

MEMORANDUM

TO: Board of Adjustment Members

FROM: Community Development Department

DATE: October 11, 2022

RE: Variance Application –1523 Dawnview Dr.

SUMMARY: The Community Development Department has received an application from Maria Lawing for a variance from Section 5-4-3 Dimensional Requirements in accordance with the exception to the minimum front yard requirements in Section 8-1 Minimum Required Front Yard for Dwellings. The subject property is currently zoned R-10, Medium-Density Residential. The specific variance requested is for the following:

VARIANCE REQUEST: The Applicant is requesting a variance from the required 25' front setback requirements in Section 5-4-3 to 19'5" for the purpose of constructing a 10' x 14' sunroom on the front of the existing home (*Exhibit A*).

The existing home is 27' from the edge of the right-of-way of Dawnview Dr. Section 8-1 is an exception to the front yard requirements for dwellings if the average front yards of existing buildings fronting the same side of the street is less than the minimum front yard requirement. The average front setback of eight (8) existing homes fronting Dawnview Dr. is 23'5" (*Exhibit C*). The Section 8-1 exception to the minimum front yard requirements allows the Applicant a 23'5" front setback. With the Section 8-1 exception, the Applicant is requesting to encroach a total of 4'5" into the front setback to construct a 10' x 14' sunroom.

PROPOSED FINDINGS OF FACT:

- Based on Henderson County records the subject property possesses a PIN of 9569-33-8202 and is zoned as R-10 Medium Density Residential.
- Based on Henderson County records, the lot size is approximately 0.2 acres or 8,712 square feet.
- Based on Henderson County records a North Carolina General Warranty Deed between Michael C. Anderson and Paula G. Anderson (Grantor) and Maria B. Lawing (Grantee) was recorded on June 20, 2013. (*Exhibit B*).
- Section 5-4-3 requires the Principal Structure setbacks for R-10 are:
 - Front: 25'
 - Side: 10'
 - Rear: 10'

- Based on Section 8-1 of the Zoning Ordinance exception to the front yard requirements for dwellings and the average front setbacks of eight (8) existing homes fronting Dawnview Dr. allows the Applicant's a front setback of 23'5" (*Exhibit C*).
- Based on the Variance Application (*Exhibit A*), the Applicant is proposing to construct a 10' x 14' sunroom on the front of the existing home to accommodate a person with a disability.
- Section 10-9(2) of the Zoning Ordinance states that 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.
- Under the Federal Fair Housing Act a reasonable accommodation is a change, exception, or adjustment to a rule, policy, practice, or service (*Exhibit D*).

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 8-1 Minimum Required Front Yard for Dwellings. The minimum required front yard requirements of this Ordinance for dwellings shall not apply on any lot where the average front yard of existing buildings located wholly or in part within 100 feet on each side of such lot within the same block and zoning district and fronting on the same side of the street is less than the minimum required front yard. In such cases, front yard on such lot may be less than the required front yard, but not less than the average of the front yards of the aforementioned existing buildings.

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 Maria Lawing for a variance from Section 5-4-3: Dimensional Requirements to:

- 1) Reduce the front setback requirement from 25' to 19'5" for the construction of a 10' x 14' sunroom.

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 – Average Front Setbacks Table

Exhibit D – Federal Fair Housing Act