

Board of Zoning Adjustment
Staff Report
 October 21, 2019



Case No:	19VARIANCE1059
Project Name:	John Paul Lane Variance
Location:	6906 John Paul Lane
Owner:	Nina Njezic
Applicant:	Adnan Skenderovic
Jurisdiction:	Louisville Metro
Council District:	23 – James Peden
Case Manager:	Zach Schwager, Planner I

REQUESTS

- **Variance** from Land Development Code section 4.4.3.A.1.a.ii to allow a fence in the side yard in a Neighborhood Form District to exceed eight feet in height.
- **Variance** from land Development Code table 5.3.1 to allow an existing deck to encroach into the required side yard setback.

Location	Requirement	Request	Variance
Fence in Side Yard	8 ft.	8 ft. 6 in.	6 in.
Side Yard	5 ft.	0 ft.	5 ft.

CASE SUMMARY/BACKGROUND

The subject property is located in the Jefferson Meadows Section 1 subdivision. It currently contains a two-story single-family residence. The applicant has constructed a deck that encroaches into the required side yard setback. The applicant has also constructed a fence that is 8 ft. 6 in. in height. The applicant therefore requests variances to allow the deck to encroach into the required side yard setback and to allow a higher fence.

STAFF FINDING

Staff is unable to determine if the requested variances are adequately justified and meet the standards of review. The applicant has agreed to provide a property line survey of the eastern property line to determine if the deck and fence are on the subject property. The applicant requests a continuance until October 21 in order to have the survey completed.

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 to allow a fence in the side yard setback in a Neighborhood Form District to exceed eight feet in height and to allow a deck to encroach into the required side yard setback.

TECHNICAL REVIEW

- No technical review was undertaken.

RELATED CASES

There are no open zoning enforcement cases.

INTERESTED PARTY COMMENTS

Staff received a letter in support of the deck and fence height.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE FROM SECTION 4.4.3.A.1.a.ii

- (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 as the existing fence will need to meet building code.

- (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 there are similar fences in side yards in the 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 fence will need to meet building code.

- (d) The requested variance will not allow an unreasonable circumvention of the zoning regulations.

STAFF: Staff is unable to determine whether the request is an unreasonable circumvention of the zoning regulations as a survey is required to verify that the fence is on the subject property.

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 land in the general vicinity or the same zone as the property is similar in size and shape to 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 not create an unnecessary hardship on the applicant as the fence could be constructed to meet the height requirements.

3. 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.

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 fence has been constructed and the applicant is requesting the variance.

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 as the deck will need to be constructed to meet all building codes, including fire codes.

- (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 deck is not visible from the public right-of-way.

- (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 deck will need to be constructed to meet all building codes, including fire codes.

- (d) The requested variance will not allow an unreasonable circumvention of the zoning regulations.

STAFF: Staff is unable to determine whether the request is an unreasonable circumvention of the zoning regulations as a survey is required to verify that the fence is on the subject property.

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 land in the general vicinity or the same zone as the property is similar in size and shape to 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 not create an unnecessary hardship on the applicant because the deck could be built to meet the setback requirements.

3. 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.

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 deck has been constructed and the applicant is requesting the variance.

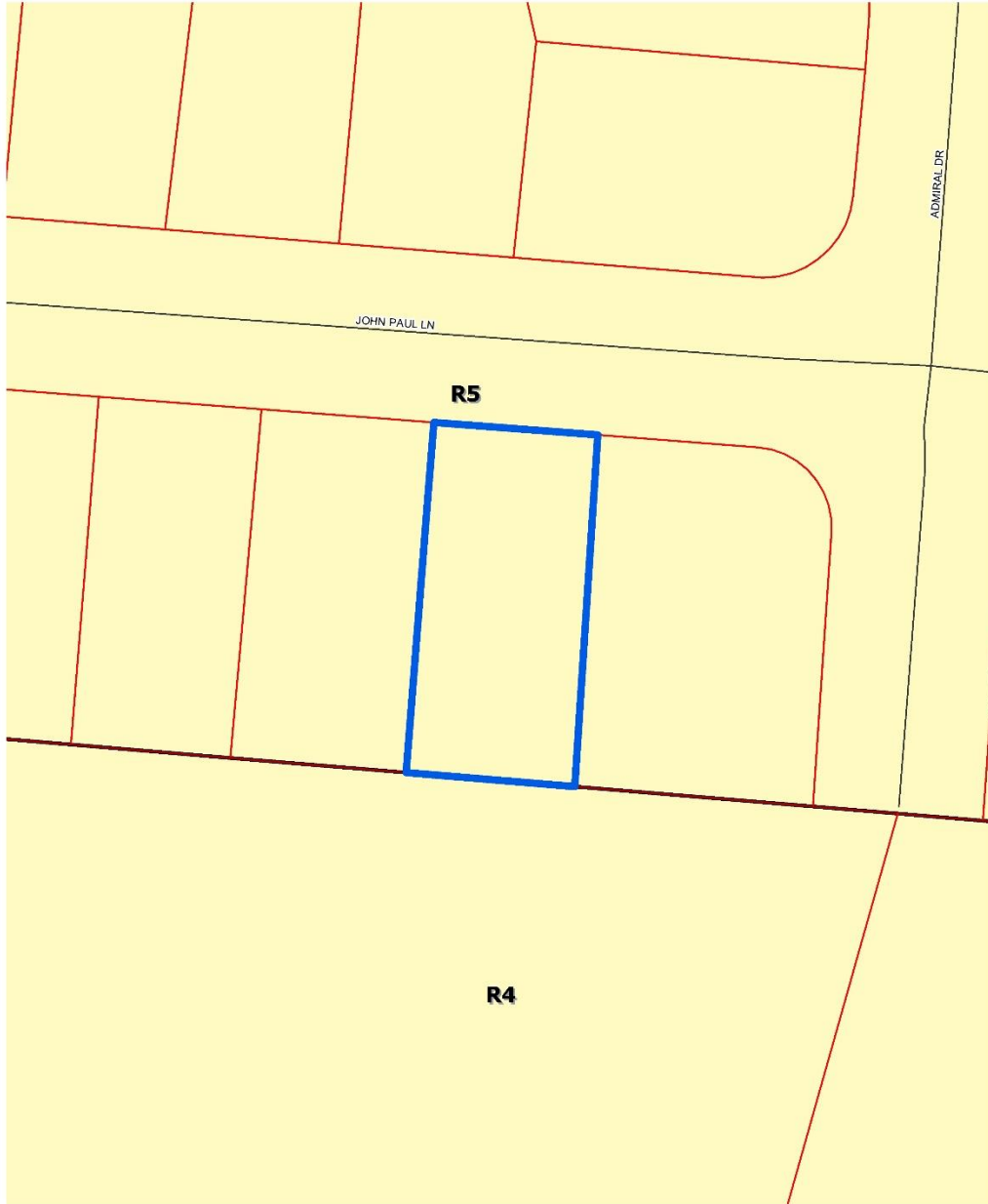
NOTIFICATION

Date	Purpose of Notice	Recipients
09/10/2019	Hearing before BOZA	1 st tier adjoining property owners Registered Neighborhood Groups in Council District 23
09/23/2019	Hearing before BOZA	Notice posted on property

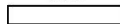
ATTACHMENTS

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

1. Zoning Map



6906 John Paul Lane
feet

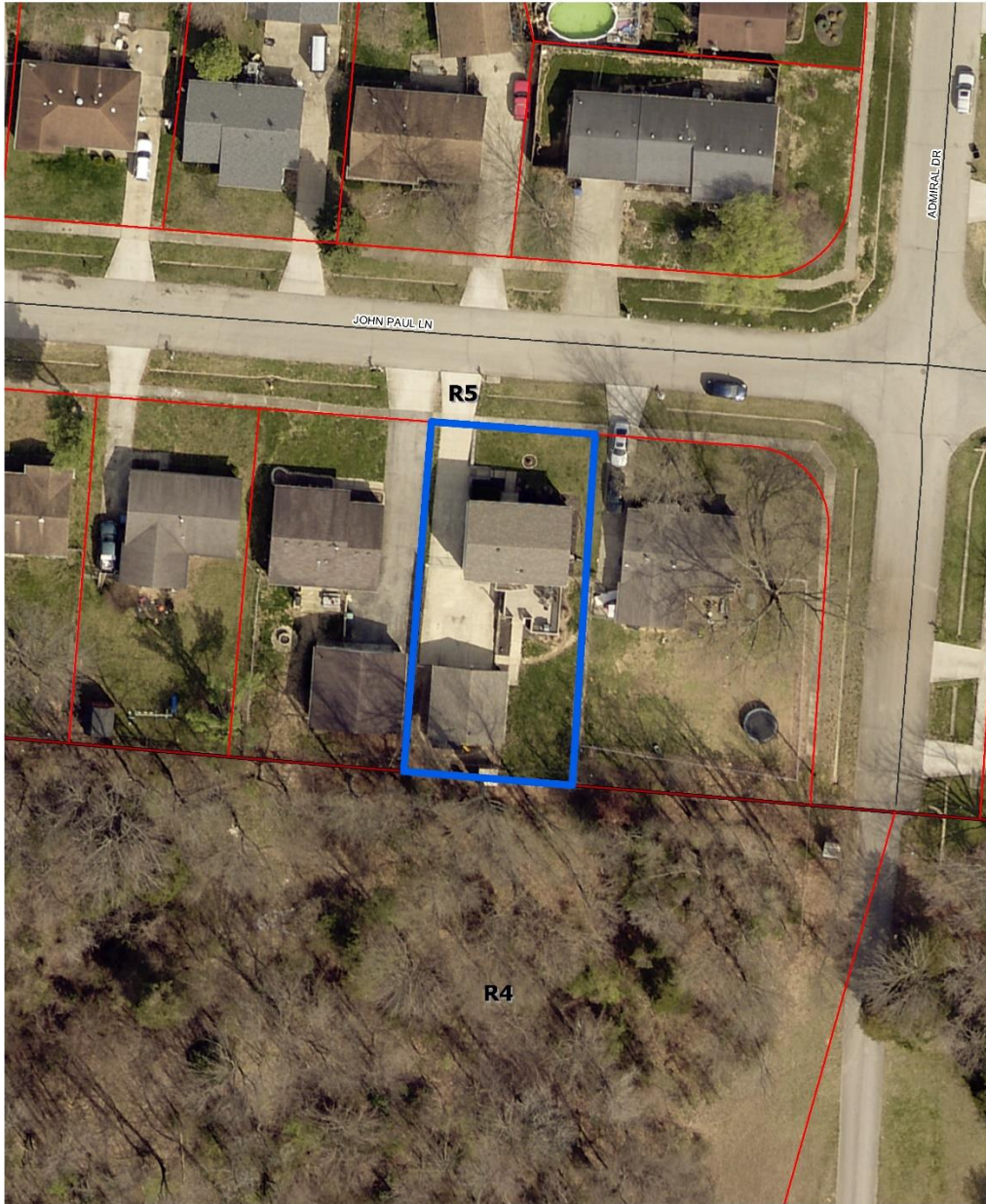


Map Created: 10/2/2019

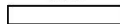


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2. Aerial Photograph



6906 John Paul Lane
feet

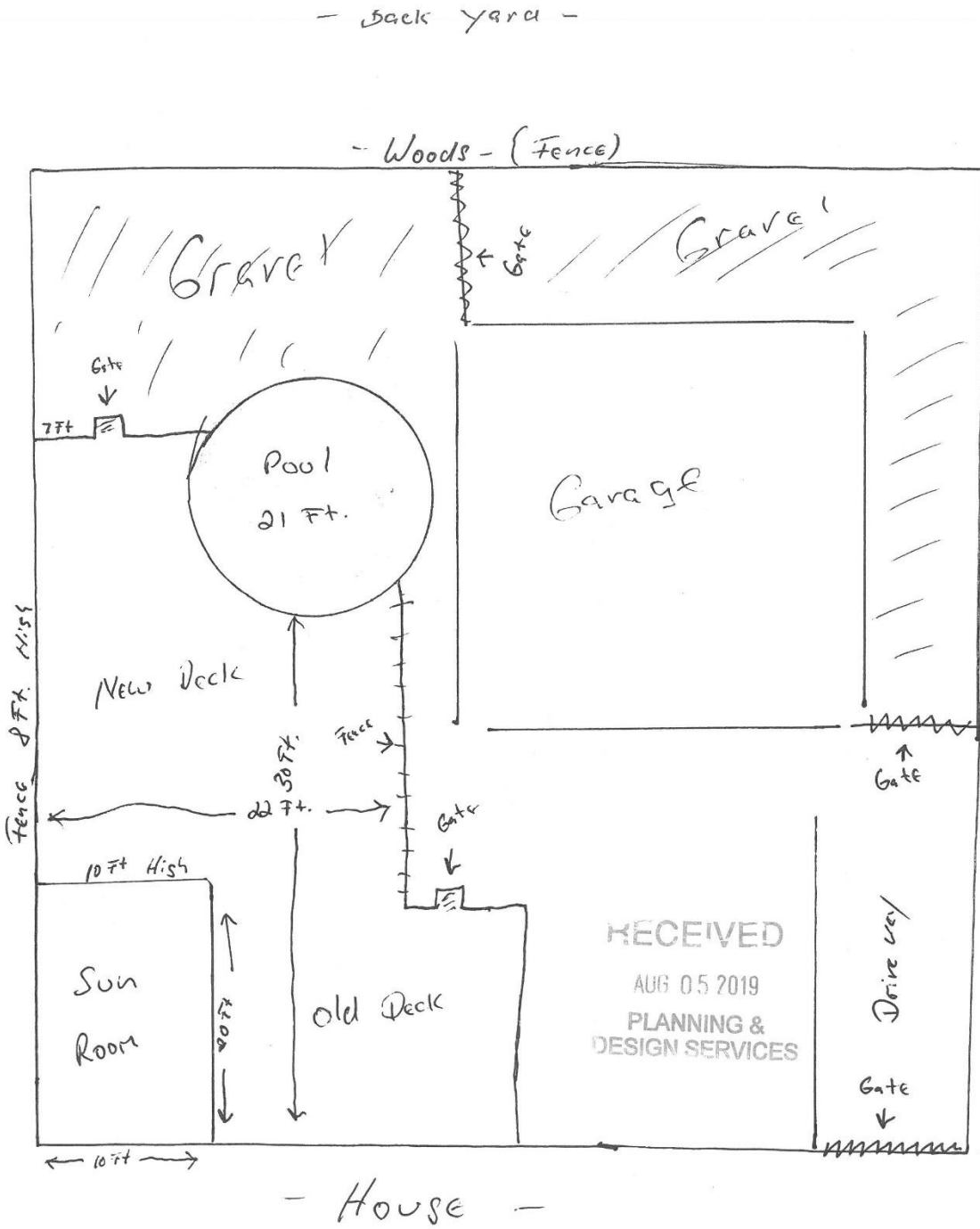


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Map Created: 10/2/2019



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3. Site Plan



19VARIANCE1059

4. Site Photos



Subject property.



Property to the left.



Property to the right.



Property across John Paul Lane.



Deck and fence.



Deck and fence.