

Board of Zoning Adjustment

Staff Report

June 05, 2023



Case No:	23-CUP-0096
Project Name:	Accessory Dwelling Unit
Location:	100 N. Crestmoor Avenue
Owner(s):	Lauren Riney & Michael Frank
Applicant:	Michael Frank
Jurisdiction:	Louisville Metro
Council District:	9 – Andrew Owen
Case Manager:	Heather Pollock, Planner I

REQUEST(S)

- Conditional Use Permit to allow an Accessory Dwelling Unit (ADU) in the R-5 Single Family zoning district and the Traditional Neighborhood form district. (LDC 4.2.3)
- **23-VARIANCE-0088:** Variance to allow an accessory structure to encroach into the street side yard setback.

Location	Requirement	Request	Variance
Street Side Yard Setback	3 ft.	1.3 ft.	1.7 ft.

CASE SUMMARY/BACKGROUND

The applicant is requesting an accessory dwelling unit conditional use permit for the existing 752.9 sq. ft. apartment on the 2nd floor of the accessory structure with the 1st floor being used as a garage. The ADU meets all of the standards of section 4.2.3 with exception of B. The primary home is a one story, single family home with 1227 sq. ft. And C. as the existing garage is built within the street side yard setback along Arterburn Ave.

STAFF FINDING / RECOMMENDATION

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 established in the LDC for a Conditional Use Permit.

RELATED CASES

BL1055015: Building permit for new garage with living space above, approved May 31, 2018. Certificate of Occupancy issued October 21, 2019.
 20-ZONE-0126: Change in zoning request from R-5 to R-6 with associated waivers and variances. Denied by the Planning Commission on June 02, 2022.

TECHNICAL REVIEW

Upon approval of the requested CUP, the owner/developer should contact Metro Emergency Services to have address assigned for the proposed accessory apartment.

INTERESTED PARTY COMMENTS

Two neighborhood meetings were held. The first was on January 26, 2023 and 1 person attended. The 2nd was on February 15, 2023 and 8 people attended. Interested party comments were received by staff and are attached to this agenda item.

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 does not conflict with Comprehensive Plan policies.

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

STAFF: When appropriately managed, the proposed use is compatible with surrounding development and land uses.

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 subject property is served by existing public utilities and facilities. The proposal will not create substantial additional requirements for the site.

4. Does the proposal comply with the specific standards required to obtain the requested conditional use permit?

Accessory dwelling units that do not meet the provisions of Section 4.3.27 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. One ADU, either attached or detached is permitted per single family dwelling per lot. ***The applicant has been informed of this requirement.***

B. Maximum ADU Size: 800 square feet or 30 percent of the gross floor area of the principal structure, whichever is greater. ***The existing accessory dwelling unit is on the 2nd floor of the garage and is 752.9 sq. ft.***

C. Location Requirements:

1. For an attached ADU, the yard or setback requirements of the principal structure shall be met. The attached ADU shall be located either to the side or behind the principal structure.

2. For a detached ADU, the yard or setback requirements of an accessory structure shall be met.

The detached ADU shall be located either to the side or behind the principal structure. ***The applicant has been informed of this requirement. The existing accessory structure in which the ADU is located does not meet the street side yard setbacks; the associated variance request is to allow the structure to be 1.3 ft. from the property line must be approved to meet this requirement.***

D. ADU Access:

1. For an attached ADU, an exterior staircase used to access a second story or higher ADU shall not be located on the front façade of the structure.
2. For a detached ADU, the exterior pedestrian entrance to the ADU shall be located facing the principal structure or side yard. ***The applicant has been informed of this requirement. The pedestrian access for the ADU is off of the side street.***

E. Maximum Height:

1. For an attached ADU, the maximum height shall not exceed the height of the principal structure.
2. For a detached ADU, the maximum height shall not exceed the maximum height permitted for an accessory structure in accordance with Chapter 5 of the LDC. The maximum height shall not exceed the height of the principal structure. ***The existing accessory structure is 25 ft. in height which is taller than the 1 story primary structure, relief will need to be requested.***

F. ADUs approved under this provision shall not be used as a short term rental. ***The applicant has been informed of this requirement.***

G. Any property that has been subject to a zoning, property maintenance, or building code violation(s) in the 12 months prior to application shall be reviewed and approved by the directors of Planning & Design Services and Codes & Regulations, or their designees. Any violations shall be resolved prior to approval. ***The applicant has been informed of this requirement.***

H. Off-street parking shall meet the requirements of Chapter 9 of the LDC. ***The applicant has been informed of this requirement.***

I. ADUs that include new construction that results in habitable floor area (for example, additions to principal structures or new accessory structures) shall not be allowed on any areas of lots that contain environmental constraints (LDC Section 4.6.2.A) ***The applicant has been informed of this requirement. this is an existing structure.***

J. The owner of the property shall reside within either the principal or the accessory dwelling unit. ***The applicant has been informed of this requirement. The property owners reside in the primary residence.***

K. To avoid any confusion, since there is no language to the contrary, this section does not override any deed restriction or homeowners' association declarations restricting accessory dwelling units. ***The applicant has been informed of this requirement.***

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE FROM SECTION 5.2.2 to allow the accessory structure to encroach into the required 3 ft street 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.

- (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 the existing structure is in line with other accessory and principal structures along Arterburn Ave.

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

STAFF: The addition will not cause a hazard or nuisance to the public as it is required to meet all applicable requirements of the building code.

- (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 accessory structure setback is consistent with other structures along Arterburn Ave.

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 land in the general vicinity or the same zone as the lot is a similar size and shape in comparison 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 create an unnecessary hardship on the applicant as the structure is existing and has building permits and a certificate of occupancy.

3. 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.

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 accessory structure is already built and has received a certificate of occupancy.

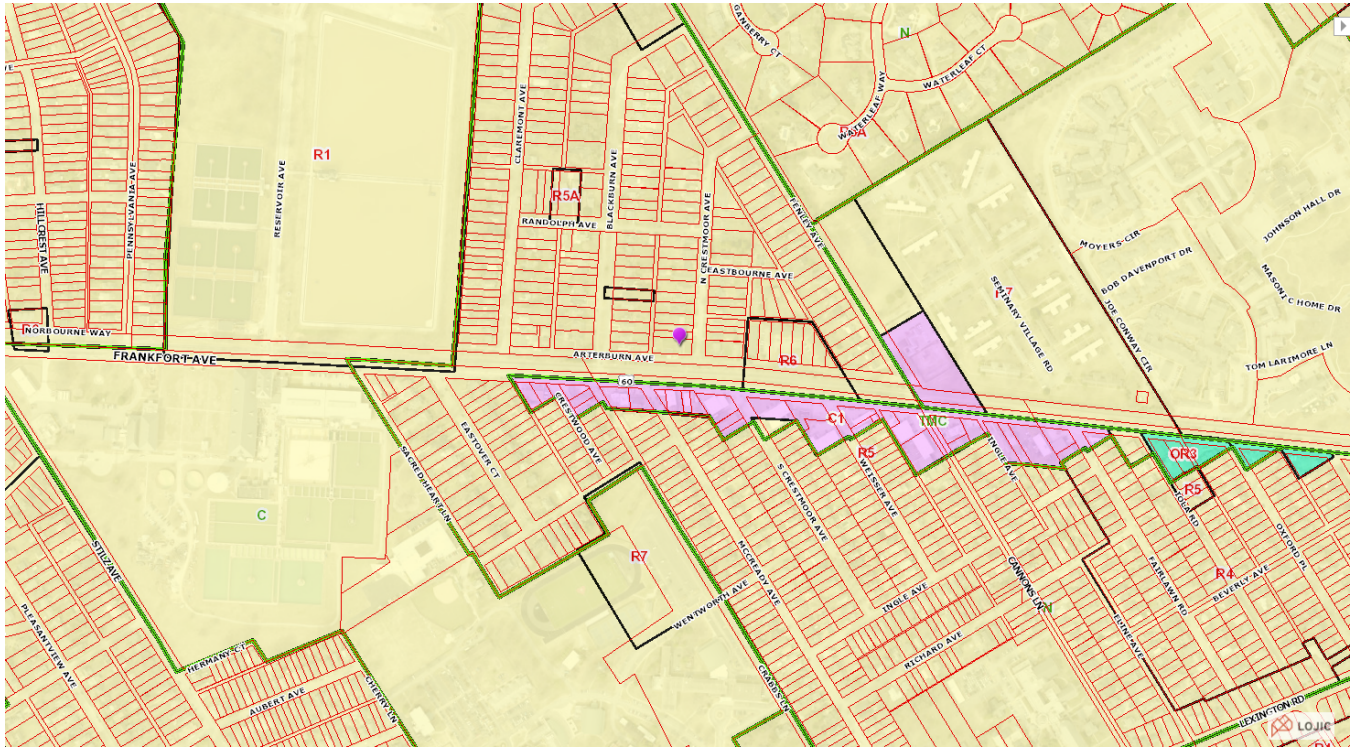
NOTIFICATION

Date	Purpose of Notice	Recipients
06/12/2023	Hearing before BOZA	1 st and 2 nd tier adjoining property owners Registered Neighborhood Groups in Council District 9
06/12/2023	Hearing before BOZA	Sign Posting

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Site Plan
4. 2040 Checklist
5. Conditions of Approval
6. Site Photos

1. **Zoning Map**



2. Aerial Photograph



3. Site Plan



Grant Tellman & Paige A. Roubic DR. 10498, PG. 326

CRESTMoor AVENUE 60' R/W
PB. 2, PG. 10

RECEIVED
MAR 20 2023
PLANNING &
DESIGN SERVICES

- LEGEND**
- = Existing 5/8" rebar.
 - = Existing 5/8" rebar with a cap #2542
 - = Set a 1/2" rebar with a cap #3444 Willett.
 - = Fence lines

4. 2040 Checklist

Conditional Use Permit Checklist

+ Meet policy

- Does not meet policy

+/- Meets/Does not meet some portion of policy

NA – Not applicable

NIS – Information needed

Policy#	Plan Element or Portion of Plan Element	Staff Finding	Comments
Community Form – Goal 1			
4.	Ensure new development and redevelopment are compatible with the scale and site design of nearby existing development and with the desired pattern of development within the Form District. Quality design and building materials should be promoted to enhance compatibility of development and redevelopment projects.	+	Proposed ADU will be in existing accessory structure. The structure was built to be compatible with the surrounding area.
11.	Ensure setbacks, lot dimensions and building heights are compatible with those of nearby developments that meet Form District guidelines.	+/-	Lot dimensions are compatible, but existing accessory structure does not meet street side yard setback.

Policy#	Plan Element or Portion of Plan Element	Staff Finding	Comments
12.	Design parking, loading and delivery areas located adjacent to residential areas to minimize adverse impacts from noise, lights, and other potential impacts. Ensure that parking, loading and delivery is adequate and convenient for motorists and does not negatively impact nearby residents or pedestrians. Parking and circulation areas adjacent to the street shall be screened or buffered. Use landscaping, trees, walls, colonnades or other design features to fill gaps along the street and sidewalk created by surface parking lots. Encourage the placement of parking lots and garage doors behind or beside the building rather than facing the street. The use of alleys for access to parking lots is encouraged, especially in Downtown Louisville, Urban Center Neighborhoods, Traditional Neighborhoods and Traditional Marketplace Corridors. Encourage elimination or reduction of parking minimums in areas readily accessible to transit routes.	+	Transportation Planning has reviewed the proposal and has no comments.
17.	Mitigate adverse impacts of traffic from proposed development on nearby existing communities.	+	Transportation Planning has reviewed the proposal and has no comments.
18.	Mitigate adverse impacts of noise from proposed development on existing communities.	NA	Residential Use
19.	Mitigate adverse impacts of lighting from proposed development on nearby properties, and on the night sky.	NA	Residential Use

Policy#	Plan Element or Portion of Plan Element	Staff Finding	Comments
Goal 2 Community Facilities			
3.	Ensure that all development has adequate means of sewage treatment and disposal to protect public health and to protect water quality in lakes and streams as determined by the Metropolitan Sewer District (MSD).	+	MSD has reviewed the proposal and has no comments.

5. Conditions of Approval

1. The site shall be developed in strict compliance with the approved development plan (including all notes thereon). No further development shall occur on the site without prior review and approval by the Board.
2. The Conditional Use Permit shall be "exercised" as described in KRS 100.237 within two years of the Board's vote on this case. If the Conditional Use Permit is not so exercised, the site shall not be used for an accessory apartment without further review and approval by the Board.

6. Site Photos



Front of subject property.



View of accessory structure from side street.



Property to the left of subject property along Arterburn Ave.



Across N. Crestmoor Ave.



Looking west down Arterburn Ave.