

## Legislation Details (With Text)

<b>File #:</b>	21-1233	<b>Name:</b>	
<b>Type:</b>	Report	<b>Status:</b>	Individual Item Ready
<b>File created:</b>	11/8/2021	<b>In control:</b>	Board of Adjustment
<b>On agenda:</b>	11/18/2021	<b>Final action:</b>	
<b>Title:</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.		

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Aerial Map, 2. Application, 3. Proposed Site Plan, 4. Proposed Elevations Submitted with Building Permit, 5. Exhibit of Adjacent Residential Properties, 6. Notification List and Map, 7. Sec. 3.4-17 C-O, 8. Sec. 144\_5.3. Landscaping tree preservation public trees screening fences buffering and lighting

Date	Ver.	Action By	Action	Result
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Presenter/Contact  
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### **SUBJECT:**

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.

### **BACKGROUND / RATIONALE:**

**Case #:** ZB21-0010

**Applicant:** Nik Petrik  
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The subject property is located on Rusk Street in the Rivermill area and is zoned "C-O" Commercial

Office District. Chevrolet Alley (as shown on the aerial map) is a part of the subject property and is not city right-of-way, therefore, the property is considered an interior lot with its only frontage on Rusk Street. The property is approximately 37,260 square feet in area with an approximate lot depth of 345 feet and approximate lot width of 108 feet. There are currently no improvements on the property but has several large trees.

The applicant has an approved replat to combine the four tracts into one lot and intends to construct nine dwelling units within three separate buildings resembling townhomes in scale and appearance. Because the Zoning Ordinance defines multifamily use as three dwellings or more on a single tract, the proposed use of the property (9 dwelling units) must follow the city's multifamily development standards.

The "C-O" district requires a multifamily use developed immediately adjacent to a one- or two-family use or zoning district to have a setback from the one- or two-family property line of at least 20 feet plus one foot for each foot of building height over 20 feet. Essentially the setback is to be equal to the maximum height of the building. This provision in the regulations is intended to buffer residential homes from large scale apartment complexes and commercial development; regulating development of smaller scale residential complexes or multiple units on a single lot was not the intention of this requirement. When this setback requirement was created, the standard for construction was primarily single-family homes and large apartment complexes or commercial developments. Recent recognition of the importance of allowing "Missing Middle" types of housing has resulted in the Workforce Housing Commission recommending revisions to the zoning regulations to remove obstacles to development such as the masonry wall requirement and the residential setback from being applied to smaller scale missing middle housing types such as the dwellings proposed in this project.

The subject property is adjacent to 5 single-family properties along the northern interior side property line and the rear property line. The proposed townhome-style structures are each proposed to be approximately 42 feet in height, measured from the ground to the highest point of the pitched roof, and are therefore subject to a 42-foot setback from each property line shared with residential property. With the 42-foot residential setback and the minimum interior side setback of 20 feet, the buildable area of the lot is approximately 16,528 square feet with a maximum allowable width for new structures of 41 feet. This buildable area represents only 44% of the entire lot size, meaning that the setback requirements take up over one-half of the lot area. Furthermore, the 42-foot height of the proposed structures is 7 feet taller than the maximum allowable height of 35 feet for single-family structures within the district; single-family structures taller than 20 feet in height do not have to abide by increased setbacks nor additional buffering.

The applicant is requesting a variance to allow two of the three proposed structures to encroach up to 13 feet into the required 42-foot residential setback. If the variance is approved, the structures would be set back 29 feet from the side and rear property lines shared with the residential uses. The third structure, towards the front of the property along Rusk Street, is unaffected by the residential setback requirement.

Section 144-5.4(7)(i)(5) of the Zoning Ordinance states at least one shade tree per 25 linear feet of property, or part thereof, shall be planted along the common property line shared by a non-residential or multifamily development and one- or two-family property as part of a residential buffer. There is approximately 250 linear feet of property line shared with the adjacent one-family properties, therefore, 10 shade trees are required to be planted evenly spaced along the side and rear property

lines where the residential buffer is required. The applicant is requesting a variance to waive the minimum residential landscaping buffering requirements and to not plant 10 of the 10 required shade trees.

Additionally, the subject property must also comply with the tree preservation requirements requiring replacement of at least 50% of any protected or heritage trees removed from the site.

Section 2.2-3(a) of the Zoning Ordinance states the ZBA may authorize a variance from the zoning regulations only upon finding all of 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**

**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.

Per Section 2.2-3 of the Zoning Ordinance, a variance shall not be granted to relieve a self-created or personal hardship, nor based solely on economic gain or loss, nor shall it permit any person the privilege in developing a parcel of land not permitted by Chapter 144 to other parcels of land in the particular zoning district. No variance may be granted which results in undue hardship upon another parcel of land.

#### **GENERAL INFORMATION:**

##### **Size:**

Approximately 37,260 square feet  
345 feet in depth  
108 feet in width

##### **Variance Request Due to Notice of Violation:**

No

##### **Surrounding Zoning**

North - M-2/ Single-family dwellings  
South - Across Rusk Street, M-2 / Old Mill property  
East - M-2 / Antique storage and warehouse  
West - M-2/ Parking lot and single-family dwellings

##### **Notification**

Public hearing notices were sent to 16 owners of property within 200 feet. Staff has not received any responses in favor or in objection.

**Attachments:**

1. Aerial Map
2. Application
3. Proposed Site Plan
4. Proposed Elevations Submitted with Building Permit
5. Exhibit of Adjacent Residential Properties
6. Notification Packet
7. Sec. 3.4-17 Commercial Office District Zoning Ordinance
8. Section 144-5.4(7) Additional Landscaping Requirements