

# Board of Zoning Adjustment

## Staff Report

June 21, 2021



**Case No:** 21-VARIANCE-0042  
**Project Name:** Mulberry Street Variance  
**Location:** 1138 Mulberry Street  
**Owner/Applicant:** Richard Burnette  
**Jurisdiction:** Louisville Metro  
**Council District:** 10 – Pat Mulvihill  
**Case Manager:** Zach Schwager, Planner I

### **REQUESTS:**

**Variance** from Land Development Code section 5.1.10.F to allow an addition to a principal structure to encroach into the required side yard setback.

| Location  | Requirement | Request | Variance |
|-----------|-------------|---------|----------|
| Side Yard | 2 ft.       | 0.2 ft. | 1.8 ft.  |

### **CASE SUMMARY/BACKGROUND**

The subject property is zoned R-5 Residential Single Family in the Traditional Neighborhood Form District. It is on the west side of Mulberry Street at the intersection of Mulberry Street and Texas Avenue. The applicant is proposing to add a second story that will encroach into the required side yard setback.

The subject property is 20 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. The required side yard setback is therefore 2 feet.

### **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 construction and 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 the Land Development Code section 5.1.10.F to allow a principal structure to encroach into the required 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 SECTION 5.1.10.F**

- (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 addition 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 property.

- (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 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 20 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 generally apply to the land in the generally 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 subject property is only 20 ft. in width.

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 not 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 not started construction 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.

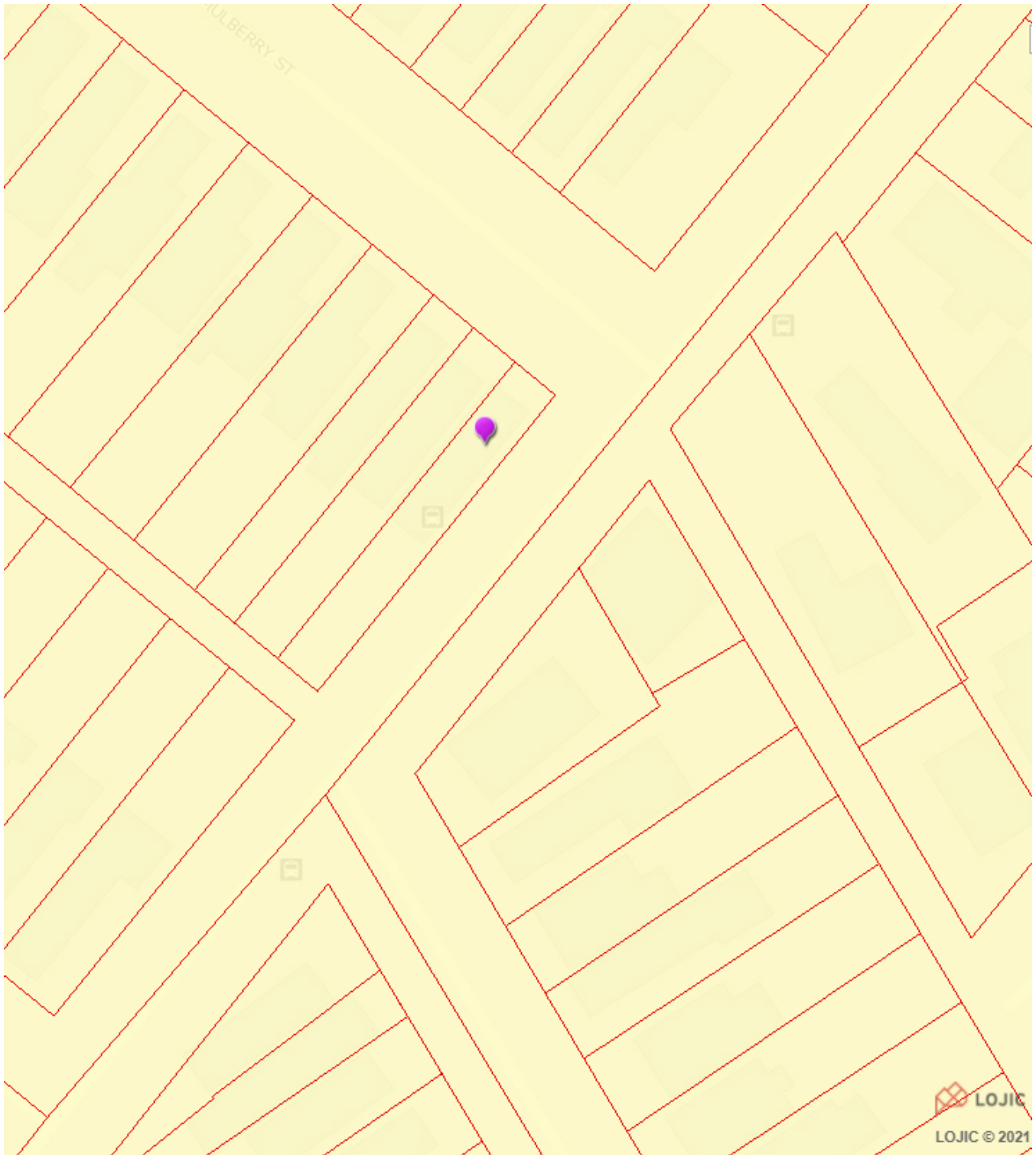
### **NOTIFICATION**

| Date     | Purpose of Notice   | Recipients                                                                                              |
|----------|---------------------|---------------------------------------------------------------------------------------------------------|
| 6/4/2021 | Hearing before BOZA | 1 <sup>st</sup> tier adjoining property owners<br>Registered Neighborhood Groups in Council District 10 |
| 6/8/2021 | Hearing before BOZA | Notice posted on property                                                                               |

### **ATTACHMENTS**

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

## 1. Zoning Map

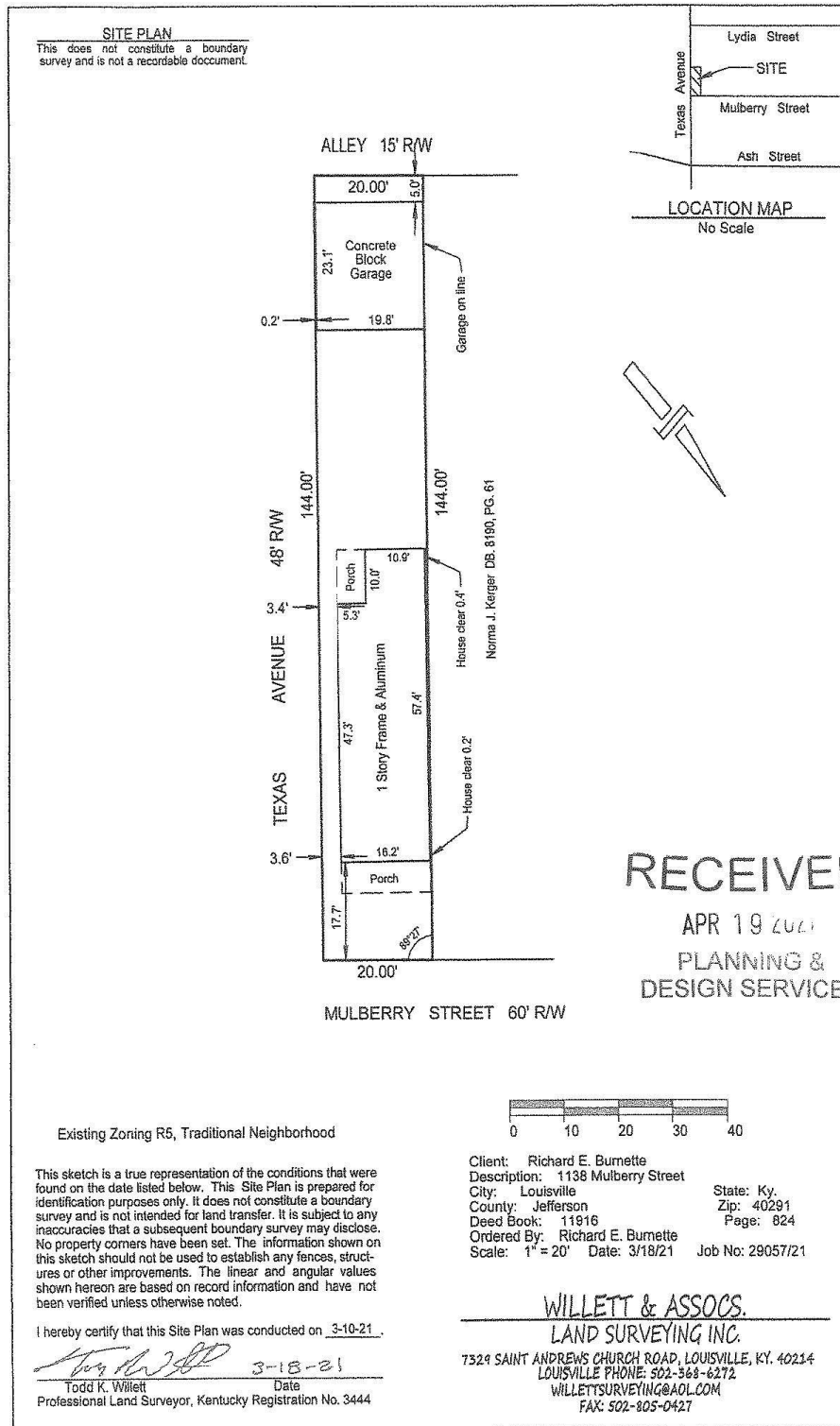


## 2. Aerial Photograph





### 3. Site Plan



#### 4. Site Photos



Front of subject property.



Property across Texas Avenue.





Properties to the right.

June 8, 2021 at 11:05:07 AM



Property across Mulberry Street.





Variance area.