



AMERICAN FORK CITY
BOARD OF ADJUSTMENT AGENDA
September 14, 2022

AMENDED NOTICE OF PUBLIC HEARING BEFORE THE BOARD OF ADJUSTMENT

NOTICE is hereby given that the Board of Adjustment of American Fork City, Utah will meet on Wednesday, September 14, 2022 at the American Fork City Public Works Complex, 275 East 200 North, American Fork, at 6:00 p.m.* The items listed below will be discussed, and anyone interested is invited to participate and provide a comment.

BOARD OF ADJUSTMENT MEETING

1. Call to Order
2. Annual Open and Public Meetings Training*
3. SCHEDULED ITEMS

Josh Draper has submitted an application for a review and action on a request for a variance on a proposed addition as an accessory apartment for a property located at 322 west 1300 North in the R1-9000 Zone.

4. Other Business

ADJOURNMENT

5. Adjourn

To send public comments to Board of Adjustments members, email mwhite@americanfork.gov.

*Amended item

Melissa White
Administrative Assistant
Development Services
American Fork City

**AMERICAN FORK CITY
BOARD OF ADJUSTMENT**

MEETING DATE: September 14, 2022
STAFF: Dan Loveland

AGENDA TOPIC: Review and action on a variance for property located at 322 West 1300 North in the R1-9000 zone.

BACKGROUND INFORMATION				
Location:		322 West 1300 North		
Applicants:		Joshua and Sariah Draper		
Existing Land Use:		Residential Low Density		
Proposed Land Use:				
Surrounding Land Use:	North	Residential Low Density		
	South	Residential Low Density		
	East	Residential Low Density		
	West	Residential Low Density		
Existing Zoning:		R1-9000		
Proposed Zoning:				
Surrounding Zoning:	North	R1-9000		
	South	R1-900		
	East	R1-9000		
	West	R1-9000		
Land Use Plan Designation:		Residential Low Density		

Background

To grant a variance, all conditions must be met. To deny a variance, you only need to be lacking on one condition.

1. Would granting the variance change the intended use of the property? **Yes, it would be a two-family dwelling as shown on the plans, not an accessory apartment which is allowed in the municipal code R-1, 9000 only allows one family dwelling.**
2. Are there special circumstances attached to the property that do not generally apply to other properties in the same zone? **No, the request is not property circumstance.**

3. Do those circumstances in (2) cause an unreasonable hardship on the applicant, denying use of the property, that others in the same zone enjoy or that he/she has a right to expect? **No, this is a self-imposed hardship.**
4. Is the variance essential to a substantial property right possessed by other property owners? **No, an accessory apartment is allowed as long as all conditions are met. See American Fork Municipal Code 17.5.134.**
5. Will granting the variance substantially affect the goals of the general plan or be contrary to the public interest? **Yes, the City allows accessory apartments as long as all conditions are met which keeps everything consistent and fair for all.**
6. Is the spirit of the land use zoning ordinance observed and is the Board being fair to all involved? **No, the request is for a two-family dwelling not an accessory apartment.**

Section 17.2.303 Powers of Board

The Board of Adjustment shall have the following powers:

- A. The power to grant variances from the terms of the land use ordinances, subject to compliance with the terms and conditions set forth herein and the provisions of Section 10-9a-702, Utah Code.
- B. The power to hear and decide appeals where it is alleged that there is error in any order, requirement, decision, or determination made by the administrative official in the enforcement of this code, subject to compliance with the terms and conditions of this code and the provisions of Sections 10-9a-703 through 10-9a-708, Utah Code Annotated, 1953, as amended.

Section 17.4.204 R1-9000 Residential Zone

- A. Intent. The R1-9000 residential zone has been established for the purpose of providing a place where one family detached dwellings on spacious individual lots can be constructed having attractively landscaped yards and a favorable environment for family life. Uses such as high-density apartment houses and commercial and industrial uses are not permitted in this zone.
- B. Permitted uses. The following buildings, structures, and uses of land shall be permitted upon compliance with the applicable requirements of this code:
 1. One-family dwellings (conventional, construction and manufactured housing), subject to the provisions of Section 17.5.129.
 2. Customary residential accessory buildings and structures.
 3. The growing of crops in the field.

4. Sheds used for storage of equipment used in connection with agricultural activities on the premises.
5. Utility lines
6. Accessory signs in accordance with the applicable provisions of Section 17.5.128.
7. Public and parochial schools and grounds.
8. Public agency, parks, and playgrounds.
9. Public buildings and grounds, not including storage yards and repair shops.
10. Churches.
11. Customary household pets, but not including kennels.
12. Fences, walls, and hedges subject to the requirements of Section 17.5.115 of the code.
13. Accessory apartments subject to the requirements of section 17.5.134 of this code.

FINDINGS OF FACT

The Board cannot grant a variance. The variance request does not meet any of the six conditions for a variance (see background comments). All six conditions must be met to grant a variance. The request is not a Land Use hardship, it's a self-imposed hardship. The power of the Board is Land Use ordinances only. The variance request proposal is a 2-family dwelling by definition in Section 17.12.204 in the municipal code.

A dwelling unit is defined as one or more rooms in a building designed for living purposes (bathing, eating, and sleeping) and occupied by one family. A one family dwelling is defined as a detached residence designed for or occupied by one family. The R1-9000 permitted use is for one family dwelling.

An accessory apartment is allowed as long as all of the conditions and criteria are met per Section 17.5.134. The intent of an accessory apartment is defined in Section 17.5.314.A, and allows for affordable housing with limitations, to minimize the impact on neighboring properties and neighborhoods.

This variance request will have an impact on neighboring properties because what is being proposed is a two-family dwelling. A two-family dwelling is also required to have complete fire separation by the 2015 International Residential Code 302.3. As a result of these findings, this request does not qualify for a variance.

Sec 17.5.134 Accessory Apartments

Accessory apartments are permitted within the city subject to compliance with the conditions and criteria hereinafter set forth.

- A. Intent. The intent of this section is to recognize the residential character of American Fork City, while providing for supplementary living accommodations in the community. These provisions are intended to provide additional opportunities for affordable housing, with limitations, to minimize the impact on neighboring properties and neighborhoods.
- B. Conditions and criteria.
1. A maximum of one accessory apartment may be allowed in a single-family home within all single-family residential zones. Accessory apartments shall not be calculated as additional density. No accessory apartment may be allowed in any multi-family dwelling unit, or on any lot or parcel that cannot satisfy the parking requirements.
 2. Owner occupied. No accessory apartment shall be created or occupied in a single-family home unless the owner of the property occupies either the main dwelling or the accessory apartment. For the purpose of this section, the term "owner occupied" shall be defined as full time residency within the home by the bona fide property owner(s) as shown on the Utah County tax assessment rolls.
 3. Occupancy. The occupants of an accessory apartment shall be limited by one of the following family categories:
 - a. One person living alone; or
 - b. Two or more persons related by blood, marriage, or adoption, and not more than two unrelated persons; or
 - c. Up to four unrelated individuals.
 4. Parking. Two off-street parking spaces, in addition to the two spaces required for a single-family home, are required for an accessory apartment. No parking spaces may be located within a front or side yard; except within an approved driveway. Tandem parking within a driveway is allowed to meet the parking requirement.
 5. Utility meters. A single family home with an accessory apartment may have separate meters for each water, gas, and electricity utility service. Each utility meter shall be in the property owner's name and the property owner shall be responsible for payment of all utilities.
 6. Address. The principal dwelling unit and the accessory apartment shall have the same address number, but shall refer to the principal dwelling as unit "A" and the accessory apartment as unit "B". Address must be located in a visible location on the street frontage side of the home.
 7. Appearance. The outside appearance of a single family home with an accessory apartment shall not be changed from that of a single family home.
 8. Entrances. An accessory apartment shall have a dedicated entrance located on any side or rear of the single family home or at the front of the home if it is below grade and maintains the characteristics of a single family home.
 9. Separate living areas. An accessory apartment must provide living areas for eating, sleeping and sanitation facilities separate from the principal dwelling unit.

10. Interior access. An interior access between the main living area and an accessory apartment must be maintained.
11. Building code. All construction and remodeling shall comply with building codes and ordinance requirements in effect at the time of construction or remodeling, in accordance with Utah State Code Section 10-9a-511.5, Changes to dwellings - Egress windows.
12. Not intended for sale. The accessory apartment shall not be intended for sale or detached by deed and shall only be rented.

(Ord. No. 2016-06-31, pt. I, § 1, 6-14-2016)

Editor's note—Ord. No. 2016-06-31, pt. I, § 1, adopted June 14, 2016, set out provisions intended for use as § 17.5.132. Inasmuch as there were already provisions so designated, said provisions have been included herein as § 17.5.134 at the discretion of the editor.

HISTORY

Amended by Ord. [2019-05-29](#) on 5/28/2019

Sec 17.4.204 R-1-9000 Residential Zone

- A. Intent. The R-1-9000 residential zone has been established for the purpose of providing a place where one family detached dwellings on spacious individual lots can be constructed having attractively landscaped yards and a favorable environment for family life. Uses such as high density apartment houses and commercial and industrial uses are not permitted in this zone.
- B. Permitted uses. The following buildings, structures, and uses of land shall be permitted upon compliance with the applicable requirements of this code:
1. One-family dwellings (conventional construction and manufactured housing), subject to the provisions of Section 17.5.129.
 2. Customary residential accessory buildings and structures.
 3. The growing of crops in the field.
 4. Sheds used for storage of equipment used in connection with agricultural activities on the premises.
 5. Utility lines.
 6. Accessory signs in accordance with the applicable provisions of Section 17.5.128.
 7. Public and parochial schools and grounds.
 8. Public agency parks and playgrounds.
 9. Public buildings and grounds, not including storage yards and repair shops.
 10. Churches.
 11. Customary household pets, but not including kennels.
 12. Fences, walls, and hedges subject to the requirements of Section 17.5.115 of this code.
 13. Accessory apartments subject to the requirements of Section 17.5.134 of this code.
- C. Conditional uses. The following buildings, structures, and uses of land shall be permitted upon compliance with the applicable requirements of this code and after approval has been given by the designated review agency.
1. Home occupations subject to the provisions of Section 17.5.123 of this code.
 2. Residential facility subject to the provisions of Chapter 17.15 of this code.
 3. Temporary uses, subject to the provisions of Section 17.5.122 of this code.
 4. Historic building conservation projects, subject to the applicable provisions of 17.7.801 of this code.
 5. Pre-schools and child care nurseries - quasi-public, subject to the standards and conditions set forth under Section 17.6.111.
 6. Pre-schools and child-care nurseries - residential, subject to the following:
 - a. The number of children in attendance shall not exceed ten at any one time;
 - b. The use and facilities appurtenant thereto shall comply with and shall have been approved as a home occupation; and
 - c. The submission of copies of permits or approvals from the state department of

human services or other recognized approval agency or evidence of imminent approval by such agency (when such approval is required by state law or regulation).

7. Foster care homes containing not more than two non-related foster care occupants.
8. Planned unit developments and residential condominium projects subject to the applicable provisions of Section 17.7.501 of this code.
9. Low power radio service antenna facilities, subject to the provisions of Section 17.6.112 of this code.
10. Private home/charter schools, subject to the provisions of Section 17.6.113.
11. Senior housing projects, subject to the provisions of Section 17.7.506.

D. Lot area, width and depth requirements. The minimum area, width and depth requirements for a zoning lot within the zone shall be as follows:

Use	Minimum Area (in sq. ft.)	Minimum Width (at minimum setback line)	Depth of Lot (in feet)
One-family dwellings	9,000	90	100
Churches	2 acres	250	none

E. Location requirements.

1. Main buildings. All dwellings and other main buildings and structures shall be set back in accordance with the following:
 - a. Front setback. All dwellings and other main buildings shall be setback not less than thirty feet from the front lot line which abuts on any existing or proposed public street, except that a portion of a dwelling may project up to five feet into the required front setback area, provided that the width of the projecting portion shall not exceed thirty percent of the width of the dwelling.
 - b. Side setback—Interior lots. All dwellings and other main buildings including any attached garage or similar structure shall be set back not less than eight feet from either side lot line and the combined total distance of the two side setbacks shall be not less than eighteen feet, except that where a garage or carport is attached to the side of a dwelling, the minimum required setback for such garage or carport may be reduced to not less than six feet, as measured from the lot line to the closest part of the building, and the combined required distance of the two side setbacks shall be not less than fourteen feet.
 - c. Side setback—Corner lots—Side abutting a street. All dwellings and other main buildings shall be set back not less than twenty feet from the side lot line which abuts on any existing or proposed public street.
 - d. Rear setback—Interior lots. Dwellings and other main buildings and structures shall be set back not less than twenty-five feet from the rear lot line, except that a portion of a dwelling may project up to five feet into the required rear setback area, provided that the width of the projecting portion shall not exceed fifty percent of the total width of the dwelling.
 - e. Rear setback—Corner lots. All dwellings and other main buildings shall be set

back not less than twenty-five feet from the rear lot line, except as follows: (i) a portion of a dwelling may project up to five feet into the required rear setback area, provided that the width of the projecting portion shall not exceed fifty percent of the total width of the dwelling, or (ii) where a garage is attached to the rear of the dwelling, the required rear setback for said garage may be reduced to not less than twelve feet, as measured from the rear lot line to the closest part of the garage, or (iii) a portion of a dwelling may project up to fifteen feet into the required rear setback area, provided that the width of the projecting portion shall not exceed fifty percent of the total width of the dwelling and the rear area of the corner lot abuts a side setback of an adjacent lot.

2. Accessory buildings. All accessory buildings shall be located in accordance with the following:

- a. Setback from main building—Front setback. Accessory buildings shall be set back not less than twelve feet to the rear of the closest rear wall of the main building, and not less than twelve feet from the closest side wall of the main building. Accessory buildings which are located twelve feet or closer to a main building shall be considered as part of the main building. Where no main building exists on a lot, a detached accessory building shall be set back not less than seventy-five feet from the front lot line.
- b. Side setback—Corner lot—Side abutting a street. Accessory buildings shall be set back not less than forty feet from the side lot line which abuts on a street.
- c. Side and rear setback—Interior lot line. Accessory buildings shall be set back not less than five feet from the lot line, except that no minimum side setback shall be required when all the following conditions are met:
 - (1) The accessory building is located more than twelve feet from an existing dwelling on the same or an adjacent lot.
 - (2) The accessory building contains no openings on the side contiguous to the lot line.
 - (3) No drainage from the roof will be discharged onto an adjacent lot.
 - (4) The accessory building shall have fire resistive walls rated at one hour or more.
 - (5) The building will not be placed on land designated as a utility easement.

3. Exceptions and limitations. Notwithstanding the provisions of paragraphs 1.d. and 1.e. of this subsection relating to encroachment into the rear setback area, the combined area occupied by any portion of a dwelling projecting into the rear setback area, and any portion of an attached garage located closer than thirty feet to the rear lot line, and any detached accessory building located within the rear setback area, shall not exceed thirty percent of the required rear setback area of the lot.

F. Dwelling requirements.

1. Height of dwellings. The maximum height of any dwelling shall be thirty-six feet, measured in accordance with the criteria set forth under Section 17.5.130, as may be modified by the following:
 - a. Chimneys, flag poles, television antennas, and similar ancillary structures not used for human occupancy shall be excluded in determining height.

b. The building inspector may approve a dwelling having a greater maximum height, provided, that the dwelling will be set back from all appurtenant lot lines (or footprint lot boundaries where applicable) a distance two feet for each additional foot of dwelling height.

2. Size of dwelling. Each dwelling shall have a minimum building footprint area of not less than nine hundred square feet, not including any portion of the footprint area occupied solely by a garage, carport, porch, breezeway or similar area not used as a living area.
3. Width of dwelling. The minimum width of a dwelling shall be twenty feet, as measured from the outside wall at the narrowest point of the first story, exclusive of any garage, porch, shed or similar area not considered as living area. The width shall be considered the lesser of the two primary dimensions.
4. Corner clearance for driveways. Any driveway providing access to a corner lot shall adhere to the standards as set forth in Figure 17.5.110-B, entitled "Minimum Standards for Corner Clearance of Residential Driveways."

G. Special provisions. Special provisions shall apply in this zone in order to protect its essential characteristics.

1. The space required around buildings and structures shall be kept free from refuse and debris.
2. All buildings used for human occupancy shall be furnished with a public water supply and shall be constructed in accordance with the adopted building, plumbing, electrical, fire prevention, and similar codes.
3. All buildings and uses within this zone shall comply with all applicable supplementary development standards as set forth in this code.
4. At least seventy percent of the area contained within a required front yard or side yard adjacent to a street shall be landscaped.

(Ord. No. 94-08-31; Ord. No. 01-06-32; Ord. No. 2000-12-40; Ord. No. 03-05-17; Ord. No. 04-02-01; Ord. No. 2014-01-02, § 1, 1-14-2014; Ord. No. 2015-04-25, pt. I, § 1, 4-14-2015; Ord. No. 2015-11-72, pt. I, § 2, 11-10-2015; Ord. No. 2016-06-31, pt. I, § 2, 6-14-2016; Ord. No. 2017-09-48, § 7, 9-12-2017)

HISTORY

Amended by Ord. [2019-05-32](#) on 5/28/2019

AMERICAN FORK CITY BOARD OF ADJUSTMENT VARIANCE WORKSHEET

In order to grant a variance, ALL CONDITIONS MUST BE MET. In order to deny a variance, you only need to be lacking on ONE condition.

- (1) Would granting the variance change the intended use of the property?

The answer must be NO.

Explanation: A variance may never change the use of the given zoning. Such a change can only be accomplished through an amendment to the zoning ordinance. For example, a Board of Adjustment cannot grant a variance to: Allow a commercial use in a residential zone; allow an apartment in a single-family zone; provide for any use that does not appear as a permitted use for the zone.

Findings
of
Fact

- (2) Are there special circumstances ATTACHED TO THE PROPERTY that do not generally apply to other properties in the same zone?

The answer must be YES.

Explanation: There must be something ABOUT THE PROPERTY that is unusual. This may include a geographic feature such as a steep slope, or a stream. There may be a legal right-of-way, or an approved platted lot that is irregularly shaped, or be a legal non-conforming lot that no longer meets minimum requirements.

Findings
of
Fact

- (3) Do those circumstances in (2) cause an unreasonable hardship on the applicant, denying use of the property, that others in the same zone enjoy or that he/she has a right to expect?

The answer must be YES.

Explanation: By definition, a hardship may not be economical, esthetic, or self-imposed. In other words, it cannot be a hardship if it will merely add value, look better, or be more convenient. In addition, if the hardship was created by the applicant, it cannot be considered a legal hardship. An example would be "I have a hardship because I would have to tear down the garage..." Such is not a hardship because the applicant apparently built the garage illegally, and has therefore created the hardship.

Findings
of
Fact

- (4) Is the variance essential to a substantial property right possessed by other property owners?

The answer must be YES.

Explanation: If the applicant can accomplish his/her needs without a variance, you may not grant a variance. The most difficult part of this requirement is defining the term "substantial." What may be a substantial right in one neighborhood may not be in another. Find out what one is "expected" to have in this neighborhood. Ask: "How necessary is this specific request to the enjoyment of the property?" The expansion of a little old house for a laundry room may be a more substantial right than the addition of a playroom or an extra bedroom. This is one where you will be expected to use good and fair judgement.

Findings
of
Fact

- (5) Will granting the variance substantially affect the goals of the general plan or be contrary to the public interest?

The answer must be NO.

Explanation: Again, you must define what constitutes a substantial affect. Rule of thumb is: If others will say, "Who the heck let them do that?" There is probably a negative substantial affect and the variance should not be granted. Likewise, if granting the variance will negatively impact the neighbor's property values, the variance should be denied.

Findings
of
Fact

- (6) Is the "spirit" of the land use (zoning) ordinance observed and is the Board being fair to all involved?

The answer must be YES.

Explanation: Like the previous two questions, this requires good judgement on the part of the Board. In addition, it requires that the Board understand the intent and spirit of the land use (zoning) ordinance. If the variance would allow a major violation of the intent of the ordinance, differ from the character of the underlying zone, or appear to be out of place, the variance should not be granted.

Findings
of
Fact



APPLICATION TO APPEAR BEFORE THE BOARD OF ADJUSTMENT

Date: 8/15/2022 Phone Number: 801-842-7311
Property Owner: Joshua & Sariah Draper
Mailing Address: 322 West 1300 North
American Fork, UT 84003
Address of Subject Property: 322 West 1300 North
American Fork, UT 84003
Zone of Property: R1-9000
Signature of Property Owner: Joshua A Draper
TYPE OF REQUEST:

I, (we), the above-stated applicant(s), hereby make application to the Board of Adjustment of American Fork City, Utah, for one of the following: (Check the provision that describes the type of request).

- ☐ 1. An error in an order, requirement, decision or determination made in the enforcement of the Land Use Ordinance.
- ☐ 2. An interpretation of the Land Use Ordinance text or boundary line.
- ☐ 3. A variance in the specific terms of the ordinance (requests for variance are generally limited to requirements relating to lot dimensions, building setbacks, lot area and/or size of building). The board is not authorized to issue use variances.
- ☒ 4. A special exception to the ordinance (a use which the terms of the ordinance specifically authorizes or requires the action of the Board).
- ☐ 5. Photos of the property.

SUMMARY OF REQUEST;

Please attach a sheet describing in detail the specific action requested under this application including reasons you feel qualify for granting your request. Please identify the specific section(s) of the Ordinance applicable to the issue.

EXPLANATION AND SUPPORTING DOCUMENTATION;

State the facts fully. A plot plan, to scale, must be attached showing the location of the property with existing and proposed Buildings on the lot/parcel (please indicate what is existing and what is proposed). You should also include the buildings on adjacent lots that may be affected by the variance.

DATE RECEIVED: 8.17.2022 BY: mwh REQUEST: _____

The reason for my application to the Board of Adjustments is to ask for an exception to Building Code 17.5.134.B.10 Accessory Apartments. In pursuing an independent living space for my mother-in-law, the least expensive option we have been able to come up with is adding an accessory apartment to our home. In today's market, rentable spaces are out of reach for those on a very limited fixed income. Therefore, the most economical option was to add a living space onto our home here in American Fork.

In exploring this option, we determined that adding a living space above our existing garage would be the best fit. Unfortunately, in so designing we misinterpreted ordinance 17.5.134.B.10 which states "10. Interior access. An interior access between the main living area and an accessory apartment must be maintained." Thankfully the American Fork Building Official flagged this oversight during the plan review phase. Unfortunately, to meet this ordinance a dedicated set of stairs to this accessory apartment would need to be built in our already cramped living room. Effectively rendering our living room unusable and adding unnecessary expenses to this project.

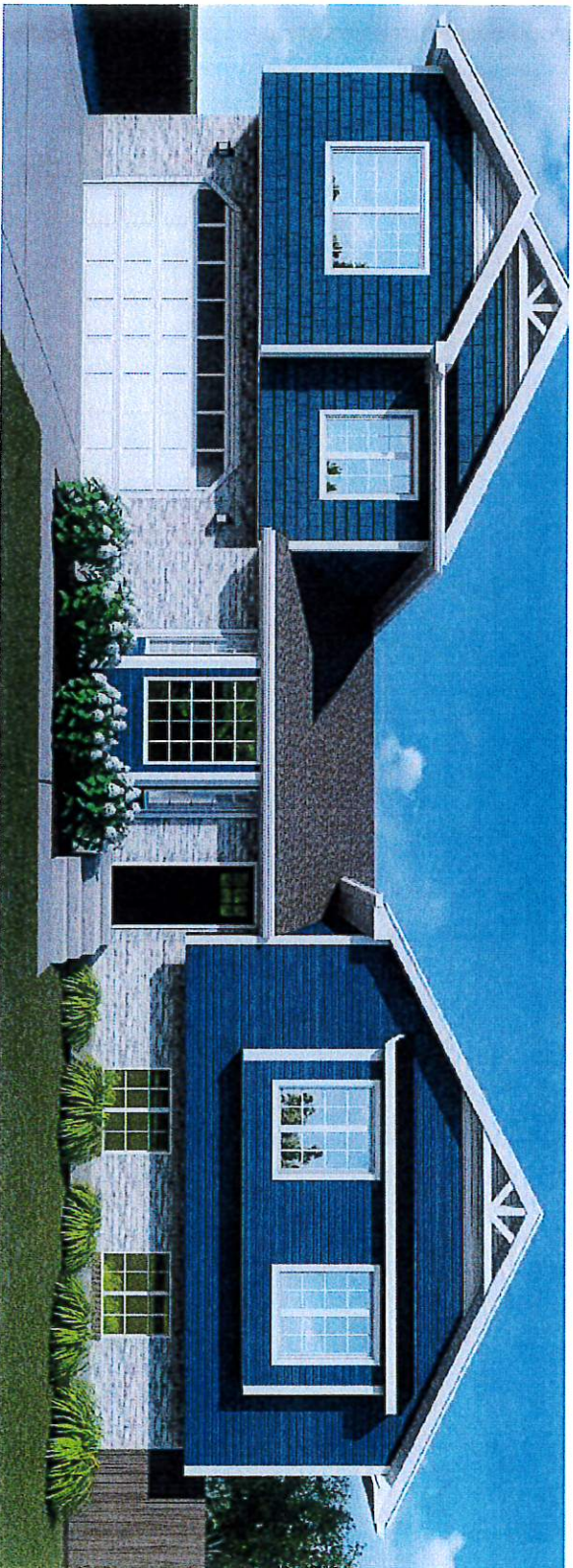
I ask the Board of Adjustment to grant a variance to this building ordinance. I understand the reasoning behind this ordinance is to allow the homeowner access to this living space without having to enter from the exterior. Thus, extending the usable living space of a single-family home, without creating a separate apartment in an otherwise single-family home area. As you can see in the attached drawings, this addition would not detract from the single-family home intent of the building ordinance. But would add beauty and value to our community. I believe the current design meets all the other requirements of an accessory apartment.

In today's market, limiting homes to single family units is near impossible. Adult children are having to return home, retired in-laws are moving in with their children. Occupied RVs are a common sight throughout residential neighborhoods. Everyone is looking for a reasonable/affordable place to live. My wife and I were extremely lucky to purchase this home when interest rates and home prices were reasonable, although we didn't think so at the time. In researching other housing options for my mother-in-law, I don't know how anyone can afford a home or apartment.

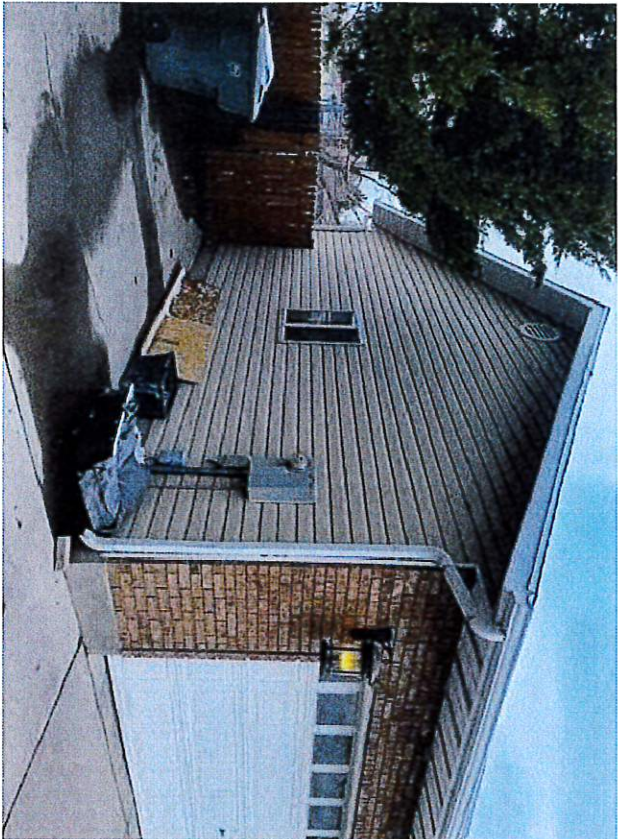
Thank you for your consideration and time,
Josh Draper



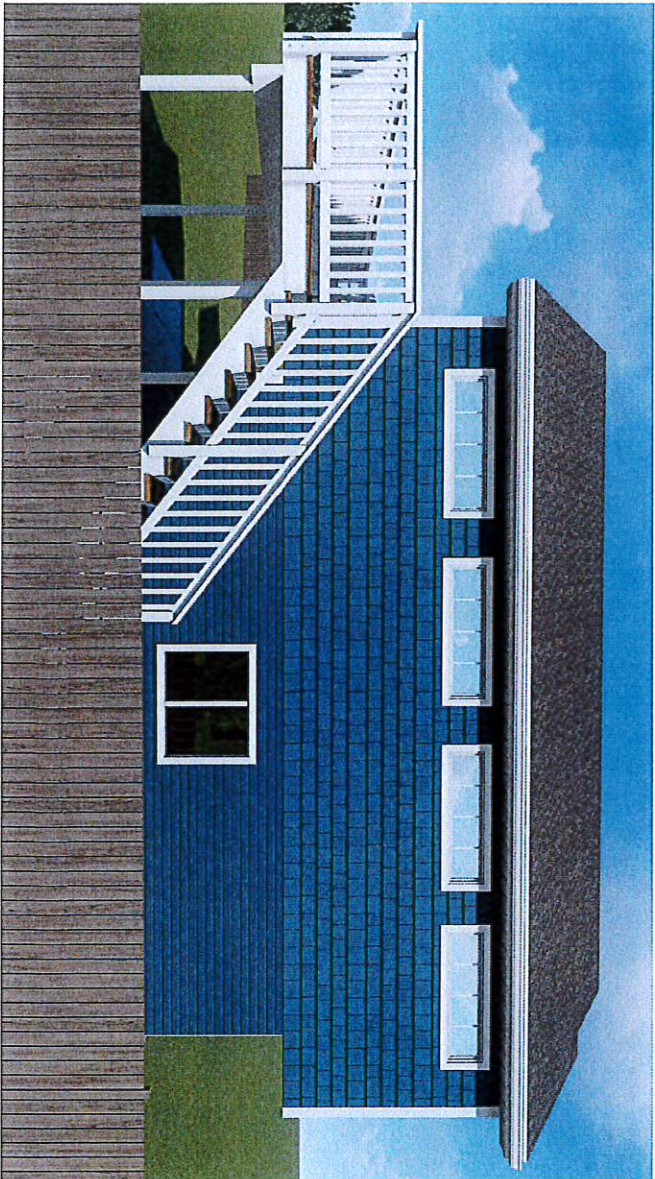
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PROPOSED



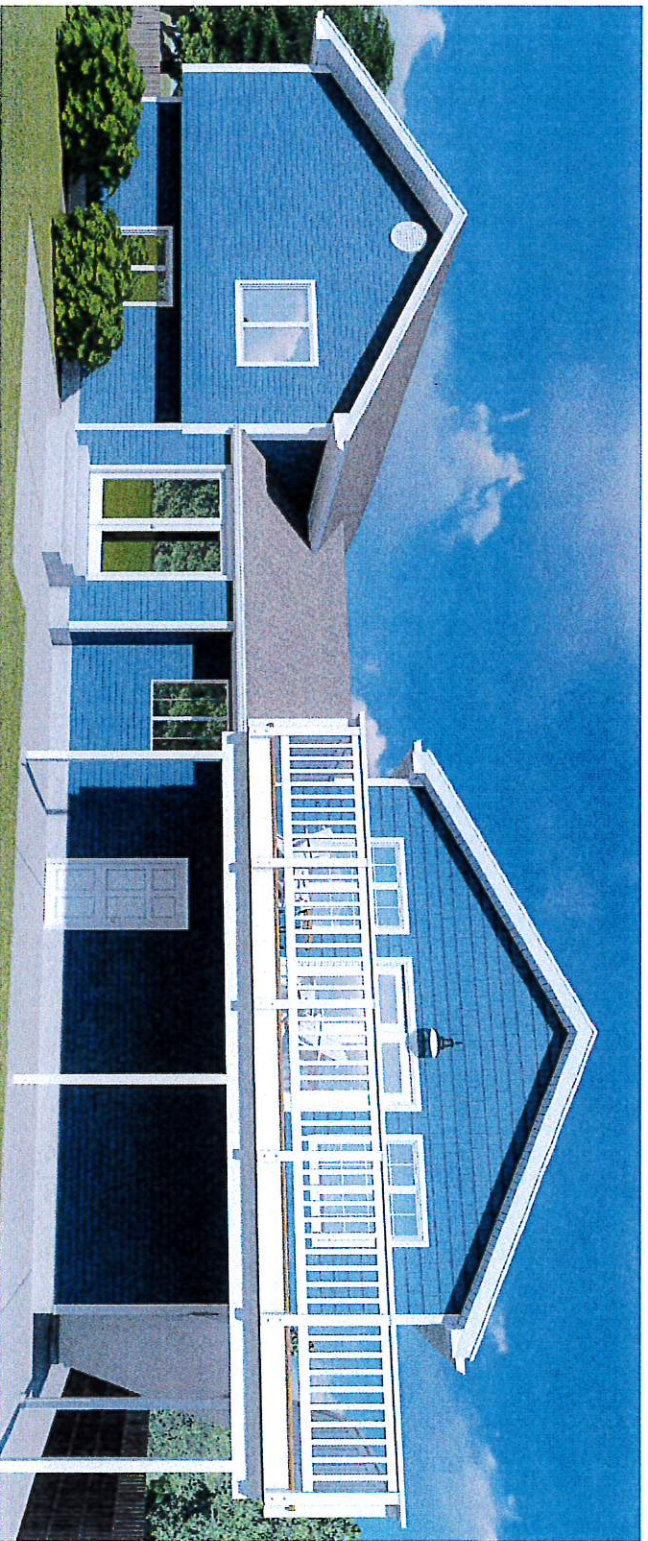
EXISTING



PROPOSED 13. LEFT VIEW



EXISTING



PROPOSED

The site plan illustrates the layout of a residential property with the following features and dimensions:

- EXISTING HOUSE:** A rectangular structure colored orange, measuring 28' in width and 34'-6 1/2" in depth.
- SECOND FLOOR ADDITION:** A rectangular structure colored pink, measuring 29' in width and 26'-3" in depth, located to the left of the existing house.
- UPPER DECK PROPOSED:** A rectangular structure colored pink, measuring 9'-1 1/2" in width and 7'-6" in depth, located to the right of the second floor addition.
- Property Dimensions and Setbacks:**
 - The total width of the property is 42'-6".
 - The total depth of the property is 35'-9 1/4".
 - The setback from the left property line to the second floor addition is 36'-9 1/2".
 - The setback from the right property line to the existing house is 34'-6 1/2".
 - The setback from the bottom property line to the existing house is 42'-1 1/2".
 - The setback from the top property line to the second floor addition is 6'-2 1/4".

1. SITE PLAN 1/16" = 1'

Untitled Map

Write a description for your map.

Legend
Trail



