

**Board of Zoning Adjustment
Staff Report**
March 7, 2016



Case No:	16VARIANCE1006
Request:	Variance from a side yard setback.
Project Name:	1124 East Burnett Ave.
Location:	1124 East Burnett Ave.
Owner:	Eric Toohey
Applicant:	Kathy Matheny
Representative:	Kathy Matheny
Jurisdiction:	Louisville Metro
Council District:	10 – Pat Mulvihill
Case Manager:	Ross Allen, Planner I

REQUEST

- Variance from LDC section 5.2.2 table 5.2.2 Dimensional Standards – Traditional Neighborhood

Location	Requirement	Request	Variance
Side Yard Setback	3' ft.	2' ft. 9" in.	3.24" in.

CASE SUMMARY/BACKGROUND/SITE CONTEXT

The applicant is requesting a variance as a result of a 3 inch construction error along a 44 foot long wall on the southeastern side of the two story addition at the subject address.

LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

	Land Use	Zoning	Form District
Subject Property			
Existing	Residential Single Family	R-5	Traditional Neighborhood (TN)
Proposed	Residential Single Family	R-5	Traditional Neighborhood (TN)
Surrounding Properties			
North	Residential Single Family, Commercial District	R-5, C-2	Traditional Neighborhood (TN)
South	Residential Single Family	R-5	Traditional Neighborhood (TN)
East	Residential Single Family	R-5	Traditional Neighborhood (TN)
West	Residential Single Family	R-5	Traditional Neighborhood (TN)

PREVIOUS CASES ON SITE

No previous cases associated with the subject property.

INTERESTED PARTY COMMENTS

No comments were received from concerned citizens.

APPLICABLE PLANS AND POLICIES

Land Development Code

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCES

- (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 since the applicant is requesting three inches and many homes in the area all sit in close proximity. The original front portion of the home sits on a lot 21 feet wide and is only 1.68 feet off the property line on the eastern side and 3.09 feet of the property line on the western side. The rear addition is a new construction and was proposed to be the required 3 feet off the property line on both sides based upon the existing house and fences to determine the placement of the addition led to a 3 inch error on the east side. Consideration should be given to the existing fire code and potential impacts upon adjacent properties.

- (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 since homes located on the block with 20 to 23 foot wide lots sit in close proximity to each other. The nature of the new addition is negligible when the existing structures in the general vicinity are considered.

- (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 since the 3 inch encroachment into the setback is still within the applicant's property line and does not encroach upon the adjacent property.

- (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 since setbacks are established to provide consistent building placement, 3 inches is negligible on the eastern side of the home while the western side has a setback greater than the three feet by 2.4 inches.

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 arises from special circumstances which do not generally apply to land in the general vicinity or the same zone since the applicant had constructed the addition with the intent of having a three foot setback but as a result of the construction process had encroached upon the

three foot setback by 3.24 inches. The applicant's original portion of the home (front section) has a setback of 1.68' feet which predates the currently established LDC setback.

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 deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant since the three inch encroachment would require the applicant to demolish a 15 foot wide by 44 foot long two story structure to build to LDC regulations.

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 applicant's actions were not subsequent to the adoption of the zoning regulations. However, the intent of the applicant to comply with the three foot setback as shown in the survey (the two story addition has a setback greater than required by LDC on the northeastern portion attached to the original structure) is an indication that an attempt to meet code was made. An error in construction based upon relative boundaries resulted in the encroachment.

TECHNICAL REVIEW

- No agency comments at this time.

STAFF CONCLUSIONS

The applicant with the intent to construct a two story addition on the home with the required three foot setback, as defined in LDC section 5.2.2 table 5.2.2 Dimensional Standards – Traditional Neighborhood, had determined at the time of construction to have used a relative boundary rather than a absolute boundary resulting in the encroachment.

Based upon the information in the staff report, 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 from sections 5.2.2 Table 5.2.2 for the side yard setback encroachment of 3.24 inches into the required three feet setback.

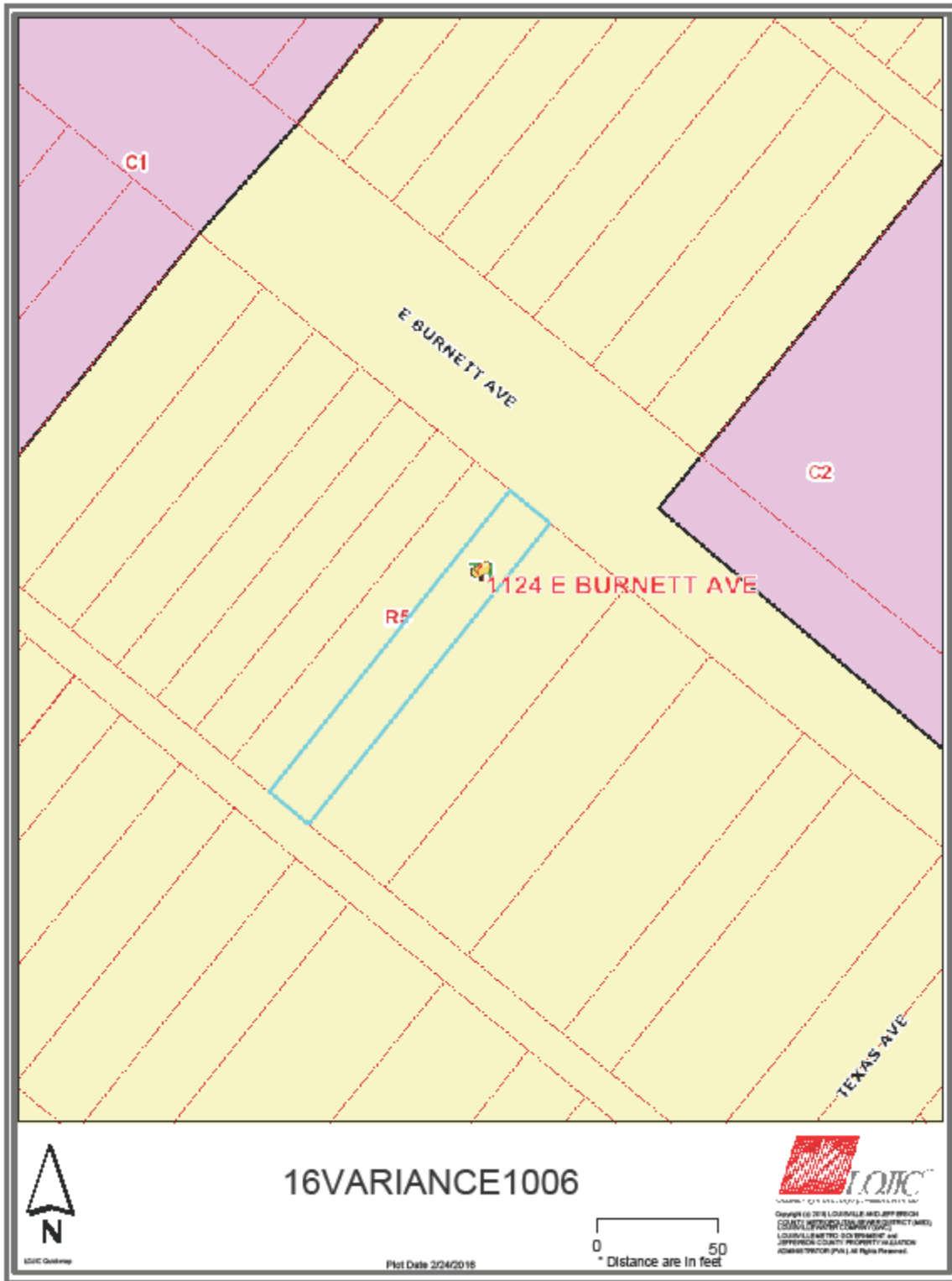
NOTIFICATION

Date	Purpose of Notice	Recipients
Feb. 19, 2016	Hearing before BOZA	1 st tier adjoining property owners Neighborhood notification recipients
Feb. 19, 2016	Sign Posting for BOZA	Sign Posting on property

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Site Inspection Photos

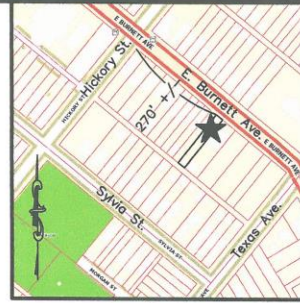
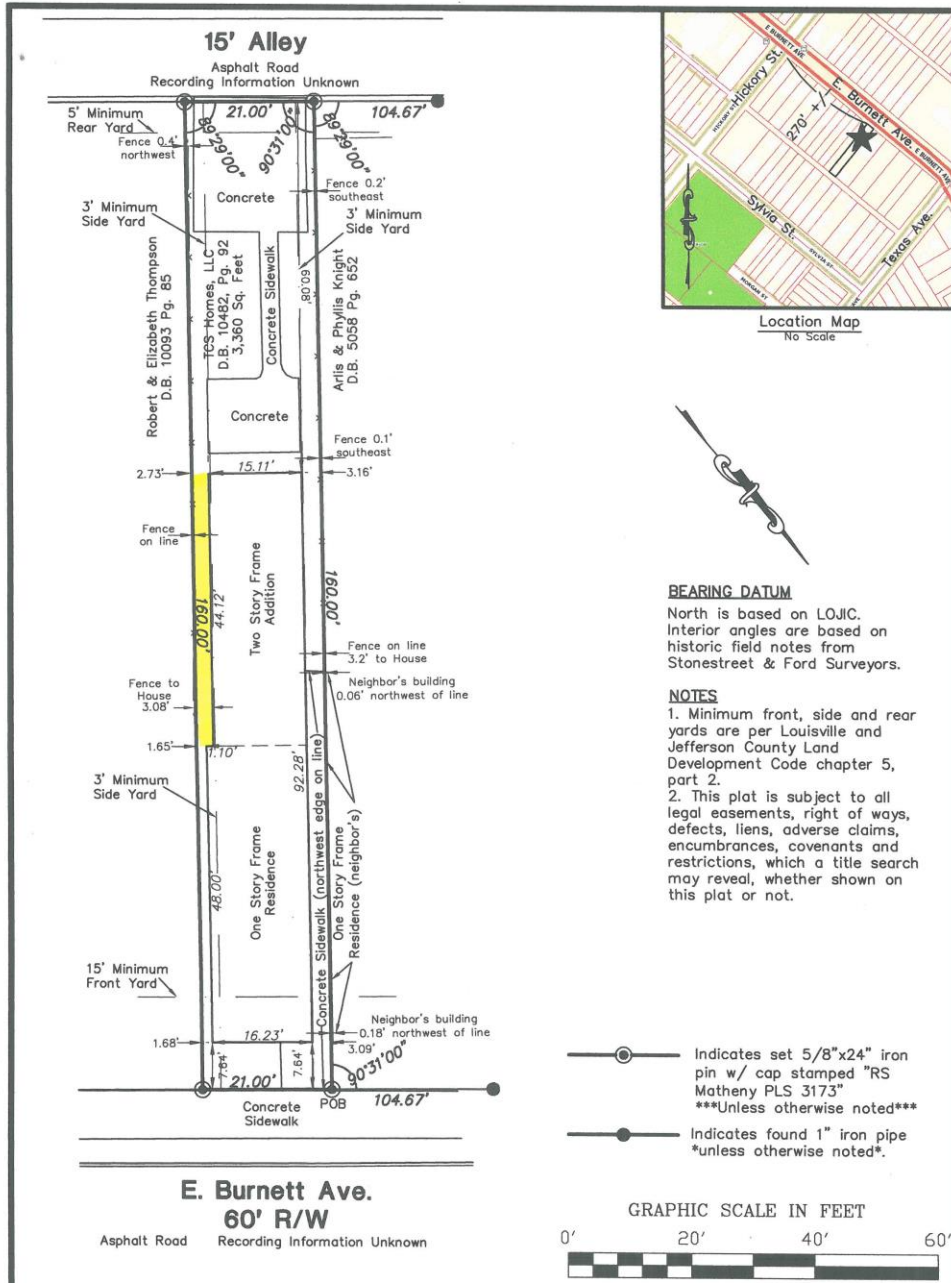
1. Zoning Map



2. Aerial Photograph



3. Site Plan



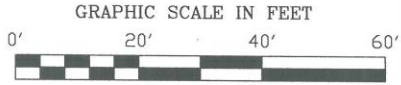
Location Map
No Scale



BEARING DATUM
North is based on LOJIC.
Interior angles are based on historic field notes from Stonestreet & Ford Surveyors.

- NOTES**
1. Minimum front, side and rear yards are per Louisville and Jefferson County Land Development Code chapter 5, part 2.
 2. This plat is subject to all legal easements, right of ways, defects, liens, adverse claims, encumbrances, covenants and restrictions, which a title search may reveal, whether shown on this plat or not.

- Indicates set 5/8"x24" iron pin w/ cap stamped "RS Matheny PLS 3173" ***Unless otherwise noted***
- Indicates found 1" iron pipe *unless otherwise noted*.



LAND SURVEYOR'S CERTIFICATE
I hereby certify that this plat and survey were made under my supervision on January 29, 2016, and that the angular and linear measurements as witnessed by monuments shown hereon are true and correct to the best of my knowledge and belief. This survey was made by method of random traverse with sideshots. The unadjusted closure ratio of the traverse was 1:20,175 and was not adjusted. This survey and plat meets or exceeds the minimum standards of governing authorities for an "Urban" survey.

Richard S. Matheny 02/01/2016
RICHARD MATHENY—P.L.S. # 3173 DATE

BOUNDARY SURVEY FOR SIDE YARD VARIANCE
Owner: TCS Homes, LLC
11207 Newstone Court, Louisville, KY 40245
Site: 1124 E. Burnett Ave., Louisville, KY 40217
D.B. 10482, Pg. 92 Parcel ID 026G01800000
R-5 Zoning TN Form District
This survey complies with 201 KAR 18:150

	<p>CARDINAL SURVEYING 9009 PRESTON HWY. LOUISVILLE, KY 40219 Phone (502) 966-3446 www.cardinalsurveyingservices.com</p>	DRAWN BY: BKF
		SCALE: 1"= 20'
		DATE: 02/01/2016
		FIELD SURVEY DATE: 01/28/2016
		BY: RSM/LF/CC

PLAT 1008 VARIANCE 1006

4. Site Inspection Photos



Looking Southwest along the southern side of the property from the front.



Looking Southwest along the southern side of the property at the two story rear addition.



Looking Southwest along the southern side of the property at the setback from the neighbor's fence line.



Looking Southwest along the northern side of the property at the setback from the neighbor's home.

Site Inspection photos



Looking Northeast at the rear of the property.



Looking Northeast at the rear of the property along the southern side of the property.



Looking Northeast at the rear of the property along the northern side of the property.