

**MINUTES OF
PLANNING COMMISSION
November 4, 2020
6:00 PM**

The meeting was called to order at 6:05 pm by Chair Fiorendino.

Commission Members present- Novitsky, Hoiium, Kaiser, Vargas, and Fiorendino.
Commission Members absent- Schill, Sahnaw

Also present were, Elizabeth Hammond (City Planner), Christy Bennett (Secretary), and Connie Buesgens (Council Liaison).

APPROVAL OF MINUTES

*Motion by Hoiium, seconded by Novitsky, to approve the minutes from the meeting of September 1, 2020.
All ayes. MOTION PASSED.*

PUBLIC HEARINGS

CASE NUMBER: 2020-1101
TO: Planning Commission
APPLICANT: Ivan Barbecho
LOCATION: 1329 41st Ave NE (PID 36-30-24-24-0114)
REQUEST: Variance to side yard setback and minimum width standard

INTRODUCTION

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Hammond said that Ivan Barbecho is requesting a Variance for a proposed accessory structure to be located at 1329 41 St Ave NE. The application and narrative are attached for your consideration. The applicant seeks the following:

1. Variance to allow the accessory structure to be 19.95 feet wide. City Code Section 9.106 (C) (1) (m) requires that "Accessory structures shall be no less than 20 by 20 in size"
2. Variance to allow the garage to be within 0 feet from the property line. City code section 9.109 (C) requires that the minimum required setback is 5 feet (based on the R2A district standards).

ZONING ORDINANCE

Hammond said the property is located in the R2A One and Two Family Residential Zoning District, as are the properties to the east and west and south. Properties to the north are located in the R-2B Built as Duplex District. The use of the property as a residential home complies with the Zoning Code.

COMPREHENSIVE PLAN

Hammond said the Comprehensive Plan guides this area for residential development. The proposed garage is consistent with the goals and intent of the Comprehensive Plan.

DESIGN GUIDELINES

Hammond said this property is not located in a Design Guidelines District.

SITE PLAN

Hammond said the applicant has submitted a Certificate of Survey and site pictures, illustrating the proposed location of the garage and relation to the adjacent property lines.

FINDINGS OF FACT

Hammond said the City Council shall make each of the following findings before granting a variance from the provisions of this article:

- (a) Because of the particular physical surroundings, or the shape, configuration, topography, or other conditions of the specific parcel of land involved, strict adherence to the provisions of this article would cause practical difficulties in conforming to the zoning ordinance. The applicant, however, is proposing to use the property in a reasonable manner not permitted by the zoning ordinance.

Hammond said this is correct. The shape of the lot and the existing location of the house, cause a practical difficulty in adhering to provisions of the code. The lot gets narrow as it gets closer to the street. The garage will meet the setback requirement farther north about midway on the east side and at the northeast corner, but in order to have the garage meet the side yard setback on the front southeast corner, it would need to be moved farther back to the north and would not line up with the existing house. The existing driveway actually goes over the property line to the east adjacent to an alleyway easement. This is an existing condition not caused by the current owner, and makes it so that access to the property is confined. There is also a significant grade change as you go north on the property, making it impractical to place the garage farther north on the property.

- (b) The conditions upon which the variance is based are unique to the specific parcel of land involved and are generally not applicable to other properties within the same zoning classification.

Hammond said this is correct. Due to the topography of this lot, the adjacent alleyway easement, and the existing driveway location and the location of the house, the situation is unique to this parcel.

- (c) The practical difficulties are caused by the provisions of this article and have not been created by any person currently having a legal interest in the property.

Hammond said this is correct.

- (d) The granting of the variance is in harmony with the general purpose and intent of the Comprehensive Plan.

Hammond said this is correct.

- (e) The granting of the variance will not be materially detrimental to the public welfare or materially injurious to the enjoyment, use, development or value of property or improvements in the vicinity.

Hammond said this is correct. The granting of the Variance will result in a new two car garage for the property. I received a call from a neighbor expressing support for the Variance, the improvements the current owners

have been making, and for the fact that it will provide a new two car garage on the block and improve the value of the neighborhood. In addition to the phone call, I received an email from a neighbor who supports the project (attached).

Hammond said that staff recommends that the Planning Commission recommend approval to the City Council, of the proposed Variances.

Member questions for City Staff

Fiorendino asked if this is approved, would it still need to go through the normal building permit application process. Hammond said correct. After going through Planning Commission this evening, City Council would review it next, as well. After that, it would go through the administrative approval process with reviews by various Staff members.

Hoium asked if notices were sent to everyone. Hammond said that they were sent to everyone that was within 350 feet of the property.

Hoium said that the notes say there needs to be a burn rating for anything closer than 5 feet. How much more strict is that than it normally is for a garage? That is really typical if there is a living space. This is part of the building code, rather than the zoning code. The fire wall has to do with the potential, even though that is not the case in this situation, of another structure being within 5 feet. There is a code that says when you are within 5 feet of another structure, or the property line, and it is part of a residential structure, you need that fire wall. Hoium stated it is more than he would put in his garage. Fiorendino said he dealt with this when he put in his new garage, as his building line is right up against his property line. He said they built a normal garage, but the facing the property line had a fire wall. Hammond said that it makes it so that if there is a fire, it's a lot slower.

Hoium said 19.95" is 5/8". Is the City making him take that 5/8" off the garage of can he make it 20'? Hammond said that it has to be that, because that is where the property line is. It's not an option to grant a variance that allows him to go over the property line. It may be that he makes it a little narrower, but Staff wanted to allow for him to go right up to the property line given there is the easement there that will not be changed. Hammond said that Staff felt it was a reasonable request, as he is not able to achieve the 20'x20' two-car garage attached to the home otherwise.

Vargas asked what type of liability the property owner would incur and what type of liability does the City have if the water main needs to be maintained/repaired/moved. The crew comes in for maintenance or to fix it and it is 5/8" or 1/2" an inch over the property line and he has a variance, who does it fall on? Hammond said that in this case, it won't be over the property line. He is requesting to have it up to his property line. Hammond said as far as the liability question, she can't really address that question. Fiorendino said, so the variance is to have the garage be under the 20'x20' size required by ordinance, so that it does not go over the property line? Hammond said correct.

Vargas said the front of the house appears to have a front door there. Is that a family room or a bedroom there? Hammond said she can't address that question. It would be a question for the applicant. Vargas said that you can't have a garage open right into a bedroom. It doesn't meet code; that is why he was wondering. Vargas said it seems like it would be wiser to have a cantilever and set the garage back, to reduce potential drainage issues that could occur by having a garage with varying peaks next to the home. Vargas said he's

wondering if there was any thought given to shifting the garage to the north. Fiorendino said that this would need to be addressed by the applicant.

Vargas said that the water main is minimum 7-8' deep and if there is a need for any major repairs, the crew could easily be half a foot into the garage trying to dig down to it. He said for any civic project, every easement obtains a temporary easement, to prevent issues with contractors damaging homes. Vargas expressed concern at having a structure right up to the line of the easement, as this allows no spacer for a temporary easement, if it was needed to work on the water main. Hammond said that the City Engineer, the Assistant City Engineer, and the Storm Water Specialist all reviewed this. Hammond said that when she spoke with the Assistant City Engineer, she said they were comfortable with this. Hammond said there is a report attached that provides their approval in general for the project, with the condition that the eaves and that the footing itself needs to be within the property line. This is something that he will have to work out with his architect as he gets into the design. Hammond said the garage might be moved over a little, but she wanted to allow for it to be right up to the line.

Vargas and Fiorendino made the point the way the variance is worded, it would not allow for the garage to potentially be smaller than 19.95', which brings it right up to the property line. Hammond said that the Planning Commission could look at re-wording the variance. Vargas said that with the eaves and cornices or any part of the garage not being able to go over the property line, it might make sense to allow for it to be smaller than 19.95'. Hammond said the wording could be changed to be more general. It could say that it allows the garage to be less than 20' wide, which would provide flexibility. Hammond said that would probably be the best way to do this. Fiorendino asked if they decided to do a single car garage, would they even need a variance. Hammond said no, and that there was a single car garage there previously that has been removed.

Member Questions for Applicant

Ivan Barbecho (1329 41st Ave NE) said that he has a door on the side of his house that is ready to open into the garage. He said this door leads to a hallway. Novitsky asked if the doorway is right at the front of the house Barbecho said yes, which is why he is applying for the variance. Otherwise he would move the garage back and have more space. Fiorendino asked so the reason that the garage would be right on the property line is that is the only way to make it work with the existing door opening? Barbecho said yes, that is the reason.

Vargas asked if there was no alley way there. Hammond said that there is not an alley and that the easement is there just for the water main. Hammond said that when it was originally platted, there was probably intent to put in an alleyway. Vargas asked if the easement has been used for anything else – utilities, etc. Hammond said no.

Novitsky asked if the City has the right to pave that corner of the alleyway; to make that part of his driveway. Hammond said it already is technically. Fiorendino said some of the existing pavement already goes over the easement. Hammond said that was discussed with the engineering department. They don't have any concerns about it; he obviously needs to access his property. Obviously it would be great if we could correct it, but there isn't a way to correct it. The City can't sell him this land, as it is something they need to maintain the water main, so he will always have access to it. Maybe someday the City will have to tear it up, but he will always have access to that. Novitsky asked if the City tears it up, do they have to replace it, since it is already there. Hammond said she can't address that, but the City probably would, but it would be a pretty minor thing. Hammond said she knows that the City has done so in the past when they have done various

improvements in the past that tear up sidewalks or roadways, etc. Hammond said again that she couldn't say for sure that the City would do that; it would be something for the engineering department to determine. Novitsky commented that there are telephone poles going down that alley that doesn't exist, too.

Vargas said that work safety ultimately comes to the forefront. Any maintenance that is going to need a trench box dropped in by a backhoe, the backhoe needs 15-30' swing space and it can't have anything overhead, so anything close to the easement is subject to be in that zone where the backhoe could hit it. Trench collapses kill people at work across this country pretty regularly. Vargas said not taking into consideration the safety of someone that might have to work on that pipe should be brought to the attention of the engineers. Trench collapses happen more often than they should. Swinging trench boxes in that weigh 2 thousand pounds, you can't really control it. Fiorendino said that is a great point and perhaps Hammond can pass that along. Hammond said absolutely. Fiorendino said, just to repeat, none of the garage may hang over the easement.

Public Hearing Open

There were no public comments

Public Hearing Closed

*Motion by Hoium, seconded by Novitsky, to waive the reading of the draft resolution attached.
All ayes. MOTION PASSED.*

Motion by Hoium, seconded by Novitsky, to recommend that the Planning Commission recommend to the City Council approval the Variances for the proposed garage to be located at 1329 41st Ave NE, subject to certain conditions of approval.

- 1. The applicant will meet the requirements of the Building Official Report dated, October 23, 2020 and obtain a Building Permit for the project prior to starting construction.*
 - 2. The applicant will meet the requirements of the Assistant City Engineer Report dated, October 29, 2020.*
- All ayes. MOTION PASSED.*

Variance will go before City Council on Monday, November 9th.

OTHER BUSINESS

Hammond said that the next Planning Commission meeting is scheduled for Tuesday, December 1st at 6pm.

The meeting was adjourned with no objection by Fiorendino at 6:29 pm.

Respectfully submitted,

Christy Bennett
Secretary