

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

Meeting Date: May 3, 2023

ITEM: 1975 S. 40th Court, Joseph Setback Exception – Zoning Exception for a Reduction of Setback to accommodate a second dwelling unit – Sable and Burton Joseph – VAR-005980-2023

REQUESTED ACTION: Zoning Exception for a Reduction of Rear Yard Setback and Reduction of Street Side Yard Setback

Applicant’s Request: The applicants and property owners, Sable J. Joseph and Burton M. Joseph, IV are seeking approval of a Zoning Exception to reduce the street side yard setback along Grand Avenue by one (1) foot and to reduce the rear yard setback by five (5) feet to accommodate the conversion of an existing accessory building to a secondary dwelling unit.

History: This property is a parcel that lies between Hidden Creek Estates and The Oaks subdivisions, but is not included in either subdivision. The property is zoned Residential Estate (RE-1A). Second dwelling units are allowed in this zoning district but are required to meet primary dwelling unit setbacks. The setbacks for primary dwelling units in this zoning district are:

Front Yard – 50 feet from property line
Rear Yard – 50 feet from property line
Side Yard – 20 feet
Street Side Yard (Grand Avenue) – 20 feet.

The property has an accessory structure that is proposed to be redesigned into a second dwelling unit. The accessory structure meets the 20 foot street side yard setback at the northeast corner, but the northwest corner encroaches approximately 0.5 feet into the street side yard setback. A reduction of one (1) foot for the street side yard is requested to allow the conversion of the accessory structure to a second dwelling.

Likewise, the accessory structure encroaches into the rear yard setback by approximately 4.5 feet. A reduction of the rear yard setback of five (5) feet is requested to allow the conversion of the accessory structure to a second dwelling.

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 key point of interest:

- *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 zoning exception is similar to a variance 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. Practical difficulties as they relate to consideration of the request may be shown by special circumstances which apply to the property such that the rems of Title 9 cannot be satisfied.

Zoning Exception Findings: The Zoning Exception process is not permission to evade zoning regulations just because a property owner wants an improvement. To grant the zoning exception, all of the following standards and criteria must be met, or conditions and limitations, as the Board deems necessary, imposed to allow it to make said findings.

1. Without the requested exception, strict compliance with the ordinance prevents improvement of the property in a manner which is reasonable, customary, and consistent with other properties in the area.
2. Without the requested exception, strict compliance with the ordinance results in a practical difficulty. An “practical difficulty” may be shown by:
 - a. Significant or unjustified expense in light of the scope of the project; or
 - b. Destruction or demolition of significant and attractive features of the property, or similar reasons; or
 - c. Unique physical attributes of the subject property such as exceptional narrowness, shallowness, size, shape, mature & desirable vegetation, natural features such as streams, creek, and ponds, or topographical conditions of the subject property that restrict placement of the intended improvement; or
 - d. Orientation or interior configuration of the existing structure which impacts the logical function of the intended improvement unless additional modifications are made to the existing layout or use of the existing structure.
3. The requested exception is the minimum necessary to achieve the purpose of the request.
4. The requested exception will not have a negative impact on the character or context of the neighborhood.
5. The requested exception will not be detrimental to the public health, safety or general welfare.
6. The requested exception does not authorize or expand a use or activity not otherwise expressly authorized by the regulations within the zoning district in which the property is located.

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 Tragesser

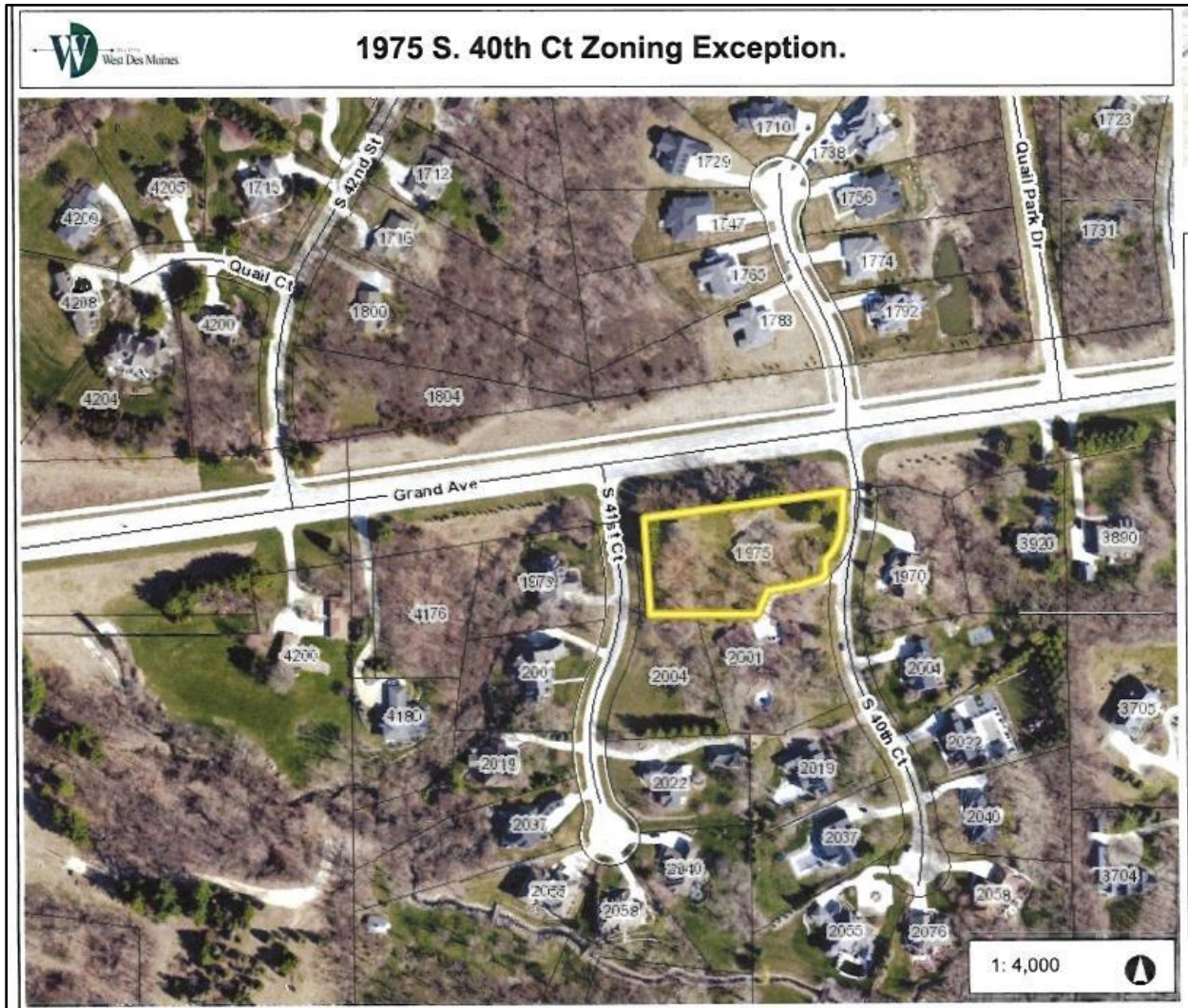
Staff Report Reviews:

<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
Date(s) Published	April 21, 2023
Date(s) of Mailed Notices	April 18, 2023

Subject Property



**ZENITH DESIGN + BUILD
1975 S 40TH COURT, WEST DES MOINES**



NOTES:

1. BUILDING DIMENSIONS SHOWN ON THIS DRAWING ARE TO THE FACE OF FOUNDATION.
2. BUILDER SHOULD BE ADVISED MINIMUM ELEVATION REQUIREMENTS MAY BE APPLICABLE TO THIS PROPERTY.
3. KNOWN EASEMENTS ARE SHOWN, HOWEVER THERE MAY BE UNRECORDED EASEMENTS AND/OR EASEMENTS CREATED AFTER THE ORIGINAL DEVELOPMENT THAT MAY AFFECT THE PROPERTY.
4. DRIVEWAY OBSTRUCTIONS MAY BE PRESENT. THE BUILDER IS RESPONSIBLE FOR VERIFYING FREE AND CLEAR DRIVEWAY ACCESS.



2727 S.W. SNYDER BLVD.
ANKENY, IA 50023 (515) 964-2020



PN:	123.0042
DATE:	3-27-23
TECH/PM:	RSN/GAC

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Applicant's Findings

A zoning exception 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. Without the requested exception, strict compliance with the ordinance prevents improvement of the property in a manner which is reasonable, customary, and consistent with other properties in the area.

APPLICANT RESPONSE: *Correct, without an approved exception, our clients would not be able to fulfill their desire to convert this existing garage to an "in-law" suite.*

2. Without the requested exception, strict compliance with the ordinance results in a practical difficulty. An "practical difficulty" may be shown by:

- a. Significant or unjustified expense in light of the scope of the project; or
- b. Destruction or demolition of significant and attractive features of the property, or similar reasons; or
- c. Unique physical attributes of the subject property such as exceptional narrowness, shallowness, size, shape, mature & desirable vegetation, natural features such as streams, creek, and ponds, or topographical conditions of the subject property that restrict placement of the intended improvement; or
- d. Orientation or interior configuration of the existing structure which impacts the logical function of the intended improvement unless additional modifications are made to the existing layout or use of the existing structure.

APPLICANT RESPONSE: *A denial would not only prevent our clients from converting this currently unused detached garage into a "Mother-in-Law Suite" but they would incur a substantial financial increase by having to redesign to plan a new build elsewhere on the property*

3. The requested exception is the minimum necessary to achieve the purpose of the request.

APPLICANT RESPONSE: *Yes, correct. 4-3/4" @ the northwest corner of that existing structure is all we need an exception for. (Staff note: the applicant also needs an exception of the rear yard setback of approximately 5 feet, which was not included in the application, but was discussed with the applicant prior to application and after review.)*

4. The requested exception will not have a negative impact on the character or context of the neighborhood.

APPLICANT RESPONSE: *This is true - granting the exception would actually have a positive impact in the context of the neighborhood since the improvements would be more aesthetically pleasing.*

5. The requested exception will not be detrimental to the public health, safety or general welfare.

APPLICANT RESPONSE: *True - there is nothing in our proposed design plan or in this request for exception that would be detrimental to the public health, safety or general welfare.*

6. The requested exception does not authorize or expand a use or activity not otherwise expressly authorized by the regulations within the zoning district in which the property is located.

APPLICANT RESPONSE: *True.*

Staff's Findings

1. Without the requested exception, strict compliance with the ordinance prevents improvement of the property in a manner which is reasonable, customary, and consistent with other properties in the area.

STAFF RESPONSE: *Second dwelling units are allowed in the zoning district and regulations for Residential Estate (RE-1A). The lot appears to meet the regulations of the zoning district. The allowance of a second dwelling unit is reasonable and consistent to other properties in the area. The area does not appear to have many second dwelling units, so the customary finding is without substantiation by current conditions of the area.*

2. Without the requested exception, strict compliance with the ordinance results in a practical difficulty. An "practical difficulty" may be shown by:

- a. Significant or unjustified expense in light of the scope of the project; or
- b. Destruction or demolition of significant and attractive features of the property, or similar reasons; or
- c. Unique physical attributes of the subject property such as exceptional narrowness, shallowness, size, shape, mature & desirable vegetation, natural features such as streams, creek, and ponds, or topographical conditions of the subject property that restrict placement of the intended improvement; or
- d. Orientation or interior configuration of the existing structure which impacts the logical function of the intended improvement unless additional modifications are made to the existing layout or use of the existing structure.

STAFF RESPONSE: *Without the exception, expense to move the accessory structure by less than a foot for the street side yard and less than five feet for the rear yard is unjustified for the re-use of the structure as a second dwelling in-place.*

3. The requested exception is the minimum necessary to achieve the purpose of the request.

STAFF RESPONSE: *The requested exceptions to the street side yard and the rear yard setbacks are the minimum necessary to allow the accessory structure to be converted to a dwelling unit.*

4. The requested exception will not have a negative impact on the character or context of the neighborhood.

STAFF RESPONSE: *The structure is existing and is not proposed to be expanded or moved. The neighborhood is accustomed to the accessory structure in the existing location. Improvements to the structure or a second dwelling will improve the visual aesthetic of the property.*

5. The requested exception will not be detrimental to the public health, safety or general welfare.

STAFF RESPONSE: *The requested exceptions will not be detrimental to the public health, safety, or general welfare as the structure exists and changes to the exterior of the structure will enhance the aesthetic of the property. The structure is not proposed to be enlarged or moved, so the public health, safety, or general welfare will be maintained as is currently.*

6. The requested exception does not authorize or expand a use or activity not otherwise expressly authorized by the regulations within the zoning district in which the property is located.

STAFF RESPONSE: *The conversion of the accessory structure to a dwelling unit is authorized in the zoning district applied to this property.*

Prepared by: Kara Tragesser, 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 23-09

A RESOLUTION OF THE BOARD OF ADJUSTMENT OF THE CITY OF WEST DES MOINES, (APPROVING / DENYING) THE ZONING EXCEPTION REQUEST FOR REDUCTION OF THE STREET SIDE YARD SETBACK AND THE REAR YARD SETBACK FOR PROPERTY LOCATED AT 1975 S. 40th COURT

WHEREAS, pursuant to the provisions of Title 9, Chapter 1 et seq, of the West Des Moines Municipal Code, the property owners, Sable J. Joseph and Burton M. Joseph, IV, have requested approval of a Zoning Exception from Title 9, Zoning, Chapter 7 (*Setback and Bulk Density Regulations*), Section 4 (*Setback and Density Regulations*), to reduce the street side yard setback by one (1) foot, resulting in a 19 foot setback and to reduce the rear yard setback by five (5) feet resulting in a 45 foot rear yard setback for converting an existing accessory building to a second dwelling unit on the property at 1975 S. 40th Street and legally described as:

PART OF THE SW 1/4 OF THE SE 1/4 OF SECTION 20, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE 5TH P.M. DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE SOUTH LINE OF SAID SECTION 20 THAT IS 541.0 FEET EAST OF THE SOUTH 1/4 CORNER OF SAID SECTION 20; THENCE N 3°28' W 173.2 FEET MORE OR LESS TO THE SOUTH LINE OF GRAND AVENUE; THENCE N 82°19' E ALONG THE SOUTH LINE OF GRAND AVENUE 360.6 FEET; THENCE S 3°39'W, 59.5 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT HAVING A RADIUS OF 98.6 FEET AND A CENTRAL ANGLE OF 41°31'; THENCE ALONG SAID CURVE, 71.44 FEET; THENCE SOUTH 25 FEET; THENCE S 47°38'W 12.4 FEET; THENCE S 73° 05'40"W, 39.05 FEET; THENCE S 80°15'W 59.0 FEET; THENCE S 22°25'20" W, 47.0 FEET MORE OR LESS TO THE SOUTH LINE OF SAID SECTION 20; THENCE WEST ALONG THE SOUTH LINE OF SECTION 20, 191.5 FEET TO THE POINT OF BEGINNING; ALL NOW INCLUDED IN 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 May 3, 2023, the Board of Adjustment held a duly noticed public hearing to consider the application for a Zoning Exception (VAR-005980-2023).

WHEREAS, based upon a review of the submitted zoning exception 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 Zoning Exception to allow a reduction of the street side yard of one (1) foot resulting in a setback of 19 feet and a reduction of the rear yard setback of five (5) feet resulting in a 45 foot setback is (**approved / denied**).

PASSED AND ADOPTED on May 3, 2023.

Angie Pfannkuch, 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 May 3, 2023, by the following vote:

AYES:

NAYS:

ABSTAIN:

ABSENT:

ATTEST:

Recording Secretary

Exhibit A
Conditions of Approval

None