

**Board of Zoning Adjustment**  
**Staff Report**  
 February 20, 2023



<b>Case No:</b>	22-VARIANCE-0168
<b>Project Name:</b>	Harmon Court Variance
<b>Location:</b>	3119 Harmon Court
<b>Owner/Applicant:</b>	Kelly Rodriguez Britt and Daniel Rodriguez
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	10 – Pat Mulvihill
<b>Case Manager:</b>	Amy Brooks, Planner I

**REQUESTS:**

**Variance** from the Land Development Code Table 5.3.1 to allow an accessory structure to encroach into the required front yard setback

**Variance** from Land Development Code section 4.4.3.A.1.a.i to allow a fence to exceed the maximum allowed height in a front yard setback.

Location	Requirement	Request	Variance
Front Yard Setback	15 ft.	5 ft.	10 ft.
Front Yard Fence Height	48 in.	72 in.	24 in.

**CASE SUMMARY/BACKGROUND**

The subject property is zoned R-5 Single Family Residential and is in the Neighborhood Form District within the Audubon Park subdivision. The property is one of several houses that fronts both Harmon Court and Poplar Level Road. On the northeastern property line, there is an existing 35 foot right-of-way dedicated to the Commonwealth of Kentucky. This ROW is heavily planted with vegetation and contains steep grade changes.

The site currently has a 1.5 story single-family home. The applicant is requesting a variance to allow a proposed 700 square foot detached garage and an existing storage shed to encroach within the required front yard setback on Poplar Level Rd. In addition, there is an existing 6 foot wooden privacy fence on the aforementioned property line.

**STAFF FINDINGS**

Staff finds that the requested 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 Code to allow detached accessory structures to encroach into the front yard setback and an existing fence to exceed the maximum height in the front yard setback.

**TECHNICAL REVIEW**

No technical issues

**INTERESTED PARTY COMMENTS**

No interested party comments were received by staff.

**RELATED CASES**

None

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE FROM Section 5.3.1**

- (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

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

STAFF: The requested variance would not alter the essential character of the general vicinity because the accessory structures are out of the public view from the front setback on the northeastern property line due to the existing 35 foot right of way between the subject site and the roadway. This ROW is covered with intense vegetation between the applicant's property line and Poplar Level Road.

- (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 would not allow an unreasonable circumvention of the zoning regulations because accessory structures would be allowed five feet from what seemingly operates as a rear property line, if this were not a double frontage lot.

**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 land in the general vicinity or the same zone. There are only a limited number of properties within this neighborhood that are subjected to double frontage regulations.

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 create an unnecessary hardship on the applicant as there is no room to shift the proposed garage out of the required 15 feet front yard setback.

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 not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought since the applicant has not started construction and has requested a variance.

#### **STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE FROM SECTION 4.4.3.A.1.a.i**

- (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 fence must be constructed to with the land development code, except where relief is requested. The fence is setback far enough from the edge of pavement and any vehicle corridor as neither to impede vision clearance nor adversely impact the safe movement of vehicles or pedestrians.

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

STAFF: The requested variance does not alter the essential character of the general vicinity as there are other wooden privacy fences along Harmon Court that exceed 48 inches within the required front yard on Poplar Level Rd.

- (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 it will not adversely impact the safe movement of vehicles or pedestrians.

- (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 since there are other fences in this block that exceed 4 feet in the front yard setback.

#### **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 generally apply to land in the general vicinity or the same zone as the property is similar in size and shape as this is only of 4 houses in the subdivision that have double frontage lots that require front yard setback regulations on both Poplar Level Road and Harmon Court.

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 create an unnecessary hardship on the applicant as the fence was already existing prior to the applicant's purchase of the property.

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 not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought. The fence was not constructed by the applicant.

**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.

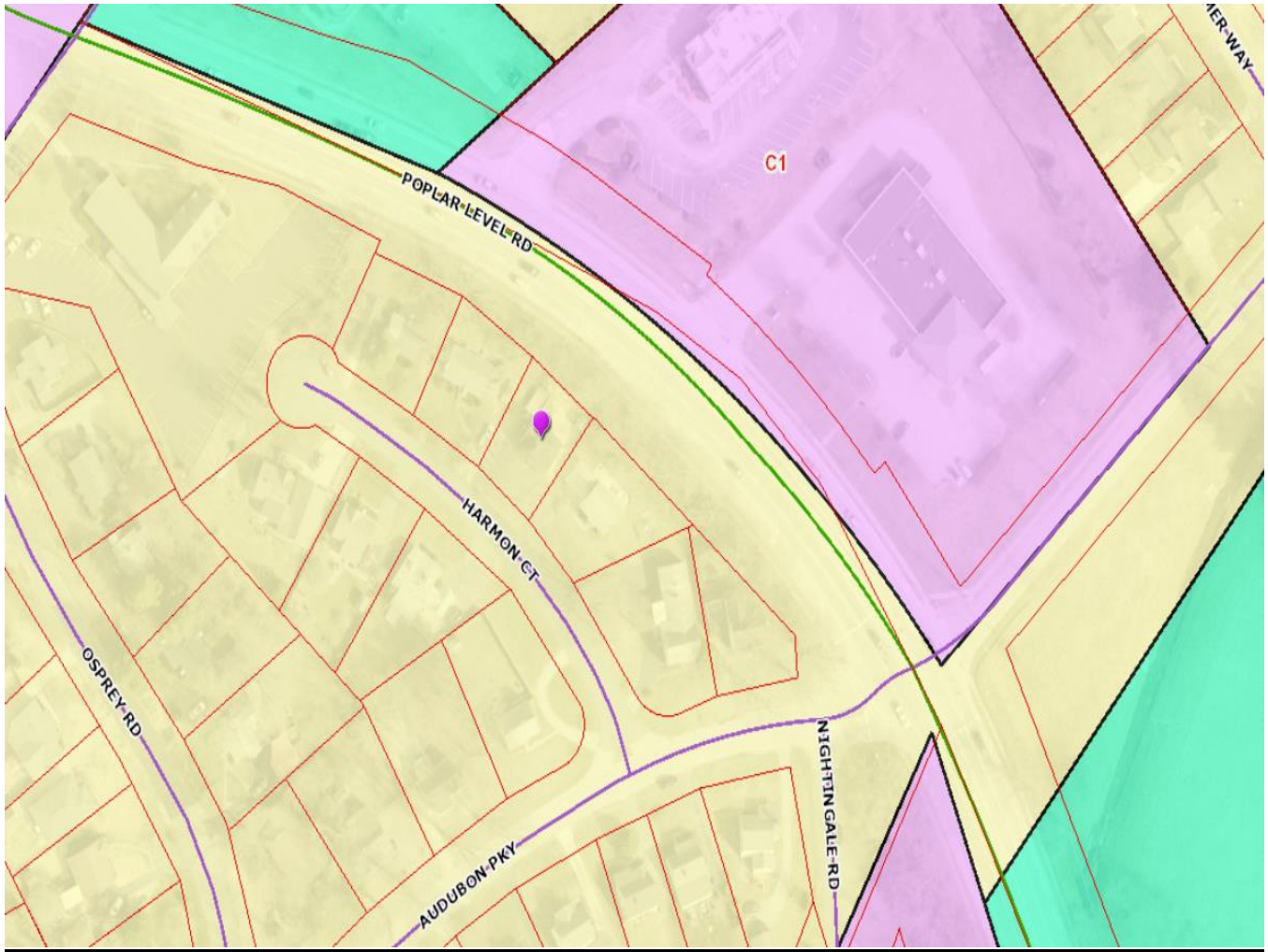
**NOTIFICATION**

Date	Purpose of Notice	Recipients
02/03/2023	Hearing before BOZA	1 <sup>st</sup> tier adjoining property owners and current residents Registered Neighborhood Groups in Council District 14
02/08/2023	Hearing before BOZA	Notice posted on property

**ATTACHMENTS**

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

1. Zoning Map

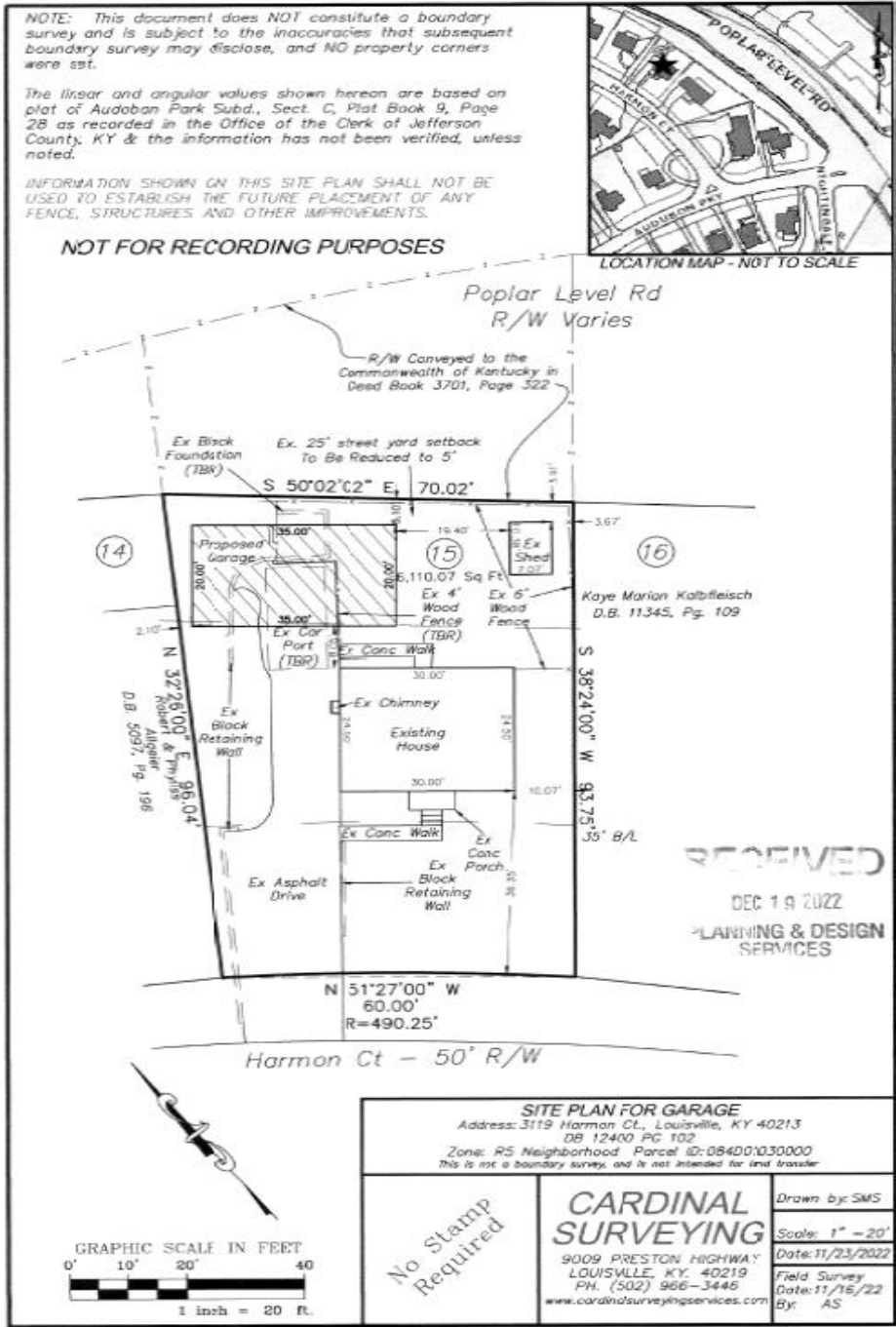




## 2. Aerial Photograph




3. Site Plan



4. Renderings

**STRUCTURE TYPE**

**Frontier - Fully Enclosed**

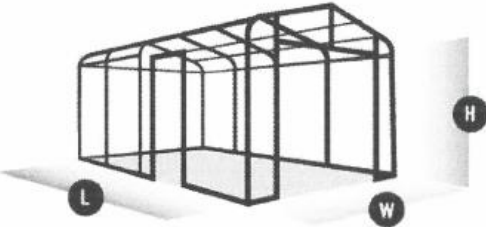


With Roof Hat Channel (Purlins)




**Description:**  
20'x35'x12' Frontier Fully Enclosed, 5' on center, (1) 16'x9' garage door opening, (1) walk door opening

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**FRAME SPECS**

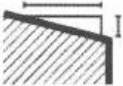






This structure is engineered to meet or exceed your local building code requirements of:

 <b>15lbs</b> GROUND SNOW LOAD	 <b>20lbs</b> ROOF SNOW (LIVE) LOAD	 <b>90MPH</b> WIND LOAD
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\* Source: 2007 KBC (IBC 2009)

**Structure will be anchored to:**  
**Concrete**

 <b>ROOF PITCH</b> 3:12	 <b>ON CENTER SPACING</b> 5'	 <b>TRUSS BRACE TYPE</b> Type 2	 <b>GROUND-TO-TRUSS CLEARANCE</b> 11' 10 1/2"	 <b>FRAME WEIGHT</b> 2529 lbs
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RECEIVED

DEC 19 2022

PLANNING & DESIGN SERVICES

22-VARIANCE-0168



**5. Site Photos**



Front of subject property.



To the right of subject property.





Left side of subject property, Google street view, 2022.





Across the street from subject site.



View of variance area from front of house.





View of proposed variance area





Existing fence in front yard setback



Similar fence on the adjacent property to the left of the subject site.





View of subject site from Poplar Level Rd. The subject site is to the left of the telephone pole.