



Neighborhood Services Department
*Planning, Zoning, Code Enforcement, GIS
and Building Inspections*

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Telephone: (262) 473-0540

January 16, 2024

Staff Memorandum
Zoning Board of Appeals
RE: 355 W James Street

Project History

The applicant Randall Aschbrenner of RLA Properties, LLC, property owner of 355 W James Street requested a variance to construct a new single family principal structure with relief from front yard, side yard, and rear yard setbacks, on an existing lot where a nonconforming structure was demolished in 2020. The requested variance is for the new construction with setbacks that do not meet the current requirements of the R-3 zoning district in which the property is located in. The applicant is requesting an interior side yard setback of 3.8 feet at the narrowest point, **(our code requires 15 feet)**, a front yard setback of 15.4 feet, **(our code requires 30 feet)**, and a rear yard setback of 20.2 feet, **(our code requires 30 feet)**.

Findings prerequisite to grant of variance.

No variance to the provisions of this title shall be granted by the board unless it finds beyond a reasonable doubt that all of the following facts and conditions exist, and so indicates in the minutes of its proceedings:

- A. The particular physical surroundings, shape, or topographical conditions of the specific property involved would result in a particular hardship upon the owner as distinguished from a mere inconvenience, if the strict letter of the regulations were to be carried out;
- B. The conditions upon which the application for a variance is based would not be applicable generally to other property within the same zoning classification;
- C. The purpose of the variance is not based exclusively upon a desire for economic or other material gain by the applicant or owner;
- D. The hardship is not one that is self-created;
- E. The proposed variance will not impair an adequate supply of light and air to adjacent property or substantially increase the congestion in the public streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair property values within the neighborhoods;
- F. The proposed variance will not have the effect of permitting a use which is not otherwise permitted in the district;
- G. No variance shall be granted in a floodland district where not in compliance with Section 19.46.070C.4. of this title.



Decisions—Time limit—Additional conditions—Expiration and extensions.

- A. The board of zoning appeals shall decide all appeals and applications within thirty days after the final hearing, and shall transmit a signed copy of the board's decision to the appellant or applicant, zoning administrator, and city plan commission
- B. Conditions may be placed upon any zoning permit ordered or authorized by this board.
- C. Variances, substitutions or zoning permits acted upon by the board shall expire within six months unless substantial work has commenced pursuant to such grant. Extension may be granted by decision of the board.

Following are some excerpts from Wisconsin State Statutes 62.23(7)(e)7 relating to Board of Appeals:

b. The board of appeals shall have the following powers: To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this section or of any ordinance adopted pursuant thereto; to hear and decide special exception to the terms of the ordinance upon which such board is required to pass under such ordinance; to authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in practical difficulty or unnecessary hardship, so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.

d. A property owner bears the burden of proving "unnecessary hardship," as that term is used in this subdivision, for an area variance, by demonstrating that strict compliance with a zoning ordinance would unreasonably prevent the property owner from using the property owner's property for a permitted purpose or would render conformity with the zoning ordinance unnecessarily burdensome or, for a use variance, by demonstrating that strict compliance with a zoning ordinance would leave the property owner with no reasonable use of the property in the absence of a variance. In all circumstances, a property owner bears the burden of proving that the unnecessary hardship is based on conditions unique to the property, rather than considerations personal to the property owner, and that the unnecessary hardship was not created by the property owner.

Staff Recommendation

The proposed principal structure would create a greater degree of nonconformity within the City of Whitewater, and previous nonconforming use has ceased existence for over 12 months. The proposed residence would impede on adjacent properties, and the hardship is self-imposed, as the lot is conforming in size, and the property owner has adequate room to build on it while meeting all setback requirements of the R-3 Zoning District.

Staff Recommends the application for a Variance on the property located at 355 W James Street **be denied.**

Regards,

Allison Schwark
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Zoning Administrator
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