

**CITY OF WEST DES MOINES
BOARD OF ADJUSTMENT STAFF REPORT COMMUNICATION**

Meeting Date: August 18, 2021

ITEM: 1804 S. 42nd Street – Variance of Front Yard Setback along Grand Avenue from 50 feet to 30 feet to accommodate construction of new dwelling unit — VAR-005276-2021

REQUESTED ACTION: Variance of Front Yard Setback from 50 feet to 30 feet along Grand Avenue

Applicant's Request: The applicant and property owners, Charles and Morgan Elliott, request a Variance of the front yard setback along Grand Avenue from 50 feet to 30 feet to accommodate the construction of a new dwelling. The applicant provides the following explanation of their intent:

"Lot 1 of Quail Park Plat 1 has very unique geometry, it is a "pie" shaped lot where you lose buildable width dramatically as you move to the rear of the lot. According to City staff there may have been an error when accepting the geometry of this particular lot within the plat. There are 50' setbacks from both S 42nd street and a side 50' setback along the south or Grand Avenue. Quail Park also has HOA Convenance for minimum size/footprint of lot. We are requesting 20' of relief from the Grand Avenue setback, changing that setback from 50' to 30'. Intended improvement is to build a single family house that conforms to the HOA Convenance for size as well as zoning regulations for setbacks."

History: This property is part of the Quail Park Plat 1 final plat approved by the City in 1988. The property is zoned Residential Estate (RE-1A). The property has been vacant since the plat was approved. It appears that this lot is the one remaining lot in the plat yet to be developed.

City Council Subcommittee: This item was not presented to the Development and Planning City Council Subcommittee as they do not have authority over variance requests.

Staff Review and Comment: Staff notes the following:

- **Buildable lot:** Staff reviewed the plat and notes that the lot as platted met the requirements for lot width, size, and setbacks. The lot also meets current requirements.
- **Restrictive Covenants:** The applicant refers to the restrictive covenants for Quail Park Plat 1 for minimum building size. Staff has included in the staff report an excerpt of the renewed covenants as of January 1, 2021, for the Board's review.
- **Site Drawing:** The applicant has provided a site drawing that reflects the position of the dwelling on the lot and the proposed setback of 30 feet.
- **Comment:** Attached to this staff report is a comment received indicating neighbor support for the variance.
- **Variance vs Zoning Exception:** A variance is similar to a zoning exception in that it is a relaxation of the applicable zoning requirement; however, a variance requires the applicant show there is an "unnecessary hardship," while an applicant must only show there is a "practical difficulty" for a zoning exception request. Specifically defined allowable Zoning Exceptions only apply to existing single-family zoned and developed properties. Relief from zoning regulations for undeveloped single-family lots, as well as

Item 3a.

requests associated with non-single-family zoned parcels must be considered as a variance. Neither a variance nor a zoning exception is permission to circumvent zoning regulations just because a resident wants an improvement: the necessary findings applicable to each request (variance or zoning exception) must be made in granting the request.

Variance Findings: To grant the variance, all the following findings must be made, or conditions and limitations, as the Board deems necessary, imposed to allow it to make said findings.

1. That the granting of the variance shall not be contrary to the public interest.
2. That without the granting of the variance, and due to special conditions, a strict application of the zoning regulations as they apply to the subject property will result in an unnecessary hardship. An "unnecessary hardship" exists when:
 - a. The subject property cannot yield a reasonable return from any use or improvement permitted by the subject zoning regulations. Failure to yield a reasonable return may only be shown by proof that the owner has been deprived of all beneficial or productive use of the subject property. It is not sufficient to merely show that the value of the land has been depreciated by the regulations or that a zoning variance would permit the owner to increase the value in the subject property; and
 - b. The plight of the owner is due to unique circumstances not of the owner's making and not due to the general conditions in the neighborhood; and
 - c. The use or construction to be authorized by the variance will not alter the essential character of the neighborhood.
3. That the spirit of the ordinance shall be observed when the variance is granted; and
4. Substantial justice shall be done as a result of granting the variance.

It shall be the responsibility of the applicant to prove to the satisfaction of the Board that the above findings can be made. The applicant's findings to grant the variance and staff's findings, are included herein for the Board's consideration in making their decision.

Lead Staff Member: Kara V. Tragesser, AICP

Staff Report Reviews:

<input checked="" type="checkbox"/> Development Coordinator or Director	<input checked="" type="checkbox"/> Legal Department
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Publications (if applicable)

Published In:	Des Moines Register Community Section
Date(s) Published	August 7, 2021
Date(s) of Mailed Notices	August 5, 2021

Subject Property

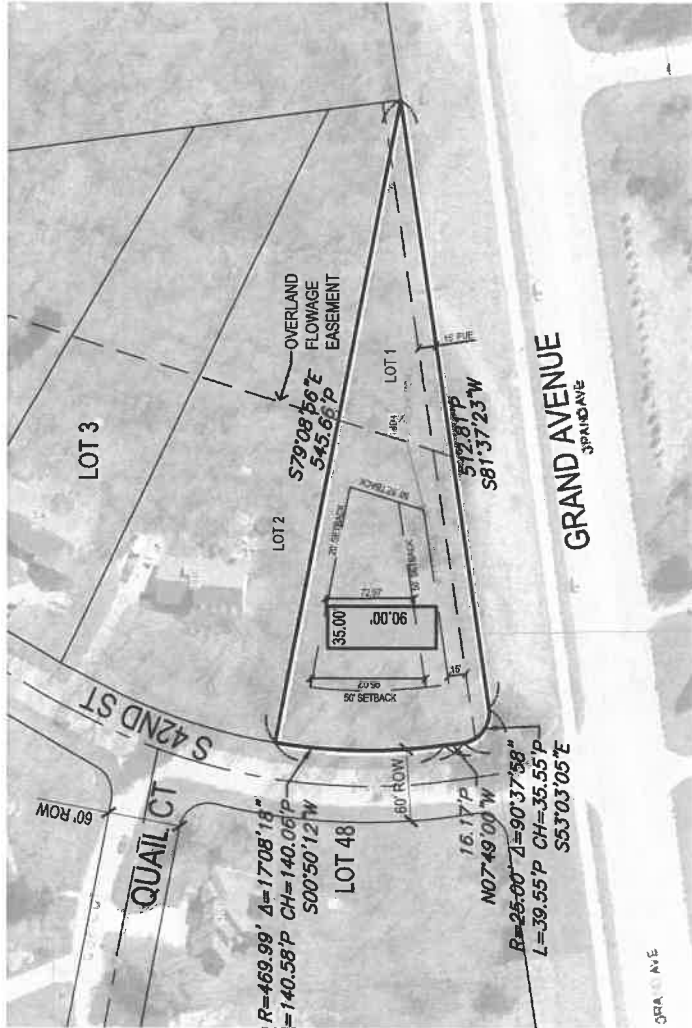
Item 3a.



HOMES BY DEPHILLIPS

GRAND AVENUE SETBACK EXHIBIT

REQUEST FOR VARIANCE OF GRAND AVENUE SETBACK
REDUCTION BY TWENTY FEET (20') FOR PRINCIPAL STRUCTURES.



PROPERTY DESCRIPTION:
SPECIAL WARRANTY DEED (BK. 18398 PG. 479)
LOT 1 ON QUAIL PARK PLAT 1, AN OFFICIAL PLAT, NOW
INCLUDED IN AND FORMING A PART OF THE CITY OF
WEST DES MOINES, POLK COUNTY, IOWA.

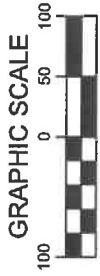
ADDRESS:
1804 SOUTH 42ND STREET
WEST DES MOINES, IOWA 50265

OWNER:
SAM CHARLES ELLIOTT
2824 VALLEY VIEW DRIVE
WEST DES MOINES, IOWA 50265

PREPARED FOR:
KEVIN DEPHILLIPS
HOMES BY DEPHILLIPS

ZONING:
RE - RESIDENTIAL ESTATE DISTRICT

BULK REGULATIONS
SETBACKS:
FRONT = 60'
REAR = 50'
SIDE = 20' MIN.
GRAND AVE. = 15' PUE & 35' SETBACK
FROM PUE FOR A TOTAL OF 50'
REQUESTING



LEGEND:
P PLATTED DISTANCE
ROW RIGHT OF WAY

Bishop Engineering
"Planning Your Successful Development"

3501 104th Street
Des Moines, Iowa 50322-3825
Phone: (515) 276-0467 Fax: (515) 276-0217
Civil Engineering & Land Surveying
Established 1959

VARIANCE EXHIBIT
1804 SOUTH 42ND STREET
WEST DES MOINES, IOWA

REFERENCE NUMBER: 6-21-2021
DRAWN BY: MAW
PROJECT NUMBER: 210234
SHEET NUMBER: 1 OF 1

IV. Property Rights: Title to the common areas in Quail Park Plat 1 are in the name of the Association by virtue of Quit Claim Deeds dated March 24, 1996 and April 11, 1998, and recorded as Instrument Nos. 058651 and 083347 respectively with the Polk County Recorder's Office. Additionally, an easement for the monument and beautification area at South 42nd Street and Grand dated March 24, 1998 was conveyed to the Association and recorded on April 28, 1998, as Instrument No.083348 in the Polk County Recorder's Office. The Association shall hold, own, and operate said common areas and any others subsequently conveyed to the Association pursuant to this Second Restated Declaration and for the benefit of the Quail Park Plats.

V. Designation of Use: All Lots in Quail Park Plat 1, except therefrom Lots A, B, C, D, E, and F, Lot 49 and Lot 50, shall be known and described as residential lots and shall not be developed with more than one single-family dwelling on each, and shall not be improved, used, or occupied for other than private residential purposes, or those uses provided for in the zoning ordinance of the City.

VI. Building Type and Area.

A. No building or structure shall be constructed, altered, or maintained on any Lot(s) other than a single-family home or any structure allowed by the zoning ordinance. All single-family homes shall contain a minimum of 2,500 square feet of living space exclusive of attached garages, breezeways, porches, and finished basement areas. Additionally, all single-family homes shall meet the following requirements:

1. One-story dwellings must have a ground floor finished area of not less than 2,500 square feet.
2. One and one-half story dwellings must have 2,000 square feet of finished area on the first floor and a total on the main floor and second floor of not less than 3,100 square feet.
3. Two-story dwellings must have 1,700 square feet of finished area on the first floor and a total on the main floor and second floor of not less than 3,100 square feet.
4. Split entry dwellings must have 3,100 square feet of finished area on the upper level, but a 70% credit will be given for a finished area on the lower level which is 50% exposed over finished grade.
5. Split level dwellings must have not less than 3,100 square feet of finished area directly under roof, but a 70% credit will be given for finished area of lower level which is 50% exposed over finished grade.
6. No building shall be erected on any Lot unless the design and location is in harmony with existing structures in the tract.
7. In the computation of ground floor area, the same shall not include any porches, breezeways, attached or built-in garages, or finished basement areas.

Tragesser, Kara

From: Forrest Ridgway <flridgway@yahoo.com>
Sent: Saturday, July 31, 2021 4:38 PM
To: Development Services Inbox
Subject: [EXT] 1804 S 42nd

FYI,
I am for allowing this zoning exception. There is more than enough set back from Grand already plus there is a huge elevation change from the road.

Thank you.
Forrest Ridgway
4180 Grand Ave
WDM, IA 50265

Applicant's Findings

A variance shall only be granted if all the following findings are made; or if conditions and limitations, as the Board deems necessary, are imposed to allow it to make said findings. **It shall be the responsibility of the applicant to prove to the satisfaction of the Board that the following findings can be made:**

1. That the granting of the variance shall not be contrary to the public interest:
APPLICANT RESPONSE: *We believe the granting of the variance would not be contrary to the public interest as this lot is currently unbuildable and would not be able to benefit the public with tax dollars generated by improvements unless a variance is granted.*
2. That without the granting of the variance, and due to special conditions, a strict application of the zoning regulations as they apply to the subject property will result in an unnecessary hardship. An "unnecessary hardship" exists when:
 - a. The subject property cannot yield a reasonable return from any use or improvement permitted by the subject zoning regulations. Failure to yield a reasonable return may only be shown by proof that the owner has been deprived of all beneficial or productive use of the subject property. It is not sufficient to merely show that the value of the land has been depreciated by the regulations or that a zoning variance would permit the owner to increase the value in the subject property; and
 - b. The plight of the owner is due to unique circumstances not of the owner's making and not due to the general conditions in the neighborhood; and
 - c. The use or construction to be authorized by the variance will not alter the essential character of the neighborhood.

APPLICANT RESPONSE:

- A. *This is a platted buildable lot that has been purchased for the lots purpose of building a single-family home. Due to the geometry of the lot and setbacks and the minimum footprint allowed by the HOA (homeowners association), the owner is not able to construct a home due to width.*
 - B. *A platted and numbered lot is intended to be constructable, this lot is not constructable.*
 - C. *This variance is requested as the only way to not alter the character of the neighborhood due to the HOA footprint regulations*
3. That the spirit of the ordinance shall be observed when the variance is granted; and
APPLICANT RESPONSE: *The spirit of the ordinance would be observed.*
 4. Substantial justice shall be done as a result of the granting of the variance.
APPLICANT RESPONSE: *This variance is the only way to realize the original intent of a buildable single-family lot.*

Staff's Findings

A variance shall only be granted if all the following findings are made; or if conditions and limitations, as the Board deems necessary, are imposed to allow it to make said findings. **It shall be the responsibility of the applicant to prove to the satisfaction of the Board that the following findings can be made:**

1. That the granting of the variance shall not be contrary to the public interest:
STAFF'S RESPONSE: The granting of this variance is not contrary to the public interest.

2. That without the granting of the variance, and due to special conditions, a strict application of the zoning regulations as they apply to the subject property will result in an unnecessary hardship. An "unnecessary hardship" exists when:
 - a. The subject property cannot yield a reasonable return from any use or improvement permitted by the subject zoning regulations. Failure to yield a reasonable return may only be shown by proof that the owner has been deprived of all beneficial or productive use of the subject property. It is not sufficient to merely show that the value of the land has been depreciated by the regulations or that a zoning variance would permit the owner to increase the value in the subject property; and
 - b. The plight of the owner is due to unique circumstances not of the owner's making and not due to the general conditions in the neighborhood; and
 - c. The use or construction to be authorized by the variance will not alter the essential character of the neighborhood.**STAFF'S RESPONSE:**
 - a. *Staff believes that this property is a buildable lot as is even when complying with the average front yard requirement for existing developed areas. Staff believes that a dwelling can be constructed on the lot at the current setback requirements and meet the minimum requirements of the restrictive covenants. A one-story house that is 75 feet wide by 35 feet deep yields a minimum 2,600 sq. ft. ground floor which would exceed the minimum building size required by the restrictive covenants for a one-story house of 2,500 sq. ft.*
 - b. *The buildable width of the subject lot falls in range of other lots in the development.*
 - c. *The use or construction allowed by the variance will not alter the essential character of the neighborhood.*

3. That the spirit of the ordinance shall be observed when the variance is granted; and
STAFF'S RESPONSE: *Staff believes that the spirit of the ordinance shall be observed in that specific to this lot, the right-of-way of Grand Avenue is larger than normal, is built to its ultimate width, and the larger right-of-way provides the separation from the street and the outdoor use space to the east.*

4. Substantial justice shall be done as a result of the granting of the variance.
STAFF'S RESPONSE: *Since staff believes the lot is buildable as-is and can still meet the restrictive covenants, the granting of the variance is not needed to provide substantial justice. Essentially, the granting of the variance would merely result in a larger buildable lot than originally platted.*

RESOLUTION BOA-2021-11

**A RESOLUTION OF THE BOARD OF ADJUSTMENT OF THE CITY OF WEST DES MOINES,
(APPROVING / DENYING) THE VARIANCE REQUEST (VAR-005276 -2021) TO REDUCE
THE FRONT YARD SETBACK ALONG GRAND AVENUE FOR THAT PROPERTY LOCATED
AT 1804 S 42ND STREET**

WHEREAS, pursuant to the provisions of Title 9, Chapter 1 et seq, of the West Des Moines Municipal Code, the property owners, Charles and Morgan Elliot, have requested approval of a Variance from Title 9, Zoning, Chapter 7, Setback and Bulk Density Regulations, Section 4, Setback and Density Regulations, of 30 feet of the required 50 feet front yard setback along Grand Avenue to construct a new home on the property located at 1804 S. 42nd Street and legally described as:

**LOT 1 QUAIL PARK PLAT 1, AN OFFICIAL PLAT NOW WITHIN AND
FORMING A PART OF THE
CITY OF WEST DES MOINES, POLK COUNTY, IOWA**

WHEREAS, studies and investigations were made, and staff reports, and recommendations were submitted which is made a part of this record and herein incorporated by reference; and

WHEREAS, on August 18, 2021, the Board of Adjustment held a duly noticed public hearing to consider the application for a Variance (VAR-005276 -2021).

WHEREAS, based upon a review of the submitted variance request, the Board of Adjustment finds (**In Favor of Applicant's Findings, In Favor of Staff Findings, or in Favor of the Board's Findings**) _____ as attached at Exhibit B;

NOW, THEREFORE, THE BOARD OF ADJUSTMENT OF THE CITY OF WEST DES MOINES DOES RESOLVE AS FOLLOWS:

SECTION 1. A Variance Request (VAR-005276 -2021), to allow a variance of 20 feet of the required 50 feet front yard setback along Grand Avenue resulting in a 30 feet setback is (**approved / denied**).

PASSED AND ADOPTED on August 18, 2021.

Michele Stevens, Chair

ATTEST:

Recording Secretary

I HEREBY CERTIFY that the foregoing resolution was duly adopted by the Board of Adjustment for the City of West Des Moines, Iowa, at a regular meeting held on August 18, 2021, by the following vote:

AYES:

NAYS:

ABSTAIN:

ABSENT:

ATTEST:

Recording Secretary

Exhibit A
Conditions of Approval

1. None

Exhibit B
Board of Adjustment Findings