

Board of Zoning Adjustment Staff Report

November 16, 2015



Case No: 15Variance1054
Project Name: New Dwelling
Location: 553 Wainwright Avenue
Owner(s): Frank & Brenda Mosser
Applicant: Owner
Representative: Taylor Hamilton, Morgan & Pottinger
Project Area/Size: 0.086 acres
Jurisdiction: Louisville Metro
Council District: 15 – Marianne Bulter
Case Manager: Sherie' Long, Landscape Architect
Continued from October 5, 2015 hearing and November 2, 2015 hearing

REQUEST

Variance #1: Side Yard Setback (SW)

Variance from the Land Development Code Chapter 5, Section 5.4.1.C.6.b, to allow the proposed dwelling to encroach into the infill side yard setback.

Location	Requirement	Request	Variance
Side Yard Setback (SW)	3'	1.17'	1.83'

Variance #2: Private Yard

Variance from the Land Development Code Chapter 5, Section 5.4.1.D.2, to allow a reduction of the private yard.

Location	Requirement	Request	Variance
Private Yard	2,250sf (30%)	953.3sf (12.7%)	1,296.7sf (17.3%)

CASE SUMMARY/BACKGROUND/SITE CONTEXT

This case was continued from the October 5, 2015 hearing to allow the applicant to have a survey completed, lots consolidated and to explore the location of the entrance.

The applicant is proposing to remove the existing deteriorating structure, originally built in 1900, to construct a new one story home on two lots which have been consolidated. The new home will encroach into the infill side yard setback long the southwest perimeter. The applicant is proposing to locate the new home the same distance from the side property line as the existing house. After the survey was completed it was determined the existing house is set back 1.17 feet and 1.24 feet from the southwest property line. The consolidation of the lots eliminated the need for a side yard variance along the northeast perimeter (common boundary with the second lot) and eliminated the encroachment of the proposed side entry porch. The applicant was also requesting the entrance not be located on the front façade facing the street, but instead allow the entrance to be located on the NE side of the new house facing the second lot. The

applicant has however added an entrance and a porch to the front façade facing the street, therefore the waiver request was been withdrawn. An additional request has been added, a private yard reduction is being sought to allow the new home to be located further from the front property line which honors the required 15' infill front yard setback. Therefore, the front yard variance request has also been withdrawn. The applicant is planning to preserve the existing garage and large canopy tree.

LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

The site is zoned R-6 within the Traditional Neighborhood Form District (TN). It is surrounded by single family residential, and multi-family residential property zoned R-6 in the Traditional Neighborhood Form District (TN).

	Land Use	Zoning	Form District
Subject Property			
Existing	Single-family Residential	R-6	TN
Proposed	NA		
Surrounding Properties			
North	Single-family Residential	R-6	TN
South	Single-family and Multi-family Residential	R-6	TN
East	Single-family Residential	R-6	TN
West	Single-family and Multi-family Residential	R-6	TN

PREVIOUS CASES ON SITE

WR953983 – Wrecking Permit to remove a single family dwelling which was built in 1900. Issued October 2015.

INTERESTED PARTY COMMENT

No inquiries have been received.

APPLICABLE PLANS AND POLICIES

Land Development Code
Cornerstone 2020

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE

Variance #1: Side Yard Setback (SW)

Variance from the Land Development Code Chapter 5, Section 5.4.1.C.6.b, to allow the proposed dwelling to encroach into the infill side yard setback.

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

STAFF: The variance will not adversely affect the public health, safety or welfare because the applicant's proposal provides for the overhang and gutter to be contained within the subject property and allows access to the structure.

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

STAFF: The requested variance will not alter the general character. There are other structures in the vicinity that are constructed a similar distance from the property line. Plus the location of the new structure will be the same distance from the property line 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 drainage from the roof is being addressed.

- (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 since the new structure will be located the same distance from the property line as 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 arise from special circumstances, the lot is narrow and the existing home is located close to the side property line.

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 proposal is to reuse the existing foundation of the house for the new construction.

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 applicant is requesting relief from the requirement prior to beginning the new construction.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE

Variance #2: Private Yard

Variance from the Land Development Code Chapter 5, Section 5.4.1.D.2, to allow a reduction of the private yard.

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

STAFF: The variance will not adversely affect the public health, safety or welfare because the reduction in the private yard is a result of the applicant honoring the front yard setback which matches the established pattern of the block. Plus the consolidation of the properties creates a large open area, NE of the new structure, which can be used as private yard.

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

STAFF: The requested variance will not alter the general character. The front yard setback is being honored, which is consistent with the established pattern of the block. There is sufficient open space along the NE side of the property to compensate for the reduction at the rear of the property. Plus the applicant is proposing a covered patio at the rear of the house.

- (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 there is sufficient open space along the NE side of the lot which can be used as private yard.

- (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 since the front yard setback is being honored which has created the need to ask for a private yard reduction. Plus the open space along the NE side of the lot has sufficient area to compensate for the requested reduction.

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 arise from special circumstances. The lot is shallow in depth which creates a small rear yard area. Plus to honor the front yard setback, the new home encroaches into the small rear yard area.

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 covered rear patio could not be provided as proposed.

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 applicant is requesting a reduction in the private yard prior to beginning construction.

TECHNICAL REVIEW

The applicant should correct the dimensions for the proposed setbacks along the SW property line to match the dimensions as provided on the survey.

STAFF CONCLUSIONS

The standards of review and staff analysis support the request for both variances. The SW side yard setback does allow for access to the structure and does provide for the roof drainage. Plus the new structure will not be any closer to the side property line than the existing structure or existing condition. The front yard setback

is consistence with the pattern established along the block which creates less private yard at the rear of the property. However there is sufficient open space along the NE side of the property compensating for the private yard reduction.

Based upon the information in the staff report, the analysis of the standards of review support the request to grant the variance, therefore, the Board of Zoning Adjustment must determine if the proposal meets the standard for a variance established in the Development Code based on the testimony and evidence provided at the public hearing.

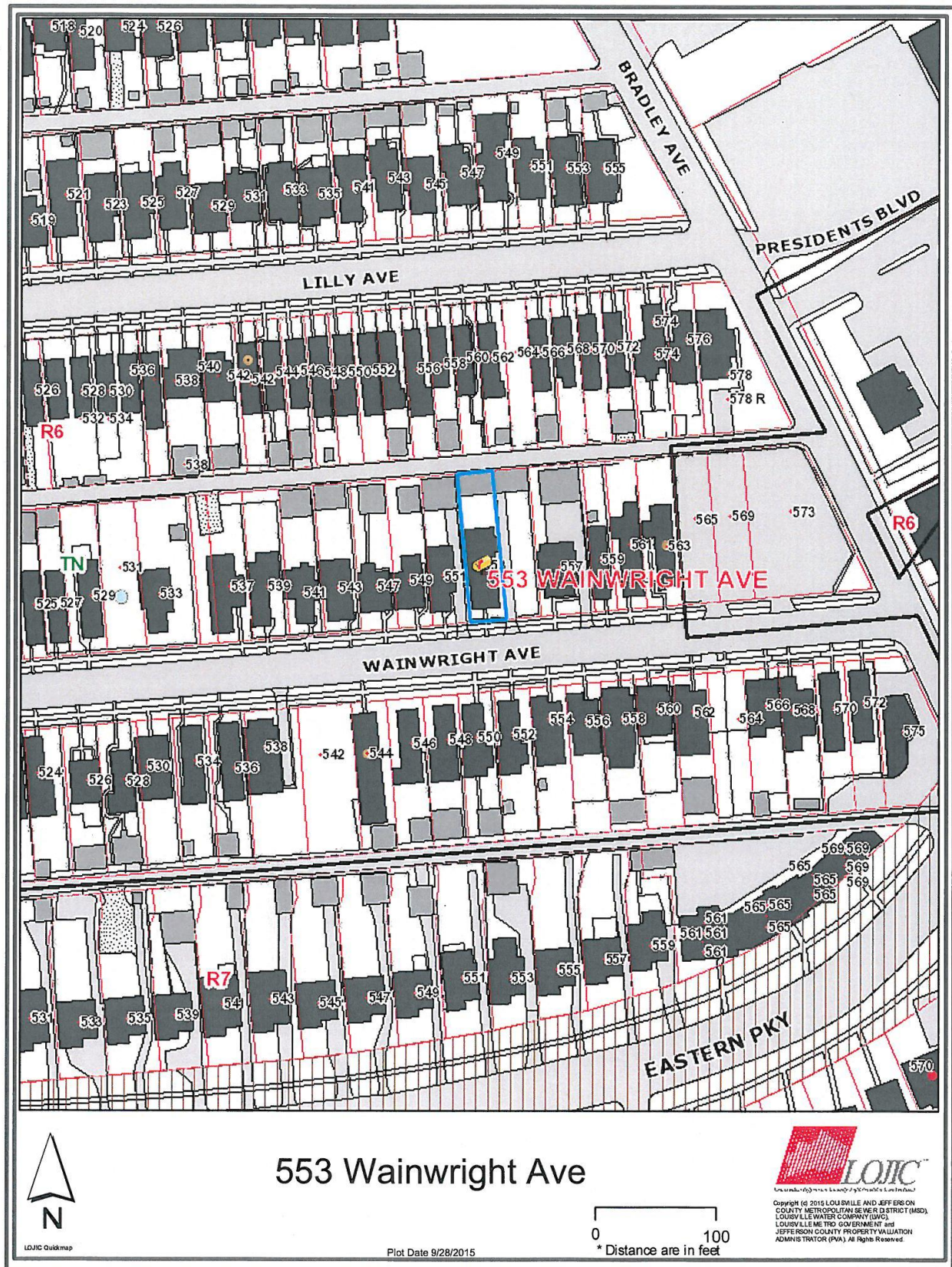
NOTIFICATION

Date	Purpose of Notice	Recipients
09/18/2015	BOZA Hearing	Neighborhood notification recipients
09/18/2015	BOZA Hearing	1 st tier adjoining property owners
11/03/2015	Sign Posting	Subject property

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Survey
4. Consolidation Document
5. Site Plan
6. Elevations
7. Site Photographs

Attachment 1: Zoning Map



Attachment 2: Aerial Photo:





LOJIC Quickmap

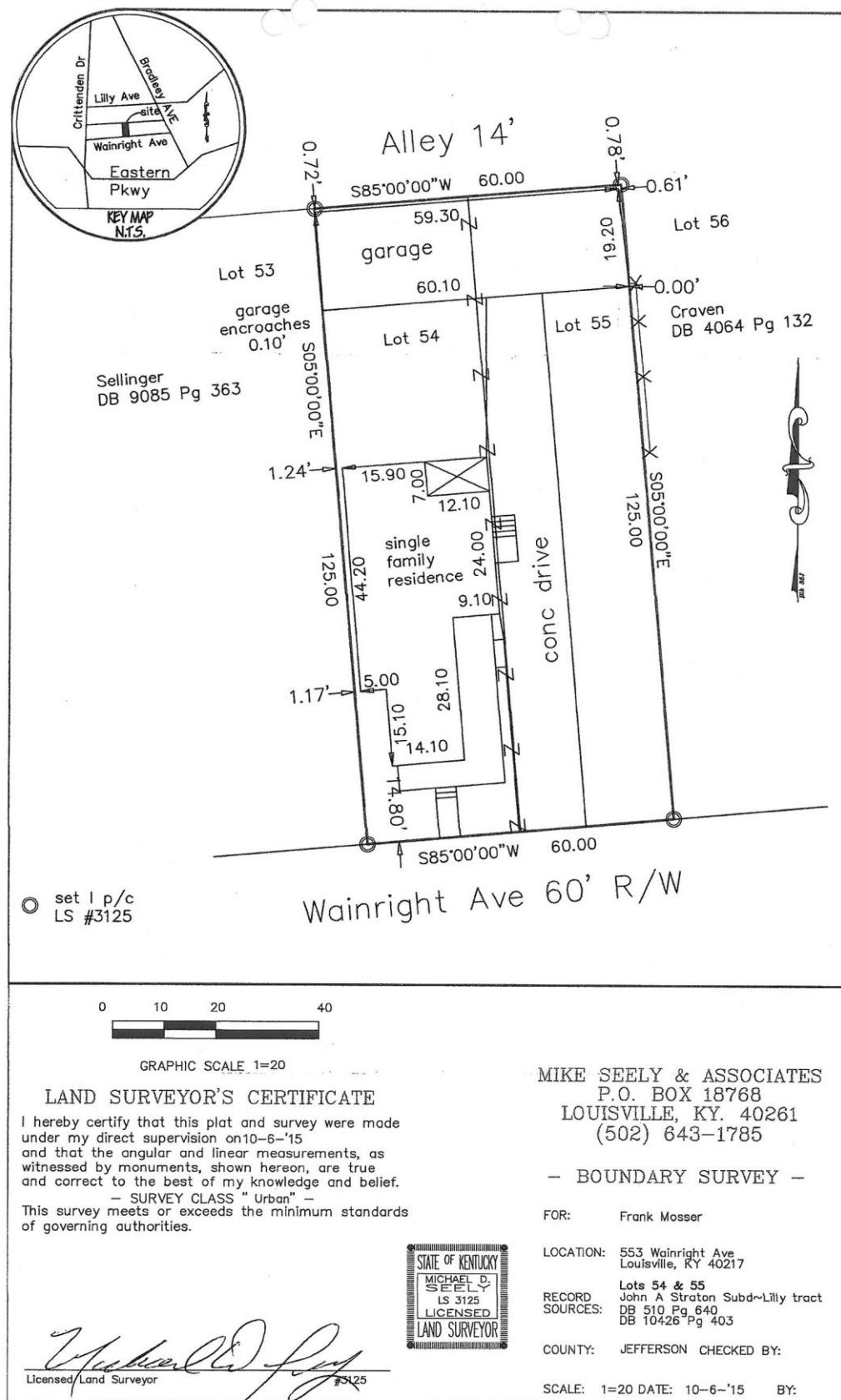
553 Wainwright Ave

Plot Date 9/28/2015

0 25
* Distance are in feet



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DEED OF CONSOLIDATION

5th ~~THIS~~ **THIS DEED OF CONSOLIDATION** made and entered effective as of the day of ~~October~~ ^{November} 2015, by and between Frank Mosser and Brenda Mosser, husband and wife, with a mailing address of 553 Wainwright Avenue, Louisville, Kentucky 40217 ("Grantors"), and Frank Mosser and Brenda Mosser, husband and wife, with a mailing address of 553 Wainwright Avenue, Louisville, Kentucky 40217 ("Grantees"), for the purpose of consolidating certain tracts as set forth below. The in-care-of tax mailing address for this property is c/o Frank Mosser and Brenda Mosser, 553 Wainwright Avenue, Louisville, Kentucky 40217.

WITNESSETH:

NOW, THEREFORE, for the sole purpose of consolidating two (2) contiguous lots conveyed to Grantors and described more particularly in that certain Deed recorded on June 26, 2015, in Deed Book 10426, Page 0403 in the office of the Jefferson County Clerk into one parcel, Grantors do hereby sell, grant and convey unto Grantees, in fee simple, the above referenced real property, together with all improvements thereon, located in Louisville, Jefferson County, Kentucky, which property shall now more particularly be described as follows:

Being lots 54 and 55 Block 2 in John A. Stratton's Subdivision of the Lilly Tract, as shown by plat recorded in Deed Book 510 Page 640 in the Office of the Clerk of Jefferson County, Kentucky; and more particularly described as follow:

Beginning at an iron pin in the Northerly right-of-way of Wainwright Ave at the common corner of lots 55 and 56 of the John A. Stratton's Subdivision of the Lilly Tract, as shown by plat recorded in Deed Book 510 Page 640 in the Office of the Clerk of Jefferson County, Kentucky; Thence with said right-of way line South 85 degrees 00 minutes 00 seconds West, 60.00 feet to the common corner of lots 53 and 54 of the aforementioned Subdivision and extending back between parallel lines perpendicular to the aforementioned right-of-way 125.00 feet to an alley.

Being the same property conveyed to Frank Mosser and Brenda Mosser, husband and wife, by Deed recorded June 26, 2015, in Deed Book 10426, Page 0403 in the office of the Jefferson County Clerk.

Provided however, this conveyance is made subject to all mortgages, easements, restrictions and zoning ordinances of record affecting said property and the taxes and assessments for the current year.

TO HAVE AND TO HOLD said property unto Grantees, its successors and assigns forever.

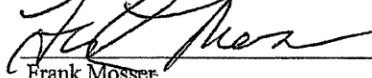
Grantors do hereby release and relinquish unto Grantees, its successors and assigns forever, all of Grantors' rights, title and interests in and to the above described property, including all exemptions allowed by law, and hereby covenants to and with Grantees, that Grantors will **WARRANT GENERALLY** the title to said property.

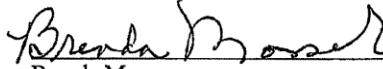
Grantees hereby assume and agree to pay all subsequent taxes and assessments against said property, including for the current year.

This conveyance is a transfer of title, for nominal consideration, which confirms or corrects a deed previously recorded, and thus is exempt from real estate transfer tax by virtue of KRS 142.050(7)(d). The Grantees joins in this deed for the sole purpose of certifying the consideration pursuant to KRS 382.135, and Grantors and Grantees state that the fair cash value of the property is \$50,000.00.

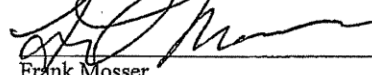
IN TESTIMONY WHEREOF, the undersigned has executed this instrument as of the dates set forth below but is effective as of the date first above written.

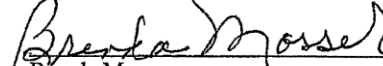
GRANTORS:


Frank Mosser


Brenda Mosser

GRANTEES:

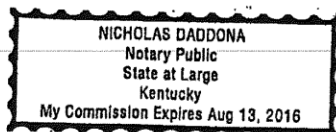

Frank Mosser

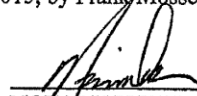

Brenda Mosser

STATE OF KENTUCKY)

COUNTY OF JEFFERSON)

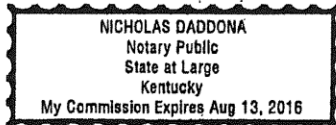
The foregoing deed was subscribed, sworn to and acknowledged before me this the 5th day of November, 2015, by Frank Mosser.

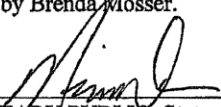



NOTARY PUBLIC, State-at-Large, Kentucky
My Commission Expires: Aug. 13th 2016
Notary Id.: 472771

STATE OF KENTUCKY)
)
COUNTY OF JEFFERSON)

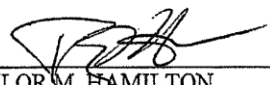
The foregoing deed was subscribed, sworn to and acknowledged before me this
the 5th day of November, 2015, by Brenda Mosser.



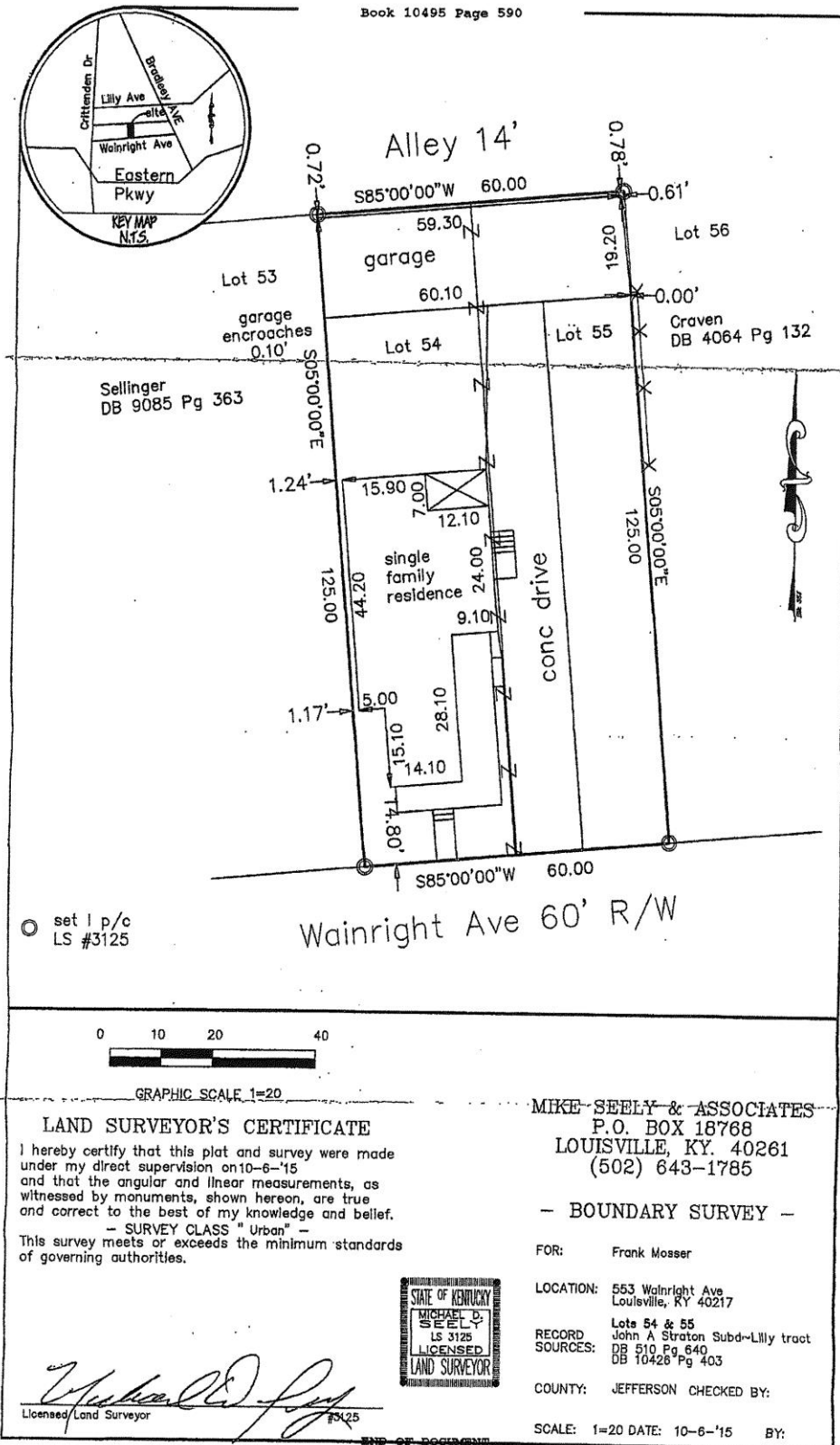


NOTARY PUBLIC, State-at-Large, Kentucky
My Commission Expires: Aug. 13th 2016
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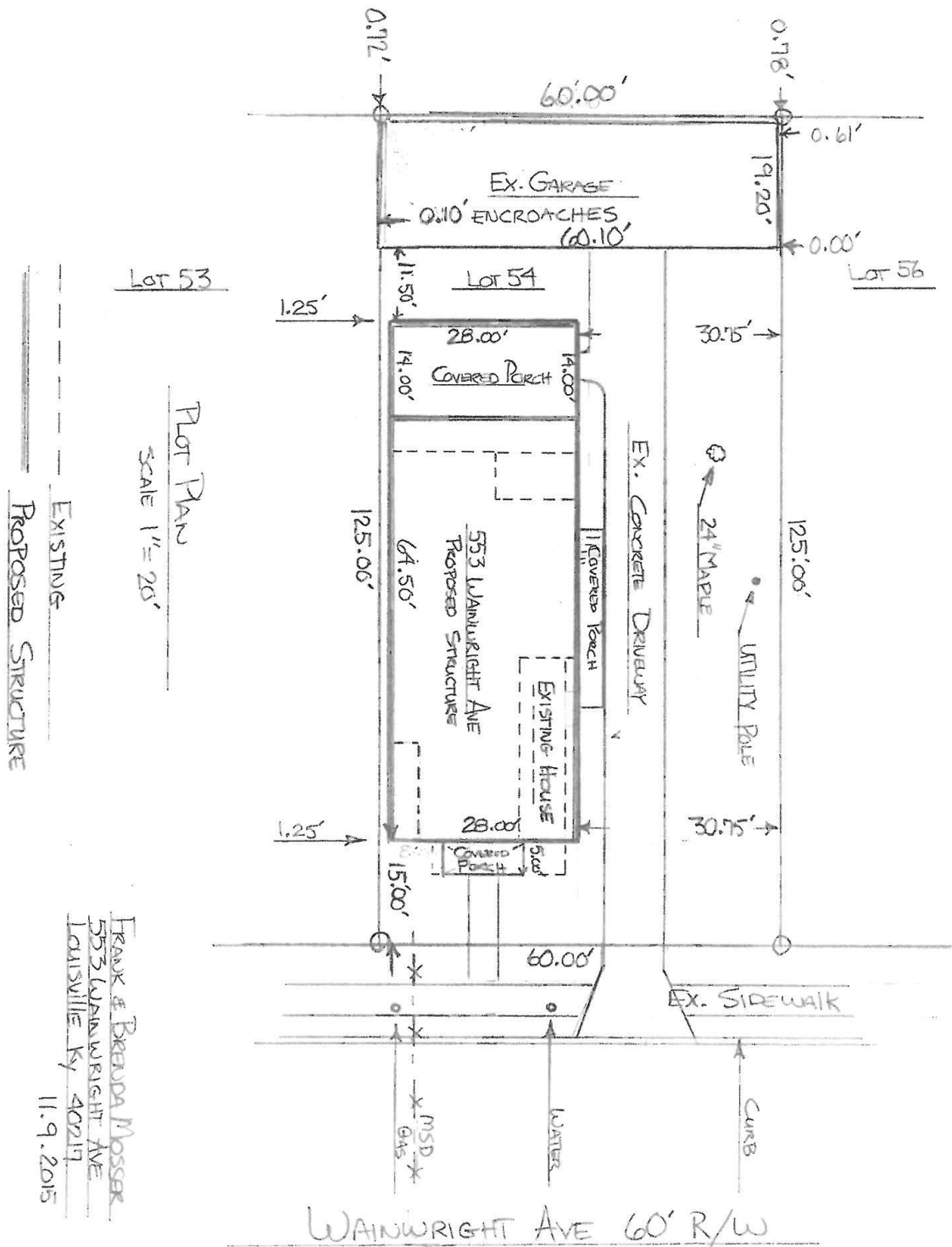
THIS INSTRUMENT PREPARED BY:

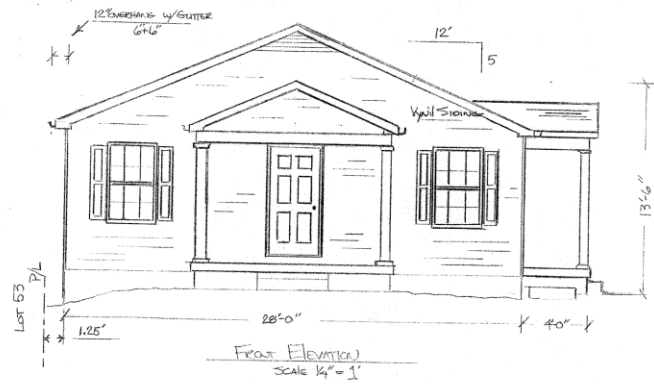


TAYLOR M. HAMILTON
Morgan & Pottinger, P.S.C.
601 West Main Street
Louisville, Kentucky 40202
direct dial: 502.572.7058
fax: 502.572.8058

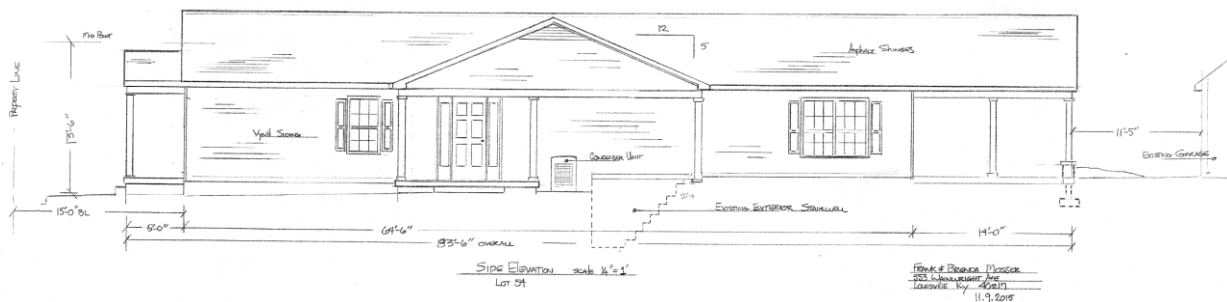


Attachment 5: Site plan





FRANK & BRENDA MOORE
553 WAINWRIGHT AVE
LOUISVILLE KY 40217
11.9.2015



Frank & Barbara Mosser
553 W. Main Street
Louisville Ky 40217
11.9.2015

Attachment 7: Site Photographs



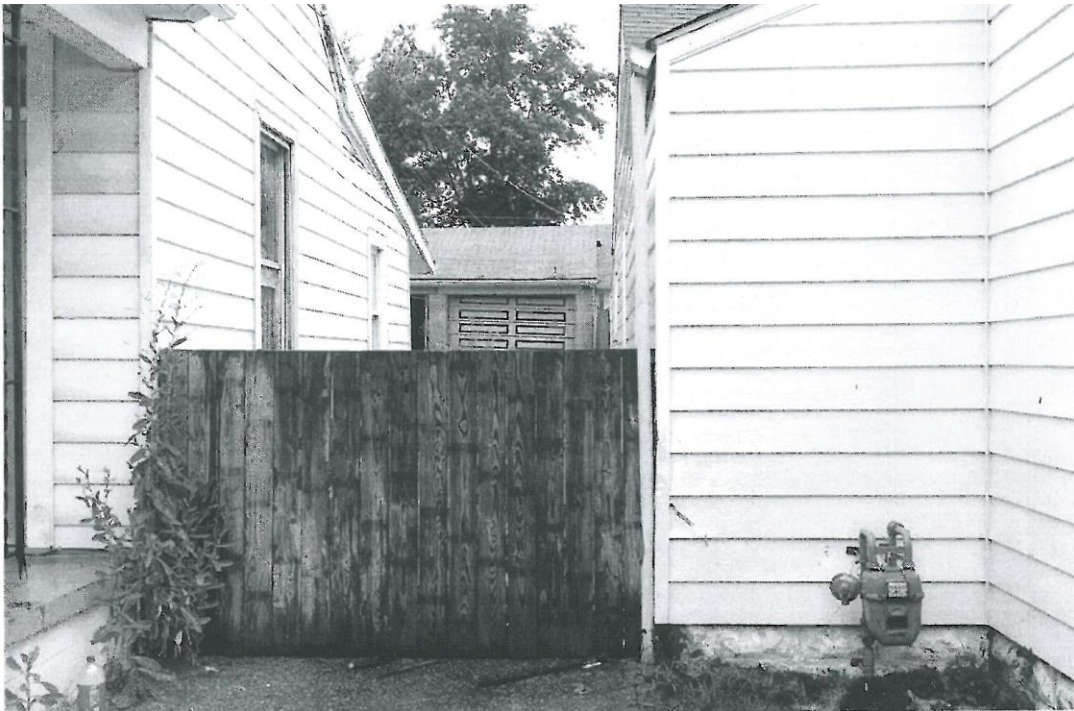
Existing house to be removed



Side Yard Setback (west)



View of the existing SW side yard setback



Closer view of the existing SW side yard setback



NE Side yard setback



NE Side Yard



View of the front yard setbacks



Rear Yard and existing garage



Private yard



Existing garage to remain



Existing adjacent lot's private yard and garage to remain



House has been removed



Existing Foundation