

AMENDED MEMORANDUM

TO: Board of Adjustment Members

FROM: Community Development Department

DATE: February 14, 2023

RE: Variance Application –0 Geneva St.

SUMMARY: The Community Development Department has received an application from Edith and James Smith for a variance from Section 6-1-7 Corner Lot Requirements in accordance with the definition of “building, setback line” in Section 12-2-2 Definition of Terms to reduce the required 18’ side setback to 14’. The subject property is currently zoned R-6, High-Density Residential. The specific variance requested is for the following:

VARIANCE REQUEST: The Applicant is requesting a variance from the requirement that side yards on corner lots along a side street, shall be increased by ten feet as defined in Section 6-1-7 of the Zoning Ordinance in order to place a modular home on the lot. (*Exhibit A*).

The subject property is currently a vacant corner lot zoned R-6 High Density Residential. The lot conforms to the dimensional requirements for the R-6 zoning district. The side setback requirements for R-6 are 8’. Section 6-1-7 Corner Lot Requirements requires that an additional 10’ be added to the side setback on corner lots along a side street.

The subject property is located on the corner of Geneva Street and N Oak Street and fronts N Oak Street. The Section 6-1-7 corner lot requirement increases the side setback on Geneva St. from the required 8’ to 18’. The Applicant was sold a modular home that when placed on the lot in accordance with the setback requirements, would encroach a total of 4’ into the side setback on Geneva St. excluding the outermost 3’ of the uncovered porch per the building setback line definition in Section 12-2-2.

PROPOSED FINDINGS OF FACT:

- Based on Henderson County records the subject property possesses a PIN of 9568-57-3034 and is zoned as R-6 High Density Residential.
- Based on Henderson County records, the lot size is approximately 0.14 acres or 6,098.4 square feet.
- Based on Henderson County records, the subject property is a vacant lot.
- Based on the City of Hendersonville records, Geneva Street is a City maintained street.

- Based on Henderson County records a North Carolina General Warranty Deed between Joan Cooley, Dora Y. Brown and Willie Brown (Grantors) and James T. Smith, Jr. and Edith A. Smith (Grantees) was recorded on January 4, 2023.
- Section 5-5-3 requires the Principal Structure setbacks for R-6 are:
 - Front: 20'
 - Side: 8'
 - Rear: 10'
- Section 6-7-1 requires the side yards for corner lots in a residential district be increased by ten feet.
- Section 12-2-2 defines the building setback line as a line establishing the minimum allowable distance between the nearest portion of any building (excluding the outermost three feet of any uncovered porches, steps, eaves, gutter and similar fixtures) and the street or highway right-of-way when measured perpendicularly thereto.
- Based on the Variance Application (*Exhibit A*), the Applicant is proposing to place a modular home on the subject property.
- Based on the survey submitted by the Applicant, the proposed modular home is 27.6' x 60' with two, 4' x 8' uncovered porches.

CODE REFERENCES.

5-5-3 Dimensional Requirements:

Minimum Lot Area in Square Feet:	6,000
Lot Area per Dwelling Unit in Square Feet:	6,000 for the first; 4,000 square feet for one additional dwelling unit in one building.
Minimum Lot Width at Building Line in Feet:	50
Minimum Yard Requirements in Feet:	
Front:	20
Side:	8
Rear:	10
Accessory Structures:	
Front:	20
Side:	5
Rear:	5
Maximum Height in Feet:	35

6-1-7 Corner Lots. In any residential district, the side yard requirements for corner lots along the side street shall be increased by ten feet. Accessory buildings shall observe all setback requirements.

Section 12-2-2 Definition of Terms

Building, Setback Line: A line establishing the minimum allowable distance between the nearest portion of any building (excluding the outermost three feet of any uncovered porches, steps, eaves, gutter and similar fixtures) and the street or highway right-of-way when measured perpendicularly thereto.

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 – Application and Site Plan

Exhibit B – Warranty Deed

Exhibit C – Site Plan with Staff notes

Exhibit D – Site Photos