

## Brooks, Amy

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**From:** Tobe <lightsource@gmail.com>  
**Sent:** Sunday, July 23, 2023 1:37 PM  
**To:** Brooks, Amy  
**Cc:** cheripowell@yahoo.com; planning-design@public.govdelivery.com  
**Subject:** Record 23-VARIANCE-0060 (2038 Tyler Lane)

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Dear Ms. Brooks --

I am writing to voice my opposition to the proposed variance requested for the property located at 2038 Tyler Lane. While I no longer live in the neighborhood, this was my family's residence for over 50 years and so I am very familiar with the property and street on which it is located. Cheri Powell shared with me her letters stating the reasons for her opposition to the variance. My understanding is that the builder violated code requirements when building the garage (putting it too close to the street) and now wants to be permitted to let this code violation stand. I agree with Cheri's objections.

Section 11.5B-1 of the Louisville Development Code (LDC) governs, and it is specific about the factors to be considered when determining whether a variance may be granted. Sub-paragraphs 1 through 5 list specific factors to consider. I do not believe the requested variance can satisfy any of those factors.

- Sub-paragraph 3 mentions whether "special circumstances" exist on the property which might weigh in favor of the variance. None certainly exist in this case.
- Sub-paragraph 4 directs the board to consider whether application of the code would deprive the applicant reasonable use of the land or create an unnecessary hardship. It is hard to see how the applicant can satisfy this factor. The builder could simply have built the garage further back in the lot, complying with the zoning requirement, just as the Powell's garage was built across the street.
- Sub-paragraph 2 directs the board to consider, among other things, whether the variance "will allow an unreasonable circumvention of the requirements of the building code." This application appears to be a classic example of a "build first, ask permission later" tactic. The zoning code becomes toothless if circumvention is permitted in this manner.

Several Kentucky court decisions have been issued concerning whether a zoning variance was proper. These cases further demonstrate why a variance should not be granted in this case.

In Ball v. Oldham County Planning and Zoning Com'n, 375 S.W.3d 79 (2012), the Kentucky Court of Appeals reviewed the language of KRS 100.243, upon which LDC 11.5B-1 was modeled. The Ball court stated:

"This section demonstrates a *bias against variances*, and the burden of proof in convincing the board is on the one seeking the variance (citing Bourbon County Bd. of Adjustment Claims v. Currans). Thus, in order to justify a variance, an applicant must present proof adequate to meet the criteria set forth in KRS 100.243." (italics added).

In Bray v. Beyer, 166 S.W.2d 290 (1942), the Kentucky Court of Appeals ruled upon whether a variance had properly been granted by the zoning board of Paducah. In ruling against the granting of the variance, the Bray court

example of a "build first, ask permission later" tactic. The zoning code becomes toothless if circumvention is permitted in this manner.

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In Bray v. Beyer, 166 S.W.2d 290 (1942), the Kentucky Court of Appeals ruled upon whether a variance had properly been granted by the zoning board of Paducah. In ruling against the granting of the variance, the Bray court stated: "... the power of authorizing special exceptions to and variations from the general provisions of the zoning law is designed to be exercised only under *exceptional circumstances* ..." (italics added).

Taken together, the Ball and Bray decisions show that variances are disfavored under Kentucky law and the applicant carries a heavy burden of proof. I don't believe that the applicant in the present case can meet that burden of proof and so I urge the board to deny the application. Thank you for considering my opinion.

Tobe Liebert  
Ft. Thomas, Ky.

## Brooks, Amy

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**From:** Charles Downes <cdownes88@gmail.com>  
**Sent:** Sunday, August 20, 2023 7:38 PM  
**To:** Brooks, Amy  
**Subject:** Variance

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Hello Amy. My name is Charles Downes. I live at 2816 Hooch Ave behind the house on Tyler that is applying for a variance on the property. We are in favor of this variance and would like to see house completed and sold.

Sincerely,  
Charles Downes

## Brooks, Amy

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**From:** Alison Drury <adrury1@hotmail.com>  
**Sent:** Monday, July 24, 2023 12:20 PM  
**To:** Brooks, Amy  
**Subject:** Re: Zoning Variance on Tyler Lane

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Thank you - did not realize I missed a deadline!

Thank you for the link

Alison

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**From:** Brooks, Amy <Amy.Brooks@louisvilleky.gov>  
**Sent:** Monday, July 24, 2023 11:16 AM  
**To:** Alison Drury <adrury1@hotmail.com>  
**Subject:** RE: Zoning Variance on Tyler Lane

Good afternoon,

Thank you for taking the time to respond. You did miss the deadline (7/21/23 at 9am) to submit comments on this site to the case manager. I will take your comment to the public hearing on Monday to see if the Board would consider reviewing a comment that was submitted past the deadline.

It is to their discretion. The Board is typically strict with that deadline, though.

I would urge you to come to the public meeting or attend virtually. I have attached the included the link to the Webex meeting.

Monday, July 24, 2023

### Board of Zoning Adjustment (BOZA)

- **Time:** 1:00 PM
- **Location:** Old Jail Auditorium, 514 W Liberty St, Louisville, KY 40202

This meeting will be available for in person attendance and remote attendance via Cisco WebEx. You may join the meeting using a computer or mobile device by following the link below:

- **Link:** <https://louisvilleky.webex.com/louisvilleky/j.php?MTID=m31f09cbbb461770eb68ce53ccd97798a>
- **Event Number:** 2312 995 2406

- **Event Password:** BOZA072423

If you wish to attend a public meeting virtually and speak to a Board, Commission, or Committee, you MUST be visible and audible on the platform provided below. IF YOU EXPERIENCE TECHNICAL DIFFICULTIES WHILE ATTENDING VIRTUALLY, THE CASE WILL NOT BE DELAYED.

Thank you,

**Amy Brooks**  
Planner I

Office of Planning  
Louisville Metro Government  
444 S. Fifth St. #300, Louisville, KY 40202

O: 502-574-8215



OFFICE OF  
**PLANNING**

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**From:** Alison Drury <adrury1@hotmail.com>  
**Sent:** Saturday, July 22, 2023 1:12 PM  
**To:** Brooks, Amy <Amy.Brooks@louisvilleky.gov>  
**Subject:** Zoning Variance on Tyler Lane

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I am writing to oppose issuing a variance for the garage built at 2038 Tyler Lane. When the construction started on this, I was concerned because it didn't seem safe to be so close to the street, and because it looked so awful. This was before I knew that it was not in compliance. I am concerned how it will affect the property values of nearby properties, which I have on Hook Avenue. I am sympathetic to the money the investors have put into this but it seems the best thing is to stop it now. They have made some poor decisions but we shouldn't all pay for it. Maybe it could be deconstructed and become a shed in the back corner of the yard.

Thank you

Alison Drury  
2821 Hooch Ave

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