

Board of Zoning Adjustment

Staff Report

July 10, 2023



Case No:	23-VARIANCE-0066
Project Name:	Payne Street Variance
Location:	1112 Payne Street
Owner:	Lisa Mann
Applicant:	Cassidy Cook, Highbridge Development
Jurisdiction:	Louisville Metro
Council District:	9- Andrew Owen
Case Manager:	Amy Brooks, Planner I

REQUEST (S):

Variance from the Land Development Code section 5.4.1.E.5 to allow an accessory structure to encroach into the side yard setback.

Variance from Land Development Code section 4.4.3.A.1.a.i to allow a fence to exceed the maximum height in the street side yard setback.

Variance from the Land Development Code section 5.4.1.D.3 to allow a private yard area to be less than the required 20% of the area of the lot.

Location	Requirement	Request	Variance
Side Yard	2 ft.	0 ft.	2 ft.
Street Side Yard (Maximum Fence Height)	42 in.	96 in	54 in.
Private Yard Area	700 sq. ft	300 sq. ft	400 sq. ft.

CASE SUMMARY/BACKGROUND

The subject site is zoned R-6 Multi-Family Residential in the Traditional Neighborhood Form District. The property is located on the southeast corner of the Payne and Bishop Streets intersection in the Irish Hill neighborhood. The subject property is currently developed with a two-story home that was constructed in 2018. The applicant is proposing to build a 433 square-foot garage in the rear that will reduce the private yard area beyond what is permitted by the current regulations. In addition, there is an existing fence (that was issued a building permit in 2019) near the western property line that exceeds the maximum height in the street side yard setback. On the eastern property line, there is an existing accessory structure that encroaches into the required side yard.

STAFF FINDINGS

Staff finds Side Yard Setback and Private Yard Area variances are adequately justified based on the staff's analysis contained in the standard of review.

Staff finds that the fence height variance is not adequately justified based on the staff's analysis contained in 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 variances and a waiver as established in the Land Development Code.

TECHNICAL REVIEW

The applicant is required to obtain a building permit and the proposed addition or structure may require alterations to the proposed building plans in order to meet building code requirements.

INTERESTED PARTY COMMENTS

There have been no comments received by staff.

RELATED CASES

BLD-FEN-19-00026

18WAIVER1030: allows for access to the accessory use area from Bishop Street rather than from the alleyway.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE FROM SECTION (Side Setback)

- (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 structure must be constructed to comply with the Land Development Code, except where relief is requested.

- (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 because the proposed addition is to be in an area where minimal setbacks from the side property lines are common. Examples of accessory structures that seemingly encroach into the side yard setback include 1114 Payne Street, 1128 Payne Street, and 1130 Avenue. Please see site photos under attachments in the staff report for aerial imagery of these specific properties.

- (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 reduction of the required side setback does not impede the safe movement of vehicles or pedestrians or result in environmental degradation.

- (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 because the location of the shed is comparable to other accessory structures along the block that are built into the side setback.

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 general vicinity or the same zone as the lot is similar in size and shape to 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 not create an unnecessary hardship on the applicant as the shed could be moved out of the required side setback.

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. The shed has already been placed in the required side setback but not by the current owner or applicant.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE FROM SECTION 4.4.3.A.1.a.i (Maximum Fence Height)

- (a) The requested variance will not adversely affect the public health, safety or welfare.

STAFF: Staff is concerned that the fence height will adversely affect the public health, safety or welfare, because the increased height could impede vision clearance for the vehicles entering and exiting the proposed garage at the rear of the property. This would adversely impact the safe movement of traffic along Bishop 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 because there are several fences in the street side yard in the neighborhood that seemingly exceed 42 inches, including the adjoining property at 613 Bishop Street. Other examples include street side yard fences along Bishop located north of the subject site.

- (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 it potentially impacts the safety vehicles travelling along Bishop Street.

- (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 because most of the fence is within the prescribed height limits. There is only a slight portion of the fence that exceeds the allowed maximum height in the street side yard.

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 general vicinity or the same zone as the lot is similar in size and shape to 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 fence has already been constructed and received a building permit from Louisville Metro.

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. However, the current property and applicant were not the responsible party.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE FROM SECTION 5.4.1.D.2

(Private Yard Area Variance)

- (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 structure must be constructed to comply with all applicable building codes, including fire codes, and the Land Development Code, except where relief is requested.

- (b) The requested variance will not alter the essential character of the general vicinity.

STAFF: The proposed private yard area reduction will not alter the essential character of the general vicinity as several parcels in the area seemingly have reduced private yard areas to accommodate for the more compacted urban lots that are commonplace in this area of Irish Hill.

- (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 proposed garage will comply will all other regulations, except where relief is requested, and there are other properties within the block that have seemingly reduced open space between the principal and accessory use areas.

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 not generally apply to the land in the general vicinity or the same zone as the lot is similar in size and shape to 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 deprive the applicant of reasonable use of the land because there is limited open space between the primary structure area and accessory use area. Hence, any accessory structure would likely trigger a request for a reduced private yard area.

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 taken subsequent to the adoption of the zoning regulation from which relief is sought. The garage has not been constructed and a variance has been applied for.

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
06/23/2023	Hearing before BOZA	1 st tier adjoining property owners
06/23/2023		Registered Neighborhood Groups in Council District 9
6/25/2023	Hearing before BOZA	Notice posted on property

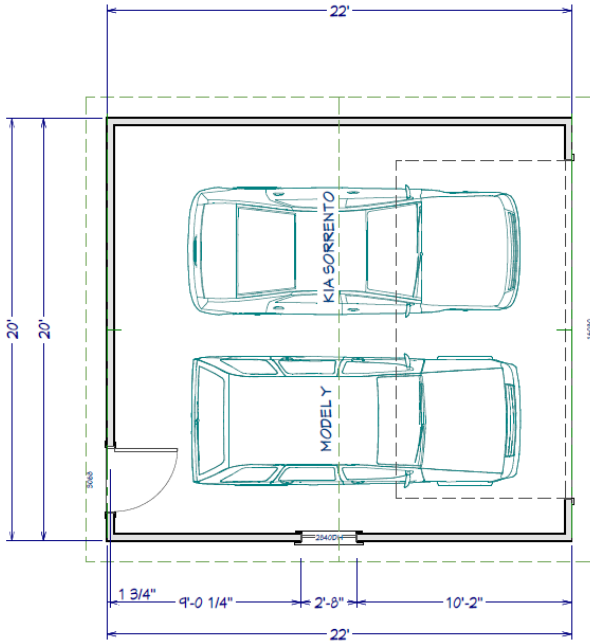
ATTACHMENTS

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

2. Aerial Photograph



4. Elevations



5. Site Photos



Front of subject property.



Right of the subject property.



Left of subject property.



View of fence in street side yard setback area.



View of side setback and private yard variance area.



View of fence looking east on Bishop Street.



Examples of adjacent properties with reduced PYA and encroachments into the side setback.