

TO: Board of Adjustment

Item Number: 1

FROM: Planning Department Staff

DATE: Tuesday, March 7, 2017.

SUBJECT: Petition BA-17-04 VAR. William Bernhardt, agent for Contrax Furnishings Inc., owners. Requesting a variance in accordance with Sec.30-354(d) (3) and Sec.30-65(c) of the Land Development Code to allow reduction of the east, side setback from 12.25 feet to 8.6 feet for construction of a flight of emergency stairs related to the occupancy of the second floor of an existing building. Zoned MU-2 (8 - 75 units/acre Urban Mixed Use 1). Located at 690 NE 23rd Avenue.

Background

The subject property is located in the northeast quadrant of the City along the north side of NE 23rd Avenue. The general area is bounded by North Main Street to the west, NE 28th Avenue to the north, NE 9th Street to the east and NE 23rd Avenue to the south. This entire block is comprised of commercial uses on the west and residential uses on the east side with most of the development fronting North Main and NE 23rd Avenue. The eastern edge of the subject parcel forms a common boundary with the eastern residential section. The subject property is approximately 2.76 acres and stretches northward from NE 23rd Avenue towards NE 28th Avenue. The property is relatively narrow, 166 feet wide and 725 feet deep reflecting the typical pattern of large narrow lots fronting the two major roadways.

The subject parcel is improved with a large two-story commercial building which was constructed in 1973 and fronts NE 23rd Avenue. The remaining unimproved portions of the parcel contain wetlands and environmentally sensitive habitats. The property is zoned MU-2, which is subject to development standards as depicted in the code reference below.

Code Reference: Sec. 30-65(c) Development Standards for the MU-2 Zoning District.

(c) *Requirements for developments of less than 50,000 square feet.*

(1) Yard setbacks.

- a. Front: The maximum setback shall be the average setback of existing development in the same face block face; however, when there is no existing development in the same block face, the setback shall be between 15 and 80 feet.
- b. Where the side or rear yard abuts property which is in a residential zoning district or is shown for residential use on the future land use map of the comprehensive plan, the minimum setback shall be 25 feet or the distance created by the 45-degree angle of light obstruction, whichever is greater. If MU-2 zoning abuts a single-family residential zoning district, then the residential portion of the mixed-use development shall be limited to RMF-7 in the area within 100 feet of the property line, plus the required buffers for the single-family residential zoning district. In addition, the multi-family development shall comply with all the regulations in the RMF-7 district and the requirements of section 30-56.

(2) Maximum building height: Five stories.

(3) Maximum lot coverage: 50 percent.

- (4) Access: Access shall be designed to integrate all aspects of the development and shall meet all requirements of article IX and Chapter 23. Driveways shall be coordinated or shared insofar

Explanation:

The two-story building has existed for many years and the owners have decided to convert some of the second floor storage to office use. Per the Building Code, such occupancy requires a second means of egress from the space. Due to architectural layout and configuration of the building, the applicant indicates that the most efficient location for the exit stairs is on the east side. However, due to the limited space on the east side, the stairs will encroach into the side setback. Based on the development standards for the MU-2 zoning district, the side setback is a 45 degree angle of light or 25 feet, whichever is the greater. Currently the distance between the east building wall and the east property line is approximately 12.2 feet. The existing building is therefore within the required setback. Due to a lack of alternatives, the applicant is therefore requesting a reduction of the east side setback from 25 feet to 8.6 feet to allow construction of stairs to serve as a second means of egress to enable use of the second floor as offices.

Analysis of request:

Staff has reviewed this petition in the context of Section 30-354(d) (3), and Sec. 30-65(c) 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 is classified 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 is adjacent to residential development along the east side.
2. There is a mature line of trees along both the east and west property boundaries providing a useful screening function.
3. The need for the egress stairs and the encroachment into the east side setback is due to a proposal to convert an existing second floor from a storage use to office use.
4. Although there is enough space on the west side to accommodate stairs without encroachment into the setback, the stairs on the east side offer the shortest exit route from the second floor occupancy.
5. The area on the east side proposed for the stairs is very narrow, contains a number of mechanical equipment and is confined by the eastern line of trees along the property line and the east wall of the building.
6. The area of encroachment affects no functional space that would neither negatively impact the operation of the existing use on site, nor negatively impact the adjacent residential development.
7. The relationship between the subject property and the adjacent residential has a history of compatible coexistence.

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.*

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The parcel on which the structure is located is significantly larger than what is typically required for such uses within the zoning district. The property is relatively narrow, 166 feet wide, resulting in significantly less functional space to accommodate and operate such a use. Given the acreage of the subject parcel, 2.76 acres, it can easily accommodate all buildings, accessory structures and all required ingress/egress requirements; however, the width creates a significant hardship. Another unique aspect of the development is that it exists and has maintained the spatial separation for a long time without negative impacts on the adjacent residential development.

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 development rights commonly enjoyed by other property owners. The development exists and contains operable square footage but is limited in its function and efficiency by limiting the use of the second floor to storage. Given the size of the overall parcel, 2.76 acres, the narrow width places a significant burden on full use of such a parcel. Additionally, considering the history of the relationship with the adjoining development, the degree of structural encroachment into the east side setback and the functional impact of the stairs; it would appear that a literal enforcement of the setback comes close to depriving the applicant of typical property rights.

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

The unique aspects of the development are not directly due to the actions of the applicant but the action to expand the existing development as proposed is directly due to the actions of the applicant.

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 at the meeting. The applicant has provided documentation illustrating reasons for the requested variance and the circumstances resulting in the need for such a variance. 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 certain key factors such as the shape and placement of the existing stairs relative to the east property boundary. The main reason for the stairs is based on the conversion of existing second floor storage areas to offices which must comply with the Building Code standards. This raises the question of whether the use conversion is necessary and is justified by the overall community benefits of having a 12-foot encroachment into the adjacent setback. Evidence is provided indicating the architectural elements and floor plan that forces the expansion in the proposed location. The applicant has also demonstrated that alternative locations for meeting the Building Code standards have been investigated but those would not meet the

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maximum distance required for placement of an egress point. When one considers the size of the proposed encroachment and the history of the existing relationship with the adjacent residential, one is forced to weigh the positive and negative aspects of granting or denying the variance. The data provided does not clearly identify that the requested variance is the minimum necessary to make possible reasonable use of the property.

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. In some cases, the standards established by one set of criteria forces the need to comply with other limiting standards. In this case, the need for a second means of egress is forcing the placement of a set of stairs on the east side of the building, thus violating the side setback standards. 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. This petition focuses on a proposal to make more efficient use of an existing building by converting storage use to functional office space. The proposed encroachment into the east side setback will not create a significant building expansion into an adjacent setback. The building is approximately 216 feet long and the length of intrusion into the corresponding side is approximately 14 feet, which can be considered as inconsequential. In terms of size, it is equivalent to space occupied by two trees.

Once it is determined that the request is reasonably consistent with the criteria necessary for granting the reduced setback, strong emphasis must be placed on whether the reduced setback will be injurious to the neighborhood? It appears that the development has been successful and has coexisted in a harmonious manner both internally among dwellings and externally with surrounding developments. Granting a reduction in the side setback is not expected to create significantly negative impacts to either the operation of the existing use or the adjacent residential development.

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

Respectfully Submitted:



Signature:

Title: Lead Planner

Date: Thursday March 2, 2017.

LDC: ldc

Attachment:

Attachment A: Application and Supporting Documents.