

Board of Zoning Adjustment

Staff Report

December 06, 2021



Case No:	21-VARIANCE-0143
Project Name:	Mulberry Street Variance
Location:	942 Mulberry Street
Owner/Applicant:	Alfred Pizzonia, Jr.
Representative:	Lindsey Stoughton, LMS Design, LLC
Jurisdiction:	Louisville Metro
Council District:	10 – Pat Mulvihill
Case Manager:	Heather Pollock, Planner I

REQUESTS:

Variance from Land Development Code table 5.2.2 to allow a principal structure to encroach into the side yard setback.

Location	Requirement	Request	Variance
Side Yard	3 ft.	.75 ft.	2.25 ft.

CASE SUMMARY/BACKGROUND

The subject property is zoned R-6 Single Family Residential and is in the Traditional Neighborhood Form District. It is located on the south side of the 900 block of Mulberry St. in the Schnitzelburg neighborhood. The site currently has a two story single family home and a detached garage. The applicant is proposing a 2nd story addition to the rear of the home that encroaches into the required side yard setback.

The subject property is 30 feet in width. Land Development Code section 5.1.10.F allows for a lot less than 50 feet in width to have a side yard setback requirement of 10% of the width of the lot, which is 3 feet. Additionally, the required side yard setback for R-6 in Traditional neighborhood is also 3 feet (table 5.2.2).

STAFF FINDINGS

Staff finds that the requested variance meets standards (b), (c), and (d), but staff is concerned that the variance request does not meet standard (a) because maintenance of the addition may have an adverse impact on the adjoining property owner.

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 Land Development Code table 5.2.2 to allow a principal structure to encroach into the side yard setback.

TECHNICAL REVIEW

No technical review required.

INTERESTED PARTY COMMENTS

No interested party comments were received by staff.

RELATED CASES

No related cases.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE FROM TABLE 5.2.2

- (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 proposed structure must be constructed to comply with all building codes, including fire codes; however, staff is concerned that the variance could adversely affect the adjacent property owner because construction and maintenance of the structure may require encroachment onto the neighboring property and the applicant was not able to get a response from the property owner.

- (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 other structures in the area that encroach into the side yard setback and the addition will encroach the same distance as the existing structure.

- (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 subject property is only 30 ft. in width and the addition will not encroach any further than the existing structure.

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 as the lot is similar in size and shape as 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 existing structure is already encroaching into the side yard setback and the proposed addition lines up with the existing footprint.

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 partially constructed the addition and is requesting the 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

Date	Purpose of Notice	Recipients
11/22/2021	Hearing before BOZA	1 st tier adjoining property owners and current residents Registered Neighborhood Groups in Council District 10
11/18/2021	Hearing before BOZA	Notice posted on property

ATTACHMENTS

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

2. Aerial Photograph



4. Site Photos



Front of subject property.



Property to the left.



Property to the right.



Across street.



Variance area.



Variance area from rear of property.