

Development Review Committee

Staff Report

October 18, 2017



Case No:	17WAIVER1022
Project Name:	4301 Mud Lane Garage
Location:	4301 Mud Lane
Owner(s):	Rickey & Janice Conley
Applicant:	Rickey Conley
Jurisdiction:	Louisville Metro
Council District:	13 – Vicki Aubrey Welch
Case Manager:	Dante St. Germain, Planner I

REQUEST

- **Waiver** from Land Development Code section 5.4.2.C.1 to allow the footprint of an accessory structure to exceed the footprint of the principal structure on a lot.

CASE SUMMARY

The subject property is a 5.08 acre lot, and currently contains a one-story single-family residence with several accessory structures. One of the accessory structures, a garage, has been built with a footprint which exceeds the footprint of the principal structure. The applicant requests an after-the-fact waiver to allow the accessory structure to remain as built.

The subject accessory structure was built in two phases. The first phase of construction was begun in 2014 without a building permit, but was issued permit number 14BL2443 after the fact. In this phase, its footprint exceeded the footprint of the principal structure, but it was allowed without a waiver due to a statement by the applicant that the property was under an agricultural use and the accessory structure would be used agriculturally (see KRS 100.203(4)). The second phase of construction was begun in 2017 without a building permit. The applicant was issued a building permit under permit number BL1024347, again due to the applicant stating that the accessory structure is under agricultural use. However, the applicant has since stated that the building is being used as a garage to store and restore cars, and has never been used agriculturally. The applicant states that these are his personal cars. Therefore, a waiver of Land Development Code section 5.4.2.C.1 is required to maintain the structure at its current size. The garage has a footprint of 3,642 square feet. The principal structure has a footprint of 1,643 square feet.

STAFF FINDING

Staff finds that the requested waiver is not adequately justified and does not meet the standard of review, as the waiver will adversely affect adjacent property owners, violates specific guidelines of Cornerstone 2020, is not the minimum necessary to afford relief to the applicant, and will not create an unnecessary hardship on the applicant.

Based upon the information in the staff report, and the testimony and evidence provided at the public hearing, the Development Review Committee must determine if the proposal meets the standards for granting a waiver established in the Land Development Code from section 5.4.2.C.1 to allow the footprint of an accessory structure to exceed the footprint of the principal structure on a lot.

CASE BACKGROUND

The applicant purchased the property in July 2013. On 04/04/2014, the applicant was issued a stop work order for construction of an accessory building without a building permit, under enforcement case number 14PR1290. The applicant requested a building permit on 04/29/2014, stating that he intended to use the accessory structure for agricultural purposes in a letter dated 05/04/2014. The applicant was issued permit number 14BL2443 on 06/09/2014 without a waiver under the condition that the structure be used for agricultural uses only, with no commercial use allowed without Planning and Design approval. The enforcement case was closed due to the permit being issued.

On 05/17/2017 the applicant was again issued a stop work order for adding onto the existing building without a permit. The enforcement case number was 17PR1486. The applicant requested a building permit on 05/22/2017, again stating in an identical letter that the intended use of the structure was agricultural. This permit was issued under permit number BL1024347 on 05/26/2017 on condition that the structure is used for agricultural purposes. Case number 17PR1486 remains open. The property is also subject to enforcement case number 17PM10362 due to too many vehicles being parked outdoors on the property. A notice of violation under this case number was issued 06/05/2017. The case remains open.

This request was originally submitted as a variance, under case number 17VARIANCE1035, and some documentation references this case number.

TECHNICAL REVIEW

- No technical review was undertaken.

INTERESTED PARTY COMMENTS

Staff has received emails from Matthew Doyle, representing neighbors Garry and Donna Doyle in opposition to the requested waiver. Mr. Doyle states that the property is being used to conduct commercial operations related to repairing and selling inoperable vehicles, with the business being run by a third party who pays Mr. Conley to use the property, and that the accessory structure is therefore facilitating a use which is not permitted by the zoning of the property. Mr. Doyle has also stated that as long as the applicant has owned the subject property, it has not been used for a bona fide agricultural operation of any type as defined in the Land Development Code and in Kentucky Revised Statutes 100.111. The Doyles oppose the granting of the waiver for these reasons. Please see the separate scanned emails and attachments for this communication.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER OF SECTION 5.4.2.C.1

- (a) The waiver will not adversely affect adjacent property owners; and

STAFF: The waiver will adversely affect adjacent property owners. The owner has stated his intent to store and repair several vehicles within the accessory structure. With its location less than 10 feet from the side property line adjoining another residentially used property, noise associated with the ongoing repair of vehicles will create a nuisance that will adversely affect adjacent property owners. Further, the size and scale of the accessory structure is not mitigated and may serve as a visual intrusion on the neighboring property.

The non-commercial storage and repair of personal vehicles could take place in several smaller garages that do not require waivers. If a large garage is desired, there are other locations on the subject property that are not near a property line and would be more suitable for a large garage containing the repair activity.

(b) The waiver will not violate specific guidelines of Cornerstone 2020; and

STAFF: The waiver will violate specific guidelines of Cornerstone 2020 because, although the property is in the Suburban Workplace form district, the principal land uses of the surrounding properties are residential and agricultural. If the property is in fact being used for commercial repair as suggested in the zoning complaint being investigated, Guideline 3, Compatibility, states that non-residential expansion into existing residential areas should be discouraged unless the applicant can demonstrate that any adverse impact on residential uses will be mitigated. The form district on the other side of Mud Lane from the subject property is Neighborhood.

Other policies that apply include Guideline 3, Policy 3, which encourages residential character that is compatible with adjacent residential areas. Allow a mixture of densities as long as their designs are compatible. Guideline 3, Policy 7 states to mitigate adverse impacts of noise from proposed development on existing communities. Guideline 3, Policy 9 states to protect the character of residential areas, roadway corridors, and public spaces from visual intrusions and mitigate when appropriate. Guideline 3, Compatibility, Policy 23 states that setbacks, lot dimensions and building heights should be compatible with those of nearby developments that meet form district guidelines. These policies are violated by the size of the building and its position close to the most affected neighboring property, as well as the use of the building to restore vehicles which creates noise and other adverse impacts.

(c) The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant; and

STAFF: The extent of the waiver of the regulation is not the minimum necessary to afford relief to the applicant as the proposed activities could be conducted in multiple accessory structures, each of which has a footprint less than the footprint of the principal structure.

(d) Either:

(i) The applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect); OR

(ii) 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.

STAFF: The strict application of the provisions of the regulation would create a hardship on the applicant by requiring the applicant to remove part of an accessory structure which has already

been constructed. However, as the applicant built the accessory structure initially without the benefit of a building permit and under the premise of an agricultural use, the hardship may or may not be unnecessary.

NOTIFICATION

Date	Purpose of Notice	Recipients
10/04/2017	DRC Public Meeting	1 st tier adjoining property owners Registered Neighborhood Groups in Council District 13

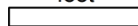
ATTACHMENTS

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

1. **Zoning Map**



4301 Mud Lane
feet



290
Map Created: 10/4/2017

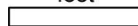


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2. Aerial Photograph



4301 Mud Lane
feet



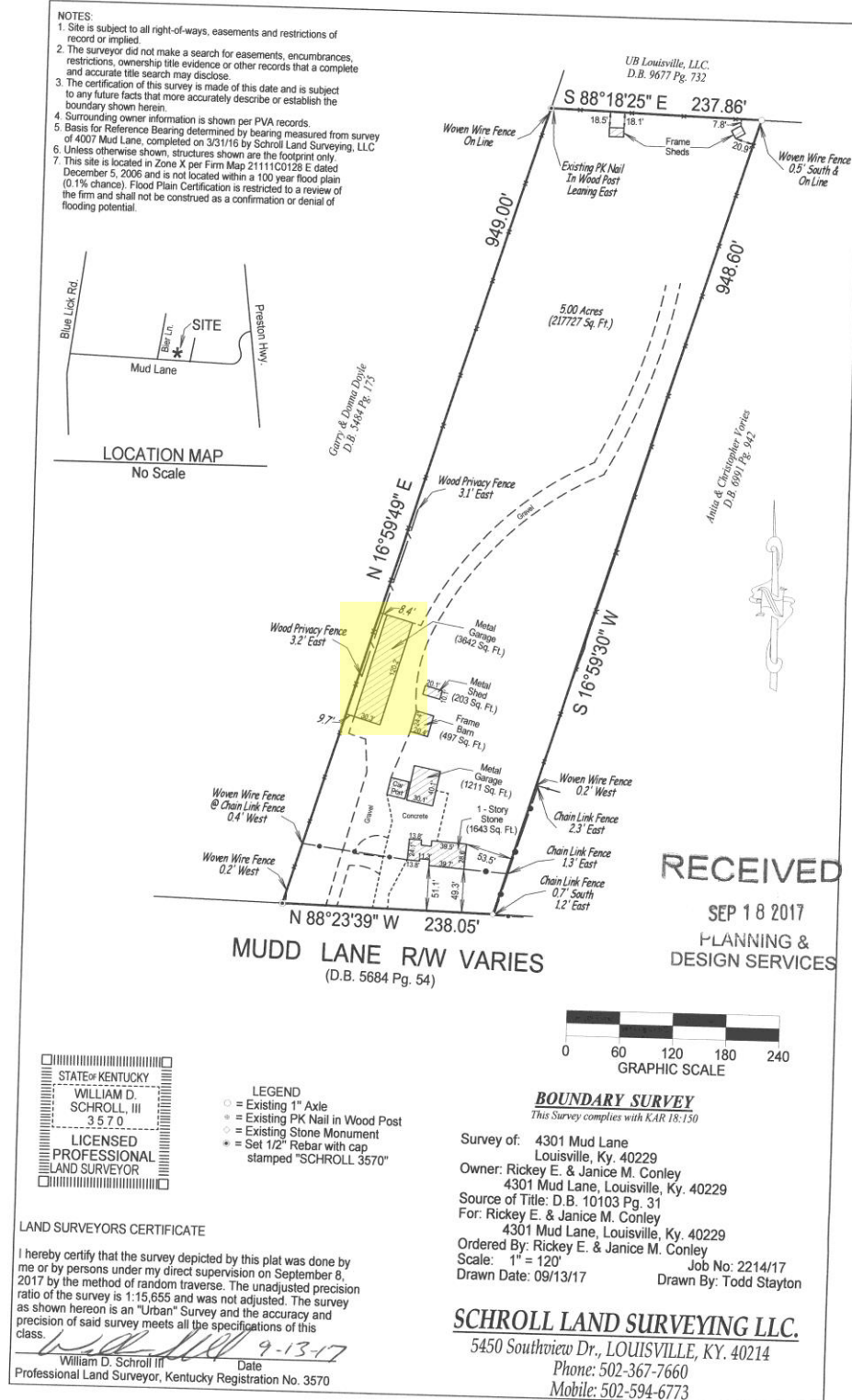
Map Created: 10/4/2017



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Published Date: October 11, 2017

Site Plan



4. Citizen Comments

Please see separate scanned emails and attachments.

6. Site Photos



The new section of the garage when it was under construction. Construction has since been completed. Photo taken looking east from the neighboring property to the west.



The previously-existing section of the garage with the fences separating the subject property from the most affected neighboring property.



The previously-existing building with the new construction, which has since been completed.