



BOARD OF ZONING APPEALS STAFF REPORT

To: Members of the Board of Zoning Appeals

From: Tom Vander Woude, Planning Director

Meeting Date: April 12, 2022

Agenda Item: BZA Docket No. 22-002

Hearing: **PUBLIC HEARING**

Summary: Jeffery and Nancy Nixon requesting approval of a variances from *TABLE 26-6.405.A-2* to permit a 6-foot tall fence in a front yard at 8004 Hohman Avenue.

Applicant: Jeffery and Nancy Nixon

Property Address: 8004 Hohman Avenue

Current Zoning: CD-3.R1 Neighborhood – 70' Lot One Family Residence Character District

Adjacent Zoning:
North: CD-3.R1
South: CD-3.R1
East: CD-3.R2
West: CD-3.R1

Action Requested: Approve variances

Additional Actions Required: Findings of Fact

Staff Recommendation: **Approve variances**

Attachments: BZA 22-002 variance application
Applicant-provided information packet

BACKGROUND

Jeffery and Nancy Nixon have submitted an application for a variance from TABLE 26-6.405.A-2 to permit a 6-foot tall fence in a front yard of their residential property at 8004 Hohman Ave. A portion of the fence along the north side of the subject property has already been installed without a permit. When it was brought to the attention of the applicant that the fence required a permit and did not comply with the Town's zoning code, the Nixons submitted a variance application. The application includes both the existing nonconforming fence along the north edge of the property that extends past the northeast corner of the building and a request to install additional 6-foot fencing in the front yard at the southeast corner of the building.

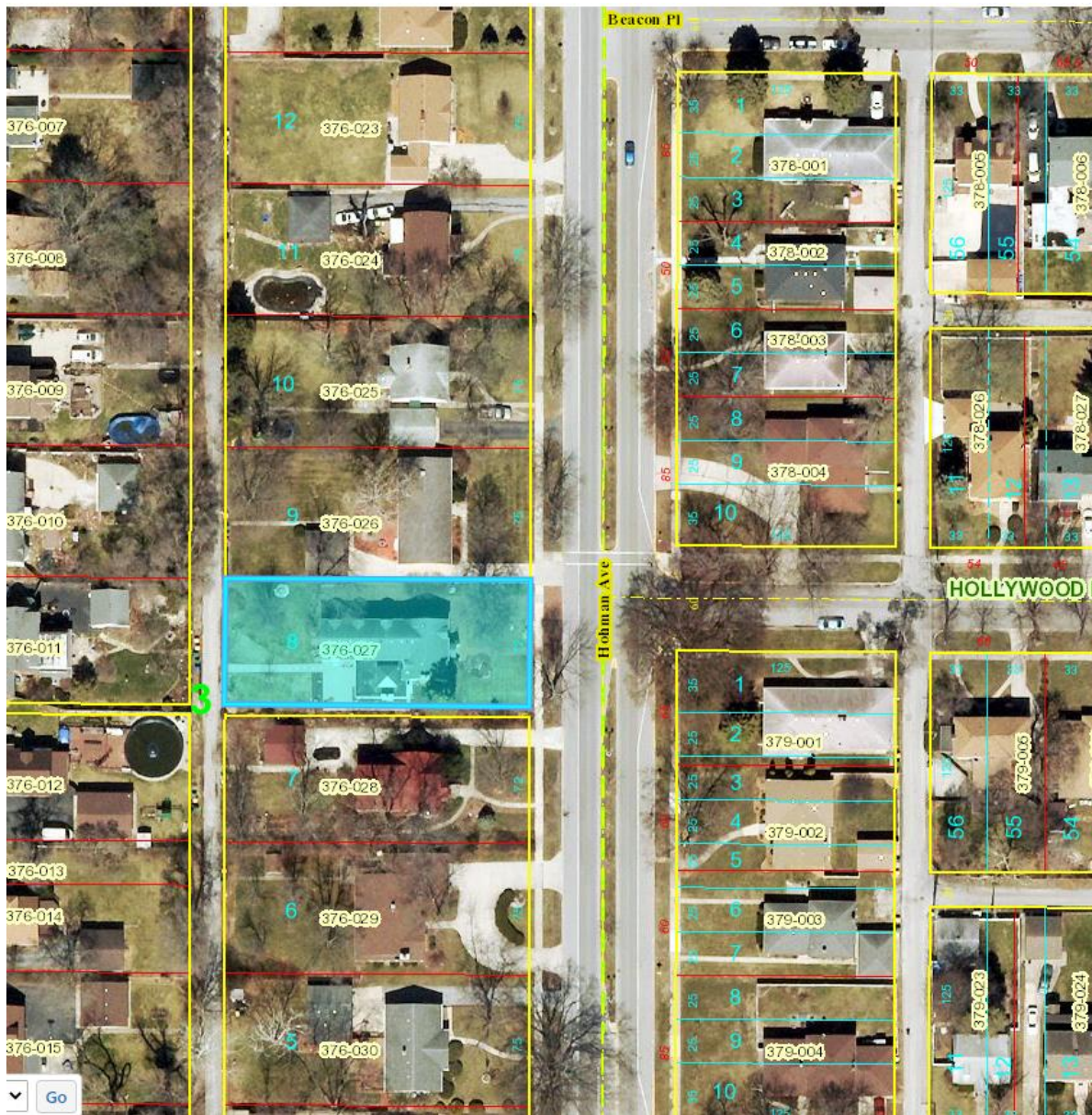


Figure 1: Subject property highlighted in blue.

DISCUSSION

Munster Zoning Ordinance TABLE 26-6.405.A-2 Private Landscaping and Fencing - Walls & Fencing (not including Screens) permits the following:

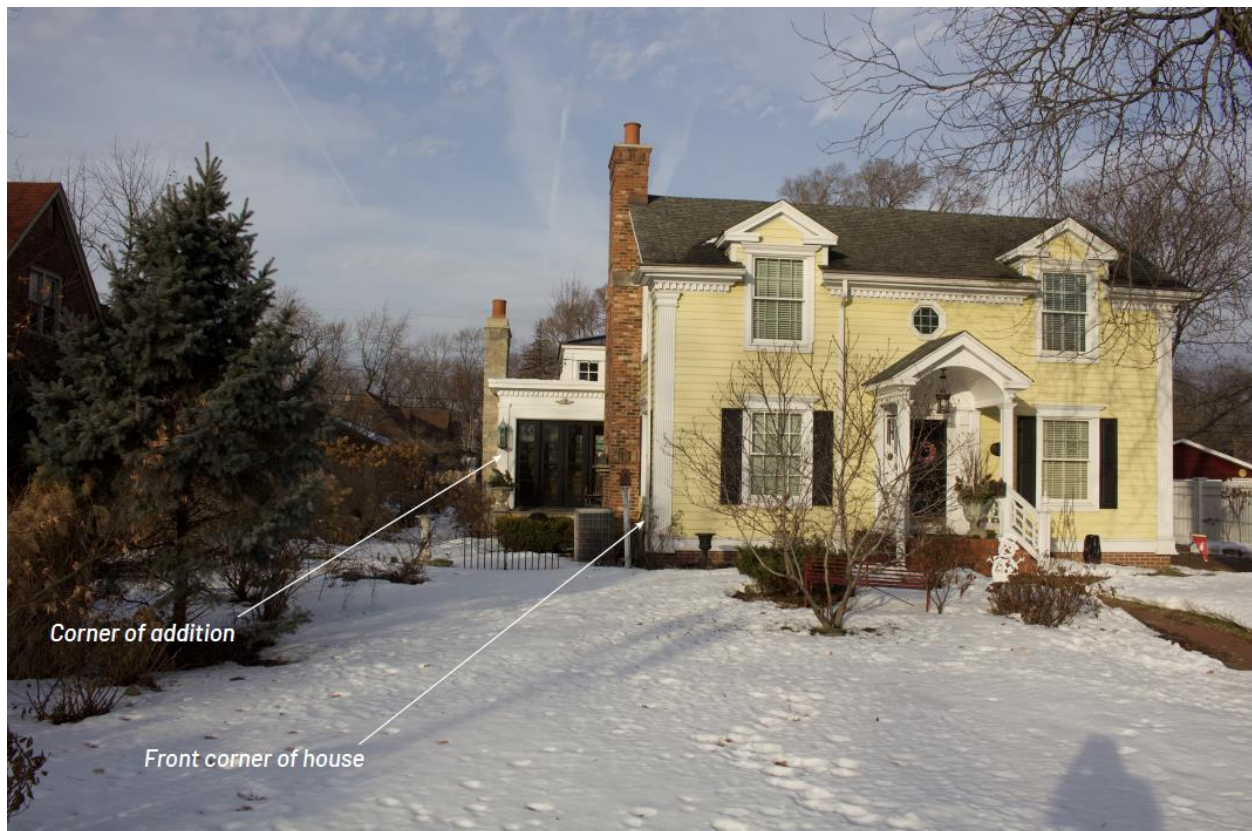
Height

42 inches max. in Front Yards, with up to 6 additional inches allowed for decorative post tops; otherwise 6 ft. max in Side and Rear Yards; height measured above the Finished Grade

The Munster Zoning Ordinance defines a Front Yard:

Front Yard: *a Yard that is situated between (a) the nearest roofed portion of the Principal Building or of any Accessory Building on the Lot and (b) the Front Lot Line, extending the full width of the Lot, from Side Lot Line to Side Lot Line.*

In the case of the subject property, all the land to the east (in front of) the main house and the addition comprises the front yard. Additional information is provided in the attached packet of information provided by the applicant.



Staff notes that the minimum front setback for a Principal Building in this district is 35 feet. Because the existing single-family residence is set back approximately 50 feet from the front lot line, the proposed fence does not encroach into the minimum setback.

VARIANCE STANDARDS

The variance process is established to provide relief to a property owner when, due to unique circumstances, compliance with the zoning code imposes a hardship or practical difficulty on a property owner. The BZA is under no obligation to grant a variance. It is the petitioner's responsibility to prove a hardship or practical difficulty. The BZA should ask the petition to address the criteria listed below.

Sec. 26-6.804.I of the Munster Zoning Code states that the basis for a variance is as follows:

g. General Standards.

A Variance may be granted only if the Decision-Making Authority has made the following determinations for such Variance:

- i. the practical difficulties or unnecessary hardships that would be incurred by strict application of the Use or Development standard, as applicable, are unique and not shared by all properties in the vicinity and are not self-imposed;
- ii. such Variance is the minimum Variance that will relieve such practical difficulties or unnecessary hardships, as applicable;
- iii. such Variance is in the spirit of the general purposes and intent of this Article as stated in Division 1; and
- iv. such Variance is so designed as to provide reasonable consideration to, among other things, the character of the neighborhood, District, or Civic Zone, the conservation of property values in the vicinity, and the guidance of Development in accordance with the Comprehensive Plan.

h. Specific to Development standards Variances:

A Variance from Development Standards may be approved or approved with conditions only if:

- i. it will not be injurious to the public health, safety, morals, and general welfare of the community;
- ii. the use and value of the area Adjacent to the property included in the Variance will not be affected in a substantially adverse manner; and
- iii. the strict application of the Development standards will result in practical difficulties in the use of the property.

The applicant has addressed these criteria in the attached application.

RECOMMENDATION

The Board of Zoning Appeals may wish to consider the following motion:

Approve BZA Docket No. 22-002 granting variances from TABLE 26-6.405.A-2 to permit a 6-foot tall fence to extend ten feet into front yard along the north property line and a 6-foot tall fence to extend along the south property line to a point south of the easternmost face and then north to the easternmost south corner of the single-family house at 8004 Hohman Avenue, in accordance with the attached plans.



Petition BZA _____ - _____

Date: _____

Application Fee: \$ _____

Sign Fee: \$ _____

Town of Munster Board of Zoning Appeals Petition Application

OWNER INFORMATION:

Jeffery and Nancy Nixon

219-644-5044

Name of Owner

Phone Number

8004 Hohman Ave. Munster, IN 46321

nanixon@att.net

Street address, City, ST, ZIP Code

Email address

APPLICANT OR PETITIONER INFORMATION (if different than above):

Name of Applicant/Petitioner

Phone Number

Street address, City, ST, ZIP Code

Email address

PROPERTY INFORMATION:

Business or Development Name (if applicable)

Address of Property or Legal Description

Current Zoning

APPLICATION INFORMATION:

Please select what this Application is for:

☒ **Variance** If yes, select one of the following: ☐ **Use** ☒ **Developmental Standards**

☐ **Conditional Use**

☐ **Administrative Appeal**

Brief Description of Project and List of Variances or Conditional Uses Being Requested (if applicable):

North side of property fence extends 2 ft. longer and 2 ft higher than existing code allows

South side of property we want to be able to enclose side yard to the front corner of the house. We have a bump out addition, added three years ago, that is only 25% of the depth of the house. This addition has a set of french doors facing the front of the property, that we want to enclose with the fence, for privacy and security. Current code says this is the front corner of our house. If we had installed the fence before the addition, the fence would be extended to the actual front corner of the house with no variance required.

Name of Registered Engineer, Architect or Land Surveyor

Phone Number

Street address, City, ST, ZIP Code

Email address

DEVELOPMENTAL VARIANCE CONDITIONS OF APPROVAL

The Munster Board of Zoning Appeals is authorized to hear petitions for developmental standards variances and to approve or deny. The Board of Zoning Appeals may also impose reasonable conditions and restrictions. Indiana Code 36-7-4-918.5 lists the legal criteria for a developmental standards variance:

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:

We cannot see where either of the variances granted would violate the above conditions. On the North side of the property one existing fence section is slightly longer and higher than the code allows but is in keeping with the rest of the fence. This panel gives us privacy and security for the large windows on the north side of the home. On the south, as explained above, the fence only encloses the side yard to the front corner of the house. The fence ends approx. 55 feet from the town sidewalk. Neither fence obstructs any safety views required to enter or leave adjacent properties.

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. Explain why this statement is true in this case:

This fence in no way affects the use or value except to increase the beauty and value of adjacent properties. Both adjacent properties are partially fenced by old, rusted, chain link fences, one being poorly maintained and ready to fall down.

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

The practical difficulty has to do with privacy and the security of our home. When we moved to this house 33 years ago Hohman ave was a less busy street, both from vehicle and foot traffic. When we built the first addition in 2001, we added two large windows to the north side of the house. At the time we understood, the fence we had planned, could extend 10 feet past the front corner of the house. Thereby blocking the view to the inside of the house from the town sidewalk. On the south side of the house the fence would have always been within code, had we not added a unique bump out on that side. The privacy fence abutting the actual front corner of the house gives us another layer of security for the french doors that face the street while not being a main entrance. We have invested a lot of time and energy in our home and with the train coming to this area, with additional traffic, we would like to maintain a sense of security while adding something beautiful to the neighborhood.

Attach additional pages if necessary

NIXON FENCE VARIANCE

FENCE PLANS AND PLAT



The brown line indicates where the fence will be. The north fence is completed.

THE ISSUES





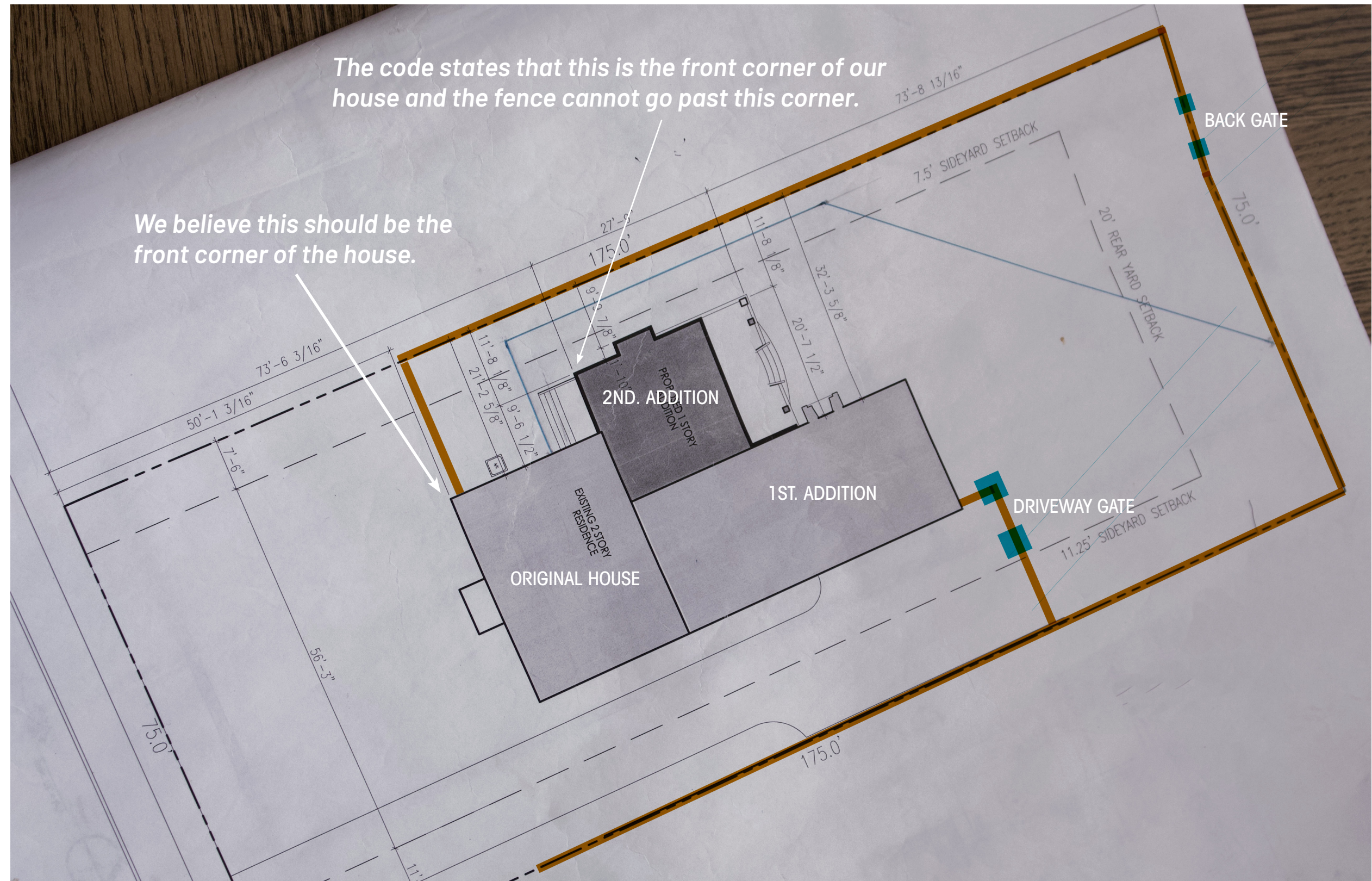
The 6' fence (two foot over code when it extends past the house) helps screen the view into our kitchen from cars and pedestrians.

Security and privacy are the reasons to allow the 6' fence to remain.



The fence allows us to eat at the kitchen table without people looking in.

Security and privacy are the reasons to allow the 6' fence to remain.





Security and privacy are the reasons to allow the fence to enclose the area to the front corner of the house.