

**MINUTES
LOUISVILLE ZONING BOARD OF APPEALS
NOVEMBER 13, 2007**

Louisville Zoning Board of Appeals met in regular session with Chairman Campbell presiding. The meeting was called to order at 6:30 P.M.

MEMBERS PRESENT

William Ferrell
Ken Grosswiller
Guy Guidone
John Phillippi
John Campbell, Chairman

CITY PERSONNEL PRESENT

E. Thomas Ault, City Manager
Sue Mendenhall, Deputy City Clerk
Deborah Sanborn, Director of Planning & Development

MINUTES OF THE SEPTEMBER 11, 2007 MEETING

MEMBER GUIDONE MOVED, MEMBER PHILLIPPI SECONDED, and the Motion carried to approve the Minutes of the September 11, 2007 meeting as presented. The vote: All yea.

Chairman Campbell swore in those in attendance planning to speak before the board.

NEW BUSINESS

AB 07-22 BRIAN & LORI SUAREZ, OWNERS, 725 GLENBAR ST, VARIANCE OF SECTION 1161.04(D) TO LOCATE A FENCE TALLER THAN 2 FT IN THE REQUIRED SIDE/FRONT YARD (5 FT PROPOSED) AND VARIANCE OF SECTION 1151.21(A)(2) FOR AN IN-GROUND POOL CLOSER THAN THE ALLOWED 40 FT FROM THE CORNER/SIDE LOT LINE (37 FT PROPOSED).

Director of Planning & Development, Deborah L. Sanborn presented the following staff report.

EXISTING CONDITION

Single-Family Residence

ZONING

Parcel: R-1

USE

Single-family residential

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North:	R-1	Vacant and residential
South:	R-1	Residential
East:	R-1	Residential and vacant
West:	R-1	Residential

BACKGROUND INFORMATION AND ZONING REQUIREMENTS

- The subject lot is located at the corner of Glenbar Street and Ashbury Avenue
- The subject lot although irregular in shape is a standard lot measuring approximately 22,900 SF
- For the purposes of setbacks, corner lots are typically considered to have two front yards both requiring a 40 ft setback
- Section 1161.04(d) states that fences in front yards shall not exceed two feet in height
- The applicants propose to install a 5 ft high fence along the east corner/side lot line along Ashbury Avenue running along the angle of the street ranging from 44 ft to 35 ft from the property line
- The proposed fence is not a privacy fence but rather a metal fence with considerable spacing between slats
- The applicant also proposed to install an in-ground swimming pool positioned at an angle ranging from 40 ft to 37 ft from the east corner/side lot line situated 2 ft inside the fence

It is common for cities to regulate front yard obstructions as a means of promoting safety, security and visibility. On corner lots the issue of visibility is of particular concern due to the street intersection. As noted above, section 1161.04 (d) of the Louisville Zoning Code limits fences in front yards to two feet. In the case of corner lots, this restriction also applies to the corner side yard.

Section 1151.14 of the Code also addresses visibility at corner lots. It states that “no obstruction to view in excess of two feet in height shall be placed on any corner lot within a triangular area formed by the street right-of-way lines and a line connecting them at points thirty feet from the intersection of the street lines ... so as not to obstruct clear view of motor vehicle drivers.” The “vision triangle” concept is a common method of ensuring clear visibility.

Variations are intended to alleviate a situation in which, for no public reason, zoning for an area more stringently burdens one parcel of land than others. *The zoning requirements do not impact the subject lot more stringently than other corner lots in the city except for the fact the side/front lot line is angled.*

Conditions justifying a variance arise from the characteristics of the property itself, not the personal situation of the owner. *The subject lot is an irregularly*

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shaped lot in an R-1 zoning district and does not have any particular topographic constraints.

The standard to use in determining the merits of an area variance is whether the denial of the variance would result in “practical difficulties” for the property owner. The following questions need to be examined in considering an area variance:

1. Can there be a beneficial use of the property without the variance? *Yes, the lot still accommodates residential uses and could accommodate the pool within the code requirements.*
2. Is the variance substantial? *The fence would be located 5 FT closer to the lot line than permitted by code in a corner/side yard and the pool would be 3 FT closer*
3. Will the essential character of the neighborhood be substantially altered or adjoining properties suffer a substantial detriment? *No, the area is generally residential. The site is located in the Glenbrook Village subdivision and much of the development has yet to be constructed; therefore, there is considerable vacant land around the site.*
4. Did the property owner purchase the property with knowledge of the zoning restriction? *Unknown*
5. Can the problem be solved by some other manner other than the granting of a variance? *Yes, the fence could be placed along the 40 ft setback line with the pool located inside of it eliminating the need for a variance. Although this would disrupt the garden area already located in the back yard.*

Staff finds:

- The current condition at the subject property does not preclude compliance with the fence height requirement – it is possible to erect a 2 ft fence or place the 5 ft fence 40 ft from the corner/side lot line thus accommodating the pool within the allowable area (40 FT from corner/side lot line);
- The placement of a 5 ft fence 44 ft to 35 ft in from the corner/side lot line would be outside of the vision triangle and not obstruct visibility at the corner

Lori Suarez, applicant, stated the same wrought iron railing fence will be installed around the entire rear yard. The adjoining property owners agreed to the fence being installed on the property line. She stated they could not move the pool in 40 ft because of the brick patio behind her home. That is the reason for the variance request.

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MEMBER PHILLIPPI MOVED, MEMBER GROSSWILLER SECONDED, and the Motion carried to approve the variance requests since the style of fence will cause no vision obstruction, the lot is irregular in shape, the pool and fence are in line with the house, and these are not major variances. Grosswiller added that the variances do not hinder any safety or visibility issues. The vote: all yea.

AB 07-23 RONALD GLOBECK, OWNER, 1267 FILOMENA CIRCLE,
APPEALING THE PLANNING DIRECTOR'S DETERMINATION THAT AN
ACCESSORY BUILDING CANNOT BE PLACED IN A STORM EASEMENT

Director Sanborn presented the following staff report.

EXISTING CONDITION

Single-Family Residence

ZONING

Parcel: R-1
North: R-1
South: R-1
East: R-1
West: R-1

USES

Single-Family Residence
Single-Family Residence
Single-Family Residence
Single-Family Residence
Single-Family Residence

BACKGROUND INFORMATION

- The applicant is appealing the denial of a permit for an accessory building (shed) in a storm water easement
- Section 1151.16(b) states that accessory buildings which are not a part of the main building shall not be located closer than 15 ft to the main building and may be built within 8 ft of the rear and side lot lines
- Section 1151.16(b) goes on to state that accessory buildings not part of the main structure shall not occupy more than 30% of the required rear yard and shall not be located nearer than 60 ft to any front lot line or side street lot line
- The proposal meets the above requirements in that it would be 29 ft and 8 ft from the rear and side property lines, in excess of 35 ft from the main structure
- The accessory building is 10 ft x 14 ft or 140 sf or 4% of the required rear yard and would be located in excess of 60 ft from the front lot line
- Although the proposal meets these code requirements, the city has a 40 ft storm easement along the rear of the lot and the applicant wishes to place the accessory building within the storm easement
- Accessory buildings have been permitted in storm easements on a case-by-case basis with the provision the applicant sign a certification the structure would be removed if conditions warranted. Although the Board previously approved yard variances for accessory buildings in the storm

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easement in the same subdivision (AB 02-22, AB 03-05 and AB 03-12), staff determined it is not in the best interest of the neighborhood to approve obstructions in the easement given recent flooding.

The board discussed the drainage easement, that this location is surface drainage (not piped), the 2003 flooding, and similar requests in the same allotment. The entire building and gravel is in the storm easement. They questioned why the applicant wants this specific location.

Mr. Globeck, applicant, stated that when he bought the house in 2005, the space was already graded flat for the shed and landscaped by the previous owner, the remainder is sloped. The shed is under construction. He stated the shed could be moved forward 10 ft, but there is a wall that would block the front view of his shed. He shared pictures of his property and the proposed site. He also stated he didn't realize he needed a permit. He stated that he would sign something that states he would move the building if need be.

MEMBER PHILLIPPI MOVED, MEMBER GUIDONE SECONDED, and the Motion carried to deny the request to reverse the Planning Director's decision per the previous statements. The vote: all yea.

AB 07-24 GARRY PYLES, OWNER, 1008 S NICKELPLATE, FOR A VARIANCE OF SECTION 1151.16(B) FOR AN ACCESSORY BUILDING LESS THAN THE REQUIRED 15 FT FROM THE MAIN BUILDING (10 FT PROPOSED).

Director Sanborn presented the following staff report.

EXISTING CONDITION
Single-Family Residence

ZONING

Parcel: R-1
North: R-1
South: R-1
East: R-1
West: R-1

BACKGROUND INFORMATION

- The subject property is located on South Nickelplate
- The subject property is two lots measuring 234 ft X 133 ft
- The applicant built a 12 ft X 20 ft addition (prior to obtaining permits) to an existing 24 ft X 30 ft accessory building (garage) in the rear yard

- Section 1151.16(b) states that accessory buildings which are not a part of the main building shall not be located closer than 15 ft to the main building and may be built within 8 ft of the rear and side lot line
- Section 1151.16(b) goes on to state that accessory buildings not part of the main structure shall not occupy more than 30% of the required rear yard and shall not be located nearer than 60 ft to any front lot line or side street lot line
- The proposed garage would be located 10 ft from the main structure, 187 ft from the front property line, 10 ft from the rear property line, 10 ft from the north side property line and 93 ft from the south side property line
- The proposed addition and existing garage would be 960 sq ft or 18% of the required rear yard

DISCUSSION

- Variances are intended to alleviate a situation in which, for no public reason, zoning for an area more stringently burdens one parcel of land than others.
The setback requirements for accessory buildings are no more burdensome for this lot than for other lots the garage prior to the addition was 15 ft from the house.
- Conditions justifying a variance arise from the characteristics of the property itself, not the personal situation of the owner.
The actual building lot, although very irregular in shape, can accommodate the required setbacks for detached accessory buildings.
- The standard to use in determining the merits of an area variance is whether the denial of the variance would result in “practical difficulties” for the property owner. The following questions need to be examined in considering an area variance:
 1. Can there be a beneficial use of the property without the variance? *Yes, the denial of this request will not render the lot unusable.*
 2. Is the variance substantial? *The applicant is requesting a variance after the fact to construct an addition to the garage 10 ft from the house, a variance of 5 ft.*
 3. Will the essential character of the neighborhood be substantially altered or adjoining properties suffer a substantial detriment? *No the overall character of the neighborhood will not be affected.*
 4. Did the property owner purchase the property with knowledge of the zoning restriction? *The applicant has secured permits for other activities on the site.*
 5. Can the problem be solved by some other manner other than the granting of a variance? *Not unless the applicant demolishes the addition which has already been constructed without permits.*

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The board discussed the construction of the building before acquiring permits at length. They discussed whether they should require demolition of the addition or part of the addition. They also discussed policing future construction. The City's newsletter lists projects that need building permits. If permits had been applied for prior to construction this variance would have been taken care of before the building addition was started.

Mr. Plyes stated he went through the process 5 years ago when he built the garage and understood that he had to have a certain amount of footage between the house and garage. He stated with the addition he maintained setbacks 100%. He stated he did not encroach on any of the exterior property lines and that he did not know he needed permits for a garage addition. He built the addition to house a 29 ft recreational vehicle. He stated the addition is finished. It is built exactly as the existing garage with footers, etc.

MEMBER GROSSWILLER MOVED, MEMBER PHILLIPPI SECONDED, and the Motion carried to approve the variance as requested. The vote: Ferrell no, Grosswiller yea, Guidone yea, Phillippi yea, Campbell no.

Having no further business, the meeting was adjourned at 7:17 P.M.

Respectfully submitted,

Sue Mendenhall
Deputy City Clerk