



DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Planning Division

m e m o r a n d u m

TO: Bruce K. Walden, Chief Administrative Officer

FROM: Elizabeth H. Tyler, AICP, Director

DATE: November 26, 2002

SUBJECT: ZBA-02-MAJ-9: A request for a major variance by Keith Harris for a two-foot reduction in the required five-foot side yard at 2922 East Rutherford Drive in Urbana's R-2, Single Family Residential Zoning District.

Introduction and Background

Keith Harris of Hearthstone Homes, Inc. has requested a variance for a two-foot reduction in the required five-foot side yard for the single-family residence at 2922 East Rutherford Drive. The property is located within Beringer Commons Subdivision and is zoned R-2, Single-Family Residential. In this case, the residence has already been constructed and the existing garage attached to the house was unintentionally constructed to within three feet of the western property line. The major variance would be a 40% reduction in side yard setback, and would bring the entire structure into compliance with all zoning regulations.

The subject property is 11,502 square-feet in area and contains a single-family dwelling unit with a three-car attached garage. The property is located along the north side of Rutherford Drive between two single-family homes and south of Rutherford Lake. Condominiums are located across Rutherford Drive to the south.

Discussion

The requested variance comes as a result of a desire by the petitioner to correct an error made during construction of the house, which would allow the house to remain in its current location without the need for modifications.

The subject property was located outside the Urbana City limits when the house was constructed in the fall of 2001. The petitioner intended to construct the house with a five-foot side yard setback to comply with Champaign County Zoning Regulations. However, as the petitioner indicates, the property boundary pin was not located and the property line was incorrectly

identified, causing the error in the placement of the house. The property was annexed into the City on February 4, 2002. Both Champaign County officials and the petitioner informed the City of the error and Mr. Harris requested the variance to bring the house into full compliance. If the variance is denied, the two-foot portion of the garage that encroaches into the current side yard would need to be removed. No other variances would be necessary for setback, Floor Area Ratio, Open Space Ratio, or maximum height.

At the November 20, 2002 Zoning Board meeting, some concerns were raised in regard to what effect approving the variance would have on the remainder of the Beringer Commons subdivision. As was indicated at the Zoning Board meeting, every variance is considered on its own merits, and approving the variance would not create a precedent for any future variances within the subdivision. City staff cannot guarantee the precise location of property lines, and therefore the applicant for a construction project assumes the responsibility for providing accurate information during the permitting process. As noted above, all construction done was done while the property was outside the jurisdiction of the City of Urbana.

Variance Criteria

In order to review a potential variance, Section XI-3 of the Urbana Zoning Ordinance requires the Zoning Board of Appeals and City Council to make findings based on variance criteria. At the November 20, 2002 meeting, the ZBA cited the following findings for their recommendation for approval of the requested variance:

1. *Are there special circumstances or special practical difficulties with reference to the parcel concerned in carrying out the strict application of the ordinance?*

In this case, there is a special circumstance due to the fact that the petitioner has constructed the house in a manner that would require a reduction of the side yard to three feet in order to avoid removing and rebuilding a portion of the garage. However, as this is a rectangular parcel of adequate size to contain the existing house, there are no special practical difficulties with reference to the parcel concerned in carrying out the strict application of the ordinance.

2. *The proposed variance will not serve as a special privilege because the variance requested is necessary due to special circumstances relating to the land or structure involved or to be used for occupancy thereof which is not generally applicable to other lands or structures in the same district.*

The requested variance would serve as a special privilege since it is only necessary because the structure was built in violation of setback requirements, even though that was done inadvertently. There is adequate space on the east side of the lot to accommodate the footprint of the house as designed.

3. *The variance requested was not the result of a situation or condition having been knowingly or deliberately created by the Petitioner.*

Although the house was constructed without an approved variance, the petitioner indicates that the placement of the garage over the required side yard setback was unintentional and did not constitute a deliberate circumvention of the regulations. The petitioner indicates that there was an error in the location of the property line during excavation, which caused the house to be constructed with a nonconforming setback. Following construction, the error was discovered and the petitioner contacted the City to pursue a variance request to bring the property into compliance.

4. *The variance will not alter the essential character of the neighborhood.*

The variance should not alter the essential character of the neighborhood. Since the property to the west was constructed with a side yard setback greater than ten feet, a significant visibility corridor remains between the two properties. The house complies with all other development regulations of the zoning ordinance, and would fully comply if it had been built two feet to the east.

5. *The variance will not cause a nuisance to the adjacent property.*

The variance should not cause a nuisance to adjacent properties. Although there is an entrance to the subject garage along the west wall, the house to the west of the subject property is located greater than 10 feet from the east property line, and the driveway does not extend into the required side yard. As mentioned previously, the reduced side yard does not significantly impede the view between the two properties.

6. *The variance represents generally the minimum deviation from requirements of the Zoning Ordinance necessary to accommodate the request.*

The petitioner is only requesting the amount of variance needed to bring the existing house into compliance with all development regulations.

Options

The City Council has the following options this case:

- a. The Council may approve the variance as requested based on the findings outlined in this memo; or
- b. The Council may approve the variance subject to certain terms and conditions. If the Council elects to impose conditions or grant the variance on findings other than those articulated herein, they should articulate its findings in support of the approval and any conditions imposed; or
- c. The Council may deny the variance request. If the Council elects to do so, they should articulate findings supporting its denial.

Recommendation

Staff is concerned about the precedent for approving variance cases after construction has occurred. Nevertheless, in this case, the alternative would be to tear out a portion of the existing garage and reconstruct it to meet the standard setback requirement, which would be an extreme measure when it appears that the requested variance would have little, if any, impact on the surrounding neighborhood and will not affect the general safety and welfare of the public.

Further, the construction within the required side yard setback was unintentional on the petitioner's part and was the result of an error during the excavation phase at the beginning of the project.

Based on the findings outlined herein, the Zoning Board of Appeals voted 4-0 to forward the variance request to the City Council with a recommendation for approval with the condition recommended by staff. Staff concurs with the ZBA and recommends that City Council **APPROVE** the variance as requested, with the **CONDITION** that the setback reduction only apply to the existing house footprint, as indicated on Exhibit 1, Site/Roof Plan

Attachments: Proposed Ordinance
 Site/Roof Plan
 Draft Minutes of November 20, 2002 ZBA Public Hearing

c: Keith Harris, 413 N. Abbey Rd., Urbana, IL 61802
 Gwen Byers, 2922 E. Rutherford Dr., Urbana, IL 61801

Prepared by:

Tim Ross, AICP, Senior Planner

ORDINANCE NO. 2002-11-132

AN ORDINANCE APPROVING A MAJOR VARIANCE

(to allow a two-foot reduction in the required five-foot side yard setback at 2922 East Rutherford Drive in the R-2, Single Family Residential Zoning District - Case No. ZBA-02-MAJ-9)

WHEREAS, the Zoning Ordinance provides for a major variance procedure to permit the Zoning Board of Appeals and the City Council to consider criteria for major variances where there are special circumstances or conditions with the parcel of land or the structure; and

WHEREAS, the owner of the subject property, Keith Harris, has submitted a petition requesting a major variance to allow a two-foot encroachment into the required five-foot front yard setback at 2922 East Rutherford Drive in the R-2, Single Family Residential Zoning District; and

WHEREAS, said petition was presented to the Urbana Zoning Board of Appeals in Case #ZBA-02-MAJ-9; and

WHEREAS, after due publication in accordance with Section XI-10 of the Urbana Zoning Ordinance and with Chapter 65, Section 5/11-13-14 of the Illinois Compiled Statutes (65 ILCS 5/11-13-14), the Urbana Zoning Board of Appeals (ZBA) held a public hearing on the proposed major variance on November 20, 2002 and the ZBA by a unanimous vote of its members recommend to the City Council approval of the requested variance; and

WHEREAS, after due and proper consideration, the City Council of the City of Urbana has determined that the major variance referenced herein conforms with the major variance procedures in accordance with Article XI, Section XI-3.C.3.d of the Urbana Zoning Ordinance; and

WHEREAS, the City Council agrees with the following findings of fact adopted by the ZBA in support of its recommendation to approve the application for a major variance:

1. In this case, there is a special circumstance due to the fact that the petitioner has constructed the house in a manner that would require a reduction of the side yard to three feet in order to avoid removing and rebuilding a portion of the garage. However, as this is a rectangular parcel of adequate size to contain the existing house, there are no special practical difficulties with reference to the parcel concerned in carrying out the strict application of the ordinance.

2. The requested variance would serve as a special privilege since it is only necessary because the structure was built in violation of setback requirements, even though that was done inadvertently. There is adequate space on the lot to accommodate the footprint of the house where it was originally intended to be located.

3. The variance requested was not the result of a situation or condition having been knowingly or deliberately created by the Petitioner. Although the house was constructed without an approved variance, the petitioner indicates that the placement of the garage over the required side yard setback was unintentional and did not constitute a deliberate circumvention of the regulations. The petitioner indicates that there was an error in the location of the property line during excavation, which caused the house to be constructed with a nonconforming setback. Following construction, the error

was discovered and the petitioner contacted the City to request a variance to bring the property into compliance.

4. The variance should not alter the essential character of the neighborhood. Since the property to the west was constructed with a side yard setback greater than ten feet, a significant visibility corridor remains between the two properties. The house complies with all other development regulations of the zoning ordinance, and would fully comply if it had been built two feet to the east.

5. The variance should not cause a nuisance to adjacent properties. Although there is an entrance to the subject garage along the west wall, the house to the west of the subject property is located greater than 10 feet from the east property line, and the driveway does not extend into the required side yard. The reduced side yard does not significantly impede the view between the two properties.

6. The petitioner is only requesting the amount of variance needed to bring the existing house into compliance with all development regulations.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF URBANA, ILLINOIS, as follows:

The major variance request by Keith Harris, in Case #ZBA-02-MAJ-9, is hereby approved to allow a two-foot reduction into the required five-foot front yard setback 2922 East Rutherford Drive in the R-2, Single Family Residential Zoning District, in the manner proposed in the application, with the condition that the setback reduction only apply to the existing house footprint, as indicated on Exhibit 1, Site/Roof Plan.

The major variance described above shall only apply to the property located at 2922 East Rutherford, Urbana, Illinois, more particularly described as follows:

LEGAL DESCRIPTION:

Beringer Commons Subdivision No. 3, Lot 306, Urbana, Illinois

PERMANENT PARCEL #: 30-21-10-306-011

The City Clerk is directed to publish this Ordinance in pamphlet form by authority of the corporate authorities. This Ordinance shall be in full force and effect from and after its passage and publication in accordance with the terms of Chapter 65, Section 1-2-4 of the Illinois Compiled Statutes (65 ILCS 5/1-2-4).

This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called of a majority of the members of the City Council of the City of Urbana, Illinois, at a regular meeting of said Council on the _____ day of _____, 2002.

PASSED by the City Council this _____ day of _____, _____.

AYES:

NAYS:

ABSTAINS:

Phyllis D. Clark, City Clerk

APPROVED by the Mayor this _____ day of _____, _____.

Tod Satterthwaite, Mayor

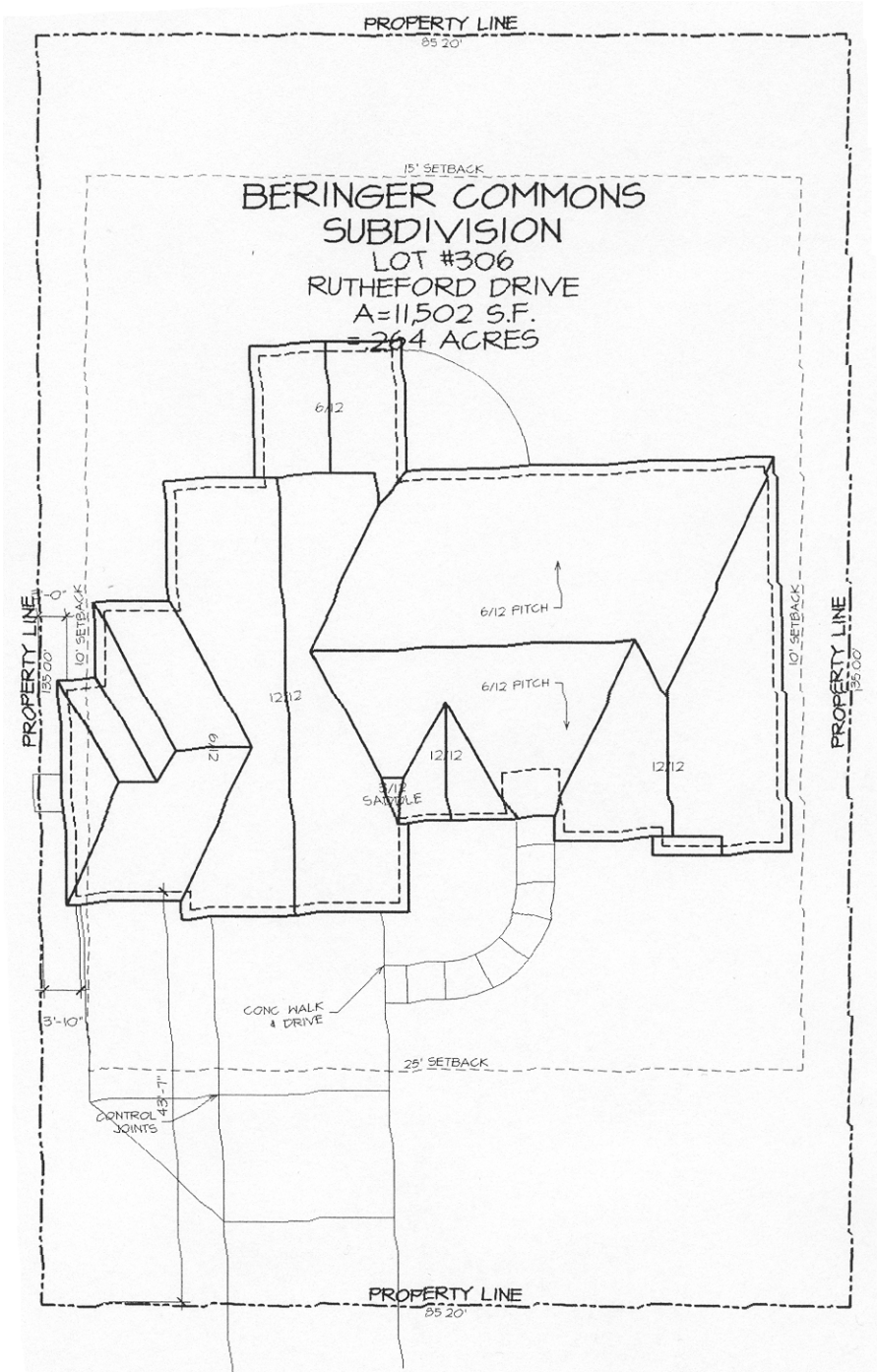
CERTIFICATE OF PUBLICATION IN PAMPHLET FORM

I, Phyllis D. Clark, certify that I am the duly elected and acting Municipal Clerk of the City of Urbana, Champaign County, Illinois.

I certify that on the _____ day of _____, 2002, the corporate authorities of the City of Urbana passed and approved Ordinance No.

_____, entitled AN ORDINANCE APPROVING A MAJOR VARIANCE

(to allow a two-foot reduction in the required five-foot side yard setback at 2922 East Rutherford Drive in the R-2, Single Family Residential Zoning District - Case No. ZBA-02-MAJ-9) which provided by its terms that it should be published in pamphlet form. The pamphlet form of Ordinance No. _____ was prepared, and a copy of such Ordinance was posted in the Urbana City Building commencing on the _____ day of _____, 2002, and continuing for at least ten (10) days thereafter. Copies of such Ordinance were also available for public inspection upon request at the Office of the City Clerk.



1 SITE/ROOF PLAN
A-2 SCALE: 1"=10'00"

