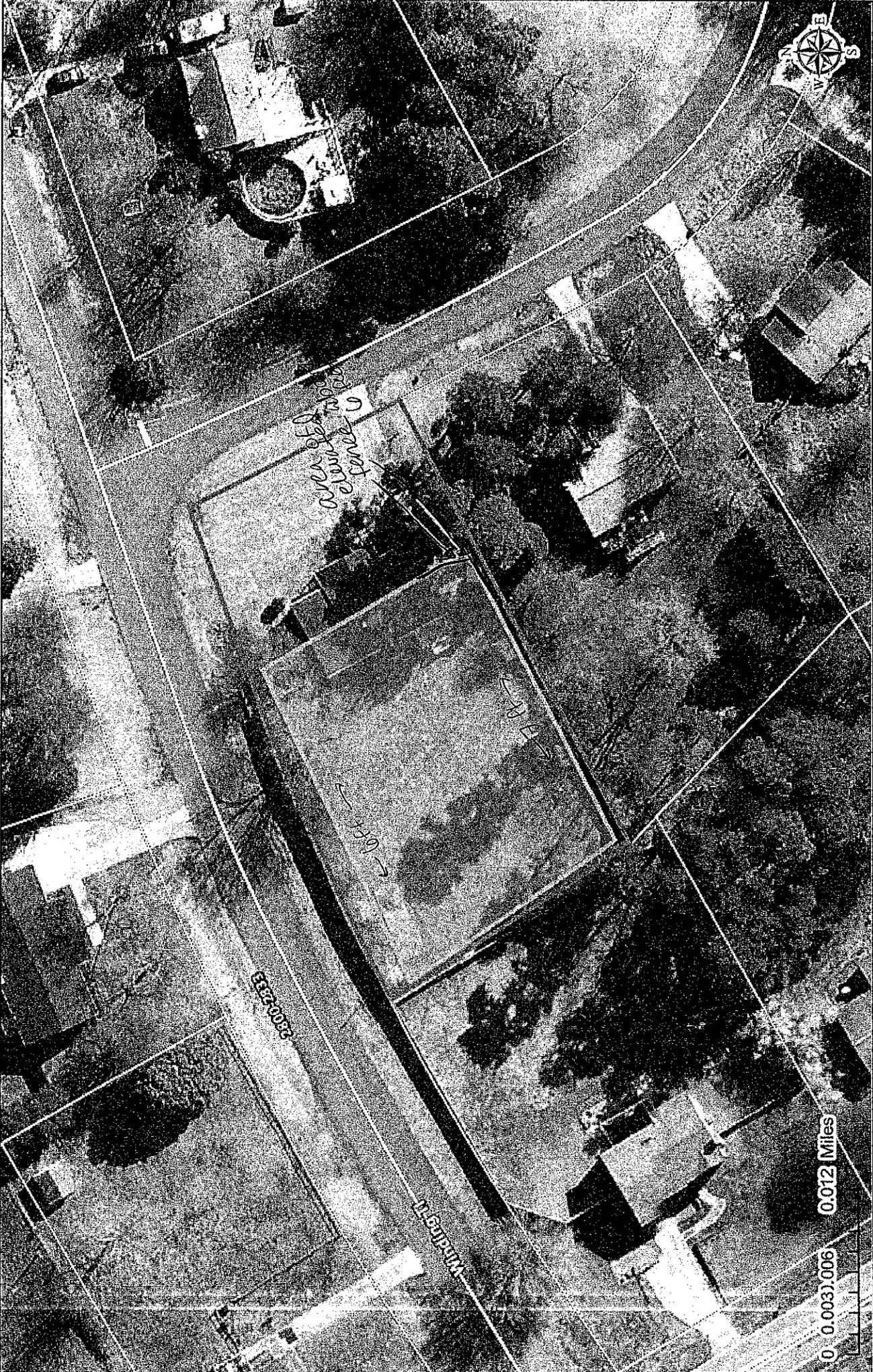
0 0.005:01 0.02 Miles

This map or report is prepared for the inventory of real property within Mecklenburg County and is compiled from recorded deeds, plats, tax maps, surveys, planimetric maps, and other public records and data. Users of this map or report are hereby notified that the aforementioned public primary information sources should be consulted for verification. Mecklenburg County and its mapping contractors assume no legal responsibility for the information contained herein.

Polaris 3G Map – Mecklenburg County, North Carolina

Drawing of 3247 with Fence

Date Printed: 12/10/2015 11:25:12 AM



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Adjoining Property Addresses, Owner's Names, & Tax Parcel Codes for:
3247 Winding Trail, Matthews, NC 28105

(Variance Application filed Dec. 15, 2015)

Michael & Eileen Fain
2846 Winding Trail
Matthews, NC 28105
Tax Parcel ID # 21517217

Thomas & Marian Holland
3239 Winding Trail
Matthews, NC 28105
Tax Parcel ID # 21517133

Joseph & Sheila Favuzza
2833 Winding Trail
Matthews, NC 28105
Tax Parcel ID # 21517104

Additional Adjoining Property Owners BJ

Alicia & Imer Rosales
2825 Winding Trail
Matthews NC 28105

Parcel # 21517103

Andre Llewellyn
13335 Phillips Road
Matthews NC 28105

Parcel # 21517102

Veaceslav Stutechnik
13401 Phillips Road
Matthews NC 28105

Parcel # 21517135

November 19, 2015

Hannah & Walter Trapp
3247 Winding Trail
Matthews, NC 28105

**RE: NOTICE OF ZONING VIOLATIONS
3247 Winding Trail - Tax Parcel 215-171-34**

Dear Mr. & Mrs. Trapp

A visual inspection of the above referenced property was recently performed. Town staff observed that the privacy fence on your property on the right side facing Winding Trail was close to seven (7) in height. There was places on the left side of your property where the fence appear to be more than nine (9) feet in height. Fences that exceed six (6) feet in height violates the Town of Matthews Zoning Ordinance Section 155.601.21 which states:

155.601.21 Fences and Walls in Residential Districts and Developments

- A. Within the single-family residential districts (R-20, R-15, R-12, R-9, R-MH, R-VS, CRC), no wall or fence may exceed four feet (4') in height in any required front setback, or no more than six feet (6') in height within any required side or rear yard.
- C. Fence height shall be the vertical distance measured on the exterior side of the fence from the ground directly under the fence to the highest point of the fence, exclusive of capitals or ornamental projections which are no closer than five foot (5') intervals. When applicable, the finished side of the fence shall face the exterior of the property.
- E. Fully opaque fences and walls are not desired at entrances to housing areas or along front setbacks of dwellings. Privacy fences and walls which are intended to create private yards, courtyards, or play spaces for use by residents are allowed along street edges, but should incorporate landscaping or other features to visually break the appearance of a solid single plane for pedestrians.

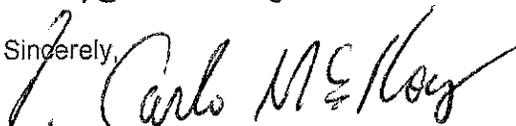
The Town of Matthews requires you to reduce the height of the fence to 6 feet or less.

If these violation are not corrected and there is no appeal to the Zoning Board of Adjustment, this Department reserves the right to exercise any one of the following **REMEDIES: REVOCATION OF A CERTIFICATION OF OCCUPANCY** making continued occupancy unlawful; seeking of an **INJUNCTION**; the issuance of a **CITATION WITH FINES** up to \$500 per day; and/or the issuance of a **CRIMINAL SUMMONS**.

If you feel the above listed violations are incorrect, you may appeal to Zoning Board of Adjustment by submitting an application of appeal concurrently to the Town Clerk and the Planning Office within 30 days of this Notice of Violation. This Notice of Violation meets the provision of 155.214(B)(4) and serves as a warning citation. Because this written Notice of Violation includes an opportunity for appeal, there will be no provisions for appeal after the 30 days.

Your prompt response to this matter is appreciated and will prevent any further enforcement action by the Town of Matthews. If you have any questions, please do not hesitate to contact me in person, via phone at 704-708-1232, or via email at cmckoy@matthewsnc.gov.

Sincerely,



Carlo McKoy
Code Enforcement Officer

