

AMENDED MEMORANDUM

TO: Board of Adjustment Members

FROM: Community Development Department

DATE: August 13, 2024

RE: Variance Application –709 Florida Avenue

SUMMARY: The Community Development Department has received an application from Andrew Griffin for a variance from Section 5-10-3. – Dimensional requirements in accordance with the definition of “setback” in Section 12-2 Definition of Terms to reduce the required 5’ side setback to 4.3’ and to reduce the 20’ total side setback to 11.1’ to construct a 336 square foot (footprint) addition. The subject property is currently zoned MIC, Medical, Institutional and Cultural Zoning District. The specific variance requested is for the following:

VARIANCE REQUEST: The Applicant is requesting a variance from the requirement that side yards shall be a minimum of 5’ wide and that the lot should have a combined 20’ side setback in accordance with Section 5-10-3 of the Zoning Ordinance. The applicant is seeking to build a two-story addition (336 square foot footprint) that will include a garage on the ground level and an upstairs apartment. (*Exhibit B*)

The subject property is .08 acre or a 3,484 square foot lot zoned MIC – Medical Institutional and Cultural. There is a 1,872 square foot building on the property currently. The side setback requirements for MIC is 20’ total for the lot with a minimum of 5’ on any side according to Section 5-10-3. – Dimensional requirements. Other requirements for this district are a 50’ minimum lot width, a front setback of 10’, rear setback of 20’, and a maximum height of 50’.

PROPOSED FINDINGS OF FACT:

- Based on Henderson County records the subject property possesses a PIN of 9568-58-3783 and is zoned as MIC Medical, Institutional and Cultural.
- Based on Henderson County records, the lot size is approximately 0.08 acres or 3,484.8 square feet.
- Based on Henderson County records, the subject property has one structure built on it that is 1,872 square feet.
- Based on the City of Hendersonville records, Florida Avenue is a City maintained street.
- Based on Henderson County records a North Carolina General Warranty Deed between Lori Kay Eaton FKA Lori Kay Luhrs, unmarried (Grantors) and Andrew

Dennis Griffin and wife, Kassondra Marie Griffin (Grantees) was recorded on December 29, 2023.

- *Section 5-10-3* of the zoning ordinance requires the principal structure setbacks for MIC be:
 - Front: 10'
 - Side: 20' total for lot; with minimum of 5'; on any side
 - Rear: 20'
- *Section 12-2-2* defines the building setback as an open, unobstructed area that is required by this zoning ordinance to be provided from the furthestmost projection of a structure to the property line of the lot on which the building is located.
- Based on the Variance Application (*Exhibit B*), the Applicant is proposing to construct an addition on the home.
- Based on the survey submitted by the Applicant, the addition will be 24' by 14'.

CODE REFERENCES.

5-10-3 Dimensional Requirements:

Minimum Lot Area in Square Feet: 8,000

Minimum Lot Width at Building Line in Feet: 50

Minimum Yard Requirements in Feet:

Front: 10

Side: 20 total for lot; with minimum of 5; on any side

Rear in Feet: 20

Maximum Height in Feet: 50

Section 12-2 Definition of Terms

Setback: An open, unobstructed area that is required by this zoning ordinance to be provided from the furthestmost projection of a structure to the property line of the lot on which the building is located.

Section 10-9 Variance.

A Variance is a means whereby the City may grant relief from the effect of the Zoning Ordinance in cases of hardship. A Variance constitutes permission to depart from the literal requirements of the ordinance. When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the Board of Adjustment shall vary any of the provisions of the ordinance upon a showing of the following:

- 1) Unnecessary hardship would result from the strict application of the ordinance. It is not necessary to demonstrate that, in the absence of the Variance, no reasonable use can be made of the property.
- 2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a Variance. A Variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.
- 3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a Variance is not a self-created hardship.
- 4) The requested Variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured and substantial justice is achieved.

The Board of Adjustment shall not have authority to grant a Variance when to do so would:

- 1) result in the extension of a nonconformity regulated pursuant to Section 6-2, above,
or
- 2) permit a use of land, building or structure which is not permitted within the applicable zoning district classification. Per NCGS 160D-705 (d), appropriate conditions may be imposed on any Variance, provided that the conditions are reasonably related to the Variance.

EXHIBITS

Exhibit A – Staff Report
Exhibit B – Application
Exhibit C – Warranty Deed
Exhibit D – Site Photos