

## MEMORANDUM

**TO:** Board of Adjustment Members

**FROM:** Community Development Department

**DATE:** December 13, 2022

**RE:** Variance Application –714 Florida Ave. (B22-107-VAR)

**SUMMARY:** The Community Development Department has received an application from Patricia Addiss for a variance from *Section 5-10-3 Dimensional Requirements*. The subject property is currently located in the Medical, Institutional, & Cultural (MIC) Zoning District. The specific variance requested is for the following:

**VARIANCE REQUEST:** The Applicant is requesting a variance from Section 5-10-3 to reduce the required 10' side setback to 1.4'; and to reduce the required 20' rear setback to 4' to bring an existing storage shed into compliance with the zoning code (*Exhibit A*).

The Community Development Department received a complaint about a storage shed at 714 Florida Avenue that did not conform with the setback requirements of Section 5-10-3. The Code Enforcement Officer for the City of Hendersonville investigated the complaint and determined that the storage shed was in violation of side and rear setback requirements. The property owner was notified of the violation and promptly filed for a variance. (*see Exhibit B*)

The Applicant made the following statement related to their request:  
“Due to the limited physical dimensions of the property, it would not be possible to physically move or relocate the utility shed on my property to meet the Zoning Ordinance.” (*see Exhibit A*).

### **PROPOSED FINDINGS OF FACT:**

- Based on Henderson County records the subject property possesses a PIN of 9568-58-3641 and is zoned as MIC, Medical, Institutional, & Cultural.
- Based on the National Register of Historic Places the subject property is located in the West Side Historic District (*Exhibit C*).
- Section 5-10-1 requirements list single-family residential dwellings as a permitted use in the MIC zoning district.
- Based on Henderson County records, the lot size of the subject property is approximately 5,227.2 square feet or 0.12 acres.
- Section 5-10-3 requires a minimum lot size of 8,000 square feet or .18 acres in the MIC zoning district.

- Based on Henderson County GIS records, there are eleven (11) lots fronting Florida Avenue with the average lot size being .23 acres or 10,019 square feet.
- Based on Henderson County GIS records, approximately seven (7) of the eleven (11) lots fronting Florida Avenue, meet the minimum lot size requirements in Section 5-10-3 of the MIC zoning district. The subject property is one (1) of the four (4) lots that do not meet the minimum lot size requirements of the MIC zoning district.
- Based on Henderson County records, the single-family dwelling on the subject property was constructed in 1930, prior to the establishment of the MIC zoning district, and is considered a legal non-conforming lot.
- Based on Henderson County records a Quitclaim Deed between Marcus B. Liles, III, (Grantor) and Patricia E. Addiss (Grantee) was recorded on August 27, 2021. (*Exhibit C*).
- Section 5-10-3 requires the Minimum Yard Requirements for MIC are:
  - Front: 20'
  - Side: 10'
  - Rear: 20'
- There are no setback standards for accessory structures in the MIC zoning district. Accessory structures in the MIC zoning district must adhere to the same setbacks as principal structures.
- Based on the Variance Application (*Exhibit A*), the Applicant is requesting a variance from Section 5-10-3 to reduce the required 10' side setback to 1.4'; and to reduce the required 20' rear setback to 4' to bring an existing storage shed into compliance with the zoning code.

### **CODE REFERENCES.**

#### **5-10-3 Dimensional Requirements:**

Minimum Lot Area in Square Feet:	8,000
Lot Area per Dwelling Unit in Square Feet:	10,000 for the first; 5,000 square feet for each additional dwelling unit in one building.
Minimum Lot Width at Building Line in Feet:	70
Minimum Yard Requirements in Feet:	Front: 30 Side: 10 Rear: 20

Maximum Height in Feet: 50 (No building shall exceed 50 feet in height unless the depth of the front and total width of side yards required herein shall be increased by one foot for each two feet, or fraction thereof, of building height in excess of 50 feet.)

### **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.

### **REVIEW, ANALYSIS, & CONSIDERATIONS:**

- The single-family use on the subject property pre-dates the City's Zoning Ordinance.
- The subject property is 2/3rds the size of the minimum lot size for the MIC zoning district.
- The City's single-family residential districts (R-40, R-20, R-15, R-10, & R-6) establish standards for the setbacks of accessory structures separate from those required for principal structures. These accessory structure setbacks are reduced from those of principal structures and allow for greater flexibility of placement of

accessory structures on a lot. The MIC Zoning District does not have separate standards for accessory structures and principal structures. In the MIC, accessory structures must adhere to the same setback standards as principal structures.

## **EXHIBITS**

**Exhibit A – Application**

**Exhibit B – 10.13.22 Notice of Violation**

**Exhibit C – West Side Historic District Overlay Map**

**Exhibit D - Quitclaim Deed**

**Exhibit E – Site Photos**

**Exhibit F - Aerial Map**