



STAFF REPORT

DATE: 11/13/2019

REGULAR

ITEM #:

MOTION

TO: Planning Commission
FROM: Ben Prchal, City Planner
AGENDA ITEM: Variance Request to Allow Expansion of A Non-Conforming Structure
REVIEWED BY: Ken Roberts, Planning Director

BACKGROUND:

The City has received a variance application Vance and Haupheng Vang of 2038 Inwood Ave. to allow an expansion of a legal non-conforming structure. The applicants would like to construct an addition onto the existing home that is on the property. The proposed addition would conflict with the required front and side yard setback(s). With the home being considered as legal non-conforming improvements from a dimensional standpoint would more than likely trigger the need for a variance.

ISSUE BEFORE THE COMMISSION:

The Planning Commission is being asked to hold a public hearing and make recommendation on the above-mentioned variance requests.

PROPOSAL DETAILS/ANALYSIS:

Applicant: Vance and Haupheng Vang
Property Owners: Haupheng Vang
Location: 2038 Inwood Ave. PID# 21.029.21.34.0013, Subdivision name Torre Pines 2nd
Addition Block 1 Lot 3
Request: Variance for Expansion of a Non-Conforming Structure for Front and Side
Yard Setbacks
Existing Land Use: Single-Family Detached Residential Dwelling
Surrounding Land
Use: Surrounded by other single-family detached residential dwellings. Lake Elmo
Park Reserve is to the East of the property.
Existing Zoning: RE – Residential Estate
Comprehensive Plan: Rural Single Family
History: This property holds an old home that currently does not meet the front yard
setback. The development established around the home.
Deadline for Action: Application Complete – 10-15-2019
60 Day Deadline – 12-14-2019
Extension Letter Mailed – N/A
120 Day Deadline – N/A
Applicable
Regulations: Article V – Zoning Administration and Enforcement
Article XI – Rural Districts

Request Details. The applicant is proposing to build an addition off the north side of the existing structure. At this point the existing setback from the side lot line (north line) is 64 ft. 6 inches. and the setback from the front lot line is 50 ft. 9 inches. There is no issue with the side setback as a 50 ft. side yard setback is required but the front yard setback falls short by 50 ft. (100 ft. required). The applicant would like to invest in the property and improve it so that it will become more accommodating for their family's needs. There is language in the Zoning Code that would

allow certain improvements without the need for a variance. However, the language is not flexible enough to assist with obtaining the addition. (See Code Reference Below)

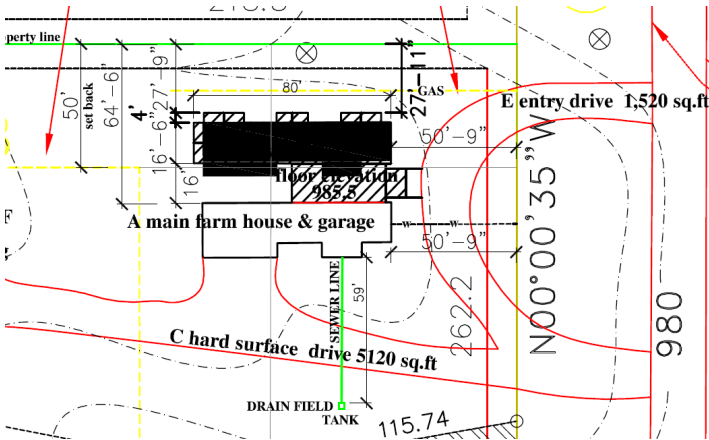
The Applicant is seeking variances on the following items

There is some language in place that would allow the home to be altered. However, the current front yard setback is already more than 10% of the reduced setback. The current side yard setback is conforming but the addition will conflict with the required 50 ft. side yard setback.

Structure Setbacks:

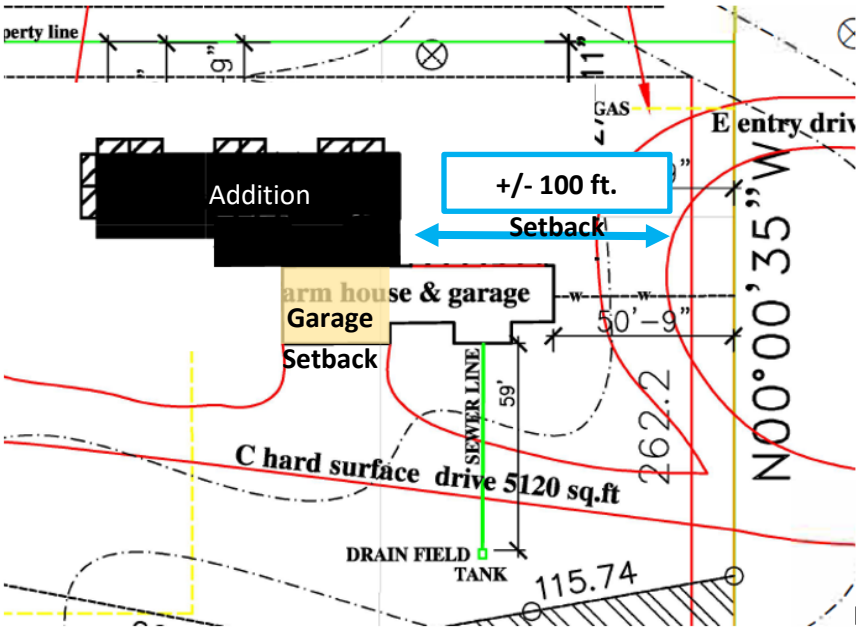
154.151 Non-Conforming Uses, Buildings and Structures

C. Preservation of Dimensionally Substandard Buildings or Structures. Except as provided in this chapter, buildings structures lawfully existing on the effective date of this chapter or on the effective date of any amendment to this chapter may be maintained although the building or structure does not conform to the dimensional standards of this chapter. However, any such building or structure shall not be altered or improved beyond normal maintenance, except that any lawful dimensional substandard residential building, accessory building, or structure may be altered or improved if the existing substandard dimension relates only to setback requirements and does not exceed the 10% of the minimum setback requirements. Additionally, the alteration or improvement shall conform to all of the provisions of this chapter and shall not increase the existing substandard dimensions.



Code Location	Code Setbacks	Proposed Setbacks
Front yard setback (garage) 154.402 table 9-2	100 ft. also established in past variance	50 ft. 9 in. not compliant
Side yard setback (garage) 154.402 table 9-2	50 ft.	27 ft. 11. compliant

If the expansion was placed on the home where a variance would not be required from the front yard setback Staff believes that the home/addition would not be functional (see image below). Staff created a layout that would not conflict with the front yard setback which ends up placing the addition behind the existing garage (not to scale). Shifting the addition to a position on the home where neither the front nor the side lot line setbacks would then appear to directly interfere with the access to the garage and driveway.

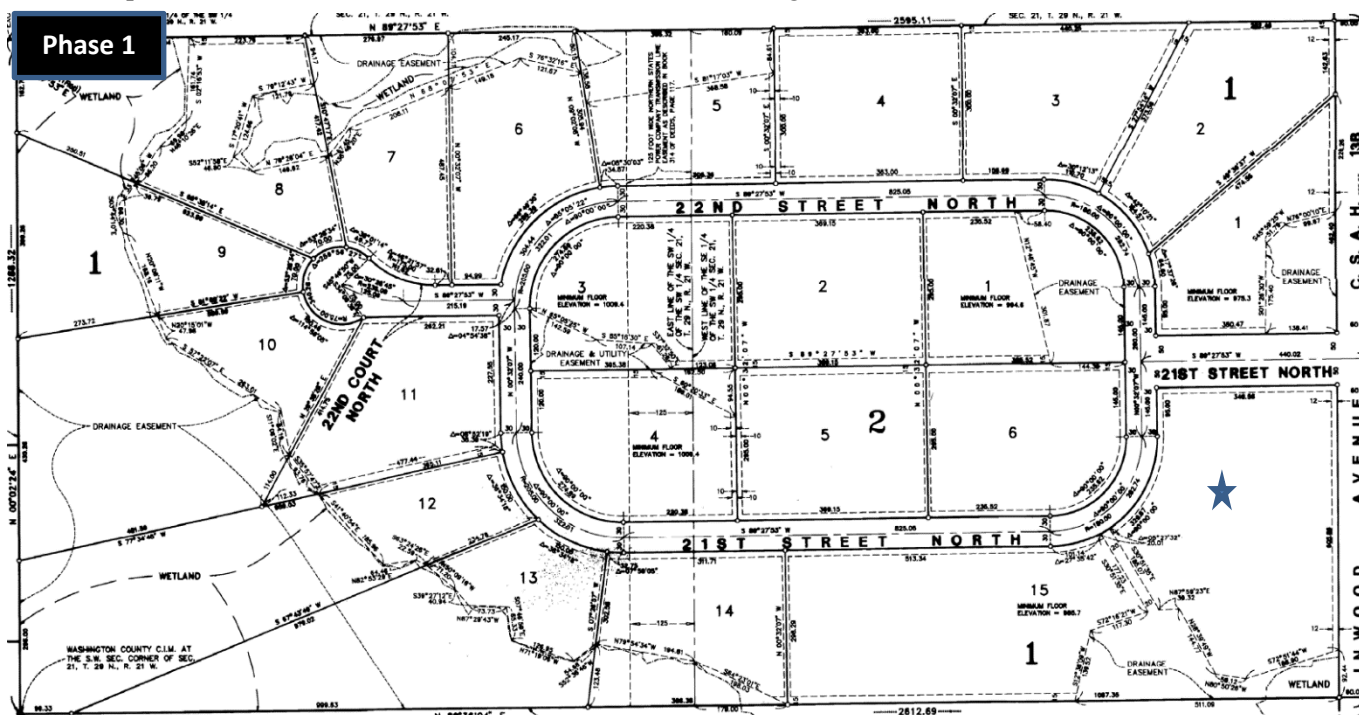


Lot Details and Details of the Development

Lot Details. The property was established during the development of the Torre Pines Subdivision. The lot itself does not have any issues when it comes to zoning. As stated before the issue starts with the existing home. With the lots being established around the existing home it is not terribly surprising to Staff that the home would become Legal Non-Conforming.

Code Location	Code Setbacks	Proposed or Existing Setbacks
<i>Lot area 154.402 table 9-2</i>	<i>2.5 acres</i>	2.5 acres
<i>Front yard setback 154.402 table 9-2</i>	<i>100 ft.</i>	50 ft. 9 in. – Existing setback 50 ft. 9 in. - Proposed setback
<i>Side yard setback 154.402 table 9-2</i>	<i>50 ft.</i>	64 ft. 6 in. (North) – Existing 27 ft. 9 in. (North) - Proposed
<i>Impervious Surface 154.402 table 9-2</i>	<i>15%</i>	11.5% - Proposed

One important aspect worth a discussion is the approving resolutions for the development. Phase one of the development consisted of 15 lots with the discussed home being on lot 15.

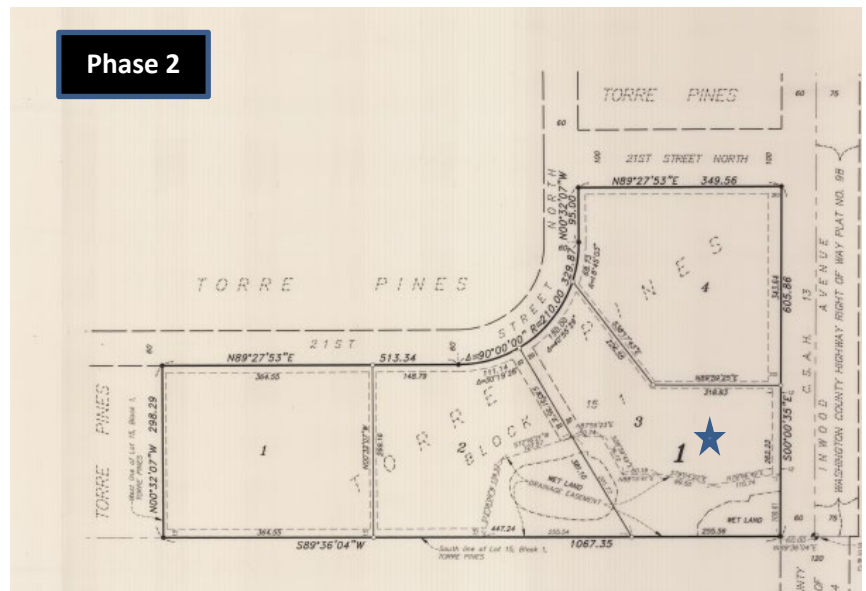


The issue then comes up during the approval for Phase 2. At first there doesn't seem to be any issues and it's a fairly straightforward development with no issues (*except the legal non-conforming home*). The problem that Staff found is condition number 7. Of the approving resolution (2008-038) for phase 2. The condition states:

"The driveway access from Lot 13, Block 1 shall be moved to 21st Street prior to any expansion or replacement of the existing house on this lot."

The issue here is that there is no lot 13 for block 1 of the second addition. However, there is a lot 13 of block 1 in the first addition (*see phase 1 graphic*). With that said, Staff speculates that there was a mistype and it should have said Block 1 Lot 3 and further believes that the driveway condition was intended for the existing home of the property at 2038 Inwood Ave.

At this time Staff believes the intent was to redirect the driveway but it was miss-stated. This would be an appropriate time to correct the location of the driveway for the house to 21st St. but Staff does not believe it is entirely necessary. The driveway enters out onto a County Road and though the driveway connects to a road that is obviously busier than 21st St. the existing owner would like to have it remain in place. At the time when Inwood Ave (Hwy 13) is improved the homeowner may want to connect to 21st St. The City would also need to accept that requiring the driveway to connect to 21st St. would create another non-conformity. With the driveway connecting out to 21 St. the accessory building would be closer to the front lot line than the principle structure (the home). Though, that would conflict with the code it would not appear to be terribly detrimental to the neighbors. Although some individuals may find it more desirable to connect to 21 St. Staff does not necessarily see a gain in requiring the current owner to re-direct the driveway. Unless the Commission or City Council have different thoughts this may be an appropriate condition to have Washington County enforce as everything is already existing.



Other Agency Review

Washington County Comments.

Washington County has stated that they would not like to see additional access created onto Inwood Avenue and instead have a new driveway installed for connection to 21st St.

Staff Comment - City Staff agrees that additional access should not be created but does not necessarily agree that enforcing a connection to 21st St. would need to be required at this time. Instead that connection could/should be required when Inwood Avenue is improved (expanded).

Valley Branch Watershed Comments.

The Watershed did respond but was uncertain if a permit would be required.

Staff Comment – It would be appropriate to apply a condition requiring the property owner to reach out to the Watershed District and provide feedback on what will be required.

City of Lake Elmo Engineer Comments.

The comment memo from the City's Engineer is attached.

To summarize the memo, additional encroachment is not recommended in anticipation of the expansion of Highway 13 (Inwood Ave.) and the setback line should be measured from the ROW line with an addition 15 ft. as that is what

the County would expect to acquire during the time that Hwy 13 is improved, eliminate one section of the driveway onto Highway 13, acquire an addition 15 ft. of ROW in anticipation of the expansion of Hwy 13.

Torre Pines HOA.

The applicant has obtained approval from the HOA architectural advisory board for the addition.

RECOMMENDED FINDINGS:

An applicant must establish and demonstrate compliance with the variance criteria set forth in Lake Elmo City Code Section 154.109 before an exception or modification to the property can be granted. The criteria is listed below, along with recommended findings from Staff regarding applicability of these criteria to the applicant's request.

- 1) **Practical Difficulties.** A variance to the provision of this chapter may be granted by the Board of Adjustment upon the application by the owner of the affected property where the strict enforcement of this chapter would cause practical difficulties because of circumstances unique to the individual property under consideration and then only when it is demonstrated that such actions will be in keeping with the spirit and intent of this chapter. Definition of practical difficulties;

“Practical difficulties” as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by an official control.

FINDINGS:

Variance For Front Yard Setback: *With respect to the proposed variance for a reduced setback from the front lot line, strict enforcement of the City's zoning regulations will cause practical difficulties and the applicant is proposing to use the property in a reasonable manner. The request to expand the existing home on site does appear to be reasonable. Considering that the home is existing and the development was established around the existing home, property owners are limited when it comes to improvements that could comply with the code. Also, the addition does not further increase the non-conformity, the reduced setback does appear reasonable.*

Variance For Side Yard Setback: *With respect to the proposed variance for a reduced setback from the side lot line, strict enforcement of the City's zoning regulations will cause practical difficulties and the applicant is proposing to use the property in a reasonable manner. With the Residential Estate requiring a minimum of 50 ft. as a setback from the side lot line, which is the largest of all rural zoning districts only being less restricting than the Agricultural district, requiring 100 ft. as the setback. Although, the existing structure does meet the setback requirement any addition larger than 14 ft. would trigger a variance. The City must keep in mind that perhaps there is an alternative to the request to avoid a variance. But placing the addition to the South of the existing home would more than likely infringe on the existing driveway, access to the garage, and possibly the septic system. The addition to the north does appear reasonable and they are still able to maintain a 27 ft. and 9 in. setback from the north property line.*

- 2) **Unique Circumstances.** The plight of the landowner is due to circumstances unique to the property not created by the landowner.

FINDINGS:

Variance For Front Yard Setback: *With respect to the proposed variance for the front yard setback, the plight of the Applicant is unique and has not been caused by the applicant. Although the lot is large enough in size to accommodate the size of home that is desired the applicant was not involved with the construction/placement of the existing house or with the platting process that triggered this home to become legal non-conforming. With the structure being legal non-conforming, additions become difficult especially when the required setback is 100 ft. Given the circumstances, approval for the addition on the structure with a setback less than 100 ft. from the front lot line does appear to be reasonable.*

Variance For Side Yard Setback: With respect to the proposed variance for the side yard setback, the plight of the Applicant is unique and has not been caused by the applicant. Generally speaking property owners do not have to contend with legal non-conforming structures in a new development. Although the home as existing, is capable of meeting the required setback from the northern side lot line there is limited room and options for expanding the structure. Beyond this, it is impractical to expand the structure to the south where the setbacks can be met. This is justified because an expansion would then be to conflict with the driveway, garage, and the driveway would be forced south towards the drain field is located. The standard appears to be met.

3) **Character of Locality.** The proposed variance will not alter the essential character of the locality in which the property in question is located.

FINDINGS:

Variance For Front Yard Setback: With respect to the proposed variance for the front yard setback, the addition would not appear to alter the character of the locality. Though affiliated with the Torre Pines Development the home primarily appears to have a limited impact on the development due to its location in the rear of the lot, as compared to the other homes. Allowing a variance to the front lot line appears to have limited bearing on the character of the locality.

Variance For Side Yard Setback: With respect to the proposed variance for the side yard setback, the addition would not appear to alter the character of the locality. The City recognizes that allowing a reduced setback for the side yard lot line would be different from what has been allowed by the Zoning Code and the Locality. However, understanding that this was the original home in the subdivision and given its location on the property being able reasonably notice the setback from the development appears stretched.

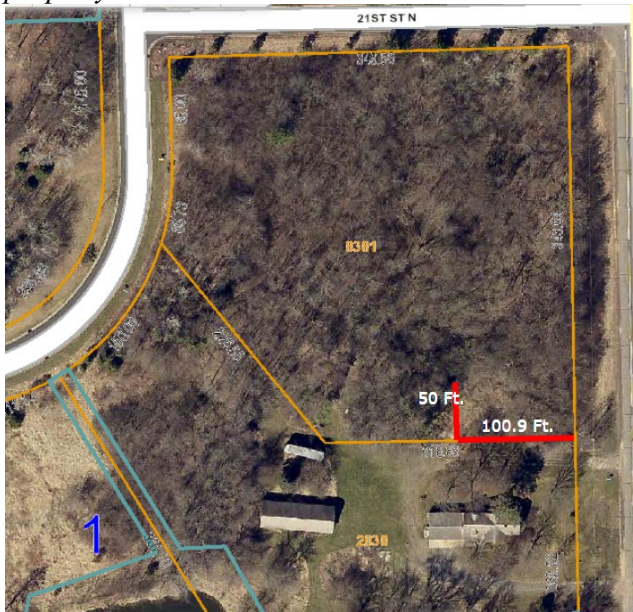


- 4) **Adjacent Properties and Traffic.** The proposed variance will not impair an adequate supply of light and air to properties adjacent to the property in question or substantially increase the congestion of the public streets or substantially diminish or impair property values within the neighborhood.

FINDINGS

Variance For Front Yard Setback: With respect to the proposed variance for the front yard setback, the proposed variance will not impair an adequate supply of light and air to the adjacent property or substantially increase congestion of the public streets or substantially diminish property values. Drawing a conclusion that allowing a variance from the front property line would cause negative impacts appears limited in this situation when reviewed through the required scope. Since the home is on the opposite side of the lot of where the neighborhood road is located the impacts of the proposal would be severely limited.

Variance For Side Yard Setback: With respect to the proposed variance for the side yard setback, the proposed variance will not impair an adequate supply of light and air to the adjacent property or substantially increase congestion of the public streets or substantially diminish property values. The only property that would be perceivably impacted is the property to the north (vacant). However, there would still be an estimated 77 ft. setback from the proposed home and a new home on the neighboring property to the north (8381 21st N.). There is also a strong stand of trees on the northern not that further helps to minimize the visibility of the structure. Although the required setback is being infringed on there still appears to be a sufficient setback to accommodate approval. Furthermore, allowance of the reduced setback appears to have a limited bearing on reducing property values when it comes to the setback.



FISCAL IMPACT:

None.

OPTIONS:

The Planning Commission may:

- Recommend approval of the variance requests, subject to conditions of approval as recommended by Staff.
- Amend conditions of approval and recommend approval of the variance requests, subject to amended conditions of approval.
- Recommend denial of the variance requests.

RECOMMENDATION:

Staff is recommending approval of the variance requests. Although the lots are larger in the Residential Estate Zoning classification the property owner is at a disadvantage when it comes to making improvements consisting expansions of the home. Staff is recommending the following conditions of approval:

- 1) The applicant shall reduce the number of access points onto Inwood Avenue from two to one.
- 2) The applicant shall follow up with the Valley Branch Watershed District regarding permitting and provide their conclusion to City Staff. If a permit is required then an approved permit shall be provided to the City prior to issuance of the building permit.
- 3) The applicant shall follow up with Washington County Septic Department regarding permitting and provide their conclusion to City Staff. If a permit is required then an approved permit shall be provided to City Staff prior to issuance of a building permit.

Staff recommends the following motion:

“Motion to recommend approval of the request for reduced front and side yard setbacks for the property at 2038 Inwood Ave., subject to conditions of approval as recommended by Staff”

ATTACHMENTS:

- Applicants narrative
- Survey/site plan
- HOA Architectural Board Approval
- Lake Elmo Resident Comments
- Engineering Memo