

**ZONING BOARD OF ADJUSTMENT
Regular Meeting Minutes
August 25, 2021**

MEMBERS PRESENT

Vice Chair Brandon Mund
Steve Quidley
Jenny Wilson
Bonnie Leitch
David Lerch

STAFF PRESENT

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

MEMBERS ABSENT

Chair Coker

Vice Chair Mund called the meeting to order at 6:10 p.m. Roll was called, and a quorum declared.

3. APPROVAL OF MINUTES

Motion by Member Leitch, seconded by Member Quidley, to approve the minutes of the Zoning Board of Adjustment Regular Meeting of June 24, 2021. The motion carried (5-0-0).

4. STAFF REPORT

Vice Chair Mund requested item B to be considered first.

(B) ZB21-0002 Hold a public hearing and consider a request for a request for two variances to Sections 3.3-2(b)(1)(ii) and 3.3-2(b)(v) to allow a proposed dwelling to 1) encroach up to 5 feet into the required 25-foot front setback and 2) encroach up to 15 feet into the required 20-foot rear setback in the "R-2" Single and Two-Family District, addressed at 1020 Cole Ave. (Applicant: Toya Olrich; 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 current setback requirements were designed for newer developments that have lots that are more than 100' in depth and that the current setback requirements would restrict the applicant from building on 45' of buildable space on the lot. The applicant further states the hardship is the size of the lot and code required setbacks. Staff notes that the minimum depth for all lots in "R-2" is 100 feet. Although the nearly square configuration of the lot is not typical for lots in "R-2", the subject property meets the minimum lot depth (100 feet) requirement and exceeds the minimum requirements for lot width (70 feet) and area (7,000 sf) for corner lots in the district. Additionally, setback requirements are not a special circumstance of the land itself since their impact on development of the subject property is shared with other residential properties with the same zoning. The request appears to be more related to the minimum standards of the R-2 district for the neighborhood as opposed to special circumstances or conditions of the property.) **and**
- 2) That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;** (The applicant states the variances are not necessary to preserve a substantial property right of the property owner. Staff notes the substantial property right to use the property for a residential dwelling is not removed due to the rear and front setback requirements.) **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.) **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 believes the variance should not prevent orderly use of other land within the area. While the proposed building envelope reduces the existing encroachments, however, all neighboring properties will still be required to comply with zoning ordinance standards for any new construction.) **and**
- 5) **That an undue hardship exists;** (The applicant states the existing structure is in violation of all setbacks on each side of the property and that they want to improve the neighborhood. The applicant further states that, if the variances are not approved, the buildable area would require a taller, skinnier structure to be constructed that would be out of character for the neighborhood. Staff has not identified a physical hardship due to the nature of the land itself that is not shared by other residential property within the neighborhood.) **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. The applicant further states the setback adjustments will allow them to make improvements in keeping with the neighborhood than the current structure. Staff acknowledges the existing encroachments within each required setback are proposed to be reduced.)

Vice Chair Mund asked if there were any questions for staff.

Vice Chair Mund requested the applicant address the Board.

Toya Olrich elaborated on the intent of the request and provided additional information.

Vice Chair Mund asked if there were any questions for the applicant.

Vice Chair Mund opened the public hearing and asked if anyone wished to speak in favor.

Judy Young commented in favor of the request.

Brenda Chapman commented in favor of the request.

Cecil Eager commented in favor of the request.

Dan Castillo commented in favor of the request.

Carrell Miller commented in favor of the request.

Shannon McIntush commented in favor of the request.

Mike Higgins commented in favor of the request.

There being no further comment, Vice Chair Mund closed the public hearing.

Vice Chair Mund called for a motion or discussion from the Board.

Motion by Member Leitch, seconded by Member Quidley to approve the proposed two variances to Sections 3.3-2(b)(1)(ii) and 3.3-2(b)(v) to allow a proposed dwelling to 1) encroach up to 5 feet into the required 25-foot front setback and 2) encroach up to 15 feet into the required 20-foot rear setback in the "R-2" Single and Two-Family District, addressed at 1020 Cole Ave. Motion carried (5-0-0).

(A) ZB21-0001 Hold a public hearing and consider a request for a variance to section 3.3-2(b)(v) to allow an encroachment of up to 15 feet into the required 20-foot rear setback for a main structure as a result of the expansion of an existing detached structure (5-foot setback) and attaching it to the main structure in the "R-2" Single and Two-Family District, addressed at 780 Elizabeth Ave. (Applicant: Carrell Miller; 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 has limited usable area and that the infill location [of the addition] is the most aesthetic option and best use of the land. Staff acknowledges the location of the existing dwelling and detached structure on the property and the open space between them; however, the applicant has not identified a special circumstance of the land itself that necessitates connecting the two structures in order to preserve the reasonable use of land.) **and**
- 2) **That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;** (The applicant states the use of the space between the garage and the residence allows the property owner to maintain a rear yard and reasonably repair existing utility services. Staff notes the substantial property right to use for the property for residential dwelling is not removed due to the rear setback requirement. Furthermore, the majority of the rear yard of the subject property is already improved with the detached garage and driveway. The property behind the applicant's garage is not a "rear yard" but city-owned property.) **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 city-owned property along W. Torrey Street has a 30-inch water main and is not suitable for construction. The applicant further states the property owner currently maintains this city-owned property.) **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 believes the variance should not prevent orderly use of other land within the area. 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 any new construction. Furthermore, the proposed structures are required to comply with all city codes and standards required for structures built within 5 feet of a property line.) **and**
- 5) **That an undue hardship exists;** (The applicant states the infill expansion of the residence is the best use of the lot and the proposed footprint is fitting with the neighborhood. The applicant has not identified a physical hardship due to the nature of the land itself that is not shared by other residential property in the neighborhood.) **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. The applicant further states, due to the adjacent city-owned tract, the proposed addition would be setback 40 feet from the W. Torrey Street right-of-way if the variance is approved. Staff notes the intent of the rear setback requirement is for the preservation of open space on residential property.)

Vice Chair Mund asked if there were any questions for staff.

Vice Chair Mund requested the applicant address the Board.

Dan Castillo elaborated on the request.

Vice Chair Mund asked if there were any questions for the applicant.

Vice Chair Mund opened the public hearing and asked if anyone wished to speak in favor.

Judy Young commented in favor of the request.

Vice Chair Mund opened the public hearing and asked if anyone wished to speak in opposition.

No one spoke.

There being no further comment, Vice Chair Mund closed the public hearing.

Vice Chair Mund called for a motion or discussion from the Board.

Discussion followed on the city property adjacent to the rear of the subject property.

Motion by Member Quidley, seconded by Member Leitch to approve the proposed variance to section 3.3-2(b)(v) to allow an encroachment of up to 15 feet into the required 20-foot rear setback for a main structure as a result of the expansion of an existing detached structure (5-foot setback) and attaching it to the main structure in the "R-2" Single and Two-Family District, addressed at 780 Elizabeth Ave. Motion carried (5-0-0).

5. INDIVIDUAL ITEMS FOR CONSIDERATION

A) Updates regarding the Unified Development Code.

Mr. Looney presented on the Unified Development Code.

6. ADJOURNMENT

Vice Chair Mund adjourned the meeting at 7:06 pm.

Chair

Date

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