

# Board of Zoning Adjustment

## Staff Report

October 29, 2018



<b>Case No.</b>	17CUP1109
<b>Project Name</b>	Accessory Apartment
<b>Location</b>	1318 Lydia Street
<b>Owner</b>	Ryan Daly
<b>Applicant</b>	Mose Putney
<b>Jurisdiction</b>	Louisville Metro
<b>Council District</b>	10 – Pat Mulvihill
<b>Case Manager</b>	Beth Jones, AICP, Planner II

**REQUEST**

**Conditional Use Permit** for an Accessory Apartment (LDC 4.2.3)

**Variance** to permit the accessory structure to encroach on the required rear yard setback (LDC 5.4.2.C.3.a.)

<b>Variance Location</b>	<b>Requirement</b>	<b>Request</b>	<b>Variance</b>
Rear Yard	5 ft	2 ft 1 in	2 ft 11 in

**CASE SUMMARY/BACKGROUND**

The applicant proposes to construct a second-floor dwelling unit above an existing garage. The site is located on the west side of Lydia Street between Eastern Parkway and Clarks Lane.

The site is zoned R-5 Single-Family Residential within a Neighborhood Form District, as are adjoining properties to the north, south and east. All these properties are in single-family residential use. On the west, the site adjoins an OR-3 zone; this site is occupied by the Kosair Charities campus.

The proposed 484 sq ft accessory apartment will be built as a second story on an existing detached garage. It will be accessed via a new exterior staircase leading to a new deck on the second floor. The existing driveway will provide access from the street to the structure.

**STAFF FINDING**

Staff finds that the requested CUP and variance are adequately justified and meet the standard of review.

Based upon the information in the staff report, 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 Conditional Use Permit as established by the Land Development Code.

## **TECHNICAL REVIEW**

No technical review comments remain to be resolved.

## **INTERESTED PARTY COMMENTS**

Staff has received no comments from interested parties. A neighborhood meeting was held on March 29, 2018.

## **STANDARD OF REVIEW AND STAFF ANALYSIS FOR CONDITIONAL USE PERMIT**

### 1. Is the proposal consistent with applicable policies of the Comprehensive Plan?

STAFF: The proposal is consistent with the Comprehensive Plan.

### 2. Is the proposal compatible with surrounding land uses and the general character of the area including such factors as height, bulk, scale, intensity, traffic, noise, odor, drainage, dust, lighting and appearance?

STAFF: The proposal is compatible with surrounding uses and with the general character of the area.

### 3. Are necessary on-site and off-site public facilities such as transportation, sanitation, water, sewer, drainage, emergency services, education and recreation adequate to serve the proposed use?

STAFF: The proposed development does not substantially increase demands on public infrastructure and facilities and has received preliminary approval from MSD and Transportation Planning.

### 4. Does the proposal comply with the specific standards required to obtain the requested Conditional Use Permit?

**4.2.3. Accessory Apartments** Accessory Apartments may be allowed in the R-R, R-E, R-1, R-2, R-3, R-4, R-5 and U-N districts upon the granting of a conditional use permit and compliance with the listed requirements:

A. The principal and accessory dwellings shall be owned by the same person(s). Occupancy of the accessory unit shall occur only while the property owner(s) resides in the principal dwelling on the premises.

STAFF: The applicant has been informed of this requirement. The principal and accessory buildings are under the same ownership.

B. The accessory apartment shall be no greater than 650 sq ft or 30% of the floor area of the principal residence, whichever is greater.

STAFF: The floor area of the proposed accessory apartment is 484 sq ft, or 28% of the floor area of the principal structure and meets this requirement.

C. If the accessory apartment is located in a freestanding structure, it shall not exceed the height of the principal residence. In the TNFD, permissible height shall be as allowed by the form district regulation, unless the Board approves a differing height. In all other form districts, if the freestanding

structure is located within 25 feet of a property line, the height of the structure shall not exceed the average height of accessory structures on abutting parcels or 15 feet, whichever is greater, unless the Board finds that a different height limit is appropriate.

STAFF: The proposed height of the accessory structure does not exceed the height of the principal structure. The height exceeds 15 ft but is consistent with development in the general vicinity and adjoins a large site in non-residential use to the rear.

- D. Sites having accessory apartments shall provide off-street parking for the principal and accessory apartment as follows:
1. Neighborhood Form District - at least three off-street spaces provided on the lot, no more than two spaces outdoors;
  2. Traditional Neighborhood - at least one off-street space provided on the lot; and
  3. Other form districts - at least two off-street spaces provided on the lot; the Board may require additional parking spaces as appropriate.

STAFF: The site is located in a Neighborhood form district and meets off-street parking requirements. The proposal has been reviewed by Transportation Planning staff.

#### **STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE FROM LDC 5.4.2.C.3.a.**

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

STAFF: The requested reduction of the required rear yard will not adversely affect the public health, safety or welfare as the proposal is an upward expansion of an existing structure.

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

STAFF: The proposal will not alter the existing rear yard and will not be out of character for the neighborhood, where narrow rear yards are common.

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

STAFF: The proposed construction will meet current building codes and requirements and will not cause a public hazard or nuisance through excessive noise, vibration, odor or light.

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

STAFF: The requested variance is not unreasonable as it will result in development of the property consistent with development in the vicinity.

#### **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 proposed construction follows the footprint of an garage existing structure.

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 application of the regulation may create an unnecessary hardship in that the proposed construction follows the footprint of the existing garage structure.

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: According to the PVA, the existing residence was in place in 1920, prior to the zoning regulation from which relief is being sought. The construction date of the garage structure is unknown.

### **NOTIFICATION**

<b>Date</b>	<b>Purpose of Notice</b>	<b>Recipients</b>
3/29/2018	Neighborhood Meeting	1st and 2nd tier adjoining property owners Registered Neighborhood Groups in Council District 10
10/12/2018	Notice of BOZA Hearing	1st and 2nd tier adjoining property owners Registered Neighborhood Groups in Council District 10 Sign Posting

### **ATTACHMENTS**

1. Zoning Map
2. Aerial Photograph
3. Cornerstone 2020 Checklist
4. Conditions of Approval

1. Zoning Map



2. Aerial Photograph



### 3. Cornerstone 2020 Checklist

- ✓ Meets Guideline
- Does Not Meet Guideline
- +/- More Information Needed
- NA Not Applicable

#### NEIGHBORHOOD: RESIDENTIAL

#	Plan Element or Portion of Plan Element	Staff Finding	Staff Comments
Community Form/Land Use Guideline 1: Community Form			
1	B.3: The proposal supports the creation of a mix of residential housing choices and densities for the neighborhood.	✓	Proposal creates a new housing type for the neighborhood.
2	B.3: If the proposal is classified as high density (greater than 12 dwelling units per acre), it is located on a major or minor arterial or in a location that has limited impact on adjacent low or moderate density developments.	NA	
3	B.3: If the proposal introduces a new housing type to the neighborhood, it is designed to be compatible with nearby land uses.	✓	New accessory apartment building is compatible with land uses in the vicinity.
4	B.3: Neighborhood streets are designed to invite human interaction and easy access through the use of connectivity, and design elements such as short blocks or bike/walkways in the middle of long blocks to connect with other streets.	NA	
Community Form/Land Use Guideline 2: Centers			
5	A.1. Locate activity centers within the Neighborhood Form District at street intersections with at least one of the intersecting streets classified as a collector or higher, AND one of the corners containing an established non-residential use.	NA	Proposal is not a Center.
6	A.2: Develop non-residential and mixed uses only in designated activity centers except (a) where an existing center proposed to expand in a manner that is compatible with adjacent uses and in keeping with form district standards, (b) when a proposal is comparable in use, intensity, size and design to a designated center, (c) where a proposed use requires a particular location or does not fit well into a compact center, (d) where a commercial use mainly serves residents of a new planned or proposed development and is similar in character and intensity to the residential development, or (e) in older or redeveloping areas where the non-residential use is compatible with the surroundings and does not create a nuisance.	NA	
7	A.4: Encourage a more compact development pattern that results in an efficient use of land and cost-effective infrastructure.	NA	
8	A.5: Encourage a mix of compatible uses to reduce traffic by supporting combined trips, allow alternative modes of transportation and encourage vitality and sense of place.	NA	
9	A.6: Encourage residential uses in centers above retail and other mixed-use multi-story retail buildings.	NA	

#	Plan Element or Portion of Plan Element	Staff Finding	Staff Comments
10	A.7: Encourage new developments and rehabilitation of buildings to provide residential uses alone or in combination with retail and office uses.	NA	
11	A.8/11: Allow centers in the Neighborhood form district that serve the daily needs of residents and that are designed to minimize impact on residents through appropriate scale, placement and design.	NA	
12	A.10: Encourage outlot development in underutilized parking lots provided location, scale, signs, lighting, parking and landscaping standards are met. Such outlot development should provide street-level retail with residential units above.	NA	
13	A.12: Design large developments to be compact, multi-purpose centers organized around a central feature such as a public square, plaza or landscape element.	NA	
14	A.13: Encourage sharing of entrance and parking facilities to reduce curb cuts and surface parking.	NA	
15	A.14: Design and locate utility easements to provide access for maintenance and to provide services in common for adjacent developments.	NA	
16	A.15: Encourage parking design and layout to balance safety, traffic, transit, pedestrian, environmental and aesthetic considerations.	NA	
17	A.16: Encourage centers to be designed for easy access by alternative forms of transportation.	NA	
Community Form/Land Use Guideline 3: Compatibility			
18	A.1: The proposal is generally compatible within the scale and site design of nearby existing development and with the form district's pattern of development.	✓	The proposal meets specific CUP requirements regarding height.
19	A.2: The proposed building materials increase the new development's compatibility. (Only for a new development in a residential infill context, or if consideration of building materials used in the proposal is specifically required by the Land Development Code.)	✓	New accessory apartment is compatible with the existing principal dwelling and with development in the vicinity.
20	A.3: The proposal is compatible with adjacent residential areas, and if it introduces a new type of density, the proposal is designed to be compatible with surrounding land uses through the use of techniques to mitigate nuisances and provide appropriate transitions between land uses. Examples of appropriate mitigation include vegetative buffers, open spaces, landscaping and/or a transition of densities, site design, building heights, building design, materials and orientation that is compatible with those of nearby residences.	✓	Proposal is compatible with the existing dwelling unit on the site and with neighboring development. It is not expected to create a nuisance or require exceptional transition mitigation.
21	A.6: The proposal mitigates any adverse impacts of its associated traffic on nearby existing communities.	NA	Proposal is not expected to create significant traffic impacts.
22	A.8: The proposal mitigates adverse impacts of its lighting on nearby properties, and on the night sky.	NA	Proposal is not expected to create significant lighting impacts.
23	A.10: The proposal includes a variety of housing types, including, but not limited to, single family detached, single family attached, multi-family, zero lot line, average lot, cluster and accessory residential structures, that reflect the form district pattern.	NA	



#	Plan Element or Portion of Plan Element	Staff Finding	Staff Comments
24	A.11: If the proposal is a higher density or intensity use, it is located along a transit corridor AND in or near an activity center.	NA	
25	A.13: The proposal creates housing for the elderly or persons with disabilities, which is located close to shopping, transit routes, and medical facilities (if possible).	✓	Since the proposed dwelling unit is located on a second floor it may not be appropriate for elderly or disabled residents, but the site is located close to shopping, transit routes and medical facilities.
26	A.14/15: The proposal creates appropriate/inclusive housing that is compatible with site and building design of nearby housing.	✓	Proposal creates inclusive housing that is compatible with the primary residence.
27	A.21: The proposal provides appropriate transitions between uses that are substantially different in scale and intensity or density of development such as landscaped buffer yards, vegetative berms, compatible building design and materials, height restrictions, or setback requirements.	NA	
28	A.22: The proposal mitigates the impacts caused when incompatible developments unavoidably occur adjacent to one another by using buffers that are of varying designs such as landscaping, vegetative berms and/or walls, and that address those aspects of the development that have the potential to adversely impact existing area developments.	NA	
29	A.23: Setbacks, lot dimensions and building heights are compatible with those of nearby developments that meet form district standards.	✓	Proposal meets LDC and CUP requirements.
Community Form/Land Use Guideline 4: Open Space			
30	A.2/3/7: The proposal provides open space that helps meet the needs of the community as a component of the development and provides for the continued maintenance of that open space.	✓	No open space requirements are associated with the proposal, but significant open space will remain on the site.
31	A.4: Open space design is consistent with the pattern of development in the Neighborhood form district.	NA	
32	A.5: The proposal integrates natural features into the pattern of development.	✓	The proposal is not expected to create significant impacts on existing natural features.
Community Form/Land Use Guideline 5: Natural Areas and Scenic and Historic Resources			
33	A.1: The proposal respects the natural features of the site through sensitive site design, avoids substantial changes to the topography and minimizes property damage and environmental degradation resulting from disturbance of natural systems.	✓	The proposal is not expected to create significant impacts on existing natural features.
34	A.2/4: The proposal includes the preservation, use or adaptive reuse of buildings, sites, districts and landscapes that are recognized as having historical or architectural value, and, if located within the impact area of these resources, is compatible in height, bulk, scale, architecture and placement.	NA	These conditions do not exist on the site.
35	A.6: Encourage development to avoid wet or highly permeable soils, severe, steep or unstable slopes with the potential for severe erosion.	NA	These conditions do not exist on the site.
Mobility/Transportation Guideline 7: Circulation			

#	Plan Element or Portion of Plan Element	Staff Finding	Staff Comments
36	A.1/2: The proposal will contribute its proportional share of the cost of roadway improvements and other services and public facilities made necessary by the development through physical improvements to these facilities, contribution of money, or other means.	NA	
37	A.6: The proposal's transportation facilities are compatible with and support access to surrounding land uses and contribute to the appropriate development of adjacent lands. The proposal includes at least one continuous roadway through the development, adequate street stubs, and relies on cul-de-sacs only as short side streets or where natural features limit development of "through" roads.	NA	
38	A.9: The proposal includes the dedication of rights-of-way for street, transit corridors, bikeway and walkway facilities within or abutting the development.	NA	
Mobility/Transportation Guideline 8: Transportation Facility Design			
39	A.8: Adequate stub streets are provided for future roadway connections that support and contribute to appropriate development of adjacent land.	NA	
40	A.9: Avoid access to development through areas of significantly lower intensity or density if such access would create a significant nuisance.	NA	
41	A.11: The development provides for an appropriate functional hierarchy of streets and appropriate linkages between activity areas in and adjacent to the development site.	NA	
Mobility/Transportation Guideline 9: Bicycle, Pedestrian and Transit			
42	A.1/2: The proposal provides, where appropriate, for the movement of pedestrians, bicyclists and transit users around and through the development, provides bicycle and pedestrian connections to adjacent developments and to transit stops, and is appropriately located for its density and intensity.	NA	
Livability/Environment Guideline 10: Flooding and Stormwater			
43	The proposal's drainage plans have been approved by MSD, and the proposal mitigates negative impacts to the floodplain and minimizes impervious area. Solid blue-line streams are protected through a vegetative buffer, and drainage designs are capable of accommodating upstream runoff assuming a fully-developed watershed. If streambank restoration or preservation is necessary, the proposal uses best management practices.	✓	The proposal has been received preliminary approval from MSD.
Livability/Environment Guideline 13: Landscape Character			
44	A.3: The proposal includes additions and connections to a system of natural corridors that can provide habitat areas and allow for migration.	✓	The proposal is not expected to create significant impacts on existing natural features.
Community Facilities Guideline 14: Infrastructure			
45	A.2: The proposal is located in an area served by existing utilities or planned for utilities.	✓	The proposal is served by existing utilities.
46	A.3: The proposal has access to an adequate supply of potable water and water for fire-fighting purposes.	✓	The proposal has access to an adequate supply of water.
47	A.4: The proposal has adequate means of sewage treatment and disposal to protect public health and to protect water quality in lakes and streams.	✓	The proposal has adequate means of sewage treatment and disposal.

#### **4. Conditions of Approval**

1. All development shall be in accordance with the approved district development plan, including all notes thereon, and with all applicable sections of the Land Development Code (LDC). No further development shall occur on the site without prior review of and approval by the Board of Zoning Adjustment (BOZA).
2. The Conditional Use Permit shall be exercised as proscribed by KRS 100.237 within two years of BOZA approval. If it is not so exercised, the site shall not be used for an Accessory Apartment without further review and approval by BOZA.
3. The applicant is required to contact Louisville Metro Emergency Services to have a unique address assigned to the accessory apartment.