

**Board of Zoning Adjustment**  
**Staff Report**  
 January 23, 2023



<b>Case No:</b>	22-VARIANCE-0140
<b>Project Name:</b>	Bardstown Road Variance
<b>Location:</b>	1036 Bardstown Rd
<b>Owner/Applicant:</b>	Bierhaus LLC
<b>Representative:</b>	Rachel Harman
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	8-Cassie Chambers Armstrong
<b>Case Manager:</b>	Amy Brooks, Planner I

**REQUEST:**

**Variance** from the Land Development Code section 5.5.5.to allow an accessory structure to encroach into the rear yard setback and a **Variance** from Land Development Code section 4.4.3.A.1.b.i to allow a fence to exceed the maximum allowed height within a required rear yard.

<b>Location</b>	<b>Requirement</b>	<b>Request</b>	<b>Variance</b>
Rear Yard Setback	15 feet	4 feet	11 feet
Rear Yard Fence Height	8 feet	11 feet	3 feet

**CASE SUMMARY/BACKGROUND**

The subject site is zoned C-2 Commercial within the Traditional Marketplace Corridor. Located on the southwest side of Bardstown Road in the Cherokee Triangle neighborhood, the subject property is developed with a 1.5 story building known as the Parsonage that is currently serving a commercial function. The applicant is proposing to construct a 6 foot tall wood deck with an attached 12 foot gazebo in the courtyard space behind the building. This accessory structure will encroach into the required rear yard setback. In addition, a wooden, 11 foot tall privacy fence will run the perimeter of the courtyard. A 24 foot long by 11 foot tall built-in seat with three rounded metal canopy roofs over the seating will be constructed to the northwest side of the covered deck/gazebo.

The LDC section 5.5.5 states that rear yard setback for accessory structures shall be the same as for the required landscape buffer area or transition setback/yard if applicable, whichever is greater. Therefore, the required rear setback is 15 feet.

**STAFF FINDINGS**

Staff finds the Rear Yard Setback is adequately justified based on staff’s analysis contained in the standard of review.

Staff finds that Maximum Fence Height variance meets the standards of review of (a), (b), and (c). However, staff is concerned the request does not meet standard (d) because there are no similar structures within the surrounding 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 the Land Development Code.

**TECHNICAL REVIEW**

No outstanding technical comments.

**INTERESTED PARTY COMMENTS**

None

**RELATED CASES**

22-OVERLAY-0024

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE FROM SECTION 5.5.5 (Rear 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, 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 structure will not alter the essential character of the general vicinity as it has been built with material that is in character with the surrounding residential neighborhood. The applicant has gotten approval from the Bardstown Road/Baxter Avenue Corridor Overlay District for the proposed exterior alterations. According to the permit, the proposed changes will have little to no impact on the Corridor.

- (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. In addition, the entire structure will not be visible from any public way.

- (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 is compatible with other development in the area.

**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 the land in the generally vicinity or the same zone as the lot is similar in size and shape 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 required rear yard setback for accessory structures on this site is almost the entire rear yard itself.

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 applicant has not begun construction and has applied for a variance.

#### **STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE FROM SECTION 4.4.3.A.1.b.i (Fence Height Maximum)**

- (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, 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 proposed private yard area reduction will not alter the essential character of the general. The applicant has gotten an overlay permit from the Bardstown Road/Baxter Avenue Corridor Overlay District for the proposed fence. According to Overlay report findings, the proposed changes will have little to no impact.

- (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 will allow an unreasonable circumvention of the zoning regulations as the proposed fence is taller than those on surrounding properties in this portion of Cherokee Triangle.

#### **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 the land in the generally vicinity or the same zone as the lot is similar in size and shape 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 not an unnecessary hardship on the applicant as the applicant could modify the height of the fence to be more compliant with the allowed maximum height regulations within abutting office and residentially zoned properties.

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 applicant has not begun construction and has applied for a 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.

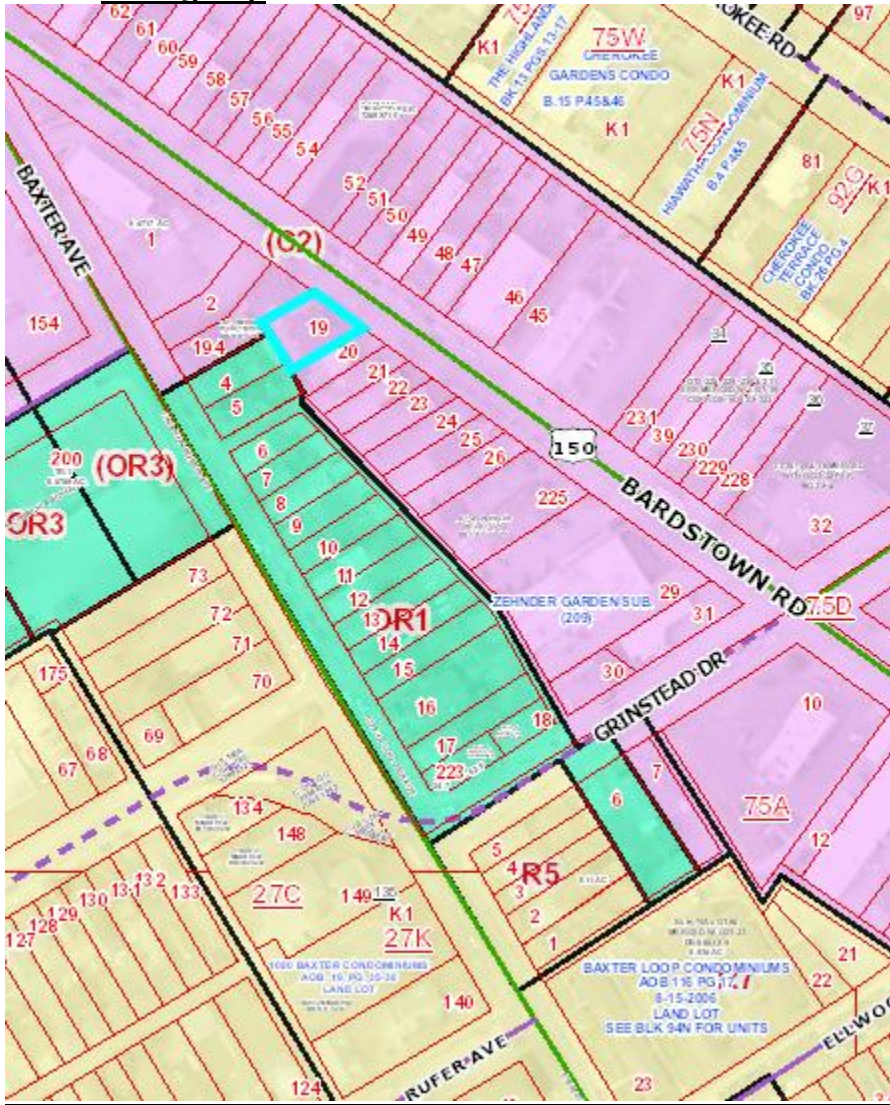
### **NOTIFICATION**

<b>Date</b>	<b>Purpose of Notice</b>	<b>Recipients</b>
<b>01/09/2023</b>	Hearing before BOZA	1 <sup>st</sup> tier adjoining property owners Registered Neighborhood Groups in Council District 8
<b>01/11/2023</b>	Hearing before BOZA	Notice posted on property

### **ATTACHMENTS**

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

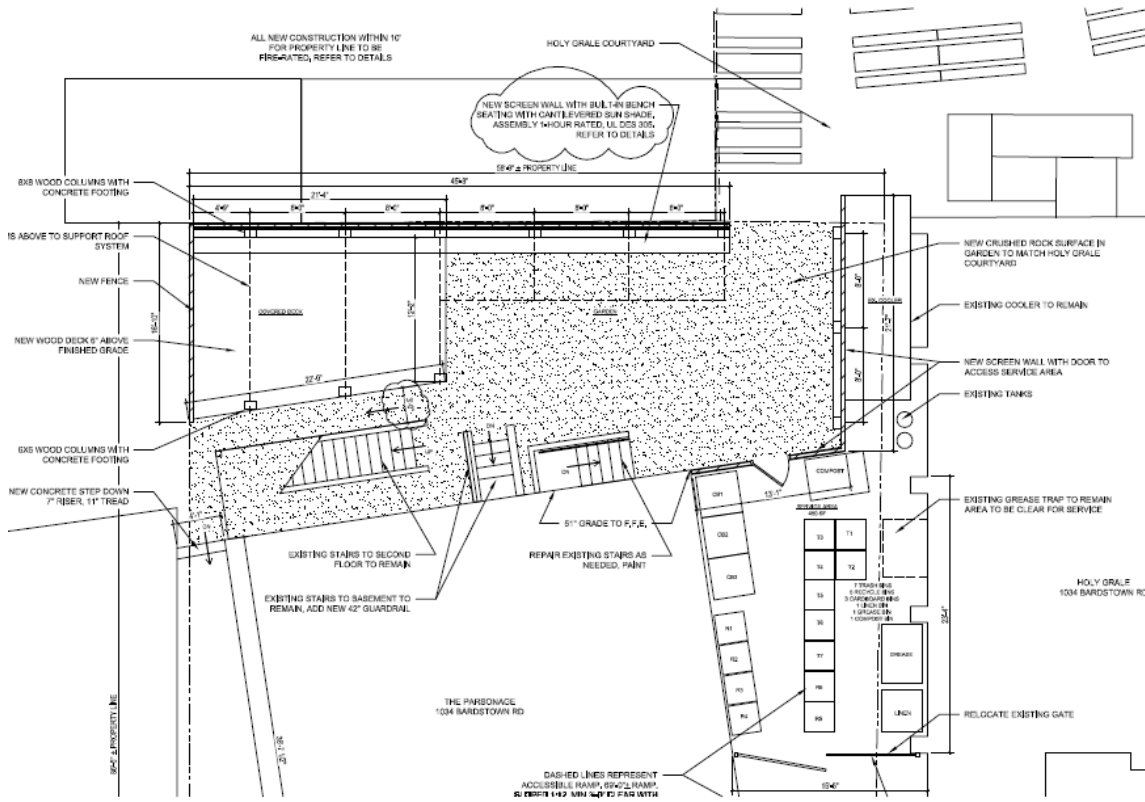
1. Zoning Map



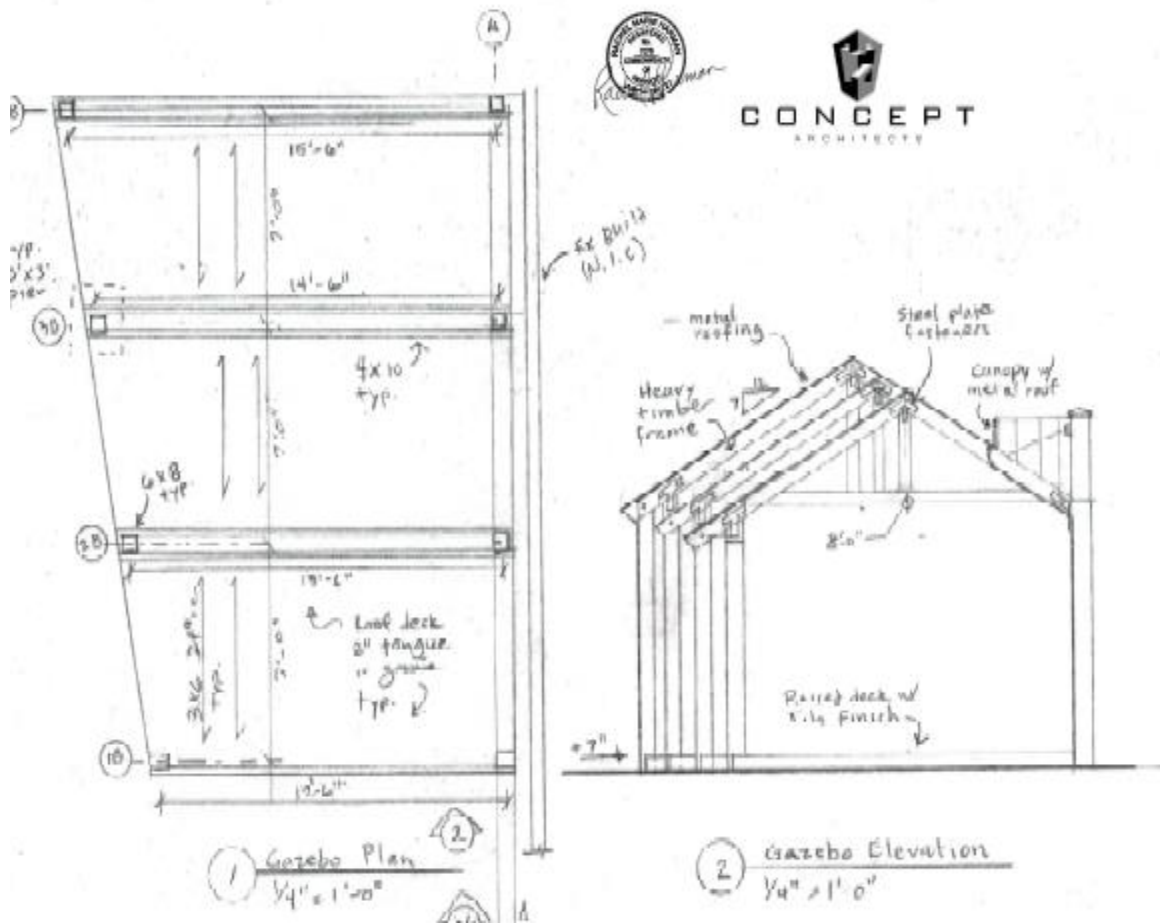
2. Aerial Photograph



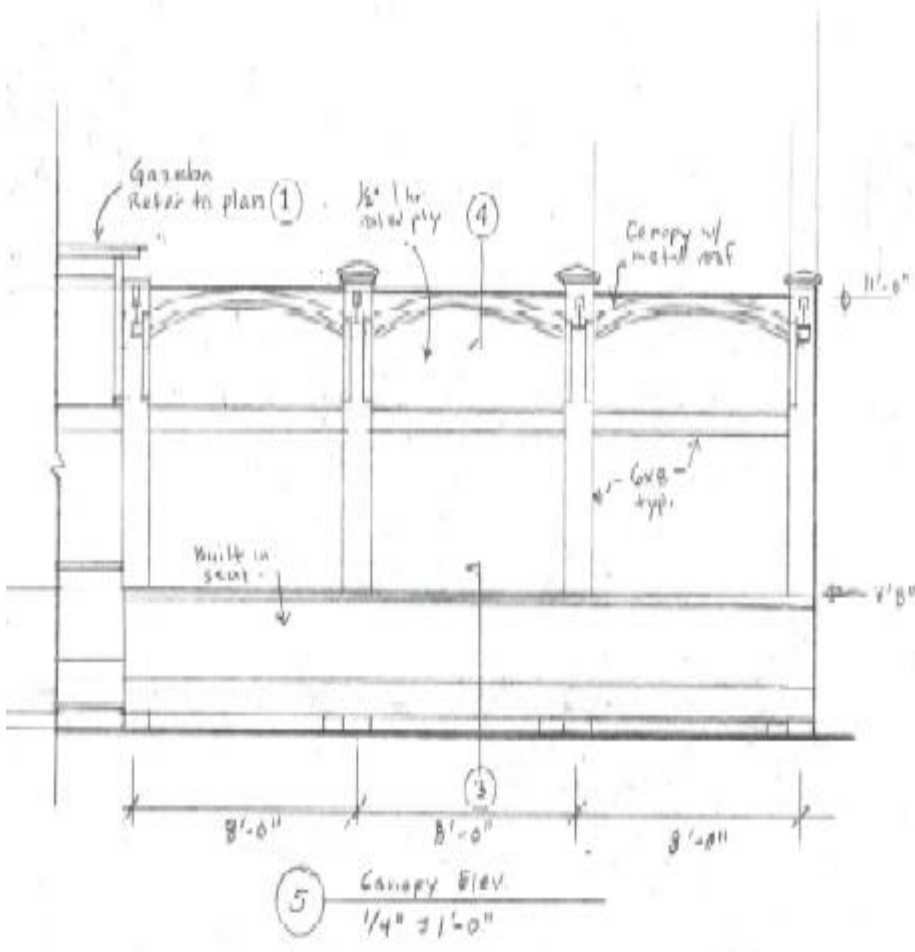
### 3. Site Plan



4. Elevations







**6. Site Photos**



Front of subject property.



Right of the subject property.



Left of subject property.



Across the street from subject property.



View of variance area.



Courtyard view