

## Legislation Text

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File #: 21-777, Version: 1

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Presenter/Contact  
*Applicant: Carrell Miller*  
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**SUBJECT:**

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 the main structure in the "R-2" Single and Two-Family District, addressed at 780 Elizabeth Avenue.

**BACKGROUND / RATIONALE:**

**Case #:** ZB21-0001

**Applicant:** Carrell Miller  
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**Staff Contact:** Maddison O'Kelley  
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The subject property is located within the Landa Park Estates neighborhood at the corner of Elizabeth Avenue and Country Club Circle and is zoned "R-2" Single and Two-Family District. The property is approximately 105 feet deep and 87 feet wide, totaling 8,925 square feet in area. The property line fronting Country Club Circle is considered the front property line and the property line along Elizabeth Avenue is considered the corner side property line. The required setbacks of the "R-2" district create a buildable area that is 67 feet wide by 60 feet deep (4,020 square feet in area). The rear property line of the property is adjacent to a 35' wide city-owned lot that is currently undeveloped.

The existing property improvements include a 1,589 square foot single-family dwelling built in 1982 and a detached garage in the rear yard that is approximately 525 square feet in area. The detached garage is currently set back 5 feet from the rear property line. Accessory structures are authorized to be set back 3 feet from rear property lines.

The applicant is proposing to construct a 550 square foot addition that would connect the existing dwelling and existing detached garage together creating one structure. This one structure would be subject to the setback requirements for main structures in the "R-2" district. Main structures are required to maintain a minimum setback of 20 feet from the rear property line. The resulting new main structure will have the existing detached garage and a 7' wide portion of the new addition, encroach up to 15 feet into the required 20-foot rear setback.

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 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.)

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:**

8,925 square feet in area

105 feet in depth

85 feet in width

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

No

**Surrounding Zoning and Land Use:**

North - Across Country Club Circle R-2 / Single Family Dwellings

South - R-2 / Vacant

East - R-2 / Single Family Dwellings

West - Across Elizabeth Avenue, R-2/ City Golf Course

**Notification**

Public hearing notices were sent to 11 owners of property within 200 feet. Staff has received one response in favor and none in objection.

**Attachments:**

1. Aerial Map
2. Application
3. Site Plan with Proposed Improvements
4. Pictures of Subject Property
5. Notification Packet and Responses
6. Sec. 3.3-2 "R-2" Single Family and Two-Family District
7. Sec. 5.4 Accessory uses and structures