



DEPT. OF COMMUNITY DEVELOPMENT
PLANNING DIVISION
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**BOARD OF ADJUSTMENT
MINUTES
July 23, 2020**

MEMBERS PRESENT:

Aaron Smith
Roger Clark
Andrew Curry
Mandel Samuels
Hannah Cicioni
Hunter Fry

OTHERS ATTENDING:

Ethan Hunter, City Planner
Chris Robinson, Planner I
Gloria Garcia, Planning Tech.

Aaron Smith called the meeting to order at 4:01 pm.

NEW BUSINESS

20-14: A request by Mark and Courtney Fisher for a variance to allow a rear and interior side setback reductions at 4107 W. Mockingbird Ln. in the city's RSF-5 (Residential Single Family, 5 units per acre) zoning district.

Mark and Courtney Fisher represented the request. Staff stated that the request is to allow a 14' rear setback reduction (20' to 6') and a 6'3" side setback reduction (10' to 3'9") for an illegally nonconforming shed. The applicant constructed the existing shed without a building permit and in violation of the required setbacks. Staff has not identified any circumstances that are unique to the individual property where strict enforcement of the zoning ordinance would cause undue hardship.

Courtney Fisher stated that the property is shaped like a backward "C" and if they did 10' out from the fence line, the shed would be sitting on their patio door. Fisher also stated that the shed was an exact replacement of the shed that was there when they bought the house a year ago but for this shed they laid concrete and bolted it down to secure it.

Smith opened the public hearing. There were no public comments and the hearing was closed.

Cicioni asked if the applicants were able to put the shed to the south. Mark Fisher stated that there is a tree on that side of the property. Cicioni asked staff the only thing they are only dealing with is the placement of the shed and not being within the setbacks. Staff stated that is correct. Staff also stated that the previous shed was not permanently attached to the ground and of a size that

wouldn't have required a building permit but was replaced with one that does require a building permit.

Curry stated that they don't get to rewrite the law because of a bad situation and there needs to be some sort of justification to allow the variance. Cicioni stated she agrees with Curry and is failing to find a hardship to justify the request.

Motion by Cicioni to deny the request as presented. Second by Curry.

Voice vote: Unanimous *Motion carried*

DENIED

20-15: A request by Guy and Kristen Lockridge for a variance to allow a rear setback reduction at 2809 W. Cobbler Place in the city's R-SF (Residential Single Family) zoning district.

Tim Boudrey represented the request. Staff stated that this request is to allow a rear setback reduction of 10' (20' to 10') for portions of a home that is currently being constructed in violation of the zoning ordinance. Staff has not identified any circumstances unique to the individual property where strict enforcement of the zoning ordinance would cause undue hardship.

Boudrey explained that a stop work order was issued due to a new structure encroaching into the 20' rear setback. Boudrey stated they are only asking for a 10' rear setback reduction, which does not encroach into the utility easement.

Smith opened the public hearing and proceeded as follows:

- Guy Lockridge, 2809 W. Cobbler Place- Lockridge stated they would've change the house plans if they would've known the porch was encroaching into the rear setback.

There will no further comments from the public and the hearing was closed.

Curry asked staffed for additional information to clarify the issue that's been raised as to the mistaken approval. Staff stated that the form approved showed information about setbacks and was filled out showing the rear setback at 20' and was signed by the applicant stating that the site plan is accurate and that everything would be verified in the field. Staff stated oversights were made and the permit should not have been issued but whenever the issues were caught prior to the encroaching portions of the house being built, the builder and homeowner were contacted to inform them of it, at which they agreed to stop work on the encroaching portions of the home but then found out that the construction continued. Community Development Director, John McCurdy, stated that at the time of review, staff was not aware that there would be a covered roof on the concrete slab. McCurdy stated that he and Deputy Fire Chief William Hyde spoke with the builder and were promised that they would stop construction and would submit a variance request. Staff then realized that a corner of the house was also encroaching into the setback by 1'. Staff agreed to let them continue working based on the promise from the builder to not build the roof but later issued a second stop work order after being notified that the roof was being built.

Samuels stated that a stop work order was put into place in time to prevent the structure from being building and unfortunately it still was but didn't see that as a reason to accept the variance.

Clark asked staff if the 1' encroachment was going to be presented as a new variance. Staff stated that they have not requested a setback reduction for the 1' encroachment. Boudrey stated he wasn't aware of the encroachment but would request it if it was needed.

Curry stated that a partially constructed building does not create a hardship and has not yet heard a hardship to allow the request. Cicioni stated she agreed with Curry.

Motion by Cicioni to deny the request as presented. Second by Clark.

Voice vote: Unanimous **Motion carried**

DENIED

20-16: A request by Hunter Fry for a variance to allow a rear setback reduction at 606 S. 4th Street in the city's NBT (Neighborhood Transition) zoning district.

Smith stated that Andrew Curry and Hunter Fry were recusing themselves from this request.

Will Kellstrom represented the request. Staff stated that the request is to allow a 10' rear and side setback reduction (10' to 0') for a detached garage. The NBT zoning district typically allows 0' rear setback, but requires certain transition standards when adjacent to "existing single-family residential zoned lots" (Sec. 14-715(4.2)(d)). Staff finds that this request is warranted based on the intent of the Downtown Rogers Development Code and the Downtown Regional Center Zoning Plan.

Kellstrom stated that the property was recently rezoned NBT but because it is adjacent to single family residential properties, the residential transition standards apply and a 10' setback is required. Kellstrom stated that the hardship here is the location of the property in the timing of this request. If all properties were zoned NBT this wouldn't be an issue and they wouldn't be required to ask for a variance.

Smith opened the public hearing. There were no public comments and the hearing was closed.

Kellstrom stated that he doesn't believe the residential transition standards are appropriate in this context and would like to be exempt from all of them.

Motion by Cicioni to approve the request for a variance from the residential transition standards which can be outlined in Sec. 14-715(4.2)(d). Second by Clark.

Voice vote: Unanimous **Motion carried**

APPROVED

Previous minutes: June 25, 2020

Clark motioned to approve the minutes from June 25, 2020. Second by Curry. Voice vote: (unanimous). Motion carried. **APPROVED.**

Meeting adjourned at 4:43 pm.

Roger Clark, Board of Adjustment Secretary