RECOMMENDED FINDINGS (DENIAL)

Variance

In order to approve the Variance, the following findings must be made:

1. Because of exceptional or extraordinary circumstances or conditions applicable to the property, or use, including size, shape, topography, location or surroundings, the strict application of the ordinance is found to deprive the property owner of privileges enjoyed by other properties in the vicinity and within the same zoning district. [**Finding not met**]

The subject parcel is located midblock along South Pastoria Avenue near the intersection with Lewis Avenue. The site is surrounded by residential developments of one and two unit homes. The site is not constrained by its size or shape. The lot size of 5,750-square feet is less than current zoning code requirement for new R-2 lots, but the site is the same lot size as other properties in the same R-2 neighborhood. The rectangular shape of the property and the lot dimensions of approximately 50 feet wide by 115 feet deep are similar to other lots on the same street and does not present a unique or unusual circumstance that may warrant special consideration through a Variance.

Similarly, the topography does not present a unique or unusual circumstance. The site has a grade slope of negative .9% from front to back.

Aside from one protected tree, and four unprotected trees in the rear yard, there are no natural obstructions on the lot.

Therefore, the application of the accessory structure ordinance is not found to deprive the property owner of privileges enjoyed by other properties in the vicinity and within the same R-2 zoning district.

2. The granting of the Variance will not be materially detrimental to the public welfare or injurious to the property, improvements or uses within the immediate vicinity and within the same zoning district. [**Finding not met**]

The shed roof is 8 feet and 7 inches at its lowest point along the left side property line and 9 feet and 11 inches at its highest point. The existing 5 foot 8 inch fence along the left side and approximately 6 foot tall fence along the rear property line partially screens the accessory structure, however the accessory structure is still visible from adjacent properties. While some neighbors have expressed support for the project, two other neighbors have expressed concerns about the unpermitted structure, citing its proximity to the property lines, height, visibility, and construction without the benefit of a city permit. Without opening up the walls and roof to verify how it was constructed, staff cannot confirm whether the structure meets minimum health and safety requirements. Therefore, Finding 2 cannot be met.

3. Upon granting of the Variance, the intent and purpose of the ordinance will be still served and the recipient of the Variance will not be granted special privileges not enjoyed by other surrounding property owners within the same zoning district. [**Finding not met]**

The neighborhood pattern primarily consists of houses located at the front of the lot and detached garages behind the home. Although many of the older constructed garages do not meet current rear and side yard setback standards, they were constructed before these standards were adopted and therefore legal nonconforming structures. Over the past 50 years, four homes in the vicinity have been granted Variances for deficient setbacks, including those at 119 South Pastoria Avenue, 168 South Pastoria Avenue, 386 South Pastoria Avenue, and 389 South Pastoria Avenue. Only one of these Variances involved an accessory structure, while the others were for accessory dwelling units, which are different types of structures regulated by State law and are not pertinent to this Variance application.

The Variance granted for the accessory structure at 386 South Pastoria Avenue allowed for reduced rear setbacks of 6.5 feet where 10 feet is required, and increased rear yard coverage of 33% where 25% is the maximum. The variance was for an addition to an existing, legal nonconforming detached one-car garage. The addition added a second garage parking space and a small workshop, which brought the property into compliance with the minimum parking requirement of two covered parking spaces. While there are some similarities between the past Variance and the subject Variance in terms of reduced rear setbacks, the key difference is that the former corrected a non-conforming situation and brought the property into compliance with current parking requirements. However, the proposed accessory structure and the subject of the proposed Variance was created due to unpermitted construction, and would not bring the property into compliance with current requirements.

The intent of required yard setbacks is to ensure the separation of buildings on neighboring properties and to mitigate potential impacts to privacy, light, air, or the enjoyment of property, whether current or in the future. The subject accessory structure was constructed without the benefit of a city permit, does not correct a non-conforming situation on-site, and is not aligned with the City’s intent for granting Variances. Therefore, the required findings cannot be made as described above.