



# MORGANTOWN BOARD OF ZONING APPEALS

October 15, 2014  
6:30 PM  
City Council Chambers

## **Board Members:**

Bernie Bossio, Chair  
Leanne Cardoso, Vice-Chair  
Bill Burton  
George Papandreas  
Jim Shaffer

## **STAFF REPORT**

**CASE NO:** V14-41 / Germata / 324 Maple Avenue

### **REQUEST and LOCATION:**

Request by Francis Mulkeen, on behalf of Michael Germata, for variance relief as it relates to the maximum height of fences at 324 Maple Avenue.

### **TAX MAP NUMBER(s) and ZONING DESCRIPTION:**

Tax Map 36, Parcel 525; R-1A, Single-Family Residential District

### **SURROUNDING ZONING:**

R-1A, Single-Family Residential District

### **BACKGROUND and ANALYSIS:**

The petitioner seeks to erect a fence enclosing the rear yard, which is closest to Jackson Avenue. Addendum A of this report illustrates the location of the subject site

Article 1331.08(B) provides that fences on residentially zoned parcels,

“...may not exceed six and one-half (6.5) feet in height at any point unless the entire fence or that portion of fence above six and one-half (6.5) feet is open fifty percent or more. Fences permitted to exceed six and one-half (6.5) feet as provided herein may not be constructed of chain link or wire and may not exceed eight (8) feet in height at any point.

According to the petitioner’s site plan, approximately 35 feet of the proposed privacy fence will be eight (8) feet in height, which exceeds the maximum height restriction for privacy fences by 1.5 feet and requires variance relief.

The following graphic illustrates the existing conditions in the area of the proposed fence.



## **Development Services**

Christopher Fletcher, AICP  
Director

## **Planning Division**

389 Spruce Street  
Morgantown, WV 26505  
304.284.7431



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The green sided house on the right is the petitioner's property and red brick house on the left is the neighboring property. The petitioner's rear covered patio is below the adjoining grade and well below the elevation of the neighboring house's side door threshold. It appears that the top of the proposed eight-foot privacy fence would be near the bottom of the window in the side door of the neighboring red brick house.

The following graphic illustrates the approximate location of the proposed 35-foot section of eight-foot high privacy fence. The remaining sections of the fence will have heights ranging from four (4) feet (picket) to six (6) feet (privacy), which are permitted by-right.



### **STAFF RECOMMENDATION:**

The Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for *each* of the "Findings of Fact" submitted by the petitioner.

It is the opinion of the Planning Division that the maximum fence height standard does not result in peculiar or unusual practical difficulties for the petitioner to erect a conforming fence and achieve privacy as evidently desired. As such, Staff submits the following negative findings of fact and recommends that the petitioner's variance request be denied.

Finding of Fact No. 2 – The variance DOES NOT arise from special conditions or attributes which pertain to the property for which a variance is sought as the predominate slope and physical features of the immediate vicinity does not appear to be unique to the petitioner's property.

Finding of Fact No. 3 – The variance will NOT eliminate an unnecessary hardship and permit a reasonable use of the land because a hardship does not appear to exist that prevents the petitioner's pursuit of desired privacy. Alternate by-right, privacy measures might include incorporating lattice or similar fence design elements of  $\leq 50\%$  opacity between the 6.5-foot and 8-foot elevation heights and/or the planting of evergreen shrubs and/or bushes that can grow to the desired height.

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Finding of Fact No. 4 – Variance relief is NOT necessary to ensure that the purpose and intent of the maximum fence height standard is observed. Substantial justice is provided under the standard as the petitioner may pursue a fence height of eight (8) feet if designed as permitted by-right. Further, alternate privacy measures can be pursued.

Enclosures: Application and accompanying exhibits

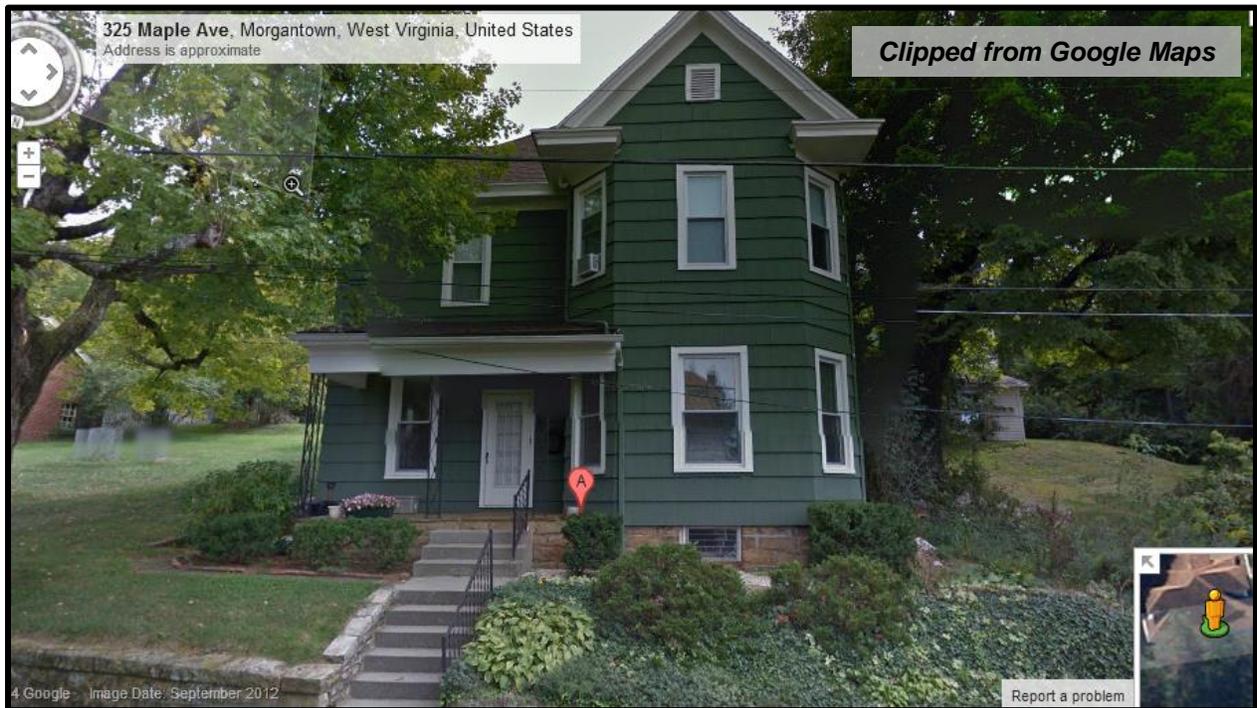
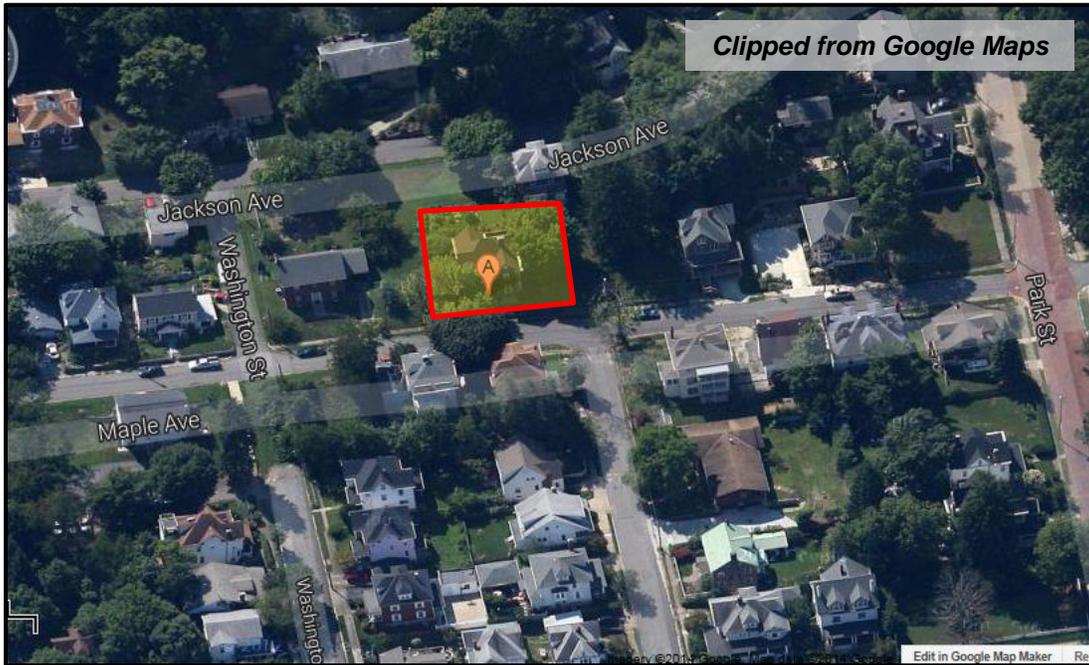
### **Development Services**

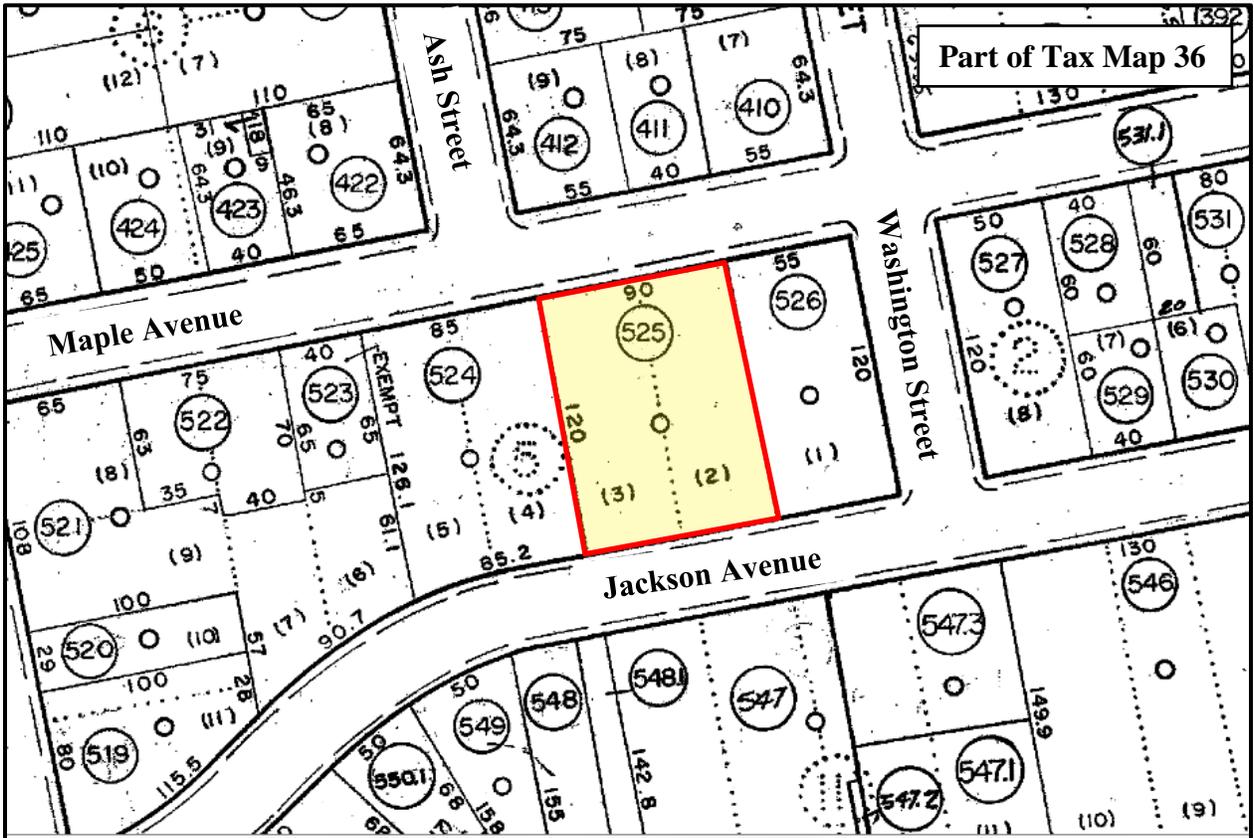
Christopher Fletcher, AICP  
Director

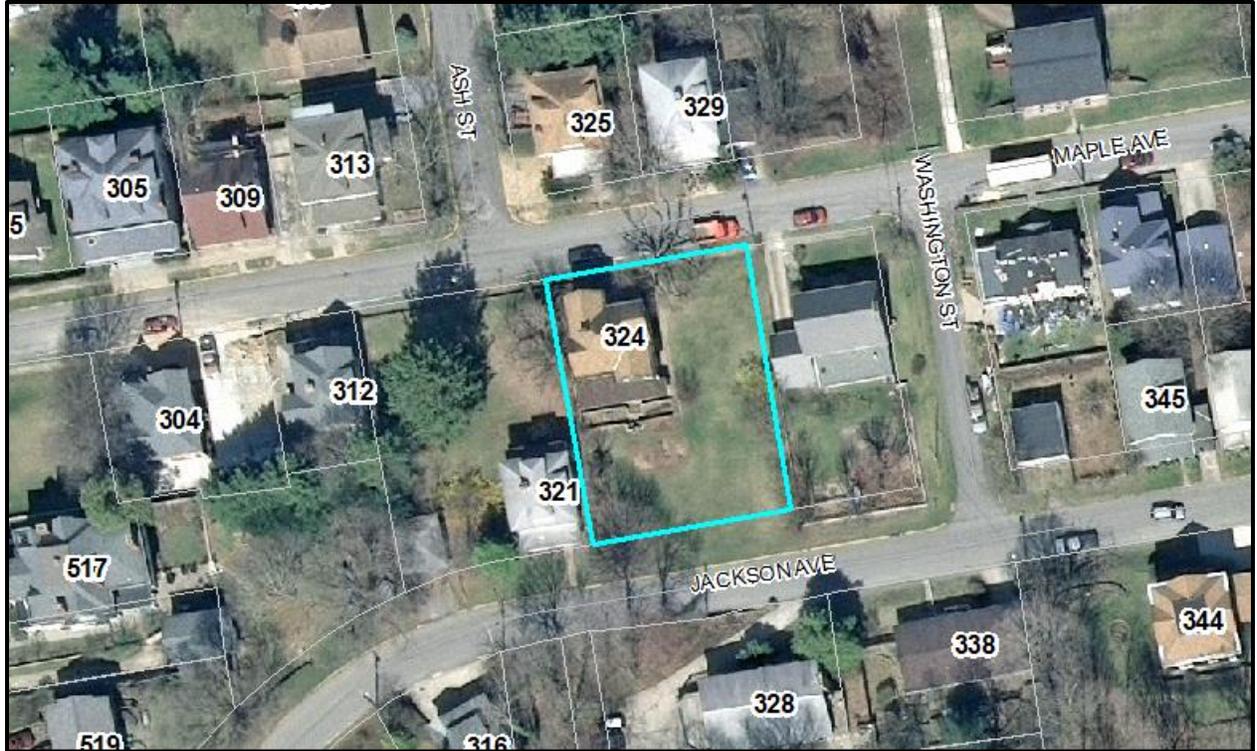
### **Planning Division**

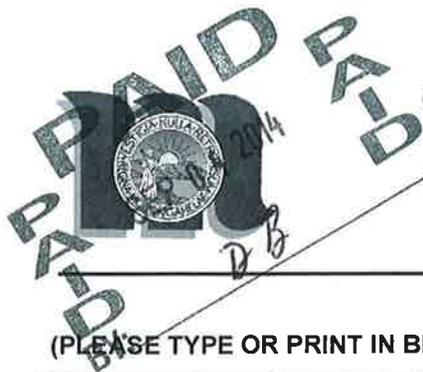
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**STAFF REPORT ADDENDUM A**  
**V14-41 / Germata / 324 Maple Avenue**









City of Morgantown, West Virginia

# APPLICATION FOR VARIANCE PETITION

OFFICE USE	
CASE NO.	V14-41
RECEIVED:	9/4/14

OK 14008

(PLEASE TYPE OR PRINT IN BLACK INK)

Fee: \$75

<b>I. APPLICANT</b>		Name:	FRANCIS X MULKEEN		
Mailing Address:	Street	(FOR) 324 MAPLE AVE - 743 Sleepy Hollow Road		Phone:	(301) 292-0059
	City	State	Zip	Mobile:	(301) 288-7550
	Independence WV 26374			Email:	FRANCIS@MULKEENLANDSCAPING.COM
<b>II. PROPERTY</b>		Street Address:	324 MAPLE AVE		
Owner:	MICHAEL GERMAHA		Zoning:		
Mailing Address:	Street	324 MAPLE AVE		Tax Map No:	
	City	State	Zip	Parcel No:	
	<del>MORGANTOWN</del> MORGANTOWN, WV 26501			Phone:	301 282-9364

<b>III. NARRATIVE</b>	Please describe the nature and extent of your variance request(s).
<p>EXTEND HEIGHT OF FENCE (NEW CONSTRUCTION) TO EIGHT FEET IN HEIGHT. FROM ALLOWED SIX AND ONE HALF FOOT HEIGHT.</p>	

<b>V. ATTEST</b>		
<p>I hereby certify that I am the owner of record of the named property, or that this application is authorized by the owner of record and that I have been authorized by the owner to make this application as his/her authorized agent. I agree to conform to all applicable laws of this jurisdiction. The granting of a variance does not presume to give authority to violate or cancel the provisions of any other federal, state, or local law regulating construction or the performance of construction. I certify that the information submitted herein and attached hereto is true and accurate and understand that if found otherwise may result in the denial of this request or subsequent revocation of any and all related approvals. The undersigned has the power to authorize and does hereby authorize City of Morgantown representatives on official business to enter the subject property as necessary to process the application and enforce related approvals and conditions. I hereby authorize the Development Services Department to erect a notification sign on the subject property approximately 15 days prior to the BZA hearing. I further agree to maintain said signage and hereby accept responsibility in case of destruction or removal.</p>		
FRANCIS X MULKEEN		9/4/14
Type/Print Name of Applicant/Agent	Signature of Applicant/Agent	Date

**You or a representative MUST be present at the scheduled hearing to present the request and answer questions. Failure to appear at the hearing will result in your request being tabled.**



APPLICATION FOR VARIANCE PETITION

OFFICE USE table with CASE NO. 114-41 and RECEIVED:

VI. SUPPLEMENTAL INFORMATION

Depending on the type of variance request and the scale and scope of the development proposal, supplemental information may be needed to assist the Board of Zoning Appeals in rendering a variance decision. Staff will check the appropriate boxes below that must be addressed.

Land Use Characteristics (complete only those that apply)

- Residential, Single-Family Dwelling, Townhouse Dwelling, Two-Family Dwelling, Multi-Family Dwelling, Non-Residential or Mixed (please explain)

Structure Characteristics (complete only those that apply)

Total number of buildings: Gross floor area of each building: Estimated number of employees: No. of dwelling units: No. of bedrooms: Additional structure-related details:

Additional Information (as required by Staff):

Site Plan. A scaled site plan may be required to assist the Board in rendering a variance decision. The following features must be represented, as required by Staff.

- Location, shape, exterior dimensions, and number of stories of each building on the site. Standard yard setbacks for the applicable zoning district. Location, grade, and dimensions of paved surfaces, and all abutting streets. Existing and proposed contours, at an interval of at least two (2) feet. Complete traffic circulation plan showing dimensions, entrance/exit drives, planters, and similar improvements. Location of landscaped areas (to be detailed on landscape plan), fences, walls, and other screen required.



APPLICATION FOR VARIANCE PETITION

OFFICE USE	
CASE NO.	V14-41
RECEIVED:	

VII. FINDINGS OF FACT

COMPLETE THE FOLLOWING STATEMENTS IN THIRD PERSON.

The Board of Zoning Appeals may grant a variance request only if each of the following "Findings of Fact" criteria is determined to be in the positive. Applicants must give their own responses to the following criteria statements.

1. The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The fence is ADJACENT TO A BUILDING AND IS FOR PRIVACY ONLY

2. The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

ENTRANCE TO ADJACENT BUILDINGS IS ABOVE YARD THAT FENCE IS BEING INSTALLED IN THIS CREATES A PRIVACY ISSUE



APPLICATION FOR  
VARIANCE PETITION

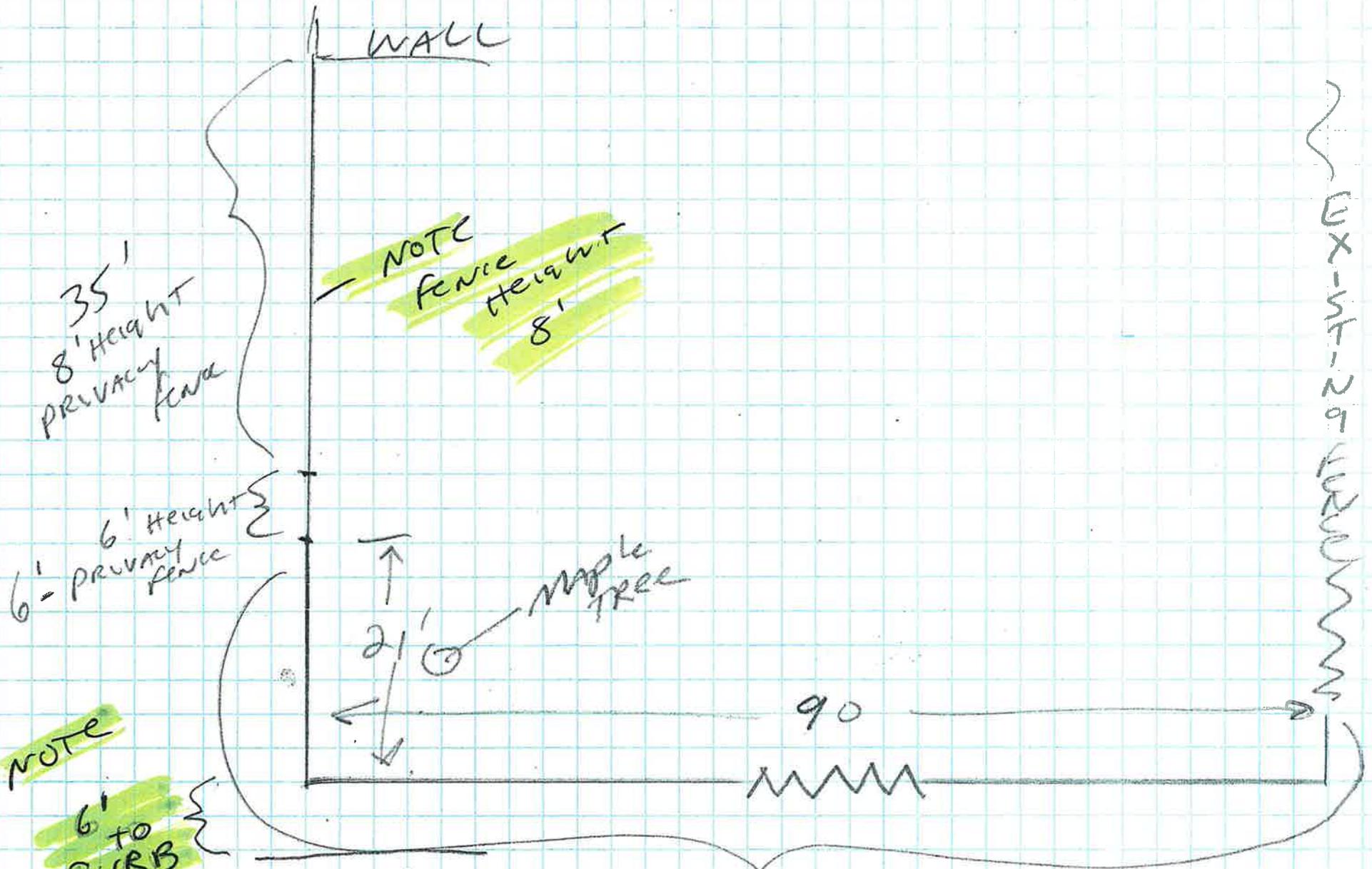
OFFICE USE	
CASE NO.	V14-41
RECEIVED:	

VII. FINDINGS OF FACT	COMPLETE THE FOLLOWING STATEMENTS IN THIRD PERSON.
3. The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:	<p>The YARD enclosed By The fence will provide A SAFE AREA FOR CHILDREN</p>
4. The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:	<p>The fence will only be 18 inches higher THAN EXISTING CODE allows</p>

Mulken  
288-7550

# Maple Ave House

GERMATA  
282-9364



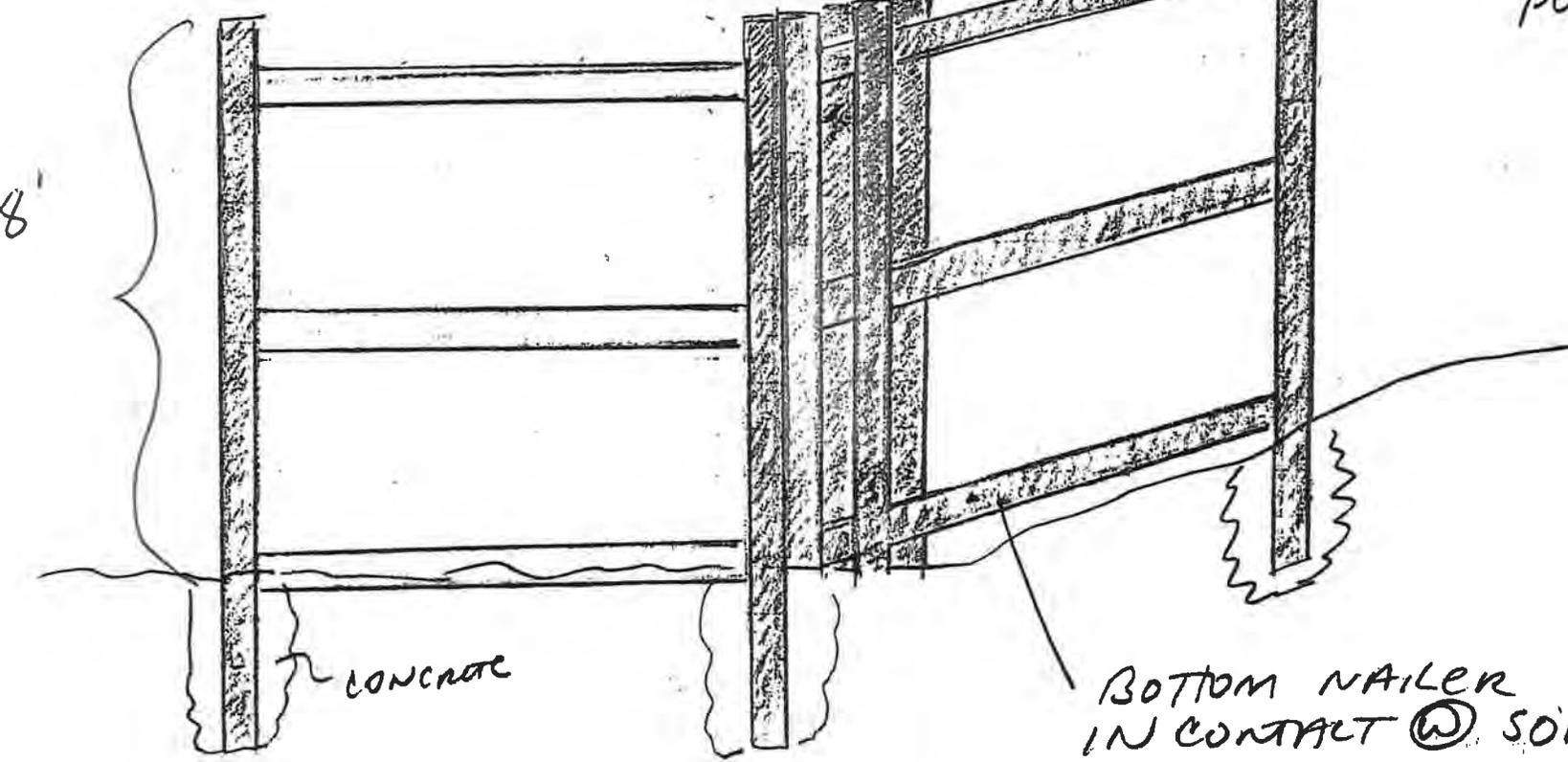
NOTE  
Fence  
Height  
8'

NOTE  
6'  
TO  
CURB

(+) (-) 128' 4' HEIGHT PICKET FENCE

V14-41

# 8' PRIVACY FENCE SIDE VIEW



TOP NAILER  
@ 6" Below  
POST HEIGHT

CONCRETE

BOTTOM NAILER TO BE  
IN CONTACT @ SOIL