

CITY1898.DSS

Chairperson Blaser called to order the December 13, 2017, regularly scheduled meeting of the Board of Adjustment at 5:30 p.m. in the City Council Chambers, West Des Moines City Hall, located at 4200 Mills Civic Parkway, in West Des Moines, Iowa.

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

**Item 1 – Consent Agenda**

**Item 1a – Minutes of November 29, 2017**

Moved by Board Member Celsi; seconded by Chairperson Blaser, to approve the November 29, 2017 meeting minutes.

Vote: Blaser, Celsi .....Yes  
Christiansen, Pfannkuch.....Absent  
Cunningham.....Abstained

Motion carried.

**Item 2 – Old Business**

There were no Old Business items reported.

**Item 3 – Public Hearings**

**Item 3a – Rogers Variance, 5673 Flagstone Way – Vary the side yard setback by 5 feet from 25 feet to 20 feet for the construction of a new house – Martin & Sheryl Rogers – VAR-003681-2017**

Chairperson Blaser 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 November 27, 2017, in the Des Moines Register.

Chairperson Blaser 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 Cunningham, seconded by Board Member Blaser, the Board of Adjustment accepted and made a part of the record all testimony and documents received at this public hearing.

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

Motion Carried.

Jered Rogers, 9283 Winterberry Ct, West Des Moines, spoke on behalf of his mother Cheryl Rogers (present), and his father Martin Roger (unable to attend). He explained to the Board that his parents purchased the lot to build a new home, and during design, they found that they will need an extra 5 feet on the side to make the house fit. He noted that they had talked to City regarding the easement, and he feels there is plenty of room with 20 feet of easement for any necessary future repairs to the sanitary sewer. They agree with staff comments regarding overhangs and projections.

Board Member Cunningham asked for visual schematic. He questioned Mr. Rogers regarding the lot numbers on the plat and the aerial view. Mr. Rogers clarified that their property is Lot 5. Board Member Cunningham then asked which setback was being asked for variance and which adjacent property has only 20 feet of easement. Mr. Rogers replied that Lot 4 has 20 feet, and Lot 5 has 25.

Chairperson Blaser asked if the lot is buildable without the variance. Mr. Rogers agreed that it is, however the design that his parents are seeking with a side-loading car garage would benefit from having the extra 5 feet.

Chairperson Blaser asked for clarification regarding the different lot numbers on the drawings, noting that he had reviewed this area for a previous case and understood that one lot was not as big as it was platted. He asked if Lot 3 had been replatted. Planner Portz produced Plat 6, noting that this is the current plat.

Chairperson Blaser asked if this is located next to the walking trail, and asked if there is a City easement between lots 3 and 4. Mr. Rogers replied that the sewer easement is located between lots 4 and 5, and runs along the property line.

Chairperson Blaser then asked how far the easement went toward each property. Mr. Rogers replied that it extends 20 feet onto the adjacent property, and 25 feet onto his parent's property. He stated that the sewer goes right down the middle, and believes there is plenty of room to get a backhoe down the middle. He didn't believe the 5 feet would make any difference regarding reaching the sewer system.

Chairperson Blaser then asked for any other questions or comments from the audience. There were none.

Chairperson Blaser then closed the public hearing and asked for Staff's presentation on the request.

Brian Portz, Planner for Development Services, stated that the easement for sanitary sewer was existing before the property was platted in 2015. The width of easement was based on the depth of the sanitary sewer. The depth is probably 17 feet, therefore the easement is double that depth for a total easement of 35 feet. The developer put the property lines as shown on the final plat, which is why it's slightly skewed. Regarding the variance request, he stated that staff looks at factors to determine whether there is a hardship, and whether the hardship is created by the applicant. He stated that staff believes the hardship in this case is created by the applicant. The lot is empty, and when purchasing with intent to build, there are setbacks that have to be taken into consideration. The applicant could build a smaller house. It is staff's position that the hardship is self-imposed. Mr. Portz expressed concern that approving the variance would set a precedent that anyone could request a variance to put a larger home on a lot without regard to the setback requirements. He asked that if the Board decided to approve this request to include the overhang condition limiting the house from being any closer to the eastern sanitary sewer easement line than the depth of the overhang.

Board Member Cunningham asked if it is correct that the different setbacks to each site are because the developer drew the line. Director Twedt affirmed that this is so, and observed that this lot is probably a little wider, so staff are guessing it is probable the developer thought the wider lot could give up a little more room. She stated that it's up to the Engineers and developer to determine the easement placement, and asserted that Planning just looks for the setback for excavation purposes.

Chairperson Blaser noted that he is also concerned about setting precedent. If the Board approves something, someone else can request the same, and the Board is in the position of having to approve again. He commented that at the last meeting there was a request for a garage variance against the back lot line. In that situation, there were more neighbors behind them and it was decided that was a self-imposed hardship.

Chairperson Blaser asked if there was something unique about this set of facts with the City sewer line impacting this lot, in order to justify approval. He asked staff if they found any unique considerations that might set this apart

from setting precedence. He noted that he understood staff’s position, at the time the applicant bought the lot, the setbacks were clear, and it’s not the City or Board of Adjustment’s responsibility to make the lot fit the applicant’s house design just because they want a garage to fit their boat. He asked if the City had determined anything unique about this situation which set it apart.

Planner Portz responded that this lot does have an extra easement on the side property line. Normally easements are in the rear yard. That is unique, however, the lot is 100 feet wide, whereas the lot next to it is 95 feet wide. Taking the setbacks into consideration, each lot has 70 feet of width to build a home. Some lots in the City are smaller and a home has to fit.

Chairperson Blaser restated his question, asking whether staff did not feel this was unique enough to remedy the problem that was existing. Planner Portz replied that staff does not.

Jered Rogers addressed the Board again. He noted that having a larger house would mean more tax value for the property and observed that he finds the City of West Des Moines difficult to work with. He reiterated that he does not feel the change in setback would prohibit repairs to the sewer system. He stated that he does feel this property is different from others and doesn’t create a precedent.

Chairperson Blaser replied that the Board of Adjustment is different than other City bodies. The Board does not make policy, but our decisions are legal, therefore we have to be more concerned with setting precedent. He added that in his six years of being on the Board, there have been only 1-2 variance requests per year, historically there not very many applications. He concluded that he appreciated Mr. Rogers’ comments.

Development Coordinator Schemmel addressed the Board, stating she had additional information to provide. She noted that the City has concern for the homeowner should excavation be necessary for access to the sanitary sewer. She stated that the reason the setbacks are established are in case the area requires excavation, it won’t risk disturbing their foundation. By moving the setback to the easement line, they might increase the risk of damage to the house. That’s the reason the setback is in addition to the utility easement.

As there were no other questions or comments, Chairperson Blaser asked for a motion and a second for this item.

Moved by Board Member Celsi to approve the variance request. There was no second. Motion died.

Chairperson Blaser then asked if there was another motion.

Board Member Cunningham moved to deny the variance based on staff findings. Chairperson Blaser supported the denial, seconding the motion.

Vote: Blaser, Cunningham.....	Yes
Celsi.....	No
Christiansen, Pfannkuch.....	Absent

Motion carried.

Board Member Celsi was asked if she would like to add a comment, and she declined.

The Board of Adjustment adopted a resolution to deny the Variance based on staff findings.

1. That the proposed development or use is consistent with the West Des Moines comprehensive plan and any applicable sub-area plan.

*The proposed use of single family residential development is consistent with the West Des Moines Comprehensive Plan in that the land use of the property is designated as Single Family on the Comprehensive Plan Land Use Map.*

2. That there are special circumstances or exceptional characteristics applicable to the subject property with regard to size, shape, topography or location, which do not apply generally to comparable properties in the same vicinity and zones.

*The lot is 13,915 square feet in size. There is a 15' rear yard setback along the north, a 5' setback along the east, and a maximum 30' front yard setback on the south to go along with the required 25' setback along the west. While the setback on this lot may be larger than a nearby parcel, setbacks within the entire Village of Ponderosa development were set based on typical zoning requirements (20' for Residential Estate lots) or easement locations with a 5' additional cushion (the 25' setback in this situation) to prevent foundations immediately on the easement line, thus potentially impeding maintenance or repairs within the easement area. The buildable area for the dwelling structure provides enough room to construct a single family home to fit within the setbacks. The lot is not unique and is in fact larger than other lots within the Village of Ponderosa Plat 6 plat and other plats in the area.*

3. That the strict application of the zoning regulations as they apply to the subject property will result in practical difficulties or unnecessary hardships inconsistent with the general purpose of such regulations provided that such hardships shall not be self-imposed by the applicant or his or her successor in interest.

*Staff is of the opinion that the strict application of the zoning ordinance does not result in practical difficulties or hardships and that the hardship is self-imposed by the applicant in that the applicant has not taken into account the setbacks and existing easements on the property when designing the proposed single family home. Staff believes the side yard setback can be met with a different home design that respects the easements and setbacks on the property. Granting of a variance in this situation in which the lot is a clean-slate for site layout could possibly set precedent for other new homes to seek variances rather than design a home to fit the lot purchased. It should be expected that when searching for a lot that the size and design of the intended home be considered and a lot of suitable size and configuration to accommodate the desired home within the regulations that exist be purchased.*

4. That there have been no changes in the character of the site or its surroundings which detrimentally affect the environment.

*The character of the site has not been changed since platting. The platting of the subdivision respected the existing features of the ground. The property was already graded and prepared at the time of platting. There are 6 lots out of 7 within this subdivision which are seeking or have received building permits within this development. The applicant is the only one of the 6 lots that has requested a variance due to characteristics of the development.*

5. That the granting of such variance does not, under the circumstances and conditions applied in the particular case, adversely affect the health or safety of persons, is not materially detrimental to the public welfare, nor injurious to nearby property or improvements.

*The granting of this variance will not adversely affect the health or safety of persons, is not materially detrimental to the public welfare, nor injurious to nearby property or improvements.*

**Item 4 – New Business**

There were no New Business items presented.

**Item 5 – Staff Reports**

There were no Staff Reports.

**Item 6 – Adjournment**

Chairperson Blaser asked for a motion to adjourn the meeting.

Moved by Board Member Celsi seconded by Board Member Cunningham, the Board of Adjustment meeting adjourned.

Vote: Blaser, Celsi, Cunningham .....Yes  
Christiansen, Pfannkuch.....Absent  
Motion carried.

The meeting adjourned at 5:53 p.m.

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Michael R. Blaser, Chairperson  
Board of Adjustment

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Jennifer Canaday, Recording Secretary