

APPLICATION NUMBER

5405

A REQUEST FOR

**FENCE HEIGHT VARIANCE TO ALLOW THE
CONSTRUCTION OF A 6' WOODEN PRIVACY FENCE
WITHIN 9.9' OF A FRONT PROPERTY LINE AND
WITHIN 4.3' OF A SIDE STREET (GAILLARD DRIVE)
PROPERTY LINE; A 25' FRONT YARD SETBACK AND A
20' SIDE STREET YARD SETBACK ARE REQUIRED FOR
PRIVACY FENCES OVER 3' HIGH IN AN R-1, SINGLE-
FAMILY RESIDENTIAL DISTRICT.**

LOCATED AT

804 NASSAU DRIVE

(Northeast corner of Nassau Drive and Gaillard Drive)

APPLICANT/AGENT

TYLER L. COX

OWNER

TYLER L. COX

BOARD OF ZONING ADJUSTMENT

FEBRUARY 2007

The applicant is requesting a Fence Height Variance to allow the construction of a 6' wooden privacy fence within 9.9' of a front property line and within 4.3' of a side street (Gaillard Drive) property line; a 25' front yard setback and a 20' side street yard setback are required for privacy fences over 3' high in an R-1, Single-Family Residential District.

The purpose of this application is actually to allow the fence to remain as it was recently constructed, for the most part, without any reviews, approvals, or permits. The applicant states that prior to constructing the fence, setbacks were obtained by contacting the Planning Section, but were interpreted as being from the street curb thinking that was the property line. The fence was about 80% complete when a citizen complaint was investigated by the Building Inspection Unit for working without a permit, although no setback violation was noted. The applicant obtained a fence permit with the standard 25' front and 20' side street yard setbacks and completed the fence. A later observation by a Planning Section staff member discovered the setback violation, hence this application.

The applicant further states that the purpose of the fence is to block the sound of traffic from Gaillard Drive, increase the aesthetics of the community and was built symmetrical with the neighbor's fence across the street and serves to hide the side street yard, which had the appearance of a large vacant lot. It is also stated that an addition to the house is planned which would make it impossible to comply with the Zoning Ordinance.

Although the applicant did contact the Planning Section to verify setbacks, the misinterpretation of the street curb as the property line could have been avoided if the applicant had a property survey. Verification of property lines for construction purposes is the applicant/owner's responsibility and misinterpretations of such are his liability. In this case, a survey was not obtained until the setback violation was noticed. Issues to consider for fences and walls on corner lots are the visibility at the street corner and associated safety issues. The Zoning Ordinance requires a "visibility triangle" at corners which would be reduced with the construction of a solid fence or wall within that area's line-of-sight. By the standards of the Ordinance for calculating the "visibility triangle" for this site, approximately a 50' length of the fence at the corner is constructed within the "visibility triangle". Traffic Engineering has determined that a line-of-sight problem would be hard to justify due to the fact its reviews are based on street curb locations and not property line locations.

With regard to a hardship, the traffic noise along Gaillard Drive could be considered a hardship, but not one which would impact the fence location. Likewise, the proposed addition to the existing house would not be considered as a hardship imposed upon the proper fence placement. The recorded building setback for the subject lot is 30' from both the front and side street property lines. With the proposed addition indicated approximately 4' from the front setback line and approximately 2' from the side street setback line, this would allow the fence to be constructed approximately 9' from the front

of the addition and approximately 12' from the end of the addition, meeting all required setbacks.

The Zoning Ordinance states that no variance shall be granted where economics are the basis for the application. Furthermore, the applicant must present sufficient evidence to find that the variance will not be contrary to the public interest, and that special conditions exist such that a literal enforcement of the Ordinance will result in an unnecessary hardship. The Ordinance also states that a variance should not be approved unless the spirit and intent of the Ordinance is observed and substantial justice done to the applicant and the surrounding neighborhood.

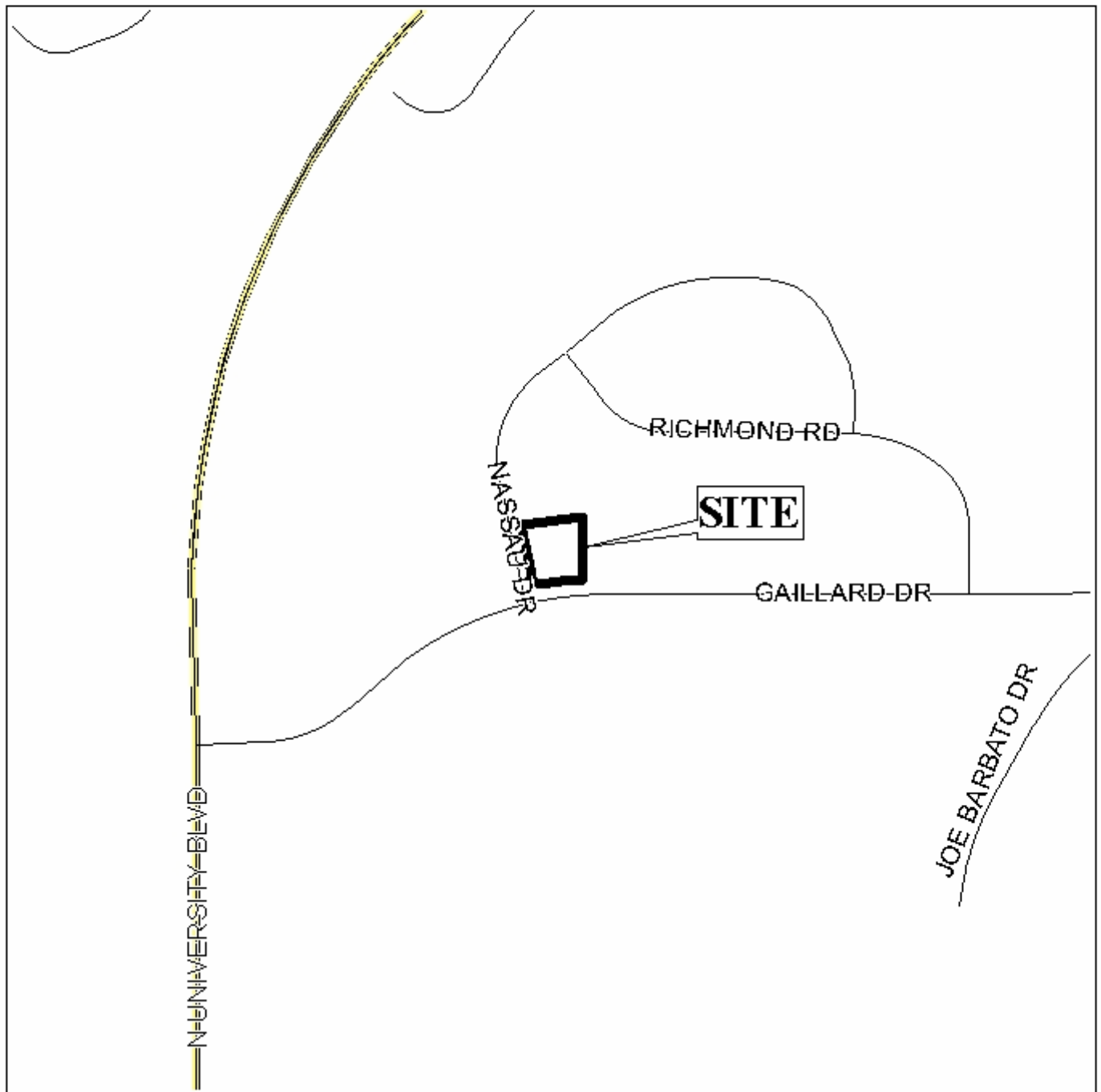
Variances are not intended to be granted frequently. The applicant must clearly show the Board that the request is due to very unusual characteristics of the property and that it satisfies the variance standards. What constitutes unnecessary hardship and substantial justice is a matter to be determined from the facts and circumstances of each application.

The applicant failed to illustrate that a literal enforcement of the Ordinance would result in an unnecessary hardship. It is simply the applicant's desire to construct a 6' wooden privacy fence within the required setbacks.

RECOMMENDATION 5405**Date: February 5, 2007**

Based on the preceding, this application is recommended for denial.

LOCATOR MAP

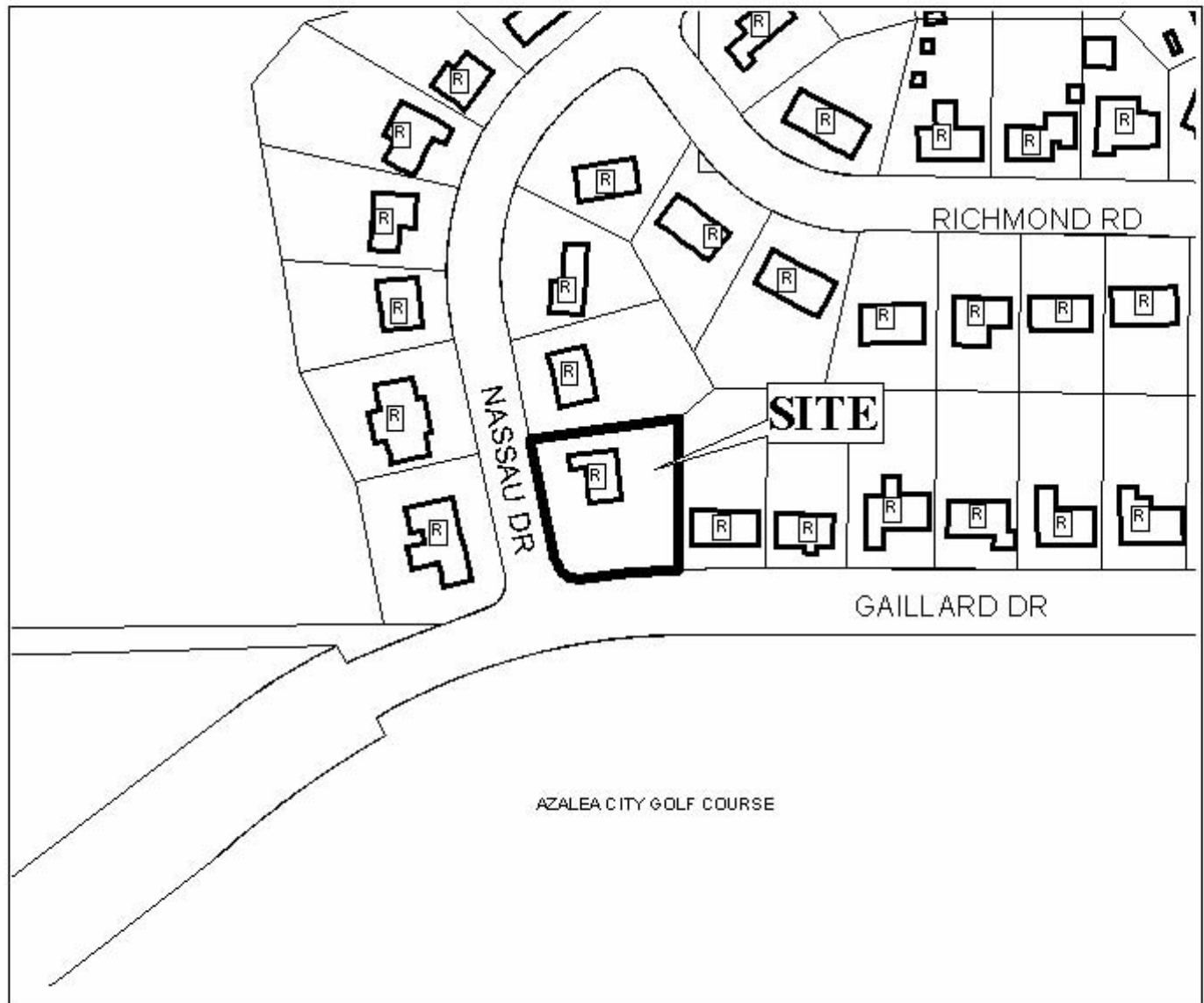


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BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



Single-family residential units are located to the west, north, and east of the site. A golf course is located to the south of the site.

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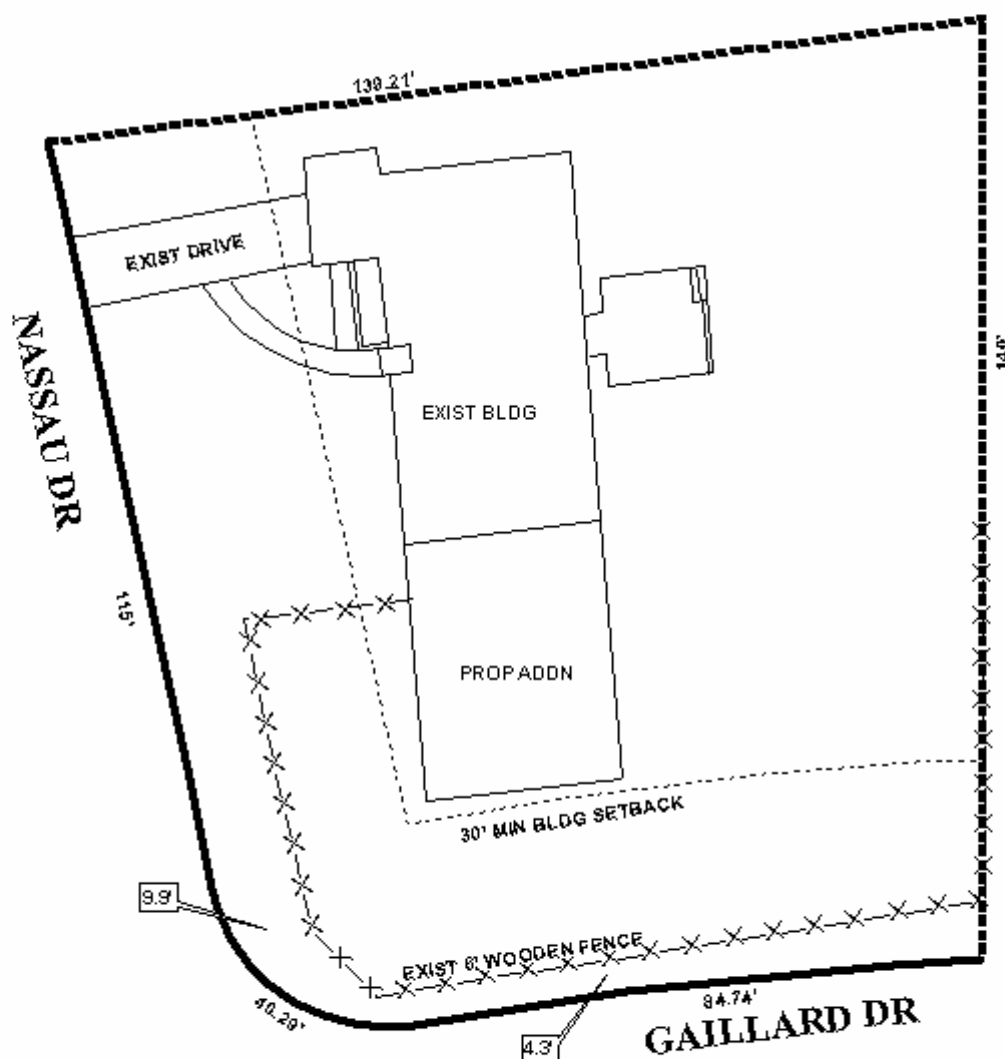
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LEGEND
R-1 R-2 R-3 R-A R-B H-B B-1 LB-2 B-2 B-3 B-4 B-5 I-1 I-2



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SITE PLAN



The site plan illustrates the existing building and proposed fence

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