

## Agenda Item #3

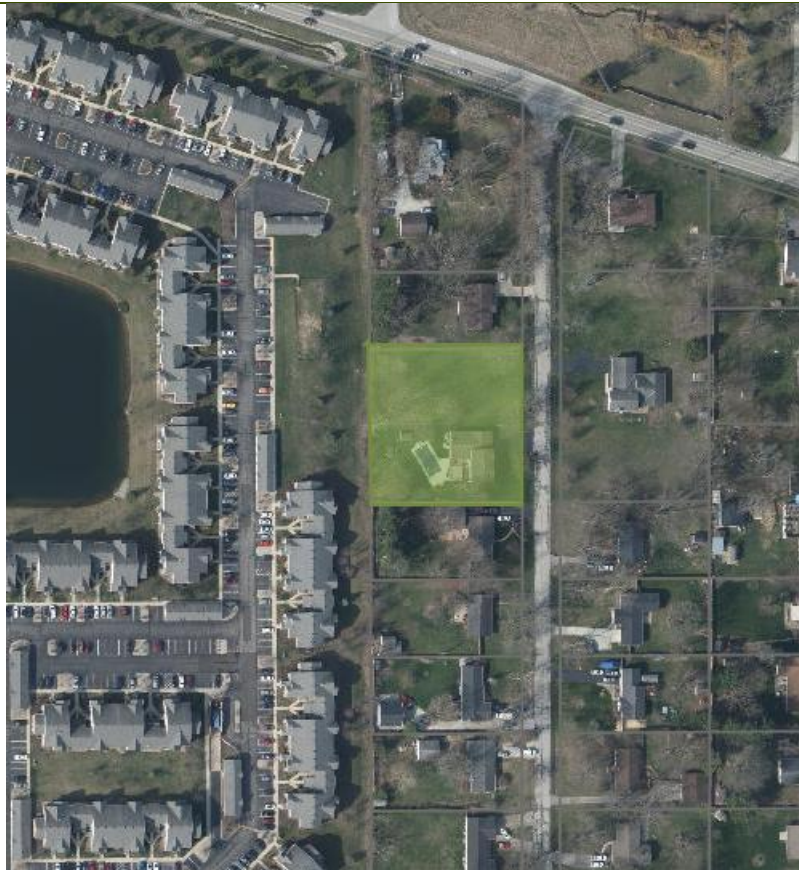
<b>Case Number</b>	BZNA-000216-2024	<b>Property Size</b>	0.91 acres
<b>Address</b>	107 Waterman Drive West	<b>Zoning</b>	Corporate Campus Planned Development
<b>Owners</b>	Kenton Craig and Robin Lynn Ward	<b>Reviewer</b>	Amy Steffens, AICP
<b>Applicants</b>	Kenton Craig and Robin Lynn Ward	<b>BZA Meeting</b>	December 2, 2024

**Requested Action:** Variance of Development Standards application pursuant to UDO §9.B.4.E.3. to allow for an eight-foot tall fence in the west rear yard (maximum seven-foot tall fence permitted).

**Recommendation:**  
Neural recommendation

**Table of Contents:**

- A. Application
- B. Aerial Photo
- C. Site Plan



## ANALYSIS

The subject site is a 0.91-acre parcel, improved with a 2,905-acre single-family dwelling, in the Fairview subdivision. Single-family dwellings abut to the north, south, and east; to the west is the Cumberland Pointe apartment complex.

If approved, the variance request would allow for installation of 200 linear feet of eight-foot tall privacy fence. Section 9.B.4.E.3. specifies that *residential open or solid fences, latticework, screens, or walls not more than seven (7) feet in height may be located in the required side or rear yard.* There does appear to be a county-regulated drain along this portion of the yard where the fence would be installed.

## VARIANCE OF DEVELOPMENT STANDARDS FINDINGS

### AGENDA ITEM #3.:

If the Board should decide to APPROVE the requested variances, please use the following findings of fact:

The Noblesville Board of Zoning Appeals is authorized to approve or deny variances of use from the terms of the zoning ordinance. **The BZA may impose reasonable conditions as part of its approval. A Variance of Development Standards may be approved only upon a determination in writing that the following three (3) conditions are met (see Indiana Code § 36-7-4-918.5):**

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community:

**It is likely that this variance will NOT be injurious to the public health, safety, morals, and general welfare of the community. A fence is a common residential appurtenance.**

2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner:

**It is likely that the use and value of real estate adjacent to the subject site will not be affected in a substantially adverse manner. The rear yard abuts an open area of the apartment complex and is not immediately adjacent to a multi-family residential structure.**

**Nearby property owners may remonstrate against this petition if they believe this request will have significant adverse effects on adjacent properties. Should nothing contrary be brought to light by adjacent owners at the public hearing, it is presumed that the approval of this variance request will not have a substantially adverse effect on the use and value of adjacent properties. Staff has not received any correspondence on this variance request.**

3. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property.

**The strict application of the terms of the plan development ordinance will not result impractical difficult difficulties in the use of the prop because the required seven-foot fence could be installed without**

variance approval. However, the requested variance could be a minor deviation from the fence height requirement.

If the Board should decide to DENY the requested variances, please use the following findings of fact:

The Noblesville Board of Zoning Appeals is authorized to approve or deny variances of use from the terms of the zoning ordinance. **The BZA may impose reasonable conditions as part of its approval. A Variance of Development Standards may be approved only upon a determination in writing that the following three (3) conditions are met (see Indiana Code § 36-7-4-918.5):**

1. The use and value of the area adjacent to the property included in the variance will be affected in a substantially adverse manner:

**The use and value of the area adjacent to the property included in the variance will be affected in the substantially adverse manner by allowing the requested variances. A solid fence can have a canyonization effect, and especially an eight-foot tall solid privacy fence that is more typically associated with a commercial or industrial use.**

**Nearby property owners may remonstrate against this petition if they believe this request will have significant adverse effects on adjacent properties. Should nothing contrary be brought to light by adjacent owners at the public hearing, it is presumed that the approval of this variance request will not have a substantially adverse effect on the use and value of adjacent properties. Staff has not received any correspondence on this variance request.**

2. The strict application of the terms of the zoning ordinance will not result in practical difficulties in the use of the property.

**The strict application of the terms of the zoning ordinance will not result impractical difficulties in the use of the property because as noted the site has been developed for single-family residential use since the early 1960s and the site to the west developed for multi-family residential use since 2007. Furthermore, the rear yard of the subject site does not immediately abut a multi-family residential structure but rather an open area. Privacy in the subject site's rear yard could be adequately gained by a compliant fence height.**

In addition to the findings of fact, per Section 4.D.3.E.2. of the UDO the Board of Zoning Appeals *shall consider the following factors when deliberating over a variance request:*

- a. **Hardship:** No variance shall be granted pursuant to this unless the applicant shall establish that carrying out the strict letter of the provisions of this Ordinance would create a particular hardship or practical difficulty. The hardship in the FH zoning district must be exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or disagreement with the neighbors also does not qualify as an exceptional hardship as they can be resolved through other means without granting a variance, even if the alternative is more expensive. The need for a property owner to build elsewhere or put the property to a different use than originally intended does not constitute a hardship.

- b. **Unique Physical Condition:** The subject lot is exceptional as compared to other lots subject to the same provision by reason of a unique physical condition, including presence of an existing use, structure, or sign, whether conforming or non-conforming; irregular or substandard shape or size; exceptional topographical features; or other extraordinary physical conditions peculiar to and inherent in the subject lot that amount to more than a mere inconvenience to the owner and that relate to or arise out of the lot rather than the personal situation of the current owner of the lot.
- c. **Not self-created:** The aforesaid unique physical condition is not the result of any action or inaction of the owner or its predecessors in title and existed at the time of the enactment of the provisions from which a variance is sought or was created by natural forces or was the result of governmental action, other than the adoption of this ordinance.
- d. **Denied substantial rights:** The carrying out of the strict letter of the provision from which variance is sought would deprive the owner of the subject lot of substantial rights commonly enjoyed by owners of other lots subject to the same provision.
- e. **Not Merely Special Privilege:** The alleged hardship or difficulty is neither merely the inability of the owner or occupant to enjoy some special privilege or additional right not available to owners or occupants of other lots subject to the same provision, nor merely the inability of the owner to make more money from the use of the subject lot.
- f. **Ordinance and Plan Purposes:** The variance would not result in a use or development of the subject lot that would be not in harmony with the general and specific purposes for which this ordinance and the provision from which a variance is sought were enacted or the general purpose and intent of the Comprehensive Plan.
- g. **No Other Remedy:** There is no means other than the requested variance by which the alleged hardship or difficulty can be avoided or remedied to a degree sufficient to permit a reasonable use of the subject lot.
- h. **Minimum Required:** The requested variance is the minimum measure of relief necessary to alleviate the alleged hardship or difficulty presented by the strict application of the ordinance.

## RECOMMENDATIONS

**AGENDA ITEM #3.:** Staff is NEUTRAL on the variance of development standards application.

If the Board should choose to approve the requested variance, staff asks that the Board include the following specific conditions:

1. The Applicant shall sign the Acknowledgement of Variance document prepared by the Planning and Development Department Staff within 60 days of this approval. Staff will then record this document against the property and a file stamped copy of such recorded document shall be available in the Department of Planning and Development.
2. Any alterations to the approved building plan or site plan, other than those required by the Board of Zoning Appeals (BZA), shall be submitted to the Planning and Development Department prior to the alterations being made, and if necessary, a BZA hearing shall be held to review such changes.
3. Hamilton County Surveyor's Office shall issue a drainage permit, if required, prior to the planning and development department issuing a permit for the fence.

# EXHIBIT A



## PLAN DETAILED REPORT BZNA-000216-2024 FOR CITY OF NOBLESVILLE

<b>Plan Type:</b> Board of Zoning Appeals	<b>Project:</b> Fairview	<b>App Date:</b> 10/22/2024
<b>Work Class:</b> Land Use Variance	<b>District:</b> City of Noblesville	<b>Exp Date:</b> NOT AVAILABLE
<b>Status:</b> Applied Online	<b>Square Feet:</b> 0.00	<b>Completed:</b> NOT COMPLETED
<b>Valuation:</b> \$0.00	<b>Assigned To:</b>	<b>Approval Expire Date:</b>
<b>Description:</b> 8 foot privacy fence		

<b>Parcel:</b> 10-11-08-03-02-037.000 Main	<b>Address:</b> 107 Waterman Dr W Main Nob, IN 46060	<b>Zone:</b> CCPD(Corporate Campus Planned Devel
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<b>Applicant</b> Robin Ward 107 Waterman Drive Noblesville, 46060 Business: 3176272775 Mobile: (317) 627-2775	<b>Property Owner</b> Kenton Ward 107 Waterman Drive Noblesville, IN 46060 Business: 317-773-8352 Mobile: 317-319-8615	<b>Responsible for Costs</b> Associated with Application Kenton Ward 107 Waterman Drive Noblesville, IN 46060 Business: 317-773-8352 Mobile: 317-319-8615
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Activity Type	Activity Number	Name	User	Created On
Application Check - BZA	PLACT-000220-10-2024		Amy Ely	10/23/2024

Invoice No.	Fee	Fee Amount	Amount Paid
NOT INVOICED	Variances - Single Family - \$320	\$320.00	\$0.00
<b>Total for Invoice NOT INVOICED</b>		<b>\$320.00</b>	<b>\$0.00</b>
<b>Grand Total for Plan</b>		<b>\$320.00</b>	<b>\$0.00</b>

## Narrative Statement

Petitioner requests permission to install an 8-foot privacy fence along the length of their backyard. The homeowners abut The Cumberland Pointe Apartments along the rear of the property.

The purpose for this request is to provide privacy, safety, and security for the homeowners. Currently, a line fence consisting of a woven wire farm fence exists along the rear of the property line. This fence was installed many years ago when the apartment property was owned by the Trout family. The line fence was paid for by the Trout's and each abutting property owner. Currently, the fence has been damaged by cutting a square hole to an adjoining neighbor to the north. It has also been damaged due to trampling to the ground in two places allowing access to our property. Residents of the apartments have used these access points to enter and cross our property uninvited. This causes a security and safety issue for us and our guests as well as children in the neighboring apartments. We wish to address this issue by using a solid PVC privacy fence. The use of the fence will restrict further access to our property from the apartments and reduce safety concerns due to this trespass.

We are asking to vary the height of the fence from the allowed 7 feet to 8 feet for additional privacy as well as security. This would prevent residence of the apartments to our rear being able to watch activities around our pool from within their apartments.

Thank you for your consideration.

Kent and Robin Ward

The Noblesville Board of Zoning Appeals (BZA) is authorized to approve or deny Variances of Development Standards from the terms of the Unified Development Ordinance. The BZA may impose reasonable conditions as part of its approval. A Variance of Development Standards may be approved only upon a determination in writing that the following three (3) statements are true (see Indiana Code § 36-7-4-918.5):

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community. Explain why this statement is true in this case:

Fence is to provide occupants of resident from the apartment building behind property. It is a safety of homeowners due to residents of apartments entering the property.

2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner by the approval of this variance request. Explain why this statement is true in this case:

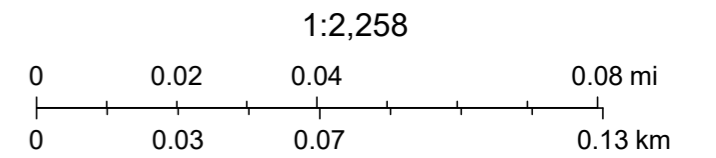
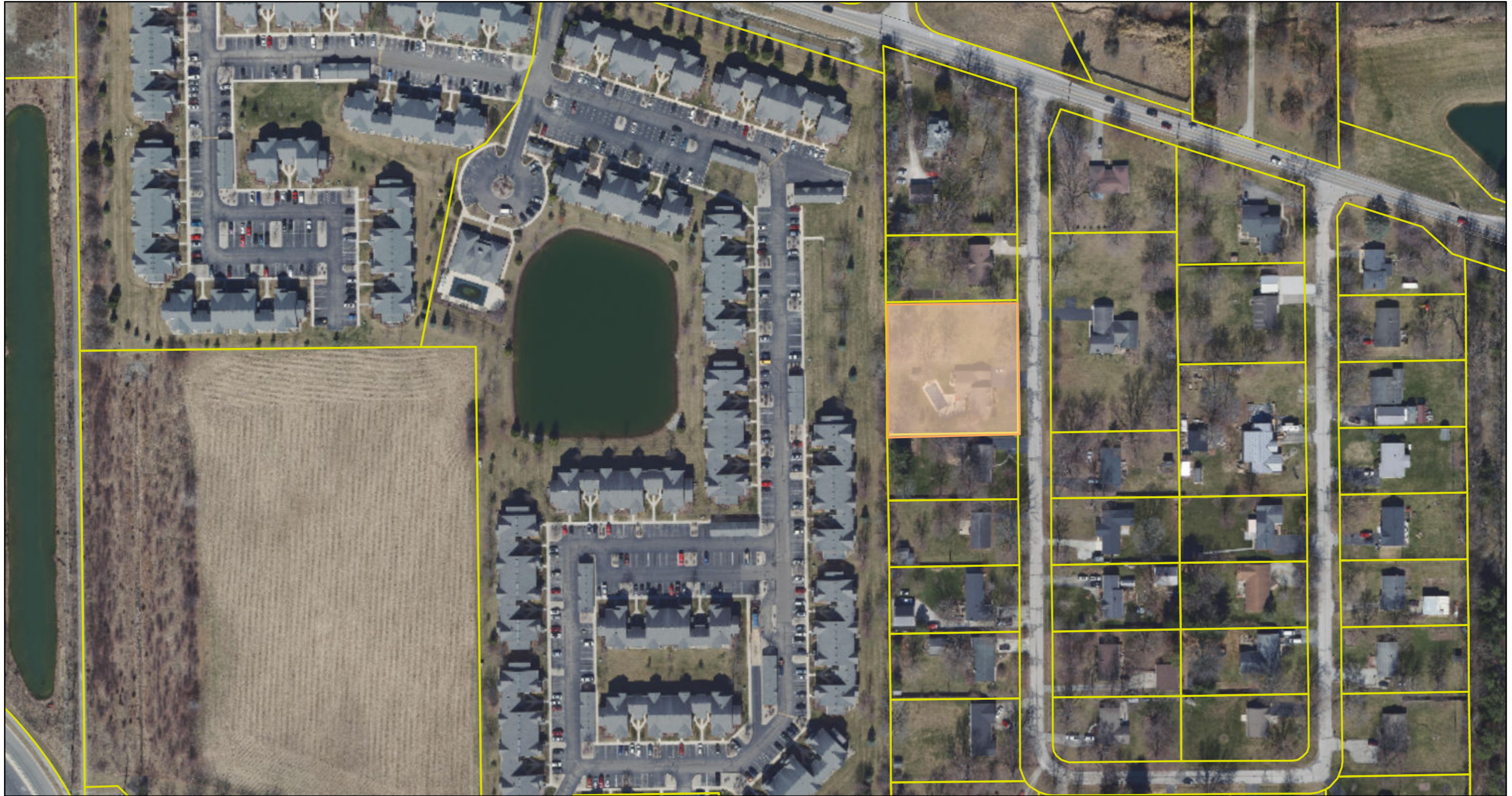
This is to replace the existing farm fence.

3. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the subject property. Explain why this statement is true in this case:

Residents of the apartments will no longer be able to trespass onto our property.



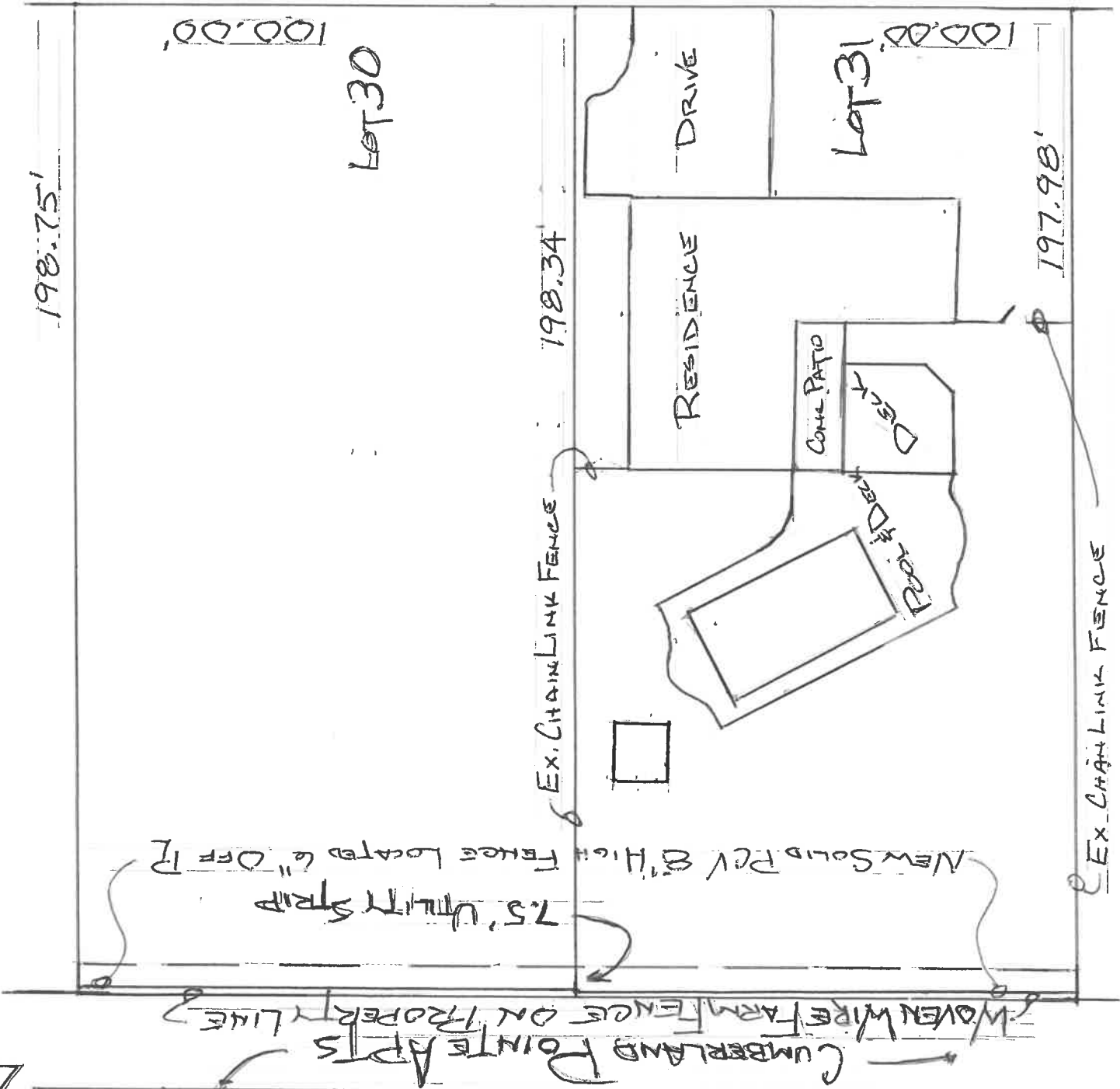
# EXHIBIT B



# EXHIBIT C

FAIRVIEW SECOND ADDITION  
Lots 30 & 31  
PARCEL 10-11-08-03-02 -  
037.000

WATERMAN DRIVE



WARD RESIDENCE - 107 WATERMAN DRIVE  
SCALE 1" = 30'