

RECOMMENDED FINDINGS (DENIAL)

Variance

In order to approve the Variance, the following findings must be made:

1. Because of exceptional or extraordinary circumstances or conditions applicable to the property, or use, including size, shape, topography, location or surroundings, the strict application of the ordinance is found to deprive the property owner of privileges enjoyed by other properties in the vicinity and within the same zoning district. **[Finding not met]**

The subject parcel is located midblock along South Pastoria Avenue near the intersection with Lewis Avenue. The site is surrounded by residential developments of one and two unit homes. The site is not constrained by its size or shape. The lot size of 5,750-square feet is less than current zoning code requirement for new R-2 lots, but the site is the same lot size as other properties in the same R-2 neighborhood. The rectangular shape of the property and the lot dimensions of approximately 50 feet wide by 115 feet deep are similar to other lots on the same street and does not present a unique or unusual circumstance that may warrant special consideration through a Variance.

Similarly, the topography does not present a unique or unusual circumstance. The site has a grade slope of negative .9% from front to back.

Aside from one protected tree, and four unprotected trees in the rear yard, there are no natural obstructions on the lot.

Therefore, the application of the ordinance is not found to deprive the property owner of privileges enjoyed by other properties in the vicinity and within the same R-2 zoning district.

2. The granting of the Variance will not be materially detrimental to the public welfare or injurious to the property, improvements or uses within the immediate vicinity and within the same zoning district. **[Finding not met]**

The unpermitted accessory structure is visible from adjacent properties and while some neighbors have expressed support for the project, at least one affected neighbor expressed concerns that the unpermitted structure was too close to the property lines, was constructed without a city permit, and the structure is too tall and visible. At its lowest height, the shed roof is 8 feet, 7 inches along the left side property line and at its highest point, the shed roof is 9 feet, 11 inches. The existing 5 feet, 8 inch fence along the left side and approximately 6 feet high fence along the rear property line serves to partially screen the accessory structure. While landscaping in the form of shrubs and trees may help reduce visual impacts; however, there are gaps and the upper portion of the accessory structure is visible from adjacent properties. Therefore, Finding 2 cannot be met.

3. Upon granting of the Variance, the intent and purpose of the ordinance will be still served and the recipient of the Variance will not be granted special privileges not enjoyed by other surrounding property owners within the same zoning district. **[Finding not met]**

The neighborhood has a pattern of having a house situated at the front of the lot and a detached garage behind the home. Typically, the detached garage will have deficient rear and side setbacks. In the vicinity, there are four examples of homes being granted Variances over the past fifty years for deficient setbacks including 119 South Pastoria Avenue, 168 South Pastoria Avenue, 386 South Pastoria Avenue, and 389 South Pastoria Avenue. Only one of these Variances involved an accessory structure. The other Variances were for accessory dwelling units which are different types of structures and are not pertinent to this Variance.

For the accessory structure Variance at 386 South Pastoria Avenue, it was approved for reduced rear setbacks – 6.5 feet where 10 feet is required - and increased rear yard coverage – 33% when 25% is the maximum - for an addition to an existing legal nonconforming detached one car garage. The addition added another garage parking space and a small workshop which brought the property into compliance with the minimum residential parking requirement of two covered parking spaces. While there are some similarities between the past Variance and the subject Variance in terms of reduced rear setbacks the difference is that the former correct a non-conforming situation and brought the property into compliance with current parking requirements. However, the proposed accessory structure and the subject of the proposed Variance was created due to unpermitted construction, would not bring the property into closer compliance with current requirements.

The intent of required yard setbacks is to ensure the separation of buildings across property lines and to mitigate potential impacts to privacy, light, air, or the enjoyment of property whether current or in the future. The subject accessory structure was constructed without benefit of a city permit, does not correct a non-conforming situation on-site, and is not consistent with the City's purpose for Variances and the required findings cannot be made as described above.