



PLANNING COMMISSION STAFF REPORT

Originator Kris Aaker Assistant Planner	Meeting Date May 14, 2014	Agenda # B-14-09
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Recommended Action: Approve the 2 foot fence height variance as requested for property located at 5528 Woodcrest Drive for Thomas Raih.

Project Description

The subject property is located in the North West corner of Woodcrest Drive and West 56th Street, consisting of a rambler with an attached two car garage. The Property has an in-ground pool in the back yard located approximately 5 feet from the rear lot line. The swimming pool is currently surrounded by a 5 foot tall fence enclosing the perimeter of the back yard. The owner would like to replace the 5 foot tall fence with a 6 – 8 foot tall fence. The fence is proposed to vary in height given adjacent grade elevations of neighboring properties. (See property location, aerial photos, photos of the subject, site survey, site photos, and fence product on pages A.1–A. 10).

INFORMATION/BACKGROUND

The homeowner has decided to replace the existing fence on the property that is required for protection given the in-ground pool in the rear yard. Most of the fence is proposed to be 6 feet in height, (conforming to the fence height code), with a section adjacent to the neighbor at 5537 Park Place, to the west, that will be 8 feet in height. The 8 foot tall section of the fence requires a 2 foot fence height variance. The property to the west is a recent tear-down re-build that received a Conditional Use Permit in 2012 to allow the new basement and 1st floor to be raised 3.75 feet above existing to bring the new basement floor elevation above the 100 year, (1%), flood elevation, (see pages A. 11 - 12., CUP Resolution) It was necessary to elevate the basement of the adjacent house to remove the structure from the flood zone. The elevated basement resulted in an elevated back yard with retaining walls along the proponent's westerly lot line. The neighbor's back yard is now 3 feet higher than it had been previously. Fence height near the pool on the neighbor's side is approximately 2 feet in places. The Edina Health Code requires a minimum 4 foot tall fence for protection around a pool. While fence height is measured from grade on the subject property, the existing height from the neighbor's yard is as low as 2 feet in some areas and

perhaps an attractive nuisance with the pool only 5 feet from the lot line. Attached is a Memorandum from the City's Environmental Health Specialist in support of the requested variance for fence height.

Surrounding Land Uses

- Northerly: Single dwelling units, zoned R-1, single dwelling unit district and guided residential.
- Easterly: Single dwelling units, zoned R-1, single dwelling unit district and guided residential.
- Southerly: Single dwelling units, zoned R-1, single dwelling unit district and guided residential.

Existing Site Features

The subject property is 17,097 square foot lot that includes a rambler with a two car garage built in 1958.

Planning

Guide Plan designation: Single Dwelling Unit
Zoning: R-1, Single Dwelling Unit District

Fence Design

The proposed fence will be Scalloped solid board fence. (See pictures on pages A-A.)

Primary Issue:

- **Is the proposed development reasonable for this site?**

Yes. Staff believes the proposal is reasonable for four reasons:

1. The proposed use is permitted in the R-1, Single Dwelling Unit Zoning District and complies with all requirements with the exception of a section of fence along the west lot line proposed to be 8 feet in height.
2. It is reasonable to increase the fence height given the grade difference between the subject property and the property to the west.

3. The improvements will provide a reasonable use by allowing a conforming fence height as viewed and measured from the adjacent property.

4. The fence will provide adequate protection as needed given the Edina Health Code.

- **Is the proposed variance justified?**

Yes. Per the Zoning Ordinance, a variance should not be granted unless it is found that the enforcement of the ordinance would cause practical difficulties in complying with the zoning ordinance and that the use is reasonable. As demonstrated below, staff believes the proposal does meet the variance standards, when applying the three conditions:

Section 850.0.Subd., requires the following findings for approval of a variance:

Minnesota Statutes and Edina Ordinances require that the following conditions must be satisfied affirmatively. The Proposed Variance will:

1) *Relieve practical difficulties that prevent a reasonable use from complying with ordinance requirements.*

Reasonable use does not mean that the applicant must show the land cannot be put to any reasonable use without the variance. Rather, the applicant must show that there are practical difficulties in complying with the code and that the proposed use is reasonable. "Practical difficulties" may include functional and aesthetic concerns.

Staff believes the proposed variance is reasonable. The fence will allow for minimum protection around the existing in ground pool as necessary by Edina Health Code.

Staff believes the proposed variance is reasonable given the altered grade on the adjacent neighbor's property. The practical difficulty is therefore, caused by the necessary elevation of the neighbor's basement to bring it above the flood elevation and the subsequent regarde of the property.

The lot is large, with generous spacing between the new home next door and the subject home and pool. The purpose behind the ordinance is to prohibit an unnecessarily high fence between neighbors in a residential

setting. Eight foot fences were allowed by code prior to an amendment over 7 years ago. Fence height has since been reduced to a maximum of 6 feet. It should be noted that there are quite a number of 8 foot fences within the city erected at a time when the ordinance allowed higher fence heights. Those fences may remain and be maintained at 8 feet. Eight foot fences are not uncommon within the City.

2) *There are circumstances that are unique to the property, not common to every similarly zoned property, and that are not self-created?*

Yes. The unique circumstances include the altered grade on the neighboring property that has affected the required fence needed for protection and the close proximity of existing pool located on the subject property.

3) *Will the variance alter the essential character of the neighborhood?*

No. The proposed fence will maintain the existing character and allow for conformance with and pool protection as needed in the health code.

Staff Recommendation

Approve the requested variance based on the following findings:

1. The proposal meets the required standards for a variance, because:
 - a) The practical difficult is caused by the grade elevation changes of the adjacent property.
 - b) The City Health Code requires adequate fence protection around an in ground pool. The proposal is reasonable in that it provides the pool protection as supported by the City Pool Inspector.

Approval of the variance is subject to the following condition:

1. The fence must be construction per the proposed plans date stamped: May 15, 2014.

Deadline for a city decision: July 14, 2014

Health Division of the Edina Police Department
Phone 952-826-0463 • Fax 952-826-0389 • www.EdinaMN.gov



To: Kris Aaker, Assistant Planner

cc:

From: Solvei Wilmot, R.S

Date: 5/7/14

Subject: Thomas Raih, 5528 Woodcrest Drive, Edina
request for variance to height requirements for fencing around a swimming pool

The Edina Health Division of the Edina Police Department is responsible for enforcement of Edina City Codes relating to swimming pools. In reviewing Mr. Raih's request for a variance to increase the height of the fencing on the west side of his property from 5 feet to 8 feet, the Health Division supports his proposal for the following reasons:

- Mr. Raih effectively illustrates how the elevation of the adjoining property has resulted in his existing 5 foot tall fence to be a 2 foot tall fence on the neighbor's side of the fence.
- Edina City Code Chapter 10, Article XI, Sec. 10-510 requires fencing around swimming pools to be a minimum of 4 feet tall, non climbable material. Although Mr. Raih's fence on his side of the property meets the height requirements of the code, the height requirement is not met on the neighbor's side of the fence due to the increased elevation.
- Additionally, the Center For Disease (CDC) control report on Childhood Injury 2000-2006 lists drowning as the 2nd leading cause of death for children between 1 and 14 years of age (transportation related issues is 1st). Proper fencing has been found to reduce the potential for accidental drowning.

Therefore, Mr Raih's proposal to increase his fence height from 5 feet to 8 feet in order to limit the potential for entry to his pool and/or unintended injuries is in keeping with the intent of the Edina City Code and the recommendations of the CDC.



VARIANCE APPLICATION

CASE NUMBER _____ DATE 5/1/14
FEE PAID _____

City of Edina Planning Department * www.cityofedina.com
4801 West Fiftieth Street * Edina, MN 55424 * (952) 826-0369 *
fax (952) 826-0389

FEE: RES - \$350.00 NON-RES - \$600.00

APPLICANT:

NAME: Thomas J. Raih (Signature required on back page)

ADDRESS: 5528 WOODCREST DRIVE PHONE: 952-920-1323

EMAIL: MOLLIE.5@COMCAST-NET 612-889-8868

PROPERTY OWNER: THOMASRAIH@TCDMM.COM

NAME: Thomas J. Raih (Signature required on back page)

ADDRESS: 5528 WOODCREST DR PHONE: 952-920-1323
612-889-8868

LEGAL DESCRIPTION OF PROPERTY (written and electronic form):

LOT 4, Block 2, COLONIAL GROVE Fifth Addition

**You must provide a full legal description. If more space is needed, please use a separate sheet.

Note: The County may not accept the resolution approving your project if the legal description does not match their records. This may delay your project.

PROPERTY ADDRESS: 5528 WOODCREST DRIVE, EDINA MN 55424

PRESENT ZONING: R-1 P.I.D.# 19-028-24-11-0082

EXPLANATION OF REQUEST:

REQUEST VARIANCE TO REPLACE THE 5 FOOT FENCE BETWEEN OUR
PROPERTY AND POOL AT 5528 WOODCREST DRIVE AND THE ADJACENT
ELEVATED PROPERTY AND LOT AT 5537 56TH WITH 8 FOOT FENCE
(Use reverse side or additional pages if necessary)

ARCHITECT: NAME: _____ PHONE: (SEE PHOTOS SEE SURVEY)

EMAIL: _____

SURVEYOR: NAME: BROWN LAND SURVEYING - SUITE 228 PHONE: _____

EMAIL: 8030 CEDAR AVE SO. BUS 952-854-4055
BLOOMINGTON, MN FAX 952-854-4268
55425

Minnesota Statutes and Edina Ordinances require that the following conditions must be satisfied affirmatively. Please fully explain your answers using additional sheets of paper as necessary.

The Proposed Variance will: To RAISE OUR YARD AND POOL FENCE TO A LEGAL HEIGHT YES NO

FROM THE NEIGHBORS' PERSPECTIVE GIVEN THEIR RECENT ALLOWED LOT ELEVATION OF 2-3 FEET → SEE PHOTO 1

Relieve practical difficulties in complying with the zoning ordinance and that the use is reasonable

WOULD FAIL TO MEET POOL FENCE REQUIREMENTS → SEE PHOTO 2

Correct extraordinary circumstances applicable to this property but not applicable to other property in the vicinity or zoning district

OUR LEGAL 5 FOOT FENCE IS INADEQUATE AND 2 FEET TALL FROM THE NEIGHBORS' VIEW GIVEN THEIR ALLOWED LOT ELEVATION. → SEE PHOTO 3

Be in harmony with the general purposes and intent of the zoning ordinance

THE PURPOSE OF THIS REQUEST IS TO SAFEGUARD THE POOL AND PROTECT THE NEIGHBORS THREE SMALL CHILDREN. → SEE PHOTO 4

Not alter the essential Character of a neighborhood

THE REQUESTED FENCE ELEVATION IS ONLY FOR 60 FEET OF THE 150 FOOT LOT LINE BETWEEN OUR YARD 5528 AND THE NEIGHBORS' YARD 5577. THE FENCE WILL BE ADJACENT TO AND ALONG THE WEST-SIDE OF THE BACKYARD POOL AND SHIELDED FROM THE STREET BY A ROW OF 5-6 FOOT ARBORVITAE

Detailed Application Requirements: Unless waived by the Planning Department, you must complete all of the following items with this application. An incomplete application will not be accepted.

- ✓ Completed and signed application form.
- ✓ Application fee (not refundable). Make check payable to "City of Edina."
- ✓ One (1) Copy of drawings to scale.
- ✓ Seventeen (17) 11x17 copies of drawings, including elevations and survey, photographs and other information to explain and support the application.
- ✓ A current survey is required. Please refer to "Exhibit A."
- ✓ Variance requests require scale drawings to explain and document the proposal. The drawings are not required to be prepared by a professional, but must be neat, accurate and drawn to an acceptable scale. The drawings may vary with the proposal, but should include a site plan, floor plans and elevations of the sides of the building which are affected by the variance.

VARIANCE GUIDELINES AND APPLICATION INFORMATION

The City of Edina Planning Department encourages healthy development within the city of Edina. Although this document is meant to serve as a guide for the application process for development through the Planning Department it is by no means comprehensive. The Planning Staff recommend that you schedule a meeting to answer any questions or to discuss issues that may accompany your project. It is much easier to tackle problems early on in the process. The office number for the Planning Staff is (952) 826-0465.

Variance Information

The Edina Planning Commission has been established to consider exceptions (variances) from the Land Use, Platting and Zoning Ordinance (Number 850), the Antenna Ordinance (Number 815), the Sign Ordinance (Number 460) and the Parking and Storage of Vehicles and Equipment Ordinance (Number 1046).

The variance procedure is a "safety valve" to handle the unusual circumstances that could not be anticipated by these ordinances. The Commission is charged to only grant a petition for a variance if it finds:

1. That strict enforcement of the ordinance would cause practical difficulties because of circumstances unique to the petitioner's property
2. That the granting of the variance is in keeping with the spirit and intent of the ordinance.
3. Would not alter the essential character of the neighborhood.

"Practical Difficulties" means that:

1. The property in question cannot put to a reasonable use as allowed by the ordinance
2. The plight of the petitioner is due to circumstances unique to his/her property which were not created by the petitioner
3. The variance, if granted, will not alter the essential character of the property or its surroundings.

****Economic considerations alone shall not constitute an undue hardship if reasonable use for the petitioner's property exists under the terms of the ordinance.**

Application: Applications are submitted to the Planning Department. Offices are open Monday through Friday, 8 AM to 4:30 PM.

Deadlines for Applications: Applications need to be submitted at least **fifteen days** before the meeting. This allows the City of Edina time to notify surrounding property owners of the date of the hearing and details of the variance. It is helpful to submit the application as soon as possible to secure an early hearing position.

Notice of Public Hearing: Notice is mailed to all property owners (of record at City Hall) that are located within 200 feet of the site. Notice is mailed ten (10) days prior to the hearing. You are encouraged to contact adjacent or close owners and advise them of your proposal prior to the notice of the hearing. You may wish to provide statements of "no objection to the variance" from the nearby property owners.

Meetings and Public Hearings: Meetings of the Planning Commission are scheduled on the second and fourth Wednesday of each month. The meetings are held at 7:00 pm in the Edina City Hall Council Chambers, 4801 West 50th Street. ***Each meeting is limited to five variance cases on a first come, first serve basis.*** Additional requests are delayed until subsequent meetings. Meetings are formal public hearings with a staff report, comments from the proponent and comments from the audience. It is important the owner or a representative attend the meeting to answer questions.

Staff Report: After review of the drawings submitted and a visit to the site staff prepares a report. This report, along with any supporting drawings and materials, are sent to the Zoning Board in advance of the meetings. Board members may visit the site before the meeting. All plans, emails and written information are public information, and may be used in the staff report and distributed to the public.

Board Membership: The Planning Commission serves as the Zoning Board. Five members are required for a quorum.

Decisions by the Planning Commission: The Planning Commission may approve, deny or amend the variance request and establish conditions to ensure compliance or protect surrounding property owners. The Planning Commission generally makes a decision at the scheduled hearing. Occasionally, however, a continuance to another meeting may be necessary.

Appeals: Decisions of the Planning Commission are final unless appealed to the City Council in writing within 10 days. The proponents, any owner receiving notice of the hearing or the staff may appeal decisions. Appeals are rare and they can be time consuming because a new hearing is required before the full City Council. Appeals must be filed with the City Clerk.

Legal Fee: It is the policy of the City to charge applicants for the actual cost billed by our attorneys for all legal work associated with the application. An itemized bill will be provided which is due and payable within thirty (30) days.

**** Filing an Approved Variance:** The applicant is required to file an approved variance resolution with the County. Documents necessary for filing will be provided by the Planning Department.

APPLICANT'S STATEMENT

This application should be processed in my name, and I am the party whom the City should contact about this application. By signing this application, I certify that all fees, charges, utility bills, taxes, special assessments and other debts or obligations due to the City by me or for this property have been paid. I further certify that I am in compliance with all ordinance requirements and conditions regarding other City approvals that have been granted to me for any matter.

I have completed all of the applicable filing requirements and, to the best of my knowledge, the documents and information I have submitted are true and correct.

Thomas J Raich

Applicant's Signature

5/1/14

Date

OWNER'S STATEMENT

I am the fee title owner of the above described property, and I agree to this application.

(If a corporation or partnership is the fee title holder, attach a resolution authorizing this application on behalf of the board of directors or partnership.)

Thomas J Raich

Owner's Signature

5/1/14

Date

Note. Both signatures are required (if the owner is different than the applicant) before we can process the application, otherwise it is considered incomplete.

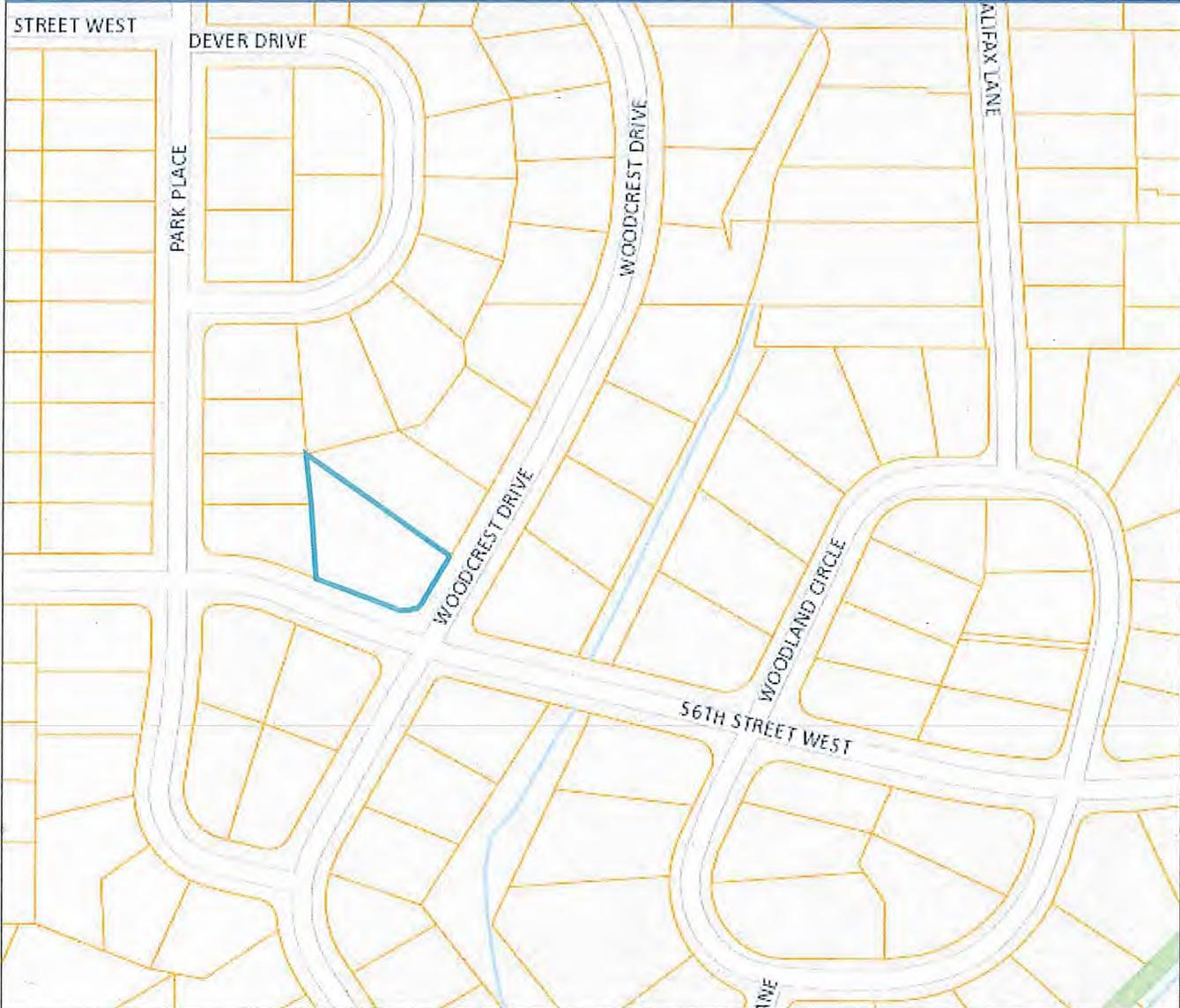
Jackie Hoogenakker

From: Laura Hemler <laura@hemler.com>
Sent: Monday, May 05, 2014 10:09 AM
To: Jackie Hoogenakker
Cc: mollie.5
Subject: Neighbor input for Case File B-14-09 (Raih property)

To whom it may concern,

I fully support allowing a variance for the fence on the Raih's property, especially considering that their western neighbors were allowed by the City of Edina to significantly build up the grade of their yard without consideration to the Raih's privacy.

Laura Hemler
5601 Park Place
laura@hemler.com



Parcel ID: 19-028-24-11-0062

Owner Name: M A Raih & T J Raih Trustees

Parcel Address: 5528 Woodcrest Dr
Edina, MN 55424

Property Type: Residential

Home-stead: Homestead

Parcel Area: 0.39 acres
17,097 sq ft

A-T-B: Torrens

Market Total: [REDACTED]

Tax Total: [REDACTED]

Sale Price: [REDACTED]

Sale Date: 08/2002

Sale Code: Warranty Deed

Map Scale: 1" ≈ 200 ft.

Print Date: 5/2/2014



This map is a compilation of data from various sources and is furnished "AS IS" with no representation or warranty expressed or implied, including fitness of any particular purpose, merchantability, or the accuracy and completeness of the information shown.

COPYRIGHT © HENNEPIN COUNTY 2014



A.1



A.2

Interactive Maps

Find a PID or an address on the map

Welcome

Results

Links

- [Tax information](#)
- [View oblique imagery \(Bing maps\)](#)
- [Survey documents](#)
- [About the data](#)

PID: 1902824110062

5528 Woodcrest Dr
Edina, MN 55424

Owner/Taxpayer

Owner: M A Raih & T J Raih Trustees

Taxpayer: THOMAS RAIH
5528 WOODCREST DR
EDINA MN 55424

Tax District

School Dist: 273

Sewer Dist:

Watershed Dist: 3

Parcel

Parcel Area: 0.39 acres
17,097 sq ft

Torrens/Abstract: Torrens

Addition: Colonial Grove 5th Addn

Lot: 004

Block: 002

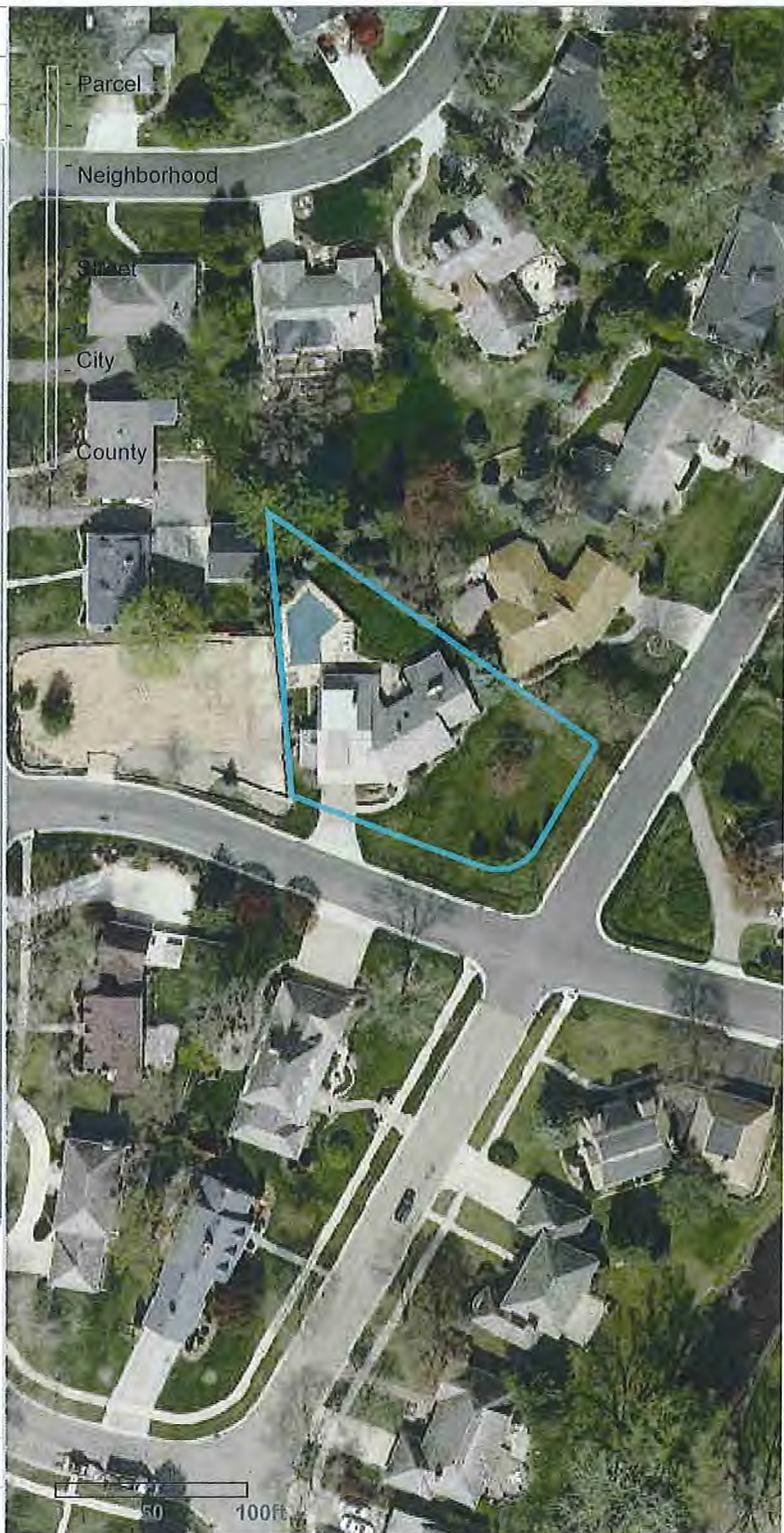
Metes & Bounds:

Tax Data (Payable 2014)

Market Value: ██████████

Legend

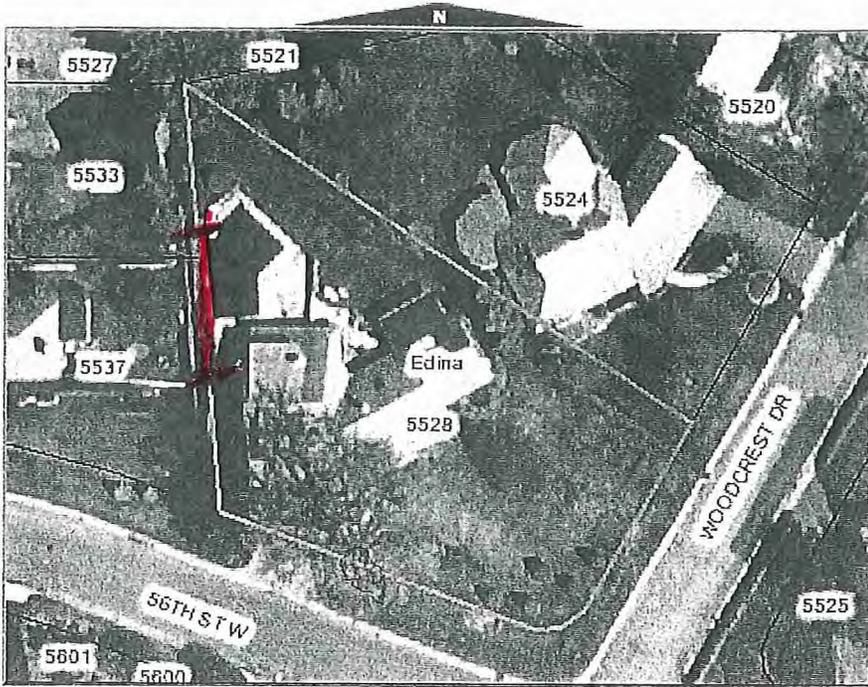
Measure



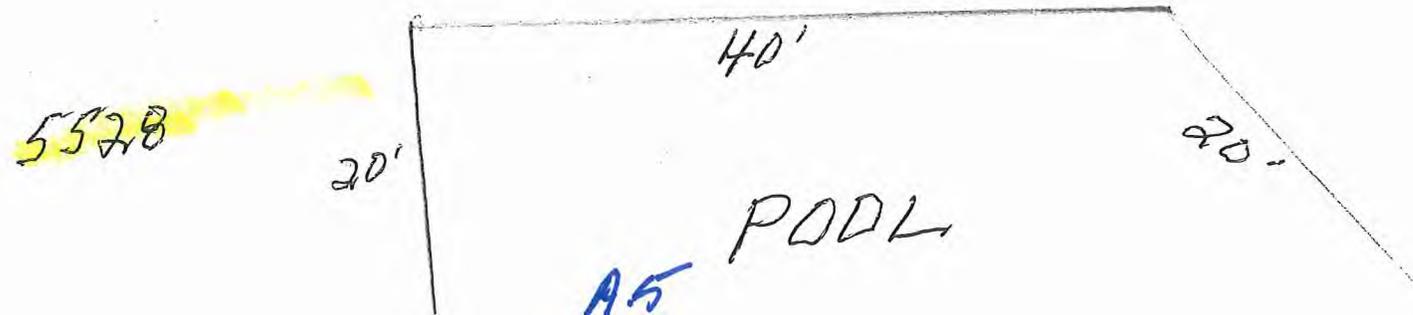
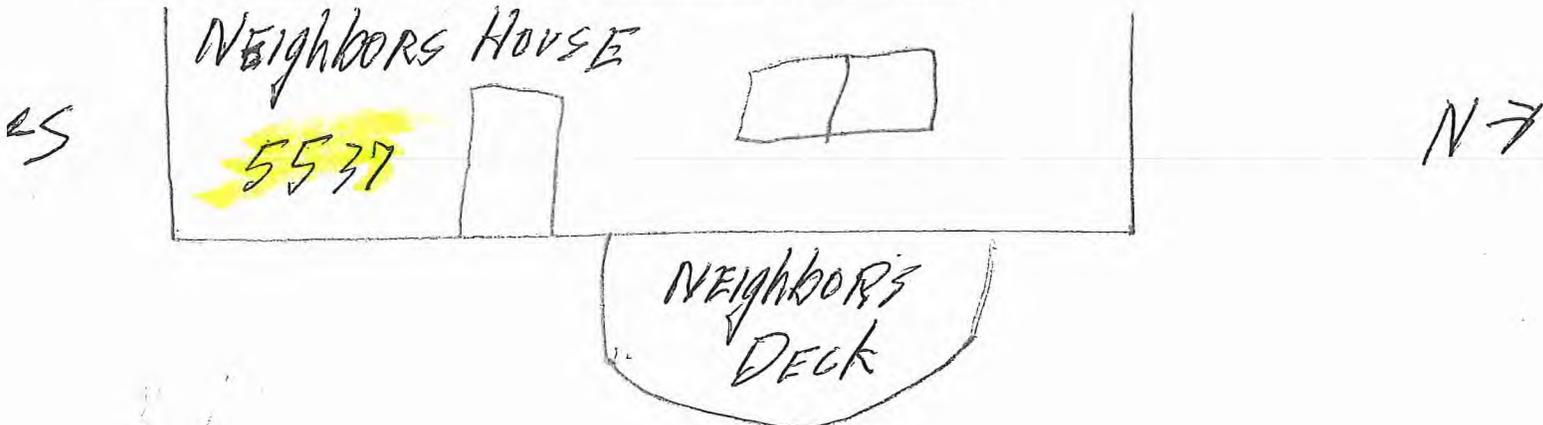
A.3

Hennepin County Property Map

SCALE



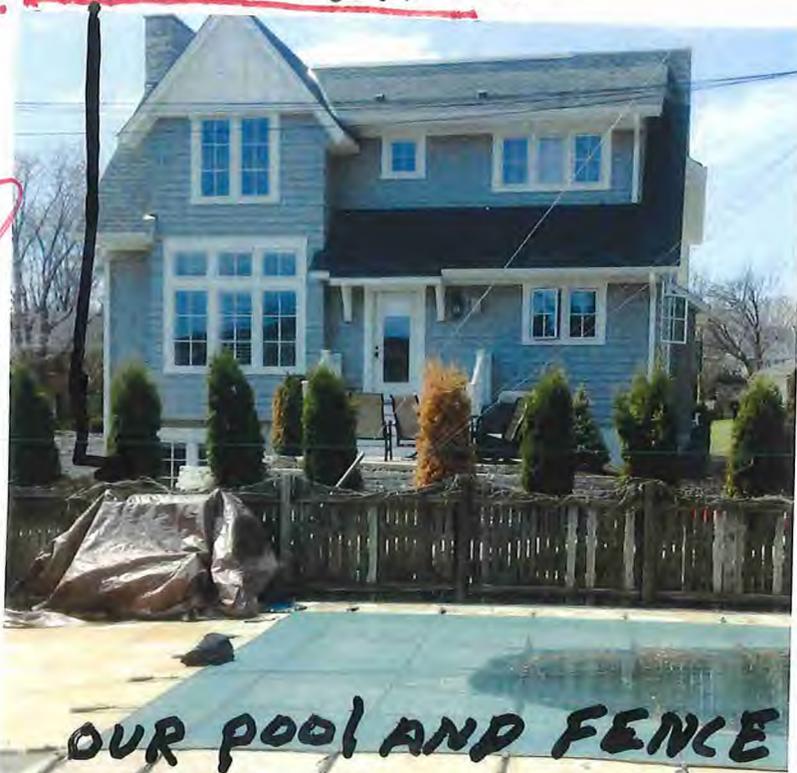
PROPOSED FENCE
VARIANCE IN RED



2002 - Rains purchase 5528 Woodcrest Dr.
with pool and legal 5 foot fence.

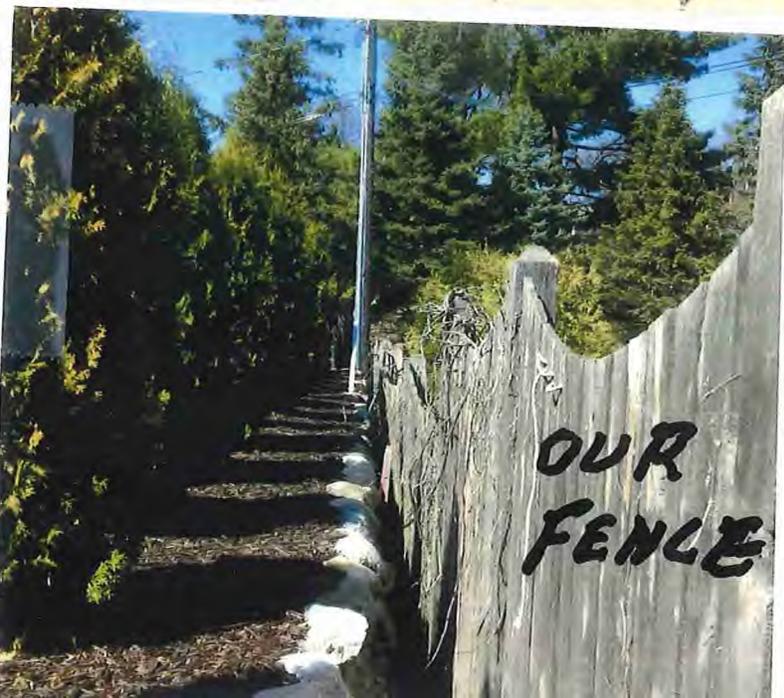
2012 - House next door at 5537 is torn
down. Developer is given permission
to raise the lot 3 feet to
accommodate a basement.

2013 - House is built.
Family with
three small ^①
children →
move in.



OUR POOL AND FENCE

2014 - Our 5 foot
fence becomes
a functional
2 foot fence
viewed from
5537 next
door lot. ^②



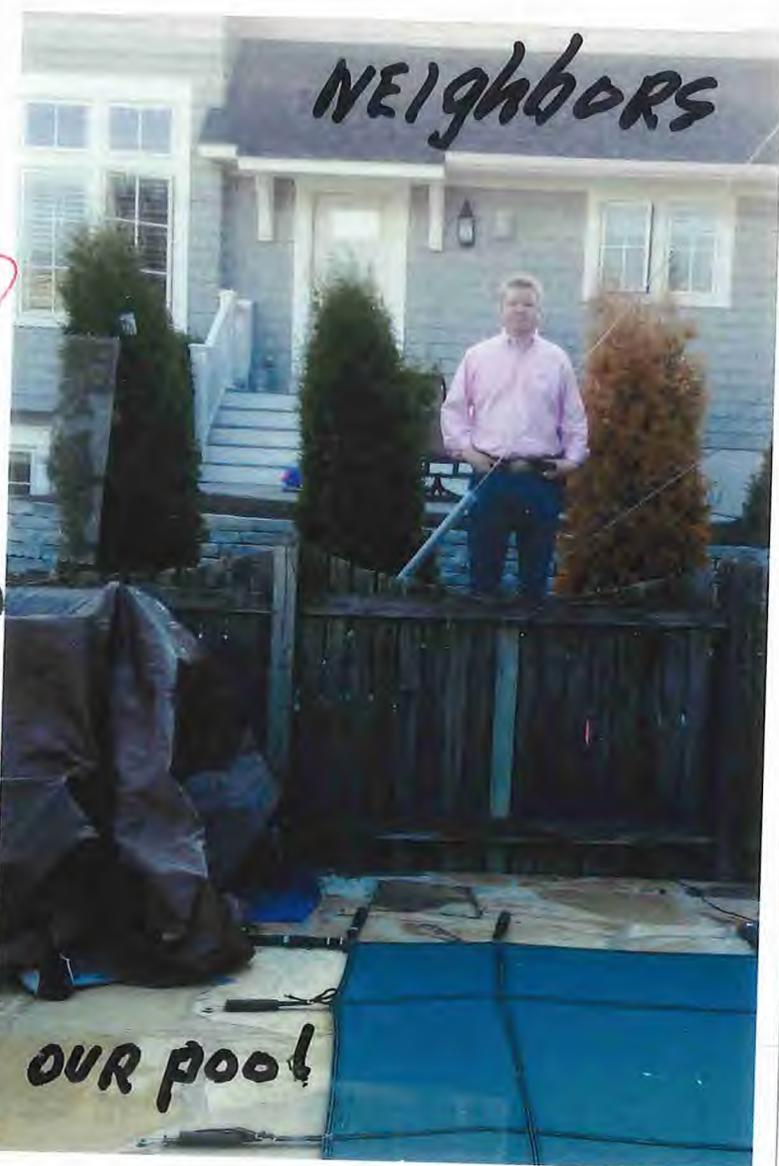
OUR
FENCE

ELEVATED
NEXT
DOOR LOT
→

RESULT. AN ADULT
STANDING ON THE
GROUND IN NEXT
DOOR LOT. OUR
5 FOOT FENCE
COMES TO HIS KNEES

3

① NEIGHBORS ② OUR FENCE ③ OUR POOL



REQUEST. IS TO RAISE
JUST THIS ONE SIDE
THE WEST SIDE POOL
FENCE FROM 5 FEET
TO 8 FEET TO BE
EFFECTIVELY 5 FEET
HIGH FROM THE
NEIGHBORS VIEWPOINT

FENCE IN BACKYARD ONLY

4

RAISING THE FENCE
WOULD SAFEGUARD THE POOL
AND PROTECT THE CHILDREN. FENCE WILL NOT BE MOVED

A.7

WOOD PRIVACY

Framed Batten Board

King Style

Alternating Board

Scalloped Solid Board

Framed Batten Board without Accent

STYLE
Scalloped
Solid Board

VENDOR
MIDWEST
FENCE

Post Cap Options



Backstreet



Harbor



Island



Federal

A.B



Quality

MIDWEST FENCE

525 E. Villaume Avenue
South St. Paul, MN 55075
Phone: 651-451-2221
Fax: 651-451-6939
State Contractor #4739

www.midwestfence.com

A.9

ADDITIO

EXISTING FENCE

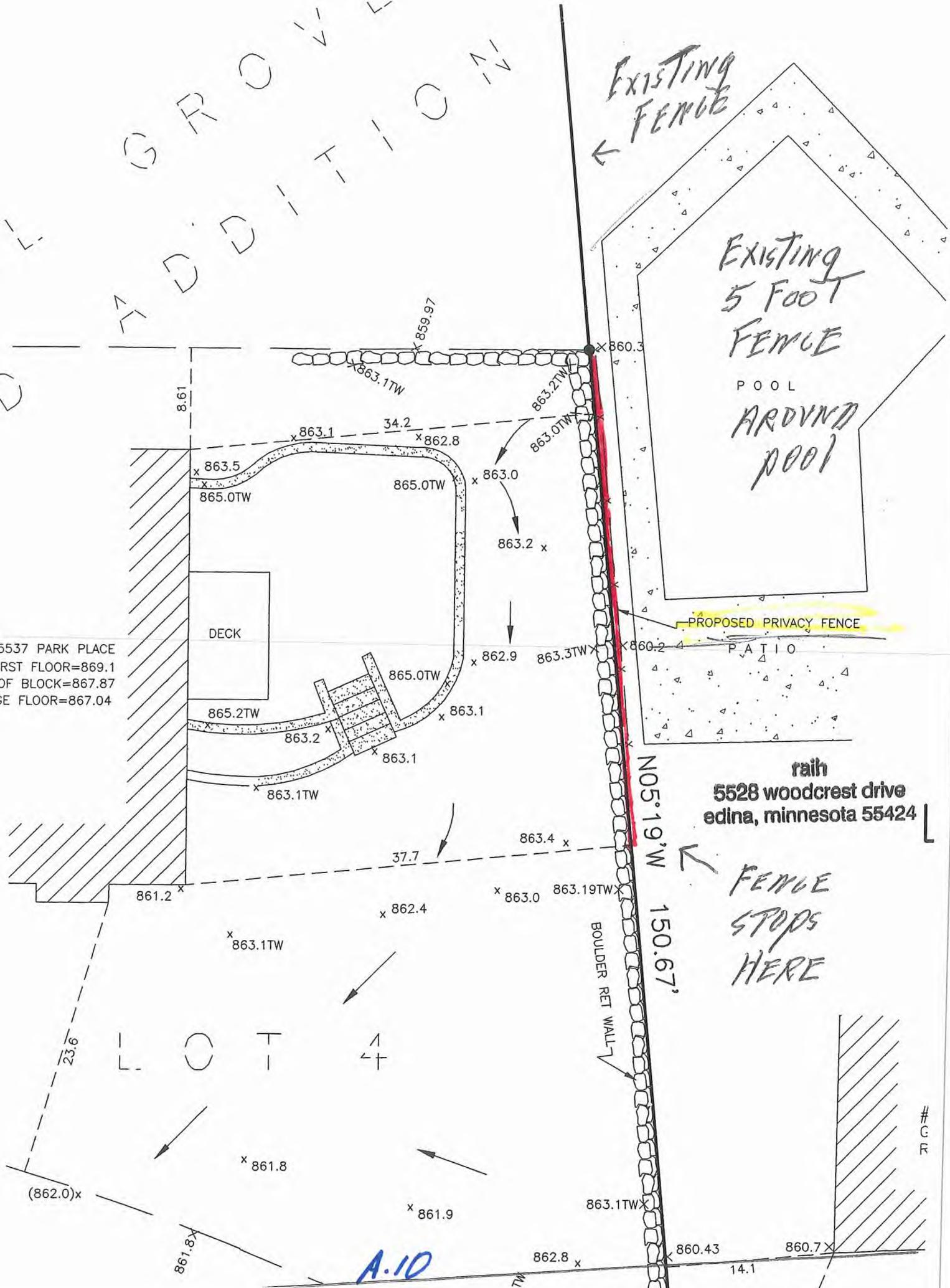
EXISTING 5 FOOT FENCE
POOL
AROUND
POOL

PROPOSED PRIVACY FENCE

rain
5528 woodcrest drive
edina, minnesota 55424

FENCE
STOPS
HERE

#5537 PARK PLACE
FIRST FLOOR=869.1
TOP OF BLOCK=867.87
GARAGE FLOOR=867.04



A.10

#CR



RESOLUTION NO. 2012-84
APPROVING A CONDITIONAL USE PERMIT
AT 5537 PARK PLACE FOR KATE SCHMITT

BE IT RESOLVED by the City Council of the City of Edina, Minnesota, as follows: City of Edina

Section 1. BACKGROUND.

- 1.01 The applicant is requesting a Conditional Use Permit to tear down and construct a new home at 5537 Park Place. A Conditional Use Permit is requested to allow the first floor elevation of the new home to exceed the first floor elevation of the existing home by more than one foot. Specifically the applicant would like to raise the first floor elevation **3.75 feet above** the existing first floor elevation.
- 1.02 The property is legally described as follows:
- Lot 4, Block 8, COLONIAL GROVE THIRD ADDITION, Hennepin County, Minnesota.
- 1.03 On June 13, 2012, the Planning Commission recommended approval of the conditional use permit. Vote: 7 Ayes and 0 Nays.

Section 2. FINDINGS

- 2.01 Approval is based on the following findings:
1. The proposal meets the Conditional Use Permit conditions of the Zoning Ordinance.
 2. The proposal meets all applicable Zoning Ordinance requirements.
 3. The homes in the area have a variety of height, mass and scale.
 4. The proposed new home is in character with this neighborhood.

Section 3. APPROVAL

NOW THEREFORE, it is hereby resolved by the City Council of the City of Edina, approves the Conditional Use Permit to allow construction of a new home at 5537 Park Place, subject to the following conditions:

1. The site must be developed and maintained in conformance with the following plans:
 - Survey date stamped August 19, 2011
 - Building plans and elevations date stamped May 23, 2012.
2. Submit a copy of the Minnehaha Creek District permit. The City may require revisions to the approved plans to meet the district's requirements.

- 3. Final grading and drainage plans are subject to review and approval of the city engineer prior to issuance of a building permit. Drainage patterns may not be directed to adjacent properties.

Adopted by the city council of the City of Edina, Minnesota, on June 19, 2012.

ATTEST: _____
Debra A. Mangan, City Clerk

_____ James B. Hovland, Mayor

STATE OF MINNESOTA)
COUNTY OF HENNEPIN)SS
CITY OF EDINA)

CERTIFICATE OF CITY CLERK

I, the undersigned duly appointed and acting City Clerk for the City of Edina do hereby certify that the attached and foregoing Resolution was duly adopted by the Edina City Council at its Regular Meeting of June 19, 2012, and as recorded in the Minutes of said Regular Meeting.

WITNESS my hand and seal of said City this ____ day of _____, 2012.

City Clerk

A.12