

# Board of Zoning Adjustment

## Staff Report

March 1, 2021



|                          |                                     |
|--------------------------|-------------------------------------|
| <b>Case No:</b>          | 21-VARIANCE-0005 and 21-WAIVER-0006 |
| <b>Project Name:</b>     | Mayer Avenue Variance and Waivers   |
| <b>Location:</b>         | 1014 Mayer Avenue                   |
| <b>Owner:</b>            | Jeffrey & Rebecca Hollkamp          |
| <b>Applicant:</b>        | Rachel Harman – Concept Architects  |
| <b>Jurisdiction:</b>     | Louisville Metro                    |
| <b>Council District:</b> | 10 – Pat Mulvihill                  |
| <b>Case Manager:</b>     | Zach Schwager, Planner I            |

### REQUEST

- **Variance** from Land Development Code section 5.4.1.D.2 to allow a private yard area to be less than the required 30% of the area of the lot
- **Waiver** from Land Development Code section 5.4.1.E.3 to allow parking access to be achieved from the primary street where alley access is available
- **Waiver** from Land Development Code section 5.4.1.C.4 to allow a detached garage to be located in the principal structure area

| Location          | Requirement   | Request   | Variance      |
|-------------------|---------------|-----------|---------------|
| Private Yard Area | 3,510 sq. ft. | 0 sq. ft. | 3,510 sq. ft. |

### CASE SUMMARY

The subject property is located in the Schnitzelburg neighborhood on the south side of Mayer Avenue west of Poplar Level Road and currently contains a 1 ½ story single-family residence. It is zoned R-5 Residential Single Family in the Traditional Neighborhood Form District. The property is a multi-frontage lot on Mayer Avenue and Clarks Lane. The property and surrounding properties currently have access from Clarks Lane. Clarks Lane is the primary street because it is classified as a primary collector and Mayer Avenue is classified as a local road. The applicant is proposing to construct a detached garage in the principal structure area and add access to Mayer Avenue. Due to the street classifications, the private yard area is between the principal structure and Mayer Avenue; therefore, the existing private yard area is zero sq. ft. and the variance is to bring this into compliance.

There are four basic components of a lot or building site in the Traditional Neighborhood Form District: the public realm area, the principal structure area, the private yard area, and the accessory use/structure area. The public realm area is defined as the area between the public right-of-way and the principal structure area. The principal structure area is the area where the principal structure is located, and the private yard area is between the principal structure area and the accessory use/structure area.

The waiver to allow parking access to be achieved from the primary street where alley access is available is also to bring the existing site conditions into compliance. The Land Development Code

(LDC) states, "Lots with more than one street frontage and not a corner lot shall use the primary street for the calculation of the public realm area. For situations where a primary street cannot be determined, the planning director or designee may choose the street that functions as the primary street. The secondary street shall be used for the location of the rear yard and accessory structure area." The applicant is requesting access to Mayer Avenue, which is the secondary street and would be in compliance with the LDC. The waiver is to bring the existing access to Clarks Lane into compliance. The final request is to allow an accessory structure to be in the principal structure area. The applicant is proposing to construct the accessory structure adjacent to the principal structure, which would be in the principal structure area.

### **STAFF FINDING**

Staff finds that the requested variance is adequately justified and meets the standard of review. Staff finds that the requested waiver to allow parking access to be achieved from the primary street where alley access is available is adequately justified and meet the standards of review. Staff finds that the requested waiver to allow a detached garage to be located in the principal structure area is not adequately justified and does not meet the standard of review. Staff recommends that if the Board agrees with the recommendation to deny the waiver to allow a detached garage to be located in the principal structure area that they delay action on the other requests until the plan can be revised based on the Board's direction.

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 LDC from section 5.4.1.D.2 to allow a private yard area to be less than the required 30% of the area of the lot. The Board of Zoning Adjustment must also determine if the proposal meets the standards for granting waivers from LDC section 5.4.1.E.3 to allow parking access to be achieved from the primary street where alley access is available and from LDC section 5.4.1.C.4 to allow a detached garage to be located in the principal structure area.

### **TECHNICAL REVIEW**

- Transportation Planning has reviewed the plan and has approved the access to Mayer Avenue and keeping the access to Clarks Lane; however, it was determined that the accessory structure needs to be moved to 25 ft. from the Mayer Avenue property line.

### **INTERESTED PARTY COMMENTS**

No interested party comments were received.

### **STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE FROM SECTION 5.4.1.D.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 as there is currently no private yard area and the site needs to be brought into compliance.

- (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 other properties on the south side of Mayer Avenue have similar private yard areas.

- (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 proposed accessory structure must be constructed to comply with all 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 existing private yard area is zero sq. ft.

**ADDITIONAL CONSIDERATIONS:**

1. The requested variance does not arise from special circumstances which do not generally apply to land in the general vicinity or the same zone.

STAFF: The requested variance does arise from special circumstances which do not generally apply to land in the general vicinity or the same zone because the subject property is a double frontage lot and the existing private yard area is zero sq. ft. The subject property is also 90 ft. wide and the majority of the other properties on Mayer Avenue are 30 ft. wide.

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 because the private yard area is currently zero sq. ft.

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 not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as the private yard area is currently nonconforming and the variance is to bring the existing conditions into compliance.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER OF SECTION 5.4.1.E.3**

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

STAFF: The waiver will not adversely affect adjacent property owners as the existing access to the lot is from Clarks Lane. Also, the majority of the other properties on the south side of Mayer Avenue achieve access from Clarks Lane. Transportation Planning has also reviewed the plan and determined that access from Clarks Lane is appropriate.

- (b) The waiver will not violate specific guidelines of Plan 2040; and

STAFF: The waiver does not violate specific guidelines of Plan 2040 as Plan 2040 states that revitalization and reinforcement of the Traditional Neighborhood Form will require particular emphasis on (a) preservation and renovation of existing buildings in stable neighborhoods (if the building design is consistent with the predominant building design in those neighborhoods), (b) in the case of new developments or redevelopments using traditional building scales and site layouts, (c) the preservation of the existing or establishing a new grid pattern of streets and

alleys, and (d) preservation of or creation of new public open spaces. The existing access is consistent with the existing access to Clarks Lane. Alley access is promoted and preferred in the Traditional Neighborhood form, which is achieved through the proposed access to Mayer Avenue.

- (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 the minimum necessary to afford relief to the applicant as the waiver is to bring the existing site conditions into compliance.

- (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 an unnecessary hardship on the applicant because the waiver is to bring the existing site conditions into compliance.

#### **STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER OF SECTION 5.4.1.C.4**

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

STAFF: The waiver will not adversely affect adjacent property owners as the subject property is 90 ft. wide and has the space to accommodate an accessory structure in the principal use area.

- (b) The waiver will not violate specific guidelines of Plan 2040; and

STAFF: The waiver does violate specific guidelines of Plan 2040 as Plan 2040 states that revitalization and reinforcement of the Traditional Neighborhood Form will require particular emphasis on (a) preservation and renovation of existing buildings in stable neighborhoods (if the building design is consistent with the predominant building design in those neighborhoods), (b) in the case of new developments or redevelopments using traditional building scales and site layouts, (c) the preservation of the existing or establishing a new grid pattern of streets and alleys, and (d) preservation of or creation of new public open spaces. Staff has concerns about the size of the proposed accessory structure as the footprint is nearly the same size as the principal structure. Also, the accessory structures on the other properties on the south side of Mayer Avenue are closer to Clarks Lane as that has acted as the access point for these properties

- (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 accessory structure could be moved closer to Clarks Lane. This would require an additional waiver as the accessory structure would also be in the public realm area. However, this would also help address the Transportation Planning determination that the proposed garage needs to be moved to 25 ft. from the Mayer Avenue property line. In addition,

other accessory structures within the block are closer to Clarks Lane and are accessed from Clarks Lane.

- (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 not create an unnecessary hardship on the applicant as the proposed accessory structure could be moved so as to not be entirely in the principal structure area. This change would also be more consistent with the surrounding properties.

### **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.

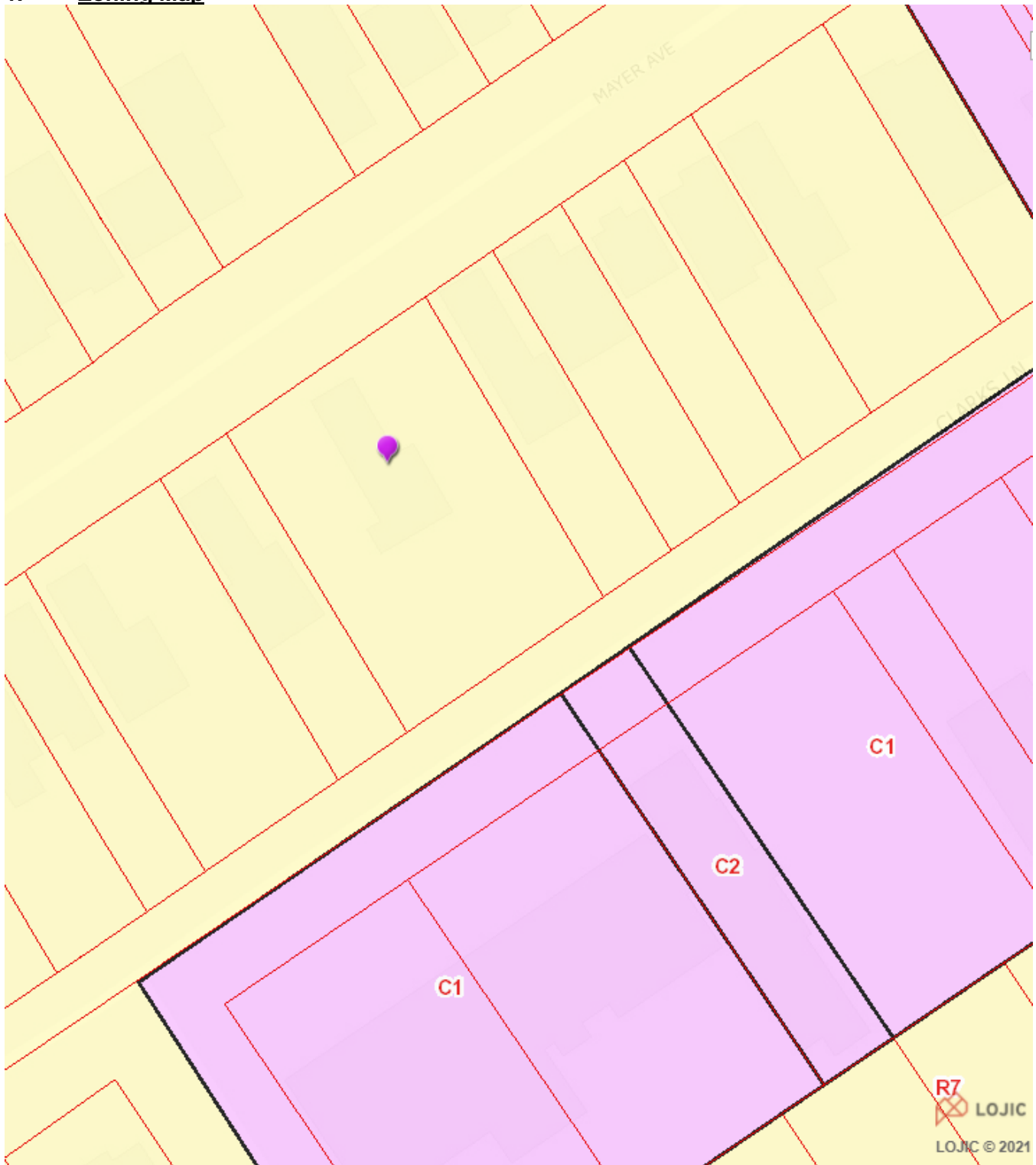
### **NOTIFICATION**

| Date       | Purpose of Notice   | Recipients  |
|------------|---------------------|---|
| 02/10/2021 | Hearing before BOZA | 1 <sup>st</sup> tier adjoining property owners<br>Registered Neighborhood Groups in Council District 10 |
| 02/17/2021 | Hearing before BOZA | Notice posted on property   |

### **ATTACHMENTS**

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

1. **Zoning Map**

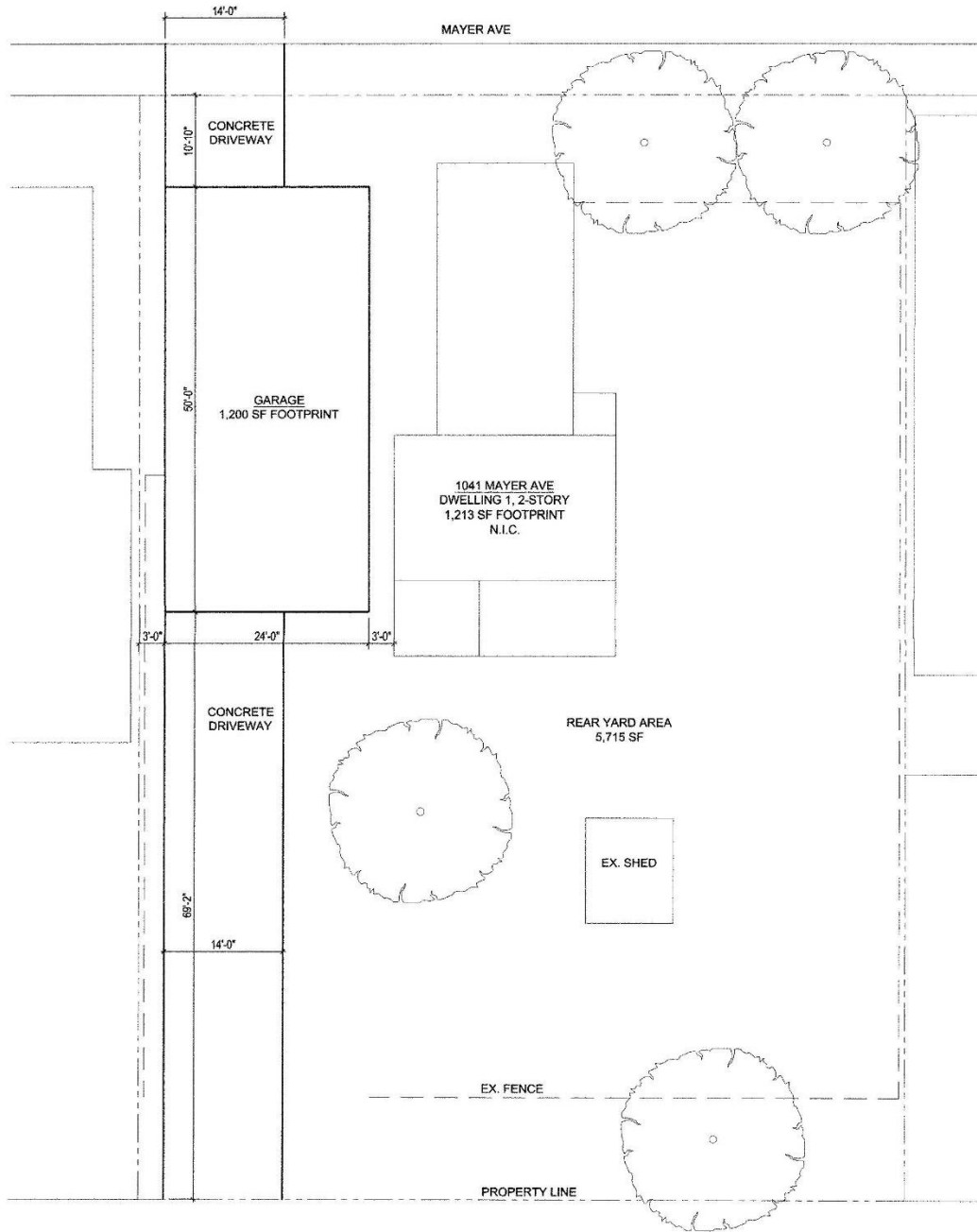




## 2. Aerial Photograph



### 3. Site Plan



**SITE PLAN**  
 3/32" = 1'-0"  
 01-11-21

CLARKS LANE  
 RECEIVED  
 JAN 11 2021  
 PLANNING & DESIGN  
 SERVICES

  
**CONCEPT**  
 ARCHITECTS

21-VARIANCE-0005



4. **Site Photos**



Front of subject property and existing private yard area.





Property to the left.



Property to the right.





Properties across Mayer Avenue.



Location of proposed garage and access to Mayer Avenue (waiver from section 5.4.1.C.4).





Existing access from Clarks Lane (waiver from 5.4.1.E.3).