

# Board of Zoning Adjustment Staff Report

May 2, 2016



<b>Case No:</b>	16VARIANCE1021
<b>Request:</b>	Variance from a side yard setbacks.
<b>Project Name:</b>	3004 Sherbrooke Road
<b>Location:</b>	3004 Sherbrooke Road
<b>Area:</b>	.21690 acres
<b>Owner:</b>	William and Sharon Higgins
<b>Applicant:</b>	William and Sharon Higgins
<b>Representative:</b>	William and Sharon Higgins
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	8 – Tom Owen
<b>Case Manager:</b>	Ross Allen, Planner I

## REQUEST

- Variance from LDC section 5.3.1 table 5.3.1 Dimensional Standards – Residential Development to encroach into the minimum required side yard setbacks along the north and south property lines.

Location	Requirement	Request	Variance
<b>Side Yard Setback (North)</b>	5' ft.	2' ft.	3' ft.
<b>Side Yard Setback (South)</b>	5' ft.	4.33' ft.	.67' ft. or 8 inches

## CASE SUMMARY/BACKGROUND/SITE CONTEXT

The applicant is requesting a variance from LDC section 5.3.1 table 5.3.1 to construct onto the rear of the principal structure. The home is a 2 story brick home with an attached garage located in the R-5 zoning District within a Neighborhood Form District. The principal structure has a finished square footage of 1518 square feet (PVA) and the proposed addition would add approximately 1370 square feet more to the principal structure, for a combined total of 2888 sf. The floor area ratio (FAR) for the structure (existing and proposed) is below the requirement of .5 FAR for the R-5 zoning district. The addition will require two variances for side setbacks along the northern and southern property lines. The proposed addition will convert the one car garage to a one story living space and extend the width of the existing structure by approximately 4.92' ft. requiring the northern side yard setback variance of 2 feet. The addition will continue along the northern property line to the rear by approximately 33.5' ft. The addition will wrap around the full length of the rear and extend out past the existing principal structure on the southern property line by 8 feet, requiring the second variance for a side yard setback of 4.33' ft. The rear center portion of the proposed addition will have two stories. The addition will be approximately 1370 sf. of additional living space for the applicant.

## LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

	Land Use	Zoning	Form District
<b>Subject Property</b>			
<b>Existing</b>	Residential Single Family	R-5	Neighborhood (N)
<b>Proposed</b>	Residential Single Family	R-5	Neighborhood (N)
<b>Surrounding Properties</b>			
<b>North</b>	Residential Single Family	R-5	Neighborhood (N)
<b>South</b>	Residential Single Family	R-5	Neighborhood (N)
<b>East</b>	Residential Single Family	R-5	Neighborhood (N)
<b>West</b>	Residential Single Family	R-5	Neighborhood (N)

### PREVIOUS CASES ON SITE

No previous cases associated with the subject property.

### INTERESTED PARTY COMMENTS

An email was received on Monday April 25, 2016 from an adjoining property owner located at 3002 Sherbrooke Road. The owner states that the addition onto the neighboring property (Case # 16VARIANCE1021) would place the addition to close to his property line and existing fence. The concerned citizen further states the addition is out of character for the neighborhood and would place the applicant's bedroom in very close proximity to the neighbor's bedroom. Please see the email on page 14 of the staff report.

A second e-mail was received on April 29, 2016 which contained an affidavit from a Johan Graham – AU Associates Inc. on behalf of the opposition. The Affidavit states that Mr. Graham believes portions of the staff report to be incorrect, please see pages 15-17 of the staff report.

### 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 will have building materials that are to fire code and the addition will match the principal structure façade.

- (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 in other homes along the block have equal or greater than the square footage for similar sized parcels. The proposed addition would add 8' feet of width to rear side of the home along the southern property boundary and another 4.92' ft. to the northern side of the property, widening the view of the property from the street frontage.

- (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 applicant has proposed to use materials that meet fire and 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 since the applicant has the required private yard area remaining and is within the zoning district requirements for Floor Area Ratio (.5).

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 since homes along the block have equal or greater than the square footage for similar sized parcels.

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 addition would allow the applicant's to consolidate existing uses in the home into one level for the purpose of agedness.

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 since the applicant has made no alterations to the principal structure prior to seeking approval for the variances requested.

**TECHNICAL REVIEW**

- See agency comments for development plan review comments.

**STAFF CONCLUSIONS**

The applicant's request to have a proposed side yard setback of two feet along the northern property line and a proposed side yard setback of 4.33' feet along the southern property line meet the standard of review.

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 LDC section 5.3.1 table 5.3.1 Dimensional Standards – Residential Development

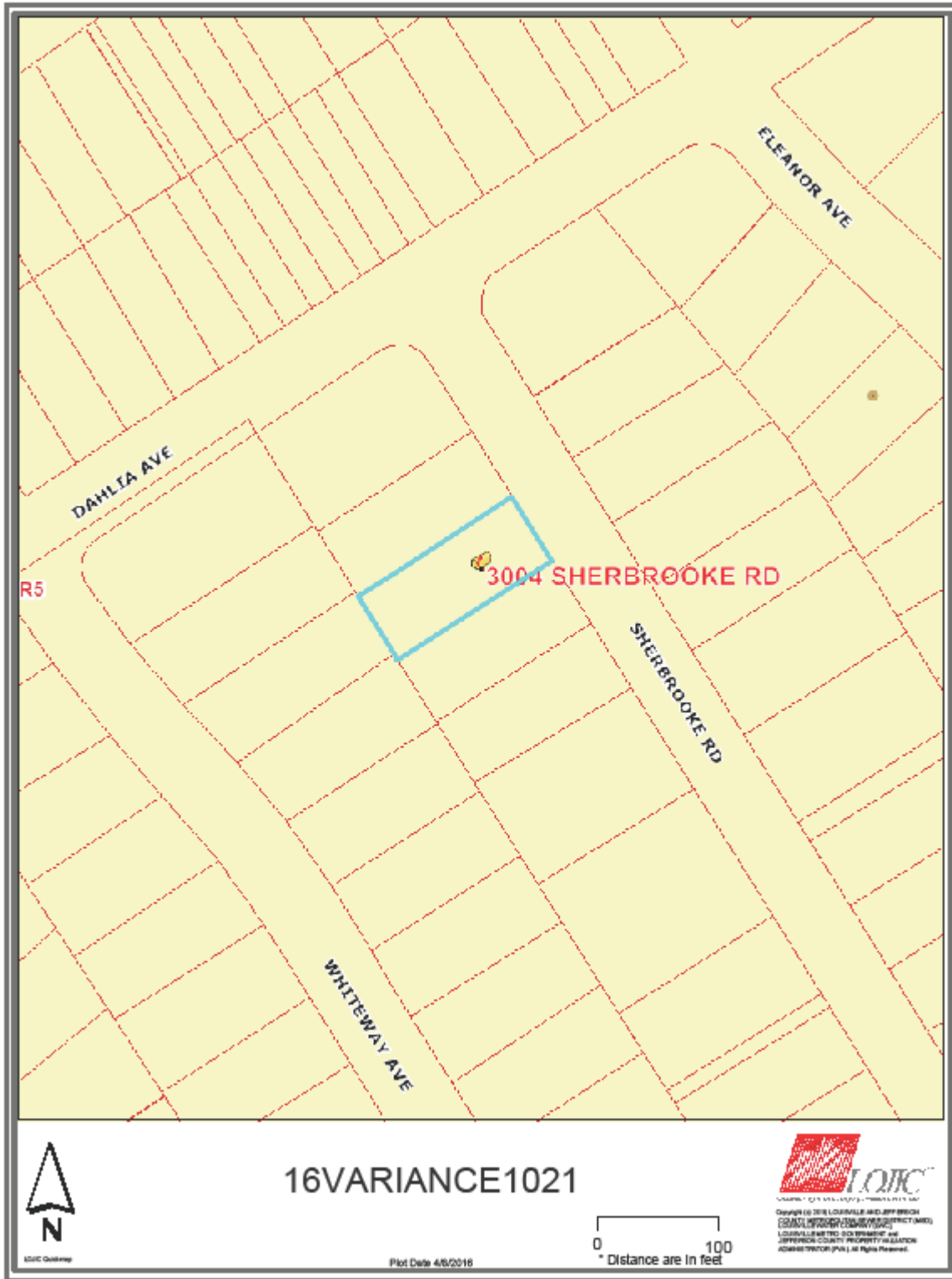
## NOTIFICATION

Date	Purpose of Notice	Recipients
May 2, 2016	Hearing before BOZA	1 <sup>st</sup> tier adjoining property owners Speakers at Planning Commission public hearing Subscribers of Council District ___ Notification of Development Proposals
April 15, 2016	Sign Posting for BOZA	Sign Posting on property

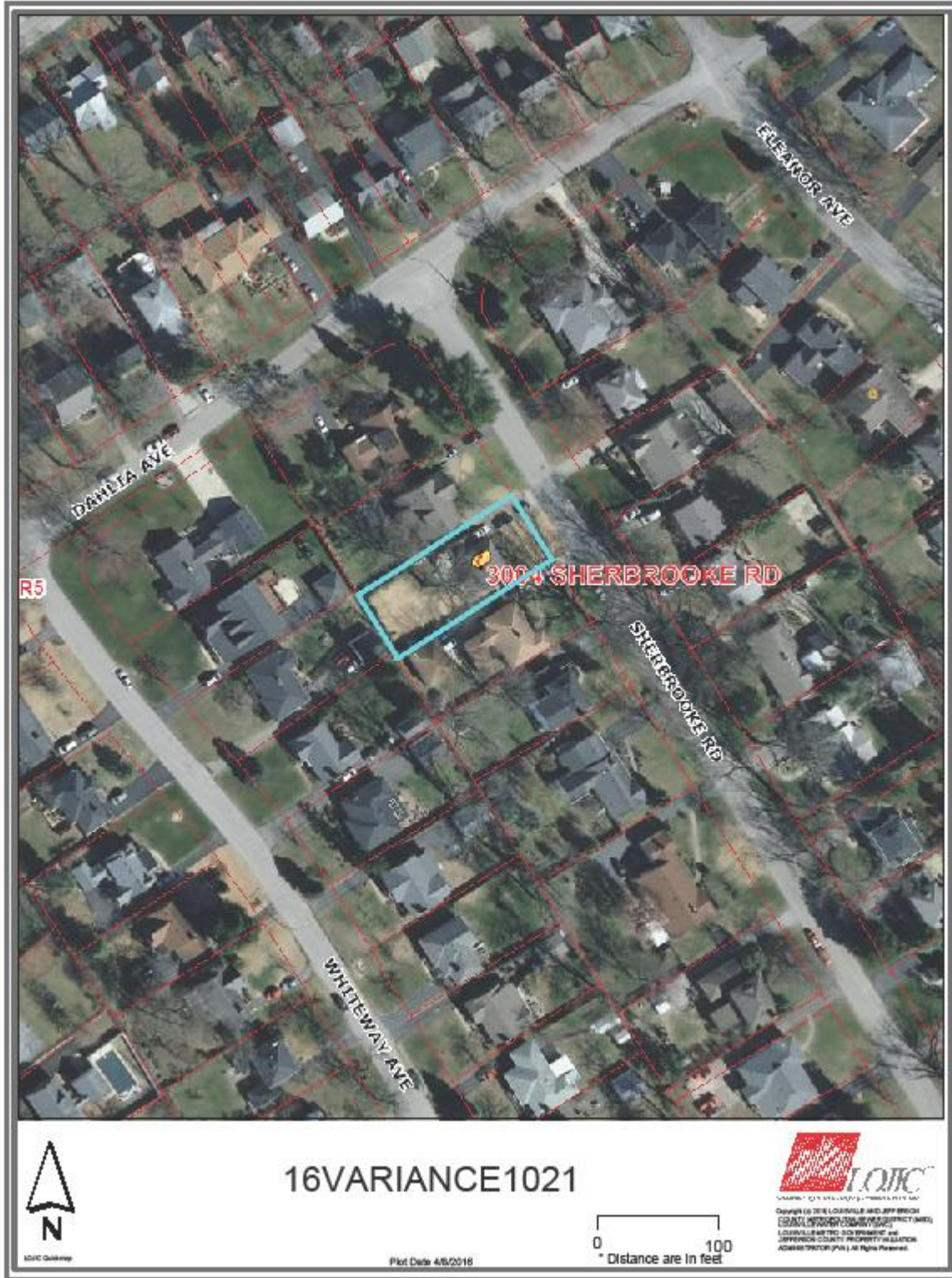
## ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Survey
4. Site Plan
5. Front Elevation
6. Left Elevation
7. Right Elevation
8. Rear Elevation
9. Site Inspection Report
10. E-mail from Concerned Citizen
11. Opposition Letter of Affidavit – Johan Graham

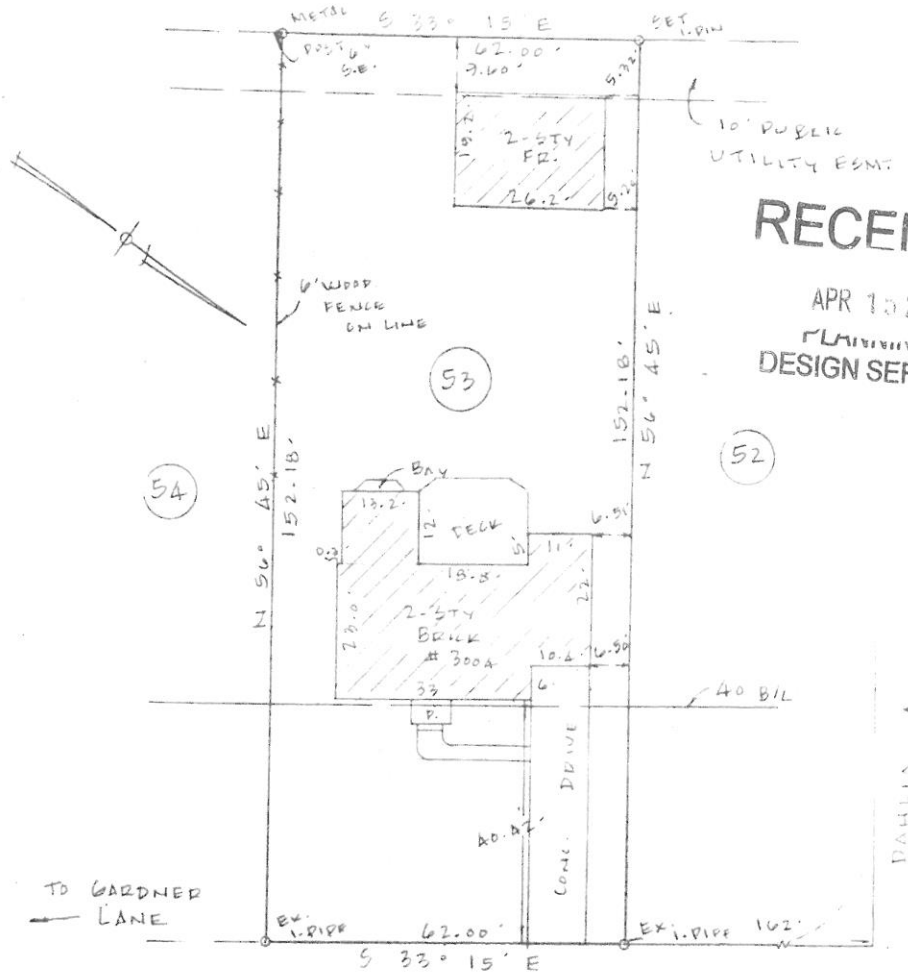
1. Zoning Map



2. Aerial Photograph



3. Survey



**RECEIVED**

APR 15 2016  
PLANNING &  
DESIGN SERVICES

SHERBROOKE ROAD  
(60' R/W)

LAND SURVEYOR'S CERTIFICATE

I hereby certify that this survey as depicted hereon was performed under my supervision and was conducted under the standards for survey defined under KAR 18:150. It is an "Urban Survey", with an unadjusted closure of 1 part in 10,000 and is witnessed by monuments as shown. The survey method used was that of random traverse and the bearings have been rotated and adjusted for closure using bearing N 14° 28' 14" E. This survey is subject to all road way, easements, and right of ways, if any whether shown hereon or not. The property is not located in a flood hazard area as shown by FEMA map No. 21012060E dated 12-5-06.

Gary Dukes PLS  
Land Surveying  
3602 Briarglen Lane  
Louisville, KY 40220  
garydukespls@gmail.com  
502-553-4912



Location: 300A SHERBROOKE ROAD  
LOT 53  
Description: SHERBROOKE (P.B. 483)  
(D.B. 5181 P. 383)  
BLOCK 304 - PARCEL 153

For: WILLIAM AND SHARON HIGGINS

Scale: 1" = 20' Date: 2-5-16 By: G.J.D.



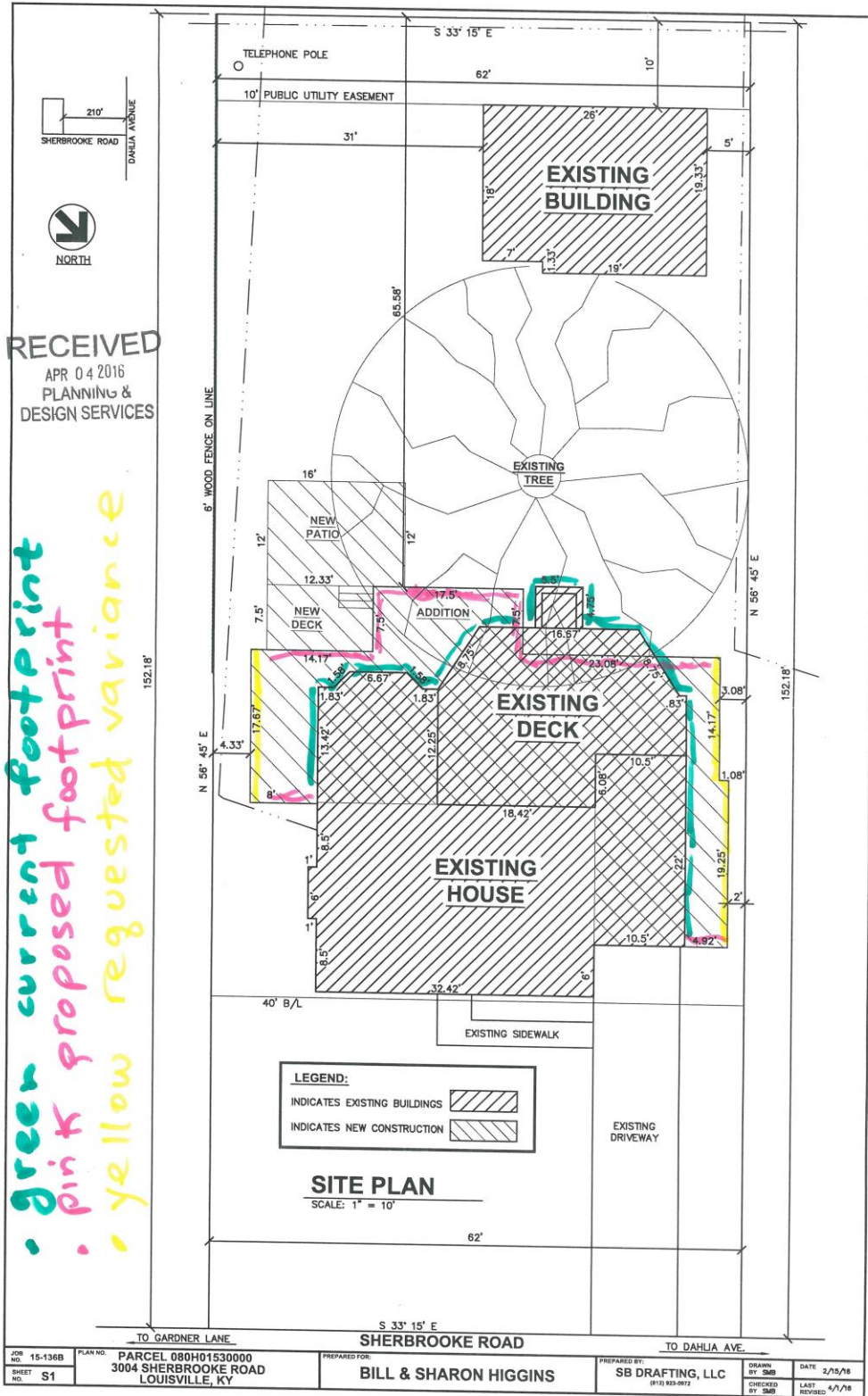
Gary J. Dukes PLS #3061  
Dated: 2-5-16



16 VARIANCE 1021



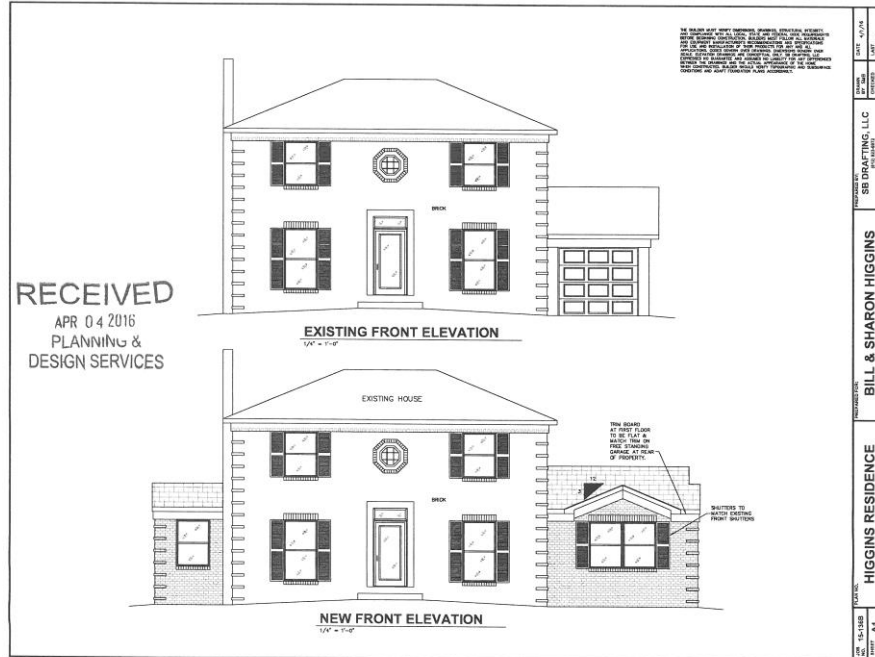
4. Site Plan



16 VARIANCE 1021



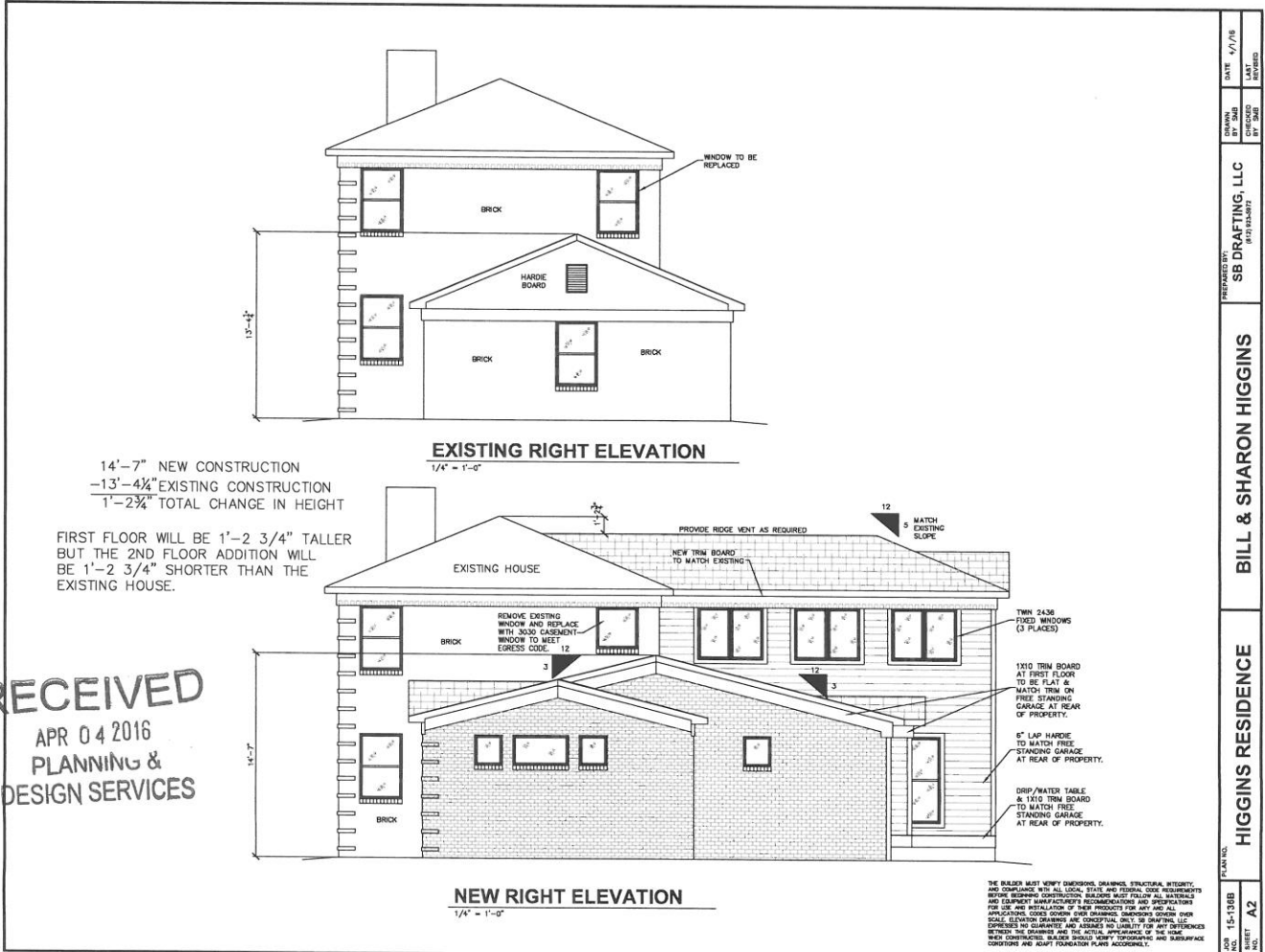
5. Front Elevation



6. Left Elevation

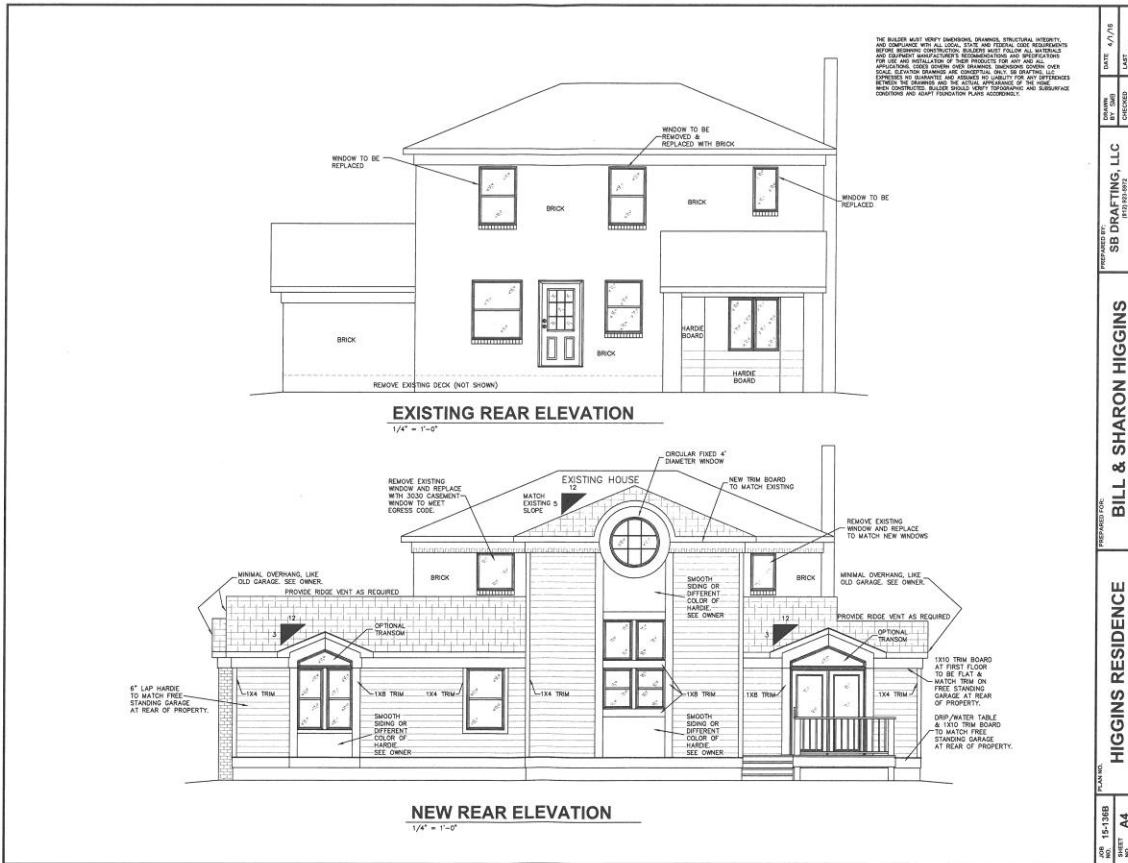


7. Right Elevation



DATE	4/7/16
LAST	REVISED
DRAWN	BY: SAH
CHECKED	BY: SAH
PREPARED BY:	SB DRAFTING, LLC ARCHITECT
PROJECT:	BILL & SHARON HIGGINS
PLAN NO.:	HIGGINS RESIDENCE
JOB NO.:	15-138B
SHEET NO.:	A2

8. Rear Elevation



9. Site Inspection Report



Looking down the northern property line where the proposed 1-story addition to the side of the home leading to the rear yard area. Notice the fence along the neighboring home the proposed variance would allow a distance of two feet near the corner of the proposed addition and existing fence.



Looking down the northern property line, a more detailed view, of the existing one car garage and the neighbor's fence. The variance is the same the applicant is requesting a 2 foot variance towards the front portion of the home will the addition will step back as it moves towards the rear of the home allowing three feet of space.



**Site Inspection Report Continued**



**Looking down the southern property line where the rear addition will have a 4.33' ft. setback.**



**Looking at the rear of the property where the proposed addition is to be constructed.**

**10. E-mail from concerned citizen**

Hi Mr. Allen,

My name is Tim Weatherholt, and I received a mailing that you are the case manager for 16Variance1021 with respect to the property on 3004 Sherbrooke Road. My family lives next door at 3002 Sherbrooke Road. Our position is that the proposed variance would put the physical property at 3004 Sherbrooke too close to ours. Currently, their property line is already fairly close for our neighborhood. The variance they seek would, in our view, be out of character for the neighborhood. They want to build within two feet of our fence line, and our fence line is just a few feet from our home. Moreover, the variance would put their bedroom in very close proximity to our bedroom. I appreciate your consideration, and, if possible, would like to see a copy of your report prior to the hearing.

Thank you,  
Tim

**Timothy J. Weatherholt**

**Attorney at Law**

[tweatherholt@laborlawyers.com](mailto:tweatherholt@laborlawyers.com) | O: (502) 561-3982

220 West Main Street | Suite 2000 | Louisville, KY 40202



11. **Affidavit of Johan Graham**

**LOUISVILLE BOARD OF ZONING ADJUSTMENT  
16VARIANCE1021**

**AFFIDAVIT OF JOHAN GRAHAM**

Comes now the Affiant, Johan Graham, and after being duly sworn, states as follows:

1. I make this affidavit of my own free will and volition.
2. I am the Director of Development of AU Associates, Inc., a Lexington, Kentucky company that focuses on planning, development, and construction.
3. I have held this position since 2007.
4. I am a 2000 graduate of Transylvania University and a 2002 graduate of the University of North Carolina at Chappell Hill with a Masters in Regional Planning.
5. I am intimately familiar with the concept of variances and the standards for granting variances under Kentucky law.
6. I have reviewed the report prepared by Ross Allen at the request of the residents of 3002 Sherbrooke Road.
7. In my professional opinion, I believe the report misinterprets Section (b): "The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant."
8. The applicants at 3004 Sherbrooke Road are not hindered by the applicable zoning regulations. Their request for a variance to construct a master bedroom is based on the wishes of the homeowners and their architect to construct the desired master bedroom to their *optimal* dimensions.
9. Given that the site is not constrained based on the floor area ratio, the applicant could build further into the rear of their site or modify the shape of their proposed master suite to fit into the current zoning guidelines.

10. With a garage of 10.5 feet in width and the ability to extend at least an additional 1.5 feet without a need for a variance, that would give them a room width in excess of 12 feet. To further increase the surface area of the master bedroom, they could extend the length in the rear, as noted above. Such a re-designed plan would create a master bedroom that would presumably have a larger surface area than most similar homes in the immediate vicinity. Obviously a variance would not be needed in that instance.

11. This re-design would not create a hardship for the applicants nor would it in any manner substantially deprive them of the use of their property. Rather, it would simply require a variation in their architectural plan.

12. Since the variance lives with the property, the Board's granting of a variance here opens the door for future modifications for subsequent homeowners and for other property owners in the area to seek similar convenient relief. Since no precedent exists in the area currently, this case sets a standard -- and potentially a slippery slope.

13. This would seem to be an unreasonable attempt to circumvent the zoning regulations per KRS 100.243 and there are no special conditions present that prohibit the applicant from modifying their structure to allow for aging in place AND at the same time adhering to the zoning regulations.

14. Moreover, granting this variance would alter the essential character of the general vicinity.

15. I have visited this area on multiple occasions and am familiar with Sherbrooke Road and its parallel streets (Eleanor, Whiteway, and Wellbrooke). Between essentially every neighboring homes on Sherbrooke and similar streets, there is either (i) width in excess of six feet of green space, *i.e.*, grass; or (ii) a driveway well in excess of six feet in width.

16. Granting the variance would yield a situation where the neighboring homes at 3002 and 3004 Sherbrooke Road would be much closer in physical proximity than practically any two similar homes on Sherbrooke Road or its parallel streets.

17. This would alter the essential character of the neighborhood.

18. Finally, it is my opinion that granting the proposed variance would diminish the value of the property at 3002 Sherbrooke Road. While granting the variance could conceivably benefit other homes in the area, however slightly, it would almost certainly have a negative effect on the property value of the home at 3002 Sherbrooke Road.

19. This is particularly true in light of the fact that the applicants' proposed variance would extend their bedroom to just a few feet from the bedroom of the residents of 3002 Sherbrooke Road.

Further Affiant sayeth naught.

  
Johan Graham

COMMONWEALTH OF KENTUCKY )  
COUNTY OF FAYETTE )

Subscribed, sworn to and acknowledged before me by Johan Graham on this the 29  
day of April, 2016.

  
Notary Public, State at Large

My commission expires: 4/9/19

**Lori E. Mills**  
Notary Public  
State at Large, Kentucky  
My Commission Expires April 9, 2019