

**Board of Zoning Adjustment**  
**Staff Report**  
 February 06, 2023



<b>Case No:</b>	22-VARIANCE-0109
<b>Project Name:</b>	Mockingbird Valley Drive Variance
<b>Location:</b>	34 Mockingbird Valley Drive
<b>Owner/Applicant:</b>	Hoedt Fitz Schultze
<b>Representative:</b>	Trey Ferrara, Land Design & Development, INC
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	16 – Scott Reed
<b>Case Manager:</b>	Amy Brooks, Planner I

**REQUESTS:**

**Variance** from the Land Development Code Table 5.3.1 to allow a structure to encroach into the side yard setback.

Location	Requirement	Request	Variance
<b>Side Yard Setback</b>	<b>15 ft.</b>	<b>4 ft.</b>	<b>11 ft.</b>

**CASE SUMMARY/BACKGROUND**

The subject property is zoned R-1 Single Family Residential and is in the Neighborhood Form District. It is on the west side of Mockingbird Valley Dr. adjacent to the Louisville Country Club golf course. The site has a single family home and the applicants are proposing to build a new 115 sq. ft. addition to the principal structure that will encroach into the side yard setback on the northeast property line.

The applicant was issued a building permit, in error, in 2019 for an addition to the primary structure. As a result of this, the applicant’s primary structure was constructed into both the required minimum side yard setback and onto a private roadway easement that was located on a neighbor’s property. These errors were discovered in 2022 when the applicant applied for a new building permit to add a glass curtain wall façade to the existing family room. As such, the applicant has rectified several of these issues; the applicant purchased the portion of the property where his house was built over the existing property line and was approved for a minor subdivision plat under 22-MPLAT-0147 to shift the property line, thereby bringing the entire structure onto the applicant’s property. In addition, the applicant has released the roadway easement.

**STAFF FINDINGS**

Staff finds that the requested variance is adequately justified and meets the standard of review.

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 Code to allow a principal structure to encroach into the setback.

## **TECHNICAL REVIEW**

The applicant is required to obtain a building permit and the structure may require alterations to the proposed building plans in order to meet building code requirements.

## **INTERESTED PARTY COMMENTS**

Louisville Country Club submitted a letter of support for the proposed variance.

## **RELATED CASES**

9-063-06: Rezoning to R1 Single Family zoning district.

22-MPLAT-0147: Minor plat to shift a property line.

BL 1096028

RES-ADD-22-0375

## **STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE FROM Table 5.3.1**

- (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 regulations 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 variance will not alter the essential character of the general vicinity as the structure and its location on the lot will be in character with the surrounding residential neighborhood. Several homes on Mockingbird Place do not have the required minimum or total side yards required in this zoning district.

- (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 not allow an unreasonable circumvention of the zoning regulations as the other homes within the general vicinity also encroach into the required side yards.

## **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 arise from special circumstances which do not generally apply to land in the general vicinity or the same zone as the lot is not similar in size and shape as the surrounding properties. This specific lot is triangular shaped with a wider frontage that

narrows in the rear. There are also existing steep slopes that could possibly impede construction in the rear yard.

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 as the applicant had received a building permit in 2019 for the part of the addition.

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 completed part of the construction.

### **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/?/2023</b>	Hearing before BOZA	1 <sup>st</sup> tier adjoining property owners and current residents Registered Neighborhood Groups in Council District 16
<b>01/25/2023</b>	Hearing before BOZA	Notice posted on property

### **ATTACHMENTS**

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

1. Zoning Map





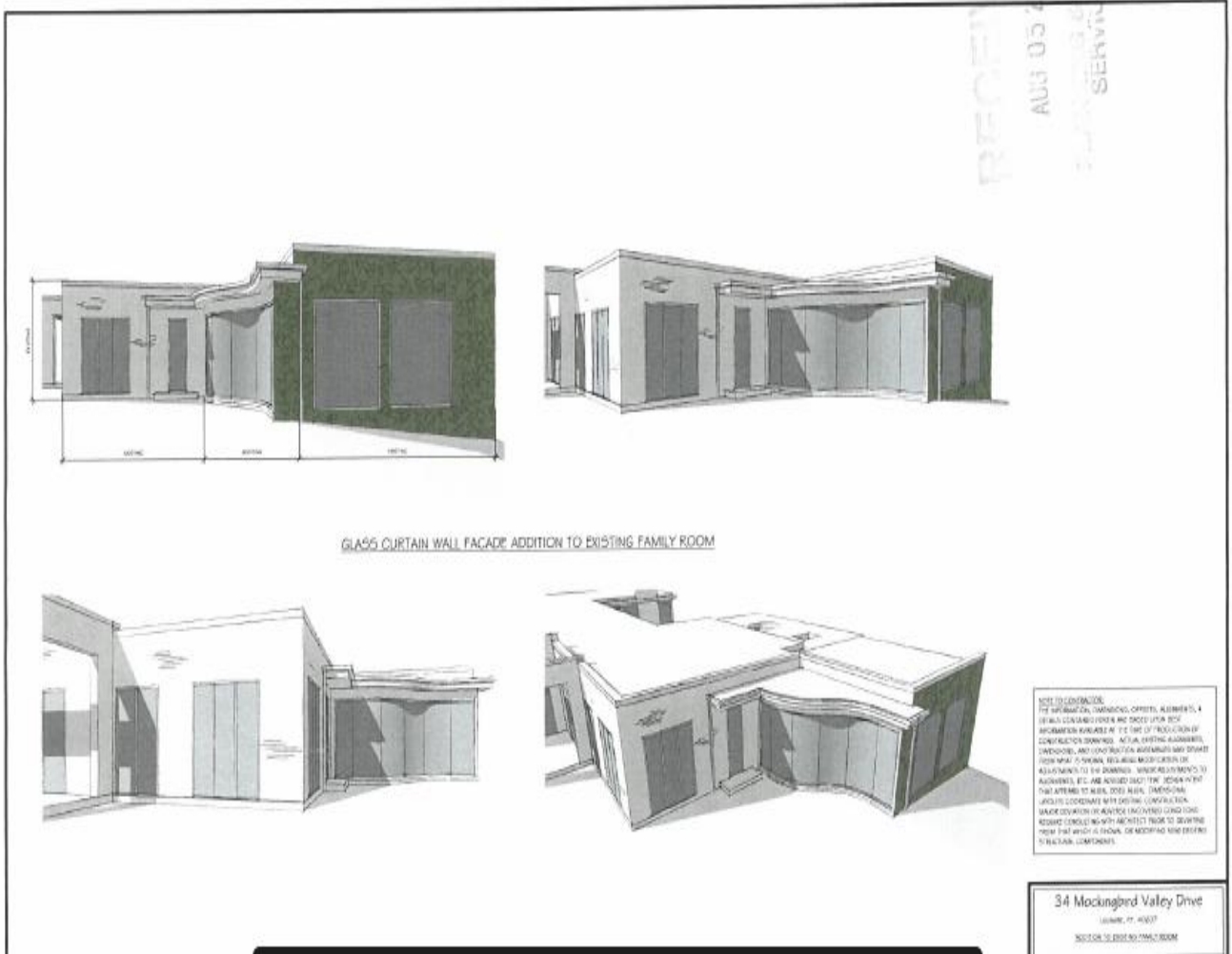
2. Aerial Photograph





4. Elevations

RECEIVED  
 AUG 03 2022  
 PLANNING & DESIGN  
 SERVICES





**5. Site Photos**



Front of subject property.





Property to the left.





Property to the right, golf course.





Across street Mockingbird Valley Dr.





View of variance area from golf course





View of variance area from front.





View of variance are from rear

6. Survey

