



Zoning Board of Appeals

Monday, August 21, 2023

City Hall Council Chambers – 601 Main St W. Ashland, WI 54806

5:00 PM

The following items will be considered:

1. Call to Order and Roll Call

2. Election of Chairperson

3. Election of Vice-Chairperson

4. Approval of Agenda

5. Public Comment (non-agenda items)

6. Action Items:

- a. Public Hearing and vote regarding an Area Variance request for a reduced accessory structure setback (0-foot instead of 3-feet required by code) for Parcel 201-01650-0000

7. Announcements/Reports/Comments/Questions

8. Adjournment

It is possible that a quorum of members of other governmental bodies of the municipality may be in attendance at the above stated meeting to gather information or speak about a subject, over which they have decision-making responsibility. Any governmental body at the above stated meeting will take no action other than the governmental body specifically referred to above in this notice. The City of Ashland does not discriminate on the basis of sex, race, creed, color, national origin, sexual orientation, age or disability in employment or provision of services, programs or activities. NOTE: Upon reasonable notice, the City of Ashland will accommodate the needs of disabled individuals through auxiliary aids or services. For additional information or to request this service, contact the City of Ashland Planning and Zoning Department at 715 -682-7041.

Agenda Item # 4a: An Area Variance request for a reduced accessory structure setback

Property Owner: S.H. Warren, LLC

Site Address: 200 Block 3rd Avenue W

Parcel No: 201-01650-0000

Zoning District: City Center (CC)

Applicant's Request for an Area Variance:

The applicant, S.H. Warren, LLC, requests an area variance to allow a reduction in the minimum accessory structure setback (0-feet instead of 3-feet required by code) for a property (Parcel 201-01650-0000) in the City Center (CC) zoning district.

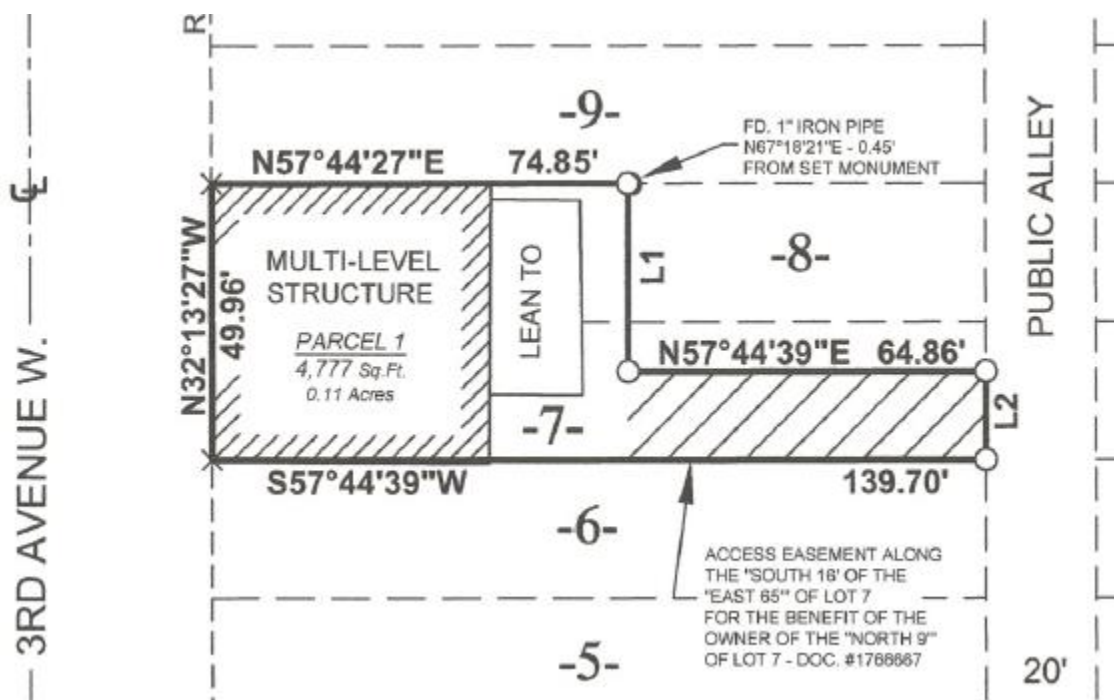
Background



Parcel #201-01650-0000, in the 200 block of 3rd Avenue West, is immediately adjacent to the south of the former Opera House. The parcel is approximately 0.080 acres (3,485 sq. ft.) in area and is zoned City Center (CC). A developer has purchased the subject parcel along with the Opera House property and Eddie's Bar parcel to the north. The subject parcel contains a gravel access drive running its length from 3rd Avenue West to the alley on the east. The applicant plans to combine the subject parcel with the Opera House and Eddie's Bar parcels via Certified Survey Map (CSM) to create one lot. A 16-foot wide access easement runs along the east 65 feet of the Opera House parcel. This easement provides access for the neighboring property at 212 Main Street West owned by West II Building Corporation and has existed since 1949 when it was recorded at the Ashland County Register of Deeds. The neighboring property owner continues to use the easement to access the parking on his parcel. The applicant has plans to develop the

subject parcel as part of the adaptive reuse of the Opera House site. The plans include the construction of a detached garage and dumpster enclosure and paving of the access drive.

The minimum required accessory structure setback in the City Center zoning district from side parcel lines is three (3) feet. The minimum required setback for surface parking is five (5) feet from the side parcel line. Based on the number and type of condominium units (4) proposed for the site, ordinance requires 6 parking spaces. The applicant could not achieve the minimum 3-foot side setback for an accessory structure and maintain the 16-foot wide access easement while providing surface or garage parking. The applicant and staff have had communication with Scott Clark of West II Building Corporation who has the easement on the subject parcel. Staff has asked Mr. Clark if he would consider amending the easement. Mr. Clark indicated that he is not inclined to do so as he requires it to access his parking area.



Above is a Plat the applicant provided showing the Opera House property at 208 3rd Avenue West and indicating the 16' x 65' access easement with diagonal lines. Note that the subject site where the applicant requests the variance is Lot 6 just to the south.

The applicant provided a recent Plat of Survey (see above) of the lots in question and the plat includes the easement. The easement predates the current owners and is unique to the subject parcel. In order to accommodate the required parking spaces and maintain the required 16-foot easement the applicant has requested an area variance to allow a 0-foot interior side setback for the proposed detached accessory structure rather than the normal 3-foot setback required by code. The area variance for a reduced side setback is the only legal option to allow four stalls of on-site parking on the parcel.

Attachments

1. Applicant Email
2. Zoning Map of Subject Parcel and Surrounding Area

Public Hearing Notice

The required Class 1 Public Hearing Notice was issued in the designated newspaper (the Ashland Daily Press), and was also posted at Ashland City Hall, the Vaughn Public Library, and Ashland County Courthouse.

Standards for Review & Potential Actions

The City of Ashland's *Unified Development Ordinance 781, Section 3.10: Variance*, creates the legal framework for actions and decisions made by the Zoning Board of Appeals. Specifically, the Board of Appeals has the powers to:

- Hear and grant requests for area variances and use variances from the provisions of the Unified Development Ordinance 781 (listed below).
- Conduct a public hearing.
- Approve, approve with conditions, or deny the variance request based on the approval criteria specified, and designate such conditions that will secure substantially the objectives of the regulations or provisions in the application of which the variance is granted as to light, access to direct sunlight for solar energy systems, air, character of the neighborhood, conformity to the Comprehensive Plan, and, generally, the public health, safety, comfort, convenience, and general welfare.

“An ‘area variance’ allows the Zoning Board of Appeals greater flexibility and discretion in granting the variance request in that the Board does *not* have to conclude that no reasonable use of the property exists without the variance, rather the Board has to find that regulation unnecessarily burdens or unreasonably prevents the proposed activity. In addition, the Board must find that variance request relates to a unique property condition and that granting the variance will cause no harm to the public interest” (UDO Section 3.10C).

Conditions & Final Decision

In granting a variance under the provisions of the Unified Development Ordinance 781, the Zoning Board of Appeals shall designate such conditions that will secure substantially the objectives of the regulations or provisions in the application of which the variance is granted as to light, access to direct sunlight for solar energy systems, air, character of the neighborhood, conformity to the master plan, and, generally, the public health, safety, comfort, convenience, and general welfare.

Background on Relevant U.D.O. Regulations

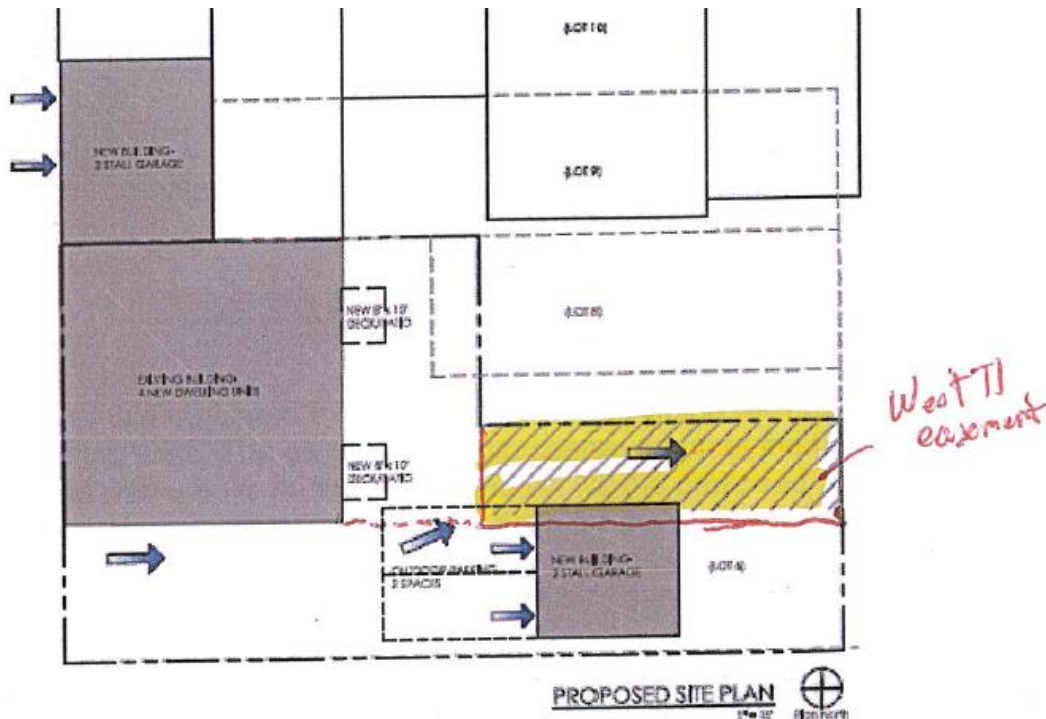
Applicable Standards for Accessory Structure Setbacks (Section 5.6 (A)(5))

Accessory building interior side and rear setbacks. Accessory buildings shall not be located less than three (3) feet from the interior side or rear parcel lines.

Statement of Facts

1. The applicant and owner is S.H. Warren, LLC.
2. The subject property is located on the 200 block of 3rd Avenue West (parcel 201-01650-0000).
3. The current zoning district is City Center (CC).
4. All accessory structures must meet setbacks consistent with Unified Development Ordinance (U.D.O.) Section 5.6 (A)(5).

5. Per the Ashland County property records, the lot is currently 0.080 acres (approximately 3,485 square feet) in area. The minimum parcel area required by the City of Ashland U.D.O. is 3,500 square feet.
6. The subject parcel is approximately 24 feet wide. The minimum parcel width required by the City of Ashland U.D.O. is 25 feet.
7. The property in tandem with the adjacent Opera House parcel (208 3rd Avenue W) and property at 206 3rd Avenue W will be an irregular shaped parcel once the owner combines the parcels via Certified Survey Map (CSM).
8. Section 5.6 (A)(5) of the City of Ashland U.D.O. requires a 3-foot interior side setback for accessory structures.
9. The City Center (CC) zoning district has a zero-foot setback for principal buildings from all parcel lines.
10. Exceptions to the Accessory Building interior side and rear setback requirements in Section 5.6 of the U.D.O. may be granted with the issuance of a variance.
11. The intent of the required setback is related to neighboring property and accessory structure separation.
12. No accessory building currently exists on the parcel.
13. A 16-foot wide access easement exists on the eastern 65 feet of the Opera House property (208 3rd Avenue W: Parcel 201-01650-0100) immediately to the north of the subject parcel affording access to the neighboring parcel at 212 Main Street West: Parcel 201-01651-0000
14. The 16-foot wide access easement has existed since 1949, predates the current owner, and is recorded at the Ashland County Register of Deeds. The neighboring property owner (West II Building Corp) is not willing to amend the access easement.
15. Based on the unit mix proposed with the adaptive reuse of the Opera House, six (6) off-street parking stalls are required by the U.D.O. (one each for 2 one-bedroom units and two each for 2 two-bedroom units).
16. The applicant requests a variance to reduce the minimum setback for a proposed accessory structure from 3-feet required by code to 0-feet.



Above is a site plan from the applicant. The yellow highlighted area with diagonal lines is the 16-foot wide access easement leading to the property owned by West II Building Corp. Attorney Scott Clark drew the easement and submitted this to City staff. The proposed garage is shown on the south side of the easement with a three (3) foot setback from the property line. The garage would bump 3 feet into the easement as shown on the plan.

Area Variance Approval Criteria:

Review of the decision criteria established by Wisconsin case law below, shall indicate whether the requested Area Variance may or may not be granted. No variance from the terms of the provisions of the Unified Development Ordinance 781 shall be authorized unless all of the following facts and conditions exist:

- a. **Exceptional Circumstances** *That there are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties or classes of uses in the same zoning district.*

Does this condition exist? Yes

The subject parcel is unique given the pre-existing lot configurations and 16-foot wide access easement for the owner of the neighboring property. Due to these two factors the applicant is restricted on where he can place his parking and dumpster enclosures. Since new residential land uses must provide enough parking to meet code year-round the applicant cannot simply rely on on-street or off-site parking options. Given the easement and lot configuration, the applicant has multiple factors he must consider.

Natural Causes *That the alleged difficulty or hardship has not resulted from the fault or actions of the applicant.*

Does this condition exist? Yes

The hardship results from the irregular lot configurations and access easement, both of which pre-date the applicant. The easement has existed since 1949 and the neighboring property owner is not willing to amend the easement. If the current owner of the subject parcel had granted the easement to the neighboring property owner the hardship would have resulted from the actions of the applicant. Staff is not aware of how long the lot configurations have existed in their current form but they also pre-date the current owner/applicant. With the lot width (40 feet once the subject parcel and Opera House property are combined) and 16-foot wide easement, the buildable area is reduced to 21 feet given a 3-foot minimum side setback for accessory structures. Buildable area is reduced further (to 19 feet) given a 5-foot minimum side setback for surface parking. The accessory structure setback is less restrictive than the surface parking setback but would still not allow enough dimension to accommodate the number and dimensions of off-street parking as required by code. The zoning ordinance has a 0-foot setback for principal structures in the CC district but does not include a proportionate setback reduction for accessory structures based on the lot width or zoning. Due to the lot configuration and easement there is no other location on the property where the applicant could place an accessory structure and meet code.

- b. **Preservation of Property Rights** *That such variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same zoning district and in the same vicinity including, but not limited to, the use of solar energy systems.*

Does this condition exist? Yes

The irregular lot configuration (even when combined) and easement prevent the applicant from constructing a surface parking lot and maintaining clearances required to access or leave the parking stalls. Ordinance requires six (6) on-site parking spaces for the multi-family use proposed. For uses that were existing legal uses at the time the current ordinances took effect, those uses can continue to operate as legal non-conforming and do not have to meet current parking requirements. Additionally, many uses downtown are commercial in nature and have limited hours of operation when parking is necessary. Residential uses require parking at all hours for their occupants. Therefore, the applicant must find a way to accommodate parking as required by code while allowing traffic flow through the site and maintaining the access easement unencumbered.

- c. **Absence of Detriment** *That the authorizing of such variance will not be of substantial detriment to adjacent property, and will not materially impair the purposes of the Unified Development Ordinance 781 or the public interest.*

Does this condition exist? Yes.

Granting of the requested Variance and allowing a 0-foot setback along the side property line would not have a detrimental impact to the adjacent property. The City Center (CC) district has a 0-foot setback for principal structures already. Most principal structures within the downtown abut the property lines and the structure proposed is a smaller detached accessory structure which would have less of an impact than the side wall of a principal structure.

- d. **General Nature** *No variance shall be authorized unless the Zoning Board of Appeals specifically finds the condition, situation, or intended use of the subject property is not so general or recurrent in a nature as to make reasonably practicable the formulation of a general regulation to cover such cases.*

Does this condition exist? Yes

The irregular lot configuration and access easement are unique to this lot. Without either of them the variance would not be needed. Though some other properties in the city may have easements or irregular lot configurations, these are the exception rather than the norm and ordinances cannot account for all situations that might arise in these cases.

- e. **Minimum Variance Required** *The Zoning Board of Appeals shall find that the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure. The Zoning Board of Appeals shall be satisfied by the evidence heard before it that the granting of such variance will alleviate a hardship approaching confiscation as distinguished from a special privilege sought by the owner.*

Does this condition exist? Yes

In allowing a reduction in setback from the ordinance minimum of 3 feet to a 0-foot setback, this would allow enough buildable area for a detached accessory structure and maintain the width of the access easement running along the eastern portion of the property. The variance would only be for the proposed garage and not any other parking or structures. The parking proposed is the minimum necessary to meet ordinance requirements.

- f. **Unnecessary Hardship**

- 1) *No Variance shall be granted unless the property owner can show that compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk, or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.*

Does this condition exist? Yes

The lot configuration and access easement along with existing buildings restrict the area available for required on-site parking. It is not possible for the owner to construct a regular surface lot and allow the required clearances for access and backing out. The applicants have explored a number of options for accommodating the parking required by code. The buildable area of the parcel restricts the applicants to constructing two parking stalls side-by-side and two stalls on the approach leading to the garage. The variance would allow for the construction of parking without encumbering the access easement which predates the current owner. The variance is the minimum relief required and would only apply to the proposed detached garage and not any additional parking or structures. Since the land use is a residential use the property owner must provide off-street parking to accommodate the occupants of the development year-round. The owner cannot simply rely on on-street parking.

- 2) *No Variance shall be granted unless the property owner can show that the condition causing such unnecessary hardship is unique to the property for which a Variance has been applied. The unique condition is one that is not a condition in common with neighboring properties and relates not to the owner, but to the physical characteristics of the property, such as slope, soil type, or wetlands.*

Does this condition exist? Yes

The hardship is imposed by the irregular lot configuration and the pre-existing easement on the applicant's property. As mentioned previously, the hardship would be self-created if the current owner had granted the easement to the neighboring property owner. Without the lot configuration and easement, no hardship would exist. Most of the adjacent parcels are of regular shape and do not have access easements restricting their buildable areas. Many nearby CC-zoned parcels with residential land uses pre-date the current zoning standards and do not have to provide code minimum parking counts.

Zoning Board Options

The Zoning Board of Appeals can make the following decisions:

1. Approval of the variance request with justification the criteria are met as stated by the Zoning Board of Appeals.
2. Denial of the request with justification the criteria are not met as stated by the Zoning Board.
3. Table the request for further study.

Conditions

Recommended conditions of approval of this Area Variance request shall include:

- The property owner shall complete a Certified Survey Map (CSM) to combine the subject parcel with parcels 201-01650-0100 and 201-01654-0000 and submit all necessary materials as outlined in the Unified Development Ordinance (UDO) Section 3.39 for combination of the lots in accordance with this Variance request; AND
- The variance is only for the reduced setback (0-foot instead of the code required 3 feet) for the two-car detached garage as proposed. The variance is not for any other structures or additional parking.
- Applicant shall submit plans and elevations of the proposed garage for staff and Plan Commission review prior to issuance of any building permits.

Staff Recommendation

Based on the decision criteria outlined in the City's Unified Development Ordinance and applicable Wisconsin state statutes and associated case law, staff recommends APPROVAL of the requested Area Variance based on the conditions listed above.

Steven Wiley

From: shwarren@ncis.net
Sent: Friday, June 23, 2023 9:10 AM
To: Steven Wiley
Cc: 'Thomas Westlund'
Subject: RE: Variance Request
Attachments: Opera House Survey.pdf

Good Morning Steven,

Thanks for reviewing this for us. Per your request, I have attached a recent survey map of the lots in question. Our proposed detached garage on the current site plan (submitted yesterday with the application) extends three feet north onto an access easement for the benefit of the owner of the north portion of lot 7. I spoke with Scott Clark (owner of the north portion of lot 7) yesterday, and he does not seem willing to relinquish a part of his easement over our portion of lot 7. We are therefore requesting the variance request for the zero set back to build a reasonable size garage on the southern border of lot 6, as marked on our site plan submitted yesterday.

I hope this clarifies our request.

Thank you, Scott H. Warren, representing S.H. Warren, LLC

From: Steven Wiley <swiley@coawi.org>
Sent: Thursday, June 22, 2023 3:25 PM
To: shwarren@ncis.net
Subject: Variance Request

Hello Scott,

I received your variance application request for the garage setback. We will want to have a more detailed description of why the variance is needed. I believe I am familiar with the easement situation over there but it would be beneficial to have a narrative in your words explaining why the variance is needed. Also, do you have a map showing the location of the easement? If so and if you can send it as a pdf or an image that would be helpful.

Thank you!

Steven D. Wiley, AICP

Planning and Development Director
City of Ashland
601 Main Street West
Ashland, WI 54806
715.685.1610

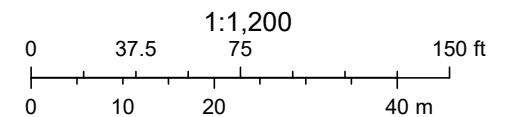


City of Ashland Base Map



7/17/2023, 1:45:41 PM

Parcels
■ Zoning
■ CC, City Center
 Subject Site
 ROW, Right of Way
 Parcel Labels



City of Ashland Public Works Department, GIS Division, City of Ashland
Public Works and Planning Department, PICTOMETRY INTL

Department of Public Works Engineering
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