



### Zoning Board of Appeals Staff Report

The Zoning Board of Appeals will meet on November 13, 2023. The following staff report has been prepared for an application that was received by the Planning and Zoning Division of the Community and Economic Development Department. *This application was deferred from the August 22, 2023, meeting.*

**Applicant(s):** Derek Bigham  
**Property Address:** 102 5<sup>th</sup> Avenue  
**Parcel ID:** 15 213 02 139  
**Present Land Use:** RL—Low Density Residential  
**Present Zoning:** R-60—Single Family Residential

Variance	Existing	Proposed	Ordinance
Setback	This is currently an empty lot.	A new single-family residence.	Per UDO Section 3.2.4: Lots zoned R-60 have 30-foot or average front setbacks, 30-foot rear setbacks, and 10-foot side setbacks. Per UDO Section 2.1.5.A.6: Where a lot of record in an R-60 zoning district at the time of the effective date of this UDO had less than the required minimum lot width, one of the minimum required side yards may be reduced by ½ foot for each foot that the lot width is less than 60 feet, [as long as] a) there is a minimum distance of 10 feet between the dwelling and the principal building on the property adjacent to the reduced side yard, and b) no side yard may be reduced below a minimum of 5 feet.

1. The property is a 0.04 acre trapezoidal lot located on the south side of Oakview Street between 5<sup>th</sup> Avenue and Spring Street (see Exhibit A).
2. The applicant requests a setback variance to construct a new residence.
3. Per the previous meeting’s minutes: “the Board stated they want to see three things addressed in future plans: a parking plan, particularly whether there is space on site and where it's going to be; a plan that does not encroach on the easement and the northeast corner of the property; and setbacks further from the sidewalks because it is a high traffic, high water area”.

While City staff finds the reasons set forth by the applicant justify peculiar, extraordinary, and practical difficulties due to the shallowness and shape of the lot, they find the revision does not

address some of the concerns expressed by the Board. The proposed residence does not encroach on the easement and parking has been included; however, the street side setback has been reduced to less than 2 feet from the lot line. City staff finds the variance should not be approved based on the current configuration. If a variance is granted, it is recommended the Board require a larger setback from the street.

4. *Criteria for Approval.* The Zoning Board of Appeals shall have the authority to authorize upon application in specific cases a variance from the terms of this UDO such as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of this UDO will result in unnecessary hardship, but where the spirit of the ordinance shall be observed and substantial justice done. Such special conditions shall be limited to exceptional narrowness, shallowness, or shape of a specific piece of property existing at the time of the enactment of this UDO, or exceptional topographic conditions or other extraordinary and exceptional situations or conditions of such piece of property as would result in peculiar, extraordinary, and practical difficulties. Per UDO Section 11.2.9.D, no variance shall be authorized unless the Board finds that all of the following conditions exist:
  - a) The special circumstances or conditions applying to the building or land in question are peculiar to such premises and do not apply generally to other land or buildings in the vicinity.
  - b) The granting of the application is necessary for the preservation and enjoyment of a property right and not merely to serve as a convenience to the applicant.
  - c) The condition from which relief or a variance is sought did not result from action by the applicant.
  - d) The authorizing of the variance will not impair an adequate supply of light and air to adjacent properties, unreasonably increase the congestion in public streets, increase the danger of fire, imperil the public safety, unreasonably diminish or impair established property values within the surrounding areas, or in any other respect impair the health, safety, comfort, morals, or general welfare of the inhabitants of the City.
  - e) The granting of the variance will be in harmony with the general purpose and intent of the Decatur Land Use Plan.
  - f) The granting of the variance will not allow a structure or use in a district restricted against such structure or use.
5. *Additional Criteria for Approval.* In addition to the variance criteria for approval above, the following factors will be considered in determining whether to issue a variance from buffer requirements per UDO Section 9.2.5.B.6:
  - a) The shape, size, topography, slope, soils, vegetation, and other characteristics of the property;
  - b) The locations of all streams on the property, including along property boundaries;
  - c) The location and extent of the proposed buffer or setback intrusion;

- d) Whether alternative designs are possible which require less intrusion or no intrusion;
  - e) The long-term and construction water-quality impacts of the proposed variance; and
  - f) Whether the variance is at least as protective of natural resources and the environment.
6. *Conditions to Approval.* Per UDO Section 11.2.9.F, the Zoning Board of Appeals may impose special conditions it deems necessary in order to mitigate negative impacts upon surrounding properties which may be expected without the imposition of those conditions. Such conditions may consist of a variety of requirements, including, but not limited to:
- a) Setbacks from any lot line if such setback is a proper part of the application under review;
  - b) Specified or prohibited locations for buildings, parking, loading or storage, or other structures;
  - c) Restrictions in the location of driveways and curb cuts;
  - d) Maximum building heights and other dimensions;
  - e) Landscaping requirements which may include location, type, and maintenance of plant materials, fences, walls, earth berms or other buffers; screening or other protective measures;
  - f) Preservation of existing trees and other vegetation;
  - g) Special measures to alleviate undesirable views, light, glare, noise, dust, or odor;
  - h) Permitted hours of operation;
  - i) Requiring that an existing building be retained;
  - j) Requiring that development take place according to a site plan, development plan, and/or building plan;
  - k) Limitation on exterior modifications to existing buildings;
  - l) Public facility improvements by the owner;
  - m) A time limit within which the property must either be used as allowed by the variance, special exception, or other appeal; or
  - n) Any other requirement deemed appropriate and necessary as a condition of approval.
7. Requirements imposed as a condition of approval shall be required of the property owner and all subsequent owners as a condition of the use of the property and interpreted and continuously enforced by the Zoning Administrator.
8. *Other requirements.* If approved, the development is subject to applicable permit and compliance procedures, current local life safety and fire codes, local soil erosion, drainage, tree preservation, and other requirements of the stream buffer protection ordinance not subject to this variance.

**Exhibit A: Locational Map with Current Lot Configuration.  
The building shown was demolished approximately 10 years ago.**

