



## STAFF REPORT

**MEETING DATE:** March 28, 2022

**AGENDA ITEM TITLE:** Van Wyck Variance Application – 200 Wood Avenue

**AGENDA SECTION:** Public Hearing

### REQUEST:

The purpose of the request is to receive variances from the minimum side lot line setback and the minimum rear lot line setback to build a second story accessory dwelling unit on the existing nonconforming accessory structure.

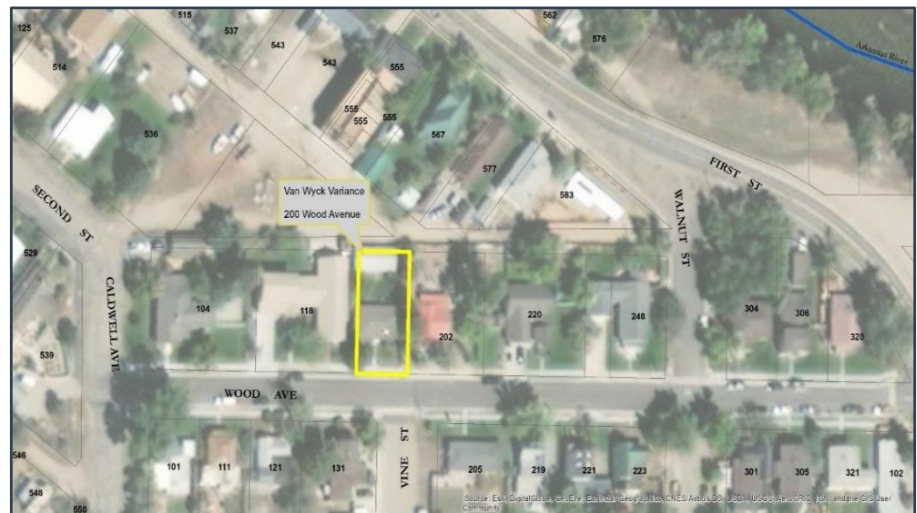
The required minimum side lot line setback for accessory structures with a wall plane over twenty (20) feet is ten (10) feet from the side property line. The required minimum rear lot line setback is five (5) feet for all accessory structures. The applicant is requesting a minimum allowed side lot line setback of three (3) feet to construct a second story accessory dwelling unit with a wall plane of 21'8". The second request is for an allowed minimum rear lot line setback of three (3) feet to build a roof structure over the ground floor entry. The accessory structure was built in 1996 at the current .52' side lot line setback and meets the required rear lot line setback.

### APPLICANT:

The applicant is property owner Barbara Van Wyck, 200 Wood Avenue, Salida CO 81201.

### LOCATION:

The subject property is located at 200 Wood Avenue, legally known as Lots 9 & 10, Block E, Babcock's Addition, City of Salida, Chaffee County, Colorado.



### PROCESS:

Variances are addressed in the City's Code of Ordinances, Section 16-4-180, Zoning Variances. Variances may be granted from the standards of the underlying zone district and shall be authorized only for maximum height, minimum floor area, maximum lot coverage, maximum lot size, minimum setbacks and parking requirements.

The Board of Adjustment holds a public hearing after fifteen days advance notice of the hearing. The public hearing shall be held, at which any person may appear or be represented by an agent or attorney. The Board may describe appropriate conditions and safeguards in conformity with the Zoning title of the City Code.

## OBSERVATIONS:

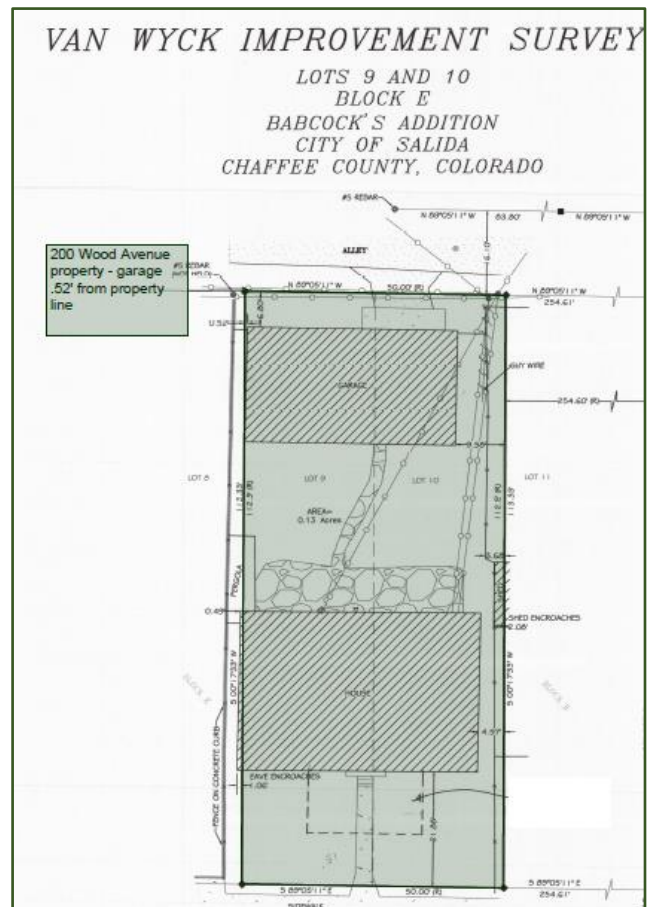
1. The subject property is located within the Medium Density Residential (R-2) zone district. Surrounding properties are within the Medium Density Residential (R-2) zone district and across the alley from the subject property the properties are zoned Commercial (C-1).

2. The existing accessory structure is considered a nonconforming structure. Nonconforming structures are structures that were lawfully established pursuant to the zoning and building regulations in effect at the time of their development which do not now conform to the provisions of the current zoning regulations. The existing 800 square foot garage is considered nonconforming because the northwest corner of the garage is built .52' from the side property line and the remaining wall is on the property line. This was discovered when the applicant had a survey done.



When the prior owner built the garage the site plan showed a 3' setback. The setback on the site plan was shown to the fence and not the property line. The current survey shows several nonconformities on this property and the adjoining properties.

3. Originally the applicant was requesting a variance to build the second story with a 0' side lot line setback but modified the variance request after her discussion with the Chaffee County Building Official. She wanted to be able to have a window on the west side of the accessory dwelling unit.
4. Chaffee County Building Official, Dan Swallow, explained to the applicant that building code prohibits openings (doors or windows) within three feet of a property line to prevent transmission of fire from building to building. He further explained that windows must be fire rated from 3' to 5' of a property line and no fire rating requirement at 5' or more from a property line.
5. The request is to receive relief from the required minimum 10' side lot line setback for an accessory dwelling unit with the wall plane exceeding 20' in height. The applicant is requesting approval to build a second story ADU with the west wall five (5) feet from the property line and eaves that extend two (2)



additional feet from the wall which will be three (3) feet from the side property line. The applicant is showing the height of the ADU as 21' 8".

6. Land Use Code Sec. 16-4-180(a) states that a variance shall not be granted solely because of the presence of nonconformities in the zone district or adjoining districts.
7. The second variance is a request for relief from the required 5' rear lot line setback. The applicant is requesting approval for a minimum rear lot line setback of 3' to construct a roof structure above the first floor entry on the north side of the structure. The existing rear setback of the garage is 6.8' and meets the minimum 5' required rear lot line setback.
8. Per Land Use Code Sec. 16-8-130(a) Building eaves and architectural projections may project eighteen (18) inches into a setback, provided they are in compliance with the City's Building Code.
9. Staff received emails from the current neighbors who are in support of the variance requests. As of Friday, March 25<sup>th</sup> staff has not received any opposition to the variance requests.

**REQUIRED SHOWING (Section 16-4-180):** The applicant shall demonstrate that a majority of the following criteria to the Board of Adjustment before a variance may be authorized.

1. Special Circumstances Exist. There are special circumstances or conditions which are peculiar to the land or building for which the variance is sought that do not apply generally to land or buildings in the neighborhood.

*Applicant's response: Applicant has discovered a discrepancy between the legal lot boundary and the practical boundary line of the fence that has been present for many years. Applicant and the adjacent property owner were not aware of this discrepancy until applicant had a survey conducted, which highlighted the issue. The building in question is also nonconforming and has been in existence for decades. Entry at North side of an existing building, overhang needed for protection from weather at entry.*

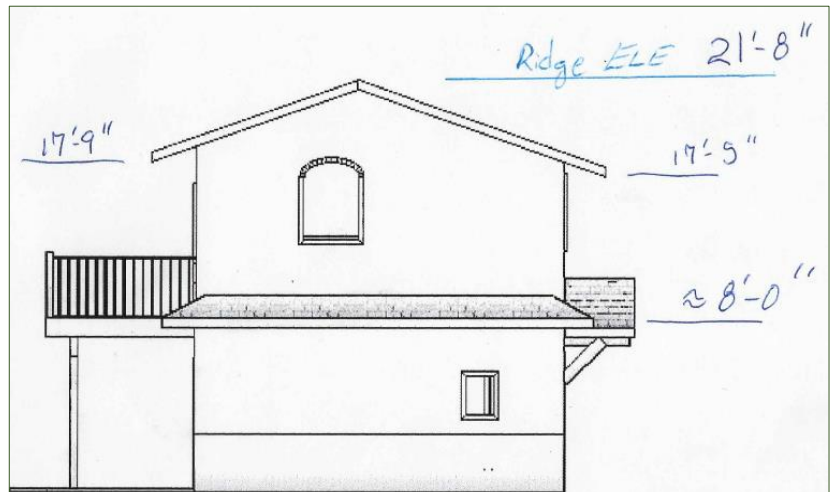
- Special circumstances exist for the existing garage that was built at the current setbacks. The approved building permit for the garage, attached to the staff report, shows a 3' side lot line setback from the existing fence. At that time the previous owner was not required to verify the setbacks with a survey for the construction of the garage.
- The applicant is creating the special circumstance with construction of an ADU at the proposed setbacks. The applicant could consider increasing the conditioned area on the first floor and reducing the proposed square footage of the second story to meet the required setbacks.
- The applicant could also consider reducing the height of the structure from 21'8" to 20' with 18" eaves and would not need a variance from the side lot line setback. Any part of a wall plane up to twenty (20) feet must meet the side lot line setback requirement of 5'.

- Special circumstances do not exist for the second variance request to be allowed to build a roof structure encroaching 2' into the rear lot line setback. The applicant could investigate building a small covered entry that will meet the 5' rear lot line setback requirement and add 18" eaves. Code allows eaves to project into setbacks 18".

2. Not result of Applicant. The special circumstances and conditions have not resulted from any action of the applicant.

Applicant's response: *These special circumstances have not resulted from any act of the applicant. The existing garage structure was constructed many years ago (close to 30?) by a previous owner.*

- Special circumstances and conditions have not resulted from any action of the applicant. The applicant did not construct the garage at the current rear setbacks. The applicant would like to construct the second story addition to have an accessory dwelling unit.
- Per Land Use Code Sec. 16-4-190(c)(5) c. Any part of a wall plane (inc. windows and facades greater than 45 degrees from the horizontal) over twenty (20) feet high must be set back a minimum of ten (10) feet from all side lot lines.
- The proposed wall plane is approximately 21.8' to the peak of the roof. Staff could not verify the exact measurement because the materials that were submitted were not to scale. If the applicant reduced the wall plane to 20' the side lot line setback requirement would be 5'.

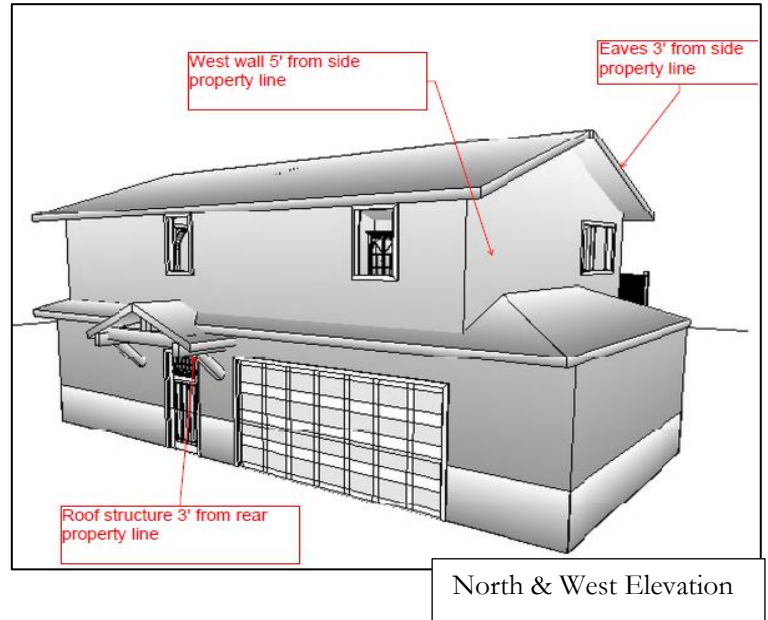


- The applicant is requesting is to construct the west wall of the second story at a side setback of 5' along with 2' eaves extending to 3' from the side property line. The west wall must be at least five (5) feet from the property line in order to have windows on that elevation per Chaffee County Building Official, Dan Swallow.
- The variance request for the roof structure above the rear entry door is a result of the applicant wanting protection from the elements. The size of the roof structure could be reduced to meet the rear setback but it might not have the same weather protections as the proposed roof structure.



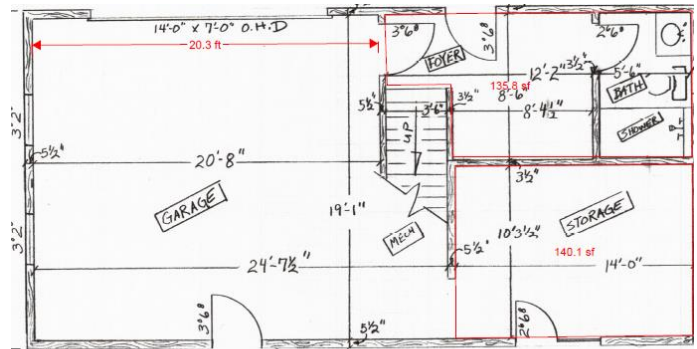
3. Strict Application Deprives Reasonable Use. The special circumstances and conditions are such that the strict application of the provisions of this Chapter would deprive the applicant a reasonable use of the building or land.

Applicant's response: *A strict application of the provisions of the land use code would deprive applicant of reasonable use of the building and land. Many land owners in Salida have built carriage houses/ADU's to expand the ability for a family household to live in town. As the cost of living continues to rise, this enables land owners to support family members that would otherwise be unable to stay in Salida. The City and future owners will benefit from this improvement by having a de facto increase in livable square footage in town, without having any additional expansion in built-out footprint on the property.*



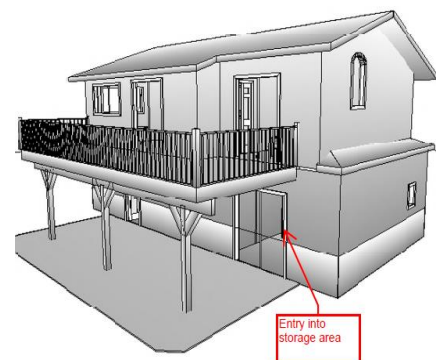
*In addition, second floor setback on the west side will meet fire code to accommodate a window, allowing ventilation, light and improving aesthetics of the building. Strict application of a 10' setback above 20' doesn't allow for an eave on the West side, which will provide weather protection to west siding and structure. This in turn will help diminish maintenance need.*

- Strict application would not deprive the applicant reasonable use of the building or land but would deprive the applicant of constructing an accessory dwelling unit directly above the nonconforming garage in the configuration as preferred.



Lower Floor Plan 1/4" = 1'

- The applicant is showing conditioned living space on both levels of the garage. Since the accessory dwelling unit has conditioned floor area on both the upper and lower levels of the garage the applicant could consider building a smaller second story to meet or reduce the variance request for the side lot line setback requirement.
- The conditioned living area on the first floor is approximately 136 square feet and 140 square feet of unconditioned storage area.





- The applicant has reasonable use of the property. The proposal is to construct the second story addition with the wall 5' from the side property line and the eaves extending to 3' from the side lot line setback.
- The applicant reduced the variance request from the first proposal in order to have a window on the west wall. Originally she was requesting 0' side lot line setback to build the second story 20'x36' or 720 square feet (exterior walls). The updated proposal is to build the second story 23'x33' or 722 square feet (exterior walls).
- The applicant is also requesting a variance from the rear lot line setback to construct a roof structure over the ground floor entry. Eaves are allowed to encroach 18" into a setback but the proposal is for a covered roof structure over the entry with a rear lot line setback of 3'. As explained in Criteria #1 the applicant could build a smaller covered entry with eaves that meet current setback requirements.

6. No Injury to the Neighborhood. The granting of the variance will not be injurious to the neighborhood surrounding the land where the variance is proposed, and is otherwise not detrimental to the public welfare or the environment.

Applicant's response: *The granting of the variance will not be injurious to the neighborhood surrounding the land where the variance is proposed. The adjacent land owner that abuts this structure is aware of the request and is in support of the construction project. This structural improvement is not detrimental to the public welfare or the environment; in fact, it promotes public welfare by expanding the ability of a family to live together in Salida.*

- The granting of the variance should not be injurious to the neighborhood. Staff has received emails from two current neighbors in support of the variance requests.
- Staff is concerned that the applicant will not be able to maintain the second story on the west side of the addition on her own property. The applicant will be able to maintain all other elevations of the structure on her property.

7. Consistency with Code. The granting of the variance is consistent with the general purposes and intent of this Land Use Code.

Applicant's response: *The granting of the variance is consistent with the general purposes and intent of the Land Use Code. Overall, the intent is to ensure the actions of one property owner do not detrimentally impact the rights of another property owner. In the current circumstance, the neighbors agree the construction is not injurious to their rights. Applicant intends to comply with all remaining code with regards to construction.*

- The applicant complies with all other aspects of the code with the exception of the two variance requests. The east side of the second story is required to meet a 10' side yard setback and, as proposed, the wall will be 11' from that side lot line.
- Setbacks help provide open space and to address basic safety issues: distances between buildings decrease the potential damage in case of a fire, provide the room necessary for a homeowner to maintain his/her buildings on his/her own property and provide for solar access and ventilation.

- There may not be adequate space which the owner can use for maintenance of the west side of the addition.

**Land Use Code Sec. 16-4-180(f)** The Board, in approving the variance, may impose such restrictions and conditions on such approval, and the premises to be developed or used pursuant to such approval, as it determines are required to prevent or minimize adverse effects from the proposed variance on other land in the neighborhood and on the general health, safety and welfare of the City. All conditions imposed upon any variance shall be set forth in the granting of such variance.

#### **REVIEW AGENCIES:**

**Fire Department Fire Chief, Doug Bess** – Fire Department has no concerns.

**Chaffee County Building Official, Dan Swallow** – See attached emails from Dan Swallow

#### **REQUIRED ACTIONS BY THE BOARD:**

1. The Board shall confirm that adequate notice was provided.
2. The Board shall conduct a public hearing.
3. The Board shall make findings that a majority of the points 1 through 7 of the above section are met by the applicant.

#### **POSSIBLE DECISION OPTIONS:**

**Option A:** Based on the findings below, the Board of Adjustment may recommend **APPROVAL** of the two variance requests based on the following findings of fact:

- Special circumstances exist because the existing accessory structure was built at the current setbacks.
- The conditions of the lot and the existing detached garage are not the result of any action by the applicant.
- The granting of the variance should not be injurious to the neighborhood.

**Or**

**Option B:** Based on the findings below, the Board of Adjustment may recommend **DENIAL** of the two variance requests based on the following findings of fact:

- No Special circumstances exist. The applicant is creating the special circumstance with construction of an ADU at the proposed setbacks.
- There is not adequate space that maintenance of the addition can be provided on the subject property.
- The applicant has reasonable use of the property.



**RECOMMENDED MOTION (OPTION A):** “I make a motion to approve the Van Wyck Variance requests as the requests meets the review standards for Zoning Variances, subject to the following conditions.

1. That the applicant submits a building permit that meets all requirements of the Chaffee County Building Official.
2. That the eaves project no more than 18” on the second story.

**RECOMMENDED MOTION (OPTION B):** “I make a motion to deny the Van Wyck Variance requests as the requests do not meet the review standards for Zoning Variances.

BECAUSE THIS APPLICATION IS FOR A VARIANCE, THE SALIDA BOARD OF ADJUSTMENT SHALL MAKE THE FINAL DECISION ON THIS APPLICATION. DECISIONS BY THE BOARD SHALL BE FINAL AND MAY NOT BE APPEALED FURTHER EXCEPT IN COURT.

Attachments: Proof of publication  
Review agency comments  
Application materials  
Letters from neighbors