

**TO: Board of Adjustment**

**Item Number: 1**

**FROM: Planning Department Staff**

**DATE:** Tuesday, November 3, 2015.

**SUBJECT:** **Petition BA-15-13 VAR.** Beth A. Jenkins, agent for Virginia Pearson, owner. Request for a variance in accordance with Sec. 30-354(d)(3) of the Land Development Code to reduce the north street side setback from 10 feet to 9.8 feet to allow an existing structure to remain in place. Zoned: RSF-2 (4.6 units/acre single-family residential district). Located at 3015 NE 17th Terrace.

### **Background**

The subject property is located in the northeast part of the City, just west of Waldo Road. The area is bounded by NE 15<sup>th</sup> Street to the west, NE 23<sup>rd</sup> Avenue to the south and NE 31<sup>st</sup> Avenue to the north. Located in the northwest quadrant of the area is a small residential section which is surrounded on the south and east by the Northeast Industrial Park. The parcel which is the subject of this variance is located at the southeast corner of NE 31<sup>st</sup> Avenue and NE 17<sup>th</sup> Terrace.

The parcel is a corner lot with a typical rectangular shape and comparable to most of the lots within the neighborhood. It is approximately 11,325 square feet and contains a single-family dwelling and a shed totaling approximately 2,088 square feet. The property is zoned RSF-2, which has a required street side setback of 10 feet. The single-family dwelling located on the property was constructed in 1970 comprising approximately 1058 square feet. In 1996, the owner applied for an "owner/contractor" permit to remodel the dwelling unit and to expand the existing garage into a two-car garage along the north side. A permit was issued and the work received a final approval on October 23, 1996. Due to the garage expansion, there is a small encroachment of three (3) inches into the setback, leaving a setback of approximately 9' 9". All other setbacks are in compliance with the zoning standards.

### **Explanation:**

Recently the owner attempted to sell the property and discovered that the garage encroaches about 3 inches into the north, street side setback. Due to this encroachment, the buyer has requested resolution of the encumbrance prior to executing sale of the property. The owner is therefore requesting a variance to reduce the north street side setback from 10 feet to 9.8 feet to allow the existing garage to remain in place.

**Table 1**  
**Dimensional Requirements for the RSF-2 (Single-family Residential) Zoning District.**

	RSF-1	<b>RSF-2</b>	RSF-3	RSF-4
Maximum density	3.5 du/a	<b>4.6 du/a</b>	5.8 du/a	8 du/a
Minimum lot area	8,500 sq. ft.	<b>7,500 sq. ft.</b>	6,000 sq. ft.	4,300 sq. ft.
Minimum lot width at minimum front yard setback	85 ft.	<b>75 ft.</b>	60 ft.	50 ft.
Minimum lot depth	90 ft.	<b>90 ft.</b>	90 ft.	80 ft.
Minimum yard setbacks:				
Front	20 ft.	<b>20 ft.</b>	20 ft.	20 ft.
Side (interior)	7.5 ft.	<b>7.5 ft.</b>	7.5 ft.	7.5 ft.
Side (street)	10 ft.	<b>10 ft.</b>	7.5 ft.	7.5 ft.
Rear	20 ft.	<b>20 ft.</b>	15 ft.	10 ft.
Maximum building height	35 ft.	<b>35 ft.</b>	35 ft.	35 ft.

**Analysis of request:**

Staff has reviewed this petition in the context of Section 30-354(d) (3), Sec. 30-Sec.30-51 and of the Land Development Code. Those sections of the code set development standards, define a variance and authorize the Board of Adjustment to grant variances from certain provisions of the code. It places restrictions on granting these variances, and outlines the general requirement for granting a variance. This request to reduce the street side yard setback, classifies as a type of variance that may be authorized by the Board of Adjustment.

**Staff identifies the following key issues as directly related to the requested variance:**

1. The subject property was first developed with full compliance with the standards of the Land Development Code
2. The area of encroachment coincides with the last building expansion of the property.
3. The property is a corner lot and is comparable in shape and size with most of the lots within the neighborhood.
4. There are no residential developments adjacent to the side of the encroachment.
5. The area on the opposite side of the setback encroachment contains a City park and undeveloped forested areas.

November 3, 2015

In considering a request for a variance, the code requires that the board establish findings that the request demonstrates the following:

- 1. That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same district.***

Staff could not find any conditions or circumstances peculiar to the land, structure or building on the property. There appears to be no overriding conditions that can be attributed to the need for an encroachment into the street-side setback. Information in the application and from City records seems to indicate that the applicant applied for a building permit as an “owner/contractor”, the permit was issued and granted final approval. The record is not clear on whether or not a final inspection was conducted.

- 2. That literal enforcement of the provisions of the Land Development Code or building chapters would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of the Land Development Code or Building code.***

Strict application of the zoning code will not deprive the applicant of rights commonly enjoyed by other property owners. Denial of the variance would result in continued use of the property as a single family dwelling. However, since the property is under contract for sale subject to resolving the encroachment, denial of the variance may affect the contract for sale.

- 3. That the special conditions and circumstances do not result from the action of the applicant.***

The action to construct the garage expansion along the street side of the property is a direct result of the actions of the applicant. The fact that the applicant applied for a permit and was

granted approval, raises questions about the City’s responsibility in ensuring that full compliance prior to granting final approval. Nonetheless, the application was submitted by the property owner as an “Owner/Contractor” and the record is not clear on whether a final inspection was requested or conducted.

- 4. That granting the variance requested will not confer on the applicant any special privilege that is denied by this section to other lands, structures or buildings in the same district.***

Granting the variance request based on findings of fact will not confer upon the applicant any special privileges that are denied to other land, structures, or buildings in the same district. In reaching a decision on the requested variance, the board must consider the material facts and competent substantial evidence presented. The applicant has provided documentation illustrating reasons for the request which must be considered in reaching a decision. A variance based on the listed criteria establishes a sound basis for deviating from the zoning standards and is not considered a special privilege.

- 5. The evidence presented justifies the granting of the variance and that the variance is the minimum variance that will make possible the reasonable use of the land, building or structure.***

The applicant has provided documentation addressing the findings of fact necessary to grant a variance. The evidence demonstrates the history of the existing building relative to the required setbacks and co-existence

November 3, 2015

with surrounding developments. The drawings show the existing layout and alignment of the building in relationship to the lot lines. The evidence also indicates the relationship of the encroachment to surrounding development and that the side of the encroachment contains no development that would be impacted by a 2 inch encroachment. The requested variance is also the minimum that would allow the pending contract for purchase to be completed.

***6. Granting of the variance will be in harmony with the general intent and purpose of the zoning or building chapters and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.***

The intent of the variance procedure is to provide relief to property owners who have demonstrated hardships in pursuing development in strict compliance with the Land Development regulations. To this end, the intent of the code is to establish reasonable separation between buildings and to allow for a certain degree of outdoor space consistent with the specific neighborhood. Those factors relate to the overall character of the neighborhood, the pattern of developments in the area, neighborhood types, lifestyle, and cultural and socioeconomic factors. In the case of a street side setback, the intent of a larger setback is to create a harmonious relationship between residential uses and street activities. Given the very small encroachment, absence of immediately adjacent residential developments, the width of the adjacent street and the City Park across the street, it seems reasonable to conclude that granting the variance will not be injurious to the neighborhood. It is also reasonable to factor-in the historical existence of the situation, since 1996, with no noticeable community complaints or negative impacts.

The petitioner must demonstrate compliance with the findings necessary to issue a variance and show restricting hardships.

**Respectfully Submitted:**

**Signature:**

A handwritten signature in blue ink, appearing to read "L. Adams", is written over a horizontal line.

**Title: Lead Planner**

**Date:** Thursday October 28, 2015.

**LDC: ldc**

**Attachment:**

**Attachment A: Application and Supporting Documents.**

**Attachment B: Some Relevant Land Development Code References.**

**Attachment C: Building Division Records.**