



Board of Adjustment Variance Staff Report Hearing Date: May 16, 2019

ITEM # 1 Lisa and David Clark request a variance to the side yard setback from 10' to 7'2" for an addition to the home located at 1460 N Cherry Lane in the R1.8 Zone. Wasatch Neighborhood. PLVAR20190099

<p>Applicant: Lisa and David Clark</p> <p>Staff Coordinator: Dustin Wright</p> <p>Property Owner: Lisa and David Clark Parcel ID#: 490570036 Acreage: 0.30 Number of Properties: 1 Number of Lots: 1</p> <p><u>ALTERNATIVE ACTIONS</u></p> <p>1. Continue to a future date to obtain additional information or to further consider information presented. <i>The next available meeting date is June 20, 2019 5:00 p.m.</i></p> <p>2. Deny the requested variance. <i>This action <u>would not be consistent with the recommendations of the Staff Report.</u> The Board of Adjustment should <u>state new findings.</u></i></p>	<p>Current Legal Use: Single-family home.</p> <p>Relevant History: Applicant has requested to build an addition to the home and was informed that the addition encroaches into the side yard setback.</p> <p>Neighborhood Issues: No issues have been made know to staff at the time of this report.</p> <p>Summary of Key Issues: The required setbacks of the zone would be encroached upon by an addition to the home.</p> <p>Staff Recommendation: <u>Approve</u> the requested variance to allow a side yard setback reduction from 10' to 7'2" to allow for an addition to the home located at 1460 N Cherry Lane.</p>
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OVERVIEW

The applicants would like to build an addition on the back of their home. The proposed addition would have a small portion encroach into the required setback of the side yard, approximately three feet.

An existing corner of the home is located within five feet of the property line making the structure nonconforming, meaning that it doesn't meet the current standards of the Code. The Code provides a provision that allows nonconforming structures to expand along the nonconforming building line to ½ the length of the existing building.

Since this home is not oriented parallel to the lot line, only the corner of the home is located in the setback. Extending the nonconformity 1/2 of this small area would not provide enough area for the proposed addition. Had the property line ran parallel to the side of the home then the provision in 14.36.050(3) would have provided enough relief for the applicant to do the addition without needing a variance.

The proposed addition is on a corner lot and will follow the natural retaining wall and will be perpendicular to the property line. The addition will be tucked away from road views and will be lower in elevation than the adjoining lot.

FINDINGS OF FACT

1. The home is located in the R1.8 zone;
2. 14.36.050(3) of the Provo Code allows expansion of existing one-family dwellings into yard setbacks up to three feet of the property line;
3. This request would not encroach more than five feet on one end and three feet on the other;
4. This lot has a lower elevation than the adjacent lot;
5. There are unique circumstances associated with the subject property in terms of the shape of the lot and the topography of the lot in relation to the adjacent property.

ANALYSIS

1. Section 14.05.030(9), Variances, paragraph (b) of the Provo Municipal Code states that the Board of Adjustment may grant variances if the following criteria are met: **(Staff responses in bold)**
 - (i) Literal enforcement of this Title would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of this Title; **The enforcement of the Title would require moving the proposed addition to another location that could make it impractical due to the layout of the home.**
 - (ii) There are special circumstances attached to the property that do not generally apply to other properties in the same district; **The odd shape and topography of the lot make an addition to the existing home difficult. The proposed addition follows the angle of the lot line.**

- (iii) Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district; **The rear yard of this lot narrows towards the rear property line. This limits the amount of buildable area that many other lots in this area have available.**
- (iv) The variance will not substantially affect the general plan and will not be contrary to the public interest; and **allowing this variance will not affect the General Plan.**
- (v) The spirit of this Title is observed and substantial justice done. **The addition will be tucked away from road views and will be lower in elevation than the neighboring lot. It will allow the applicant to better utilize space on this irregular lot.**

APPLICABLE ZONING CODES

14.36.050(3) Expansion and Enlargement. Any expansion of a noncomplying structure that increases the degree of nonconformance is prohibited except as provided in this Subsection or as may be required by law. An existing one-family dwelling which is nonconforming as to height, area, or yard regulations may be added to or enlarged if the addition or enlargement conforms with applicable requirements of this Title. Provided, however, that such a dwelling which is nonconforming as to side yard requirements but having a minimum side yard of not less than three (3) feet, may be extended along the nonconforming building line to the extent of one-half (1/2) the length of the existing dwelling if such extension is for the purpose of enlarging and maintaining the existing dwelling unit in the structure, and provided such enlargement conforms to all other regulations of the zone in which the dwelling is located.

CONCLUSIONS

Staff finds that the proposed request for a variance would allow the applicant to construct an addition on the back of the home that would follow the contours of the lot and align with the property line. The impact of the request would be very minimal and be the least obtrusive solution to provide relief from the hardships created by the irregular lot and topography.

JUDICIAL APPEAL OF BOARD OF ADJUSTMENT ACTION

Chapter 14.05 provides a process for appeal of a determination by the Board of Adjustment (quoted in part):

04.05.050. Judicial Appeal.

- (i) Any person aggrieved by or affected by any decision of the Board of Adjustment may have and maintain a plenary action for relief from the District Court of competent jurisdiction, provided petition for such relief is presented to the court within thirty (30) days after the filing of such decision in the office of the Board of Adjustment or with the City Recorder.

ATTACHMENTS

