

CITY OF WEST DES MOINES STAFF REPORT COMMUNICATION

Meeting Date: January 18, 2023

ITEM: Sikh Temple, 1115 Walnut Street – Variance of 8 feet to the east side yard setback to accommodate a building addition – Baljit Singh Virdi – VAR-005706-2022

REQUESTED ACTION: Variance of Side Yard Setback

Applicant's Request: The applicant, Kate Arnest with Arnest Architecture, on behalf of the property owner, Iowa Sikh Association, is requesting a Variance to reduce the required east side yard setback to accommodate the construction of a proposed building addition. This lot is only 62.5 feet wide and the current zoning setbacks for non-residential uses in the Single Family Valley Junction district are 15 feet on each side. The existing building is 34 feet wide and has a 22 foot setback on the west side of the property. The temple currently has a 7.7 foot setback on the east side. They are requesting to add an addition to the front of the building making it the same width as the existing building. The new addition will be used as a gathering space for refreshments after the prayer service. The applicant is seeking approval of a variance from Title 9, Chapter 7, Section 4, Table 7.4 of eight feet (8') to reduce the minimum east side yard setback from fifteen feet (15') to seven feet (7'). If approved, the variance would allow for the proposed addition to align with the existing structure.

History: According to the Polk County Assessor website, the building on the property was constructed in 1976.

Staff Review and Comment: Staff would summarize the following key points of interest:

- **City Code Requirement as Relates to Request:** City Code requirements come from Title 9, Chapter 7, Section 4, Table 7.4 which indicates a side yard setback of 15 feet is required. The applicant is requesting approval of an 8-foot variance of the 15-foot side yard setback requirement for a proposed addition. The temple was constructed with a 7.7' setback on the east side of the property adjacent to a 16' alley. The reduced setback on the east side of 7' will allow the addition to align with the existing building, plus a few inches for construction tolerances. They are requesting to do an addition off the front of the current building.
- **Off-Street Parking:** The current building and with the proposed addition, does not comply with the city's minimum off-street parking requirements of 20 spaces per 1,000 square feet of assembly area and 3 spaces per 1,000 square feet for non-assembly gross floor area. The City Council has the authority to waive or modify to a lesser restriction the number of parking required by code. The applicant plans to pursue this option when they submit for a Minor Modification and has demonstrated in the illustrations Future Parking Plans on how additional parking could be provided.
- **Permitted Condition Use and Minor Modification Approval:** In addition to this Variance consideration by the Board of Adjustment, the land use and the exterior improvements will require approval of a separate Permitted Conditional Use Permit and Minor Modification Level 2 application prior to initiation of work. The Permitted Conditional Use Permit will come back to the Board of Adjustment for consideration; however, Minor Modifications are

reviewed and approved administratively by City Staff unless code requirements cannot be met by the proposed project. As suggested in the above parking paragraph, the applicant will be requesting deferral of the installation of some parking therefore, the Minor Modification will be considered by the Plan and Zoning Commission and City Council, rather than approved by staff.

- **Variance vs Zoning Exception:** In the fall of 2020, city code was amended to provide an alternative to the variance process (AO-004860-2020). This amendment created the Zoning Exception process specifically for existing residential properties wanting to make improvements. 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 requests associated with non-single-family zoned or used 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.

City Council Subcommittee: This item was presented to the Development and Planning City Council Subcommittee as an upcoming project only. There was no discussion on the request as the City Council does not have authority over variance or zoning exception requests.

Variance Findings: To grant the variance, all of 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;
 - 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 is 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: Kate DeVine

Staff Report Reviews:

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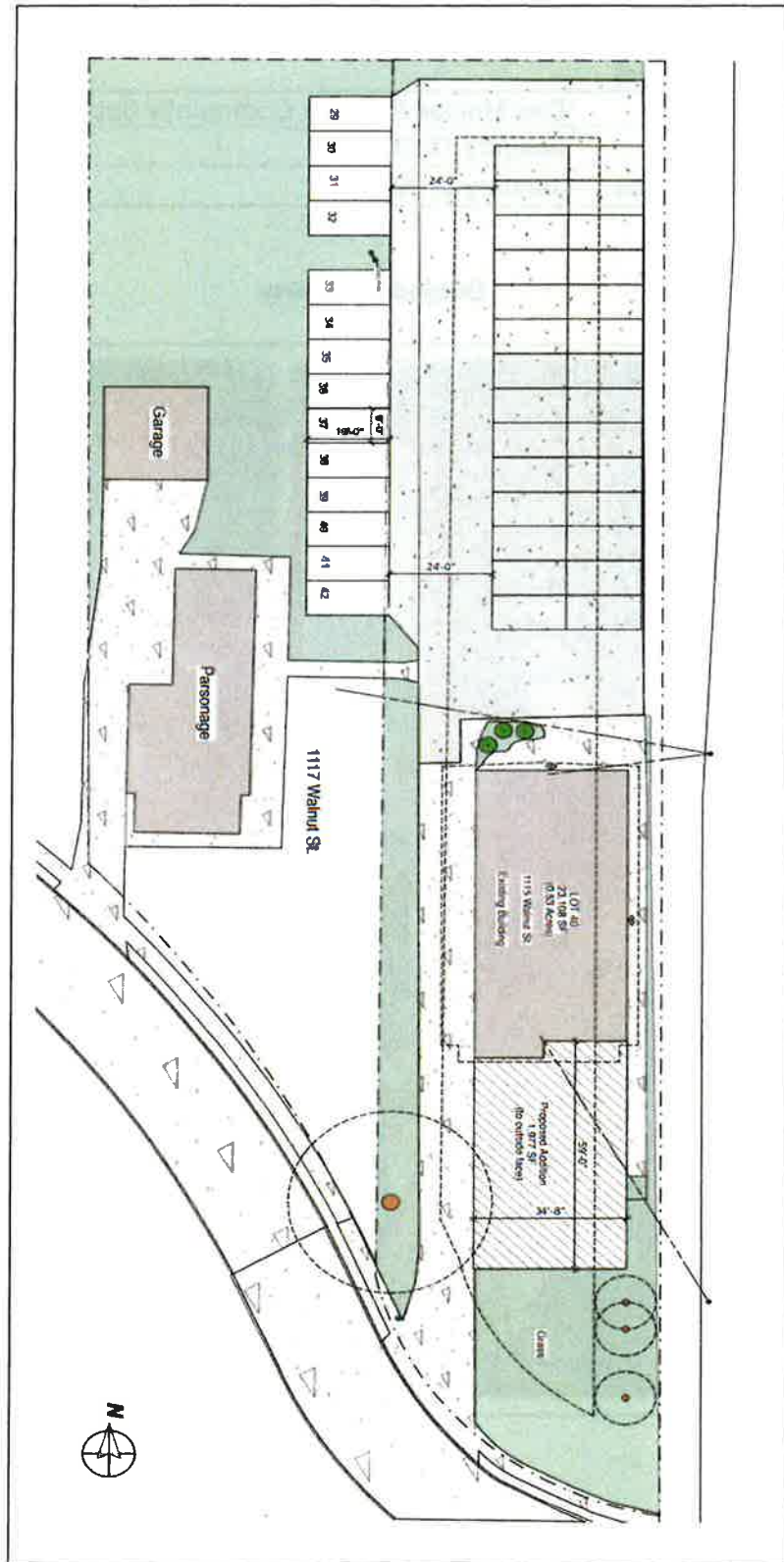
Publications (if applicable)

Published In:	Des Moines Register Community Section
Date(s) Published	January 10, 2023
Date(s) of Mailed Notices	January 6, 2023

Subject Property



Draft Site Plan



Applicant's Findings

A variance shall only be granted if all of 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: *The alley is not a public street, so we are not infringing on any public interest there. The parking lot has never been full and is sufficient for the congregation. The congregation is not expected to grow disproportionately because this addition will be used after services, not concurrently. Therefore, there will not be any change or addition to street parking due to this addition.*
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.) The Temple needs more space at this time. They need to keep the prayer space separate from the refreshment/community space, as most churches do. The lot is a difficult shape as it is very long and narrow. Parking is necessary for them, any other business that occupies this space. Due to that, we only have 2 options of expansion: towards the front as proposed, or up a second story. Going up is not within their budget and poses other ADA issues. We also don't feel that is consistent with how this building has looked historically. Keeping the 15' east setback means this addition can only be 27' wide and (a) that will not good from the exterior and will clearly be an addition that was poorly designed, (b) that is going to be a very awkward space on the interior, and (c) we will have to go out even further towards the front to get the necessary space which will look bad aesthetically. We want to improve this building and we feel this is the best way to do that and keep/increase the property value.

B.) The lot is very narrow and the existing building was not located centrally. So we have exceeded the setback on the west. We are hoping that we can retain the east setback of 7.7' (not 15' as required) to make this addition match existing.

C.) We believe that granting the variance is the best way to keep the essential character of the neighborhood. If variance is not granted, our only other option is to go up and do a second story and we feel that will alter the essential character. We want to keep this building as close to its original look as possible, while acknowledging that more space is needed at this time.

3. That the spirit of the ordinance shall be observed when the variance is granted; and
APPLICANT RESPONSE: *The spirit of the ordinance wants 15' on each side building. Unfortunately, the original building was not centered on the lot. That is our problem. We feel that the ordinance is still observed because we are 7.7' from the east and 22.4 from the west. We still have 30' of space between the building and property lines, it's just that there's more on the west than the east.*

4. Substantial justice shall be done as a result of the granting of the variance.
APPLICANT RESPONSE: *We feel that this building (no matter who owns it) needs more space and has available space on the lot. Because of the strange shape of the lot, we feel that our proposal is the best way to achieve that while adhering as closely as we can to the zoning requirements.*

Staff's Findings

A variance shall only be granted if all of 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 proposed variance is needed in order to expand on the use of the temple to have separation between prayer services and gathering space. The addition will not increase the congregation size as the spaces are used one after the other, not concurrently. Additionally, the variance will not be contrary to the public interest due to the fact that the building addition will not encroach further than the existing building already on the east side yard setback. The proposed addition will not obstruct the required vision triangle for the alley or the property's driveway.*

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: *According to the information provided by the applicant, the existing building for the property is located 22 feet from the west boundary and 7.7 feet from the east boundary. "Unnecessary hardship" exists since the subject property cannot yield a reasonable return from any use or improvement permitted by the subject zoning regulations, 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 the use or construction to be authorized by the variance will not alter the essential character of the neighborhood. Staff would note the following for this finding:*

- a. *More space is needed at this time to meet the functional requirements of worship. The applicant has explored other options to expand the building but has determined that the only option for the proposed addition is to follow the current building setback on the east side yard. Without the granting of the variance, a strict application of the zoning regulations as they apply to the subject property will result in an unnecessary hardship, impacting the beneficial or productive use of the subject property for the current owner of the property.*
- b. *The existing non-conformity is not a hardship of the owners making. The existing structure is located within the 15' side yard setback on the east side, all other setbacks meet current code requirements. The subject property was platted in*

1916, outside of the city's limits at the time. Staff was unable to confirm when the property was annexed into the City or if zoning was applied when the original building was constructed. In the past, the Board has approved several side yard variances for residential properties that allowed a building addition to align with the non-conforming setback of the existing building. Staff is not aware of the Board supporting a variance to allow the same for a non-residential building in a residential neighborhood.

- c. The use as a place of worship has existed since the building was constructed and the proposed addition is to address functional requirements of worship for the current owner, not to accommodate additional worshipers. The building is larger than the surrounding buildings, however even with the addition it is in keeping with the typical scale of a place of worship within a residential neighborhood.
3. That the spirit of the ordinance shall be observed when the variance is granted; and
STAFF'S RESPONSE: *The spirit of the ordinance is still observed as the applicant is requesting to construct an addition that does not increase the non-conformity of the existing building's east setback and does still comply with required setbacks for the remaining yards.*
 4. Substantial justice shall be done as a result of the granting of the variance.
STAFF'S RESPONSE: *The granting of the variance will allow the building to expand to accommodate functional requirements of the place of worship without increasing the existing non-conformities of the building.*

Prepared by: Kate Devine, City of West Des Moines Development Services Dept., PO Box 65320,
West Des Moines, Iowa 50265-0320 515-222-3620
When Recorded, Return to: City Clerk, City of West Des Moines, PO Box 65320, West Des Moines, IA 50265-0320

RESOLUTION BOA-2023-02

**A RESOLUTION OF THE BOARD OF ADJUSTMENT OF THE CITY OF WEST DES MOINES,
(APPROVING / DENYING) THE VARIANCE REQUEST FOR REDUCING THE EAST SIDE
YARD SETBACK TO SEVEN FEET (7') FOR THAT PROPERTY LOCATED AT
1115 WALNUT STREET**

WHEREAS, pursuant to the provisions of Title 9, Chapter 1 et seq, of the West Des Moines Municipal Code, the property owner, Iowa Sikh Association, has requested approval of a Variance from Title 9 (*Zoning*), Chapter 7 (*Setback and Bulk Density Regulations*), Section 4 (*Setback and Density Regulations*), Table 7.4, of 8 feet of the required 15 foot side yard setback resulting in a 7 foot side yard setback along the east property line for the installation of an addition on the property located at 1115 Walnut Street and legally described as:

**LOT 40 NUTTALL ACRES, 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 January 18, 2023, the Board of Adjustment held a duly noticed public hearing to consider the application for a Variance (VAR-005706-2022).

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 that a Variance Request to allow a variance of 8 foot of the required 15 foot side yard setback resulting in a 7 foot setback along the east property line is (**approved / denied**).

PASSED AND ADOPTED on January 18, 2023.

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 January 18, 2023, by the following vote:

AYES:

NAYS:

ABSTAIN:

ABSENT:

ATTEST:

Recording Secretary

Exhibit A
Conditions of Approval

1. The applicant obtaining approval of a Minor Modification Level 2 prior to the issuance of any building permits.
2. The applicant obtaining approval of a Permitted Conditional Use Permit prior to the issuance of any building permits.

Exhibit B
Board of Adjustment Findings