

**Board of Zoning Adjustment
Staff Report**
October 5, 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

REQUEST

Variance #1: Front Yard Setback

Variance from the Land Development Code Chapter 5, Section 5.4.1.B.3, to allow the proposed dwelling to encroach into the infill front yard setback.

Variance #2: Side yard Setback (NE)

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.

Variance #3: 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
Front Setback	15'	10'	5'
Side Yard Setback (NE)	3'	1.5' (18")	1.5' (18")
Side Yard Setback (SW)	3'	0	3'

Waiver: Entrance

Waiver from the Land Development Code Chapter 5, Section 5.4.1.C.1, to not provide the entrance on the front façade and oriented to the primary street.

CASE SUMMARY/BACKGROUND/SITE CONTEXT

The applicant is proposing to remove the existing deteriorating structure, originally built in 1900, to construct a new one story home. This proposal includes two lots which are not being consolidated. The new home will encroach into both infill side yard setbacks and the infill front yard setback. The applicant is also requesting the entrance not be located on the façade facing the street, but instead allow the entrance to be located on the NE side of the new house facing the second lot. An existing garage, located on both properties, is to remain.

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. Pending.

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: Front Yard Setback

Variance from the Land Development Code Chapter 5, Section 5.4.1.B.3, to allow the proposed dwelling to encroach into the infill front 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 proposed structure will be 10 feet from the property line which is the current distance of the closest adjacent property's porch from the street right-of-way.

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

STAFF: The requested variance will alter the general character. The setbacks of the structures along this block are consistence. The designs of the existing homes are consistence with a front porch extending out from the house façade to the street. The design of this structure does not fit into the overall character of the other houses in the block.

- (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, but the proposed structure will block the eastern view of the street from the adjacent properties porch.

- (d) The requested variance will not allow an unreasonable circumvention of the zoning regulations.

STAFF: The requested variance will allow an unreasonable circumvention of the zoning regulations. The setbacks of the existing homes along this block are consistence; the front façade of the homes are at the same distance from the right-of-way line with a porch extending out from the home façade. The proposed location of this home is not consistence with the current configuration.

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. The new structure can be built to meet the façade requirements. The other structures along this block have a consistence front yard setback from the street.

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 deprive the applicant of a reasonable use of the land, since the front setback requirement could be met and the design of the structure could be consistence with the existing structures along this block.

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 since the applicant is requesting a variance prior to construction.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE

Variance #2: Side yard Setback (NE)

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 there will be an 18" setback from the property line in which the drainage system for the roof can be located and not encroach onto the adjacent property. Plus the adjacent property to the NE is owned by the applicant.

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

STAFF: The requested variance will not alter the general character of the general vicinity since the adjacent property is owned by the applicant and there are other structures located a similar distance from the side property line.

- (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 adjacent property is owned by the applicant.

- (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 a variance is required. However, it is suggested that the two parcels be consolidated to allow the proposed porch and the existing garage to be located on a single parcel to eliminate easements for the encroachments.

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. Most of the existing structures in the vicinity do already encroachment into the side yard setback areas.

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 deprive the applicant of a reasonable use of the land since the adjacent property is owned by the applicant. The lots could be consolidated which would eliminate this variance of the side yard 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 since the applicant is requesting a variance prior to construction.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE

Variance #3: 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 adversely affect the public health, safety or welfare because the applicant's proposal is to build to the property line and not provide a gutter to control the drainage from the roof.

- (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 at the property line.

- (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 because the drainage from the roof is not being addressed. The applicant is not providing a gutter along that side of the roof.

- (d) The requested variance will not allow an unreasonable circumvention of the zoning regulations.

STAFF: The requested variance will allow an unreasonable circumvention of the zoning regulations since setbacks are provided to allow for access to structures without encroachment on other property; allows room to provide necessary drainage systems; and allow room for the spread of the foundation footers.

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, because the existing house is located at a zero setback on this narrow 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 because the proposal is to reuse the existing foundation of the house for the new construction. However, a new foundation could be provided within the property to accommodate a drainage system to not encroach onto the adjacent property.

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. The applicant is removing the existing structure to construct a new dwelling which could be constructed to provide a minimum setback to allow for access and drainage.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER

Waiver: Entrance

Waiver from the Land Development Code Chapter 5, Section 5.4.1.C.1, to not provide the entrance on the front façade and oriented to the primary street.

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

STAFF: The waiver will not adversely affect adjacent property owners since adequate access is being provided to the new dwelling.

- (b) The waiver will not violate specific guidelines of Cornerstone 2020.

STAFF: Guideline 3, policy 1 and 2 calls for the compatibility of all new development and redevelopment with the scale and site design of nearby existing development and with the pattern of development within the form district. The type of building materials may be considered as a mitigation measure and may also be considered in circumstances specified in the Land Development Code. The

waiver does violate the guidelines of the comprehensive plan since the location of the entrance is not consistence with the existing pattern; entrances of the homes all facing the street. Plus the proposed setback of the new house is not consistence with the established pattern of the front setback along this block.

- (c) The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant

STAFF: The extent of waiver of the regulation is not the minimum necessary to afford relief to the applicant since the regulation from which relief is being sought can be provided and should be provided to conform to the established pattern.

- (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 applicant has not 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). The strict application of the provisions of the regulation would not deprive the applicant of the reasonable use of the land; plus would not create an unnecessary hardship on the applicant. The new dwelling entrance could be provided as required facing the street.

TECHNICAL REVIEW

There are no technical review issues.

STAFF CONCLUSIONS

The standards of review and staff analysis do not support the request for variances #1 and #3. The front setback is not consistence with the pattern established along the block and the SW side yard setback does not allow for access to the structure and does not provide a drainage system for the roof.

The standard of review and staff analysis does support the request for variance #2. Considering the adjacent property, which is most affected by the reduction of the setback, is owned by the applicant the request is supported. However, it is suggested to consolidate the two parcels into one property to eliminate the need for this variance request.

The standard of review and staff analysis does not support the request for the waiver. To not provide an entrance on the front façade facing the street is not consistence with the established pattern along the block. All the existing homes along this block and across the street have an entrance on the primary façade facing the street.

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.

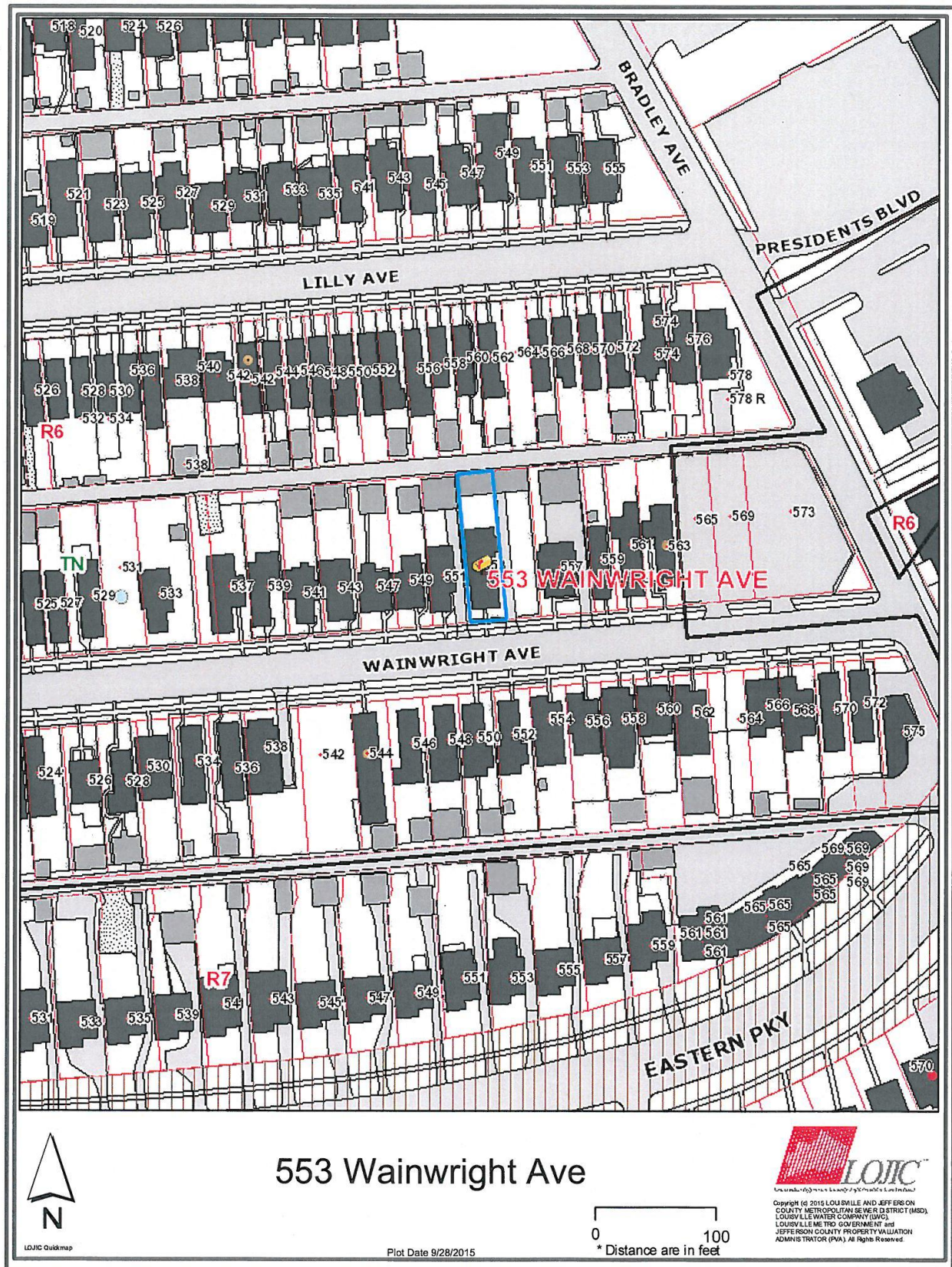
NOTIFICATION

Date	Purpose of Notice	Recipients
09/18/2015	BOZA Hearing	Neighborhood notification recipients
09/18/2015	BOZA Hearing	1 st tier adjoining property owners
09/22/2015	Sign Posting	Subject property

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Site Plan/ Front Elevation
4. Applicant's Photographs
5. Applicant's Justification Statement
6. Site Photographs

Attachment 1: Zoning Map



Attachment 2: Aerial Photo:





LOJIC Quickmap

553 Wainwright Ave

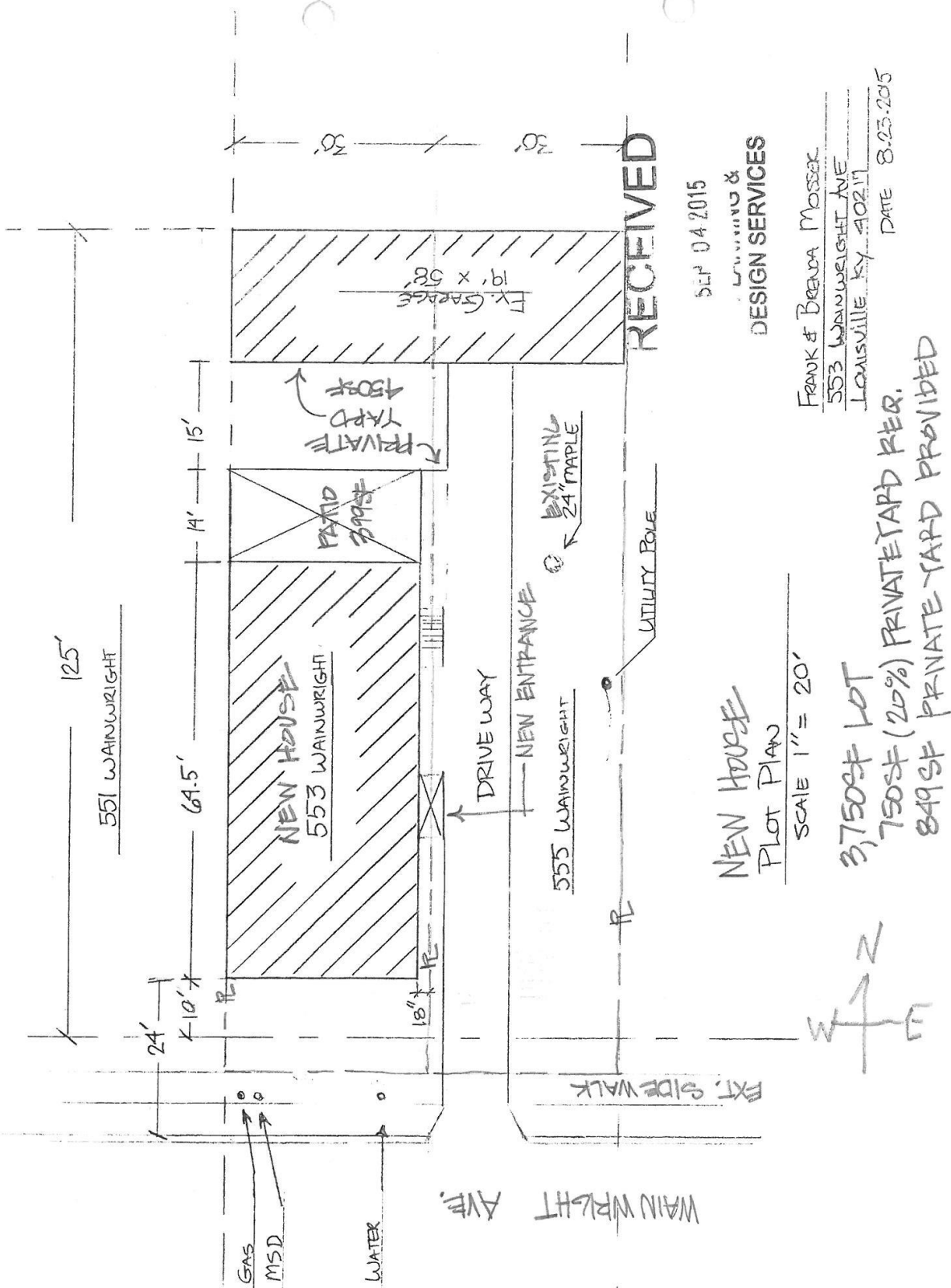
Plot Date 9/28/2015

0 25
* Distance are in feet



Copyright (c) 2015 LOUISVILLE AND JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT (MSD), LOUISVILLE WATER COMPANY (LWC), LOUISVILLE METRO GOVERNMENT and JEFFERSON COUNTY PROPERTY VALUATION ADMINISTRATOR (PVA). All Rights Reserved.

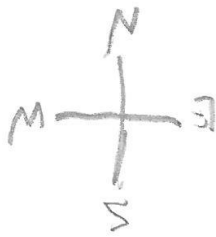
Attachment 3: Site Plan:



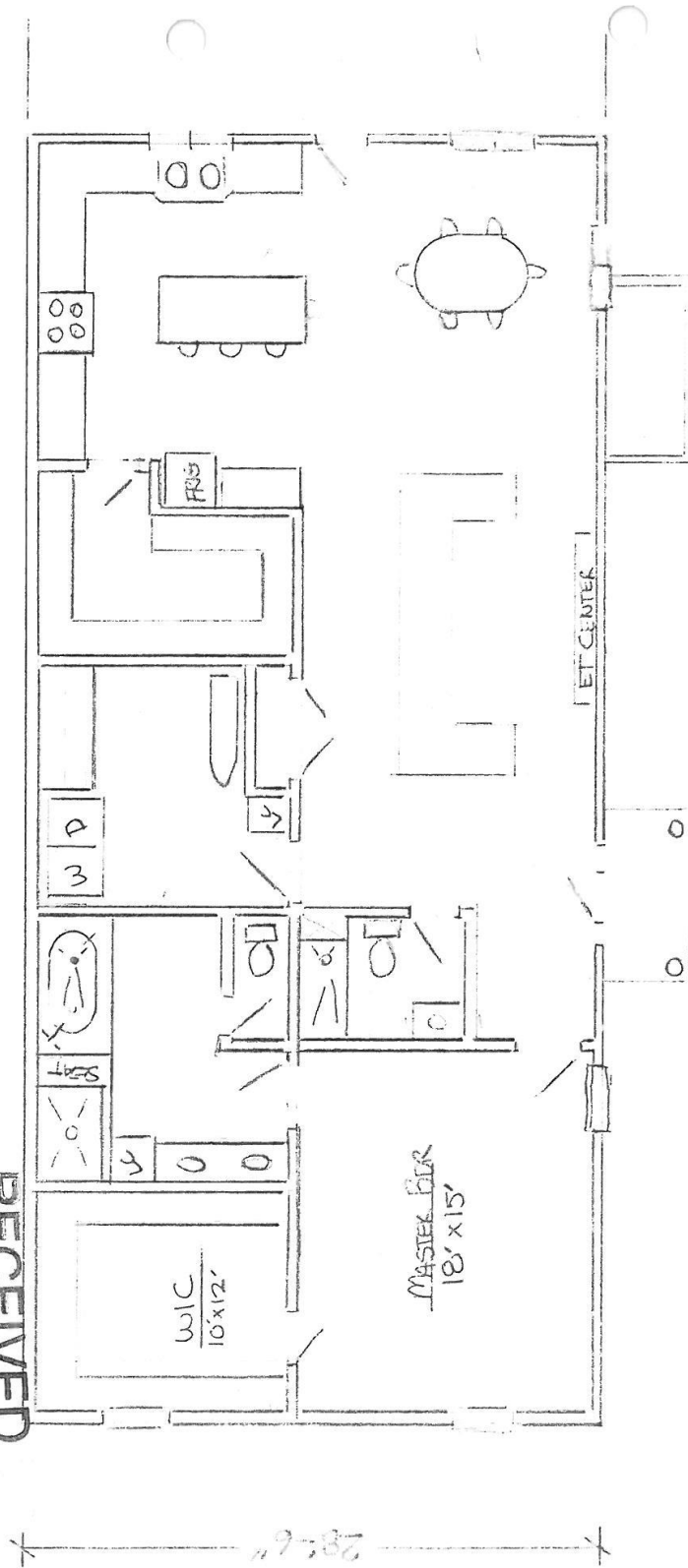
15VARIANCE1054

15VARIANCE1054

RECEIVED
SEP 04 2015
PLANNING &
DESIGN SERVICES



RECEIVED



64'-6"

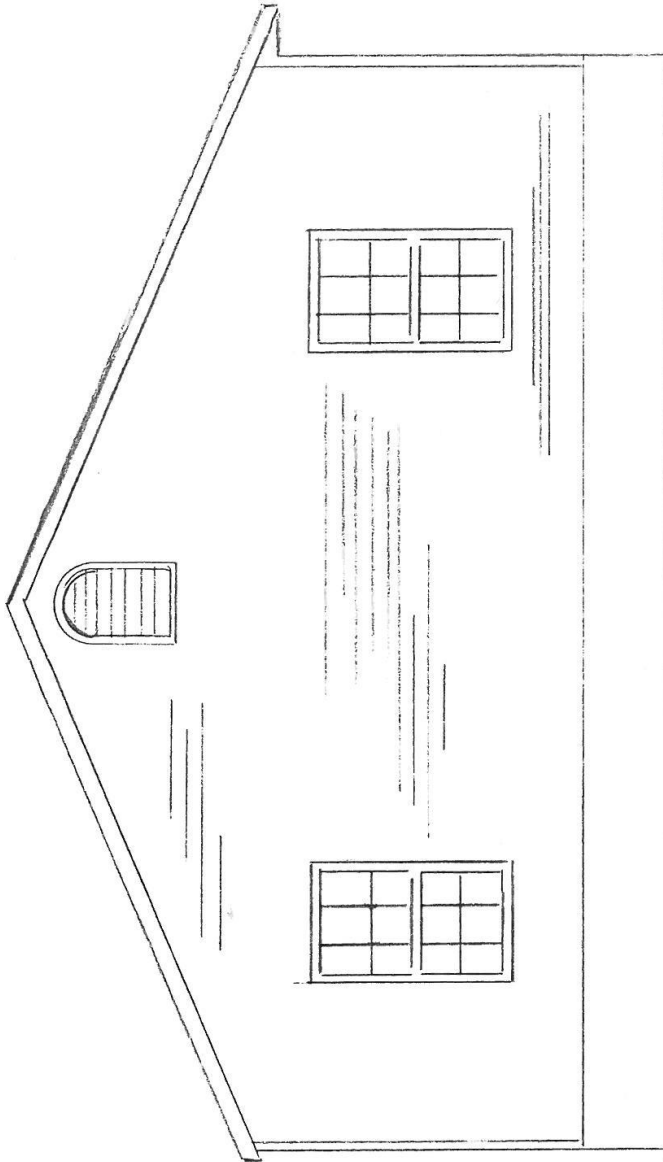
NEW HOUSE
FLOOR PLAN

FRANK & BRENDA MOSSEK
503 WAINWRIGHT AVE
LOUISVILLE KY 40217

SCALE 1/8"=1' 8/23/15

#1

Attachment 4: Front Elevation



RECEIVED

FRONT ELEVATION #2

NEW HOUSE (STREET FACADE) SEP 04 2015

PLANNING &
DESIGN SERVICES

FRANK & BRENDA NOSSER

553 WAYNE WRIGHT

LOUISVILLE KY 40217

8/10/2015

15VARIANCE1054

Attachment 5: Applicant's Justification Statement

Variance Justification:

In order to justify approval of any variance, the Board of Zoning Adjustment considers the following criteria. Please answer all of the following items. Use additional sheets if needed. A response of yes, no, or N/A is not acceptable.

1. Explain how the variance will not adversely affect the public health, safety or welfare.

The variance will only extend the front of the house out five feet. It will not block any public walkway or create any type of safety hazard.

2. Explain how the variance will not alter the essential character of the general vicinity.

The essential character of the general vicinity will be unchanged. In fact, it will be greatly improved. The current improvement on the property is in poor condition and the owner recently purchased and plans to update and improve the entire structure.

3. Explain how the variance will not cause a hazard or a nuisance to the public.

The five foot variance will not create any hazards or nuisance whatsoever. No fire hazards, no view obstructions, etc.

4. Explain how the variance will not allow an unreasonable circumvention of the requirements of the zoning regulations.

It is a very reasonable and typical variance request. The owner is only asking for a slight deviation from the current zoning.

Additional consideration:

1. Explain how the variance arises from special circumstances, which do not generally apply to land in the general vicinity (please specify/identify).

The owner's mother lives next door to the property. The owners have recently retired and are selling their current home in Audubon Park, and using the money from the sale of the property to update and remodel the home on Wainwright. It will greatly improve the value and aesthetic of the property.

2. Explain how the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create unnecessary hardship.

The owners would be unable to move forward with the current remodel plans that have been drawn up for the property. They seek to add a small amount of living space to the property and improve the value and aesthetic of the improvement and the neighborhood.

3. Are the circumstances the result of actions of the applicant taken subsequent to the adoption of the regulation which relief is sought?

No.

RECEIVED

AUG 10 2015
PLANNING &
DESIGN SERVICES

KUARRAWC1054

General Waiver Justification:

In order to justify approval of any waiver, the Planning Commission or Board of Zoning Adjustment considers four criteria. Please answer **all** of the following questions. Use additional sheets if needed. **A response of yes, no, or N/A is not acceptable.**

1. Will the waiver adversely affect adjacent property owners?

No, the adjacent property owners will not be affected by the entrance being on the side of the home instead of facing the street. The adjacent grass lot is owned by the property owner and the side entrance will face this lot.

2. Will the waiver violate the Comprehensive Plan?

The waiver will not violate the Comprehensive plan. Allowing the applicant to tear down the existing rundown home and build a new home on the property will improve the overall value of the property, the neighborhood, and the City of Louisville as a whole.

3. Is extent of waiver of the regulation the minimum necessary to afford relief to the applicant?

Yes, this is the absolute minimum needed to afford the applicant the relief they need- in order to build the new home they want for the property. The plans they have drawn for the improvement will maximize the value of the improvement and the property, and the entrance to the adjacent grass lot will serve this purpose.

RECEIVED

SEP 10 2015

PLANNING &
DESIGN SERVICES

4. Has either (a) the applicant 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 would (b) the strict application of the provisions of the regulation deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant?

Strict application of the regulation would deprive the applicant of the reasonable use of the land and would create an unnecessary hardship on the applicant. The applicant has purchased a rundown home and wishes to tear it down and build a new home that will increase the value of the property immensely, and add value to the street and neighborhood in general. The plans for the new home have been drawn in order to maximize the applicants' use of the property and maximize the value of the improvement to the property.

15VARIANCE1054

Attachment 6: Site Photographs



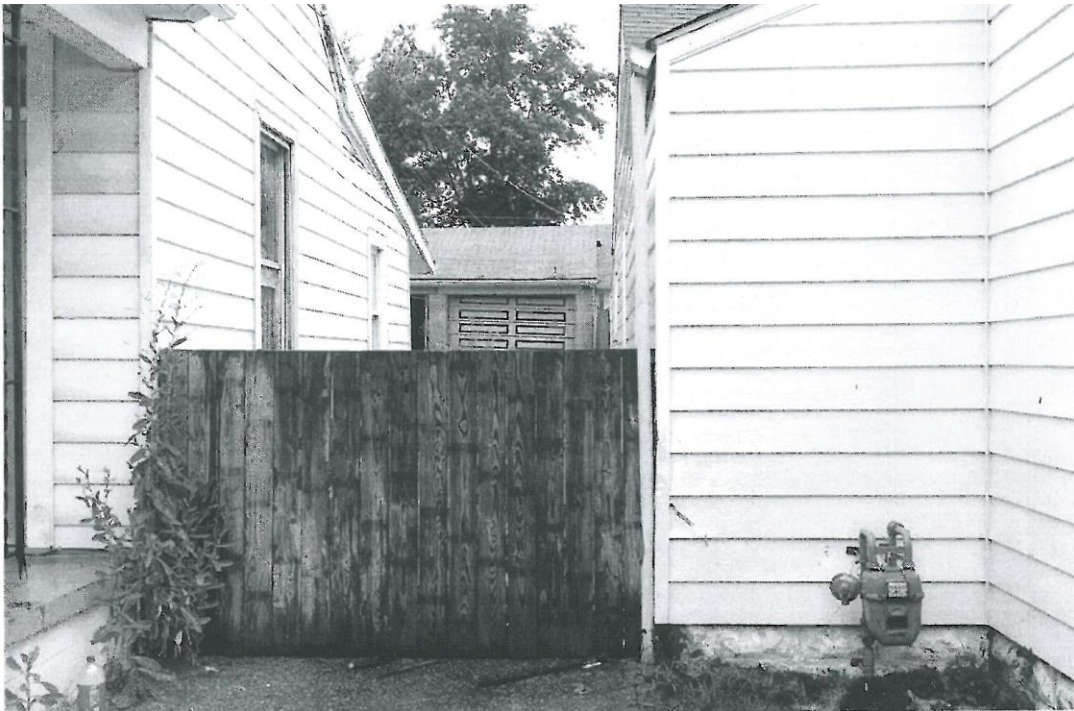
Existing house to be removed



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



Adjacent lot



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