AMENDED MEMORANDUM

TO: Board of Adjustment Members

FROM: Community Development Department

**DATE:**   August 8, 2023

RE: Variance Application – 869 Thornton Pl.

SUMMARY: The Community Development Department has received an application from Elizabeth Collina for a variance from *Section 5-3-3 Dimensional Requirements* in accordance with the definition of "Yard, Rear" in *Section 12-2-2 Definition of Terms* to reduce the required 15' rear setback requirements to 7'. The subject property is currently zoned R-15, Medium-Density Residential. The specific variance requested is for the following:

VARIANCE REQUEST: The Applicant is requesting a variance from the requirement that rear setback defined in Section 5-3-3 of the Zoning Ordinance in order to construct an 8' x 20' elevated, uncovered deck on the rear of the existing single family home. (*Exhibit A*).

On February 14, 2017, the Board voted to grant the Applicant a variance to reduce the rear setback from the required 15' to 12' to construct a single family home.

The Applicant is now requesting a variance from the rear setback to construct an 8' x 20' deck that would project a total of 8' into the current 12' rear setback. Applying the rear yard definition in *Section 12-2-2*: Definition of Terms for "Rear Yards," which excludes the outermost 3' of any uncovered porches, steps, eaves, gutters and similar fixtures, the proposed deck would encroach a total of 5' into the current 12' rear setback, reducing the rear setback to 7'.

Figure A.

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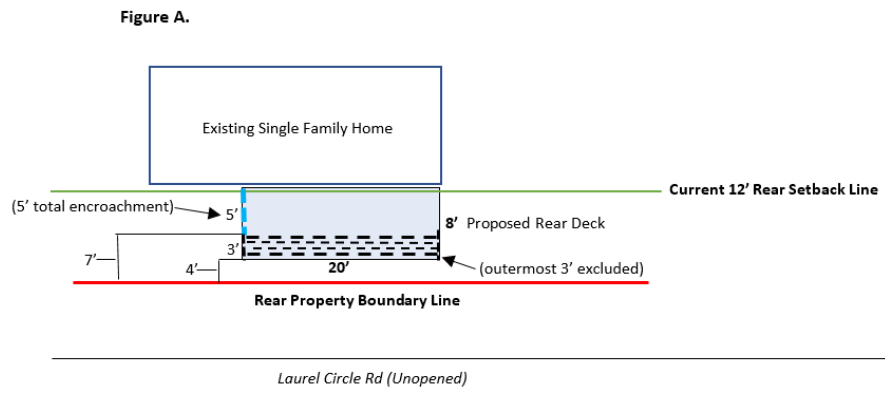
PROPOSED FINDINGS OF FACT:

- Based on Henderson County records the subject property possesses a PIN of 9569-51-0060 and is zoned as R-15 Medium Density Residential.
- Based on Henderson County records, the lot size is approximately 0.46 acres or 20,037.6 square feet.
- Based on Henderson County records, the subject property contains a single family dwelling.
- Based on Henderson County records a North Carolina General Warranty Deed between Courtrney S. Tiger (Grantor) and John S. Collina and Elizabeth Collina (Grantees) was recorded on October 4, 2013 *(Exhibit B)*.
- Section 5-3-3 requires the Principal Structure setbacks for R-15 are:
  - Front: 30'
  - Side: 10'
  - Rear: 15'
- Section 12-2-2 defines rear yard as an open, unoccupied space on the same lot with the principal building (excluding the outermost three feet of any uncovered porches, steps, eaves, gutters and similar fixtures), extending the full width of the lot and situated between the rear line of the lot and the rear line of the building to the side lines of the lot.
- Based on the Variance Application (*Exhibit A)*, the Applicant is proposing to construct a 8' x 20' uncovered, elevated rear deck.
- Based on the Variance Application and photographs submitted by the Applicant, the topography of the subject property is steep.
- On August 9, 2016, the Board of Adjustment voted to grant the Applicant a variance to reduce the required 30' front setback to 20' due to the topography of the lot.
- On February 14, 2017, the Board of Adjustment voted to grant the Applicant a variance to reduce the rear setback from the required 15' to 12' to construct a single family home.

CODE REFERENCES.

5-3-3 Dimensional Requirements:

Minimum Lot Area in Square Feet:	15,000
Lot Area per Dwelling Unit in Square Feet:	15,000 for the first; 7,500 square feet for one additional dwelling unit in one building.
Minimum Lot Width at Building Line in Feet:	85

Minimum Yard Requirements in Feet:
Front: 30
Side: 10

Rear: 15

Accessory Structures:
Front: 30
Side: 5
Rear: 5

Maximum Height in Feet: 35

Section 12-2-2 Definition of Terms
Yard, Rear: An open, unoccupied space on the same lot with the principal building (excluding the outermost three feet of any uncovered porches, steps, eaves, gutters and similar fixtures), extending the full width of the lot and situated between the rear line of the lot and the rear line of the building to the side lines of the lot.

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 – Variance Application
Exhibit B – Warranty Deed
Exhibit D – Site Photos Submitted by Applicant