



TOWN OF SMYRNA BOARD OF ZONING APPEALS

MEETING MINUTES

November 16, 2023

5:00 p.m.

Smyrna Town Hall

Chairman Steve Sullivan called the regular session of the Smyrna Board of Zoning Appeals to order on November 16, 2023 at 5:00 p.m. The invocation was given by Chairman Steve Sullivan and the Pledge of Allegiance was led by Scott Demonbruen.

The following Board of Zoning Appeals members/staff were present/absent:

Present: Steve Sullivan, Councilman; Jay Michaelson; Scott Demonbreun; Vanessa Haley

Absent: Phil Wilson

Staff Present: Todd Spearman, Assistant Town Manager; Jason King, Asst. Town Attorney; Mitchell Wensman, Planner; Kathryn Bobbitt, Office Coordinator; Charles King, Engineer; Dennis Blair, Interim Building Official

1. Citizens' Comments: None at this time.

2. Approval of Minutes of the October 19, 2023 meeting

Motion by Vanessa Haley, seconded by Scott Demonbreun to approve the Minutes of the October 19, 2023 meeting.

Vote: 4 - 0 Passed - Unanimously

3. New Business:

a. Setback Variance:

1. Moises Castillo
807 Blue Springs Drive

Location: 807 Blue Springs Drive	Property Owner(s): Moises Castillo
Tax Map/Group/Parcel #: 28F/A/43.00	Zoning/Use Classification: R-3/Medium Density Residential

Request: For a front setback variance of 20' and a side setback variance of 2' to allow a carport within the front setback.



Staff Analysis

The applicant has requested a 20' front setback variance to place a detached carport in the front setback in front of the principal structure. In addition, a side setback variance is being requested of 2'. The property is zoned R-3, Medium Density Residential, and is 10,200 square feet in size. Minimum front yard setback requirement in the R-3 district is 35' for any structure, however when this subdivision plat was recorded in 1993, a 40' front setback was required. Detached structures are allowed to be a minimum of 8' from the side property line, with the exception of easements.

The structure is 20' x 20' in size (400 SF) and is located in the driveway in front of the residence. The applicant has a fenced in rear yard with an existing shed in addition to the carport.

Section 7.080 D of the Zoning Ordinance details the requirements for variances not involving special flood hazard areas. These are detailed below.

Zoning Variance Requirements

Section 7.080 of the Municipal Zoning Ordinance lists general requirements for a zoning variance request. Those requirements and staff's findings are as follows:

Section 7.080 Procedure for authorizing zoning variances

The purpose of a variance is to modify the strict application of the specific requirements of this ordinance in the case of exceptionally irregular, narrow, shallow, or steep lots, or other exceptional physical conditions, whereby such strict application would result in practical difficulty or unnecessary

hardship which would deprive an owner of the reasonable use of his land. The variance shall be used only where necessary to overcome some obstacle which is preventing an owner from using his property under this ordinance.

B. Standards for Variances not Involving Special Flood Hazard Areas:

The board shall not grant a variance unless it makes finding based upon evidence presented to it as follows:

1. The particular physical surroundings, shape, topographic conditions of the specific property involved that would result in a particular hardship upon the owner as distinguished from a mere inconvenience, if the strict application of this ordinance were carried out must be stated.
 1. Staff finds that the property is uniform in shape, size and topographic conditions with no unique circumstances.
2. The conditions upon which the petition for a variance is based would not be applicable, generally, to other property within the same district.
 1. The property has no distinguishable features that would deem the petition for a variance, however, the recorded setback for this property is 40' compared to 35' if a plat was recorded today.
3. The variance will not authorize activities in a zone district other than those permitted by this ordinance.
 1. Detached structures are allowed by right in the R-3 zoning district, but are to adhere to applicable front setbacks of the principal structure.
4. Financial returns only shall not be considered as a basis for granting a variance.
 1. The property owner has not identified financial returns as a reason for requesting this variance.
5. The alleged difficulty or hardship has not been created by any person having an interest in the property after the effective date of this ordinance.
 1. The creation of the house and lot shape were not completed by the applicant. However, the structure was placed by the applicant without obtaining a building permit.
6. That granting the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same districts.
 1. Staff finds that the variance requested could potentially provide the applicant with special privileges denied by the ordinance to other lands, structures, or buildings in the R-3 district with a structure located in the front yard setback.
7. The variance is the minimum that will make possible the reasonable use of the land, building, or structure.
 1. Staff finds that the requested setback variance may be the minimum to make reasonable use of this structure for the proposed use due to the structure already being located on the property.
8. The granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the area in which the property is located.
 1. Staff finds that the variance should not be detrimental to the public welfare or injurious to other property or improvements in the area.
9. The proposed variance will not impair an adequate supply of light and air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the area.
 1. Staff finds that the variance may not have any of the above effects.
10. Variances may be issued for the reconstruction rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places upon a determination that the variance is the minimum necessary so as not to destroy the historic character and design of the building, and provide the proposed reconstruction, rehabilitation or restoration will not result in the structure losing its historic designation.
 1. Not applicable.

Conclusion

Staff finds that this property is uniform in size and shape to other lots within the R-3 district. No building permits were applied for with this structure and could have been noticed prior to installation of the carport. If approved, the applicant will be required to obtain a building permit.

No one spoke at the public hearing.

Motion by Jay Michaelson, seconded by Scott Demonbreun to deny the setback variance located at 807 Blue Springs Drive due to lack of hardship.

Vote: 1 - 3 Failed

NAY: Councilman Steve Sullivan

Jay Michaelson

Scott Demonbreun

Motion by Jay Michaelson, seconded by Scott Demonbreun to deny the setback variance located at 807 Blue Springs Drive due to lack of hardship and structure is to be removed within 30 days.

Vote: 4 - 0 Passed - Unanimously

2. Michael Crawford
407 Morton Lane

Location: 407 Morton Street	Property Owner(s): Michael Crawford
Tax Map/Group/Parcel #: 28M/A/1.00	Zoning/Use Classification: R-2/Low Density Residential

Request: For a front setback variance of 32' to allow a fence within the front setback.



Staff Analysis

The applicant has requested a 32' front setback variance to place a fence in the front setback in front of the principal structure. The property is zoned R-2, Low Density Residential, and is approximately 18,312 square feet in size. Minimum front yard setback requirement in the R-2 district is 35' for any structure. When the subdivision plat was recorded for this property in 1964, the setback requirement was 40'. If approved, the structure would be roughly 25' from the edge of pavement on Morton Street.

The applicant applied for a fence permit. As part of the application process, applicants are provided an agreement for fence/accessory structure form which outlines the requirements for fences and accessory structures per the Zoning Ordinance. The applicant is advised of the presence of any easements on their property; this lot does not have any easements. A drawing was also submitted for the proposed location for the fence, which is not required as part of the application process. Upon receiving the agreement form for fences, the applicant took this as approval for the location and the fence was constructed.

Section 7.080 D of the Zoning Ordinance details the requirements for variances not involving special flood hazard areas. These are detailed below.

Zoning Variance Requirements

Section 7.080 of the Municipal Zoning Ordinance lists general requirements for a zoning variance request. Those requirements and staff's findings are as follows:

Section 7.080 Procedure for authorizing zoning variances

The purpose of a variance is to modify the strict application of the specific requirements of this ordinance in the case of exceptionally irregular, narrow, shallow, or steep lots, or other exceptional

physical conditions, whereby such strict application would result in practical difficulty or unnecessary hardship which would deprive an owner of the reasonable use of his land. The variance shall be used only where necessary to overcome some obstacle which is preventing an owner from using his property under this ordinance.

B. Standards for Variances not Involving Special Flood Hazard Areas:

The board shall not grant a variance unless it makes finding based upon evidence presented to it as follows:

1. The particular physical surroundings, shape, topographic conditions of the specific property involved that would result in a particular hardship upon the owner as distinguished from a mere inconvenience, if the strict application of this ordinance were carried out must be stated.
 1. Staff finds that the property is uniform in shape, size and topographic conditions with no unique circumstances.
2. The conditions upon which the petition for a variance is based would not be applicable, generally, to other property within the same district.
 1. The property has no distinguishable features that would deem the petition for a variance, however, the recorded setback for this property is 40' compared to 35' if a plat was recorded today.
3. The variance will not authorize activities in a zone district other than those permitted by this ordinance.
 1. Fences are allowed in R-2 zones, but are to adhere to all applicable provisions of Section 3.180 of the Zoning Ordinance.
4. Financial returns only shall not be considered as a basis for granting a variance.
 1. The property owner has not identified financial returns as a reason for requesting this variance.
5. The alleged difficulty or hardship has not been created by any person having an interest in the property after the effective date of this ordinance.
 1. The placement of the fence was completed by the applicant.
6. That granting the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same districts.
 1. Staff finds that the variance requested could potentially provide the applicant with special privileges denied by the ordinance to other lands, structures, or buildings in the R-2 district with a fence located in the front yard setback.
7. The variance is the minimum that will make possible the reasonable use of the land, building, or structure.
 1. Staff finds that the requested setback variance may not be the minimum to make reasonable use of this structure for the proposed use.
8. The granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the area in which the property is located.
 1. Staff finds that the variance should not be detrimental to the public welfare or injurious to other property or improvements in the area.
9. The proposed variance will not impair an adequate supply of light and air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the area.
 1. Staff finds that the variance may not have any of the above effects.
10. Variances may be issued for the reconstruction rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places upon a determination that the variance is the minimum necessary so as not to destroy the historic character and design of the building, and provide the proposed reconstruction, rehabilitation or restoration will not result in the structure losing its historic designation.
 1. Not applicable.

Conclusion

Staff finds that this property does not have unique circumstances in regards to physical attributes associated with the lot. The applicant contacted staff with a fence permit application including a drawing of the desired fence location. A drawing is not required as part of the application process, however the applicant was not notified the desired location does not meet setback requirements. Upon receiving a signed agreement for fence/accessory structure form back from staff that recognizes the applicant was notified if any easements are present on their lot, the applicant took that as approval for the location and constructed the fence in the desired location.

At this time, Chairman Steve Sullivan opened the board for a public hearing. The following individuals spoke during the public hearing: Applicant Mike Crawford.

Motion by Jay Michaelson, to deny the setback variance located at 407 Morton Street due to lack of hardship. This motion was then immediately withdrawn.

At this time, Chairman Steve Sullivan opened the board for a public hearing. The following individuals spoke during the public hearing: Applicant Mike Crawford and Justin Crawford of 207 Valley Court.

Motion by Jay Michaelson, seconded by Scott Demonbreun to deny the setback variance located at 407 Morton Street due to lack of hardship and the fence to be removed and/or relocated within 60 days.

Vote: 4 - 0 Passed - Unanimously

3. Jose Manuel Morales
416 Clarkston Drive

Location: 416 Clarkston Drive	Property Owner(s): Lazaro Morales
Tax Map/Group/Parcel #: 32E/A/21.00	Zoning/Use Classification: R-3/Medium Density Residential

Request: For a front setback variance of 23' to allow a detached shed along the front property line on Rock Springs Road and a side setback variance of 3.5'.



Staff Analysis

The applicant has requested a 23' front setback variance to place a detached storage shed in the front setback along Rock Springs Road and a 3.5' side setback variance along the northern property line. The property is zoned R-3, Medium Density Residential, and is 10,200 square feet in size. This parcel has road frontage on Clarkston Drive as well as Rock Springs Road, which would traditionally be a rear yard setback for a lot with one front setback. Since this property has two road frontages, two front setbacks are required to be met. Minimum front yard setback requirement in the R-3 district is 35' for any structure. At the time of recording of the plat, a 40' front setback was required on Clarkston Drive with no notation of a front setback on Rock Springs Road which defaults to the requirement today of 35'. Detached structures are to be a minimum of 8' off a side lot line.

The structure is 8' x 20' in size (160 SF) and is placed in the backyard. The applicant's backyard is fenced and the shed is located within the fenced area. The structure has not been permitted and will be required to be permitted through the Codes Department, if approved.

There is an attached structure that has been recently permitted which is also currently encroaching on the rear front setback on Rock Springs Road. This is a separate issue aside from the request presented on the agenda. It is approximately 27.5' from the property line. A 7.5' variance for this structure would be required. The covered addition is 11' x 20' (220 SF).

Section 7.080 D of the Zoning Ordinance details the requirements for variances not involving special flood hazard areas. These are detailed below.

Zoning Variance Requirements

Section 7.080 of the Municipal Zoning Ordinance lists general requirements for a zoning variance request. Those requirements and staff's findings are as follows:

Section 7.080 Procedure for authorizing zoning variances

The purpose of a variance is to modify the strict application of the specific requirements of this ordinance in the case of exceptionally irregular, narrow, shallow, or steep lots, or other exceptional

physical conditions, whereby such strict application would result in practical difficulty or unnecessary hardship which would deprive an owner of the reasonable use of his land. The variance shall be used only where necessary to overcome some obstacle which is preventing an owner from using his property under this ordinance.

B. Standards for Variances not Involving Special Flood Hazard Areas:

The board shall not grant a variance unless it makes finding based upon evidence presented to it as follows:

1. The particular physical surroundings, shape, topographic conditions of the specific property involved that would result in a particular hardship upon the owner as distinguished from a mere inconvenience, if the strict application of this ordinance were carried out must be stated.
 1. Staff finds that the property is uniform in shape, size and topographic conditions with no unique circumstances.
2. The conditions upon which the petition for a variance is based would not be applicable, generally, to other property within the same district.
 1. The property has two front setbacks, one in the traditional front yard and the rear yard, which constricts the rear yard for additional structures since any covered structures cannot be located within the front setbacks. The lot is 120 feet long, at the time of recording, the front setback on Clarkston Drive was 40', with the setback on Rock Springs defaulting to the requirement today of 35' since it was not denoted on the plat. This leaves a buildable space on the property for any covered structures to be 45 feet. The house is approximately 37 feet at its longest, thus constricting the rear yard to a smaller area for any covered structures.
3. The variance will not authorize activities in a zone district other than those permitted by this ordinance.
 1. Detached structures are allowed by right in the R-3 zoning district, but are to adhere to applicable front setbacks of the principal structure.
4. Financial returns only shall not be considered as a basis for granting a variance.
 1. The property owner has not identified financial returns as a reason for requesting this variance.
5. The alleged difficulty or hardship has not been created by any person having an interest in the property after the effective date of this ordinance.
 1. The creation of the house and lot shape were not completed by the applicant. However, the structure was placed by the applicant without obtaining a building permit.
6. That granting the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same districts.
 1. Staff finds that the variance requested could potentially provide the applicant with special privileges denied by the ordinance to other lands, structures, or buildings in the R-3 district with a structure located in the front yard setback. Other properties in the same zoning district have requested variances from the BZA in previous years in similar situations and have received approval.
7. The variance is the minimum that will make possible the reasonable use of the land, building, or structure.
 1. Staff finds that the requested setback variance may not be the minimum to make reasonable use of this structure for the proposed use. The structure could be rotated, but would still not meet setback requirements.
8. The granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the area in which the property is located.
 1. Staff finds that the variance should not be detrimental to the public welfare or injurious to other property or improvements in the area.
9. The proposed variance will not impair an adequate supply of light and air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the area.

1. Staff finds that the variance may not have any of the above effects.
10. Variances may be issued for the reconstruction rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places upon a determination that the variance is the minimum necessary so as not to destroy the historic character and design of the building, and provide the proposed reconstruction, rehabilitation or restoration will not result in the structure losing its historic designation.
 1. Not applicable.

Conclusion

Staff finds that this property is uniform in size and shape to other lots within the R-3 district. However, the parcel does have two front setbacks to meet, one on the front and one on the rear, which creates a constricted rear lot size for detached structures. If approved, the applicant would be required to obtain a building permit for the structure. Staff would also recommend the Board put a condition, if approved, that the shed not be converted to living space. If the applicant wishes to use it for living space, they must submit an application to the BZA for an accessory apartment at that time. The covered deck is approximately 27.5' from the property line on Rock Springs Road. A permit has been applied for and approved.

At this time, Chairman Steve Sullivan acknowledged applicant Jose Morales to speak regarding this request.

Motion by Scott Demonbreun, seconded by Vanessa Haley to approve the 23' rear and 3.5' side setback for the detached shed located at 416 Clarkston Drive due to the hardship of having two front setbacks.

Vote: 4 - 0 Passed - Unanimously

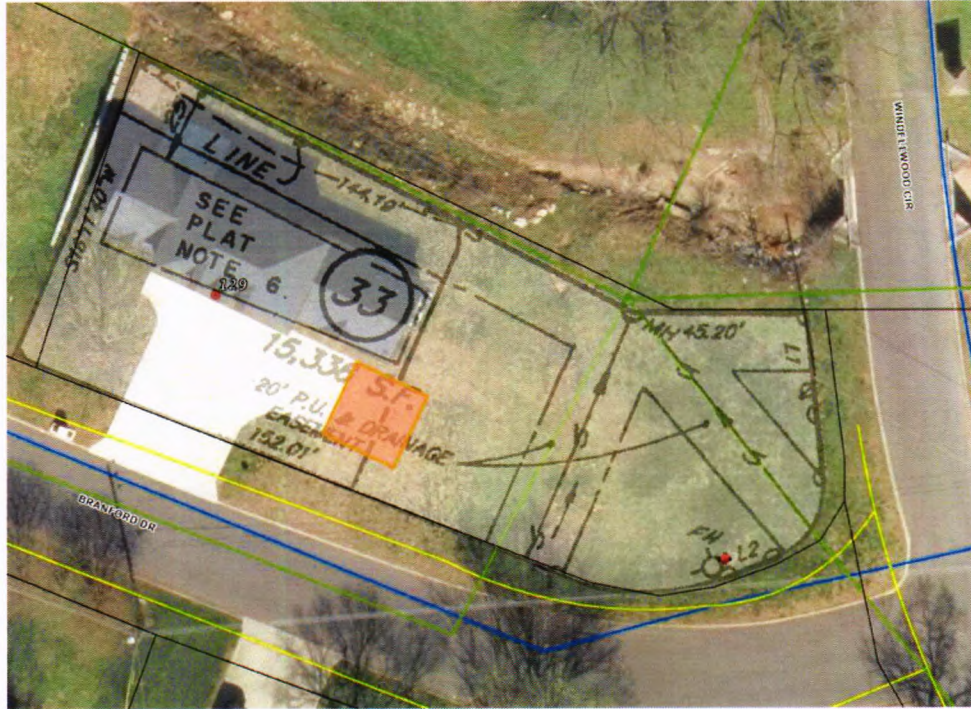
Motion by Vanessa Haley, seconded by Scott Demonbreun to approve the 7.5' rear front setback for the covered structure located at 416 Clarkston Drive due to the hardship of having two front setbacks.

Vote: 4 - 0 Passed - Unanimously

4. Ayman Nashed
129 Branford Drive

Location: 129 Branford Drive	Property Owner(s): Ayman Nashed
Tax Map/Group/Parcel #: 34I/A/44.03	Zoning/Use Classification: R-3/Medium Density Residential

Request: For a front setback variance of 21' to allow a carport within the front setback.



Staff Analysis

The applicant has requested a 21' front setback variance to place a detached carport in the front setback in front of the principal structure. The property is zoned R-3, Medium Density Residential, and is 15,336 square feet in size. Minimum front yard setback requirement in the R-3 district is 35' for any structure. In 2014, this property received BZA approval for a front setback variance of 5' to allow for a 30' front setback. This request is to place the carport approximately 9' off of the front setback. If approved, the structure would be roughly 23' from the edge of pavement on Branford Drive. There are several utility easements present on the property, which cannot be built upon.

The structure is 20' x 20' in size (400 SF) and is located in the driveway in front of the residence. Section 7.080 D of the Zoning Ordinance details the requirements for variances not involving special flood hazard areas. These are detailed below.

Zoning Variance Requirements

Section 7.080 of the Municipal Zoning Ordinance lists general requirements for a zoning variance request. Those requirements and staff's findings are as follows:

Section 7.080 Procedure for authorizing zoning variances

The purpose of a variance is to modify the strict application of the specific requirements of this ordinance in the case of exceptionally irregular, narrow, shallow, or steep lots, or other exceptional physical conditions, whereby such strict application would result in practical difficulty or unnecessary hardship which would deprive an owner of the reasonable use of his land. The variance shall be used only where necessary to overcome some obstacle which is preventing an owner from using his property under this ordinance.

B. Standards for Variances not Involving Special Flood Hazard Areas:

The board shall not grant a variance unless it makes finding based upon evidence presented to it as follows:

1. The particular physical surroundings, shape, topographic conditions of the specific property involved that would result in a particular hardship upon the owner as distinguished from a mere

inconvenience, if the strict application of this ordinance were carried out must be stated.

1. Staff finds that the property does have a unique shape in addition to the utility easements present on the property.
2. The conditions upon which the petition for a variance is based would not be applicable, generally, to other property within the same district.
 1. Easements found on other residential lots will typically have one utility line/drainage easement whereas this lot has three distinct utility lines and easements.
3. The variance will not authorize activities in a zone district other than those permitted by this ordinance.
 1. Detached structures are allowed by right in the R-3 zoning district, but are to adhere to applicable front setbacks of the principal structure.
4. Financial returns only shall not be considered as a basis for granting a variance.
 1. The property owner has not identified financial returns as a reason for requesting this variance.
5. The alleged difficulty or hardship has not been created by any person having an interest in the property after the effective date of this ordinance.
 1. The creation of the house and lot shape were not completed by the applicant. However, the structure was placed by the applicant without obtaining a building permit.
6. That granting the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same districts.
 1. Staff finds that the variance requested could potentially provide the applicant with special privileges denied by the ordinance to other lands, structures, or buildings in the R-3 district with a structure located in the front yard setback.
7. The variance is the minimum that will make possible the reasonable use of the land, building, or structure.
 1. Staff finds that the requested setback variance may not be the minimum to make reasonable use of this structure for the proposed use due to the ability to relocate the carport on the property to meet setback requirements and remain outside of any easements.
8. The granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the area in which the property is located.
 1. Staff finds that the variance should not be detrimental to the public welfare or injurious to other property or improvements in the area.
9. The proposed variance will not impair an adequate supply of light and air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the area.
 1. Staff finds that the variance may not have any of the above effects.
10. Variances may be issued for the reconstruction rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places upon a determination that the variance is the minimum necessary so as not to destroy the historic character and design of the building, and provide the proposed reconstruction, rehabilitation or restoration will not result in the structure losing its historic designation.
 1. Not applicable.

Conclusion

Staff finds that this property does have unique circumstances in regards to shape, utilities and easements located on the property. This lot has already been granted a 5' variance in 2014 to have a lesser setback requirement than is allowed on any R-3 lot today. The carport can be relocated on the site to meet setback requirements and had a permit been applied for through Codes, this would have been noticed at that time. If approved, the applicant will be required to obtain a building permit.

At this time, Chairman Steve Sullivan opened the board for a public hearing. The following individuals spoke during the public hearing: George Geshoy and Interim Building Official Dennis Blair.

Motion by Scott Demonbreun, to deny the setback variance for 129 Branford Drive due to a lack of hardship. This motion was subsequently withdrawn.

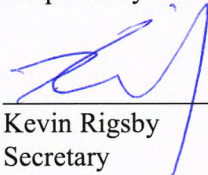
At this time, Chairman Steve Sullivan opened the board for a public hearing. The following individuals spoke during the public hearing: George Geshoy and applicant Ayman Nashed.

Motion by Scott Demonbreun, seconded by Jay Michaelson to deny the setback variance for 129 Branford Drive due to lack of hardship with the ability to relocate the structure on the lot and 90 days for the structure to be relocated or removed.

Vote: 4 - 0 Passed - Unanimously

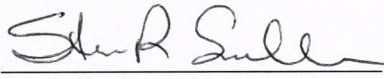
4. Staff comments and/or other business
5. Adjournment

Respectfully submitted:



Kevin Rigsby
Secretary

Certified by:



Councilman Steve Sullivan
Chairman