

**BOARD OF ZONING ADJUSTMENT MINUTES**  
**November 21, 2016**

**PUBLIC HEARING**

**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:**

**01:18:30** 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:**

**01:24:10** Michael Secor spoke regarding the project and provided photographs to the Board along with a newly conducted land survey. He stated that the new addition to the deck is over two feet away from the fence and the height is the same as the original deck. The new addition was constructed to be eight feet wide to match the size of the existing deck.

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

Kay Rivoli, 6806 Downs Branch Road, Louisville, KY 40228

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**Summary of testimony of those in opposition:**

**01:41:02** Neighbor, Kay Rivoli, spoke about her disapproval of the project and provided a photograph to the Board. She stated that the corner of Mr. Secor's deck is only 12'1" away from her property line and is 25 inches taller than her deck. She travels frequently for her job, but she is home more than two weeks a year. Any financial hardship he might face because of this is of his own doing. Mrs. Rivoli responded to further questions from the Board (see recording for detailed presentation).

**Rebuttal:**

**01:48:49** Mr. Secor stated that the posts will be removed once the building permit is granted. He also stated that Mrs. Rivoli's husband asked him to cut down the trees mentioned by Mrs. Rivoli while he was removing other trees, but then Mr. Rivoli denied making this request.

**01:51:16 Deliberation**

**02:01:35** On a motion by Board Member Fishman, seconded by Board Member Howard, the following resolution was adopted:

**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 is behind a six foot tall fence, 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. The topography of the area, a sloping grade towards the East, does place the applicant's deck at a higher point than the fence located between the applicant and the adjoining neighbor to the East, and

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**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. As stated previously, the deck is situated at a higher elevation permitting the applicant to view down and into the Eastern neighbor's rear property, 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 **APPROVE** 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 3.55 ft., noting that the applicant will remove the six foot posts along the deck (**Requirement: 5 ft., Request: 1.45 ft., Variance: 3.55 ft.**), based on discussion at both hearings, the Standard of Review and Staff Analysis, and additional considerations from the Staff Report

**The vote was as follows:**

**Yes: Fishman, Turner, Howard, Tharp, and Allendorf**

**Absent: None**

**Abstain: None**

**No: Jarboe and Bergmann**