

Board of Zoning Adjustment
Staff Report
 August 01, 2022



Case No:	21-VARIANCE-0134
Project Name:	Hoertz Avenue Variance
Location:	1314 Hoertz Avenue
Owner/Applicant:	Katrina Miller
Representative:	Cliff Ashburner, Dinsmore & Shohl, LLP
Jurisdiction:	Louisville Metro
Council District:	15 – Kevin Triplett
Case Manager:	Heather Pollock, Planner I

REQUESTS:

Variance from Land Development Code Table 5.2.2 to allow an open unenclosed deck to encroach into the side yard and front yard setbacks.

Location	Requirement	Request	Variance
Front Yard Setback	15 ft.	0 ft.	15 ft.
Side Yard Setback	2.5 ft.	0 ft.	2.5 ft.

CASE SUMMARY/BACKGROUND

The subject property is zoned R-6 Multi-Family Residential and is in the Traditional Neighborhood Form District. It is on the north side of the 1300 block of Hoertz Ave. in the Schnitzelburg neighborhood. The site currently has a one-story single-family residential structure, and the applicant has begun construction on a front deck that encroaches into the required side yard and front yard setbacks.

The subject property is 25 feet in width. Land Development Code section 5.1.10.F allows for a lot less than 50 feet in width to have a side yard setback requirement of 10% of the width of the lot. The required side yard setback is therefore 2.5 feet.

STAFF FINDINGS

Staff finds that the requested variance meets the standards (a), (c), and (d) however, staff believes that this request does not meet standard (b) because the deck is out of character with the neighborhood.

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 Land Development Code table 5.2.2 to allow a structure to encroach into the required front yard setback.

TECHNICAL REVIEW

Public Works cannot license the porch to encroach into the right-of-way because of the obstruction of the sight distance at the alley intersection.

The applicant has stated they plan to cut the deck back so that it no longer encroaches in the right-of-way.

INTERESTED PARTY COMMENTS

Interested party comments were received by staff, one in support and several in opposition. The opposing parties were concerned with the height and location of the deck as well as the design. Metro Council District 15 office also reached out to staff as they had been receiving concerns about this project from the public.

RELATED CASES

ENF-BLD-21-004736: A building enforcement case for a front deck without permits.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCES FROM TABLE 5.2.2

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

STAFF: The requested variances will not adversely affect the public health, safety or welfare, because the proposed structure must be constructed to comply with all building codes, including fire 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 variances may alter the essential character of the general vicinity as there does not appear to be front yard decks of similar design and size in the surrounding area.

- (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 as the applicant plans to remove the front portion of the partially constructed so that it no longer encroaches in the right-of-way and obstruct the sight distance at the alley intersection.

- (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 subject property is narrow and the front yard is sloped with the primary structure built close to the property line.

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 not generally apply to land in the general vicinity or the same zone as the lot is similar in size and shape as 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 existing primary structure is close to the property lines.

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 the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as the applicant has started construction and is requesting the variance.

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.

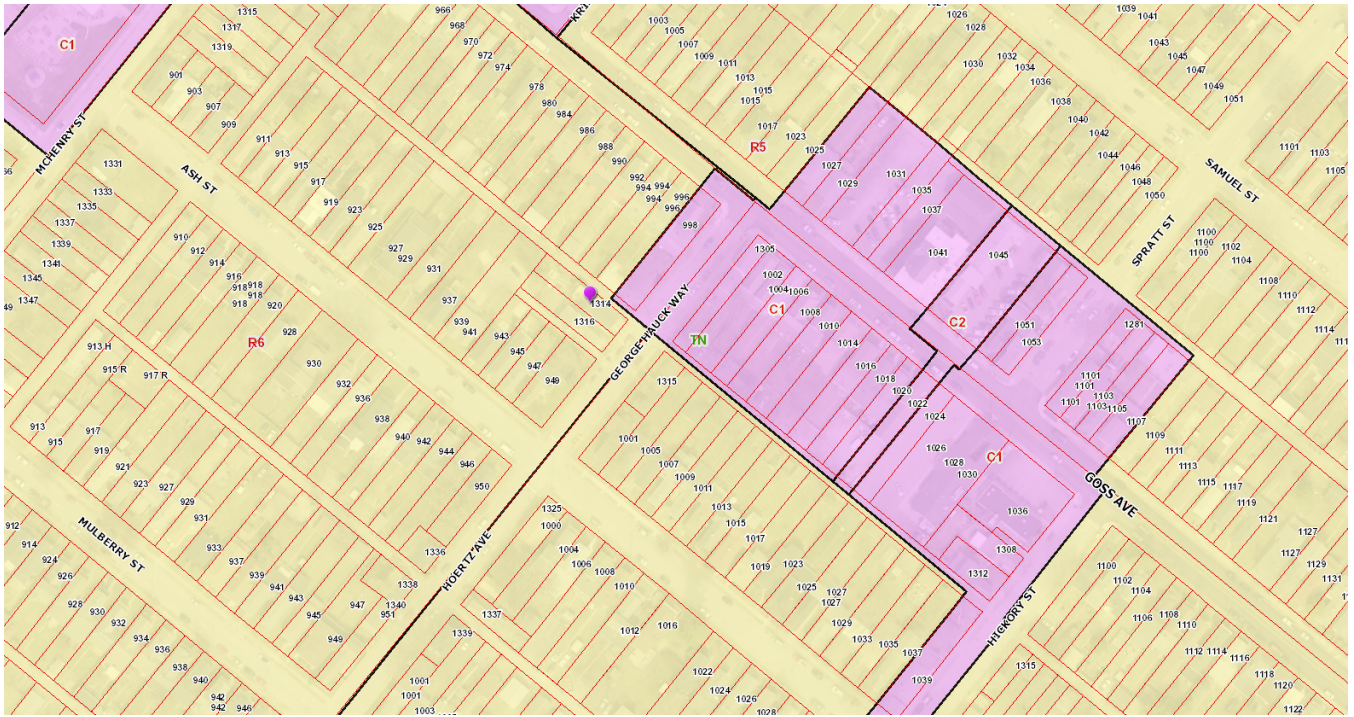
NOTIFICATION

Date	Purpose of Notice	Recipients
07/15/2022	Hearing before BOZA	1 st tier adjoining property owners and current residents Registered Neighborhood Groups in Council District 15
07/21/2022	Hearing before BOZA	Notice posted on property

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Site Plan
4. Condition of Approval
5. Site Photos

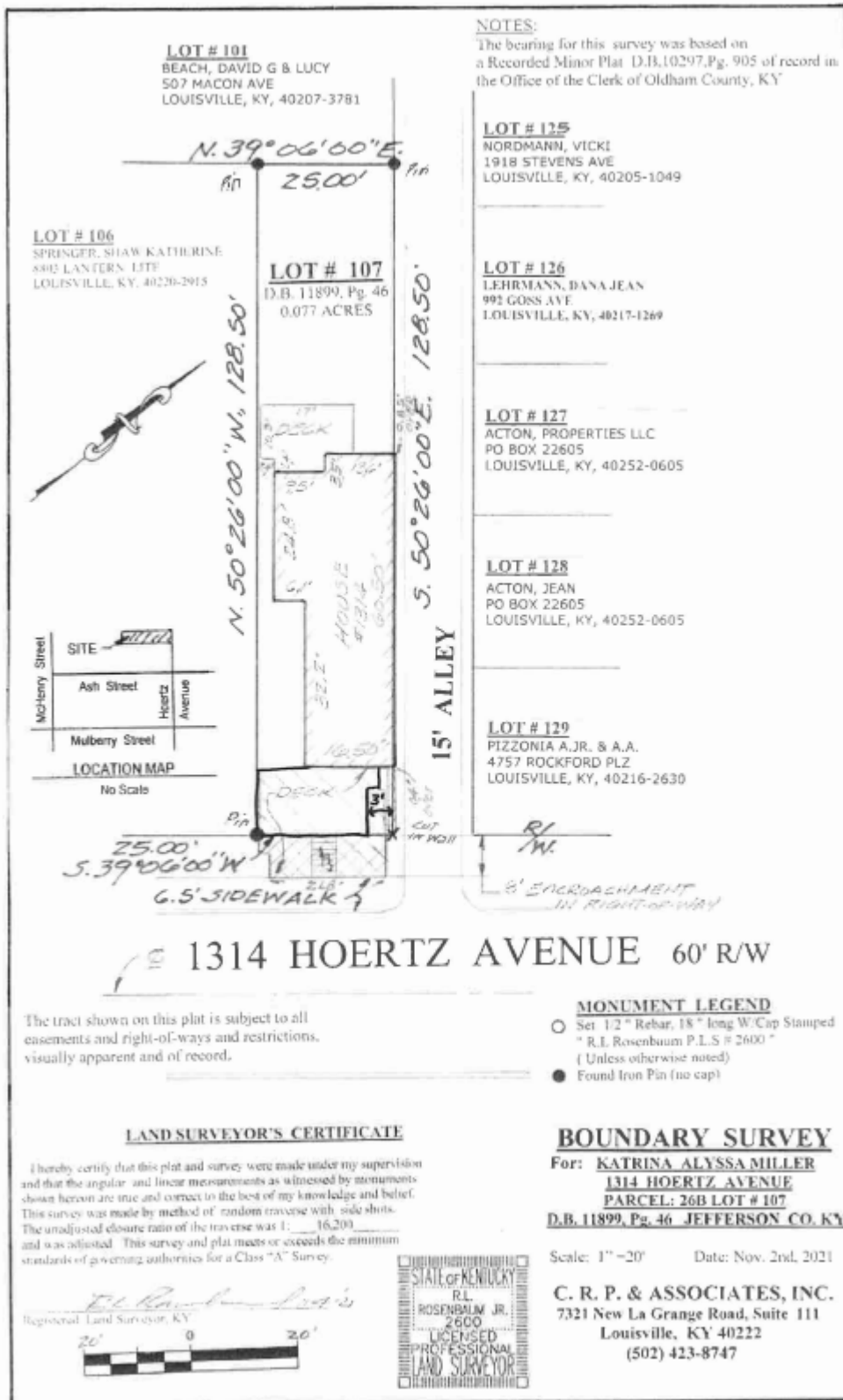
1. Zoning Map



2. Aerial Photograph



3. Site Plan



4. Conditions of Approval

1) Existing portions of deck within the Right of Way must be removed within 6 months of the approval of this variance.

5. Site Photos



Front of subject property and variance area.



View of deck from Hoertz Ave.



View of deck from intersection of alley and Hoertz Ave.



View of side yard variance area looking east up Hoertz Ave.



Property to the left.



Alley and properties to the right.



Across street.