

OFFICE OF THE CITY ADMINISTRATOR

Subject: Recommendations for ZBA Meeting of November 20, 2023

Item 1 CALL TO ORDER

Item 2 ROLL CALL
Prerogative of the Chair to request the City Clerk to take attendance.

Item 3 ACCEPTANCE OF THE AGENDA Prerogative of the Zoning Board of Appeals that all items on tonight's agenda be received, placed on file, and taken in order of appearance.

Item 4 PUBLIC HEARING

Item 4A SIDE YARD SETBACKS VARIANCE REQUEST: RUSS SANDS, 551 ROSLYN ROAD

Open the Public Hearing. Receive and place on file all communications pertaining to this request. Hear any comments, first in support of, second in opposition to, the request. Close the Public Hearing.

The Petitioner, Russ Sands, is requesting a variance for side yard setbacks for 551 Roslyn Road to enlarge his home with additions to make it more accessible. The applicant was in an automobile accident requiring the use of a motorized wheelchair. He seeks to renovate his home to make it more accessible by installing an elevator, a new concrete patio, wood deck with ramp and accessible bathroom with other renovations.

Per Section 50-3.1.A.4 of the City's Zoning Ordinance, the minimum side yard setbacks in the R-1A Zoning District are 10 feet per side and a total of 25 feet.

The applicant's plan shows that the home currently has side yard setbacks of 4 feet (on the west) and 8 feet, 8.5 inches (on the east), and is therefore a legally nonconforming use. The proposed renovations increase these nonconformities only in size of the structure, it does not increase the degree of the nonconformity in terms of the structure extending further into the current side yard setback.

Section 50-3.8 of the Ordinance does allow for a reduction of side yards for certain lots if more than 50 percent of lots on the block have side yards setback less than what is required in the district. The reduced side yard is determined by the average of the existing structures so long as the side yard of the smaller side is not less than 4 feet and the total of the sides is not less than 12 feet. Based on Wayne County Parcel Data several adjacent properties on the same block do not comply with the side yard setback

as set in the Ordinance; however, we do not have enough plot plans on file to determine with certainty the average side yard setback of the block. The structure does, however, abide by the absolute minimum set side yard setback at 4 feet and the total setback minimum of 12 feet.

In this case, the applicant is seeking a variance for a reduction of 12 feet, 3.5 inches of the total required side yard setback.

Per *Section 50-7.15.I.1* of the Zoning Ordinance, the Board of Appeals must find that “practical difficulty” has been demonstrated and make findings regarding the following standards prior to acting on a proposed variance.

Additional information brought forward by the Board, the applicant, and/ or during the public hearing should be incorporated into the record prior to the Board making any determination. The Ordinance outlines the following criteria for consideration in determining a variance. Our comments follow:

1. The variance must be in harmony with and serve the intent and purpose of the Ordinance, considering the following:

- a. That strict compliance with the restrictions governing area, setbacks, frontage, height, bulk, density, and other similar items would unreasonably prevent the petitioner from using the property for a permitted purpose or would render conformity with said restrictions unnecessarily burdensome.**

The applicant, who is wheelchair-dependent, needs to be able to make several renovations to continue to be able to live in his home. However, strict compliance with the side yard setback requirements would prevent many of these renovations from taking place. If the requested variance is not granted, it is highly likely that the applicant would be forced to move.

- b. That a variance would do substantial justice to the petitioner as well as to other petitioners in the zoning district; or whether a lesser relaxation of the restrictions would give substantial relief to the petitioner and be more consistent with justice to others (i.e., are there other more reasonable alternatives).**

Granting this variance would allow the petitioner to make necessary accessible modifications to his home, and the variance would not negatively impact others in the same zoning district.

- c. That the plight of the petitioner is due to unique circumstances of the property.**

The subject property is rather unique in that it is legally nonconforming due to small side yard setbacks. If the applicant resided in a home with more

typical existing side yard setbacks, it is likely that he would be able to make the requested renovations without needing to seek a variance.

d. That the petitioner’s problem is not self-created.

The petitioner is wheelchair dependent because of an automobile accident, so the “problem” should not be considered one that was self-created.

The City Planner recommends granting this variance as a case can be made to justify the findings of a practical difficulty as described in the variance standards.

I concur with the recommendation.

Prerogative of the Zoning Board of Appeals as to action taken.

Item 4B

BUILDING ADDITION TO LEGAL NONCONFORMING HOME VARIANCE
REQUEST: JAMES KALICH JR., 1398 ANITA AVENUE

The applicant seeks to build a 240 sq. ft. single-story addition to the rear of the existing house. The applicant asserts that the existing home is legally nonconforming because its setbacks do not meet Ordinance requirements. Additions to nonconforming homes are not permitted without review and approval by the Zoning Board of Appeals.

The lot is 60’ by 128’, and the proposed addition would bring the lot coverage to 14.6% in a district that allows up to 35% lot coverage.

According to Section 50-7.16 of the Ordinance, any lawful nonconforming building may be lawfully used so long as it is not structurally changed, altered or enlarged. Building additions to nonconforming structures requires a variance from the Zoning Board of Appeals.

The reason this structure is nonconforming is due to noncompliance with Section 50-5.1.E of the City’s Zoning Ordinance that sets the minimum side yard setbacks in the R-1E Zoning District at 5 feet for at least one side and 15 feet for both sides combined. Section 50-3.8 Allows for a reduction of side yards for certain lots based on the side yard setbacks of adjacent properties so long as the reduced side yards are not less than 4 feet for the smaller side yard. The side yard of the current structure on site was not provided by the applicant; however, based on the Wayne County Parcel viewer the side yard setback is less than 4 feet.

Nevertheless, the proposed addition does not conflict with the current side yard setback: The lesser of the setbacks on the addition is 12.3 feet. Additionally, the proposed addition complies with all other dimensional requirements of the Ordinance.

Per *Section 50-7.15.I.1* of the Zoning Ordinance, to grant a request for a variance the Board of Appeals must find that “practical difficulty” has been demonstrated and make findings regarding the following standards. Additional information brought forward by the Board, the applicant, and/ or during the public hearing should be incorporated into the record prior to the Board making any determination. The Ordinance outlines the following criteria for consideration in determining a variance. Our comments follow:

1. The variance must be in harmony with and serve the intent and purpose of the Ordinance, considering the following:

- a. That strict compliance with the restrictions governing area, setbacks, frontage, height, bulk, density, and other similar items would unreasonably prevent the petitioner from using the property for a permitted purpose or would render conformity with said restrictions unnecessarily burdensome.**

The requested variance is not necessary to be able to use the property for its permitted residential purpose. The variance request merely reflects the applicant’s *preference* for a larger home. However, it should be noted that the Zoning Ordinance was updated in May of 2022, which then requires an addition to a nonconforming building to be under review of ZBA. This addition itself complies with the restrictions governing area, setbacks, height, lot coverage, etc and does not create any new nonconformities.

- b. That a variance would do substantial justice to the petitioner as well as to other petitioners in the zoning district; or whether a lesser relaxation of the restrictions would give substantial relief to the petitioner and be more consistent with justice to others (i.e., are there other more reasonable alternatives).**

Granting the variance would allow the petitioner to build the requested addition. The addition would not unreasonably hinder the surrounding neighbors’ enjoyment of their own property. Additionally, there are a number of other properties on this block, in this residential district, and throughout the City that do not comply with the updated side yard setback.

- c. That the plight of the petitioner is due to unique circumstances of the property.**

The subject property is rather unique in that it is a legally nonconforming use, presumably with small side yard setbacks. Therefore, many building additions would not be permitted as they would enlarge the already existing nonconformity.

Based upon the application and the submitted site plan by the applicant, a case can be made to justify the findings of a practical difficulty as described in this review letter. Unless there are unaddressed concerns raised by members of the public during the public hearing at this meeting, we recommend that the applicant's request for a variance to enlarge a legal nonconforming residential structure be granted.

I concur with the recommendation.

Prerogative of the Zoning Board of Appeals as to action taken.

Item 4C

LOT COVERAGE, FIRST FLOOR ELEVATION AND SIDE YARD SETBACK
VARIANCE REQUEST: NICHOLAS AND ALANNA AVOURIS, 707 N.
RENAUD ROAD

The renovation / addition expanding the nonconforming residential house and the lanai (screened in porch) do not comply with various components of the Zoning Ordinance: It exceeds the allowed lot coverage and first floor elevation allowed by-right in the R-1A District. The applicant requests two variances from the Zoning Ordinance that pertain to Section 50-3.1. A. 4. and Section 50-5.20:

50-3.1. A R-1A One-Family Residential. 4. Development Standards:

Lot coverage & Maximum percentage: 35%

50-5.20 Building grades: *"...The first-floor elevation shall be not less than six inches or more than 26 inches above the finish grade line of the building."*

Per *Section 50-7.15.I.1* of the Zoning Ordinance, the Zoning Board of Appeals must find that "**practical difficulty**" has been demonstrated and make findings regarding the following standards prior to acting on a proposed variance.

Additional information brought forward by the Board, the applicant, and/ or during the public hearing should be incorporated into the record prior to the Board making any determination. The Ordinance outlines the following criteria for consideration in determining a variance. Our comments follow:

1. **The variance must be in harmony with and serve the intent and purpose of the Ordinance, considering the following:**
 - a. **That strict compliance with the restrictions governing area, setbacks, frontage, height, bulk, density, and other similar items would unreasonably prevent the petitioner from using the property for a permitted purpose or would render conformity with said restrictions unnecessarily burdensome.**

Enforcing the first-floor elevation would be excessively burdensome. The difficulty in raising or lowering the first-floor level in relation to the degree of nonconformity is hard to justify given that half stories and basement stories are permitted by the Zoning Ordinance. If the height of the basement was built to be two (2) feet higher, totaling five (5) feet from the grade level to the first tier of floor, the basement would have been considered a story and met the ordinance requirement.

In terms of lot coverage, the Zoning Board of Appeals must determine to what extent it is unnecessarily burdensome based on the appeal presented by the applicant.

- b. That a variance would do substantial justice to the petitioner as well as to other petitioners in the zoning district; or whether a lesser relaxation of the restrictions would give substantial relief to the petitioner and be more consistent with justice to others (i.e., are there other more reasonable alternatives).**

Other properties in the near vicinity on N. Renaud do not comply with the 35% lot coverage. The applicant has reduced the size of the front porch to reduce the degree of non-compliance. The Zoning Board of Appeals should consider what is a reasonable alternative based on the petition of the applicant.

- c. That the plight of the petitioner is due to unique circumstances of the property.**

There are not any unique circumstances of the property.

- d. That the petitioner's problem is not self-created.**

The problem is self-created. It is the responsibility of the property owner / applicant to comply with the code or identify any deviation. The applicants have taken measures to modify the original construction plans and to what has been built to be in greater compliance with the Zoning Ordinance.

In conclusion, based on the information provided by the applicant and the context of the block, a case can be made to justify the findings of practical difficulty for the variances requested to 50-5.2 Building Grades. The applicant complies with the overall height restriction of the R-1A Residential District and if the basement were elevated two (2) feet higher, the basement would be considered a story and up to 2.5 stories are permitted in the R-1A District.

For the variance to increase the lot coverage, there is practical difficulty in meeting the Ordinance based on the current and unique circumstances of this case. The decision of what is an allowable percentage to increase the lot coverage will be contingent on whether the Zoning Board of Appeals considers the walkout and/or the

balcony to be included in the lot coverage calculations. Given that the applicant has already taken action to reduce their lot coverage by decreasing the size of the open front porch, we recommend the Board bases their decision regarding the allowable lot coverage on the petition from the applicant at the meeting.

It is recommended that the requested variances be granted with the stipulations that no further accessory building be permitted on the property or no further action is taken to increase the lot coverage.

I concur with the recommendation.

Prerogative of the Zoning Board of Appeals as to action taken.

Item 5 NEW BUSINESS/PUBLIC COMMENT

Item 6 IMMEDIATE CERTIFICATION OF MINUTES Prerogative of the Zoning Board of Appeals to immediately certify tonight's meeting minutes.

Item 7 ADJOURNMENT

Respectfully submitted,



Frank Schulte
City Administrator