

MEMORANDUM

TO: Board of Adjustment Members

FROM: Community Development Department

DATE: August 9, 2022

RE: Variance Application –1525 Ridgewood Blvd

SUMMARY: The Community Development Department has received an application from James Walgenbach for a variance from Section 5-4-3 Dimensional Requirements. The subject property is currently zoned R-10, Medium-Density Residential. The specific variance requested is for the following:

VARIANCE REQUEST: The variance requested is to reduce the side setback from the required 5' to 3' 3" and to reduce the rear setback from the required 5' to 2' in Section 5-4-3 of the Hendersonville Zoning Ordinance for the purpose of constructing a new detached garage using the same footprint of an existing detached garage.

PROPOSED FINDINGS OF FACT:

- The subject property possesses a PIN of 9569-43-0230 and is zoned as R-10 Medium Density Residential.
- Based on Henderson County records, the lot size is approximately 0.29 acres or 12,632.4 square feet.
- The accessory structure setbacks for R-10 are:
 - Front: 25'
 - Side: 5'
 - Rear: 5'
- Based on Henderson County records, the existing 20' x 26' detached garage was constructed in 1926. (*Exhibit D*)
- Based on the Variance Application (*Exhibit A*), the Applicant is proposing to construct a new garage using the same 20' x 26' footprint of the existing detached garage.

CODE REFERENCES.

5-4-3 Dimensional Requirements:

Minimum Lot Area in Square Feet:	10,000
Lot Area per Dwelling Unit in Square Feet:	10,000 for the first; 5,000 square feet for one additional dwelling unit in one building.
Minimum Lot Width at Building Line in Feet:	75
Minimum Yard Requirements in Feet:	
Front:	25
Side:	10
Rear:	10
Accessory Structures:	
Front:	25
Side:	5
Rear:	5
Maximum Height in Feet:	35

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.

MOTION:

With regard to the request by James Walgenbach for a variance from Section 5-4-3: Dimensional Requirements to:

- 1) Reduce the side setback requirement from 5' to 3'3" and to reduce the rear setback requirement from 5' to 2'.

I move the Board to find that (a) strict enforcement of the regulations would result in practical difficulties or unnecessary hardship to the applicant, (b) the variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit, and (c) in the granting of the variance the public safety and welfare have been secured and substantial justice has been done.

(After the motion has been seconded, the movant should state the factual basis and reasoning for the motion. In doing so, bear in mind the considerations set out in Section 10-9 of the zoning ordinance.)

Remember: Staff suggest the motion be made in the affirmative regardless of whether it is your intention to support or oppose the issuance of a variance. This does not mean that staff is recommending approval of the application. RATHER, we believe it is better procedurally to approach it this way. Once you have made the motion, you should state your position as to the required findings. For variance applications, it takes seven affirmative votes to approve this application, if others are voicing support of the application, you should make it a point to state your position vis-à-vis the required findings since your vote, even standing by itself may represent the position of the Board.

EXHIBITS

Exhibit A – Application and Site Plan

Exhibit B – Warranty Deed

Exhibit C – Site Photos

Exhibit D – Henderson County Property Report