



## MEMORANDUM

To: Mayor Stille and St. Anthony Village City Council  
City Manager Yunker

From: Stephen Grittman, City Planner

Date: City Council Meeting – November 9, 2021

NAC Project No. 323.01 – 20.05

Request: Request for Variance to Side Yard Fence Setback Requirements for Driveway, Patio, and Shed, and to Maximum Impervious Surface Requirements for Single Family Parcel

Property Address: 2912 Crestview Drive

Property PID: 06-029-23-43-0047

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## STAFF and PLANNING COMMISSION RECOMMENDATIONS

The applicant has constructed a series of improvements to their property at the above address, including increased driveway width, a rear yard patio, and a rebuilt shed in the rear corner of the property. For the concrete work, the applicable setback for driveways and patios is 5 feet. Both surfaces have been constructed with a 2 foot setback, according to the sketch materials provided by the applicant.

The shed was constructed in its current location as a replacement for a prior shed that was in poor repair. The original structure was 10 feet by 10 feet, and placed up to the property lines both to the north and west. The applicant's new shed is 10 feet by 20 feet, also placed adjacent to the property line with a zero setback. For such buildings, a setback requirement of 5 feet applies, although an existing non-conforming structure can be replaced in its prior location, provided the non-conformity is not increased.

Finally, staff's estimates of impervious surface cover – including all paved areas and the areas of the shed and home, totals approximately 42.5%. For single family parcels less than 9,000 square feet, an impervious surface maximum of 40% is required. As such, on this lot of 8,732 square feet, the allowable impervious area is exceeded by approximately 220 square feet.

Staff has reviewed for use, setbacks, and impervious surface, among other standards. Based on the material presented by the applicant, and the requirements for variance consideration in the City's zoning ordinance, Staff and Planning Commission recommend as follows:

1. **Side Yard Setback Variance for Driveway**, reducing the required 5 foot setback to 2 feet. Staff and Planning Commission recommend **approval**, based on a finding that the current garage and driveway are inadequate to provide reasonable access and parking area on the property, and that further expansion to the interior of the lot would create other zoning issues. The Planning Commission made this recommendation with one negative vote.

2. **Side Yard Setback Variance for Patio**, reducing the required 5 foot setback to 2 feet. Staff and Planning Commission recommend **denial**, based on a finding that the threshold requirements for unique conditions and definition of reasonable use are not met according to the requirements of the zoning ordinance for variance consideration. A portion of the patio should be removed to meet the 5 foot setback. The Planning Commission made this recommendation unanimously.

3. **Side and Rear Yard Setback Variance for Shed Expansion** from 5 feet to 0 feet. Staff and Planning Commission recommend **denial**, based on a finding that the threshold requirements for unique conditions and definition of reasonable use are not met according to the requirements of the zoning ordinance for variance consideration. The applicant may choose to remove a portion of the shed to retain the prior non-conformity setbacks for a 10' by 10' shed, or relocate the expanded shed to meet the 5 foot setback. The Planning Commission made this recommendation unanimously.

4. **Impervious Surface Variance** from 40% maximum coverage to 43% coverage. Staff and Planning Commission recommend **denial**, based on a finding that the threshold requirements for unique conditions and definition of reasonable use are not met according to the requirements of the zoning ordinance for variance consideration. The applicant should work with Code Enforcement to remove at least 220 square feet of impervious area (this amount based on staff estimates), or provide a survey that demonstrates a different amount of removal to meet the maximum allowable coverage of 40% (3,715 square feet). The Planning Commission made this recommendation unanimously.

Because these improvements were completed prior to permitting or zoning approval, denial of the variances noted would require removal of some of the improvements made to the property.

## **GENERAL INFORMATION**

Applicant:	Greg Stull
Owner:	Cynthia Stull
Location:	2912 Crestview Drive
Existing Land Use	Low-Density Residential
Zoning:	R-1 Single Family District

Surrounding Land Use / Zoning: North: Low-Density Residential / Zoned: R-1 Single Family District  
East: Low-Density Residential / Zoned: R-1 Single Family District  
South: Low-Density Residential / Zoned: R-1 Single Family District  
West: Low-Density Residential / Zoned: R-1 Single Family District

Deadline for Agency Action: Application Complete Date: 9/30/2021  
60 Days: 11/29/2021  
Letter Sent: No  
120 Days: 1/28/2022

## ANALYSIS

### 1. Background



As stated above, the applicant has constructed several improvements to the property over the past several months that were found to violate required zoning standards. The applicant is seeking variances to approve, after the fact, the construction and location of those improvements.

The applicant has filed the appropriate applications for the permitting of those projects – again, after the fact. However, upon those filings, it was found that many of the improvements did not comply with applicable zoning regulations. Thus, the applicant is seeking variances for those violations.

The zoning ordinance sets out a series of criteria necessary to qualify for variance consideration. Those criteria are found in §152.245, (C) *Evidence of the Zoning Chapter*, and are quoted in this report for reference below. The criteria can be summarized as whether there are unique conditions on the property that contribute to creation of a practical difficulty in putting the property to what would otherwise be considered a reasonable use – reasonable use is often thought of as one that would be common and acceptable in the area. Variances may



not be entirely economic in nature, nor be the result of the actions of the applicant.

Thus, for variance consideration, there is a two-step test. First is the definition of “reasonable use”. The proposed use must be one that is reasonable for the property, given the characteristics of the property and the neighborhood.

The second test is whether there are unique physical conditions on the property that require consideration of a variance to reach the reasonable use as defined. The parcel itself is a typical residential parcel of common dimensions and use, however, the applicant suggests that the width of the garage and the driveway leading to it impede his family’s ability to make use of the property, particularly given the accessibility issues they face.

The specific variance requests are addressed independently below.

1. Driveway setback. The zoning ordinance requires a driveway setback from the side lot line of 5 feet. In some instances, the City engineer or public works director can approve a setback of as little as 3 feet. The applicant’s as-built setback is shown as 2 feet, based on the sketch materials provided as part of the application.

The applicant supports his variance request based on a issues related to accessibility, and his family’s special needs for wheelchair access. While this is not typically a land-based argument, the existing garage and prior driveway width (16 feet) limits reasonable accessibility for common driveway parking areas. The applicant notes that he increased the driveway by two feet toward to the interior of the lot to line up with the edge of the garage – the limits of that construction. To supplement this, the applicant then expanded the width of the driveway 5 feet toward the side lot line, resulting in the now-existing 2 foot setback.

The applicant suggests that the expansion as completed was done to align with an existing sidewalk that leads from the front driveway to the rear yard. Sidewalks of 3 feet or less in width are permitted to have a 1 foot setback, so the sidewalk complies with code.

Applying the unique conditions and reasonable use tests noted above, staff believes that the applicant’s burden has been met with this design. The existing garage width, and the previously narrow driveway, are not typical of most single family home driveways, with commonly have widths of up to 25 feet in accordance with the zoning ordinance regulations for these improvements. The location of the garage was a pre-existing condition of the property, not created by the applicant. Thus, staff recommends approval of the variance for driveway setback.

2. Patio setback. The applicant constructed a rear patio behind the existing garage that connected to the existing sidewalk. As stated by the applicant, he continued the line of the sidewalk as it became patio. According to the City’s zoning regulations, a patio is any paved recreational space that is greater than 3 feet in width. Patios are required to maintain setbacks of 5 feet from the property line to facilitate drainage and buffer fence or landscaping between the owner’s outdoor recreation area and the neighbor’s outdoor spaces. The paved area would be considered sidewalk for the length of the pavement that is 3 feet or less in dimension. As such, the encroachment area is that

portion of the patio that extends along the side lot line and is more than 3 feet from the rear wall of the garage. The first 3 feet would be considered consistent with the sidewalk connection to the front driveway area.

Again applying the variance criteria of reasonable use and unique conditions, staff does not believe that the test is met for the patio space. While accessibility issues can be addressed by a 3 foot walk, the patio beyond that point is not required for wheelchair access. The patio could be expanded farther into the rear yard while maintaining the 5 foot setback (notwithstanding the impervious issues addressed below), so square footage and usability is not at issue for this aspect of the project.

As such, staff finds that there are no unique conditions that require a patio setback encroachment to make reasonable use of this property. Staff recommends denial of the patio setback encroachment, recommending instead that the portion of the patio area more than 3 feet beyond the rear garage wall (to account for accessible sidewalk access) be removed to a setback of at least 5 feet.

3. Shed Setback. The replacement shed sits in the northwest corner of the lot, with little if any setbacks from either the west or north property lines. The required setback for such structures is 5 feet from both side and rear lot lines. The applicant notes that prior to construction of this shed, another accessory shed occupied the corner of the lot, but with a dimension of 10 feet by 10 feet. That shed was in a state of disrepair and required replacement.

The zoning ordinance permits the replacement on non-conformities under specific timing and other provisions, but with the requirement that no expansion of the non-conformity is permitted. Thus, a replacement shed could have been placed in the same location, with the same zero setback and same 10' by 10' dimension. In this case, the applicant's replacement structure was expanded to 10 feet by 20 feet, resulting in new encroachments into the required 5 foot setback along the rear property line.

Evaluating the shed setback variance according to the variance criteria noted above, staff believes that the criteria are not met by the request. There is ample space on the property to locate the expanded building away from the property lines to meet the required setback. In the alternative, the applicant has the ability to continue the non-conformity with a 10' by 10' building replacement. There are no apparent unique aspects of this parcel that suggest reasonable use consists of an expanded setback violation. As such, staff recommends denial of the variance. The applicant's options in event of a denial are to remove a portion of the shed to return to the 10' by 10' sized building on the property line, or relocate the existing structure to meet the 5 foot setback requirement along both property lines.

4. Impervious Surface. With the improvements now in place, the applicant has expanded impervious surfaces on the property through the driveway expansions, the patio, and the larger shed. The standard for lots of As noted above, it appears (based on staff's calculations from aerial photography) that the applicant exceeds the allowable

impervious surfaces on by approximately 220 square feet. A survey would be necessary to be more precise.

The City has been rigorous in enforcing the impervious surface standards due to overall stormwater management issues, including specific areas of flooding in the past, and a number of variances have been denied for similar exceptions, or potential applicants cautioned that variances for future projects are unlikely. The ordinance has been structured to allow a slightly higher percentage for lots such as that of the applicant, increasing the standard allowance from 35% to 40% for smaller existing lots, under 9,000 square feet.

For a lot of 8,732 square feet, a total impervious surface area – including all paved areas within the boundaries of the parcel, as well as roof coverage of both principal and accessory buildings, the maximum allowable impervious area is 3,493 square feet. Measurement taken by staff from aerial photography indicate a total current coverage (including the improvements placed by the applicant prior to permitting) of approximately 3,715 square feet. As noted above, the applicant could have a survey prepared to demonstrate a different number.

However, under the current estimates, the applicant must remove 220 square feet of impervious area, or receive a variance to accommodate the current higher square footage. Had the applicant applied for the required building and/or zoning permits for the various improvements, staff would have notified him of the impervious standard, and cautioned him of the need to limit construction to the allowable area.

In viewing the projects as if they were being proposed prior to construction, there is no apparent unique condition that supports the need for a variance to make reasonable use of the property. For the driveway discussed above, the expanded area adds about 210 square feet of coverage. The shed covers 200 square feet, 100 square feet of which is expanded coverage from the original condition. The patio adds approximately 375 square feet of coverage (again, estimating from aerial photography), about 75 square feet of which appears to be in the required setback.

Staff recommends against the impervious surface variance, and further recommends that at least 220 square feet of current impervious surface area is removed from the property. As highlighted previously, the applicant may present a survey that accounts for current conditions, and which may modify that total to match the maximum allowable coverage of 3,715 square feet.

## **2. Representative Codes Referenced.**

Title XV Land Usage, Chapter 152 Zoning Code, Section §152.245 VARIANCES.

## **3. Criteria for and Consistency with Criteria for Variance Approval.** Title XV Land Usage, Chapter 152 Zoning Code, Section §152.245, (C) *Evidence*, lists the criteria the City Council must consider in determining whether to grant or deny a variance.

**Request:** Request for a 5-foot variance from the required side yard setback. The applicable criteria include:

1. *The subject matter of the application is within the scope of this section.*
2. *Strict enforcement would cause practical difficulties because:*
  - a. *The property owner proposes to use the property in a reasonable manner not permitted by the zoning code;*
  - b. *The plight of the property owner is due to circumstances unique to the property not created by the property owner;*
  - c. *The variance, if granted, will not alter the essential character of the locality; and*
  - d. *Economic considerations alone are not the basis of the practical difficulties.*
3. *The variance, if granted, would be consistent with the City's comprehensive land use plan.*
4. *The granting of the variance is in harmony with the general purposes and intent of the zoning code.*

## **SUMMARY AND STAFF RECOMMENDATION**

***Side Yard Setback and Impervious Surface Variances.*** Four separate variances are necessary to accommodate the improvements that the applicant has made to the property. Those are summarized as follows, with a staff recommendation for each individual request.

## **RECOMMENDED COUNCIL ACTION**

### **Decision 1. Variance to Side Yard Setback for Driveway**

1. **Motion to recommend approval of the request for a variance to the side yard setback for construction of a driveway, based on findings noted by staff recommendation.**

#### **ALTERNATIVE ACTIONS**

2. Motion to deny the variance as requested. In the event of a motion for denial, the City Council should identify findings supporting the action for the record.
3. Request Additional Information and Table Action, subject to the submission of additional information from staff and/or applicant.

### **Decision 2. Variance to Side Yard Setback for Patio**

1. **Motion to deny the variance as requested, based on the findings in the City Council resolution.**

#### ALTERNATIVE ACTIONS

2. Motion to approve the request for a variance to the side yard setback for construction of a patio. In the event of a motion for approval, the City Council should identify factors leading to the approval as the findings for the record.
3. Request Additional Information and Table Action, subject to the submission of additional information from staff and/or applicant.

#### **Decision 3. Variance to Side and Rear Yard Setback for Shed**

- 1. Motion to deny the variance as requested, based on the findings in the City Council resolution.**

#### ALTERNATIVE ACTIONS

2. Motion to approve the request for a variance to the side yard setback for construction of a shed. In the event of a motion for approval, the City Council should identify factors leading to the approval as the findings for the record.
3. Request Additional Information and Table Action, subject to the submission of additional information from staff and/or applicant.

#### **Decision 4. Variance to Impervious Surface**

- 1. Motion to deny the variance as requested, based on the findings in the City Council resolution.**

#### ALTERNATIVE ACTIONS

2. Motion to approve the request for a variance to the impervious surface requirements. In the event of a motion for approval, the City Council should identify factors leading to the approval as the findings for the record.
3. Request Additional Information and Table Action, subject to the submission of additional information from staff and/or applicant.

#### **ATTACHMENTS**

Exhibit A: Application and Supporting Material