



Development Services
City Services Center
500 15th Avenue SW
Cedar Rapids, IA 52404
Telephone: (319) 286-5168

SPECIAL
ZONING BOARD OF ADJUSTMENT
Wednesday, June 24, 2015 @ 11:00 AM
2nd Floor City Service Center
500 15 Avenue SW, Cedar Rapids IA 52404

DECISION AND ORDER

Members Present: Chair Todd Barker, Vice-Chair Bill Vernon, Sue Lowder,
Staff Present: Vern Zakostelecky, Ruth A Fuessley and Patricia A Pfiffner
Others Present: Gregory Stover. Joanne Stevens & Tom Jackson / objectors

New Business

Chair, Todd Barker called the June 24, 2015 Special Board of Adjustment meeting to order at 11:00 AM. Attendance taken and a quorum declared. The Board of Adjustment is a Quasi-Judicial Board created by the City of Cedar Rapids. The Board is empowered to vary the regulations of the Zoning Ordinance in harmony with its general purpose and intent where the Board makes Finding of Fact that there are practical difficulties or unnecessary hardships in the way of carrying out the literal provisions of the Ordinance.

This Board reviews Conditional Use requests. When considering a Conditional Use, the Board will keep in mind the following: Is the requested use consistent with the intent and purpose of the Ordinance and with the Future Land Use policy plan; will the use have a substantial adverse effect upon adjacent property and the character of the neighborhood; and will the proposed use be compatible with the immediate neighborhood. This Board also reviews Variance requests. A Variance request should only be granted if the Petitioner establishes that an unnecessary hardship will result if the Zoning regulations are enforced. There are seven criteria for actions on a Variance which were to be addressed in your application. To review they are: Unique Circumstances, Not exclusively for financial gain, Hardship not self-created, Substantial rights denied, not special privilege, not detrimental and No other remedy. A general rule of thumb is that a Variance should prevent a hardship, not grant a special privilege not available to other landowners in similar situation.

Typically "Unnecessary Hardship" means: The land in question cannot yield a reasonable return if used only for the purpose allowed in that zone; the issue in question is due to unique circumstances and not to the central conditions of the neighborhood; the hardship must not be self-created; and the use authorized by the Variance will not alter the essential character of the locality.

We are an independent volunteer Board of citizens appointed by the Mayor and approved by the City Council. We are

not part of the City Administration. We are governed by both City and State Codes and Ordinances. The Board is made up of five Board members. The Chair cannot make a motion but has a vote. There must be three (3) affirmative votes to pass. No motion made by the Board will be the same as a denial. Today we have 3 members present.

As a Board of the City, we welcome all testimony. We make our decisions based on the facts and evidence allowed under City Code, presented at this open meeting. While your case is being read by our Secretary we ask that the Petitioner comes forward so your testimony can be heard and recorded. Please give your name and address for the record. You will then be able to present your case. If the proceedings become lengthy, we may ask that testimony be focused on the new facts or evidence not already presented. We will then ask for any objectors. At that time objectors will come forward, state name and address for the record, and then state your objections. The Board will then give the City Staff an opportunity to present information for the case. I will then call for any Board questions or any Board discussion. Final summaries and additional comments may then take place. Based on a motion and a second the Chair will then call for a vote. If your Variance is approved, please understand that you may still have to comply with other regulations and codes, such as applicable Building Codes, to work within.

V34-2015-19583: A Public Hearing regarding an application submitted by Petitioner Gregory J and Penny E Stover hereby requesting that the Board of Adjustment authorize the issuance of a Building Permit to construct a new attached garage addition (with up to 1 foot overhang) to an existing single family dwelling that would be as close as 4.04 feet from the interior side property line in lieu of the minimum 5 feet required setback on the property at 399 Indiandale Road SE, R-1 Zone District.

Findings of Fact: The Board finds that Subsection **32.05.010.B.1.** Table 32.05-1 requires a minimum 5 feet single interior side yard setback, as measured from the property line. The Board acknowledges the Appellant submitted the required criteria sheet indicating unique circumstances to size and terrain of the lot – the property is fairly large but consists of 60 percent unused due to slopes. Appellant states the request is to disassemble the carport, relocate the shed on the property and the concrete is good.

Objectors Present: Joanne Stevens and Tom Jackson, 365 Trail Ridge Road SE, appeared to testify and answer questions. Objectors are obtaining a survey through Anderson – Bogart to be completed in approximately 10 days to determine where the property line is. Steven's stated she believes the City of Cedar Rapids should require the Petitioner/Titleholder to be the responsible party to obtain surveys. Petitioner stated he will move the wall if survey indicates the carport is too close the property line. The gas line and electric line is near the property line. The Board acknowledges the Development Services Department has received concerns from an adjoining neighbor due to the lack of being convinced where the actual property line is located.

The Board acknowledges that the rear of the property sits lower than both adjacent neighbors which have created rain/water runoff problems. The proposed addition(s) are not for financial gain, rather for much needed room, security and storage. The hardship is not self-created as they are asking to be allowed to maintain/utilize the existing concrete wall formerly used as a carport which would not create any further encroachment, but would provide the additional room, security and storage and correct water/drainage issues – which is not a special privilege but that of which is enjoyed by other neighboring properties. The Board acknowledges only a small portion of the existing wall (approximately 3 feet – 4 feet) is too close to the lot line. The proposed addition(s)/project would not be detrimental as an architect is involved to design a historically appropriate addition that provides the much needed room, security and storage while utilizing the existing concrete wall and will provide one hour construction (fire protection) and it will be designed to receive grading and drainage to properly remove water from all 3 properties. The Board finds the subject lot is a very large irregular shaped corner lot (2 combined platted lots) in a well-established neighborhood. The single family dwelling was built in 1953. The Board finds the topography of the subject property as well as the adjacent properties seems significant as evidenced by the attached image showing topography. The Board acknowledges that on October 14, 1996 the BOA granted a Variance for reduced interior side yard setback - 4.04 feet in lieu of 5 required (with up to an 18 inch overhang per BOA Docket 72-1996 with one condition: the carport must remain open on three sides. Upon inspection, it was discovered the carport had been partially enclosed which resulted in the appellant asking for reconsideration/clarification. On August 11th, 1997 the Board heard the Appellants request and approved

with the condition that the front and rear of the carport must remain open and there be no garage doors installed. Board acknowledges that Staff has no objection to the request that will result in no further encroachment. (*Noting less encroachment with the overhang as the overhang will become compliant).

Disposition: By a vote of 3-0 the Board of Adjustment approved V34-2015-19583 an application submitted by Petitioner Gregory J and Penny E Stover requesting that the Board of Adjustment authorize the issuance of a Building Permit to construct a new attached garage addition (with up to 1 foot overhang) to an existing single family dwelling that would be as close as 4.04 feet from the interior side property line in lieu of the minimum 5 feet required setback on the property at 399 Indiandale Road SE, R-1 Zone District. Following discussion Bill Vernon moved for approval citing unique circumstances and not detrimental subject to the condition that construction before a survey report is at the risk of Petitioner should measurement indicate less than 4.04 feet. Sue Lowder seconded, motion carried. Motion to adjourn. Therefore, be it resolved by the Board of Adjustment that V34-2015-19583 is hereby approved subject to stated condition:

1. Construction before a survey report is at the risk of Petitioner should measurement indicate less than 4.04 feet in lieu of 5 ft. required

Prepared by Patricia A Pfiffner
Recording Secretary Board of Adjustment

Motion to adjourn at 11:40, motion carried.

Prepared by Patricia A Pfiffner
Recording Secretary Board of Adjustment