

Board of Zoning Adjustment

Staff Report

January 27, 2020



Case No: 19-VARIANCE-0081
Project Name: Rogers Variance
Location: 1201 Rogers St
Owner(s): FlipLou, LLC
Applicant: Ariel Kattan
Jurisdiction: Louisville Metro
Council District: 4 – Barbara Sexton Smith
Case Manager: Nia Holt, Planner I

REQUESTS:

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

Variance from Land Development Code (LDC) section 4.4.3.A.1.a.i to allow a fence in the street side yard in the Traditional Neighborhood Form District to exceed 42 inches in height.

Location	Requirement	Request	Variance
Fence in Street Side Yard	42 in	72 in	30 in
Northeast Side Yard	3 ft.	0 ft.	3 ft.
Southwest Side Yard	3 ft.	2 ft.	1 ft.

CASE SUMMARY/BACKGROUND

The subject site is zoned R-6 Multi-Family Residential in the Traditional Neighborhood Form District. It is a single-family structure located in the Irish Hill Neighborhood. The applicant is proposing to construct a one-story addition on the rear of the existing structure with a deck. The applicant has also replaced an existing wooden privacy fence with a new fence. The new fence is a 72 inch wooden fence on the street side yard. Since the fence is new a variance is required.

STAFF FINDINGS

Staff finds that the requested variance from Table 5.2.2 does not appear to be adequately justified and does not meet the standard of review.

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 from table 5.2.2 to allow a principal structure to encroach into the required side yard setbacks.

Staff finds that the requested variance from 4.4.3.A.1.a.i appears to be adequately justified and does meet the standard of review.

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 street side yard setback in a Traditional Neighborhood Form District to exceed 42 inches in height.

TECHNICAL REVIEW

Staff has received comments from Construction Review.

INTERESTED PARTY COMMENTS

Staff has received a call from one interest party in opposition.

RELATED CASES

There is an open enforcement case under ENF-BLD-19-05687.

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 variances will adversely affect the public health, safety or welfare as the structure has not been constructed to comply with 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 proposed structure will align with the existing street wall and keep in character with other structures in the general vicinity. The fence replaced an existing fence of the same height.

- (c) The requested variance will not cause a hazard or nuisance to the public.

STAFF: The requested variance will cause a hazard or nuisance to the public as the addition has not construct to comply with building codes, including fire 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 structure will help to keep the existing street wall and built on the same footprint.

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: There not special circumstances associated with this variance. However, there are similar structures within the general vicinity of the subject property.

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 permit the property owner to reconstruct the addition in a way that aligns with the existing structure and complies with building codes.

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 is requesting the variances after construction has been completed.

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

- (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 fence is not within the sight triangle and does not interfere with vision clearance at the intersection of Roger Street and Cooper Street.

- (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 fence replaced an existing fence of the same height.

- (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 not obstruct sight lines or create a hazard for motorists or pedestrians at the intersection.

- (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 fence is needed to provide privacy in the rear yard of a corner lot. A similar fence in need of serious repair was on the property previously and staff do not have information that contradicts that assertion.

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 arises from special circumstances which do not generally apply to land in the general vicinity or the same zone as the property is a corner lot.

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 by requiring the applicant to construct a lower fence.

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 fence has been constructed and the applicant 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
1/10/20 1/16/20	Hearing before BOZA	1 st tier adjoining property owners Registered Neighborhood Groups in Council District 4
1/10/20	Hearing before BOZA	Notice posted on property

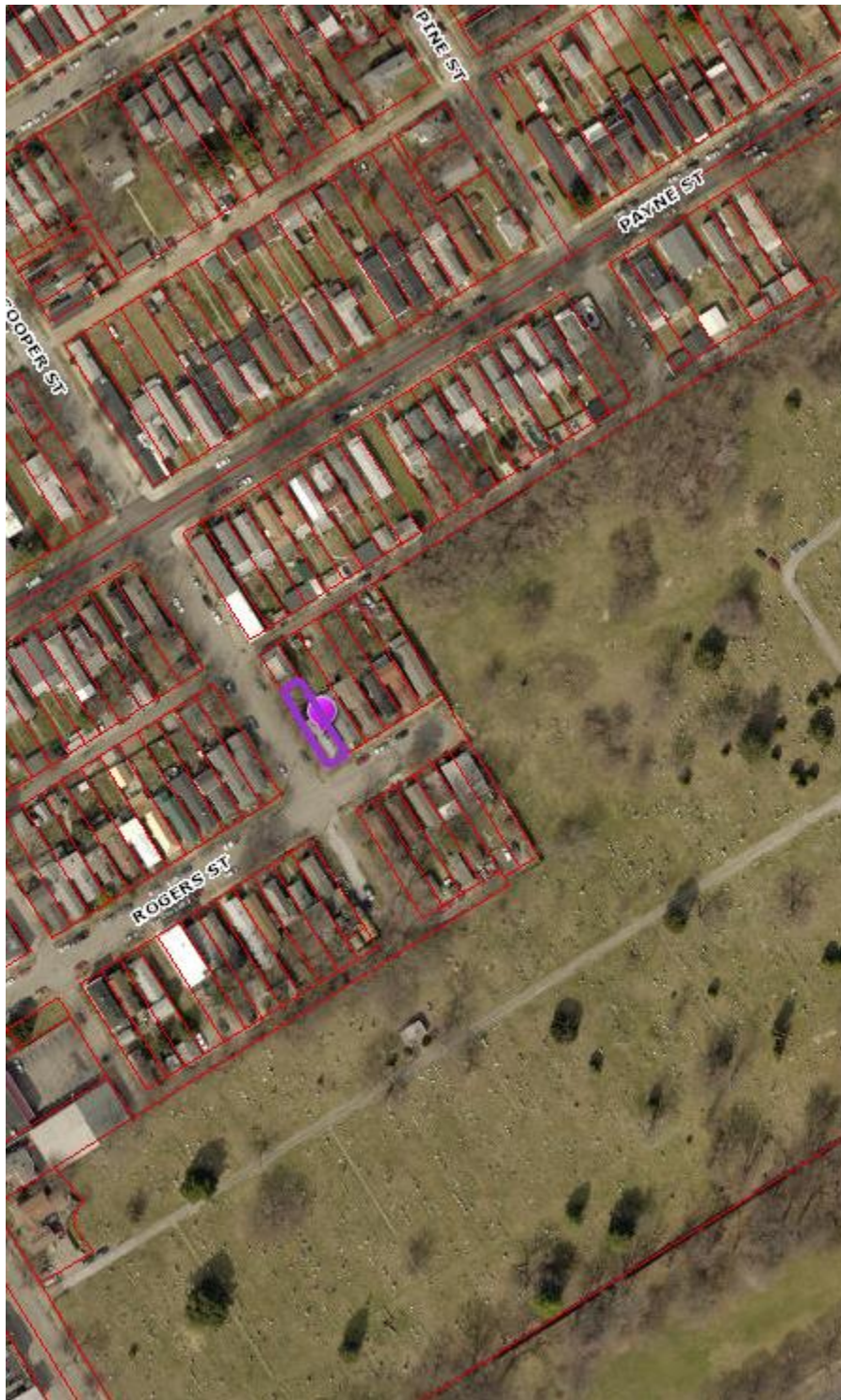
ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Site Plan
4. Condition of Approval

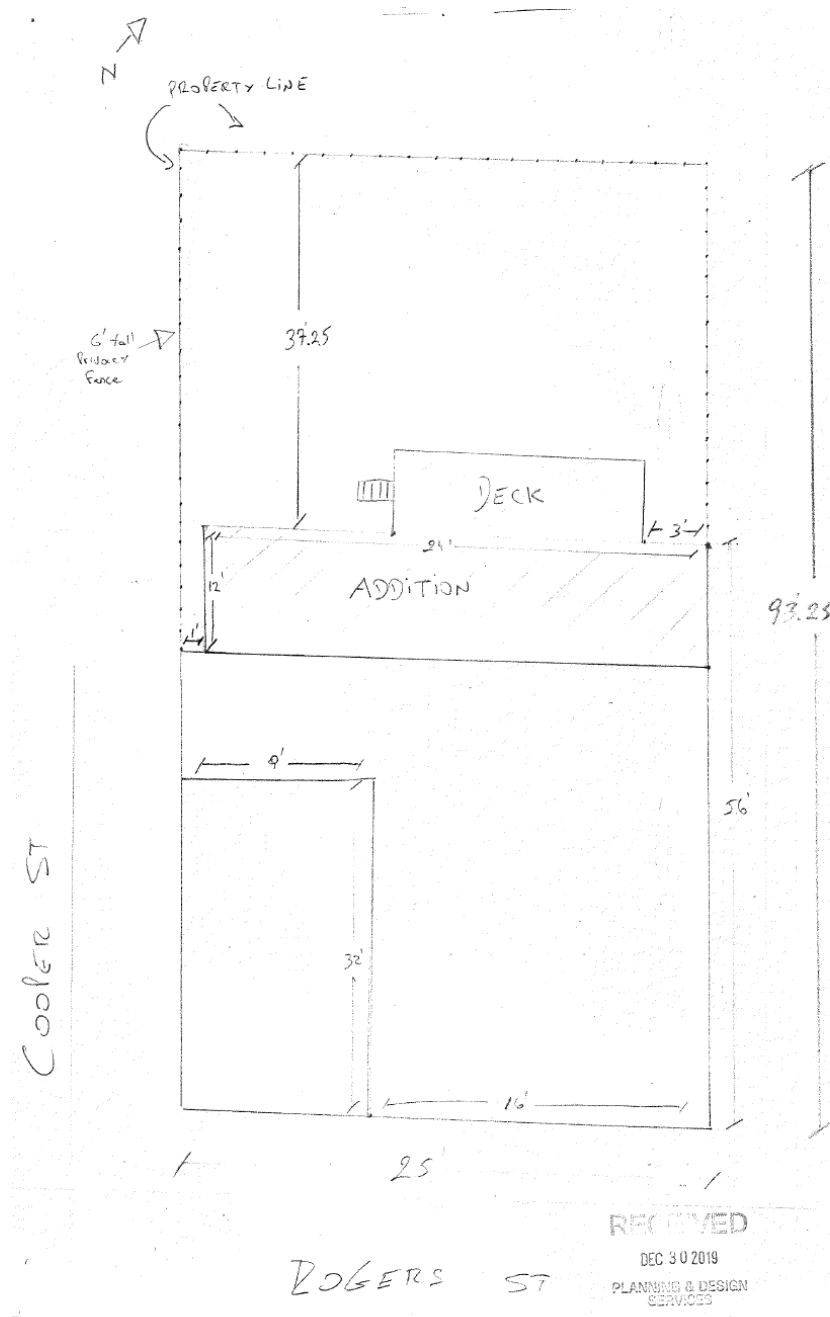
1. Zoning Map



2. Aerial Photograph



3. Site Plan



4. **Condition of Approval**

A survey of the Northeast and Southwest property lines shall be completed prior to the commencement of construction activity and shall be staked in the field. No projections from the façade or building foundation shall cross the property line; any such projections shall be accommodated by stepping back the proposed structure from the property line.