

## Legislation Text

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**File #:** 22-1117, **Version:** 1

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**PRESENTER:**

Owner/Applicant: Ted Garland

Agent: James Ingalls, Ink Civil

**SUBJECT:**

ZB22-0015 Hold a public hearing and consider a request for a variance to Section 3.3-11(b)(4) to allow a proposed main structure to encroach up to 8 feet into the required 20-foot rear setback, resulting in a 12-foot rear setback, addressed at 1225 Rivertree Drive.

**BACKGROUND / RATIONALE:****Case #:** ZB22-0015

**Owner/Applicant:** Ted Garland  
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The subject property is located on the southwest corner of the intersection of State Highway 46 and Rivertree Drive. The subject property is approximately 24,300 square feet in area with a lot depth of 180 feet and a lot width of approximately 130 feet. The buildable area of the lot, within the required setbacks in “M-1”, is approximately 18,700 square feet. There is an existing 1,980 square foot commercial building on the property that was constructed in 2004.

The applicant is proposing to demolish the existing structure and build a new commercial building that will encroach up to 8 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 special circumstance affecting the land itself is that the commercial use on ‘M-1’ subject property abuts an amenity center for a subdivision in the rear. The

applicant states most zoning districts that abut residential uses are abutting the rear or side of a home or residence. Staff acknowledges the rear of the subject property abuts a non-residential use (amenity center). Staff notes the subject property is currently developed in compliance with the setback requirements for the district. All the city's commercial zoning districts, with the exception of 'C-2', require a 20-foot rear setback regardless of the adjacent property use and zoning district and parking lots are not subject to building setbacks.) **and**

- 2) **That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;** (The applicant states the approval of the variance would allow the property to be sold to Auto Zone. Staff notes that all 258 uses currently allowed in the 'M-1' zoning district are required to comply with the district setbacks.) **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 will not be detrimental to the public health, safety or welfare, or injurious to other property within the area. Staff acknowledges the impact to the surrounding area is likely minimal.) **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 orderly use of other land within the area. Staff notes with the redevelopment of the subject property, a minimum 6-foot-tall residential masonry buffer wall and landscaping is required by code to be constructed by the applicant along the rear property line in accordance with Sec. 144-5.3-1(7)(i)5 & Sec. 144-5.3-2(h).) **and**
- 5) **That an undue hardship exists;** (The applicant states that an undue hardship does not exist. Staff has not identified an undue hardship of the land itself that affects the buildable area of 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 City's regulations. Staff notes the intent of the rear setback requirement is to minimize negative impacts on adjacent 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:**

Lot area: 24,300 square feet

Lot depth: 180 feet

Lot width: 130 feet

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

No

#### **Surrounding Zoning and Land Use:**

North - Across State Hwy 46, C-3 / Vehicle towing services

South - R-2A / Neighborhood amenity center

East - Across Rivertree Drive, M-1 / Auto repair and auto body repair

West - M-1 / Vacant commercial/warehouse building

**Notification**

Public hearing notices were sent to 12 owners of property within 200 feet. To date, staff has received no responses in favor or in objection.