**TO: Board of Adjustment****Item Number: 1****FROM: Planning Department Staff****DATE: Tuesday, July 11, 2017.**

SUBJECT: 1. **Petition BA-17-05 VAR. Monica Garza, 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 west, side setback from 7.5 feet to 7.4 feet and the north, rear yard setback from 20 feet to 17.3 feet to allow an existing single-family dwelling to remain as constructed. Zoned RSF-1 (Single-family Residential, 3.5 du/a). Located at 4186 NW 37th Terrace.

Background

The subject property is located in the northwest quadrant of the City within an established residential area. It is more specifically located in an area west of NW 34th Street and north of NW 39th Avenue within a subdivision called Breckenridge. The subject lot within the subdivision is at the end of a cul-de-sac on the north edge of the subdivision. The lot has a trapezoidal shape with the narrowest width along the edge of the cul-de-sac and the widest part on the north side forming a common boundary with the Capri subdivision. The lot is improved with a single-family dwelling and other accessory structures positioned towards the rear of the lot. The property is zoned RSF-1 with development standards as depicted in Table 1 below. Breckenridge is also a Cluster Subdivision which was approved with setbacks less than the basic requirements of the RSF-1 but many of the lots were plated with a 20-foot rear setback to match compatibility with the adjacent subdivisions.

Explanation:

The owner stated that she hired a contractor to build a single-family dwelling which was permitted, inspected and a Certificate of Occupancy was issued through the City of Gainesville. When she attempted to sell the property, a survey by the buyer determined that there was an encroachment into the north, rear 20-foot setback and the west side setback; those encroachments resulted in a loss of the sale. In order to remedy the situation, the owner is requesting a variance to allow the single-family dwelling to remain in place by reducing west, side setback from 7.5 feet to 7.4 feet and the north, rear setbacks from 20 feet to a minimum of 17.3 feet.

Analysis of request:

Staff has reviewed this petition in the context of Section 30-354(d) (3), and Sec. 30-51(e) 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. Those sections of the code place restrictions on granting variances and outline the general requirement for granting a variance. The request to reduce the side and rear yard setbacks is classified as variances that may be authorized by the Board of Adjustment.

TABLE 1. DIMENSIONAL REQUIREMENTS FOR RSF DISTRICTS

Principal Structures

STANDARDS	RSF-1	Breckenridge	Breckenridge Built	Capri Adjacent Subdivision
Maximum density	3.5 du/a	3.5 du/a		3.5 du/a
Minimum lot area	8,500 sq. ft.	8,500 sq. ft.		8,500 sq. ft.
Minimum lot width at minimum front yard setback	85 ft.	85 ft.		85 ft.
Minimum lot depth	90 ft.	90 ft.		90 ft.
Minimum yard setbacks:				
Front	20 ft.	15ft.	15 ft.	15 ft.
Side (interior)	7.5 ft.	7.5 ft.	7.5 ft.	5 ft.
Side (street)	10 ft.	10 ft.	7.5 ft.	10 ft.
Rear	20 ft.	10 ft.	20 ft.	10 ft.
Maximum building height	35 ft.	35 ft.	35 ft.	35 ft.

Accessory Structures ¹, Excluding Fences and Walls

Minimum front and side yard setbacks	Same requirements are for the principal structure.
Minimum yard setback, rear ²	7.5 ft.
Maximum building height	25 ft.
Transmitter towers ³	80 ft.

¹ Accessory screened enclosure structures whether or not attached to the principal structure may be erected in the rear yard as long as the enclosure has a minimum yard setback of three feet from the rear property

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line. The maximum height of the enclosure at the setback line shall not exceed eight feet. The roof and all sides of the enclosure not attached to the principal structure must be made of screening material.

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

1. The subject property is in a residential development which was approved as a cluster subdivision with reduced setback.
2. The subject property is adjacent to another residential subdivision which was also approved as a cluster subdivision with reduced setback.
3. The development was permitted, inspected and a Certificate of Occupancy was issued.
4. The lot is on a cul-de-sac and has a unique shape.
5. The area of encroachment affects no functional space that would impact activities on the existing and adjacent sites.
6. The site and the adjacent neighborhood has a history of 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.***

The parcel on which the structure is located is not like most of the other lots within the subdivision. It has a trapezoidal shape with the narrowest boundary as the front along the cul-de-sac. That shape of the lot forces the placement of a structure away from the front and closer to the rear in order to maintain the setback limitations; this was the experience of the property owner during construction and may have been the cause of the minor encroachment. The home owner also claimed that professionals were hired to build the single-family dwelling and a high degree of confidence was exercised in getting it done correctly. The owner also stated that a high degree of trust and confidence was also placed in the City by obtaining the necessary permits to construct the dwelling and that any deficiencies should have been brought to her attention as the owner. She was unaware that there were any limitations or deficiencies until she attempted to sell her house to a third party. Another unique aspect of the development is that the encroachment exists since completion of the project in 2014 and the spatial separation with the adjacent properties has been maintained for a long time without negative impacts on those properties.

- 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.***

Since construction of the single-family dwelling, the owner has enjoyed all of the rights commonly enjoyed by other properties in the same district under the terms of the Land Development Code or Building code. However, one of the rights commonly enjoyed by property owners is the ability to sell the property at market value. Strict application and literal enforcement of the provisions of the Land Development Code or Building Chapters has and will deprive the applicant of that right to market the property in the same manner as enjoyed by other property owners.

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

A property owner is ultimately responsible for incidents, actions and transactions occurring on a property; the owner alleges that all the necessary measures were implemented to avoid such violations. It appears that the contractor as well as the City contributed to the situation.

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 existence of the building since it was permitted in late 2013; final inspections and permit; the relationship of the building to the required setbacks; and photos of the site with the improved single-family dwelling. The main reason for the requested variance is to remove encumbrances and setback encroachments on the property to allow a clear title that would facilitate sale of the property. The setback violations can be resolved through a variance, by shifting the house, or by removing the parts of the dwelling which are encroaching into the setbacks; the latter two are relatively significant undertakings and are not typically applied unless there was clear evidence of negligence. On the other hand, a variance seems to be designed and intended for such hardships. When one considers the size of the encroachment, 0.1 foot on the west side setback; 2.7 feet on the north, rear setback; and the history of the existing relationship with the adjacent residential; one is likely to attribute greater weight to the flexibility, practicality and positive benefits of granting a variance for such de minimis encroachments. The data provided clearly illustrates 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 without being injurious and creating disharmony within the neighborhood. The very nature and characteristics of the Brackenridge and Capri subdivisions reflects the kind of setback encroachments expected in both neighborhoods. When lots have varying sizes, shape and orientation the standards established by one set of criteria often result in difficulties in complying with some of the other development standards. In this case, the need for compliance with the front setback on a trapezoidal

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shaped lot, forces placement of the building towards the rear with the potential of violating the rear and side setback standards. Another unique aspect of both neighborhoods is that the typical setbacks of the RSF-1 zoning district were modified through the Cluster Subdivision process allowing some lots to enjoy a 10 foot rear setback but others like the subject property must comply with a 20 foot rear setback; those variations sometimes lead to misunderstanding in application of the standards.

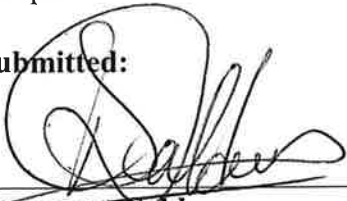
The intent of the code is to establish reasonable separation between buildings and to allow for a certain degree of outdoor space consistent with the specific neighborhood. Those factors relate to the overall character of the neighborhood, the pattern of developments in the area, neighborhood types, lifestyle, and cultural and socioeconomic factors. The existing encroachments into the east side and north rear setbacks will not create a significant building expansion into the relevant adjacent setback. The requested setback encroachment is therefore reasonably consistent with the criteria necessary for granting the reduced setback. However, 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 and rear setbacks is not expected to create significant 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:

Name:


Lawrence Calderon

Title:

Lead Planner

Date: Friday July 7, 2017.

LDC: ldc

Attachments:

Attachment A: Application and Supporting Documents.

Attachment B: Some Relevant Land Development Code References

Attachment C: Technical Review Committee Comments Conditions and Recommendations

Attachment D: Images of Subject Property Showing Requested Setback Modifications