

**ZONING BOARD OF ADJUSTMENT
Regular Meeting Minutes
November 18, 2021**

MEMBERS PRESENT

Chair John Coker
Vice Chair Brandon Mund
Bonnie Leitch
Cynthia Foster
Steve Quidley
David Lerch
Jenny Wilson
Drew Snider

STAFF PRESENT

Jean Drew, Assistant Planning and Development Services Director
Stacy Snell, Planning Manager
Frank Onion, First Assistant City Attorney
Maddison O'Kelley, Planner
Sam Hunter, Assistant Planner

MEMBERS ABSENT

None.

Chair Coker called the meeting to order at 6:00 p.m. Roll was called, and a quorum declared.

3. APPROVAL OF MINUTES

Motion by Vice Chair Mund, seconded by Member Leitch, to approve the minutes of the Zoning Board of Adjustment Regular Meeting of October 28, 2021. The motion carried (5-0-0).

4. INDIVIDUAL ITEMS FOR CONSIDERATION

(A) ZB21-0003 Hold a public hearing and consider a request for a variance to Section 3.3-2(b)(1)(iii) to allow a proposed dwelling to encroach up to 1) 10 feet into the required 15-foot corner-side setback for a maximum length of 89 feet and 2) 5 feet into the required 15-foot corner-side setback for a maximum length of 24 feet for the foundation only with an allowance for a cantilevered structure to be able to project an additional 3 feet into the setback, in the "R-2" Single and Two-Family District, addressed at 298 W Edgewater Terrace. (Applicant: Susan Tolbert; Case Manager: Maddison O'Kelley)

Ms. O'Kelley presented the staff report and stated the ZBA may authorize a variance from the zoning regulations only upon finding the following facts:

- 1) **That there are special circumstances or conditions affecting the land involved such that the strict application of the provisions of this Chapter would deprive the applicant of the reasonable use of land;** (The applicant states the lot is 30 feet narrower than the minimum width required for interior lots in the R-2 district and that there are five heritage trees on the property that are intended to be preserved. The tree set back furthest from the front property line on W. Edgewater that would be located in front of the proposed building envelope is 86 feet from the front property line which significantly reduces the buildable area of the lot. The applicant summarizes the land is restricted by the 15-foot corner side setback and the heritage trees, the combination of which makes the variance necessary to build a home. Staff acknowledges the width of the lot 30 feet less than the minimum required lot width for corner lots in "R-2" district impacts the property and the five heritage trees on the property significantly reduce the buildable area. The four heritage trees between the front property line and proposed location of the home reduce the buildable area by 1,260 square feet (63 feet in depth from the front setback line by a 20-foot buildable width.) **and**
- 2) **That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;** (The applicant states the variance is necessary to preserve the right to build a home with modern living and safety standards. The applicant further states the variance is necessary to extend the buildable area away from the existing trees. Staff notes the 20-foot buildable width of the lot is less than the typical buildable width for residential property, however, the substantial property right to use for the property for residential dwelling

- is not removed due to the corner side setback requirement.) **and**
- 3) **That the granting of the variance will not be detrimental to the public health, safety or welfare, or injurious to other property within the area;** (The applicant states the variance should not be detrimental to public health, safety or welfare. The applicant further states the proposed dwelling will improve public safety because it will be built to comply with all city codes and inhabited by its owner.) **and**
 - 4) **Granting of the variance will not have the effect of preventing the orderly use of other land within the area in accordance with the provisions of this Chapter;** (The applicant states the neighboring properties will continue to enjoy and use their properties in the same manner because the variance would allow the proposed new structure to be located in approximately the same corner-side setback from N. Liberty Avenue as the existing structures. The applicant further states by removing the old structures, the new dwelling will meet the minimum 5-foot interior side setback, a reduction of an encroachment of approximately 4 feet. There does not appear to be a negative effect preventing orderly use of other land within the area by granting the variance for the house, however, all neighboring properties will still be required to comply with zoning ordinance standards for new construction. Furthermore, the proposed structures are required to comply with all city codes and standards required for structures built within the floodplain.) **and**
 - 5) **That an undue hardship exists;** (The applicant states the undue hardship is the building area is decreased by the existing heritage trees and the narrow buildable width of the lot which is not typical for corner lots. The applicant states the undue hardship is not self-created, personal, or financial and that the hardships are environmental and ecological and a result of outdated city code. Staff acknowledges the buildable width of the property is limited to 20 feet due to the corner lot setback requirements of the "R-2" district on a dead-end street where the only driveway access is to the subject property, and that the buildable area is further reduced due to the existing heritage trees on the lot.) **and**
 - 6) **That the granting of a variance will be in harmony with the spirit and purpose of these regulations.** (The applicant states granting of the variance will be in harmony with the spirit and purpose of the zoning ordinance because the city has an interest in preserving the scale, context, foliage, and ecology of the area. Staff acknowledges it is in the best interest of the city to support the preservation of mature, desirable trees. Staff further acknowledges purpose of the corner-side setback requirement is to ensure adequate sight-distance for passing vehicles and to maintain the line of sight for buildings by creating a standardized setback. In this circumstance, the sight-distance and building setback line are not relevant to the subject property's development due to the lack of vehicular activity on this portion of N. Liberty Avenue adjacent the subject property.)

Chair Coker asked if there were any questions for staff.

Discussion followed for clarification of the request, existing structure, and the public response.

Chair Coker asked if the applicant would like to speak.

Susan Tolbert elaborated on her request.

Chair Coker asked if anyone would like to speak in favor.

No one spoke.

Chair Coker asked if anyone would like to speak in opposition.

No one spoke.

Chair Coker asked if there were any discussion or a motion.

Motion by Vice Chair Mund, seconded by Member Quidley, to approve the proposed variance to Section 3.3-2(b)(1)(iii) to allow a proposed dwelling to encroach up to 1) 10 feet into the required 15-foot corner-side setback for a maximum length of 89 feet and 2) 5 feet into the required 15-foot corner-side setback for

a maximum length of 24 feet for the foundation only with an allowance for a cantilevered structure to be able to project an additional 3 feet into the setback, in the "R-2" Single and Two-Family District, addressed at 298 W Edgewater Terrace . Motion carried (5-0-0).

(B) ZB21-0010 Hold a public hearing and consider a request for a variance to Section 3.4-17(b)(4)(v) and Section 5.3-7(i)(5) 1) to allow two proposed 42-foot-tall buildings to encroach up to 13 feet into the required 42-foot residential setback and 2) to not require the property owner to plant 10 of the 10 shade trees required to buffer between the proposed use and the common property lines shared with residential property, addressed at 548 Rusk Street. (Applicant: Nik Petrik; Case Manager: Maddison O'Kelley)

Ms. O'Kelley presented the staff report and stated the ZBA may authorize a variance from the zoning regulations only upon finding the following facts:

- 1) **That there are special circumstances or conditions affecting the land involved such that the strict application of the provisions of this Chapter would deprive the applicant of the reasonable use of land;** (The applicant states that, if the setback variance is not approved, the residential setback requirement will force the applicant to construct a dense structure (with all nine of the proposed units) at the front of the lot and leave the rear portion as a 20-car parking lot. . Staff finds that while placing the buildings in this manner might meet code, the impact of the design would be more out of scale with the adjacent residential neighborhood than would the proposed layout. As the intent of the setback requirement is to make the project blend into the scale of the residential neighborhood, staff does not believe the result of this modified layout would meet the intent of the code. The proposed layout includes buildings that have stair-stepped elevations with the portions of the buildings closest to the one-family properties at a height of 28 feet and 8-1/4 inches No hardship justification has been submitted for the requested variance from the tree requirement of the residential buffer.) **and**
- 2) **That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;** (The applicant states that by granting the variance the proposed buildings can be spaced evenly across the lot which allows them to fit better into the character of the neighborhood and existing residential uses. Additionally, the applicant states that by spacing out the townhome-style buildings across the lot and providing packing between each building, there is more adequate buffering for car noise, street sounds, and headlights; whereas if the variance is not approved, the rear end of the lot would be constructed as a parking lot and could heighten these impacts on the adjacent residences. Staff notes that the residential setback substantially restricts the buildable area of the lot however, the residential setback of 42 feet is a reflection of the overall desired building height and some relief in the setback may be provided in reducing the building height. The applicant has not demonstrated a special circumstance that prevents the planting of the minimum required residential landscape buffer trees.) **and**
- 3) **That the granting of the variance will not be detrimental to the public health, safety or welfare, or injurious to other property within the area;** (The applicant states there will be no detriment to the public's health, safety, or welfare if the variance is granted. Staff notes the subject property must comply with all other development standards intended to protect adjacent residential uses from potential nuisances such as required lighting, noise, and buffering standards.) **and**
- 4) **Granting of the variance will not have the effect of preventing the orderly use of other land within the area in accordance with the provisions of this Chapter;** (The applicant states the variance should not prevent the orderly use of other land nor set an unusual precedent. Staff states the intent of the residential setback is to preserve the property right of adjacent one- and two-family residences to use and enjoy their property. **and**
- 5) **That an undue hardship exists;** (The applicant states the location of the property in relation to the neighboring residential properties is an undue hardship because, if the variance is not approved, the setback requirements require the townhome-style buildings to be built at the front of the property, leaving the rear of the property to be used for the 20-car parking lot. The applicant further states this design creates an unappealing view for the adjacent residential property owners and exposes them to nuisances such as vehicle noise and exhaust. Staff notes the front of the property is not encumbered by the residential buffer requirements since

the adjacent land uses are non-residential and would be allowed to construct a multi-dwelling unit building at a maximum height of 60 feet when a pitched roof is used with a setback of 20 feet. The general area around the subject property is becoming a more mixed-use neighborhood, and therefore impacts to surrounding residential properties and property owners should be considered when designing the form and scale of commercial construction, or when making improvements to existing structures. Staff acknowledges the adjacent residential properties are legally non-conforming uses as residential use has been removed as an allowed use from the M-2 industrial district in 2019, and therefore the use of these properties is likely to change in the future. The applicant has not identified a hardship of the land that prevents the planting of the minimum required residential landscape buffer trees.) **and**

- 6) That the granting of a variance will be in harmony with the spirit and purpose of these regulations.** (The applicant states granting the variance will be in harmony with the spirit and purposes of these regulations and cites the zoning district for the property which allows for multifamily use. Staff notes that the upcoming Unified Development Code will examine the residential setback requirement, and propose adjustments to these standards to better accommodate the inclusion of Missing Middle housing types, in response the recommendations of the Workforce Housing Commission.

Chair Coker asked if there were any questions for staff.

Discussion followed on the Unified Development Code, existing shade trees, the alternate plan if the request is not approved, and letters in objection.

Chair Coker asked if there were any questions for the applicant.

John Robinson and Haley Serna elaborated on the intent behind the request.

Discussion followed on buildable area, interior side setback, the view from the third floor units, buffer trees, and Chevrolet Alley.

Chair Coker asked if anyone would like to speak in favor.

No one spoke.

Chair Coker asked if anyone would like to speak in opposition.

No one spoke.

Chair Coker called for a motion or discussion from the board.

Chair Coker stated he is in favor of the request.

Discussion followed on the public notice responses in objection, residential buffer wall, and height.

Motion by Chair Coker, seconded by Member Foster, to approve the proposed variance to Section 3.4-17(b)(4)(v) and Section 5.3-7(i)(5) 1) to allow two proposed 42-foot-tall buildings to encroach up to 13 feet into the required 42-foot residential setback and 2) to not require the property owner to plant 10 of the 10 shade trees required to buffer between the proposed use and the common property lines shared with residential property, addressed at 548 Rusk Street. Motion failed (2-3-0) with Member Leitch, Member Quidley, and Vice Chair Mund in opposition.

Motion by Vice Chair Mund, seconded by Chair Coker, to approve the proposed variance to Section 3.4-17(b)(4)(v) 1) to allow two proposed 42-foot-tall buildings to encroach up to 13 feet into the required 42-foot residential setback and to deny the proposed variance to Section 5.3-7(i)(5) 2) to not require the property owner to plant 10 of the 10 shade trees required to buffer between the proposed use and the common property lines shared with residential property, addressed at 548 Rusk Street. Motion carried (5-0-0).

Chair Coker called for a break at 6:58 pm.

The meeting resumed at 7:03pm.

5. STAFF REPORT

A) ZBA training

Mr. Onion, Mrs. Snell, and Ms. O'Kelley presented training on new state legislation HB 1475 that provides for additional criteria they may choose to consider to determine hardship in addition to the existing required criteria.

Member Foster requested clarification on the burden of proof.

Discussion followed on burden of proof, legal non-conforming status, demolitions, applications, previously denied applicants, appeal process, and paper copies of objections for board members.

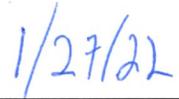
6. ADJOURNMENT

Vice Chair Mund adjourned the meeting at 7:28 pm.



A large, stylized handwritten signature in blue ink, written over a horizontal line. The signature is somewhat illegible but appears to be a cursive name.

Chair



A handwritten date in blue ink, "1/27/22", written above a horizontal line.

Date

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