

**BOARD OF ZONING ADJUSTMENT MINUTES**  
**October 17, 2016**

**PUBLIC HEARING**

**CASE NUMBER 16VARIANCE1074**

Request:	To allow a deck addition to encroach into the minimum side yard setback.
Project Name:	7206 Hollow Creek Road
Location:	7206 Hollow Creek Road
Area:	.18150 acres
Owner:	Michael Secor
Applicant:	Michael Secor
Representative:	Michael Secor
Jurisdiction:	Hollow Creek
Council District:	23 – James Peden
Case Manager:	Ross Allen, Planner I

The staff report prepared for this case was incorporated into the record. This report was available to any interested party prior to the BOZA meeting (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S 5th Street).

**An audio/visual recording of the Board of Zoning Adjustment meeting related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.**

**Agency Testimony:**

**03:32:17** Ross Allen presented the case (see Staff Report and recording for detailed presentation).

**The following spoke in favor of the request:**

Michael Secor, 7206 Hollow Creek Road, Louisville, KY 40228

**Summary of testimony of those in favor:**

**03:39:05** Applicant, Michael Secor, stated that the home needed a great deal of repair when he purchased it in 2008, and he has been renovating it for the last two years. There was an existing deck on the property that was beginning to collapse, so he removed the deck boards and restructured the deck, but did not raise the elevation. Initially, he wanted to construct a sun room, but the neighbor disapproved. He stated that the neighbor is concerned about her privacy, but he can already see into her backyard from his yard and house. He clarified that he would like to install steps off of the deck, not a ramp.

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**The following spoke in opposition to the request:**

Kay Rivoli, 6806 Downs Branch Road, Louisville, KY 40233

Edward Winner, 1217 Cardinal Drive, Louisville, KY 40213

**Summary of those in opposition.**

**03:44:20** Kay Rivoli lives next door to the applicant. She disagrees with the findings of the Standard of Review and Staff Analysis on the staff report and feels that her privacy and property value will be adversely affected by this project. She is also doubtful about the applicant's statement regarding the dismissal of his plans to build a sunroom. She reiterated that the applicant requested this variance for a project completed without a permit and stated that per Kentucky Revised Statute Chapter 100 dated July 22, 2016, the Board shall deny any request for a variance arising from circumstances that are a result of willful violations of the zoning regulation by an applicant. She does not feel there is evidence that supports that the applicant has unique and unusual hardship created by the character of the land.

**03:54:20** Edward Winner testified that he has stood on the deck of the subject property and that there is no part of Ms. Rivoli's yard that is not visible, which was not true of the previous deck. He is not an official inspector; he was asked as a personal friend of Ms. Rivoli to examine the deck.

**Rebuttal:**

**03:59:19** Mr. Secor stated again that he will not be constructing a sunroom on his property. The remodeled deck is at the exact same height as before; it is not two inches taller as Ms. Rivoli has stated. He didn't realize he needed a permit when he started the reconstruction process and has since been told that he could not get a permit until the variance was approved. He stated there is approximately 1' 6" in between the expanded portion of his deck and the fence, and that Ms. Rivoli also has a deck that runs along her side of the privacy fence. The expanded portion covers a patch of gravel and poison ivy, and he cannot lower the deck due to the slope of the yard.

**04:15:16 Deliberation**

**04:23:41** On a motion by Board Member Fishman, seconded by Board Member Bergmann, the following resolution was adopted:

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**WHEREAS**, the Louisville Metro Board of Zoning Adjustment finds that the requested variance will not adversely affect the public health, safety or welfare since the deck is encroaching but not crossing the property line, and

**WHEREAS**, the Board further finds that the requested variance will not alter the essential character of the general vicinity since many homes in the area have decks attached to the homes at the rear, and

**WHEREAS**, the Board further finds that the requested variance will not cause a hazard or nuisance to the public since the deck although not meeting the setback requirements is within the property boundary, and

**WHEREAS**, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations since the deck is within the parcel boundary and is behind a privacy fence, and

**WHEREAS**, the Board further finds that the requested variance does not arise from special circumstances which do generally apply to land in the general vicinity or the same zone since many homes in the vicinity have attached decks found to the rear of the principal structures, and

**WHEREAS**, the Board further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant since the deck has been constructed and if the variance is not granted the applicant would need to reduce the size of the deck, and

**WHEREAS**, the Board further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought since the deck has been constructed and if the variance is not granted the applicant would need to reduce the size of the deck; now, therefore be it

**RESOLVED**, that the Louisville Metro Board of Zoning Adjustment, in Case Number 16VARIANCE1074, does hereby **CONTINUE** the Variance from the Land Development Code section 5.3.1.C, table 5.3.1 to allow an addition onto an existing deck to encroach into the minimum side yard setback by approximately 5 feet (**Requirement: 5 ft., Request: 0 ft., Variance: 5 ft.**) to the November 21, 2016 Board of Zoning Adjustment meeting, noting that the applicant must provide the results of a professional land survey and a dimensional map with exact measurements showing the proposed variances, based on the staff report and testimony heard today.

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**The vote was as follows:**

**Yes: Fishman, Bergmann, Allendorf, and Turner**

**Absent: Tharp, Howard, and Jarboe**

**Abstain: None**

**No: None**