

CITY1424.DSS

Chairperson Christiansen called the regular Board of Adjustment meeting of September 23, 2015, to order at 5:30 p.m. in the Council Chambers of West Des Moines City Hall, located at 4200 Mills Civic Parkway, in West Des Moines, Iowa.

Roll Call: Blaser, Celsi, Christiansen, Cunningham..... Present  
Stewart..... Absent

**Item 1 – Consent Agenda**

**Item 1a – Minutes of September 9, 2015**

Chairperson Christiansen asked for any questions or comments to the September 9, 2015 meeting minutes.

Moved by Board member Celsi, seconded by Board member Christiansen, the minutes of the September 9, 2015, meeting are approved as presented.

Board members Blaser and Cunningham indicated that they would abstain from voting on this item due to their absence at the September 9<sup>th</sup> meeting.

Vote: Celsi, Christiansen..... Yes  
Blaser, Cunningham..... Abstain  
Stewart..... Absent

Motion carried.

**Item 2 – Old Business**

There were no Old Business items reported.

**Item 3 – Public Hearings**

**Item 3a – 428 4<sup>th</sup> Street Variance, Approval of a 3.5 foot variance of the required seven foot (7’) side yard setback requirement to permit the construction of a 252 sq. ft. house addition – Lanie Cross – VAR-002813-2015**

Chairperson Christiansen opened the public hearing and asked the Recording Secretary to state when the public hearing notice was published. The Recording Secretary indicated that the notice was published on September 4, 2015, in the Community Section of the Des Moines Register.

Chairperson Christiansen then asked for a motion to accept and make a part of the record all testimony and all other documents received at this public hearing.

Moved by Board member Celsi, seconded by Board member Blaser, the Board of Adjustment accepts and makes a part of the record all testimony and documents received at this public hearing.

Vote: Celsi, Blaser, Christiansen, Cunningham..... Yes  
Stewart..... Absent

Motion carried.

Chairperson Christiansen briefly stated that a written comment was received and placed on the dais.

Lanie Cross, 428 4<sup>th</sup> Street, explained that the variance request is for an addition to the west side of his house. The house was constructed in 1913 and is too close to the north property line to meet current City Code. The addition will initially be a 3-season porch with a basement underneath and in the future will be enclosed and allow for expansion of his current bathroom on the northwest corner of the house. Future plans include installation of a new furnace, but no upgrades to the plumbing is planned. A deck currently sits where the addition is proposed. The deck would be removed for the addition: the deck covers 10 feet of the 14 foot addition. He is aware that staff is recommending denial of his variance and that staff's opinion is that the addition could be constructed in an alternate way thus without the necessity of a variance. Mr. Cross feels that the alternate plans proposed by City staff are not possible due to the extensive building work and associated costs that would be involved. Also, the plans do not allow for expansion of the bathroom as intended. Staff's proposals include multiple roof lines, which he feels would decrease the value of the property and would not be possible without extensive work on the main house. He feels that the option he has requested the variance for is the only one that would be realistic and economically viable. Constructing the addition as proposed would also allow for deficient areas of the existing house to be brought up to Code. He noted because of the existing deck, there would be minimal impact to the neighboring property. If the variance is approved, construction would not begin until 2016. Mr. Cross concluded by reading Policies 1.1 and 1.2 from the City Code.

Chairperson Christiansen inquired if Mr. Cross was the owner/occupier of the residence, to which he replied affirmatively.

Board member Cunningham referred to Mr. Cross' comments regarding Policy 1.2 and bringing any deficiencies of the property up to Code. He asked Mr. Cross what deficiencies of his property could be brought up to code with granting the variance request.

Mr. Cross replied that it would include the entry into his basement and drainage around the basement. City Code requires that any new construction have tiling and sump pump mechanisms in place for this section of the City.

Board member Blaser inquired if the applicant has plans to do any tiling around his entire house or just the addition and if he had a sump pump. Mr. Cross answered that the tiling would just be placed around the new addition and that he does have a sump pump for his home.

Board member Cunningham asked Mr. Cross why denying the variance would make it impossible for him to redo his bathroom. Mr. Cross replied that the bathroom is located in the northwest corner of the house and that the main entry of the home is located next to the bathroom. It would require walling off a section of the kitchen and extending the bathroom to the west.

Board member Blaser questioned if the plumbing fixtures would be relocated with the addition or remain where they currently are. Mr. Cross answered that he plans to move the fixtures as he cannot install a regular swinging door since they are too close to the door.

Board member Cunningham referred to a fence in a photograph and asked if it was the applicant's and if so, whether or not it would be removed should the variance be granted. Mr. Cross explained that the fence is his and his plans include replacing the six foot (6') privacy fence with a four foot (4') privacy fence constructed of the same materials as the current fence. He added that he owns one (1) foot of his neighbor's driveway but that the fence is inside his property line.

Board member Blaser then asked the applicant if he had spoken with his neighbor to the north regarding his proposed plans. Mr. Cross replied that did not talk with the property owner but has spoken with the renter of the property and that the renter does not have any issues with his proposed request and presumes that property owner does not either, as he's not heard anything to the contrary from them.

Board member Cunningham inquired how large the addition was. Mr. Cross answered that it will extend 14 feet to the west and be approximately 7 feet from his neighbor's garage.

Brad Munford, Planner, added that the addition would be approximately four (4) feet larger (deeper) than the existing deck.

Chairperson Christiansen asked Mr. Cross what his hardships would be in order for the Board to be able to grant his variance. Mr. Cross answered that he would be unable to make any improvements to his current bathroom as it would need to be made larger and placed elsewhere in his house, which would be quite costly. He does not have another alternative to relocating his bathroom in his home.

Lynne Twedt, Development Services Director, asked the applicant how much room is needed for the bathroom addition. Mr. Cross answered that it would be approximately three (3) to four (4) feet.

Board member Cunningham asked the applicant if he was aware of any additions that had been done to the home. Mr. Cross replied that most likely the bathroom had been added after the house was originally constructed due to the age of the building.

Chairperson Christiansen applauded the applicant in coming before the Board for his variance request. He noted concern with setting a precedence for this type of variance but wanted to try and help the applicant in finding a resolution for his request.

Board member Cunningham made reference to photographs of the applicant's residence that were made a part of the staff report and noted areas of the residence, specifically the dormer, that were most likely added onto after the original construction.

Mr. Cross explained that after the flood in 1993 the house was renovated and modifications consisted of vinyl siding, new windows, and enclosure of the existing front porch.

Board member Blaser referred to Attachment C of the staff report and asked the applicant what the plans were for the existing back porch and if it was enclosed. Mr. Cross replied that it was enclosed and that it would become a part of the addition. The exterior wall would be removed.

Board member Blaser then asked if it was possible to extend the bathroom to the south and use a portion of the existing porch for the bathroom. Mr. Cross answered no, because the door is the main entry into the house and the door cannot be moved as it is the load bearing wall for the house.

Board member Cunningham asked if he had an estimate available in what the increase in cost would be to relocate the bathroom. Mr. Cross replied that he did not have an estimate available but it was something that he would not be able to afford.

Chairperson Christiansen asked for any other questions or comments and hearing none, closed the public hearing.

Planner Munford explained that Mr. Cross' request is to reduce the seven foot (7') setback to three and one-half feet (3.5') on the north side of his property. The proposed addition is 252 sq. ft. and would be added to the west of his property. The property is currently zoned Single Family Valley Junction. Mr. Munford reviewed staff's stance on the findings noting that staff had no issues with Finding #1. For Finding #2, the residence was constructed in 1913 prior to the City adopting the first Zoning Ordinance and staff cannot confirm or deny if the residence was built compliant to standards. The zoning restrictions for setbacks were put in place after the

neighborhood developed. The physical characteristics of the home would not make it impossible to construct the addition in another manner. Other designs were discussed. There is approximately 15 feet available to the south in which the structure could be relocated to.

Board member Cunningham asked for clarification regarding staff's comments in Finding #3, which states, *"...Over the years there have been other homes of this age in Valley Junction that have expanded without violating minimum setback requirements and/or requiring variances."*

Planner Munford explained that during his review of this request, he drove around Valley Junction noting additions on other homes that were constructed within the City's current requirements. For Finding #3, discussions were held with the applicant regarding moving the addition vertically so as not encroach into the setback. With regard to the load bearing wall, although he is not a structural engineer, Mr. Munford does not feel that it would change the integrity of the addition if the door were relocated. Minimizing the severity of the variance was discussed with the applicant but he preferred not to sway from his original request.

For Finding #4, staff had no issues. For Finding #5, the only comment that staff has is that the nearby neighbors could be impacted because of the size of the addition. Mr. Munford concluded that staff is recommending denial of the variance request as they believe that the property does not have any exceptional characteristics that would prohibit the applicant from complying with City Code and that he has other options available to him.

Board member Cunningham asked that if the standard is not impossibility, how costly something has to become before compliance becomes a practical or unnecessary hardship.

Mr. Munford explained that a financial hardship is difficult to take into consideration.

Ms. Twedt added that in the past variances have been granted based on financial hardship, but it is subjective and at the Board's discretion what that hardship amount is.

Chairperson Christiansen noted that the Board has also denied variances for access for health reasons.

Board member Celsi commented that the addition would enhance the value of the home and feels that the applicant's variance request is within reason.

Board member Cunningham commented that although this has been done in the past he doesn't want to have the Board in a position where people are being treated inconsistently. He appreciates the practical difficulties but also wants to make certain the Board is treating similarly situated people similarly.

Ms. Twedt surmised that many individuals, after talking with staff about proving hardships, do not follow through with a variance request. It is not uncharacteristic of Valley Junction to have homes located so close to the property line. Valley Junction may be an area in which the setbacks may need to be different as compared to the rest of the City.

Chairperson Christiansen reopened the public hearing to allow the applicant to provide additional information regarding his proposal.

Board member Cunningham commented that there was discussion in granting a variance for three to five feet (3-5') and moving the addition south but that the applicant did not wish to pursue that route.

Lanie Cross, 428 4<sup>th</sup> Street, West Des Moines, responded that it had to do with the roof line of the house.

Board member Blaser stated that if the Board were to grant the variance, the deck would be removed and an enclosed porch in its location with heat added later.

Mr. Cross replied that there is no forced air to the addition at this time. The location of the existing bathroom would extend back to the west enclosed by a wall. The addition will have walls, windows, and doors on the north,

west, and south sides. The south wall would extend up to the main house and the wall on the west side of the bathroom and existing porch would remain.

Mr. Munford interjected that the applicant is proposing to construct an exterior shell with the interior modifications at a later date.

Board member Blaser commented he is appreciative of the concern in setting a precedence if the variance were to be granted but would be hard pressed to deny the variance in most circumstances in the future if someone wanted to build along an existing setback. He indicated disagreement with staff’s position in Finding #2 as he feels that the older homes in Valley Junction have the same issues. For Finding #3, cost-benefit should be considered in that the additional roof line would resolve the setback issue but would be costly and add no benefit to the residence. He concluded that he would be in support of granting the applicant’s variance request with findings other than what was outlined in the staff report.

Board member Celsi indicated agreement with Board member Blaser’s comments.

Chairperson Christiansen asked for any other questions or comments and hearing none, reclosed the public hearing.

Director Twedt informed the Board that if they chose to, they could approve the variance with modifications to the findings.

Moved by Board member Blaser, seconded by Board member Cunningham, the Board of Adjustment adopts a resolution for approval of a 3.5 foot variance of the required seven foot (7’) side yard setback for construction of a 252 sq. ft. addition, located at 428 4<sup>th</sup> Street, based on the following findings:

Finding #2 - This house is smaller than houses immediately adjacent to it which are longer (larger) with grandfathered-in setbacks only because those houses were built as such originally or added onto prior to change in zoning regulations. Allowing the expansion to the back end of this house will allow the applicant the same benefits to size as many other homeowners in Valley Junction and the home with the addition will be no deeper than the adjoining immediate properties.

Finding #3 – The general purpose of the setback regulations is to provide open space between adjacent homes and when you look at VJ in particular, and even this block, many homes have grandfathered setbacks that are under 7 feet. Given the homeowner’s desire to improve the property, the hardship in this case is financial due to the cost to have to put a different roofline on, move doors, and relocate plumbing solely to meet the requirement of the 7 foot setback. The strict application results in practical difficulties or unnecessary hardships that are inconsistent with the general purpose of these regulations in terms of side setbacks.

Vote: Blaser, Cunningham, Celsi, Christiansen.....Yes  
Stewart.....Absent

Motion carried.

**Item 4 – New Business**

There were no New Business items presented.

**Item 5 – Staff Reports**

There were no staff report items presented.

**Item 6 – Adjournment**

Chairperson Christensen asked for a motion to adjourn the meeting.

Moved by Board member Blaser, seconded by Board member Cunningham, the Board of Adjustment meeting adjourns.

The meeting adjourned at 6:30 p.m.

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Erik Christiansen, Chairperson  
Board of Adjustment

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Michelle Riesenberg, Recording Secretary