

Item # 49

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Appeal of a Board of Adjustment decision to deny a fence height variance from 6 feet 6 inches to 8 feet for an existing fence in the R-1AA (Single-Family Dwelling District); (Christine Menzel, appellant/applicant).

DEPARTMENT: Planning & Development **DIVISION:** Planning

AUTHORIZED BY: Dan Matthys **CONTACT:** Ian Sikonia **EXT.** 7398

Agenda Date <u>5/9/2006</u> Regular <input type="checkbox"/> Consent <input type="checkbox"/> Work Session <input type="checkbox"/> Briefing <input type="checkbox"/> Public Hearing – 1:30 <input checked="" type="checkbox"/> Public Hearing – 7:00 <input type="checkbox"/>
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MOTION/RECOMMENDATION:

1. **UPHOLD** the Board of Adjustment decision to deny a fence height variance from 6 feet 6 inches to 8 feet for an existing fence in the R-1AA (Single-Family Dwelling District); (Christine Menzel, appellant/applicant); or
2. **REVERSE** the Board of Adjustment decision to deny a fence height variance from 6 feet 6 inches to 8 feet for an existing fence in the R-1AA (Single-Family Dwelling District); (Christine Menzel, appellant/applicant); or
3. **CONTINUE** the request to a time and date certain.

Commission District #3, Van Der Weide

Ian Sikonia, Planner

BOARD OF ADJUSTMENT'S DECISION:

At the February 27, 2006 regular meeting, the Board of Adjustment heard the applicant's request for a fence height variance from 6 feet 6 inches to 8 feet for an existing fence at 3538 Shirley Drive. The Board of Adjustment voted 5-0 to deny the request based on a determination that an eight foot tall fence would not be in keeping with the character of the neighborhood and that it was a self imposed hardship since the applicant constructed the 8 foot high fence without obtaining a building permit. Staff recommended denial of this request because it did not meet the six criteria for it to be considered a hardship.

A motion to uphold the Board of Adjustment's decision will allow a six foot six inch high fence which is the maximum permitted by the Land Development Code, Section 30.1349.

Reviewed by: _____ Co Atty: <u>KFT</u> DFS: _____ Other: _____ DCM: _____ CM: _____ File No. <u>ph130pdp04</u>

STAFF RECOMMENDATION:

Uphold the Board of Adjustment decision to deny a fence height variance from 6 feet 6 inches to 8 feet for an existing fence based on staff's findings.

ATTACHMENTS:

Staff Report
Future Land Use Map
Zoning Map
Aerial
Site Plan
Appeal Letter
Notice of Code Violation
BOA Minutes from February 27, 2006
Pictures of existing fence

STAFF REPORT

BACKGROUND / REQUEST:

- The applicant was cited on 12/09/05 by the Seminole County Building Division for the installation of an 8 foot high, board on board wood privacy fence without a building permit.
- The applicant applied for the variance on 12/16/05 for fence height and appeared at the February 27, 2006 Board of Adjustment meeting.
- The applicant submitted the application to appeal the Board of Adjustment decision to the Planning Division on March 14, 2006.
- The applicant has submitted plans for the existing fence to the Building Division on 12/16/05.
- There is no record of any approved fence height variances in the immediate area of the subject property.

ZONING & FUTURE LAND USE (FLU)	Direction	Existing Zoning	Existing FLU	Use of Property
	Site	R-1AA	Low Density Residential	Single-Family (Conventional)
North	R-1AA	Low Density Residential	Single-Family (Conventional)	
South	R-1AA	Low Density Residential	Single-Family (Conventional)	
East	R-1AA	Low Density Residential	Single-Family (Conventional)	
West	R-1AA	Low Density Residential	Single-Family (Conventional)	

STAFF FINDINGS:

The Board of County Commissioners shall have the power to hear and decide appeals from Board of Adjustment decisions, including variances the Board of Adjustment is specifically authorized to pass under the terms of the Land Development Code upon determination that all of the following provisions of **Section 30.43(b)(3)** are satisfied:

a) That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning classification.

No special conditions exist on this property which would warrant a fence to be higher than allowed by the Land Development Code.

b) That the special conditions and circumstances do not result from the actions of the applicant.

No special conditions or circumstances exist due to the fact that the applicant is the one that constructed the illegal fence on the property without building permits.

c) That granting the variance requested will not confer on the applicant any special privilege that is denied by Chapter 30 to other lands, buildings, or structures in the same zoning classification.

The grant of the requested variance will confer on the applicant special privileges due the fact that other property owners in the subdivision have fences that comply with the Land Development Code.

d) That literal interpretation of the provisions of Chapter 30 would deprive the applicant of rights commonly enjoyed by other properties in the same zoning classification and would work unnecessary and undue hardship on the applicant.

The literal interpretation would not deprive the applicant of rights commonly enjoyed by others due to the fact that other residents of the Bear Lake Manor Subdivision have fences that comply with the Land Development Code.

e) That the variance granted is the minimum variance that will make possible the reasonable use of the land, building, or structure.

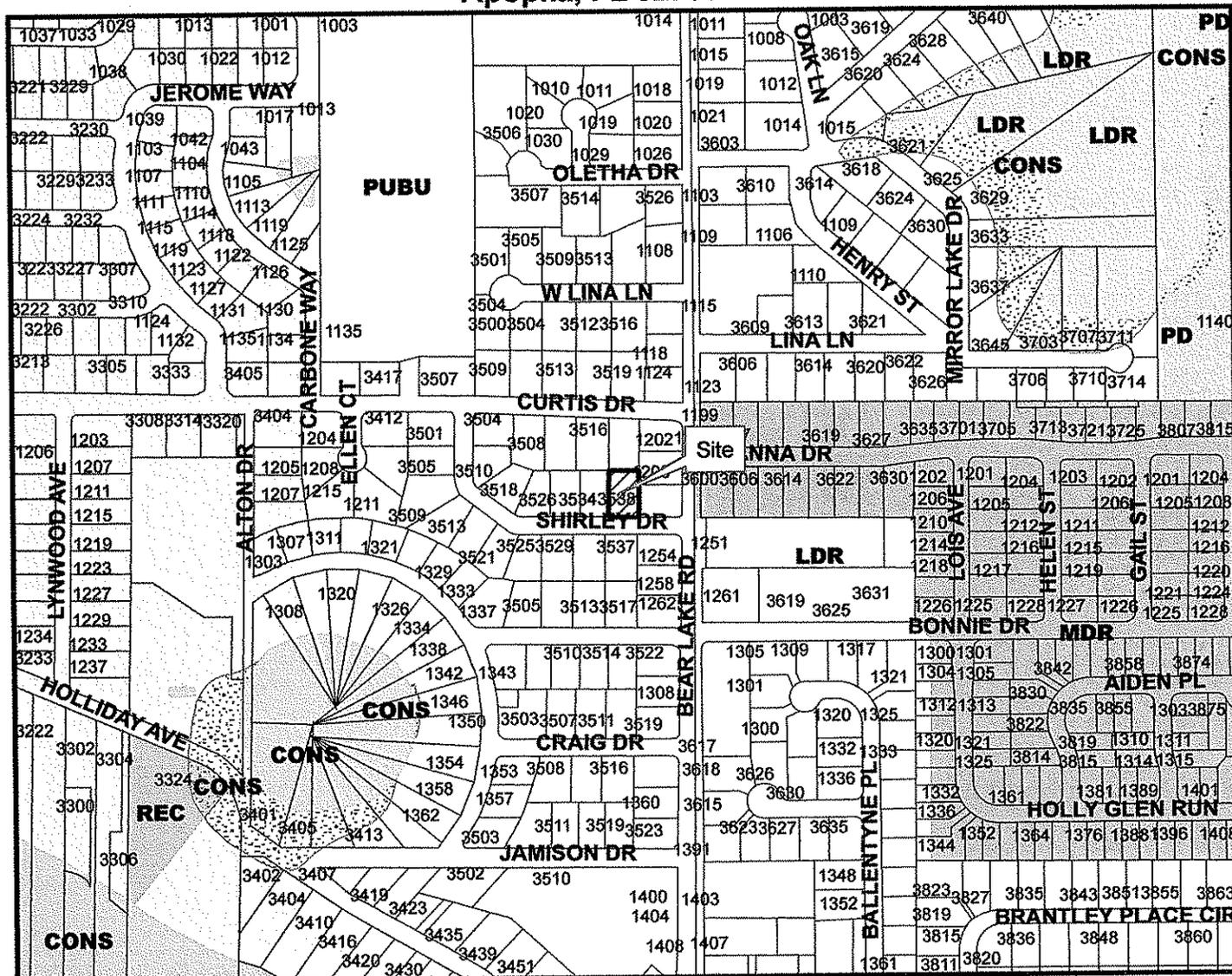
The applicant will still retain reasonable use of the property without the requested variance because only a portion of the existing fence will have to be modified by one foot six inches to meet the height requirements of the Land Development Code.

f) That the grant of the variance will be in harmony with the general intent and purpose of Chapter 30, will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

The grant of the variance will not be in harmony with the trend of development of the neighborhood because other residents of the subdivision have fences that comply with the height requirements of the Land Development Code.

STAFF RECOMMENDATION:	<ul style="list-style-type: none">• Based on the stated findings, staff recommends the Board of County Commissioners uphold the decision of the Board of Adjustment to deny a fence height variance from 6 feet 6 inches to 8 feet for an existing fence in the R-1AA (Single-Family Dwelling District).
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Christine Menzel
 3538 Shirley Dr.
 Apopka, FL 32703

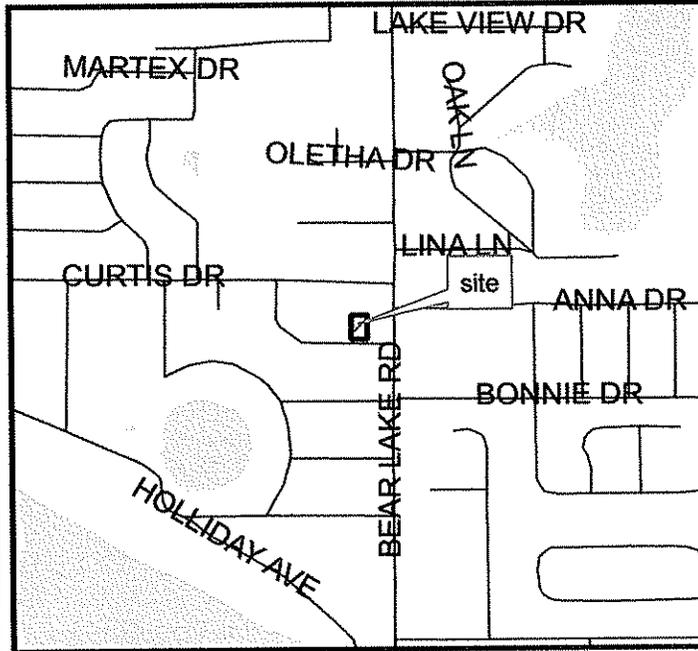


Seminole County Board of Adjustment
February 27, 2006
Case: BV2005-202
Parcel No: 18-21-29-519-0A00-0140

Future Land Use

	BV2005-202	PUBU
	CONS, REC	LDR
	CONS, LDR	MDR
	CONS, PD	PD
	REC	
	PUBC	

0 85170 340 510 680 Feet

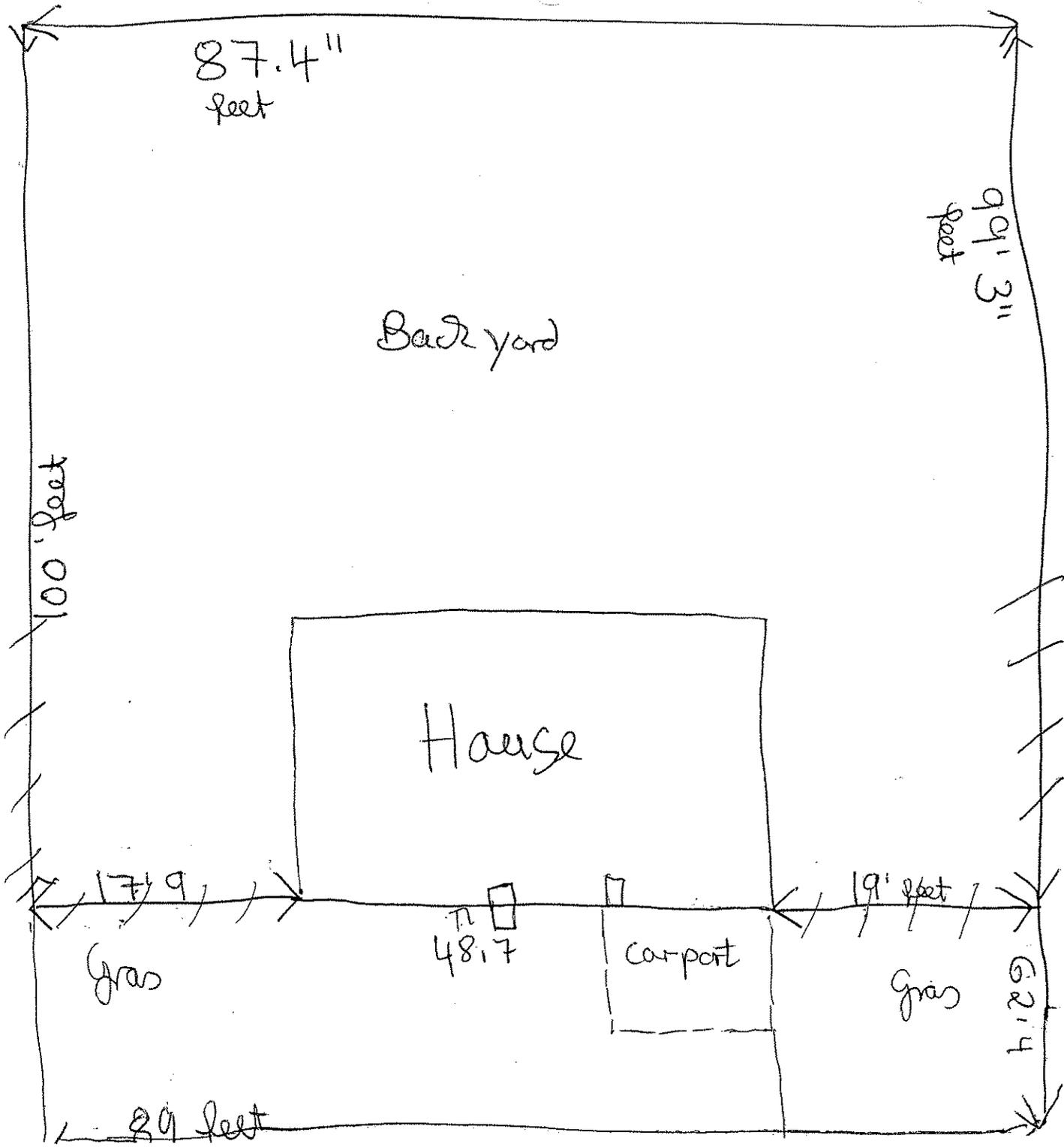
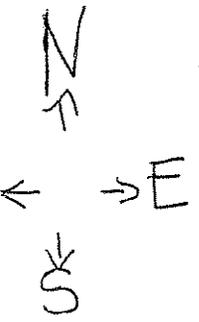




2004 AERIAL

BV2005-202 APPEAL



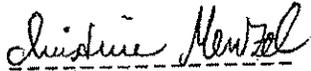


March 11, 2006

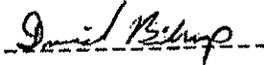
Dear Mr. Rumer,

We are respectfully appealing the decision of the Planning and Development Dept. from February 27, 2006 regarding the Fence Height Variance from 6 feet to 8 feet. Thank you very much for your attention on this matter.

Sincerely,



Christine Menzel



David T. Bishop

NOTICE OF CODE VIOLATION

LOCATION OF VIOLATION: 3538 SHIRLEY DR APOPKA, FL 32703
IN ACCORDANCE WITH SEMINOLE COUNTY CODES YOU ARE HEREBY NOTIFIED THAT
THE ABOVE DESCRIBED PROPERTY IS IN VIOLATION OF _____
CHAPTER/ARTICLE FBC 104.1.1 SECTION _____

DESCRIPTION OF VIOLATION: INSTALLATION OF 8 FT PRIVACY FENCE WITHOUT BUILDING PERMIT

CORRECTIVE ACTION: NEED TO OBTAIN PERMIT

THE ABOVE CORRECTIVE MEASURES MUST BE TAKEN BY 12-23-05

FAILURE TO CORRECT THE ABOVE VIOLATION WILL RESULT IN THE MATTER BEING TURNED OVER TO THE CODE ENFORCEMENT BOARD FOR FURTHER ACTION. THE CODE ENFORCEMENT BOARD HAS THE AUTHORITY TO LEVY FINES UP TO \$250.00 A DAY FOR EVERY DAY THE VIOLATION EXISTS.

IF CHECKED, A LICENSE REVOCATION HEARING WILL BE SCHEDULED FOR APPLICABLE CONTRACTOR VIOLATIONS.



For further information contact:
Building and Fire Inspection Division
Seminole County Services Building
1101 East First Street, Room 1020
Sanford, FL 32771
PHONE: (407) 665-7338 OR (407) 665-7423

DATE: 12-9-05 **INSPECTOR:** TERRY SCOTT

CASE NO: 05-604

**MINUTES FOR THE SEMINOLE COUNTY BOARD OF ADJUSTMENT
FEBRUARY 27, 2006 MEETING
ITEM #4**

3538 SHIRLEY DRIVE – Christine Menzel, applicant; Request for a fence height variance from 6 feet to 8 feet for an existing fence in the R-1AA (Single-Family Dwelling District); Located on the north side of Shirley Drive; approximately 3,000 feet southwest of the intersection of Bear Lake Road and E SR 436; (BV2005-202).

Michael Rumer, Senior Planner

Michael Rumer introduced the location of the property and stated that the applicant constructed an 8 foot high fence without receiving the proper building permits and variance. He further stated that a letter of violation was sent by the Seminole County Building Division. He lastly stated that there was no record of prior variances granted for the property.

David Bishop stated that he lives on the property with his mother, and he didn't know he needed to pull a permit for the fence. He further stated that he would be inheriting the house, and being tall he can see over a 6 foot fence and therefore he constructed the 8 foot fence.

Mr. Pennington made a motion to deny the request.

Mr. Bushrui seconded the motion.

The motion passed by unanimous consent (5-0).



