

Board of Zoning Adjustment

Staff Report

January 23, 2023



Case No:	22-VARIANCE-0150
Project Name:	Peterson Avenue Variance
Location:	321 S. Peterson Avenue
Owner/Applicant:	Benjamin Brainard
Jurisdiction:	Louisville Metro
Council District:	9- Bill Hollander
Case Manager:	Amy Brooks, Planner I

REQUEST:

Variance from the Land Development Code Table 5.2.2 to allow a primary structure to encroach into the side yard setback and a modified **Variance** from Land Development Code section 5.4.1.D.2 to allow a private yard area to be less than the required 30% of the area of the lot.

Location	Requirement	Request	Variance
Side Yard Setback	3 ft.	1.0 ft.	2.0 ft.
Private Yard Area	3000 sq. ft.	2520 sq. ft	480 sq. ft.

CASE SUMMARY/BACKGROUND

The subject site is zoned R-5A Multi-Family Residential in the Traditional Neighborhood Form District. The site is located in the Crescent Hill neighborhood and is adjacent to both Barrett Middle School and the Peterson-Dumesnil House. The property is currently developed with a 2.5 story principal structure and a 1.5 story accessory to the rear of the lot. The applicant has built a screened- in porch that is attached to the primary structure. The addition will encroach into both the side yard setback and the required private yard area.

The applicant was approved for a Private Yard Area variance in 2017. The dimensional request reduced the PYA to 3,000 square feet. However, the screened-in porch will reduce the private yard area to beyond what was approved under 17VARIANCE1047.

STAFF FINDINGS

Staff finds that the requested side yard setback variance meets standards (b), (c), and (d), but staff is concerned that the variance request does not meet standard (a) because construction and maintenance of the addition may have an adverse impact on the adjoining property owner.

Staff finds that the request for a private yard variance is adequately justified and meets the standard of review.

Based upon the information in the staff report, and the testimony and evidence provided at the public hearing, the Board of Zoning Adjustment must determine if the proposal meets the standards for granting a variance established in the Land Development Code.

TECHNICAL REVIEW

The applicant is required to obtain a building permit and the structure may require alterations to the proposed building plans in order to meet building code requirements.

INTERESTED PARTY COMMENTS

Applicant submitted signatures from adjoining property owners.

RELATED CASES:

ENF-BLD-22-09071
RES-ADD-22-00724
17VARIANCE1047
18CUP1109

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE FROM TABLE 5.2.2 (Side Yard Setback)

- (a) The requested variance will not adversely affect the public health, safety or welfare.

STAFF: The requested variance will not adversely affect the public health, safety or welfare, because the structure must be constructed to comply with all applicable building codes and the Land Development Code, except where relief is requested. However, staff is concerned that the variance could adversely affect the adjacent property owner because construction and maintenance of the structure may require encroachment onto the adjacent property along the north side yard.

- (b) The requested variance will not alter the essential character of the general vicinity.

STAFF: The structure will not alter the essential character of the general vicinity as it will be built with material that is in character with the surrounding residential neighborhood. In addition, there are other primary structures along South Peterson Avenue that appear encroach into the side yard setback.

- (c) The requested variance will not cause a hazard or nuisance to the public.

STAFF: The requested variance will not cause a hazard or nuisance to the public because the structure must be constructed to comply with all building codes.

- (d) The requested variance will not allow an unreasonable circumvention of the zoning regulations.

STAFF: The requested variance will not allow an unreasonable circumvention of the zoning regulations as the location of the proposed structure is similar to others in the neighborhood.

ADDITIONAL CONSIDERATIONS:

1. The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone.

STAFF: The requested variance does not arise from special circumstances which do generally apply to the land in the generally vicinity or the same zone as the lot is similar in size and shape to the surrounding properties.

2. The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant.

STAFF: The strict application of the provisions of the regulation would not create an unnecessary hardship on the applicant as the screened in porch could be modified to align with the primary structure thereby reducing the need for a variance.

3. The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

STAFF: The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as the applicant has begun construction.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE FROM SECTION 5.4.1.D.2

- (a) The requested variance will not adversely affect the public health, safety or welfare.

STAFF: The requested variance will not adversely affect the public health, safety or welfare, because the structure must be constructed to comply with all applicable building codes, including fire codes, and the Land Development Code, except where relief is requested.

- (b) The requested variance will not alter the essential character of the general vicinity.

STAFF: The proposed private yard area reduction will not alter the essential character of the general vicinity as many properties in the area seemingly have reduced private yard areas.

- (c) The requested variance will not cause a hazard or nuisance to the public.

STAFF: The requested variance will not cause a hazard or nuisance to the public because the structure must be constructed to comply with all building codes.

- (d) The requested variance will not allow an unreasonable circumvention of the zoning regulations.

STAFF: The requested variance will not allow an unreasonable circumvention of the zoning regulations as the proposed accessory structure will comply with all other regulations, except where relief is requested, and there are other properties within the block that have seemingly reduced open space between the principal and accessory use areas.

ADDITIONAL CONSIDERATIONS:

1. The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone.

STAFF: The requested variance does arise from special circumstances which do not generally apply to the land in the general vicinity or the same zone as the lot is similar in size and shape to the surrounding properties. The property is adjacent to an alleyway which serves as a public school entrance.

2. The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant.

STAFF: The strict application of the provisions of the regulation would not create an unnecessary hardship on the applicant as the proposed plan could be modified to reduce its encroachment into the private yard area.

3. The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

STAFF: The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought. The applicant started construction on the

VARIANCE PLAN REQUIREMENT

In accordance with LDC Section 11.5B.1.C (Requirement to Follow Approved Plan), a variance shall be approved only on the basis of the plan approved by the Board and shall be valid only for the location and area shown on the approved plan. All construction and operations must be conducted in accordance with the approved plan and conditions attached to the variance.

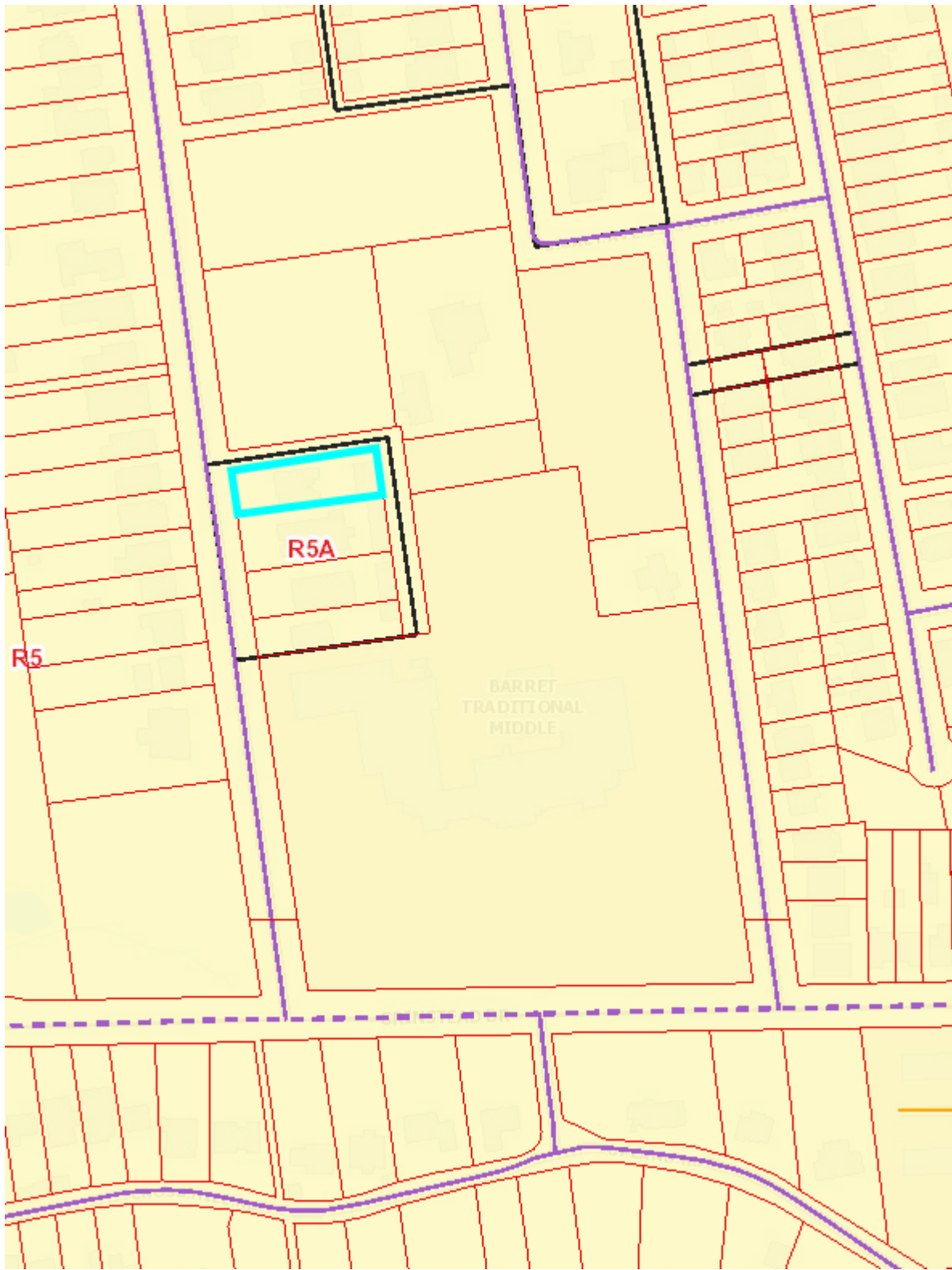
NOTIFICATION

Date	Purpose of Notice	Recipients
10/31/2022	Hearing before BOZA	1 st tier adjoining property owners Registered Neighborhood Groups in Council District 9
10/17/2022	Hearing before BOZA	Notice posted on property

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Site Plan
4. Elevations
5. Site Photos

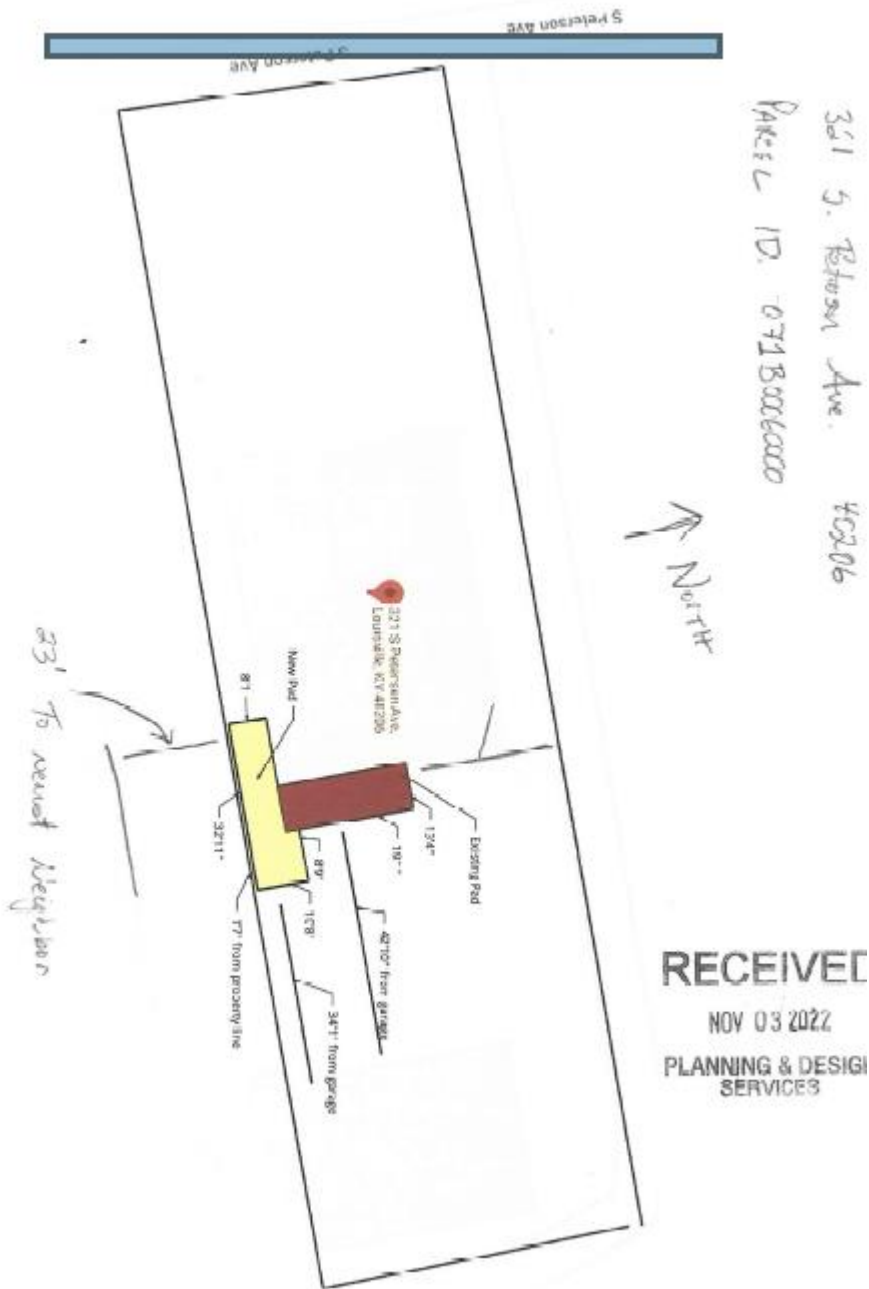
1. Zoning Map



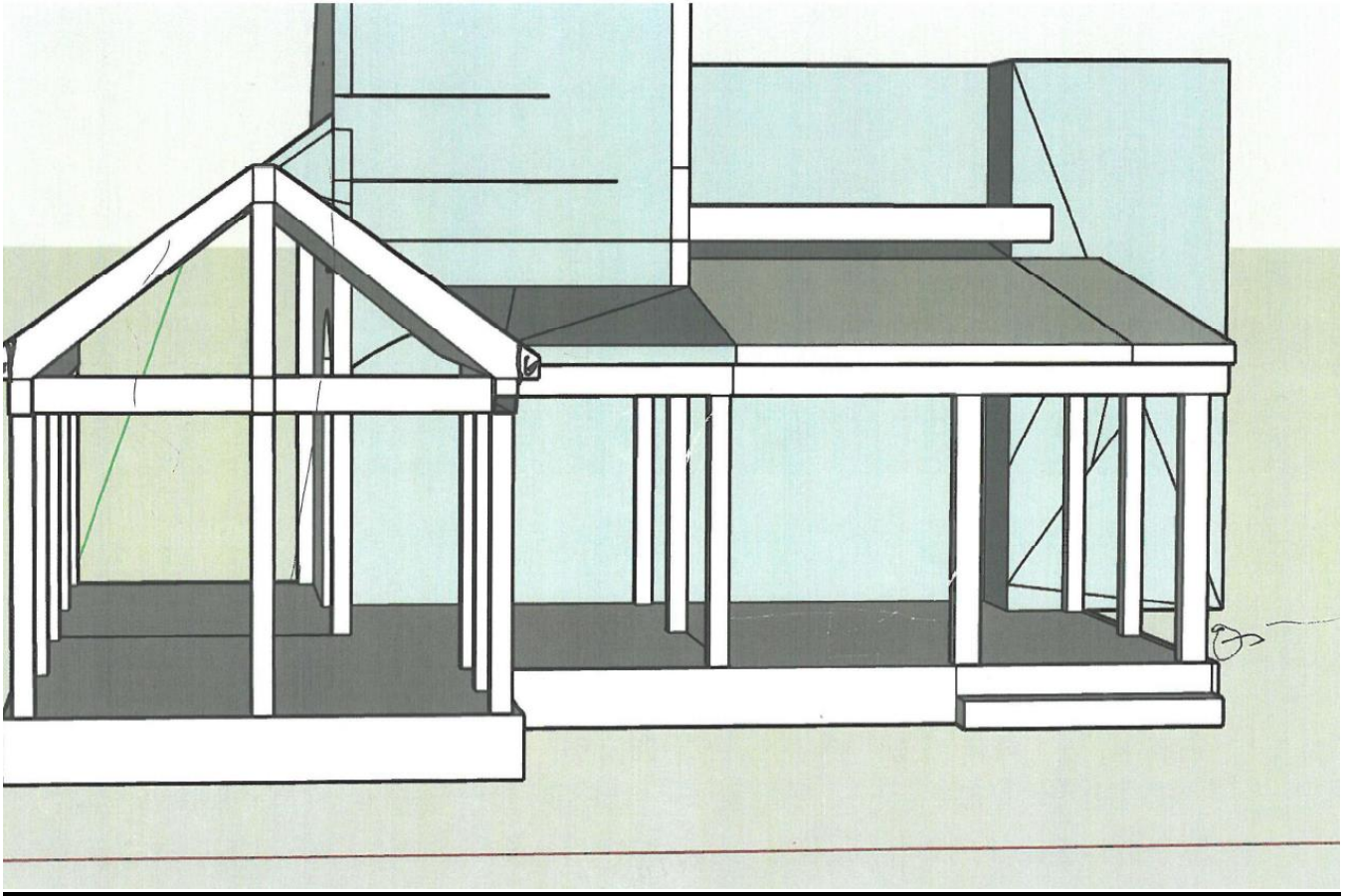
2. Aerial Photograph



3. Site Plan



4. Elevations



5. Site Photos



Front of subject property.



Property to the south. Google street view, 2019.



View of variance area from S. Peterson Avenue



Properties to the North. Google street view, 2019.



Across S. Peterson Street



Variance area from rear yard.